

# **SUPREME COURT OF VICTORIA**

## **RECENT JUDGMENTS BULLETIN**

### **ISSUE NO. 15/2018**

Below is a list of Victorian Supreme Court unreported judgments received in the Library from 6 to 17 August 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](mailto:sclib@supremecourt.vic.gov.au) or telephone (03) 9603 6282.

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## COURT OF APPEAL

CONSTITUTIONAL LAW - Appeal - Validity of Commonwealth and State Acts - Whether Supreme Court of Victoria is an unlawful court - Whether Queen of Australia exists - Whether Constitution Act 1975 (Vic) validly enacted - Whether oath of allegiance unlawful or invalid - Validity of the appointment of Governors of Victoria - Whether enactments treasonous - Applicant's arguments without merit.

PRACTICE AND PROCEDURE - Application for leave to appeal out of time - Application refused by judicial registrar - Review of judicial registrar's decision - Proposed appeal having no real prospect of success - Application for leave to appeal totally without merit - Judicial registrar correct in refusing extension of time - Proceeding futile - Supreme Court (General Civil Procedure) Rules

2015, rr 64.14, 64.15 and 64.42 - Supreme Court Act 1986, ss 14C and 14D.

***Sill, Jeffrey Craig v City of Wodonga***

Beach JA

[\[2018\] VSCA 195](#)

8 August 2018

CONTRACTS - Australian Consumer Law - Contract for supply of services - Right to terminate contract for 'major failure' pursuant to Australian Consumer Law, s 267(3)(a) - Whether right to terminate contract exercised - Goods connected with services deemed rejected on termination of contract pursuant to Australian Consumer Law, s 270(1)(c) - Acceptance of goods connected with services inconsistent with termination of contract - Australian Consumer Law, ss 267, 269, 270; Australian Consumer Law and Fair Trading Act 2012, s 8.

JUDICIAL REVIEW - Appeal on question of law - Question of law founds jurisdiction of Court to hear appeal - No question of law articulated in originating process - Notice of appeal requires setting out of questions of law - Victorian Civil and Administrative Tribunal Act 1998, s 148; Supreme Court (Miscellaneous Civil Proceedings) Rules 2008, r 4.06(1)(b)(v).

***Coliban Heights P/L (ACN 123 150 738) v Citisolar Vic P/L (ACN 143 558 061)***

Tate, Kyrou and McLeish JJA

[\[2018\] VSCA 191](#)

7 August 2018

CONTRACTS - Construction - Consultancy agreement in respect of property development project - Consultant entitled to 20 per cent net profit - Agreement terminated prior to completion of project - Whether net profit entitlement contingent on completion of project - Whether sale of undeveloped property constitutes completion of project - Consultant entitled to hourly rate for work performed - Hours claimed in invoice pursuant to agreement - Evidence as to certain hours claimed in invoice rejected - Evidence of additional hours not claimed in invoice - Whether evidence of additional hours made up shortfall in invoice - Consultant entitled to monthly payment 'in advance' - Whether monthly payments to be deducted from hourly rate claim.

COSTS - Calderbank offers - Whether reasonable not to accept offers - Whether offers so unclear as to be incapable of acceptance - *Hazeldene's Chicken Farm Pty Ltd v Victorian WorkCover Authority* [No 2] (2005) 13 VR 435 applied; *Little v Saunders* [2004] NSWSC 655 distinguished.

***Sim Development P/L (ACN 165 339 524) and Cai, Hong (aka Roy Cai) v Greenvale Property Group P/L (ACN 159 975 498)***

Kyrou, McLeish and Niall JJA

[\[2018\] VSCA 201](#)

13 August 2018

COSTS - Whether separate groups of respondents could have been jointly represented - Overlapping issues common to all respondents - Separate issues concerning each respondent group - Individual representation of each respondent group justified.

