

Court of Appeal reserved judgments as at 1 September 2017

NUMBER	CASE NAME	HEARD	ISSUES	Judgment Below
1	2016/83963 Tudor Capital Australia Pty Ltd v Christensen	10/11/2016	WORKERS COMPENSATION – death of worker following cardiac episode – appeal to Presidential Member from Commission constituted by Arbitrator – whether experience of stressful conditions constituted an “injury” pursuant to Workers Compensation Act 1987 (NSW), s 4 – whether employment a “substantial contributing factor” to injury pursuant to s 9A – whether death of worker resulted from injury – whether defence of reasonable actions of employer under s 11A available – whether relevant injury in fact entry of T cell lymphocytes into myocardium – whether Presidential Member erred in substituting own determination of relevant injury for that of Arbitrator – whether erred in determining that experience of stress made worker more susceptible to contraction of virus – whether failed to consider relevance to injury of worker’s pre-existing cardiac condition – whether misconstrued nature of appeal from Arbitrator under Workplace Injury Management and Workers Compensation Act 1998 (NSW), s 352 – whether reasons inadequate	Not on Caselaw
2	2015/377941 Ku-ring-gai Council v Chan	25/11/2016	TORTS (negligence) – building and construction – first and second respondents purchased house from third respondent – third respondent had engaged fourth respondent in renovations discovered to have been defective – whether Council as certifying authority owed relevant duty of care to purchasers – whether purchasers vulnerable – whether necessary to find antecedent duty of care owed by Council to third respondent – whether such duty existed and whether breached – whether Council’s failure to properly inspect and to halt work causative of loss – whether primary judge erred in calculation of third respondent’s relative responsibility – whether thereby erred in finding as to third respondent’s right of indemnification by Council	Chan v Acres [2015] NSWSC 1885; Chan v Acres (No 2) [2016] NSWSC 557
3	2016/122310 Yee v Yee	6/12/2016	SUCCESSION – family provision – appellant a nephew of deceased for whom no provision made in will – appellant lived with deceased as a child after immigrating to Australia without his parents – appellant now in substantial debt – whether any factors warranting order for provision under Succession Act, s 59(1)(b)	Yee v Yee [2016] NSWSC 360
4	2016/209697 Dougall v Melville	6/02/2017	PROFESSIONAL NEGLIGENCE (legal) – summary dismissal - limitations – failure to properly advise – settling of matter without instructions – effect of consent orders was to preclude subsequent claim for knee injuries that did not arise out of accident - whether cause of action at time of settlement – whether knee injury was latent – whether settlement actually caused the loss of rights	Lower court decision not available on Caselaw
5	2016/235877 Goode v England	5/04/2017	TORTS (negligence) – appellant and respondent were jockeys in the same race meeting at Queanbeyan Racecourse in 2009 – appellant was thrown from his horse when it fell shortly after the start of the race – appellant sustained catastrophic injuries and likely to be confined to a wheelchair for the rest of his life – appellant brought proceedings alleging that his injuries, loss and damage were caused by the respondent’s negligence in riding in such a manner as to cause interference with the appellant and his mount – primary judge gave verdict for respondent – whether primary judge impermissibly made use of video and photographic evidence to make findings as to how the fall occurred rather than as an aid to comprehending certain expert evidence – whether primary judge erred in certain findings as to the separation and movement of the respective mounts during the race – whether primary judge erred in finding that professional horse racing constitutes a “recreational activity” for the purposes of the Civil Liability Act 2002 (NSW), s 5K – whether primary judge erred in finding that the appellant suffered harm as the result of the materialisation of an obvious risk of a dangerous recreational activity as contemplated by the Civil Liability Act, s 5L	Goode v Andland [2016] NSWSC 1014
6	2016/384753 Barrett v TCN Channel Nine Pty Ltd	5/04/2017	DEFAMATION – refusal of extension of time to bring proceedings - Limitations Act 1969 s56A(2) – finding that A satisfied test that it was not reasonable to bring proceeding within a year – whether extension mandatory once test satisfied	Barrett v TCN Channel Nine Pty Ltd [2016] NSWSC 1663
7	2016/285344 O'Brien v Australian Broadcasting Company	1/05/2017	DEFAMATION – respondent broadcast a segment of the Media Watch programme criticising articles written by the appellant journalist – articles alleged the discovery of toxic substances “at levels well above health limits” near the Orica industrial site in Hillsdale – imputations that the appellant failed to consult experts in the preparation of the articles, misrepresented the location of certain testing and caused unnecessary concern in the community – whether primary judge erred in finding that the defence of fair comment at common law had been made out – whether primary judge erred in finding that matters complained of amounted to an expression of opinion by the respondent based on proper material – whether primary judge erred in finding that any or all of the defences of honest opinion pursuant to Defamation Act 2005 (NSW), s 31 were made out – whether primary judge erred in failing to separately address the defences in s 31(1), (2) and (3) – whether primary judge erred in finding that the defence of contextual truth under s 26 was made out	O'Brien v Australian Broadcasting Corporation [2016] NSWSC 1289

