Supreme Court of NSW Court of Appeal

Decisions Reserved as at 26 May 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	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
3	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	*Verde Terra Pty Ltd v Central Coast Council; Central Coast Council v Environment Protection Authority (No 9)* [2022] NSWLEC 29

				Assessment Regulation 2000	
4	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	*Flanagan v Bernasconi* [2022] NSWSC 381

				– whether the primary judge erred in finding that the Appellant failed to take reasonable 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	
5	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 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	*Carpenter v Morris* [2021] NSWSC 1700

				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	

6	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
7	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-	*Alelaimat v Synergy Scaffolding Services (No 3)* [2022] NSWSC 536

				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 – 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	
8	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
9	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 Respondents were incorporated and entered into share sale agreements	*Stav Investments Pty Ltd v Taylor; LK Investments Pty Ltd v Taylor* [2022] NSWSC 208

				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	
10	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	*Jake Properties Australia Pty Ltd v Naaman* [2022] NSWSC 517

				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 – 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	
11	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*
12	2022/261766	The Property Investors	13/02/2023	EQUITY - Rectification - Appellant is a real estate agent retained by the First Respondent	*The Property Investors Alliance Pty Ltd v CBB Project Pty Ltd (in liq)* [2022]

		Alliance Pty Ltd v C88 Project Pty Ltd (in liquidation)		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 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	NSWSC 1081

				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	
13	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
14	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

15	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*
16	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	*Bell v Hartnett Lawyers (No 3)* [2022] NSWSC 1204

				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	
17	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	*Khattar v Hills Shoppingtown Pty Ltd (subject to a Deed of Company Arrangement)* [2022] NSWSC 363

				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 – 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	
18	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	*Lynda Gabriel de Roma v Inner West Council & Ausgrid Operator Partnership* [2022] NSWDC 425

				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 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	
19	2022/273229	Chief Commissioner of State Revenue v Meridian Energy Australia Pty Ltd	21/03/2023	TAX- Landholder duty- Dutiable transactions - Respondent sought a review pursuant to s 97(1)(a) of the Taxation Administration Act 1996 (NSW) of an assessment made by the Appellant in respect of the acquisition by the Respondent of 100% of the shares in GSP Energy Pty Ltd (GSP) for over $160 million - The amount of duty was $7,979,740 calculated on land holdings and goods valued	*Meridian Energy Australia Pty Ltd v Chief Commissioner of State Revenue* [2022] NSWSC 1074

				by the Appellant in the amount of $145 million -GSP was the operator of three hydro-electric power stations in NSW and the lessee of the land on which the power stations were situated - GSP's access to the water required for the operation of the power stations was pursuant to Water Agreements entered into with the State Water Corporation - Respondent contended that the interest in the power stations which it acquired was an innominate sui generis property interest created by a statutory vesting order that could neither be classified as land nor goods, and thus the leases were worth less than $2 million, and accordingly were not a relevant acquisition -Appellant contended that the power stations where fixtures, and therefore part of the leased land which would thus have a value greater than $2 million - Primary judge concluded that the power stations were an in nominate sui generis interest in land and that the leases were thus not a relevant acquisition - Whether primary judge erred in finding that power stations were an innominate sui generis property interest - Whether primary judge ought to have found that the power stations were fixtures - Whether, alternatively, primary judge should have found that those parts of the power stations installed prior to the vesting order were goods and the parts installed after the vesting order were fixtures - Whether primary judge erred as to the allocation of the residual value of the water agreements	

