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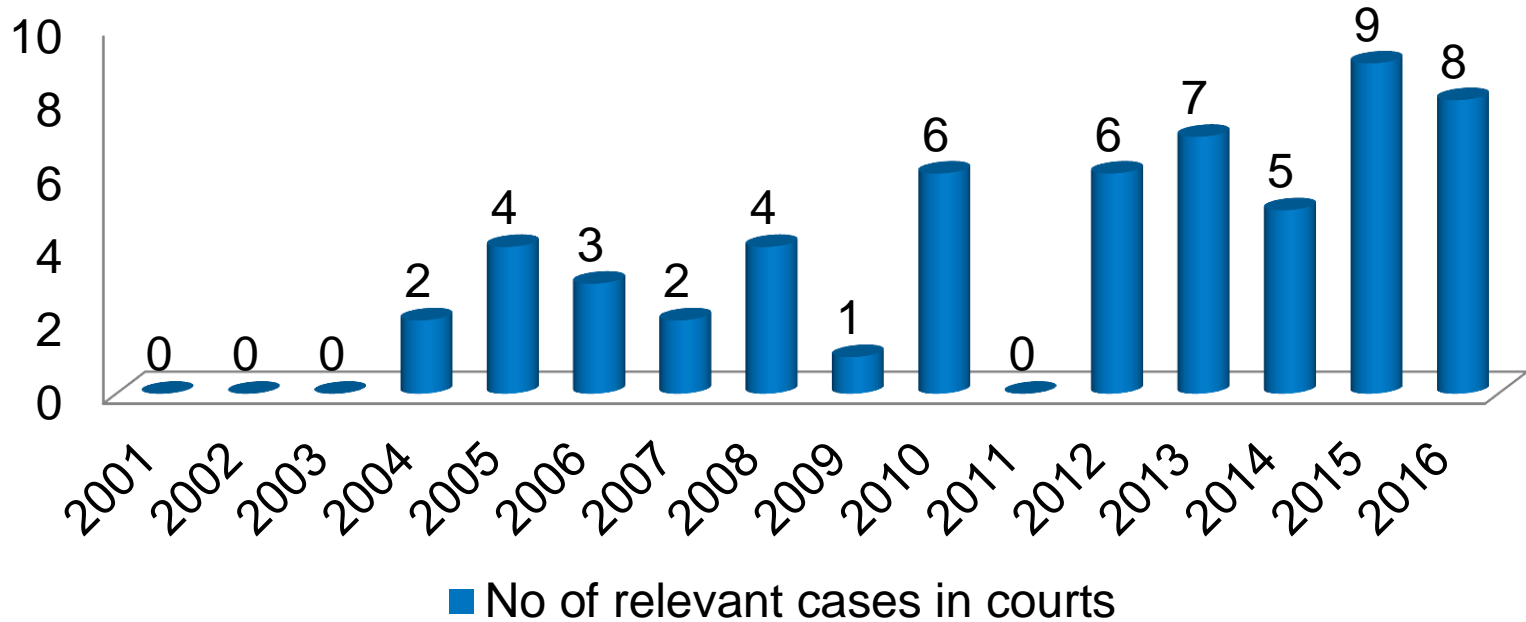
# The ties that bind: execution & statutory assumptions under the Corporations Act

