



Supreme Court of NSW Court of Appeal

Decisions Reserved at 21 August 2020

	Number	Case Name	Heard	Issues	Judgment Below
1	2019/196566	Primary Securities Ltd v Aurora Funds Management Ltd	13/02/2020	CORPORATIONS – change of responsible entity of listed managed investment scheme said to have occurred by resolution at meeting called by members under s 252D of the Corporations Act 2001 (Cth) – first respondent was incumbent responsible entity and appellant was incoming responsible entity – first respondent brought proceedings alleging that the meeting and resolutions were invalid – primary judge found meeting was invalid – whether primary judge erred in finding that the meeting was procedurally deficient – whether primary judge erred in finding that substantial injustice within the meaning of s 1322(2) had been occasioned by the procedural irregularities of the meeting – whether primary judge erred in not finding that any substantial injustice could be cured by an order of the court – whether the primary judge erred in having regard to certain allegations made by the first respondent	In the matter of Aurora Funds Management Limited [2019] NSWSC 630

2	2019/335705	Lianos v Order of AHEPA NSW Inc	27/02/2020	CORPORATIONS – appellants were three members of first respondent – appellants brought proceedings challenging the validity of amendments to first respondent’s constitution and resolutions passed subsequent to the amendments – first respondent sought, in event that the constitutional amendments were invalid, orders under s 1322(4) of the Corporations Act 2001 (Cth) – foundational documents of first respondent were “complex and obscure” and record keeping was “patchy” – primary judge found in favour of first respondent – whether primary judge erred in making certain factual findings – whether primary judge erred in interpretation of foundational documents – whether primary judge erred in finding that the amendments to the constitution and certain resolutions passed thereafter were valid – whether primary judge erred in finding certain management members did not breach their fiduciary duties	In the matter of Order of AHEPA NSW Inc. [2019] NSWSC 1329
3	2019/267950	Mohareb v Palmer	5/03/2020	ADMINISTRATIVE LAW (other) – Vexatious Proceedings Act – whether erred in finding that all of the applicant’s proceedings were commenced vexatiously – whether denied procedural fairness in being heard on application – whether primary Judge reversed onus of proof by requiring applicant to show that he was not vexatious – bias	Palmer v Mohareb [2019] NSWSC 975
4	2019/292791	Piatti v ACN 000 246 542 Pty Ltd	23/03/2020	TORTS (negligence) – appellant is representative of deceased’s estate – deceased had been in the employ of first respondent and, both in the course of that work and other work, worked with asbestos sheets manufactured	Piatti v ACN 000 246 542 Pty Ltd & Anor [2019] NSWDDT 7

				and supplied by second respondent – deceased died from mesothelioma – shortly before his death, deceased brought negligence proceedings against first and second respondents – appellant took over proceedings on deceased’s death – primary judge found in favour of appellant – whether primary judge erred in restricting damages for gratuitous domestic assistance to the number of hours provided by the deceased to his de facto spouse as at the date the liability for the disease arose, for the purposes of s 15B of Civil Liability Act 2002 (NSW)	
5	2019/150753	The Owners - Strata Plan No 30791 v Southern Cross Constructions (ACT) Pty Limited (in liq)	25/03/2020	TORTS (negligence) – excavation, shoring and piling works were undertaken for a residential development – works caused aesthetic and structural damage to nearby apartments – first appellant and lot owners of nearby apartments whose internal walls were affected commenced proceedings against first respondent, which was engaged to construct the development, second respondent, first respondent’s insurer, and third respondent, structural engineers – primary judge found respondents not liable for damage to apartments – whether primary judge erred in determining scope of respondents’ duty of care to appellants – whether primary judge erred in finding respondents did not breach their duty – whether primary judge applied the wrong test for causation – whether primary judge erred in finding respondents did not cause damage suffered – whether primary judge erred in making certain factual findings	The Owners – Strata Plan 30791 v Southern Cross Constructions (ACT) Pty Ltd (in liq) (No 2) [2019] NSWSC 440; The Owners – Strata Plan 30791 v Southern Cross Constructions (ACT) Pty Ltd (in liq) (No 3) [2019] NSWSC 560

6	2019/165631	E Co (a pseudonym) v Q (a pseudonym); Q (a pseudonym) v A (a pseudonym)	27/03/2020	EQUITY – third, fourth and fifth respondents are appellant’s sons – first and second respondents are companies of which sons are directors – respondents allege appellant encouraged the expectation that appellant would make his properties available for use in a family business until his death and leave the properties to his sons on his death – appellant disinherited his sons and sought to take possession of properties – sons brought, among other claims, a proprietary estoppel claim – primary judge found estoppel claim made out – whether primary judge took into account irrelevant considerations in finding appellant encouraged expectation – whether primary judge erred in finding certain conduct of appellant encouraged expectation – whether primary judge erred in finding fifth respondent acted in reliance on expectation – whether primary judge erred in finding fourth and fifth respondents suffered detriment – whether primary judge erred in determination of relief to be granted	E Co v Q [2018] NSWSC 442; E Co v Q (No 2) [2018] NSWSC 445; E Co v Q (No 3) [2018] NSWSC 646; E Co [a pseudonym] v Q [a pseudonym] (No 4) [2019] NSWSC 429
7	2019/333199	Australian Executor Trustees (SA) Limited v Kerr	3/04/2020	EQUITY – appellant was trustee for respondent members of forestry scheme – appellant consented to the sale of trees and land and the discharge of the respondent’s security without receiving proceeds of sale and procuring alternative security – first respondent, as special purpose trustee for other members, brought proceedings against appellant for breach of trust – appellant conceded breach and primary judge found breach caused damage and that appellant was unable to rely on legal advice it received in relation to sale – whether primary judge erred in allocating	Kerr v Australian Executor Trustees (SA) Ltd; Australian Executor Trustees (SA) Ltd v Fuller and others trading as Sparke Helmore Lawyers [2019] NSWSC 1279; Kerr v Australian Executor Trustees (SA) Ltd; Australian Executor

