



Supreme Court of NSW Court of Appeal

Decisions Reserved as at 1 July 2022

	Number	Case Name	Heard	Issues	Judgment Below
1	2020/00310603; 2020/00310609; 2020/00310590; 2020/00311015; 2020/00311016; 2020/00311017	Clancy v Plaintiff D; Clancy v Plaintiff A; Clancy v Plaintiff C; Bird v Plaintiff C; Bird v Plaintiff D; Bird v Plaintiff A	19/07/2021	TORTS (other) – first appellant owned 99% of shares in second appellant, which was a childcare centre – third respondent who worked at childcare centre was arrested and charged with two offences after a child made disclosures about him – “B” and “D” made disclosures about third respondent with police investigations resulting in criminal charges laid against him in relation to “B”, but none were laid in relation to “D” – “A” and “C” are “B” and “D”’s mothers respectively and also pursued claims for breach of contract due to childcare’s failure to provide quality childcare and to ensure that children were safe and adequately cared for – primary judge found in favour of “A”, “B”, “C” and “D” – whether primary judge erred in concluding that disclosures made by the four children and the admissions of third respondent were admissible as tendency evidence – whether primary judge erred in finding that “Child 1”	<i>Plaintiff A and B v Bird; Plaintiff C v Bird; Plaintiff D v Bird</i> [2020] NSWSC 1379

				<p>was unavailable to give evidence – whether primary judge erred in finding that third respondent’s admissions were admissible against appellants – whether primary judge erred as to certain factual findings – whether primary judge erred in finding that appellants were negligent – whether primary judge erred in finding that appellants created and enhanced the risk of abuse which materialised – whether primary judge erred as to findings on vicarious liability – whether primary judge erred as to findings on a breach of duty of care – whether primary judge erred as to findings on breach of contract – whether primary judge erred as to the award of damages</p>	
2	2021/163352	<p>Reid v Commonwealth Bank of Australia</p>	22/02/2022	<p>PROCEDURE – summary dismissal – deed of release - resolution of dispute by sale of applicant’s property by respondent – property vandalised prior to settlement with purchaser - respondent allowed \$370,000 as adjustment – whether respondent negligently allowed property to be damaged – whether deed ought to be set aside – whether primary Judge failed to consider pleading – whether denial of procedural fairness in not allowing applicant to seek to amend pleading</p>	<p><i>Reid v Commonwealth Bank of Australia</i> [2021] NSWDC 225</p>

3	2019/110615	Nyunt v First Property Holdings Pte Ltd	4/03/2022	ADMINISTRATIVE LAW (other) – refusal to set aside registration of judgments under <i>Foreign Judgments Act 1991</i> (Cth) – whether respondent had submitted to jurisdiction of Singapore Courts – whether Joint Venture Agreement properly construed included a submission to the jurisdiction of Singapore Courts – whether Singapore Courts had jurisdiction when the facts particularised were already the subject of litigation in Myanmar – whether applicant had adequate notice of proceedings in order to defend – whether enforcement of judgment contrary to public policy	<i>First Property Holdings Pte Ltd v Nyunt</i> [2019] NSWSC 249
4	2021/235929	Sun v Chapman	11/03/2022	SUCCESSION – the appellant sought a family provision order in the proceedings below, on the basis that she was the alleged de facto partner of the deceased – an issue arose as to whether the appellant and the deceased were in a de facto relationship at the time of his death – primary judge found in favour of the respondent – whether primary judge erred in failing to find that the appellant and the deceased were in a de facto relationship at the time of his death – whether primary judge erred in failing to find that there were factors which warranted the making of the application by the appellant, in circumstances where the primary judge found that the appellant and deceased were living in a close personal relationship at the time of his death	<i>Sun v Chapman</i> [2021] NSWSC 955

5	2021/173153	Williams v Fraser	17/03/2022	MEDICAL NEGLIGENCE – undiagnosed congenital pars defect – radiologist failed to report of existence of defect – where appellant subsequent work alleged to have cause deterioration of her condition – whether no damage following breach of duty – whether primary Judge failed to address that condition would have stabilised with appropriate exercise – whether loss of chance	<i>Williams v Fraser</i> [2021] NSWSC 416
6	2021/87464	Joldzic v Patrick	21/03/2022	MOTOR ACCIDENTS – appellant was struck by the respondent’s vehicle in a motor accident in 2012, to which the respondent admitted that she breached her duty of care to the appellant – however, from about February 2016, the appellant suffered from an atypical psychotic disorder – issue arose as to whether by reason of her involvement in the motor vehicle accident in 2012, the appellant suffered personal injury in the form of mental harm and, if she did, whether any mental harm caused by that accident led to her current predicament – primary judge awarded the appellant damages in the sum of just under \$44k – whether primary judge erred in the quantum of damages assessed – whether primary judge erred in finding that the appellant’s incapacity would have come about independently of the motor vehicle accident – whether primary judge erred in failing to find that the appellant’s incapacity for employment in the future was caused by the psychological impact of the accident	<i>Joldzic (bht Joldzic) v Patrick</i> [2021] NSWDC 55

7	2021/282503	Amaca Pty Ltd v Cleary	29/03/2022	<p>TORTS (negligence) – the deceased was employed by the appellant between 1962 and 1964 at its Camellia factory and plant – whilst the appellant conceded that the deceased developed asbestos related pleural plaques, it disputed the claims for compensation for lung cancer and asbestosis injuries – primary judge found in favour of the respondent – whether the primary judge erred by failing to accept certain expert evidence – whether the primary judge erred as to certain factual findings</p>	<p><i>Roseanne Cleary as the Legal Personal Representative of the Estate of the late Fortunato (aka Frank) Gatt v Amaca Pty Ltd [2021] NSWDDT 5</i></p>
8	2021/204042	Dwyer v Volkswagen Group Pty Ltd	30/03/2022	<p>TRADE PRACTICES – the appellant brought representative proceedings on behalf of some 83,000 persons who purchased Volkswagen vehicles in which a Takata driver side airbag was installed between 2007 and 2018 – the appellant claimed that his vehicle was not of acceptable quality because, by reason of the installation of the Takata airbag, the vehicle was not free from defects and was not safe – primary judge found in favour of the respondent – whether primary judge erred in failing to find that the appellant’s vehicle was not of acceptable quality at the time of the supply to the appellant, within the meaning of s 54 of the Australian Consumer Law – whether primary judge erred as to certain factual findings – whether primary judge erred by importing a negligence or fault standard into a strict liability regime – whether primary judge erred by rejecting certain expert evidence – whether primary judge ought to have held that the appellant was entitled to damages under s 272 of the ACL</p>	<p><i>Dwyer v Volkswagen Group Australia Pty Ltd t/as Volkswagen Australia [2021] NSWSC 715</i></p>

