



Supreme Court of NSW Court of Appeal

Decisions Reserved at 4 December 2020

	Number	Case Name	Heard	Issues	Judgment Below
1	2019/333199	Australian Executor Trustees (SA) Limited v Kerr	03/04/2020	EQUITY – appellant was trustee for respondent members of forestry scheme – appellant consented to the sale of trees and land and the discharge of the respondent’s security without receiving proceeds of sale and procuring alternative security – first respondent, as special purpose trustee for other members, brought proceedings against appellant for breach of trust – appellant conceded breach and primary judge found breach caused damage and that appellant was unable to rely on legal advice it received in relation to sale – whether primary judge erred in allocating the onus of proving causation – whether primary judge erred in certain findings on causation – whether primary judge erred in failing to make certain factual findings about the legal advice – whether primary judge erred in finding appellant was unable to rely on advice – whether primary judge erred in finding the encumbrances were trust property – whether primary judge erred in finding South	Kerr v Australian Executor Trustees (SA) Ltd; Australian Executor Trustees (SA) Ltd v Fuller and others trading as Sparke Helmore Lawyers [2019] NSWSC 1279; Kerr v Australian Executor Trustees (SA) Ltd; Australian Executor Trustees (SA) Ltd v Fuller and others trading as Sparke Helmore Lawyers (No 2) [2019] NSWSC 1438

				Australian apportionment legislation, and not New South Wales apportionment legislation, applied to the respondent's claims	
2	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
3	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

4	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
5	2019/159993	Capar v SPG Investments Pty Ltd	10/06/2020	TORTS (negligence) – appellant, a security guard at commercial premises, pursued an intruder on the premises – intruder threatened appellant with death – appellant brought proceedings in negligence against first respondent, owner of the premises, second respondent, which provided security services at the premises, and third respondent, appellant’s employer – primary judge found in favour of respondents – whether primary judge erred in finding neither first nor second respondent owed appellant a duty to take care not to cause mental harm – whether primary judge erred in characterising nature and extent of duty of care owed by first and second respondents – whether primary judge erred in characterising risk of harm – whether primary judge erred in finding first and second respondents did not breach duty of care – whether primary	Capar v SPG Investments Pty Limited t/a Lidcombe Power Centre & Ors (No 5) [2019] NSWSC 507

				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	
6	2019/366615	Oikos Constructions Pty Ltd v Oston	11/07/2020	BUILDING & CONSTRUCTION – respondent home owners commenced proceedings against appellant builder for breach of statutory warranties under Pt 2C of the Home Building Act 1989 (NSW) – primary judge found in favour the respondents – whether primary judge misconstrued the scope of works or purpose of the building contract – whether primary judge erred in excluding certain evidence – whether the primary judge erred in granting relief on bases outside the respondents' pleaded case – whether the primary judge erred in making certain factual findings – whether primary judge erred in failing to reject the respondents' claim on the basis that the warranty had already been enforced by a settlement reached between the respondents and a third party – whether the primary judge erred in finding the respondents had discharged their onus of proof – whether the primary judge erred in considering that a certain submission was not put by the appellant – whether the primary judge erred in assessing damages	Decision not available on Caselaw

7	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 – whether erred in finding restraint in contract when written contract not available – whether in length of time ordered for restraint</p>	Devine Real Estate Concord Pty Ltd v Wajih [2019] NSWSC 786
8	2019/383494	Schlaepfer v Australian Securities and Investments Commission	29/07/2020	<p>DEFAMATION – second respondent was an officer of the first respondent – statements were allegedly made by second respondent to certain stockbrokers about the conduct of the appellant and his day trading business – appellant brought proceedings against the respondents for defamation and injurious falsehood – primary judge found in favour of respondents – whether primary judge erred in failing to find that respondents published defamatory material – whether primary judge erred in finding that the appellant was not identified by one or more recipients of the relevant publications – whether the primary judge erred in failing to find that the relevant publications conveyed the imputations alleged – whether the primary judge erred in considering whether the imputations would be conveyed to the particular listeners rather than to the ordinary reasonable listener – whether the primary judge</p>	Schlaepfer v ASIC [2019] NSWSC 1644

