



THE LAW LIBRARY OF VICTORIA

Library Bulletin

25 May 2018

Library News

Rare Book Week 2018: Legal Luminaries and their books
Friday 6 July, 1.00pm-2.00pm

As part of Melbourne Rare Book Week 2018, the Law Library of Victoria brings together a discussion panel of eminent members of the legal community to share their passion for books. Held annually in the iconic Supreme Court Library, this session is intended to celebrate the richness of the written word and the beauty of the book. After presentations from panellists, audience members will be invited to offer questions to the panel to stimulate further discussion.

All are welcome and entry is free. Bookings are required, visit Eventbrite at <https://www.eventbrite.com.au/e/rare-book-week-2018-legal-luminaries-and-their-books-tickets-44616857221?aff=es2> for more details.

SUBSCRIBE TO THE LIBRARY BULLETIN

If you would like to receive the Library Bulletin by email, please contact us at lv@courts.vic.gov.au

Judging for the People: A Social History of the Supreme Court in Victoria 1841-2016



Judging for the People: A Social History of the Supreme Court in Victoria 1841-2016 has just been published. Copies of the book can be ordered from the Supreme Court Library, please phone 03 9603 6282 for details.

The book costs \$60 and there is a \$10 discount for members of the Royal Historical Society of Victoria (RHSV).

Contents

Contents

New Books	3
Legislation	4
Victorian Bills	4
Victorian Assents	4
Proclamations	4
High Court Cases	5
Victorian Supreme Court Cases	7
Court of Appeal	7
Commercial Court	12
Common Law Division	16
Criminal Division	22
Costs Court	24
County Court of Victoria Cases	25
Articles	27
Constitutional Law	27
Contract Law	27
Corporations Law	27
Criminal Law & Procedure	27
Employment Law	28
Equity	28
Evidence	28
Family Law	28
International Law	28
Legislation	28
Media Law	28
Medical Law	29
Practice & Procedure	29

New Books

Following is a selection of new books in the Library collection. For details of more new books, see the Library Catalogue: https://courts.sdp.sirsidynix.net.au/client/en_AU/llv/.

Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

Members of the legal profession and the public can request any of the books to read on site at the Supreme Court Library.



Carter, J.W., *Contract law in Australia*
7th ed., LexisNexis Butterworths, Chatswood, 2018
Call number: 346.02 CAR.7 (Supreme Court Library, VCAT Library)

[Link to the book in the catalogue](#)



Hurst, Peter, *Costs & funding following the civil justice reforms: questions & answers*
4th ed., Sweet & Maxwell, London, 2018
Call number: 347.41077 COS.4 (Supreme Court Library)

[Link to the book in the catalogue](#)



Jackson, Rupert M. et. al., *Civil procedure 2018*
London, Sweet & Maxwell, 2018
Call number: 347.4102 CIV.18 (Supreme Court Library)

[Link to the book in the catalogue](#)

Legislation

Victorian Bills

The following Victorian Bills have received a second reading since the last Library Bulletin:

- [Crimes Amendment \(Unlicensed Drivers\) Bill 2018](#)
- [Electoral Legislation Amendment Bill 2018](#)
- [Flora and Fauna Guarantee Amendment Bill 2018](#)
- [Justice Legislation Amendment \(Terrorism\) Bill 2018](#)
- [Local Government Bill 2018](#)

Victorian Assents

The following Victorian Acts were assented to since the last Library Bulletin:

- [Long Service Leave Act 2018](#)
- [Major Events Legislation Amendment \(Ticket Scalping and Other Matters\) Act 2018](#)
- [Service Victoria Act 2018](#)

Proclamations

The following Victorian Act proclamations have been made since the last Library Bulletin:

- [Bail Amendment \(Stage One\) Act 2017 No. 26/2017](#)
 - Sections 1-10, 12-14(9), 14(11)-22, 24-29 of this Act came into operation on 21 May 2018 (SG218 15.5.2018)
- [Crimes Legislation Amendment \(Protection of Emergency Workers and Others\) Act 2017 No.65/2017](#)
 - Sections 21, 22 of this Act came into operation on 21 May 2018 (SG218 15.5.2018)
- [Firearms Amendment Act 2018 No. 2/2018](#)
 - Sections 4-37, 39-42 of this Act came into operation on 9 May 2018 (SG209 8.5.2018)
- [Gambling Legislation Amendment Act 2018 No. 9/2018](#)
 - Sections 6-9, 11, 18 of this Act came into operation on 9 May 2018 (SG209 8.5.2018)

The following Victorian Acts have come into operation by forced commencement since the last Library Bulletin:

- [Firearms Amendment Act 2018 No. 2/2018](#)
 - Section 38 of this Act came in by forced commencement 9 May 2018 s.2(2)



EXHIBITIONS IN THE LIBRARY

Argus from 100 years ago

The Supreme Court Library has the Argus newspaper from 1918 on display.

The page is turned daily and provides an insight into what was happening 100 years ago to the day.

A snapshot is provided via the Law Library of Victoria Twitter account. You can follow these tweets via @lawlibraryvic #argus1918

High Court Cases

MIGRATION - Refugees - Appeal as of right from Supreme Court of Nauru - Where Secretary of Department of Justice and Border Control of Nauru ('Secretary') determined appellant not refugee under Refugees Convention Act 2012 (Nr) - Where Secretary determined Nauru did not owe appellant complementary protection under Refugees Convention Act - Where Refugee Status Review Tribunal ('Tribunal') affirmed Secretary's determinations on basis appellant could reasonably relocate within country of origin to place where persecutors had little or no influence or power - Where Tribunal's reasons contained typographical error - Where Tribunal issued corrigendum correcting error - Where Supreme Court of Nauru affirmed Tribunal's decision - Whether appellant's ability reasonably to relocate within country of origin relevant to claim for complementary protection - Whether typographical error in Tribunal's reasons disclosed error - Whether ability of appellant's family reasonably to relocate relevant to assessing appellant's ability reasonably to relocate - Whether Tribunal erred in failing to consider whether appellant's family able reasonably to relocate in assessing appellant's ability reasonably to relocate - Whether Tribunal's finding that persecutors had little or no influence or power in place of relocation supported by evidence. WORDS AND PHRASES - 'complementary protection', 'corrigendum', 'freedom of movement', 'internal flight alternative', 'internal relocation', 'non-refoulement', 'reasonable internal relocation', 'reasonable relocation', 'refugee', 'subsidiary protection', 'typographical error', 'well-founded fear of persecution'.

CR1026 v The Republic of Nauru

[\[2018\] HCA 19](#)

16/05/2018

MIGRATION - Refugees - Appeal as of right from Supreme Court of Nauru - Where Secretary of Department of Justice and Border Control of Nauru ('Secretary') determined appellant not refugee under Refugees Convention Act 2012 (Nr) - Where Secretary determined Nauru did not owe appellant complementary protection under Refugees Convention Act - Where Refugee Status Review Tribunal ('Tribunal') affirmed Secretary's determinations on basis appellant could reasonably relocate within country of origin - Where Supreme Court of Nauru affirmed Tribunal's decision - Whether appellant's ability reasonably to relocate within country of origin relevant to claim for complementary protection - Whether Tribunal failed to take into account factors relevant to appellant's ability reasonably to relocate - Whether Tribunal required under Convention on the Rights of the Child (1989) to give primary consideration to best interests of appellant's child.

WORDS AND PHRASES - 'best interests of children', 'best interests of the child', 'complementary protection', 'internal relocation', 'reasonable internal relocation', 'reasonable relocation', 'refugee', 'well-founded fear of persecution'.

