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## SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

***DERHAM v AMEV LIFE INSURANCE CO LTD***

Blackburn CJ

19 May 1978 — 20 ACTR 23; Noted 52 ALJ 464

**PRACTICE AND PROCEDURE – INTERROGATORIES – ANSWERS TO – SUFFICIENCY OF – INSUFFICIENT APPLICATION FOR ORDER FOR FURTHER ANSWERS – OBLIGATIONS OF INTERROGATED PARTY – WHETHER "INFORMATION" INCLUDES MEANS OF OBTAINING INFORMATION – WHETHER BOUND TO INQUIRE FROM FORMER SERVANTS AND AGENTS – AGENT CEASED TO BE AGENT BEFORE INTERROGATORIES SERVED – WHETHER INTERROGATED PARTY EXCUSED FROM ANSWERING – WHETHER THE INTERROGATED "ASSUMES" A VALID ANSWER – WHETHER THE INTERROGATED "DOES NOT KNOW" SUFFICIENT ANSWER.**

The plaintiffs sued the defendant for damages for fraudulent misrepresentation alleging that a named person, said to have been an agent of the defendant, made fraudulent misrepresentations to the plaintiffs. Relying on the representations the plaintiffs paid money to that person for investment in accordance with the representations. The defendant denied the representations and the agency of the named person. The plaintiffs, having served interrogatories on the defendant and allegedly having received insufficient answers to them, sought an order for further answers to the interrogatories from the court.

**HELD: In ordering that the defendant make such further answers to certain of the interrogatories as were consistent with the reasons for the judgment of the court:—**

**(i) It is not enough to reply that the party interrogated does not know. A reason for not knowing is required.**

*Adams v Dickeson* [1974] VicRp 10; (1974) VR 77, applied.

**(ii) Interrogatories must be answered on knowledge, information and belief and if the party interrogated affirms to one of these elements he must affirm as to all three. "Information" includes here the means of obtaining the information.**

*Sharpe v Smail* (1975) 49 ALJR 130; 255 F 609; (1975) 5 ALR 377 at 379; and  
*Grassmere Estate Co Ltd v Illingworth* (1889) 11 ALT 45, applied.

**(iii) That the interrogated party "assumes" a fact is not an answer at all.**

*Shannon v Whiting* [1901] VicLawRp 67; (1900) 26 VLR 392; 7 ALR 72, referred to.

**(iv) An interrogated party is bound to make all reasonable inquiries from a person who was his servant or agent at the material time, even though that person was not his servant or agent at the time he was interrogated.**

*National Trustee etc Co of Australasia Ltd v Christian* (1933) ALR 111, per McArthur J at 112, applied

*Everingham v Commonwealth* (1973) Qd R 185, per Hoare J at 192, doubted  
*Sharpe v Smail* (1975) 5 ALR 377; (1975) 49 ALJR 130; 255 F 609, distinguished.

**(v) An interrogated party may be excused from answering any interrogatory on the ground that it is oppressive or that it would be oppressive to require the defendant to make inquiries of its former agents.**