



THE LAW LIBRARY OF VICTORIA

Library Bulletin

22 June 2018

Library News

Landmark agreement expands barristers' library

A landmark agreement between the Law Library of Victoria and the Victorian Bar is set to give Barristers significantly better access to subscriber-only online legal resources and library services.

From 1 July 2018, Barristers will be able to access three times the volume of top quality subscriber-only online resources, such as case law, commentary and databases, via computers in the new branch of the Law Library of Victoria: the Victorian Bar's Richard Griffith Library (Level 1, Owen Dixon Chambers, 205 William Street, Melbourne).

Barristers can currently only access these quality resources during opening hours at the Supreme Court Library or via personal subscription. Further benefits include a qualified librarian available at the Richard Griffith Library during set times to help with research enquiries.

"What a triumph! This is such an important step towards realising the vision for the Law Library of Victoria. Warmest congratulations to all of those who have helped to make it happen."

Acting Chief Justice Chris Maxwell

Read more on page 3...

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

DIARY DATES

Upcoming dates for your diary
VENUE - Supreme Court Library
210 William Street, Melbourne

THURSDAY 5 JULY at 1:15pm
Switch on...Legislation - Victorian
Parliamentary procedure
Presented by Office of the Chief
Parliamentary Counsel

FRIDAY 6 JULY at 1:00pm
Legal Luminaries and their books
Melbourne Rare Book Week
Booking essential

See www.lawlibrary.vic.gov.au for more details

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Library News

A landmark service agreement between the Law Library of Victoria and the Victorian Bar will dramatically increase library services and research materials available to all members of the Victorian Bar.

From 1 July 2018, the Richard Griffith Library (Level 1, Owen Dixon Chambers, 205 William Street, Melbourne) will formally become part of the Law Library of Victoria, giving members around-the-clock access to the same electronic research databases available in the Supreme Court Library and to the judiciary.

“This is a very exciting development for all barristers, but particularly junior barristers and barristers on lower incomes. It will be a significant factor for people when they are deciding whether to come to the Bar - they will know they don’t have to give up the level of research support they had at university or their former employer, and they will have access to more information than would ever be possible from a personal library.”

Dr Matthew Collins QC, President Victorian Bar

As well as tripling the number of top quality subscriber-only resources that will be available to Bar members, the agreement includes:

- improved availability of loose-leaf services and text books in the Richard Griffith Library and a budget for new acquisitions each year
- a qualified librarian on site at the Richard Griffith Library, at advertised times, to provide reference enquiry and research support to members, and
- training and information sessions for members.

Through computers in the Richard Griffith Library, the Law Library Online includes:

- CCH Intelliconnect - commentary
- Hein Online - American and Australian legal articles
- ICLR - Law reports from England and Wales
- Lawlex - Australian legislation material
- LexisNexis AU - Judgments and commentary (including Casebase, Court Forms Precedents & Pleadings Victoria, Cross on Evidence, Halsbury’s Laws of Australia and many other services)
- Timebase - Australian legislation material
- Westlaw AU, UK and Next - Australian and international judgments and commentary (including FirstPoint, Australian Bankruptcy Law and Practice, The Laws of Australia and many other services)

The online resources are in addition to the quality hard copy resources that will continue to be available in the Richard Griffith Library.

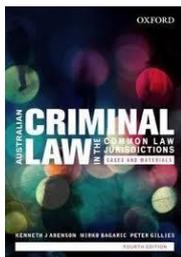
For more information on this initiative, please contact the Law Library of Victoria Director, Ms Laurie Atkinson on 9603 6164 or email laurie.atkinson@supcourt.vic.gov.au

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/.

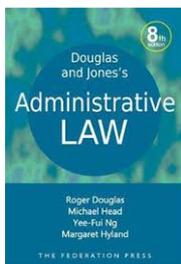
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

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



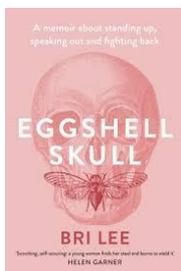
Arenson, Kenneth J., Bagaric, Mirko, Gillies, Peter, *Australian criminal law in the common law jurisdictions: cases and materials*
South Melbourne, Oxford University Press, 2016
Call number: 345.94 ARE.4 (Supreme Court Library, Magistrates' Court Library)

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



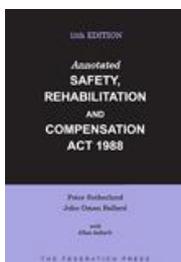
Douglas, Roger et al, *Douglas and Jones's administrative law*
8th ed., Leichhardt, The Federation Press, 2018
Call number: 342.9406 DOU.8 (Supreme Court Library)

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



Lee, Bri, *Eggshell skull: a memoir about standing up, speaking out and fighting back*
Crow's Nest, Allen & Unwin, 2018
Call number: 340.092 LEE (County Court Library)

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



Sutherland, Peter, Ballard, John Oman, Anforth, Allan, *Annotated Safety, Rehabilitation and Compensation Act 1988*
Annandale, The Federation Press, 2018
Call number: 344.021 BAL.11 (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:

- [Environment Protection Amendment Bill 2018](#)
- [Firearms Amendment \(Silencers\) Bill 2018](#)
- [Justice Legislation \(Police and Other Matters\) Bill 2018](#)
- [Justice Legislation Miscellaneous Amendment Bill 2018](#)
- [Prevention of Family Violence Bill 2018](#)
- [Racing Amendment \(Integrity and Disciplinary Structures\) Bill 2018](#)
- [Toll Fine Enforcement Bill 2018](#)
- [Victorian Industry Participation Policy \(Local Jobs First\) Amendment Bill 2018](#)

Victorian Assents

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

- [Liquor and Gambling Legislation Amendment Act 2018](#) No. 20/2018
- [National Redress Scheme for Institutional Child Sexual Abuse \(Commonwealth Powers\) Act 2018](#) No. 21/2018
- [State Taxation Acts Amendment Act 2018](#) No. 22/2018
- [Appropriation \(Parliament 2018-2019\) Act 2018](#) No. 23/2018

Proclamations

No Victorian Act proclamations have been made since the last Library Bulletin.

No Victorian Acts have come into operation by forced commencement since the last Library Bulletin.



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

CRIMINAL LAW - Appeal against conviction - Application of proviso - Where appellant convicted of manslaughter - Where either of two acts of appellant may have caused death of deceased - Where trial judge erred in failing to direct jury as to requirement that it be unanimous as to specific act causing death - Whether "no substantial miscarriage of justice has actually occurred" - Whether absence of unanimity direction precluded application of proviso.

WORDS AND PHRASES - "fundamental defect", "nature and effect of the error", "presuppositions of the trial", "proviso", "reasonable doubt", "substantial miscarriage of justice", "unanimity direction", "unanimous".

Criminal Appeal Act 1912 (NSW), s 6(1).

Lane, Paul Ian v The Queen

Kiefel CJ, Bell, Gageler, Keane and Edelman JJ

[\[2018\] HCA 28](#)

20 June 2018

CRIMINAL LAW - Parole - Where s 74AAA of *Corrections Act 1986 (Vic)* imposes conditions for making parole order for prisoner convicted and sentenced to imprisonment for murder of person who prisoner knew was, or was reckless as to whether person was, police officer - Where s 127A inserted into *Corrections Act 1986 (Vic)* stating s 74AAA applies regardless of whether prior to commencement of s 74AAA prisoner became eligible for parole, prisoner took steps to ask Adult Parole Board of Victoria ("Board") to grant parole, or Board began consideration of whether prisoner should be granted parole - Where prior to commencement of s 74AAA and s 127A plaintiff became eligible for parole and applied for parole and Board began consideration of whether plaintiff should be granted parole - Whether s 74AAA and s 127A apply to plaintiff.