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8	2016/257182	Owners Strata Plan 57164 v Yau	15/05/2017	AGENCY – judgments and orders – respondents the owners of a commercial lot located on the ground floor of the strata scheme of which the appellant is the Owners Corporation – the respondents commenced proceedings against the appellant in 2011 which were settled by consent in 2013 – appellant subsequently commenced proceedings seeking to set aside the consent orders made and the repayment of certain damages and costs paid in accordance with those orders – appellant contended that its senior counsel had neither actual nor ostensible authority to make the settlement agreement and that the respondents had been aware that the relevant executive committee meeting had not been held in accordance with the Strata Schemes Management Act 1996 (NSW) – whether primary judge erred in declining to set aside consent orders – whether primary judge erred in holding that appellant owners corporation in general meeting had not sought to restrict or limit its Executive Committee in respect of the instructions it might give its lawyers in settling the proceedings	The Owners Strata Plan No 57164 v Yau [2016] NSWSC 1056
9	2016/292021	Upside Property Group Pty Ltd v Tekin	25/05/2017	CONTRACT – contract for the purchase of four parcels of land at Castle Hill for \$7.8 million – respondent vendor purported to terminate contract on 13 March 2015 for failure to complete – appellant asserted that there was no entitlement to terminate and that the purported termination amounted to repudiation – appellant sought damages for loss allegedly suffered as a consequence of the repudiation – appellant's deposit repaid prior to hearing – primary judge dismissed claim – whether primary judge erred in finding that the appellant had failed to establish it was ready, willing and able to perform at the completion date – whether primary judge erred in finding that the appellant had not demonstrated it had suffered loss as a result of the alleged repudiation – whether primary judge erred in the treatment of certain evidence as to offers made for purchase of the properties	Upside Property Group Ltd v Tekin [2016] NSWSC 1260
10	2016/365973	Kaldas v Barbour	9/06/2017	INSURANCE – residential building under constructions on appellant's property damaged by fire – appellant brought claim on insurance policy written by respondent – respondent refused to pay on policy – allegation that claim was fraudulent within s 56 of the Insurance Contracts Act 1984 (Cth) and that the appellant procured someone to set the fire deliberately – primary judge found that respondent had failed to establish fraud in the relevant sense but refused to admit certain valuation evidence relied on by the appellant – whether primary judge erred in finding that evidence of appellant's "expert valuer" was not admissible as expert opinion under s 79 of the Evidence Act 1995 (NSW) – EVIDENCE – whether primary judge erred in view that valuer's report did not enable any assessment to be made of the validity of the reasoning process undertaken – whether primary judge ought to have found the relevant opinion evidence was based on, or the result of, the application of specialised knowledge – whether primary judge erred in view that valuer's report should otherwise be excluded pursuant to the discretion in s 135 of the Evidence Act on the basis of unfair prejudice to the respondent	Rolleston v Insurance Australia Ltd [2016] NSWSC 1561
11	2016/380578	Walker v Harwood	20/06/2017	COSTS – succession – probate grant in respect of later will set aside in favour of earlier will - order for indemnity costs against executors of later will – where executors had no indemnity from beneficiaries – where invalidity first raised nine months after grant – whether former executors could have abandoned the grant without court supervision and approval – effect of Calderbank offer	Lower court decision not available on Caselaw
12	2016/336497	GAR v Attorney-General (NSW)	21/06/2017	ADMINISTRATIVE LAW (judicial review) – application to the Supreme Court under Crimes (Appeal and Review) Act 2001 (NSW) for inquiry into conviction for sexual intercourse without consent – direction under s 79(1) may only be made if it appears that there is a doubt or question as to the convicted person's guilt, as to any mitigating circumstances in the case or as to any part of the evidence in the case – application for inquiry based on "fresh evidence" in the form of statement by complainant and complainant's daughter – whether new material gave rise to a doubt or question as to the applicant's guilt – whether primary judge erred in assessment of fresh evidence	GAR – Application for an inquiry into conviction pursuant to s 78 of the Crimes (Appeal and Review) Act 2001 [2016] NSWSC 1205