				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	
9	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
10	2020/4245	MacDonald v Yakiti Pty Ltd	12/08/2020	CONTRACT – third party Mr Henley managed a group of companies that operated a number of failing gyms – the appellant was a lawyer working for the group of companies – appellant loaned sums to Mr Henley and borrowed sums from the respondent – the loans from the respondent to the appellant were secured by registered mortgages – the appellant, Mr Henley and two others (one of whom owned and managed the respondent) entered into negotiations to save the gym businesses – appellant was hospitalised during the course of the negotiations and was ultimately excluded from the arrangements – appellant defaulted on	Yakiti Pty Ltd v MacDonald [2019] NSWSC 1772

				<p>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>	
11	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 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</p>	Lawson v Minister for Environment and Water [2020] NSWSC 186

				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	
12	2020/16869	DEJ (a pseudonym) v Council of the NSW Bar Association	20/08/2020	DISCIPLINARY PROCEEDINGS – respondent was found guilty of professional misconduct for, inter alia, failing to comply with conditions placed on his practising certificates in relation to his ongoing failure to meet his income tax obligations – Civil and Administrative Tribunal ordered that the appellant’s name be removed from the roll – whether Tribunal erred in finding appellant did not have a “reasonable excuse” for contravening the conditions attaching to his practising certificate – whether the Tribunal erred in making or failing to make certain findings regarding the appellant’s psychiatric condition – whether the Tribunal erred in finding the appellant knowingly swore a false affidavit regarding the transfer of a one-half interest in a property to his wife – whether the primary judge erred in finding the appellant’s conduct warranted the removal of his name from the roll	Council of the New South Wales Bar Association v DEJ [2019] NSWCATOD 186
13	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	Decision not available on Caselaw

				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	
14	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
15	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	ET-China.com International Holdings Ltd v Cheung [2019] NSWSC 1874

				<p>– 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</p>	
16	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	<p>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</p>	Decision not available on Caselaw

17	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
18	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 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	National Australia Bank Limited v Sayed [2019] NSWSC 653

				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	
19	2020/95724	De Lorenzo v De Lorenzo	29/09/2020	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 be shared as tenants in common of three beneficiaries	De Lorenzo v De Lorenzo [2019] NSWSC 188
20	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	Makaroff v Nepean Blue Mountains Local Health District [2019] NSWSC 715

				<p>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 certain factual findings – whether primary judge erred in finding causation not made out – whether primary judge erred in apportionment of liability for contributory negligence</p>	
21	2020/147838	Rahman v Al-Maharmeh	20/10/2020	<p>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</p>	<p>Samar Abdul Rahman v Sarah Al-Maharmeh [2020] NSWDC 129</p>

				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	
22	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
23	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	Omayya Investments Pty Limited v Dean Street Holdings Pty Limited (No 5) [2020] NSWLEC 9

				<p>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</p>	
24	2020/138068	Manly Fast Ferry Pty Ltd v Wehbe	28/10/2020	<p>TORTS (negligence) – respondent sustained a knee injury when the appellant’s ferry on which he was travelling 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</p>	<p>Wehbe v Manly Fast Ferry Pty Ltd [2020] NSWDC 155</p>

25	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
26	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
27	2020/92075	Metlife Insurance Ltd v Sandstrom	06/11/2020	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	Sandstrom v FSS Trustee Corporation & Anor [2020] NSWSC 200

				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 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	
28	2020/133642	Zeko v Richards Contracting Co Pty Ltd	12/11/2020	CORPORATIONS – reinstatement of company’s registration cancelled under s308 of Companies Act 1961 – reinstatement for the purposes of proceedings in Dust Diseases Tribunal – whether repeal of Corporations (New South Wales) Act prevents reinstatement	Questions referred by Black J on 2/10/2020
29	2020/149995	TR v Attorney General of New South Wales	12/11/2020	ADMINISTRATIVE LAW (other) – appeal from Local Court to Supreme Court - applicant is an Aboriginal female aged 15 – applicant strip searched and filmed – footage to be used in criminal proceedings in Children’s Court – application before Magistrate for change of venue for a female Magistrate to sit – application to exclude men from courtroom – whether erred in holding that lower Court had no power – whether Magistrate’s refusal an interlocutory order	TR v Constable Cox [2020] NSWSC 389
30	2020/7219	Johnson v Mackinnon	12/11/2020	TRADE PRACTICES – appellant was partner in fraudulent gambling scheme – respondent brought representative	Mackinnon as plaintiff representative of 153