WORDS AND PHRASES - "non-parole period", "parole", "recklessness", "sentencing", "statutory construction".

Charter of Human Rights and Responsibilities Act 2006 (Vic), ss 10, 22, 28, 31, 32.

Corrections Act 1986 (Vic), ss 74AAA, 127A. *Crimes Act 1958 (Vic)*, s 3.

Minogue, Craig William John v State of Victoria

Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ

[\[2018\] HCA 27](#)

20 June 2018

CRIMINAL LAW - Trial by judge alone - Adequacy of reasons - Where appellant convicted of "[p]ersistent sexual exploitation of a child" - Where offence comprised of two or more acts of sexual exploitation separated by not less than three days - Where complainant alleged various acts of sexual exploitation over many years - Where alleged inconsistencies and implausibilities in complainant's evidence - Where trial judge regarded complainant as reliable witness as to "core allegations" - Whether trial judge's reasons inadequate because failed to identify two or more acts constituting offence - Whether trial judge's reasons inadequate because failed to explain process of reasoning.

WORDS AND PHRASES - "adequacy of reasons", "basis for decision", "conflict between evidence", "credibility", "inadequacy of reasons", "inconsistencies in evidence", "process of reasoning", "reasons", "trial by judge alone".

Criminal Law Consolidation Act 1935 (SA), s 50(1).

DL v The Queen

Kiefel CJ, Bell, Keane, Nettle and Edelman JJ

[\[2018\] HCA 26](#)

20 June 2018

DEFAMATION - Publication - Capacity to defame - Where application for summary dismissal of defamation proceeding - Where allegedly defamatory matter includes search results of internet search engine - Where allegedly defamatory matter includes autocomplete predictions of internet search engine - Whether respondent published allegedly defamatory matter - Whether matter capable of conveying allegedly defamatory imputations - Whether proceeding had no real prospect of success.

WORDS AND PHRASES - "autocomplete", "capacity to defame", "composite publication", "defamation", "defamatory image", "no real prospect of success", "ordinary reasonable person", "publication", "search engine", "search results", "search terms", "summary dismissal", "summary judgment".

Civil Procedure Act 2010 (Vic), ss 62, 63. Supreme Court (General Civil Procedure) Rules 2005 (Vic), rr 7.01, 8.09.

Trkulja, Milorad (AKA Michael Trkulja) v Google LLC

Kiefel CJ, Bell, Keane, Nettle and Gordon JJ

[\[2018\] HCA 25](#)

13 June 2018

MIGRATION - Refugees - Appeal as of right from Supreme Court of Nauru - Where Secretary of Department of Justice and Border Control determined appellant not refugee - Where Refugee Status Review Tribunal affirmed Secretary's determination - Where appellant established wellfounded fear of persecution - Where Tribunal found alternative "home area" - Whether Tribunal properly applied internal relocation principle - Whether Tribunal failed to consider family unity - Whether Supreme Court erred in affirming Tribunal's determination.

WORDS AND PHRASES - "family unity", "home area", "in all the circumstances", "internal relocation principle", "reasonableness of relocation", "relocation".

Appeals Act 1972 (Nr), s 44. *Nauru (High Court Appeals) Act 1976* (Cth), s 5, Sched, Art 1. *Refugees Convention Act 2012* (Nr), ss 3, 4, 5, 6, 22, 31, 34, 43, 44. Convention relating to the Status of Refugees (1951) as modified by the Protocol relating to the Status of Refugees (1967), Art 1A(2).

CRI028 v The Republic of Nauru

Bell, Gordon and Edelman JJ

[\[2018\] HCA 24](#)

13 June 2018

NEGLIGENCE - Personal injury - Damages - Assessment of present value of future loss - Where claimant diagnosed with terminal malignant mesothelioma post-retirement - Where claimant's life expectancy reduced - Where claimant receiving superannuation pension under *Superannuation Act 1988* (SA) and age pension under *Social Security Act 1991* (Cth) - Whether superannuation pension entitlement which would have been received during remainder of pre-illness life expectancy compensable loss - Whether age pension entitlement which would have been received during remainder of pre-illness life expectancy compensable loss - Whether reversionary pension payable under s 38(1)(a) of *Superannuation Act* to partner on claimant's death should be deducted from damages award.

WORDS AND PHRASES - "age pension", "capital asset", "compensable loss", "compensatory principle", "loss of earning capacity", "lost years", "net present value", "offsetting or collateral benefit", "pension", "pre-illness life expectancy", "reversionary pension", "superannuation pension". *Social Security Act 1991* (Cth), Pt 2.2. *Superannuation Act 1988* (SA), Pt 5.

Amaca P/L (under NSW administered winding up) v Latz, Anthony; Latz, Anthony v Amaca P/L (under NSW administered winding up)

Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ

[\[2018\] HCA 22](#)

13 June 2018

PRACTICE AND PROCEDURE - Victoria - Stay of proceeding - Where appellant commenced proceeding in Supreme Court of Victoria - Where appellant made applications for leave to file and serve amended statement of claim - Where applications refused with costs taxed immediately - Where costs unpaid because appellant impecunious - Where appellant made further application - Where leave to amend statement of claim granted but proceeding stayed under Supreme Court (General Civil Procedure) Rules 2015 (Vic) r 63.03(3) until interlocutory costs orders paid - Whether primary judge erred in making order to stay proceedings.

WORDS AND PHRASES - "conduct which falls for condemnation", "costs taxed immediately", "impecunious", "interlocutory costs order", "only practical way to ensure justice between the parties", "stay of proceeding", "strong grounds". *Civil Procedure Act 2010 (Vic)*, ss 7, 8, 9, 65C, 65E. *Supreme Court Act 1986 (Vic)*, ss 24, 25. Supreme Court (General Civil Procedure) Rules 2015 (Vic), rr 63.03(3), 63.20.1.

Rozenblit, Boris v Vainer, Michael & Anor

Kiefel CJ, Bell, Keane, Gordon and Edelman JJ

[\[2018\] HCA 23](#)

13 June 2018

Victorian Supreme Court Cases

Court of Appeal

ADMINISTRATIVE LAW - Working with Children Act 2005 (Act) - Application for assessment notice - Application 'category A application' owing to convictions for rape - Secretary required to refuse category A applications - VCAT empowered to decide category A applications - VCAT jurisdiction dependent on rape convictions - Whether VCAT finding that offender did not perpetrate rapes inconsistent with rape convictions - Whether VCAT found convictions based on mere presence during rapes - Whether VCAT confined consideration of public interest to single factor - Working with Children Act 2005 ss 12(1)(e), 12(2), 26A(1), 26A(3), 26A(4), 26A(5) applied - Minister for Immigration and Multicultural Affairs v SRT (1999) 91 FCR 234 applied.

Secretary to the Department of Justice and Regulation v L L F (a Pseudonym) and Victorian Civil and Administrative Tribunal

Beach, McLeish and Niall JJA

[\[2018\] VSCA 155](#)

18 June 2018

CONTRACT - Illegality - Contract for building works repudiated - Alleged illegal mode of performance - Whether proposed workers 'independent contractors' or 'employees' - Whether trial judge erred in refusing leave to plead illegality - Leave to appeal refused.

