



## THE LAW LIBRARY OF VICTORIA

# Library Bulletin

9 November 2018

## Library News

### Twilight Songs under the Dome

Wednesday 14 November, 6.00pm - 8.00pm

The Law Library of Victoria and BottledSnail Productions invite you to a special night of classical music performed by members of the legal profession in the beautiful surrounds of the Supreme Court Library. Enjoy a program of strings, vocal, piano and instrumental music.

Tickets are \$20, with profits going to the Asylum Seeker Resource Centre. To book tickets visit <https://events.ticketbooth.com.au/event/twilight-songs-2018>  
For further information contact [kylie.weston-scheuber@bottledsnail.com](mailto:kylie.weston-scheuber@bottledsnail.com)

### SUBSCRIBE TO THE LIBRARY BULLETIN

If you would like to receive the Library Bulletin by email, please contact us at [llv@courts.vic.gov.au](mailto:llv@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

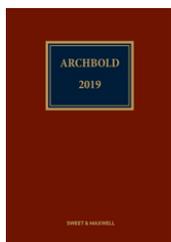
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# New Books

Following is a selection of new books added to the Law Library of Victoria collection. For details of more new books, see the Library Catalogue: [https://courts.sdp.sirsiidynix.net.au/client/en\\_AU/llv/](https://courts.sdp.sirsiidynix.net.au/client/en_AU/llv/).

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

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



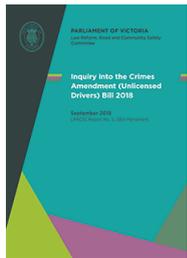
Archbold : criminal pleading, evidence and practice 2019

edited by Mark Lucraft

2019 edition, London : Thomson Reuters, 2019

345.05 ARC.19 (Supreme Court Library, County Court Library)

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



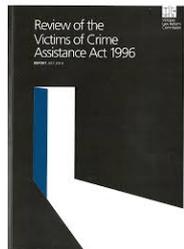
Inquiry into the Crimes Amendment (Unlicensed Drivers) Bill 2018

Parliament of Victoria, Law Reform, Road and Community Safety Committee.

[Melbourne, Victoria] : Victorian Government Printer, September 2018.

q 363.125 VIC (Supreme Court Library)

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



Review of the Victims of Crime Assistance Act 1996 Report

Victorian Law Reform Commission (author).

Melbourne, VIC : Victorian Law Reform Commission, July 2018.

LRC 94.56 R38 (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

No Victorian Acts were assented to since the last Library Bulletin.

## Proclamations

No Victorian Proclamations have been made or 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 of Australia Cases

ADMINISTRATIVE LAW - Judicial review - Jurisdictional error - Usual requirement that error must be material - When error will be material - Where visa criterion that there is no evidence that plaintiff has given bogus document - Where delegate of Minister for Home Affairs refused visa application because plaintiff provided bogus document - Where plaintiff accepted that document is bogus - Where plaintiff's migration agent made errors in communications with delegate - Whether agent's errors fraudulent - Whether agent's errors material.

WORDS AND PHRASES - "bogus document", "compassionate or compelling circumstances", "deprived the plaintiff of the possibility of a successful outcome", "false or misleading statement", "jurisdictional error", "material", "materiality", "privative clause decision".

*Migration Regulations 1994* (Cth), Sch 2, cl 820.226, Sch 4, public interest criterion 4020

## ***Wehbe v Minister for Home Affairs***

Edelman J

[\[2018\] HCA 50](#)

7 November 2018

EVIDENCE - Criminal trial - Sexual offences - Tendency evidence - Admissibility - Where appellant acolyte and complainant altar boy - Where appellant alleged to have followed complainant into church's public bathroom and committed offences - Where evidence that appellant, while working as an assistant housemaster, sexually offended against homesick boarding students who sought out appellant in private bedroom led as tendency evidence - Where tendency expressed as appellant having sexual interest in young teenage boys under his supervision and to act on that interest - Where tendency evidence of acts occurring ten years before offences charged - Where no evidence other than complainant's evidence that appellant had offended again in ten year period - Where tendency evidence unchallenged in cross-examination - Whether tendency evidence possessed significant probative value.

WORDS AND PHRASES - "sexual interest", "significant probative value", "tendency evidence", "tendency expressed at a high level of generality", "tendency to act in a particular way", "tendency to have a particular state of mind".

*Evidence Act 1995* (NSW), ss 97, 101.

## ***McPhillamy v The Queen***

Kiefel CJ, Bell, Keane, Nettle and Edelman JJ

[\[2018\] HCA 52](#)

8 November 2018

HIGH COURT - Appellate jurisdiction - Leave to appeal - Circumstances when leave necessary - Distinction between interlocutory and final judgment - Where *Judiciary Act 1903* (Cth) s 34(2) requires leave to appeal from interlocutory judgment of High Court exercising original jurisdiction - Where single Justice dismissed application for order to show cause - Where appellant filed notice of appeal without seeking leave to appeal - Whether judgment appealed from interlocutory or final - Whether appeal incompetent.

COURTS - Jurisdiction - Different dimensions of jurisdiction - Where respondent entered unconditional appearance to the appeal - Whether submission to personal dimension of jurisdiction precludes respondent from impugning competency of appeal based on lack of subject matter jurisdiction.

WORDS AND PHRASES - "application for an order nisi", "application for an order to show cause", "finally determines", "incompetent", "interlocutory judgment", "leave to appeal", "personal dimension of jurisdiction", "subject matter dimension of jurisdiction".