				<p>proceedings on behalf of 153 group members who invested in the scheme, alleging misleading or deceptive conduct – primary judge found in favour of respondent – whether appellant was denied procedural fairness – whether primary judge erred in making certain findings of fact – whether primary judge erred in identifying the material issues between the parties – whether primary judge misapplied legal principle in finding that the appellant’s silence was misleading or deceptive – whether primary judge erred in finding the respondent relied upon a representation by silence made by the appellant – whether primary judge erred in finding the appellant’s misleading or deceptive conduct caused the respondent’s loss – whether primary judge erred by failing to take into account monies recovered by the respondent prior to judgment – whether primary judge erred in failing to apply ss 34 and 35 of the Civil Liability Act 2002 (NSW) – whether primary judge intervened unduly in the hearing</p>	<p>plaintiff group members v Partnership of Larter, Jones, Miraleste Pty Ltd t/as USG Partner and Johnson, t/as “STC Sports Trading Club” (No 7) [2019] NSWSC 103</p> <p>Mackinnon as plaintiff representative of 153 plaintiff group members v Partnership of Larter, Jones, Miraleste Pty Ltd t/as USG Partner and Johnson, t/as “STC Sports Trading Club” (No 8) [2019] NSWSC 1658</p>
31	2020/12872	Young v The Royal Society for the Prevention of Cruelty to Animal, New South Wales	13/11/2020	<p>TORTS (other) – malicious prosecution – appellant brought claim for malicious prosecution against RSPCA and second respondent, who was the prosecutor who laid charges against appellant pursuant to ss 5 and 6 of the Prevention of Cruelty to Animals Act 1979 NSW) – conviction and fine were dismissed on appeal pursuant to s 32 of the Mental Health (Forensic Provisions) Act 1990 (NSW) – appellant submitted that this amounted to an acquittal – respondents argued that the appellant did not obtain a successful termination of the prosecution and thus this</p>	<p>Young v RSPCA NSW (No. 2) [2019] NSWDC 754</p>

				<p>element of his claim for malicious prosecution must fail – primary judge found in favour of the respondents – whether the primary judge erred in holding that a dismissal under s 32 of the Mental Health (Forensic Provisions) Act was not a proceeding terminated in favour of the plaintiff to constitute a valid element in a cause of action for malicious prosecution – whether primary judge refused discovery to the appellant and whether this amounted to a denial of a fair hearing</p>	
32	2020/208304	Coleman v Health Care Complaints Commission of NSW	17/11/2020	<p>DISCIPLINARY – refusal of stay of pending disciplinary proceedings in Tribunal – stay of proceedings pending resolution of criminal proceedings involving patients – whether criminal proceedings are resolved – whether finding that Patient B not included on indictment supported by evidence – whether erred in not considering the prospect of evidence overlapping between these proceedings and the criminal proceedings</p>	Health Care Complaints Commission v Coleman [2020] NSWCATOD 47
33	2020/197106	Almona Pty Ltd v Parklea Corporation Pty Limited	19/11/2020	<p>REAL PROPERTY – appellant was registered proprietor of land in Parklea, NSW, which title was subject to a registered mortgage – appellant defaulted and land was sold to the first respondent by the mortgagee in possession – first respondent became registered proprietor – first respondent granted securities to the second respondent to secure its obligations to a third party financier of the purchase – appellant commenced proceedings seeking to have the transfer set aside on the basis of fraud – primary judge refused to set aside the transfer – whether primary</p>	Almona Pty Ltd v Parklea Corporation Pty Ltd [2019] NSWSC 1868; Almona Pty Ltd v Parklea Corporation Pty Ltd (No 4) [2020] NSWSC 553

