

**Gertie's Law
Episode 1 - The Court**

Evan Martin

This episode contains descriptions of real, violent crimes.

Greg Muller

It's 9 o'clock.

Security's working fast to get through the 30-metre long line of people. The queue goes out the doors, down the ramp and along the footpath.

TV crews wait for the striding-in-confidently or walking-out-angry shots for the evening news.

They're alongside bunches of people sucking hard on cigarettes.

The ground floor lobby's filled with barristers, solicitors and police. Defendants and victims. Friends and family of each.

Tank tops, hoodies and borrowed suit jackets mingle with silk ties and the clip-clop of expensive shoes, often pulling trolleys or suitcases filled with documents.

There's plenty of tension. Hands twitching, people with sewing machine leg staring at the opposite wall.

Lawyers and clients huddle in strategic discussion.

The coke machine is getting a workout.

Evan Martin

The daily hearing list is pinned to the wall behind four large glass panels. Today, hundreds of Victorians will have their day in court,

Above us are 30 courtrooms, each churning through tens of cases every day.

The Magistrates court is the first level - the entry level - to the Victorian justice system.

This is where 90% of all cases are heard - including traffic infringements and intervention orders to committal hearings for more serious criminal offences, which will then be sent to higher courts.

SUPREME COURT OF VICTORIA

If you've ever attended a court in Victoria, it was probably here.

Greg Muller

But if you've never been to court, this is the one you probably imagine.

The other side of William Street, the grand 19th century building which is the Supreme Court of Victoria.

[Opening theme]

Greg Muller

I'm Greg Muller.

Evan Martin

I'm Evan Martin.

Greg Muller

This is *Gertie's Law*, a podcast series from the Victorian Supreme Court.

Meet the people who work here, hear from the judges and see what goes into their complex decisions.

Justice Champion

I think the community look at this building – and they walk past it every day – have very little idea about what goes on in the building not much appreciation of the kind of work that we do.

We need to find ways of bringing the community in.

Evan Martin

That's Justice Champion, former Director of Public Prosecutions and recently appointed Supreme Court Judge.

Justice Champion

When I sit on the bench, you would look around with some fantastic cases, full of drama and full of importance. You would look up and see the seats are empty.

Greg Muller

SUPREME COURT OF VICTORIA

You might think you know this court. Thousands pass it every day, it's in the news most nights, but how well do you really know it?

For starters, it's not just in Melbourne. This court sits in 12 regional centres across the state.

The judges, reserve judges, associate judges and judicial registrars deal with more than six thousand matters every year.

So despite the quiet, it's a busy place. The Daily Hearing List, published online every day, regularly shows at least 30 matters.

Trials, pleas, directions hearings, sentences.

Terrorism and murder cases.

Horrific stories play out here all the time.

It can be a place of violence and death.

Justice Hollingworth (court recording)

You have been found guilty by a jury.

Justice Champion (court recording)

Your offending was extremely serious and your actions were callous and brutal.

Justice Hollingworth (court recording)

One of the stab wounds was 12cm deep and lacerated his thigh muscles.

Justice Champion (court recording)

With you ultimately covering her head with a bag and then binding it tightly with duct tape so that it was completely covered. You gave her no chance to breathe, nor survive.

Justice Hollingworth (court recording)

Overall, I'm guarded about your prospects of rehabilitation, particularly having regard to your long history of substance abuse.

Justice Champion (court recording)

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In all the circumstances, the sentence that I will impose upon you is a period of imprisonment for 30 years. Section 11A of the Act requires me to fix a non-parole period of at least 70% of the head sentence imposed upon you, unless it...

Evan Martin

But the vast majority of cases aren't criminal.

There's the Common Law Division.

Family disputes over wills, defamation and even a university student contesting their marks.

There's the Commercial Court, where millions of dollars are at stake every day.

And when there's questions as to whether a trial was conducted fairly, and whether the law was correctly applied - these go to the Court of Appeal.

Chief Justice Ferguson (court recording)

While the result that we reach might be obvious from our decisions, I'm not sure that why we've reached the result is always as clear.

Greg Muller

That's the current Chief Justice at her welcome ceremony in 2017.

Chief Justice Ferguson (court recording)

In serving the community as Chief Justice I will treat it as part of my responsibility to do everything that I can to make sure that what judges do, how we do it and why we make the decisions that we do is easily understood by all people.

Chief Justice Ferguson

My name's Anne Ferguson and I'm the Chief Justice of the Supreme Court of Victoria.

