



Corporate Client e-Newsletter

December 2015

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Bankruptcy

[AUSTRALIA](#)

Claiming from a bankrupt - what are the timeframes for trustees?

By: [Mark Madsen, Esq.](#) & [Ruth Sainsbury, Esq.](#)

Mullins Lawyers

Brisbane, Australia

Under section 127 of the Bankruptcy Act, trustees are barred from making a claim to any property of a bankrupt after the expiration of 20 years from the date on which the person became a bankrupt. In *Madden v Official Trustee and Bankruptcy* [2014] FCA 446, the Court looked at the operation of this section when a discharged bankrupt made a claim for re-vesting of property after the expiration of the limitation period.

[Full Article](#)

Business

NETHERLANDS

Good Governance: Reasonableness and Fairness of Directors and Supervisors

By: [Thomas Schutte, Esq.](#)

Russell Advocaten B.V.

Amsterdam, Netherlands

Reasonableness and fairness play a crucial and special role in Dutch law. What function has this standard, for instance, for directors and supervisors?

[Full Article](#)

NETHERLANDS

Transfer of Undertaking Criteria

By: [Jan Dop, Esq.](#)

Russell Advocaten B.V.

Amsterdam, Netherlands

Planning a merger, acquisition or division of (part of) a business in the Netherlands or any other EU country? Be aware of the EU law which sets out the strong position of employees in case of a transfer of undertaking (Directive 2001/23/EC). Russell Advocaten will inform you on this legislation and the consequences thereof by a series of newsletters. This time: Criteria for a transfer of undertaking.

[Full Article](#)

UNITED STATES

Veterinary Medical Board (VMB) - Protecting Your Veterinary Practice from "Cite and Fine" Issues

By: [Thomas G. Redmon, Esq.](#)

Wilke, Fleury, Hoffelt, Gould & Birney, LLP

Sacramento, California

The Veterinary Medical Board's "Cite and Fine" Program was first implemented in 1990 to aid in the processing of complaints made against veterinarians. "Cite and Fine" issues can be the result of a number of problems, ranging from inadequate recordkeeping to violations in another state. These issues can not only cost your practice money, but they can also lead to more serious disciplinary actions in some cases. For these reasons, strive to protect yourself from "cite and fine" issues as much as possible. To protect your practice, follow these tips:

[Full Article](#)

UNITED STATES

General Duties of Care for Veterinarians

By: [Daniel L. Baxter, Esq.](#)

Wilke, Fleury, Hoffelt, Gould & Birney, LLP

Sacramento, California

The term "duty of care" refers to the way in which you must interact with your clients and patients in order to satisfy the requirements of the law. For California veterinarians, this amounts to:

Being a competent care provider.

Being humane.

Providing care that is consistent with the current veterinary practice standards.

Since "current" veterinary practice standards are continuously evolving, the duty of care evolves as well.

[Full Article](#)

Estate & Tax Planning

AUSTRALIA

Riddles are Great - Just not in your Will!

By: [Michael Klatt, Esq.](#) & [Chris Herrald, Esq.](#)

Mullins Lawyers

Brisbane, Australia

They say that solving riddles and puzzles keeps the mind young, but one place that you don't want to see a riddle is in your will.

The lives that people lead are varied and it is for this reason that estate planning and will drafting cannot be approached with a "one size fits all" formula. It is important that you not only have a will, but that the will is

drafted in a way that makes your wishes abundantly clear and unambiguous.

[Full Article](#)

UNITED STATES

Alert - New Law Changes Filing Deadlines for Partnerships and C Corporation Tax Returns

By: [Thomas G. Blomberg, Esq.](#)

Buchman Provine Brothers Smith LLP

San Francisco, California

On July 31, 2015, President Obama signed into law P.L. 114-41, the "Surface Transportation and Veterans Health Care Choice Improvement Act of 2015." Although this new law was primarily designed as a 3-month stopgap extension of the Highway Trust Fund and related measures, it includes a number of important tax provisions, including revised due dates for partnership and C corporation returns and revised extended due dates for some returns. This letter provides an overview of these provisions, which may have an impact on you, your family, or your business.

[Full Article](#)

Insolvency

HONG KONG

Necessary Requirements for Appointing Interim Receivers on Ex parte Basis

[ONC Lawyers](#)

Hong Kong, Hong Kong (SAR)

A receiver is an individual whose role is to realize sufficient of the charged assets in order to satisfy the company's indebtedness to its secured creditors. Although a receiver is often appointed by the secured creditors of the company, the Court also has a broad discretion to appoint a receiver. Under Section 21L of the High Court Ordinance (Cap. 4), the Court may appoint a receiver by interlocutory or final order when it appears just and convenient to do so. A receiver appointed by the Court acts as an officer of the Court to discharge the duties in the order appointing him and is not the agent of either the secured creditors or the company. The receiver is also under a duty to exercise the rights of shareholders where necessary to preserve the value of the shares of the company to which the receiver is appointed.

