



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
27 September
2018

Library News

Switch on... Point in time Victorian legislation

Thursday 4 October 2018, 1.15pm-1.40pm

The Law Library of Victoria invites you to attend our Switch On... information sessions. These twenty-five minute sessions are suited to judicial officers, court staff, legal professionals, law students, and anyone with an interest in law.

Research often requires finding a piece of legislation at a particular point in time. This session, presented by the reference staff of the Law Library of Victoria, will provide some tips on where to find point in time legislation using freely accessible resources.

All are welcome and entry is free. To register please email libraryevents@supcourt.vic.gov.au

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

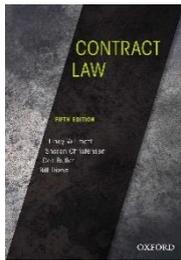
Library News	1
Switch on... Point in time Victorian legislation	1
Contents	2
New Books	3
Legislation	4
Victorian Bills	4
Victorian Assents	4
Proclamations	4
High Court Cases	5
Victorian Supreme Court Cases	6
Court of Appeal	6
Commercial Court	10
Common Law Division	14
Criminal Division	17
County Court of Victoria Cases	19
Articles	20
Contract Law	20
Criminal Law & Procedure	20
Legal Profession	20
Practice and Procedure	20
About the Law Library of Victoria	22

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/.

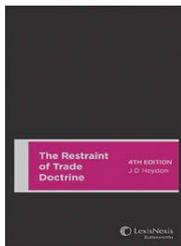
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

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



Contract law
Willmott, Lindy, et. al.
5th ed., Sydney : Oxford University Press, 2018
Call number: 346.02 WIL.5 (Supreme Court Library, VCAT Library)

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



The restraint of trade doctrine
Heydon, J.D.
4th ed., Chatswood : LexisNexis Butterworths, 2018
Call number: 343.0723 HEY.4 (Supreme Court Library)

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



Unconscionable conduct in Australian consumer and commercial contracts
Sharpe, Michelle
Chatswood : LexisNexis Butterworths, 2018
Call number: 343.07 SHA (Supreme Court Library)

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

Legislation

Victorian Bills

No Victorian Bills have received a second reading since the last Library Bulletin:

Victorian Assents

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

- [*Electricity Safety Amendment \(Electrical Equipment Safety Scheme\) Act 2018*](#) No. 43/2018
- [*Long Service Benefits Portability Act 2018*](#) No. 44/2018
- [*Residential Tenancies Amendment Act 2018*](#) No. 45/2018
- [*Building Amendment \(Registration of Building Trades and Other Matters\) Act 2018*](#) No. 46/2018
- [*Gambling Regulation Amendment \(Wagering and Betting\) Act 2018*](#) No. 47/2018
- [*Justice Legislation Miscellaneous Amendment Act 2018*](#) No. 48/2018
- [*Treasury and Finance Legislation Amendment Act 2018*](#) No. 49/2018

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

NAURU - Appeal as of right from Supreme Court of Nauru - Refugees - Where Secretary of Department of Justice and Border Control determined appellant not refugee and not owed complementary protection - Where Refugee Status Review Tribunal affirmed Secretary's determination - Where Tribunal made adverse findings as to credibility - Whether error in Tribunal's reasons.

WORDS AND PHRASES - "appeal", "credibility", "error".

Refugees Convention Act 2012 (Nr). Convention relating to the Status of Refugees (1951) as modified by the Protocol relating to the Status of Refugees (1967).

QLN146 v Republic of Nauru

Bell, Keane and Gordon JJ

[\[2018\] HCA 42](#)

11 September 2018

NAURU - Appeal as of right from Supreme Court of Nauru - Refugees - Where Secretary of Department of Justice and Border Control refused application for complementary protection - Where Refugee Status Review Tribunal affirmed Secretary's decision - Where appellant claimed he would be subject to cruel, inhuman or degrading treatment if returned to Sri Lanka - Where basis for claim was that appellant may be remanded in prison if returned to Sri Lanka and prison conditions in Sri Lanka are poor - Whether Tribunal had regard to material before it concerning prison conditions in Sri Lanka - Whether reasons of Tribunal met standard required by s 34(4) of *Refugees Convention Act 2012* (Nr).

WORDS AND PHRASES - "cruel, inhuman or degrading treatment", "duty to give reasons", "prison conditions".

Refugees Convention Act 2012 (Nr), ss 5(1), 6(1), 34(4).

QLN147 v The Republic of Nauru

Kiefel CJ, Gageler and Nettle JJ

[\[2018\] HCA 41](#)

11 September 2018

Victorian Supreme Court Cases

Court of Appeal

ACCIDENT COMPENSATION - Appeal - Workplace accident - Serious injury application - Psychiatric injury - Whether applicant suffered permanent severe mental or behavioural disturbance or disorder - Applicant found to be entirely unreliable - Relevance and importance of applicant's histories to doctors - Whether sufficient evidence to support medical opinions - Supportive evidence not subject of cross-examination - Whether judge was required to accept supportive evidence - Whether judge wrongly rejected evidence - Whether judge rejected applicant's evidence without considering it in context of whole of evidence - No error made by judge - Application for leave to appeal refused - Accident Compensation Act 1985, s 134AB.

