



## Supreme Court of NSW Court of Appeal

### Decisions Reserved at 2 October 2020

	Number	Case Name	Heard	Issues	Judgment Below
1	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
2	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	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

				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	and others trading as Sparke Helmore Lawyers (No 2) [2019] NSWSC 1438
3	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
4	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 –	Dickson v Northern Lakes Rugby League Sport & Recreational Club Inc & Anor (No 2) [2019] NSWDC 433

				<p>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 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>	
5	2019/301298	Meat Carter Pty Ltd v	04/05/2020	WORKERS COMPENSATION – respondent was paid workers compensation benefits by appellant from 2014 – in 2017,	Melides v Meat Carter Pty Limited [2019]

		Melides		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	NSWWCCPD 48
6	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
7	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

8	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
9	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	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

				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	
10	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
11	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	Mangano v Bullen [2019] NSWSC 1704

				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 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 &amp; 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	
12	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
13	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	White Constructions Pty Ltd v PBS Holdings Pty

				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 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	Ltd [2019] NSWSC 1166
14	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	Capar v SPG Investments Pty Limited t/a Lidcombe Power Centre & Ors (No 5) [2019] NSWSC 507



				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 in making certain factual findings – whether primary judge erred in assessment of damages – whether primary judge failed to give adequate reasons	
15	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 Schemes Management Act 2015 (NSW) to repair and maintain common property	Owners of Strata Plan 80412 v Pullicin [2020] NSWCATAP 5
16	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

17	2020/94599	Massarani v Kriz	02/07/2020	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
18	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 altered the audiogram without having regard to the fact that his client had altered in like manner the client statement	Legal Services Commissioner v Livers [2019] NSWCATOD 180
19	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	Decision not available on Caselaw

				<p>– 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</p>	
20	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
21	2019/370858	Tapp v Australian Bushmen's Campdraft & Rodeo Association Ltd	21/07/2020	<p>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</p>	Tapp v Australian Bushmen’s Campdraft & Rodeo Association Ltd [2019] NSWSC 1506

				<p>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</p>	
22	2019/401378	Agha v Devine Real Estate Concord Pty Ltd	24/07/2020	<p>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 –</p>	<p>Devine Real Estate Concord Pty Ltd v Wajih [2019] NSWSC 786</p>

				whether erred in finding restraint in contract when written contract not available – whether in length of time ordered for restraint	
23	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
24	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	Schlaepfer v ASIC [2019] NSWSC 1644

				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	
25	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
26	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
27	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	Decision not available on Caselaw

				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	
28	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</p>	Yakiti Pty Ltd v MacDonald [2019] NSWSC 1772

				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	
29	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
30	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	Council of the New South Wales Bar Association v DEJ [2019] NSWCATOD 186



				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	
31	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
32	2020/165758	GR Capital Group Pty Ltd (receivers and managers appointed) (subject to a deed of company arrangement) v Xinfeng	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	Xinfeng Australia International Investments Pty Ltd v GR Capital Group Pty Ltd [2020] NSWSC 620

		Australia International Investment Pty Ltd		available - whether denied opportunity to address appropriate access orders	
33	2020/147954	Volonakis v Erceg; Erceg v Volonakis	28/08/2020	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 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	Volonakis & Ors v Erceg & Anor [2019] NSWSC 1875
34	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	Decision not available on Caselaw

				<p>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 – whether primary judge erred in failing to consider applicant’s cooperation with police – whether primary judge erred in not discounting sentence for guilty plea</p>	
35	2019/103863; 2019/170998	Michael Wilson & Partners Ltd v Emmott	31/08/2020	<p>PROCEDURE – security for costs – security for costs ordered by Meagher &amp; 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</p>	Decision not available on Caselaw

				existing freezing orders in other proceedings	
36	2020/19031	Reyson 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 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	Reyson Pty Ltd v Minister Administering the Environment Planning and Assessment Act 1979 [2019] NSWLEC 203
37	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	Theoret v Aces Incorporated [2020] NSWCCPD 18

				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 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	
38	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
39	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 –	Aussie Skips Recycling Pty Ltd v Strathfield Municipal Council [2020] NSWLEC 22