				the onus of proving causation – whether primary judge erred in certain findings on causation – whether primary judge erred in failing to make certain factual findings about the legal advice – whether primary judge erred in finding appellant was unable to rely on advice – whether primary judge erred in finding the encumbrances were trust property – whether primary judge erred in finding South Australian apportionment legislation, and not New South Wales apportionment legislation, applied to the respondent’s claims	Trustees (SA) Ltd v Fuller and others trading as Sparke Helmore Lawyers (No 2) [2019] NSWSC 1438
8	2019/338853; 2020/99958	Motor Yacht Sales Australia Pty Ltd v Blann	22/04/2020	CONTRACT – appellant in business of importing and selling luxury vessels – respondent purchased vessel from appellant – contract for sale contained a term that the boat would be berthed at Rose Bay Marina for three years at \$5,500 per month paid by the purchaser – appellant brought proceedings against respondent seeking to recover unpaid mooring fees – primary judge found in favour of respondent – whether primary judge erred in failing to find the contract contained an obligation on the respondent to pay the amount specified in the berthing clause or as varied – whether the primary judge erred in finding the respondent was not liable to pay the rent from the time the vessel was sold	Motor Yacht Sales Australia Pty Limited trading as The Boat Boutique Company v Robert Blann [2019] NSWDC 558
9	2019/313856	RD Miller Pty Ltd v Roads and Maritime Services NSW	24/04/2020	LAND AND ENVIRONMENT – claim for compensation under Roads Act 1993 (NSW) – whether a “before and after” approach to construction is open – whether principle that a person cannot take advantage of their own wrong applies	RD Miller Pty Ltd v Roads and Maritime Services [2019] NSWLEC 129

				to compensation proceedings - refusal of leave to amend points of claim to allow both approaches - whether no reasonable cause of action – whether primary Judges erred in applying strict pleading principles when not a court of pleading	
10	2019/278581	Dickson v Northern Lakes Rugby League Sport & Recreational Club Inc	1/05/2020	TORTS (negligence) – appellant was subject to a “spear tackle” or “dangerous throw” instigated by second respondent when playing for his local Rugby League team – tackle was contrary to Laws of Rugby League – appellant sustained severe head injuries as a result of tackle – appellant brought proceedings against first respondent alleging it was vicariously liable for negligence of second respondent, who was a registered player of the first respondent – primary judge found in favour of respondents – whether primary judge erred in his reliance on Evidence Act 1995 (NSW) s 140(2) – whether primary judge erred in his reasoning about intention of legislature in enacting Civil Liability Act 2005 (NSW) – whether primary judge erred in conclusions made about expert evidence – whether primary judge erred in distinguishing between a neck injury intentionally caused in a spear tackle and a facial injury so caused – whether primary judge erred in disagreeing with the presumption that tort defendants intend the natural and probable consequences of their actions – whether primary judge erred in his interpretation of s 3B(1)(a) of the Civil Liability Act – whether primary judge erred in failing to apply the principle in <i>Browne v Dunn</i> – whether primary judge erred in identifying the relevant “intentional	Dickson v Northern Lakes Rugby League Sport & Recreational Club Inc & Anor (No 2) [2019] NSWDC 433

				act” for purposes of s 3B(1)(a) – whether primary judge erred in characterisation of the end stages of the tackle – whether primary judge erred in his reasoning on credit of second respondent – whether primary judge erred in making various findings of fact – whether primary judge erred in failing to accept, consider or consider adequately certain evidence – whether primary judge relied upon an irrelevant consideration	
11	2019/301298	Meat Carter Pty Ltd v Melides	4/05/2020	WORKERS COMPENSATION – respondent was paid workers compensation benefits by appellant from 2014 – in 2017, respondent’s whole person impairment was assessed at 60% -- appellant proceeded to pay benefits at higher rate specified in s 38A of the Workers Compensation Act 1987 (NSW) from 2017 – respondent brought proceedings seeking payment of arrears of benefits at s 38A rate from 2014 – arbitrator held respondent not entitled to payment of arrears – on appeal, Presidential Member found in favour of respondent – whether Presidential Member misconstrued ss 32A and 38A of the Workers Compensation Act	Melides v Meat Carter Pty Limited [2019] NSWCCPD 48
12	2019/277518	Wright v Apthorpe	5/05/2020	COSTS – indemnity costs – applicant ordered to pay plaintiff’s and other defendant’s costs - where respondent plaintiff recovered less than offer – where notice of seeking indemnity costs was not given – where defendants failed on their defences – whether erred in not ordering costs on ordinary basis – whether erred in not requiring each defendant to pay their proportion of costs	Apthorpe v QBE Insurance (Australia) Ltd [2019] NSWDC 135; Apthorpe v QBE Insurance (Australia) Ltd [2019] NSWDC 390

13	2019/305409	Scott v Ennis-Oakes	7/05/2020	<p>CONTRACT – appellant purchasers and respondent vendor contracted for sale of land – subject land was lot in proposed subdivision of respondent’s land – contract imposed reasonable endeavours obligation on respondent to have subdivision plan registered within 12 months of contract date – contract gave either party right to rescind if subdivision not registered within that time – respondent purported to rescind contract on that basis – appellants accepted rescission was valid and brought proceedings seeking loss of bargain damages – primary judge found in favour of respondent – whether primary judge erred in failing to conclude that the respondent’s rescission entitled the appellants to loss of bargain damages – whether primary judge erred in finding the contract came to an end because of “supervening circumstances” – whether primary judge erred in construing contract – whether primary judge erred in finding the respondent did not breach the clause requiring her to register plan promptly</p>	Scott v Ennis-Oakes [2019] NSWSC 1257
14	2019/292994	CXZ CXZ v Office of the Children's Guardian	12/05/2020	<p>ADMINISTRATIVE LAW (other) – Children Protection (Working with Children) Act 2012 (NSW) – applicant found not guilty of murder in 1997 of stepmother’s partner on basis he was acting as an automaton – absence of criminal convictions since 1997 – whether Tribunal erred in adopting a “three step” process in assessing the clearance – whether erred in not applying statutory test in s30 – whether erred in not considering whether granting a clearance would pose a real and appreciable risk to</p>	Children’s Guardian v CXZ [2019] NSWSC 1083