CONTRACT - Illegality - Alleged illegality not pleaded - Whether trial judge misapplied principles in *St John Shipping Corporation v Joseph Rank Ltd* [1957] 1 QB 267 - Whether trial judge failed to have regard to indicia of employment and independent contract - Alleged illegality incidental or peripheral to contract - Conclusions as to intended workers' status open on evidence - Leave to appeal refused - *St John Shipping v Joseph Rank Ltd* [1957] 1 QB 267; *Nelson v Nelson* (1995) 184 CLR 538; *Fitzgerald v FJ Leonhardt Pty Ltd* (1997) 189 CLR 215, applied - *Holdcroft v Market Garden Produce Pty Ltd* [2001] 2 Qd R 381 and *Sami v Roads Corporation* [2008] VSC 377 distinguished.

CONTRACT - Assessment of damages for loss of bargain - Where critical issue was time period required for contractual performance - Conclusions required findings of fact and judgment - No basis for interfering with trial judge's findings - Leave to appeal granted - Appeal dismissed - *Davison v Kempson* [2018] VSCA 51 applied.

Civil and Allied Technical Construction P/L (ACN 077 924 120) v A1 Quality Concrete Tanks P/L (ACN 095 210 683)

Whelan, Santamaria and McLeish JJA

[\[2018\] VSCA 157](#)

20 June 2018

CRIMINAL LAW - Appeal - Conviction - Sexual penetration of child under 16 - Fitness to stand trial - Pre-sentence report disclosed 'complex delusional system' - Applicant's longstanding grievance against chemical company - Conspiracy theory - Whether able to give proper instructions - No issue raised at trial - No evidence from trial counsel - *Madafferi v The Queen* [2017] VSCA 302 applied - Leave to appeal refused.

CRIMINAL LAW - Appeal - Conviction - False imprisonment - Acquittal on charge of indecent assault - Same complainant, same occasion - Whether verdicts inconsistent - Relevant evidentiary differences - Leave to appeal refused.

CRIMINAL LAW - Appeal - Sentence - Offender appeal - Crown appeal - Sexual penetration of child under 16 (2 charges) - Aggregate sentence of three years' imprisonment - Applicant sentenced as serious sexual offender - No power to impose aggregate sentence - Whether sentence manifestly inadequate - Pre-sentence report disclosed 'complex delusional system' - Whether applicant suitable vehicle for general deterrence - Dead time - Two years in custody on other offences resulting in acquittal - Sentence manifestly inadequate - Prior convictions - Offended while on bail - Discount for dead time - Resentenced to five years and six months' imprisonment with non-parole period of four years - Sentencing Act 1991 s 9(1A).

Osborne, Clinton James v The Queen; Director of Public Prosecutions [DPP] v Osborne, Clinton James

Maxwell ACJ, Priest and Kyrou JJA

[\[2018\] VSCA 160](#)

21 June 2018

CRIMINAL LAW - Appeal - Interlocutory appeal - Charge - Particulars - Foreign incursion - Preparatory conduct offence - Preparation for entry into foreign country with intention of engaging in hostile activity - Joint commission - Particulars of intended hostile activity - Prosecution unable to provide further particulars - Whether particulars provide 'reasonable information as to the nature of the charge' - Whether sufficient to ensure fair trial - Nature of preparatory offences - Particulars adequate - Leave to appeal refused - *Lodhi v The Queen* (2006) 199 FLR 303 applied - Criminal Procedure Act 2009 s 159(3)(c), Criminal Code Act 1995 (Cth) sch 1 ss 11.2A, 117.1(1), 119.1(1), 119.4(1).

Jarratt, Aric (a Pseudonym) v The Queen; Damion, Lyndon (a Pseudonym) v The Queen; Dennis, Alfonso (a Pseudonym) v The Queen; Abu, Toby (a Pseudonym) v The Queen; Ivor, Colby (a Pseudonym) v The Queen; Valerio, Kevin (a Pseudonym) v The Queen

Maxwell ACJ, Priest and Kyrou JJA

[\[2018\] VSCA 150](#)

7 June 2018

CRIMINAL LAW - Appeal - Sentence - Defensive homicide - Family violence - Applicant killed innocent victim - Excessive violence - Acting under threat from partner - Partner threatened to kill applicant's family unless she killed victim - History of violent mistreatment of applicant - Judge accepted that applicant believed threat would be carried out unless she complied - Sentence of 10 years' imprisonment with non-parole period of 7 years - Whether manifestly excessive - Relevance of family violence to offence gravity and culpability - Similarities to duress - Cooperation with authorities - Whether relevant that partner not prosecuted - Impairment of mental functioning - Appeal allowed - Resentenced to 6 years and 6 months with non-parole period of 5 years - *DPP v Parker (a pseudonym)* [2016] VSCA 101 applied - *Crimes Act 1958* ss 9AG, 9AH.

Sawyer-Thompson, Bonnie Kate v The Queen

Maxwell ACJ, Tate and Beach JJA

[\[2018\] VSCA 161](#)

22 June 2018

CRIMINAL LAW - Appeal - Sentence - Manslaughter - Sentence of 10 years with non-parole period of 7 years and 6 months - Co-offender sentenced to 5 years with non-parole period of 3 years and 9 months - Parity - Whether sentence infringed parity principle - Discount for co-operation - Co-offender co-operated and undertook to give evidence against applicant - Complaint of unjustifiable disparity not reasonably arguable - Manifest excess - Whether sentence manifestly excessive - Serious example of manslaughter - Complaint of manifest excess not reasonably arguable - Application for leave to appeal refused.

Mitchell, Terry Darren v The Queen

Whelan, Priest and Beach JJA

[\[2018\] VSCA 158](#)

21 June 2018

CRIMINAL LAW - Sentencing - Crown appeals - Committing indecent act with child under 16 (3 charges), producing child pornography for use through a carriage service and knowingly possessing child pornography - Non-custodial disposition - Sentenced to community correction orders for 3 and a half years, with conditions, and 3 year good behaviour bond - Whether sentences manifestly inadequate - Whether custodial sentence required - Serious offending - Offences of indecent act with child and producing child pornography committed as a child - Powerful mitigating factors - Difficult sentencing decision - Sentences not wholly outside permissible range - Appeals dismissed.

Director of Public Prosecutions [DPP] (Cth) and Director of Public Prosecutions [DPP] v Hutchison, Dylan (a Pseudonym)

Priest, Beach and Ashley JJA

[\[2018\] VSCA 153](#)

12 June 2018

CRIMINAL LAW - Appeal - Sentence - Persistent sexual abuse of child under 16 years - Female offender - Protection of community - Judge mistakenly sentenced offender as 'serious sexual offender' - Whether material error - Error could have affected sentence - No different sentence - Appeal dismissed - R v Beary (2004) 11 VR 151 applied.

Gillespie, Lucille (a Pseudonym) v The Queen

Whelan and McLeish JJA

[\[2018\] VSCA 151](#)

12 June 2018

CRIMINAL LAW - Appeal - Mens rea - Offence of probationary driver failing to display P plates - Whether defence of honest and reasonable mistake available in relation to element of not displaying P plate facing out from vehicle - Where regulation expressed in mandatory language - Where regulation part of graduated licensing scheme directed to road safety - Where commission of offence largely avoidable - Where offence is regulatory in nature - Leave to appeal refused - Road Safety (Drivers) Regulations 2009 reg 55(1) - Proudman v Dayman (1941) 67 CLR 536; He Kaw Teh v The Queen (1985) 157 CLR 523 applied.