9	2021/257944	MP Water Pty Ltd v Veolia Water Australia Pty Ltd	4/04/2022	CONTRACT- declaration - construction of “step-in” right in a long term services agreement – notice given in exercise of that right - whether applicant entitled to give notice – whether gave power to applicant to direct the respondent as to its operations rather than operate the facility	<i>MP Water Pty Ltd v Veolia Water Australia Pty Ltd (No 3)</i> [2021] NSWSC 1023
10	2021/210509	Shepherd v State of NSW	5/04/2022	TORTS (other) – assault – shoulder charge by police officer - whether the primary judge failed to give proper weight to certain evidence – whether the primary judge erred by failing to give adequate reasons – whether the primary judge erred by making certain factual findings in the absence of evidence	Lower court decision not available on Caselaw
11	2021/321969	Secretary, Dept of Communities and Justice v KH	6/04/2022	ADMINISTRATIVE (other) – judicial review sought of orders made in <i>Children and Young Person (Care and Protection) Act 1998</i> (NSW) – whether misconstrued requirement in s83(5) that there be a “realistic possibility of restoration within a reasonable period” – whether failed to apply s9(1) in consideration the safety, welfare and well-being of child being paramount – whether taking into account alleged denial of procedural fairness in Children’s Court	<i>KH v Secretary, Department of Communities and Justice</i> [2021] NSWDC 498

12	2021/240231	Massoud v Nationwide News Pty Limited	12/04/2022	<p>DEFAMATION – appellant was suspended and dismissed from his employment as a journalist for a statement that he made to an 18-year-old cadet – the appellant brought proceedings against the respondent media organisations for misquoting what he said in otherwise factually correct reports – primary judge found in favour of the respondents – whether primary judge erred in his findings as to imputations and contextual imputations – whether primary judge erred in upholding the defence of justification – whether primary judge erred as to the assessment of damages</p>	<p><i>Massoud v Radio 2GB Sydney Pty Ltd; Massoud v Fox Sports Australia Ltd; Massoud v Commonwealth Broadcasting Corporation Pty Ltd; Massoud v Nine Digital Pty Ltd; Massoud v Nationwide News Pty Ltd</i> [2021] NSWDC 336</p>
13	2022/20519	Clark v Attorney General of NSW	14/04/2022	<p>ADMINISTRATIVE LAW (judicial review) – crime – appeal and review – application pursuant to s 78 of the <i>Crimes (Appeal and Review) Act 2001</i> (NSW) – on 26 June 2009, Applicant was convicted of one count of doing an act with one count of doing an act with intent to pervert the course of justice contrary to s 319 of the <i>Crimes Act 1900</i> (NSW) and one count of aggravated sexual intercourse with a child between 14 and 16 years of age contrary to s 66C(4) of the <i>Crimes Act 1900</i> (NSW) – Applicant’s appeal against conviction dismissed in 2011 – in October 2017, Applicant made application under s 78 of the <i>Crimes (Appeal and Review) Act 2001</i> (NSW) for a review of his convictions – that application was dismissed – application for judicial review of that decision was subsequently also dismissed – Applicant brought a fresh application for review of his convictions pursuant to s 78 – Applicant contended that his convictions ought to be</p>	<p><i>Application by Peter Frederick Clark pursuant to s 78 of the Crimes (Appeal and Review) Act 2001 (NSW)</i> [2021] NSWSC 1364</p>

				referred for inquiry by a judicial officer on various bases – that Crown withheld evidence and misdirected jury – that jury verdicts were inconsistent and/or unreasonable – that convictions on counts relating to single event offended rule against double jeopardy – judge dismissed application for review – whether judge fell into jurisdictional error – by proceeding on misapprehensions of fact and law – by failing to address arguments put by Applicant	
14	2021/286249	Bryant v Quinn	19/04/2022	CONTRACT – the respondent uncle sued his appellant niece for the repayment of monies in excess of \$100,000 – the appellant claimed that the monies were a gift, and were not provided to her by way of loan – primary judge found in favour of respondent – whether primary judge erred as to certain factual findings – whether primary judge erred by making findings on the basis of a conditional gift, which had not been pleaded by the respondent – whether primary judge erred by denying the appellant procedural fairness	<i>Quinn v Bryant</i> [2021] NSWDC 570
15	2021/189912	Nitopi v Nitopi	21/04/2022	SUCCESSION – the appellant and respondent were respectively daughter and son of the deceased – the respondent alleged that the appellant took unconscientious advantage of the deceased, who was suffering a special disadvantage of which the appellant ought to have known – primary judge found in favour of the respondent – whether primary judge erred as to certain factual findings – whether primary judge erred in concluding that since the appellant had notice of the deceased's special	<i>Estate of Nitopi (No 2)</i> [2021] NSWSC 748

				disadvantage, there was an equitable presumption that she unconscientiously took advantage of the opportunities presented by that disadvantage – whether primary judge erred in finding that constructive notice or notice less than actual notice of the special disadvantage was sufficient – whether primary judge erred by making findings not available on the evidence	
16	2020/257794	Nashco Pty Ltd v Yang	21/04/2022	<p>CONTRACT – the appellant is a fabricator of metal building materials and, between July 2018 and October 2019, supplied these goods to Grand Metal Pty Ltd pursuant to a contractual arrangement – in the proceedings below, Grand Metal claimed damages from the appellant arising out of the appellant’s failure to allow it to purchase goods on credit up to \$1,400,000, which Grand Metal claimed was a breach of an implied term of the contract – by cross-claim, the appellant sought to recover from Grand Metal and also from the respondent guarantors the balance that it contended was owing to it by Grand Metal, totalling some \$940,000 – primary judge held that the appellant’s claims against the respondent guarantors be dismissed – whether primary judge erred in not giving full effect to the guarantees – whether primary judge erred in his interpretation of the deed of assignment – whether primary judge erred in failing to give reasons</p>	<i>Grand Metal Pty Ltd v Nashco Pty Ltd</i> [2021] NSWSC 1005