*Judiciary Act 1903* (Cth), s 34(2).

*High Court Rules 1952* (Cth), O 55 r 1(2).

*High Court Rules 2004* (Cth), r 25.03.3(a).

***Plaintiff S164/2018 v Minister for Home Affairs***

Edelman J

[\[2018\] HCA 51](#)

7 November 2018

# Victorian Court of Appeal Cases

ACCIDENT COMPENSATION - Appeal - Transport accident - Serious injury application - Injury to the spine - Consequences relating to pain and suffering and pecuniary disadvantage - Whether consequences serious - Consequences of injury to applicant at least very considerable - Primary judge erred in refusing application - Appeal allowed - Leave granted to applicant to commence common law proceeding - *Transport Accident Act 1986*, s 93.

***Demmler, Samantha v Transport Accident Commission***

Beach, Kaye JJA and Macaulay AJA

[\[2018\] VSCA 284](#)

9 November 2018

CIVIL PROCEDURE - Settlement approval - Settlement of two proceedings - Group proceeding and separate proceeding brought by special purpose receivers - Group proceeding funded by litigation funder - Settlement sum to be paid in settlement of both proceedings - Whether settlement sum fair and reasonable - Proposed distributions from settlement sum for litigation funder's commission and legal costs - Where overlap between two proceedings - Whether judge had adequate regard to contribution of special purpose receivers' proceeding in approving commission - Appeal allowed.

CIVIL PROCEDURE - Settlement approval - Parties to settlement contractually bound to support litigation funder's applications for commission and legal costs - Whether judge erred in ordering confidentiality over expert costs report, affidavit evidence and legal advices and submissions - Whether judge erred in failing to appoint contradictor.

CIVIL PROCEDURE - Settlement approval - Where plaintiffs did not join parent company of professional trustee company defendant.

CIVIL PROCEDURE - Settlement approval - Settlement conditional on making of 'Approval Orders' - Whether 'Approval Orders' includes litigation funder's applications for commission and legal costs - Whether open to Court to approve settlement but not approve proposed distributions for commission and legal costs - *Supreme Court Act 1986* ss 33V, 33ZF.

***Botsman v Bolitho***

Tate, Whelan and Niall JJA

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

1 November 2018

CONTEMPT - Appeal - Sentence - Contempt - Undertaking by individual to ensure compliance by company with Court orders - Failure to abide by undertaking - Sentence of four months' imprisonment - Whether contemnor punished for a contempt that he did not admit - Whether judge erred in rejecting sincerity of contemnor's apology - Whether manifestly excessive - Appeal allowed.

***Sidebottom, Shanah James v The Queen***

Priest and Beach JJA, and Macaulay AJA

[\[2018\] VSCA 280](#)

2 November 2018

CRIMINAL LAW - Appeal - Conviction - Duty of prosecutor - Failure to call witness - Whether substantial miscarriage of justice resulted - Leave to appeal refused.

CRIMINAL LAW - Appeal - Conviction - Directions on prosecutor's failure to call witness - Whether directions proper - Leave to appeal refused - *Jury Directions Act 2015* s 43.

CRIMINAL LAW - Appeal - Conviction - Opinion of police officer that potential prosecution witness is untruthful and unreliable - Whether admissible - Leave to appeal refused - *Evidence Act 2008* ss 76, 77, 78, 79, 101A, 102, 108A.

***Howard, Ashley v The Queen; McKean, Matthew Roderick v The Queen***

Priest, T Forrest and Weinberg JJA

[\[2018\] VSCA 273](#)

26 October 2018

CRIMINAL LAW - Appeal - Conviction - Sexual penetration of child under the age of 16 - Offending over several months - Whether trial judge erred in failing to exclude evidence from VARE that complainant could not recall - Whether trial judge erred in refusing to give jury unreliable witness direction in relation to evidence in VARE that complainant could not recall - Whether trial judge erred in refusing to give direction in relation to prosecution's failure to call relevant evidence - Whether combination of errors amounted to miscarriage of justice - Leave to appeal on grounds 1, 2 and 4 refused - Leave to appeal on ground 3 granted but appeal dismissed - *Evidence Act 2008* s 137 - *Jury Directions Act 2015* ss 32, 43.

***Solis, Dale (a Pseudonym) v The Queen***

Kyrou, McLeish and T Forrest JJA

[\[2018\] VSCA 275](#)

31 October 2018

CRIMINAL LAW - Appeal - Sentence - Aggravated burglary, intentionally causing serious injury and theft - Sentence of 9 years' imprisonment with non-parole period of 7 years' imprisonment - Whether judge failed to give weight to early plea of guilty - Whether sentence manifestly excessive - Appeal dismissed.

***Whelan, Brent Geoffrey v The Queen***

Priest JA, Ashley JA

[\[2018\] VSCA 279](#)

31 October 2018

CRIMINAL LAW - Appeal - Sentence - Dangerous driving causing death - Sentence of 9 months' imprisonment combined with a community correction order of 2 years' duration - Whether judge erred in assessing objective gravity of offending and appellant's moral culpability - Whether appellant denied procedural fairness - Whether sentence manifestly excessive - Appeal allowed - Appellant re-sentenced to 2 year community correction order.

