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SUPREME COURT OF VICTORIA — FULL COURT

**CUTRONA v HARNISCHFEGER of AUSTRALIA PTY LTD**

Young CJ, Newton and Murphy JJ

16-17 February, 30 March 1977 — [1977] VicRp 36; [1977] VR 306

**COURTS PRACTICE AND PROCEDURE – LIMITATION OF ACTIONS – AMENDMENT OF STATEMENT OF CLAIM AFTER EXPIRY OF LIMITATION PERIOD – PROPOSED AMENDMENT ALLEGING NEW CAUSE OF ACTION – STATEMENT OF CLAIM ALLEGING CAUSE OF ACTION IN NEGLIGENCE AND FOR BREACH OF A SPECIFIED STATUTORY DUTY – APPLICATION FOR LEAVE TO AMEND TO ALLEGE BREACH OF ANOTHER STATUTORY DUTY – APPLICATION REFUSED: *LIMITATION OF ACTIONS ACT 1958* (NO. 6295), S5(6).**

By his statement of claim the plaintiff alleged a cause of action in negligence and a cause of action for breach of a statutory duty imposed upon the defendant by the *Lifts and Cranes Act* and/or the regulations made thereunder. Upon application by the plaintiff for leave to amend the statement of claim by alleging a breach of a further statutory duty, viz. the duty said to be imposed on the defendant by reg 13(1) of the *Labour and Industry (Building Industry) (Safety, Health and Welfare) Regulations 1969*, the defendant opposed the grant of leave upon the basis that the amendment sought would introduce a fresh cause of action which was already barred by s5(6) of the *Limitation of Actions Act* of 1958.

**HELD:** The amendments ought not to be allowed, for the paragraphs sought to be added to the statement of claim introduced a new cause of action in the technical sense. They alleged a breach of statutory duty which was not pleaded in the existing statement of claim.

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