



Magistrates' Court
Victoria

MAGISTRATES CASES 2004 INDEX

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SUBJECT MATTER

CIVIL PROCEEDINGS

- Bailment** - goods left by owner with another person - boxes included memorabilia and other personal belongings - over a period of time goods became damaged - eventually disposed of as rubbish - claim by owner for return of goods or damages - claim dismissed - whether court in error: 36/04
- Bailment** - photographs supplied for display purposes - when no longer required to be donated to museum or public gallery - claim by photographer for return of photographs - claim for damages - whether magistrate in error in awarding damages for loss of photographs: 41/04
- Claim by legal practitioner for remuneration** - terms of retainer - whether legal fees to be paid by client or third party - finding by magistrate that claim statute barred - finding that practitioner not entitled to fees - magistrate in error: 8/04
- Claim for damages for loss caused by seizure of engine** - repairer's services not fit for purposes sought by truck owner - magistrate not in error in making order for amount claimed: 1/04
- Claim by body corporate for payment by member of fees and a special levy** - as insurer made good the costs of repairs, magistrate in error in ordering member to pay special levy - claim for quarterly service contributions successful - magistrate not in error in awarding costs to body corporate: 13/04
- Contract** - claim for breach of - accountants asked to procure loan for estate agents - loan obtained within reasonable time - magistrate not in error in awarding fees to accountants: 02/04
- Contract** - sale of goods - goods delivered - burden of proving goods paid for on the debtor: 39/04
- Contract of sale of property** - Estate agent's commission - agreement to pay commission on "completion of sale" - sale not completed - vendor not liable to pay agent's professional fees: 18/04
- Costs** - legal fees - terms of retainer - whether legal fees to be paid by client or third party - finding by magistrate that claim statute barred - finding that practitioner not entitled to fees - magistrate in error: 8/04
- Credit Act** - debtor in default under contract - notice of default given - incorrect amount claimed in notice - notice defective - magistrate not in error in dismissing claim based on notice: 26/04
- Estate Agent** - Estate agent's commission - agreement to pay commission on "completion of sale" - sale not completed - vendor not liable to pay agent's professional fees: 18/04
- Insurance** - jewellers insurance policy - theft of jewellery from traveller - jewellery left unattended in shop in shopping centre - jewellery in transit at time of theft - condition in policy that jewellery not be left unattended - magistrate in error in making order that insurer indemnify jeweller: 7/04
- Principal and agent** - Goods sold and delivered - order made against agent and principals - whether court in error: 40/04

COSTS

- Claim by legal practitioner for remuneration** - terms of retainer - whether legal fees to be paid by client or third party - finding by magistrate that claim statute barred - finding that practitioner not entitled to fees - magistrate in error: 8/04
- Costs** - criminal proceeding dismissed - application for costs by defendants - factors to consider when such an application is made - defendants took part in reprehensible conduct and chose to decline to assist police in a way that might have avoided any charges being laid - magistrate not in error in refusing application for costs: 19/04
- Costs** - criminal proceeding dismissed upon no case submission - defendants failed to produce business records to police - defendants refused to answer police questions - defendants did not bring prosecution upon themselves - their conduct after offence not reprehensible - magistrate in error in refusing costs: 11/04
- Costs** - claim by body corporate - essentially successful on claim against member of body corporate - entitled to an award of costs: 13/04

CRIMINAL LAW

- Burglary** - classification of burglary - one involves breaking and entering with intent to steal - the other involves breaking and entering with intent to assault or cause property damage - magistrate purported to deal with charge of aggravated burglary with intent to assault - magistrate in error: 21/04
- Dangerous dogs** - guard dogs owned by company at non-residential premises - dogs escaped and attacked other dogs - company charged with offences - found guilty - whether court in error: 37/04
- Firearms** - owner of firearm found guilty of offences - notice given to owner to immediately surrender firearm to police - firearm not surrendered - charged with offence - whether court in error in finding charge proved: 35/04
- Possession of proceeds of crime** - items of property found by police officers in garage - reasonably suspected of being proceeds of crime - charge dismissed - magistrate not satisfied that property was in defendant's possession when suspicion formed - magistrate in error: 29/04
- Workers Compensation claim** - defendant claimed payments whilst employed - signed declaration to effect that he was not engaged in any form of employment - charges dismissed by magistrate - magistrate in error: 22/04

MOTOR TRAFFIC

- Drink/driving

- **Drink/driving offence** - sentencing of offender - court cannot sentence offender to a term