COSTS - Indemnity costs - Judge at first instance found proposed claims had no prospect of success and gave summary judgment - Application for leave to appeal dismissed on the basis that no prospect of success - Fraud claims not open as a matter of law, even if factual basis established - Indemnity costs awarded.

COSTS - Respondent group with benefit of security for costs order - Evidence that respondents' costs on a standard basis exceeded the amount of the security paid into Court - Respondent group sought an order that its costs of the application for leave to appeal be fixed at the amount of that security - Abandonment of any claim to costs exceeding amount of security - Costs fixed in the amount of the security.

***Bodycorp Repairers P/L (ACN 068 589 408) and Murdaca, Antonio v Australian Associated Motor Insurers Ltd (ACN 004 791 744) & Ors (No 3)***

Whelan, Niall and Hargrave JJA

[\[2018\] VSCA 192](#)

7 August 2018

CRIMINAL LAW - Sentence - Application for leave to appeal - One charge of indecent act with a child under 16, two charges of production of child pornography, one charge of using a carriage service for child pornography, one charge of theft, one charge of possession of child pornography and one summary offence of 'upskirting' - Plea of guilty - No prior convictions - Moderate-High Risk of reoffending - Some remorse - Limited insight - Importance of general deterrence - Total effective sentence of 3y 5m - Non-parole period of 2y 6m - Manifest excess - Leave refused.

***Finley, Adrian Robert v The Queen***

Tate JA, Hargrave JA

[\[2018\] VSCA 202](#)

6 August 2018

CRIMINAL LAW - Appeal - Sentence - Charge of armed robbery - Judge's departure from earlier sentencing indication constituted failure to accord procedural fairness - Parity - Prior sentence served interstate erroneously not taken into account - Breach of principle of totality - Application for leave to appeal refused.

***Mendelle, Amos v The Queen***

Coghlan and Weinberg JJA

[\[2018\] VSCA 204](#)

8 August 2018

CRIMINAL LAW - Appeal - Sentence - Recklessly causing serious injury and intentionally causing injury (three charges) - Three applicants and a co-offender assaulted four victims - Public violence - Objective seriousness of offending - Whether sentences manifestly excessive - Whether unacceptable disparity - Applications for leave to appeal against sentence refused.

***Apineru, Andrew v The Queen; Maele, Maele v The Queen; Maele, Leti v The Queen***

Priest and Beach JJA

[\[2018\] VSCA 206](#)

15 August 2018

CRIMINAL LAW - Sentence - Application for leave to appeal - Attempting to traffic a large commercial quantity of a drug of dependence - Amount 250 times the applicable large commercial quantity - Convicted following trial - Sentenced to 15 years' imprisonment with non-parole period of 11 years and 6 months - Errors asserted by applicant not reasonably arguable - Whether sentence manifestly excessive - Manifest excess not reasonably arguable - No reasonable prospect that sentence would be reduced on appeal - Application for leave to appeal refused.

***Pham, Anthony v The Queen***

Priest JA, Beach JA

[\[2018\] VSCA 200](#)

9 August 2018

CRIMINAL LAW - Appeal - Conviction - Verdict of guilty on charge of attempted anal rape - No verdict reached on vaginal rape charge - Where acts occurred in close temporal proximity - Inconsistent verdicts - Whether jury's decisions are reasonably reconcilable - *Pillay v The Queen* (2014) 43 VR 327 applied - Application for leave granted - Appeal dismissed.

***Crofts, Michael Leigh v The Queen***

Priest, Hargrave and Weinberg JJA

[\[2018\] VSCA 197](#)

9 August 2018

CRIMINAL LAW - Appeal - Sentence - Infanticide, murder and attempted murder - Mother caused the death of three children and attempted to kill a fourth - Guilty plea - Traumatic life – Major depressive disorder as a consequence of having given birth to youngest child - Post-traumatic stress disorder - Total effective sentence of 26 years and 6 months' imprisonment, with non-parole period 20 years - Whether manifestly excessive - Appeal allowed - Total effective sentence of 18 years' imprisonment with non-parole period of 14 years substituted.

