



Magistrates' Court
Victoria

MAGISTRATES CASES 2005 INDEX

TABLE OF CASES REPORTED IN 2005

	Case No.
AB Oxford Cold Storage Pty Ltd v Arnott (CA - Callaway and Nettle JJ A, Byrne AJ A)	
(2005) 11 VR 298; 145 IR 61	08/05
Arundell v Williams Winter & Higgs & Ors (Morris J) (2005) 158 A Crim R 16.....	29/05
Asmar, Bail application (Maxwell P).....	30/05
Baypeak Pty Ltd v Lim (Balmford J)	06/05
Blair v County Court of Victoria & Anor (Mandie J)	18/05
Blair v The County Court of Victoria & Free (CA - Ormiston and Chernov JJA and Harper AJ A)	37/05
Boglari v Ballarat Steiner School & Kindergarten (Gillard J)	32/05
Development One (Australia) Pty Ltd v Cooper & Ors (Hollingworth J)	20/05
DPP (Cth) v Alateras (CA - Callaway, Eames and Nettle JJ A)	03/05
DPP v Amcor Packaging Australia Pty Ltd (Vincent, Eames and Nettle JJ A) (2005) 11 VR 557; 155 A Crim R 405.....	28/05
DPP v Cozzi (Coldrey J)	15/05
DPP v Federico (Cummins J)	36/05
DPP v Marell (Dodds-Streeton J) (2005) 12 VR 581.....	34/05
DPP v Micevic (Cummins J) (2005) 12 VR 14; (2005) 158 A Crim R 1	26/05
DPP v Pastras (Bongiorno J) (2005) 11 VR 449	01/05
Equuscorp Pty Ltd v Van Der Ross (Harper J)	16/05
Henderson v Magistrates' Court of Victoria & Anor (Habersberger J) (2004) 151 A Crim R 366	02/05
Herald & Weekly Times Ltd v County Court of Victoria (Byrne J)	09/05
Honda Australia Motorcycle & Ors v State Coroner & Anor (Smith J).....	31/05
Hughes v Molloy (Byrne J).....	23/05
Kuek v Devflan Pty Ltd & Anor (Balmford J)	10/05
Mansbridge v Nichols (Williams J)	11/05
Melbourne Cricket Club v Clohesy (Dodds-Streeton J) (2005) 14 VR 206; 56 AILR ¶250-006... ..	19/05
Meng Developments Pty Ltd v County Court of Victoria & Anor (Williams J)	35/05
National Exchange Pty Ltd v Hodder (Teague J).....	13/05
Neill v County Court of Victoria & Anor (Byrne J)	27/05
R v Vasic (Vincent and Nettle JJ A, Cummins AJ A) (2005) 11 VR 380	05/05
Real Estate City Pty Ltd v Moustafa (Ormiston and Charles JJ A, Hansen AJ A)	22/05
Roads Corporation v Magistrates' Court of Victoria and Sear (Hargrave J)	12/05
Rock Posters Pty Ltd v Bugeja (Balmford J)	04/05
Sirajuddin v Ziino (Hargrave J) (2005) 14 VR 689; (2005) 45 MVR 21	33/05
Slater v DPP & Anor (Bell J)	14/05
Smart v City of Greater Geelong (Byrne J)	07/05
Smith v The County Court of Victoria & Primrose (Gillard J)	25/05
Tankard v Chafer (Gillard J).....	17/05
Theunissen v Villaseca (Byrne J)	21/05
Zegarac v Dellios (Cummins J)	23/05