Greg Muller

We sit at a small round white table in the Chief Justice's chambers.

The polished floorboards and modern minimalist furniture make it feel like a renovated Melbourne terrace.

Chief Justice Ferguson

The Chief Justice is the first judge, I suppose, of the State of Victoria, and she has a number of roles. First it's as the head of this court, the Supreme Court of Victoria, but she also has a lot of other roles as well.

So, for example, the courts are supported by an administrative body, and I head that administrative body.

There's a commission that deals with complaints against judges and magistrates, and I'm the head of that body.

And then there's another body, and that's the Judicial College, and that's what teaches the judges. So, it's an education body, and I'm the head of that body.

Greg Muller

And do you still sit on cases?

Chief Justice Ferguson

I do sit on some cases, absolutely. I have to have a role in the courtroom. People expect the Chief Justice to be sitting on cases and expect her, really, to be sitting on the most important and serious cases.

Greg Muller

The Supreme Court sits at the top of Victoria's justice system, one of the independent pillars of democracy, along with the legislature - the Parliament - and the executive - the public servants who administer the laws made by Parliament.

Chief Justice Ferguson

The three arms of government are really, each very significant and very important to make sure that we've got a democracy, and there can be tensions between the three arms of government at times, but that's a good thing.

So you haven't got just one part of the system. You don't end up in a totalitarian system because you've got one person making all the decisions about what law should be, how it should be enforced and how it should be applied, and that's really our three arms.

Greg Muller

Despite it being a healthy tussle, the relationship the judiciary has with the other pillars of democracy is not always an easy one to manage.

Justice Lasry

... having said that, of course, whoever the government is after the election...

Greg Muller

That's Justice Lex Lasry at a politics and crime conference in Melbourne.

Justice Lasry

... if they introduce a regime of strict mandatory sentencing, well, the courts will simply have to deal with it.

Greg Muller

Justice Whelan started working here as a Supreme Court judge in 2004. He was appointed to the Court of Appeal in 2012.

Justice Whelan

Our job is to enforce the laws that the Parliament passes and to pass judgment on facts and circumstances that the State, through the prosecuting authorities, brings to the court as an independent institution, independent of the police, independent of the politicians, independent of the prosecuting authorities.

Once we've done that, we really don't think it's our role to say anything more. It's not our role to enter into a public debate about what the laws ought to be or what Parliament ought to do about any particular situation, whether the police should do this or that.

The trouble is, nowadays, there is political significance placed upon what we do, so we find ourselves embroiled in it whether we like it or not.

Greg Muller

Which brings us to the fourth pillar, the media.

Justice Riordan.

Justice Riordan

You will never read in the *Herald Sun*, or in any other paper for that matter, the paper saying 'Justice Riordan got the sentence right again.'

Greg Muller

Justice Whelan agrees.

Justice Whelan

That will never been a headline, and I know that, I know that.

'Everything is okay,' has never been a story, and it never will be, it never will. Except in, I don't know, probably in totalitarian countries, there are lots of stories about what a great job the judges are doing, but I don't think there is in any democratic country.

Greg Muller

This tension often plays out publicly after high-profile cases or during election campaigns.

The question is, does this erode trust in the system?

Chief Justice Ferguson.

Chief Justice Ferguson

If you don't have that level of confidence in the general community it's a downward spiral, really, and it really will attack the foundations of our democracy.

It's not a question of having blind faith in institutions - I don't think you should - but it is important that people feel that there is a court that's going to apply the laws in the same way to whoever comes before them without fear or favour.

We all take an oath to do that.

Greg Muller

We've spent the past six months at the court, sitting in on cases, exploring - and getting lost in - the building's narrow bluestone passageways and staircases, and meeting the people who work here.

The first thing that strikes you is the smell, like an old house in desperate need of an open window.

You can't escape the sense of history reverberating from these long corridors.

It's not hard to imagine Justice W.J. Schutt putting on the black cap and sentencing Colin Ross to death in 1922 for the Gun Alley murder of a 12-year-old Alma Tirtschke. This happened in Court 4 and it looks pretty much the same now as it did then.

Ross was later pardoned following an opinion by Justice Teague, Cummins and Coldrey of this court in 2006. Eighty-six years after execution.

One of Australia's longest and most sensational cases, the Pyjama Girl mystery, was the earliest example in Australia of dentistry being used to identify the victim. It took ten years for Linda Agostini's body to be identified and it was her husband, Tony Agostini, who was then convicted of manslaughter in 1944.