DWN027 v The Republic of Nauru

[\[2018\] HCA 20](#)

16/05/2018

MIGRATION - Refugees - Appeal as of right from Supreme Court of Nauru - Where Secretary of Department of Justice and Border Control of Nauru ('Secretary') determined appellant not refugee under Refugees Convention Act 2012 (Nr) - Where Secretary determined Nauru did not owe appellant complementary protection under Refugees Convention Act - Where Refugee Status Review Tribunal ('Tribunal') affirmed Secretary's determinations on basis appellant could reasonably relocate within country of origin - Where Supreme Court of Nauru affirmed Tribunal's decision - Whether appellant's ability reasonably to relocate within country of origin relevant to claim for complementary protection - Whether Tribunal failed to raise issue of whether appellant could reasonably relocate - Whether Tribunal failed to take into account factors relevant to appellant's ability reasonably to relocate - Whether Tribunal misunderstood country information.

WORDS AND PHRASES - 'complementary protection', 'country information', 'internal relocation', 'reasonable internal relocation', 'refugee', 'well-founded fear of persecution'.

EMP144 v The Republic of Nauru

[\[2018\] HCA 21](#)

16/05/2018

Victorian Supreme Court Cases

Court of Appeal

ACCIDENT COMPENSATION - Workplace accident - Application for leave to appeal against order granting applicant leave to commence proceedings for pecuniary loss damages - Judge's conclusion of 40 per cent loss of earning capacity conceded to be wrong - Credibility of applicant in issue - Consent orders filed granting leave to appeal, allowing appeal and remitting matter for rehearing by different judge - Whether consent orders appropriate - Orders made - Accident Compensation Act 1985, s 134AB.

PRACTICE AND PROCEDURE - Consent orders allowing appeal and remitting proceeding for rehearing - Relevant considerations for whether consent order remitting proceeding for rehearing should be made - Disposition having resource implications for administration of justice - Need to identify error - Need to ensure error made at first instance not replicated on rehearing - Consent orders made - Matter remitted for rehearing by different judge.

Major Carpets P/L (ACN 092 486 336) v Marandos, Andrew

Beach JA

[\[2018\] VSCA 133](#)

18/05/2018

ADMINISTRATIVE LAW - Appeal - Judicial review - Medical panels - Reasons - Adequacy of reasons - Whether reasons disclosed panel's path of reasoning - No error in judge's conclusion that reasons adequate.

ADMINISTRATIVE LAW - Appeal - Judicial review - Jurisdictional error - Whether medical panel erred in recording worker's history - Whether medical panel mistook worker's history - Judge's finding that not satisfied that panel made factual error - No error in judge's conclusion that jurisdictional error not made out.

ACCIDENT COMPENSATION - Appeal - Medical panel - Evidence - Medical panel's notes tendered to prove history given by worker to panel - Conflicting evidence from worker - Judge not accepting worker's evidence - No error in judge's conclusions - Appeal dismissed. ***Karabinis, Fotini and Bendrups, Dr Andrea; Mills, Dr Craig; Neill, Dr Diane; Downes-Brydon, Dr Jenny and Spotless Management Services P/L***

Osborn, Santamaria, and Beach JJA

[\[2018\] VSCA 124](#)

16/05/2018

COSTS - Application for indemnity costs - Whether special circumstances justify special costs order - Leave to appeal granted on principal ground but appeal dismissed - Relevance of failure to disclose a rival contract of sale late in trial below - Abandonment of proposed ground of appeal - Relevance of offers of compromise made in earlier proceeding - *Ettinghausen v Australian Consolidated Press Ltd (1995) 38 NSWLR 404* distinguished - Application refused.

Bisognin, Gino Andrew and Bisognin, Leah Joan v Hera Project P/L (ACN 163 685 041) (No 2)

Tate, Kyrou, and Coghlan JJA

[\[2018\] VSCA 129](#)

18/05/2018

CRIMINAL LAW - Appeal - Conviction - Extortion - Trafficking in large commercial quantity of drug of dependence (ice) - Offer to sell drugs - Whether offer genuine - Whether conviction unsafe - Evidence of finding of gun and ammunition in applicant's possession - Whether relevant to extortion and/or trafficking charges - Whether danger of unfair prejudice outweighed probative value - Defence counsel conceded relevance - No anti-propensity direction sought - Leave to appeal refused - Drugs, Poisons and Controlled Substances Act 1981 s 71, Evidence Act 2008 s 137, Jury Directions Act 2015 ss 11-12.

EVIDENCE - Admissibility - Criminal trial - Charges of extortion, drug trafficking - Evidence of finding of gun and ammunition in applicant's possession - Whether relevant - Whether danger of unfair prejudice outweighed probative value - Extortion charges based on threats to shoot - Whether applicant in business of drug trafficking - Circumstantial case --- Indicia of drug trafficking - Evidence admissible - Evidence Act 2008 ss 55, 137.

CRIMINAL LAW - Appeal - Sentence - Trafficking in large commercial quantity - Offer to sell drugs - Plea of not guilty - Sentence of nine years' imprisonment - Whether manifestly excessive - Whether offer to sell less serious form of trafficking - Consideration of risk of harm - Appeal allowed - Resentenced to seven years' imprisonment - Drugs, Poisons and Controlled Substances Act 1981 s 71.

WORDS AND PHRASES - 'Offer for sale', 'accoutrements of drug trafficking', 'tools of trade'.

Arico, Rocco v The Queen

Maxwell ACJ, Weinberg and Priest JJA

[\[2018\] VSCA 135](#)

24/05/2018

CRIMINAL LAW - Appeal - Conviction - Murder - Whether verdict unreasonable or cannot be supported having regard to evidence - Evidence of witnesses whose evidence may be unreliable - Evidence from witnesses with motive to lie - Evidence from witness involved in offending - Evidence from witness whose credibility was subject of significant attack - Contradictory evidence - Vague evidence - Whether jury must have entertained doubt about guilt of applicant - Application for leave to appeal granted - Appeal dismissed.

EVIDENCE - Admissibility - Hearsay evidence - Maker of representation not available - Whether hearsay representation made in circumstances that made it likely that representation reliable - Probative value of evidence - Danger of unfair prejudice - Whether probative value outweighed by danger of unfair prejudice to accused - Evidence Act 2008, ss 65(2)(d)(ii) and 137.

Asling, Stephen John v The Queen

Ferguson CJ, Beach, and Ashley JJA

[\[2018\] VSCA 132](#)

23/05/2018

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Dangerous driving causing death and dangerous driving causing serious injury - Respondent sentenced to three years and six months' imprisonment with non-parole period of two years - Whether sentence manifestly inadequate - Undesirability of classifying offending as falling within a certain range - Appeal allowed - Respondent resentenced to five years and six months' imprisonment with non-parole period of three years and six months - *Stephens v The Queen* (2016) 50 VR 740 considered.

Director of Public Prosecutions [DPP] v Weybury, Ebonie

Maxwell P, Priest, and Hargrave JJA

[\[2018\] VSCA 120](#)

14/05/2018

CRIMINAL LAW - Appeal against sentence - Culpable driving causing death - Causing serious injury negligently - Appellant intoxicated at time of offending - Total effective sentence eight years and nine months' imprisonment with a non-parole period of six years - Whether sentencing hearing miscarried because judge refused application to adjourn to obtain comprehensive neuropsychological testing - Procedural fairness required adjournment - Need for just punishment, denunciation, general deterrence, specific deterrence and protection of community - No lesser sentence imposed - Appeal dismissed.

