

**LIST OF REPORTED DECISIONS OF THE SUPREME COURT OF VICTORIA
(TRIAL DIVISION AND COURT OF APPEAL)
FOR WHICH CAMERON WAS REPORTER**

Ordered by date of publication

Current as of May 2024

Secretary, Department of Health and Human Services v AA 51 VR 714

[2017] VSC 34
Cavanough J. 8 Feb 2017.
Supreme Court of Victoria

Constitutional law — Commonwealth Constitution — Inconsistency between Commonwealth and State legislation — Detention provisions in Commonwealth migration legislation — Child protection provisions in State legislation — Whether ‘covering the field inconsistency’ or ‘direct inconsistency’ — Whether ‘operational inconsistency’ — Commonwealth Constitution s 109 — Migration Act 1958 (Cth) ss 4AA, 13, 14, 189, 196, 197AA, 197AB, 197AC, 197AD, 197AE, 197AF, 197AG — Children, Youth and Families Act 2005 (Vic) ss 1, 4, 5, 240, 241, 243, 262, 263, 264, 266, 267, 268, 274, 275, 280, 281, 282, 533

Attorney-General (Vic) v Garrett 51 VR 777

[2017] VSC 75
McDonald J. 2 Mar 2017.
Supreme Court of Victoria

Evidence — Admissibility — Vexatious litigant — General litigation restraint order — Application for restraint — Whether judgments and orders in earlier proceedings admissible — Whether a finding as to the nature of a proceeding is a ‘finding of fact’ — Evidence Act 2008 (Vic) s 91(1) — Vexatious Proceedings Act 2014 (Vic) ss 3, 29

Practice and procedure — Vexatious litigant — General litigation restraint order — Defendant persistently and without reasonable grounds commenced and conducted ‘vexatious proceedings’ — Whether defendant’s bankruptcy a discretionary factor weighing against the making of a general litigation restraint order — Vexatious Proceedings Act 2014 (Vic) ss 3, 29(2)

McNab v Graham 53 VR 311

[2017] VSCA 352
Tate and Santamaria JJA and Keogh AJA. 30 Nov 2017.
Court of Appeal

Estoppel — Proprietary estoppel — Remedies — Constructive trust — Promise to transfer on death — Deceased granting only life interest — Whether court obliged to consider a lesser equitable remedy than imposition of a constructive trust — Whether third parties in need of protection

Limitation of actions — Action to recover land — Proprietary estoppel — Claim for constructive trust — Delay of more than 15 years in bringing action — Whether proceeding ‘to recover from the trustee trust property’ — Limitation of Actions Act 1958 (Vic) ss 8, 11, 21, 22 — Trustee Act 1958 (Vic) s 3

Trust and trustees — Constructive trust — Proprietary estoppel — Creation of trust — Whether a constructive trust arises at the time of a court’s declaration or at the time of the conduct giving rise to that trust

Archibald v Powlett 53 VR 645

[2017] VSCA 259

Redlich, Osborn and McLeish JJA. 21 Sep 2017.

Court of Appeal

Contract — Damages for breach — Damages for distress, anxiety and depression — Whether damages recoverable — Whether damages for ‘non-economic loss’ — Whether damages awarded ‘in respect of an injury’ — Damages for inconvenience — Damages for loss of income and loss of opportunity — Remoteness — Whether loss of income from existing business foreseeable — Where compensatory damages less than admitted amount of restitution — Whether unjust to recover the lesser amount — Wrongs Act 1958 (Vic) ss 28LB, 28LC, 28LE, 28LF

Estoppel — Issue estoppel — Single proceeding against two defendants conducted as separate trials — Whether necessary to show privity of interest between defendants — Whether second trial raised issues resolved in first trial

Practice and procedure — Abuse of process — Single proceeding against two defendants conducted as separate trials — Procedure adopted to accommodate one defendant’s illness — Whether claims in first trial relitigated in second trial — Whether oppression or unfairness to defendant in second trial

Blakely, Ryan & Olde v Insurance Australia Ltd 53 VR 733

[2017] VSCA 378

Ferguson CJ, Whelan and McLeish JJA. 18 Dec 2017.

