Supreme Court of NSW Court of Appeal

Decisions Reserved as at 17 March 2023

	Number	Case Name	Heard	Issues	Judgment Below
1	2021/204042	Dwyer v Volkswagen Group Pty Ltd	30/03/2022	TRADE PRACTICES – the appellant brought representative proceedings on behalf of some 83,000 persons who purchased Volkswagen vehicles in which a Takata driver side airbag was installed between 2007 and 2018 – the appellant claimed that his vehicle was not of acceptable quality because, by reason of the installation of the Takata airbag, the vehicle was not free from defects and was not safe – primary judge found in favour of the respondent – whether primary judge erred in failing to find that the appellant's vehicle was not of acceptable quality at the time of the supply to the appellant, within the meaning of s 54 of the Australian Consumer Law – whether primary judge erred as to certain factual findings – whether primary judge erred by importing a negligence or fault standard into a strict liability regime – whether primary judge erred by rejecting certain expert evidence – whether primary judge ought to	*Dwyer v Volkswagen Group Australia Pty Ltd t/as Volkswagen Australia* [2021] NSWSC 715

				have held that the appellant was entitled to damages under s 272 of the ACL	
2	2021/278620	Pavlis v Pavlis	19/05/2022	EQUITY – constructive trust – proprietary estoppel – Appellants are sons of the Respondents – Respondents are registered proprietors of a property at Strathfield – at the time of its purchase in 1986, the Property was in a very dilapidated state – over a period of 20 years, the Property was restored to its original condition by the Appellants – Appellants expended considerable time, effort and funds in the course of the Property's restoration – as of 2017, a family dispute had resulted in the estrangement of the Appellants from the Respondents – Respondents made no provision for Appellants in their wills – Appellants commenced proceedings against Respondents seeking a declaration that the Respondents hold a 40% interest in the Property on constructive trust for each of the Appellants – Appellants pleaded alternative case on the basis of proprietary estoppel – Appellants contended that Respondents made an express representation in 1999 to the effect that Appellants would each receive a 40% interest in the Property in return for their contributions to the restoration – Respondents denied any such representation – primary judge found in favour of Respondents and dismissed proceedings – whether primary judge erred in failing to find that the restoration was a joint endeavour for the mutual benefit of the parties – whether primary judge erred in finding that Respondents were motivated by their own commercial benefit –	*Pavlis v Pavlis* [2021] NSWSC 1117

				whether primary judge erred in factual finding as to ownership of a separate property	
3	2021/358543	Catlin Australia Pty v Diamond World Jewellers Pty Ltd	27/06/2022	INSURANCE – Appellant was insurer of the Respondent's jewellery store – robbery of the store occurred in December 2017 – Respondent subsequently lodged notice of a claim with the Appellant – Respondent's policy of insurance covered stock that it owned and held on consignment – Respondent claimed in the sum of $1,691,435.70 for entirety of stock present in cabinets which were damaged during the robbery – Respondent arranged for cleaning of the store prior to its inspection by Appellant's loss assessor – Respondent melted damaged jewellery prior to inspection by Appellant's loss assessor – Respondent maintained limited accounting records and stock inventories – in May 2019, Appellant accepted that Respondent had suffered genuine loss under its insurance policy assessed in the sum of $8,600 – on the basis that Appellant was not liable for melted jewellery – in October 2019, Appellant offered $500,000 to Respondent for resolution of claim – Respondent rejected this offer – Respondent commenced proceedings against Appellant seeking damages in the sum of $1,431,759.00 – primary judge found in favour of Respondent and awarded damages in quantum as sought by Respondent – whether primary judge erred in applying test of unreasonableness under the insurance policy – whether primary judge erred in considering evidence unavailable to the Respondent at the relevant time – whether primary judge failed to	*Diamond World Jewellers Pty Ltd v Catlin Australia Pty Ltd* [2021] NSWSC 1431

				make certain findings of fact – whether primary judge relied upon matters not pleaded by Respondent – whether primary judge erred in making various findings of fact	
4	2021/262212; 2021/17031; 2021/258153	Anchorage Capital Master Offshore Ltd v Bakewell; Banco Bilbao Vizcaya Argentaria SA v Sparkes	5/08/2022	CORPORATIONS – the proceedings arose from the collapse in April 2016 of Arrium Limited and a number of its subsidiaries – the respondents were respectively the Group Treasurer and the CFO of the Arrium Group at all material times – the proceedings concerned a claim by the appellant banks against the respondents for misleading or deceptive conduct in relation to certain misleading statements said to be contained in or made by virtue of a number of drawdown notices issued by the Arrium entities, pursuant to facility agreements in 2016 – the respondents were alleged to have been responsible for causing the drawdown notices to be executed and issued – primary judge found in favour of the respondents – whether primary judge erred as to the correct legal test for insolvency – whether primary judge erred as to certain factual findings – whether primary judge erred as to his conclusion on misleading or deceptive conduct – whether primary judge erred as to his findings on causation – whether primary judge erred as to his findings on loss and damage	*Anchorage Capital Master Offshore Ltd v Sparkes (No 3); Bank of Communications Co Ltd v Sparkes (No 2)* [2021] NSWSC 1025

5	2022/65750	Creak v Ford Motor Company of Australia Ltd	10/08/2022	CONTRACT – Appellant entered into a deed of settlement with the Respondent – under the deed the Appellant accepted inter alia that he would cease production and supply of a range of Ford vehicles and parts that are not manufactured with the authority of the Respondent or its related bodies corporate – Respondent sought injunctive relief against the Appellant for breach of a settlement of proceedings – primary judge found that deed of settlement was valid and the Appellant was bound by its terms – primary judge found that Appellant had failed to adhere to the terms of the deed – primary judge entered judgment for the Respondent – whether primary judge erred in construing the deed of settlement – whether primary judge erred in finding that the restraint of trade doctrine did not apply to the deed – whether primary judge erred in finding it was open to the Respondent to recover damages which it had incurred in other proceedings – whether primary judge erred in making orders for injunctive relief	*Ford Motor Company of Australia Limited v Tallevine Pty Ltd (as trustee for Thornleigh Trading Trust) (in liq)* [2022] NSWSC 83
6	2022/134465	Verde Terra Pty Limited v Central Coast Council	1/09/2022	LAND AND ENVIRONMENT – development consent for golf course and waste management facility in 2008 – subsequent consent orders made for remediation of land in 2014 – application for alteration of 2008 development consent – whether there is an existing or approved development on the site - whether further EIS required - whether development was within meaning of cl 35 of Schedule 3 of Environmental Planning and Assessment Regulation 2000	*Verde Terra Pty Ltd v Central Coast Council; Central Coast Council v Environment Protection Authority (No 9)* [2022] NSWLEC 29