McGrath, Christopher v The Queen

Osborn and Priest JJA

[\[2018\] VSCA 134](#)

25/05/2018

CRIMINAL LAW - Appeal - Conviction - Application for extension of time to appeal - Applicant convicted of murder - Six year delay in filing application - Refusal of extension of time by Registrar - Election to have application determined by Court of Appeal - Fresh or new evidence - Confession obtained through 'scenario' technique - Whether psychologist's opinion and change in Canadian jurisprudence post-trial constitutes 'fresh' evidence - Whether other evidence constitutes 'new' evidence - No prospect that appeal would succeed - Application refused - Criminal Procedure Act 2009 s 313(2) - R v Hart [2014] 2 SCR 544; R v Wichman [2016] 1 NZLR 753 discussed - Tofilau v The Queen (2007) 231 CLR 396; Madafferi v The Queen [2017] VSCA 302 applied.

Weaven, Glenn v The Queen

Whelan, Priest, and Kyrou JJA

[\[2018\] VSCA 127](#)

21/05/2018

CRIMINAL LAW - Appeal - Conviction - Armed robbery - Whether verdict unreasonable or cannot be supported having regard to evidence - Circumstantial case - Identity of offender in issue - Evidence of physical appearance - Whether jury must have entertained reasonable doubt about guilt of applicant - Leave to appeal refused.

EVIDENCE - Admissibility - Seizure and search of mobile phone - Where police seized mobile phone without warrant - Where seizure not incidental to arrest of applicant - Whether evidence improperly or illegally obtained - Whether desirability of admitting evidence outweighs undesirability of admitting evidence obtained in the way in which evidence was obtained - Ghani v Jones [1970] 1 QB 693 discussed - Evidence Act 2008 s 138 - Appeal dismissed.

CRIMINAL LAW - Appeal - Sentence - Armed robbery - Principle of parity - Sentence of seven years' imprisonment with non-parole period of four years and nine months - Where co-offender sentenced to five years and nine months' imprisonment with a non-parole period of three years and ten months - Whether disparity manifestly excessive - Leave to appeal refused.

McElroy, Leigh v The Queen; Wallace, Robert v The Queen

Santamaria, Beach, and Ashley JJA

[\[2018\] VSCA 126](#)

21/05/2018

CRIMINAL LAW - Appeal - Sentence - Attempt to possess commercial quantity of border controlled drug, methamphetamine - Applicant and co-offender each sentenced to 7 years' imprisonment with 4 year non-parole period - Parity - Applicant played greater role in offending than co-offender - Applicant provided medium level assistance to authorities - Whether parity principle infringed - Whether sentence manifestly excessive - Application for leave to appeal refused.

Rosales, Azaan (a Pseudonym) v The Queen

Priest and Beach JJA

[\[2018\] VSCA 130](#)

18/05/2018

CRIMINAL LAW - Application for leave to appeal against sentence - Resentencing following breach of a community correction order - Original sentence of a community correction order for four years, payment of fine and restitution for four charges of obtaining property by deception - Resentence of six months' imprisonment - Whether judge erred in not considering the power to impose a suspended or partially suspended sentence for three of the four original offences - Whether judge erred in referring to earlier s 6AAA declaration as a starting point - Sentencing Act 1991 ss 27(2C), 83AS - Leave to appeal refused.

Hamoud, Mohamed Hishem v The Queen

Tate and Beach JJA

[\[2018\] VSCA 123](#)

16/05/2018

CRIMINAL LAW - Interlocutory appeal - Aggravated home invasion - Application for leave to appeal against routine evidentiary ruling - Applicant sought exclusion of 2 items of circumstantial evidence - Whether evidence relevant - Whether probative value outweighed by danger of unfair prejudice - Judge ruled evidence relevant and probative value not outweighed by danger of unfair prejudice - Judge's ruling correct - Application for leave to appeal refused - Evidence Act 2008, ss 55, 135 and 137.

Stewart, Hector (a Pseudonym) v The Queen

Priest and Beach JJA

[\[2018\] VSCA 128](#)

18/05/2018

CRIMINAL LAW – Interlocutory appeal – Applicants charged with aggravated burglary, intentionally cause injury and theft – Witnesses not available to give evidence – Whether judge erred in not excluding committal evidence of witnesses – Application for leave to appeal refused – Evidence Act 2008, ss 65, 137 – *Haddara v The Queen* (2014) 43 VR 53.

Norris, Aamir (a Pseudonym) v The Queen; Ross, Ruariri (a Pseudonym) v The Queen

Priest, Niall and Ashley JJA

[\[2018\] VSCA 137](#)

24/05/2018

PRACTICE AND PROCEDURE - Service - Service by post - Applicant found guilty in Magistrates' Court of offences against Taxation Administration Act 1953 (Cth), s 8C - Finding of guilt required proof of service of notice of requirements under Income Tax Assessment Act 1936 (Cth), s 162 - Internal mail collection system - Letter to applicant placed in mail tray - Contents of tray given to Australia Post driver - Staff member unable to say whether letter to applicant included - Whether service by post proved - *Brown v Bluestone Property Services Pty Ltd* [2010] NSWSC 869; *Grant Thornton (Qld) Pty Ltd v Green Global Technologies Ltd* [2009] QSC 262; *Re Harris Scarfe Ltd (recs and mgrs apptd) (in liq)*; *Dwyer v Cannon Australia Pty Ltd* [2007] SASC 100; *Pearlburst Pty Ltd v Summers Resort Group Pty Ltd* [2007] NSWSC 1126; *Northumbrian Ice Cream Co Ltd v Breakaway Vending Pty Ltd* [2006] NSWSC 1216 distinguished.

Guss, Joseph v Storace, Eddie (Australian Taxation Office)

Hargrave and McLeish JJA

[\[2018\] VSCA 121](#)

14/05/2018

PRACTICE AND PROCEDURE - Summary judgment - Appeal - Claim respondent gave negligent advice on appeal prospects from damages award in earlier proceeding - Whether trial judge erred in finding claim had no real prospects of success - Whether judge in earlier proceeding denied applicant procedural fairness - Whether judge in earlier proceeding awarded damages on basis inconsistent with applicant's case - Leave to appeal refused.

Russell, Christopher v Wisewould Mahony Lawyers

McLeish, Niall, and Hargrave JJA

[\[2018\] VSCA 125](#)

16/05/2018

SENTENCING - Appeal - Handling stolen goods - Arson - Whether sentence manifestly excessive - Whether applicant's assistance to authorities, guilty plea and prospects of rehabilitation adequately reflected in individual sentences imposed - Appeal allowed - Applicant resentenced.

Collins, Carl v The Queen

Osborn, Whelan, and Beach JJA

[\[2018\] VSCA 131](#)

26/05/2018

Commercial Court

BUILDING AND CONSTRUCTION - Claim based on alleged misleading conduct - Whether implied representation arose from tender documentation incorporating a construction program.

PRACTICE AND PROCEDURE - Purpose of pleadings - Whether a claim based on a continuing representation was pleaded - Whether the case conducted on the basis of a continuing representation - Failure to plead non-disclosure - Whether claim was a drastic departure from the pleading.

PRACTICE AND PROCEDURE - Principles to be applied on application to adopt the report of a special referee under r 50.04 - Whether a finding with respect to the making of a representation is a question of law.

CONSUMER LAW - Misleading conduct - Meaning of a 'continuing representation' considered - Consideration of test to be applied in determining whether a representation was made.

PUBLIC POLICY - Juridical basis for the unenforceability of contractual bars to claims under Australian Consumer Law considered - Whether a clause regulating the time a claim could be brought under s 236 of the Australian Consumer Law is unenforceable.

