



Supreme Court of NSW Court of Appeal

Decisions Reserved at 6 November 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	2019/335260	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

10	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 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	Mangano v Bullen [2019] NSWSC 1704
11	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,	Capar v SPG Investments Pty Limited t/a Lidcombe Power Centre & Ors (No

				owner of the premises, second respondent, which provided security services at the premises, and third respondent, appellant's employer – primary judge found in favour of respondents – whether primary judge erred in finding neither first nor second respondent owed appellant a duty to take care not to cause mental harm – whether primary judge erred in characterising nature and extent of duty of care owed by first and second respondents – whether primary judge erred in characterising risk of harm – whether primary judge erred in finding first and second respondents did not breach duty of care – whether primary judge erred in finding 'inherent risk' defence made out – whether primary judge erred in finding third respondent did not breach duty of care – whether primary judge erred in making certain factual findings – whether primary judge erred in assessment of damages – whether primary judge failed to give adequate reasons	5) [2019] NSWSC 507
12	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
13	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	Legal Services Commissioner v Livers [2019] NSWCATOD 180

				<p>professional conduct and professional misconduct – whether Tribunal’s findings were contrary to the evidence – whether Tribunal erred in considering the issue of whether the appellant altered the audiogram in isolation from the issue of whether the appellant misled or attempted to mislead the WorkCover Independent Review Office – whether Tribunal erred in finding the appellant altered the audiogram without having regard to the fact that his client had altered in like manner the client statement</p>	
14	2019/366615	Oikos Constructions Pty Ltd v Oston	11/07/2020	<p>BUILDING & CONSTRUCTION – respondent home owners commenced proceedings against appellant builder for breach of statutory warranties under Pt 2C of the Home Building Act 1989 (NSW) – primary judge found in favour the respondents – whether primary judge misconstrued the scope of works or purpose of the building contract – whether primary judge erred in excluding certain evidence – whether the primary judge erred in granting relief on bases outside the respondents’ pleaded case – whether the primary judge erred in making certain factual findings – whether primary judge erred in failing to reject the respondents’ claim on the basis that the warranty had already been enforced by a settlement reached between the respondents and a third party – whether the primary judge erred in finding the respondents had discharged their onus of proof – whether the primary judge erred in considering that a certain submission was not put by the appellant – whether the primary judge erred in assessing</p>	Decision not available on Caselaw

				damages	
15	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
16	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	Schlaepfer v ASIC [2019] NSWSC 1644

				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	
17	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
18	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
19	2020/4245	MacDonald v Yakiti Pty	12/08/2020	CONTRACT – third party Mr Henley managed a group of companies that operated a number of failing gyms – the	Yakiti Pty Ltd v MacDonald [2019]

		Ltd		<p>appellant was a lawyer working for the group of companies – appellant loaned sums to Mr Henley and borrowed sums from the respondent – the loans from the respondent to the appellant were secured by registered mortgages – the appellant, Mr Henley and two others (one of whom owned and managed the respondent) entered into negotiations to save the gym businesses – appellant was hospitalised during the course of the negotiations and was ultimately excluded from the arrangements – appellant defaulted on her loans and the respondent commenced proceedings against her – appellant cross-claimed alleging that she, Mr Henley and the other two persons had come to an agreement relating to the gyms and her debt was subsumed within that agreement – primary judge found in favour of respondent on its claim and dismissed the appellant’s cross-claim – whether primary judge erred in the weight given to certain conduct of the parties to the alleged agreement – whether primary judge erred in finding the businesses did not have any value – whether the primary judge erred in finding the parties to the alleged agreement did not engage in unconscionable conduct – whether the primary judge erred in granting leave to issue a writ for possession of the mortgaged properties – whether the primary judge erred on question of costs</p>	NSWSC 1772
20	2020/106578	Lawson v Minister for Environment and Water (SA)	18/08/2020	<p>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</p>	Lawson v Minister for Environment and Water [2020] NSWSC 186

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

				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	
22	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 – whether primary judge erred in failing to consider	Decision not available on Caselaw

				applicant's cooperation with police – whether primary judge erred in not discounting sentence for guilty plea	
23	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
24	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 description in s 6(1) – whether primary judge erred in	Reysson Pty Ltd v Minister Administering the Environment Planning and Assessment Act 1979 [2019] NSWLEC 203