This all played out in Court 4 in front of Justice Lowe.

Convicted murderer Jean Lee, the last woman hanged in Australia, also heard her fate in Court Four from Justice Gavan Duffy in 1950.

Lee became hysterical after her verdict was announced, and was sedated.

She was again sedated at her execution six months later and had to be placed on a chair above

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the trap door at the gallows. She was hanged at 8am, 9th of February, 1951.

Justice John Starke sentenced Ronald Ryan to death here in 1966. Ryan was the last person to be legally executed in Australia.

The Menhennitt Ruling, R Versus Davidson, or Australia's Roe versus Wade, determined the legality of abortions here in 1969.

Justice Betty King (court recording)

She tried to escape from you and you chased her. Clearly, you overpowered this relatively petite woman, but she tried valiantly to fight you.

The evidence of her attempt to resist you showing in her finger drag marks which were located on the centre island as she held tight to anything she could find, including the ground, to stop you dragging her away from the light and what should have been safety.

Greg Muller

Scott Miller who brutally raped, and murdered a woman in Melbourne's Kings Domain was sentenced by Justice Betty King in 2015.

Justice Betty King (court recording)

I direct you are to be sentenced as follows.

Charge one - rape, 13 years.

Charge 2 - rape, 13 years.

Charge 3 murder, 29 years.

I direct that charge three...

Greg Muller

Melbourne Gangland members were regulars here in the 1990 and 2000s.

Actor Rebel Wilson's defamation case was heard here in 2017, as was the appeal which reduced her payout from \$4.56 million to \$600,000.

Joanne Boyd

The first really notorious case would be the Deeming one; the serial killer, the baby, the family-underneath-the-fireplace-at-Windsor killer.

Evan Martin

Joanne Boyd and Nicole Lithgow are the Court's archivists.

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They know pretty much all there is to know about this building, its history, the cases, well, anything really.

Nicole Lithgow

Deeming is particularly interesting because he was believed by many to be Jack the Ripper. So, he's famous for being reasonably, at times, robust theory that he was Jack the Ripper.

We know it's not the case now, but there was a long time where that was considered to be a possibility.

Evan Martin

And a note; despite court four being colloquially known as the Kelly court, Ned died in 1880, four years before this building opened.

Joanne Boyd

The joy of the Ned Kelly myth is that it just takes a life of its own and so people want things to desperately be related to Kelly.

Evan Martin

Sir Redmond Barry, the judge at the Kelly trial, and who was also instrumental in designing this building, also never set foot in here.

He died two weeks after Kelly was executed, as Ned predicted.

When Sir Redmond Barry sentenced Ned to death, he said the customary words...

Sir Redmond Barry (actor)

May God have mercy on your soul.

Evan Martin

To which Kelly replied...

Ned Kelly (actor)

I will go a little further than that, and say 'I will see you there where I go.'

Evan Martin

There are stories of ghosts here as well

Joanne and Nicole again.

Joanne Boyd

There is the ghosts.

They're meant to be in Court 4, and it's not surprising they're in Court 4, because Court 4 is the main criminal one. It's where all the really bad cases have been heard and it would be a place that if anything was going to hang around, it was.

One of the judges, who I never thought was subject to flights of fantasy, one of the criminal judges, said to me once he'd gone back into Court 4 once everyone had left to collect some papers off the bench, and he swears he saw a small boy in there.

He was convinced that that's what he'd seen and that wouldn't surprise me.

One of the cleaners apparently had a story about someone coming... a woman wasn't it...

Nicole Lithgow

Yes.

Joanne Boyd

... whooshing past her as she came in to clean the courtroom early one morning.

Nicole Lithgow

It's also frightfully cold, so you can sort of feel that chilly, ghostly presence just on any given morning in July, because it's a frightfully cold building with all of the stone.

Justice Niall

The Supreme Court predates Federation which, is a very significant part of its history, that is, it emerged... it started with the colony and has grown with the colony and has always been part of the colony. It's always been a local court. In the early 1850s, the Supreme Court of Victoria was established and we had our own resident judges.

Evan Martin

That's Appeal Court judge, Justice Niall.

It's no accident the Court stands where it does, on this side of the CBD.

Justice Niall

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It's significant, I think, that the building is here at this end of town away from the Parliament at the other end of town at Spring Street.