SUBJECT MATTER

CIVIL PROCEEDINGS

- Contract** - claim for breach of - offer and acceptance - company shares to be transferred - shares transferred to wrong person - person had no legal or beneficial interest in shares - claim dismissed - no error: 13/05
- Defamation** - three letters sent by ratepayer to local laws manager of shire - finding that letters were defamatory - manager awarded one lump sum for damages - magistrate in error - should have awarded an amount for each defamatory publication - interest on judgment to be calculated from the date the proceeding was commenced: 17/05
- Easement** - interference with by construction of a gate and a fence by landowner - claim for damages for cost of removal - finding by court that terms of easement had not undergone substantial change - claim upheld - no error: 32/05
- Employment** - long service leave - entitlement of casual employee to long service leave - "continuous employment" - employee who worked at some football matches, concerts and cricket games not in continuous employment - magistrate in error in finding otherwise: 19/05
- Fence** - dividing fence between adjoining owners - proposal to fence with double gate for access - fence not an unreasonable or substantial interference with rights of owner - magistrate in error in dismissing complaint: 06/05
- Landlord and tenant** - lease of office premises at certain rental - rent fell into arrears - action taken by lessor to claim arrears of rent plus interest - claim upheld by magistrate - premises not being used "wholly or predominantly" for provision of retail services or goods - magistrate not in error: 20/05
- Professional fees** - claim by accountant for professional fees - dispute developed between accountant and client - written agreement between parties - accountant not a registered tax agent - prohibited by law from demanding or receiving payment - magistrate not in error in dismissing accountant's claim: 21/05
- Professional fees** - claim by solicitor for services rendered - written agreement failed to set out the circumstances that constitute a successful outcome of the matter - agreement inefficacious - finding by magistrate that solicitor entitled to fees on a *quantum meruit* basis - no error: 23/05
- Restitution** - improvements to house - claim for remuneration - such claim would have exceeded value of the enhanced property - magistrate not in error in adopting the increase in property's value as the measure of compensation: 24/05
- Sale of property** - claim for commission by estate agent - handwritten endorsement on authority to sell - "no sale no charge" - agent found willing purchaser - vendor did not complete sale - magistrate dismissed agent's claim - magistrate in error: 22/05
- Time share venture** - purchase of interest in - some payments made under contract - loan contract assigned no evidence of consideration - essential element of case not proved - claim of misleading and deceptive conduct - contract rescinded - Statute of Limitations does not apply to matters raised only by way of defence: 16/05
- Work and Labour done** - warranty given in relation to work done - engine broke down during warranty period - nature of contractual relationship - contract not made with company claim against company dismissed - claim against mechanic dismissed - no error: 10/05

COSTS

- Claim for damages for interference with easement** - claim upheld - amount of costs allowed on Scale D - no error: 32/05
- Professional fees** - claim by solicitor for services rendered - written agreement failed to set out the circumstances that constitute a successful outcome of the matter - agreement inefficacious - finding by magistrate that solicitor entitled to fees on a *quantum meruit* basis - no error: 23/05

CRIMINAL LAW

- Bail** - serious drug offences - accused to show exceptional circumstances for release on bail - meaning of "exceptional circumstances" - "delay" - bail granted by magistrate - not in error: 15, 30/05
- Committal proceedings** - hand up brief - notice by accused of intention to cross-examine witnesses - leave refused by magistrate in respect of some witnesses - no error: 02/05
- Cruelty to Animals** - owner of sheep charged with offences - failed to provide sheep with sufficient food and drink - duplicity - reasons of court - whether sufficient - natural justice - court-made recording not preserved - no denial of natural justice - charges duplicitous - costs - reasons for making order inadequate: 11/05
- Dealing in property reasonably suspected of being proceeds of crime** - charges dismissed on ground that prosecution did not prove beyond reasonable doubt that property was proceeds of crime - magistrate in error: 34/05
- Obtaining a financial advantage by deception** - tendering valueless cheque in pretended payment of existing debt financial advantage obtained: 05/05
- Possession of proceeds of crime** - person apprehended at home of known drug dealer with \$44,000 in cash on his person - court to consider whether property may be suspected of being the proceeds of crime - case to answer: 01/05
- Self defence** - escaping prisoner shot by prison guard - agony of the moment decision - elements of self-defence - guard not guilty of murder: 36/05