20	2022/260573	Caterjian v Parfit Investments Pty Ltd	24/03/2023	LAND LAW-Action for possession of land - First Respondent was a provider of finance and Second Respondent was its director - Respondents alleged First Respondent loaned the First Appellant $250,000 pursuant to a facility agreement for the purpose of a business investment - Respondents alleged that Second Appellant executed a written guarantee of the First Appellant's obligations - Appellants granted a second mortgage over their property in Bexley to secure their obligations under the facility agreement and under a guarantee and indemnity agreement - Respondents alleged that First Appellant defaulted on payment of the principal and interest due under the facility agreement - Respondents sought possession of the Bexley property in order to exercise power of sale - Alternatively, Respondents sought restitution of the principal sum and interest - By cross-claim Appellants disputed that the advance was made and that the Second Appellant was bound by her guarantee; and alleged unconscionable conduct and/or misleading and deceptive conduct - Primary judge held that Respondents were entitled to judgment for possession in order to exercise its power of sale - Whether primary judge erred in making various factual findings – Whether primary judge erred in failing to find that the manner in which the advance was made discharged the Second Appellant's obligations in accordance with the principles in Ankar Ply Ltd v National Westminster Finance (Australia) Ltd (1987) 162 CLR 549 at [11] -	*Parfit Investments Ptv Ltd v Caterjian* [2022] NSWSC 1093

				Whether primary judge erred in failing to find that the Respondents had engaged in unconscionable conduct	
21	2022/222755	Akrawe v Culjak	28/03/2023	REAL PROPERTY – Contract for the sale of land – The First Appellant entered into a contract for sale with the Respondents in 2020 following auction – The contract provided for completion on the 42nd day after the date of the contract, this date was extended twice – The Respondents served a Notice to Complete, however settlement did not take place on that date – The time for completion was extended a third time – Settlement did not take place – The Respondents served a Notice of Termination upon the First Appellant – The Respondents sought a declaration that the contract was duly terminated and an order that they are entitled to the deposit of $155,000 – The First Appellant denied the validity of the Notice of Termination – The Appellants sought an order that the contract be specifically performed by cross-claim – Primary judge held that the Notice of Termination was valid, and that the Respondents were entitled to recover the deposit – Primary judge dismissed the cross-claim – Whether primary judge erred in making various factual findings – Whether primary judge erred in failing to order that the contract be specifically performed – Whether the errors in factual findings caused the primary judge to misapply the discretionary power granted by s 55(2A) of the Conveyancing Act 1919 (NSW)	*Culjak v Akrawe* [2022] NSWSC 949

22	2022/265558	Kalloghlian v Mitry Lawyers Pty Ltd	31/03/2023	COSTS – dismissal of motion seeking costs against applicant's lawyer under s99 of Civil Procedure Act 2005 (NSW) – whether evidence established a prima facie case that order should be made – whether irrelevant factors taken into account – whether alleged failure to plead cause of action amounts to gross negligence or improper conduct – adequacy of reasons	*Kalloghlian v Mitry Lawyers Pty Ltd* (No 2) [2022] NSWSC 1071
23	2022/370857	Soulos v Pagones; Soulos v Soulos; Kristallis v Soulos; Kristallis v Pagones	6/04/2023	SUCCESSION – the deceased was survived by her four children (James, Maria, Dennis and Nick), 12 grandchildren and several great-grandchildren – the deceased left an estate of some $35.8 million comprising all forms of property – much of the property was held by two companies, Esperia Court Pty Ltd (Esperia) and A&R Management Pty Ltd (A&R) – by her last will the deceased left each child property and shares in Esperia, although the deceased gifted Nick all management shares in Esperia and the major interest of all members of Esperia in a winding up of Esperia – disputes as to particular parcels of land and corresponding entitlements to shares in Esperia and A&R arose between the children of the deceased – Maria brought a claim for Esperia to be wound up in oppression proceedings against the deceased's estate, Nick and John (Nick's son) – claims as to family provision orders were brought by each of James, Maria and Dennis – the primary judge made orders that the four sets of proceedings be heard together with evidence in each set of proceedings to be evidence in each other set of proceedings so	*Re Estate Soulos* [2022] NSWSC 1507

