

SUPREME COURT OF VICTORIA

RECENT JUDGMENTS BULLETIN ISSUE NO. 16/2018

Below is a list of Victorian Supreme Court unreported judgments received in the Library from 20 to 31 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 or telephone (03) 9603 6282.

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COURT OF APPEAL

ADMINISTRATIVE LAW - Appeal on question of law - Procedural fairness - Practical content of fairness - Magistrates' Court - Charges of unlicensed driving - Respondent filed written objections to jurisdiction - Asserted common law right to travel - Magistrate dismissed jurisdictional objection without hearing oral argument - Whether denial of procedural fairness - Self-represented litigant - Objection clearly articulated - Objection self-evidently groundless - No necessity for oral argument - Appeal allowed - Criminal Procedure Act 2009 s 272(1), Road Safety Act 1986 s 18(1)(a).

Roberts, Paul v Harkness, Zenaan and Magistrates' Court of Victoria

Maxwell P, Beach and Niall JJA

[\[2018\] VSCA 215](#)

29 August 2018

ADMINISTRATIVE LAW - Judicial review - Merit Protection Board decision confirming annulment of teacher's employment - Contract stated employment to be confirmed or annulled at end of probation period - Period extended - Statutory instruments providing power to extend probation - Whether probation period lawfully extended - Whether probationary clause of contract void as fetter on future exercise of discretionary statutory power - Education and Training Reform Act 2006, ss 2.4.2, 2.4.8, 5.10.4.

CONTRACTS - Public service - Contract of employment - Incorporation by reference of statute and ministerial order - Construction of public service contracts to take place against statutory regime - Director-General of Education v Suttlings (1987) 162 CLR 427, applied.

ADMINISTRATIVE LAW - Reasons for decision - Whether Board required to provide reasons – Remedy for failure to comply - No error of law - Sherlock v Lloyd (2010) 27 VR 434, applied – Administrative Law Act 1978, s 8.

State of Victoria v Tutos, Marius Lucian and The Merit Protection Boards

Maxwell P, Beach and McLeish JJA

[\[2018\] VSCA 213](#)

27 August 2018

ADMINISTRATIVE LAW - Judicial review - Procedural fairness - Hearing rule - Bias rule – Self-represented litigant - Appeal to County Court against summary conviction - Litigant disputed judge's procedural ruling - Litigant refused to participate in hearing - Disrespectful and aggressive conduct - Whether judge obliged to provide additional assistance - Whether apprehended bias – No lack of procedural fairness - Appeal allowed.

Doughty-Cowell, Rhys v Kyriazis, Vasilios and County Court of Victoria

Maxwell P, Beach and Niall JJA

[\[2018\] VSCA 216](#)

29 August 2018

CRIMINAL LAW - Appeal - Application for leave to appeal against conviction - Armed robbery - Whether doctrine of 'continuous appropriation' capable of being invoked in particular circumstances - R v Hale (1978) 68 Cr App 415 considered - Application for leave granted.

Putrus, Mazin v The Queen

Weinberg JA

[\[2018\] VSCA 218](#)

29 August 2018

CRIMINAL LAW - Appeal - Sentence - Fresh evidence - Criminal damage, arson, theft - Sentenced to 5 years' imprisonment, 3 year non-parole period - Continuing criminal enterprise offences - Disgruntled employee sabotaged plant and equipment - Reduction of moral culpability on the basis of mental disorder - Further expert report obtained after sentencing - Fresh diagnosis of Autism Spectrum Disorder - Fresh evidence ground conceded - No alteration in sentence warranted - Orders for cumulation merciful - Leave to appeal granted - Appeal dismissed.

Wilson, Bret v The Queen

Maxwell P, Priest and Niall JJA

[\[2018\] VSCA 219](#)

29 August 2018

CRIMINAL LAW - Appeal - Sentence - One charge of attempting to possess a commercial quantity of an unlawfully imported border controlled drug, 2 charges of attempting to possess a marketable quantity of such a drug - Sentenced to 16 years, 6 months' imprisonment with non-parole period of 12 years, 6 months - Whether individual sentences, orders for cumulation, total effective sentence and non-parole period manifestly excessive - Appeal dismissed - Brown v The Queen [2017] VSCA 162 considered.