7	2022/118789	Cooper v DPP	13/09/2022	ADMINISTRATIVE LAW (judicial review) – termination of Drug Court program for applicant – whether primary Court failed to condition mandatory considerations under ss 10(1)(b) and 11 of Drug Court Act – whether erred by taking into account irrelevant considerations	*Lower decision not available on Caselaw*
8	2021/252548	Macquarie Units Pty Ltd v Sunchen Pty Ltd	21/09/2022	EQUITY – equitable remedies – recission in aid of rights at law –Second Appellant is director and shareholder of Third Appellant – Second Respondent is director and shareholder of First Respondent – Second Appellant and Second Respondent entered into a joint venture to purchase and develop three resort business at Cairns, Queensland – Second and Appellant and Second Respondent incorporated Third Respondent for purposes of funding joint venture – on incorporation of Third Respondent, 50% of issued share capital was held by Third Appellant with the remaining 50% held by the First Respondent – Third Appellant's shares subsequently transferred to First Appellant, which is another company controlled by Second Appellant – issue arise as to Second Appellant's ability to meet his share of the financing obligations for the joint venture prior to the purchase of the relevant assets at Cairns – First Respondent subsequently acquired 50% of First Appellant's shares in Third Respondent in order to reduce Appellants' burden of financing obligation – purchase of the Cairns assets by Third Respondent was completed – Second Appellant provided no funds to the joint	*Nassif v Sun* [2021] NSWSC 990

				venture personally – Second Respondent arranged for transfer to First Respondent of First Appellant's remaining 25% shareholding in Third Respondent for nil consideration pursuant to compulsory acquisition clause in Third Respondent's Shareholders' Agreement – transfer of shares executed without proper authority – Appellants commenced proceedings seeking declarations that share transfer was void and of no effect, and liable to be rescinded in equity – in the alternative, Appellants sought equitable compensation – Respondents contended that Appellants had no standing to bring proceedings, that Shareholders' Agreement granted right to enact transfer, that Appellants had unclean hands, and that defence of laches applied – primary judge found in favour of Respondents and dismissed Appellants' claims with costs – whether primary judge erred in finding that share transfer had been carried into legal effect – whether primary judge erred in upholding defence of laches – whether primary judge erred in various findings of fact, including that value of shares was not established	

9	2022/123736	Flanagan v Bernasconi	18/10/2022	TORT (Professional negligence) – The Respondent provided the Appellant with insurance brokering services in respect of insurance products – in 2012 the Appellant took out a homeowner's insurance policy with Vero – in 2013 the swimming pool at the Appellant's property was substantially damaged – the Appellant made a claim on the Vero policy with respect to the pool damage – the claim was rejected on the basis that the policy excluded events involving swimming pools – the primary judge found that the pool damage occurred as a result of the swimming pool having been left empty and defects in the pool valves – the primary judge held that the Appellant had failed to take reasonable precautions in circumstances where she left the swimming pool empty and did not take steps to repair or refill the swimming pool – whether the primary judge erred in failing to find that the policy the Appellant would have obtained but for the Respondent's breach of duty would have responded to the pool damage that was the subject of the Appellant's claim – whether the primary judge erred in failing to find that the Respondent bore the burden of proof as to whether the damage was caused by a defect in an item or a failure to take reasonable precautions – whether the primary judge erred in finding that the loss was caused by a defect in an item – whether the primary judge gave insufficient weight to effect of heavy rain on pool damage – whether the primary judge erred in finding that the Appellant failed to take reasonable	*Flanagan v Bernasconi* [2022] NSWSC 381

				precautions – whether the primary judge erred in concluding that the cross-respondent would have taken out insurance cover of a kind that did not contain the exclusion that appeared in the Vero policy – Whether primary judge erred in making various factual findings, failed to take into account evidence, or gave insufficient weight to evidence – Whether primary judge erred in finding hat the cross-respondent was not reckless	
10	2022/309126	Lahoud v Willoughby City Council	19/10/2022	PROCEDURE – joinder – refusal of motion to join Willoughby Local Planning Panel to judicial review proceedings in LEC – whether UCPR 59.3(4) mandates joinder of body which was "responsible for the decision" being reviewed – whether necessary to join when decision made by first respondent as a consequence of the Panel's decision - whether joinder necessary to bind the Panel to outcome from proceedings – whether Panel ought to have been joined to enable applicant to seek interrogatories against the Panel	*Lahoud v Willoughby City Council* [2022] NSWLEC 125
11	2022/14029	Carpenter v Morris	24/10/2022	CONTRACT – Partnership – First Appellant and First Respondent extracted granite from the Grandee Quarry – From 1996 to 2003, quarrying undertaken for a business conducted by Second Appellant in partnership with Second Respondent – Second Appellant extracted granite from the Quarry from 2003 to 2014 – Granite mined at Quarry falls into two categories in terms of its grade, being first and second grade rock, there being greater demand for the former – Quarry situated on two adjacent parcels of land upon which granite boulders, overburden, and other	*Carpenter v Morris* [2021] NSWSC 1700

				material extracted from the land or disturbed during quarrying operations were piled (Stockpiles) – Stockpiles largely consisted of second grade rock – Under mining agreement First Respondent entitled to quarry, remove and sell the granite, and required to pay annual rent plus royalties in respect of the two lots – Proceeds of the sale of granite was distributed in various ways, including in order to make monthly payments to First Respondent, the amount of which varied from month to month – Appellants sought an order requiring repayment of 50% of those monthly payments as money had and received – Appellants claimed for breach of an oral quarrying agreement with the Respondents insofar as First Respondent failed to make payment to Appellants in respect of certain sales, and in respect of sales made from the Stockpile – Appellants claimed First Respondent repudiated oral agreement insofar as he was not ready, willing or able to perform his obligation to sell the Stockpile due to his lack of authority to do so without permission of the owners of the lots on which the Stockpile is situated – Whether primary judge erred in failing to order damages with respect to monthly payments – Whether primary judge erred by failing to apply Commonwealth v Amann Aviation (1991) 174 CLR 64 in respect of damages vis-à-vis the Stockpiles – Whether primary judge erred in allowing the difficulty in assessing damages bar all relief to the Appellants with respect to the Stockpiles –	

				Whether primary judge erred in making various factual findings – Whether primary judge erred in rejecting certain evidence – Whether primary judge erred in failing to imply a term into the agreement – Whether primary judge erred in failing to find that the Appellants were entitled to damages for breach of contract, or quantum meruit for the work done in exposing he rock faces for future mining	
12	2022/136307; 2022/140758	Scenic Tours Pty Ltd v Moore	26/10/2022	TRADE PRACTICES – the Respondent brought representative action claiming compensation and damages arising out of a European river cruise – the Respondent claimed against the Appellant that contrary to consumer guarantees, the Appellant did not provide a “once in a lifetime cruise” in all-inclusive luxury – primary judge held that it was reasonable for group members to rely on the skill and judgment of the Appellant – primary judge found that the s 61(3) defence was not established by the Appellant – the primary judge upheld the group members’ claim of an entitlement of damages pursuant to s 267(4) of the Australian Consumer Law in respect of the monies they paid for return airfares to embark on the cruise and for distress or disappointment – the primary judge awarded damages pursuant to s 267(3) of the ACL by way of lost value – whether the primary judge erred in failing to find that the group members did not rely on, or that it was unreasonable for the group members to rely on, the skill or judgment of the Appellant – whether the amounts awarded for reduction in the value of the Services with respect to	*Moore v Scenic Tours Pty Limited (No 4)* [2022] NSWSC 270

