



Magistrates' Court
Victoria

MAGISTRATES CASES 2006

INDEX

TABLE OF CASES REPORTED IN 2006

| | Case No. |
|---|-----------------|
| ABC Developmental Learning Centres Pty Ltd v Wallace (Bell J) (2006) 161 A Crim R 250 | 14/06 |
| Antoun v The Queen (HC) (2006) 159 A Crim R 513 | 05/06 |
| Astvilla Pty Ltd v Director of Consumer Affairs (Bell J) | 28/06 |
| D'Alo v Nolan & Anor (Osborn J) | 36/06 |
| DeJong v State of Victoria (Bongiorno J) | 25/06 |
| DPP v Alliston (Osborn J) | 31/06 |
| DPP v Azzopardi (Bell J) (2006) 159 A Crim R 543 | 03/06 |
| DPP v Bleakley (Smith J) | 04/06 |
| DPP v Colbey (Redlich J) | 37/06 |
| DPP v Cummings (Kellam J) | 35/06 |
| DPP v Cyberman (Williams J) (2006) 162 A Crim R 564 | 24/06 |
| DPP v Hogg (Williams J) (2006) 162 A Crim R 564 | 24/06 |
| DPP v Luff (Osborn J) | 15/06 |
| DPP v Neisser (Hargrave J) | 18/06 |
| DPP v Tien Duc Vu (Gillard J) | 26/06 |
| DPP v Tien Duc Vu (CA - Chernov, Nettle and Neave JJ A) | 34/06 |
| DPP v Woodward (Cavanough J) | 27/06 |
| Gandy & Anor v State of Victoria (Bongiorno J) | 30/06 |
| Hannon v Norman (Gillard J) | 16/06 |
| Hardy Wine Co Ltd v Janevruss Pty Ltd and Ors (CA - Callaway, Eames and Ashley JJ A) | 10/06 |
| Insurance Manufacturers of Aust Pty Ltd v King and Anor (Gillard J) | 23/06 |
| Insurance Manufacturers v Heron (Gillard J) | 01/06 |
| Kuek v Devflan Pty Ltd (CA - Warren CJ, Eames JA and Bell AJA) | 32/06 |
| Maitland v Swinden (Hansen J) | 40/06 |
| Melbourne City Council v Eurodynamics Pty Ltd (Smith J) | 07/06 |
| Murdoch v Smith (Cavanough J) | 41/06 |
| Quiroga v Credit Corp Services Pty Ltd (Hansen J) | 29/06 |
| R v Hunter (CA - Maxwell P, Buchanan and Redlich JJ A) | 22/06 |
| R v Mokbel & Mokbel (Gillard J) | 13/06 |
| R v Mokbel (Application by surety) (Gillard J) | 20/06 |
| R v Pidoto & O'Dea (CA - Maxwell P, Callaway, Buchanan, Vincent and Eames JJ A) | 33/06 |
| R v Steggall (CA - Buchanan, Eames and Nettle JJ A) (2005) 157 A Crim R 402 | 02/06 |
| R v Waters (Osborn J) (2006) 163 A Crim R 312 | 12/06 |
| R v Weitering (CA - Buchanan, Vincent and Eames JJ A) | 11/06 |
| R v Yusuf (No 2) (CA - Chernov, Vincent and Redlich JJ A) | 21/06 |
| Rasdon Group Pty Ltd v Lemas Nominees Pty Ltd (Harper J) | 06/06 |
| Roumeliotis v Webb (Williams J) | 08/06 |
| Sawyer v Forai (Hansen J) | 17/06 |
| Slaveski v Economakis (Hargrave J) | 19/06 |
| T&G Industries Pty Ltd & Anor v Randjelovic (Osborn J) | 38/06 |
| Tenth Vandy Pty Ltd v Natwest Markets Australia Pty Ltd (Hargrave J) | 09/06 |
| Wilson v County Court & Anor (Cavanough J) | 30/06 |

SUBJECT MATTER

ACCIDENT COMPENSATION

Claim for compensation by process worker - worker sustained chronic pain syndrome - claimant sent a Return to Work plan - worker advised by doctor not to return to work - magistrate not in error in making an order for weekly payments: 38/06

CIVIL PROCEEDINGS

Agency - principal and agent - alleged factoring arrangement - failure to disclose any agency - no evidence of relationship between contracting parties - no agency: 06/06

Contract - agreements to purchase wine grapes for 10-yr period - inconvenience of provisions agreed to by parties - finding by magistrate that buyer bound by terms of agreement - no error: 10/06