17	2021/195258	Hobhouse v Macarthur- Onslow	28/04/2022	<p>LAND LAW – appellant and first respondent are siblings who were parties to a deed of settlement and release made in February 2021 – the deed conferred a number of options to purchase different properties on each of the appellant and first respondent – the present dispute involved a 60 day option given to the first respondent to purchase an apartment in Darling Point, which was to expire on 23 April 2021 – the first respondent purported to exercise it by a notice given on 22 April 2021, however the purchase price had not yet been determined in accordance with the deed – issue as to whether, on the proper construction of the deed, the call option could be exercised before the purchase price had been determined in accordance with the deed – primary judge found in favour of first respondent – whether primary judge erred by failing to find that the determination of the purchase price of the property was a condition precedent to the exercise of the option – whether primary judge erred as to the construction of the deed – whether primary judge erred as to certain factual findings</p>	<p><i>Hobhouse v Mount Gilead Pty Ltd</i> [2021] NSWSC 684</p>
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18	2021/328205; 2021/328225	McMurchy v Employsure Pty Ltd; Kumaran v Employsure Pty Ltd	29/04/2022	CONTRACT – restraint of trade – whether first applicant bound by restraint in contract – whether restraint unreasonable – whether breach of fiduciary obligation by accepting employment with second applicant whilst still employed by respondent – whether first applicant induced an employee of respondent to leave – whether second applicant knowingly assisted the first applicant in the breaches	<i>Employsure Ltd v McMurchy</i> [2021] NSWSC 1179
19	2021/247771	Ali v Insurance Australia Ltd	2/05/2022	INSURANCE – separate question – claim under policy made more than six years after refusal of claim – whether action statute barred - construction of respondent’s promise to indemnify under policy – whether time ran from refusal of claim or from incident - whether <i>Globe Church Inc v Allianz Australia Insurance Ltd</i> [2019] NSWCA 27 ought to be confined or distinguished	<i>Ali v Insurance Australia Ltd</i> [2021] NSWDC 369
20	2021/288657	Health Care Complaints Commission v Robinson	3/05/2022	DISCIPLINARY PROCEEDINGS – medical practitioner – Respondent is a medical practitioner – Appellant applied to the Occupational Division of the New South Wales Civil and Administrative Tribunal for disciplinary findings and orders under the Health Practitioner Regulation National Law 2009 (NSW) – in relation to consultation with a patient referred to as Patient A – Appellant alleged that Respondent was guilty of unsatisfactory professional conduct by conducting a physical examination of Patient	<i>Health Care Complaints Commission v Robinson</i> [2021] NSWCATOD 142

				<p>A's breasts and abdomen without medical indication – Respondent conceded that adequate clinical records of the consultation had not been kept – Appellant alleged that the particulars of the complaints against Respondent amounted to professional misconduct – Tribunal held that whilst Respondent was guilty of unsatisfactory professional conduct in relation to the consultation with Patient A, he was not guilty of professional misconduct – whether Tribunal failed to give adequate reasons for conclusion that Respondent was not guilty of professional misconduct – whether Tribunal failed to conduct an assessment of the degree to which the Respondent's conduct fell short of the expected professional standard – whether Tribunal failed to consider effect of Respondent's conduct on reputation of and confidence in the medical profession – whether Tribunal erroneously took account of clinical basis for breast examination – whether Tribunal failed to consider inherent sexuality of Respondent's conduct</p>	
21	2021/326602	Khadarou v Antarakis	10/05/2022	<p>SUCCESSION – the appellant applied for a family provision order under s 59 of the Succession Act 2006 (NSW) in respect of the deceased's estate, on the basis that he and the deceased were living in a close personal relationship at the time of the death of the deceased – primary judge dismissed the application – whether primary judge erred as to certain factual findings</p>	<p><i>Khadarou v Antarakis</i> [2021] NSWSC 743</p>

22	2021/204029	Ming v DPP	12/05/2022	JUDICIAL REVIEW (other) – judicial review of criminal appeal from Local Court to District Court – whether jurisdiction error in failing to provide reasons for finding that applicant acted dishonestly – whether charge should have failed when conduct relied upon as deception did not accompany the transmissions of funds – failure to identify basic facts contended for by the Crown – failure to take into account relevant evidence – whether failed to address that request was actually honest	<i>Ming v R</i> [2021] NSWDC 223
23	2021/243855	Krolczyk v Winner	16/05/2022	BUILDING & CONSTRUCTION – whether primary judge erred as to certain factual findings – whether primary judge failed to have regard to certain evidence – whether primary judge erred by failing to give adequate reasons	<i>Lower Court decision not available on Caselaw</i>
24	2021/269154	Hardy v Coates Hire Operations Pty Ltd	17/05/2022	CONTRACT – whether the primary judge erred as to certain factual findings – whether primary judge erred by failing to find that the guarantee, indemnity and charge was unjust in the circumstances relating to the guarantee at the time it was made, and erred by failing to make an order declaring the guarantee void, in whole or in part – whether primary judge erred by finding that there was no reliable medical opinion that the appellant suffered from any relevant impairment in May 2016	<i>Lower Court decision not available on Caselaw</i>