Court of Appeal

Companies — Directors — Liability for insolvent trading — Adviser providing services to client through management consulting company — Adviser appointed as director of client — Whether management consulting company was ‘shadow director’ or ‘de facto director’ of client company — Corporations Act 2001 (Cth) s 9

Insolvency — Insolvent trading — Claim by liquidators against director — Whether standing to seek declaration against director’s insurer — Whether justiciable controversy — Effect of deed of settlement — Bankruptcy Act 1966 (Cth) s 117 — Corporations Act 2001 (Cth) s 562

Insurance — Professional indemnity policy — Claim by liquidators against director — Whether standing to seek declaration against director’s insurer — Whether justiciable controversy — Construction of terms — Whether liability incurred in the course of the insured’s provision of ‘professional services’ — Non-disclosure and misrepresentation — Failure to disclose insured’s directorship of client company — Deed of settlement — Settlement between insured and liquidators of client company — Whether settlement limited loss recoverable under insurance policy — Insurance Contracts Act 1984 (Cth) ss 21, 26, 28

Re Specialist Australian Security Group Pty Ltd (in liq); Valdii Investments Pty Ltd v Specialist Australian Security Group Pty Ltd (in liq) 55 VR 433

[2018] VSC 199

Sifris J. 27 Apr 2018.

Supreme Court of Victoria

Bankruptcy and insolvency — Companies — Joint and several administrators — Remuneration — Priorities — Whether proceeds of sale of company assets arranged by shareholders subject to statutory lien — Whether proceeds subject to equitable lien — Whether sufficient connection between former administrators’ work and recovery, care, or preservation of company assets — Corporations Act 2001 (Cth) ss 443D, 443E(1), 443F, 556

Equity — Equitable lien — Controller of insolvent company — Lien claimed for fees, costs and expenses — Whether sufficient connection between controller’s work and recovery, care, or preservation of company assets

Trusts — Constructive trust — Company in liquidation — Sale by company's shareholders of shares in related entity prior to liquidation — Whether share sale proceeds held on constructive trust for company — Whether proceeds intended to be paid to company for benefit of company's creditors — Whether inequitable for vendor of shares to retain proceeds

Dai v Lui and Others 55 VR 616

[2018] VSC 189
Ginnane J. 24 Apr 2018.
Supreme Court of Victoria

Real property — Interest in land — Nominee purchaser — Whether equitable interest — Another undisclosed purchaser — Equitable interest of undisclosed purchaser — Priorities — Whether better equity

Sale of land — Multiple purchasers — Undisclosed purchaser — Nomination of new purchaser by disclosed purchaser — Undisclosed purchaser not consenting to nomination — Agency — Whether ostensible authority — Whether nomination valid — Whether co-purchasers in partnership — Whether partnership extinguished by nomination — Availability of specific performance

Victorian Legal Services Commissioner v McDonald 57 VR 186

[2019] VSCA 18
Tate, Kaye and Emerton JJA. 13 Feb 2019.
Court of Appeal

Legal practitioners — Unsatisfactory professional conduct — Dealings between practitioners — Requirement to take all reasonable care to maintain integrity and reputation of legal profession — Ensuring courteous communications — Avoidance of offensive or provocative language or conduct — Exception for communication made for legitimate pursuit of client interests and on reasonable basis — Whether exception applied — Charter of Human Rights and Responsibilities Act 2006 (Vic), s 15(2) — Legal Profession Act 2004 (Vic), s 4.4.4(a) — Professional Conduct and Practice Rules 2005 (Vic), r 21

Chickabo Pty Ltd v Zphere Pty Ltd 57 VR 406

[2019] VSC 73
Sifris J. 22 Feb 2019.
Supreme Court of Victoria

Equity — Fiduciary duties — Partnership — Duty to avoid conflict of interest — Duty to avoid deriving unauthorised profits — Duty to disclose and offer commercial opportunity to fellow partners — Whether breach of duties — Accessorial liability — Whether knowing inducement or procurement of breach — Whether receipt of property derived from another person's breach — Application of terms of partnership deed — Partnership Act 1958 (Vic), ss 32, 33(1)

Partnership and partners — Formation — Partnership deed — Person signing partnership deed in capacity of director of corporate partner — Whether director personally bound — Whether director of partner a partner of partnership