***Bell, Arron v The Queen***

Priest and Ashley JJA

[\[2018\] VSCA 281](#)

2 November 2018

CRIMINAL LAW - Application for leave to appeal - Refusal to discharge juror - Association between relative of applicant and relative of juror - Questioning of juror - Juror ignorant of association - No apprehended bias - *Webb v The Queen* (1994) 181 CLR 41, *Dupas v The Queen* (2010) CLR 237, *R v Hood* [1968] 1 WLR 773 applied - *Najibi v The Queen* (2016) 260 A Crim R 491, *Wu v The Queen* (1999) 199 CLR 99 considered - *Juries Act 2000* (Vic) s 43.

***Platt, Damien Aubrey v The Queen***

Tate, Whelan and Niall JJA

[\[2018\] VSCA 276](#)

1 November 2018

CRIMINAL LAW - Conviction - Application for extension of time in which to file notice of leave to appeal against conviction - Leave refused - *Criminal Procedure Act 2009* (Vic) s 313 - *Bowling v The Queen* [2013] VSCA 87, *Madafferi v The Queen* [2017] VSCA 302 considered.

CRIMINAL LAW - Sexual offending - Direction requested in accordance with *Liberato v The Queen* (1985) 159 CLR 507 - Direction not given - No danger that jury understood it could properly reach verdict by choosing between belief in either the complainant's or the applicant's account - No miscarriage of justice.

CRIMINAL LAW - Standard of Proof - Direction given in manner approved in *R v Dookhea* (2017) 347 ALR 529.

CRIMINAL LAW - Intervention of trial judge during cross-examination of complainant - No rebuke or deprecation of counsel - No prejudice arising.

CRIMINAL LAW - Direction as to demeanour of witness - Permissible to refer to age of child witness - No infringement of *Jury Directions Act 2015* (Vic) s 33.

CRIMINAL LAW - Report of trial judge - Argumentative style - *Raimondi v The Queen* [2013] VSCA 194 considered.

***Monforte, Victor v The Queen***

Whelan, Niall JJA and Taylor AJA

[\[2018\] VSCA 277](#)

1 November 2018

CRIMINAL LAW - Conviction - Application for extension of time to file application for leave to appeal against conviction - Aggravated burglary - Manslaughter - Joint criminal enterprise - Enlargement of Crown case against applicant by prosecutor in closing address - Invitation to jury to engage in post-offence incriminating conduct reasoning - Application for discharge of jury refused - Strong direction by trial judge - Whether, applicant having been convicted, substantial miscarriage of justice - Application for leave to appeal filed nearly 12 months out of time - Explanation for delay unsatisfactory - Proposed prospect of success on appeal poor - Application for extension of time refused.

***Power, Adam v The Queen***

Kyrou and Ashley JJA

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

30 October 2018

CRIMINAL LAW - Conviction - Application for leave to appeal - Prosecutor's closing address - Whether prosecutor's closing address reversed onus of proof - Whether prosecutor's address undermined stature of defence counsel - Whether prosecutor's address encouraged emotive or speculative reasoning - Whether prosecutor's address contained submissions not supported by evidence - Whether prosecutor's address otherwise impermissible - Proposed ground of appeal not reasonably arguable - Application for leave to appeal refused.

CRIMINAL LAW - Sentence - Application for leave to appeal - Rape (3 counts), threat to kill and common assault - Total effective sentence 8 years and 6 months, with non-parole period of 6 years and 3 months - Whether sentences, orders for cumulation or non-parole period manifestly excessive - Complaints of manifest excess not reasonably arguable - Application for leave to appeal refused.

***Henson, Emyr (a Pseudonym) v The Queen***

Beach, Hargrave JJA and Almond AJA

[\[2018\] VSCA 283](#)

7 November 2018

CRIMINAL LAW - Sentence - 3 years and 3 months' imprisonment for aggravated burglary charge - 1 year and 3 months' imprisonment, with 6 months cumulation for theft charge - Extensive criminal history including 3 prior aggravated burglary offences - Whether sentencing judge erred in assessing objective gravity of aggravated burglary offence - Leave to appeal refused.

***Dirbass, Jason v The Queen***

Kyrou and Ashley JJA

[\[2018\] VSCA 272](#)

26 October 2018

CRIMINAL LAW - Sentence - Leave to appeal - Appeal - Intentionally causing serious injury - Unprovoked assault with knife upon five year old child - Superficial injuries - Residual scarring - Limited evidence of psychological impact - Offender aged 23 - Seriously incapacitated by cerebral palsy - Plea of guilty but circumstances of incident not admitted - Reasons for attack unclear - No prior criminal history - Heavy burden of imprisonment - Total effective sentence of nine years with non-parole period of six years and three months' imprisonment - Leave to appeal granted - Appeal allowed - Appellant re-sentenced to six years' imprisonment with non-parole period of three years and six months' imprisonment.

***Ranger, Ty v The Queen***

Kyrou and Ashley JJA

[\[2018\] VSCA 271](#)

26 October 2018

PRACTICE AND PROCEDURE - Application for leave to appeal - Primary judge directed registrar not to permit applicant to file writ - Whether proceeding if issued would be irregular or an abuse of process - No reasons given for order - Defective general endorsement - Endorsement not complying with r 5.04 of *County Court Civil Procedure Rules 2008* - Not reasonably arguable that proceeding would not be irregular if writ permitted to be filed - Application for leave to appeal having no prospect of success - *County Court Civil Procedure Rules 2008*, rr 5.05 and 27.06.