				<p>judge erred in failing to consider the conduct of the mortgagee in exercising its power of sale holistically, rather than as a series of isolated acts – whether primary judge erred in failing to find the primary purpose of the exercise of the power of sale was to obtain a substantial interest in land, rather than to recover under the mortgage – whether primary judge erred in findings as to the evidentiary burdens of the mortgagee and first respondent – whether primary judge erred in failing to find that the mortgagee’s fraud was sufficient to render the registration of the first respondent as proprietor defeasible – whether primary judge erred by misunderstanding the inquiry mandated by ss 42, 45 and 118 of the Real Property Act 1900 (NSW) – whether primary judge erred in construing the contract for sale – whether primary judge erred in precluding the appellant from pursuing a claim of collusion – whether primary judge erred in finding second respondent obtained an absolute interest in the land, and for valuable consideration – whether primary judge erred on question of costs</p>	
34	2020/152970	Pittmore Pty Ltd v Chan	19/11/2020	<p>CONTRACT – sale of property arising under first joint venture deed - damages arising from breach of contract and breach of fiduciary duty – whether second joint venture deed superseded first joint venture deed - whether correct to find implicit condition precedent to second joint venture coming into effect – whether correct in striking out certain words in the second joint venture deed by way of rectification – whether second joint</p>	Chan v Tan [2020] NSWSC 428

				venture agreement ought to bear its nature meaning	
35	2019/323678	Baba v Sheehan	20/11/2020	EQUITY – first respondent and appellant’s husband were two of three founders of an optometry business – business conducted through a unit trust – units in the trust owned by appellant, second respondent and another company – second respondent company controlled by first respondent – third respondent company, owned and directed by the founders, was trustee of the trust – first respondent, concerned that he was being excluded from the business’ management, purported to exercise his power under the trust deed to appoint the fourth respondent as a new trustee – fourth respondent owned and directed by first respondent and his wife – first respondent caused fourth respondent to take control of the business – appellant unit holder brought proceedings challenging validity of fourth respondent’s appointment and seeking that a receiver be appointed to the trust and the business be wound up – fourth respondent cross-claimed seeking monies allegedly overpaid to various persons including the appellant – primary judge found in favour of the fourth respondent on both claims – whether primary judge erred in failing to find oppression to the unit holders sufficient to grant the relief sought by the appellant – whether primary judge failed to take into account certain evidence	Baba v Sheehan [2019] NSWSC 1281
36	2020/112258	Baba v Sheehan	20/11/2020	INSURANCE – in August 2015, the appellant’s home insurance policy with the respondent became active – in September 2015, the appellant’s home was severely	Worth v International Insurance Company of Hannover SE [2020]

				<p>damaged in a fire – appellant made a claim under the insurance policy while the fire was being investigated by the NSW Police Force and Fire & Rescue NSW – while the investigation was underway, appellant and respondent entered into a deed providing for the respondent to grant “conditional indemnity” pending the outcome of the investigation – police concluded the fire had been deliberately lit and no further payments were made by the respondent – appellant commenced proceedings against the respondent seeking payment under the deed or the policy – whether primary judge erred in finding the appellant deliberately lit the fire – whether primary judge erred in finding the appellant had a motive for committing insurance fraud – whether primary judge’s reasons were inadequate – whether primary judge erred in making or failing to make certain findings of fact – whether primary judge erred in failing to consider certain evidence – whether primary judge erred in failing to accept the appellant as a witness of truth – whether primary judge erred in failing to award the appellant damages – whether primary judge erred on issue of costs</p>	NSWSC 249
37	2020/240464	Burton v Babb	24/11/2020	<p>PROCEDURE – claim for malicious prosecution brought against Director of Public Prosecution and Secretary of Department of Communities and Justice – claim named them personally rather than using than the name of the office held – primary Court substituted State of New South Wales for both defendants – whether s8 of Law Reform Vicarious Liability Act 1983 permitted that substitution –</p>	Lower court decision not available on Caselaw

				whether erred in not permitting trial by jury	
38	2020/99712	Jagatramka v Wollongong Coal Ltd	25/11/2020	CORPORATIONS – appellants were former directors of respondent – respondent commenced proceedings against appellants alleging breach of directors’ duties in connection with the respondent’s purchase of and development at a Wollongong property, at which the appellants subsequently resided rent free – primary judge found in favour of respondent – whether primary judge erred in finding that the appellants voted in a resolution for an improper purpose – whether primary judge erred in making various factual findings – whether primary judge erred in finding appellants breached their directors’ duties – whether primary judge erred in holding that the decision in Brickenden v London Loan & Savings Co [1934] 3 DLR 465 precluded consideration of a counterfactual where the appellants disclosed their interests – whether primary judge erred in allocating the burden of proof, or otherwise finding the appellants had not discharged it – whether primary judge erred in treatment of certain evidence – whether primary judge erred in findings as to causation of loss	Wollongong Coal Ltd v Gujarat NRE Properties Pty Ltd [2020] NSWSC 25
39	2020/248350	Sidoti v Hardy	25/11/2020	REAL PROPERTY – dispute over ownership of a 3.35 square metre piece of former “dunny lane” land in Redfern, passing over rear of first respondent’s property adjoining the appellant’s property – land in dispute previously enabled the “dunny man” to collect waste from brick outhouses – land was included on first appellant’s title	Hardy v Sidoti [2020] NSWSC 1057