				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	
40	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 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	ET-China.com International Holdings Ltd v Cheung [2019] NSWSC 1874
41	2020/57569	Feldman v Nationwide News Pty Ltd	14/09/2020	DEFAMATION – appellant gave evidence in the Royal Commission into Institutional Responses to Child Sexual Abuse – the respondent newspapers published articles	Feldman v Nationwide News Pty Ltd & Ors; Feldman v Nationwide

				relating to the appellant's evidence – appellant commenced proceedings against the respondents and certain journalists alleging the publications were defamatory – primary judge found in favour of the respondents – whether primary judge erred in admitting into evidence the transcript of the Royal Commission – whether primary judge erred in allowing the defences of justification and fair report – whether primary judge erred in concluding the ordinary reader would understand “wrong” to mean legally wrong rather than morally wrong – whether primary judge erred in refusing to recuse himself – whether primary judge erred in finding certain defamatory imputations were not conveyed on the basis that the ordinary reader would understand there to have been an editing error in one of the articles	News Pty Ltd & Ors; Feldman v Nationwide News Pty Ltd & Ors; Feldman v Special Broadcasting Corporation [2020] NSWSC 26
42	2020/15003	Coffs Harbour City Council v Polglase	17/09/2020	TORTS (other) – fall off jetty through railing – public liability – whether breach of duty of care – effect of design to take into account heritage and aesthetic considerations - whether erred in not finding grandparents of child in breach of duty of care – construction of s5M of Civil Liability Act 2002 – whether sign at entrance provided a risk warning – costs – whether wrong test applied in ordering indemnity costs	Polglase v Coffs Harbour City Council [2019] NSWSC 1848
43	2019/94353; 2019/195328	Council of the New South Wales Bar Association v Siggins; Siggins v Council of the New South Wales	17/09/2020	DISCIPLINARY PROCEEDINGS – respondent held Tasmanian and Queensland barrister's practising certificates – respondent did not hold a NSW barrister's practising certificate – applicant claims respondent's principal place	Decision not available on Caselaw

		Bar Association		of practice was NSW – applicant alleges respondent repeatedly misrepresented his principal place of practice to the Tasmanian Law Society, Queensland Bar Association and NSW Bar Association – applicant alleges respondent failed to comply with statutory obligations as to practising certificates – applicant seeks an order that respondent’s name be removed from the roll or, alternatively, a declaration that respondent is guilty of professional misconduct	
44	2020/113927	Bailey v Win Television NSW Pty Ltd	21/09/2020	DEFAMATION – appellant’s employment with Lithgow City Council was terminated early – first respondent ran a television news item regarding the termination, and the story was thereafter available on the second respondent’s Facebook page – appellant brought defamation proceedings against the respondents – primary judge found in favour of the respondents – whether primary judge erred in finding that none of the imputations sued upon were conveyed to the ordinary reasonable viewer of the matters of which the appellant complained	Bailey v WIN Television NSW Pty Ltd [2020] NSWSC 232
45	2020/166894	Li v Attorney General of NSW	22/09/2020	ADMINISTRATIVE LAW (judicial review) – applicant sentenced in the District Court for knowingly taking part in the supply of a large commercial quantity of a prohibited drug – applicant brought an unsuccessful appeal against sentence – applicant subsequently and unsuccessfully sought an inquiry into his sentence pursuant to the Crimes (Appeal and Review) Act 2001 (NSW) s 78 – applicant sought judicial review of the dismissal of his s 78	R v Li [2020] NSWSC 59



				application, which review was unsuccessful – applicant brought fresh s 78 application before the primary judge – primary judge dismissed the application – whether primary judge constructively failed to exercise his jurisdiction	
46	2020/187160	Cooper v The Owners - Strata Plan No 58068	23/09/2020	ADMINISTRATIVE LAW (other) – whether absolute prohibition on keeping animals within a strata scheme is harsh, oppressive or unconscionable within meaning of ss139 & 150 of Strata Schemes Management Act 2015 (NSW) – whether erred in taking account knowledge of by-law when purchasing apartment	Strata Plan No 58068 v Cooper [2020] NSWCATAP 96
47	2020/98793	GC NSW Pty Ltd v Galati	24/09/2020	CONTRACT – appellants were members of a group of companies involved in the acquisition, subdivision and sale of residential lots – second appellant approached first respondent in relation to the possibility of acquiring her property – it was allegedly agreed that the first respondent would sell her property and that she or her nominees would be given an option to purchase up to five lots in the subdivision – following the sale of first respondent’s property to the first appellant, dispute arose as to whether binding agreement reached as to the repurchase option – respondents commenced proceedings seeking an order that the first appellant exchange contracts for the sale of the five lots – primary judge found in favour of the respondents – whether primary judge erred in holding the agreement was binding, or in doing so for reasons outside the respondents’ pleadings – whether primary judge erred in finding the appellants had admitted the authority of	Galati v GC NSW Pty Ltd [2020] NSWSC 217