Brighton Australia P/L (ABN 23 108 995 553) v Multiplex Constructions P/L (ABN 70 107 007 527)

Riordan J

[\[2018\] VSC 246](#)

17/05/2018

BUILDING CONTRACTS - Progress payment claims - Revision and correction and withdrawal of progress payment claim - Compliance with statutory requirements - Whether revised payment claim constituted a prohibited second claim in relation to same reference date - Building and Construction Industry Security of Payment Act 2002 (Vic), s 14(8).

BUILDING CONTRACTS - Progress payment claims - Payment schedule served out of time - Application for recovery of debt - Building and Construction Industry Security of Payment Act 2002 (Vic), s 16(2)(a)(i).

Valeo Construction P/L (ACN 139 755 801) v Pentas Property Investments P/L (ACN 102 933 406)

Digby J

[\[2018\] VSC 243](#)

15/05/2018

CONSUMER LAW - Misleading or deceptive conduct - False or misleading representations - Relevant legal principles - Billboard and internet advertisements - Alleged representations as to quality of parties' respective mobile networks - Whether representations conveyed - Whether representations likely to mislead or deceive, or false or misleading to hypothetical ordinary or reasonable person within that class - Competition and Consumer Act 2010 (Cth), sch 2, Australian Consumer Law ss 18, 29(1)(b), (g).

INJUNCTION - Interlocutory - Principles to be applied - Serious question to be tried - Irreparable damage - Balance of convenience.

Telstra Corporation Ltd v Singtel Optus P/L

Robson J

[\[2018\] VSC 247](#)

16/05/2018

CONTRACT - Whether interest under deed of settlement to be calculated according to loan deed or statute - Uncertainty - Whether interest clause in settlement deed void for uncertainty - Penalty - Whether interest under settlement deed according to loan deed is a penalty - Interest rate held to be out of all proportion to the greatest loss that might follow from breach of loan agreement - Interest rate to be calculated under s 58 of Supreme Court Act 1986 - Application for costs on indemnity basis under deed of settlement, loan deed and mortgage - Exercise of discretion as to basis of award of costs.

Canis Portfolio P/L v Badov, Roman

Ierodiaconou AsJ

[\[2018\] VSC 257](#)

21/05/2018

CONTRACT - Written agreement for loan and mortgage - Authenticity of written agreement disputed by defendant - Whether document prepared and executed on date it bears.

MORTGAGES AND SECURITIES - Equitable mortgage - Intention to enter mortgage agreement - Whether transfer of interest in property unequivocally referable to a contract of the nature alleged.

MORTGAGES AND SECURITIES - Equitable lien - Indebtedness - Oral agreement or arrangement not adequately pleaded - Indebtedness claim unsubstantiated in any event - No unconscientiousness established.

EQUITY - Trusts - Implied trusts - Resulting trusts - Transfer of property interest to corporate trustee of family trust for no consideration - Whether presumption of resulting trust arose - Presumption precluded by *Conveyancing Act 1919* (NSW) s 44(1) - Whether resulting trust established on the evidence - Whether plaintiffs demonstrated an intention to retain beneficial ownership following the transfer.

Voukidis, Peter and Voukidis, Kathy v C & O Voukidis P/L (ACN 064 963 054) (in liquidation)

Sloss J

[\[2018\] VSC 267](#)

24/05/2018

CONTRACTS - Termination of Franchise Agreement - Termination of License Agreement - Duty of good faith - Default notice - Whether incorrect default notice precludes termination.

FRANCHISING - Franchising Code of Conduct - Termination of Franchise Agreement - Requirements for Notice of Termination - Restrictions on Termination - Notice of Dispute - Whether set-off permitted under Franchise Agreement.

INJUNCTIONS - Interlocutory injunction - Serious issue to be tried - Invalid notice to remedy - Breach of duty of good faith - Relief against forfeiture - Estoppel - Unconscionable conduct.

INJUNCTIONS - Mandatory interlocutory injunction - Form of order - Whether balance of convenience precludes mandatory order - Effect of injunctive relief on third parties - Need for ongoing supervision.

Delahunt, Todd Peter and Delahunt, Jenelle Kathryn v Swim Loops P/L (ACN 160 532 490)

Digby J

[\[2018\] VSC 269](#)

23 April 2018

CORPORATIONS - External administration - Application by former administrator for determination of remuneration pursuant to s 449E(1)(c) of the Corporations Act 2001 (Cth) - Consideration of transitional provisions in respect of the new Insolvency Practice Schedule (Corporations) as Schedule 2 to the Corporations Act 2001 (Cth) - Remuneration approved. *Yeo, Andrew Reginald (in his capacity as former Administrator of Firebrace Life P/L (in liquidation)) (ACN 165 508 716) v Firebrace Life P/L (in liquidation) (ACN 165 508 716)*

Matthews JR

[\[2018\] VSC 252](#)

18/05/2018

CORPORATIONS LAW - Statutory demand - Application to set aside - Corporations Act 2001 (Cth), s 459J(1)(b) - Some other reason - Proceedings in District Court of Queensland - Claim under guarantee - Plaintiff to this application not a party to the District Court proceeding - Abuse of process - Some other reason why the statutory demand ought to be set aside. GENUINE DISPUTE - Graywinter principle - Was the 21 day affidavit an affidavit in support - Adjournment to augment.

B.S.B. Mining P/L(ACN 132 203 108) v Ranger Resources P/L (ACN 603 852 213)

Randall AsJ

[\[2018\] VSC 263](#)

24/05/2018

PRACTICE AND PROCEDURE - Dismissal for want of prosecution - Rule 24.05 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Inherent jurisdiction - Non-compliance with orders - Section 8 of the Civil Procedure Act 2010 (Vic) - Inordinate delay - Inexcusable delay - Minimal prejudice.

Hunter Stone P/L (ACN 125 485 752) (In Liquidation); Kaso, Sam and Juratowitch, Daniel Peter v Mortazavi, Azad and Hunterstone Australia P/L (ACN 605 267 301)

Connock J

[\[2018\] VSC 261](#)

18/05/2018

PRACTICE AND PROCEDURE - Application for leave to re-open case - Application made after final Orders perfected - Whether s 49 of the Civil Procedure Act 2010 confers power to revisit perfected Orders - Extent to which equitable jurisdiction to revisit perfected Orders made in equity remains - Application dismissed for want of jurisdiction - *In re St Nazaire Co* (1879) 12 Ch D 88 - *Autodesk Inc v Dyason (No 2)* (1993) 176 CLR 300 - *DJL v The Central Authority* (2000) 201 CLR 226 - *Burrell v The Queen* (2008) 238 CLR 318 - *Clone Pty Ltd v Players Pty Ltd (in liq)* [2018] HCA 12 - Civil Procedure Act 2010 s 49.

PRACTICE AND PROCEDURE - Application for leave to re-open after judgment - Whether "truly exceptional circumstances" established - Whether fresh evidence available which would likely reverse outcome - Whether error was inadvertent though a result of deliberate conduct - No "truly exceptional circumstances" - *Australian Super Developments Pty Ltd v David Wellesley Marriner & Ors (No 2)* [2015] VSC 315 - *Urban Transport Authority of NSW v Nweiser* (1992) 28 NSWLR 471 - *Ezra Abrahams Pty Ltd v Milburn* [2017] VSCA 355.

COSTS - Application for special costs Order - Whether reliance on legal technicality justifies the award of costs on a special basis - Where Court was misled - Special costs Order appropriate - *J-Corp Pty Ltd v Australian Builders Labourers' Federated Union of Workers (WA Branch) (No 2)* (1993) 46 IR 301 - *Sunland Waterfront (BVI) Ltd v Prudentia Investments Pty Ltd (No 3)* [2012] VSC 399 - *Sunland Waterfront (BVI) Ltd v Prudentia Investments Pty Ltd* [2013] VSCA 237 - Supreme Court Act 1986 s 24 - Supreme Court (General Civil Procedure) Rules 2015 rr 63.28, 63.31.