25	2021/242905	<p>Cassaniti v Ball; Ball v AKA (NSW) Pty Ltd; Ball v Cassaniti; Ball v Borg Family Pty Ltd; Khalil v Diamondwish Pty Ltd (in liq); Khalil v Rackforce Pty Ltd (in liq); Khalil v Earth Civil Pty Ltd (in liq); Khalil v RCG CBD Pty Ltd (in liq); Khalil v Bluemine Pty Ltd (in liq)</p>	18/05/2022	<p>CORPORATIONS – accessorial liability – the First Appellant liquidator commenced the underlying proceedings seeking relief against a large number of corporate and individual defendants arising out of alleged conduct on the part of insolvent companies of engaging, on the advice or recommendation of an accounting firm, in certain “carousel payments” or round robin transactions – it was alleged that the insolvent companies, while under the control of certain “primary conspirators”, were used as “money transaction units” effectively for money laundering – these “primary conspirators” were alleged to have breached fiduciary duties owing to the insolvent Second Appellant company by conspiring in a course of conduct amounting to equitable fraud – the Respondents were alleged to have been accessories to the breaches of fiduciary duties by the primary conspirators – by their participation in the relevant transactions – primary judge found in favour of the First Appellant as against the “primary conspirators” – primary judge found in favour of Respondents in respect of accessorial liability and dismissed claims brought against them – whether primary judge failed to provide adequate reasons – whether primary judge erred in making various findings of fact – whether primary judge erred in finding that Second Respondent lacked requisite knowledge to make out accessorial liability – whether primary judge failed to make inferences reasonably open on the evidence –</p>	<p><i>In the matters of Earth Civil Australia Pty Ltd, RCG CBD Pty Ltd, Bluemine Pty Ltd, Diamondwish Pty Ltd and Rackforce Pty Ltd (all in liq) [2021] NSWSC 966</i></p>
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				whether primary judge erred in failing to consider concept of imputed knowledge	
26	2021/323942	Fisher v Degnan	18/05/2022	<p>CONTRACT – construction of Deed – Deed concerning parcel of land at Sawtell – parcel of land contained a primary dwelling – Respondent is mother of First Appellant and mother-in-law of Second Appellant – Appellants purchased parcel of land at Sawtell in May 2011 and constructed secondary dwelling on the land – Appellants lived in secondary dwelling whilst Respondent occupied primary dwelling – on 2 July 2012, Respondent transferred \$250,000 into Appellants’ bank account and recorded transaction as payment for “house purchase” – on 20 July 2012, parties executed a Deed entitled “Deed of Loan” – Deed recorded a principal sum of \$250,000 advanced from Respondent to Appellants for purpose of “assist[ing] in purchase of property situate at [Sawtell]” – in January 2019, parcel of land was subdivided into separate lots for primary and secondary dwellings – in February 2019, Appellants sold primary dwelling and demanded that Respondent vacate the property – in November 2019, Appellants sold</p>	<i>Degnan v Fisher</i> [2021] NSWSC 1334

				<p>secondary dwelling for \$645,000 and paid Respondent the sum of \$250,000 from proceeds of sale – Respondent brought claim against Appellants – Respondent contended that, pursuant to Deed, Appellants were obliged to transfer primary dwelling to her upon subdivision of the land – Respondent sought relief in the form of Appellants accounting to her for net proceeds of sale of primary dwelling – Appellants contended that Deed was nothing more than an interest-free loan – primary judge found in favour of Respondent – whether primary judge erred in construing Deed as agreement for sale of property – whether primary judge erred in referring to correspondence post-dating Deed – whether primary judge erred in treating cl 3 of Deed as operative provision – whether primary judge erred in various findings of fact</p>	
27	2021/278620	Pavlis v Pavlis	19/05/2022	<p>EQUITY – constructive trust – proprietary estoppel – Appellants are sons of the Respondents – Respondents are registered proprietors of a property at Strathfield – at the time of its purchase in 1986, the Property was in a very dilapidated state – over a period of 20 years, the Property was restored to its original condition by the Appellants – Appellants expended considerable time, effort and funds in the course of the Property’s restoration – as of 2017, a family dispute had resulted in the estrangement of the Appellants from the Respondents – Respondents made no provision for Appellants in their wills – Appellants commenced proceedings against Respondents seeking a declaration that the</p>	<i>Pavlis v Pavlis</i> [2021] NSWSC 1117

				<p>Respondents hold a 40% interest in the Property on constructive trust for each of the Appellants – Appellants pleaded alternative case on the basis of proprietary estoppel – Appellants contended that Respondents made an express representation in 1999 to the effect that Appellants would each receive a 40% interest in the Property in return for their contributions to the restoration – Respondents denied any such representation – primary judge found in favour of Respondents and dismissed proceedings – whether primary judge erred in failing to find that the restoration was a joint endeavour for the mutual benefit of the parties – whether primary judge erred in finding that Respondents were motivated by their own commercial benefit – whether primary judge erred in factual finding as to ownership of a separate property</p>	
28	2022/4794	NSW Trustee and Guardian v Togias	23/05/2022	<p>EQUITY – Trusts and trustees – Respondent claimed beneficial interest in two real properties located at Glenwood and Seven Hills – Respondent's de facto partner charged with the supply of prohibited drugs – NSW Crime Commission obtained a restraining order and a proceeds assessment order against the Respondent's de facto partner – A forfeiture order was made including the two properties – Respondent sought declaration of a Baumgartner v Baumgartner (1987) 164 CLR 137 constructive trust over the properties – Respondent alleged that the forfeiture order was limited to the de facto partner's interests in the properties, and not the Respondent's</p>	<p><i>Nicolitsa Togias v State of New South Wales</i> [2021] NSWSC 1588</p>

