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Business

AUSTRALIA

Buyer of Business Short Changed

By **Selwyn Black, Esq.** and **Nicholas Huang, Esq.**

Carroll & O'Dea Lawyers

Sydney, Australia

The recent case of *Kallin Pty Ltd v ACN 107 851 847 Pty Ltd* [2018] NSWSC 124 highlights the importance of buyer due diligence in making acquisitions and the need for a carefully tailored sale contract.

The Key Facts

1. Good Booze (**Seller**) owned a liquor store (**Store**). David Short (**David**) and other members of the Short family were the shareholders of the Seller. The Short family owned other interests in pubs and clubs, and operated a wholesale liquor business.

Full Article

AUSTRALIA

Unconscionable Conduct Bringing Experienced Commercial Parties Back Down to Earth in *Ipstar Australia Pty Ltd*.

By **Selwyn Black, Esq.**

Carroll & O'Dea Lawyers

Sydney, Australia

In the recent decision of *Ipstar Australia Pty Ltd V APS Satellite Pty Ltd* [2018] NSWCA 15 the

New South Wales Court of Appeal (**NSWCA**) has developed the meaning of unconscionable conduct pursuant to Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**ACL**), particularly as it applies to relations between 'experienced commercial parties'.

FACTS

The Appellant, Ipstar Australia Pty Ltd (**Ipstar**), is a wholesaler of satellite broadband services and the Respondent, APS Satellite Pty Ltd (**APS**) (formerly known as SkyMesh Pty Ltd) was at the time of the events subject to this decision, a licensed telecommunications carrier.

[Full Article](#)

GERMANY

Foreign Direct Investments (FDI) in German "Critical Infrastructure" by EU Foreigners

By [Phillipp von Raven, Esq.](#)

[WINHELLER Attorneys at Law & Tax Advisors](#)

Frankfurt, Germany

New Reporting Requirements for Foreign Direct Investments in German Companies and Possibilities for Prohibition Orders

If non-European investors acquire German companies or shares in a German company, the Federal Ministry for Economic Affairs may have a say. In fact, the Ministry has extended rights for screening of company purchases by non-EU-foreigners if so-called "critical infrastructure" is concerned. This applies not only to the companies that operate the "critical infrastructure" but also to those that develop software specifically designed for use in "critical infrastructure".

[Full Article](#)

HONG KONG

An Update on the Regulatory Regime of OTC Derivatives Markets in Hong Kongs

[ONC Lawyers](#)

Hong Kong, Hong Kong

The Securities and Futures Commission ("SFC") introduced 2 new regulated activities, namely type 11 regulated activities ("Type 11 RA") and type 12 regulated activities ("Type 12 RA"), and collectively referred as the "new RAs", to regulate persons who serve as dealers, advisers or clearing agents etc. in the OTC derivatives market.

[Full Article](#)

NETHERLANDS

UBO-Register and Central Register of Shareholders

By [Ynze Kliphuis, LL.M.](#)

[Russell Advocaten, B.V.](#)

Amsterdam, Netherlands

In the Netherlands, two registers will be implemented to combat money-laundering and tax avoidance, the UBO-register and the central register of shareholders. As a consequence, everyone can see who owns a company.

Currently, it is difficult or impossible to find out who the main shareholders of private and non-listed companies are. A shareholder is only registered in the trade register and therefore public if a company has only one shareholder. This will change in the near future.

[Full Article](#)

Data Privacy

UNITED STATES

School Threats Won't Threaten Student Privacy

By [Amy B. Welch, Esq.](#)

[Rudolph Friedmann LLP](#)

Boston, Massachusetts

It's Monday morning and you log onto Facebook. You expect to see the usual litany of pet pictures, bland status updates and requests for where to find the best Chinese food in your community. Instead, there is a post on the community "Moms" page with over 57 comments. There is a rumor of a threat at the high school and the school is only saying that it's "not credible."

In this age of social media, 24 hours news and reality television, it's frustrating not to know the full details. Between Facebook, Instagram, Snap Chat and text messages, rumors spread faster than they can be addressed. We want answers and we want them immediately. Assumptions are made, debated and critiqued. While it is worrisome being told proper procedures were followed and there is no credible threat to student safety, many are surprised to learn that Federal and Massachusetts law prevent the school from releasing more information.

