

COVID-19 AND THE LAW

Bernadine McNamara
General Counsel
18 August 2022



**Barwon
Health**



Agenda

- The rule of law
- Employment
- Contracts
- Miscellaneous



The rule of law

- Traditional in Australia and other similar democracies
- No one is above the law, including government itself
- Laws are clear, known and enforced
- Provides a shield against the arbitrary exercise of power



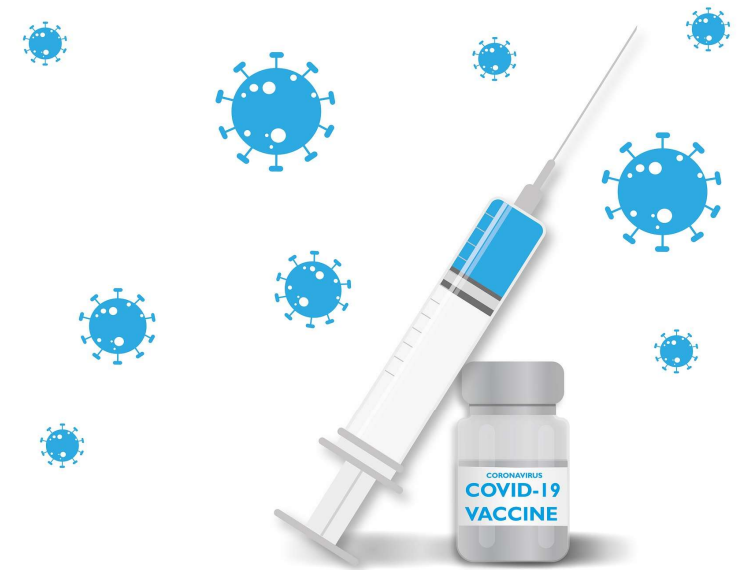
The rule of law

- What happened when COVID struck?
- Was the rule of law disregarded?
- Emergency powers
- lexatlas-c19.org



Employment and industrial relations

- Mandatory vaccinations
- Employer-mandated vaccinations
- Unfair dismissal cases
 - In the healthcare sector
 - In other sectors



Contracts – Force Majeure Clauses

- A clause in a contract which provides a defence to breach of contract if performance is hindered, delayed or prevented because of an event which the party could not have anticipated or controlled
- Example (pre-COVID):
 - [Supplier] is excused from performing its obligations to the extent it is prevented by circumstances beyond its reasonable control including but not limited to acts of God, natural disasters, acts of war, riots and strikes
- Example (post-COVID):
 - www.qut.edu.au/additional/force-majeure-covid-19



Contracts – Force Majeure – A case

- Mineo v Jetstar Airways Pty Limited (Civil Claims) [2021] VCAT 1558 (21 December 2021)



Contracts – Doctrine of Frustration

- Frustration is a common law doctrine which recognises that an event may occur through no fault of either party which makes it impossible to perform or radically changes the nature of any obligations under a contract
- Terminates the contract and parties are discharged from their obligations



Contracts – Doctrine of Frustration

- Classic case

www.worldlii.org/int/cases/EngR/1863/526.pdf

- Modern case

Foster & Sieker v Theodor
(Civil Claims) [2021] VCAT 1025



The comma again

- W. Jefferson v. Cammelleri,
2015-Ohio-2463

<https://www.washingtonpost.com/news/post-nation/wp/2015/07/01/ohio-appeals-court-ruling-is-a-victory-for-punctuation-sanity/>

WRONG

Let's eat Grandpa!
Yikes!

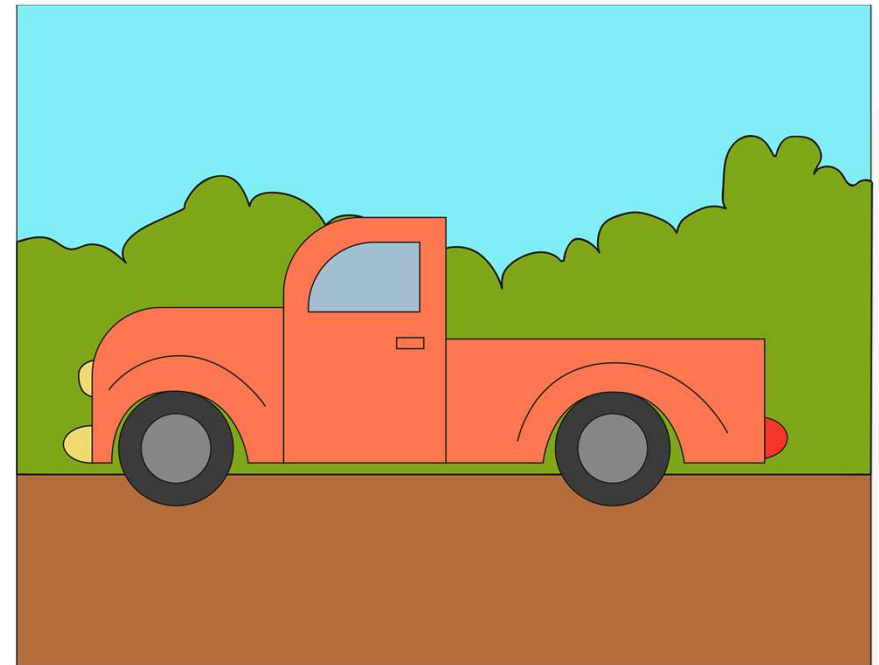
RIGHT

Let's eat, Grandpa!

www.photovis.com

The comma again, continued

- It was illegal to park “any motor vehicle camper, trailer, farm implement and/or non-motorized vehicle” on a street for more than 24 hours.
- What about a pickup truck?



Lawyer joke

An attorney was sitting in his office late one night, when Satan appeared before him. The Devil told the lawyer, "I have a proposition for you. You can win every case you try, for the rest of your life. Your clients will adore you, your colleagues will stand in awe of you, and you will make embarrassing sums of money.

All I want in exchange is your soul, your wife's soul, your children's souls, the souls of your parents, grandparents, and parents-in-law, and the souls of all your friends and law partners."

The lawyer thought about this for a moment, then asked, "So, what's the catch?"



Doctor joke



A man, dressed only in a hospital gown, rushed into the waiting room and said to his wife: "Take me home now! I've changed my mind about the operation."

"Why?" asked his wife.

"It was what the nurse said," the man said. "She said, 'It's a straightforward operation, very easy, you'll be fine, stop worrying!'"

"That's OK," said his wife.

"She was trying to reassure you."

"She wasn't talking to me," he said.

"She was speaking to the surgeon!"

However...

Discrimination law developments

www.humanrights.vic.gov.au/for-individuals/profession-trade-occupation/



Questions