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13	2016/353144	Hannover Life Re of Australia Ltd v Jones	23/06/2017	INSURANCE – respondent made claim for insurance benefit pursuant to cover provided as part of his superannuation scheme – first appellant, as trustee of the CBUS fund, notified the respondent that he did not meet the definition of “total and permanent disablement” in the CBUS Trust Deed following a decision of the second appellant reinsurer to the same effect – relevant definition required that insured person unable to follow their usual occupation by reason of accident for six consecutive months and that the trustee had formed the opinion that the insured person is unlikely ever to be able to engage in any regular remunerative work for which the insured person is reasonably fitted by education, training and experience – primary judge held that decisions of the trustee and insurer were void and that the respondent did meet the definition of “total and permanent disablement” – whether primary judge erred in finding that relevant decisions were in breach of the policy – whether primary judge ought to have found that the relevant decisions were not so unreasonable that no reasonable insurer could have made them – whether primary judge erred in construction of definition of “total and permanent disablement” – whether primary judge ought to have found that the respondent had not established that he had no real chance of obtaining employment to which he is reasonably suited	Jones v United Super Pty Limited [2016] NSWSC 1551
14	2017/78239	DC v Secretary, Department of Family and Community Services	4/07/2017	ADMINISTRATIVE LAW (judicial review) – applicant the father of two children the subject of care and protection proceedings – appeals from Children’s Court to District Court commenced by both applicant and the children’s mother – applicant’s appeal ultimately withdrawn – primary judge dismissed mother’s appeal and made orders allocating parental responsibility for both children to the Minister for Family and Community Services – applicant seeks to have primary judge’s orders quashed and an order that the older of his two children be placed into his care – whether applicant was denied procedural fairness by primary judge failing to draw to his attention available regimes for waiver of court fees – whether bias on the part of the primary judge – whether primary judge entitled to make findings against the applicant where	Lower court decision not on Caselaw
15	2016/382130; 2016/385849	Muriniti v De Costi Seafoods (Franchises) Pty Ltd	10/07/2017	COSTS – orders against legal practitioners under s348 of Legal Profession Act 2004 & s99 of Civil Procedure Act 2005 – whether conduct or neglect was sufficiently “serious” to warrant an order being made - quantification of extent of indemnity having regard to nature and extent of party’s involvement in proceedings – quantification of costs by reference to a reasonable trial length rather than additional costs actually incurred - use of Jones v Dunkel inferences where lawyers are subject to their former client’s claim for legal professional privilege – where primary Judge held that Androulla Costi had no personal liability for costs, s348 permitted an order indemnity her co-defendants who were not entitled to an order under s348 – whether apportionment of 20% of costs available when misjoinder of Androulla Costi led to no additional costs by other defendant	De Costi Seafoods (Franchises) Pty Ltd v Wachtenheim (No 6) [2016] NSWDC 378
16	2016/360129	Hilton v Legal Profession Admission Board	18/07/2017	LEGAL PRACTITIONERS – appellant former solicitor convicted in 1986 of conspiracy to corruptly give certain sums of money to the Minister for Corrective Services as an inducement to show favours to certain persons – appellant imprisoned and disbarred – appellant released from gaol in 1989 and obtained permission from the Administrative Decisions Tribunal in 2013 to work in a law practice as a “lay associate” – appellant applied to the Legal Profession Admission Board in 2015 for readmission as a lawyer in New South Wales – LPAB refused to issue a compliance certificate on the basis that it was not satisfied that the appellant was a “fit and proper person” – LPAB’s reasons expressed view that statutory declaration made by appellant did not express remorse – appeal to Supreme Court against refusal to issue compliance certificate pursuant to Legal Profession Uniform Law, s 26 dismissed – whether primary judge erred in finding appellant not currently a fit and proper person to be admitted – whether primary judge erred in finding appellant not of good fame and character – whether findings made by primary judge not open on the evidence – whether primary judge placed undue limitations on the weight to be given to testimonial evidence adduced in support of the appellant – whether primary judge erred in consideration of public interest	Hilton v Legal Profession Admission Board [2016] NSWSC 1617
17	2017/166532; 2017/185625	Taouk v Assure (NSW) Pty Ltd	20/07/2017	CONTRACT – joint venture to construct townhouses – deed of variation – whether variation precluded reimbursement of construction costs - whether clause ambiguous – recourse to surrounding circumstances as an aid to construction – unjust enrichment – procedural fairness	Joseph Taouk v Assure (NSW) Pty Ltd [2017] NSWSC 534
18	2017/145647	Lardis v Lakis	21/07/2017	REAL PROPERTY - s37A of the Conveyancing Act 1919 (NSW) – whether intention to defraud creditors – rearrangement of properties between A and her husband. Husband subsequently bankrupted – bankruptcy arose out of voluntary liquidation of company - whether at time of arrangement there was a likelihood that property would be subject to significant recovery claims - credit of witnesses – trial judge’s assessment of evidence in absence of cross examination – whether defence made out – whether A entitled to take steps to protect own interests by preventing further encumbering of property by her husband	Edward Ted Lakis and Anor v Michael Victor Lardis and Anor [2017] NSWSC 321

