



Magistrates' Court
Victoria

MAGISTRATES CASES 2007

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SUBJECT MATTER

BAIL

- **application for** - applicant to show cause why detention not justified - must show new facts and circumstances - bail granted to co-accused is not a new fact or circumstance: 20/07
- **failure to answer bail** - bail forfeited - application by surety for relief against forfeiture - matters to be considered on such an application - application refused: 10, 39/07

CIVIL PROCEEDINGS

- Application for security for costs** - order made - self-executing order - complaint dismissed pursuant to self-executing order - no power in Court to make self-executing order: 46/07
- Contract to supply wine bottles** - wrong bottles supplied - not suitable for table wine - discussions between parties as to compensation - no enforceable agreement between parties - nature of original agreement to supply - whether express term: 45/07
- Easement** - easement of way - interference with by construction of a gate and fence - order that gate and fence be removed - no error: 22/07
- Equity** - debt assigned to another entity - no notice of assignment given to owner of motor vehicle - whether assignee able to sue to recover debt - unjust enrichment - whether benefit provided: 21/07
- Execution of court order** - judgment debt owing - warrant to seize property issued - property seized - sold whilst subject to sheriff's warrant - sellers guilty of an offence: 44/07
- Hire purchase agreement** - procedure to be followed where Notice of Termination given - hiror to establish value of goods - hirer then has the evidentiary burden of negating the *prima facie* position: 40/07
- Insurance claim** - landlord and tenant - tenant's goods removed by landlord - some goods damaged - magistrate must find that damage caused by malicious act: 13/07
- Landlord and tenant** - rent in arrears - representation by tenant's brother he would use his best endeavours to ensure his brother paid the rent - not a misleading or deceptive representation - person had reasonable grounds for making representation: 41/07
- Principal and agent** - travel agent secured tickets for air travel - prior to travel airline financially collapsed - agent fulfilled terms of the contract - traveller liable to pay: 42/07

CORPORATIONS

- **Company in liquidation** - is entitled to act as a claimant in an interpleader summons: 37A/07

COSTS

- Judgment awarded** - GST claimed - if commercial relationship includes GST then that should be awarded in order - if claim for damages then no award for GST: 45/07
- Offer of Compromise** - offer not accepted - claim dismissed - reasonable not to accept offer - costs awarded on a party/party basis: 05/07
- Summary Criminal proceeding** - charges dismissed - general rule - whether circumstances were an exception to the general rule: 02/07
- Summary Criminal proceeding** - charges dismissed - application for costs - procedure to be followed on application - two steps involved - whether costs reasonably incurred and reasonable in amount - no need for senior counsel to be briefed: 31/07

CRIMINAL LAW

- Accused in custody** - committal proceedings - accused should be granted reasonable access to media necessary to listen to telephone intercepts and the record of interview: 16/07
- Bail** - applicant to show cause why detention not justified - must show new facts and circumstances - bail granted to co-accused is not a new fact or circumstance: 20/07
- Bail** - applicant to show exceptional circumstances - delay of more than 2 years - personal factors - no bail priors - has ties to jurisdiction - bail granted with conditions: 03/07
- Firearms offence** - prohibited person carrying an unregistered firearm - sentence imposed under the *Road Safety Act 1986* does not make a person a prohibited person for the purposes of the *Firearms Act 1996*: 12/07
- Regulatory offence** - child in danger when leaving child care centre - duty on proprietor to ensure adequate supervision of children whilst in the centre - magistrate not in error in finding charge proved: 33/07
- Self defence** - onus on prosecution: 29/07
- Trafficking in a drug of dependence** - found in house occupied by accused - onus on accused - *prima facie* evidence of trafficking: 15/07

EVIDENCE

- evidence not admissible as collateral evidence - may be admissible as a prior inconsistent statement
- magistrate in error in rejecting such evidence: 29/07
- expert evidence as to accuracy of PBT and breath analysing instrument - court may admit results of PBT test: 08/07
- admissibility of oral and written admissions - admissions not tape-recorded - whether accused a suspect - admissions not admissible: 04/07

SUBJECT MATTER

- admissibility of tape-recorded statement - person not a "person in custody" - statement not involuntarily obtained - statement admissible: 09/07
- document used to refresh memory - no time limit as to when such document may be receivable in evidence: 07/07
- sub-poena to produce material as to police surveillance methodology - whether "on the cards" test appropriate - proper test to be applied - telecommunications - whether listening is communicating: 35/07
- sub-poena to produce document - reasons for issuing summons for examination - test to be applied
- application to produce granted - no error: 36/07