				children	
15	2019/325559	Bauer Media Pty Limited t/as Network Services Company v Khedrlarian	18/05/2020	WORKERS COMPENSATION – first respondent injured at work while on the premises of appellant – first respondent brought proceedings against appellant in the District Court for damages under the Workers Compensation Act 1987 (NSW) Pt 5 Div 3 – District Court judge found in favour of first respondent – Court of Appeal remitted proceedings to District Court – primary judge found in favour of the first respondent – whether primary judge erred in making certain factual findings – whether primary judge erred in treatment of evidence – whether primary judge erred applying ss 5B and 5D of the Civil Liability Act 2002 (NSW) – whether primary judge erred in apportioning liability to the second respondent – whether primary judge erred in assessing damages	Decision not available on Caselaw
16	2019/289986	Davies v Whitehaven Coal Mining Ltd	18/05/2020	TORTS (negligence) – appellant was mine worker employed by respondent – appellant was injured in course of his work when he slipped and fell while dismounting from a load-haul-dump machine – appellant brought proceedings against respondent alleging negligence and breach of statutory duty – primary judge found in favour of respondent – whether primary judge erred in failing to find respondent breached its duty of care by, inter alia, modifying the machines – whether primary judge erred in making and failing to make certain factual findings – whether primary judge erred in findings on causation – whether primary judge erred in finding appellant was guilty	Davies v Whitehaven Coal Mining Ltd [2019] NSWSC 1125

				of contributory negligence when he was acting in accordance with the system of work supplied to him	
17	2019/404200	Sydney Local Health District v Macquarie International Health Clinic Pty Ltd	29/05/2020	TORTS (other) – long-running dispute between appellant and respondent in relation to construction of private hospital and medical centre on appellant’s land – appellant wrongfully terminated appellant’s lease and evicted appellant – respondent brought proceedings for, inter alia, damages for trespass to land – primary judge found in favour of the respondent – whether primary judge erred in application of the user principle – whether primary judge’s discretion not to permit appellant to advance certain arguments or to re-open the proceedings below miscarried – whether the primary judge erred in failing to consider certain evidence – whether primary judge erred in failing to have regard to causation and restitutionary principles – whether primary judge erred in making certain findings of fact – whether primary judge erred in adjusting award to take account of taxation – whether primary judge erred in assessing hypothetical earnings and costs of the hospital	Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd (No 12) [2019] NSWSC 916
18	2020/95805	Wallis v Rudek	29/05/2020	EQUITY – equitable interest in property – family arrangement – transferee pays off mortgage on property – equity in property exceeds amount owing – transferor permitted to remain in property – licence agreement not signed – relationship breakdown – Baumgartner v Baumgartner equity recognised – equitable compensation granted	Wallis v Rudek [2020] NSWSC 162

19	2019/335260	Dyldam Developments Pty Ltd v Strata Plan 85305	2/06/2020	BUILDING & CONSTRUCTION – claim for breach of statutory warranties and defective works – whether claim was within time if first and second interim occupation certificates were valid - whether erred in holding occupation certificate invalid – whether invalidity of certificate is a matter for the Land & Environment Court – whether issuing of occupation certificate determines completion of residential building work for purposes of Home Building Act 1989 (NSW) – whether NCAT exceeded its jurisdiction in determining the validity of the occupation certificate – whether interim occupation certificates were valid and not in breach of Environmental Planning and Assessment Act 1979 (NSW)	Dyldam Developments Pty Ltd v Owners of Strata Plan 85305 [2019] NSWCATAP 229
20	2019/393045	Mangano v Bullen	4/06/2020	REAL PROPERTY – first respondent and the deceased, through an incorporated company, purchased a series of properties including one in which the pair resided – the company was eventually deregistered – some years later, the pair witnessed the affixing of the company’s seal on a transfer of the property to themselves as tenants in common – the transfer was registered and, shortly before his death, the deceased converted the tenancy in common to a joint tenancy – by survivorship, the first respondent became the sole registered proprietor – appellant, daughter of the deceased, brought proceedings alleging that the first respondent’s title to the property was defeasible by reason of fraud upon the National Companies and Securities Commission (the statutory owner of the property following the company’s deregistration) – primary	Mangano v Bullen [2019] NSWSC 1704

				judge found in favour of the first respondent – whether primary judge erred in failing to decide the proceedings in accordance with the principles set down in <i>Cassegrain v Gerard Cassegrain & Co Pty Ltd</i> (2015) 254 CLR 425 and related case law – whether primary judge erred in making findings of fact contrary to or inconsistent with the evidence – whether primary judge erred in making inferences without a factual basis – whether the primary judgment otherwise contains errors of fact	
21	2019/335719; 2019/335731; 2020/70625; 2020/70655	Arcidiacono v The Owners - Strate Plan No 17719; Arcidiacono v The Owners - Strate Plan No 61233; Arcidiacono v The Owners - Strate Plan No 61233; Arcidiacono v The Owners - Strate Plan No 17719	4/06/2020	REAL PROPERTY – appellants were registered proprietors of two parcels of land in the Sydney CBD – respondent brought proceedings against the appellants claiming various easements over the land – primary judge found partially in favour of the respondent – whether primary judge erred in holding that a right of carriageway by prescription had been established – whether primary judge erred in holding that certain easements were reasonably necessary and not inconsistent with the public interest within the meaning of s 88K of the Conveyancing Act 1919 (NSW) – whether primary judge erred in treatment of certain evidence	The Owners – Strata Plan No 61233 v Arcidiacono; The Owners – Strata Plan No 17719 v Arcidiacono [2019] NSWSC 1307
22	2019/308044	White Constructions Pty Ltd v PBS Holdings Pty Ltd	10/06/2020	CONTRACT – appellant developer contracted with respondents for the design, approval and installation of sewerage system – appellant brought proceedings alleging respondents failed to prepare and submit satisfactory sewer designs within a reasonable time causing the development to be delayed – primary judge found in	White Constructions Pty Ltd v PBS Holdings Pty Ltd [2019] NSWSC 1166