Petrovic, Kenneth v Victorian WorkCover Authority

Beach, Kaye and Niall JJA

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

25 September 2018

CRIMINAL LAW - Appeal - Sentence - Applicant sentenced to an aggregate term of 12 months' imprisonment, with a non-parole period of six months, on nine theft and fraud related charges - Engaged in 'ghost terminalling' operation (a form of identity theft) - New evidence first emerged during hearing of application - Concession by Crown that evidence admissible - Applicant permanent resident but not Australian citizen - 12 month sentence gave rise to automatic cancellation of visa under s 501(3A) Migration Act 1958 (Cth) - Sentencing discretion re-opened - Application for leave granted and appeal allowed - Aggregate sentence of seven months' imprisonment imposed.

Allouch, Mohamed v The Queen

Beach and Weinberg JJA

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

24 September 2018

CRIMINAL LAW - Application for extension of time to seek leave to appeal against conviction - Delay of approximately 16 months - Applicant convicted of murder - Merits of proposed appeal - Whether miscarriage of justice occasioned by prosecutor's failure to challenge eyewitness testimony - Conduct of trial - Proposed ground of appeal directly contrary to way case conducted by applicant at trial - Proposed ground of appeal totally devoid of merit - Whether conviction unreasonable or unable to be supported by evidence - Not reasonably arguable that conviction unreasonable or unsupported by evidence - Explanation for applicant's delay thin - Application for extension of time refused.

Selimovski, Jumer v The Queen

Beach, Niall and Emerton JJA

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

17 September 2018

CRIMINAL LAW - Leave to appeal against sentence - Jointly dishonestly causing a loss to the Commonwealth contrary to ss 11.2A(1) and 135.1(5) of the Criminal Code Act 1995 (Cth) - Sentence of 3 years' imprisonment with recognisance release order after serving 2 years and 3 months - Whether denial of procedural fairness - Whether sentence manifestly excessive - Whether parity principle infringed - Leave granted in part.

Saoud, Houssein v The Queen

Niall JA

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

17 August 2018

CRIMINAL LAW - Sentence - Appeal - Incest (sibling) 2 charges - Total effective sentence of 30 months with non-parole period of 15 months - Whether judge erred in taking into account aggravating circumstance warranting conviction for more serious offence - Error not established - Whether judge failed to take relevant circumstance into account - Error conceded - Whether sentence manifestly excessive - Not reasonably arguable that sentence manifestly excessive - No different sentence should now be passed - Appeal dismissed.

Holland, Alexander (a Pseudonym) v The Queen

Beach, Weinberg JJA and Champion AJA

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

19 September 2018

CRIMINAL LAW - Sentence - Guilty plea - Charge of cultivate a commercial quantity of cannabis - Two charges of possess a drug of dependence - Charge of theft - Crop found at place of residence - Whether judge erred in finding that guilty plea was evidence of only some remorse as applicant had little choice but to plead guilty - Whether judge erred in finding that applicant's drug dependence lowered his moral culpability only to a small extent - Total effective sentence 3 years 8 months - Whether manifestly excessive - Application refused.

Mohtadi, Jamel v The Queen

Kyrou JA, Kaye JA

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

20 September 2018

CRIMINAL LAW - Sentence - Late guilty plea - Charge of attempt to possess a marketable quantity of an unlawfully imported border controlled drug - Charge of traffick a marketable quantity of a controlled drug - Appellant sentenced to nine years' imprisonment with a non-parole period of seven years - Characterisation of the seriousness of the offending - Whether judge erred in taking into account an adverse factor not proven beyond reasonable doubt - Whether sentence manifestly excessive - Whether denunciation, protection of the community and general deterrence given too much weight in sentencing - Whether appellant's personal circumstances and rehabilitation prospects given sufficient weight - Appeal dismissed.

Teoh, Ban Joo v The Queen

Kyrou and Kaye JJA

[\[2018\] VSCA 239](#)

20 September 2018

CRIMINAL LAW - Two charges of negligently causing serious injury and two charges of reckless conduct endangering serious injury - Total effective sentence of 4 years, 9 months' imprisonment.

CRIMINAL PROCEDURE - Application for extension of time to file application for leave to appeal against sentence - Delay of 11 months - Applicant under mistaken belief that he had signed documents which preserved his appeal rights - Legal advice sought promptly after sentence - New solicitors engaged and Legal Aid funding sought - Significant parts of delay not attributable to applicant - Application for extension of time granted.

CRIMINAL LAW - Application for leave to appeal against sentence - Whether judge mischaracterised objective gravity of negligently causing serious injury offences - Whether judge erred in adopting incremental approach to upward adjustment of current sentencing practices - Whether judge doubly punished applicant - Whether sentence of 3 years, 2 months' imprisonment for first negligently causing serious injury charge and orders for cumulation manifestly excessive - Application refused.

Sutic, Jakob v The Queen

Kyrou and Kaye JJA

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

27 September 2018

DISCRIMINATION - Applicant suspended and dismissed from employment - Whether due to direct discrimination on the basis of his disability - Equal Opportunity Act 2010 s 8 - Direct discrimination claim dismissed by the Victorian Civil and Administrative Tribunal - Where case was put on an inferential basis - Where Tribunal stated there was 'absolutely no evidence' dismissal was due to disability - Whether Tribunal failed to consider all submissions - No error of law - Leave to appeal granted - Appeal dismissed.

Ferris, Scott v State of Victoria

Tate AP, Niall and Hargrave JJA

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

19 September 2018

JUDICIAL REVIEW - Instrument of delegation - Delegation to Chief Operating Officer of respondent - Whether only named individuals or holders of public offices can be delegates - Prevention of Cruelty to Animals Act 1986 s 38(2).