				Cruises 3, 4, 6, 7, 8 and 11 were excessive – whether the primary judge erred in preferring the Respondent's valuations and failed to give adequate reasons for this preference – whether the amounts awarded for distress and disappointment were excessive – whether the primary judge erred in awarding damages for the cost of airfares to those group members for whom the sole purpose of incurring the airfares was to take the Cruise	
13	2022/119934	Ritchie v Insurance Australia Ltd	31/10/2022	INSURANCE – representative action in respect of losses suffered as a result of bushfire caused by sparks from a power cutter to cut steel – "Welding Endorsement" exclusion clause in policy for "spark producing equipment" - whether the power cutter was a "spark producing equipment" – whether spark was produced by contact with certain materials rather than the equipment	*Ritchie v Advanced Plumbing and Drains Pty Ltd* [2022] NSWSC 330
14	2022/112930	Commissioner of Police, NSW Police Force v Merrell	1/11/2022	ADMINISTRATIVE LAW (other) – respondent convicted of three offences under s91H(2) of Crimes Act 1900 (NSW) for possessing child abuse material – each offence arose of identical material being stored on three separate USB drives – respondent not a registrable person under Child Protection (Offenders Registration) Act 2000 (NSW) if a single offence committed – s3A(5) provides that single offence includes a reference to more than one offence of the same kind arising from the same incident – meaning of the phrase "arising from the same incident" – whether primary judge erred in not finding respondent a registrable person	*Merrell v Commissioner of NSW Police* [2022] NSWSC 337

15	2022/35553	Farriss v Axford	3/11/2022	TORTS (negligence) – First appellant is the lead guitarist in the band INXS – First appellant hired a boat through the third respondent belonging to the first respondent – First appellant sustained injuries to his left hand as a result of an accident on the boat – Appellants allege that the injuries were caused by the respondents' failure to take care – Primary judge held that there was no failure by the respondents to warn or instruct because the first appellant was aware of the relevant matters prior to the accident – Primary judge found that the exercise of reasonable care on the part of the respondents did not require any of them to arrange for additional componentry to be installed prior to the accident because the probability that harm would occur if care was not taken was low – Whether primary judge erred by failing to find that the respondents ought to have taken precautions and that failure was a breach of their duties of care which caused the appellants' loss – Whether primary judge erred by failing to find that the respondents breached their duty of care by failing to warn or instruct the first appellant which caused the appellants' loss – Whether primary judge erred by failing to find that the respondents breached the statutory guarantee in s 61 of the Australian Consumer Law which caused the appellant's loss	*Farriss v Axford (No 3)* [2022] NSWSC 20
16	2022/134398	Lim v Lim	3/11/2022	SUCCESSION – The Appellant and the Respondent are adult children of the deceased – probate of the deceased's executed will dated 2019 was granted to the	*Lim v Lim* [2022] NSWSC 454

				Appellant as executor – the Respondent brought proceedings seeking revocation of probate of the 2019 will and an order that probate of an earlier will made by the deceased in 2011 be granted to him – the Respondent alleged that the deceased did not have testamentary capacity when she executed the 2019 will and she did not know and approve its contents – the primary judge found that the Appellant did not discharge the burden of establishing testamentary capacity at the time the deceased executed the 2019 will – the primary judge held that the grant of probate of the 2019 will should be revoked and there should be a grant of probate of the 2011 will – whether the primary judge erred in holding that the deceased did not have testamentary capacity – whether the primary judge erred in holding that the facts displaced the presumption of knowledge and approval by the deceased of his will while ignoring the effect of the revocation and attestation clauses and the evidence of the interpreter – whether the primary judge erred in holding that the deceased did not know and approve the contents of the will – whether the primary judge erred in finding that the deceased did not comprehend the claims upon her bounty – whether the primary judge erred in finding that the fact that the deceased decreased the amount of provision to the Respondent was evidence of lack of testamentary capacity	

17	2022/187883	Misan v Markham Real Estate Partners (KSW) Pty Ltd	4/11/2022	CONTRACT – guarantee and indemnity provisions of sub-lease – recovery of rental arrears, loss of bargain, make-good costs and legal costs - failure to pay rent by sub-lessee when it went into administration - whether landlord unlawfully re-entered into possession of retail tenancy – whether re-entry a repudiation of sub-lease – whether re-entry unlawful as contrary to s440B of Corporations Act 2001 (Cth) – whether respondent could terminate sub-lease prior to expiry of breach notice issued under s 129 Conveyancing Act 1919 (NSW) – whether changing of locks amounted to a re-entry	*Markham Real Estate Partners (KSW) Pty Limited v Misan* [2022] NSWSC 733
18	2022/144781	Synergy Scaffolding Services Pty Ltd v Alelaimat	11/11/2022	WORKERS COMPENSATION – Personal injury – The First Respondent was paid by DJ's Scaffolding Pty Limited (represented by the Second Respondent) for work as a sub-contracting truck driver delivering and collecting scaffolding materials to the Appellant – The First Respondent was injured when he was struck by a falling scaffolding bench caked in cement while he assisted in dismantling scaffolding he had been directed to collect – Appellant alleged that the proceedings were statute barred by the Limitation Act 1969 (NSW) – Primary judge held that claim was not statute-barred, insofar as it was unclear that the First Respondent knew that his injury was caused by the fault of the Appellant, as opposed to DJ Scaffolding – The First Respondent alleged that the Appellant should be considered to be in the position of his employer and to owe the Respondent a non-delegable duty of care –	*Alelaimat v Synergy Scaffolding Services (No 3)* [2022] NSWSC 536

				The Appellant conceded that it owed the First Respondent a duty of care, however alleged that it had not assumed the role of employer and was not responsible for the system of work on the site – Primary judge found that the Appellant owed a duty of care to the First Respondent to ensure that the system of work for dismantling the scaffolding was safe, that the Appellant breached that duty, and that therefore the Appellant was liable in damages – Primary judge awarded various heads of damages amounting to $1,356,533.39 – Whether primary judge erred in failing to find that the First Respondent's claim was statute barred – Whether primary judge erred in finding that the Second Respondent was not liable to the First Respondent in negligence – Whether primary judge ought to have held that the Appellant was not liable to pay damages in respect of medical expenses paid for by the Second Respondent – Whether primary judge erred in failing to find contributory negligence against the First Respondent – Whether primary judge erred in finding a causal link between the accident and the resultant level of disability – Whether primary judge's award for non-economic loss was manifestly excessive	

19	2022/92292	The Cleaning Doctor NSW Pty Ltd v Fonseca	23/11/2022	EQUITY – Trusts – Second Appellant was registered proprietor of a property in Bardwell Valley, the deposit for the sale of which was paid by the Second Respondent, with the remainder financed by a loan from Perpetual Trustees Victoria Ltd, secured by a registered mortgage over the property – Second Appellant transferred the Bardwell Valley property to the Second Respondent who discharged the mortgage obtained by the Second Appellant and took out a mortgage in his own name – Second Appellant alleged that First Respondent was to hold the property on trust for him – Second Appellant alleged in the alternative that a resulting trust was presumed from the transfer of the Bardwell Valley property to the Second Respondent for no or "false" consideration – Second Respondent transferred the property in 2015 to Goodman Court Pty Ltd – Second Appellant alleged that this constituted a breach of the trust – Primary judge found no express trust, and no implied or resulting trust – Primary judge found no proprietary estoppel – Primary judge found that consideration was paid by virtue of the discharge of the mortgage – First Appellant alleged that the First and Second Respondents withdrew $2,695,078 from its bank account in the period of 2009 to 2012 – Second Appellant claimed to be entitled to repayment of the money as money had and received and claimed damages for fraud, deceit and misleading or deceptive conduct, and damages for conversion – Primary judge found that First Appellant was not the legal	*The Cleaning Doctor NSW Pty Ltd v Fonseca* [2022] NSWSC 253 (Williams J)

