

Friday, 8 March 2019

## Weekly Employment Law Selected Bulletins covering Employment

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### Executive Summary (1 minute read)

**Umoona Tjutagku Health Service Aboriginal Corporation v Walsh** (FCAFC) - costs - corporations - employment - victimisation - Court upheld claim against second appellant - appeal against costs orders allowed in part - no orders for costs

**Wilh. Wilhelmsen Investments Pty Ltd v SSS Holdings Pty Ltd** (NSWCA) - employment law - estoppel - primary judge found employee of appellant had ostensible authority to place orders for phones with respondent and that appellant was obliged to pay - appeal dismissed

**Wichmann v Dormway Pty Ltd** (QCA) - contract - deed - respondent granted summary judgment on claim for money misappropriated by appellant - respondent's claim not precluded by release in deed executed by parties - appeal dismissed

**Rickard & Wilson & Active Safety Services Pty Ltd v Testel Australia Pty Ltd** (SASCFC) - damages - franchise deed - restraint covenant - interference with contractual relations - appeal against assessment of damages - appeal allowed in part - cross-appeal dismissed

**Atherden v Caldipp** (ACTSC) - negligence - plaintiff sued employer in respect of injuries he suffered in workplace accident which involved a vehicle - no contributory negligence - damages assessed - judgment for plaintiff

### Summaries With Link (Five Minute Read)

**[Umoona Tjutagku Health Service Aboriginal Corporation v Walsh \[2019\] FCAFC 32](#)**

Full Court of the Federal Court of Australia

White, Perry & Banks-Smith JJ

Costs - corporations - employment - victimisation - respondent was first appellant's 'former employee and officeholder' - second appellant was first appellant's Chief Executive Officer - Court dismissed respondent's claim against first appellant, finding they were statute-barred - Court upheld claim against second appellant for victimisation - Pt 10-5 *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) - Court awarded respondent compensation - appeal against costs orders - whether erroneous exercise of discretion - litigation's conduct - offers of settlement - *House v The King* (1936) 55 CLR 499 - r40.08 *Federal Court Rules 2011* (Cth) - held: appeal allowed in part - no orders for costs.

[Umoona](#)

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## **Wilh. Wilhelmsen Investments Pty Ltd v SSS Holdings Pty Ltd [2019] NSWCA 32**

Court of Appeal of New South Wales

Beazley ACJ; White JA & Emmett AJA

Employment law - estoppel - primary judge gave judgment for respondent in sum against appellant - primary judge found employee of appellant had ostensible authority to place orders for phones with respondent, and that appellant was thus obliged to pay - whether erroneous finding that employee had ostensible authority to place the orders - whether, if respondent relied on "relevant representation of authority" to found ostensible authority's existence, primary judge erroneously found reliance was reasonable - whether erroneous finding appellant vicariously liable for employee's conduct where vicarious liability not pleaded - held: appeal dismissed.

[View Decision](#)

[From Benchmark Friday, 8 March 2019]

## **Wichmann v Dormway Pty Ltd [2019] QCA 31**

Court of Appeal of Queensland

Sofronoff P; Gotterson & Morrison JJA

Contract - deed - respondent employed appellant as office manager - appellant diverted respondent's money into appellant's bank account - respondent discovered appellant misappropriated \$2,809.42 - respondent terminated appellant's employment - parties executed deed containing 'mutual releases' - after deed executed, respondent discovered appellant had taken \$321,593.85 (sum) - respondent sued appellant for sum - appellant contended claim precluded by deed - respondent was granted summary judgment - appellant appealed - construction of release in deed - whether release extended to respondent's claims - held: appeal dismissed.

[Wichmann](#)

[From Benchmark Friday, 8 March 2019]

## **Rickard & Wilson & Active Safety Services Pty Ltd v Testel Australia Pty Ltd [2019]**

## **SASCFC 16**

Full Court of the Supreme Court of South Australia

Kourakis CJ; Kelly & Bampton JJ

Damages - franchise deed - restraint covenant - interference with contractual relations - Court gave judgment against appellants in proceedings - appellants did not challenge findings of liability - appellants challenged assessment of damages - appellants' 'primary contention' was that primary judge erred in assessment of damages for 'loss of opportunity' - held: Court reduced award of damages to respondent by \$2,286.44 - respondent entitled to judgment of \$142,526.19 - appeal allowed in part - cross-appeal dismissed.

[Rickard](#)

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## **Atherden v Caldipp [2019] ACTSC 29**

Supreme Court of the Australian Capital Territory

Penfold J

Negligence - plaintiff sued employer in respect of injuries he suffered in workplace accident which involved a vehicle - plaintiff conceded that 'with hindsight he realised that the activity was dangerous' - employer admitted liability but sought reduction in damages due to alleged contributory negligence by plaintiff - plaintiff's extent of loss also disputed - contributory negligence test - whether activity which resulted in plaintiff's injury was initiated by supervisor - whether plaintiff participated in the activity for own interest or employer's interest - assessment of damages - held: Court not satisfied there was any contributory negligence by plaintiff - damages assessed - judgment for plaintiff.

[Atherdon](#)

[From Benchmark Friday, 8 March 2019]



# Benchmark

## **The White Rabbit's Evidence**

**By: Lewis Carroll**

*'They told me you had been to her,*

*And mentioned me to him:*

*She gave me a good character,*

*But said I could not swim.*

*He sent them word I had not gone*

*(We know it to be true):*

*If she should push the matter on,*

*What would become of you?*

*I gave her one, they gave him two,*

*You gave us three or more;*

*They all returned from him to you,*

*Though they were mine before.*

*If I or she should chance to be*

*Involved in this affair,*

*He trusts to you to set them free,*

*Exactly as we were.*



*My notion was that you had been*

*(Before she had this fit)*

*An obstacle that came between*

*Him, and ourselves, and it.*

*Don't let him know she liked them best,*

*For this must ever be*

*A secret, kept from all the rest,*

*Between yourself and me.'*

[https://en.wikipedia.org/wiki/Lewis\\_Carroll](https://en.wikipedia.org/wiki/Lewis_Carroll)

en.wikipedia.org

Charles Lutwidge Dodgson (/ ʔ l ʔ t w ʔ d ʔ ʔ d ʔ d ʔ s ʔ n /; 27 January 1832 – 14 January 1898), better known by his pen name Lewis Carroll, was an English writer of world-famous children's fiction, notably Alice's Adventures in Wonderland and its sequel Through the Looking-Glass. He was noted for his facility at word play, logic and fantasy. The poems Jabberwocky and The Hunting of the ....

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