				<p>beneficial interest in the properties – Primary judge imposed a remedial constructive trust, notwithstanding that the Respondent could not show the exact money she had contributed to the purchase and maintenance of the properties – Primary judge found that the Respondent made significant contributions, financial and otherwise, to the maintenance of the properties, the business of her de facto partner, and raised the children – Whether the primary judge erred in holding that the Respondent established that she and the de facto partner formed a joint relationship and endeavour pursuant to which the Respondent made contributions to the acquisition of the properties – Whether primary judge erred in making various factual findings – Whether primary judge erred in finding that money borrowed for and contributed to expenses of the property following the breakdown of the relationship were payments pursuant to the joint endeavour which had since terminated – Whether primary judge erred in holding that the beneficial interest should be shared equally as an application of the maxim “equity is equality”</p>	
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29	2019/363483; 2021/214357	Foundas v Arambatzis	24/05/2022	PROCEDURE – second application to reopen appeal – availability of new evidence as to ownership of subject property – whether appeal ought to be reopened – whether further appeal available following determination of earlier appeal	<i>Foundas v Arambatzis</i> [2020] NSWCA 47
30	2022/3420; 2022/3426; 2022/3432; 2022/3439	Rialto Sports Pty Ltd v Cancer Care Pty Ltd; Rialto Sports Pty Ltd v CCA Estates Pty Ltd; Rialto Sports Pty Ltd v Davjul Pty Ltd; Rialto Sports Pty Ltd v Armmam Pty Ltd	1/06/2022	REAL PROPERTY – building dispute – strata scheme – sale of land – whether primary judge erred in holding that Respondent had standing to sue for recovery of damages suffered to common property by Owners Corporation – whether primary judge erred in construction of contract for sale of land between Appellant and Respondent – whether primary judge erred in construction and application of statutory levies under pt 5, div 2 of Strata Schemes Management Act 2015 (NSW) – whether primary judge addressed fire cladding evidence adequately – whether primary judge erred in admitting expert reports	<i>Lower Court decision not available on Caselaw or JusticeLink</i>

31	2021/299055	Miller v Secretary, Department of Communities and Justice	1/06/2022	<p>WORKERS COMPENSATION –</p> <p>Anshun estoppel – Appellants are respectively husband and son of the deceased – Respondent was the employer of the deceased – deceased was employed as a co-ordinator at Nynghana Home Care in Brewarrina, New South Wales – that role included driving a community bus from Brewarrina to Dubbo for the purpose of transporting clients to medical appointments – deceased had suffered with asthma for the whole of her life – on 14 April 2011, the deceased suffered an asthma attack while driving the community bus, subsequently went into cardiac arrest, and passed away – Appellants commenced proceedings in the Workers Compensation Commission to claim the deceased’s applicable benefits pursuant to ss 25 and 26 of the Workers Compensation Act 1987 (NSW) – those proceedings were commenced on the basis that the relevant “cause of injury”, under s 4(a) of the Workers Compensation Act, was the deceased’s asthma – those proceedings were dismissed successively by an Arbitrator, a Presidential Member on appeal and the Court of Appeal, on findings that the deceased’s injury was a pre-existing medical condition such that employment was not a “substantial contributing factor” to her injury and death – Appellants subsequently commenced the present proceedings on the basis that the relevant “causes of injury” were the deceased’s asthma and/or cardiac arrest – Respondent contended that present</p>	<p><i>Miller v Secretary, Department of Communities and Justice (No 9) [2021] NSWPCPD 29</i></p>
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				proceedings were precluded by an Anshun estoppel created by the determination of the earlier proceedings – although it was held that the deceased’s employment was a “substantial contributing factor” to her injury and death, the Arbitrator accepted the Respondent’s contention as to Anshun estoppel and made an award in its favour – Appellants appealed to Presidential Member against Arbitrator’s decision – Deputy President confirmed Arbitrator’s decision – whether Deputy President erred in confirming operation of Anshun estoppel	
32	2021/362894	Alora Property Group Pty Ltd v McKenna	2/06/2022	CORPORATIONS — winding up — liquidator’s adjudication of proof of debt — appeal to Court from liquidator’s decision – effect of clause 16 of Shareholders Agreement – whether funds being available prior to there being a liability for the payment of fees – whether erred in rejecting proof of debt for \$198,165 when supported by uncontested evidence	<i>In the matter of Alora Davies Developments 104 Pty Ltd</i> [2021] NSWSC 1583

33	2021/314709; 2021/289675; 2021/311103	DSHE Holdings Ltd v Potts; Potts v National Australia Bank Ltd; HSBC Bank Australia Ltd v Abboud	3/06/2022	CORPORATIONS – the underlying proceedings concerned Dick Smith, the retailer of consumer electronics in Australia and New Zealand, of which the first respondent was the Chief Financial Officer and Company Secretary – the appellant claimed that the payment of an interim dividend in 2015 contravened s 254T of the Corporations Act 2001 (Cth), in that the payment of the dividend materially prejudiced the company’s ability to pay its creditors – the appellant claimed that the directors, acting with reasonable care and diligence, could not or should not have declared the dividend, because the appellant had other needs for the money – primary judge found in favour of the respondents – whether primary judge erred in finding that the appellant did not suffer any damage – whether primary judge erred by failing to find that the directors did not contravene s 180 of the Corporations Act by voting in favour of the resolution to pay or to declare the dividend	<i>DSHE Holdings (Receivers & Managers Appointed) (In liquidation) v Nicholas Abboud (No 3); National Australia Bank Limited v Nicholas Abboud (No 4) [2021] NSWSC 673</i>
34	2021/254614	Mount Gilead Pty Ltd v Stanham	7/06/2022	CORPORATIONS – alleged breach of trustee duties by sale of land for undervalue - dismissal of application for leave to proceed under s237 of Corporations Act 2001 (Cth) – whether settlement deed between second applicant in her personal capacity and first respondent prohibited derivative proceedings brought by second applicant as director of company – whether leave is a “cause of action” caught by deed – whether proposed proceedings were in good faith	<i>Mount Gilead Pty Ltd & Hobhouse v L Macarthur-Onslow & Ors [2021] NSWSC 948</i>