***Guode, Akon v The Queen***

Ferguson CJ, Priest and Beach JJA

[\[2018\] VSCA 205](#)

16 August 2018

CRIMINAL LAW - Sentence - Leave to appeal - Parity - Leave granted.

***Williamson, Adam v The Queen***

Whelan JA

[\[2018\] VSCA 193](#)

7 August 2018

CRIMINAL LAW - Appeal - Conviction - Applicant convicted of five charges of committing an indecent act with a child under 16 - Alleged inconsistencies between evidence given by complainant at VARE and at special hearing - Evidence of defence witnesses regarding collateral matters 'unchallenged' at trial - Whether verdict unreasonable or unable to be supported having regard to the evidence - Application for leave to appeal granted - Appeal dismissed - Ward (a Pseudonym) v The Queen [2017] VSCA 37 considered.

***Goillon, Jason v The Queen***

Whelan, Hargrave and Weinberg JJA

[\[2018\] VSCA 194](#)

8 August 2018

CRIMINAL LAW - Sentence - Appeal - Obtaining financial advantage by deception - 'Rolled up' charge involving 25 transactions - Bogus insurance claims - Payment on bogus claims exceeded \$200,000 - Applicant pleaded guilty - Sentenced to one year and nine months' imprisonment with non-parole period of 12 months - Whether manifestly excessive - Relatively youthful offender suffering depression and anxiety - General deterrence, denunciation and punishment relevant - Leave to appeal refused.

***Leimonitis, Anna v The Queen***

Priest and Weinberg JJA

[\[2018\] VSCA 198](#)

CRIMINAL LAW - Sentence - Appeal - Recklessly causing serious injury - Victim struck to face with a rock or brick - Applicant sentenced to 6 months' imprisonment with 24 month community correction order - Whether manifestly excessive - Leave to appeal against sentence refused.

***McKeon-Muller, Tony v The Queen***

Priest JA, Weinberg JA

[\[2018\] VSCA 199](#)

8 August 2018

CRIMINAL LAW - Appeal - Sentence - Arson - Sentence of 12 months' imprisonment combined with a Community Correction Order ('CCO') of 5 years' duration - Whether manifestly excessive - Whether sentencing judge was required to invite counsel to make submissions on length of CCO - Possible tension between Boulton v The Queen (2014) 46 VR 308 and Barbaro v The Queen (2014) 253 CLR 58 - Application for leave to appeal refused.

***Hach, Gavin v The Queen***

Tate JA, Hargrave JA

[\[2018\] VSCA 196](#)

7 August 2018

PRACTICE AND PROCEDURE - Court of Appeal - Applications - Filing - Power of Registrar - Application to reopen proceeding after judgment - Applicant had sought special leave to appeal to High Court - Special leave refused - Registrar refused to accept application for filing – Applicant sought judicial direction to Registrar to accept application - Final judgment - No power to reopen - Election - Issue estoppel - Application for direction refused - Burrell v The Queen (2008) 238 CLR 218 applied - Supreme Court (General Civil Procedure) Rules 2015 r 64.43(1), (5).

***Bodycorp Repairers P/L v Oakley Thompson & Co P/L (No 2)***

Maxwell P

[\[2018\] VSCA 203](#)

16 August 2018

## COMMERCIAL COURT

BUILDING CONTRACTS - Building and Construction Industry Security of Payment Act 2002 (Vic) - Where 'final claim' issued after termination of contract - Whether valid reference date - No reference date existed such that jurisdictional error made - Whether further error committed in failing to assess alleged defects which existed at time of earlier adjudication but only identified subsequently - Further jurisdictional error found.