[Full Article](#)

Intellectual Property & Technology

AUSTRALIA

Santa Claus is Comin' to Town - and Away from the Studio! An IP Tale of How a Family Won Back a Christmas Classic

By: [Patricia Monemvasitis, Esq.](#) & [Kim Leontiev, Esq.](#)

Carroll & O'Dea

Sydney, Australia

2015 has been another big year in the world of IP. We had the Federal Court order discovery on Internet Service Providers in relation to account holders who may have illegally downloaded a copy of the film Dallas Buyers Club, the Federal Parliament passed the website blocking laws (Copyright Amendment (Online Infringement) Bill 2015), not to mention the commencement of metadata retention in Australia and the High Court victory for Yvonne D'Arcy against Myriad Genetics Inc in the battle to invalidate the patent over the BRCA-1 gene.

[Full Article](#)

AUSTRALIA

D'Arcy v Myriad Genetics: A Grandmother & Goliath case highlighting broad legal standing in patent opposition and public interest litigation

By: [Patricia Monemvasitis, Esq.](#) & [Kim Leontiev, Esq.](#)

Carroll & O'Dea

Sydney, Australia

The recent Australian High Court case of D'Arcy v Myriad Genetics Inc[1] ('D'Arcy's case') is exceptional for a number of reasons not least of all, holding that the BRCA-1 genetic sequence is not a "patentable invention" within the meaning of s 18(1)(a) of the Patents Act 1990 (Cth) ('Patent's Act').[2] Specifically, it represents a win for breast cancer sufferers possessing the genetic form of the cancer, enabling public research institutes to continue their necessary research into the BRCA-1 gene without paying for the use of the genetic sequence. The story of the woman who led the charge against Myriad Genetics however is even more captivating still. The D'Arcy's case is veritably of a "David and Goliath battle", [3] played out in Australia's highest court.

[Full Article](#)

HONG KONG

Can You Sing "Happy Birthday to You" in Public?

ONC Lawyers

Hong Kong, Hong Kong (SAR)

In a recent U.S. judgment of *Rupa Marya v. Warner Chappell Music Inc.*, Case No. 2:13-cv-04460, the copyright in the popular song "Happy Birthday" ("Song") of Warner Chappell Music Inc. and Summy-Birdchard Inc. (collectively, "Defendants") was in disputed by a group of artists ("Plaintiffs"). The Plaintiffs claimed that the copyright in the Song did not belong to the Defendants and the Defendants should be compelled to return the "millions of dollars of unlawful licensing fees" they have collected by wrongfully asserting copyright ownership in the lyrics to the Song. This article will summarise the key points of the judgment of the U.S. District Court ("Court").

[Full Article](#)

Labor and Employment

AUSTRALIA

HR Personnel Beware

By: [Pat Mullins, Esq.](#) & [Alan Strain, Esq.](#)

Mullins Lawyers

Brisbane, Australia

Your employer's failure to comply with the National Employment Standards (NES) can damage your personal financial wellbeing.

The recent decision of the Federal Circuit Court in the case of *Cerin v ACI Operations Pty Ltd & Ors* [2015] FCCA 2762 (14 October 2015) is a salutary and timely reminder for HR personnel of the risk of personal liability under the accessorial liability provisions of the Fair Work Act.

[Full Article](#)

HONG KONG

Bad Performance Is Not a Reason for Withholding Contract Gratuity

ONC Lawyers

Hong Kong, Hong Kong (SAR)

On 2 November 2015, the Labour Tribunal handed down judgment against the Equal Opportunities Commission (the "EOC") for its refusal to pay its former officer a contract gratuity of HK\$867,000, being the first case of EOC's defeat at the Tribunal. The publicity of the EOC as well as of the dispute leading to the hearing had put the case under the spotlight, but the basic legal principles applied in the case by the Tribunal are equally noteworthy.

[Full Article](#)

NETHERLANDS

Personnel: Working After Pension Age Act

By: [Jan Dop, Esq.](#)

Russell Advocaten B.V.

Amsterdam, Netherlands

As from 1 January 2016, you will face fewer risks of having to pay high (health care) costs in the event you hire or continue to employ experienced employees who have reached the statutory pension age. This is regulated in the 'Working After Pension Age Act' (Wet werken na de AOW-gerechtigde leeftijd) which is then to become effective. What obstacles will be removed by this Act?

