



Supreme Court of NSW Court of Appeal

Decisions Reserved at 11 September 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	2019/267950	Mohareb v Palmer	05/03/2020	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
3	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

4	2019/333199	Australian Executor Trustees (SA) Limited v Kerr	03/04/2020	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 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	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 Trustees (SA) Ltd v Fuller and others trading as Sparke Helmore Lawyers (No 2) [2019] NSWSC 1438
5	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	Motor Yacht Sales Australia Pty Limited trading as The Boat Boutique Company v Robert Blann [2019] NSWDC 558

				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	
6	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 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	RD Miller Pty Ltd v Roads and Maritime Services [2019] NSWLEC 129
7	2019/278581	Dickson v Northern Lakes Rugby League Sport & Recreational Club Inc	01/05/2020	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	Dickson v Northern Lakes Rugby League Sport & Recreational Club Inc & Anor (No 2) [2019] NSWDC 433

				<p>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 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</p>	
8	2019/301298	Meat Carter Pty Ltd v Melides	04/05/2020	<p>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</p>	Melides v Meat Carter Pty Limited [2019] NSWCCPD 48

				misconstrued ss 32A and 38A of the Workers Compensation Act	
9	2019/277518	Wright v Apthorpe	05/05/2020	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
10	2019/305409	Scott v Ennis-Oakes	07/05/2020	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	Scott v Ennis-Oakes [2019] NSWSC 1257

				breach the clause requiring her to register plan promptly	
11	2019/292994	CXZ CXZ v Office of the Children's Guardian	12/05/2020	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 children	Children's Guardian v CXZ [2019] NSWSC 1083
12	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
13	2019/289986	Davies v Whitehaven Coal	18/05/2020	TORTS (negligence) – appellant was mine worker employed by respondent – appellant was injured in course of his	Davies v Whitehaven Coal Mining Ltd [2019]

		Mining Ltd		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 of contributory negligence when he was acting in accordance with the system of work supplied to him	NSWSC 1125
14	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	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

				assessing hypothetical earnings and costs of the hospital	
15	2019/335260	Dyldam Developments Pty Ltd v Strata Plan 85305	02/06/2020	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
16	2019/393045	Mangano v Bullen	04/06/2020	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	Mangano v Bullen [2019] NSWSC 1704

				and Securities Commission (the statutory owner of the property following the company's deregistration) – primary 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 Cassegrain v Gerard Cassegrain & Co Pty Ltd (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	
17	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	04/06/2020	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
18	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	White Constructions Pty Ltd v PBS Holdings Pty Ltd [2019] NSWSC 1166

				sewer designs within a reasonable time causing the development to be delayed – primary judge found in 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	
19	2019/159993	Capar v SPG Investments Pty Ltd	10/06/2020	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 –	Capar v SPG Investments Pty Limited t/a Lidcombe Power Centre & Ors (No 5) [2019] NSWSC 507

				whether primary judge erred in finding third respondent did not breach duty of care – whether primary judge erred in making certain factual findings – whether primary judge erred in assessment of damages – whether primary judge failed to give adequate reasons	
20	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
21	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	Owners of Strata Plan 80412 v Pullicin [2020]

				award damages to a lot owner for a breach of an Owners Corporation statutory duty under s106(1) of Strata Schemes Management Act 2015 (NSW) to repair and maintain common property	NSWCATAP 5
22	2019/392094	Minister for Education and Early Childhood Learning v Zonneville	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	Zonneville v Minister for Education and Early Childhood Learning [2019] NSWCATAP 274
23	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 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	Council of the Law Society of New South Wales v Carr [2020] NSWCATOD 5
24	2020/94599	Massarani v Kriz	02/07/2020	DEFAMATION – summary dismissal of claim for want of proportionality between legal costs and interests at stake –	Decision not available

				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	on Caselaw
25	2019/401260	Owlstara v State of New South Wales	09/07/2020	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
26	2019/400796; 2020/108013	Livers v Legal Services Commissioner	10/07/2020	DISCIPLINARY PROCEEDINGS – appellant solicitor made application for legal funding from WorkCover on behalf of 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	Legal Services Commissioner v Livers [2019] NSWCATOD 180

				altered the audiogram without having regard to the fact that his client had altered in like manner the client statement	
27	2019/366615	Oikos Constructions Pty Ltd v Oston	11/07/2020	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 considering that a certain submission was not put by the appellant – whether the primary judge erred in assessing damages	Decision not available on Caselaw
28	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	Kaji Australia Pty Ltd v Glover (No 4) [2019]