JUDICIAL REVIEW - Instrument delegating authority to Chief Operating Officer of respondent authorised grant of written 'approval' to inspector to apply for search warrant - Authorisation instrument 'allowed' inspector to make application - Whether inspector properly authorised.

JUDICIAL REVIEW - Application for search warrants under ss 24G and 24K of Prevention of Cruelty to Animals Act 1986 - Whether affidavit in support satisfied preconditions for issue of warrants.

JUDICIAL REVIEW - Search warrants under ss 24G and 24K of Prevention of Cruelty to Animals Act 1986 - Whether warrants too wide - Whether s 24K warrant specified its object by reference to specific offence - Whether magistrate failed to consider terms of warrants - Appeal allowed.

JUDICIAL REVIEW - Inspector obliged to give owner of animal opportunity to arrange veterinary treatment before inspector arranged such treatment - Whether opportunity must be given to owner prior to application for search warrant authorising seizure of animals - Prevention of Cruelty to Animals Act 1986 s 24C.

Healey, Heather v Royal Society for the Prevention of Cruelty to Animals Victoria 518

Kyrou, Niall and Hargrave JJA

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

26 September 2018

LANDLORD AND TENANT - Lease or licence - Agreements relating to ski fields containing reservations in favour of public - Whether grant of exclusive possession - Alpine Resorts Act 1983 s 28 - *Radaich v Smith* (1959) 101 CLR 209 - *Goldsworthy Mining Ltd v Federal Commissioner of Taxation* (1973) 128 CLR 199 - *Western Australia v Ward* (2002) 213 CLR 1 - *Western Australia v Brown* (2014) 253 CLR 507 - *Queensland v Congoo* (2015) 256 CLR 239.

TAXATION AND REVENUE - Land tax - Grant of Crown land with significant reservations - Whether grantees hold land as lessees - Land Tax Act 2005 ss 10(1)(b), 79(2)(a).

Living and Leisure Australia Ltd (ACN 107 863 445) v Commissioner of State Revenue
Ferguson CJ, Whelan and Niall JJA

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

17 September 2018

LIMITATION OF ACTIONS - Medical negligence - Application to appeal decision of Associate Justice - Application to appeal decision of judge - Whether it was unreasonable to not grant an extension of the limitation period due to delay in bringing proceedings - Factors to be considered in granting an extension of the limitation period - Whether Associate Justice correctly applied factors to be considered - Reasonable explanation for delay - Change in plaintiff's circumstances and knowledge - Limitation of Actions Act 1958, ss 27K, 27L - Leave to appeal granted - Appeal dismissed.

Hunt, Roland and Numurkah District Health Service v Holcombe, Shane

Beach, Kaye and Niall JJA

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

27 September 2018

STATUTORY INTERPRETATION - Transitional provisions - Post-sentence detention and supervision regime for serious sex offenders expanded to include offenders who have served custodial sentences for serious violence offences - Repeal of Serious Sex Offenders (Detention and Supervision) Act 2009 - Commencement of Serious Offenders Act 2018 - Whether applications made but not determined before commencement of 2018 Act to be dealt with in accordance with 2009 Act or 2018 Act - Application on 7 August 2018 for renewal of detention order not determined until after commencement of 2018 Act - Reserved questions of law to Court of Appeal - Serious Offenders Act 2018 sch 4 cls 4 and 5. WORDS - 'made under this Act'.

Director of Public Prosecutions [DPP] v Lyons, Phillip (a Pseudonym)

Tate AP, Kaye and Niall JJA

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

27 September 2018

Commercial Court

CORPORATIONS - Corporations Act 2001 (Cth), s 233 - Oppression - Relief sought was a wind up - Alternative relief, a buyout - Proceeding compromised save as to costs by agreement to wind up the first defendant - Costs - Costs where no adjudication - Principles - Offer of Compromise - Civil Procedure Act 2010 (Vic), ss 22, 24, 28 and 29 - Conduct of the parties. ***Black, Renee Susan v R & M Traders P/L (ACN 601 602 126); Evans, Michael Thomas and Zappelli, Kaylin***

Randall AsJ

[\[2018\] VSC 527](#)

14 September 2018

CORPORATIONS - Corporations Act 2001 (Cth) s 459G - Application to set aside statutory demand - 21 day affidavit required to 'raise' or 'identify' a particular ground expressly, by necessary inference or by reasonably available inference - No genuine dispute - Offsetting claim - Calculation - Need for some evidence supporting the offsetting claim to enable the Court to determine whether or not there is a genuine offsetting claim for a given amount. ***Ad Astra Institute P/L (ACN 611 629 693) v Tayden Investments P/L (ACN 114 205 131)***

Randall AsJ

[\[2018\] VSC 563](#)

25 September 2018

CORPORATIONS - Winding up order on just and equitable ground - Liquidator appointed - Application for a stay of the winding up order refused - Suitable costs order where multiple proceedings.

Knights Quest P/L v Daiwa Can Company (No 2)

Sifris J

[\[2018\] VSC 551](#)

21 September 2018

COSTS - Calderbank offers - Not unreasonable for Plaintiffs to refuse to accept offers in the circumstances.