				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	
25	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 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	Theoret v Aces Incorporated [2020] NSWCCPD 18
26	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	Aussie Skips Recycling Pty Ltd v Strathfield Municipal Council [2020] NSWLEC 22

				<p>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</p>	
27	2020/65494	ET-China.com International Holdings Ltd v Cheung	09/09/2020	<p>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</p>	ET-China.com International Holdings Ltd v Cheung [2019] NSWSC 1874

				failed to address certain of appellants' submissions and to give sufficient reasons	
28	2019/94353; 2019/195328	Council of the New South Wales Bar Association v Siggins; Siggins v Council of the New South Wales Bar Association	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 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	Decision not available on Caselaw
29	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
30	2020/166894	Li v Attorney General of	22/09/2020	ADMINISTRATIVE LAW (judicial review) – applicant sentenced in the District Court for knowingly taking part in	R v Li [2020] NSWSC 59

		NSW		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 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	
31	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 certain persons to contract on their behalf – whether	Galati v GC NSW Pty Ltd [2020] NSWSC 217

				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	
32	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
33	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 property would be registered in his name to facilitate his	National Australia Bank Limited v Sayed [2019] NSWSC 653

				<p>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>	
34	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 distribution – whether erred in finding that two shares to</p>	De Lorenzo v De Lorenzo [2019] NSWSC 188

				be shared as tenants in common of three beneficiaries	
35	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
36	2019/212257	Makaroff v Nepean Blue Mountains Local Health District	06/10/2020	TORTS (negligence) – appellant sustained a serious injury to her shoulder while feeding her horses – appellant taken to Hawkesbury Hospital where her shoulder was relocated to its socket and then to Nepean Hospital for plastic surgery for horse bite – after her discharge from Nepean Hospital, appellant consulted second respondent (her longstanding GP) – appellant suffered permanent disability in her arm – appellant brought proceedings against first respondent alleging Nepean Hospital was negligent in failing to refer her to an appropriate orthopaedic surgeon and to impress upon her the urgency with which she needed to see an orthopaedic surgeon – appellant brought proceedings against second respondent alleging negligence in failing to adequately test, refer for treatment or advise appellant in relation to her shoulder injury – primary judge found in favour of both respondents – whether primary judge erred in accepting and rejecting certain evidence – whether primary judge erred in determining that certain breaches of duty of care not made out against first respondent – whether primary judge erred in making	Makaroff v Nepean Blue Mountains Local Health District [2019] NSWSC 715

				certain factual findings – whether primary judge erred in finding causation not made out – whether primary judge erred in apportionment of liability for contributory negligence	
37	2020/57328	Super Vision Resources Ltd BVI Registered No 1810534 v AC Holdings Co Pty Ltd	08/10/2020	REAL PROPERTY – third respondent sold two properties to the first respondent – second respondent was sole director and shareholder of the first respondent – appellant was prospective creditor of third respondent and commenced proceedings seeking declarations pursuant to s 37A of the Conveyancing Act 1919 (NSW) that the sales were void for being alienations made with the intent to defraud creditors – primary judge found in favour of respondents – whether primary judge erred in failing to find that the appellant was a person prejudiced within the meaning of s 37A – whether primary judge erred in finding the properties were fully encumbered by pre-existing mortgages – whether primary judge erred in treatment of certain evidence – whether primary judge reversed the onus of proof under s 37A – whether primary judge erred in interpreting, and failing to find, “notice” for the purposes of s 37A – whether primary judge erred in finding the first respondent was a purchaser in good faith and without notice of intent to defraud purchasers	Super Vision Resources Ltd v AC Holdings Co Pty Ltd [2020] NSWSC 65
38	2020/118255	Aardwolf Industries LLC v Tayeh	13/10/2020	CORPORATIONS – leave to sue court appointed liquidators – directors do not inform liquidator that trademarks rights abandoned - trademarks assigned to petitioning creditor and applicant’s competitor – where alleged that director	Aardwolf Industries LLC v Tayeh [2020] NSWSC 299