35	2021/296713	Sheppard v Smith	8/06/2022	<p>REAL PROPERTY – easements – parties are two couples who own adjoining terrace houses in Birchgrove – Appellants own “number 6” – Respondents own “number 8” – Respondents hold an easement in respect of a one-metre wide right of way extending down the side and around the back of number 6 – to provide street access to the rear of number 8 – Appellants completed building works partially obstructing the easement without development consent – local Council issued development control order requiring removal of building works – Appellants commenced proceedings seeking an order, under s 89(1) of the Conveyancing Act 1919 (NSW), to extinguish the easement – on alternative bases that easement was obsolete or unreasonable in absence of practical benefit to Respondents, had been abandoned, or that extinguishment would not cause substantial injury to Respondents – Council suspended enforcement of development control order pending resolution of proceedings – primary judge found in favour of Respondents and dismissed Appellants’ claims – whether primary judge erred in finding that easement had not been abandoned – whether primary judge erred in finding that Respondents, by their conduct, did not intend to abandon the easement – whether primary judge erred in conducting subjective inquiry as to abandonment – whether primary judge failed to place adequate weight upon Respondents’ asserted non-use of easement – whether primary judge erred in finding that easement</p>	<i>Sheppard v Smith</i> [2021] NSWSC 1207
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				was not obsolete – whether primary judge imposed excessive standard of proof on Appellants as to issue of substantial injury to Respondents	
36	2021/238528	Collins v Insurance Australia Ltd	15/06/2022	<p>TORTS (negligence) – appellant was driving her motor vehicle along the Kings Highway in Monga and, after rounding a bend, she observed that traffic was unexpectedly banked-up – in order to avoid a collision with the rear-end of the last of the stationary cars in her vicinity, she swerved her vehicle, causing it to leave the shoulder of the road and hit an embankment – the appellant sustained neck and lower back injuries as a result of that incident – the traffic had become banked-up as a result of an earlier motor vehicle accident on the road, for which a Mr Falconer was at fault – the respondent was Mr Falconer’s insurer – the appellant sought to sue the respondent for her personal injuries, and asserted that the insured’s negligence caused her personal injuries – primary judge found in favour of the respondent – whether primary judge erred by rejecting certain evidence – whether primary judge erred as to certain factual findings – whether primary judge erred by failing to give adequate reasons – whether primary judge erred by</p>	<p><i>Collins v Insurance Australia Ltd</i> [2021] NSWDC 371</p>

				finding that the insured did not owe a duty of care to the appellant – whether primary judge erred as to findings on contributory negligence	
37	2021/262590	GR v Secretary, Department of Communities and Justice	15/06/2022	ADMINISTRATIVE (other) – dismissal of appeal from Children’s Court in care proceedings – whether Children’s Court had jurisdiction - whether Court disregarded uncontested evidence that medical treatments were without medical indication – adequacy of reasons	<i>GR v The Department of Communities & Justice</i> [2021] NSWSC 1081
38	2021/269394	Australian Karting Association Ltd v Karting (New South Wales) Inc	16/06/2022	CONTRACT – the appellant is the Australian body responsible for promoting the sport of karting in Australia – until January 2019, the respondent was the NSW entity responsible for promoting the sport and conducting karting races in NSW and the ACT, until the appellant purported to expel it as an Ordinary Member – in the underlying proceedings, the appellant claimed monies said to be outstanding pursuant to three loan agreements with the respondent – the respondent defended the claims on the basis that it was not in default of	<i>Australian Karting Association Ltd v Karting (NSW) Incorporated</i> [2021] NSWSC 1075

				<p>the loan agreement, as the appellant had not validly expelled it as an Ordinary Member, and that the terms for accelerated payment and interest in the loan agreements amounted to penalties, and were therefore unenforceable – the respondent further claimed that the appellant’s conduct was unconscionable and that the provisions of the loan agreements ought not to be enforced – primary judge found in favour of the respondent – whether primary judge erred as to certain factual findings</p>	
39	2021/358220	<p>Shoal Bay Beach Constructions (No 1) Pty Ltd v Hickey</p>	21/06/2022	<p>CONTRACT – TORTS (negligence) – extent of solicitor’s negligence/breach of retainer – Appellant is the assignee of Shoal Bay Beach No. 1 Pty Ltd (SBB) – SBB retained the Respondents to act as its solicitor for the Shoal Bay development – SBB constructed and developed 53 units – Respondents prepared a master contract for the sale of the units which relevantly provided for a ‘Registration Date’ by which certain documents had to be registered – Respondents advised the Appellant that under the contract the Registration Date could be extended by giving notice one month prior to the Registration Date – Appellants instructed Respondents to extend the Registration Dates for various sold units – Respondents gave invalid notice of extension of time to purchasers of units 50 and 52 (Purchasers) – Purchasers exercised their rights to rescind the sale contracts – Respondents advised the Appellant that the notice given was invalid – Appellant gave instructions not to return any</p>	<p><i>Shoal Bay Beach Constructions No. 1 Pty Ltd v Mark Hickey and the persons listed in Schedule A to this Statement of Claim trading as at all material times Sparke Helmore (No 6) [2021] NSWSC 1597; Shoal Bay Beach Constructions No. 1 Pty Ltd v Mark Hickey and the persons listed in Schedule A to this Statement of Claim trading as at all material times Sparke Helmore (No 5) [2021] NSWSC 1499</i></p>