Evan Martin

On opposing hills, with a clear line of sight at the time.

A physical representation of the Westminster system and the separation of powers.

Justice Dixon.

Justice Dixon

No, that's right, and the Parliament was intended to have a dome that was never built and, of course, we've got a dome and the exhibition building has got a dome. And the domes were also supposed to speak to each other from the various hills across the town.

Joanne Boyd

This building's up on a hill. There's two hills if you think about Melbourne, so there's the hill that Parliament House is on and that's one end of the city, and then this is the other end of the city here. So, it was built deliberately on this hilltop and we had a really nice view over to the bay and everything like that. If you see the photos we were by far the tallest building.

Nicole Lithgow

At the time, Melbourne would have been under a fair bit of construction because it was getting toward the end of the Gold Rush.

A lot of money around; rivers of gold, as discovered under Ballarat and Bendigo. By about the 1870s and 80s it was indeed one of the wealthiest cities.

Joanne Boyd

Manchester in England and Melbourne, but we were by far and away one of the most wealthiest cities in the British Empire, which is worth remembering.

Greg Muller

Although the building still looks much the same now as it did in 1880s, though it's now surrounded by high rises, the way people interact with this court it has changed a lot.

Justice Dixon

If you go back to when this court was built, there was no television, no movies. For entertainment, people would come to the courts and they would watch the cases and they would watch the leading barristers perform and they would watch the salacious murder trials and, invariably, the public galleries of the courts were full.

Greg Muller

Justice John Dixon.

Justice Dixon

That is mostly not the case anymore.

There are some cases that will fill the galleries, for sure, but generally they're quiet and unoccupied, so that the way that the community finds out about the court really is through media reporting. And often the only extra people who will be there, apart from those immediately associated with the parties, will be members of the press.

Greg Muller

Despite the popularity of true crime books and now podcasts, rarely do people come here to see it play out for real.

Indeed, many people are no longer aware they can.

Barney McAll

Well, I was kind of freaked out to be frank. So, I just came off the street and next minute I'm sitting two or three meters from a serial killer.

Greg Muller

That's Barney McAll, the composer for this series.

After agreeing to this job, Barney came in for some inspiration.

Did you know you could do that?

Barney McAll

I had no idea.

And actually, I am thinking it would be great to bring my children in. Not to see a serial killer but just to get a sense of the grandiosity of the whole place.

I mean, It's quite an intense place and there's serious things going on. It's very confronting, I have to say. People's lives are at stake.

Chief Justice Ferguson

The divisions of the Court. So, there are three trial divisions.

The Commercial Court, which deals with, unsurprisingly, commercial matters.

The Criminal Division, which deals with the criminal matter that we handle, and then there's the Common Law Division, which is basically everything else.

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And then there's the Court of Appeal where, if the trial division has made a decision and people are not happy with it they can go to the Court of Appeal to have that decision reviewed, within some limits.

Justice Hollingworth

I'm Justice Elizabeth Hollingworth.

Evan Martin

Principal Judge in the Criminal Division.

Justice Hollingworth's chambers act as a beacon to any newcomer getting lost in this maze of a building.

It's the one with a large palm tree and a toy monkey hanging from a branch.

Justice Hollingworth

Look, we do see a lot of terrible things. Our main bread and butter work for the Criminal Division are homicides, so that's either murder or manslaughter, acts of great violence.

Evan Martin

The Criminal Division also deals with terrorism offences and, apparently, treason too.

Justice Hollingworth

I have no idea whether we've ever had one.

We have exclusive jurisdiction for treason. It has certainly not happened in the time I've been on the court and I don't think I've read a report about it. I do think that perhaps some of the terrorist cases come to us almost on a quasi-treasonous basis although they're not, in fact, treason.

I think some of the thinking is that they involve effectively an assault on the state, which is the modern equivalent, perhaps, of treason, which was, as I understand, it was originally against the King or the Queen.

We also do some very serious examples of white collar crime or other cases where there might be a legal point of principle that it would be better to have the Supreme Court determine.

But the County Court is very much the trial workhorse court in terms of doing most of the drug cases, burglaries, robberies, sexual assaults, things of that sort. We would only get a case of that description if there was something quite unusual and complicated about it that required coming here to the Supreme Court.

As part of that, we see both the best and the worst of human behaviour, actually. It's both challenging and also a privilege, quite frankly, to get to see such a spectrum of the community.