McCrohan Super Investments P/L & Ors v Ashdown, Maria Luisa & Ors (No 2)

Sifris J

[\[2018\] VSC 512](#)

14 September 2018

COSTS - Indemnity costs - Unmeritorious claims and defences - Conduct of unsuccessful parties - Offers of compromise - Extent of indemnity - Entitlement of self-represented solicitors to professional costs - Whether gross sum costs order appropriate - Supreme Court Act 1986 (Vic), s 24 - Civil Procedure Act 2010 (Vic), s 65C - Supreme Court (General Civil Procedure) Rules 2015 (Vic), rr 26.02, 26.08, 63.02, 63.07, 63.28, 63.30, 63.30.1, 63.31, 63.34.

United Petroleum Australia P/L & Ors v Herbert Smith Freehills (a firm) & Anor; Herbert Smith Freehills (a firm) v United Petroleum Australia P/L & Anor (No 2)

Elliott J

[\[2018\] VSC 501](#)

25 September 2018

PRACTICE AND PROCEDURE - DEEDS AND OTHER INSTRUMENTS - Powers of attorney - Validity - Application for term finance - Words "agree to appoint" Whether a- ABL Custodian Services Pty Ltd & Bendigo and Adelaide Bank Ltd v Wade [2013] VCC 878 - Comptroller of Stamps v Associated Broadcasting Services Ltd [1990] VR 335 - Manton v Parabolic Pty Ltd (1985) 2 NSWLR 361.

PRACTICE AND PROCEDURE - DEEDS AND OTHER INSTRUMENTS - Deeds - Powers of attorney - Formal validity - ABL Custodian Services Pty Ltd & Bendigo and Adelaide Bank Ltd v Wade [2013] VCC 878 - Ghosn v Principle Focus Pty Ltd (No 2) [2008] VSC 574 - Backstop Nominees Pty Ltd v Goscor Pty Ltd [1990] VR 468 - Xenos v Wickham (1866) LR 2 HL 296 - Nom de Plume Nominees Pty Ltd v Fingal Developments Pty Ltd (2016) 11 BFRA 480; 337 ALR 303 - Comptroller of Stamps (Vic) v Papalia (1982) 82 ATC 4080 - Twenty Ninth Macorp Nominees Pty Ltd v George [2017] VSC 136 - Property Law Act 1968 s 73A - Property Law Act 1969 (WA) s 9 - Instruments Act 1958 ss 106, 107.

PRACTICE AND PROCEDURE - DEEDS AND OTHER INSTRUMENTS - Powers of attorney - Powers of attorney created in one jurisdiction intended to operate in a different jurisdiction - Creation of power of attorney subject to the jurisdiction of where the power of attorney is made - Construction and operation of power of attorney subject to the jurisdiction of where the power of attorney is to operate - Employers' Liability Assurance Corporation Ltd v Sedgwick, Collins & Company Ltd [1927] AC 95 - First Russian Insurance Company (in liquidation) v London and Lancashire Insurance Company Ltd [1928] 1 Ch 922 - Chatenay v The Brazilian Submarine Telegraph Co Ltd [1891] 1 QB 79.

PRACTICE AND PROCEDURE - DEEDS AND OTHER INSTRUMENTS - Powers of attorney authorising person or entity to execute a deed on behalf of donor must be granted by deed under general law - Berkeley v Hardy (1826) 5 B&C 355; 108 ER 132 - MYT Engineering Pty Ltd v Mulcon Pty Ltd [1999] 195 CLR 636 - Harrison v Jackson (1797) 7 TR 207; 101 ER 935.

PRACTICE AND PROCEDURE - DEEDS AND OTHER INSTRUMENTS - Powers of attorney - Scope of power or agency will be strictly construed - Tobin v Broadbent (1947) 75 CLR 378 - Attwood v Munnings (1827) 7 B&C 278; 108 ER 727 - Bryant v La Banque du Peuple [1893] AC 170 - ABL Custodian Services v Kunz [2016] SADC 145.

PRACTICE AND PROCEDURE - DEEDS AND OTHER INSTRUMENTS - Deeds - Execution of a deed - Two directors' signatures - Directors authorise their facsimile signatures to be affixed to document - MYT Engineering Pty Limited v Mulcon Pty Limited (1999) 195 CLR 636 - Goodman v J Eban Ltd [1954] 1 QB 550 - Re a Debtor (No 2021 of 1995) [1996] 2 All ER 345 - Wilbank v Westpac Banking Corporation [2015] FCAFC 17 - Corporations Act 2001 (Cth), ss 127, 129(5).

COURTS AND JUDICIAL SYSTEM - GROUP PROCEEDINGS - Group membership - Consequences of being a group member - Clarke (as Trustee of the Clarke Family Trust) v Great Southern Finance Pty Ltd (Receivers and Managers Appointed) (in liquidation) [2014] VSC 516 - Byrne v Javelin Asset Management Pty Ltd [2016] VSCA 214 - Bendigo and Adelaide Bank Ltd v Pekell Delaire Holdings Pty Ltd (2017) 118 ACSR 592; [2017] VSCA 51 - ABL Custodian Services Pty Ltd v Freer [2018] VSC 355 - Bendigo and Adelaide Bank Limited v Lonergan [2018] VSC 357 - Bendigo and Adelaide Bank Ltd v Laszczuk [2018] VSC 388 - Bendigo and Adelaide Bank Ltd v Haque [2018] VSC 406.

Bendigo and Adelaide Bank Ltd v DY Logistics P/L

Croft J

[\[2018\] VSC 558](#)

27 September 2018

PRACTICE AND PROCEDURE - Discovery - Confidential documents - Production - Produced to external legal practitioners and experts subject to confidentiality undertakings - Access sought by in-house counsel upon undertakings being given to the court - Application granted.

