

SUPREME COURT OF VICTORIA

RECENT JUDGMENTS BULLETIN ISSUE NO. 12/2018

Below is a list of Victorian Supreme Court unreported judgments received in the Library from 25 June to 6 July 2018. Catchwords are included when provided on the cover sheet of the unreported judgment. Enquiries regarding unreported judgments can be forwarded to the Supreme Court Library at: sclib@supremecourt.vic.gov.au or telephone (03) 9603 6282.

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COURT OF APPEAL

CRIMINAL LAW - Appeal - Conviction - Aggravated burglary, armed robbery, recklessly causing serious injury and assault - Identification evidence - Offender identified by co-offender – Judge warned jury about dangers of identification evidence - Whether judge sufficiently identified 'significant matters' going to reliability - Evidence of making of telephone calls - Whether wrongly admitted - Whether verdict unsafe and unsatisfactory - Leave to appeal refused - Jury Directions Act 2015 ss 35, 36, 37 - *Domican v The Queen* (1992) 173 CLR 555.

Audsley, Brett v The Queen

Maxwell P, Priest and Beach JJA

[\[2018\] VSCA 162](#)

26 June 2018

CRIMINAL LAW - Appeal - Sentence - Application for extension of time to appeal against sentence - Applicant convicted of abduction, false imprisonment, multiple charges of rape and associated offences - Delay of 13 months not satisfactorily explained - Appeal having no prospects of success - Application for extension of time refused - Criminal Procedure Act 2009 s 313 - *Madafferi v The Queen* [2017] VSCA 302 applied.

Gray, Tom (a Pseudonym) v The Queen

Priest, Beach and Niall JJA

[\[2018\] VSCA 163](#)

26 June 2018

PRACTICE AND PROCEDURE - Judgments - Interest - Repayment of part of judgment sum following successful appeal - Restitutionary interest - Costs - Costs of proceeding at first instance - Costs of appeal - Settlement offer - Whether costs of trial should be on indemnity basis - Both parties succeeding and failing on some issues - Whether costs should be apportioned - Defamation Act 2005, s 40.

Bauer Media P/L (ACN 053 273 546) and Bauer Media Australia P/L (ACN 160 041 681) v Wilson, Rebel Melanie Elizabeth (No 3)

Tate, Beach and Ashley JJA

[\[2018\] VSCA 164](#)

27 June 2018

DEFAMATION - Defences - Pleadings - Partial justification - Contextual truth - Application for leave to appeal against refusal to strike out defences - Whether particulars of justification capable of justifying sting of plaintiffs' imputation - Whether matter for jury to determine meaning of plaintiffs' imputation - Whether contextual imputations capable of 'swamping' plaintiffs' imputation - Whether contextual imputation 'in addition to' plaintiffs' imputation - Leave to appeal granted - Appeal allowed in part - Defamation Act 2005 ss 25, 26.

Fenn, Ashley and Ethan Affordable Housing Ltd (ACN 135 818 245) v Australian Broadcasting Corporation

McLeish, Niall and Ashley JJA

[\[2018\] VSCA 166](#)

28 June 2018

OCCUPATIONAL HEALTH AND SAFETY - Investigations - Statutory notices - Validity - Notices

requiring giving of information and production of documents - Notices issued for purpose of

investigating suspected contravention - Whether notices adequately stated nature of suspected contravention - Whether recipients able to assess validity of notices - Function of notices - State of investigators' knowledge - Notices valid - Leave to appeal granted - Appeal dismissed - Occupational Health and Safety Act 2004 ss 9, 100, 104, 111, 131, 132.

Aurora Construction Materials P/L and Epping Transport P/L v Victorian WorkCover Authority

Maxwell P, Tate and Kaye JJA

[\[2018\] VSCA 165](#)

29 June 2018

MEDICAL PRACTITIONERS - Investigations - Medical Board of Australia - Professional misconduct - Referral to VCAT - Summons for production of medical records - Production resisted by practitioner - Whether covered by statutory privilege against disclosure - No privilege – Appeal allowed - Evidence (Miscellaneous Provisions) Act 1958 s 28(2) - Health Practitioner Regulation National Law (Victoria) Act 2009.