				<p>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</p>	NSWSC 1779
29	2019/398947	Fernandez v State of New South Wales	20/07/2020	<p>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 repugnancy</p>	Fernandez v State of New South Wales [2019] NSWSC 1736
30	2019/370858	Tapp v Australian	21/07/2020	<p>TORT (negligence) – appellant sustained serious injuries</p>	Tapp v Australian

		Bushmen's Campdraft & Rodeo Association Ltd		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	Bushmen's Campdraft & Rodeo Association Ltd [2019] NSWSC 1506
31	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	Hancock v Rinehart [2019] NSWSC

				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 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	1451
32	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
33	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) –	State of New South Wales v

				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	Lawrence [2019] NSWSC 1441
34	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 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	Megerditchian v Khatchadourian [2019] NSWSC 1870

				relevant considerations – whether primary judge’s discretion miscarried – whether the provision made by the primary judge was manifestly inadequate	
35	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 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	Schlaepfer v ASIC [2019] NSWSC 1644
36	2019/389053	Meetfresh Franchising Pty Ltd v Ivanman Pty Ltd	30/07/2020	CONTRACT – appellant represented to first respondent that it was authorised to grant in Australia franchises in Taiwanese dessert restaurant chain “Meet Fresh” – first	Decision not available on Caselaw

				<p>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 respondent’s guarantor, was liable to pay the licence fees</p>	
37	2019/3999301	Bandelle Pty Limited v Sydney Capitol Hotels Pty Ltd	30/07/2020	<p>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</p>	Sydney Capital Hotels Pty Ltd v Bandelle Pty Ltd [2019] NSWSC 1825

				of Environmental Planning & Assessment Act 1979	
38	2020/12516	Brien v Mrad	05/08/2020	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
39	2020/14206	Hoblos v Alexakis	07/08/2020	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 judge’s reasons were inadequate	Decision not available on Caselaw
40	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	Commissioner for Fair Trading v Jonval Builders Pty Ltd & Ors [2019] NSWSC 1893

				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	
41	2020/4245	MacDonald v Yakiti Pty Ltd	12/08/2020	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	Yakiti Pty Ltd v MacDonald [2019] NSWSC 1772

				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	
42	2020/76913	Mistrina Pty Ltd (in liq) Australian Consulting Engineers Pty Ltd	14/08/2020	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 that the misleading or deceptive conduct caused the loss alleged	Mistrina Pty Ltd v Australian Consulting Engineers Pty Ltd [2020] NSWSC 130
43	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	Lawson v Minister for Environment and Water [2020] NSWSC 186

				<p>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</p>	
44	2019/374732	Kedwell v Deputy Commissioner of Taxation	20/08/2020	<p>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</p>	<p>Deputy Commissioner of Taxation v Kedwell [2019] NSWDC 610</p>

				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	
45	2020/16869	DEJ (a pseudonym) v Council of the NSW Bar Association	20/08/2020	DISCIPLINARY PROCEEDINGS – respondent was found guilty of professional misconduct for, inter alia, failing to comply 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	Council of the New South Wales Bar Association v DEJ [2019] NSWCATOD 186
46	2018/214680	Gwe v The Commissioner of the Australian Federal Police	25/08/2020	ADMINISTRATIVE LAW (other) – Proceeds of Crime Act 2002 (Cth) – where applicant did not know that subject property transferred in a manner which resulted in the funds being the proceeds of an offence – whether	Commissioner of the Australian Federal Police v Gwe & Hoang [2018] NSWSC 992