Credit card debt - assigned by bank to a debt collector - debt sale agreement - debts assigned specified in annexure not produced to court - magistrate not in error in finding that bank had assigned debts: 29/06

Defamation - drug testing station set up with media representatives present - person tested - positive test - later test not positive - no charges laid - "publication" - consideration of aspects of the law of defamation: 25/06

Insurance - motor vehicle damages - claim for indemnity - omission to disclose relevant information to insurer claim not fraudulent - insured's claim upheld - no error by magistrate: 01/06

Principal and agent - alleged factoring arrangement - failure to disclose any agency - no evidence of relationship between contracting parties - no agency: 06/06

Proceeding struck out with right of reinstatement - first application to reinstate dismissed - second application not an abuse of process - matters to take into consideration when hearing second or subsequent application: 09/06

Tort - claim for damages against State of Victoria when police officers evicted the plaintiffs from their premises - actionable duty of care does not exist - claim dismissed: 39/06

Trade and commerce - sale of house and land - property shown to inexperienced buyer - representations made by seller when seller did not own property - later sold to buyer at a substantial profit - matter referred to Director of Consumer Affairs - Magistrate not in error in finding seller had engaged in misleading or deceptive conduct: 28/06

Work and Labour done - alleged negligence in carrying out repairs to a boat engine - duty of care breached - contributory negligence - magistrate in error in allowing counterclaim as equalling amount of claim: 08/06

Work and labour done - finding by magistrate that frayed timing belt not the cause of engine failure - appeal dismissed - magistrate in error in finding that there was no contractual relationship between mechanic and his company - judge in error in awarding indemnity costs against unsuccessful party: 32/06

CRIMINAL LAW

Aggravated burglary - accused armed with offensive weapon namely a pocket knife - magistrate correct in finding that pocket knife was not an offensive weapon in the circumstances: 27/06

Bail - forfeiture of - order that surety pay amount undertaken - surety to be given notice before matter of forfeiture considered - surety may contest or make submissions at hearing - court to determine period in default of payment of undertaking: 13/06

Child leaving child care centre - exposed to potential harm - child not properly supervised or protected - company charged with offences - company liable: 14/06

Cultivation of cannabis - plants weighing more than 30kgs - commercial quantity "25.0kg or 100 plants" - meaning of - commercial quantity is either 25 kgs or 100 plants: 11/06

Evidence - admissibility of record of interview - matters to be considered when objection taken to admission of record of interview: 12/06

Evidence - Company employee approached by management - no caution given before interview - magistrate not in error in excluding evidence of managers and police informant: 03/06

Rape charge - flight - consciousness of guilt - matters to take into account when deciding such issues: 21/06

EVIDENCE

- admissibility of record of interview - matters to be considered when objection taken to admission of record of interview: 12/06

- Company employee approached by management - interviewed - no caution given before interview - magistrate not in error in excluding evidence of managers and police informant: 03/06

- Rape charge - flight - consciousness of guilt - matters to take into account when deciding such issues: 21/06

- "Without Prejudice" privilege - letter containing request for payment by instalments marked "without prejudice" - proceedings concluded - letter not privileged from production in proceedings to pay debt by instalments: 19/06

INSURANCE

- Motor vehicle damage claim - omission by insured to disclose relevant information - whether omission induced false belief in insurer - claim not made fraudulently - insured's claim upheld: 01/06

SUBJECT MATTER

MOTOR TRAFFIC

- Drink/driving

- **Accident occurred** - refusal to undergo PBT - belief by police officer that driver involved in an accident - prosecution not required to prove belief beyond reasonable doubt - magistrate correct in finding charge proved: 17/06
- **Blood sample taken by doctor at hospital** - when driver released did not have sample in his possession - doctor required by regulations to give sample to driver - magistrate found "evidence to the contrary" and dismissed charge - magistrate in error: 35/06
- **Blood sample taken by doctor** - container of blood not given to police officer - placed by doctor in blood safe at hospital - sample later collected and taken for analysis - magistrate not satisfied with integrity of sample - charge dismissed - no error - strict compliance with statutory provisions required: 37/06
- **Breath test** - reference in certificate to "0.010 grams of alcohol in 210 litres of breath" - reference in Act to "grams per 210 litres of exhaled air" - difference immaterial: 04/06
- **Breath test** - evidence given by operator not familiar with regulations - magistrate to properly consider the defence under s49(4) of *Road Safety Act* 1986 - magistrate in error in dismissing charge: 15/06
- **breath test** - taken at road block - no lights or signs indicating that a preliminary breath testing station had been set up - magistrate not in error in finding charges proved: 40/06
- **Breath test taken** - driver notified of result - given caution - "No comment" to questions - driver later convicted - court took into account fact that driver had not raised defence at time - court in error - accused's silence after caution not to be used against accused: 30/06
- **Brief of evidence procedure adopted** - matter proceeded *ex parte* - brief not tendered in evidence - no proof that operator authorised or that PBT had been conducted using a prescribed device - magistrate in error in finding charge proved: 16/06
- **Refusal to undergo PBT** - no evidence called that device used was a prescribed device - magistrate in error in dismissing charge: 31/06