				and beneficial owner of the money in the account but rather of a chose in action – Primary judge found that the First Appellant failed to discharge its onus of proving that the withdrawals from the account were made without the authority of the First Appellant – Whether primary judge erred in failing to find that the Bardwell Valley property was held on trust for the Second Appellant by the Second Respondent – Whether primary judge impermissibly reversed the burden of proof with respect to the First Appellant's claims – Whether primary judge erred in making various factual findings	
20	2022/114516	Resilient Investment Group Pty Ltd v Barnet	24/11/2022	CORPORATIONS – winding up - tax refund after placed into liquidation – refund arose out of "tax offsets" as first respondent was an "R&D entity" for purposes of relevant tax legislation – whether refund was a circulating asset which required employee entitlements to be satisfied first – whether certain identified employees were employees of first respondent rather than second respondent	*In the mater of Spitfire Corporation Ltd (in liquidation) and Aspirio Pty Ltd (in liquidation)* [2022] NSWSC 340
21	2022/127231	Chief Commissioner of State Revenue v Godolphin Australia Pty Ltd	30/11/2022	TAXATION – The Respondent sought review of a decision of the Appellant to assess the Respondent for land tax in respect of two properties – the Respondent submitted that the land was exempt from land tax on the basis of the exemption for rural land used for primary production because the dominant use of the land was for the maintenance of stallions for the purpose of selling their bodily produce – the Appellant argued that the true use of the land was not for the requisite statutory purpose but rather for breeding,	*Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue* [2022] NSWSC 430

				training and spelling racehorses – primary judge held that the exemption applied and the assessment should be set aside – whether primary judge failed to correctly apply the legal test in determining that the land was used for primary production – whether primary judge erred in finding that the Respondent conducted an 'integrated or composite' activity on the land – alternatively whether primary judge erred in finding that the preparation of horses for racing was with the overall purpose of increasing revenue from nomination fees and from the sale of progeny produced by the horses – whether primary judge erred in finding that the nomination fees and sale of progeny were sufficiently proximate to the maintenance of the animals on the land – whether primary judge erred in determining that the dominant use of the land was for the maintenance of horses for the purpose of selling their bodily produce	
22	2022/96995	Taylor & Wilkinson v Stav Investments Pty Ltd	1/12/2022	CONTRACT – Breach of contract and misleading and deceptive conduct – First Appellant was founder, director and CEO of Yatango Mobile – Second Appellant was Chief Financial Officer and company secretary of Yatango Mobile – Yatango Mobile was an online reseller of mobile phone plans provided to Yatango Mobile on a wholesale basis by Optus – Sales were made through an online platform promoted as unique which allowed users to customise their mobile phone plans – The directors of the Respondents in each matter were approached to invest in Yatango's business – In 2013 each of the	*Stav Investments Pty Ltd v Taylor; LK Investments Pty Ltd v Taylor* [2022] NSWSC 208

				Respondents were incorporated and entered into share sale agreements with Yatango Mobile for $750,000 – In 2014 the Respondents each invested a further $262,500 in Yatango Mobile – First and Second Appellant gave personal warranties as to the ownership of the intellectual property used in Yatango Mobile's business – Respondents alleged that First and Second Appellants made representations as to IP Ownership, Yatango Mobile's assets, the valuation of the Yatango Mobile business, and the roll-up of the Respondents' shares in Yatango mobile --Yatango Mobile went into liquidation in 2015 – Respondents complained as to breaches of the warranties given by Appellants – Respondents complained of misleading and deceptive conduct and that, but for the misleading or deceptive representations, the Respondents would not have entered into the share sale agreements – Whether primary judge erred in finding a no transaction case – Whether primary judge failed to provide sufficient reasoning for the conclusion that there was a no transaction case – Whether primary judge failed to take into account evidence in reaching conclusion that there was a no transaction case – Whether primary judge erred in concluding that the business of Yatango Mobile was not a going concern because it did not own the intellectual property — Whether primary judge erred in assuming that the claims made by the respondent extended beyond the contractual warranty claim – Whether primary judge erred	

				in categorising the “Pre-Contract Roll-Up Representations” as a representation as to a future matter – Whether primary judge erred in finding that Respondent would not have entered into share sale agreements but for the Pre-Contract Roll-Up Representations	
23	2022/266023	Ahern v Aon Risk Services Australia Ltd	3/02/2023	COSTS – the Appellants were the owners of a home that was damaged by fire – the Appellants discovered they were grossly under insured and commenced proceedings against their insurance broker the First Respondent for professional negligence – the parties reached settlement however they could not agree on the quantum of the Appellants’ costs to be paid – the parties applied for review of the assessor’s determination – the Appellants filed a summons instituting an application for leave and an appeal against the review panel’s decision regarding the costs assessment – the First Respondent filed a notice of motion seeking orders that the Appellants’ summons be dismissed on the grounds it was incompetent because it was out of time – the Appellants applied for an extension of time – whether the primary judge denied the applicant natural justice or procedural fairness – whether the primary judge erred in failing to determine the summons on a final basis pursuant to the notice of motion – whether the primary judge applied the wrong legal test that there must be a strongly arguable case for leave – whether the primary judge erred in determining whether leave should be granted – whether the primary judge erred in	*Ahern v Aon Risk Services Australia Ltd* [2022] NSWSC 702

				determining that any re-assessment of the legal costs must be carried out by the Court – whether the primary judge erred in criticising the Appellants' submissions as inadequate – whether the primary judge erred in refusing an application for an extension of time and dismissing the summons – whether primary judge erred in determining that the Appellants' claim for interest was not arguable	
24	2022/243445	Yu Xiao v BCEG International (Australia) Pty Ltd	6/02/2023	CORPORATIONS - Fraud - Respondent is part of the Beijing Construction Engineering Group- From 2010 to 2017, the First and Second Appellants ran the Respondent company - Respondent was engaged in various large developments, including a private hospital on the Gold Coast, a commercial and residential development in Wagga, and a shopping centre and medical centre in Wyalong - The Wagga development was owned by the Third and Fourth Appellants (which were in turn owned by the First and Second Appellants) - The Wyalong project was undertaken through the Fifth Appellant - Respondent engaged a builder on all projects which builder was controlled by the First and Second Appellants - First and Second Appellant diverted $3.4 million of the loan facility for the private hospital to the Wyalong project through the rendering of false invoices by the builder controlled by the First and Second Appellants - First and Second Appellants used some $1.3 million of the drawdown of the loan facility for the private hospital as the deposit on an apartment for themselves in the Rocks - From the second	*Lower Court decision not available on CaseLaw*

				drawdown on the loan facility the First and Second Appellants purchased the Wagga land for some $2 million - When applying for subsequent drawdowns, the First and Second Appellant justified upcoming costs by reference to fraudulent subcontracts, resulting in the advancement of a further $23 million - Respondent sought equitable compensation for breach of fiduciary duty, and accessorial claims against the Fourth and Fifth Appellants - Respondent sued in contract for monies owed by the Third Appellant - Primary judge found in favour of the Respondent – As to the Wyalong project, whether primary judge erred in holding that the Respondent was entitled to equitable compensation from the First and Second Appellants and an account of profits from the Fifth Appellant - Whether primary judge erred in assessing the Respondent's loss - As to the Wagga project, whether primary judge erred in finding that the breaches of fiduciary caused the Respondent's loss - Whether primary judge erred in assessing the Respondent's loss - Whether primary judge erred in finding that various payments were fraudulent	