EVIDENCE - Privilege - Medical privilege - Medical records - Statutory privilege against production in 'civil suit action or proceeding' - Regulatory proceeding in VCAT - Nature of proceeding – Whether proceeding constitutes a 'civil suit action or proceeding' - No adjudication of private rights - Privilege not applicable - Appeal allowed - Royal Women's Hospital v Medical Practitioners Board (Vic) [2005] VSC 225 considered - Evidence (Miscellaneous Provisions) Act 1958 s 28(2) – Health Practitioner Regulation National Law (Victoria) Act 2009.

Medical Board of Australia v Kemp, Dr Geoffrey

Maxwell P, Tate and Niall JJA

[\[2018\] VSCA 168](#)

29 June 2018

COMMERCIAL COURT

BUILDING CONTRACTS - Building and Construction Industry Security of Payment Act 2002 (Vic) - Payment claim issued after termination of contract - No 'reference date' to support payment

claim - Absence of reference date meant payment claim invalid such that adjudication determination also invalid - Adjudication determination quashed by consent for jurisdictional error.

COSTS - Whether plaintiff ought to obtain costs order where error made by adjudicator – Where hearing dates and filing of material necessitated following opposition - Order for costs made with small discount.

Green Suburban P/L (ACN 151 542 602) v Vita Built P/L (ACN 256 579 434) and Moore, Kevin

Kennedy J

[\[2018\] VSC 330](#)

28 June 2018

CORPORATIONS - Court-appointed receivers - Application for approval of remuneration - Source of power for making orders - Prima facie case for remuneration established - Quantum of remuneration - Discount for possible duplication - In the matter of Banksia Securities Ltd (in liq) (receivers and managers appointed) [2017] NSWSC 540 - IMO Traditional Values Management Limited (in liq) [2012] VSC 650.

Re Western Port Holdings P/L

Matthews JR

[\[2018\] VSC 352](#)

27 June 2018

CORPORATIONS - External administration - Application by former administrators for determination of remuneration pursuant to s 449E(1)(c) of the Corporations Act 2001 (Cth) - Consideration of transitional provisions in respect of the new Insolvency Practice Schedule (Corporations) as Schedule 2 to the Corporations Act 2001 (Cth) - Remuneration approved.

Pullen, Travis Jay as the administrator of CMTC P/L (in liquidation) ACN 607 395 004 v CMTC P/L (in liquidation) ACN 607 395 004

Matthews JR

[\[2018\] VSC 350](#)

27 June 2018

CORPORATIONS - Management and administration - Meetings - Application for extension of convening period for second meetings of creditors pursuant to ss 439A(6) and 447A of the

Corporations Act 2001 (Cth) - Whether extensions in best interests of companies' creditors -

Whether prejudice may be caused to any creditor or third party.

CORPORATIONS - Voluntary administration - Corporate group of companies in administration -

Application by administrators for directions under s 90-15 of Schedule 2 to the Corporations Act 2001 (Cth) (the Insolvency Practice Schedule (Corporations)) -

Where operating company in group of companies has amounts of monies imminently due - Whether administrators would be justified in procuring the holding company to lend monies to the operating company under intercompany loan agreements.

CORPORATIONS - Management and administration - Orders sought for modification of operation of s 443A of the Corporations Act 2001 (Cth) for limitation of administrators' personal liability in respect of relevant borrowings - Where administrators exposed to personal liability for proposed intercompany loan agreements - Whether interests of companies' creditors best served by administrators' proposed actions - Whether creditors of companies may be prejudiced or disadvantaged by order sought.

