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Magistrates' Court Victoria

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Case No.

SUBJECT MATTER

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Insurance – motor car policy – modification to motor car – if disclosed insurance would have been declined – claim by insured dismissed – no error: 35/00

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Admissibility of DNA evidence – discarded cigarette butts - evidence of test admissible: 11/00
Admissibility of tape-recorded conversations – undercover police officer – admissions made – taped material excluded: 10/00

Application for compensation by victim of crime – application must be made within a certain time: 9/00 **Bail** – trafficking in commercial quantity of heroin – "exceptional circumstances" – delay – other factors – magistrate not in error in granting bail: 43/00

Breach of the peace – standing of police officer to bring proceedings – "a person" – no actual violence or threatened violence – conduct likely to provoke violent conduct – order made – no error: 40/00

Tobacco sold to young person – use of young person to obtain evidence against vendor – no unfairness to vendor – public policy - entrapment: 6/00

ENVIRONMENT

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EVIDENCE

Admissibility of DNA evidence – discarded cigarette butts – evidence of test admissible: 11/00
Admissibility of tape-recorded conversations – undercover police officer – admissions made – taped material excluded: 10/00

Tobacco sold to young person – use of young person to obtain evidence – such evidence wrongly excluded – public policy – entrapment - no unfairness: 6/00

MOTOR CAR TRADER

Numerous motor cars advertised for sale – person not licensed as a motor car trader - application for injunction to stop trading granted: 7/00

MOTOR TRAFFIC

- Drink-driving
 - **Certificate of breath analysis** police officer no longer a member of police force certificate not admitted into evidence magistrate in error: 39/00
 - **Driving whilst licence suspended** defendant not previously notified that licence suspended defendant had reasonable grounds for believing he was licensed to drive: 3/00.

SUBJECT MATTER

- Offence under s49(1)(e) RSA elements of making of a requirement an essential ingredient "refuse" implies the previous making of a requirement: 1/00.
- Offence under s49(1)(e) RSA "fail" to comply rather than "refuse" whether such words are similar in description omission to state in charge that police officer formed opinion does not invalidate charge: 2/00.
- **Refusal to remain for breath test** person left booze bus to have cigarette remained close to steps of bus in company of two police officers "other place" whether person remained for purpose of test person not guilty of offence refreshment of memory from written statement inspected by defence counsel wrongly compelled to tender it: 41/00

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Business offering unsupervised horses for hire to ride – risk to health and safety of riders – improvement notice issued – cancelled by magistrate – "exposed to risks" – not restricted to workplace risks: 30/00

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Application for compensation for pain and suffering – brought more than six months after offender convicted of offence – application out of time: 9/00

Combined custody and treatment order – breached – "exceptional circumstances" – whether existed: 14/00

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Trafficking in cannabis – serious offence – suggestion that drug not harmless - serious offences require imposition of an immediate custodial sentence: 16/00

TABLE OF CASES REFERRED TO, CONSIDERED, APPLIED etc.

ACF v Commonwealth (1980) 146 CLR 493, referred to: 40/00.

Arnett v Holloway [1960] VR 22, referred to: 31/00.

Astley v Austrust Ltd (1999) 73 ALJR 403, applied: 21/00.

Australian Casualty Co Ltd v Federico (1986) 160 CLR 513, referred to: 33/00.

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Bellgrove v Eldridge (1954) 90 CLR 613, referred to: 38/00.

Bunning v Cross (1978) 141 CLR 54, referred to: 39/00.

Chugg v Pacific Dunlop Ltd (1990) 170 CLR 249, referred to: 27/00.

Codelfa Constructions Pty Ltd v State Rail Authority of NSW (1982) 149 CLR 337, applied: 29/00.

Comm'r for Corporate Affairs v Green (1978) VR 505, distinguished: 21/00.

Commissioners of Succession Duties (SA) v Executor Trustee & Agency Co of South Australia Ltd (1947) 74 CLR 358, applied: 23/00.

Cuthill v State Electricity Commission of Victoria [1981] VR 908, referred to: 27/00.

Davis v Grocon Ltd [1992] 2 VR 661, followed: 27/00.

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Dobbin v Waldorf Toilet Saloons Ltd (1937) 1 All ER 331, referred to: 21/00.

DPP (Cth) v Tang (1995) 83 A Crim R 593, referred to: 14/00.

DPP v Bajram & Foster [1999] 2 VR 643, followed: 1, 2, 39, 41/00.

DPP v Emaden Pty Ltd [1991] MC 171, distinguished: 4/00.

DPP v His Honour Judge Fricke (1993) 1 VR 369, referred to: 4/00.

DPP v Webb [1993] 2 VR 403, applied: 41/00.

DPP v Williams (1998) 28 MVR 521, referred to: 41/00.

Dunlop Perdriau Rubber Co Ltd v Federated Rubber Workers' Union (1931) 46 CLR 329, referred to: 33/00.

Elyard Corporation Pty Ltd v DDB Needham (1995) 133 ALR 206, applied: 31/00.

Ex parte Lovell; re Buckley (1938) SR(NSW) 153, cited: 1, 2/00.

Fisher v Fisher (1988) VR 1028, referred to: 40/00.