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19	2016/296281	Sutherland Shire Council v Safar	28/07/2017	TORTS (negligence) – respondent was injured whilst attending a dance concert in an auditorium owned, occupied and managed by the appellant council – respondent suffered severe fracture of right ankle as a result of slip and fall – respondent sought damages in negligence alleging that parquet flooring had become wet – appellant did not concede floor was wet and contended that wet flooring would amount to an obvious risk as contemplated by s 5F of the Civil Liability Act 2002 (NSW) of which it had no duty to warn pursuant to s 5H(1) – primary judge held that appellant had no duty to warn but found that a reasonable person in the appellant’s position would have taken precautions against the risk of slippage on moisture affected parquet flooring such as through the placement of mats or through a system for the detecting and mopping up of water – whether primary judge erred in finding that a reasonable person in the position of the appellant would have taken the precautions in question as contemplated by Civil Liability Act, s 5B(1)(c) – whether primary judge failed to give proper consideration to the factors enumerated in Civil Liability Act, s 5B(2) – whether primary judge erred in finding that respondent’s injury was caused by breach of duty on the part of the appellant in the sense contemplated by s 5D of the Civil Liability Act	Safar v Sutherland Shire Council [2016] NSWDC 232
20	2016/161867; 2017/161867	McElwaine v Owners Strata Plan 75975	25/07/2017	REAL PROPERTY – strata title property – appellant the registered proprietor of unit in apartment complex in Newcastle – appellant commenced proceedings alleging construction defects caused severe water damage to his unit through water penetration from common property – pleadings initially sought damages for alleged breach of statutory duty to properly maintain and repair common property under Strata Schemes Management Act 1996 (NSW), s 62 – appellant’s pleadings amended to claim breach of common law duty not to continue or adopt a nuisance – agreed separate question whether the effect of Chapter 5 of the Act is that the appellant has no claim in common law nuisance – primary judge answered separate question in the affirmative and dismissed appellant’s proceedings – whether primary judge erred in view that Chapter 5 of the Act operates to exclude availability of common law claims in nuisance	McElwaine v The Owners – Strata Plan No 75975 [2016] NSWSC 1589
21	2016/388878	Dinov v Allianz Australia Insurance Ltd	26/07/2017	BUILDING & CONSTRUCTION – Great Wall Constructions Pty Ltd built 13 residential townhouses in Lilyfield, NSW – appellants each directors of Great Wall Constructions – Great Wall Constructions applied, through an agent of the respondent, for residential building work insurance as required by Home Building Act 1989 (NSW) in relation to the Lilyfield building works – defects in building works subsequently detected – Great Wall Constructions having been deregistered, strata corporation of the Lilyfield properties brought claim against the respondent insurer – appellant settled the claim and agreed to undertake remedial work – respondent brought proceedings against the appellants seeking to recover on deeds of indemnity executed by each of the appellants in 2002 – Environmental Planning & Assessment Act 1979 (NSW), s 109ZK imposed limitation period of 10 years from issuance of final occupation certificate for a “building action” – definition of “building action” in s 109ZI as “an action... for loss or damage arising out of or concerning defective building work” – primary judge held that proceedings on the deeds of indemnity had only an indirect connection with defective building work and did not constitute a building action – primary judge gave judgment against each of the appellants in the amount of \$185,000 – whether primary judge erred in construction of the definition of “building action” – whether primary judge erred in holding that the term “building action” is confined to claims for compensation arising from latent defects	Allianz Australia Insurance Ltd v Dinov [2016] NSWDC 342
22	2017/77429	NU v NSW Secretary of Family and Community Services	27/07/2017	ADMINISTRATIVE LAW (judicial review) – care and protection proceedings in the District Court – primary judge made finding that the applicant father is an unacceptable risk to his child and made certain care orders – application to have the orders made by primary judge quashed and remitter of matter for determination according to law – whether primary judge committed error of law on the face of the record	Lower court decision not on Caselaw
23	2016/341574	Smith v Alone	27/07/2017	TORTS (negligence) – appellant suffered personal injury as a result of being struck by the respondent’s motor vehicle in 2011 – respondent admitted liability and appellant admitted contributory negligence of 60% on account of being affected by alcohol at the time of the accident – dispute as to assessment of damages – whether primary judge erred in assessment of appellant’s residual earning capacity – whether primary judge erred in reducing damages for future economic loss by 35% for vicissitudes – whether primary judge ought to have found that the appellant required future internal and external home and domestic care and assistance – whether primary judge erred in relation to evidence of an expert occupational therapist	Smith v Alone [2016] NSWDC 265