SUBJECT MATTER

Summary offence – posting of bills on property - offence alleged to have been committed between certain dates - evidence proved otherwise - magistrate in error in finding charge proved: 04/05

MOTOR TRAFFIC

- **Careless driving** - driver passed by another vehicle closely - driver lost control and collided with vehicle parked on other side of road - driver charged with drink/driving and careless driving - drink/driving charge dismissed - no mention by court about effects of alcohol in finding careless driving charge proved - reference by court to alcohol in sentencing on careless driving - court in error: 25/05
- **Drink/driving**
 - **Drink/driving offence** - driver made two attempts at providing a sample of breath - instrument indicated "insufficient sample" on first occasion - where PBT indicated the presence of alcohol in the driver's blood there was evidence to conclude the police officer held the relevant opinion - court entitled to conclude that printout from instrument provided a sufficient basis for police officer to request a second sample: 27/05
 - **Drink/driving offence** - driver underwent PBT which was positive - requested to accompany police officer to police station for a breath test - driver left scene - later charged and found guilty - charge had surplus verbiage in it - magistrate not in error in finding charge proved - no evidence that prescribed device used for PBT - prosecution may reopen case to prove same: 18/05; affirmed: 37/05
 - **Drink/driving offence** - PBT conducted - no evidence that PBT conducted on a prescribed device - court in error in finding charge proved - certificate tendered in evidence - reference to "grams in 210 litres of breath" - Act states "grams per 210 litres of exhaled air" - difference not material: 33/05
- **Parking Infringement** - notice not complied with - charge and summons issued - standing - jurisdiction of court whether Road Rules Victoria is a proper law - magistrate not in error in finding charge proved: 07/05

NATURAL JUSTICE

Bias - apprehended or ostensible - coroner conducting inquest - approached witness to enquire whether witness would participate in a forthcoming seminar for coroners - during inquest coroner indicated his feelings about the evidence - having regard to all of the material, coroner's conduct did not involve an acknowledgement of apprehended or ostensible bias: 31/05

Court-made transcript - not preserved - copy not provided to party - no denial of natural justice: 11/05

OCCUPATIONAL HEALTH AND SAFETY

Death of employee - risk known to employer - no action taken to guard machine - fines of \$60,000 imposed on each of two charges - sentences manifestly inadequate - matters to be taken into account on sentencing - fines increased to \$180,000 on each: 28/05

Employees affected by carbon monoxide fumes - power of authority to authorise inspector to bring charges - authorisation instrument valid - employer failed to provide first aid or medical treatment - guilty of offence: 08/05

Instrument of authorisation - executed by person at WorkCover Authority - inspector authorised to bring proceedings - instrument validly executed: 35/05

PRACTICE AND PROCEDURE

Legal practitioners - immunity from liability - damages sought by accused from lawyers who represented him at trial - practitioners immune from suit in relation to in-court work and out-of-court work intimately connected with conduct of trial - abuse of process to allow claim: 29/05

No case submission - principles governing a 'no case' submission: 36/05

Publication of reasons for judgment - to be announced in open court - not to be emailed to parties: p167/05

Summary offence - posting of bills on property - offence alleged to have been committed between certain dates - evidence proved otherwise - magistrate in error in finding charge proved: 04/05

Suppression order - accused charged with certain sexual offences - victims less than 3 years old - "necessary" - no ground for making order: 09/05

Traffic Infringements - Demerit Points recorded - offender given option - further demerit points incurred - licence suspended by VicRoads - appeal to Magistrates' Court - scope of appeal to Court - finding by magistrate that infringement notice invalid - magistrate in error: 12/05

SENTENCING

Defrauding Commonwealth - Offences committed by Centrelink Officer - More than \$90,000 improperly given to Centrelink clients over period of two years - sentenced to 9 months' imprisonment to be released forthwith on recognisance - sentence not manifestly inadequate: 03/05