				<p>favour of respondents – whether primary judge erred in various findings on each of duty, breach and causation – whether primary judge erred in making certain findings of fact – whether primary judge erred in obtaining the assistance of a specially qualified person under r 31.54 of the Uniform Civil Procedure Rules 2005 (NSW) – whether primary judge failed to accord appellant procedural fairness – whether primary judge’s reasons were inadequate – whether primary judge erred on the question of damages</p>	
23	2019/159993	Capar v SPG Investments Pty Ltd	10/06/2020	<p>TORTS (negligence) – appellant, a security guard at commercial premises, pursued an intruder on the premises – intruder threatened appellant with death – appellant brought proceedings in negligence against first respondent, owner of the premises, second respondent, which provided security services at the premises, and third respondent, appellant’s employer – primary judge found in favour of respondents – whether primary judge erred in finding neither first nor second respondent owed appellant a duty to take care not to cause mental harm – whether primary judge erred in characterising nature and extent of duty of care owed by first and second respondents – whether primary judge erred in characterising risk of harm – whether primary judge erred in finding first and second respondents did not breach duty of care – whether primary judge erred in finding ‘inherent risk’ defence made out – whether primary judge erred in finding third respondent did not breach duty of care – whether primary judge erred</p>	<p>Capar v SPG Investments Pty Limited t/a Lidcombe Power Centre & Ors (No 5) [2019] NSWSC 507</p>

				in making certain factual findings – whether primary judge erred in assessment of damages – whether primary judge failed to give adequate reasons	
24	2019/404269	DRJ v Commissioner of Victims Rights	11/06/2020	ADMINISTRATIVE LAW (judicial review) – applicants are Yazidi women who report having been subject to acts of violence, abduction and trafficking – applicants identified an Australian citizen as perpetrator of some of the offences committed against them – applicants applied for victims’ support under the Victims Rights and Support Act 2013 (NSW) – application dismissed by first respondent’s delegate – applicants unsuccessfully sought internal review – applicants applied to second respondent pursuant to s 51(2) of the Victims Rights and Support Act – Tribunal found in favour of first respondent – whether Tribunal erred in holding that “an act of violence” under the Victims Rights and Support Act meant one “in and of New South Wales” – whether Tribunal erred in the meaning given to “in and of New South Wales” in s 12(1)(b) of the Interpretation Act 1987 (NSW) – whether the Tribunal erred in holding an offence proscribed by the Criminal Code (Cth) by reason of s 15.4 cannot be an offence “in and of New South Wales” – whether Tribunal erred in failing to apply the presumption of similarity	DRJ v Commissioner of Victims Rights; DRK v Commissioner of Victims Rights; DRL v Commissioner of Victims Rights; DRM v Commissioner of Victims Rights; DRN v Commissioner of Victims Rights [2019] NSWCATAD 195
25	2020/45557	Vickery v The Owners of Strata Plan No 80412	18/06/2020	ADMINISTRATIVE (other) – loss of rent due to water ingress from common property - whether Tribunal has power to award damages to a lot owner for a breach of an Owners Corporation statutory duty under s106(1) of Strata	Owners of Strata Plan 80412 v Pullicin [2020] NSWCATAP 5

				Schemes Management Act 2015 (NSW) to repair and maintain common property	
26	2019/380876	J and E Vella Pty Ltd v Hobson	23/06/2020	PROCEDURE – amendment of Statement of Claim – whether delay by plaintiff was intentional or accidental – whether erred in concluding that matter was ready for a hearing when discovery had not been completed - whether discretion miscarried in not granting leave to amend	In the matter of Beverage Freight Services Pty Ltd [2019] NSWSC 1684
27	2019/274063	Walton v Commonwealth Bank of Australia	25/06/2020	COSTS – no order for costs following discontinuance of proceedings – whether erred in failing to take into account applicant’s significant expenditure in defending proceedings – whether erred in holding that respondent’s proceedings did not lack any utility	Commonwealth Bank of Australia v Daleport Pty Ltd (in receivership)(No 6) [2019] NSWSC 958
28	2019/392094	Minister for Education and Early Childhood Learning v Zonnevylle	26/06/2020	ADMINISTRATIVE LAW (other) – application by respondent under Government Information (Public Access) Act 2009 for access to information held by Minister – whether tribunal proceedings ought to have been dismissed as vexatious – whether proceedings brought for collateral purpose – whether the pattern of previous proceedings ought to have been taken into account – whether Tribunal decided matter on point on which parties had no prior notice	Zonnevylle v Minister for Education and Early Childhood Learning [2019] NSWCATAP 274
29	2020/42887; 2020/94657	Carr v Council of the Law Society of NSW	30/06/2020	DISCIPLINARY – breach of undertaking to transfer trust monies of \$3,127 – whether breach of undertaking professional misconduct - whether trust monies were capable of being transferred without written authority of client - whether undertaking to transfer money from trust	Council of the Law Society of New South Wales v Carr [2020] NSWCATOD 5

				account was an unqualified one - whether file note of alleged representations admissible when author not available to be cross-examined – whether finding of intention to mislead could be proved to the relevant standard – whether inference should have drawn that evidence would not have assisted Council’s case by not calling the author	
30	2020/94599	Massarani v Kriz	2/07/2020	DEFAMATION – summary dismissal of claim for want of proportionality between legal costs and interests at stake – whether erred in finding that proportionality in s60 of Civil Procedure Act 2005 (NSW) is a ground of power to dismiss proceedings – whether want of due dispatch under UCPR 12.7 includes a want of proportionality	Decision not available on Caselaw
31	2019/401260	Owlstara v State of New South Wales	9/07/2020	TORTS (other) – appellant was arrested and detained by a police officer – appellant commenced proceedings against the respondent seeking damages for assault, battery and false imprisonment in relation to the conduct of the officer – primary judge found in favour of respondent – whether primary judge erred in finding the police officer had reasonable grounds to arrest the appellant – whether the primary judge erred in failing to find certain acts constituted assault or battery – whether the primary judge erred in accepting the evidence of the police officer – whether the primary judge erred in finding the arrest and detention were lawful and the assault or battery justified	Decision not available on Caselaw
32	2019/400796;	Livers v Legal Services	10/07/2020	DISCIPLINARY PROCEEDINGS – appellant solicitor made application for legal funding from WorkCover on behalf of	Legal Services Commissioner v