[Full Article](#)

UNITED STATES

Frequently Asked Questions Regarding Workplace Accommodations Requested By Pregnant Employees

By: [Carol S. Harding, Esq.](#)

Earp Cohn P.C.

Philadelphia, Pennsylvania

Is pregnancy deemed to be a disability under the original ADA? No. Neither pregnancy itself, nor common restrictions thereof, including avoidance of repetitive heavy lifting and of exposure to hazardous chemicals, have been deemed to be a disability requiring accommodation under the original ADA.[1] In rare circumstances, however, serious complications of pregnancy have been deemed to meet the definition of disability under the original ADA.[2]

[Full Article](#)

UNITED STATES

Legislative Developments Affecting California Employers in 2016

Greenberg Glusker

Los Angeles, California

This year has brought many changes that will impact all California employers. This annual report from Greenberg Glusker's Employment Department summarizes some of the most important employment law developments that will affect California employers in the upcoming year. We look forward to working with you in 2016!

Full Article

UNITED STATES

Out-of-state Forum Selection Clauses May Not be Enforceable with Respect to California Wage and Hour Claims

By: Samson R. Elsbernd, Esq.

Wilke, Fleury, Hoffelt, Gould & Birney, LLP

Sacramento, California

Employment agreements commonly include a provision designating the place or forum where any employment related-claims must be litigated. Ordinarily, the party opposing a forum selection clause has the burden to demonstrate that the clause should not be enforced. However, the burden is reversed when the underlying claims are statutory rights that may not be waived, such as California Labor Code provisions concerning employee compensation. In such cases, the party seeking to enforce the forum selection clause must demonstrate that the forum selection clause will not diminish the statutory rights; otherwise, the clause will not be enforced.

Full Article

UNITED STATES

National Labor Relations Board General Counsel Guidance on Rules in Employee Handbooks: What You Need to Know

By: Kathryne Baldwin, Esq. & Samson R. Elsbernd, Esq.

Wilke, Fleury, Hoffelt, Gould & Birney, LLP

Sacramento, California

The National Labor Relations Board ("NLRB") enforces the federal National Labor Relations Act (NLRA), which applies to most private employers. Periodically, the General Counsel of the NLRB releases reports to clarify issues that arise in the workplace. One of the more recent reports discusses the lawfulness of employee rules found in a number of different employee handbooks. Section 7 of the NLRA protects the rights of all employees, not merely unionized employees, to communicate with one another or third parties at or away from work regarding terms and conditions of employment. Section 8 of the Act makes it unlawful for employers to interfere with, restrain or coerce employees in the exercise of their Section 7 rights.

Full Article

Real Estate

HONG KONG

How to Represent Your Company to Sign a Preliminary Sale and Purchase Agreement?

ONC Lawyers

Hong Kong, Hong Kong (SAR)

In Hong Kong, all contracts for the sale of property should be made in writing and signed by the vendor and the purchaser of the property or some other person lawfully authorized by the vendor/purchaser for that purpose. The manner of execution of such contracts is therefore vital. Parties to a property transaction usually sign a provisional agreement for sale and purchase at the conclusion of negotiations. Where the vendor/purchaser is a company, the way how this company signs a provisional agreement for sale and purchase may call into question.

Full Article

NETHERLANDS

Attractive Retail Rents in the Netherlands

By: Ynze Kliphuis, Esq.

Russell Advocaten B.V.

Amsterdam, Netherlands

Because of relatively low retail rents and a large international public, more and more international retail chains are established in the Netherlands. Russell Advocaten will gladly advise entrepreneurs in the sectors of retail, fashion and luxury.

Full Article

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The [Fall 2015 Primerus Membership Directory](#) is a useful tool that makes it easy for you to find one of Primerus' high quality law firms around the world.

Paradigm Magazine



The [2015 Fall 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.

If you would like to be added to our hard copy mailing list please include your mailing address in a brief email to Derek Hoeft at dhoeft@primerus.com

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[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 Various Countries Compendium - International Transactional Services Practice Group - March 2012](#)

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We seek out, accept and retain only the best firms for membership. Each firm is screened to ensure its commitment to excellence as embodied in the Six Pillars: Integrity, Excellent Work Product, Reasonable Fees, Continuing Legal Education, Civility and Community Service. After more than 20 years, in which Primerus has experienced tremendous growth in membership and expansion of services, we have never wavered from this commitment, and we never will.

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