25	2022/219923	Jaken Properties Australia Pty Limited v Naaman	7/02/2023	EQUITY – Trusts – Subrogation – The First Appellant was the trustee of the Sly Fox Trust – The initial trustee of the Sly Fox Trust was Jaken Property Group Pty Ltd (JPG), now in liquidation – In 2016, the Respondent obtained a judgment in the Supreme Court for $3.4 million against JPG – The Court determined that JPG was entitled to be indemnified from the assets of the Sly Fox Trust and that the Respondent was subrogated to JPG's right of indemnity – Second Appellant alleged that there was little or nothing of the assets in the Sly Fox Trust available to satisfy the judgment debt – Respondent alleged that to the extent that the Trust was unable to meet the debt, this was brought about by the Second Appellant directly or indirectly causing the First Appellant to enter into impermissible transactions – Respondent alleged that First Appellant, as successor trustee of the Sly Fox Trust, owed a fiduciary duty to JPG not to deal with the assets of the Trust in a way that diminished JPG's right of indemnity – Respondent alleged that he was subrogated to JPG's right to enforce that fiduciary duty – Respondent alleged that the Second Appellant was the de facto and shadow director of the First Appellant and the architect of the impugned transactions – Respondent alleged that the First Respondent undertook various transfers of land or properties for no commercial purpose and for no consideration – Primary judge held that the impugned transactions were impermissible and in breach of trust –	*Jake Properties Australia Pty Ltd v Naaman* [2022] NSWSC 517

				Whether primary judge erred in holding that the Respondent was entitled to sue the First Appellant as successor trustee of the Sly Fox Trust for breach of fiduciary duty by the First Appellant to JPG, and the Second, Third, Fourth, Fifth, Sixth and Seventh appellants for knowing assistance – Whether primary judge erred in finding that various transfers of land were voidable transactions – Whether primary judge erred in making various factual findings – Whether primary judge erred in finding that the First Appellant breached orders made by Rein J by consent on 18 June 2014 – Whether primary judge erred in making declarations	
26	2022/83362	Gan v Xie	7/02/2023	TRADE PRACTICES – misrepresentations made to invest in an investment trading platform trading virtual investments – appellant unable to with withdraw investment - whether erred in finding that the “MFC line platform” was not a pyramid scheme with meaning of s45 of Australian Consumer Law (ACL) – whether credit findings were infected by mistaking the Mandarin translator with the interpreter at trial – whether erred in failing to dispense with notice regarding tendency and coincidence evidence – whether erred in not admitting conduct after 2016 as tendency evidence - evidence	*Lower Court decision not available on CaseLaw*

27	2022/225708	Payne v Liccardy	9/02/2023	TORT (negligence) – the Appellant owed and operated a pontoon which was the subject of a marine accident – the Appellant charged a fee to a group which included the First Respondent for the charter of the pontoon for a day including the provision of a master for the pontoon – the First Respondent was injured when he dove off the moving pontoon and, while re-boarding, his leg came into contact with the motorised propellor – the Second Respondent was the master of the pontoon at the relevant time – the primary judge found that at no time did the Second Respondent provide a safety briefing to the group and took no steps to guide or assist the First Respondent when re-boarding the pontoon – the primary judge held that negligence of the Second Respondent was established – the primary judge held that the Appellant should be held vicariously liable for the Second Respondent's negligence as he was the Appellant's authorised agent, if not his employee, in relation to the marine accident – the primary judge rejected the claimed defences of contributory negligence and intoxication – whether the primary judge erred in failing to find that the First Respondent had been guilty of contributory negligence – whether the primary judge erred in rejecting the Appellant's defence in relation to intoxication under s 50 of the Civil Liability Act 2002	*Liccardy v Payne trading as Sussex Inlet Pontoons Pty Ltd* [2022] NSWDC 246

28	2022/252874	Stokes v Toyne	10/02/2023	PROCEDURE – strike out application – whether Anshun estoppel should operate to prevent the District Court proceedings from continuing – whether significant connection between relief in earlier Supreme Court proceedings – whether forensic decision made not to adduce evidence as to damage - whether erred in refusing leave to cross-examine witnesses – whether respondent's evidence was relevant to explaining the manner in which the earlier litigation had been conducted – whether erred in accepting respondent's evidence on the basis it was unchallenged – whether erred in finding that earlier proceedings could not have addressed damages as it was impossible to quantify at that stage	*Toyne v Stokes* [2022] NSWDC 292
29	2022/261766	The Property Investors Alliance Pty Ltd v C88 Project Pty Ltd (in liquidation)	13/02/2023	EQUITY - Rectification - Appellant is a real estate agent retained by the First Respondent to sell apartments in a development in Carlingford - The Appellant sold 317 apartments and received $10 million in commission, with some $18 million outstanding -Appellant brought proceedings to recover the sum owed, and the Respondent failed to file a Commercial List Reply - Appellant applied for summary judgment; Hammerschlag J (as his Honour then was) gave judgment in favour of the Appellant for $18 million with interest - Respondent sought to set aside the statutory demand for the judgment sum - In May 2022, the Respondent went into liquidation, and the Appellant sought leave under s 500(2) of the	*The Property Investors Alliance Pty Ltd v CBB Project Pty Ltd (in liq)* [2022] NSWSC 1081

				Corporations Act 2001 (Cth) to proceed against the Respondent - Appellant sought rectification of the agency agreement on the basis of mutual mistake and a declaration that, under the terms of that agreement, it has an equitable charge over 27 unsold apartments – The liquidator of the Respondent opposed the relief sought and contended that any equitable charge would be void for illegality pursuant to s 49(1) of the Property and Stock Agents Act 2002 (NSW) - Primary judge dismissed Appellant's claim for rectification - Primary judge held that the caveat clauses in the agency agreement did not grant an implied equitable charge - Whether primary judge erred in failing to find that the agency agreement created an equitable charge - Whether primary judge erred in failing to find that the Appellant and the Respondent had a common intention that the monies secured by the charge included commissions for units previously sold by the Appellant - Whether primary judge erred in declining to draw a Jones v Dunkel inference - Whether primary judge erred in drawing an inference against the Appellant that it did not adduce into evidence notes or drafts of the agency agreement	

30	2022/181470	Saipan Holdings Pty Ltd v City Gym Sydney Pty Ltd	13/02/2023	REAL PROPERTY – Leases – Obligation to make good – Respondent was the sublessee of a property in Darlinghurst – First Appellant was the owner of the property, and Second Appellant was the lessee under the headlease – First Respondent gave its consent to the sublease and acknowledged that it was bound by its terms – Respondent operated a gymnasium at the premises – In 2018 the premises suffered storm damage which resulted in water leakages from the roof and ceiling of the property, and damaged the air-conditioning units – Leakages occasioned damage to the Respondent's property, and allegedly caused loss of custom – Respondent alleged that the Appellants were in breach of their obligations under the sublease to make good, repair and maintain the premises – Appellants alleged that the failure to make good resulted from breaches by the Respondent of the sublease in unreasonably withholding its consent to carry out works and denying access to the premises – Primary judge held Appellants breached the obligation to make good – Whether primary judge erred in construing the sublease – Whether primary judge erred by having regard to the parties' expectations prior to entry into the sublease – Whether primary judge erred in failing to find that the Appellants were prevented from fulfilling their obligations under the sublease – Whether primary judge erred in making various factual findings	*City Gym Sydney Pty Ltd v Saipan Holdings Pty Ltd* [2022] NSWSC 699