	2020/108013	Commissioner		<p>client – application was allegedly false and misleading – respondent found appellant guilty of unsatisfactory professional conduct and professional misconduct – whether Tribunal’s findings were contrary to the evidence – whether Tribunal erred in considering the issue of whether the appellant altered the audiogram in isolation from the issue of whether the appellant misled or attempted to mislead the WorkCover Independent Review Office – whether Tribunal erred in finding the appellant altered the audiogram without having regard to the fact that his client had altered in like manner the client statement</p>	Livers [2019] NSWCATOD 180
33	2019/366615	Oikos Constructions Pty Ltd v Oston	11/07/2020	<p>BUILDING & CONSTRUCTION – respondent home owners commenced proceedings against appellant builder for breach of statutory warranties under Pt 2C of the Home Building Act 1989 (NSW) – primary judge found in favour the respondents – whether primary judge misconstrued the scope of works or purpose of the building contract – whether primary judge erred in excluding certain evidence – whether the primary judge erred in granting relief on bases outside the respondents’ pleaded case – whether the primary judge erred in making certain factual findings – whether primary judge erred in failing to reject the respondents’ claim on the basis that the warranty had already been enforced by a settlement reached between the respondents and a third party – whether the primary judge erred in finding the respondents had discharged their onus of proof – whether the primary judge erred in</p>	Decision not available on Caselaw

				considering that a certain submission was not put by the appellant – whether the primary judge erred in assessing damages	
34	2020/12483	Glover v Kaji Australia Pty Ltd	14/07/2020	TORT (other) – appellant was facing bankruptcy after having made number of loans to a third party which were not repaid – the third party with the third to fifth respondents arranged for appellant to borrow \$115,000 from the first and second respondents – loan was secured by a mortgage over appellant’s home – appellant defaulted and the first and second respondents commenced proceedings seeking possession of the mortgaged property and judgment for the amount owing under the loan agreement – appellant cross claimed and joined the third to fifth respondents to the proceedings – cross claim alleged the loan agreement and mortgage were unjust and unconscionable, that the third and fourth respondents had engaged in misleading and deceptive conduct and that all respondents were guilty of fraud and conspiracy – primary judge found in favour of the respondents – whether the primary judge erred in finding there was no evidence of fraud or conspiracy – whether the primary judge erred in making or failing to make certain factual findings – whether primary judge erred in failing to consider certain evidence and submissions	Kaji Australia Pty Ltd v Glover (No 4) [2019] NSWSC 1779
35	2020/84580	Cruceanu v Vix Technology (Aust) Pty Ltd	14/07/2020	WORKERS COMPENSATION – appellant injured in the course of his employment with the respondent – dispute as to whether certain of the appellant’s injuries were	Decision not available on Caselaw

				<p>sustained in the course of his employment – arbitrator found in favour of respondent – primary judge upheld arbitrator’s decision on appeal – whether primary judge erred in making factual findings not available on the evidence, or in failing to make factual findings compelled by the evidence – whether primary judge’s discretion miscarried – whether there was a constructive failure by the primary judge to exercise jurisdiction – whether primary judge erred in failing to find that the arbitrator’s drawing of a certain inference constituted a denial of procedural fairness – whether primary judge erred in finding arbitrator had neither failed to deal with one of appellant’s submissions nor taken into account an irrelevant consideration</p>	
36	2020/174803	Stewart v Uber Technologies Inc	15/07/2020	<p>PROCEDURE – representative proceedings were commenced in the Victorian Supreme Court against Uber Technologies Inc and related companies alleging unlawful means conspiracy – cognate representative proceedings were commenced in the NSW Supreme Court out of concern that the Victorian provision suspending limitation periods for group members might not suspend NSW limitation periods – whether the Court should, of its own motion, pursuant to s 5(2) of the Jurisdiction of Courts (Cross-Vesting) Act 1987 (NSW) transfer the whole of the NSW proceedings to the Supreme Court of Victoria to be heard and determined separately and in advance of all other questions in the proceedings</p>	

37	2020/45454	Wilson v Chan & Naylor Parramatta Pty Ltd ATF Chan & Naylor Parramatta Trust	15/07/2020	COSTS – appellant commenced proceedings in the Civil and Administrative Tribunal against the first respondent for loss arising out of allegedly negligent advice in relation to a self-managed superannuation fund – proceedings were dismissed by Senior Member for being statute barred and outside the jurisdiction of the Tribunal – applicant appealed and Senior Member deferred issue of costs pending appeal – Appeal Panel held that the Tribunal lacked jurisdiction, transferred the proceedings to the Local Court and entered costs order against applicant – Senior Member entered costs order adverse to applicant – applicant appealed and sought judicial review in respect of both the decision of the Appeal Panel and the decision of the Senior Member on costs – primary judge found against applicant on each issue – whether Appeal Panel had power to order that the appellant pay the first respondent’s costs of the appeal – whether the Senior Member had power to order that the appellant pay certain of the first respondent’s costs of the proceedings at first instance – in the event that there was no power, what orders should be made	Wilson v Brisbane; Wilson v Chan & Naylor Parramatta Pty Ltd [2019] NSWSC 1598
38	2019/398947	Fernandez v State of New South Wales	20/07/2020	CONTRACT – separate question – directives to Local Health District to obtain guarantee for payment of medical treatment for ineligible persons in hospital system – whether directives are invalid as being repugnant to s.17 of Health Services Act – whether directives impair the obligation to provide “care and treatment” – whether failed to address a substantial argument on the question of	Fernandez v State of New South Wales [2019] NSWSC 1736

				repugnancy	
39	2019/370858	Tapp v Australian Bushmen's Campdraft & Rodeo Association Ltd	21/07/2020	TORT (negligence) – appellant sustained serious injuries while competing in a campdraft competition organised by the respondent – appellant brought proceedings alleging negligence and breach of contract on the part of the respondent in relation to the conditions of the surface of the arena – primary judge found in favour of respondent – whether primary judge erred in finding appellant had engaged in a dangerous recreational activity, and that the relevant risk was an obvious risk, within the meaning of the Civil Liability Act 2002 (NSW) s 5L – whether primary judge erred in identifying the relevant risk – whether the primary judge erred in finding the respondent had not breached its duty of care – whether the primary judge erred in failing to make certain factual findings – whether the primary judge erred in considering s 5G of the Civil Liability Act in circumstances where the respondent did not invoke the section – whether primary judge erred in finding a liability waiver form signed by the appellant contained a risk warning covering the relevant risk – whether the primary judge erred in finding s 3C and Pt 9 of the Civil Liability Act operated to exclude liability – whether the primary judge erred in finding there was no contract between the parties, and no occasion to imply to that putative contract statutory terms from the Competition and Consumer Act 2010 (Cth) and Australian Consumer Law	Tapp v Australian Bushmen's Campdraft & Rodeo Association Ltd [2019] NSWSC 1506