Re Unlocked Ltd (administrators apptd) & Ors

Sloss J

[\[2018\] VSC 345](#)

22 June 2018

CORPORATIONS - Statutory demands - Application to set aside - Genuine dispute - Loans recorded in the accounts of the creditor from a date when each plaintiffs' officer was a director of the creditor - 30 June 2015 statutory accounts recording loans due to the creditor - Resolution dated 5 June 2015 to extinguish loans - 5 June 2015 resolution apparently fabricated in 2017 – Recent invention - Dispute about how existence of the loans arose prior to service of the statutory demands - Whether the dispute identified by the plaintiffs 'was so devoid of plausibility that no investigation was required' as that phrase was referred to in *Ligon 158 Pty Ltd v Huber* (2016) 117 ACSR 495 - Corporations Act 2001 (Cth), ss 459G and 459H.

CORPORATIONS - Evidence - Statutory accounts - Prima facie evidence - Resolution dated 5 June 2015 to extinguish loans - Resolution not reflected in the statutory accounts for 30 June 2015 – Role of other evidence - *Shot One Pty Ltd (in liq) v Day* [2017] VSC 741 - Corporations Act 2001 (Cth), s 1305.

**Gordon Finance P/L (ACN 006 407 272) v Queenfield P/L (ACN 060 482 644);
Gordon Nominees P/L (ACN 004 707 617) v Queenfield P/L (ACN 060 482 644)**

Randall AsJ

[\[2018\] VSC 341](#)

22 June 2018

GUARANTEE AND SURETY - Guarantor's right to equitable contribution from co-sureties – Several guarantors under separate guarantees for same debt of same principal debtor - Request by one guarantor to creditor to release two co-guarantors - Prospect that such request disentitles guarantor to later claim equitable contribution from co-guarantors - Code of Banking Practice - Whether Bank impliedly bound under the Code to give prominent notice to the requesting guarantor to seek independent financial and legal advice about the requested release – Implication incapable of being made - No such construction open - Summary judgment granted.

Commonwealth Bank of Australia v Ruthven, Glenn William James

Mukhtar AsJ

[\[2018\] VSC 365](#)

3 July 2018

LEGAL PRACTITIONERS - Duties of solicitors - Fiduciary duties - Proposed initial public offering – No breach of duties - Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015, 9, 10, 11, 12; Wrongs Act 1958 (Vic) ss 48, 58.

CORPORATIONS - Directors' duties - Due diligence process - Lack of information from company

management - Non-executive directors - No breach of duties - Corporations Act 2001 (Cth) ss 180, 181, 182, 183, 1317S, 1318.

CORPORATIONS - Securities - Fundraising provisions - Misleading and deceptive statements,

omissions and new circumstances - Draft prospectus - Whether appropriate to release to analysts - Corporations Act 2001 (Cth) ss 728, 729, 731, 732, 733.

CONTRACT - Conditional agreement - Applicable costs agreement - Terms of the retainer – Whether subsequent retainer may be entered into by "continuing to instruct" - Application of a provision for uplift, downlift or maintenance of 100 percent of legal fees.

DEBT - Proceeding to recover unpaid legal fees - Entitlement to interest - Calculation of interest - Legal Profession Uniform Law (Vic), s 195(1); Legal Profession Uniform General Rules 2015, r 75.

CIVIL PROCEDURE - Real list of issues in dispute - Pleadings - Civil Procedure Act 2010 (Vic), s 7.

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

Elliott J

[\[2018\] VSC 347](#)

26 June 2018

PRACTICE AND PROCEDURE - Deeds and other instruments - Enforcement of deed of settlement - Whether summary procedure appropriate - Barratt v Rees [2014] VSCA 327 - Roberts v Gippsland Agricultural & Earthmoving Contracting Co Pty Ltd [1956] VLR 555 - Seachange Management Pty Ltd v Pital Business Pty Ltd (2009) 23 VR 396.