Intensive correction order breached - options open to sentencer - pre-sentence report sought - offender suitable for further ICO - recommendation not adopted by court - offender committed to prison for unexpired portion of sentence - court not in error: 14/05

Non-parole period - when fixing court should not take into account the possible effect of executive action

SUBJECT MATTER

or policy: p27/05

Occupational Health & Safety - death of employee - risk known to employer - no action taken to guard machine - fines of \$60,000 imposed on each of two charges - sentences manifestly inadequate - matters to be taken into account on sentencing - fines increased to \$180,000 on each: 28/05

Plea of guilty discount - nothing else to show accused's state of mind - accused's remorse "slight" - appropriate to frame a sentence on that basis: p195-6/05

Suspended sentence - breached - "exceptional circumstances" required if sentence is not restored - no exceptional circumstances - magistrate in error: 34/05

TABLE OF CASES REFERRED TO, CONSIDERED, APPLIED etc.

AB Oxford Cold Storage v Arnott MC08/05; [2005] VSCA 111, applied: 35/05
Adam v Ward [1917] AC 309, referred to: 17/05
Angelopoulos v Sabatino (1995) 65 SASR 1, referred to: 24/05
Attorney-General v Meyrick [1915] 79 JP 515, referred to: 06/05
Australian Securities Commission v Marlborough Gold Mines Ltd (1993) 177 CLR 485, applied: 01/05
Bellino v ABC (1996) 185 CLR 183, referred to: 17/05
Berwin v Donohue (1915) 21 CLR 1, discussed: 08/05
Blair v County Court of Victoria and Anor MC 18/05; [2005] VSC 213, approved: 37/05
Brown v Schiffman [1911] VLR 133, applied: 01/05
Bryan v Maloney (1995) 182 CLR 609, referred to: 19/05
Butler v Muddle (1995) 6 BPR 13,984, referred to: 06/05
Byrne v Baker [1964] VR 443, referred to: 11/05
Carltona Ltd v Commissioners of Works [1943] 2 All ER 560, referred to: 35/05
Chisholm v Matthews MC42/92; (1992) 16 MVR 447, not followed: 33/05
Chugg v Pacific Dunlop Ltd [1988] VR 411, referred to: 11/05
Cooper v County Court of Victoria and Gallagher [1998] VSC 149, followed: 25/05
David Syme & Co Ltd v Mather [1977] VR 516, referred to: 17/05
Doney v The Queen (1990) 171 CLR 207, applied: 36/05
D'Orta-Ekenaike v Victoria Legal Aid [2005] HCA 12; 214 ALR 92, followed: 29/05
DPP Reference No 2 of 2001 (2001) 4 VR 55, referred to: 33/05
DPP (Cth) v Banda [2000] VSC 542, referred to: 15/05
DPP v Bodoulouh MC40/03, not followed: 01/05
DPP v DiNunzio [2004] VSCA 78, applied: 34/05
DPP v Foster [1999] 2 VR 643, referred to: 33/05
DPP v Ghiller [2000] VSC 435, followed: 30/05
DPP v Harika MC 11/01; [2001] VSC 237, not followed: 30/05
DPP v Holden (1999) 28 MVR 315, followed: 27/05
DPP v Merriman [1973] AC 584, referred to: 11/05
DPP v Milne [2001] VSCA 93, referred to: 03/05
DPP v Nguyen [2000] VSC 452, referred to: 15/05
DPP v Skinner (2004) 40 MVR 427, referred to: 27/05
DPP v Trainor and Cahir [2000] VSCA 249, referred to: 03/05
DPP v Webb [1993] 2 VR 493, followed: 33/05
Dunell v Phillips (1982) 2 BPR 9517, followed: 06/05
Equuscorp Pty Ltd v Glengallan Investments Pty Ltd 79 ALJR 206, referred to: 22/05
Equuscorp Pty Ltd v Jeffree [2001] VSC 212, referred to: 16/05
Ex parte Hebburn Limited, re Kearsley Shire Council (1947) 47 SR (NSW) 416, referred to: 02, 11/05
Ex parte Kingston, unrep, VSC (FC), 26/2/76, followed: 19/05
Ex parte Patmoy; Re Jack (1944) 44 SR(NSW) 351, referred to: 01/05
Fensom v Cootamundra Race Course Reserve Trust [2000] NSWSC 1072, referred to: 24/05
Fisher v Bennett (1987) 85 FLR 469, not followed: 05/05
Fleet v District Court of NSW & Ors [1999] NSWCA 363, applied: 11/05
Gallagher v Rainbow (1994) 179 CLR 174, referred to: 32/05
Gascor v Ellicot [1997] 1 VR 332, applied: 31/05
Giannarelli v Wraith (1988) 165 CLR 543, followed: 29/05
Gohl v Hender [1930] SASR 158, applied: 06/05
Hackwill v Kay [1960] VR 632, applied: 04/05
Hansford v McMillan [1976] VR 743, referred to: 18/05
Harrison v Bush 5 E and B 344, referred to: 17/05
Herald & Weekly Times Ltd v Popovic (2005) 9 VR 1, referred to: 17/05
Hollocks v Lowe [1975] AC 135, referred to: 17/05
Holmes v RE Spence & Co Pty Ltd 5 VIR 119, followed: 28/05
Hose v Cobden [1921] VLR 617, referred to: 06/05
Howe v Lees (1910) 11 CLR 361, referred to: 17/05
I & L Securities Pty Ltd v HTW Valuers (Brisbane) Pty Ltd (2002) 210 CLR 109, referred to: 16/05
Impagnatiello v Campbell MC27/03; (2003) 6 VR 416, followed: 33/05
Jelbert v Davis [1968] 1 WLR 589, followed: 32/05
John Fairfax v Kelly (1987) 8 NSWLR 131, referred to: 17/05
John Fairfax Publications Pty Ltd v District Court (NSW) (2004) 50 ASCR 380, referred to: 09/05