Stanojlovic, Robert v Director of Public Prosecutions [DPP] (on behalf of Steven Emil Kokas) and County Court of Victoria

Beach, McLeish and Niall JJA

[\[2018\] VSCA 152](#)

12 June 2018

DEFAMATION - Appeal - Damages - Damages for non-economic loss - Aggravated damages - Publications seriously defamatory - Serious circumstances of aggravation - Multiple matters of aggravation - Judge's assessment of non-economic loss damages of \$650,000 - Successful challenge on appeal to some of judge's findings of aggravation - Plaintiff's damages for non-economic loss reassessed at \$600,000.

DEFAMATION - Appeal - Damages - Statutory cap on damages for non-economic loss - Whether only the aggravated damages component of damages for non-economic loss may be awarded in a sum in excess of the maximum prescribed in s 35(1) - Whether statutory cap acts as cut-off - Whether statutory cap fixes top end of range of damages that may be awarded for non-economic loss - Defamation Act 2005 ss 34 and 35 - Judge's construction that the cap can be exceeded whenever an award of aggravated damages is warranted, correct.

DEFAMATION - Appeal - Damages - Damages for economic loss - Claim for special damages - Loss of valuable opportunity - Real review of the evidence - Plaintiff failed to establish relevant opportunity - Plaintiff failed to establish articles caused loss of opportunity - Relevance of grapevine - Judge erred in overestimation of spread and impact of grapevine effect - Judge's award of damages for economic loss set aside.

DEFAMATION - Appeal - Damages - Damages for general decline in business - Andrews damages - Andrews v John Fairfax & Sons Ltd [1980] 2 NSWLR 225, Ratcliffe v Evans [1892] 2 QB 524, Chakravarti v Advertiser Newspapers Ltd (1998) 193 CLR 519, discussed - Claim for Andrews damages not made out.

STATUTES - Appeal - Construction of s 35 of Defamation Act 2005 - Plain words of statute - Whether plain words should be displaced by other considerations - Plain words not displaced - Defamation Act 2005 ss 1, 3, 6, 23, 34, 35, 37 and 38.

Bauer Media P/L (ACN 053 273 546) and Bauer Media Australia P/L (ACN 160 041 681) v Wilson, Rebel Melanie Elizabeth (No 2)

Tate, Beach and Ashley JJA

[\[2018\] VSCA 154](#)

14 June 2018

PERSONAL INJURY - Application for leave to appeal - Torts - Occupier's liability - Employee rolled ankle in water filled depression in pedestrian crossover at work - Whether trial judge erred in assessment of what it was prospectively reasonable for the occupier to do in providing and maintaining crossover - Whether trial judge failed to have adequate regard to the extent and nature of contractual obligations of the maintenance contractor in assessing whether it had taken reasonable care in maintaining the crossover - Leave refused.

Monash University v Savage, Sheila and Programmed Maintenance Services Ltd

Osborn, Priest and Niall JJA

[\[2018\] VSCA 156](#)

19 June 2018

Commercial Court

ARBITRATION - PRACTICE AND PROCEDURE - Application for issue of subpoenas for examination of a person not party to the arbitration agreement - *Alinta Sales Pty Ltd v Woodside Energy Ltd* [2008] WASC 304 - *Aurecon Australasia Pty Ltd v BMD Constructions Pty Ltd* (2017) 52 VR 267 - International Arbitration Act 1974 ss 22A, 23.

UDP Holdings Pty Ltd v Esposito Holdings Pty Ltd & Ors

Croft J

[\[2018\] VSC 316](#)

15 June 2018

COMPANIES - Winding up - Application for orders under section 90-15 of Schedule 2 - Insolvency Practice Schedule (Corporations) to the Corporations Act 2001 (Cth) - Whether liquidators entitled to relief from liability under section 1318 of the Corporations Act 2001 (Cth) or section 67 of the Trustee Act 1958 (Vic) - Whether liquidators entitled to be paid their remuneration, costs and expenses under section 556(1) of the Corporations Act 2001 (Cth).

TRUSTS - Whether liquidators entitled to treat trust assets as company assets - *Commonwealth v Byrnes* (in their capacity as joint and several receivers and managers of *Amerind Pty Ltd* (recs & mgrs apptd) (in liq)) (2018) 354 ALR 789 and *Jones* (in his capacity as liquidator of *Killarnee Civil and Concrete Contractors Pty Ltd* (in liq)) v *Matrix Partners* [2018] FCAFC 40 applied.

***Dudman, Leigh William and Rohrt, Richard Trygve* (in their capacity as joint and several liquidators of *Matthew Forbes P/L* (ACN 158 648 312) (in liquidation) *Matthew Forbes P/L* (CAN 158 648 312) (in liquidation)**

Riordan J

[\[2018\] VSC 331](#)

19 June 2018

CONTRACT - Formation - Intention to create legal relations for sale of land - *Masters v Cameron* (1954) 91 CLR 353 - Informal agreement stated 'The offer is subject to the contract being executed' - Where plaintiff purchaser sought specific performance of the informal agreement - Contemplation of future 'formal' contract of sale of land - Principles to be applied when the issue is whether parties intended to be bound by a single document - Vendor later contracts to sell land to third party.

The Edge Development Group P/L* (ACN 105 329 726) v *Jack Road Investments P/L* (ACN 112 898 763) as trustee for the *Jack Road Investments Unit Trust

Riordan J

[\[2018\] VSC 326](#)

19 June 2018

CORPORATIONS - Corporations Act 2001 (Cth) - winding up application - s465B - application for substitution - standing of supporting creditor - where two competing claims for substitution.

***In the matter of Erfanian Developments P/L* (ACN 140 457 601) *Between Inter Industrial Services P/L* (ACN 076 094 472) v *Erfanian Developments P/L* (ACN 140 457 601)**

Hetyey JR

[\[2018\] VSC 342](#)

6 June 2018

CORPORATIONS - Corporations Act 2001 (Cth) - Winding up - Summonses for public examination issued under ss 596A and 596B - Where substantive examinations did not ultimately proceed - Inherent power of the Court to compensate examinees for costs and expenses in compliance with summons - Claims for time spent by examinees locating documents - Applications by examinees for costs of legal representation - General presumption against recovery of legal costs - Whether there was litigation between examinees and liquidators such that ordinary costs rules apply.

CORPORATIONS - Corporations Act 2001 (Cth) - s 597B - Whether summonses issued without reasonable cause - Where substantive examinations did not ultimately proceed.

CORPORATIONS - Corporations Act 2001 (Cth) - s 596C(2) - Confidential affidavit filed in support of application for issue of summonses - No formal application made by examinees to inspect affidavit - Whether access should be granted for reason of procedural fairness.

PRACTICE AND PROCEDURE - Civil Procedure Act 2010 (Vic) - Whether public examination a "civil proceeding" under ss 3 and 4 - s 24 whether liquidators in breach of overarching obligation to ensure legal and other costs incurred in public examination process were reasonable and proportionate.

In the matter of IMF P/L (receiver and manager appointed) (in liquidation)

Hetyey JR

[\[2018\] VSC 317](#)

14 June 2018

CORPORATIONS - External administration of company being wound up in insolvency pursuant to pt 5.4 of the *Corporations Act 2001* (Cth) - Breaches by directors of their duties - *Corporations Act 2001* (Cth), s 181 - Proceeds of insurance claim redirected to other corporate entity of which one of the directors was shareholder and director - Damages awarded under s 1317H, s 1317J of the *Corporations Act 2001* (Cth).

CORPORATIONS - Directors - Section 9 of the *Corporations Act 2001* (Cth) - Consideration of involvement of person at management level of company - Finding that that person acted as a de facto director within the meaning of s 9 of the *Corporations Act 2001* (Cth).