COURTS AND JUDICIAL SYSTEM - Group proceedings - 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 - Timbercorp Finance Pty Ltd (in liq) v Collins (2016) 259 CLR 212.

ABL Custodian Services P/L (ACN 097 889 720) in its capacity as trustee of the ABL Portfolio Funding Trust 2007-1 v Freer, Peter James

Croft J

[\[2018\] VSC 355](#)

3 July 2018

PRACTICE AND PROCEDURE - Deeds and other instruments - Enforcement of deed of settlement - Whether summary procedure appropriate - *Barratt v Rees* [2014] VSCA 327 - *Roberts v Gippsland Agricultural & Earthmoving Contracting Co Pty Ltd* [1956] VLR 555 - *Seachange Management Pty Ltd v Pital Business Pty Ltd* (2009) 23 VR 396.

COURTS AND JUDICIAL SYSTEM - 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 - *Timbercorp Finance Pty Ltd (in liq) v Collins* (2016) 259 CLR 212.

Bendigo and Adelaide Bank Ltd (ACN 068 049 178) v Lonergan, David Kenneth
Croft J

[\[2018\] VSC 357](#)

3 July 2018

TAXATION AND REVENUE - Congestion Levy - Whether s 34 is a transitional provision - Whether congestion Levy can be recovered under s 34 of the Congestion Levy Act 2005 by former owner - Definition of "owner" under s 3 of the Congestion Levy Act 2005 - Definition of "reviewed" under s 34(7)(b) of the Congestion Levy Act 2005 - *Pasen v Buy-Rite Discounts Pty Ltd* (1992) V ConvR 54- 431 - Whether s 34 of the Congestion Levy Act 2005 allows for double recovery - *Indian Farmers Fertiliser Cooperative Ltd v Gutnick* (2015) 304 FLR 199 - Congestion Levy Act 2005, ss 3, 34.

LEASES AND TENANCIES - Outgoings - Whether congestion Levy is an outgoing - Whether congestion Levy can be recovered as an outgoing by a former landlord - Meaning of "payable" under s 14 of the Taxation Administration Act 1997 - Taxation Administration Act 1997, s 14 - Congestion Levy Act 2005, s 34(4).

Fitzpatrick Investments P/L v DXC Technology Australia P/L

Croft J

[\[2018\] VSC 290](#)

29 June 2018

COMMON LAW DIVISION

Fauna and Flora Research Collective Inc v Secretary to the Department of Environment, Land, Water and Planning and Vic Forests

Keogh J

[\[2018\] VSC 366](#)

4 July 2018

ADMINISTRATIVE LAW - Judicial review - Opinion of a Medical Panel - Assessment of degree of permanent psychiatric impairment - Unrelated injuries or causes - Whether jurisdictional error - Whether statement of reasons adequate - Proceeding dismissed - Accident Compensation Act 1985 ss 91, 98C - Workplace Injury Rehabilitation and Compensation Act 2013 s 313.

St Luke's Anglicare v Handrinos, Dr Dennis; Millington, Dr Peter and Nicholas, Michele Anne

Richards J

[\[2018\] VSC 356](#)

28 June 2018

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

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

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

John Dixon J

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

21 June 2018

JUDICIAL REVIEW - Orders of County Court on appeal from Children's Court - Family Preservation Orders - Application based on allegations of sexual abuse by father - Meaning of sexual abuse - Evidentiary findings of Court - Risk of harm to children - Whether reasons of Court adequate - Whether jurisdictional error or error of law on the face of the record - Children, Youth and Families Act 2005 ss 1, 10, 162, 184, 274, 275.

PRACTICE AND PROCEDURE - Litigation guardian orders - Judicial review of County Court orders - Appeal from Children's Court protection orders to County Court - Children directly represented in Children's Court and County Court - Dispensing with requirement of litigation guardian in Supreme Court judicial review proceedings - Exercise of discretion - Relevant considerations - Children, Youth and Families Act 2005 s 525; Supreme Court (General Civil Procedure) Rules 2015 rr 2.04, 15.02.