Evan Martin

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The 'Baby-Farming Murderess', Frances Knorr, Gangster Squizzy Taylor, Mark 'Chopper' Read and more recently, James "Dimitrious" Gargasoulas, who in 2017 killed six people when he drove through pedestrians on Bourke Street.

They've all passed through the Criminal Division here.

It can be a distressing place.

Justice Lasry (court recording)

The work of the Criminal Division in the court can be emotionally very taxing. I think I've seen too much violent death, apart from anything else.

I've sentenced a significant number of people to usually very long sentences.

It's only recently that any interest has been shown in the effect of a judge's work on their lives and their wellbeing, criminal trial judges in particular.

For myself I've become thoroughly used to much of it, although I do continue to be amazed at the way people can find new methods to torture and kill each other, including children.

Evan Martin

That's retired criminal Judge Lex Lasry at his farewell speech in 2018.

He's back as a reserve judge now so we'll hear more from him in future episodes.

Greg Muller

While it's criminal cases which get all the attention - the vast majority of the work here is not criminal.

Of the more than 6,000 cases in the Supreme Court in the 2016-17 year, 40% were in the Common Law division.

That's compared with only 150 in the Criminal Division, or about 2.5% of cases.

Justice Bell

I'm Kevin Bell, Justice Kevin Bell. I'm in the Common Law Division. I also sit in the Criminal Division and I sit in the Commercial Court as well.

Common law is, generally speaking, judge-made law.

It evolved, essentially, in England. It's the foundation of the legal system in so-called common law countries and common law countries include Canada... well, virtually the whole Commonwealth.

Greg Muller

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Common Law is like sedimentary rock; made from layers upon layers of decisions by judges, built up over centuries.

It's the law of the commons as opposed to law legislated by parliament.

Justice Bell

So the law of tort, 'You must not assault somebody. You must take care of your neighbour. You must not trespass upon somebody else's land. You must not trespass upon somebody else's goods;' these are all principles which have evolved socially and become principles of law, because judges have recognised those principles as part of the customary law that governs our ordinary life with each other.

And so over time, what began as custom, really, a rule of a relationship between people living in a community, evolved into a principle of law as enforced by judges.

Julie Clayton

My name is Julie Clayton. I'm a judicial registrar in the Common Law Division. Do you want me to tell you what that means?

Greg Muller

Yeah.

Julie Clayton

Okay. So, the way I describe it to my friends who don't have any familiarity with the law is I say, 'I'm kind of like a very, very junior judge.'

The Judge will hear the trial, the Associate judges will deal with smaller trials or the big applications and I deal with the little things.

We describe ourselves as the 'go anywhere, do anything' division. And by 'go anywhere', it's because we go on circuit all around country Victoria. And 'do anything', it's basically everything that doesn't fit within crime or commercial falls within the common law.

So, that ranges from personal injuries and dust diseases which are some of our biggest lists. We have a lot of those cases. Everything from your slip-and-trip at a supermarket, work injury from a, you know, heavy, repetitive factory job to medical negligence.

You know, the court really is the mirror of the society in which it lives.

Greg Muller

There's also reviews of decisions made by other courts, tribunals and external bodies.

Julie Clayton

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It might be review of a decision by a university. That recent case where a young fellow failed a particular assignment at Monash and sought to judicially review it, that's the sort of thing that might come in this court.

It stretches all the way from the person who didn't want to pay his \$22.50 dog registration fee to the Wodonga Council because he didn't think that the Wodonga Council was legitimately entitled to actually charge him, all the way to really significant human rights cases.

Greg Muller

Justice Bell again.

Justice Bell

Victoria has a *Charter of Human Rights* which has brought the court into an important area, which it used not to be, and that jurisdiction comes within the Common Law Division and forms an important part of its work.

Greg Muller

Cases involving human rights can quickly get complicated.

Julie Clayton

I think that if you took a, sort of, poll down, you know, the middle of Bourke Street or at the local pub and said, 'Do you care if Paul Haigh has access to a set of tarot cards in prison...'

Greg Muller

Paul Haigh is a serial killer from the 70s who stabbed his girlfriend 157 times after his mate raped her at knifepoint.

He also shot a 10-year-old boy. All up he's killed seven people.

He's currently in prison for life. He now wants tarot cards.

Julie Clayton

I would imagine that there's not a great deal of community concern about that.

Person on the street 1

I don't think he would have those rights. Shouldn't be entitled, I don't think. No. He doesn't deserve it.