***Muto, Milvan Frank v Shepparton City Council and Crow, Robert***

Beach JA and Macaulay AJA

[\[2018\] VSCA 274](#)

29 October 2018

PRACTICE AND PROCEDURE - Costs - Confiscation proceedings - Application by applicant for declarations in respect of restraining order - Application dismissed - Application for leave to appeal refused - Usual costs rule applied - Applicant ordered to pay respondent's costs of application for leave.

***Coleman, Anthony v The Director of Public Prosecutions for Victoria (No 2)***

Kaye, Ashley and Weinberg JJA

[\[2018\] VSCA 282](#)

1 November 2018

# Supreme Court of Victoria Cases

## Commercial Court

CONTRACT - Formation of loan agreement - Where no written instrument - Where no evidence of an oral agreement - Inference from parties' conduct - Where parties are a proprietary company and the sole director - Where sole director has ratified company financial statements - Whether loan agreement can be inferred from financial statements.

CORPORATIONS - Practice and procedure - 'Books' of a body corporate - Admissibility of books in evidence - Whether loan recorded in financial statements is prima facie evidence of debt - Whether presumption is outweighed by other evidence - Where books are used to prove matters not recorded in books - *Corporations Act 2001* (Cth), s 1305(1).

EVIDENCE - Matters relating to proof - Standard of proof - Gravity of the matters alleged - Implication witness has been dishonest - Allegations of fraudulent or criminal conduct - *Briginshaw v Briginshaw* (1938) 60 CLR 336 - *Evidence Act 2008* (Vic), s 140.

LIMITATION OF ACTIONS - Contracts and personal actions - Loan agreement with no repayment date - Whether cause of action accrues when money is advanced - Whether cause of action is revived on part payment - *Limitation of Actions Act 1958* (Vic), ss 5, 24(3).

***Michell, Stephen John (as trustee of the Bankrupt Estate of Cheryl Ann Hill) v Onroad Offroad P/L***

Digby J

[\[2018\] VSC 648](#)

31 October 2018

CORPORATIONS ACT 2001 (Cth) - Part 5.4 - Insolvency - Winding up - Statutory demand to pay debt - s 459G - Application to set aside - s 459H(1)(a) - Whether genuine dispute about existence of debt.

***S.M. Floreani P/L (ACN 069 513 266) v C Tina P/L (ACN 161 723 100)***

Hetyey JR

[\[2018\] VSC 654](#)

1 November 2018

CORPORATIONS - External administration - Application by former administrators and current liquidators for determination of remuneration pursuant to ss 449E(1)(c) and 473(3)(b) of the *Corporations Act 2001* (Cth) - Consideration of transitional provisions in respect of the new Insolvency Practice Schedule (Corporations) as Schedule 2 to the *Corporations Act 2001* (Cth) - Remuneration approved, with minor adjustments.

***Langdon, Paul William and Vince, Peter Robert in their capacities as liquidators of Alternate Dwellings P/L (In Liquidation) (ACN 006 245 307) v Alternate Dwellings P/L (in liquidation) (ACN 006 245 307)***

Matthews JR

[\[2018\] VSC 653](#)

1 November 2018

PRACTICE AND PROCEDURE - Application to stay proceedings for abuse of process where exclusive jurisdiction clause - No abuse of process shown - Application to transfer proceeding - Whether in the interests of justice to transfer proceedings - Transfer ordered - *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Vic), s 5(2)(b)(iii).

***Tasmanian Land Company Ltd (ACN 601 090 493) v Van Dairy Group P/L (formerly known as Moon Lake P/L) (formerly known as Moon Lake Investments P/L) (ACN 609 049 265)***

Kennedy J

[\[2018\] VSC 618](#)

2 November 2018

## Common Law Division

ACCIDENT COMPENSATION - Negligence - Application by plaintiff for indemnity from defendant - Payments made to driver of motorcycle who sustained serious injuries in collision with defendant's motor vehicle - Defendant 90 per cent liable for collision - *Transport Accident Act 1986* s 104.

### ***Transport Accident Commission v Stephens, Marie***

McDonald J

[\[2018\] VSC 667](#)

9 November 2018

ADMINISTRATIVE LAW - Appeal - Decisions of Victorian Civil and Administrative Tribunal ('VCAT') that two persons with mental illness be compulsorily subjected to electroconvulsive treatment ('ECT') - Determination that they lacked the capacity to give informed consent to or refuse treatment - Whether VCAT properly interpreted and applied requirement that person be able to 'use or weigh' information relevant to decision - Further requirement that there be no less restrictive way for the person to be treated - Whether this requirement only met where treatment immediately needed to prevent serious deterioration in person's health or serious self-harm or harm to another - 'Capacity to give informed consent' - *Mental Health Act 2014* (Vic) ss 68, 69, 70, 72, 93 and 96.

HUMAN RIGHTS - Two persons having mental disability found by VCAT to lack capacity to give informed consent to or refuse ECT - Whether incompatible with human rights to self-determination, to be free of non-consensual medical treatment and to personal inviolability - Assessing capacity compatibly with those rights and the right to health - Applicable principles - Dignity of risk - *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 8(3), 10(c), 13(a), *International Covenant on Economic, Social and Cultural Rights* art 12(1), *Convention on the Rights of Persons with Disabilities* arts 12(4), 24.