Secretary, Department of Health and Human Services v County Court of Victoria; A B (a

Pseudonym); C D (a Pseudonym); E F (a Pseudonym) and G H (a Pseudonym)

Ginnane J

[\[2018\] VSC 322](#)

18 June 2018

JUDICIAL REVIEW - Orders of County Court on appeal from Children's Court - County Court orders quashed - Entitlement of defendants to indemnity certificates - Indemnity certificates granted - Appeal Costs Act 1998 s 4.

Secretary, Department of Health and Human Services v County Court of Victoria; A B (a Pseudonym); C D (a Pseudonym); E F (a Pseudonym) and G H (a Pseudonym) (No 2)

Ginnane J

[\[2018\] VSC 354](#)

28 June 2018

MENTAL IMPAIRMENT AND CRIMINAL LAW - Review of custodial supervision order ("CSO") - AB

strangled two co-patients at Thomas Embling Hospital ("TEH") with ligature, killing one but not the other - AB found not guilty by jury of murder and attempted murder by reason of mental impairment - History of mental illness, including (partly) treatment-resistant schizophrenia, and serious acts of violence, especially while in custody - Exceptionally, certificate of available services declared no facilities or services available for AB in designated mental health facility (i.e. TEH) - Level of security and facilities at TEH inadequate to cater for AB's estimated risk of violence on long-term basis - CSO made but, absent 'favourable' certificate, Court compelled to commit AB to prison instead of TEH - Upon review of CSO three years later, new certificate of available services makes same negative declaration - Certificate based on advice that AB still could not be managed safely at TEH at present - Prison conditions in which AB held in interim extremely restrictive, including isolation from others and movement about in handcuffs accompanied by guards, but high level of psychiatric and psychological care provided - Some improvement in AB's mental health and possibility of further improvement in future - Possibility of high security mental health facility to be commissioned and built in future - AB concedes necessity of continued detention in prison on CSO, for time being - Unnecessary to decide whether, upon review, 'favourable' certificate of available services required to allow change to place of custody from prison to TEH - Existing CSO and place of custody (prison) confirmed - Possible underestimation of effect of anti-psychotic Clozapine in controlling AB's illness and risk of violence - Further review directed by 1 September 2019 - Anonymization of reviewee and others in reasons - Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic), ss 3, 20, 23, 24, 26, 27, 31, 33, 39, 40, 41, 42, 47 & 75; Mental Health Act 2014 (Vic), ss 3, 276, 306 & 329.

In the matter of a review of a custodial supervision order imposed on "A B"

Croucher J

[\[2018\] VSC 349](#)

29 June 2018

PLANNING - Challenge to findings by the Victorian Civil and Administrative Tribunal - Tribunal an expert body - Findings open on the evidence and not irrational or illogical - Application for leave to appeal refused - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s 148.

Datta Yoga Centre Australia P/L (ABN 24 150 630 201) v Wyndham City Council; Jobling, Bryan; Fairchild, Karen; Pountney, Keith and Smith, Martin
Garde J

[\[2018\] VSC 353](#)

29 June 2018

PRACTICE AND PROCEDURE - Application for leave to file an amended statement of claim -

Principles underlying r 23.02 of the Supreme Court (General Civil Procedure) Rules 2015 applied - Whether proposed amended statement of claim discloses a cause of action - Defects of form - Leave to file the amended statement of claim refused.

NEGLIGENCE - Plaintiff claims her local council owed her a duty to acquire her land for a public purpose and had failed to do so, causing her loss - Whether the claimed duty inconsistent with the defendant's statutory duties - *Dansar Pty Ltd v Byron Shire Council* (2014) 89 NSWLR 1 considered - Whether this question should be determined at trial - Held no because pleaded facts show the claimed duty not arguable.