				accused of 'phoenixing' - whether duty of care – whether vulnerability is a necessary requirement for existence of a duty of care to avoid economic loss – whether erred that liquidator's conduct was no more than a performance of their statutory power under Part 5.3A of Corporations Act 2001 (Cth) – whether failed to consider critical part of applicant's case that liquidators representations were misleading or deceptive conduct	
39	2020/157894	Chief Commissioner of State Revenue v Benidorm Pty Ltd	14/10/2020	TAX – respondent held a penthouse apartment on Macquarie Street, Sydney, on trust for the deceased – respondent (as trustee) and third party (as beneficiary) executed a deed declaring that, in consequence of the deceased's death and pursuant to the terms of the deceased's will, respondent held the apartment on trust for the third party on the same terms as it had for the deceased – appellant assessed the deed for ad valorem duty – respondent objected to the assessment, which objection was partially disallowed – respondent commenced proceedings seeking review of the assessment – primary judge found in favour of respondent – whether primary judge erred in finding the declaration was not a "declaration of trust" within the meaning of s 8(3) of the Duties Act 1997 (NSW) – whether primary judge erred in finding the declaration merely acknowledged the already existing position – whether primary judge erred in finding "declaration of trust" within the meaning of the subsection did not capture mere acknowledgments of existing trusts – whether primary judge erred in failing to find that the	Benidorm Pty Ltd v Chief Commissioner of State Revenue [2020] NSWSC 471

				declaration concerned the third party as beneficiary under the deceased's will, rather than as executor	
40	2020/240881	Wany v Director of Public Prosecutions NSW	15/10/2020	ADMINISTRATIVE LAW (judicial review) – applicant was driving a vessel when it collided with a port marker – the applicant and the two passengers on the vessel were injured – applicant pleaded guilty in the Local Court to operating a vessel at speed causing grievous bodily harm and operating an unregistered vessel contrary to the Marine Safety Act 1998 (NSW) – applicant sentenced	Lower court decision not available on Caselaw
41	2020/188413	SafeWork NSW v BOC Limited	16/10/2020	ADMINISTRATIVE LAW (judicial review) – first respondent carried out works installing and testing and commissioning medical gas outlets at Bankstown Lidcombe Hospital – subsequently, two babies operated on at the Hospital were administered medical nitrous oxide thought to be medical oxygen – appellant brought criminal proceedings against first respondent alleging it had failed to comply with a health and safety duty and had thereby exposed a person to risk of death or serious injury, contrary to s 32 of the Work Health and Safety Act 2011 (NSW) – primary judge found first respondent not guilty – whether primary judge erred in failing to consider or deal with the installation work, in addition to the testing and commissioning work – whether primary judge erred in finding the first respondent's test certificates constituted a Safe Work Method Statement for the installation work – whether primary judge erred in finding the first respondent had performed a risk assessment – whether primary judge	SafeWork NSW v BOC Limited [2020] NSWDC 156

				erred in significance given to the falsification of testing certificates by certain third parties – whether primary judge failed properly to apply the Act	
42	2020/147838	Rahman v Al-Maharmeh	20/10/2020	MOTOR ACCIDENTS – appellant was injured in a motor vehicle accident with the respondent on 30 November 2014 – a Claims Assessment Review Service application was made on 30 November 2017 (the date on which, but for the application, the appellant’s claim would be barred under s 109 of the Motor Accidents Compensation Act 1999 (NSW)) – appellant was dissatisfied with the CARS award but only commenced proceedings after the expiry of the extended limitation period – appellant sought leave to maintain her action – primary judge denied the appellant leave – whether primary judge erred in finding the appellant had not provided a full and satisfactory explanation for the delay – whether primary judge erred in not allowing and otherwise rejecting certain evidence – whether primary judge erred by failing to take the appellant’s case at its highest when assessing whether the claim met the monetary threshold under s 109	Samar Abdul Rahman v Sarah Al-Maharmeh [2020] NSWDC 129
43	2020/71539	Roude v Helwani	21/10/2020	BUILDING & CONSTRUCTION – respondent carried out plumbing and electrical works on appellants’ property – respondent brought claim in quantum meruit in the Local Court – Local Court allowed the claim and appellants appealed – primary judge found in favour of respondent – whether primary judge erred in finding there was evidence of the fair and reasonable market rate for the work	Roude v Helwani [2020] NSWSC 123