				transfer occurred for sufficient consideration – whether reasonable person would have had a suspicion that property was the proceeds of crime – whether applicants had discharged that onus in relation to the absence of suspicion – whether erred in not drawing inferences that applicant was not aware that payments were being structured	
47	2020/62409	Battenberg v Phillips	26/08/2020	SUCCESSION – the respondents (nephew and niece of the deceased) were the executors of deceased’s 2016 Will and sought its grant of probate in solemn form – the deceased’s other nephew challenged the validity of the 2016 Will, alleging the deceased lacked testamentary capacity to make it or otherwise that suspicious circumstances attended its execution – primary judge found in favour of respondents – whether primary judge erred in finding the deceased knew and approved of the contents of the 2016 Will	The Estate of Blanche Minnie Condon [2020] NSWSC 19
48	2020/165758	GR Capital Group Pty Ltd (receivers and managers appointed) (subject to a deed of company arrangement) v Xinfeng Australia International Investment Pty Ltd	27/08/2020	PROCEDURE – setting aside of a subpoena - privilege – relevance of documents to application to set aside consent order on basis of illegality - whether implied waiver over all legal advices received – whether legal advices relevant to applicant’s state of mind as to whether defence was available - whether denied opportunity to address appropriate access orders	Xinfeng Australia International Investments Pty Ltd v GR Capital Group Pty Ltd [2020] NSWSC 620
49	2020/12517	Zhang v Metcalf	27/08/2020	EQUITY – parties were at some stage in a de facto relationship – parties owned two properties, one as joint tenants (the Waterloo property) and the other as tenants	Metcalf v Zhang [2018] NSWSC 1998

				<p>in common (the Alexandria property) – dispute arose as to their respective ownership in the two properties – respondent commenced proceedings seeking a share in the proceeds of sale of the Alexandria property and the appointment of a trustee for sale of the Waterloo property – primary judge found that the Alexandria property was held beneficially in equal shares between the parties and that the appellant had a 78% interest in the Waterloo property – whether primary judge erred in finding the parties’ de facto relationship ended no later than 2002 – whether primary judge’s discretion miscarried – whether primary judge erred in finding the parties had equal beneficial ownership of the Alexandria property – whether primary judge erred in calculating amounts payable in final orders – whether primary judge erred in orders as to costs – whether primary judge was biased</p>	
50	2020/147954	Volonakis v Erceg; Erceg v Volonakis	28/08/2020	<p>CONTRACT – two undocumented loans for \$100,000 and \$375,000 were made between friends – respondent lenders brought proceedings against the borrowers (the appellant and her estranged husband) seeking repayment of the balance allegedly outstanding on the loans, along with interest – primary judge found in favour of respondents – whether primary judge erred in finding the appellant was aware of and party to the \$375,000 loan agreement – whether primary judge’s finding as to the appellant’s involvement was made in the absence of supporting or admissible evidence – whether primary judge erred in drawing certain inferences from the</p>	Volonakis & Ors v Erceg & Anor [2019] NSWSC 1875

				appellant's failure to give evidence – whether primary judge erred in treatment of appellant's husband's evidence – whether primary judge failed to have regard to certain considerations	
51	2019/302523	Dacich v NSW Director of Public Prosecutions	28/08/2020	ADMINISTRATIVE LAW (judicial review) – applicant responded to online advertisements from three sellers in relation to two smart phones and various furniture items – applicant agreed with each of the three sellers to make electronic payment in exchange for the goods – applicant provided to each seller a message falsely depicting an electronic receipt confirming her transfer of the respective purchase prices – applicant never transferred the relevant funds to the sellers – each seller transferred the property to the applicant – applicant charged with and convicted in the Local Court of dishonestly obtaining a financial advantage by deception – applicant appealed to the District Court against sentence – appeal upheld – whether primary judge erred in failing to consider all options prior to imposing a term of imprisonment – whether primary judge erred in failing to allow an adjournment under s 57 of the Legal Aid Commission Act 1979 (NSW) – whether primary judge erred in failing to identify whether threshold under s 5 of the Crimes (Sentencing Procedure) Act 1999 (NSW) was met – whether the Court had jurisdiction to re-sentence applicant – whether applicant's legal representative failed to act in her best interests – whether primary judge erred in failing to hear and admit certain evidence – whether certain evidence was illegally obtained	Decision not available on Caselaw