***Vanguard Development Group P/L (ACN 167 084 648) as trustee for the Taylor Family Trust No. 2 v Promax Building Developments P/L (ACN 114 054 741) and O'Brien, John***

Kennedy J

[\[2018\] VSC 386](#)

6 August 2018

CONSTITUTIONAL LAW - GROUP PROCEEDINGS - Validity of orders approving settlement of group proceedings - Where settlement binds group members in respect of issues not the subject of the group proceedings - Whether orders approving settlement determined hypotheticals or otherwise breached rules of natural justice - Re Judiciary & Navigation Acts (1921) 29 CLR 257 - Leeth v Commonwealth (1992) 174 CLR 455 - Dimitrov v Supreme Court of Victoria (2017) 92 ALJR 12 - Supreme Court Act 1986 Part 4A.

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 Pty Ltd v Freer [2018] VSC 355 - Bendigo and Adelaide Bank Ltd v Lonergan [2018] VSC 357.

***Bendigo and Adelaide Bank Ltd (ACN 068 049 178) v Laszczuk, Mark Simon; Bendigo and Adelaide Bank Ltd (ACN 068 049 178) v Cairncross, Tiffany***

***Michelle***

Croft J

[\[2018\] VSC 388](#)

10 August 2018

CONTRACTS - Interpretation of deed of assignment - Interpretation of a commercial instrument - Whether drafting errors prevail over commercial purpose.  
CONTRACTS - Remedies - Contractual interest - Non-merger clause - Whether contractual interest recoverable after judgment - Whether contractual interest displaces statutory interest.

COSTS - Interpretation of costs agreement - Default position of party-party costs - Award of solicitor-client costs - Whether plain and unambiguous language required for recovery of costs beyond standard party-party costs.

MORTGAGES - Enforcement costs - Third party claim - Whether litigating the costs of mortgage recovery related issues is a secured cost.

***Down Town Visuals v Panorama Investments***

Digby J

[\[2018\] VSC 427](#)

3 August 2018

CORPORATIONS - Whether Pt IVAA of the Wrongs Act 1958 (Vic) 'picked up' by s 79 of the Judiciary Act 1903 (Cth) - Corporations Act 2001 (Cth), ss 180, 1317S, 1318, 1317H - Wrongs Act 1958 (Vic), Pt IVAA - Judiciary Act 1903 (Cth), s 79 - Dartberg Pty Ltd v Wealthcare Financial Planning Pty Ltd (2007) 164 FCR 450 followed.

PRACTICE AND PROCEDURE - Joinder - Alleged concurrent wrongdoer - Application by defendant to join alleged concurrent wrongdoer as defendant - Claim under Corporations Act 2001 (Cth), s 180 - Whether arguable the claim is an apportionable claim - Whether arguable that the party sought to be joined is a concurrent wrongdoer - Wrongs Act 1958 (Vic) Pt IVAA, ss 24, 24AE, 24AF, 24AH, 24AI, 24AL - Supreme Court (General Civil Procedure) Rules 2015 (Vic), r 9.06(b)(i).

***Yeo & Ors v Freeman & Ors***

Gardiner AsJ

[\[2018\] VSC 448](#)

14 August 2018

COURTS AND JUDICIAL SYSTEM - Group proceedings - Right of group member to opt out - Court powers concerning group membership - Femcare Ltd v Bright (2000) 172 ALR 729 - Clarke v Great Southern Finance Pty Ltd (in liq) [2014] VSC 569 - Clarke v Great Southern Finance Pty Ltd (in liq) (No 2) [2012] VSC 338 - Supreme Court Act 1986, ss 33J, 33KA.

***Murray & Anor v Great Southern Managers Aust Ltd & Ors (an Application by Garry James Parker)***

Croft J

[\[2018\] VSC 416](#)

10 August 2018



JURISDICTION - Whether proceeding still on foot - Whether proceeding brought to an end by July 2015 Orders - Effect of Settlement Implementation Deed - Court's jurisdiction to hear and determine Summons - Whether Court clearly satisfied that justice can be done - *Roberts v Gippsland Agricultural Earthmoving Contracting Co Pty Ltd* [1956] VLR 555 applied - *Seachange Management Pty Ltd v Pital Business Pty Ltd* (2009) 23 VR 396.