Blango, Frank v The Queen

Whelan and Kyrou JJA

[\[2018\] VSCA 210](#)

24 August 2018

CRIMINAL LAW - Application for leave to appeal against conviction - Armed robbery and intentionally causing serious injury - Whether judge erred in admitting hearsay evidence of co-offender - Leave granted.

EVIDENCE - Admissibility - Hearsay evidence - Maker of representations not available – Where maker of representations was co-offender - Whether representations made in circumstances that made it likely that representations reliable - Evidence Act 2008 s 65(2)(d) - Sio v The Queen (2016) 259 CLR 47 considered.

Vitale, Craig v The Queen

Niall JA

[\[2018\] VSCA 212](#)

23 August 2018

CRIMINAL LAW - Application for leave to appeal against sentence - One charge of manslaughter - Sentenced to eleven years' imprisonment with a non-parole period of seven years and six months - Whether sentence manifestly excessive - Applicant played active role in organised fight - Application for leave refused.

Wan, Shengliang v The Queen

Weinberg JA

[\[2018\] VSCA 217](#)

28 August 2018

CRIMINAL LAW - Application for leave to appeal against sentence - Proposed ground manifest excess - Trafficking in a commercial quantity of a drug of dependence - 3.5kg of 1,4-butanediol - Relevance of profitability of drug of dependence - Offences committed whilst on bail and subject to community correction order - Application refused - DPP v Maxwell [2013] VSCA 50 considered

Ellis, Sarah v The Queen

Whelan and Beach JJA

[\[2018\] VSCA 221](#)

31 August 2018

CRIMINAL LAW - Director's appeal - Sentence - One charge of manslaughter by unlawful and dangerous act and one charge of prohibited person possess a firearm - Respondent shot partner in head at close range - No challenge to sentencing judge's finding that respondent did not intend gun to discharge when he pulled trigger and therefore did not intend to cause physical harm – Whether finding that offence 'tends towards a lower level of gravity of manslaughter' constituted specific error - Whether sentence manifestly inadequate - Appeal dismissed.

Director of Public Prosecutions [DPP] v Osborn, Brandon

Beach, McLeish and Weinberg JJA

[\[2018\] VSCA 207](#)

23 August 2018

CRIMINAL LAW - Interlocutory appeal - Refusal of permanent stay - Fair trial - Trial of alleged sexual offences - Delay - Alleged offending occurred between 42 and 33 years ago - Six child complainants - Whether proposed trial unacceptably unfair - Whether irremediable prejudice - Refusal of stay open - Application for leave to appeal refused.

CRIMINAL LAW - Interlocutory appeal - 35 charges and multiple uncharged acts - Six complainants - Whether indictment overloaded.

Kenny, Jayson (a Pseudonym) v The Queen

Priest JA, Taylor AJA and Weinberg JA

[\[2018\] VSCA 220](#)

31 August 2018

CRIMINAL LAW - Sentence - Appellant pleaded guilty to one charge of armed robbery and one charge of theft - Appellant and co-offender robbed liquor store armed with knives – Appellant sentenced to five years' imprisonment with a non-parole period of three years - Whether sentence manifestly excessive - Whether appellant's youth, deprived background and Aboriginality appropriately taken into account in mitigation - Whether appellant's participation in Koori Court process given sufficient weight - R v Morgan (2010) 24 VR 230 considered - Appeal dismissed.

CRIMINAL LAW - Koori Court - Principles to be applied when determining weight to be given to participation in sentencing conversation - Whether judge should seek feedback from Elders after sentencing conversation - Role of 'Gladue' reports - Gladue v The Queen [1999] 1 SCR 688 referred to.

Honeysett, Damian v The Queen

Priest, Beach and Hargrave JJA

[\[2018\] VSCA 214](#)

28 August 2018

CRIMINAL LAW - Sentence - Application for leave to appeal - Conspiracy to defraud by 'ghost terminal skimming' - Imprisonment more burdensome by reason of ill health - Whether mitigating factor overlooked - Whether markedly different sentence would follow had the matter been taken into account - No different sentence should be imposed - Leave granted, appeal dismissed - R v Koumis (2008) 18 VR 434 and - R v Van Boxtel (2005) 11 VR 258 applied - Criminal Procedure Act 2009 s 281.

CRIMINAL LAW - Sentence - Manifest excess - Not arguable - Leave refused.