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

John L Pty Ltd v A-G for NSW (1987) 163 CLR 508, referred to: 11/05
 Johnson v Miller (1937) 59 CLR 467, followed: 11/05
 Kent v Wilson MC14/2000; [2000] VSC 98, followed: 34/05
 Kerr v Hannon [1992] 1 VR 43, followed: 04/05
 Kurzbock v Hallett (2001) 126 A Crim R 125, referred to: 18/05
 Licensed Clubs Assocn v Re Christine Higgins (1988) 30 ALLR 497, referred to: 19/05
 McGee; xp McGee v McKeever [1995] 1 Qd R 623, followed: 01/05
 Macrae v Commonwealth Disposals Commission (1951) 84 CLR 377, referred to: 13/05
 Mann v O'Neill (1997) 191 CLR 204, referred to: 17/05
 Matthews v Fountain [1982] VR 1045, affirmed: 05/05
 May v O'Sullivan (1955) 92 CLR 654, applied: 36/05
 Moloney, Re VSC, unrep, Vincent J, 31 October 1990, applied: 15/05
 Moors v Burke (1919) 26 CLR 265, referred to: 01/05
 Muhaidat, Ismail, [2004] VSC 17, referred to: 15/05
 National Exchange Pty Ltd v Vane [2003] VSC 361, referred to: 13/05
 Owendale Pty Ltd v Anthony (1967) 117 CLR 538, followed: 08/05
 Parker v DPP (1992) 65 A Crim R 209, referred to: 11/05
 Pavey & Matthews v Paul (1987) 162 CLR 221, followed: 24/05
 Perera v Peiris [1949] AC 1, referred to: 17/05
 Perkins v County Court of Victoria (2000) 2 VR 246, applied: 11/05
 Pettet v Parsons [1914] 2 Ch 653, applied: 06/05
 Potter v Tural (2000) 2 VR 612, discussed: 02/05
 Powell v Langdon (1944) 61 WN (NSW) 238, referred to: 06/05
 Proctor v Webster 16 QBD 112, referred to: 17/05
 R v Buckett (1995) 132 ALR 669; 79 A Crim R 302, followed: 01/05
 R v Carter [1998] 1 VR 601, followed: 03/05
 R v Chairman of General Sessions; xp Atterby [1959] VR 800, referred to: 11/05
 R v Cheng (1999) 73 SASR 502, followed: 05/05
 R v Clarke [1996] 2 VR 520, followed: 28/05
 R v Dossi (1918) 12 Cr App R 158, applied: 04/05
 R v Elliott; ex p Elliott (1974) 8 SASR 329, referred to: 11/05
 R v English (1989) 17 NSWLR 149, referred to: 01/05
 R v Ginies [1972] VR 349, referred to: 11/05
 R v Industrial Appeals Court and anor; ex parte Kingston, unrep, VSC (FC), 26/2/76, followed: 19/05
 R v Lilydale Magistrates' Court [1973] VR 122, referred to: 11/05
 R v Osenkowski (1982) 30 SASR 212, followed: 03/05