EXPERT DETERMINATION - Expert determination final and binding in the absence of manifest error - Whether manifest error - Commercial contracts – objective approach to contractual interpretation - Ordinary commercial meaning - Reasonable business person - Language used by the parties - Context - Commercial purpose or object to be secured - *Australian Broadcasting Commission v Australian Performing Rights Association* (1973) 129 CLR 99 considered and applied - *Mt Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* (2015) 256 CLR 104 considered and applied.

***Ugrinovski, Robert v Naumovski, Vlado & Ors***

Almond J

[\[2018\] VSC 437](#)

8 August 2018

PRACTICE AND PROCEDURE - Interlocutory Injunction - Mortgagee power of sale - Principles to be applied - Serious question to be tried - Balance of convenience - Whether 'general rule' in *Inglis v Commonwealth Trading Bank of Australia* to be applied invariably.

***El-Saafin, Hassan and El-Saafin, Mohamad v Franek, Mark; Dixon, Stephen Robert; Bise, Ahmed and MAG Financial And Investment Ventures P/L (ACN 625 790 623)***

Lyons J

[\[2018\] VSC 450](#)

15 August 2018

PRACTICE AND PROCEDURE - Trial commenced - Documents called for during cross-examination - Recent events concerning possible sale or partial disposal of business, including the business the subject of the proceeding - Discovery - Relevance of requested documents - Documents relating to value of global and Australian businesses - Supreme Court (General Civil Procedure) Rules 2015 (Vic) r 29.08 - Application granted.

***Cargill Australia Ltd (ACN 004 684 173) v Viterra Malt P/L (ACN 096 519 658) & Ors and Cargill, Incorporated & Ors***

Elliott J

[\[2018\] VSC 433](#)

6 August 2018

PRACTICE AND PROCEDURE - Application for leave to file third further amended statement of claim - Allegations made in respect of third parties - Risk of prejudice - Leave granted - Supreme Court (General Civil Procedure) Rules 2015 (Vic) r 36.01.

***Cargill Australia Ltd (ACN 004 684 173) v Viterra Malt P/L (ACN 096 519 658) & Ors and Cargill, Incorporated & Ors (No 10)***

Elliott J

[\[2018\] VSC 439](#)

2 August 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 - *ABL Custodian Services Pty Ltd v Freer* [2018] VSC 355 - *Bendigo and Adelaide Bank Ltd v Lonergan* [2018] VSC 357.

***Bendigo and Adelaide Bank Ltd (ACN 068 049 178) and ABL Nominees P/L in its capacity as trustee for the Lighthouse Trust No 12 (ACN 106 756 521) v Haque, MD Monirul***

Croft J

[\[2018\] VSC 406](#)

10 August 2018

PRACTICE AND PROCEDURE - Summary judgment - Defendant admits debt - Civil Procedure Act 2010 (Vic), s 61 - Application for summary judgment allowed. PRACTICE AND PROCEDURE - Interest on judgment sum - Claim by successful plaintiff for entitlement to be paid interest under the Penalty Interest Act 1983 (Vic) - Supreme Court Act 1986 (Vic), s 58 - Whether a statutory demand constitutes a 'demand for payment' - Whether demand need be served on all parties - Whether 'good cause to the contrary' shown for not ordering interest from earliest proper demand - Whether four and a half year delay between demand and issuing proceedings constitutes 'good cause to the contrary' - Interest period reduced - Whether interest rate should be reduced - Interest rate not reduced.

***Cumner, Victor Leslie v Bird, John; Bird, Sharon and JSB Equipment P/L (ACN 093 740 768)***

Matthews JR

[\[2018\] VSC 443](#)

17 August 2018

## COMMON LAW DIVISION

COSTS - Property law - Application for removal of caveat - Caveat removed - Application for costs against non-party - Application dismissed - Non-party application for indemnity costs on costs application - Plaintiffs and defendant pay non-party's standard costs on costs application – *Sekhon & Anor v Chandyoke & Anor* [2018] VSC 327.