				certain persons to contract on their behalf – whether primary judge erred in finding the contract was sufficiently certain – whether primary judge erred in finding that, if the agreement were not binding, the earlier agreements remained on foot and were enforceable – whether primary judge erred in assessing the first respondent’s loss	
48	2020/69978	Price v Price	25/09/2020	COSTS – dispute between former wife of Andrew Price, and his children over power of attorney and guardianship – urgent application by respondents to revoke or restrain use after falling gravely ill – proceedings resolved by consent except as to costs – costs ordered - whether failed to consider that proceedings were in substance protective – where third party appointed independent of the parties - whether resolution was an event so that costs were to follow – whether UCPR 42.1 engaged – whether proceedings were commenced before giving applicant adequate time to give undertakings – where respondents’ urgency of application not demonstrated	Decision not available on Caselaw
49	2019/204489	Sayed v National Australia Bank Limited	29/09/2020	REAL PROPERTY – the appellant and a third party entered into an oral joint venture agreement to develop a property – the property was subject to a watercourse development application – the appellant purchased land from the third party – the purchase price nominated on the contract for sale was \$1,500,000 – the appellant indicated, however, that the “real agreement” between him and the third party was that the appellant would purchase a one-half share in the property for \$500,000 and that the whole of the	National Australia Bank Limited v Sayed [2019] NSWSC 653

				<p>property would be registered in his name to facilitate his borrowing from the respondent bank – respondent undertook a valuation of the property before the loan was granted – property was mortgaged to respondent to secure a loan sum of \$500,000 – appellant became unable to service the loan – respondent appointed a company to exercise its power of sale over property – appellant contacted respondent indicating that he had negotiated a sale of one of the lots of the property – company acting for respondent sought a number of market appraisals and formal valuations of the property – respondent rejected appellant’s proposal for separate sale of one of the lots – discrepancy between various appraisals and valuations – property sold by public tender for \$545,455 – appellant brought proceedings alleging that fair market value for property at time of sale was \$1,430,000 or \$1,050,000 and that the property was sold at an undervalue – appellant sought equitable damages for breach by the respondent of its fiduciary duty as mortgagee in possession – primary judge found in favour of respondent – whether primary judge erred in finding respondent had not breached its fiduciary duty – whether primary judge erred in failing to have regard to certain evidence – whether primary judge erred in making certain factual findings</p>	
50	2020/95724	De Lorenzo v De Lorenzo	29/09/2020	<p>SUCCESSION – construction of will – shares to be distributed amongst three beneficiaries and where shareholding not divisible by three, the excess to be given to a certain beneficiary – where only two shares for</p>	De Lorenzo v De Lorenzo [2019] NSWSC 188

				distribution – whether erred in finding that two shares to be shared as tenants in common of three beneficiaries	
51	2020/172325	Lee Environmental Planning Pty Ltd v Reulie Land Co Pty Ltd	01/10/2020	LAND AND ENVIRONMENT – costs ordered against submitting parties – whether no allegation in pleadings that applicant was in breach of Act – whether evidence available to support findings that actions of applicant contributed to default – whether erred in making costs when errors in primary judgment were drawn to attention of the Court	Reulie Land Co Pty Ltd v Lee Environmental Planning Pty Ltd [2019] NSWLEC 194
52	2020/83815	Stephenson v Santos	02/10/2020	EQUITY – a property was acquired in the appellant’s name – during the term of the appellant’s ownership, respondent lived in the property and contributed to mortgage repayments and other expenses – appellant sold the property – respondent commenced proceedings for a half share in the proceeds of sale alleging she and the appellant had agreed that, by contributing to half of the costs of the property, the respondent would obtain a half interest in the property – primary judge found in favour of respondent – whether primary judge erred in finding there was an agreement as alleged by the respondent – whether primary judge gave insufficient weight to certain factors and failed to consider certain evidence – whether primary judge made findings in the absence of evidence – whether primary judge erred in allowing respondent’s sister to give evidence after objections and not pursuant to leave – whether primary judge’s reasons were inadequate – whether primary judge misapplied the principle from	Santos v Stephenson [2020] NSWSC 90

				Nelson v Nelson (1995) 184 CLR 538 – whether primary judge erred in granting the respondent equitable relief in circumstances where she did not come with clean hands	
53	2020/236073	HDI Global Specialty SE v Wonkana No 3 Pty Ltd	02/10/2020	CONTRACT – insurance – interpretation - whether “declared to be quarantinable diseases under the Australian Quarantine Act 1908” should be read as “ which are listed human diseases under the Biosecurity Act 2015” – whether exclusion clause in insurance policy is enlivened in respect of any of those diseases	Questions referred by Hammerschlag J on 4/9/2020