31	2022/119549	Tzavaras v Tzavaras & Sons Pty Ltd	14/02/2023	CONTRACT – an issue arose in the proceedings below as to the construction of a mortgage document, in relation to what currency the principal and interest was payable in – a further issue arose as to whether the mortgage was invalid, as an issue arose as to whether the lender unconscionably exploited the borrowers – primary judge found in favour of the respondent – whether the primary judge erred by denying the appellants procedural fairness and the right to be heard – whether primary judge erred as to certain factual findings – whether primary judge erred by rejecting certain evidence	*In the matter of Tzavaras & Sons Pty Ltd* [2022] NSWSC 359
32	2022/314994	DXC Eclipse Pty Ltd v Wildsmith	15/02/2023	CONTRACT – restraint of trade - non-competition covenant in securities purchase agreement - whether erred in reading down reference to “Microsoft Dynamics 365 technologies” to April 2018 rather than future versions of software – whether erred in disregarding the reference to “future, successor or derivative products, services or technologies” in construing covenant – whether business of Will Thirty Three Pty Ltd was competitive with the Sable 37 business – whether business of Sentient Dynamics was competitive with the Sable 37 business – whether covenant against solicitation of employees was unreasonable -	*Lower court decision not available on Caselaw*

33	2022/313424	Piety Constructions Pty Ltd v Hville FCP Pty Ltd	15/02/2023	BUILDING AND CONSTRUCTION – The Appellant builder alleged that the Respondent developer failed to provide a Payment Schedule within the 10 business day period specified in s 14(4)(b)(ii) of the Building and Construction Industry Security of Payment Act 1999 (NSW) (Act) and that the Appellant was therefore entitled to judgment against the Respondent in the sum of $10,179,961.84 – The Appellant effectively served the Respondent a payment claim for $16.5 million using an electronic information exchange system on 2 May 2022 – The Respondent provided a Payment Schedule via that same system on 16 May 2022 at 6:30pm – An agent of the Appellant company received and read the email and its attachments on 16 May 2022 – The contract provided that all notices or other communications authorised or required to be made to or by a party that were delivered after 4:30pm were deemed to be given at 9:30am the next business day – Primary judge concluded that notwithstanding the deeming provision in the contract, by virtue of its receipt and perusal by the Appellant, the Payment Schedule was provided for the purposes of s 14 of the Act – Whether primary judge erred in failing to find that the deeming provision displaced the common law position – Whether primary judge erred in failing to apply the agreement as to the time of receipt of notifications to s 14 of the Act which is permitted by s 13A of the Electronic Transactions Act 2000 (NSW) – Whether primary judge erred in	*Piety Constructions Pty Ltd v Hville FCP Pty Ltd* [2022] NSWSC 1318

				applying Falgat Constructions Pty Limited v Equity Australia Corporation Pty Ltd [2006] NSWCA 259 where that decision was not concerned with a deeming provision – Whether primary judge erred in distinguishing APN Funds Management Limited v Australian Property Investment Strategic Limited [2013] VSCA 239 on the ground that it was not concerned with the Victorian analogue of s 14 of the Act – Whether primary judge erred in finding that the 10 business day period specified in s 14 applied in circumstances where the contract stipulated a shorter period for notification – Whether primary judge erred in finding that the contract restricted the operation of the Act – By Notice of Contention the Respondent alleges that it did not provide the Payment Schedule in accordance with the contract and thus the deeming provision did not apply	
34	2022/180699	Sweeney v He	16/02/2023	EQUITY – Trusts and trustees – The Second Respondent purchased a property in Bomaderry, NSW – The Appellant and the First Respondent (the Appellant's wife, and the Second Respondent's mother) resided in the property until 2017 when the First Respondent vacated the property but the Appellant remained – The Second Respondent brought proceedings in NCAT to terminate the Appellant's tenancy – A warrant for possession was issued to remove the Appellant from the property – The Appellant alleged that the property was held on trust by the Second Respondent for him and the First Respondent in equal shares in accordance	*Sweeney v He* [2022] NSWSC 655

				with an oral agreement – The Appellant alleged that all payments by him were mortgage repayments and not rent – Primary judge dismissed the Appellant's claim and found that the legal and beneficial interest in the property was held by the Second Respondent absolutely – Whether primary judge erred in finding that payments were for rent rather than mortgage repayments – Whether primary judge erred in making various factual findings – Whether primary judge failed to give adequate reasons – Whether primary judge erred in making certain findings as to credit	
35	2022/214958	183 Eastwood Pty Ltd v Dragon Property Development & Investment Pty Ltd	17/02/2023	EQUITY – Agency – Ostensible authority – Appellant is the trustee company of the Eastwood Unit Trust through which investment was made in a residential unit development in Eastwood – 46 of the 100 units in the Unit Trust were held by a company of which Mr Scott Chan was the sole director and shareholder – Without the knowledge or approval of the true officeholders of the Appellant, Mr Chan caused the lodgement of an ASIC Form 484 which informed ASIC that Mr Chan had become the sole director and secretary of the Appellant, and this appeared on ASIC's searchable register – The true officeholders were aware of the actions of Mr Chan and drafted an agreement for the sale of units to Mr Chan's company – Mr Chan did not pay the amount due under the agreement – Mr Chan convinced the Respondent to pay $1.67 million in return for the promise of the transfer of title to 19 units in the Unit Trust –	*Dragon Property Development & Investment Pty Ltd v 183 Eastwood Pty Ltd* [2022] NSWSC 910

				The ASIC register was then corrected and the police informed of the fraud – Primary judge held that Mr Chan was held out by the Appellant as possessing authority to bind the company to contracts like that with the Respondent – Whether primary judge erred in making various factual findings – Whether primary judge erred in finding that the Appellant was under a duty to monitor the correctness of the ASIC register and correct any false information therein – Whether primary judge erred in finding that the Appellant had impliedly ratified Mr Chan's conduct through its silence – Whether primary judge erred in awarding expectation damages when the respondent pleaded reliance damages	
36	2021/318239	Young v Director of Public Prosecutions	22/02/2023	JUDICIAL REVIEW – dismissal of appeal from the Local Court by the District Court – procedural fairness – failure of Local Court to provide hearing loop for hearing – whether proceedings miscarried where the applicant was unable to fully participate – failure of legal representative to cross-examine – failure of police to discover material	*Lower decision not available on Caselaw*

37	2022/211356	Western Sydney University v Thiab	28/02/2023	ADMINISTRATIVE LAW (other) – cancellation of first clinical placement required to complete Bachelor of Nursing due to failure to have Covid-19 vaccination – cancellation of second clinical placement after certain conversations at placement – whether cancellation of placements in breach of s35 of Western Sydney University Act 1997 (NSW) – whether respondent's views on vaccination "political" – whether erred in finding that applicant's decision imputed anti-vaxxer beliefs to the respondent – whether erred in granting relief based on the misconduct decision which was not challenged in the summons – failure to cross-examine on whether decision was based on the respondent being an anti-vaxxer	*Thiab v Western Sydney University* [2022] NSWSC 760
38	2022/209841	Catlin v Draper	1/03/2023	TORTS (motor vehicle) – separate question on liability - duty of care in circumstances where respondent's own violent acts contributed to injuries – respondent threw a bottle at vehicle and then threw herself onto windscreen caused it to fracture – respondent fell off when applicant drove away and suffered brain damage - whether applicant acted in self-defence at common law or pursuant to s52 of Civil Liability Act 2002 (NSW) – whether scope of liability extended to the harm pursuant to s5D(1)(b) of Civil Liability Act 2002 (NSW) – adequacy of reasons – contributory negligence - findings	*Lower Court decision not on Caselaw*