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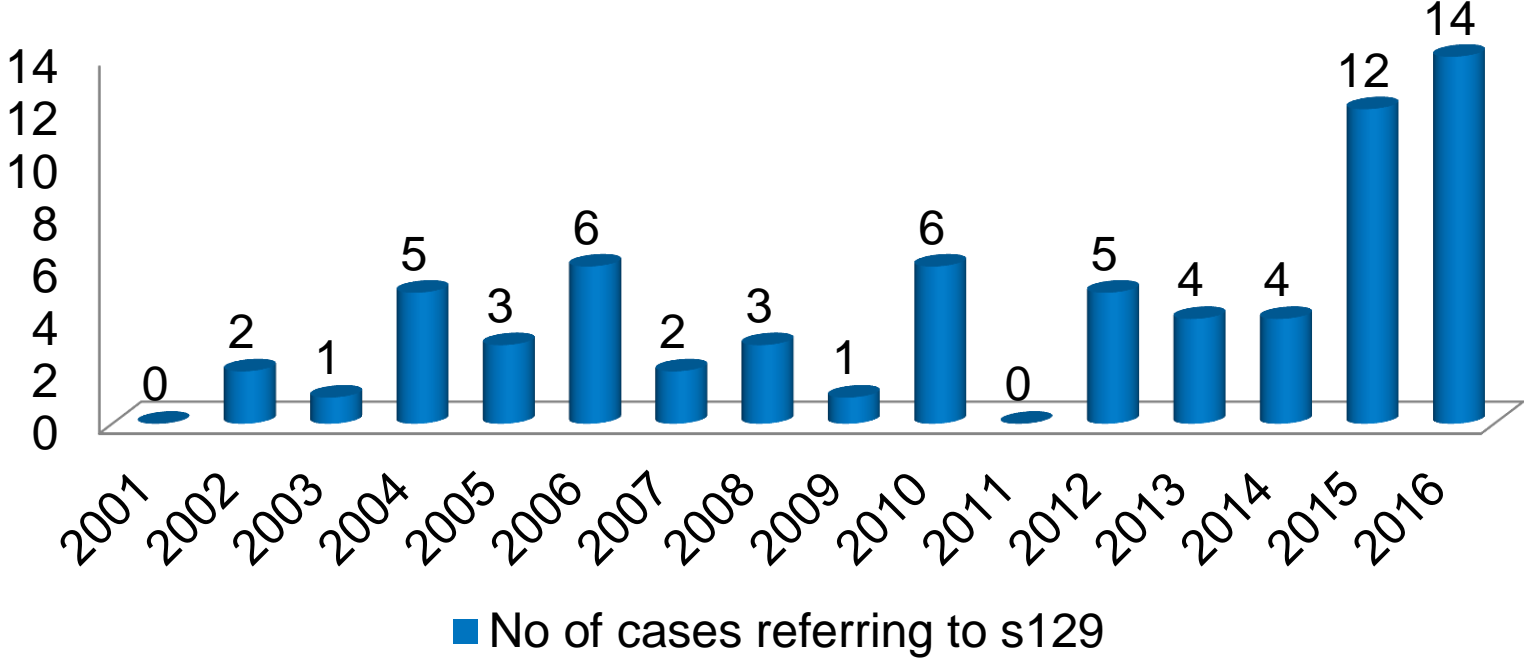