40	2019/298538; 2020/55990; 2019/297428	Smith v Coles Supermarkets Australia Pty Ltd; Coles Supermarkets Australia Pty Ltd v Chandler Macleod Group Ltd; Ready Workforce (A Division of Chandler Macleod) Pty Ltd v Coles Supermarkets Australia Pty Ltd	22/07/2020	CONTRACT – appellant and respondent entered into labour hire agreement – a worker, alleged to be the employee of the respondent, was injured at the appellant’s premises – the worker brought proceedings against the appellant in respect of the injuries sustained – appellant cross claimed against the respondent – primary judge found in favour of the appellant on both claims– whether primary judge erred in awarding the appellant only nominal damages in the sum of \$100 for breach of contract – whether the appellant was denied procedural fairness	Decision not available on Caselaw
41	2020/6348; 2020/55981; 2020/80241	Gray v Coles Supermarkets Pty Ltd; Coles Supermarkets Australia Pty Ltd v Chandler McLeod Group Ltd; Coles Supermarkets Australia Pty Ltd v Chandler McLeod Group Ltd	23/07/2020	CONTRACT – appellant and respondent entered into labour hire agreement – a worker, alleged to be the employee of the respondent, was injured at the appellant’s premises – the worker brought proceedings against the appellant in respect of the injuries sustained – appellant cross claimed against the respondent – primary judge found in favour of the appellant on both claims– whether primary judge erred in awarding the appellant only nominal damages in the sum of \$100 for breach of contract – whether the appellant was denied procedural fairness	Decision not available on Caselaw
42	2019/366237; 2020/133923	Rinehart v Rinehart	24/07/2020	PROCEDURE – appellant was made the trustee of a trust in respect of which first respondent was formerly trustee – first respondent ordered to deliver to appellant all trust documents in her possession – first respondent brought a motion seeking, inter alia, an order that she be indemnified in respect of future costs associated with producing the	Hancock v Rinehart [2019] NSWSC 1451

				documents – primary judge made the indemnity order – whether primary judge erred in finding first respondent entitled to indemnity in circumstances of the case – whether primary judge erred in holding a right of indemnity could exist in respect of a liability prior to the liability having been incurred – whether primary judge erred in holding first respondent, as a former trustee, was capable of being entitled to an indemnity – whether primary judge erred in holding that any right of indemnity justified the orders made	
43	2019/401378	Agha v Devine Real Estate Concord Pty Ltd	24/07/2020	CONTRACT – dissolution of jointly owned real estate business – restraint of trade - whether erred in finding that applicant had committed a serious criminal offence by modifying contact details of 905 customers – whether erred in finding that applicant had broken into the respondent’s premises when allegation had not been pleaded - whether information the subject of confidentiality clause could be breached when respondent had placed that information in the public domain – whether erred in finding restraint in contract when written contract not available – whether in length of time ordered for restraint	Devine Real Estate Concord Pty Ltd v Wajih [2019] NSWSC 786
44	2019/408771	Noel Outerbridge t/as Century 21 Plateau Lifestyle v Hall	27/07/2020	CONTRACT – appellants were partners in a real estate trading business – respondents sold a property to a third party purchaser – appellants commenced proceedings against respondents for breach of contract claiming an entitlement to a real estate commission on the sale –	Outerbridge trading as Century 21 Plateau Lifestyle Real Estate v Hall [2019] NSWDC 724; Outerbridge tradin

				primary judge found in favour of respondents – whether primary judge erred in failing to find the appellants were an effective cause of the sale – whether primary judge applied the wrong test for determining whether the appellants were an effective cause of the sale	g as Century 21 Plateau Lifestyle Real Estate v Hall (No 2) [2020] NSWDC 8
45	2020/118038	Lawrence v State of New South Wales	28/07/2020	ADMINISTRATIVE LAW (other) – orders made under Terrorism (High Risk Offenders) Act 2017 (NSW) – Constitution – whether orders invalid as contrary to principle that involuntary detention of citizen is permissible only as a consequential step in the adjudication of guilt for past acts – whether Act purports to direct the Supreme Court to proceed in a manner that does not ensure equality before the law and being incompatible with the Court’s role as repository of federal jurisdiction	State of New South Wales v Lawrence [2019] NSWSC 1441
46	2020/83474	Megerditchian v Khatchadourian	28/07/2020	SUCCESSION – deceased owned home in which he and his son (the respondent) and the respondent’s family lived – deceased’s will left \$10,000 to his daughter (the appellant) and left the residue of his estate to the respondent – shortly after making his will, the deceased transferred the property into his and the respondent’s names as joint tenants – the respondent became sole owner of the property on the deceased’s death by survivorship – there were insufficient funds in the deceased’s estate to meet the \$10,000 legacy left to the appellant – appellant brought claim for family provision out of late father’s estate – given the lack of estate funds, appellant sought an order designating a half share of the property as the	Megerditchian v Khatchadourian [2019] NSWSC 1870

				deceased's notional estate under the Succession Act 2006 (NSW) Pt 3.3 – primary judge made an order for the provision of \$100,000 to the appellant by designating a half share of the property as the deceased's notional estate – whether primary judge approached the question of whether an order for family provision should be made incorrectly – whether primary judge had regard to irrelevant considerations or failed to have regard to relevant considerations – whether primary judge's discretion miscarried – whether the provision made by the primary judge was manifestly inadequate	
47	2019/383494	Schlaepfer v Australian Securities and Investments Commission	29/07/2020	DEFAMATION – second respondent was an officer of the first respondent – statements were allegedly made by second respondent to certain stockbrokers about the conduct of the appellant and his day trading business – appellant brought proceedings against the respondents for defamation and injurious falsehood – primary judge found in favour of respondents – whether primary judge erred in failing to find that respondents published defamatory material – whether primary judge erred in finding that the appellant was not identified by one or more recipients of the relevant publications – whether the primary judge erred in failing to find that the relevant publications conveyed the imputations alleged – whether the primary judge erred in considering whether the imputations would be conveyed to the particular listeners rather than to the ordinary reasonable listener – whether the primary judge erred in finding that the recipients of the publications were	Schlaepfer v ASIC [2019] NSWSC 1644