*Sekhon, Amritaa and Sekhon, Aman v Chandyoke, Veena and Registrar of Titles*  
T Forrest J

[\[2018\] VSC 435](#)

7 August 2018

COSTS - Costs of defendants' strike out application and plaintiff's application under s 23B of the Limitation of Actions Act 1958 (Vic) sought by defendants from plaintiff - Costs of proceeding sought by defendants on an indemnity basis - Defamation Act 2005 (Vic) s 40 - Civil Procedure Act 2010 (Vic) s 29 - Plaintiff sought that there be no order as to costs - Whether any special circumstances warranting a departure from usual position that defendants ought have their costs of the proceeding - Plaintiff ordered to pay defendants' costs of proceeding on a standard basis - Consideration of principles relevant to the award of indemnity costs - Consideration of relevance of factors including plaintiff's late service of s 23B application, failure to comply with Court orders and failure to accept prior settlement offer - Application that costs be paid by plaintiff's solicitor - *Gdanski v Palms Court Management Pty Ltd* [2017] VSCA 348, referred to - No order for indemnity costs, or any order that the costs be paid by the solicitor.

PRACTICE AND PROCEDURE - Application by plaintiff to restrain defendants' counsel from continuing to represent the defendants - Plaintiff was a client of defendants' counsel 14 years prior - Consideration of factors relevant to exercising discretion to restrain a legal practitioner from acting for a former client - Application dismissed.

*Brott, Issac Alexander v FGD P/L t/as Farrar Gesini & Dunn (ABN 44 075 255 006); Thomson, Petranella and Rosenbaum, Norman (No 2)*

Daly AsJ

[\[2018\] VSC 424](#)

2 August 2018

COSTS - Family provision - Where plaintiff obtained judgment for further provision not more favourable than defendant's offer of compromise - Where judgment amount marginally less than defendant's offer of compromise - Whether appropriate to otherwise order in all the circumstances - Supreme Court (General Civil Procedure) Rules 2015, r 26.08(3).

*Smith, Elizabeth Ruth v Thwaites, Alan Keith (Executor of the Will and Trustee of the Estate of Margaret Mary Williams deceased) (No 3)*

McMillan J

[\[2018\] VSC 431](#)

6 August 2018

DEFAMATION - Pleadings - Defences - Justification - Hore-Lacy form -  
Imputations - Vagueness and generality - Pleading of post-publication conduct -  
Application for leave to amend refused - Defendant granted leave to replead.  
***Fenn, Ashley and Ethan Affordable Housing Ltd (ACN 135 818 245) v  
Australian Broadcasting Corporation 510***

McDonald J

[\[2018\] VSC 449](#)

15 August 2018

DEFAMATION - Publication - Defendant falsely denied publication.

DEFAMATION - Defences - Justification - Particulars of justification incapable of  
meeting sting of imputations - Particulars not established on evidence - Defamation  
Act 2005 (Vic), s 25.

DEFAMATION - Defences - Qualified privilege - Where publication denied - Where  
publication anonymous - Common law qualified privilege - No duty or reciprocity of  
interest – Statutory qualified privilege - Publication not reasonable - Defendant  
actuated by malice - Defamation Act 2005 (Vic), s 30.

DEFAMATION - Damages - Defendant aggravated plaintiffs' damage in  
circumstances of publication and since publication - Defamation Act 2005 (Vic), s  
34.

DEFAMATION - Other remedies - Injunction - Special circumstances warranting  
imposition of injunction.

***Moroney, Denis & Ors v Zegers, Karel***

John Dixon J

[\[2018\] VSC 446](#)

16 August 2018

ESTOPPEL - Issue estoppel - Whether same question decided in earlier proceeding -  
Findings by County Court in claim for weekly payments for work injury -  
Subsequent common law claim - No issue estoppel.