### ***P B U v Mental Health Tribunal and Melbourne Health; N J E v Mental Health Tribunal and Bendigo Health***

Bell J

[\[2018\] VSC 564](#)

1 November 2018

ADMINISTRATIVE LAW - Judicial review - Medical questions referred by Magistrates' Court of Victoria to Medical Panel under s 274 of the *Workplace Injury Rehabilitation and Compensation Act 2013* - Application to quash certified opinion of Medical Panel - Alleged Medical Panel mistook or misunderstood oral history of incident alleged to have caused injury given by plaintiff during examination - Whether failure to accord natural justice - Whether failure to take into account mandatory consideration - Error shown - Certified opinion quashed - *Workplace Injury Rehabilitation and Compensation Act 2013* ss 274, 313(2).

EVIDENCE - Admissibility of notes taken by members of Medical Panel in relation to examination - Notes provided by way of 'voluntary informal discovery' - Whether doubt as to provenance - Hearsay - Business records exception to hearsay - Compellability of members of Medical Panel to give evidence - Notes admissible - *Evidence Act 2008* ss 59, 63, 64, 66A, 67, 69, 190(1), 190(3), Dictionary (pt 1 (definition of 'business'); pt 2 cl 1, 4) - *Workplace Injury Rehabilitation and Compensation Act 2013* ss 272, 303, 310, 541 - *Civil Procedure Act 2010* ch 2.

***Tait, Karen v Rehabilitation Care Solutions P/L; Homolka, Susanne; Drnda, Armin; Kierce, Paul; D'Ortenzio, Gianni and Convenor of Medical Panels***

Cavanough J

[\[2018\] VSC 657](#)

31 October 2018

APPEAL - Appeal from Magistrates' Court under s 272, *Criminal Procedure Act 2009* (Vic) against order of Magistrate dismissing charge under *Occupational Health and Safety Act 2004* (Vic) - Whether dismissal of charge a 'final order' that may be appealed under s 272, *Criminal Procedure Act 2009* - Appeal competent - *Criminal Procedure Act 2009* (Vic) s 272.

OCCUPATIONAL HEALTH AND SAFETY - Whether Magistrate misconstrued s 23(1), *Occupational Health and Safety Act 2004* - Meaning of 'persons other than employees of the employer' in s 23(1) - Whether s 23(1) applies to employees of independent contractors engaged by an employer - Independent contractors and their employees are 'persons other than employees' for the purposes of s 23(1) - Whether appropriateness of charge preferred by informant an irrelevant consideration - Appeal allowed - Remitted for review by same Magistrate - *Occupational Health and Safety Act 2004* (Vic) ss 21, 23.

***Muscat, Graham Mark v Magistrates' Court of Victoria at Ringwood and Southern Alpine Resort Management Board***

Richards J

[\[2018\] VSC 650](#)

31 October 2018

COSTS - Successful self-represented plaintiff - Barrister - Member of the Victorian Bar - Entitled to costs for work as counsel - Entitled to reasonable disbursements - Supreme Court Act 1986 ss 3(1), 24 (1).

***Lake, Geoff v Municipal Association of Victoria (No 2)***

Ginnane J

[\[2018\] VSC 660](#)

1 November 2018

COSTS - Whether court's power to order costs pursuant to s 24 of the Supreme Court Act 1986 is subject to s 570 of the *Fair Work Act 2009* (Cth) - Plaintiff claimed imposition of penalties upon defendant for failure to comply with National Employment Standards - Plaintiff abandoned claim on first day of trial - Claim for penalty had no prospect of success - Whether claim should be struck out as an abuse of process - Whether proceeding in Supreme Court of Victoria was in relation to a matter arising under the *Fair Work Act 2009* (Cth) - Claim struck out as an abuse of process - *Commonwealth Constitution* ss 77, 109 - *Fair Work Act 2009* (Cth) ss 44, 61, 539, 545, 546, 570, - *Judiciary Act 1903* (Cth) s 78B - *Supreme Court Act 1986* ss 24, 58, 60 - *Civil Procedure Act 2010* ss 23, 63 - *Supreme Court (General Civil Procedure) Rules 2015* rr 10.02, 10.09.

***Bannon, Paul v Nauru Phosphate Royalties Trust; Nauru Phosphate Royalties Trust v Bannon, Paul (Costs Ruling)***

McDonald J

[\[2018\] VSC 643](#)

29 October 2018

JUDICIAL REVIEW - Application for ex parte order for review pursuant to s 3 *Administrative Law Act 1978* (Vic) - Applicant complained about racial discrimination and bullying by persons supervising his candidature for the degree of PhD - Applicant aggrieved by findings of investigation of that complaint - Applicant sought internal appeal against those findings - University said no appeal available - Whether that decision amenable to an order for review - Consideration of the University regulatory framework and various policies - Whether a prima facie case for an order for review established - Held: no - Application refused. *Administrative Law Act 1978* (Vic) ss 2, 3 and 4; *University of Melbourne Act 2009* (Vic); *University of Melbourne Statute 2015*; *Academic Board Regulation 2015*; *Student Complaints and Grievances Policy* (MPF 1066); *Appropriate Workplace Behaviour Policy* (MPF 1328); *Student Appeals to the Academic Board Policy* (MPF 1323).