PCCEF P/L (ACN 130 656 147) v Geelong Football Club Ltd (ACN 005 150 818)

Croft J

[\[2018\] VSC 258](#)

23/05/2018

TAXATION AND REVENUE - Services performed by persons who ordinarily performed services of that kind to the public generally - Payroll Tax Act 2007 s 32(2)(b)(iv).

TAXATION AND REVENUE - Nature of appeal - Hearing de novo, judicial review or some other form of appeal - *Avon Downs Pty Ltd v Federal Commissioner of Taxation* (1949) 78 CLR 353 - *Conte Mechanical and Electrical Services Pty Ltd v Commissioner of State Revenue* [2011] VSC 104; (2011) 85 ATR 120 - *Mould v Commissioner of State Revenue* [2014] VSC 268; (2014) 98 ATR 579 - Taxation Administration Act 1997 s 106.

Nationwide Towing & Transport P/L (ACN 088 026 706); Eastern Van Services P/L (ACN 090 167 552) and Re's Roadside Recovery P/L (ACN 006 627 710) v Commissioner of State Revenue

Croft J

[\[2018\] VSC 262](#)

23/05/2018

Common Law Division

ADMINISTRATIVE LAW - Application for leave to appeal - Whether reasons were written or oral - Whether reasons were inadequate - Whether order of the Tribunal failed to make a final determination - Victorian Civil and Administrative Tribunal Act 1998 ss 117, 148 - Owners Corporation Act 2006 ss 1, 4, 162, 165.

STATUTORY INTERPRETATION - Inconsistency between planning permit and owners corporation rules - Whether a planning permit confers a right for the purposes of the Owners Corporation Act 2006 s 140 - Whether a planning permit confers a right under an Act - Owners Corporation Act 2006 s 140 - Planning and Environment Act 1987 ss 3, 4, 47-68, 87-91, 114-130.

Elwick 9 P/L (ACN 610 147 290) t/as 9 Round Elsternwick v Freeman, Elliot; Sun, Li and Shearer, Heather

Quigley J

[\[2018\] VSC 234](#)

11/05/2018

ADMINISTRATIVE LAW - Judicial Review - County Court appeal from Magistrates' Court - Magistrate refused application for intervention order under the Family Violence Protection Act 2008 (Vic) - Magistrate made costs order against unsuccessful applicant at a later date - 30 day time limit for appeals - Appeal against costs order within time - County Court held that unsuccessful applicant also able to appeal against refusal to make intervention order although more than 30 days had passed since the refusal - County Court in error - Family Violence Protection Act 2008 (Vic) ss 1, 2, 5, 8, 74(1), 114(1), 116(2)(c), 117, 119, 154(3).

Carroll, Priscilla (a Pseudonym) v Browne, Marvin (a Pseudonym) and County Court of Victoria

Richards J

[\[2018\] VSC 253](#)

18/05/2018

ADMINISTRATIVE LAW - Transfer of liquor licence - Objection by Chief Commissioner of Police - Decision by Victorian Commission for Gambling and Liquor Regulation approving transfer - Appeal on question of law - Failure to take into account relevant consideration relied on by Chief Commissioner - Error of law - Consent orders proposed by parties - Consent orders approved - Liquor Control Reform Act 1998 s 172A.

Chief Commissioner of Police v AMJK P/L and Victorian Commission for Gambling and Liquor Regulation

Ginnane J

[\[2018\] VSC 250](#)

17/05/2018

COSTS - Application by defendant for relief under r 63.23 of the Supreme Court (General Civil Procedure) Rules 2015 ('the Rules'), s 29(1) of the Civil Procedure Act 2010 (Vic) ('CPA') and the Court's inherent jurisdiction - Plaintiff had issued proceeding in respect of alleged breach of agreement involving transfer of title of houseboat to defendant as security for a loan - Receiver appointed to plaintiff's income and personal property prior to issue of proceeding - Defendant communicated intention to seek indemnity costs on basis plaintiff was not entitled to issue proceeding - Plaintiff discontinued proceeding forthwith, without notice - Defendant alleged he was unable to settle the sale of houseboat as a result of plaintiff's issue of proceeding - Plaintiff's solicitor passed away after defendant's application filed - Whether plaintiff's solicitor's estate ought be jointly and severally liable with the plaintiff to pay those costs - Whether defendant should be denied any entitlement to legal costs by reason of a term of a Deed which prescribes priority in which proceeds of houseboat sale are to be applied - Whether there is sufficient evidence to establish that any financial loss was caused by the conduct of the plaintiff or his solicitor - Whether an order ought be made in favour of the defendant for financial losses arguably suffered by his company - 'Wasted costs' jurisdiction - *Dura (Australia) Construction Pty Ltd v Hue Boutique Living Pty Ltd (No 5)* [2014] VSC 410, referred to - *Gatto Corporate Solutions Pty Ltd v Mountney* [2016] VSC 752, referred to - Held plaintiff's solicitor jointly and severally liable for defendant's costs of proceeding up to date of discontinuance of proceeding - Manner in which defendant applied proceeds of houseboat sale irrelevant to exercise of discretion to award costs in defendant's favour - Plaintiff and plaintiff's solicitor ordered to pay defendant's costs of the proceeding up to the date of discontinuation on an indemnity basis.

PRACTICE AND PROCEDURE - Whether defendant's application under s 29(1) of CPA is statute barred - Meaning of the term 'finalisation' in s 30(2) of CPA - Whether application under s 29(1) of CPA permitted to be made after finalisation of proceeding - *1165 Stud Road Pty Ltd v Power & Ors (No 2)* [2015] VSC 735, distinguished - *Kenny v Gippsreal Ltd* [2015] VSC 284, distinguished - *Gippsreal Ltd v Kenny* [2016] VSCA 319 - *Talacko & Ors v Talacko* [2017] VSC 804, referred to - *Yara Australia Pty Ltd v Oswal* (2013) 41 VR 302, referred to - CPA ss 30 and 31 - The Rules, r 63.15 - Relevance of defendant not having been on notice of pending finalisation of the proceeding - Held application not statute barred - Whether the issue of the proceeding amounted to a breach of an overarching obligation or other conduct which would justify the award of indemnity costs in defendant's favour - Failure of plaintiff's solicitor to file a 'proper basis' certificate - Relevance of plaintiff's lack of standing to issue the proceeding - Finding of no proper basis for issuing proceeding - *Ugly Tribe Pty Ltd v Sikola* [2011] VSC 189, applied - CPA, s 18 - Indemnity costs awarded in defendant's favour - No evidence that financial loss claimed was suffered by the defendant personally - Defendant's claim for financial loss unsuccessful.

Gabelich, Matthew v Donaghey, Andrew

Daly AsJ

[\[2018\] VSC 184](#)

10/05/2018

COSTS - Costs of proceeding following trial - Defendants successful on discrete issue - Discretionary considerations - Defendant to pay 50% of plaintiff's costs - *Chen v Chan* [2009] VSCA 233 applied.

COSTS - Application for gross sum costs order - Gross sum costs order not warranted - Supreme Court (General Civil Procedure) Rules 2015 (Vic) r 63.07.

COSTS - Application by plaintiff for costs on indemnity basis - Application refused.

Manderson, Warwick Alexander v Wright, Vicki Louise (Costs)

John Dixon J

[\[2018\] VSC 177](#)

17/04/2018

COSTS - Family provision claim by plaintiff - Where plaintiff awarded provision not more favourable than defendant's offer of compromise - Supreme Court (General Civil Procedure) Rules 2015, r 26.08(3).