Smith, Tony v The Queen

Whelan and Kyrou JJA

[\[2018\] VSCA 208](#)

24 August 2018

CRIMINAL LAW - Sentence - Application for leave to appeal - Non-Parole period fixed 80 per cent of head sentence - No 'usual' non-parole period - Seriousness of offending warranted the non-parole period fixed - Leave granted, appeal dismissed - Power v The Queen (1974) 131 CLR 623, R v Krasnov (1995) 125 FLR 120 applied - DPP v Josefski (2005) 13 VR 85, Kumova v The Queen (2012) 37 VR 538, Hili v The Queen (2010) 242 CLR 520 considered - Sentencing Act 1991 (Vic) s 11(3).

McLean, Joshua v The Queen

Whelan and Kyrou JJA

[\[2018\] VSCA 209](#)

24 August 2018

CRIMINAL LAW - Sentence - Application for leave to appeal against sentence - Contempt - Failure to comply with court order - Defiant, contumacious, continuing contempt - Sentenced to term of imprisonment of 3 months - Errors asserted by applicant not reasonably arguable - Manifest excess - Not reasonably arguable that sentence manifestly excessive - No reasonable prospect of less severe sentence being imposed - Application for leave to appeal refused.

Harris, Chad v Marubeni Equipment Finance (Oceania) P/L

Whelan and Beach JJA

[\[2018\] VSCA 211](#)

23 August 2018

COMMERCIAL COURT

CORPORATIONS - Failure to comply with a statutory demand - Presumption of insolvency enlivened - Part 5.4 of the Corporations Act 2001 (Cth) - Plaintiffs contend they are 'unquestionably solvent' and that threatened winding up applications would plainly fail - Injunction sought to restrain creditor making any application for winding up.

EQUITY - Interlocutory injunction - Allegation of abuse of process in the technical sense described in *Williams v Spautz* (1992) 174 CLR 509 and under the 'second branch' of *Fortuna Holdings Pty Ltd v Deputy Commissioner of Taxation* (Cth) [1978] VR 83 - Whether 'second branch' remains available in light of ASIC v *Lanepoint Enterprises Pty Ltd* (receivers and managers appointed) (2011) 244 CLR 1 - Whether prima facie case of abuse of process made out.

A G Coombs P/L (ACN 005 653 332) and A G Coombs (NSW) P/L (ACN 134 239 768) v M & V Consultants P/L (ACN 079 957 387 (in liquidation))

Sloss J

[\[2018\] VSC 468](#)

22 August 2018

LEASES AND TENANCIES - Whether retail premises lease - Effect of permitted use provisions under head-lease and sub-lease - *Sofos v Coburn* (1992) V ConvR ¶54-439 - *Fitzroy Dental Pty Ltd v Metropole Management Pty Ltd* [2013] VSC 344 - IMCC Group (Australia) Pty Ltd v *CB Cold Storage Pty Ltd* [2017] VSCA 178 - Access Solutions International Pty Ltd v *Gamet Pty Ltd* [2017] VCC 1563 - Retail Leases Act 2003, ss 4, 81 and 94.

PRACTICE AND PROCEDURE - Determination of preliminary questions - Supreme Court (General Civil Procedure) Rules 2015, r 47.04 - *Murphy v State of Victoria and Linking Melbourne Authority* (2014) 45 VR 119.

Koga Nominees P/L (ACN 005 167 779) v Loscam Australia P/L (ACN 006 440 991);

Pacific Metal Group P/L (ACN 130 588 546) and Mourad, Haysam

Croft J

[\[2018\] VSC 455](#)

28 August 2018

LEGAL PRIVILEGE - Evidence at trial - Notes made by witness in preparation for giving evidence - Documents used to try to revive memory of the witness - Whether established particular parts of documents used to try to revive memory - meaning of "about a fact or opinion" - Evidence Act 2008 (Vic), ss 119, 122(6).

Cargill Australia Ltd (ACN 004 684 173) v Viterra Malt P/L (ACN 096 519 658) & Ors and Cargill, Incorporated & Ors (No 11)

Elliott J

[\[2018\] VSC 453](#)

15 August 2018

PRACTICE AND PROCEDURE - Application for recusal on the basis of apprehended bias - Re JRL; ex parte CJL (1986) 161 CLR 342; Helljay Investments Pty Ltd v Deputy Commissioner of Taxation (1999) 166 ALR 302 - Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337.