***Thomas, Darron v University of Melbourne***

Lansdowne AsJ

[\[2018\] VSC 647](#)

29 October 2018

JUDICIAL REVIEW - Application for ex parte order for review pursuant to s 3 *Administrative Law Act 1978* (Vic) - Applicant made complaint about a legal practitioner to the Victorian Legal Services Commissioner - The Commissioner closed the complaint on 26 July 2018 - Applicant sought to 'appeal' that decision on 1 August 2018 - Commissioner treats the 'appeal' as an application for internal review - No decision yet made as to whether or not to conduct an internal review - Whether a decision in relation to internal review is amenable to an order for review - Whether a prima facie case shown that the Commissioner has 'failed or refused' to make that decision - Held: no - Application refused. *Administrative Law Act 1978* (Vic) ss 2, 3 and 4 - *Legal Profession Uniform Law Application Act 2014* (Vic) - *Legal Profession Uniform Law (Victoria)* ss 277 (1)(a); 313; 316; 319.

***Thomas, Darron v Victorian Legal Services Board and Commissioner***

Lansdowne AsJ

[\[2018\] VSC 645](#)

29 October 2018

JUDICIAL REVIEW - Charge of loitering without reasonable excuse contrary to s 60B(2) of the *Crimes Act 1958* - Whether 'loitering' requires proof of lack of purpose or unlawful purpose - No such proof required - *Nadarajamoorthy v Moreton* [2003] VSC 283 distinguished.

STATUTORY CONSTRUCTION - Whether the term 'loiter' has fixed, technical meaning - Consideration of statutory history of term 'loiter' - No such fixed meaning - Primacy of statutory context in determining meaning of the term 'loiter' - *Hagan v Ridley* (1948) 50 WALR 112; *Samuels v Stokes* (1973) 130 CLR 490 applied.

HUMAN RIGHTS - Right to freedom of movement - No choice of statutory construction arising - Reasonable and demonstrably justifiable limitation - *Charter of Human Rights and Responsibilities Act 2006*, ss 12, 25(1), 32(1), 72(2) considered.

***Director of Public Prosecutions [DPP] (on behalf of Mark Adam Vetter) v Rayment, Shaun and The Attorney-General for Victoria***

Taylor J

[\[2018\] VSC 663](#)

2 November 2018

PRACTICE AND PROCEDURE - Costs - Successful application for preliminary discovery - Whether costs should be awarded to the plaintiff or the defendants and if so whether on an indemnity basis - *Supreme Court Act 1986* (Vic), s 24(1).

***Pandolfo v Finadri & Ors (Costs)***

Derham AsJ

[\[2018\] VSC 655](#)

31 October 2018

PRACTICE AND PROCEDURE - Discovery - Order for particular discovery - *Supreme Court (General Civil Procedure) Rules 2015* (Vic) r 29.08 - Whether the documents are relevant to the issues in dispute.

***Van Den Boogaard, Jeannie v Emergency Services Telecommunications Authority***

Clayton JR

[\[2018\] VSC 674](#)

8 September 2018

PRACTICE AND PROCEDURE - Group proceeding - Publication of misleading statements to group members via media - Opt-out procedure - Whether affected by statements - Whether correcting communication needed - *Supreme Court Act 1986* (Vic), ss 33J, 33X, 33ZF.

***Hawker, William Robert v Powercor Australia Ltd (ACN 064 651 109)***

John Dixon J

[\[2018\] VSC 661](#)

2 November 2018

PRACTICE AND PROCEDURE - Judicial Review - Extension of time - Whether 'special circumstances' existed - Local Council decisions - Delay of six months - No special circumstances - Application dismissed.

***Russell, John (Jack) v Murrindindi Shire Council***

Moore J

[\[2018\] VSC 662](#)

7 November 2018

PRACTICE AND PROCEDURE - Subpoenas - Issue of subpoenas with less than five days' notice - Urgent proceeding - Witnesses to give confined evidence - Potential prejudice to plaintiff - Risk of oppression limited by timetabling orders - *Supreme Court (General Civil Procedure Rules 2015)* r 42.03(8).

***Barker, Geoffrey Gordon v Australian Labor Party; Australian Labor Party (Victorian Branch); Rae, Samuel and Carroll, Noah (No 2)***

Kennedy J

[\[2018\] VSC 646](#)

15 October 2018

PROBATE - Where defendant seeks to amend grounds of objection to include testamentary undue influence - Whether proposed grounds of testamentary undue influence establish a prima facie case - *Re Kouvakas; Lucas v Konakas* [2014] NSWSC 786.

***In the matter of the estate of Savio, Luigia deceased. Savio, Andrew Dominic v Savio, Luisa Mary***

McMillan J

[\[2018\] VSC 676](#)

8 November 2018

REAL PROPERTY - Caveats - Application to remove caveat - Whether caveator had an interest in property pursuant to a resulting trust - Serious issue to be tried that property acquired with funds advanced by caveator which were not by way of loan - Balance of convenience favoured removal of caveat - Proceeds of sale from property subject to caveat to be paid into trust account until trial - *Transfer of Land Act 1958 s 90(3)*.

***Oz Envision Development P/L (ABN 60 876 176 657) and Oz Envision Property Development P/L (ABN 75 609 595 600) v Yuan, Xinhui***

McDonald J

[\[2018\] VSC 607](#)

11 October 2018

TRUSTS - TRUSTEES - Application under s 48, *Trustee Act 1958* (Vic) to remove trustee - Whether plaintiffs disclaimed interest in trust - Whether appointment of co-trustee effective - Whether co-trustee should be joined as a defendant.