				– whether primary judge erred in failing to consider applicant’s cooperation with police – whether primary judge erred in not discounting sentence for guilty plea	
52	2019/103863; 2019/170998	Michael Wilson & Partners Ltd v Emmott	31/08/2020	PROCEDURE – security for costs – security for costs ordered by Meagher & Brereton JJA and Emmett AJA following vacation of appeal hearing - whether appeal ought to be dismissed following non-payment of security for costs – extension of time – whether appellant ought to be granted more time to pay security – variation – whether security for costs orders ought to be set aside or varied – whether valid retainer between respondent and his lawyers giving a basis for security to be provided – whether appellants able to comply with provision of security due to existing freezing orders in other proceedings	Decision not available on Caselaw
53	2020/19031	Reysson Pty Ltd v Minister Administering the Environmental Planning and Assessment Act	31/08/2020	LAND & ENVIRONMENT – appellant owned land on NSW coast in Tweed Heads South – appellant’s land was included in the Coastal Wetlands and Littoral Rainforests Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (NSW) – appellant commenced judicial review proceedings challenging the validity of the Policy – primary judge found in favour of respondents – whether primary judge erred in interpreting the term “coastal wetland” in s 6(1) of the Coastal Management Act 2016 (NSW) – whether primary judge erred in determining that the characterisation of land as “coastal wetland” was not a jurisdictional fact – whether primary judge erred in finding appellant’s land fit the	Reysson Pty Ltd v Minister Administering the Environment Planning and Assessment Act 1979 [2019] NSWLEC 203

				description in s 6(1) – whether primary judge erred in failing to find that the designation of parts of the appellant’s land was not reasonably appropriate and adapted to achieving the objects of the Coastal Management Act and Policy – whether primary judge erred in failing to find the Policy was invalid	
54	2019/103863; 2019/170998	Michael Wilson & Partners Ltd v Emmott	31/08/2020	PROCEDURE – security for costs – security for costs ordered by Meagher & Brereton JJA and Emmett AJA following vacation of appeal hearing - whether appeal ought to be dismissed following non-payment of security for costs – extension of time – whether appellant ought to be granted more time to pay security – variation – whether security for costs orders ought to be set aside or varied – whether valid retainer between respondent and his lawyers giving a basis for security to be provided – whether appellants able to comply with provision of security due to existing freezing orders in other proceedings	Decision not available on Caselaw
55	2020/118949	Theoret v Aces Incorporated	01/09/2020	WORKERS COMPENSATION – appellant was injured in the course of her employment with the respondent and subsequently commenced receiving compensation payments – appellant challenged the calculation of her pre-injury average weekly earnings, asserting that in accordance with s 82A of the Workers Compensation Act 1987 (NSW) the indexation of the figure should commence from the date she first received compensation rather than a later date – arbitrator found in favour of respondent – on appeal, primary judge confirmed arbitrator’s	Theoret v Aces Incorporated [2020] NSWCCPD 18

				determination – whether primary judge erred in finding s 82A did not apply to index pre-injury average weekly earnings from the date the appellant first received compensation	
56	2019/291624; 2020/67802	Cameron v Catic	01/09/2020	TORTS (negligence) – appellant sustained significant injuries in the course of employment with third party – many years later, appellant and respondent were in motor vehicle accident – appellant brought proceedings for injuries sustained in accident – respondent admitted liability but challenged damages – primary judge awarded judgment for the appellant in the sum of \$42, 505.40 – whether primary judge failed to take into account mandatory relevant considerations or took into account irrelevant considerations – whether primary judge erred in weight given to certain evidence – whether primary judge’s rulings on costs were unreasonable – whether primary judge erred in making certain findings of fact – whether primary judge erred in assessing damages	Cameron v Catic [2019] NSWDC 434
57	2020/93541	JE v Secretary, Department of Communities and Justice	02/09/2020	ADMINISTRATIVE LAW (judicial review) – applicant is the mother of two daughters the subject of care orders under the Children and Young Persons (Care and Protection) Act 1998 (NSW) – applicant commenced proceedings in the District Court under s 91 of the Care and Protection Act seeking to appeal orders of the Children’s Court which varied an existing care order allocating parental responsibility for one of the children from the child’s maternal grandparents to the child’s father – primary judge	Decision not available on Caselaw