Burkett, Paul v Bendigo and Adelaide Bank Ltd (ACN 068 049 178); Bendigo and Adelaide Bank Ltd (ACN 068 049 178) and ABL Nominees P/L (ACN 106 756 521) as trustee for the Lighthouse Trust No 12 v Burkett, Paul

Croft J

[\[2018\] VSC 457](#)

28 August 2018

PRACTICE AND PROCEDURE - Application for recusal on the basis of apprehended bias - Re JRL; ex parte CJL (1986) 161 CLR 342; Helljay Investments Pty Ltd v Deputy Commissioner of Taxation (1999) 166 ALR 302 - Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337.

Bendigo and Adelaide Bank Ltd (ACN 068 049 178) v Redmond, William Hanron

Croft J

[\[2018\] VSC 458](#)

28 August 2018

PRACTICE AND PROCEDURE - Confidentiality - Plaintiff by counterclaim alleged that defendant by counterclaim had breached a commercial agreement by failing to adequately invest in, promote and develop certain products - Representative sample of documents - Whether nature of information concerned and competitive relationship between parties warrants documents being subject to a confidentiality regime over and above the usual Harman undertaking – Balance between the commercial sensitivity of the document, the forensic importance of the document to the litigation, the potential harm of disclosure, and the risk of prejudice and injustice to the party bearing the burden of the confidentiality regime - Terms of confidentiality regime - Mobil Oil v Guina Developments [1996] 2 VR 34, applied - IOOF Holding v Maurice Blackburn (No 2) [2016] VSC 594, applied - Tiered confidentiality regime imposed.

Fonterra Brands Australia P/L (ACN 095 181 669) and Bonland Cheese Trading P/L (CAN 001 148 992) v Bega Cheese Ltd (ACN 008 358 503)

Daly AsJ

[\[2018\] VSC 471](#)

24 August 2018

PRACTICE AND PROCEDURE - Discovery - Confidential documents - Production - Produced to external legal practitioners and experts subject to confidentiality undertakings - Inspection sought by in-house counsel - Need for documents to be disclosed to in-house counsel not demonstrated - Application refused.

Cargill Australia Ltd (ACN 004 684 173) v Viterro Malt P/L (ACN 096 519 658) & Ors and Cargill, Incorporated & Ors (No 13)

Elliott J

[\[2018\] VSC 478](#)

21 August 2018

PRACTICE AND PROCEDURE - Order of evidence at trial - Subpoena's to give evidence issued by plaintiff to third parties - Application by plaintiff to leave open its case pending the calling of evidence in the defendants' and third parties' cases - Possibility of plaintiff calling third parties as witnesses in its case pursuant to subpoenas if not called in third parties' cases - Considerable delay in proceeding to date - Some prejudice to parties inevitable - Most efficient and timely alternative - Leave granted - Civil Procedure Act 2010 (Vic) ss 7, 9, 47, 49.

Cargill Australia Ltd (ACN 004 684 173) v Viterro Malt P/L (ACN 096 519 658) & Ors and Cargill, Incorporated & Ors (No 12)

Elliott J

[\[2018\] VSC 454](#)

15 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

ADMINISTRATIVE LAW - Judicial review - Opinion of a Medical Panel - Assessment of whether ongoing incapacity for work was still work-related - Lymphoedema in left arm, right arm and left chest - Whether Panel's statement of reasons adequate - Whether findings of fact were open on the evidence - Error established - Panel's opinion quashed - Questions remitted to differently constituted Panel.

Morrison, Wendy v Melbourne Pathology P/L; Downes-Brydon, Dr Jenny; Thevathasan, Dr Mano and Bourke, Dr John

Richards J

[\[2018\] VSC 477](#)

27 August 2018

ADMINISTRATIVE LAW - Judicial Review of a Medical Panel decision - Jurisdictional error - Alleged misapplication of the AMA Guides to the Evaluation of Permanent Impairment (4th edition) - Whether the panel failed to take into account a relevant consideration - Wrongs Act 1958 (Vic) Pt VBA - Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24 - HJ Heinz Company Australia Limited & Anor v Kotzman & Ors [2009] VSC 311 (31 July 2009) - Wingfoot Australia Partners Pty Ltd & Anor v Kocak & Ors (2013) 252 CLR 480.

