

Andrianakis v Uber Technologies; Taxi Apps Pty Ltd v Uber Technologies (Appeal) [2022] VSC 643 (28 October 2022)

client legal privilege – misconduct exception - the operation of a business model as systemic conduct

At issue was whether client legal privilege over certain sample documents was inapplicable by reason of the misconduct exception; that is, documents prepared or communications made in furtherance of the commission of offences.

Judgment

After identifying relevant principles (at [40]), John Dixon J considered that the primary judge had not erred. It was inappropriate to reason from the fundamental importance of the right to consult a lawyer in private rather than from the text of s 125, *Evidence Act 2008* (Vic) and the context of that Act (at [135]). Section 125, when read with s 131A, made clear that client legal privilege did not prevent disclosing a communication in furtherance of the commission of misconduct (at [136]). Nor did s 125 require identifying specific offences or how communications were in furtherance of them (at [137]). The commission of ridesharing offences was a fact in issue in the proceedings. The plaintiffs only had to demonstrate that there were reasonable grounds – that is, a foundation of factual allegations made on a proper basis – for finding that offences were committed (misconduct) and communications were made or documents prepared in furtherance of the alleged misconduct (at [140]). Whether a document was made ‘in furtherance of’ misconduct was fact sensitive, and ‘furtherance’ was given its ordinary meaning: the fact of being helped forward; the action of helping forward; advancement, aid, assistance (at [143], [150]). It was appropriate to regard the alleged misconduct as systemic (at [147]).

Implications

This case is of interest for considering the “misconduct” exception to the protection afforded by legal professional privilege. It was unnecessary to determine the dominant purpose for which communications were made because s 125 would conceivably apply (at [166]).

CHAPTER III



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