Cargill Australia Ltd (ACN 004 684 173) v Viterra Malt P/L (ACN 096 519 658) & Ors and Cargill, Incorporated & Ors (No 16)

Elliott J

[\[2018\] VSC 529](#)

14 September 2018

PRACTICE AND PROCEDURE - Victorian Civil and Administrative Tribunal - Appeal against Tribunal orders - Victorian Civil and Administrative Tribunal Act 1998 s 148(1).

TAXATION AND REVENUE - Liability of deemed employer for payroll tax for distributions under an express trust to a deemed employee - Where optometrists directed consultation fees be paid to store owner to be held on trust for the optometrist - Where net consultation fees returned to the optometrists reflected hours worked rather than fees earned - Whether return of trust moneys were payments "for or in relation to the performance of work" - *Murdoch v The Commissioner of Pay-Roll Tax (Vic) (1980) 143 CLR 629* - *Newcastle Club Ltd v Commissioner of Taxation (1994) 53 FCR 1* - Payroll Tax Act 2007 s 35(1) - Pay-Roll Tax Act 1971 s 3C(2)(c).

WORDS AND PHRASES - "Paid or payable" - Whether a sum returned under an express trust could be "paid or payable" within the meaning of payroll tax legislation.

Commissioner of State Revenue v The Optical Superstore P/L

Croft J

[\[2018\] VSC 524](#)

21 September 2018

PRIVILEGE - Admissibility of without prejudice communications - Whether evidence adduced would be likely to be misleading to court unless without prejudice communications admitted - Meaning of 'likely to mislead the court' considered - Whether without prejudice communications contradicted or qualified the evidence adduced - s 131(2)(g) of the Evidence Act 2008 (Vic) considered - Without prejudice communications not admissible.

Cargill Australia Ltd (ACN 004 684 173) v Viterra Malt P/L (ACN 096 519 658) & Ors and Cargill, Incorporated & Ors (No 14)

Riordan J

[\[2018\] VSC 541](#)

10 September 2018

STATUTORY INTERPRETATION - Construction - Reconciliation of conflicting provisions - Amendments to Petroleum Act 1998 introduced by enactment of Resources Legislation Amendment (Fracking Ban) Act 2017 - Provision creating statutory moratorium to prohibit onshore petroleum activities - Plaintiff resource companies holders of existing authorities to carry out activities prohibited by moratorium - Provision that moratorium does not affect existing requirements or obligations under the conditions of existing authorities - Meaning of 'requirement' and 'obligation' - Whether provision creating moratorium should be read down - Whether resource companies are permitted to conduct any onshore petroleum activities during the moratorium - Project Blue Sky v Australian Broadcasting Authority (1998) 194 CLR 355 and Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (Northern Territory) (2009) 239 CLR 27 applied - Declaratory relief refused.

ADMINISTRATIVE LAW - Wednesbury unreasonableness - Whether purported variations to permits by Minister invalid - Minister given broad discretionary power under s 102 of the Petroleum Act 1998 to vary conditions of permits issued - Purported variations required permit holders to carry out work at future, unspecified time at which time the permit would not authorise the work - Purported variation contains obligation to carry out work illegal under the conditions of permit - Minister for Immigration and Citizenship v Li & Anor (2013) 249 CLR 332, considered - Order made quashing variations.

ADMINISTRATIVE LAW - Implementation of executive policy - Non-statutory moratorium prohibiting onshore petroleum activities - Whether alleged decisions made by the Minister in an administrative capacity to implement the moratorium until March 2017 were unlawful - Discretionary nature of declaratory relief - Ainsworth v Criminal Justice Commission (1992) 175 CLR 564 considered - Declaratory relief refused on the basis relief lacked utility.

Mirboo Ridge & Ors (ACN 060 663 934) v Minister for Resources

Macaulay J

[\[2018\] VSC 557](#)

21 September 2018

Common Law Division

ASSOCIATIONS - Local government - Municipal Association of Victoria - Interpretation of rules - Extrinsic material - Whether President ceased to hold office - Whether causal vacancy in office of President - Effect of President ceasing to be municipal council's representative - Effect of President's municipal council ceasing to be a participating member of Association - No vacancy in office of President - Declarations - Municipal Association of Victoria Act 1907; Interpretation of Legislation Act 1984 s 35.

Lake, Geoff v Municipal Association of Victoria

Ginnane J

[\[2018\] VSC 561](#)

24 September 2018

CONTRACT - Contract of employment - Claim for unpaid fees for acting as Secretary/Director of 19 subsidiaries of defendant - Estoppel by convention - Defendant assumed that it had no liability to pay plaintiff fees for acting as Secretary/Director of subsidiaries - Plaintiff acquiesced in assumption - Whether estoppel by convention suspensory or permanent - Plaintiff estopped from claiming fees - Whether claims for fees prior to June 2009 statute barred - Claims for accrued annual and long service leave - Claims for redundancy pay and payment in lieu of notice - Claims for superannuation entitlements - Whether such claims subject to maximum superannuation salary base in Superannuation Guarantee (Administration) Act 1992 (Cth) - Corporations Act 2001 (Cth) Part 1.5, ss 46, 50AAA, 188, 204C - Superannuation Guarantee (Administration) Act 1992 (Cth) ss 11, 12, 15, 19 - Limitation of Actions Act 1958 ss 5, 27 - Nauru Phosphate Royalties Trust Act 1968 (Nr) s 32.