Sell Your Gold Pty Ltd v Australia Diamond Trading Corporation Pty Ltd 57 VR 595

[2018] VSCA 355
Maxwell P, Hargrave and Ashley JJA. 20 Dec 2018.
Court of Appeal

Tort — Conversion — Bailment — Unauthorised pledge of chattels by bailee — Chattels returned by pledgee to bailee — Whether pledgee liable in conversion — Elements of cause of action — Whether dealing with or exercise of acts of ownership over chattels required — Whether unauthorised possession sufficient — Whether conversion a strict or absolute liability tort — Possible need for law reform

***Vishniakov v Lay* 58 VR 375**

[2019] VSC 403
Derham AsJ. 20 Jun 2019.
Supreme Court of Victoria

Guardianship — Appointment of litigation guardian — Applicable principles — Mental capacity — Whether subject incapable of managing legal affairs by reason of infirmity — Whether subject's solicitor may be appointed

Practice and procedure — Appointment of litigation guardian — Applicable principles — Whether litigation guardian who is solicitor must appoint a solicitor — Supreme Court (General Civil Procedure) Rules 2015 (Vic), r 2.04

***Masters Home Improve Australia Pty Ltd v Aventus Cranbourne Thompsons Road Pty Ltd* 59 VR 80**

[2019] VSC 428
Croft J. 8 Aug 2019.
Supreme Court of Victoria

Landlord and tenant — Lease — Tenant's request to sublet part of leased premises — Landlord's consent withheld — Whether consent unreasonably withheld — Whether landlord entitled to withhold consent on basis of prejudice to landlord's commercial proprietary interests

***Finance & Guarantee Company Pty Ltd v Auswild* 59 VR 288**

[2019] VSC 665
Riordan J. 3 Oct 2019.
Supreme Court of Victoria

Civil procedure — Expert witness — Obligations of expert witnesses — Independence — Non-disclosure by expert of certain matters — Communications between expert and lawyers and potential witnesses — Impact on overarching obligations — Civil Procedure Act 2010 (Vic), s 29

Evidence — Expert evidence — Admissibility — Objection to expert report and joint expert report on grounds of lack of independence, misleading conduct and failure to disclose basis for expert's opinion — Whether inadmissible — Evidence Act 2008 (Vic), ss 79, 135

***Kinchington Estate Pty Ltd v Wodonga City Council* 59 VR 443**

[2019] VSC 745
Quigley J. 18 Nov 2019.
Supreme Court of Victoria

Administrative law — Judicial review — Decisions of municipal council — Nature of council's decisions — Whether decisions made in exercise of statutory power — Whether council acting as a tribunal when decisions made — Meaning of tribunal — Administrative Law Act 1978 (Vic), ss 2, 8(1)

Town and country planning — Planning scheme — Agreement between responsible authority and land owner — Application to amend agreement — Refusal of application — Refusal to furnish reasons — Whether requirement to furnish reasons — Whether rules of natural justice apply — Planning and Environment Act 1987 (Vic), ss 173, 178, 178A

***Carbone v Melton City Council* 60 VR 539**

[2020] VSCA 117

Tate, Kyrou and Niall JJA. 13 May 2020.

Court of Appeal

Practice and procedure — Interest — Statutory interest — Claim for compensation arising from acquisition of land by local council — Compensation paid to land owner before judgment — Non-statutory compensation — Whether land owner entitled to interest on compensation — Whether compensation a ‘debt or sum certain’ — Whether compensation ‘recovered’ in a proceeding — When compensation ‘payable’ — Whether ‘good cause’ ‘shown to the contrary’ — Supreme Court Act 1986 (Vic), s 58

***Leeda Projects Pty Ltd v Zeng* 61 VR 384**

[2020] VSCA 192

Tate, Kaye and McLeish JJA. 31 Jul 2020.

Court of Appeal

Contract — Breach — Damages — Domestic building contract — Failure to complete building works within reasonable time — No intention to reside at or rent property in interim — Loss of use and enjoyment of land — Whether compensable — Measure of damages — Whether measured as commercial rental value of property — Whether measured as wasted expenditure on property during period of delay

Practice and procedure — Appeals — Appeal from Victorian Civil and Administrative Tribunal — Whether remittal required for resolution of issues — Uncontested facts — Considerations of convenience — Victorian Civil and Administrative Tribunal Act 1998 (Vic), s 148

***Elliott v Lindholm* 62 VR 307**

[2020] VSCA 260

McLeish, T Forrest and Weinberg JJA. 2 Oct 2020.