CONTRACT - Terms of settlement requiring appointment of independent co-trustee - Whether defendant's unilateral appointment of co-trustee was performance or repudiation of terms of settlement - Terms of settlement not performed - Plaintiffs accepted defendant's repudiation - Whether releases effective despite repudiation of terms of settlement - Releases not effective.

***Biggs, Ian Grainge and Williams, Rodney Bertram v Miller, James Harwood***

Richards J

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

31 October 2018

## Criminal Division

CONTEMPT - Examination under *Major Crime (Investigative Powers) Act 2004* (Vic) - Contempt - Refusal to answer questions - No explanation for contempt - Totality - Reasonably good prospects of rehabilitation - *Major Crime (Investigative Powers) Act 2004* (Vic) ss 36(4) and 49.

***The Queen (on the application of the Chief Examiner) v Miles, Oscar (a Pseudonym)***

Champion J

[\[2018\] VSC 669](#)

9 August 2018

CRIMES MENTAL IMPAIRMENT - Defence of mental impairment - Agreement between parties the proposed evidence establishes the defence of mental impairment - Verdict of not guilty because of mental impairment - *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) ss 20, 21, 23, 24, 41 and 47.

***DPP v Barta, Atila***

Jane Dixon J

[\[2018\] VSC 681](#)

7 November 2018

CRIMINAL LAW - Bail - 14 year old applicant - Aggravated home invasion and other charges - Young age of applicant an important consideration - Requirement to show existence of exceptional circumstances - Whether exceptional circumstances established - Whether unacceptable risk - Bail refused - *Bail Act 1977*, ss 1B, 3A, 3B, 4, 4AA, 4A and 4E.

***In the matter of the Bail Act 1977 and In the matter of an Application for Bail by B A***

Tinney J

[\[2018\] VSC 665](#)

2 November 2018

CRIMINAL LAW - Bail - Aggravated burglary, false imprisonment, and assault charges - Requirement to show compelling reason exists that justifies grant of bail - Whether compelling reason exists - Whether unacceptable risk - Compelling reason not shown - Unacceptable risk established - Bail refused - *Bail Act 1977*, ss 1B, 3AAA, 4AA, 4C and 4E.

***In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Mongan, Daniel***

Tinney J

[\[2018\] VSC 638](#)

24 October 2018

CRIMINAL LAW - Bail - Conspiracy to kidnap and assault and possession of firearms charges - Question of whether compelling reasons case - Finding that it was not - Whether unacceptable risk - Any risk was not an unacceptable one - Bail granted - *Bail Act 1977*, ss 1B, 3, 4 and 4E.

***In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Farah, Shadi***

Tinney J

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

30 October 2018

CRIMINAL LAW - Bail - Threat to kill, contravene personal safety intervention order, commit indictable offence whilst on bail and contravene conduct condition of bail charges - Requirement to show compelling reason exists that justifies grant of bail - Whether compelling reason exists - Compelling reason not shown - Unacceptable risk - Bail refused - *Bail Act 1977*, ss 1B, 3AAA(1), 3AAA(1)(l), 4, 4AA and 4C.

***In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Johnstone, Timothy***

Tinney J

[\[2018\] VSC 640](#)

25 October 2018

CRIMINAL LAW - Sentence - Intentionally causing serious injury - Conduct endangering serious injury - Prohibited person possessing a firearm - Possessing a drug of dependence - Shotgun discharged at close range into driver's side of vehicle carrying two passengers - General Deterrence - Denunciation - Remorse - Reasonable prospects for rehabilitation - *Nash v The Queen* (2013) 40 VR 134 and *Phillips v The Queen*; *Liszcak v The Queen* [2017] VSCA 313 applied.

***The Queen v McCoy, Robert***

Taylor J

[\[2018\] VSC 658](#)

2 November 2018

CRIMINAL LAW - Sentence - Murder - Plea of guilty - Shooting of 30 year old son with a shotgun - Minor incident leading to loss of control of emotions - Background of deteriorating relationship between the two - Undiagnosed depressed state of offender at the time - Some Verdins considerations - Serious example of murder - Sentence of 19 years' imprisonment with a non-parole period of 14 years.

***The Queen v Smith, Peter John***

Tinney J

[\[2018\] VSC 656](#)

13 October 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.

*CIVIL PROCEDURE ACT 2010* - s61- Application by plaintiff for summary judgment - Plaintiff seeking payment of lump sum for total and permanent disablement within the meaning of a Trust Deed - Contested claim with Defence filed, hearing dates allocated, unsuccessful mediation conducted and the like - Plaintiff also had on foot application to same fund for superannuation payout - Error made by agent of defendant by way of informing plaintiff that claim for total and permanent disablement has been accepted - Plaintiff subsequently informed of error within a period of approximately 7 days - Arguments include those relating to election and estoppel - Consideration of provisions of *Civil Procedure Act 2010* and Order 22 of the Civil Procedure Rules - Whether summary judgment should be ordered - Factors to be considered

***Davis v Alcoa Australia Retirement Plan Pty Ltd***

Judge Bowman

[\[2018\] VCC 1724](#)

30 October 2018

JUDGMENT - Whether ex parte judgment entered irregularly under the *Building and Construction Industry Security of Payment Act 2002 (Vic)* Act because the plaintiff was not a “claimant”

STAY - Whether stay should be granted where set-off claimed - Application of s47 of the *Building and Construction Industry Security of Payment Act 2002 (Vic)* and s553C of the *Corporations Act 2001 (Cth)* - Whether stay should be ordered subject to provision of further security

***Coal Projects Pty Ltd v Maicome Pty Ltd***

Judge A Ryan

[\[2018\] VCC 1730](#)

30 October 2018

# Articles

Listed below are articles indexed by the Library from journals added to our collection over the last 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.