In the matter of Part IV of the Administration and Probate Act 1958 (Vic) and In the matter of the Will and Estate of Saric, Danka deceased. Saric, Grgo v Vukasovic, Tanja (who is sued as the executrix of the will of the abovenamed deceased) (No 2)

McMillan J

[\[2018\] VSC 254](#)

17/05/2018

COSTS - Where provision awarded to successful plaintiffs more favourable than their open offers made after mediation and before trial - Where plaintiffs seek their costs from the estate on indemnity basis - Where at trial executors limited asset pool to their share of the estate - Where defendants seek their costs from the estate.

In the matter of Part IV of the Administration and Probate Act 1958 and In the matter of the estate of McKenzie, David Cyril, deceased. Between: McKenzie, Aileen Moira and Harris, Faye Ada v McKenzie, David Gordon and McKenzie, Lynton Henry (as executors of the will of David Cyril McKenzie) (No 2)

McMillan J

[\[2018\] VSC 238](#)

11/05/2018

CRIMINAL LAW - Regulatory offences - Judicial review - Offences of handling and selling unsafe food - Alleged failure to provide adequate particulars of charges - Application for relief in the nature of certiorari - Whether magistrate erred in finding that charges gave reasonable information as to the nature of each offence - Food Act 1984 ss 11, 16 - Criminal Procedure Act 2009 sch 1, cls 1-3 - Johnson v Miller (1937) 59 CLR 467; John L Pty Ltd v Attorney-General (NSW) (1987) 163 CLR 508 applied - DPP v Kypri (2011) 33 VR 157 discussed.

Southgate Management P/L v Nitschke, Helen (City of Melbourne) and The Magistrates' Court of Victoria

Priest JA

[\[2018\] VSC 236](#)

14/05/2018

EVIDENCE - Admissibility - Hearsay exceptions - Plaintiff seeks to tender prior out-of-court representations - Representations from statements made to Royal Commission - Whether representations are relevant - Whether representations are admissions - Evidence Act 2008 (Vic) ss 55, 81, 87, 88, Dictionary Part 1.

Roo-Roofing P/L (ACN 131 182 093) and Matsuh P/L (ACN 105 461 818) v The Commonwealth of Australia (Ruling No 3)

John Dixon J

[\[2018\] VSC 232](#)

11/05/2018

EVIDENCE - Hearsay - Exceptions - Where plaintiffs seek to rely on prior statements - Whether witness unavailable - Whether plaintiff took all reasonable steps to secure attendance - Reasonable steps not taken - Tender of prior statements refused - Evidence Act 2008 (Vic) ss 59, 63, Dictionary cl 4 (f) and (g).

Roo-Roofing P/L (ACN 131 182 093) and Matsuh P/L (ACN 105 461 818) v The Commonwealth of Australia (Ruling No 2)

John Dixon J

[\[2018\] VSC 219](#)

07/05/2018

JUDICIAL REVIEW AND APPEAL - Discovery - Application for discovery in judicial review proceeding - Supreme Court (General Civil Procedure) Rules 2015 rr 29.01, 29.01.1, 29.07 - Civil Procedure Act 2010 s 54 - Australian Society for Kangaroos Inc. v Secretary, Department of Environment, Land, Water and Planning [2018] VSC 88 - Moreland City Council v Minister for Planning [2014] VSC 468 - Application dismissed - Interrogatories - Application for interrogatories in judicial review proceeding - Supreme Court (General Civil Procedure) Rules 2015 O 30 - Application dismissed.

Russell, John (Jack) v Abbey, Margaret and Murundindi Shire Council (Ruling No 2)

Ierodiaconou AsJ

[\[2018\] VSC 260](#)

22/05/2018

LOCAL GOVERNMENT - Powers, functions and duties of municipal councils generally - Regulation and administration - Functions and powers of the Chief Executive Officer of a council - Whether decision to exclude member of public from council premises and facilities is within the power of the Chief Executive Officer of that council - Local Government Act 1989 ss 1, 1A, 3A, 3B, 3C, 3D, 3E, 3F, 5(2), 82, 94A, 98.

PRACTICE AND PROCEDURE - Supreme Court (General Civil Procedure) Rules 2015 r 56.01(3) - Description of defendant in originating motion for judicial review - Whether the Chief Executive Officer of a municipal council is 'the holder of a public office' - R v McCann [1998] 2 Qd R 56 - Obeid v R (2005) 91 NSWLR 226.

ADMINISTRATIVE LAW - Prerogative Writs and Orders - Whether order in the nature of certiorari would be directed to the Chief Executive Officer personally - Where it is futile to order relief because the effect or purported effect of the order would be moot.

Russell, John (Jack) v Abbey, Margaret and Murundindi Shire Council

Ierodiaconou AsJ

[\[2018\] VSC 259](#)

22/05/2018

PRACTICE AND PROCEDURE - Judicial Review - Order 56 of the Supreme Court (General Civil Procedure) Rules 2005 - Extension of time within which to commence proceeding - Special circumstances required - No special circumstances disclosed - No arguable case for judicial review - Lazarevic v Victoria Police [2014] VSC 479 - Application dismissed.

Richards, Jason v Victorian Magistrates' Court (No 1)

Keogh J

[\[2018\] VSC 225](#)

09/05/2018

PRACTICE AND PROCEDURE - Judicial Review - Order 56 of the Supreme Court (General Civil Procedure) Rules 2005 - Extension of time within which to commence proceeding - Special circumstances required - No special circumstances disclosed - No arguable case for judicial review - *Lazarevic v Victoria Police* [2014] VSC 479 - Application dismissed.

Richards, Jason v Victorian Magistrates' Court (No 2)

Keogh J

[\[2018\] VSC 226](#)

09/05/2018

PRACTICE AND PROCEDURE - Objection to admissibility of expert evidence - Application to amend defence and counterclaim - Expert evidence of probative value - Objections to evidence going to weight of evidence rather than admissibility - Application for leave to amend pleadings granted - Expert evidence admissible - Civil Procedure Act 2010 ss 9(1)(d), 10(3), 16, 20, 23, 56.

Bannon, Paul v Nauru Phosphate Royalties Trust; Nauru Phosphate Royalties Trust v Bannon, Paul

McDonald J

[\[2018\] VSC 237](#)

18/05/2018

PRACTICE AND PROCEDURE - Summary judgment sought by plaintiff on part of her claim, being for breach of fiduciary duty - Defence found to have no real prospect of success - Strike out of counterclaim - Whether discretion against grant of summary judgment should be exercised pursuant to Civil Procedure Act 2010 (Vic) s 64 - Whether compound interest should be awarded in the Court's equitable jurisdiction or interest under Supreme Court Act 1986 (Vic) s 60 - Whether judgment should be stayed.

Lambrou, Christos (who sues as representative of the Estate of Despina Lambrou, deceased) v Lambrou, Emmanuel George and Lambrou, Melissa Joanne (No 2)

Lansdowne AsJ

[\[2018\] VSC 244](#)

16/05/2018

PRACTICE AND PROCEDURE - Trial by jury - Complexity of facts - Order 47 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Notice given for jury trial - Application to dispense with jury trial - Application dismissed.

Marinelli, Robert v State of Victoria

Keogh J

[\[2018\] VSC 251](#)

16/05/2018

TRUSTS - Powers and duties of trustees - Power of trustee to compromise a claim - Where Court approval of compromise is sought - Trustee Act 1958 s 19(1)(f) - Supreme Court (General Civil Procedure) Rules 2015 r 54.02.