 R v Parsons (1983) 2 VR 499, followed: 01/05
 R v Pomeroy [2002] VSC 178, applied: 09/05
 R v Tieman [1908] VLR 4, followed: 04/05
 R v Turner [1973] 1 WLR 653, not followed: 05/05
 R v Tween [1965] VR 687, referred to: 01/05
 R v Whitnall (1993) 42 FCR 512, referred to: 03/05
 R v Zotti (2002) 82 SASR 554; 131 A Crim R 27, followed: 01/05
 Re Alcan Australia Ltd v Ex parte FIMEE (1994) 181 CLR 96, applied: 19/05
 Re Reference under s11 of *Ombudsman Act* 1976 (1979) 2 ALD 86, applied: 35/05
 Real Estate City Pty Ltd v Moustafa MC05/03, overruled: 22/05
 Rinaldi v Watts (2003) 138 A Crim R 456, not followed: 01/05
 Roberts v Bass (2002) 212 CLR 1, referred to: 17/05
 Romeyko v Samuels (1972) 2 SASR 529, applied: 11/05
 Saggars v Brown (1981) 2 BPR 9329 followed: 06/05
 Smith v Van Maanen (1991) 14 MVR 365, followed: 33/05
 Sobh v Children's Court of Victoria (1994) 74 A Crim R 453, referred to: 11/05
 Soulemezis v Dudley (Holdings) Pty Ltd (1987) 10 NSWLR 247, followed: 11/05
 Stanton v Abernathy (1990) 19 NSWLR 656, referred to: 11/05
 Stuart v Bell [1891] 2 QB 341, referred to: 17/05
 Sunstar Fruit Pty Ltd v Cosmo [1995] 2 Qd R 214, referred to: 24/05
 Tang & Ors (1995) 83 A Crim R 593, referred to: 15/05
 Taylor v Johnson (1982-3) 151 CLR 422, referred to: 13/05
 The King v War Pensions Entitlement Appeal Tribunal (1933) 50 CLR 228, applied: 02/05
 Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd (2004) 211 ALR 342, referred to: 21, 22/05
 Toogood v Spring (1834) 1 CM and R 181, referred to: 17/05
 Tucker v Noblet (1924) SASR 340, referred to: 11/05
 Van den Berg v Giles [1979] 2 NZLR 111, referred to: 24/05
 Walsh v R [2002] VSCA 98, followed: 11/05
 Walsh v Tattersall (1996) 188 CLR 77, applied: 11/05
 Wilson v Bahr (1991) V Conv R 54-392, applied: 06/05
 Wood v Marsh (2003) 139 A Crim R 475, referred to: 11/05
 Woolcock Street Investments Pty Ltd v CDG Pty Ltd [2004] 78 ALJR 628, applied: 19/05
 WorkCover Authority of NSW v Profab Industries Pty Ltd (2000) 49 NSWLR 700, adopted 28/05
 Zambelis v Nahas (1991) V Conv R 54-396, unrep, VSC (FC), 26/2/76, referred to: 20/05
 Zecevic v DPP (1987) 162 CLR 645, applied: 36/05

WORDS AND PHRASES, CATCHWORDS, CONCEPTS etc.