# 1. The Numbers Trend

## ➤ Court judgments referring to ss127 or 129 (Austlii)

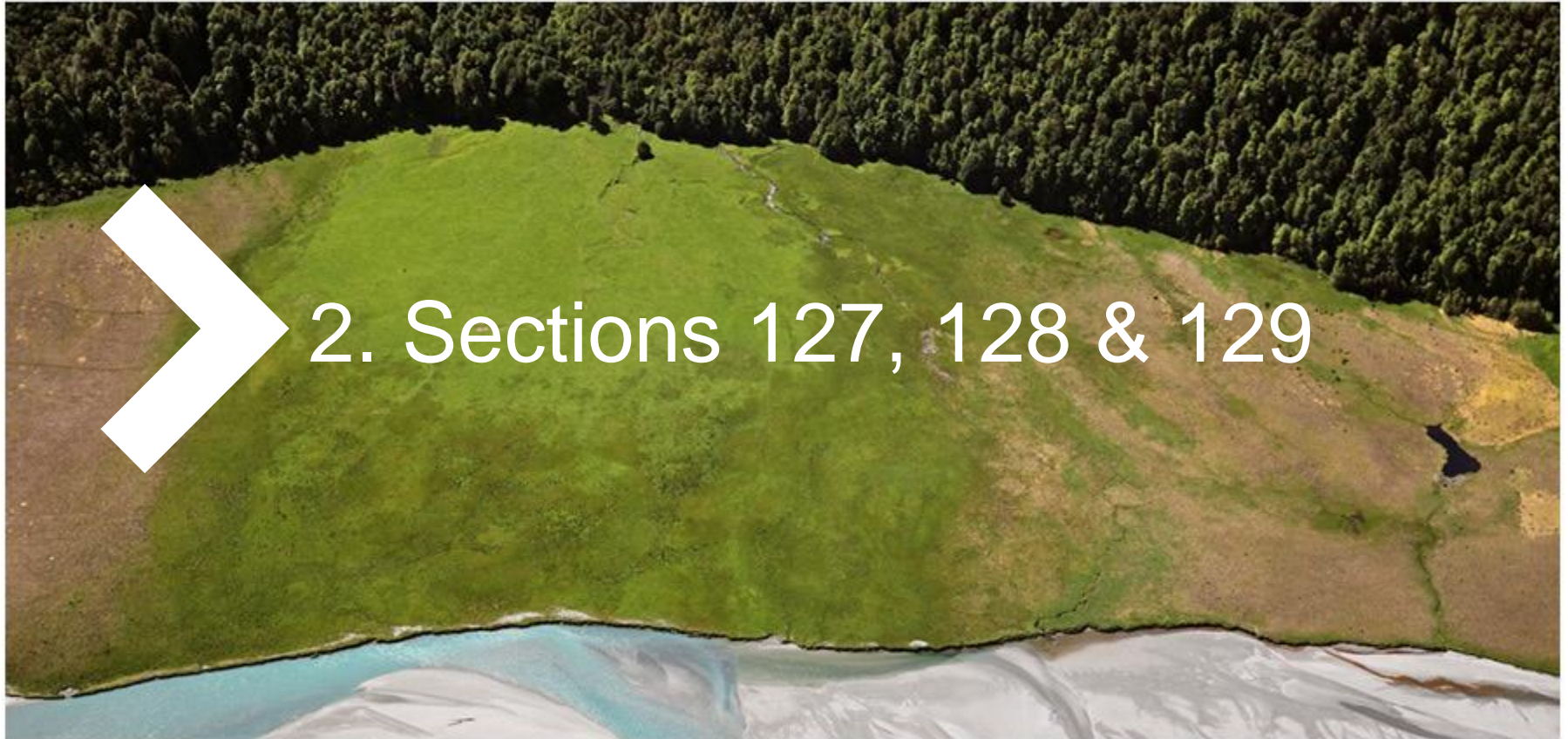


# ➤ Cases considering s129 (CaseBase)



## ➤ Outline

1. The numbers trend
2. Sections 127, 128 and 129
3. Issue 1: Purported dealings under section 128(1)
4. Issue 2: Can statutory assumptions help create proprietary rights?
5. Issue 3: Do sections 129(5) and (6) cover substantive authority?
6. Conclusion



2. Sections 127, 128 & 129

## ➤ Purpose of sections 127-129

- Balancing exercise
- Protect outsiders in dealing with corporations
- Clarify and supplement common law rules

## ➤ Section 127 – Execution by company

- A document may be signed **by the company** with or without a seal by the following people signing:
  - two directors of the company;
  - a director and a company secretary; or
  - in the case of pty company, by a sole director who is also the sole secretary.