				far as may be material – the primary judge made orders that each child of the deceased receive 125 of the 500 management shares in Esperia – the primary judge made an order that James receive 1,000 shares in Esperia given to Nick – the primary judge made orders inter alia that Nick and John hold their interest in certain property on trust for Esperia and that they be required to retire as directors of Esperia – whether the primary judge erred in finding that adequate provision for the proper maintenance, education or advancement in the life of James had not been made in the will of the deceased for the purpose of s 59 of the Succession Act 2006 (NSW)	
24	2022/336144	United Resource Management Pty Ltd v Par Recycling Services Pty Ltd	14/04/2023	CONTRACT – agreement to separate waste from recycled collections in commingled containers – dispute as to failure to make payments - whether "implied agreement" could be terminated by reasonable notice – whether erred in finding misleading or deceptive conduct in relation to the Somersby Supply Agreement – whether offer would have been but for that conduct – whether loss suffered – whether an agreement on more favourable terms would have been entered – whether common mistake as to 2011 agreement was such that the parties were bound by the "implied agreement" – whether the appellant was unjustly enriched – whether failure to call witness gave rise to a Jones v Dunkel inference of 2011 agreement coming to an end	Par Recycling Services Pty Ltd v United Resource Management Pty Ltd [2022] NSWSC 1269

25	2022/318549	Walker Corporation Pty Ltd v Owners of Strata Plan 61618	14/04/2023	ADMINISTRATIVE LAW (other) – termination of appointment of strata managing agent for Finger Wharf at Woolloomooloo under the Strata Schemes Management Act 2015 by three owner corporations (OC) – Strata Management Statement (SMS) for development covered 7 OC's - whether article 8.11 of SMS required the same strata manager for all OCs – whether prohibition binding on all OCs – whether article 8.11 created an implied negative stipulation – whether registration of SMS under Real Property Act 1900 caused it to operate as a deed – whether OC had power to terminate strata manager	*Walker Corporation Pty Ltd v The Owners - Strata Plan No 61618* [2022] NSWSC 1246
26	2022/223074	One T Development Pty Ltd v Krejci	20/04/2023	CORPORATIONS - judicial advice to liquidator – advice given that liquidator is entitled to treat property of company is beneficially owned by company in liquidation – whether erred in providing advice when interest in property was contested – whether erred in ignoring evidence of other potential interests in property – whether effect was to make a binding determination as to beneficial ownership of property – evidence	*In the matter of ENA Development Pty Ltd (in liq)* [2022] NSWSC 919
27	2022/295461	Wojciechowska v Secretary, Department of Communities and Justice	24/04/2023	CONSTITUTION – proceedings pending in NCAT concerning Government Information (Public Access) Act 2009 - applicant a resident of Tasmania - whether Tribunal can exercise jurisdiction – whether President of NCAT erred in exercising functions under s52 of Civil and Administrative Tribunal Act 2013 to reconstitute Appeal Panel	*Wojciechowska v Secretary, Department of Communities and Justice* [2022] NSWCATAP 226
28	2022/333016	Jacups v Fidelity Fund	28/04/2023	DISCIPLINARY PROCEEDINGS – the appellant made a claim on the Fidelity Fund	*Jacups v The Fidelity Fund Management Committee of the Law*

		Management Committee of the Law Society of New South Wales		for money he alleged was received by his former solicitor (Mr Knaggs) as trust money – the respondent wholly disallowed the appellant's claim – the primary judge held that the hearing was a de novo hearing – whether the primary judge erred in failing to have regard to the overall merits of the case – whether the primary judge erred in failing to conduct a hearing de novo – the primary judge held that there was no default within the meaning of s 219 of the Uniform Law and it was more probable than not that all of the trust money was properly disbursed and did not involve any default – whether the primary judge failed to make various findings – whether the primary judge erred in characterising the payments of Mr Knaggs	*Society of NSW (No 2)* [2022] NSWSC 1375
29	2022/342349	Atanaskovic v Birketu Pty Ltd	1/05/2023	COSTS – declaration made as to costs entitlement during pending cost assessment of party & party costs - whether unincorporated law firm can recover costs performed by employed solicitor – whether previous right to recover derived from the now abrogated Chorley exception	*Birketu v Castagnet* [2022] NSWSC 1435
30	2022/326111	He v Kure	3/05/2023	EQUITY – Oral Loan Agreement – The Respondent sought a monetary judgment for $1,804,117.84 (plus interest) in respect of loans allegedly made by the Respondent to the Appellant which were not repaid, and moneys alleged to have been misappropriated by the Appellant – Primary judge found that the Respondent had loaned the Appellant $633,744.57 in 2008, repayable upon two months' notice, which remained unpaid – Primary judge found that the Respondent	*Kure v He* [2022] NSWSC 1240