39	2022/281148	Parkview Constructions Pty Ltd v Owners of Strata Plan 90018	2/03/2023	PRACTICE AND PROCEDURE – buildings defects dispute - whether there were separate causes of action for each alleged breach of warranty contained in s18B of the Home Building Act 1989 (NSW) – whether s18C and s18D confer separate causes of action – whether there is only cause of action for all of the alleged breaches of the Act - whether amendments to claim to introduce new claims were statute barred	*Owners of Strata Plan 90018 v Parkview Constructions Pty Ltd* [2022] NSWSC 1123
40	2022/229896	Mt Owen Pty Ltd v Parkes	3/03/2023	WORKERS COMPENSATION – The Appellant is the proprietor and occupier of a coal mine the subject of a workplace accident – the Appellant engaged the Second Respondent to provide mining services including hire of labour – the First Respondent was employed by the Second Respondent and his labour was hired to the Appellant – during the course of this employment, another worker Mr Kemp (employed by the Second Respondent) caused the track on which the First Respondent was standing to elevate, resulting in the latter's leg being crushed between the track and an inspection platform – the primary judge found that there is no doubt that the Appellant owed the First Respondent the host employer's duty as described in TNT Australia Pty Ltd v Christie (2003) 65 NSWLR 1 (TNT) – the primary judge was satisfied on the balance of probabilities that Mr Kemp, at all material times, was the employee of Mt Owen pro hac vice – the primary judge held that liability for damages should be apportioned between the Appellant and Second Respondent on the	*Parkes v Mt Owen Pty Ltd* [2022] NSWSC 909

				basis that the former bears 80 percent and the latter 20 percent – whether the primary judge erred in finding that the circumstances of the case were covered by TNT and the Appellant owed the First Respondent a duty as described in that decision – whether the primary judge erred by giving undue weight to various factors – whether the primary judge erred in failing to apply various principles of construction	
41	2022/383325	Next Generation (NSW) Pty Ltd v State of New South Wales	6/03/2023	LAND & ENVIRONMENT – the appellant sought a declaration that Part 4 of Chapter 9 of the Protection of the Environment Operations (General) Regulation 2022 (NSW) (the Regulation) was invalid and of no effect – the primary judge held that the appellant had not established that the Regulation was in excess of the legislation power or regulation making power – whether the primary judge erred in failing to conclude that the Regulation was invalid	*The Next Generation (NSW) Pty Ltd v State of New South Wales* [2022] NSWLEC 138
42	2022/363122	Khatib v Director of Public Prosecutions	6/03/2023	ADMINISTRATIVE LAW – judicial review of District Court following appeal from Local Court – jurisdictional error – procedural fairness – failure to give reasons for being satisfied beyond reasonable doubt that complainant did not consent alleged touching – whether erred in giving direction under s293A of Criminal Procedure Act 1986 (NSW) as to inconsistencies – whether magistrate put words into the mouth of the complainant – failure to afford opportunity to speak – whether alleged touching met legal definition of sexual touching under s61HB of Crimes Act 1900 - bias	*Lower Court decision not on Caselaw*

43	2022/299298	Hartnett v Bell; Hartnett v Deakin-Bell	7/03/2023	PROFESSIONAL NEGLIGENCE (legal) – The Appellant (a solicitor) charged his (now deceased) mortgagee client (the First Respondent) $288,601.03 for acting in uncontested possession proceedings to enforce a $30,000 mortgage – the Second Respondent as mortgagor (on behalf of the estate of his deceased mother) brought a claim that the Appellant ought to be ordered to disgorge or pay back what are said to be excessively charged legal fees that were borne by the Second Respondent as mortgagor – the primary judge considered this an appropriate case for the Court to exercise its inherent supervisory jurisdiction to require the Appellant to pay to the Second Respondent the sum of $311,356.47 – whether the primary judge erred in holding that the supervisory jurisdiction of the Court extended to empowering the Court to order the Appellant to pay the mortgagor an amount which represented the difference between the undisputed amount paid by the mortgagee to the Appellant and the amount of costs which were assessed between the mortgagee and mortgagor in separate proceedings – whether the primary judge's discretion miscarried	*Bell v Hartnett Lawyers (No 3)* [2022] NSWSC 1204
44	2022/200181	Valuer-General v Sydney Fish Markets Pty Ltd	8/03/2023	LAND AND ENVIRONMENT – separate question – appeal by respondent under Valuation of Land Act 1916 – prior to privatisation lease was under Crown Land Management Act 2016 - whether land "Crown lease restricted" under s14I(2) – whether land remained a holding after vesting of land to State Property Authority	*Sydney Fish Market Pty Ltd v Valuer-General of New South Wales* [2022] NSWLEC 71

45	2022/186871	Tredmore Pty Ltd v Atlas Advisors Australia Pty Ltd	8/03/2023	CORPORATIONS – The Appellants brought claims against the Respondents in relation to an investment of $4.8 million made by the Appellant into an investment fund known as the QCAX Australian Property Income Fund II – The Appellants sought relief under the Corporations Act 2001 (Cth) and the Australian Securities and Investments Commission Act 2001 (Cth) for misleading and deceptive conduct and unconscionable conduct – The Appellants alleged that the Respondents made representations as to the security or safety of investment in certain financial products – Primary judge found that the Respondents represented that investment in the QCAX fund was “very safe” and that this was misleading and deceptive – Primary judge found that the representation was not causative of the Appellants’ loss – Primary judge found that Appellants succeeded only in their claims as to a second investment of $2 million – Whether the primary judge failed to consider certain allegedly misleading representations – Whether primary judge failed to consider all relevant evidence – Whether primary judge erred in finding that the Second Appellant had a certain level of business acumen – Whether primary judge erred in failing to find that the Second Respondent was a person involved in misleading and deceptive conduct – Whether primary judge erred in failing to find that Respondents’ engaged in unconscionable conduct	*In the matter of Atlas Advisors Australia Pty Ltd* [2022] NSWSC 705

46	2022/142224	Khattar v Fayad; Fayad v Khattar	9/03/2023	CONTRACTS – Interpretation and termination – Following the settlement of probate proceedings concerning the estate of the Appellant's late brother, the Respondents alleged that the Appellant had an obligation under a Deed of Agreement to cause Hills Shoppingtown Pty Ltd to complete a development owned by it, including the strata sub-division and to transfer the unencumbered interest in 20 Units in the development to a trust known as the GK3 Trust which, under the Agreement, would eventually be controlled by the Respondents – The Trust was not a party to the Deed – The Respondents alleged that the Appellant did not do so and was thus in breach of her obligations under the agreements – A Deed of Acknowledgement was executed following the failure to transfer the Units to the Trust pursuant to which the Appellant acknowledged her breach and agreed to pay monthly payments and organise the transfer of the Units – The development was not completed, nor was the strata plan registered, nor were the Units transferred to the Trust – The Respondents treated the breaches as repudiatory, accepted the repudiation and elected to terminate the Deed of Agreement – The Respondents sought to recover damages for loss of bargain struck under the Deed of Agreement under which the Units had an agreed value of $15 million – Whether primary judge erred in finding that debate about what was to be included in the deceased's estate was at the heart of the probate proceedings –	*Khattar v Hills Shoppingtown Pty Ltd (subject to a Deed of Company Arrangement)* [2022] NSWSC 363