Person on the street 2

It's good that he's in prison if he killed people. I don't think he should get out of prison, but, like, who cares if he's got tarot cards? It doesn't really affect anyone.

Person on the street 3

I don't think he should have access to leisure activities. He's done his business, and he should be punished as much as possible, I reckon.

Julie Clayton

You will get a prisoner and they're saying, 'I've been denied access to tarot cards. I've become a Pagan while I'm in prison. Tarot cards are a part of my religious expression and I should be allowed to practise it.' And the Department of Corrections will say, 'Well, this particular set of tarot cards show pictures of naked women.'

Now, if I was a prisoner and I wanted a book of paintings in the Louvre, there would be plenty of paintings of naked women as well. Would they ban that? I don't know.

But if you extrapolate out from that and say, 'Well, is it a question of freedom of religion? Is it – you know, do you support the notion that even the worst amongst us ought to be entitled to some basic human rights,' and even those who've been found guilty of the most heinous crimes ought to have access to religious material, there might be a different view about that.

But if it was someone saying, 'Well, I want a copy of the Bible,' and Corrections said, 'Well, you can't have a copy of the Bible because there's violent imagery in the Bible and there's discussions of beheadings and there's discussions of sex in the Bible, and therefore it's a prohibited book...

Man

... and took his sword, and drew it out of the sheath thereof, and slew him, and cut off his head therewith. Samuel 17:51.

Woman

Solomon 1:13. My lover is to me a sachet of myrrh resting between my breasts.

Man

Samuel 5:3. Do not spare them, but kill both man and woman, child and infant, ox and sheep, camel and donkey.

Julie Clayton

... which it could well fit within the definition of a prohibited book, frankly. That would be pretty inflammatory.

Greg Muller

Justice Dixon, Principal Judge of the Common Law Division, recently decided a high-profile human rights case against the Victorian Government.

Justice Dixon

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The certain children case, which I had the second round of it, which was about the use of the Grevillea Unit at Barwon Prison for detaining children, and that was run as a human rights case.

And ultimately I ordered the Government to shut it down and move the children out of there back into appropriate places for detaining children, and that's what they did. They accepted the decision and it was closed down.

Greg Muller

The Common Law Division often comes to public's attention when it deals with class actions.

Justice Dixon

All of the common law class actions generally involve what we call mass torts. That is where someone has committed a tort, they have been negligent. And there are masses of people who have suffered as a result of that.

The best examples of them are the class actions which came out of Black Saturday. In Black Saturday, we had six class actions in the court, and there was overall something like 14,400 individual claims that were dealt with in those six proceedings.

They all settled. And it's really about managing cases to help people see where their risks are, where their rewards might lie and help them to negotiate a compromise. Otherwise cases run and they become enormously expensive.

The Kilmore-East Kinglake class action did run. It went for 208 days over a period of more than a year. It was a massive, huge trial; the biggest trial this court's conducted by a country mile, and involved 100s of witnesses, lots of lawyers, lots of exhibits, and lots of experts too trying to work out whether there was negligence and who was at fault.

But ultimately the parties arrived at an arrangement between themselves and the case settled.

And then there was a long process of administration of that settlement. There was half a billion dollars paid and all of the claims in that particular case... there was about 1,900 claims from personal injury and dependency claims. That's the claims from the deceased estate because from that particular fire there was over 100 people killed. There was 173 people killed in the Black Saturday bushfires all together, but there were thousands of people who were injured.

Greg Muller

Defamation cases also come here, recently sparking international interest.

Justice Dixon

They're very interesting cases because you have the conflict of the freedom of speech, the right to freedom of speech and freedom of expression, up against the private right to protection of one's reputation from an unfair slandering or defamation. It's a complex balancing between those two rights and that's what takes place in a defamation trial.

There's a lot of defamation these days coming out of the internet, social media, but often that's at a smaller level than one sees with publication in a major, daily newspaper that circulates to

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100s of thousands of people a day. An internet publication might just be a comment on a Facebook site or a tweet that's redistributed to perhaps 20 or 30 people. There's only a small claim.

The term that's used is 'the poison of the defamation has spread' and often it spreads through what's called the grapevine effect. You never know where it's going to pop up - that someone has heard a defamatory slur against a plaintiff who wants to be compensated for that.

We've had cases here where there's been a publication on the internet on blogs that have attracted damages awards around the vicinity of around \$125 - \$150 thousand and then there are cases like the Rebel Wilson case attracted a damages case of \$600,000.