				loaned the Appellant a further $312,000 in 2009, which remained unpaid – Primary judge found that the Respondent loaned the Appellant a further sum of $159,738 later in 2009, which remained unpaid – Primary judge found that the entitlement to recover the sums loaned was not extinguished by the Limitation Act 1969 (NSW) ss 14 and 63 – Primary judge held that the Respondent was precluded from maintaining his claim for equitable compensation for the alleged misappropriations on the basis that he made the claim more than six years after it first became available to him – Primary judge entered judgment for the Respondent in the sum of $1,105,513.04 – Whether primary judge erred in finding that each of the three loans remained unpaid – Whether primary judge erred in finding that the Appellant bore the onus to prove that the first loan had been repaid – Whether the primary judge erred in holding that the first loan was in fact a loan – Whether primary judge erred in finding that entitlement to recover each of the three loans was not barred by the Limitation Act 1969 (NSW) – Whether primary judge failed to give adequate reasons for the cost orders made	
31	2022/303307	Anderson v State of New South Wales; Perri v State of New South Wales	4/05/2023	TORT – false imprisonment, assault and battery – strip search by police officers of applicant when a minor – proceedings dismissed after limitations defence – whether exemption for "child abuse" in s6A of Limitations Act 1969 applied – whether violation of child's privacy an abuse – whether	*Anderson v State of New South Wales* [2022] NSWDC 435

				the “Capable Persons” had taken reasonable steps to ascertain the fact mentioned in s50(1)(c) – whether ought to have known that injury was sufficiently serious to justify bring an action	
32	2022/341	Ranclose Investments Pty Ltd v Leda Management Services Pty Ltd	4/05/2023	PROCEDURE – dismissal of proceedings after non-payment of security for costs – whether UCPR 42.21(3) is inconsistent with s1335 of the Corporations Act 2001 – whether power under UCPR 42.21 enlivened – whether erred in dismissing amended statement of claim – whether erred in ordering security for costs – whether failed to take into account that applicant was a trustee with no assets COSTS – whether erred in ordering costs of the dismissal of cross-claim - whether failed to take into account an undertaking not to pursue a cross-claim	*Ranclose Investments Pty Ltd v Leda Management Services Pty Ltd* [2021] NSWDC 651
33	2022/318631	Li v Tao	16/05/2023	EQUITY – the appellant and respondent were in a de factor relationship – the appellant bought a property in North Ryde using the respondent’s money for the deposit – both parties entered into a written agreement with the appellant and Mr Bao pursuant to which Mr Bao agreed to contribute 50% of the costs for the development of a North Ryde Property in return for 50% of net profits – the respondent purchased a property in St Ives and at some point the appellant’s name was added as co-purchaser – the parties’ relationship deteriorated and the respondent and Mr Bao requested that the appellant sell the North Ryde Property but the appellant refused – Mr Bao sought an order from the court that the North Ryde Property be sold	*Bao v Li* [2022] NSWSC 1335

				and an account taken to determine his entitlement – the respondent cross-claimed against the appellant alleging that she held the North Ryde Property and the St Ives Property on express trust for him – the primary judge held that the appellant and the respondent agreed to the creation of an express trust in relation to both properties – whether the primary judge erred in finding that the respondent and Ms Lee were honest witnesses – whether the primary judge erred in finding that the appellant was an unimpressive witness – whether the primary judge erred in finding that an express trust arose in relation to the St Ives Property – whether the primary judge erred in making various factual findings – whether the primary judge erred in making orders to effect the transfer of the St Ives Property without first ordering that the appellant was entitled to an indemnity with respect to the mortgage liabilities in her name	
34	2023/95392	Resolution Life Australasia Ltd v N.M. Superannuation Proprietary Ltd	16/05/2023	INSURANCE – group policy to cover members of superannuation fund - construction of policy – whether policy contains an express or implied promise to pay premiums – whether erred in finding that this was consistent with a life insured being able to terminate their cover – whether erred in not restraining respondent from terminating insurance contract by selecting another insurer	*Resolution Life Australasia Ltd v N. M. Superannuation Pty Ltd* [2023] NSWSC 98
35	2022/199614	Coalroc Contractors Pty Ltd v Matinca	17/05/2023	TORTS (Negligence) – Personal Injury – The Respondent was an employee of the Appellant, which operated a coal mine in the	*Matinca v Coalroc (No 5)* [2022] NSWSC 844