PRACTICE AND PROCEDURE - Compromise of proceeding on behalf of a minor - Court approval of compromise - Supreme Court (General Civil Procedure) Rules 2015 r 15.08.

Rockman, Zachary Phillip and Rockman, Rachel Lily (who sues by her litigation guardian Lynette Anne Rockman) v I.P.R Nominees P/L (which is sued as the trustee of The 1965 Irvin Peter Rockman Trust); Rockman, Matthew Myer; Rockman, Edward Jacob and Rockman, Rhett Nathan (No 2)

McMillan J

[\[2018\] VSC 270](#)

24/05/2018

WILLS AND ESTATES - Application for grant of probate of informal will - Whether testator intended informal document to be will - Standard of proof - *Fast v Rockman* [2013] VSC 18 - *Briginshaw v Briginshaw* (1938) 60 CLR 336 - Wills Act 1997, ss 7 and 9.

WILLS AND ESTATES - Principal beneficiary of estate convicted of murder of deceased - Whether forfeiture rule applies - *Troja v Troja* (1994) 33 NSWLR 269 - *Gonzales v Claridades* (2003) 58 NSWLR 211 - *Edwards v State Trustees Ltd* [2016] VSCA 28.

In the matter of the Will and Estate of Rattle, Stuart Charles and In the matter of an application pursuant to section 9 of the Wills Act 1997. Application by: Equity Trustees Ltd

McMillan J

[\[2018\] VSC 249](#)

16/05/2018

WORKERS' COMPENSATION - Stress-related migraine headaches and chest pains - Whether injury arising out of or in the course of any employment - Whether wholly or predominantly caused by management action - Relevance and admissibility of patient's history in medical reports - Whether admissible as exception to hearsay rule as admissible for non-hearsay purpose of providing the basis for medical opinions - Whether properly disregarded entirely on grounds that doctors did not have 'full story' - Proper consideration of causation test in case of mental injuries - Whether magistrate erred in law in rejecting claim for compensation - Whether considered whole of employment and all of its incidents - Whether considered worker's employment over time and her perception of actual workplace stressors - Whether considered whether increased regularity and severity of symptoms represented aggravation of existing injury - Whether considered potential overlap between the injury and its symptoms and consequences - 'arising out of or in the course of any employment', 'mental injury', 'wholly', 'predominantly', 'management action' - Evidence Act 2008 (Vic) s 60(1), Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) ss 39(1) and 40(1)(a), Magistrates Court Act 1989 (Vic) s 109(1).

Pulling, Vicki Elizabeth v Yarra Ranges Shire Council

Bell J

[\[2018\] VSC 248](#)

Criminal Division

CRIMINAL LAW - False accounting - Elements of offence - Dishonesty - Whether used in special sense - Whether confined to falsification or misuse of accounting documents - Defence of claim of right - Whether available in respect of view of accused to gain - Character of dishonesty element in respect of falsification or misuse of accounting documents - Where defence of claim of right is raised, whether sufficient for prosecution to establish that accused had no belief in legal right to falsify or misuse documents - 'dishonesty', 'view to gain', 'falsifies' - Crimes Act 1958 (Vic) s 83(1)(a) and (b).

Commonwealth Director of Public Prosecutions [CDPP] v Gerathy, Clifford John

Bell J

[\[2018\] VSC 255](#)

18/05/2018

CRIMINAL LAW - Application for bail - Children's Court - Charges of theft and committing an indictable offences while on bail - Applicant required to show cause - Whether conditions ameliorate unacceptable risk - Bail granted with conditions - Bail Act 1977.

In the matter of the Bail Act 1977 and In the matter of an Application for Bail by B K T

Champion J

[\[2018\] VSC 240](#)

17/04/2018

CRIMINAL LAW - Sentence following trial - Contravention of family violence safety notice intending to cause fear for safety - Aggravated burglary (intent to assault/persons present) - Intentionally causing serious injury (acquitted of attempted murder) - Accused, angry and threatening, entered former partner's flat uninvited with intent to assault male guest - Once inside, accused picked up shards of glass from broken window and slashed guest several times, wounding cheek, neck, chest, snuff box and elsewhere - Surgery required to repair wounds - Victim unable to work for two months - Significant permanent scarring to cheek and neck - Accused unable to accept relationship over - Offending occurred while on bail - Plea of guilty to summary offence of committing indictable offence while on bail - Limited criminal history - Hardship of imprisonment arising from uncertainty concerning possible deportation - Very good prospects of rehabilitation - Importance of general deterrence, specific deterrence, denunciation, just punishment and rehabilitation - Totality - Total effective sentence of seven years' imprisonment with non-parole period of four years - Sentencing Act 1991 (Vic), ss 5 & 18.

The Queen v Kumar, Amit

Croucher J

[\[2018\] VSC 241](#)

18/05/2018

PRACTICE AND PROCEDURE - Application for leave to inspect medical and psychological records of Crown witness in a murder trial including records relating to allegations of sexual abuse - Allegations of sexual abuse relevant to credibility of Crown witness but not directly relevant to the proceeding - Applicability of Division 2A of the Evidence (Miscellaneous Provisions) Act 1958 - Crown conceded Division 2A not applicable and withdrew objection to inspection - Court accepted Crown concession and permitted inspection.

STATUTORY INTERPRETATION - Stronger literal meaning would lead to unintended and anomalous results - Alternative meaning more consistent with legislative purpose - Principles to be applied.

The Queen v Lyons, Christine Ann and Lyons, Ronald (Subpoena leave application)

Riordan J

[\[2018\] VSC 256](#)

18/05/2018

Costs Court

COSTS - Entitlement to interest on refund of legal costs paid and reduced on review under Legal Profession Act 2004 - Consideration of sections 60 & 101 Supreme Court Act 1986 and rule 63.11 Supreme Court (General Civil Procedure) Rules 2015.

Weingart, Dan v Leanne Cain & Associates

Wood AsJ

[\[2018\] VSC 245](#)

18/05/2018

SCOPE OF COSTS AGREEMENT - Non-compliance with disclosure obligations under Legal Profession Act 2004 - Costs of the proceedings

Weingart, Dan v Leanne Cain & Associates

Wood AsJ

[\[2018\] VSC 242](#)

22/02/2018

County Court of Victoria Cases

Following is a selection of cases recently handed down in the County Court of Victoria.

These cases have been selected for inclusion by the presiding judge. If you would like your judgment added to the Library Bulletin, please email the reference librarian in your jurisdiction.

ACCIDENT COMPENSATION - Workers' compensation - Application for leave to bring common law proceedings - Workplace injury - Spinal injury - Economic loss - Whether the plaintiff has suffered the relevant 40 per cent reduction in work capacity - Leave granted - Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) s 325, 335.

Mill v Victorian WorkCover Authority

[\[2018\] VCC 670](#)

Judge Murphy

10/05/2018

COSTS - Offer of compromise - Offer expressed to be inclusive of costs and interest - Offer refused - Whether plaintiff enjoyed greater success at trial in circumstances where its costs are not known.

INTEREST - Whether successful plaintiff entitled to interest - Level of discretion - Rejection of offer of compromise - Interest to be calculated from commencement of proceeding unless good cause shown - Whether settlement offer constitutes good cause.

MA & J Tripodi Pty Ltd v Swan Hill Chemicals Pty Ltd (No 3)

[\[2018\] VCC 710](#)

Judge Cosgrave

22/05/2018

PRACTICE AND PROCEDURE - Originating Motion endorsed with a Statement of Claim - Serious procedural defects - Incorrectly named first defendant - Defects forgiven by the defendants in preference for a determination that the plaintiff's claim has no real prospect of success - Statement of claim not disclosing a cause of action - Attempts by the plaintiff to enlarge the causes of action to include a breach of whistleblower legislation.