- **Parking Infringement** - owner onus - notice not complied with - statutory declaration by company to effect that it was not the actual driver - charge and summons issued - corporation cannot be in charge of vehicle - magistrate in error in dismissing charge: 07/06

NATURAL JUSTICE

- Bias** - alleged perceived bias - test to be applied in determining whether judicial officer is disqualified by reason of the appearance of bias - objective test: 20/06

PRACTICE AND PROCEDURE

- Amendment of pleadings** - general rule that pleadings can be amended in order to determine the real question in dispute between parties: 23/06
- Application under Confiscation Act 1997** - as a general rule notice must be given to any person who may have an interest in the property: 26, 34/06
- Charge and summons** - issued but not filed with Registrar within 7 days - proceeding commenced - later struck out - magistrate in error in refusing an application for reinstatement: 24/06
- Charge and summons** - not issued within 7 days of signing charge-sheet - no proceeding commenced - charge struck out - magistrate in error in refusing application for reinstatement: 24/06
- Charge and summons** - charges filed with Registrar - defendant attended at Melbourne Magistrates' Court - case not listed - adjourned same day by Registrar at Broadmeadows - summons did not lapse - capable of reactivation by administrative intervention: 41/06
- Forfeiture of bail** - order that surety pay amount undertaken - surety to be given notice before matter of forfeiture considered - surety may contest or make submissions at hearing - court to determine period in default of payment of undertaking: 13/06
- No case submission** - principles governing a 'no case' submission: 05/06
- Proceeding struck out with right of reinstatement** - first application to reinstate dismissed - second application not an abuse of process - matters to take into consideration when hearing second or subsequent application: 09/06

SENTENCING

- Drug offenders** - harmfulness of the drug trafficked is irrelevant to the sentencing exercise - sentencer not to evaluate the relative harmfulness of any particular drug: 33/06
- Offences committed whilst on parole** - sentence to be served cumulatively unless exceptional circumstances exist - consideration of factors said to amount to "exceptional circumstances" - totality principle: 22/06
- Period spent in custody** - period wasted - may be generally taken into account as part of wide sentencing discretion: p27/06
- Suspended sentence** - breached - "exceptional circumstances" required if sentence is not restored - no exceptional circumstances: 02/06

TABLE OF CASES REFERRED TO, CONSIDERED, APPLIED, etc.

STATUTORY INTERPRETATION

Commercial quantity of cannabis - "25.0kg or 100 plants" - a commercial quantity is either 25 kilograms or 100 plants: 11/06

Publication of book - authored by police officer - containing confidential information - published by book publisher - court not in error in finding that author published confidential information: 36/06

Sex Offenders Registration - Act does not apply to all persons who commit sexual offences - where person was undergoing a wholly suspended sentence for a registrable offence before 1 October 2004 that person was not an existing controlled registrable offender: 18/06

TABLE OF CASES REFERRED TO, CONSIDERED, APPLIED etc.

ACCC v CG Berbatis Holdings Pty Ltd (2003) 214 CLR 51, referred to: 28/06

ACCC v McCaskey (2000) 104 FCR 8, referred to: 28/06

Antoun v The Queen [2006] 80 ALJR 497, referred to: 20/06

Arktos Pty Ltd v Idyllic Nominees Pty Ltd [2004] FCAFC 119 (10 May 2004), referred to: 28/06

Arms v Houghton [2006] FCFCA 46, referred to: 28/06

Barrett v Wearne (1994) 18 MVR 331, referred to: 15/06

Bazeley v O'Halloran (1994) 20 MVR 268, cited: 41/06

Bessell (1997) Tas SC, 29 August 1997, referred to: 03/06

Bogdanovski v Bogdanovski [1989] VR 897, referred to: 31/06

Briginshaw v Briginshaw (1930) 60 CLR 336, referred to: 01/06

Britton v The Royal Insurance Co (1866) 4 F and F 905, referred to: 01/06

Browne v Dunn (1893) 6 R 67, referred to: 35/06

Bunting v Venville [1980] VR 633, referred to: 09/06

Chamberlain v R (No 2) (1984) 153 CLR 521, referred to: 12/06

Charles v Koetsier (1994) 20 MVR 381, referred to: 30/06

Chisholm v Mathews (1992) 16 MVR 447, referred to: 31/06

Cleary v Australian Co-Operative Foods Ltd (1999) 32 ACSR 701, referred to: 28/06