Pickett, Natalie v Parks Victoria; Apteso P/L; Gibbons, Associate Professor Peter (Convener of Medical Panels) and Medical Panel constituted by Kotzman, Dr David and

Elsner, Mr Keith

Keogh J

[\[2018\] VSC 473](#)

24 August 2018

AVIATION - Carriage by air - Claim under the Civil Aviation (Carriers' Liability) Act 1959 (Cth) - Plaintiff injured on international flight - Whether pt VBA of the Wrongs Act 1958 (Vic) applies - Operation of s 79(1) Judiciary Act 1903 (Cth) - Whether pt VBA is applicable to the plaintiff's case - Whether Commonwealth law "otherwise provides" - Agtrack (NT) Pty Limited v Hatfield (2005) 223 CLR 251 applied - Zicherman v Korean Airlines Co Ltd 516 US 217 (1996) and Casey v Pell-Air Aviation Pty Ltd [2015] NSWSC 566 (15 May 2015) distinguished.

Di Falco, Lina v Emirates

Keogh J

[\[2018\] VSC 472](#)

24 August 2018

CONTRACT - Interpretation - Principles of construction of commercial contract - What was the amount of the debt assigned under a deed of assignment?
PROPERTY - Whether the assignment of a mortgage also vests rights under separate loan agreements in the assignee - Effect of s 46 of Transfer of Land Act 1958 (Vic) - French v Queensland Premier Mines Pty Ltd [2006] VSCA 287 considered.
CONVEYANCING - Whether mortgagee entitled to recover interest for period between settlement and clearance of cheque.
DEBTOR and CREDITOR - Principles to be applied when a cheque is accepted in payment of a debt.

Fuji Xerox Australia P/L (ACN 000 341 819) v Thoi, Cuong Vinh & Ors

Riordan J

[\[2018\] VSC 483](#)

29 August 2018

COSTS - Leave to discontinue proceeding - Rule 63.15 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) - No adjudication of claims on the merits - Whether costs should be payable on an indemnity rather than standard basis - Whether plaintiff had a proper or reasonable basis for commencing and maintaining the proceeding - Alleged breaches of overarching obligations under Civil Procedure Act 2010 (Vic) not made out - Plaintiff did not have proper or reasonable basis for maintaining the proceeding after 6 January 2018 - indemnity costs ordered for period after that date - Plaintiff's rejection of two Calderbank offers not unreasonable in the circumstances - Discretion to make non-party costs order - Costs order sought against sole director and shareholder of plaintiff - Not established that non-party was a 'real party' to the litigation - Section 24 Supreme Court Act 1986 (Vic) - Sections 10, 18, 29, 56 Civil Procedure Act 2010 (Vic) - Knight v FP Special Assets Limited (1992) 174 CLR 178 - Gdanski v Palms Court Management Pty Ltd [2017] VSCA 348 - Hazeldene's Chicken Farm Pty Ltd v Victorian Workcover Authority (No 2) [2005] VSCA 298 - Course v Hannan & Ors [2018] VSC 401.

Linchi Group P/L (ACN 146 504 716) v Wang, Wen Yong and New Eastern Group P/L (ACN 082 692 680)

Matthews JR

[\[2018\] VSC 482](#)

31 August 2018

CRIMINAL LAW - Crimes Mental Impairment - Application for further extended leave - Whether the safety of the applicant or members of the public will not be seriously endangered – Application granted - Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic), ss 39, 40, 57.

In the matter of an application under s 57(1) of the Crimes (Mental Impairment and

Unfitness to be Tried) Act 1997 and In the matter of an application for extended leave

by "D G" (No 2)

Macauley J

[\[2018\] VSC 469](#)

22 August 2018

CRIMINAL LAW - Indictment - Validity of indictment - Signature of indictment by Crown Prosecutor - Crown Prosecutor ceasing to hold office prior to filing of indictment - Criminal Procedure Act 2009 s 159.

JUDICIAL REVIEW - Indictment - Consequences of invalid indictment - Consent orders sought - Appropriate judicial review remedies.

Director of Public Prosecutions [DPP] v Roote, Kelly and The County Court of Victoria

Ginnane J

[\[2018\] VSC 496](#)

31 August 2018

INJUNCTIONS - Interim injunction - Imminent television broadcast - Potentially defamatory publication - Applicable principles - Public interest - Free speech - Grounds for supposing that defendant may succeed upon the ground of truth - Application dismissed.