				performed – whether primary judge erred in making a finding as to the amount payable on a quantum meruit basis in circumstances where there was no evidence of the fair and reasonable market rate – whether primary judge erred in finding the respondent had discharged his burden of proof –whether primary judge erred by distinguishing Horley v Sector 7G Architecture Pty Ltd (in liquidation) [2011] NSWSC 827	
44	2019/232687	Guan v Lui	22/10/2020	CONTRACT – appellant entered into agreement with respondent, the appellant acting on behalf of herself and ostensibly a third party company of which she was a director – agreement provided that respondent would locate suitable investors and developers to take over a project – under the agreement, following a successful bid for the project, respondent would receive a Rolls Royce Phantom along with an amount equal to 2% of the total bidding figure of the successful bid – respondent commenced proceedings against appellant and the company seeking damages for breach of contract – primary judge found in favour of respondent – whether primary judge erred in failing to find that s 8(2) of the Property, Stock and Business Agents Act 2002 (NSW) precluded the respondent’s claim	Lui v Guan; Sun Link Group Pty Ltd v Lui [2019] NSWSC 803 Lui v Guan; Sun Link Group Pty Ltd v Lui (No 2) [2020] NSWSC 398
45	2020/193035	Miles v Coulthurst	23/10/2020	TORTS (neg) – lifting and installation of horizontal steel beam for sliding door by excavator – beam dislodged and injured respondent- whether reasonable plant operator would executed the manoeuvre by use of the quick release	Coulthurst v Miles [2020] NSWSC 599

				mechanism – findings – whether evidence supported finding that appellant unfamiliar with mechanism – whether boom was fully withdrawn at time and could not be moved – whether lowering beam caused the beam to move laterally to respondent – contributory negligence	
46	2020/71992	Omayya Investments Pty Ltd v Dean Street Holdings Pty Ltd	26/10/2020	LAND & ENVIRONMENT – first appellant owned land adjoining a construction site in Burwood, which land was later acquired by the second appellant – first respondent was registered proprietor of construction site – second respondent was the contractor carrying out the works on the site and third respondent owned other land adjoining the construction site – the fourth and fifth respondents were the principal certifying authority and consent authority, respectively – appellants commenced civil enforcement proceedings against respondents alleging that the work carried out at the site was unlawful – primary judge found principally in favour of respondents – whether primary judge erred in finding that a construction certificate issued by the fourth respondent had been modified – whether primary judge erred in finding certain engineering plans were first stamped on or about a particular date – whether primary judge erred in finding appellants had not discharged their onus of establishing certain piling and shoring works were carried out between particular dates	Omayya Investments Pty Limited v Dean Street Holdings Pty Limited (No 5) [2020] NSWLEC 9
47	2020/138068	Manly Fast Ferry Pty Ltd v Wehbe	28/10/2020	TORTS (negligence) – respondent sustained a knee injury when the appellant’s ferry on which he was travelling	Wehbe v Manly Fast Ferry Pty Ltd [2020]

				collided at speed with a wharf at Manly – respondent commenced negligence proceedings against appellant – appellant conceded breach of duty of care – primary judge awarded respondent \$426,600.15 in damages – whether appellant was denied procedural fairness – whether primary judge erred in certain findings as to the extent of the respondent’s injury – whether primary judge erred in rejecting certain expert evidence – whether primary judge erred in allowing damages for commercial domestic assistance	NSWDC 155
48	2020/261304	MTR Corporation (Sydney) NRT Pty Ltd v Thales Australia Limited	29/10/2020	CONTRACT – validity of determination under Building and Construction Industry Security of Payment Act 1999 (NSW) - separate question – whether the adjudicator had erred in considering a basis for the claim which was not advanced in the payment claim or adjudication claim – procedural fairness	MTR Corporation (Sydney) NRT Pty Ltd v Thales Australia Ltd [2020] NSWSC 1147
49	2020/199551	Ippin Textiles Pty Ltd v Winay Aust Pty Ltd	29/10/2020	REAL PROPERTY – separate question on whether registered mortgage secured no money – registration of mortgage after Scott Chan had altered ASIC register to give the appearance that he was the sole director and shareholder of first respondent – where applicant mortgagee registered mortgage without knowledge of Chan’s fraud – whether monies provided to Chan constituted an amount advanced to the first respondent	Winau Aust Pty Ltd v LCC Property Development Pty Ltd [2020] NSWSC 434 Winau Aust Pty Ltd v LCC Property Development Pty Ltd (No 2) [2020] NSWSC 586