				<p>money to the Purchasers – Purchasers commenced Equity proceedings against SBB for return of the deposits paid to it – SBB instructed new solicitors for these proceedings – on 24 November 2016 the Court made orders declaring the rescissions valid and orders for the return of the deposits – Appellant claimed damages against Respondents for alleged negligence and breach of retainer and duty of care – primary judge entered judgment for the Appellant against the Respondents – primary judge assessed a reduction for SBB’s contributory negligence at 30% – primary judge ordered that there be no order as to the costs of the proceedings – whether primary judge erred in finding that the Appellant was contributorily negligent – whether primary judge erred in finding that the Respondents are not liable for legal costs in the Equity proceedings by reason of s 5D(1)(b) of the Civil Liability Act 2002 (NSW) – whether primary judge erred in failing to find that the funds for lots 50 and 52 would have been applied to reduce the Appellant’s indebtedness – whether primary judge erred in ordering pre-judgment interest – whether primary judge erred in construing UCPR r 42.34(2) – whether primary judge erred in misconstruing the Appellant’s submission – whether primary judge erred in failing to award the Appellant costs of the proceedings</p>	
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40	2021/334059	Kloczko v About Life Pty Ltd	21/06/2022	<p>PROFESSIONAL NEGLIGENCE (legal) – First Respondent operated a chain of grocery stores, one of which was located in Double Bay in the vicinity of a Woolworths outlet – the store premises was leased from the Council of the Municipality of Woollahra – Second, Third and Fourth Respondents were directors of the First Respondent – Appellants are partners of a law firm – during 2017, First Respondent was experiencing serious cash flow issues – in April 2017, First Respondent resolved to sell the Double Bay store to Harris Farm for \$10 million in order to ease cash flow issues – Appellants acted for First Respondent on the transaction, which was expected to complete by 30 June 2017 – Appellants failed to advise that Woolworths had a right of first refusal to the premises pursuant to a Deed entered into with the First Respondent during 2014 – Woolworths sued First Respondent and Harris Farm to enforce the Deed and succeeded – Harris Farm sued Respondents, which claim was settled by Second to Fourth Respondents for \$430,000 – About Life subsequently assigned lease to Woolworths for \$9.65 million in December 2017 – sale proceeds did not alleviate cash flow crisis such that First Respondent entered into external administration in December 2018 – First Respondent brought proceedings against Appellants seeking damages for loss of opportunity to apply to proceeds of the sale to Woolworths to address its cash flow crisis as of 30 June 2017 – Second to Fourth Respondents brought proceedings for</p>	<p><i>About Life Pty Ltd v Maddocks Lawyers</i> [2021] NSWSC 1370</p>
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				damages in the sum of \$430,000 – Appellants defended claims on all bases – Appellants contended that no actionable loss had been suffered in light of First Respondent’s pre-existing cash flow issues – primary judge found in favour of Respondents and awarded \$13 million in damages to First Respondent and \$344,000 to Second, Third and Fourth Respondents – whether primary judge erred in finding that Appellants’ failure to perform retainer adequately was necessary condition of the Respondents’ actionable harm – whether primary judge erred in failing to address counterfactuals as a matter of causation – whether primary judge erred in assessment of damages by reference to discounts – whether primary judge erred in finding that Appellants owed a duty of care to Second to Fourth Respondents – whether primary judge’s allowance for contributory negligence was inadequate	
41	2021/295739	Chief Commissioner of State Revenue v E Group Security Pty Ltd	23/06/2022	TAX – employment agency contracts – Respondent is main operating entity of group of companies involved in provision of asset and personal security services for clients in commercial, government, retail, events and hospitality industries – Respondent entered into contracts with third party clients for supply of subcontracted security guards – accepted that those security guards were not the employees of the Respondent – on 3 September 2018, Appellant issued Assessment Notices to Respondent in respect of payroll tax liability for financial years ended 30 June 2016–2018 – Appellant assessed	<i>E Group Security Pty Ltd v Chief Commissioner of State Revenue</i> [2021] NSWSC 1190

				<p>wages paid to subcontracted security guards as liable to payroll tax in each of the relevant financial years – Respondent objected to those assessments – Appellant disallowed that objection on the basis that subcontractor security guards were engaged pursuant to “employment agency contracts”, as defined in s 37 of the Payroll Tax Act 2007 (NSW) – Respondent commenced proceedings in Equity Division seeking review of the assessments, pursuant to s 97 of Taxation Administration Act 1996 (NSW) – Respondent contended that contracts with third party clients and/or its related group entities were not “employment agency contracts” as it did not procure services of security guards “in and for the conduct of the business of” its third party clients and/or related group entities – Respondent relied upon application of Security Industry Act 1997 (NSW) to its operations – primary judge found in favour of Respondent and revoked the assessments, pursuant to s 101(1)(a) of the Taxation Administration Act – whether primary judge erred in finding that Respondent’s related group entities did not procure services of security guards during the relevant financial years, for the purposes of ss 37–38 of the Payroll Tax Act – whether primary judge erred in making various findings of fact – whether Respondent is jointly and severally liable for related group entities’ payroll tax liabilities, under s 81 of the Payroll Tax Act</p>	
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42	2021/363142	Larsen v Tastec Pty Ltd	23/06/2022	<p>CONTRACT – whether primary judge erred in failing to find that the Appellants and the First Respondent entered into a contract – whether primary judge erred in failing to find the First Respondent owed the Appellants a duty of care pursuant to the Design and Building Practitioners Act 2020 (NSW) – whether primary judge erred in making various findings of fact in relation to the cladding, flashing, windows and external doors supplied by the Respondents – whether primary judge erred in failing to find that various representations were made by the Respondents and relied upon by the Appellants</p>	<p><i>Lower court decision not available on Caselaw</i></p>
43	2022/76853	Chalak v G & G Mikhael Pty Ltd	24/06/2022	<p>CONTRACT – summary judgment – mortgage and possession of land – pleaded dispute in defence as to economic dispute, unconscionable conduct and misleading conduct – alleged dispute as to terms of interest payable - whether primary judge erred in finding that the respondent’s evidence was incontrovertible – whether erred in finding that defence raised any triable issue – failure to consider part of the applicant’s submissions – erred in not permitting an amendment to the defence as an alternative to summary judgment – failed to take into account that issue of cross-claim was still outstanding requiring an accounting</p>	<p><i>G & G Mikhael Pty Ltd v Chalak [2022] NSWSC 191</i></p>

44	2021/256597	McGettigan v Coulter	24/06/2022	<p>SUCCESSION – Appellant is brother of the deceased – Respondents are niece and nephew of wife of the deceased and executors of her estate – two sets of proceedings – probate proceedings and equity proceedings – in probate proceedings Appellant cross-claimed that deceased made last will in July 2016 giving bulk of estate to Appellant – Respondents claimed that deceased’s last will was made in January 2000 and gave entirety of estate to his wife – Respondents contended that 2016 will was a forgery – Appellant contended that 2000 will was a fabrication – in equity proceedings Appellant claimed beneficial interest in farm and other property owned by deceased and his wife – interest claimed on the basis of seven inter vivos instruments including partnership agreements, sale agreements and leases – primary judge found in favour of Respondents and dismissed probate and equity proceedings – primary judge held that 2016 will was false document created by Appellant – whether there was sufficient evidence to support primary judge’s findings – whether primary judge gave adequate reasons for conclusions</p>	<p><i>McGettigan v Coulter & Anor; Coulter & Anor v McGettigan</i> [2021] NSWSC 1097</p>
45	2021/358543	Catlin Australia Pty v Diamond World Jewellers Pty Ltd	27/06/2022	<p>INSURANCE – Appellant was insurer of the Respondent’s jewellery store – robbery of the store occurred in December 2017 – Respondent subsequently lodged notice of a claim with the Appellant – Respondent’s policy of insurance covered stock that it owned and held on consignment – Respondent claimed in the sum of \$1,691,435.70 for entirety of stock</p>	<p><i>Diamond World Jewellers Pty Ltd v Catlin Australia Pty Ltd</i> [2021] NSWSC 1431</p>