BREACH OF STATUTORY DUTY - Plaintiff claims local council breached a duty to her imposed by s 197 of the Planning and Environment Act 1987 (Vic) to promptly acquire her land - Breach of this claimed statutory duty depends on duty to acquire being established - Not arguable on the pleaded facts that there was such a duty - Accordingly no cause of action for breach of statutory duty is disclosed.

Chapman, Elise v City of Greater Bendigo

Lansdowne AsJ

[\[2018\] VSC 358](#)

28 June 2018

PRACTICE AND PROCEDURE - Subpoena to treating psychologist in personal injury claim – Records disclose allegations of sexual abuse - Sexual abuse not the subject of proceeding but relevant to psychiatric impairment claimed - Whether psychologist records are 'confidential communications' pursuant to Evidence (Miscellaneous Provisions) Act 1958 Div 2A - Whether leave to issue subpoena required - *KR v BR & Anor* [2018] VSCA 159, *R v Lyons* [2018] VSC 256.

Staker, Jesse v Kemp, Ralph; Kemp, Debra and Kemp, John

Clayton JR

[\[2018\] VSC 367](#)

4 July 2018

PRACTICE AND PROCEDURE - Summary judgment - Appeal - Proceeding for judicial review
summarily dismissed by Associate Justice - Whether proceeding had no real prospect of success - Whether impugned 'decisions' susceptible to review - Whether incurable procedural deficiencies - No error disclosed - Appeal dismissed - Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd (2013) 42 VR 27; Kuek v Victoria Legal Aid (2001) 3 VR 289 referred to - Civil Procedure Act 2010 s 63(2)(b) - Supreme Court (General Civil Procedure) Rules 2015 O 56.

Crowther, Andrew David v Whitehorse City Council (No 2)

Zammit J

[\[2018\] VSC 344](#)

26 June 2018

PROBATE - Where plaintiff seeks to prove will in solemn form - Whether deceased lacked

testamentary capacity - Whether deceased knew and approved of the contents of the will -

Application dismissed - Banks v Goodfellow (1870) LR5QB 549 - Veall v Veall (2015) 46 VR 123.

In the matter of the Will of Parr, Shirley Patricia (deceased). State Trustees Ltd (ACN 064 593 148) v Nicholson, Rodney

McMillan J

[\[2018\] VSC 359](#)

28 June 2018

REAL PROPERTY - Caveats - Application to remove caveat under s 90(3) Transfer of Land Act 1958 (Vic) - Lodgement of caveat by former de facto based on alleged contributions - Caveat removed by order of court - Lodgement of second caveat allegedly claiming a different interest pursuant to Family Court order - No interest pursuant to order where amount due under order never paid - Balance of convenience also favoured removal of caveat - Unnecessary to decide if second caveat claimed 'same interest' in respect of both caveats under s 91(4) - Order for removal made.

National Australia Bank Ltd (ABN 12 004 044 937) v Siri Nilsen and The Registrar of Titles

Kennedy J

[\[2018\] VSC 368](#)

2 July 2018

NEGLIGENCE - Duty of care - Standard of care for professionals - Standard of care for Australian lawyers - Whether incorrect advice is negligent - Whether advice to settle proceeding is negligent - Whether advice to pursue former solicitor is negligent. NEGLIGENCE - Causation - Whether incorrect advice caused loss or damage - Whether failure to advise caused loss or damage - Whether advice to settle proceeding caused loss or damage.

NEGLIGENCE - Quantification of loss and damage - Reliance loss - Loss of opportunity – Whether speculated loss is recoverable - Whether value of prospective judgment can be quantified.

STATUTORY INTERPRETATION - Accrued rights - Retail Tenancies Reform Act 1998, s 25 – Retail Leases Act 2003, ss 25 and 26 - Retail Leases (Amendment) Act 2005, s 43 - Interpretation of Legislation Act 1984, s 14.