Dinh, Jason v Nine Network Australia Pty Ltd

Cavanough J

[\[2018\] VSC 464](#)

15 August 2018

JUDICIAL REVIEW - Human rights - Prisoner - Religious freedom - Whether decision to refuse access to four Tarot cards unreasonably limited right to religious freedom - Freedom of expression - Humane treatment when deprived of liberty - Obligation to accord proper consideration to a relevant human right when making a decision - Claims for declaratory relief - Prison policies - Whether application of prison policy unlawful or unreasonable - Corrections Act 1986 ss 21, 47(1)(i); Charter of Human Rights and Responsibilities Act 2006 ss 7(2), 14, 15, 22, 32(1) and 38(1); Corrections Regulations 2009 reg 33.

HUMAN RIGHTS - Prisoner - Religious freedom - Freedom of expression - Humane treatment when deprived of liberty - Refusal of access to certain Tarot cards for purposes of religious practice - Whether refusal unlawfully limited rights - Proper consideration of human rights - Charter of Human Rights and Responsibilities Act 2006 ss 7(2), 14, 15, 22, 32(1) and 38(1).

Haigh, Paul Steven v Ryan, Brett (in his capacity as Governor of Barwon Prison)

Ginnane J

[\[2018\] VSC 474](#)

24 August 2018

JURY - Application to discharge jury - Evidence led from plaintiff's general practitioner referring to an 'offer' - Whether risk to a fair trial - Any risk of prejudice to defendant remediable by direction to jury to disregard evidence.

Tragas, Konstantinos v Bob Jane Corporation P/L (Ruling No 1)

Richards J

[\[2018\] VSC 432](#)

6 August 2018

NEGLIGENCE - Duty of care - Police - Family violence - Alleged duty of care to affected family members named in extant intervention orders prevent breach of intervention orders - Alleged duty of care to women and children to prevent family violence by repeat offenders - Alleged duty of care owed by identified senior officers at particular police stations to affected family members named in extant intervention orders, to ensure compliance by police within their line of command with Victorian family violence policies - Whether such duties have no real prospect of being successfully established - Family Violence Protection Act 2008 (Vic), preamble, s 1. PRACTICE AND PROCEDURE - Summary judgment - Application for summary dismissal – Supreme Court (General Civil Procedure) Rules 2005 (Vic), r 23.01 - Civil Procedure Act 2010 (Vic), ss 63 and 64.

Smith, Tara & Ors v State of Victoria

John Dixon J

[\[2018\] VSC 475](#)

27 August 2018

PRACTICE AND PROCEDURE - Discovery - Whether redacted documents subject to public interest immunity - Whether release of documents would be injurious to public interest - Whether plaintiff should have access in the interest of fair administration of justice - Whether public interest outweighs desirability of documents being released - Police training, tactics, and equipment - Inspection of documents pursuant to Evidence Act 2008 (Vic) - State of Victoria v Brazel [2008] VSCA 37 - Ryan v State of Victoria [2015] VSCA 353 - Plaintiff granted access to document.

Robinson. Warwick Craig v State of Victoria

Clayton JR

[\[2018\] VSC 470](#)

24 August 2018

PRACTICE AND PROCEDURE - Leave to file amended statement of claim refused as futile because claims not arguable on the pleaded facts - Whether proceeding should be dismissed or adjourned to allow plaintiff to seek to reformulate other claims initially sought to be made but not pursued in later iterations - Adjournment refused - Proceeding dismissed - Civil Procedure Act 2010 (Vic), ss 63 and 64.

Chapman, Elsie v City of Greater Bendigo (No 2)

Lansdowne AsJ

[\[2018\] VSC 486](#)

23 July 2018

PRACTICE AND PROCEDURE - Security for costs - Whether discretion enlivened - Weighing of discretionary factors - Significance of late timing of application - Defendant insured – Whether ordering security would stultify proceeding - Whether proceeding should be stayed pending provision of security.

Butler Market Gardens P/L (ACN 007 019 865) v G.G. & P.M. Burrell P/L (ACN 006 006

613) and Wilson, Gavan (trading as G.J. Wilson Contracting) (ABN 41 501 575 931)

Richards J

[\[2018\] VSC 461](#)

20 August 2018

PRACTICE AND PROCEDURE - Stay - Application for stay of VCAT orders that the respondent be granted a working with children certificate - Where applicant is appealing VCAT decision – Whether special circumstances arise - Whether arguable grounds of appeal - Whether not allowing the stay would render the appeal nugatory - Application granted.