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

Abuse of process: 29/05
Acceleration provision: 21/05
Accountant's fees: 21/05
"Adequate facilities": 08/05
"Alcohol in mouth": 27/05
Animals, cruelty to: 11/05
Appeal against demerit points: 12/05
Apprehended bias: 31/05
Arbitration: 13/05
Authorisation to bring proceedings: 35/05
Authority in writing: 08/05
Bail, application for: 15, 30/05
Bias: 31/05
Billposting: 04/05
Breach of—
 - contract: 13/05
 - easement: 32/05
 - ICO: 13/05
 - Suspended sentence: 34/05
Breath analysing instrument: 27/05
Breath tests: 27/05
Browne v Dunn rule: 22/05
Careless driving: 25/05
Casual employee: 19/05
Centrelink, fraud on: 03/05
Certificate for drink/driving: 33/05
Certificate of Authority: 35/05
Commission, estate agent: 22/05
Committal proceedings: 02/05
Compensation for improvements to property: 24/05
Compensatory damages: 17/05
"Continuous employment": 19/05
Contract, breach of: 13, 16/05
Contractual relationship: 10, 13/05
Costs: 11, 17, 32/05
Costs agreement: 23/05
Cruelty to animals: 11/05
Damages by way of interest: 17/05
Dates of offence: 04/05
Decision reasons for: 11/05
Defamation: 17/05
Defrauding Commonwealth: 03/05
"Delay": 15/05
Demerit register: 12/05
Discount for plea of guilty: p195/05
Double jeopardy: 34/05
Drink/driving: 18, 27, 33, 37/05
Duplicity in charges: 11/05
Easement: 32/05
Elements of self-defence: 36/05
Employee, casual: 19/05
Enrichment: 24/05
Estate agent's claim: 22/05
"Exceptional circumstances": 15, 30, 34/05
Exclusive Agents authority: 22/05
Fees, solicitor's: 23/05
Fence between adjoining occupiers: 06, 32/05
"Financial advantage": 05/05
Frauds on the Revenue: 03/05
"Grams in 210 litres of breath": 33/05
"Grams per 210 litres of exhaled air": 33/05
Honesty and the legal profession: p195/05
Immunity from liability: 29/05
Implied terms: 22/05

WORDS AND PHRASES, CATCHWORDS, CONCEPTS etc.

Infringement notice: 12/05
"Insufficient sample": 27/05
Intensive Correction order breached: 13/05
Interest, damages: 17/05
Interstate cases: 01/05
Landlord and tenant: 20/05
Lease: 20/05
Legal practitioners immunity: 29/05
Legal Profession honesty: p195/05
Loan contract: 16/05
Long service leave: 19/05
Malice: 17/05
"May": 01/05
Misleading and deceptive conduct: 16/05
Mistake: 13/05
Money laundering: 34/05
Natural justice: 11, 18, 31/05
"Necessary": 09/05
No case submission: 36/05
"No sale - no charge": 22/05
Notice of Infringement: 12/05
Nuisance: 32/05
Obtaining a financial advantage by deception: 05/05
Occupational Health and Safety: 08, 28, 35/05
Offence between dates: 04/05
Offer and acceptance: 13/05
Office premises: 20/05
Ostensible bias: 31/05
Parking infringement: 07/05
PBT: 27, 33/05
Plea of guilty discount: p195/05
Prescribed device for PBT: 18, 33/05
Procedural fairness: 18, 31/05
Proceeds of crime: 01, 34/05
Property reasonably suspected: 34/05
Qualified privilege: 17/05
Quantum meruit claim: 23/05
"ratio decidendi": 19/05
Reasons for decision: 11/05
"Rent": 20/05
Reopening prosecution case: 18/05
Requirement: 18/05
Rescission of contract: 16/05
Restitution: 24/05
Retail premises lease: 20/05
Road Rules Victoria: 07/05
"Sale": 22/05
Scale fees and costs: 17/05
Self defence: 36/05
Sentencing—