Connelly v DPP (1964) AC 1254, cited: 41/06

Crisafio v The Queen (2003) 141 A Crim R 98, applied: 21/06

DA Christie Pty Ltd v Baker [1996] 2 VR 582, considered: 09/06

Daniel Wong v Citibank Ltd [2004] NSWCA 396, referred to: 28/06

Derry v Peek (1889) 14 App Cas 337, referred to: 01/06

Dey v Victorian Railways Commissioners (1949) 78 CLR 62, applied: 25, 39/06

Dietrich v R (1992) 177 CLR 292, referred to: 35/06

Di Natale v Kelly [2006] NSWCCA 201, cited: 41/06

Doney v The Queen (1990) 171 CLR 207, followed: 05/06

DPP v Bodoulouh (2003) 144 A Crim R 37, referred to: 17/06

DPP v Butay [2001] VSC 346 at [3], noted: 30/06

DPP v Diamond [2004] VSC 35, referred to: 41/06

DPP v Foster (1999) 2 VR 643, referred to: 16, 31, 37/06

DPP v Mitchell (2002) 37 MVR 142, referred to: 17/06

DPP v Moore (2003) 6 VR 430; (2004) 39 MVR 323, applied: 03, 24, 35/06

DPP v Newman [1999] 1 VR 715, considered: 02/06

DPP v Sabransky [2002] VSC 143, referred to: 24, 41/06

DPP v Webb [1993] 2 VR 403, referred to: 16, 31/06

DPP Reference No 1 of 1996 [1998] 3 VR 352, referred to: 14/06

DPP Reference No 2 of 2001 (2000) 2 VR 503, referred to: 16/06

Edwards v The Queen (1993) 178 CLR 193, referred to: 21/06

Entwills Pty Ltd v National and General Insurance Co Ltd (1991) 6 ANZ Ins Cases 61-059, referred to: 01/06

Field v Commissioner of Railways (NSW) (1957) 99 CLR 285, referred to: 18/06

Fire and All Risks Insurance Co v Powell [1966] VR 513, referred to: 01/06

Flaherty v DPP [2003] VSC 234, followed: 30/06

Flynn v DPP [1998] 1 VR 322, considered: 30/06

Furze v Nixon (2000) 2 VR 503, referred to: 15, 16/06

Gahan v Frahm [1999] VSC 410, referred to: 41/06

George v Rockett (1990) 170 CLR 104, applied: 17/06

Glennon v The Queen (1994) 179 CLR 1, applied: 30/06

Global Realty Development Corp v Dominion Wines Ltd [2005] VSC 474, referred to: 09/06

Glough v Leahy (1905) 2 CLR 139, referred to: 03/06

Grassby v R (1989) 168 CLR 1, cited: 41/06

Gregory v Philip Morris (1988) 80 ALR 455, referred to: 18/06

Griffiths v Boral Resources (Qld) Pty Ltd [1988] FCAFC 149, referred to: 41/06

Gunns Ltd v Marr & Ors [2005] VSC 251, distinguished: 25/06

Guss v Magistrates' Court of Victoria [1998] 2 VR 113; MC22/97: not followed: 09/06

Haines v Roberts [1953] 1 All ER 344, referred to: 07/06

Hamilton v Whitehead (1988) 166 CLR 121, referred to: 28/06

Hardess v Beaumont [1953] VLR 315, followed: 35/06

Hardy Wine Co v Janevruss Pty Ltd & Ors, VSC, unrep, Hansen J, 4/3/06, affirmed: 10/06

Harrison v Mansfield [1953] VLR 399, applied: 15/06

TABLE OF CASES REFERRED TO, CONSIDERED, APPLIED, etc.