Secretary to the Department of Justice and Regulation v CZQ and Victorian Civil and

Administrative Tribunal

Clayton JR

[\[2018\] VSC 462](#)

21 August 2018

PRIVILEGE - Legal professional privilege - Whether file note taken by a solicitor on a teleconference subject to legal professional privilege - Evidence Act 2008 ss 117-119 - Whether any privilege has been waived - Evidence Act 2008 s 125 - Commissioner of Australian Federal Police v Propend Finance Pty Ltd (1997) 188 CLR 501.

COSTS - Whether subpoenaed non-party entitled to its costs and expenses of complying with the subpoena - Whether subpoenaed non-party entitled to costs on an indemnity basis - Supreme Court (General Civil Procedure) Rules 2015 r 42.11 - ASADA v 34 Players and One Support Person (No 2) [2015] VSC 14 - Hera Project Pty Ltd v Bisognin (No 4) [2017] VSC 270 - Charan v Nationwide News Pty Ltd (No 6) [2017] VSC 331.

Victoria International Container Terminal t/a VICT v Construction, Forestry, Maritime,

Mining and Energy Union (Ruling No 2)

Ierodionou AsJ

[\[2018\] VSC 467](#)

28 August 2018

PROPERTY LAW - Co-owners entered into contract to sell land - One co-owner refuses to complete the contract - Rights of other co-owners to compel completion - Property Law Act 1958, s 49.

PRACTICE AND PROCEDURE - Application by originating motion in Form 5C pursuant to the special procedure - Supreme Court (General Civil Procedure) Rules 2015, r 45.05 - Whether appropriate procedure - Procedure appropriate in the particular circumstances.

PRACTICE AND PROCEDURE - Execution of instrument by order of Court under s 22 of the Supreme Court Act 1986 (Vic) - Circumstances where appropriate to order.

Ventura, Giovanna and Ventura, Nina v Ventura, Roberto; Petrovski, Zoran and Petrovski, Tatiana

Derham AsJ

[\[2018\] VSC 485](#)

29 August 2018

SEARCH ORDER - Breadth of search terms - Expense and inconvenience imposed upon respondent by search terms - Requirement to narrow scope of search terms in order to narrow issues in dispute and ensure costs reasonable and proportionate - Civil Procedure Act 2010 ss 23, 24.

Coachair P/L (ACN 143 743 284) v Mifsud, Lee James and National Parts & Products P/L (ACN 605 070 013)

McDonald J

[\[2018\] VSC 481](#)

25 August 2018

TESTATORS FAMILY MAINTENANCE - Application under s 99 of the Administration and Probate Act 1958 (Vic) by two sons out of deceased's eleven children and, separately, by a third son, for an extension of time to bring a proceeding seeking orders for provision out of deceased's estate - Estate constituted farming land - Plaintiffs worked on the farm since around the age of 16 - Application opposed by six out of the plaintiffs' eight siblings, being the remainder beneficiaries - Extension of time in excess of 40 years sought - Deceased passed away in 1975 - Will left mother a life interest with the remainder interest passing to the remainder beneficiaries - Plaintiffs elected not to contest deceased's will in reliance on their mother's unfulfilled promise that she would leave them her land - Plaintiff's mother passed away in June 2014 - Proceedings instituted in August 2016 and September 2017 respectively - Finding that any claim by the plaintiffs for further provision would have slim prospects of success - Plaintiffs were able bodied adult sons at time of deceased's passing - Consideration of reasons for the delay - Whether the plaintiffs had adequate appreciation of their rights to a claim under the Act when electing not to challenge the deceased's will - Relevance of length of delay - Finding that plaintiffs did not fail to challenge will by reason of ignorance of rights - Whether there was an adequate explanation for the delay between the plaintiffs becoming aware of their rights and making an application for an extension of time - Finding that one plaintiff's delay of over two years after becoming aware of legal rights not satisfactorily explained - No finding against the remaining two plaintiffs - Whether any prejudice would be caused to the remainder beneficiaries - Finding that delay in issuing proceedings has caused the remainder beneficiaries prejudice - *Ansett v Moss* [2007] VSCA 161, referred to - *McCann v Ward & Anor* [2010] VSC 452, applied - *Harrison v Harrison* [2011] VSC 459, applied - *Hughes v National Trustees* (1979) 143 CLR 134, applied - *Coates v National Trustees Executors and Agency Co Ltd* (1956) 95 CLR 494, referred to - *Bastistatos v Roads and Traffic Authority of New South Wales* (2006) 226 CLR 256, referred to - *Re Nassim* [1984] VR 51, referred to - Applications dismissed.

