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## Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Domain Paper (Australia) Pty Ltd v Galloway** (FCA) - privilege - documents contained solicitors' file privileged - no waiver - order for production refused (I)

**Zraika v Walsh** (NSWSC) - negligence - motor vehicle collision - determination of separate liability questions - apportionment (I)

**Burbank Australia Pty Ltd v Owners Corporation** (VSC) - *Domestic Building Contracts Act 1995* (Vic) applied to multi-apartment development - VCAT proceedings stayed until owners corporation authorised by special resolution to bring proceedings (I C G)

**Kirk v PBP Accounting Solutions Pty Ltd** (VSC) - summary judgment - transfer of money in breach of fiduciary duties - equitable compensation - declarations as to money held on trust (I B)

**Kambouris v Tahmazis (No 2)** (VSC) - negligence - damages - no factual causation between solicitor's breaches of retainer and claimed loss - judgment for solicitor with exception for nominal damages (I)

**King v Wogandt: Re Beutel (deceased)** (QSC) - Wills and estates - removal of executor and trustee and probate revoked - appointment of administrator and trustee (B)

**Kola v Department for Health and Ageing** (SASCFC) - administrative law - community treatment order - permission to appeal refused (I G)

## Summaries With Link (Five Minute Read)

### **Domain Paper Pty Ltd v Galloway [2015] FCA 406**

Federal Court of Australia

Beach J

Legal professional privilege - applicants sought production of documents for inspection which were contained in file of solicitors - solicitors had previously acted for respondents - whether documents privileged - whether waiver of privilege - held: documents were privileged - no document fell within a waiver category - respondents justified claims in relation to documents - order for production of documents refused.

[Domain](#) (I)

### **Zraika v Walsh [2015] NSWSC 485**

Supreme Court of New South Wales

Campbell J

Negligence - motor vehicle collision - apportionment - plaintiff claimed damages for injuries suffered in motor vehicle collision when he was in utero - pregnant mother was passenger in care driven by plaintiff's father - dispute concerned whether plaintiff's apparent disabilities acquired in accident - driver and owner of other vehicle involved in collision admitted breach of duty - plaintiff also sued father, Council and Roads and Maritime Services (RMS) - determination on separate liability questions - s43A *Civil Liability Act 2002* - whether Council and/or RMS under duty to use reasonable care in exercise of statutory powers - whether Council had duty to exercise reasonable care to avoid unreasonable risk of injury to users of intersection - whether RMS had duty to signalise driveway as fourth leg of intersection - held: RMS and Council breached duty of care to plaintiff - breaches were cause of collision - father did not breach duty of care - liability of driver and owner of other vehicle 50% - RMS's liability 25% - Council's liability 25%.

[Zraika](#) (I)

### **Burbank Australia Pty Ltd v Owners Corporation [2015] VSC 160**

Supreme Court of Victoria

McDonald J

Administrative law - appellant was builder of residential apartment development - respondent owners corporation owned common areas of development - owners corporation commenced proceedings against builder in Victorian Civil and Administrative Tribunal (VCAT) alleging defective construction works in common property - owners corporation alleged work undertaken by builder subject to implied warranties under s8 *Domestic Building Contracts Act 1995* and that it was entitled to benefit of warranties under s9 - builder sought to strike out proceedings - VCAT dismissed application - builder appealed - held: Act applied to multi-apartment development - whether or not Act applied to developers depended on nature of works subject of contract to which developer was party - no valid special resolution by owners corporation authorising commencement of proceedings in VCAT - absence of valid special resolution was procedural

irregularity which could be cured - proceedings stayed until owners corporation authorised by special resolution to bring proceedings against builder.

[Burbank](#) (I C G)

## **Kirk v PBP Accounting Solutions Pty Ltd [2015] VSC 173**

Supreme Court of Victoria

Macaulay J

Summary judgment - first plaintiff gave powers of attorney to second defendant - plaintiffs brought proceeding against second defendant and first defendant company of which second defendant was director - plaintiff alleged second defendant transferred money belonging to plaintiffs to company in breach of fiduciary obligations - plaintiffs sought recovery of money - plaintiffs sought judgment in default of defence - held: defendants failed to serve defence within time - Court satisfied second defendant caused loss to first plaintiff by breaching fiduciary duties - company knowingly received first plaintiff's money and knowingly assisted in second defendant's breaches - company knowingly received trust property belonging to trustee of family trust - declarations and relief granted.

[Kirk](#) (I B)

## **Kambouris v Tahmazis (No 2) [2015] VSC 174**

Supreme Court of Victoria

Lansdowne AsJ

Damages - negligence - solicitors' duties - assessment of damages suffered by plaintiff arising from breaches of duty by second defendant solicitor- liability trial conducted on undefended basis - held: it was necessary for Court to determine whether there was causal connection between plaintiff's losses and breaches of duty - plaintiff failed to prove factual causation as required by s51(1)(a) *Wrongs Act 1958* - plaintiff also failed to prove it was appropriate for scope of solicitor's liability to extend to harm he caused in respect of claimed loss - judgment for solicitor with exception of nominal damages awarded for breaches of retainer.

[Kambouris](#) (I)

## **King v Wogandt: Re Beutel [2015] QSC 98**

Supreme Court of Queensland

Jackson J

Wills and estates - Court dismissed respondent's application to rectify testator's last will and declared applicant was beneficiary - Court ordered respondent to sell estate's interest in land and made order for costs to be paid out of fund held in account by respondent's solicitors - applicant's solicitors inquired of respondent's solicitors as to progress of sale or administration of estate - no answer forthcoming - applicant sought order respondent be removed as executor and trustee of estate, that grant of probate to respondent be revoked and that personal representative and trustee of estate be appointed - held: Court satisfied that in the circumstances it was appropriate to make the orders sought.

[King](#) (B)

**Kola v Department for Health and Ageing [2015] SASCFC 60**

Full Court of the Supreme Court of South Australia

Kourakis CJ, Vanstone & Blue JJ

Administrative law - Guardianship Board ordered applicant be subjected to level 2 community treatment order - District Court's dismissed applicant's appeal - held: no merit in applicant's contention he was denied procedural fairness - no basis for contention Board did not have adequate regard to *Guardianship and Administration Act 1993* - questions of fact not attended by obvious error or patent improbability - permission to appeal refused.

[Kola](#) (I G)

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