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24	2017/12148	Al Maha Pty Ltd v Coplin	28/07/2017	CONTRACTS – first respondent was the registered proprietor of certain land at St Leonards purchased in 2013 for approximately \$1.177 million – Lane Cove Council published a report in September 2014 which proposed rezoning of the first respondent’s land from low density residential to high density residential – in October 2014, appellant offered to purchase the first respondent’s property for \$2 million – “Put and Call Option Agreement” executed between first respondent and appellant on 16 October 2014 providing for purchase price of \$2.2 million – belief by first respondent that \$2.2 million was the upper limit of market value for his property – expert valuation evidence that property worth between \$3.25 million and \$3.4 million – first respondent sought relief under Contracts Review Act 1980 (NSW) and the Australian Consumer Law – primary judge declared option agreement invalid ab initio pursuant to Contracts Review Act, s 7 – whether primary judge erred in finding that the option agreement was “unjust” as contemplated by Contracts Review Act, s 9 – whether primary judge erred in finding that the first respondent did not understand the essential operation of the option agreement – whether primary judge erred in finding that persons acting on behalf of the appellant knew that the first respondent was unsophisticated and deliberately cultivated the first respondent’s trust – whether primary judge erred in finding that there was unfair pressure exerted on the first respondent – whether primary judge erred in exercise of discretion to grant relief	Coplin v Al Maha Pty Ltd [2016] NSWSC 1745
25	2017/63163	REW08 Projects Pty Ltd v PNC Lifestyle Investments Pty Ltd	31/07/2017	CONTRACT – appellant acquired parcel of land for sub-division – respondent invited to invest \$250,000 to assist with capital requirements of development in return for a lot in the completed development – appellant and respondent entered into a loan agreement in 2013 for sum of \$250,000 and a contract for the sale of a lot in the unregistered plan of subdivision for a price of \$485,000 with a deposit of \$250,000 – special condition 53 in contract for sale of land allowed for purchaser to rescind contract and enter into new contract on identical terms quarterly until plan of subdivision finalised – special condition 55 provided for price reduction of \$235,000 if purchaser met all obligations under the contract – deeds of rescission and new contracts executed in March 2014 and June 2014 – appellant purported to terminate contract for sale of land in early 2016 for non-payment of deposit – respondent commenced proceedings seeking specific performance of June 2014 contract – appellant contended that June 2014 contract was unenforceable on the basis that special condition 53 was included for the purpose of avoiding or delaying the payment of stamp duty and that special condition 55 constituted a fraud on the Chief Commissioner for Stamp Duties – primary judge held that \$250,000 paid in 2013 after entry into original loan agreement and contract for sale was to be treated as the deposit for the June 2014 contract of sale under the terms of the accompanying deed of rescission – primary judge made decree of specific performance – whether primary judge erred in failing to hold contract for the sale of land and deed of rescission unenforceable for illegality – whether primary judge should have declined to grant specific performance on the basis of doctrine of unclean hands	PNC Lifestyle Investments Pty Ltd v REW08 Projects Pty Ltd [2017] NSWSC 27
26	2016/147755	AD v Commissioner of the Australian Federal Police	1/08/2017	ADMINISTRATIVE LAW – Proceeds of Crimes Act 2002 (Cth) – refusal to exclude property from forfeiture – s94 precludes making an exclusion application under s93 outside a 15 month period dating from the “conviction day” – “conviction day” includes date of sentencing – AD subsequently resentenced by CCA – motion for summary dismissal of appeal for lack of utility – property vested absolutely in Commonwealth after forfeiture under s96 - whether appeal futile by reason of expiration of 15 month period from “conviction day” – whether Director of Public Prosecutions (Cth) v Chan [2001] NSWCA 249 ought to be followed - Constitution – whether institutional integrity of Court distorted by removal of power of Court to decide issue – whether legislation required Court to implement decision of the Executive – whether unconscionable restraint on AD from accessing restrained funds to defend proceedings	Lower court decision not on Caselaw
27	2017/8687 2017/195864	Marroun v State Transit Authority of New South Wales	2/08/2017	ADMINISTRATIVE LAW (other) – appellant had been employed by the respondent State Transit Authority for 38 years at the time of his dismissal in May 2015 – appellant dismissed on the basis that he was guilty of misconduct in relation to the removal of certain lost property from the revenue room at the Kingsgrove bus depot – Commissioner of the Industrial Relations Commission of NSW dismissed an appeal by appellant pursuant to Pt 7 of Ch 2 of the Industrial Relations Act 1996 (NSW) – appellant brought proceedings in Supreme Court seeking to appeal against Commissioner’s dismissal under Industrial Relations Act, s 197B – s 197B(1) confers right of appeal on a question of law – whether primary judge erred in dismissing appeal – whether primary judge erred in holding Supreme Court had no jurisdiction to hear appeal under s 197B on the basis that no question of law raised by appellant’s allegation of denial of procedural fairness by Commissioner – whether primary judge erred in holding that Commissioner did not deny the appellant procedural fairness – whether primary judge erred in finding that Commissioner did not err in exercising discretion with regard to relief	Marroun v State Transit Authority [2016] NSWSC 1830