## ➤ Section 128 - Gateway

- Entitles a person to make the assumptions set out in s 129 in relation to:
  - **dealings** with a company; or
  - dealings with another person who has or purports to have directly or indirectly acquired title to property from a company.
- Disentitles access to assumptions if at the time of the dealing the person **knew or suspected** the assumption was incorrect

## ➤ Section 129 – Statutory Assumptions

- 129(1) - the company's corporate **constitution** is complied with
- 129(3) - a person **held out** by the company to be an officer or agent has been **duly appointed and has the customary authority** of someone in that position in a similar company
- 129(4) - the officers and agents of the company **properly perform their duties**
- 129(5) and (6) - a document which **appears** to have been executed in accordance with section 127(1) or (2) has been duly executed by the company.

An aerial photograph of a mountain landscape. The foreground shows a wide, light-colored riverbed with a small stream of turquoise water. The middle ground is a large, green, grassy slope. The background is a dense, dark green forest. A large white arrow points from the left towards the text.

### 3. Purported dealings under section 128(1)

## ➤ Section 128(1)

“A person is entitled to make the assumptions in section 129 **in relation to dealings** with a company.

The company is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.”

## ➤ Purported dealings under s128(1)

### Development of the Law

- Includes purported dealings?
  - **Yes:** *Story v Advance Bank Australia Ltd* (Gleeson CJ)
- What are ‘purported dealings’?
  - Authority **to negotiate or take other steps:** *Soyfer v Earlmaze Pty Ltd*
- How do you establish that authority?
  - CL actual or ostensible authority or under **statutory assumptions:** *ANZ v Frenmast*
- Recent applications of *Soyfer*

## ➤ Purported dealings under s128(1)

*Story v Advance Bank Australia Ltd (Gleeson CJ)*

- “[dealings must] **embrace**, subject to the qualifications contained in the legislation, **purported dealings**”
- “[if] the statutory provisions only extended to cases where the person representing the company had actual authority then they would be largely unnecessary ”

# ➤ Purported dealings under s128(1)

## Development of the Law

- Includes purported dealings?
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## ➤ Purported dealings under s128(1)

*Soyfer v Earlmaze Pty Ltd (Hodgson CJ in Eq)*

*“[It] is **not necessary** that the person representing the company have authority from the company **to commit the company to the relevant transactions** or execute the relevant documents; but in my opinion, it **is necessary** that the person have **authority to undertake some negotiation or other steps**, so that the dealings, in relation to which the document is executed, are properly considered to be dealings with the company.”*



# ➤ Purported dealings under s128(1)

## Development of the Law

- Includes purported dealings?
  - Yes: *Story v Advance Bank Australia Ltd* (Gleeson CJ)
- What are ‘purported dealings’?
  - Authority to **negotiate or take other steps**: *Soyfer v Earlmaze Pty Ltd*
- How do you establish that authority?
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## ➤ 'Purported dealings under s128(1)

### Commentary

- Summary of current state of law
- *Soyfer* in context

# ➤ Purported dealings under s128(1)

## Practical Implications

- Good news for outsiders:
  - Where there are negotiations and communications with the company, relative degree of comfort
- So-so news:
  - Not always the case
  - No foolproof way to protect against complete impostors
- Named officeholder signing

An aerial photograph of a lush green valley. The foreground shows a wide, light-colored riverbed with a small stream of turquoise water. The middle ground is a vibrant green meadow or pasture, with a small dark pond on the right. The background is a dense, dark green forest. A large white arrow points from the left towards the text.