Somasundaram v Department of Education and Training & Ors (Ruling)

[\[2018\] VCC 649](#)

Judge Misso

15/05/2018

REAL PROPERTY - ADVERSE POSSESSION - Acts amounting to exclusive possession - Whether 15 years' continuous possession - Intention to possess exclusively - Acts amounting to retaking of possession - Whether acknowledgment of paper owner's title.

EASEMENTS - Doctrine of lost modern grant - Right to use area as a driveway - Whether continuous use for 20 years - Actual or constructive knowledge of owner of servient tenement - Acquiescence.

Butler v Dickson

[\[2018\] VCC 610](#)

Judge A Ryan

10/05/2018

RULING ON SUMMARY JUDGMENT APPLICATION

Pei and Wang v Yuan

[\[2018\] VCC 651](#)

Judge Woodward

16/05/2018

SUPERVISION ORDER REVIEW - Application for revocation of non-custodial Supervision Order
- Application for Suppression Order.

Re Salter (a pseudonym)

[\[2018\] VCC 629](#)

Judge Lewitan

14/05/2018

Articles

Listed below are articles indexed by the Library from journals added to our collections over the past two weeks.

Members of the Judiciary and Court staff, please contact your jurisdictional librarian if you require copies. Members of the legal profession and the public can view the journals in the Supreme Court Library.

Constitutional Law

Citizenship - Dual citizen - Renouncing foreign citizenship - Parliamentary ministers - Australian Constitution, s44 - Legal ramifications - Re Canavan and Others - Australia

Stokes, J. and G. Del Villar. "Genealogical witch-hunts and the 'Citizenship 7'." (2018) 38(4) Proctor 14-16.

Insolvency - Winding up - Oppressive conduct - Relief - Corporations Act 2001 (Cth), s232, s233, s461, s467(4) - Asia Pacific Joint Mining Pty Ltd v Allways Resources Holdings Pty Ltd - Re Dalkeith Investments Pty Ltd - Qld
Clift, H. "A proper approach to winding up." (2018) 38(4) Proctor 20-21.

Contract Law

Unconscionability - Unconscionable conduct - Undue influence - Unequal bargaining power - Power asymmetry - Alec Lobb Garages Ltd v Total Oil (Great Britain) - Fry v Lane - Cresswell v Potter - Comparative analysis - UK - NZ - Australia

Enonchong, N. "The modern English doctrine of unconscionability." (2018) 34(3) JCL 211-239

Criminal Law & Procedure

Aboriginals - Indigenous remand - Bail - ALRC: Report No. 133 - Bail Act 1980 (Qld), s16(2)(e) - Bail Act 1977 (Vic), s3A - Re Mitchell - DPP v SE - R v Chafter-Smith - Re Hume (Bail Application) - Qld - Victoria
McLean, S. "The incarceration equation." (2018) 38(4) Proctor 18-19.

Child sex offences - Sexual offences - Pornography - Young offenders - Text messaging - Online images - Smart phones - Sexual violence - Criminal record - Social risks - Privacy - Sexual Offences Act 1997 (UK) - UK

Arthur, R. "Consensual teenage sexting and youth criminal records." [2018] (5) Crim L R 381-387.

Criminal liability - Omissions liability - Failure to report - Failure to prevent - Failure to protect - Corporate crime - Corporate criminal liability - Criminal Finances Act 2017 (UK) - UK

Ashwood, A. "A new generation of omissions offences?" [2018] (5) Crim L R 354-364.

Corporations Law

Corporate veil - Piercing the corporate veil - Companies - Concealment principle - Constructive trusts - Equitable remedies - Prest v Petrodel Resources Ltd - Soloman v Soloman - Trustor and Gencor - UK

Allan, G. and S. Griffin. "Corporate personality: utilising trust law to invoke the application of the concealment principle." (2018) 38(1) Legal Studies 79-102.

Guilty plea - Sentencing - Sentence reduction - Reform - Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017 (NSW) - NSWLRC, Report 141 - NSW McKnight, P. and A. Sprouster. "Encouraging early guilty pleas in the criminal justice system." (2018) 30(3) JOB 23-28.

Police officers - Obstructing police - Self-defence - Police Act 1996 (UK), s89(1)(2) - Criminal Justice and Immigration Act 2008 (UK), s76 - Oraki v CPS - Wheeldon v CPS - Ahmed v CPS - UK
Cape, E. "Self-defence and obstruction of a police officer in the execution duty." [2018] (5) Crim L R 388-391.

Employment Law

Discrimination - Age discrimination - Equal opportunity - Older employees - Litigation - Google class action - Age Discrimination in Employment Act (US) - US - Australia
Elsy, L. "An age-old issue." (2018) 43(4) LSJ 30-35.

Equity

Equitable remedies - Proprietary estoppel - Property rights - Constructive trusts - Estoppel - Relief - Limitation of actions - McNab v Graham - Victoria
Pilkington, T. "The nature of and approach to relief for proprietary estoppel." (2018) 92(2) ALJR 76-78.

Evidence

Expert evidence - Duty of experts - Code of conduct - Admissibility - Reliability - Dishonesty - R v Pabon - Criminal Procedure Rules (UK) - UK
Solon, M. "Out of your depth?" (2018) 168(7788) NLJ 19-20.

Expert evidence - Duty of experts - Costs - Bias - Admissibility - Expert reports - Cross-examination - Privilege - Court appointed expert - Decision makers - Australia
Kearney, T. "The unresolved problem of expert evidence." (2018) 92(2) ALJR 127-148.

Family Law

Family Law Act 1975 (Cth), s79(2)(4) - "Just and equitable" ground - Property disputes - Financial proceedings - Judicial discretion - Stanford v Stanford - Australia
Turnbull, C. "In metes and bounds: revisiting the just and equitable requirement in family law property settlements." (2018) 31(3) AJFL 159-182.

International Law

Choice of court - Jurisdiction - Foreign judgments - Hague Convention on Choice of Court Agreements - Private international law - Australian courts - Australia
Douglas, M. "Choice of court agreements under an International Civil Law Act." (2018) 34(3) JCL 186-210.

Legislation

Statutory interpretation - Acts Interpretation Act 1901 (Cth), s15AA - Constructional choice - Momcilovic v The Queen - SZTAL v Minister for Immigration & Border Protection - Australia
Bryland, G. and S. Rizalar. "Constructive choice." (2018) 92(2) ALJR 81-84.

Media Law

Social media - Ownership - Digital assets upon death or incapacity - Fiduciary - Technology - E-mail - Online financial accounts - Facebook - Digital images - Law reform proposals - NSW
Speakman, M. "Digital assets and law reform." (2018) 43(4) LSJ 26-27.

Medical Law

Impalement - Vehicle crash - Industrial - Workplace injuries - Homicides - Lethal impalement injuries - Accidental injuries - Cause of death - UK

Byard, R. "A forensic evaluation of impalement injuries." (2018) 58(2) *Med Sci Law* 85-92.

Mental capacity - Legal capacity - Assessing capacity - Decision making - Best interests - Autonomy - Illness - Disability - UK

O'Shea, T. "A civic republican analysis of mental capacity law." (2018) 38(1) *Legal Studies* 147-163.

Practice & Procedure

Federal Court of Australia Act 1976 (Cth), PtIVA, s33ZG - *Madgwick v Kelly* - *Bray v Hoffman-La Roche Ltd* - *Kelly v Willmott Forests Ltd (in liq)* - Australia

Morabito, V. and N. Hatcher. "Security for costs in unfunded federal class actions: back to the." (2018) 92(2) *ALJR* 105-126.

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