28	2016/289287	Shellharbour City Council v Minister for Local Government	3/08/2017	COSTS – appeal discontinued following announcement that Minister would not be proceeding with proposed amalgamation – announcement made two days before hearing of appeal – whether respondent ought to pay costs of appeal – whether respondent ought to be pay costs of proceedings below in light of abandonment of proposal	Shellharbour City Council v Minister for Local Government (No 2) [2016] NSWLEC 119

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29	2017/157731	Minister administering the Water Management Act 2000 v Sharkey	8/08/2017	LAND AND ENVIRONMENT – separate question - water access licence – entitlement under repealed statute to take water from river converted to water access licence under current statute – category of access licence into which entitlement is converted dependent on type of river from which water is taken – whether regulated river or unregulated river	Sharkey v Minister administering the Water Management Act 2000 [2017] NSWLEC 47
30	2016/255761 2017/70847	South West Helicopters Pty Limited v Stephenson	9/08/2017	TORTS – helicopter company contracted by local council to conduct aerial survey – helicopter struck power lines and crashed, killing all on board including two council employees – proceedings brought by family of deceased against the helicopter company and the council for nervous shock and pursuant to the Compensation to Relatives Act 1897 (NSW) – proceedings brought by helicopter company against energy provider and council for damages to helicopter and loss of profits – whether primary judge ought to have found that the Civil Aviation (Carriers' Liability) Act 1959 (Cth) as applied by the Civil Aviation (Carriers' Liability) Act 1967 (NSW) was the exclusive source of liability on the part of the helicopter company – whether primary judge ought to have found claims for nervous shock excluded by operation of Civil Aviation (Carriers' Liability) Act 1959 (Cth), s 35(2) – whether primary judge erred in apportionment of responsibility as against helicopter company – WORKERS COMPENSATION – whether primary judge erred in finding that the Council was entitled to indemnity under Workers Compensation Act 1987 (NSW), s 151Z in circumstances where council found to have breached duty of care as employer – whether primary judge erred in finding that the Council entitled to succeed in both claim for an indemnity under Workers Compensation Act, s 151Z and claim under Law Reform (Miscellaneous Provisions) Act 1946(NSW), s 5(1) for contribution and indemnity from helicopter company	Ingrid Margaret Stephenson v Parkes Shire Council [2014] NSWSC 1758; Ingrid Margaret Stephenson v Parkes Shire Council (No 2) [2015] NSWSC 719
31	2016/345890	Pentelow v Bell Lawyers Pty Ltd	10/08/2017	ADMINISTRATIVE LAW (judicial review) – the applicant, a barrister, sued the respondent in the Local Court to recover the costs of legal work carried out on the respondent's instructions – stay of proceedings in Local Court set aside on appeal to Supreme Court – judgment and costs ordered in applicant's favour – applicant subsequently brought appeal to District Court against determination of costs review panel pursuant to Legal Profession Act 2004 (NSW), ss 382 and 384 – whether primary judge erred in holding applicant could not recover for professional work she had undertaken in herself conducting the proceedings – whether primary judge erred in finding that the "Chorley exception" does not apply to barristers in New South Wales	Lower court decision not available on Caselaw
32	2016/384774	Yarham v Transport Accident Commission of Victoria	11/08/2017	TORTS (motor vehicle) – private international law – appellant was a passenger in a motor vehicle involved in an accident on the Newell Highway in New South Wales – appellant a resident of the State of Victoria – appellant and driver both employed by a company domiciled in Victoria and engaged in the business of transporting fruit and vegetables from Melbourne to Sydney and Brisbane – first respondent the third party insurer of the vehicle involved in the accident – appellant made an application for general assessment with the Claims Assessment and Resolution Service (CARS) pursuant to Motor Accidents Compensation Act 1999 (NSW), s 94 – first respondent brought summons seeking a determination whether the third respondent State Insurance Regulatory Authority had jurisdiction to entertain the appellant's claim under the Motor Accidents Compensation Act – whether primary judge erred in finding that the respondents' motor accident rights were to be determined in accordance with the Accidents Compensation Act 1985 (Vic) rather than the Motor Accidents Compensation Act – whether primary judge erred in the construction of s 150A of the Workers Compensation Act 1987 (NSW) in finding that the matter was to be determined in accordance with the substantive law of Victoria – whether primary judge erred in failing to find that the CARS assessor was entitled to determine that there was no complex question of law requiring an exemption from the CARS system	Transport Accident Commission of Victoria v Leslie Ross Yarham [2016] NSWSC 1791