EQUITY - Fiduciary obligations - Counterclaim for repayment of funds advanced to plaintiff in excess of funds expended on behalf of the defendant - Adequacy of evidence - Claim dismissed in respect of financial years for which defendant failed to discover financial records which may have assisted plaintiff's defence of claim - Claim upheld in respect of 2014 financial year - Civil Procedure Act 2010 s 7 - Supreme Court (General Civil Procedure) Rules 2015 r 48.03.

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

McDonald J

[\[2018\] VSC 532](#)

14 September 2018

EQUITY - Equitable remedies - Injunction - Restrain mortgagee from auction - Equity of redemption - Offer of unconditional finance from third party - Balance of convenience in favour of grant of injunction.

Six Bruce P/L (ACN 604 847 770) v Jadig Finance P/L (ACN 601 914 630)

Moore J

[\[2018\] VSC 552](#)

21 September 2018

FAMILY PROVISION - Where deceased died intestate - Where estate to be equally divided between two sons - Where one son sought to purchase deceased's property through private sale - Where the other son acting as administrator of the estate sought to publicly auction the property in circumstances where he also wished to purchase it - Adequate provision for proper maintenance and support - Where no need established to justify the Court making a family provision order - Application dismissed - Administration and Probate Act 1958 (Vic) ss 90, 91, 91A.

Nicholas, Theo v Karan, Frank (as administrator of the estate of Sultana Karanicopoulos, deceased)

Ierodiaconou AsJ

[\[2018\] VSC 537](#)

18 September 2018

JUDICIAL REVIEW - Criminal offences - Aboriginal person - Application for transfer to Koori Court Division - Discretion - Relevant factors - Relevance of proper venue - Magistrates' Court Act 1989 ss 4D, 4E, 4F, 4G; Criminal Procedure Act 2009 ss 11, 31.

HUMAN RIGHTS - Charter of Human Rights and Responsibilities - Transfer application to Koori Court Division - Whether Magistrates' Court a public authority - Judicial function - Right to equality before the law - Substantive equality - Enjoyment of cultural rights - Application of Charter to functions of Court - Interpretative function of Court under the Charter - Interpretation of Magistrates' Court's discretion - Charter of Human Rights and Responsibilities Act 2006 ss 1, 4(1)(j), (2), 6(2)(b), 8(3), 19(2)(a), 32(1), 38.

MAGISTRATES' COURT - Aboriginal person - Criminal offences - Application to transfer proceedings to Koori Court Division - Discretion - Relevant considerations - Application of Charter of Human Rights and Responsibilities - Magistrates' Court Act 1989 ss 4D, 4E, 4F, 4G.

Cemino, Zayden v Cannan, Jason Timothy & Others (according to the attached Schedule); Attorney-General for the State of Victoria and Victorian Equal Opportunity and Human Rights Commission

Ginnane J

[\[2018\] VSC 535](#)

17 September 2018

LAND ACQUISITION - Compensation for compulsory acquisition of part of land - Before and after values - Effect of easements - Effect of Public Acquisition Overlay - Disturbance losses - Solatium - Valuation of Land Act 1960 s 5A; Land Acquisition and Compensation Act 1986 ss 41, 43, 44, 80.

Wilson, Anne Hawthorne and Thomas, Jennifer Greaves v Melbourne Water Corporation

Ginnane J

[\[2018\] VSC 555](#)

21 September 2018

PLANNING - Development contributions - Infrastructure levies - Precinct Structure Plan - Development Contributions Plan - Infrastructure works to be constructed under a development contributions plan completed by developer - Duties and powers of collecting agency - Extent of credit or refund payable to developer - How determined - Double dipping - Planning and Environment Act 1987 (Vic) pt 3B, s 46P(2) - Casey City Council v Carson Simpson (2007) 18 VR 19 (Osborn J) considered.

Konann P/L (ACN 084 100 149) v Casey City Council (in its capacity as collecting agency of the Cranbourne North Precinct Structure Plan - Development Contributions Plan)

Garde J

[\[2018\] VSC 565](#)

27/09/2018

PRACTICE AND PROCEDURE - Appeal from the decision of VCAT - Whether error in dismissing application due to lack of jurisdiction - Planning and Environment Act 1987 ss 114, 119 - Victorian Civil and Administrative Tribunal Act 1998 ss 71, 148 - Subdivision Act 1998 ss 6, 13, 16, 17, 21, 22 - Leave to appeal granted - Appeal dismissed.

Khan, Arshad Ali v Victorian Civil and Administrative Tribunal

Champion J

[\[2018\] VSC 549](#)

20 September 2018

PRACTICE AND PROCEDURE - Group proceeding - Application by defendants for order that proceeding no longer continue as a group proceeding - Whether group proceeding not an efficient and effective means of dealing with group members' claims - Common questions related to liability alone - Quantum of claims of most individual group members likely to be modest - Whether in the interests of justice that proceeding no longer continue as a group proceeding - Whether determination of common issues lacked utility to advance claims of group members - Supreme Court Act 1986 (Vic), Part 4A, s 33N(1) - Application dismissed.

Burke, Michela Joy v Ash Sounds P/L trading as The Falls Music and Arts Festival (ABN 67 160 019 152)

Daly AsJ

[\[2018\] VSC 528](#)

13 September 2018

PRACTICE AND PROCEDURE - Pseudonyms - Application for pseudonym for plaintiff and non-party - Open justice principle - Exceptions - Prevention of prejudice to administration of justice - Application granted.