CORPORATIONS - External administration of company being wound up in insolvency - Part 5.7B of *Corporations Act 2001* (Cth) - Finding that transactions constituted by redirection of proceeds of insurance claim were uncommercial transactions pursuant to s 588FB, insolvent transactions pursuant to s 588FC and were voidable transactions pursuant to s 588FE - Order made pursuant to s 588FF accordingly.

Ditrich, Robert Scott and Crosbie, Craig David (in their capacity as liquidators of Ezyfix Caravan Repairs P/L (In Liquidation) (ACN 129 822 528)); Ezyfix Caravan Repairs P/L (In Liquidation) (ACN 129 822 528) v Longordo, Maria; Longordo, Joseph and Ezyrepairs P/L (ACN 601 843 029)

Gardiner AsJ

[\[2018\] VSC 343](#)

22 June 2018

COSTS - Application for special costs Order - Where application brought in disregard of uncontroversial legal principle - 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 [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) (No 2)

Croft J

[\[2018\] VSC 309](#)

15 June 2018

PRACTICE AND PROCEDURE - Application for summary judgment - Where defence and counterclaim have no real prospect of success - Where defendant's affidavit material shows no case is available - Summary judgment granted - *Ottedin Investments Pty Ltd v Portbury Developments Co Pty Ltd* (2011) 35 VR 1 - *Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd* (2013) 42 VR 27 - Civil Procedure Act 2010 ss 63, 64.

MIS Funding No 1 P/L (ACN 119 268 905) v Hazra, Hasan Basri. And amended counterclaim between: Hazra, Hasan Basri v Commonwealth Bank of Australia (ACN 123 123 124) and MIS Funding No 1 P/L (ACN 119 268 905)

Croft J

[\[2018\] VSC 320](#)

21 June 2018

PRACTICE AND PROCEDURE - Interim injunction - Ex parte application - Balance of convenience - Inadequacy of damages - Personal Property and Securities Act 2009 (Cth) - Risk of sale or other disposal of personal property.

De Lage Landen P/L ABN 20 101 692 040 (t/a JCB CE Australia Financial Services) v Riry P/L ABN 32 602 026 291 (t/a Wescott Roth & Associates) and Civof, Kosta

Connock J

[\[2018\] VSC 319](#)

6 June 2018

PRACTICE AND PROCEDURE - Security for costs - Whether plaintiff's impecuniosity caused by defendant - Supreme Court (General Civil Procedure) Rules 2015, rr 62.02(1), 62.04 - Corporations Act 2001 (Cth), s 1335(1).

Coonwarra P/L (ACN 063 839 832) v Cornonero P/L (ACN 606 176 069); Trimont P/L (in liquidation) (ACN 006 065 701); Breckenridge, Peter Andrew and Ascenzo, Silvio

Derham AsJ

[\[2018\] VSC 333](#)

20 June 2018

PRACTICE AND PROCEDURE - Subpoenas to produce documents - Subpoenas are oppressive, vague and too wide in scope - Documents are not relevant to issues in dispute and subpoenas serve no legitimate forensic purpose - Documents sought for the purpose of verifying second defendant's expert's assumptions, inputs and analysis - Misuse of jurisdiction to require production to assist the second defendant's expert - Subpoenas set aside - r 42A.02 *Supreme Court (General Civil Procedure) Rules 2015*.

Brady Queen P/L (ACN 600 268 817) (in its own capacity and as trustee of the Brady Queen Unit Trust) and 280 Queen P/L (ACN 600 087 741) (in its own capacity and as trustee for the 280 Queen Unit Trust) Austhome Developments P/L (ACN 140 051 387) (in its own capacity and as trustee of the Wu Family Trust)

Sifris J

[\[2018\] VSC 334](#)

22 June 2018

Common Law Division

ADMINISTRATIVE LAW - Application by employer for judicial review of a medical panel ('Panel')'s opinion in respect of questions concerning cause of injury to worker and her capacity for work - Claim by worker for compensation under s 93 of the Accident Compensation Act 1985 (Vic) ('Act') - Worker alleged she was injured while installing a windscreen in the course of employment as an auto technician, resulting in ongoing symptoms of pain in wrists and hands - Panel concluded that worker did not have a work capacity for her pre injury employment due to a risk of recurrence for a duration of approximately two years after injury, including a period of time after injury had resolved - Employer sought review on grounds including jurisdictional error, error of law and failure to provide adequate reasons - Whether there can be no compensable incapacity for work beyond the date on which an injury is found to have 'resolved' - *Richter v Driscoll* [2016] VSCA 142, referred to - *Clarchet Pty Ltd v Demediuk* [2011] VSC 22, distinguished - *Asioty v Canberra Abattoir Pty Ltd* (1989) 167 CLR 533, referred to - *Calleja v Franet* [1999] VSC 202, referred to - Whether the Panel's findings as to the risk of the worker's medical condition re occurring by a return to work were insufficient to justify a finding of a compensable incapacity for work - *Ryan v Grange at Wodonga Pty Ltd* [2008] VSC 415, referred to - *Stojilkovik v Romas* [2017] VSC 49, referred to - *Caldipp Pty Limited t/as Slaven Motors v Delov* (2002) FCAFC 352, referred to - Panel's finding that there was a 'propensity' for injury sufficient to ground an ongoing incapacity - Whether the Panel took into account the s 5(1B) factors listed in the definition of 'significant contributing factor' in determining the causal relationship between employment with the employer and the alleged injury - *Vellios Electrical Contractors Pty Ltd & Anor v Barton & Ors* [2014] VSC 664, referred to - *Ventrice v Riva Plaster Pty Ltd and Ors* [2008] VSC 415, referred to - *Wingfoot Australia Partners Pty Ltd v Kocak* (2013) 252 CLR 480, applied - *Pearce v Lloyd* [2016] VSC 806, referred to - No jurisdictional error - Open to Panel to make finding of a compensable incapacity for work - Not necessary to consider whether Panel's finding was 'grossly illogical or irrational' - Panel took into account mandatory relevant considerations - Reasons adequate - Application dismissed.

O'Brien Glass Industries Ltd v Pisani, Lisa Mary; Roberts, A/Prof Lynden; Gibbons, A/Prof Peter; Neill, Dr Diane; Cronin, Dr John and King, Dr John

Daly AsJ

[\[2018\] VSC 294](#)

6 June 2018

CORONERS COURT - Appeal against Coroner's determination to release body to senior next of kin, where two applicants for release of the body - Whether Coroner has discretion in determining 'who has the better claim' for the purposes of s 48 of the Coroners Act 2008 - construction of 'should' in s 48(3) - Mandatory hierarchy - Appeal dismissed - Coroners Act 2008 s 48, s 85 and s 88.

Smith, Joanne Maree and Smith, Daryl v Coroners Court of Victoria and Lilley, Amanda Richards J

[\[2018\] VSC 307](#)

8 June 2018

COSTS - Property law - Application for removal of caveat - Caveat removed - Application for indemnity costs - Whether circumstances are special or unusual such as to justify departure from usual 'standards costs' order - Application for costs against non-party - Indemnity costs ordered against first defendant - No costs ordered against non-party - Civil Procedure Act 2010 (Vic) s 29 - Supreme Court (General Civil Procedure) Rules 2015 (Vic) r 63.23.

Sekhon, Amrita and Sekhon, Aman v Chandyokey, Veena and Registrar of Titles

T Forrest J

[\[2018\] VSC 327](#)

19 June 2018

COSTS - Where administration proceeding issued against defendant naming his litigation guardian in a separate proceeding - Where litigation guardian not appointed and did not consent to act in administration proceeding - Whether costs claimed by litigation guardian are reasonable and proportionate - Costs allowed in part.