33	2017/119469	Sullivan v Law Society of New South Wales	14/08/2017	DISCIPLINARY PROCEEDINGS – solicitor found guilty of professional misconduct - reprimanded and suspended until compliance with a notice issued by R – whether valid complaint investigation – whether complaint should have been summarily dismissed by R – whether a notice under s660 of the Legal Profession Act 2004 was available to be used to carry out a complaint investigation – whether A failed to comply with notice – whether A was unwilling to co-operate with investigation – failure to provide particulars – procedural fairness	Council of the Law Society of New South Wales v Sullivan [2017] NSWCATOD 2
34	2016/234880	Mahaffy v Mahaffy	15/08/2017	CONTEMPT – sentence – appellant found guilty of contempt in relation to failure to comply with money orders, failure to comply with subpoena, and court behaviour – sentenced to term of imprisonment of 10 months – whether sentencing judge erred in failing to give consideration to the alternatives to full time imprisonment by way of an intensive corrections order or a suspended sentence – whether sentence excessive	D B Mahaffy & Associates v Mahaffy [2015] NSWSC 66 D B Mahaffy & Associates v Mahaffy [2015] NSWSC 1959

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35	2017/216797	Mehajer v Hogan	16/08/2017	CORPORATIONS – appointment and removal of director – whether director validly appointed – whether resolutions effective to remove director – whether Administrators appointed entitled to rely upon statutory presumptions under s 128 and 129 of Corporations Act 2001	Lower court decision not on Caselaw
36	2016/383377	Schwartz Family Co Pty Ltd v Capitol Carpets Pty Ltd	17/08/2017	CONTRACT – damages for re-laying carpet laid without sufficient “tack time” for glue to set – evidence – where primary Judge held on appeal that Magistrate had wrongly admitted evidence not objected to and to which there no evidence to the contrary – whether erred in finding that Magistrate had overlooked evidence when there no such evidence- whether weight given to evidence by Court below involves a question of law – whether defendant has the burden of proof on an allegation of failure to mitigate	Capital Carpets Pty Ltd v Schwartz Family Co Pty Ltd [2016] NSWSC 1753
37	2017/149548	Kawasaki Heavy Industries Ltd v Laing O'Rourke Australia Construction Pty Ltd	22/08/2017	CONTRACT- construction of cryogenic tanks to store LNG- performance bonds and advanced payment bonds under Consortium Agreement – interlocutory injunction restraining beneficiary from calling on bonds prior to determination of arbitral tribunal –whether promise not to call upon bonds –whether clear words in contract that prevents calling upon bonds –balance of convenience – whether failed to consider risk that bonds would expire before final determination of dispute	Laing O'Rourke Australia Construction Pty Ltd v Kawasaki Heavy Industries Ltd [2017] NSWSC 541
38	2017/191999	Smoje v Forrester	24/08/2017	WILLS – Succession Act 2006 – whether eligible person - whether erred in finding that R and deceased were living in close personal relationship – whether domestic care was provided for fee and reward – whether statutory bar under s3(4)(a) applied – whether provision was warranted – whether provision made excessive	Lower court decision not on Caselaw
39	2017/81905	King v Adams	24/08/2017	EQUITY & TRUSTS – workplace lottery syndicate won \$40,445,165.25 in Powerball draw conducted by NSW Lotteries – first respondent organised various lottery syndicates in the workplace from 2006 to 2016 – appellant a member of ongoing syndicates run by the first respondent – first respondent also conducted one-off lottery syndicates at his discretion – first respondent purchased tickets in the relevant Powerball draw on behalf of on-going syndicate of which appellant was a member but also formed a further syndicate to enter the same draw – tickets purchased on behalf of the further syndicate won the Powerball jackpot – appellant commenced proceedings seeking declarations that he was a member of the winning syndicate and is beneficially entitled to a proportionate share of the prize money – primary judge dismissed the appellant’s proceedings and gave judgment in favour of the respondents – whether primary judge erred in finding that the first respondent did not intend all of the members of the on-going syndicate to be part of the winning syndicate – whether primary judge erred in finding that the first respondent intended the winning syndicate to be a closed group not including the appellant – whether primary judge erred in not holding that first respondent bore the onus of proof in establishing which funds were used for the purchase of the winning ticket – whether primary judge ought to have found the primary judge purchased the winning ticket using mixed funds	Brendan Wilfred King v Robert Lawrence Adams [2017] NSWSC 117; Brendan Wilfred King v Robert Lawrence Adams [2016] NSWSC 1798
40	2016/357828	Metro North Hospital and Health Service v Pierce	30/08/2017	PROFESSIONAL NEGLIGENCE (medical) – respondent suffers from epilepsy due to antenatal causes – respondent underwent video telemetry testing at appellant’s hospital – testing involved withdrawal of anti-epilepsy medication and sleep deprivation in order to induce a seizure under video, EEG and ECG recording – hospital staff failed to intervene promptly with the result that the respondent went into a serious and prolonged period of seizure activity known as “complex partial status epilepticus” – respondent commenced proceedings alleging that appellant’s negligence had caused permanent deterioration in her epilepsy and consequent psychiatric harm – appellant admitted breach of duty in failure to treat seizure promptly and appropriately but disputed nature and extent of respondent’s injury in consequence thereof – primary judge found appellant’s breach of duty caused permanent deterioration in respondent’s epilepsy and awarded damages – whether primary judge failed to give adequate reasons for findings on causation – whether primary judge ought to have held that any deterioration in the respondent’s epilepsy was due to natural progression of her condition – whether primary judge erred in treatment of certain medical evidence in the nature of clinical notes and admission records – whether primary judge erred in adopting a different reasoning process with respect to medical evidence pre- and post-dating the seizure event during the video telemetry testing – whether primary judge erred in admitting opinion evidence from the respondent’s mother as to her subjective assessment of the respondent’s condition	Pierce v Metro North Hospital and Health Service [2016] NSWSC 1559