Court of Appeal

Courts and judges — Judge — Bias — Apprehended bias — Recusal application — Refusal to recuse — Statements by Court as to whether legal practitioner had breached overarching obligations — Joinder of legal practitioner as party to proceeding on Court’s own motion — Whether basis for joinder gave rise to apprehended bias — Civil Procedure Act 2010 (Vic), s 29(2)(b)

Legal practitioners — Duty to Court — Obligation of candour — Privilege against self-incrimination — Relationship between principles — Where Court required legal practitioner to give ‘full and frank’ explanation of conduct in affidavit — Whether Court could compel legal practitioner to give evidence — Court’s supervisory jurisdiction — Whether within jurisdiction

***Mandie v Memart Nominees Pty Ltd* 62 VR 528**

[2020] VSCA 281

Tate, Niall and Emerton JJA. 13 Nov 2020.

Court of Appeal

Trusts — Family discretionary trust — Beneficiaries and objects — Disclaimer of interests in trust deed — Disclaimer by special beneficiaries — Impact on rights and interests of disclaiming individuals’ children — Doctrine of acceleration — Whether impact of disclaimer by interest holder the same as death of interest holder for purposes of doctrine

Trusts — Family discretionary trust — Beneficiaries and objects — Trustee’s power of exclusion — Removal of certain family members as general beneficiaries under trust — Whether exercise of power invalid — Whether exclusion beyond power or for improper purpose

Practice and procedure — Pleadings — Amendment — Application for leave to amend during trial — Where issue sought to be pleaded would have been unavoidable at trial — Whether refusal of leave a miscarriage of discretion

***Francis v Powercor Australia Ltd* 63 VR 109**

[2020] VSC 836
Nichols J. 11 Dec 2020.
Supreme Court of Victoria

Practice and procedure — Group proceedings — Settlement — Scheme for distribution of settlement proceeds — Insured members of group — Priority as between group members and insurers — Objection by insurers of group members to proposed scheme — Where settlement by insurer or insured for amount less than full value of claim — Whether plaintiff insured gave bona fide consideration to interest of insurer — Insurance Contracts Act 1984 (Cth), ss 67(1), (3) and (9)

Practice and procedure — Group proceedings — Settlement — Scheme for distribution of settlement proceeds — Manner of distribution — Whether pro rata distribution appropriate — Insured members of group — Whether exception or supplement to statutory priority rules as basis for distribution — Insurance Contracts Act 1984 (Cth), ss 67(1), (3) and (9) — Supreme Court Act 1986 (Vic), s 33V

Insurance — Subrogation — Recovery of money in respect of insured losses — Settlement of group proceedings — Insurers' role in group proceedings — Opt-out of group proceedings not crystallised — Whether right of subrogation exercised — Whether insurer recovered amounts in respect of insured losses — Insurance Contracts Act 1984 (Cth), s 67(2)

Practice and procedure — Group proceeding — Recovery sought on behalf of persons for personal injury, loss or damage to property, or pure economic loss — Settlement of proceedings — Role of representative plaintiffs — Whether settlement constituted recovery by representative plaintiffs on behalf of group members of amounts in respect of group member losses

***LPG Laverton Property No 5 Pty Ltd v Australian Vinyls Corporation Pty Ltd* 63 VR 271**

[2020] VSC 689
Garde J. 22 Oct 2020.
Supreme Court of Victoria

Planning and environment — Environment protection — Clean up notice — Planning and building controls — Whether clean up notice works required a planning permit — Whether works were 'specified in the notice' — Environment Protection Act 1970 (Vic), ss 1A, 1B, 1D, 1K, 4, 53V, 53X and 62A — Environment Protection (General Amendment) Act 1989 (Vic), ss 4(c) and 59 — Wyndham Planning Scheme cls 33.02–4 and 33.03–4

***Sceam Construction Pty Ltd v Clyne* 64 VR 404**

[2021] VSCA 270
Ferguson CJ, Sifris and Walker JJA. 27 Sep 2021.
Court of Appeal

Companies — Winding up — Insolvency — Statutory demand — Application to set aside demand — Whether genuine dispute about existence or amount of debt — Affidavit filed in support of application — 'Graywinter principle' — Whether affidavit capable of 'supporting' application — Whether affidavit identified expressly, or by necessary or reasonably available inference, basis for setting aside demand — Corporations Act 2001 (Cth), ss 459G, 459H

Willis v Crosland 65 VR 1

[2021] VSCA 320

Sifris, Walker JJA and Macaulay AJA. 23 Nov 2021.