EXTRADITION

Application for extradition - if warrant found to be valid, magistrate can either grant bail or remand the respondent in custody - no power in court to decline to make order on the ground of abuse of process: 27A/07

INSURANCE

- Loss of property claim - loss said to be due to a burglary - person later withdrew claim - attempted fraud to attract salutary punishment - imprisonment imposed: 09/07

MOTOR TRAFFIC

- Drink/driving

- **Blood sample taken from driver** - certificate produced - not clear whether sample taken by doctor or someone else - letters 'MCRS' after word 'qualifications' in certificate - in circumstances sufficient for magistrate to admit certificate into evidence: 43/07
- **Breath test** - driver conveyed to police station - requested by another police officer to undergo breath test - finding by magistrate that informant acted excessively at scene - charge dismissed - public policy discretion - balancing of competing interests - magistrate in error: 37/07
- **Breath test** - driver subject to zero blood/alcohol - reading of 0.175BAC - not necessary to prove that person subject to zero blood alcohol limit: 01/07
- **Preliminary Breath test** - person found driving - required to undergo PBT not made at a testing station - power validly exercised - evidence of compliance not an element of an offence under s49(1)(f) of the *Road Safety Act* 1986: 19/07
- **Disqualification of driver licence** - person committed robbery of a motor vehicle then drove it away - "in connection with the driving of a motor vehicle" - charge proved - length of disqualification period: 34/07
- **Overloading** - heavy haulage vehicles - proof that defendant was the registered operator of a prime mover - proof of ownership of semi-trailer attached not an element of the offence - evidence of weighbridge tickets admissible - operator properly convicted: 30/07

NATURAL JUSTICE

Audi alteram partem rule - counsel to be given opportunity to address issues or make submissions raised in a pre-sentence report - failure to do so is a denial of procedural fairness: 14/07

Disqualification from hearing case - judge need not withdraw on rescission of bail application where same judge made forfeiture of bail order: 39/07

Unrepresented litigant in committal proceedings - no denial of natural justice of person legally unrepresented: 16/07

Unrepresented litigant - to be given due assistance by the court: 38/07

OCCUPATIONAL HEALTH AND SAFETY

Instrument of Authorisation - executed by person at WorkCover Authority - whether instrument validly executed: 06/07

PRACTICE AND PROCEDURE

Access by accused in custody - involves having available at reasonable times the media necessary to listen to telephone intercepts and the record of interview: 16/07

Adjournment of trial application - Counsel of choice - Charter of Human Rights - Charter has no relevance to application - application refused: 11/07

Application to be again licensed - granted with condition of interlock device - matters to be taken into account when determining application: 27/07

Application to film sentencing proceedings - Court has wide power to regulate its proceedings - where only short extracts of sentencing to be reported not appropriate to permit filming: 26/07

Application to re-open prosecution case - operator ordered from court - not aware that proof of operator's authorisation in issue - application to re-open granted - no error: 32/07

Evidence - undisputed - not acted upon by magistrate - magistrate in error - reasons for decision - must be adequate: 25/07

Execution of court order - warrant to seize property issued - property seized - sold whilst subject to sheriff's

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Judicial notice - initials MCRS in certificate - mean Member of the Royal College of Surgeons: 43/07

Legal aid - whilst preferable for accused to be legally represented court cannot review a decision by Legal Aid Victoria: 16/07

Pre-sentence report - copy to be provided by Court to accused's legal representatives - legal representatives may challenge any finding made in the report: 14/07

Prosecution for breach of Act - case dealt with magistrate by reformulating the prosecution case - not permitted - magistrate in error: 24/07

Reasons for decision - no reasons given - reasons obvious from the surrounding circumstances - no error: 46/07

Remarks made by sentencing judge - court not to treat defence conduct as an aggravating factor: 28/07

Requirement to give reasons for decision - reasons must disclose how magistrate came to the ultimate conclusion: 13/07

Self-represented litigant - duty of court to ensure a fair trial - the assistance to be given to self-represented litigant depends on the litigant and the nature of the case: 38/07

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Disqualification of driver licence period - in the circumstances not to extend beyond defendant's earliest release date: 34/07

False insurance claim - such contracts are of the ultimate good faith - such attempted frauds to attract curial disapproval - immediate imprisonment partly suspended imposed: 09/07

Obtaining financial advantage by deception - heartless crimes - victim an aged pensioner - 32 months' imprisonment appropriate: 28/07

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Andrew Shelton & Co Pty Ltd v Alpha Health Care Ltd [2002] VSC 248, referred to: 21/07

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[Note: Words and phrases judicially considered are in inverted commas. Ed]

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