SUBJECT MATTER

- of imprisonment and impose a fine: 12/04
- **Drink/driving offence** - application to be again licensed - applicant had relevant prior convictions - applicant convicted of second offence before convicted of first - applicant had two relevant priors at the time of application - magistrate not required to impose 3-yr alcohol interlock condition: 27/04
- **Drink/driving offence** - sentencing - person with relevant prior conviction - reading of .061%BAC - magistrate in error in declining to cancel offender's driver licence: 33/04
- **Driver intercepted outside his vehicle** - requested by police officer to accompany officer to police station for a breath test - driver refused - charge dismissed - magistrate in error: 16/04
- **Driver requested to accompany police officer for breath test** - subsequent requirement made by different police officer - whether same police officer must make each requirement: 3/04
- **Driver made three attempts to provide sample of breath to breath analysing instrument** - driver requested to undergo a blood test - refusal by driver - charged with refusal - charge dismissed - evidence adduced insufficient to establish beyond reasonable doubt that police officer believed that the instrument was incapable of measuring driver's blood alcohol concentration: 04/04
- **Driver refused breath test** - driver taken to police station - breath analysing instrument present when driver asked to take test but instrument not immediately available to operate - driver convicted - no error: 23/04
- **Driver refused to undergo PBT** - finding by magistrate that driver not aware of consequences of refusal - charge dismissed - magistrate in error: 28/04
- **Driver taken to booze bus** - driver told he would be required to go into the booze bus after certain checks had been carried out - driver left scene - whether driver given reasonably sufficient information to know what was required of him - charge proved - magistrate not in error: 9/04
- **Expert evidence** - not admissible to show that at time of breath test BAC was lower than the result recorded by the breath analysing instrument: 38/04
- **Notice given to police informant** - request for person to attend court - facts and matters in issue not specified in notice - notice declared invalid - magistrate not in error: 30/04

NATURAL JUSTICE

Application for an adjournment - applicant/defendant not in good health - sought adjournment until health improved - application refused on ground that there was no confidence that the matter would ever be heard - magistrate in error: 15/04

Application for an adjournment - young applicant with no priors not legally represented - wished to contest charges - fresh charge given to applicant on day of hearing - applicant decided to plead guilty - charges dealt with - whether magistrate in error in hearing charges - whether charges should have been adjourned for defendant to seek further legal advice: 32/04

Apprehended bias by magistrate - refusal of adjournment and that party guilty of a crime on the basis of unidentified extraneous material - no opportunity given to party to read or answer adverse material referred to by magistrate - magistrate's approach gave rise to a reasonable apprehension of bias - magistrate's conduct did not accord with the requirements of natural justice - party's right to object not waived: 20/04

Suppression Order made - publication of witnesses' names suppressed - party's legal practitioner not given opportunity to peruse relevant document - party not accorded natural justice - order quashed: 6/04

OCCUPATIONAL HEALTH AND SAFETY

Employee injured in fall - employer subsequently convicted of offences - application by employee for compensation for pain and suffering - court to take into account in determining quantum the contributory negligence (if any) of the employee - magistrate in error in finding otherwise: 25/04

PRACTICE AND PROCEDURE

Application for an adjournment - applicant/defendant not in good health - sought adjournment until health improved - application refused on ground that there was no confidence that the matter would ever be heard - magistrate in error: 15/04

Application to be again licensed - applicant had relevant prior convictions - applicant convicted of second offence before convicted of first - applicant had two relevant priors at the time of application - magistrate not required to impose 3-yr alcohol interlock condition: 27/04

Burglary - classification of burglary - one involves breaking and entering with intent to steal - the other involves breaking and entering with intent to assault or cause property damage - magistrate purported to deal with charge of aggravated burglary with intent to assault - magistrate in error: 21/04

Committal Proceedings - suppression order made - publication of witnesses' names suppressed - order made so as to not prejudice the administration of justice - no error made: 6/04

Defect in charge - charge referred to repealed Regulations - whether charge void *ab initio* - charge amended

SUBJECT MATTER

by magistrate - hearing *ex parte* - defendant not notified of amendment - magistrate in error in finding charge proved: 31/04

Demerit points - traffic infringement notices - demerit points accumulated - appeal to Magistrates' Court against proposal to suspend driver licence - appeals allowed by court - whether court in error: 34/04

Diversion Program - No formal admissions made by offender - prerequisites for order not considered by magistrate - matter adjourned - finding that matter not adjourned for offender to undertake diversion program: 5/04

Drink/driving - Notice given to police informant - request for person to attend court - facts and matters in issue not specified in notice - notice declared invalid - magistrate not in error: 30/04

Open court principle - making of suppression order in committal proceedings - right of public to know not as significant in such proceedings - magistrate not in error in making order: 6/04

Validity of summons - summons signed but no designation of officer issuing summons - no statutory or regulatory requirement that designation be set out in the summons - magistrate in error in dismissing charge: 14/04

Traffic Infringement notice - form of notice not clear on its face as to certain things - relevant address not included on one page - finding by magistrate that notice was invalid - charge dismissed - magistrate in error: 17/04

Suppression Order made - application made to lift suppression order - application to be determined whether it is necessary for order to continue - magistrate refused application on ground that not in the interests of justice to lift order - magistrate applied wrong test: 24/04

SENTENCING

Diversion Program - No formal admissions made by offender - prerequisites for order not considered by magistrate - matter adjourned - finding that matter not adjourned for offender to undertake diversion program: 5/04

Drink/driving offence - court cannot sentence offender to a term of imprisonment and impose a fine: 12/04

Drink/driving offence - sentencing - person with relevant prior conviction - reading of .061%BAC - magistrate in error in declining to cancel offender's driver licence: 33/04

TABLE OF CASES REFERRED TO, CONSIDERED, APPLIED etc.

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 Woolworths (Victoria) Ltd v Marsh, unrep, VSC, 12/6/86: referred to: 31/04
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**WORDS AND PHRASES,
CATCHWORDS, CONCEPTS
etc.**

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

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