				not aware of certain extrinsic facts – whether the primary judge erred in upholding each the defence of qualified privilege at common law, of qualified privilege under statute and of justification	
48	2019/389053	Meetfresh Frnachising Pty Ltd v Ivanman Pty Ltd	30/07/2020	<p>CONTRACT – appellant represented to first respondent that it was authorised to grant in Australia franchises in Taiwanese dessert restaurant chain “Meet Fresh” – first respondent purportedly obtained a franchise from the appellant – first respondent received notice from a third party indicating that it was not entitled to use the name “Meet Fresh” or to operate its business – appellant purported to terminate the agreements – first respondent commenced proceedings against appellant alleging breach of contract and statutory unconscionable conduct and appellant cross claimed – primary judge found in favour of first respondent on both claims – whether primary judge erred in finding first respondent’s loss was caused by appellant – whether primary judge erred in failing to find the loss of the right to use the “Meet Fresh” was a frustrating event or covered by the “events beyond the Franchisor’s control” clause of the contracts – whether primary judge erred in finding appellant had contravened s 21 of the Australian Consumer Law – whether primary judge’s reasons were inadequate to support a finding of unconscionable conduct – whether primary judge erred in finding first respondent was not obliged in the circumstances to pay licence fees – whether primary judge erred in failing to find the second respondent, as first</p>	Decision not available on Caselaw

				respondent's guarantor, was liable to pay the licence fees	
49	2019/3999301	Bandelle Pty Limited v Sydney Capitol Hotels Pty Ltd	30/07/2020	BUILDING AND CONSTRUCTION – statutory interpretation - separate question – limitation on liability for defective building work - where primary Judge held that damage caused was in an accidental, incidental or indirect sense - whether the loss or damage arose out of or in connection with defective building work within the meaning of s6.10 of Environmental Planning & Assessment Act 1979	Sydney Capital Hotels Pty Ltd v Bandelle Pty Ltd [2019] NSWSC 1825
50	2020/12516	Brien v Mrad	5/08/2020	DEFAMATION – applicant pleaded that defamatory words spoken to a single person - finding by primary Judge that words were spoken to more than one person – proceedings dismissed on basis of fatal variance – whether a fatal variation – quantum – whether erred in taking into account that words spoken in a “highly charged atmosphere of generalised hostility” – failure to take into account extent and nature of damage to applicant's reputation	Decision not available on Caselaw
51	2020/14206	Hoblos v Alexakis	7/08/2020	MOTOR ACCIDENTS – appellant and respondent were involved in a motor vehicle collision in which the appellant was injured – appellant brought proceedings alleging the respondent was negligent and caused the accident – primary judge found in favour of the respondent – whether primary judge erred in finding the respondent suffered no assessable loss or damage – whether primary judge erred in treatment of certain evidence – whether primary judge had regard to irrelevant considerations or failed to have regard to relevant considerations – whether primary	Decision not available on Caselaw

				judge's reasons were inadequate	
52	2020/111572	Commissioner of Fair Trading v Jonval Builders Pty Limited	10/08/2020	TRADE PRACTICES – appellants conducted a caravan park and sold “permanent holdings” containing caravans or mobile dwellings to various persons in circumstances in which it was unlawful to do so – respondent commenced proceedings alleging the appellants had engaged in misleading or deceptive conduct and unconscionable conduct within the meaning of the Fair Trading Act 1987 (NSW) and the Australian Consumer Law – primary judge found in favour of respondent – whether primary judge erred in finding compensation was owing to the purchasers, and in the assessment of the quantum of compensation owing – whether primary judge erred in finding certain purchasers were “consumers” within the meaning of the then s 43 of the Fair Trading Act – whether primary judge erred in requiring undertakings from the purchasers to transfer their respective dwellings to the first appellant – whether primary judge erred in finding the third appellant had engaged in misleading or deceptive conduct and unconscionable conduct	Commissioner for Fair Trading v Jonval Builders Pty Ltd & Ors [2019] NSWSC 1893
53	2019/261955	Riva NSW Pty Limited v Fraser	11/08/2020	ADMINISTRATIVE LAW (judicial review) – first respondent acted for first applicant in District Court proceedings brought against first applicant's former solicitor for professional negligence – first applicant refused to pay first respondent's costs alleging that first respondent undertook work outside of its instructions – cost assessor's determination made and certificate of determination	Riva NSW Pty Ltd v Mark A Fraser & Christopher P Clancy t/as Fraser Clancy Lawyers [2019] NSWDC 348

				<p>registered in Local Court by first respondent – first applicant unsuccessfully challenged costs determination – indemnity costs awarded to first respondent in District Court – first applicant irregularly approached Local Court and obtained favourable orders in circumstances where proceedings had been transferred to District Court – first applicant misrepresented outcome of District Court proceedings to banks – first respondent sought variation of costs orders – primary judge found in favour of first respondent – found award of costs on indemnity basis justified – found applicants failed to comply with overriding purpose of Civil Procedure Act 2005 (NSW) – found applicants acted unreasonably and misled the court and others – found applicants in contempt – directed that second and third applicant and applicants’ legal representatives be referred to relevant regulators – whether primary judge erred in making certain findings – whether primary judge erred in consideration of certain matters – whether primary judge erred in making findings about and remarking upon matters outside the ambit of the application before her – whether primary judge erred in failing to consider, inter alia, the reasoning in and outcomes of related proceedings, judgments and orders – whether primary judge failed to afford procedural fairness to, and otherwise erred in making critical findings about, applicants’ legal representatives – whether certain of primary judge’s orders and directions otherwise erroneous</p>	
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54	2020/4245	MacDonald v Yakiti Pty Ltd	12/08/2020	<p>CONTRACT – third party Mr Henley managed a group of companies that operated a number of failing gyms – the appellant was a lawyer working for the group of companies – appellant loaned sums to Mr Henley and borrowed sums from the respondent – the loans from the respondent to the appellant were secured by registered mortgages – the appellant, Mr Henley and two others (one of whom owned and managed the respondent) entered into negotiations to save the gym businesses – appellant was hospitalised during the course of the negotiations and was ultimately excluded from the arrangements – appellant defaulted on her loans and the respondent commenced proceedings against her – appellant cross-claimed alleging that she, Mr Henley and the other two persons had come to an agreement relating to the gyms and her debt was subsumed within that agreement – primary judge found in favour of respondent on its claim and dismissed the appellant’s cross-claim – whether primary judge erred in the weight given to certain conduct of the parties to the alleged agreement – whether primary judge erred in finding the businesses did not have any value – whether the primary judge erred in finding the parties to the alleged agreement did not engage in unconscionable conduct – whether the primary judge erred in granting leave to issue a writ for possession of the mortgaged properties – whether the primary judge erred on question of costs</p>	Yakiti Pty Ltd v MacDonald [2019] NSWSC 1772
55	2020/13642	Mendonca v Tonna	13/08/2020	<p>CONTRACT – in principle arrangement between first respondent and appellant’s husband (acting as agent for</p>	Tonna v Mendonca [2019]