				dismissed the appeal – whether applicant was denied procedural fairness	
58	2020/141612	Tannous v State of New South Wales	03/09/2020	ADMINISTRATIVE LAW (other) – three year extended supervision order under s5B of Crimes (High Risk Offenders) Act 2006 (NSW) – where experts opined that two years adequate - whether erred in applying correct test for length of extended supervision – whether period imposed was longer than was necessary	State of New South Wales v Tannous [2020] NSWSC 292
59	2019/368386	Commissioner of Police v Zisopoulos	03/09/2020	ADMINISTRATIVE LAW (judicial review) – respondent was dismissed from the NSW Police Force after a drug test indicated he had ingested illicit drugs – respondent contended that his hair sample was contaminated by environmental exposure to illicit drugs within the police station – respondent sought review of the decision to terminate his employment in the Industrial Relations Commission under s 181E of the Police Act 1900 (NSW) – single member held the removal of the respondent was harsh, unreasonable and unjust and ordered his reinstatement – Full Bench affirmed the decision of single member on appeal – applicant sought judicial review of the two decisions in the Supreme Court, which proceedings were removed to the Court of Appeal – whether single member erred in holding that, because expert evidence “cast doubt” on the findings of misconduct, the burden of proof under s 181F of the Police Act shifted to the applicant	Zisopoulos v Commissioner of Police [2018] NSWIRComm 1011 (Murphy C); Commissioner of Police v Zisopoulos [2019] NSWIRComm 1073

60	2020/114142	Aussie Skips Recycling Pty Ltd v Strathfield Municipal Council	08/09/2020	LAND & ENVIRONMENT – first appellant lessee and second appellant lessor commenced proceedings seeking the imposition of four interrelated easements over land owned by the respondent council pursuant to s 88K of the Conveyancing Act 1919 (NSW) – easements were designed to permit and facilitate the use of an encroaching acoustic enclosure on council land for the benefit of the adjacent leased land which operated as a waste transfer and recycling facility – primary judge found in favour of respondent – whether primary judge erred in finding the claimed easements were not easements within the meaning of s 88K of the Conveyancing Act – whether primary judge erred in finding the claimed easements were not reasonably necessary within the meaning of s 88K – whether primary judge denied the appellants procedural fairness by, inter alia, failing to deal with certain submissions – whether primary judge erred in making or failing to make certain factual findings	Aussie Skips Recycling Pty Ltd v Strathfield Municipal Council [2020] NSWLEC 22
61	2020/65494	ET-China.com International Holdings Ltd v Cheung	09/09/2020	CORPORATIONS – second appellant was founding director and chief executive officer of first appellant – during course of second appellant’s imprisonment, fourth and fifth respondents were directors of the first appellant – fourth and fifth respondents authorised the transfer of shares in a subsidiary of the first appellant, a rights issue and a special distribution of the monies received from the share transfer – second appellant brought proceedings on behalf of first appellant alleging, inter alia, the fourth and fifth respondents had breached their directors’ duties – primary	ET-China.com International Holdings Ltd v Cheung [2019] NSWSC 1874

				judge found in favour of respondents – whether primary judge erred in finding fourth and fifth respondents had not breached their directors’ duties – whether primary judge failed properly to assess the damage caused to the first appellant by the breaches of directors’ duties – whether primary judge erred in finding fourth and fifth respondents were reliable witnesses – whether primary judge erred in making certain factual findings – whether primary judge failed to address certain of appellants’ submissions and to give sufficient reasons	
62	2019/375018	Superannuation & Corporate Services Pty Ltd v Turner; Turner v Superannuation & Corporate Services Pty Ltd	11/09/2020	CONTRACT – respondent was employee of appellant company – appellant alleged respondent had stolen its intellectual property and confidential information with the intention of misusing it to deal with appellant’s clients – appellant and respondent entered into a deed of settlement and release – appellant brought proceedings seeking to recover the settlement sum – primary judge found in favour of respondent – whether primary judge erred in finding the deed was an unjust contract within the meaning of the Contracts Review Act 1980 (NSW), or otherwise unfair, and should be set aside – whether primary judge’s reasons were inadequate – whether primary judge erred in granting the respondent costs	Decision not available on Caselaw