Martin, Sarah (a Pseudonym) v The State of Victoria

John Dixon J

[\[2018\] VSC 536](#)

17 September 2018

PRACTICE AND PROCEDURE - Warrants of execution - Where more than six years had elapsed since judgment had been obtained - Where change had taken place, by assignment, in the identity of the person entitled to execution under the judgment - Equitable assignment sufficient - Evidence regarding reasons for delay satisfactory - Discretion exercised to grant leave - Supreme Court (General Civil Procedure) Rules 2015, r 68.02 - Commonwealth Bank of Australia v Saggese [2018] VSC 40 - Denney v Reasonable Endeavours Pty Ltd [2001] VSC 447 - Denney v Reasonable Endeavours Pty Ltd [2003] FCAFC 158.

Citigroup P/L (ABN 88 004 325 080) v Jackman, Alexander R

Matthews JR

[\[2018\] VSC 545](#)

21 September 2018

WILLS - Application for grant of administration on intestacy - Whether testator's will as altered by handwritten alterations revokes will - Whether testator intended handwritten alterations to revoke his will - Where handwritten alterations to deceased's will clear in meaning and form contain no language of revocation - Wills Act 1997, s 12.

In the matter of the Will and Estate of Williams, Lloyd George, deceased

McMillan J

[\[2018\] VSC 543](#)

21 September 2018

Criminal Division

CRIMINAL LAW - Application for bail - Applicant, aged 37, charged with being drunk in a public place and breaching a condition of bail (namely, a curfew) - Offences allegedly committed while on bail for being drunk in a public place and breaching a conduct condition of bail - Applicant intellectually disabled and living in supported accommodation - Previously found to be unfit to plead, which state is likely permanent - Even if fit to plead, would not be imprisoned if found guilty - High risk of committing offence of being drunk in a public place if released on bail - Incapable of complying with curfew and many other bail conditions - Whether exceptional circumstances - Whether unacceptable risk of reoffending if bailed - Bail not opposed by prosecution - Extremely unusual case - Bail granted upon own undertaking with static address - Bail Act 1977 (Vic), ss 3AAAA, 3AAA, 4A, 4B, 4E & 30A(1) and Schedules 1 and 2; Summary Offences Act 1966 (Vic), s 14.

In the matter of an Application for Bail by Hall, Brock. Hall, Brock v Pangemanan, Constable Nico

Croucher J

[\[2018\] VSC 533](#)

14 September 2018

CRIMINAL LAW - Application for bail - Charges of threat to inflict serious injury, possessing a trafficable quantity of unregistered firearms, possessing a firearm whilst being a prohibited person, possessing a firearm with no serial number, possessing cartridge ammunition without a licence - Prima facie entitlement to bail - Unacceptable risk - Surrounding circumstances - 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 Menna, Kristian

Champion J

[\[2018\] VSC 538](#)

30 August 2018

CRIMINAL LAW - Application for bail - Children's Court - Charges of robbery, affray, theft, intentionally causing injury, recklessly causing injury, assault by kicking, assault in company, unlawful assault, discharge missile, attempted theft, committing an indictable offence whilst on bail, attempted robbery, assault with intent to rob - Applicant required to show exceptional circumstances - Bail refused - Bail Act 1977.

In the matter of the Bail Act 1977 and In the matter of an application by C T

Champion J

[\[2018\] VSC 559](#)

7 September 2018

CRIMINAL LAW - Bail - Charges of rape, sexual assault by compelling sexual touching, rape by compelling sexual penetration, sexual assault, detention for sexual purposes, false imprisonment and unlawful assault - Requirement to show a compelling reason exists that justifies grant of bail - Whether a compelling reason established - Whether unacceptable risk - Compelling reason established - Not unacceptable risk - Bail granted - Bail Act 1977, ss 4C and 4E.

In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Alsulayhim, Nasser

Beach JA

[\[2018\] VSC 570](#)

27 September 2018

CRIMINAL LAW - Sentence - Dangerous driving causing serious injury - Victim sustained significant and enduring injuries - Mid to upper level of seriousness of offence of dangerous driving causing serious injury - Guilty plea - General deterrence, denunciation and punishment - Specific deterrence and protection of the community - Time spent in immigration detention - Pre-sentence detention - Deportation - Total effective sentence of two years and four months' imprisonment with non-parole period of one year and six months.

The Queen v Sahhitanandan, Mairown

Champion J

[\[2018\] VSC 550](#)

18 September 2018

CRIMINAL LAW - Sentence - Murder of 6 month infant - Extensive drug use and sleep deprivation leading up to offence - Methamphetamine - Significant fatal head injuries - Significant non-fatal injuries - Not guilty plea - Jury verdict - Multiple prior convictions for dishonest offending - Limited prior history of violent offending - Subject to Community Corrections Order at time of offence - Importance of protection of community, general deterrence and denunciation - Lack of insight and genuine remorse - Prospects of rehabilitation guarded.

Director of Public Prosecutions [DPP] v Lindsey, Dwayne Justin (Sentence)

Kaye JA

[\[2018\] VSC 239](#)

22 May 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.

PRACTICE AND PROCEDURE - COSTS - CALDERBANK OFFER - Application for indemnity costs - Whether allegation of fraud persisted with without reasonable grounds - Whether special circumstances to justify departure from usual basis.