				<p>when he purchased his terrace property in April 2018 – respondent claimed that he acquired legal title to land by adverse possession – primary judge found in favour of respondent – whether primary judge erred in holding that the Real Property Act 1900 (NSW) did not apply to the land in dispute – whether primary judge erred in holding that by reason of ss 28U(2) and 45C(2) of the Act, the respondent’s claim to possessory title to the land was not subject to the prohibition in s 45C(1) of the Act – whether primary judge erred in holding that respondent was able to acquire possessory title to land at common law – whether primary judge erred in holding that inclusion of the land in the deposit plan in limited folio for first appellant’s property was incorrect by a wrong description of boundaries for the purposes of s 28U(2) of the Act – whether primary judge erred in holding that inclusion of the land in the limited folio of the first appellant’s property did not engage the indefeasibility provisions of the Act to defeat the respondent’s possessory interest – whether primary judge erred in failing to reject the respondent’s claim to possessory title of the land because it was not the whole of a lot or portion in a current registered plan, pursuant to s 45D of the Act and s 23F of the Conveyancing Act 1919 (NSW) – whether primary judge erred in holding that the respondent’s possessory title to the land continued undisturbed notwithstanding transfer of the relevant property to the appellant</p>	
--	--	--	--	--	--

40	2020/182084	Fuller v Albert	30/11/2020	<p>CONTRACT – third respondent is a company which is the registered proprietor of property situated in Moonee Beach NSW comprising undeveloped land – both appellant and first respondent were directors of third respondent – appellant alleged he entered into agreement with first respondent that each would acquire one residential building site from third respondent, and would subdivide two blocks in relation to the land at Moonee Beach – first and second respondent entered into deed of loan with appellant for \$170,000, with one ordinary share in third respondent provided as security to second respondent in case of loan default by appellant – appellant sought declaration that agreement with first respondent was valid and enforceable – appellant sought declaration that second respondent held one ordinary share in third respondent on trust for benefit of appellant, or alternatively as mortgagee subject to an equity of redemption – primary judge found in favour of respondents – whether primary judge erred in finding that appellant was not entitled to redeem the share, despite finding that share transfer to second respondent was in the nature of a mortgage and the provisions for sale of that share was a remedy for default under the loan agreement – whether primary judge erred in finding that the parties’ bargain contemplated transfer of share to second respondent on default under loan – whether primary judge erred in finding that delay in repayment of loan was a factor in refusing equity – whether primary judge erred in confining the agreement between the parties to only a</p>	<p>In the matter of Matcove Pty Limited [2020] NSWSC 625</p>
----	-------------	-----------------	------------	--	--

				written agreement – whether primary judge erred in concluding that specific evidence did not give rise to any promissory content – whether primary judge erred in finding that appellant repudiated agreement	
41	2020/200419	Mangoola Coal Operations Pty Ltd v Muswellbrook Shire Council	02/12/2020	REAL PROPERTY – appellant owned landholdings in the local government area administered by respondent – for purpose of calculating rate levy on properties, respondent categorised appellant’s land parcels as having the dominant use as a coal mine – appellant exercised its right pursuant to s 525 of the Local Government Act 1993 (NSW) to apply to the respondent to change the categorisation of the assessed parcels of land from “mining” to “farmland” – respondent did not determine applications to recategorise the two assessment parcels within 40 days and thus existing mining categorisation was taken to be confirmed – appellant exercised right pursuant to s 526(1) of the Act to appeal to the Court against respondent’s failure to recategorise each of the assessment parcels – primary judge found in favour of respondent – whether primary judge erred in law in finding that the land was not used for farming – whether primary judge erred in making a finding contrary to or not reasonably open on the evidence – whether primary judge erred in law in finding that the dominant use of land in the subject parcel was not farming, in circumstances where there was no mining on the subject land	Mangoola Coal Operations Pty Ltd v Muswellbrook Shire Council [2020] NSWLEC 66
42	2020/151701	Woodhouse v Fitzgerald	02/12/2020	TORTS (negligence) – appellant’s farming property and	Woodhouse v Fitzgerald