Evan Martin

The other court in the Trial Division is the Commercial Court.

Julian Hetyey

My names Julian Hetyey. I'm a judicial registrar in the Commercial Court.

The Commercial Court was established four years ago as a standalone separate division of the Supreme Court.

I think Victoria is unique in that it is the only state with a dedicated Commercial Court and we have really joined the ranks of other courts around the world who have set themselves up in a similar way. So, for example, the United Kingdom and Wales Commercial Court, the Singapore International Commercial Court, the Abu Dhabi Commercial Court and more recently the Netherlands Commercial Court.

Our judges and our judicial officers, associate judges and judicial registrars who form part of the Commercial Court have got extensive commercial experience, and the idea is that it will reduce the number of pre-trial steps and, therefore, hopefully reduce the legal costs that will be incurred by the parties.

Evan Martin

And when you consider the amounts of money involved, what happens here affects the whole state.

Julian Hetyey

We looked at one particular financial year, the 2016-2017 financial year, and we worked out that, just for the matters that end up being managed by judges, those cases alone involved claims worth about \$3.3 billion. So, that's a fairly significant number relative to the whole of the Victorian economy.

Evan Martin

But despite the Commercial Court dealing with more than 2,500 matters every year, it gets little media attention.

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Justice Riordan

The school groups sometimes come in and I think you poor children. It can be like watching a chess game.

Evan Martin

Justice Riordan, Principal Judge of the Commercial Court.

Justice Riordan

For the parties things are happening at a million miles an hour. There's strategies being undertaken. To the informed observer it's quite intriguing as you watch the way the parties are manoeuvring.

But generally it's by reference to documents and if you don't know what's in the documents you're not picking up on the subtleties that might be apparent to someone who is crawling all over the detail.

Evan Martin

This Commercial Court differs in one important way. It moves faster.

Time is money and that's what's principally at stake here.

Justice Riordan

In the Criminal Division, there's a great emphasis on the proper adoption and adherence to procedures, because liberty is at stake. Here, we tend to cut through procedures.

We very quickly require parties to identify the real issue that's in dispute.

The efficient resolution of commercial disputes is an important feature of any economy, which business requires.

Evan Martin

In the same way the Common Law Division acts like a mirror to society, this court reflects the trends in the business world.

Julian Hetyey

A lot of cases arising from property development, that's not surprising given all of the activity in the property market in Australia,

We've also seen quite a few cases involving litigants from Asian countries, particularly litigants who reside in Asian countries and have various business interests in Australia.

So, a classic example would be a business investment by an overseas mainland Chinese party investment in an Australian business where there's a Chinese counterpart and they have a falling out.

They raise a number of different considerations for the Court.

Often, we notice that the cases involve very little by way of written documentation, so if a deal is done between the two parties it's not always reduced to writing.

The court needs to be aware of those cultural considerations. The reality is we are living in a multicultural society and we're also living in a world where commerce is globalised. It means that people will move capital across borders. They will invest in businesses in other countries and we have to be responsive to that.

Greg Muller

Finally, the highest court here is the Court of Appeal.

This is where judges' decision can be overturned.

Justice Richards

Hasn't happened to me yet. I'm sure it will. I'm sure it will. I mean, I do understand from other judges that it's part of the job.

Greg Muller

Justice Richards was appointed a Supreme Court judge in the Common Law Division in 2018.

Justice Richards

It happens to everyone. No one enjoys it when it does. But it helps to, sort of, understand that you are part of an overall system, and an important part of that system is that error can be corrected by an appeal court.

So, I'm not looking forward to it when it does happen, but I will have to deal with it when it does, and I'm told by one very experienced judge who I respect, that it's quite liberating the first time you're appealed and overturned because it's happened then, and then you know how bad it is and you can just get on with it then and live with it.

Greg Muller

It was certainly a memorable moment for Justice Bell.

Do you remember the first time it happened to you?

Justice Bell

I certainly do. I certainly do. So, I ran a long drug trial. It was a very heavy case, and I took the trial to verdict, which is significant achievement.

It went on appeal and the Court of Appeal, rightly in my view, held that I had not stopped the prosecutor from making a submission to the jury which the prosecutor should not have made.

SUPREME COURT OF VICTORIA

Now, the defence did not object to the submission and I thought, when this submission was being made, that it was a bit odd and I expected a defence objection. I didn't get it, so I let it go through and the convictions were overturned on that basis.