McMurray, Lucy (Ludmila) (as executor of the estate of the late Nila Lapan, deceased) v Lapan, Stefan

McMillan J

[\[2018\] VSC 321](#)

14 June 2018

ENVIRONMENTAL LAW - Pollution of groundwater - Clean up notice - Whether responsibility for pollution lies with occupier of the land - Whether occupier must have caused pollution - Environment Protection Act 1970 ss 1A - 1L, 4, 39, 62A, 62C.

STATUTORY INTERPRETATION - 'occupier' - 'premises' - 'upon or from which pollution has occurred or been permitted to occur' - Whether premises includes subsurface of the land - Whether groundwater is part of the premises - Whether premises occupied - Environment Protection Act 1970 s 62A - Interpretation of Legislation Act 1984 ss 35, 38.

JUDICIAL REVIEW - Statutory authority - Discretionary decision - Whether decision a reasonable exercise of discretion.

WORDS AND PHRASES - 'land' - 'groundwater' - 'waters' - 'premises' - 'occupier' - 'upon'.

Sale Elderly Citizens Village Inc (ACN 148 233 550) v Environment Protection Authority Victoria

Quigley J

[\[2018\] VSC 266](#)

24 May 2018

EQUAL OPPORTUNITY AND DISCRIMINATION - Disability discrimination - Appeal from Victorian Civil and Administrative Tribunal - Member of owners corporations seeking alterations to common property to accommodate her disability - Tribunal found that owners corporations provide 'services' as defined in the Equal Opportunity Act 2010 - Definition of 'services' - Construction of ss 44, 45 and 56 - Whether s 56 exclusively regulates alterations to common property of an owners corporation - Appeal dismissed - Equal Opportunity Act 2010 ss 44, 45 and 56 - Victorian Civil and Administrative Tribunal Act 1998 s 148.

Owners Corporation OC1-POS539033E and Owners Corporation OC3-POS539033E v Black, Anne and Victorian Equal Opportunity and Human Rights Commission

Richards J

[\[2018\] VSC 337](#)

21 June 2018

EVIDENCE - Privilege against self-incrimination - Whether reasonable grounds for objection - No reasonable grounds for objection - Witness required to answer - Certificate given - Evidence Act 2008 (Vic) s 128, Coroners Act 2003 (Qld) s 50A, Workplace Health and Safety Act 1995 (Qld) s 165, Workplace Health and Safety Act 2011 (Qld) s 232.

EVIDENCE - Admissibility - Whether document a business record - Tender permitted - Evidence Act 2008 (Vic) ss 48, 69.

Roo-Roofing P/L (ACN 131 182 093) and Matsuh P/L (ACN 105 461 818) v The Commonwealth of Australia (Ruling No 5)

John Dixon J

[\[2018\] VSC 338](#)

21 June 2018

FAMILY PROVISION - Costs - Where defendant executors limited asset pool to their share of the estate at trial - Where defendant executors seek their costs from the estate and to be borne by those beneficially entitled to the estate in proportion to the value of their interests in the estate - Whether costs of defendant executors be paid out of the estate or borne by them personally - Where defendants advanced their own interests in the estate.

Re McKenzie (No 3)

McMillan J

[\[2018\] VSC 311](#)

14 June 2018

FAMILY PROVISION - Where testatrix made limited provision for husband by provision of a life interest in unit and small capital fund - Where defendants agree that the testatrix owed a moral duty to her husband - Where one defendant claims breach of trust by the testatrix as trustee of certain trusts during lifetime of testatrix - Where same defendant and her husband as trustees of testatrix's superannuation fund purport to exclude the husband from any benefit of the testatrix's superannuation - Determination of what is adequate provision for proper maintenance and support of husband - Administration and Probate Act 1958, ss 91, 91A - Thompson v Thompson [2015] VSC 706 - Re Hodgson [1955] VLR 481 - Coates v National Trustees Executors & Agency Co Ltd (1956) 95 CLR 494.

Re Marsella; Marsella v Wareham

McMillan J

[\[2018\] VSC 312](#)

13 June 2018

PRACTICE AND PROCEDURE - Application for summary judgment on the basis that application for revocation of probate has no real prospect of success - Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd (2013) 42 VR 27 - Mandie v Memart Nominees Pty Ltd [2016] VSCA 4 - Re Demediuk [2016] VSC 587 - Civil Procedure Act 2010 (Vic), ss 62, 63(1), 64 - Supreme Court (General Civil Procedure) Rules 2015, r 23.02(2).

PROBATE - Application for revocation of probate granted in common form - Executor applies for summary judgment - Whether applicant for revocation has no real prospect of success - Where grounds for revocation of probate unsupported by admissible evidence - Summary dismissal granted - In the Will of Lamont (1881) 7 VLR (IP & M) 86; Re Egan (deceased) [1963] VR 318; Estate Kouvakas; Lucas v Konakas [2014] NSWSC 786; Re Anderson [2017] VSC 338; Gardiner v Hughes [2017] VSCA 167.

In the matter of the Will of El Khoury, Marina, deceased. Khouri, Elias v Khoury, Suzanne

Derham AsJ

[\[2018\] VSC 305](#)

13 June 2018

PRACTICE AND PROCEDURE - Discovery - Documents possessed by party subject to implied undertaking to use only for purposes of proceeding in another court - Whether court in separate proceeding can and should order production of discovered documents which are subject to the implied undertaking - Whether there is any restriction on the use of such documents in the separate proceeding - *Hearne v Street* (2008) 235 CLR 125 - *Esso Australia Resources Ltd v Plowman (Minister for Energy and Minerals)* (1995) 183 CLR 10 - *Cadbury Schweppes Pty Ltd v Amcor Limited* [2008] FCA 398 - *Boral Resources (Vic) Pty Ltd v Construction, Forestry, Mining and Energy Union (Ruling on Discovery)* [2015] VSC 352.

White, Nola v Woodward, William Roy and The Registrar of Titles

Matthews JR

[\[2018\] VSC 335](#)

22 June 2018

PRACTICE AND PROCEDURE - Representation of company in Supreme Court proceedings - Judicial review of VCAT order striking out and dismissing company's claim - Decision of Associate Justice refusing company leave to be represented by a director - Appeal - No error - Supreme Court (General Civil Procedure) Rules 2015 rr 1.17, 2.04.

HUMAN RIGHTS - Legal representation required for company - No human right of company infringed - Australian Human Rights Commission Act 1986 (Cth); Charter of Human Rights and Responsibilities Act 2006 ss 3(1), 6(1).

Rossi Homes P/L v Victorian Civil and Administrative Tribunal and Dun and Bradstreet (Australia) P/L

Ginnane J

[\[2018\] VSC 314](#)

14 June 2018

PRACTICE AND PROCEDURE - Application by the defendants for summary judgment in respect of certain claims brought by plaintiff pursuant to ss 62 and 63 of the Civil Procedure Act 2010 (Vic) - Defendants had acted for plaintiff in proceedings brought against her former employer - Plaintiff's claim that defendants were negligent in their conduct of her claim for psychiatric injury ('stress claim') - Plaintiff claims that the defendants' withholding her file for the stress claim pending payment of legal costs hampered her ability to prepare for trial - Defendants seek summary judgment on basis plaintiff's claim has only a 'fanciful' prospect of success - Finding that terms of agreement entitled defendants to retain file upon termination of retainer and until legal costs were paid - Finding that proceeding is an abuse of process as plaintiff seeks to re-litigate stress claim - *State Bank of New South Wales Ltd v Stenhouse Ltd* (1997) Aust Torts Rep 81-423, applied - Defendants entitled to summary judgment.