				<p>present in cabinets which were damaged during the robbery – Respondent arranged for cleaning of the store prior to its inspection by Appellant’s loss assessor – Respondent melted damaged jewellery prior to inspection by Appellant’s loss assessor – Respondent maintained limited accounting records and stock inventories – in May 2019, Appellant accepted that Respondent had suffered genuine loss under its insurance policy assessed in the sum of \$8,600 – on the basis that Appellant was not liable for melted jewellery – in October 2019, Appellant offered \$500,000 to Respondent for resolution of claim – Respondent rejected this offer – Respondent commenced proceedings against Appellant seeking damages in the sum of \$1,431,759.00 – primary judge found in favour of Respondent and awarded damages in quantum as sought by Respondent – whether primary judge erred in applying test of unreasonableness under the insurance policy – whether primary judge erred in considering evidence unavailable to the Respondent at the relevant time – whether primary judge failed to make certain findings of fact – whether primary judge relied upon matters not pleaded by Respondent – whether primary judge erred in making various findings of fact</p>	
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46	2021/285410	Cheng v Motor Yacht Sales Australia Pty Ltd	28/06/2022	<p>CONTRACT – offer and acceptance – whether applicant’s offer withdrawn prior to acceptance of contract – whether offer accepted orally by employee of respondent - whether general manager and secretary had implied actual authority to enter contract for sale – whether evidence of prior consent of Board to employee’s conduct necessary – whether employee’s acceptance of oral offers contrary to the respondent’s business practice - whether respondent entitled to windfall of second brokerage fee due to resale of boat - findings</p>	<i>Motor Yacht Sales Australia Pty Ltd v Cheng</i> [2021] NSWSC 1141
47	2021/365743	Renown Corporation Pty Ltd v SEMF Pty Ltd	29/06/2022	<p>CONTRACT – Respondent is an engineering and project management firm – First Appellant is an information technology and software services firm – during late 2012 or early 2013, the Respondent’s Finance Director approached the First Appellant to inquire about an upgrade to the Respondent’s project management and accounting system software – the First Appellant offered to provide and install software developed by Microsoft and known as Dynamics SL 2011 (“Dynamics”) – at some point between April 2013 and May 2014, the Respondent entered into a contract with the First Appellant for the provision and installation of the Dynamics software – First Appellant was acquired by the Second Appellant in August 2014 – the installation of the Dynamics software was marked by delays and limitations in the utility of the software to the Respondent’s business – Respondent contended that these limitations amounted to a breach of contract and commenced</p>	<i>SEMF Pty Ltd v Renown Corporation Pty Ltd</i> [2021] NSWSC 1547

				<p>proceedings against the Appellants – Respondent sought damages for loss incurred in attempting to fix, and eventually replacing, the Dynamics software, including the loss of employee productivity – the terms of the contract between the parties, and the specific documents comprising that contract, were in issue in the proceedings – the primary judge found in favour of the Respondent and awarded damages in the sum of \$751,291.00 – whether primary judge erred in failing to assess damages as at the date of breach of the contract – whether the primary judge erred in making certain findings of fact – whether primary judge erred in quantifying the Respondent’s loss contrary to the joint opinion of the parties’ respective experts – whether primary judge erred in failing to make an allowance for the eventual improvement of the Dynamics software in the quantification of damages</p>	
48	2022/8530	Searle v McGregor	29/06/2022	<p>CONSTITUTION – claim for common law damages for motor vehicle accident between residents of NSW and Victoria – lack of jurisdiction for PIC to hear claim - leave sought under 26 of Personal Injuries Commission Act for leave to bring claim in District Court rather than PIC – whether claim for statutory benefits are common law compensation – whether application form lodged with PIC complied with s26(4)(a)(1) – whether applicant needed to comply with UCPR 15.12 and 15.14 – whether ought to have been dismissed for failure to comply</p>	<i>Lower Court decision not on Caselaw</i>

49	2022/138696	CM v Secretary, Department of Communities and Justice	30/06/2022	ADMINISTRATIVE LAW (judicial review) – Appeal under Children’s (Care and Protection) Act 1998 from Children’s Court being heard by District Court - appointment of guardian ad litem for applicant/mother – whether jurisdiction to appoint GAL – whether evidence to support appointment – whether erred in appointing GAL – whether primary judge ought to be prohibited from hearing appeal – whether tutor required for the present judicial review proceedings	
50	2021/275201	Mt Pleasant Stud Farm Pty Ltd v McCormick	1/07/2022	TORTS (NEGLIGENCE) – Appellant owns and operates a thoroughbred horse stud farm – Respondent was employed by Appellant as manager and horse trainer – on 29 December 2014, Respondent was breaking a horse in – Respondent fell off that horse and sustained injuries to his neck, right arm and shoulder – Respondent brought a claim against the Appellant for negligence, pursuant to s 151E of the Workers Compensation Act 1987 (NSW) – Respondent contended that his injuries deprived him of his entire capacity to earn future income – Appellant denied any breach of its duty of care – Appellant contended that Respondent’s injuries did not render him permanently unfit for employment – Appellant contended that Respondent had been contributorily negligent and voluntarily assumed risk when breaking the horse in – primary judge found in favour of Respondent and awarded damages in the sum of \$1,395,525 – whether primary judge erred in accepting expert report over objection of the Appellant – whether primary judge erred in	<i>McCormick v Mt Pleasant Stud Farm Pty Ltd (No 2)</i> [2021] NSWDC 489

				making various findings of fact – whether primary judge erred in finding that Appellant had breached its duty of care where Respondent had highly specialised knowledge regarding breaking a horse in – whether primary judge erred in finding a chain of causation without evidence of counterfactual	
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