Greg Muller

Was the second time easier?

Justice Bell

I can't remember the second time, but there have been several times since.

Greg Muller

Justice Priest was appointed to the Court of Appeal in 2012.

Justice Priest

Well, by definition, somebody thinks something has gone wrong if they're coming to the Court of Appeal.

The appeal will generally then be heard by a bench of three or, in some circumstances, a bench of two, and we, I think, cooperate pretty well with each other and often there'll be complete agreement so that there will be a joint judgement.

On occasions, there are dissents so that you'll wind up with a split, 2-1. If a case is heard by a bench of two and there's a disagreement, well, that's solved by bringing in a third member of the court, usually, to see... try and cut the Gordian knot.

Greg Muller

Appeal Court judge, Justice Whelan.

Justice Whelan

Yep, that's right. We spend our lives correcting other people's homework.

Greg Muller

The reality is, 97% of criminal sentences in the Country and Supreme Courts are unchallenged, or unchanged on appeal.

Greg Muller

They don't like it when you get overturned. I don't like it when I got overturned and I got overturned lots of times, so I'm well-qualified in that sense.

If you're in crime and you're endeavouring to decide things fairly between the defence and the prosecution, you will always get overturned on occasions, because in the Court of Appeal, we judge things according to whether there has been a miscarriage of justice looking at the thing in hindsight. And it's inevitable; every criminal judge is going to be overturned.

But, look, it's a very good idea, because we're all fallible. We're all capable of making mistakes. And a system where people are looking over everybody's shoulders is essential really.

Anyone exercising power that's not subject to review by others will inevitably abuse it, I would have thought.

Justice Priest

And, by the way, we're not infallible here. We've been known to be rolled by the High Court.

Greg Muller

Which is the check on this court?

Justice Priest

That's right, and that's the system working, you see. That's ensuring that, in the end, the quality of justice is very high.

Evan Martin

Regularly, the Supreme Court hits the road and goes to 12 regional centres including Ballarat, Shepparton, Mildura and Bendigo, where I caught up with Justice Taylor who was hearing a murder trial.

Justice Taylor

This is the Supreme Court of Victoria - not the Supreme Court of Melbourne.

And it's important that the court be seen to be exercising its jurisdiction throughout the state. But it's also really important for people who live in regional areas of Victoria that their access to the justice of the court is in their hometown, and that things that occurred in their region are heard in their region and it's exactly the same justice, the same process that's dispensed in Melbourne.

So, this trial has been listed in Bendigo on these dates and I happen to be the judge who has been allocated the file. There's no strict roster of who gets sent when to Bendigo or Wangaratta or Warrnambool, wherever the court might be sitting.

[Bells ring]

It's great isn't it? Every 15 minutes; it's fantastic. I know. My chambers are in a clock tower. It's brilliant.

Evan Martin

And finally, Who's Gertie?

Overlooking the main entrance of the Court on William Street there's a statue of Lady Justice.

Justice Priest

The statue is the God Themis or Justitia. Themis or Justitia depending on whether you're a Greek or Roman a'file.

Evan Martin

But around here, she's known as Gertie.

Joanne Boyd

That's a complete mystery. Why is Gertie called Gertie? No idea.

Evan Martin

Gertie differs from the Lady Justice over the road at the County Court. Firstly she's not blindfolded.

Justice Priest

And so why isn't she blindfolded?

Joanne Boyd

Well, Justice isn't always blindfolded.

Some people say she should have her eyes open and her ears open as well.

Nicole Lithgow

Redmond Barry didn't want her blindfolded. He felt she should be seeing what comes before her.

Joanne Boyd

Gertie is actually meant to be Justice, but she's a bit lazy. Scales are sitting on her knee. Is the sword resting by her side?

Nicole Lithgow

Yeah, she's holding the sword by her side. She's not actually standing, she's sitting.

Justice Priest

I'd not thought of it that way. To me, she looks like she's ready to pounce.

Chief Justice Ferguson

I didn't think she did looked lazy. I thought she looked sort of calm and protective and quietly in control. That quiet confidence of, 'Don't worry, it's OK. I'm here for you.'

Greg Muller

SUPREME COURT OF VICTORIA

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In later episodes we're going to take a closer look at many of the misunderstood aspects of the Supreme Court, including sentencing, juries, the day to day working of a judge and we'll examine some notable historic cases.

And don't forget, you can come in, and see this all play out for yourself. It's your court after all.

[Ends]