Taseska, Silvana v Carus, Henry Joseph and Henry Carus & Associates (The Trustee for HCA Trust ABN 97 872 505 795) (No 3)

Daly AsJ

[\[2018\] VSC 308](#)

14 June 2018

PRACTICE AND PROCEDURE - Pleadings - Application to further amend statement of claim - Application made on day of trial - Multiple opportunities to further amend at interlocutory stages - Whether proposed amendments would cause undue delay - Whether proposed amendments have merit - Leave to further amend statement of claim granted in part - *Matthews v SPI Electricity Pty Ltd and SPI Electricity Pty Ltd v Utility Services Corporation Ltd* (Ruling No 6) [2012] VSC 70 - *AON Risk Services Ltd v Australian National University* (2009) 239 CLR 175 - *Boehm v Strongback Pty Ltd* [2011] VSC 463 - *Namberry Craft Pty Ltd & Anor v Watson & Anor* [2011] VSC 136 - *Deal v Father Pius Kodakkathanath* (2016) 258 CLR 281 - *Lindsay-Field v Three Chimneys Farm Pty Ltd* [2010] VSC 436.

Meade, Warren v Nillumbik Australia P/L and Suez Recycling and Recovery P/L

T Forrest J

[\[2018\] VSC 328](#)

18 June 2018

PROPERTY LAW - Application for removal of caveat - Plaintiffs joint registered proprietors of property - First plaintiff owed money to first and second defendants - Written agreement that first and second defendants could lodge caveat if loan not repaid - Defects in caveat - Serious question to be tried - Balance of convenience in favour of plaintiffs - Caveat removed - Transfer of Land Act 1958 (Vic) s 90(3).

Glenis, Jerry and Glenis, Faye v Ikosedikas, Peter; Torua P/L and The Registrar of Titles

T Forrest J

[\[2018\] VSC 278](#)

30 May 2018

VALUATION, PLANNING & COMPENSATION LIST - Application for leave to appeal an order of the Victorian Civil and Administrative Tribunal - Whether Tribunal in error in its construction of an agreement made pursuant to s 173 of the Planning and Environment Act 1987 - Whether Tribunal in error in its application of an agreement made pursuant to s 173 of the Planning and Environment Act 1987 - Planning and Environment Act 1987 s 173 - Appeal dismissed.

TPSC P/L (ACN 122 486 971) v Kingston City Council; Bonleaf P/L (ACN 082 546 049) and Roads Corporation

Quigley J

[\[2018\] VSC 313](#)

14 June 2018

WILLS AND ESTATES - Informal will - Will kit utilised but only one witness - Doubt as to testamentary capacity due to diagnosis of schizophrenia and paranoid delusions - Principles to apply in the case of partial unsoundness of mind - Delusions did not result in a disposition that would not otherwise have been made or deprive a person with a good claim of a disposition - Testatrix found to have testamentary capacity and probate of will granted - Wills Act 1997 (Vic), s 9 - *Banks v Goodfellow* (1870) LR 5 QB 549 and *Tipper v Moore and anor* (1911) 13 CLR 248 applied - *Bull v Fulton* (1942) 66 CLR 295 distinguished.

Willis, Alana v McKenzie, Lachlan Arthur (as independent representative appointed for the infant beneficiaries Rose Amber Willis and Frank George Willis)

Lansdowne AsJ

[\[2018\] VSC 325](#)

18 June 2018

Criminal Division

CRIMINAL LAW - Murder - Sentence - Accused found guilty by jury - Issue at trial was identity - Deceased stabbed to death - Offence committed in shopping centre - Motive of retribution - Delay, effect of - General and specific deterrence - Prior criminal history - Subsequent offending and rehabilitation.

The Queen v Hague, Karl Michael

Lasry J

[\[2018\] VSC 323](#)

15 June 2018

CRIMINAL LAW - Pre-trial ruling - Evidence - Admissibility - Identification - Section 137 Evidence Act 2008 - Internally inconsistent - Probative value - Identification parades - Negative result on two occasions - Alternative suspects - Whether evidence has probative value - Risk of unfair prejudice - Whether a jury issue - Effect of publicity over 22 year period - Witness now identifies accused as the offender - Evidence of identification excluded pursuant to s 137 - Publicity - Reinforcement and effect over extended period.

The Queen v Hague, Karl Michael

Lasry J

[\[2018\] VSC 26](#)

6 February 2018

Probate Jurisdiction

EXECUTORS COMMISSION - Gifts to executor during life and under the will - Alleged misconduct - Deduction of solicitor's costs from quantum of claim - Communication with beneficiaries during administration - Duration of administration - Family disharmony - Administration and Probate Act 1958 (Vic) s 65.

In the matter of the Will and Estate of Niclasen, James Patrick, deceased and In the matter of Section 65 of the Administration and Probate Act 1958. Whitaker, Beverley Margaret (in the Will called Beverley Whitaker)

Englefield JR

[\[2018\] VSC 287](#)

19 June 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 - Amendment of pleadings - Addition of injuries.

Carman v VWA (Ruling No 1)

Judge Dyer

[\[2018\] VCC 790](#)

30/05/2018

ACCIDENT COMPENSATION - Limits of grant under s134AB(16)(b) of the Accident.

Carman v VWA (Ruling No 2)

Judge Dyer

[\[2018\] VCC 845](#)

30/05/2018

APPLICATION FOR ADJOURNMENT - Summary judgment application.

Deputy Commissioner of Taxation v Mingos

Judge Lewitan

[\[2018\] VCC 757](#)

30/05/2018

CLIENT PRIVILEGE - Whether chain of emails confidential communication - Legal advice - Whether waiver for failing to object to production under subpoena - Whether the court ought to inspect documents in the absence of admissible evidence in support of claim of privilege.

Vic Kids Property Pty Ltd v Kritsonis & Anor

Judicial Registrar Burchell

[\[2018\] VCC 891](#)

20/06/2018

CONTRACT - Construction and interpretation - Principles of construction - Role of context and surrounding circumstances and purpose - Role of "ambiguity" and "plain meaning".

TRADE PRACTICES - Misleading and deceptive conduct - Evidence - Standard of proof - Reliance on oral representation.

TORT - Negligent misrepresentation.

EQUITY - Estoppel by convention - Relevance of pre-contractual negotiations - Equitable estoppel - Promissory estoppel - Principles - Essentially defensive - Relevance of knowledge.

RESTITUTION - Money paid under mistake - Mistake of fact or law - Right to recover - Unjust enrichment - Whether retention of moneys inequitable in all the circumstances.

PRACTICE AND PROCEDURE - Whether counterclaim statute barred - Mistake - Whether defendant discovered or could with reasonable diligence have discovered mistake.

F J & P N Curran Pty Ltd v Almond Investors Land Pty Ltd (No 1)

Judge Cosgrave

[\[2018\] VCC 722](#)

25/05/2018

COSTS - INTEREST - Offer of compromise by defendant - Offer refused - Order 26 of the County Court Civil Procedure Rules - Whether defendant's offer of genuine compromise in circumstances where it made no mention of counterclaim.

F J & P N Curran Pty Ltd v Almond Investors Land Pty Ltd (No 4)

Judge Cosgrave

[\[2018\] VCC 793](#)

06/06/2018

CUSTOMS - Offences - Smuggling - Importation of tobacco - Evasion of duty - False statement - Conviction - No appearance by defendant - Deterrence - Totality- Minimum penalties.