Maher & Ors v Maher & Ors

Daly AsJ

[\[2018\] VSC 318](#)

21 August 2018

CRIMINAL DIVISION

CRIMINAL LAW - Application for extended leave - Applicant, in 2009, at age 20 and when psychiatrically unwell, killed elderly woman - Applicant found not guilty of murder because of mental impairment - Whether applicant or members of the public will not be seriously endangered if applicant granted extended leave - Two psychiatrists supportive of application – Application supported by Secretary to Department of Health and Human Services and Attorney-General - Application granted - Conditions imposed on extended leave in accordance with leave plan – Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic), ss 20, 21, 23, 24, 26, 28, 38C, 39, 40, 41, 47, 57, 57A, 75 & 76A.

In the matter of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997

(Vic) and In the matter of an application for extended leave by "X Y"

Croucher J

[\[2018\] VSC 456](#)

17 August 2018

CRIMINAL LAW - Murder - Consent mental impairment - Accused found not guilty by reason of mental impairment - Custodial supervision order made - Nominal term of 25 years - Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 ss 21, 26, 28, 41 and 47.

The Director of Public Prosecutions [DPP] v L M

Hollingworth J

[\[2018\] VSC 451](#)

20 August 2018

CRIMINAL LAW - Sentence - Attempted murder - Prolonged attack - Victim sustained multiple blunt force injuries and stab wounds - Violence against former intimate partner - Offending occurred in context of relationship breakdown - Serious example of offence of attempted murder – Conduct endangering persons - Deliberately driving in front of train - Mid-range example of offence of conduct endangering persons - Guilty plea - Degree of premeditation - No relevant criminal history - General deterrence and denunciation - Totality - Age and ill health - Total effective sentence of 9 years' imprisonment with non-parole period of 6 years.

The Queen v Tedford, Albert Winston

Champion J

[\[2018\] VSC 476](#)

24 August 2018

CRIMINAL LAW - Sentence - Manslaughter - Single stab to chest of deceased while intoxicated - Guilty plea - Presence of remorse - Long history of alcohol and drug abuse - Diagnosed with chronic lymphocytic leukaemia - Stable long-term prognosis - Sentenced to 8 years' imprisonment with non-parole period of 6 years.

Director of Public Prosecutions [DPP] v Curtin, Kevin

Coghlan JA

[\[2018\] VSC 493](#)

11 May 2018

CRIMINAL LAW - Sentence - Murder - Use of weapons - Accused with significant criminal history - Accused with significant history of drug use - Accused on methamphetamine at time of offence - Accused on bail at time of offence - Plea of Guilty - Remorse - Significant weight given to general deterrence and denunciation - Need for specific deterrence - Guarded prospects of rehabilitation - Sentence of 25 years' imprisonment with non-parole period of 20 years.

The Queen v Tang, Phuc Thien

Taylor J

[\[2018\] VSC 460](#)

20 August 2018

CRIMINAL LAW - Sentence - Murder, attempted murder and assist offender - Jury verdicts – Victim intellectually impaired mother of four young children - Female accused unable to bear children - Motive to kill victim to enable female accused to be mother to her children - Attempt by both accused and co-offender to kill victim by drugging with sedatives - Attempt unsuccessful – Victim violently bashed to death by co-offender with agreement of female accused - Male accused assisted co-offender to dispose of victim's body - High moral culpability - Premeditation - Grave motive - Female accused low intellect - Impoverished upbringing - Parity issues.

Director of Public Prosecutions [DPP] v Lyons, Christine and Lyons, Ronald

Kaye JA

[\[2018\] VSC 488](#)

30 August 2018

CRIMINAL LAW - Sentence - Murder of 11-month old infant - Blunt force trauma causing transection of the abdominal aorta, spinal fractures and laceration of the right kidney - Very severe degree of force inflicted - Antisocial/borderline structure of personality - History of depression - Childhood abuse - Lack of insight - No remorse - Prospects of rehabilitation guarded - Very serious example of crime - 30 years' imprisonment with non-parole period of 26 years.

Director of Public Prosecutions [DPP] v Noy, Jason

Coghlan JA

[\[2018\] VSC 466](#)

25 July 2018