Haw Tua Tau v Public Prosecutor [1982] AC 136, considered: 05/06
 Hazeldene's Chicken Farm Pty Ltd v Victorian WorkCover Authority [2005] 298, followed: 32/06
 Hewitt v Harms (1989) 10 MVR 63, referred to: 31/06
 Hill v Chief Constable of West Yorkshire [1989] AC 53, applied: 39/06
 Hornal v Neuberger Products Ltd [1957] 1 QB 247, referred to: 01/06
 Hurnam v State of Mauritius [2006] 1 WLR 857, referred to: 13/06
 Impagnatiello v Campbell MC27/03; (2003) 6 VR 416, referred to: 04/06
 Ingram v Ingram (1938) 38 SR (NSW) 407, referred to: 13/06
 In re Peters [1988] QB 871, referred to: 26/06
 Intrac (Sales) Pty Ltd v Riverside Plumbing & Gas Fitting Pty Ltd (1997) ATPR 41-572, referred to: 28/06
 Jago v District Court (NSW) (1989) 169 CLR 23, cited: 41/06
 Jennings v Crown Prosecution Service (2006) 1 WLR 182, referred to: 26/06
 John G Glass Real Estate Pty Ltd v Karawi Constructions Pty Ltd (1993) ATPR 41-249, referred to: 28/06
 Johnson v Johnson (2000) 201 CLR 48, applied: 20/06
 Kingstone Tyre Agency Pty Ltd v Blackmore (1970) VR 625, cited: 41/06
 Kos v Johnston (1990) 11 MVR 471, referred to: 35/06
 Lauriana Pty Ltd v Corfield Food Warehouse Pty Ltd, unrep., WA Sup Ct, 28/4/1995, referred to: 28/06
 Liberato v The Queen (1985) 159 CLR 507, applied: 21/06
 Linework Ltd v Department of Labour [2001] 2 NZLR 639, referred to: 14/06
 McConkey v McConkey [1960] VR 295, applied: 15/06
 McDermott v The King (1948) 76 CLR 501, referred to: 12/06
 McGee; xp McGee v McKeever [1995] 1 Qd R 623, followed: 01/05
 McKenzie v Commonwealth of Australia [2001] VSC 361, applied: 23/06
 McNicholas Construction Co Ltd v Customs and Excise Commissioners [2000] STC 553, referred to: 14/06
 McPherson v County Court of Victoria [2003] VSC 105, distinguished: 37/06
 Mack v Lenton (1993) 32 NSWLR 259, referred to: 29/06
 Maks v Maks (1986) 6 NSWLR 34, referred to: 29/06
 Marcusson v Southern Shipping Co [1962] ALR 758, referred to: 13/06
 Masquerade Music Ltd v Springsteen (2001) 51 IPR 650, referred to: 29/06
 Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500, applied: 14/06
 NAB v Walter [2004] VSC 26, followed: 28/06
 National Parks and Wildlife Service v Pierson (2002) 55 NSWLR 315, followed: 09/06
 Navarolli v DPP [2005] VSCA 323, applied: 26/06, considered: 33/06
 Nescor Industries Group Pty Ltd v Miba Pty Ltd (1997) 150 ALR 633, referred to: 28/06
 Nitz v Evans (1993) 19 MVR 55, referred to: 41/06
 Nominal Defendant v Manning (2000) 50 NSWLR 139, followed: 09/06
 Norton v Royal Fire and Life Assurance Co(1885) 14 App Cas 337, referred to: 01/06
 Ogden Industries Pty Ltd v Lucas[1970] AC 113, referred to: 07/06
 Onus v Sealey [2004] VSC 396, cited: 41/06
 O'Sullivan v Long [1920] VLR 182, referred to: 13/06
 Owens v Stevens, unrep, Hedigan J, VSC, 3/5/1991: approved: 02/06
 Perre v Apand Pty Ltd: applied: 39/06
 Petty v The Queen (1991) 173 CLR 95, applied: 30/06
 Pfizner v R (1996) 85 A Crim R 120, referred to: 12/06
 Philip Morris Ltd v A-G for Victoria & Lindsey [2006] VSCA 21, referred to: 09/06
 Phillips v Chapman(1921) 7 LI Rep 139, referred to: 01/06
 Platz v Barmby [2002] VSC 531, referred to: 41/06
 Plenty v Dillon (1991) 171 CLR 635, applied: 41/06
 Plomp v R (1963) 110 CLR 234, applied: 12/06
 Portelli v Seltsam Ltd [1988] VR 337, referred to: 41/06
 Pricom Pty Ltd v Sgarioto(1994) ATPR 46-135, referred to: 28/06
 Project Blue Sky Inc v ABA (1998) 194 CLR 355, referred to: 13/06, applied: 37/06
 Public Transport Commission (NSW) v J Murray Moore (NSW) Pty Ltd (1975) 132 CLR 336, referred to: 07/06
 Queensland v JL Holdings Pty Ltd (1997) 189 CLR 146, referred to: 23/06
 R v Baker [1971] VR 717, referred to: 13/06
 R v Clarke [2004] VSC 11, referred to: 12/06
 R v D'Orta-Ekenaike [1998] 2 VR 140, applied: 36/06
 R v Favata [2004] VSC 11, referred to: 12/06
 R v Kolb & Adams VCA, 14/12/1979: referred to: 27/06
 R v Lee (1950) 82 CLR 133, applied: 03/06
 R v Oates [1979] Tas R 203, applied: 03/06
 R v Marlow JJ ex p. O'Sullivan [1984] referred to: 13/06
 R v McGowan [1984] VR 1000, applied: 24, 41/06
 R v Nelson Group Services (Maintenance) Ltd [1998] 4 All ER 331, distinguished: 14/06
 R v Nguyen [1997] 1 VR 551, referred to: 27/06
 R v Orphanides (2002) 130 A Crim R 403, referred to: 21/06
 R v Parker (1990) 19 NSWLR 177, applied: 12/06
 R v Peirce (1992) 1 VR 273, referred to: 12/06
 R v Pope (2000) 112 A Crim R 588, referred to: 27/06
 R v Southampton Justices ex p Heward-Mills [1983] 1 WLR 56, referred to: 13/06