Comptroller General of Customs v Haidary

Judge Carmody

[\[2018\] VCC 848](#)

14/06/2018

EVIDENCE - Admissibility of expert evidence from an engineer/ergonomist in jury trial - Whether sufficient expertise in the area of gas pipe installation - Failure of the expert to provide details of calculations as to force and flexibility - Failure to provide sufficient detail of suitable alternative systems of work - How application of expertise relates to assumed facts - Admissibility of evidence related to Manual Handling Code of Practice - Admissibility of evidence relating to material contained on WorkSafe website.

Haslem v Ventia Utility Services Pty Limited (Ruling)

Judge O'Neill

[\[2018\] VCC 830](#)

12/06/2018

PRACTICE AND PROCEDURE - Amendment of pleadings - Application to amend made during closing submissions - Amendment includes claim for collateral warranty - Whether amendment should be allowed.

F J & P N Curran Pty Ltd v Almond Investors Land Pty Ltd (No 2)

Judge Cosgrave

[\[2018\] VCC 723](#)

25/05/2018

PRACTICE AND PROCEDURE - Amendment of pleadings - Application to amend made during closing submissions - Amendment includes claim for collateral warranty - Whether application constitutes re-agitation of issue already decided.

F J & P N Curran Pty Ltd v Almond Investors Land Pty Ltd (No 3)

Judge Cosgrave

[\[2018\] VCC 724](#)

25/05/2018

RULE 32.05 or 32.06 - Application for discovery from prospective defendant.

RDDT a Vivopharm Company Pty Ltd v CGU Insurance Limited

Judge Lewitan

[\[2018\] VCC 791](#)

07/06/2018

Magistrates' Court of Victoria Judgments

Following is a selection of judgments recently handed down in the Magistrates' Court of Victoria.

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

WORKCOVER DIVISION - Pulmonary fibrosis - Alleged exposure to metal dust, welding fumes and chemical fumes throughout course of employment between 1983-4 and 1990-2012 - Pigeon fancier from 8 years of age - 'Bird Fanciers Lung' - Whether employment is a significant contributing factor - Conflicting lay evidence - Denial of liability in respect to claim for weekly payments and medical treatment expenses and an Impairment Claim.

Durea v T.O.P Welding

Magistrate S Garnett

[\[2018\] VMC 08](#)

18/06/2018

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.

Corporations Law

Insolvency - Corporate trustee - Trust assets - Costs - Unsecured creditors - Secured creditors - Commonwealth v Bynes - Jones v Matrix Partners Pty Ltd - Personal Property Securities Act 2009 (Cth), s340 - Australia
Mirzai, N. "The commercial trust in insolvency: a persistent concern for practitioners and their advisors." (2018) 45 (2) Aust Bar Rev 193-210.

Courts

Court buildings - Court facilities - Courtroom design - Courtroom technology - Victoria
Ford, C. "New court breaks with tradition: the new Shepparton law courts." (2018) 92(6) LIJ 13-15.

Courtroom - Judges - Juries - Defamation - Court proceedings - Procedural fairness - Media - Public gallery - Ethics - Awareness of legal risk - Communication - Social media - Smart phones - Twitter - Instagram - Facebook - Comparative analysis - UK - US - Australia
Rares, S. "Social media – Challenges for lawyers and the courts" (2018) 45 (2) Aust Bar Rev 105-123.

Criminal Law & Procedure

Mental impairment - Criminal liability - Criminal responsibility - Diminished responsibility - Homicide - Murder - Manslaughter - Coroners and Justice Act 2009 (UK), s52 - R v Golds - R v Byrne - UK
Mackay, R. "The impairment factors in the new diminished responsibility plea." [2018] (6) Crim L R. 457-466.

Sentencing - Maximum sentence - Proportionality - Stalking - Theft - Protection from Harassment Act 1997 (UK) - Law reform proposals - UK

Kelly, R. "Reforming maximum sentences and respecting ordinal proportionality." [2018] (6) Crim L R 450-461.

Sentencing - Sentencing guidelines - Children - Young persons - Domestic violence - Weapons - Terrorism - Law reform proposals - Domestic Violence and Abuse Bill 2018 (UK) - UK

Padfield, N. "More consultations on sentencing." [2018] (6) Crim L R 427-429.

Sexual offences - Child sexual abuse - Sexual assault - Historical sexual abuse - Childhood trauma - Children - Assessment of damages - Compensation - Evidence of loss - Royal Commission into Institutional Responses to Child Sexual Abuse - Victoria

Wilson, G. and M. Magazanik. "What price? quantifying loss for survivors of childhood sexual." (2018) 92(6) LIJ 36-39

Environmental Law

Hydraulic fracturing - Fracking - Coal seam gas - Environment protection - Offences - Petroleum Act 1998 (Vic) - Resources Legislation Amendment (Fracking Ban) Act 2017 (Vic) - Metagasco Limited v Minister for Resources and Energy - Victoria

Komesaroff, A. and C. Langton. "To frack or not to frack." (2018) 92(6) LIJ 28-31.

Sports law

Natural resources - Environmental guardians
 - Geographical features - Environment
 protection - Conservation Act 1987 (NZ) -
 Sierra Club v Hickel - Moxon v Casino Control
 Authority - McGuire v Hastings District
 Council -NZ
Daya-Winterbottom, T. "Personality and
 representation in environmental law."
 [2018] (May) NZLJ 130-134.

Concurrent jurisdiction - Sports violence-
 Prosecution - Public interest - Sportspersons
 - Sports governing bodies - Crown
 Prosecution Service - R v Barnes - UK
Livingston, B. [2018] (6) Crim L R 431-449.

Human Rights

Victims of crime - Damages - Negligence -
 Police - Failure to investigate - Duty of care
 - Police investigations - Police liability -
 Human Rights Act 1998 (UK), s7, s8 -
 Commissioner of Police of the Metropolis v
 DSD and Anor - Hill v Chief Constable of West
 Yorkshire Police - Michael v Chief Constable
 of South Wales Police - UK
Flinn, M. "Police must investigate:
 Worboys' victims win human rights case."
 [2018] (May) Counsel 34-35.

Legal Profession

Law Institute of Victoria - History - Buildings
 - Victoria
Derkley, K. "Landmark move in legal
 precinct: the 470 Bourke St sale marks
 historic change for the LIV." (2018) 92(6)
 LIJ 16-18.
 Personalia - Judge Julie Condon - County
 Court of Victoria - Victoria
Wilson, B. "Judge Julie Condon." (2018)
 92(6) LIJ 21

Medical Law

Mental capacity - Children - Best interest -
 Informed consent - Medical treatment -
 Consent - Withdrawal of life support - Right
 to die - Alfie Evans - Re Ashya King - Gard (A
 Child) - Kings College Hospital NHS
 Foundation Trust v Haastrop - M, W v M & Ors
 - UK
English, R. "Best interest cases." [2018]
 (May) Counsel 32-33.

INFORMATION SESSIONS

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- Library news and events
- New books and articles received by the Library
- Victorian legislative updates
- High Court, Supreme Court of Victoria Court of Appeal and Trial Division judgments.

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Law Library of Victoria

210 William Street
Melbourne VIC 3000

LIBRARY FACTS

- The Law Library of Victoria is regarded as a library of national significance and is one of the largest law collections in the state, containing over 120,000 volumes.
- The oldest book in the collection is Statham's Abridgement of 1489, a case law digest.
- The largest portrait in the library is of John Schutt, the first librarian, who died in office after 54 years in the position.