4. Can statutory assumptions help create proprietary rights?

## ➤ Section 128(1)

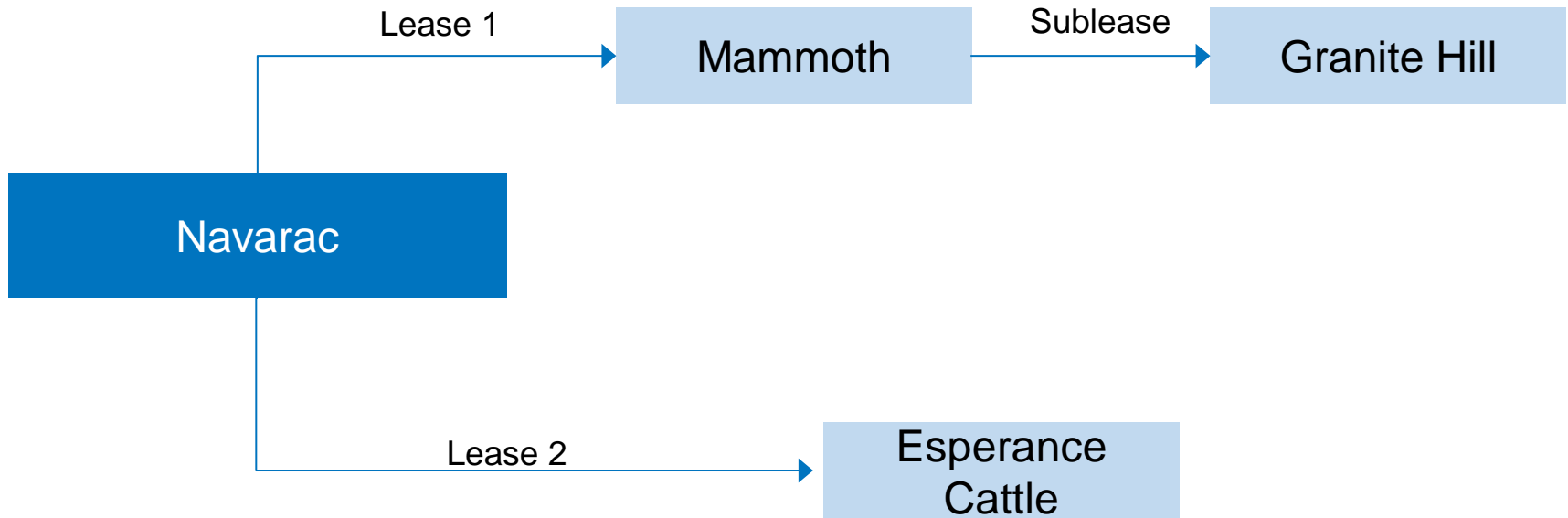
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**The company is not entitled to assert** in proceedings in relation to the dealings that any of the assumptions are incorrect.”

## ➤ Statutory assumptions and proprietary rights

*Esperance Cattle Co Pty Ltd v Granite Hill Pty Ltd*

On appeal: *Caratti v Mammoth Investments Pty Ltd*



# ➤ Statutory assumptions and proprietary rights

## Commentary

- Statutory language arguments
- Practical difficulties

# ➤ Statutory assumptions and proprietary rights

## Practical Implications

- Serious challenge to ambit of statutory assumptions rejected
- When dealing with proprietary rights, property related checks still need to be made





5. Do sections 129(5) and (6) cover substantive authority?

## ➤ Sections 129(5) and (6) and substantive authority

### **Formal Authority**

- Authorised method of execution

### **Substantive Authority**

- Authorised entry into the transaction

## ➤ Sections 129(5) and (6) and substantive authority

### Development of the Law

- *Brick and Pipe Industries Ltd v Occidental Life Nominees Pty Ltd*
- *Soyfer v Earlmaze Pty Ltd*
- *Caratti v Mammoth*
- *Great Investments v Warner*

## ➤ Purported dealings under s128(1)

*Soyfer v Earlmaze Pty Ltd (Hodgson CJ in Eq)*

*“if it can be assumed (and cannot be denied by the company) that a company has duly executed a document, **I do not think there is any separate question as to whether this was duly authorised.**”*