				Hunter Valley – The Respondent suffered personal injury after his vehicle collided with a tree on his return home from the mine after working three successive 12 hour shifts, during which he was allowed two half hour breaks – The Respondent sued the Appellant for damages for breach of the duty of care owed to him by the Appellant as his employer –The Respondent alleged that he undertook his journey home “in his character as a servant” – The Respondent alleged that the Appellant’s fatigue management procedure, which extended to cover travel time as a drive-in, drive-out worker, demonstrated that the injury was reasonably foreseeable – The Respondent alleged that a reasonable employer in the position of he Appellant would have insisted on the Respondent providing a travel management plan for its consideration and approval, and that failure to do so amount to breach of its duty of care – The Respondent alleged that the fatigue induced inattention was a necessary condition of his injury – Primary judge held that the Appellant was liable in negligence to the Respondent for the injuries the Respondent suffered in the vehicular accident, apportioning such liability as 70 percent as to the negligence of the Appellant, and 30 percent as to the contributory of the Respondent – Whether primary judge erred in finding that work induced fatigue was the cause of the Respondent’s accident and resulting injury – Whether primary judge erred in utilising “common sense and experience” as opposed	

				to expert evidence to determine that fatigue caused the Respondent's injury – Whether primary judge erred in finding that the scope of the Appellant's liability included the failure to insist that the Respondent provide a personal travel management plan – Whether primary judge erred in finding that a rest break of approximately 20 to 30 minutes would have eliminated the risk of injury to the respondent arising from work	
36	2022/48359; 2022/173413	Anderson v Canaccord Genuity Financial Ltd	17/05/2023	EQUITY – the Ashington group of companies (Ashington) was founded and controlled by Mr Anderson, the Appellant's husband - Ashington carried on a property development business – Ashington came under financial strain and engaged the services of the First Respondent to raise capital from alternative sources – Ashington also engaged the services of the Fourth Respondents to advise the superannuation fund investors on behalf of Ashington – Ashington engaged the Second and Third respondents as Head of Funds Management and Head of Acquisitions respectively to liaise with the First and Fourth Respondents – the Second and Third Respondents abandoned attempts to secure capital raising – investors approved the removal of Ashington as trustee of the property development business – Ashington went into liquidation and the Appellant purchased the rights and interests in Ashington – Appellant commenced proceedings against the Respondents alleging that the Respondents had acted unlawfully to take Ashington's business for their own	*Anderson v Canaccord Genuity Financial Ltd* [2022] NSWSC 58

				benefit – Primary judge held that Appellant had standing to sue for breach of contract but not breach of obligations owed to Ashington as a trustee – Primary judge held that Second and Third Respondents breached duties of good faith and loyalty arising from their employment with Ashington – the primary judge held that loss not established and ordered Second and Third Respondent to pay nominal damages – the primary judge dismissed claims for breach of fiduciary duty, knowing assistance and confidence against the Respondents – whether the primary judge erred in finding that Appellant lacked standing to sue for breach of confidence and fiduciary obligations – whether the primary judge erred in failing to find that the Second and Third Respondents breached fiduciary duties – whether the primary judge erred in failing to find that the First, Fourth, Fifth and Sixth Respondents knowingly assisted the Second and Third Respondents – whether the primary judge erred in failing to find that the First Respondent breached fiduciary duties and duties of good faith – whether the primary judge erred in calculating Appellant's loss	
37	2022/119930	Collier v Attorney General for the State of New South Wales	18/05/2023	ADMINISTRATIVE LAW (other) – orders made under Vexatious Proceedings Act 2008 (NSW) restraining applicant from commencing proceedings in New South Wales without leave – whether primary erred in not adjourning trial – whether erred in discretion to make orders – procedural fairness – bias - findings – evidence	*Attorney General for the State of New South Wales v Collier (No 1)* [2022] NSWSC 457