Gamlen Chemical Co v Rochem Ltd [1980] 1 WLR 614. applied: 28/00.

Graham v Haig (1885) 11 VLR 244, referred to: 40/00.

Hansford v McMillan [1976] VR 743, referred to: 27/00.

Harris v Knight (1890) 15 PD 170, cited: 4/00.

Hatton v Harris [1892] AC 546, applied: 31/00.

How v Winterton (1904) 111 LT 763, referred to: 31/00.

Howarth v Adey [1996] 2 VR 535, referred to: 28/00.

Jago v District Court of NSW (1989) 168 CLR 23, referred to: 39/00.

Johnson v Miller (1937) 59 CLR 467, applied: 1/00, 2/00.

JT Stratford & Son v Lindley [1969] 3 All ER 1122, referred to: 31/00.

Kent v Wilson [2000] VSC 98, referred to: 43/00.

Kidd v Reeves (1972) VR 563, referred to: 3/00.

Lampheir v Phipos (1838) 8 CP 475, cited: 21/00.

Lanham v Brake (1983) 34 SASR 578, discussed: 5/00.

Liebe v Mollov (1906) 4 CLR 347, applied: 38/00.

Magistrates' Court at Prahran v Murphy (1997) 2 VR 186, applied: 17/00.

March v City of Frankston [1969] VR 350, applied: 23/00.

Morse v Klooger (1918) VLR 205, referred to: 40/00.

National Australia Bank Ltd v Bond Brewing [1991] 1 VR 386, applied: 26/00.

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O'Donnell v Reichard (1975) VR 916, referred to: 33/00.

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Percy v DPP (1995) 1 WLR 1382, followed: 40/00.

Pisak v Hegedus [1983] 2 VR 386, followed: 29/00.

Plumpton v Burkinshaw [1908-10] All ER Rep 331, referred to: 29/00.

Pointon v Cox (1927) 136 LT 506, applied: 1/00.

Protean (Holdings) Ltd v American Home Assurance (1985) VR 187, referred to: 32/00.

Proudman v Dayman (1941) 67 CLR 536, referred to: 3/00.

R v Arnold (1999) 1 VR 179, applied: 19/00.

R v Australian Char Pty Ltd (1995) 79 A Crim R 427, referred to: 27/00.

R v Board of Trustees of the Science Museum [1993] 3 All ER 853, applied: 30/00.

R v Conlon (1993) 69 A Crim R 92, applied: 3/00.

R v Heaney and Welsh [1998] 4 VR 636, referred to: 10/00.

R v McLachlan MC 16/99, followed: 14/00.

R v Pastras (1993) 65 A Crim R 584, applied: 16/00.

R v Pritchard [1991] 1 VR 64, cited: 10/00.

R v Swaffield; Pavic v R (1998) 192 CLR 159, referred to: 10/00.

R v Warrell [1993] 1 VR 671, quoted: 11/00.

R v Wills [1983] 2 VR 201, applied: 3/00.

R v Wright; ex parte Klar [1971] 1 SASR 103, considered: 40/00.

Rabczynski v Morrison[1988] WAR 71, referred to: 27/00.

Ridgeway v R (1995) 184 CLR 19, discussed: 6/00.

Rival Nominees Pty Ltd v Craig Davis Constructions Pty Ltd, unrep, CA, 26 June 1981, referred to: 38/00.

Rozenes v Beljajev (1995) 1 VR 533, applied: 39/00.

Schultz v Virgin [1966] SASR 94, applied: 27/00.

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Scott v Baker (1969) 1 QB 659, distinguished: 4/00.

Scott v Dunstone [1963] VR 579, referred to: 1/00.

State of Queensland v JL Holdings Ltd (1987) 189 CLR 146, referred to: 17, 28/00.

Storey & Keers Pty Ltd v Johnstone (1987) 9 NSWLR 446, applied: 31/00.

Sun Alliance Insurance Ltd v Massoud (1989) VR 8, applied: 19/00.

The Shire President etc of Swan Hill v Bradbury (1937) 56 CLR 746, referred to: 30/00.

Thompson v Judge Byrne (1999) 196 CLR 141, applied: 39/00.

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Valentine v Eid (1992) 27 NSWLR 615, followed: 30/00.

Walker v DPP (1993) 17 MVR 194, referred to: 1/00.

Walton Stores (Interstate) Ltd v Maher (1988) 164 CLR 387, referred to: 18/00.

Woolworths (Victoria) Ltd v Marsh MC47/86, referred to: 1, 2/00. Zambelis v Nahas (1991) V Conv R 54-396, referred to: 28/00.

WORDS AND PHRASES, CATCHWORDS, CONCEPTS etc.

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

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 Environment Protection Act 1970
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Environment Protection (Scheduled Premises and Exemptions) Regulations 1996

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Evidence Act 1958 s36: 41/00

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Magistrates' Court Act 1989 s27: 1, 2/00; s30(2), (3): 4/00; s50: 1/00; s126A: 40/00

Magistrates Court Civil Procedure Rules 1989, r26.02(2): 21/00; r26.04(c): 38/00

Motor Car Traders Act 1986 ss3, 7, 7A, 33A: 7/00

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