



## WHAT DO YOU KNOW ABOUT BURIAL RIGHTS?

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Ms Arfaras owned a burial licence (aka interment right) that permitted 2 people to be buried in the one grave. She arranged for her daughter, who was Mr Vosnakis' wife, to be buried in the grave. Who was entitled to nominate the second person to be buried in the burial plot?

This issue went to court because Mrs Arfaras and Mr Vosnakis couldn't agree. The court stated that the right to nominate the second person was an asset of the estate of the owner of the burial right, and that asset could be exercised by the executor of that estate after probate was granted to him or her. The owner of the burial licence was Mrs Arfaras, so the right to nominate the second person would usually fall to her executor after her death.

However, the court also stated that as well as an executor generally having the exclusive right to decide how and where the body may be buried, once buried the executor of the buried person could prevent the body being disturbed.

The executor of the buried person was Mr Vosnakis.



This presented a dilemma. Mrs Arfaras or her executor could nominate the second person to be buried but the burial must not disturb the deceased's remains. The dilemma was resolved because the court found that Mrs Arfaras had made enforceable representations to Mr Vosnakis which meant that he had control of the burial plot. However, the take-home-message is the importance of considering this issue in advance.

### *Where is your domicile?*

Melind Bedake was born in India. At the age of 25 he came to Australia to live permanently. Whilst living in Australia he suffered severe head injuries. A year or so later he returned to live in India



where, after a further 7 years, he died. He had no will. He was not married. He had no children. But he had over \$100,000 in investments in Australia. Who inherited those investments?



The answer depended on where he was domiciled. If he was domiciled in Australia, the law of the ACT applied to determine the persons who inherited his intestate estate. If he was domiciled in India, the law of India determined the beneficiaries of his estate. Because he had suffered a head injury which meant that he couldn't make a decision to change his domicile, the law of Australia applied. However the moral is: make a will!

*Deal with all contingencies*

Barbara Pollock's Will set aside the sum of \$30,000 upon trust to pay \$2,000 a year to Karen Haywood for the maintenance and care of Pollock's pets and, upon the death of the animals,

to pay of the rest of the trust funds to RSPCA (NSW). Haywood declined to look after the pets. The Will didn't provide for this eventuality. What was to happen to the \$30,000? The Supreme Court had to consider whether the gift was for a charitable purpose. It wasn't. The court then had to consider whether the gift was saved from being void – a consequence that arose because the will had not dealt with the destination of the money in the circumstances that had occurred. The court found that the gift could be saved by reading death of the pets as meaning any situation where the gift failed.

This is a further reminder of the care needed to ensure that a Will deals with all foreseeable eventualities.



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