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

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### Executive Summary (1 minute read)

**Hanks v Johnston (No 2)** (VSC) - pleadings - defamation - defence of honest opinion - leave to amend refused (I)

**Arfaras v Vosnakis** (NSWCA) - contract - estoppel - appeal required to transfer burial licence to respondent - appeal and cross-appeal dismissed (B)

**Liristis v Director of Public Prosecutions (NSW)** (NSWCA) - administrative law - confirmation of conviction of offence of larceny as bailee and confirmation of sentence - summons dismissed (I B G)

**Yes Family Pty Ltd v Sphere Healthcare Pty Ltd** (NSWSC) - preliminary discovery - abuse of process - leave to issue subpoenas and notice to produce prior to hearing of application for preliminary discovery refused (I B)

**Re Moschoudis** (VSC) - succession - caveat - intestacy - caveator failed to rebut presumption of revocation - proceeding based on caveat dismissed (B)

**Brimelow v Alampi** (VSC) - succession - family provision - quantum - provision in sum of \$170 000 made for adult daughter of deceased (B)

**John Urquhart t/as Hart Renovations v Partington** (QCA) - security of payments - completion of "enclosed stage" of works - error by Appeal Tribunal of Queensland Civil & Administrative Tribunal - appeal allowed (I B C G)

## Summaries With Link (Five Minute Read)

### **Hanks v Johnston (No 2) [2016] VSC 149**

Supreme Court of Victoria

J Dixon J

Pleadings - defamation - Court struck out paragraphs of defence - defendants sought leave to file proposed amended defence - paragraphs of pleading pleaded defence of honest opinion under s31 *Defamation Act 2005* (Vic) - plaintiff contended particulars could not support material allegations - plaintiff contended amendment would be struck out under r23.02 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) if leave granted - held: particulars not capable of demonstrating opinions based on proper material supporting them - leave to amend defence refused.

[Hanks](#) (I)

### **Arfaras v Vosnakis [2016] NSWCA 65**

Court of Appeal of New South Wales

Beazley P; Ward & Simpson JJA

Contract - estoppel - transfer of burial licence - appellant sought to appeal against primary judge's decision that she was required by an estoppel to transfer burial licence to respondent - whether elements of equitable estoppel established - held: n appellant offered gift to respondent of plot respondent and respondent had accepted offer - intention to enter binding contract not ascertainable but elements of proprietary estoppel by encouragement had been established - appeal dismissed - cross-appeal dismissed.

[Arfaras](#) (B)

### **Liristis v Director of Public Prosecutions (NSW) [2016] NSWCA 66**

Court of Appeal of New South Wales

Sackville & Emmett AJJA; Adamson J

Administrative law - applicant sought to quash primary judge's decisions to confirm applicant's conviction for offence of larceny as bailee under s125 *Crimes Act 1900* (NSW) and to confirm sentence - whether failure to have regard for necessary element of "fraudulent" taking or conversion of vehicle - whether erroneous failure to consider applicant's claim to entitlement to statutory lien and lien under general law - held: no jurisdictional error or error in relation to limits of functions or power - summons dismissed.

[Liristis](#) (I B G)

### **Yes Family Pty Ltd v Sphere Healthcare Pty Ltd [2016] NSWSC 393**

Supreme Court of New South Wales

Slattery J

Preliminary discovery - leases and tenancies - plaintiff alleged defendant breached lease of facility - plaintiff sought leave to issue three subpoenas and notice to produce before hearing of application for preliminary discovery - defendant contended it was abuse of process to

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subpoena same documents sought in preliminary discovery application - s56 *Civil Procedure Act 2005* (NSW) - s129(9) *Conveyancing Act 1919* (NSW) - Equity Practice Notice, SC Eq 11 - r5.3 *Uniform Civil Procedure Rules 2005* (NSW) - held: documents being sought were identical to those sought in preliminary discovery application - to issue subpoenas would be abuse of process - leave to issue subpoenas refused.

[Yes Family](#) (I B)

## **Re Moschoudis [2016] VSC 139**

Supreme Court of New South Wales

McMillan J

Succession - caveat - deceased survived by two sons - plaintiffs sought grant of letters of administration on intestacy of deceased's estate - caveator opposed grant of letters of administration - caveator contended deceased left copy will (2003 will) of which original could not be found - 2003 will appointed caveator's father as executor and left part of estate to caveator - plaintiffs sought summary judgment and dismissal of proceeding based on caveat - held: Court satisfied deceased probably destroyed original 2003 will during lifetime, with intention revoke will and make new will - caveator failed to rebut presumption of revocation - caveator had no real prospect of success - proceeding based on caveat dismissed.

[Moschoudis](#) (B)

## **Brimelow v Alampi [2016] VSC 135**

Supreme Court of Victoria

McMillan J

Succession - family provision - quantum - adult child of deceased sought further provision from deceased's will - deceased made no provision for plaintiff in will - defendant conceded deceased had moral duty to provide for plaintiff - appropriate amount for plaintiff's proper maintenance and support - *Justice Legislation Amendment (Succession and Surrogacy) Act 2014* (Vic) - Pt IV *Administration and Probate Act 1958* (VSC) - held: provision to be made for plaintiff out of deceased's estate pursuant to s91 *Administration and Probate Act* in sum of \$170,000.

[Brimelow](#) (B)

## **John Urquhart t/as Hart Renovations v Partington [2016] QCA 87**

Court of Appeal of Queensland

M McMurdo P, Morrison JA & Henry J

Security of payments - applicant builder performed work on respondents' residence - dispute arose concerning payment of progress payment for building to work's "enclosed stage" - builder sought to appeal against decision of Appeal Tribunal of Queensland Civil & Administrative Tribunal that Magistrate erred in finding "enclosed stage" reached and to matter to QCAT for re-hearing - whether definition of "enclosed stage" met - Sch 2 *Domestic Building Contracts Act 2000* (Qld) - ss142 & 150(3) *Queensland Civil and Administrative Tribunal Act 2009* (Qld) - held: Appeal Panel erred in interpretation of "structural flooring" - appeal allowed -

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matter remitted for determination according to law.

[John Urquhart](#) (I B C G)

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