				<p>homestead was damaged by fire in September 2012 – appellant claimed the fire started on respondents’ adjoining property which was the subject of a controlled burn by Rural Fire Service in August 2012 – appellant commenced negligence and nuisance proceedings against respondents contending they were liable as owners of the adjoining property – primary judge found in favour of appellant – whether primary judge erred in reducing the award of damages pursuant to Pt 4 of the Civil Liability Act 2002 (NSW) – whether primary judge erred in reducing the respondents’ liability in circumstances where she had concluded their duty was non-delegable under s 5Q of the Act – whether primary judge erred in reducing damages for contributory negligence – whether primary judge’s reasons were inadequate – whether primary judge erred in failing to award pre-judgment interest from the date of the loss to the date of the commencement of the hearing</p>	<p>and McCoy (No 2) [2020] NSWSC 450</p>
43	<p>2020/273676; 2020/316017; 2020/317663</p>	<p>Ghosh v Health Care Complaints Commission</p>	<p>04/12/2020</p>	<p>DISCIPLINARY – first respondent sought disqualification of the appellant from registration as a medical practitioner by reason of her alleged professional misconduct and unsatisfactory professional conduct – Tribunal found in favour of the respondent – whether the Tribunal failed to comply with ss 165I and 165J of the Health Practitioner Regulation National Law 2009 (NSW) – whether the Tribunal erred in relying upon or in its application of s 50 of the Civil and Administrative Tribunal Act 2013 (NSW) in conducting its inquiry in the absence of the appellant – whether the Tribunal unreasonably erred in its discretion</p>	<p>Health Care Complaints Commission v Ghosh [2020] NSWCATOD 38</p> <p>Health Care Complaints Commission v Ghosh (No 2) [2020] NSWCATOD 90</p>

				to refuse the appellant's application for an adjournment – whether the orders of the Tribunal were invalidated by reason of an error of law – whether the appellant was denied procedural fairness – whether the decision of the Tribunal was infected by a reasonable apprehension of bias – whether the Tribunal failed to resolve the complaint as particularised and thereby erred in the exercise of its jurisdiction – whether the Tribunal failed to give adequate reasons to support its finding that the appellant was unfit to practise as a medical practitioner.	
44	2019/285092	French v Bremner	04/12/2020	CONTRACT – appellant invented a magnetic coupling system – respondent financed the exhibition and further development of the invention – respondent contributed to paying down appellant's mortgage – respondent also financed purchase of properties, some of which were registered in names of the parties as tenants in common – in proceedings brought by appellant's mortgagee, appellant cross-claimed against respondent alleging he misappropriated appellant's invention and exploited it across Europe to appellant's exclusion contrary to alleged agreements between the pair – respondent cross-claimed against appellant seeking recovery of monies provided by him to appellant and a declaration of resulting trust over, or order appointing trustees for sale of, the jointly held properties – primary judge found, principally, in favour of respondent – whether the primary judge erred in misdirecting himself on the evidence – whether decision was made per incuriam – whether primary judge erred in	French v Bremner [2019] NSWSC 1033

				exercising federal jurisdiction – whether primary judge erred by failing to apply Partnership Act 1898 (NSW) – whether primary judge erred in not applying the doctrine of part performance – whether primary judge erred in failing to draw a Jones v Dunkel inference – whether primary judge erred in not finding there had been accord and satisfaction – whether the primary judge erred in making certain factual findings or failing to consider certain facts	
45	2020/156277	Will v Brighton	08/12/2020	ADMINISTRATIVE LAW (other) – appeal from Local Court to Supreme Court – respondent accused found guilty of cruelty to dog but acquitted on appeal – stray dog killed following attempt on pet camel - whether deceased dog was a “pest animal” under s530(2)(b) of Crimes Act 1900 (NSW) – whether conduct of accused could be characterised as an “extermination”	Brighton v Will [2020] NSWSC 435