Cetinkaya v Unal (No 2)

[\[2018\] VCC 1392](#)

Judge Marks

07/09/2018

PRACTICE AND PROCEDURE - COSTS - CALDERBANK OFFER - COSTS HEARING - The plaintiff was successful in obtaining costs on an indemnity basis of the proceeding from the date a Calderbank offer expired as a result of the defendant unreasonably rejecting the offer - The defendant was successful in resisting a further application by the plaintiff for costs of the counterclaim from its inception - Whether orders should be made that the costs of the costs hearing be included in the costs of the proceeding payable by the defendant on an indemnity basis.

Gagliardi v KP Hicks (No 3)

[\[2018\] VCC 1400](#)

Judge Marks

07/09/2018

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.

Contract Law

Oral contracts - Oral agreements - Variation clauses - Enforceability - NZ

Shaw, W. and S. Connell. "Rock Advertising v MWB in the UK Supreme Court: "no oral variation" clauses can be enforceable." [2018] (August) NZLJ 198-200.

Criminal Law & Procedure

Criminal records - Discrimination - Convictions - Disclosure - Employees - Spent convictions - Privacy - Human rights - BE v Suncorp Group Ltd - Law reform proposals - Australia

Croucher, R. "Righting the relic: towards effective protections for criminal record discrimination." (2018) 48 LSJ 73-75.

Domestic violence - Family violence - Personal violence - Coercive control - Controlling behaviour - Crimes (Domestic and Personal Violence) Act 2007 (NSW), s55 - Law reform - NSW

Causbrook, M. "Taking controlling and coercive behaviour seriously: criminalising domestic violence in NSW." (2018) 43(2) Alt L J 102-107.

Domestic violence - Family violence - Women - Coercive control - Controlling behaviour - Intimate partner violence - Separation - Fear - Maternal obligations - "Control over women's economic capacity" - Research study - Australia

Tyson, D. and C. Bruton. "Leaving violent men: a study of women's experiences of separation in Victoria, Australia." (2018) 51(3) A & NZ J Crim 339-354.

Sentencing - Aboriginal offenders - Imprisonment - Serious assault - Violent offenders - Disparities - Racial bias - Research study - Australia

Thorburn, H. and D. Weatherburn. "Effect of Indigenous status on sentence outcomes for serious assault offences." (2018) 51(3) A & NZ J Crim 434-453.

Vulnerable witnesses - Children - Child sexual abuse - Evidence - Victims of crime - Courtroom assistance - Assistance animals - "Courthouse facility dogs" - US - Australia
Wood, E.e.al. "Teaching an old dog new tricks: using courthouse facility dogs in Australia." (2018) 43(2) Alt L J 89-95.

Legal Profession

Social media - Legal ethics - Duty to client - Duty of Confidentiality - Lawyer/client communication - Electronic communication - Evidence - Courtroom - Risks - Australia
Zawacki, A. "Social media use in the legal profession." (2018) 43(2) Alt L J 120-125.

Practice and Procedure

Contempt of court - Non-compliance - Breach of court orders - Deliberate defiance of Court orders - Costs - Civil contempt - Criminal contempt - Defamation - Al Muderis v Duncan (No 4) - Australia

Fishburn, T. "The 'poster boy' plaintiff and contumacious, contumelious, criminal and civil contempt." (2018) 48 LSJ 90-91.

Freezing orders - Injunctions - Contempt of court - Carve-outs - Liability - ASIC v One Tech Media Limited (No 3) - Australia
MacInnes, A. "Avoiding contempt of court for breach of freezing orders: it's a matter of trust." (2018) 48 LSJ 86-87.

Judgments - Law reporting - Law reports - Authorised reports - Unauthorised reports - Unreported judgments - Electronic publication - Accessibility - Australia
Paglia, J. "Policy issues in the publication of case law: do we still need authorised law reports?" (2018) 40(8) LSB 38-39.

INFORMATION SESSIONS

The Law Library of Victoria hosts regular information sessions on how to use specific legal research databases.

If you have suggestions for future information sessions, please send them to llv@courts.vic.gov.au

Visit our website for upcoming events lawlibrary.vic.gov.au



About the Law Library of Victoria

Since the 1850s, the legal profession in Victoria has funded a library to enhance the administration of justice.

The Law Library of Victoria builds upon this proud history and continues this role today. It provides access to authoritative legal information to ensure that the law is applied accurately, effectively and fairly.

The Library is an integral resource for the Victorian Courts and VCAT, as well as for the legal profession and the community.

The Library provides services that support the administration of justice in Victoria.

- We collate and curate the best range of legal information resources for our constituents.
- We assist with reference and research support, and improve skills in using legal resources across the community.
- We improve access to justice for all Victorians by providing access to legal resources for our members.

The Library Bulletin is a free fortnightly information service provided by the Law Library of Victoria for judicial officers, members of the legal profession and anyone with an interest in the law. It is compiled by Library staff and includes the following content:

- 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.

The Library Bulletin is prepared within a quick turnaround time. All attempts are made to ensure accuracy, however readers are advised to verify information contained in the Library Bulletin against information from original sources. If you do see an error or omission, please contact us at llv@courts.vic.gov.au.

The Library Bulletin is provided on the basis that readers will assume full responsibility for making their own assessment of the information provided. This service does not provide legal advice. No liability will be accepted as a result of any reliance on this service.

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.