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Ogden Industries Pty Ltd v Lucas

Citation: [118 CLR 32^{\[PDF\]}](#), 43 ALJR 63, [1970] AC 113, [1969] 3 WLR 75, [1969] 1 All ER 121, (1968) 112 SJ 1008

Court: Privy Council (AUS)

Judges: Reid, Hodson, Upjohn, Donovan, Pearson

Judgment Date: 25/11/1968

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Contribution of work to disease - Pathological episode in course of progressive disease

A worker suffered a coronary occlusion and myocardial infarction on 18 February 1965 and became totally incapacitated. He did not work again. He suffered a further coronary occlusion and myocardial infarction in June and died in July. *Held*: The worker did not suffer a further injury or aggravation in June so as to give him a new title to compensation for the purposes of the Workers' Compensation (Amendment) Act 1965 Vic . The relevant effect of the contribution of work to the disease so as to constitute it an injury was spent in February when the injury was received. All else was the result and consequence of the injury.

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General principles of operation of legislation - "Liability"

The different senses in which the word "liability" may be used referred to, with particular reference to the meaning of the word in the Workers' Compensation Act 1958 Vic, s 5 , and in the Acts Interpretation Act 1958 Vic, s 7(2)(c) .

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Rights at date of death - Amendment of legislation between injury and death

The rights of dependants of a deceased worker to compensation and the corresponding liability of the employer under the Workers' Compensation Act 1958 Vic must be tested and ascertained at the date of death: dependants of a worker who was injured before but died after the commencement of the Workers' Compensation (Amendment) Act 1965 Vic are entitled to the increased rates prescribed by that Act.

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Pathological episode in course of progressive disease

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Contribution by further employment

Semble, having regard to the definition of "injury" substituted by the Workers' Compensation (Amendment) Act 1965 Vic for the definition in the Workers' Compensation Act 1958 Vic, if a claim is based on a recurrence, aggravation or acceleration of a pre-existing injury or disease that must be contributed to by further employment after the original disease.

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Precedents

Held:

- (1) The greatest possible care must be taken to relate the observation of a judge to the precise issues before him or her and to confine those observations, even though expressed in broad terms, to the general compass of the facts before him or her, unless he or she makes it clear that he or she intended his or her remarks to have a wider ambit. It is not possible for judges to express their judgments so as to exclude entirely the risk that in some subsequent case their language may be misapplied and any attempt at such perfection of expression could only lead to the opposite result of uncertainty or even obscurity as regards the case in hand. These general principles are particularly important when questions of construction of statutes are in issue.
- (2) It is quite clear that judicial statements as to the construction and intention of an Act must never be allowed to supplant or supersede its proper construction and courts must beware of falling into the error of treating the law to be that laid down by the judge in construing the Act rather than found in the words of the Act itself.
- (3) No doubt a decision on particular words binds inferior courts on the construction of those words on similar facts, but beyond that the observations of judges on the construction of statutes may be of the greatest help and guidance but are entitled to no more than respect and cannot absolve the court from its duty of exercising an independent judgment.

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Construction so as not to affect existing liability

A worker employed by the appellants suffered from heart disease which was aggravated and accelerated by the nature of his employment. In February 1965 he suffered from a coronary occlusion and myocardial infarction. He was totally incapacitated and, by the Workers Compensation Act 1958 Vic, s 5, the appellants became liable to pay him compensation for personal injury arising out of or in the course of his employment. On 1 July the Workers Compensation Act was amended by the Workers Compensation (Amendment) Act 1965 Vic which increased the benefits payable to the dependants of a deceased worker and substituted a new definition of "injury" for that contained in the Workers Compensation Act. On 7 July the worker suffered a pulmonary oedema from which he died. Thereafter his dependants claimed compensation under the Workers Compensation Act, s 9. The question was raised as to whether compensation should be paid under the increased rates introduced by the Workers Compensation (Amendment) Act, or whether, the rights of the dependants and the liabilities of the appellants under the Workers Compensation Act were preserved by the Acts Interpretation Act 1958 Vic, s 7(2)(c), and thus not affected by the Workers Compensation (Amendment) Act. *Held:* (dismissing the appeal)

- (1) Liability in the Acts Interpretation Act, s 7(2)(c), was used to connote something quite different from the liability referred to in the Workers Compensation Act, s 5; s 5, being merely introductory even when read in conjunction with s 9, did not confer on the dependants any rights until the death of the worker, and accordingly there was no liability preserved by the Acts Interpretation Act, s 7, after the amendment of the Act.
- (2) The rights of the dependants and the corresponding liability of the appellants must be ascertained at the time of the death of the deceased; at that time there was an obligation on the appellants under the Workers Compensation Act, as amended, to compensate the dependants in accordance with its provisions.

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General principles - Construction of statutes

The greatest possible care must be taken to relate the observation of a judge to the precise issues before him and to confine such observations, even though expressed in broad terms, to the general compass of the facts before him, unless he makes it clear that he intended his remarks to have a wider ambit. It is not possible for judges to express their judgments so as to exclude entirely the risk that in some subsequent case their language may be misapplied and any attempt at such perfection of expression could only lead to the opposite result of uncertainty or even obscurity as regards the case in hand. These general principles are particularly important when questions of construction of statutes are in issue. It is quite clear that judicial statements as to the construction and intention of an Act must never be allowed to supplant or supersede its proper construction and courts must beware of falling into the error of treating the law to be that laid down by the judge in construing the Act rather than found in the words of the Act itself. No doubt a decision on particular words binds inferior courts on the construction of those words on similar facts, but beyond that the observations of judges on the construction of statutes may be of the greatest help and guidance but are entitled to no more than respect and cannot absolve the court from its duty of exercising an independent judgment.

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Earlier Proceedings of [*Ogden Industries Pty Ltd v Lucas*, 118 CLR 32]

- [Affirmed](#) - *Ogden Industries Pty Ltd v Lucas* (1967) 116 CLR 537^[PDF], 41 ALJR 146, 63 QJP 56
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- *Brennan v Comcare* (1994) 50 FCR 555^[PDF], 19 AAR 542, 122 ALR 615
- *FAI General Insurance v Morrison* (1993) 2 Tas R 9^[PDF]
- *Burls v AA Mitchell Pty Ltd* [1979] VR 417
- *Pobezin v Insurance Commissioner of State Motor Car Insurance Office* [1969] VR 682
- *Unimin Pty Ltd v Kostrzewa* (1980) 31 ACTR 3, 50 FLR 68^[PDF]
- *Egan v Northcote, City of* (1972) [1971] VR 712, 47 ALJR 299, [1972-73] ALR 431
- *Melrose Farm Pty Ltd t/as Milesaway Tours v Milward* (2008) 175 IR 455^[PDF], [2008] WASCA 175^[DOC]
- *R v Fowler* (2006) 243 LSJS 285, [2006] SASC 18^[RTF], [2008] ALMD 6219
- *Australian Guarantee Corporation Ltd v Cairns* [1994] ASC 58,702 (56-261)

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- *Telstra Corporation Ltd v Aasian Performing Right Association Ltd* (1997) 191 CLR 140^[PDF], 71 ALJR 1312, 146 ALR 649, 38 IPR 294, [1997] HCA 41, [1997] AIPC 39,567 (91-344)
- *Baini v The Queen* (2012) 87 ALJR 180^[PDF], 293 ALR 472, [2012] HCA 59^{[HTML][RTF]}, [2013] ALMD 1288

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Liability; Liable