[Full Article](#)

UNITED STATES

The Road to GDPR, Part One: Don't Look to Blockchain as a Compliance Shortcut

[Barton LLP](#)

New York, New York

US companies looking at blockchain as an expedient and inexpensive path to General Data Protection Regulation (GDPR) compliance should look skeptically. Oxford Senior Law Lecturer Michelle Finck recently [wrote](#), "It is safe to assume that most blockchains are not GDPR compliant," adding, "because they cannot implement" basic GDPR-guaranteed rights. The IT department, whose personnel may see blockchain as the path to all things digital, should be asked to take a deep breath and listen to the legal and compliance folks.

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Labor and Employment

HONG KONG

Legal Shadow Over Moonlighting

[ONC Lawyers](#)

Hong Kong, Hong Kong

In many Hong Kong companies, employees who moonlight without disclosing it or obtaining consent are breaching their contracts, and may face disciplinary action, have their employment terminated or even be sued for damages. Moonlighting may also be a criminal offence under the Prevention of Bribery Ordinance.

[Full Article](#)

HONG KONG

Sex Discrimination in Workplace Cannot be Inferred

ONC Lawyers

Hong Kong, Hong Kong

It is unlawful for any employer to dismiss any of its employees on the basis of his or her gender. However, it is often difficult, if not impossible, for an employee to produce direct evidence of such discrimination against his or her employer. In addition, the Court is often reluctant to draw an inference of sex discrimination from bare allegations of the employee that the employer has acted unreasonably or unfairly towards him or her. In *Tan, Shaun Zhi Ming v Euromoney Institutional Investor (Jersey) Ltd* [2018] HKDC 185, an employer was alleged to have unlawfully dismissed an employee on the ground of his gender. Various legal issues concerning how to ascertain an unlawful dismissal was considered at the District Court, which provide certain important insights to both employers and employees.

[Full Article](#)

NETHERLANDS

Probationary Period: When Does it Commence?

By **[Jan Dop, LL.M.](#)**

[Russell Advocaten, B.V.](#)

Amsterdam, Netherlands

When concluding an employment contract, a probationary period can be agreed upon. What will be the consequences if the employee performs activities before this probationary period has started?

Probationary Period

The purpose of the probationary period is for the employer and employee to get to know each other better before being bound to each other. During the probationary period, both the employer and the employee can terminate the employment contract. During this period the rules regarding employment protection do, in principle, not apply. However, if requested, the reason for termination has to be communicated.

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UNITED STATES

Be Prepared for Calls from the DFEH Regarding Your Anti-Harassment Policies

By **[Wendy Lane, Esq.](#)** and **[Karina Sterman, Esq.](#)**

[Greenberg Glusker](#)

Los Angeles, California

The California Department of Fair Employment and Housing (DFEH) announced that it will commence random telephone interviews of employers about their anti-harassment and diversity policies. An outgrowth of the DFEH's Task Force on the Prevention of Sexual Harassment in the Workplace, this is a well-intended but, not surprisingly, oddly executed effort "to develop a portrait of how California employers manage diversity and harassment issues."

[Full Article](#)

UNITED STATES

5 Myths About Employment Discrimination

[Zupkus & Angell, P.C.](#)

Denver, Colorado

Employment discrimination laws prohibit certain employers from engaging in discriminatory practices on the basis of characteristics such as race, religion, age, disability, and gender. This area of law can be complex since federal and state statutes, regulations, and guidelines apply.

It's not surprising, then, that myths about employment discrimination law abound. Here are five of the most common:

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Premises Liability

UNITED STATES

Post Las Vegas: The New Reality for Hotels When It Comes To Guest Privacy

By [Christian Stegmaier, Esq.](#)

[Collins & Lacy, P.C.](#)

Columbia, South Carolina

It been written an innumerable amount of times: 9/11 changed the course of our history and forever affected just about every business and activity in this country. Travel, particularly air travel, is measurably different than what it was prior to that fateful day in New York, Washington, D.C., and Shanksville. Think back to getting on a plane back in the 1980's and 1990's and compare that to today's experience. Night and day difference.