Court of Appeal reserved judgments as at 1 September 2017

NUMBER	CASE NAME	HEARD	ISSUES	Judgment Below
41	2016/384969 Ipstar Australia Pty Ltd v APS Satellite Pty Ltd	31/08/2017	TRADE PRACTICES – respondent company an Australian owned licensed telecommunications provider involved in the sale of interest services to rural customers using the Ipstar satellite platform – appellant company an Australian wholesaler of satellite broadband services – agreement in 2007 whereby appellant sold broadband capacity to respondent at a price per megabytes per second per month – price varied by addendum negotiated in 2011 – respondent’s customers required to use particular equipment to access Ipstar satellite platform – equipment imported into Australia by appellant, sold to third party company and on sold to respondent for sale to its customers – significant problems discovered in equipment – respondent commenced proceedings seeking recovery for defective goods under Trade Practices Act 1974 (Cth) and relief for unconscionable conduct under the Australian Consumer Law – primary judge gave judgment for respondent in the amount of \$3,482,367 – whether primary judge erred in view that appellant’s method of calculating price increases caused otherwise non-offending conduct to be unconscionable – whether primary judge erred in taking into account the fact that appellant did not seek to recover the expense of statutory warranties through a price increase with other service providers – whether primary judge erred in finding the respondent was entitled to recover damages in respect of items held not to be defective	APS Satellite Pty Ltd (formerly known as "SkyMesh Pty Ltd") v Ipstar Australia Pty Ltd [2016] NSWSC 1898
42	2017/8668 Bunderra Holdings Pty Ltd v Pasmenco Cockle Creek Smelter Pty Limited	31/08/2017	LAND & ENVIRONMENT – first respondent the owner of 163 ha property approximately 19km from Newcastle CBD – first respondent sold 9 ha parcel of land known as the “Tripadsite” to the appellant – development consent issued by the second respondent Council allowed for the subdivision of the Tripadsite into 90 lots – conditions in the development consent requiring the planning and construction of stormwater controls in order to address flooding and runoff from the land retained by the first respondent – first respondent commenced proceedings seeking to prevent the second respondent Council from issuing subdivision certificate until satisfied that first respondent has constructed a drainage pipe and culvert under the road separating the two properties – whether primary judge erred in finding that appellant required to construct the road pipe before a subdivision certificate can be issued – whether primary judge erred in construction of the conditions in the development consent – whether primary judge erred in finding that certain stormwater management strategy reports were incorporated into the development consent	Pasmenco Cockle Creek Smelter Pty Ltd (subject to Deed of Company Arrangement) v Lake Macquarie City Council [2016] NSWLEC 143
43	2016/365672 Let's Go Adventures Pty Limited v Barrett	1/09/2017	TORTS (negligence) – respondent operated a diving business – appellant corporation owned two boats which it made available with skilled personnel for use for diving purposes – respondent booked a diving trip for himself and 7 others with the appellant – after entering the water, respondent’s diving “buddy” descended rapidly and in a disorganised fashion – respondent assisted diving buddy to return to surface and back into boat – allegation that only a single source of oxygen available on boat and that oxygen unavailable to respondent as being in use by diving buddy – respondent went on to develop symptoms of decompression sickness – respondent commenced proceedings alleging negligence and/or breach of statutory duty to provide services with due care and skill under the Australian Consumer Law, ss 60 and 61 – primary judge gave judgment for the respondent in the sum of \$638,144 – whether primary judge erred in finding that appellant was negligent and in finding that appellant had failed to comply with Australian Consumer Law, ss 60 and 61 – whether primary judge failed to identify the relevant risk of harm in considering Civil Liability Act 2002 (NSW), s 5B – whether primary judge erred in finding that lack of oxygen on board on the boat caused the respondent loss, injury or damage for the purposes of Civil Liability Act, s 5D – whether primary judge ought to have found respondent was guilty of contributory negligence – whether primary judge erred in finding respondent was a “good Samaritan” for the purposes of Civil Liability Act, ss 57 and 58 – whether primary judge erred in assessment of damages	Barrett v Lets Go Adventures Pty Ltd [2016] NSWDC 34