50	2020/153031	Hassan v Sydney Local Area Health District	30/10/2020	PROCEDURE – review under s46(4) of Supreme Court Act 1970 of Gleeson JA – whether erred in not allowing issuing of subpoena for appeal – whether Gleeson JA and Fagan J ought to be referred to Commonwealth Parliament for misconduct – procedural fairness - failure to read affidavits	Lower court decision not available on Caselaw
51	2020/152628	Wormald v Maradaca Pty Ltd	02/11/2020	TRADE PRACTICES – second appellant and third and fourth respondent sellers sold shares to the first respondent buyer – buyer assigned its rights under the share sale agreement to second respondent – buyer and assignee contended that the sellers and first appellant (principal of the second appellant) had, by failing to disclose material facts, induced them to acquire the shares and that this constituted misleading or deceptive conduct in contravention of s 18 of the Australian Consumer Law – primary judge found in favour of the buyer and assignee – whether primary judge erred in finding there had been misleading or deceptive conduct – whether primary judge erred in finding that the failure to disclose induced the buyer and assignee to acquire the shares – whether primary judge erred in failing to reduce the award under s 236 of the ACL pursuant to s 137B of the Competition and Consumer Act 2010 (Cth) – whether primary judge erred in assessing damages – whether primary judge erred in apportioning liability equally between each of the sellers and first appellant – whether primary judge erred in finding there had been a breach of warranty or alternatively in failing to find that any claim for the same was time barred	Barrett v Maradaca Pty Ltd [2020] NSWSC 440

52	2020/163188	James Adam Pty Ltd v Fobeza Pty Ltd	04/11/2020	<p>CONTRACT – first respondent as purchaser and appellant as vendor contracted for the sale of a proposed lot in plan of subdivision near Cowra, NSW – the area of the lot was affected by the area of another proposed lot – contract gave first respondent the right to rescind if area of the other lot was greater than 2100m² – first respondent purported to rescind and appellant disputed the rescission – primary judge found in favour of the first respondent – whether primary judge erred by failing to find that the contract properly construed nominated 2205m² as the area of the other lot, or alternatively that the contract was liable to “common law rectification” to that effect – whether primary judge erred in identifying the factual context for the purposes of construing the contract – whether primary judge applied the wrong test to the issue of rectification – whether primary judge erred in failing to find that the objective intention of the parties was that the right of rescission would not arise if the area of the sketch plan did not change, or alternatively did not change by more than 5%</p>	Fobeza Pty Ltd v James Adam Pty Ltd [2020] NSWSC 597
53	2020/101444	Saad v Volvo Finance Australia Pty Ltd	04/11/2020	<p>TORTS (other) – commercial trucking company was in default under chattel mortgages over five trucks and associated trailers entered into with the respondent – respondent’s security interests were registered on the Personal Property Securities Register and respondent had given notice of default – subsequently, on 22 December 2017, vehicles were delivered to a repair and maintenance service, of which appellant was the principal – vehicles</p>	Volvo Finance Australia Pty Limited v Waterfront Enterprises Pty. Ltd. (in liq) (No 2) [2020] NSWSC 262

				<p>then disappeared, and were only recovered by the respondent between November 2018 and November 2019 – respondent commenced proceedings against the appellant in conversion and detinue – primary judge found in favour of respondent – whether primary judge erred in finding appellant had possession, control or dominion over four of the vehicles after 22 December 2017 – whether primary judge erred in finding the appellant was personally liable for the respondent’s loss</p>	
54	2020/92075	Metlife Insurance Ltd v Sandstrom	06/11/2020	<p>INSURANCE – following the fatal shooting of her colleague, respondent police officer was placed on sick leave and never returned to active duties – respondent was subsequently medically discharged from the NSW Police Force due to psychological symptoms – respondent brought a claim against the appellant seeking insurance benefits for total and permanent disability – the claim was founded on post-traumatic stress disorder and related psychological conditions which the respondent contended were consequent upon her exposure to confronting subject matter throughout the period of her service – appellant denied her claim and respondent commenced proceedings against the insurer – primary judge found in favour of respondent – whether primary judge erred by undertaking an unduly rigorous and technical analysis of the appellant’s decision letter – whether primary judge erred in failing to find that the appellant’s decision was open to it – whether primary judge erred in treatment and interpretation of various expert evidence – whether primary judge</p>	<p>Sandstrom v FSS Trustee Corporation & Anor [2020] NSWSC 200</p>

				misallocated the onus of proof – whether primary judge erred in findings as to the respondent's impairment, her limited prospects of improvement and the types of work in which she might be able to engage	
--	--	--	--	---	--