## ➤ Sections 129(5) and (6) and substantive authority

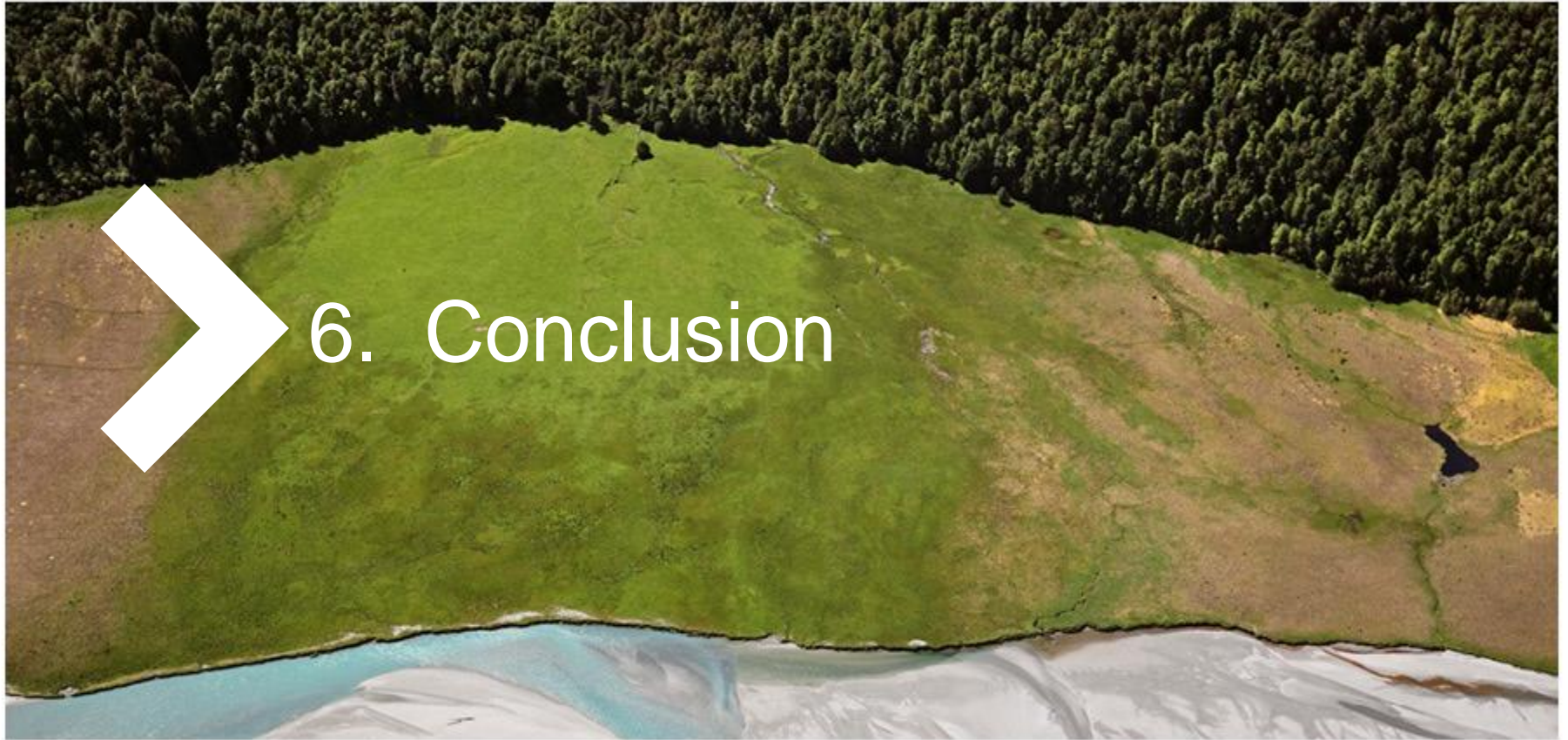
### Development of the Law

- *Brick and Pipe Industries Ltd v Occidental Life Nominees Pty Ltd*
- *Soyfer v Earlmaze Pty Ltd*
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## ➤ Sections 129(5) and (6) and substantive authority

### Practical Implications

- Good news: entrenchment of broader substantive authority view
- Be careful where you might be on notice



## 6. Conclusion

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