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Real Estate & Leasing

AUSTRALIA

Some Real Estate Buyers to Pay GST

By [Selwyn Black, Esq.](#) and [Nicholas Huang, Esq.](#)

[Carroll & O'Dea Lawyers](#)

Sydney, Australia

The Australian Government has recently passed the *Treasury Laws Amendment (2018 Measures No. 1) Bill 2018 (New Laws)*, which will make buyers of certain real property liable for paying GST on the purchase price.

The reason for the New Laws

1. Currently, property developers who are liable to pay GST on the supply of new residential premises or a subdivision of potential residential land (**New Residential Premises**) remit the GST to the ATO when they pay lodge their next business activity statement. This can be up to three months after completion of a sale.

[Full Article](#)

NETHERLANDS

Leasing/Letting: Buying Let Property? You Can't Just End that Tenancy

By [Ynze Kliphuis, LL.M.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

In a tight housing market it can be tempting to buy (partly) let property, if you don't need the space (yet) or as an investment. But don't forget: If you need the let space yourself, it won't be easy to end the tenancy.

Especially in the big cities it is not unusual that housing property is bought in which one or more apartments are still let. This can be attractive for the owner, for instance because the remaining space of the property is sufficient for him or her and/or the rental income can help finance renovations. However, when eventually the moment has come that the owner intends to use the let part of the house too - for instance when new family members arrive - can he or she terminate the tenancy?

[Full Article](#)

UNITED STATES

Lenders Beware: Omitting One Word in a Mortgage Could Impact Your Right to Foreclose

By [Rudolph Friedmann, LLP](#)

Boston, Massachusetts

In the Supreme Judicial Court case of *James B. Nutter & Company vs. Estate of Murphy, et. al. (and two consolidated cases)* dated January 18, 2018, the SJC had to decide if the language in a reverse mortgage incorporated the statutory power of sale as required by M.G.L c. 183, sec. 21 allowing the lender to foreclose on the mortgage.

In 2007 and 2008 three borrowers obtained loans from the lender. The loans were obtained by virtue of reverse mortgages. With a reverse mortgage the borrower obtains an equity line of credit based upon the value of their home. Unlike a standard mortgage the lender looks to the equity in the property when the borrower dies or sells the property. A reverse mortgage, however, is a nonrecourse loan in which the lender's only remedy is to foreclose. The borrower would not be liable for a deficiency balance if the loan proceeds exceed the value of the home at the time of the foreclosure sale.

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Tax Law

GERMANY

Double Sales Tax on Imports of Goods into the EU

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Frankfurt, Germany

All companies that import goods into the EU, and especially into Germany, have to pay the corresponding import duties. These duties are composed of the customs duty and the import sales tax. While, depending on the goods' origin, the rate of duty is often 0%, the import sales tax on imports into Germany will in most cases have to be paid in the full amount of 19% or 7%. However, there may be cases, where the German tax authority will later demand payment of the sales tax yet another time.

Trade Marks

GERMANY

Trademark Registration of "La Mafia" Infringes Accepted Principles of Morality

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Frankfurt, Germany

Recently, the European court ruled that the brand "La Mafia se sienta a la mesa" (The Mafia takes a seat at the table) is contrary to public policy and to accepted principles of morality.

Restaurant Chain Applies for Registration of a Trademark

In 2006, a Spanish restaurant chain successfully registered a word and figurative mark as intellectual property. The protection included catering services, running bars, cafeterias and café restaurants. Years later, the Italian Republic filed an application for a declaration of invalidity reasoning the mark was contrary to public policy and to accepted principles of morality.

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Paradigm Magazine



The [2018 Spring Paradigm Magazine](#) delivers articles regarding developments and trends in legal issues relevant to corporate clients around the world, while showcasing Primerus members as leaders with the expertise to assist clients with any legal needs they may have. It is published twice a year and mailed to Primerus members as well as clients around the world.

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- [**A Survey of the Law of Dram Shop and Alcohol Liability**](#)
- [**A Survey of the Law of Legal Malpractice - A Professional Liability Practice Group Compendium - September 2015**](#)
- [**A Survey of The Law of Non-Contractual Indemnity and Contribution - Products Liability Practice Group Compendium - April 2015**](#)
- [**Compendium of Principles of Law Regarding Bad Faith in the Fifty States and D.C. - 2013 Edition**](#)
- [**A State by State Update of Tort Reform - 2013 Edition**](#)
- [**Principles of Law Regarding Establishment and Operation of a Business in**](#)

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