				<p>appellant and also acting as agent and accounting adviser for respondents) – arrangement provided that respondents were to purchase a property and appellant was simultaneously to purchase the same property and hold it on trust for the respondents pending the sale of a different property by the respondents – respondents brought proceedings against the appellant and her husband alleging breach of contract and breach of trust – appellant in separate proceedings heard together sued on a residential tenancy agreement and subsequent licence allegedly entered into by her and first respondent – primary judge found the property was held on resulting trust for the appellant and respondents and dismissed the separate proceedings brought by the appellant – whether primary judgment affected by errors of law on the face of the record or jurisdictional errors – whether primary judge’s reasons were inadequate</p>	NSWSC 1849
56	2020/76913	Mistrina Pty Ltd (in liq) Australian Consulting Engineers Pty Ltd	14/08/2020	<p>TRADE PRACTICES – appellants determined to build a mix development – design of the building incorporated a raft slab – respondent engineer certified as structurally sound the proposed raft slab – the certificate was misleading or deceptive or likely to mislead or deceive – the project was delayed to remedy faulty construction undertaken in reliance on the certificate – lender bank appointed receivers and sold the land – appellants brought proceedings against respondent to recover for loss of commercial opportunity – primary judge found in favour of respondent – whether primary judge erred in failing to find</p>	Mistrina Pty Ltd v Australian Consulting Engineers Pty Ltd [2020] NSWSC 130

				that the misleading or deceptive conduct caused the loss alleged	
57	2020/106578	Lawson v Minister for Environment and Water (SA)	18/08/2020	LAND & ENVIRONMENT – land around and including Lake Victoria was vested in the State of South Australia by the River Murray Waters Act 1915 (NSW) without provision for compensation for the extinguishment of any private land rights – later, a Gazette Notice resumed the land under the Public Works Act 1912 (NSW), which Act did provide for compensation – appellant commenced proceedings seeking compensation for the extinguishment of her grandmother’s historical title in the land as a descendant of one of Aboriginal persons who obtained title by adverse possession and, by application for leave to amend, extinguishment of native title rights – primary judge found an estate in fee simple was vested in South Australia under the River Murray Waters Act and thereby extinguished any private rights – whether primary judge erred in interpreting the River Murray Waters Act – whether primary judge erred by concluding that her answers to the separate questions warranted the dismissal of the whole of the proceedings	Lawson v Minister for Environment and Water [2020] NSWSC 186
58	2020/114107	Batterham v Nauer	18/08/2020	ADMINISTRATIVE LAW (other) – orders made restraining applicant under the Vexatious Proceedings Act 2008 – bias – relevance of letter with phrase “He will do all he can to destroy Nauer’s solicitor” on question of vexatiousness – whether erred in finding that proceedings brought by Maylord Equity Management Pty Ltd and Finsec Pty Ltd	Nauer v Batterham [2020] NSWSC 240

				were alter egos of applicant and therefore relevant to question of frequently brings proceedings – whether actions of the respondent in attempting to make applicant bankrupt a second time relevant – effect of findings in the Federal Court on set-off claims between the parties and Maylord.	
59	2019/374732	Kedwell v Deputy Commissioner of Taxation	20/08/2020	TAX – company of which appellant was a director failed to remit PAYG and owed substantial other sums to the ATO – director penalty notice ('DPN') issued to appellant in relation to PAYG withholding – appellant made payments to the ATO, only later advising they were intended to discharge his liability under the DPN – respondent brought proceedings for the sum arising under the DPN – primary judge found in favour of respondent – whether primary judge erred in finding payments were made in satisfaction of a company running account debt and not in satisfaction of the DPN – whether primary judge erred in failing to find the subject funds were loaned from a company to appellant for the purpose of his paying down his liability under the penalty notice – whether primary judge erred in treatment of the appellant's quoting an incorrect payment reference number – whether primary judge erred in analysis of and findings on estoppel by representation against the respondent public authority – whether primary judge erred in failing to draw a Jones v Dunkel inference	Deputy Commissioner of Taxation v Kedwell [2019] NSWDC 610
60	2020/16869	DEJ (a pseudonym) v Council of the NSW Bar	20/08/2020	DISCIPLINARY PROCEEDINGS – respondent was found guilty of professional misconduct for, inter alia, failing to comply	Council of the New South Wales Bar

		Association		with conditions placed on his practising certificates in relation to his ongoing failure to meet his income tax obligations – Civil and Administrative Tribunal ordered that the appellant’s name be removed from the roll – whether Tribunal erred in finding appellant did not have a “reasonable excuse” for contravening the conditions attaching to his practising certificate – whether the Tribunal erred in making or failing to make certain findings regarding the appellant’s psychiatric condition – whether the Tribunal erred in finding the appellant knowingly swore a false affidavit regarding the transfer of a one-half interest in a property to his wife – whether the primary judge erred in finding the appellant’s conduct warranted the removal of his name from the roll	Association v DEJ [2019] NSWCATOD 186
61	2019/383196; 2020/156330	Salih v Emirates	21/08/2020	TORTS (negligence) – appellant was injured during the course of an international flight operated by the respondent when the door to an overhead locker landed on her hand – appellant brought negligence proceedings against the respondent under the 1999 Montreal Convention, given the force of law in Australia under s 9B of the Civil Aviation (Carriers’ Liability) Act 1959 (Cth) – the primary judge found in favour of the respondent – whether primary judge erred in finding the appellant’s injuries were not caused by an “accident” within the meaning of the Montreal Convention – whether the primary judge erred in having considered the wrong overhead locker – whether the primary judge erred in treatment of the appellant’s evidence – whether the primary judge erred in	Salih v Emirates (No 2) [2019] NSWDC 715

				characterising the circumstances surrounding the appellant's injury – whether the primary judge erred in finding the inspection of the aircraft would have identified any such locker defect as alleged	
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