TABLE OF CASES REFERRED TO, CONSIDERED, APPLIED, etc.

R v Starecki (1960) VR 141, referred to: 12/06
R v Stones [1989] 1 WLR 156, referred to: 27/06
R v Sullivan [2005] VSCA 286, referred to: 21/06
R v Swaffield; R v Pavic (1998) 192 CLR 159, referred to: 12/06
R v Tommy Reid VCA, 7/4/1998, referred to: 27/06
R v Youil (1995) 80 A Crim R 1, referred to: 21/06
R v Zilm [2006] VSCA 72, referred to: 21/06
Rankin v O'Brien [1986] VR 72, referred to: 31/06
Re Condon [1973] VR 427, referred to: 13, 20/06
Re Daintrey; ex p Holt [1893] 2 QB 116, referred to: 18/06
Re JRL; ex p CJL (1986) 161 CLR 342, referred to: 20/06
Re Polites; ex p Hoyts Corp Pty Ltd (No 2) (1991) 173 CLR 78, followed: 20/06
Re Wilkinson [1983] 2 VR 250, referred to: 20/06
Ringelstein v Redford Cattle Co Pty Ltd [1995] 1 QdR 433, referred to: 07/06
Roads and Traffic Authority of NSW v Michell [2006] NSWSC 194, distinguished: 35/06
Rozenes v Beljajev [1995] 1 VR 533, applied: 03, 12/06
Rush & Tompkins v Greater London Council [1989] AC 1280, referred to: 18/06
Sammassimo v Franich MC46/94, referred to: 41/06
Scott v Dunstone [1963] VR 579, considered: 31/06
Sinclair v Magistrates' Court at Ringwood [1998] VSC 170, referred to: 41/06
Sinclair v R (1946) 73 CLR 316, referred to: 12/06
Sirajuddin v Ziino, MC33/05, followed: 04/06; referred to: 16/06, not followed: 31/06
Smith v Chalmers [2003] VSC 236, referred to: 41/06
Smith v Van Maanen (1991) 14 MVR 365, referred to: 16/06
S Pearson & Son Ltd v Dublin Corp (1907) AC 351, referred to: 25/06
Stragan & Co Pty Ltd v Christodoulou MC19/02, not followed: 09/06
Sullivan v Moody (2001) 207 CLR 562, applied: 39/06
Teheran-Europe Co Ltd v ST Bolton (Tractors) Ltd [1968] 2 QB 545, referred to: 06/06
Tesco Supermarkets Ltd v Nattrass [1972] AC 153, referred to: 28/06
The Commissioner of Police v Tanos (1958) 98 CLR 383, referred to: 26/06
The King v Frank Smith [1925] 1 KB 603, referred to: 13/06
The Queen v Badger (1843) 4 QB 468, referred to: 13/06
The Queen v Porter [1910] 1 KB 369, referred to: 13/06
The Queen v SL (2005) VSCA 292, referred to: 12/06
The Star Sea [2003] 1 AC 469, referred to: 01/06
Thiessen v Fielding (1890) 16 VLR 666, applied: 24/06
Thomason v Hopper (1858) 120 ER 796, referred to: 01/06
Thompson v Gould & Co [1910] AC 409, referred to: 41/06
To v Australian Associated Motor Insurers Ltd (2001) 3 VR 279, considered: 01/06
Tural v Potter; BAH v Magistrates' Court of Victoria [2000] VSC 80, referred to: 30/06
Verbaken v Dowie 16 MVR 461, referred to: 15/06
Vermeulen v SIMU Mutual Insurance Association (1987) 6 ANZ Ins Cases 61-059, referred to: 01/06
Webb v Bloch (1928) 41 CLR 331, referred to: 25, 36/06
Webb v The Queen (1994) 181 CLR 41, applied: 20/06
Walsh v Loughnan [1991] 2 VR 351, referred to: 17/06
Weissensteiner v R (1993) 178 CLR 217, referred to: 30/06
Williams v Spautz (1992) 174 CLR 509, cited: 41/06
Wilson v Kuhl [1979] VR 315, followed: 27/06
Woodage v Jones [1975] RTR 119, referred to: 07/06
Yendall v Smith Mitchell & Co Ltd [1953] VLR 369, applied: 15/06
Yisrael v District Court of NSW (1996) 87 A Crim R 63, applied: 30/06
Zunter v John Fairfax Publications [2004] NSW SC 696, referred to: 25/06