## Admiralty Law

Time charters - Voyage charters - Charterer's obligations - Damages - Breach of contract - Shipowner rights - Cargo owners - Carriage of goods - Carriage of goods by sea - Right to withdrawal - Post-withdrawal costs - Third parties - Bill of lading - ENE Kos 1 Ltd v Petroleo Brasileiro SA - Grand China Logistics Holding v Spar Shipping - Dry Bulk Handy v Fayette International (Bulk Chile) - UK

**Baughem, S. After withdrawal: charterers' wrongs and shipowners' remedies. [2018] Lloyd's Maritime and Commercial Law Quarterly 348-375**

## Courts

Coronial inquests - Coroners Court - Court resources - Bereaved families - Coroners Act 2009 (NSW) - Law reform proposals - NSW

**Dillion, H. Why NSW needs a specialist Coroners Court. (2018) (48) Law Society Journal of New South Wales 26-27**

## Criminal Law & Procedure

Animal welfare - Animal cruelty - Inhumane treatment - Domestic violence - Family violence - Children - Sentencing - New Zealand Police v Witehira - Erickson v Ministry for Primary Industries - NZ

**Killeen, A. Animal cruelty and family violence. [2018] (September) New Zealand Law Journal 254-256**

Evidence - Child witnesses - Vulnerable witnesses - Children - Interviews - Testimony - Questioning procedures - Victim behaviour - Examination - NSW

**Powell, M. Earhart, B. Principles to enhance communication with child witnesses. (2018) 30(9) Judicial Officers' Bulletin 85-90**

Family violence - Domestic violence - Victims - Court attendance - Criminal hearings - Trials - Resources - Risk assessment - Magistrates Court - WA

**Magistrate Potter Navigating conveyor-belt justice: dynamics of family violence and practicalities in Magistrates Courts. (2018) 45(9) Brief: Law Society of WA 6-9**

One punch fatalities - Male violence - Assault - Intent - Sentencing - Palmer v R - Crimes Act 1961 (NZ), s.168A, s.189, s.193 - Crimes (Coward Punch Causing Death) Amendment Bill 2018 (NZ) - NZ  
**Tan, D. One-punch killers. [2018] (September) New Zealand Law Journal 225-256**

## Family Law

Non-parties - Disclosure of information - Withholding information - Disclosure of evidence - Care proceedings - Children - Police - Witness summons - Civil Procedure Rules 1998 (UK), r31.17 - UK  
**Burrows, D. Who must disclose what & when? (2018) 168(7811) New Law Journal 9-10**

Property settlement - Inheritance - Marriage - De-facto relationships - Financial contributions - Contribution of parties - Singerson v Joans - In the Marriage of Bonnici - WA  
**Sanghavi, D. Late inheritances and the family law courts. (2018) 45(9) Brief: Law Society of WA 16-21**

## Human Rights

Hate speech - Gendered hate speech - Hate crimes - Anti-discrimination - Gender discrimination - Sexual discrimination - Women - Vilification - Gender equality - Gender-based violence - Law reform proposals - Australia  
**D'Souza, T. et al. Harming women with words: the failure of Australian law to prohibit gendered hate speech. (2018) 41(3) University of New South Wales Law Journal 939-976**

## International Law

Armed conflicts - War crimes - Drones - Remote aircraft - Unmanned aerial vehicle - Weapons - Crime of aggression - UK  
**Morris, J. Anderson, L. The military drone: regulating the 21st century hunter-killer. [2018] (Sep) Counsel Journal of the Bar of England & Wales 32-33**

## Practice & Procedure

Court proceedings - Courtroom - Digital proceedings - Video-link evidence - Defendants - Participation in proceedings - Behaviour - Sentencing hearings - Time saving - Right to a fair trial - Prison and Courts Bill 2018 (UK) - UK

**Cowe, M. The human cost of digital justice. [2018] (Oct) Counsel. Journal of the Bar of England & Wales 26-27**

Jurisdiction - Post-judgments - Foreign creditors - Judicial discretion - Provision of information - Masri v Consolidated Contractors International Co - Linsen International Ltd v Humpuss Sea Transport Pte Ltd - Cruz City 1 Mauritius Holdings v Unitech Limited - UK

**Woolrich, J. International jurisdiction and the grant of post-judgment information-provision orders. (2018) 37(4) Civil Justice Quarterly 484-506**

Virtual courtrooms - Courtroom technology - Evidence - Video-link evidence - Digital proceedings - Courtroom - Vulnerable witnesses - Children - UK

**Hoyano, L. Video and live-link evidence: state of play. [2018] (Oct) Counsel. Journal of the Bar of England & Wales 28-29**

## 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](mailto:llv@courts.vic.gov.au)

Visit our website for upcoming events [lawlibrary.vic.gov.au](http://lawlibrary.vic.gov.au)



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- 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.

## Law Library of Victoria

210 William Street  
Melbourne VIC 3000

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- 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.

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- High Court, Supreme Court of Victoria Court of Appeal and Trial Division judgments.

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