***Tomasevic, Milan v State of Victoria (Department of Education & Early  
Childhood Development) (formally known as Department of Education)***

Ginnane J

[\[2018\] VSC 428](#)

3 August 2018

JUDICIAL REVIEW - Application by worker for judicial review of a medical panel's opinion in respect of questions concerning her capacity for work - Plaintiff lodged successful WorkCover claim in respect to psychological injury caused by workplace bullying - Plaintiff's weekly payment entitlement subsequently terminated on basis that she was not incapacitated for work - Plaintiff self represented in examination before Panel and in present proceeding - Whether Panel failed to take into account relevant considerations - Finding that Panel took into account all relevant considerations that had been drawn to its attention - Panel not obliged to account for aspects of plaintiff's history and condition not drawn to its attention - Whether Panel took account of irrelevant considerations - Finding that plaintiff's job search activities were not an irrelevant consideration - Whether Panel denied procedural fairness - No denial of procedural fairness - Panel not obliged to take an active investigative role - Reasons adequate - *Wingfoot Australia Partners Pty Ltd v Kocak* [2013] HCA 43, referred to - Whether a medical panel's notes are to be preferred over a plaintiff's evidence as evidence of what occurred during an examination - *Karabinis v Bendrups and ors* [2017] VSC 648, applied - Whether any gaps or errors in Panel's notes go to a matter fundamental to the Panel's determination - Finding that any discrepancies between Panel's notes and plaintiff's evidence were largely minor and trivial - No error of law established - Proceeding dismissed.

***Chang, Ying Kwan v Neill, Dr Diane; Adlard, Dr Steven and Doward International P/L***

Daly AsJ

[\[2018\] VSC 403](#)

1 August 2018

JUDICIAL REVIEW AND APPEALS - Appeal from the Magistrates' Court on a question of law under s109 of the Magistrates' Court Act 1989 (Vic) - Booking agreement for provision of broadcast radio advertising services - Construction of agreement - Whether and when payment required - Whether payment obligation dependent upon non-broadcast in circumstances where payment not made in advance.

***McDonald Murholme P/L (ACN 084 260 131) v Victorian Radio Network P/L (ACN 095 736 753)***

Sloss J

[\[2018\] VSC 434](#)

8 August 2018

PRACTICE AND PROCEDURE - Client legal privilege - Disclosure in the course of taxation of costs - Whether waiver of privilege - Whether waiver limited - Privilege waived without limitation - Evidence Act 2008 (Vic), s 122; Mann v Carnell (1999) 201 CLR 1; Giannarelli v Wraith (No 2) (1991) 171 CLR 592; Goldman v Hesper [1988] 3 All ER 97 explained.

PRACTICE AND PROCEDURE - Implied undertaking - Whether implied undertaking applicable to documents voluntarily inspected in the course of taxation of costs - Whether circumstances warranting a release of the implied undertaking if applicable - Implied undertaking not applicable - But if applicable, undertaking released - Springfield Nominees Pty Ltd v Bridgelands Securities Ltd (1992) 38 FCR 217; Liberty Funding v Phoenix Capital Ltd (2005) 218 ALR 283; Hearne v Street (2008) 235 CLR 125; Ambridge Investments Pty Ltd v Baker & Ors (No 3) [2010] VSC 545; Barrow v McLernon & Anor [2012] VSC 134.

PRACTICE AND PROCEDURE - Stay of execution - Whether stay of execution of costs order warranted - Stay granted - Rule 66.14 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) considered.