- careless driving: 25/05
- Commonwealth offenders: 03/05
- Occupational Health & Safety: 28/05
- Suspended sentence breach: 34/05

Shares, transfer of: 13/05
Solicitor's costs agreement: 23/05
Standing: 07/05
Statute of Limitations: 16/05
Suit, immunity from: 29/05
Suppression order: 09/05
Surplus verbiage in charge: 18/05
"Suspect": 01/05
Suspected property: 34/05
Suspended sentence: 34/05
Suspicion of police informant: 01/05
Tax agent not registered: 21/05
Time share venture: 16/05

TABLE OF STATUTES AND REGULATIONS

Traffic Infringements: 12/05
Transfer of shares form: 13/05
Trespass: 32/05
Unjust enrichment: 24/05
Unlawful possession: 01/05
Valueless cheque passed: 05/05
Warranty: 10/05
"Wholly or predominantly": 20/05
Work and Labour done claim: 10/05
Written authorisation: 08/05
Written documents: 22/05

TABLE OF STATUTES AND REGULATIONS

<i>Accident Compensation Act 1985</i>	s21: 08, 35/05 s245: 35/05
<i>Bail Act 1977</i>	s4(2)(aa): 15, 30/05
<i>Confiscation Act 1997</i>	s123(1): 01/05
<i>Constitution Act 1975</i>	07/05
<i>County Court Act 1958</i>	ss80, 80AA: 09/05
<i>Crimes Act 1914 (Cth)</i>	s29C: 03/05
<i>Crimes Act 1958</i>	s82(1): 05/05 s195: 34/05 s375: 04/05 s450: 04/05 s112: 20/05 Part 2A: 10/05 s4: 06/05 subs.251L(1), (5): 21/05 s32: 07/05 ss93, 97(4), 102: 23/05 s442: 29/05 ss56, 62: 19/05 s3(1): 11/05 s26(4): 04, 12/05 s27(1): 11/05 s50: 11/05 ss83, 86: 11/05 Sched 5, cll 12 and 13: 02/05 s4: 08/05 s21(1): 08, 28/05 ss47(1),(3): 08/05 s48: 08, 35/05 ss9(1), 10(1) (2): 11/05 ss4(1), 81, 87: 20/05 s3: 33/05 ss24, 25, 26: 12/05 s47: 33/05 s48(1)(b): 27/05 s49(1)(e): 18, 37/05 s49(1)(f): 33/05 s53: 33/05 s55(1), (2A): 27, 33, 37/05 s58(2): 33/05 s65: 25/05 ss19(1), 26(3A): 13/05 s31(5A): 34/05 s10(1): 04/05
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<i>Fair Trading Act 1999</i>	
<i>Fences Act 1968</i>	
<i>Income Tax Assessment Act</i>	
<i>Interpretation of Legislation Act 1984</i>	
<i>Legal Practice Act 1996</i>	
<i>Long Service Leave Act 1992</i>	
<i>Magistrates' Court Act 1989</i>	
<i>Occupational Health and Safety Act 1985</i>	
<i>Prevention of Cruelty to Animals Act 1986</i>	
<i>Retail Leases Act 2003</i>	
<i>Road Safety Act 1986</i>	
<i>Sentencing Act 1991</i>	
<i>Summary Offences Act 1966</i>	

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