38	2022/238296	SAS Trustee Corporation v Learmont	19/05/2023	WORKERS COMPENSATION – Police Regulation (Superannuation) Act 1906 (NSW) – Whether the trial judge erred in law in finding in favour of the Respondent	*Lower Court decision not on Caselaw*
39	2022/383662	Maclean v Brylewski	19/05/2023	REAL PROPERTY – in 2013 Mr Radecki (the deceased) entered into a deed with the respondents pursuant to which the deceased agreed to transfer a 50% interest in a property to the respondents and to bequeath the other 50% interest to them in his will, and the respondents agreed to grant the deceased a right of exclusive occupation for the rest of his life or until he vacated the land – the respondents became the registered proprietors of a 50% share in the property – the deceased had previously made a will in 2010 in which he bequeathed the whole of his estate to the respondents in equal shares — in 2017 the deceased married the appellant and that same year NCAT made a guardianship order appointing the Public Guardian to make decisions about the deceased's accommodation, welfare and care and moved the deceased to a care facility – in 2020 the deceased made a further will leaving his whole estate to the appellant – the respondents sought an order for possession of the property in 2021 on the basis that the deceased had vacated the property – the deceased died in 2022 – the primary judge held that the appellant had no reasonable prospects of having the registered title of the respondents set aside and therefore the respondents' entitlement to possession based on that title was a prima facie entitlement in	*Brylewski v Maclean* [2022] NSWSC 1654

				favour of the relief they sought – the primary judge held that the appellant had no immediate right to occupation as against the respondents – whether the primary judge erred in failing to conduct a proper hearing, displayed bias and made unjust findings	
40	2022/214060; 2022/214083	Cordell Jigsaw Productions Pty Ltd v Giant Dwarf Pty Ltd; Cordell Jigsaw Productions Pty Ltd v Morrow	24/05/2023	CONTRACT – breach of joint venture agreement – director's duties - misleading and deceptive conduct – whether a term that each joint venturer would give the other notice of any opportunity to make a further television series - whether representation actuated by malice – whether loss and damage was caused by the representations – whether findings supported by evidence - DEFAMATION – test to determine whether there is a reciprocal interest between the publisher of a communication and the recipient for the purposes of common law qualified privilege – whether ABC had a relevant interest in the communication - whether malice established – whether substantial truth defence established - COSTS – rejection of claim for indemnity costs – whether erred in refusing costs on basis that offers were made "long before the parties' position were finally articulated"	*The Checkout Pty Ltd v Cordell Jigsaw Productions Pty Ltd; Morrow v Cordell Jigsaw Productions Pty Ltd (No 13)* [2022] NSWSC 444
41	2022/379614	Sydney Metro v Expandamesh Pty Ltd	26/05/2023	LAND & ENVIRONMENT – a substratum of a property owned by the respondent was compulsorily acquired by the appellant for the purpose of constructing tunnels for the Sydney Metro City and Southwest project – the Valuer General determined that the amount of compensation to be paid to the respondent was nil – the respondent	*Expandamesh Pty Ltd v Sydney Metro (No 3)* [2022] NSWLEC 137

				commenced proceedings disputing the Valuer General's determination – the primary judge held that a hypothetical purchaser of the substratum of the site would contemplate a potential 10% uplift – the primary judge held that making allowances for cost the uplift in value of the site is at least in the order of $800,000 – the primary judge ordered the appellant to pay the respondent $20,000 for the compulsory acquisition and pay the respondent's costs – whether the primary judge erred by applying an improper construction of clause 2(1)(a) of Schedule 6B to the Transport Administration Act 1988 to the facts - whether the primary judge erred in determining the amount of market value – whether the primary judge erred by failing to have proper regard to the matters specified in s 55 of Just Terms Act in determining the amount of compensation	
42	2022/381918	Greylag Goose Leasing 1410 Designated Activity Company v PT Garuda Indonesia Ltd	26/05/2023	CORPORATIONS - Private international law – sovereign immunity – whether airline being an instrumentality of Republic of Indonesia is amenable to winding up proceedings in the Supreme Court	*Lower Court decision not available on CaseLaw*