***Perton, Jane Elizabeth (nee Warring) as trustee of the Port Eagle Investment Trust v Walters, Lynne Margaret***

Derham AsJ

[\[2018\] VSC 445](#)

14 August 2018

REAL PROPERTY - Co-ownership of land - Statutory application for sale of co-owned land and division of proceeds - Determination of nature and extent of co-ownership - Formation of non-commercial but profit making partnership between co-owners as friends - Purchase of beach house as leisure asset - Co-owners registered as tenants in common in equal shares - Whether interest of two owners held on resulting trust for third co-owner - Money to purchase land originated from third co-owner being in charge of partnership affairs - Dispute over identifying source of money - Whether presumption of resulting trust in favour of third owner was rebutted by intention to treat source money as partnership funds and intention for land to be beneficially owned by all three co-owners - Objective evidence and admissions of intention - Finding by Victorian Civil and Administrative Tribunal that presumption of resulting trust rebutted and no other basis for construing a trust - Appeal from finding dismissed - Appeal allowed residually on Tribunal's omission to consider statutory claim for sale and adjustment of interests according to payment of certain expenses - Property Law Act 1958 (Vic) (No 6344), ss 225, 228, 233.

***Miller, James Edward v Martin, Ian Donald; Martin, Teresa; Brabham, Ross Harold and Brabham, Margaret***

Mukhtar AsJ

[\[2018\] VSC 444](#)

10 August 2018

## CRIMINAL DIVISION

CRIMINAL LAW - Sentence - Murder - Plea of guilty - Offender struck deceased to head with knuckledusters - Offender disposed of body of deceased in disused mineshaft - Various factual matters in dispute - Where co-offender gave evidence in contested plea - Whether offender had intention to cause death or really serious injury at the time of offence - Serious instance of murder - Sentence of 24 years' imprisonment with non-parole period of 19 years.

***The Queen v Kelson, Thomas***

Tinney J

[\[2018\] VSC 442](#)

10 August 2018

CRIMINAL LAW - Sentence - Murder - Guilty plea - Accused aged 76 years - No relevant prior history - Otherwise of exemplary character - Early stages of dementing illness - Verdins - Specific deterrence and prospects of rehabilitation of little moment - General deterrence and denunciation given significant weight - Sentence of 17 years' imprisonment with non-parole period of 12 years.

***The Queen v Pavlis, Peter***

Taylor J

[\[2018\] VSC 440](#)

9 August 2018

CRIMINAL LAW - Application for bail - 13 year old applicant - Bail not opposed - Whether applicant has demonstrated exceptional circumstances - Applicant's age significant in assessing whether applicant has demonstrated exceptional circumstances - Bail Act 1977 (Vic) ss 3B(1), 4A, 4B, 4E(1)(a).

***In the matter of the Bail Act 1977 (Vic) and In the matter of an application for bail by J O***

T Forrest J

[\[2018\] VSC 438](#)

7 June 2018

CRIMINAL LAW - Sentence - Manslaughter by criminal negligence - Duty of care owed - Failure to seek medical assistance for wife seriously injured - Very serious instance of offence – Prolonged period over which offending occurred - Diagnoses of anti-social personality disorder; adjustment disorder; and low general intellectual functioning with mild intellectual development disorder - Verdins principles - Whether causal connection between mental impairment and offending - Moral culpability - Plea of guilty - Weight to general deterrence and denunciation - Less weight to specific deterrence and protection of community - Sentence of eleven years' imprisonment with non-parole period of eight years - But for plea of guilty, sentence of thirteen years' imprisonment with non-parole period of ten years - Sentencing Act 1991 - Crimes Act 1958 - R v Blackwell [2013] VSC 499 - Reid v R (2010) 29 VR 446; [2010] VSCA 234 - R v Jagroop (2009) 22 VR 80; [2009] VSCA 46 - R v Verdins (2007) 16 VR 269; [2007] VSCA 102.

***The Queen v Naddaf, Mohamed***

Champion J

[\[2018\] VSC 429](#)

20 July 2018

CRIMINAL LAW - Application for bail - Charges of rape, rape by compelling sexual penetration, sexual assault, making a threat to kill - Applicant had prima facie entitlement to bail - Bail refused - Bail Act 1977.

*In the matter of the Bail Act 1977 and In the matter of an application by Guirguis, Carl*

Champion J

[\[2018\] VSC 430](#)

16 July 2018