Barfly's Nominees P/L (ACN 080 123 057) v Kliger Partners (a firm) (ABN 27 254 281 216) Digby J

[\[2018\] VSC 315](#)

15 June 2018

CRIMINAL DIVISION

CRIMINAL LAW - Bail - Fraudulently inducing persons to invest money, obtaining property by deception (7 charges), negligently dealing with proceeds of crime (6 charges), making a false

document (13 charges), possessing methylamphetamine, possessing cannabis and committing an indictable offence while on bail - Requirement to show compelling reason why detention in custody not justified - Whether compelling reason shown - Whether unacceptable risk - Compelling reason not shown - Bail refused - Bail Act 1977, ss 1B, 4(2)(a), 4(2)(d) and 4(4).

WORDS AND PHRASES - 'Compelling reason' - Bail Act 1977, s 4(4).

In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Ceylan, Sedat

Beach JA

[\[2018\] VSC 361](#)

29 June 2018

CRIMINAL LAW - Charges of incitement to murder, extortion with threat to kill and threatening to kill - Accused found unfit to plead - Subsequent special hearing in relation to charges – Application for exclusion of accused's admissions in relation to earlier uncharged acts - Accused an elderly Italian migrant for whom English was only a partial language - No interpreter present at interview - Whether unfair to use evidence against accused in special hearing - Whether circumstances in which evidence obtained would give rise to unfair forensic advantage if it were so used – Whether evidence improperly or unlawfully obtained - Whether interview conducted in violation of accused's right to interpreter and obligation of police to obtain interpreter and defer interview until one present - Whether conducting interview without an interpreter constituted failure by police to ensure accused had equal and effective protection of the law and was therefore discriminatory - Exercise of discretion to exclude improperly or unlawfully obtained evidence where human rights of accused are breached - 'Admission' - Evidence Act 2008 (Vic) ss 90, 138(1)-(3) and 139(1)-(3), Crimes Act 1958 (Vic) 464D(1), Charter of Human Rights and Responsibilities Act 2006 (Vic) ss 8(3) and 38(1), International Covenant on Civil and Political Rights, arts 14(1) and (3) and 26.

Director of Public Prosecutions [DPP] v Natale, Rocco (Ruling)

Bell J

[\[2018\] VSC 339](#)

26 June 2018

CRIMINAL LAW - Crimes Mental Impairment - Application for revocation of non-custodial supervision order - Whether the applicant is or would be likely to endanger himself or others if order revoked - Revocation application granted.

In the matter of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) and In the matter of an application for revocation of a non-custodial supervision order by Ng, Jason (a Pseudonym)

Hollingworth J

[\[2018\] VSC 346](#)

29 June 2018

CRIMINAL LAW - Evidence - Hearsay evidence - Dying declaration - Statement by fatally-injured victim to friend that "Earl got in and got me" - Whether admissible as exception to hearsay rule - Whether probative value outweighed by danger of unfair prejudice - Statement admissible - Evidence Act 2008 ss 65(2)(b) and (c), 137.

Director of Public Prosecutions [DPP] v Jones, Earl (Ruling)

Hollingworth J

[\[2018\] VSC 43](#)

29 June 2018

CRIMINAL LAW - Murder - Attempted murder - Evidence - Admissibility - Evidence of attempts of accused at surrogacy and guardianship - Relevant to motive to murder deceased to gain care of her children - Whether probative value outweighed by unfair prejudice to accused - Evidence Act (Vic) s 137.

Director of Public Prosecutions [DPP] v Lyons, Christine Ann and Lyons, Ronald (Ruling No 3)

Kaye JA

[\[2018\] VSC 224](#)

9 May 2018

CRIMINAL LAW - Murder - Post-offence conduct - Lies about disappearance of deceased - Assistance in disposal of deceased's body - Whether intractably neutral.
Director of Public Prosecutions [DPP] v Lyons, Christine Ann and Lyons, Ronald (Ruling No 4)

Kaye JA

[\[2018\] VSC 297](#)

4 June 2018

CRIMINAL LAW - Murder - Verdict entered of not guilty by reason of mental impairment – Report received under s 41 of Crimes (Mental Impairment & Unfitness to be Tried) Act 1997 – Custodial supervision order imposed.