WORDS AND PHRASES, CATCHWORDS, CONCEPTS etc.

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

Absconding on bail: 13/06
Abuse of process: 09/06
Accident: 17/06
Accident Compensation claim: 38/06
Admissibility of evidence: 35/06
Admissibility of record of interview: 12/06
Agency: 06/06
Aggravated burglary: 27/06
Agreement, debt sale: 29/06
Amendment of pleadings: 23, 28/06
Application for reinstatement: 09, 24/06
Application under *Confiscation Act* 1997: 26, 34/06
Apprehension of bias, test: 20/06
Appropriate Registrar: 41/06
Armed with an offensive weapon: 27/06

WORDS AND PHRASES, CATCHWORDS, CONCEPTS etc.

- "As a proportionate part of": 04/06
Assignment of debt: 29/06
"Bail": 13/06
Bail, forfeiture of: 13/06
Bail, right to: 13/06
"Believes on reasonable grounds": 17/06
Bias, alleged perceived: 20/06
Blood sample procedure: 35, 37/06
Book publication: 36/06
Breach of—
 - bail: 13/06
 - suspended sentence: 02/06
Breath test: 04, 15, 40/06
Brief of evidence in drink/driving matter: 16/06
Browne v Dunn application: 35/06
Calderbank letters: 32/06
Cannabis commercial quantity: 11/06
Caution: 30/06
Certificate in drink/driving matters: 16, 35, 37/06
Charge and summons: 24, 41/06
Child Care Centre: 14/06
"Children's services": 14/06
Claim by insured: 01/06
"Commercial quantity": 11/06
Company liability: 14, 32/06
Confessional statement: 12/06
Confiscation Act 1997 notice: 26, 34/06
Confidential information: 36/06
Consciousness of guilt: 21/06
Consumer Affairs: 28/06
Contest mentions: 35/06
Contract, breach of: 08, 32/06
Contributory negligence: 08/06
Corporation: 07/06
Costs, indemnity basis: 32/06
Counterclaim: 08/06
Credibility of witness: 30/06
Credit card debt assigned: 29/06
Cumulative sentencing: 21/06
Debt assigned by bank: 29/06
Defamation: 25, 36/06
Defences, drink/driving charge: 15/06
Disqualification applications: 20/06
Disqualification for bias, test: 20/06
Drink/driving: 04, 15, 16, 17, 30, 31, 35, 37, 40/06
Driver: 07/06
Driving: 07/06
Drug testing station: 25/06
Drug trafficking sentencing: 33/06
Duty of care: 08, 39/06
Elements of drink/driving offence: 15, 16, 17, 31, 37/06
Employees actions, company liable: 14/06
Eviction of plaintiffs: 39/06
"Evidence to the contrary": 35/06
"Exceptional circumstances": 02, 22/06
Exclusion of record of interview: 12/06
"Exhaled air": 04/06
"Existing controlled registrable offender": 18/06
Ex parte hearing: 16/06
"Factoring arrangement": 06/06
"Fails": 13/06
"Fair-minded observer": 20/06
Fairness: 35/06
Fair Trading Act: 28/06
Filing of charge: 41/06
Flight: 21/06
Forfeiture of bail: 13/06
"for the purpose of a burglary": 27/06
Fraudulent claim by insured: 01/06
Furze v Nixon questioned: 16/06
"Grams in 210 litres of breath": 04/06
"Grams per 210 litres of exhaled air": 04/06
"Has failed": 13/06
Harmfulness of drug in sentencing: 33/06
"in": 04/06
"in accordance with s55": 37/06
"in charge of": 07/06
Indemnity costs: 32/06
Individual: 07/06
Insurance claim: 01/06
Integrity of blood sample: 37/06
Interlocutory applications: 09/06
Investigative unfairness: 12/06
Involuntariness: 12/06
Involved in an accident: 17/06
Liability of company for employees: 14/06
Libel: 25, 36/06
Mandatory/directory provision: 37/06
Mentions: 35/06
Mention date: 41/06
"Misleading or deceptive conduct": 28/06
"Must": 37/06
Negligence: 39/06
No case submission: 05/06
"No comment": 30/06
Notice of *Confiscation Act* application: 26, 34/06
Notice to surety: 13/06
"Offensive weapon": 27/06
Opportunity of being heard: 26, 41/06
Owner onus: 07/06
Particulars: 28/06
"Person": 07/06
"Person in charge of a motor vehicle": 07/06
Pleadings, amendment of: 23, 28/06
Pocket knife: 27/06
Preliminary breath test device proved: 16, 31/06
Preliminary breath testing station: 40/06
"Prescribed particulars": 37/06
Principal and agent: 06/06
Privilege, "Without Prejudice": 18/06
Proof of chain of title: 29/06
Proper venue: 41/06
"Publication": 25/06
"Publishes": 36/06
Reactivation of summons: 41/06
Record of interview admissibility: 12/06
Refusal to undergo PBT: 31/06
Registrable sexual offence: 18/06
Registrar's powers: 41/06
Regulatory offence: 14/06
Reinstatement applications: 09, 24/06
Request to undergo PBT: 31/06
Restraining order re confiscation: 26, 33/06
Right to silence: 30/06
Road block: 40/06
Sale of house and land: 28/06
Second applications: 09/06
Secondary evidence: 29/06
Sentencing—
 - drug trafficking: 33/06
 - "exceptional circumstances": 21/06
 - offences committed whilst on parole: 21/06
 - principle of totality: 21/06
 - suspended sentence breach: 02/06
 - taking period in custody into account: 27/06
Sex Offenders Registration: 18/06
Silence, right to: 30/06
Struck out: 24/06
"Superintend": 18/06
"Supervise": 18/06