Court of Appeal

Contract — Sale of land — Termination by purchaser — Claim by purchaser for return of deposit paid — Express right to terminate by notice contingent on purchaser at time of notice being ‘not then in default’ — Purchaser sought to terminate soon before deadline for performance — Whether purchaser entitled to return of deposit — Whether termination valid and effective — Whether purchaser ‘in default’ — Whether purchaser repudiated contract — Whether repudiation a ‘default’ — Whether purchaser ‘ready, willing and able’ to perform contract — Whether being ‘ready, willing and able’ to perform bore upon ability to terminate pursuant to express provision in contract

Sale of land — Contract — Standard form — Termination — Whether termination valid and effective — Provision in contract allowing termination where purchaser obtained report designating current defect in structure on land as ‘major building defect’ — Report identified ‘major defects’ — Whether report provided proper basis for termination — Whether exact form of wording required in report — Whether existence of ‘major building defect’ ascertainable from substance of report

Break Fast Investments Pty Ltd v Sclavenitis 67 VR 132

[2022] VSC 288

Riordan J. 6 Jun 2022.

Supreme Court of Victoria

Insolvency — Winding up — Liquidator — Powers of liquidator — Company formerly corporate trustee — Trustee removed from office automatically on winding-up — Whether former trustee empowered to sell trust asset — Corporations Act 2001 (Cth), s 477

Trust and trustees — Bare trust — Trustee removed from office on winding-up — Powers of bare trustee — Trustee’s assignment of debt — Whether breach of trust — Whether transfer in breach of trust void and nullity — Trustee’s right of indemnity and exoneration — Whether right of indemnity assignable — Enforcement of debt owing to trust — Assignee of trustee’s right of exoneration — Whether standing to bring enforcement proceeding

Pugwall Pty Ltd v Arthur McKenzie Investments Pty Ltd 68 VR 559

[2022] VSCA 272

Kyrou, Sifris and Kennedy JJA. 9 Dec 2022.

Court of Appeal

Contract — Guarantee — Joint venture agreement between corporations — Agreement containing director’s guarantee — Execution of agreement only by company by director on behalf of company — Whether intention to be bound — Whether director personally liable under guarantee

Guarantee — Agreement containing guarantee — Execution — Agreement signed by director on behalf of company — No separate execution by guarantor — Whether agreement ‘signed by the party to be charged’ — Instruments Act 1958 (Vic), s 126

Mondib Group PL v Moonee Valley Council 71 VR 45

[2021] VSC 722

Niall JA. 5 Nov 2021.

Supreme Court of Victoria

Planning and environment — Permit for development — Amendment — Permit granted for commercial development of dwellings — Proposed amendment to permit to construct residential hotel — Whether proposed amendment lawful — Whether proposed amendment impermissible as a transformation of permitted development — Meaning of ‘amendment’ — Planning and Environment Act 1987 (Vic), ss 3, 72

Administrative law — Tribunals — Summary dismissal — Victorian Civil and Administrative Tribunal Act 1998 (Vic), s 75

***The Uniting Church Property Trust (Vic) v A-G* 71 VR 290**

[2022] VSC 610

Incerti J. 12 Oct 2022.

Supreme Court of Victoria

Trust and trustee — Judicial advice — Charitable trust — Breach of trust — Liability of trustee — Withdrawals of trust capital — Whether trustee liable to restore withdrawn capital — Whether rules of equitable accounting apply to charitable trust — Whether perpetuity an object of a charitable trust — The Uniting Church in Australia Act 1977 (Vic), ss 13(2), 29(1)(b), (3)(c), 35

Trust and trustee — Defaulting trustee — Relief for actual or potential breaches — Whether trustee of charitable trust personally liable for actual or potential breaches of trust — Formulation of relief — Trustee Act 1958 (Vic), s 67