Director of Public Prosecutions [DPP] v Bailey, Stephen Patrick (Ruling No 2)

Kaye JA

[\[2018\] VSC 332](#)

22 June 2018

CRIMINAL LAW - Prisoner pleaded guilty to intentionally causing serious injury - Prisoner originally sentenced to one year and nine months' imprisonment and two year Community Correction Order - Contravention of Community Correction Order - Prisoner re-sentenced - Sentencing Act 1991 ss 6AAA, 18, 73, 83AD and 83AS.

The Queen v Ely, Kirt Matthew

Emerton J

[\[2018\] VSC 187](#)

24 April 2018

CRIMINAL LAW - Sentence - Murder - Jury verdict - Fatal stab wound inflicted to thigh in course of spontaneous fight - Intention to cause really serious injury - Lack of remorse and non-acceptance of responsibility for victim's death - Prior convictions - Borderline intellectual functioning - No mental health issues - Long history of alcohol and substance abuse - Disadvantaged upbringing – Application of Bugmy principles - Guarded prospects of rehabilitation - Sentenced to 20 years' imprisonment with a non-parole period of 15 years.

Director of Public Prosecutions [DPP] v Jones, Earl

Hollingworth J

[\[2018\] VSC 329](#)

29 June 2018

CRIMINAL LAW - Sentence - Murder - Male and female accused - Guilty verdict following trial by jury - Husband of female accused by cyanide poisoning - Very serious example of murder - Lack of remorse - Differences in objective gravity of offending, personal circumstances and prospects of rehabilitation - Male accused: 27 years' imprisonment with non-parole period of 23 years – Female accused: 22 years' imprisonment with non-parole period of 18 years.

Director of Public Prosecutions [DPP] v Kamalasanan, Arun; Director of Public Prosecutions [DPP] v Sam, Sofia

Coghlan JA

[\[2018\] VSC 340](#)

21 June 2018

EVIDENCE – Public interest immunity – Accused charged with murder – Defence of self-defence – Matters of State – Right of accused to a fair trial – Whether to grant a permanent stay in combination with an order for non-disclosure – *Evidence Act 2008* ss 130, 191.

The Queen v Kamil Yucel (Ruling No 6)

Beale J

[\[2018\] VSC 371](#)

6 July 2018

COSTS COURT

Singh, Gurwinder v Slater & Gordon

Wood AsJ

[\[2018\] VSC 363](#)

2 June 2018

JUDICIAL REVIEW AND APPEALS LIST

CRIMINAL LAW - Appeal - Whether Magistrate's finding of guilt was on a different basis to that charged and particularised - Occupational health and safety - Employer's obligation to provide safe workplace - Tiles being laid on roof of residence before permanent roof supports installed - Whether it was open for Magistrate to conclude employees were at risk of roof collapse – Whether it was reasonably practicable for Metricon to take measures to eliminate or reduce risk – Whether Magistrate failed to give adequate reasons - Occupational Health and Safety Act 2004 ss 20 and 21 - DPP v Vibro-Pile [2016] VSCA 55 (26 March 2016) - Holmes v RE Spence & Co Pty Ltd (1992) 5 VIR 119 - DPP v Kypri (2011) 33 VR 157 - R v Australian Char [1995] VSC 168 (30 June 1995) - Hunter v TAC & Avalanche [2005] VSCA 1 (10 February 2005).

Metricon Homes P/L v O'Grady, Colleen (Victorian WorkCover Authority)

Keogh J

[\[2018\] VSC 351](#)

26 June 2018