				Whether primary judge erred as to the proper construction of the Deed of Agreement – Whether primary judge erred in finding that the Appellant had breached the Deed of Agreement – Whether primary judge erred in finding that it was open to the Respondents to accept the repudiation – Whether primary judge erred in finding that the Respondents, as opposed to the Trust, suffered loss and damage – Whether primary judge erred in finding that the Appellant did not raise the contention that the proceedings were improperly "construed" (sic: constituted) – Whether primary judge erred in making various factual findings	
47	2022/226932	Cini v First Mortgage Capital Pty Ltd	10/03/2023	REAL PROPERTY – Primary judge ordered that pursuant to s 66G of the Conveyancing Act land in Maimuru be vested in the Trustees – Primary judge ordered that Appellant vacate the premises – Primary judge made orders as to the application of the sale proceeds, with the Appellant receiving any remainder after the payment of the trustee's expenses, a one-half share of the remainder to the second defendant below, and a one-half share of the remainder to be paid to the Respondent – Whether primary judge failed to acknowledge the customary law of the land – Whether orders of the primary judge lack legality – Whether contract was signed by a deceased person – Whether primary judge erred by failing to recognise that the case had already been heard by "Maori Customary Land [sic: law]" – Whether mortgage document was forged	*Lower Court decision not on caselaw*

48	2022/368018	Allianz Australia Insurance Ltd v Probuild Constructions (Aust) Pty Ltd	10/03/2023	CONTRACT – in September 2017 the appellant (Allianz) and the first respondent (Probuild) entered into a Deed of Indemnity pursuant to which Probuild undertook that any "Surplus Bond Moneys" received by Probuild would be held on trust in favour of Allianz and returned to Allianz – in October 2017 Probuild was engaged as a builder by May21 Pty Ltd – in November 2017, at Probuild's request Allianz issued two performance bonds (the Bonds), each in an amount in the order of $17.25 million, in favour of May21 – in February 2022 Probuild entered voluntary administration – in March 2022 May21 demanded payment under the Bonds, and Allianz paid the amount of some $34.5 million – in July 2022 Probuild and May21 entered into a Settlement Deed pursuant to which May21 agreed to pay Probuild $7.7 million – Allianz brought proceedings seeking a declaration that Probuild held on trust for Allianz the amount of $7.7 million and consequential orders including that Probuild pay Allianz the $7.7 million – the primary judge held Allianz failed to demonstrate that the $34.5 million Allianz paid to May21 under the Bonds was an amount "in excess of the amount required" to be paid to May21 "to meet the contractual obligation which the Bond supports" and thus failed to establish that the Settlement Sum represents Surplus Bond Moneys for the purpose of cl 2.6 of the Deed of Indemnity – whether the primary judge should have found that the	*Allianz Australia Insurance Ltd v Probuild Constructions (Aust) Pty Ltd* [2022] NSWSC 1601

				amount paid under the Settlement Deed represented the Surplus Bond Moneys (as identified in the Settlement Deed)	
49	2022/248686	Bronger v Greenway Health Centre Pty Ltd	14/03/2023	LAND AND ENVIRONMENT – Civil Enforcement – The Appellant sought declarations and consequential orders to restrain the use and occupation by the Respondent of a lot in the Greenway Plaza shopping complex – The Appellant alleged that the Respondent was operating a retail pharmacy (that is, a shop) in breach of s 4.3 of the Environmental Planning and Assessment Act 1979 (NSW) and the conditions of the complying development certificate – Primary judge concluded that the Appellant did not prove that the Respondent was conducting a retail pharmacy – Whether primary judge erred in finding that the subject premises were not a shop and were therefore not prohibited as commercial premises under the Fairfield LEP 2013 – Whether primary judge erred in failing to find that the subject premises were used contrary to the restriction to a "medical pharmacy" in the Occupation Certificate and were thus being used contrary to ss 6.9(1)(a) or 6.3(2) of the Environmental Planning and Assessment Act 1979 (NSW) – Whether primary judge erred in finding that the repealed Pt 4A, as opposed to Pt 6, of the Environmental Planning and Assessment Act 1979 (NSW) applied to the Occupation Certificate – Whether primary judge erred in not finding that the use of the subject premises as a shop was independent of the "medical centre" use in accordance with the	*Bronger v Greenway Health Centre Pty Ltd t/as Greenway Plaza Pharmacy* [2022] NSWLEC 91

				reasoning in Baulkham Hills Shire Council v O'Donnell (1990) 69 LGERA 404 – Whether primary judge erred in failing to apply the reasoning as to dual purposes in Abret Pty Limited v Wingevarribee Shire Council (2011) 180 LGERA 343 – Whether primary judge erred in making various factual findings	
50	2023/3565	Augusta Pool 1 UK Ltd v Williamson	14/03/2023	PROCEDURE – representative proceedings concerning construction and partial structural failure of building known as "Opal Tower" – limiting of applicant's contractual entitlement to funding commission and adverse insurance costs to 25% of gross settlement amount – whether Civil Procedure Act 2005 empowers a Court to review or set the funding commission payable – whether erred in proceeding on the basis that the litigation funder had an evidentiary onus to call expert evidence – whether ought to have relied upon contractual rights and lack of objection by group members – whether erred in finding that there was a lack of disclosure of funding agreement	*Williamson v Sydney Olympic Park Authority & Ors* [2022] NSWSC 1618
51	2022/246531	Owners of Strata Plan 92450 v JKH Para 1 Pty Ltd	15/03/2023	BUILDING AND CONSTRUCTION – separate questions answered – external cladding installed on residential unit block said to be combustible - whether failure to establish breaches of s18B(1)(b), 18B(1)(c) or 18B(1)(e) of Home Building Act 1989 (NSW) – whether erred in not finding that cladding was combustible for the purposes of AS1530.1 – whether failed to establish loss – whether breach de minimis	*Strata Plan 92450 v JKN Para 1 Pty Ltd* [2022] NSWSC 958

52	2022/312270	Blue Op Partners Pty Ltd v De Roma	16/03/2023	TORTS (Negligence) – Personal Injury – Occupiers liability – The Respondent was injured when she tripped over the uneven margin of a sunken utility pit lid on the footpath – The Respondent claimed that the sunken configuration and heigh discrepancy of the utility pit was a trip hazard for pedestrians – The Respondent sought damages for personal injury, alleging public liability against the Appellant, being the Ausgrid Operation Partnership – The Appellant alleged that the injuries occurred as a result of the materialisation of an obvious risk within the meaning of ss 5F and 5G of the Civil Liability Act 2002 (NSW) – The Appellant alleged that the Respondent was contributorily negligent – Primary judge found that the Appellant was liable in negligence – Primary judge assessed damages in the sum of $354,142.38 with a discount for contributory negligence of 20% -- Whether primary judge erred in placing weight on certain evidence – Whether primary judge erred in finding that the Appellant owed the Respondent a duty of care in circumstances where her harm was suffered from an obvious risk as defined in s 5F of the CLA – Whether primary judge erred in finding that the duty of care extended to warning pedestrians of height differentials of between 6mm to 10mm – Whether primary judge erred in finding that the duty of care was breached – Whether primary judge erred in finding in the absence of evidence that the Appellant ought to have been aware of the difference in surface heights – Whether	*Lynda Gabriel de Roma v Inner West Council & Ausgrid Operator Partnership* [2022] NSWDC 425

				primary judge erred in finding in the absence of evidence that the burden of taking precautions was small – Whether primary judge erred in finding that causation was established	
53	2022/362538	Truong v Director of Public Prosecutions	17/03/2023	ADMIN LAW – judicial review of District Court decision following appeal from Local Court – procedural fairness – failure to inspect false documents – failure to permit the applicant to call relevant evidence – alleged perversion of justice by police officers – misconduct by presiding magistrate	*Lower Court decision not on Caselaw*