TABLE OF STATUTES AND REGULATIONS

"Supervision": 18/06
Surety, forfeiture of bail: 13/06
Surety's obligation: 13/06
Suspended sentence: 02/06
Totality principle in sentencing: 21/06
"To the contrary": 35/06
"Unconscionable conduct": 28/06
Unreliability: 12/06
Weekly payments order: 38/06
"Without Prejudice": 18/06
Work and Labour done claim: 08/06

TABLE OF STATUTES AND REGULATIONS

Accident Compensation Act 1985

Bail Act 1977

Children's Services Act 1996

Confiscation Act 1997

Crimes Act 1958

Crown Proceedings Act 1958

Drugs, Poisons and Controlled Substances Act 1981

Fair Trading Act 1999

Insurance Contracts Act 1984

Interpretation of Legislation Act 1984

Magistrates' Court Act 1989

Magistrates Court Civil Procedure Rules 1999

Police Regulation Act 1958

Property Law Act 1958

Road Safety Act 1986

Road Safety (General) Regulations 1999

Sentencing Act 1991

Sex Offenders Registration Act 2004

s93CB(3): 38/06
s5(1): 13/06
s21: 13/06
ss26, 27: 14/06
s16(1)(a): 26, 34/06
s77: 27/06
s6(1), (4): 13/06
s70: 11/06
s71AA, sched 11: 33/06
ss7(1), 9(1), 143(1): 28/06
s56(1): 01/06
s35(a): 13/06
s3(1): 41/06
s26, 28: 41/06
s30(2)(b): 24/06
s33, 34: 41/06
s37: 16/06
s41: 41/06
Sched 2: 16/06
O35: 23/06
s127A: 36/06
s134: 29/06
s3: 04/06
s47: 04/06
s48(1)(b): 15, 37/06
s49(1)(c): 17, 31/06
s49(1)(f): 04, 15, 16, 30, 40/06
s49(1)(g): 35, 37/06
s49(1A): 31/06
s53(1)(a) (b): 40/06
s53(1)(c): 17, 31/06
s54: 40/06
s55(1): 15, 40/06
s55(9B): 37/06
s57(2) (3) (7) (7A): 35/06
s58(2): 16/06
s58(4): 15/06
s86(3): 07/06
r205(3): 35/06
r206: 37/06
s16(3B): 21/06
s18: p27/06
s31(5A): 02/06
s3: 18/06

Edited by: Patrick Street LL B, Dip Crim
C/o Magistrates' Court, GPO Box 882G,
Melbourne Vic. 3001

© 2006 The Magistrates' Court of Victoria