



Supreme Court of NSW Court of Appeal

Decisions Reserved as at 12 November 2021

	Number	Case Name	Heard	Issues	Judgment Below
1	2021/5136	Twigg v Twigg	19/03/2021	EQUITY – first appellant director of corporate trustee used money borrowed on security over the corporate trustee’s assets to acquire a number of properties for himself and caused trust funds to be distributed to himself – claims brought for breach of fiduciary duties or knowing receipt of trust property – primary judge found in favour of respondents – whether primary judge erred in certain factual findings – whether primary judge made findings not based on or contrary to the evidence – whether primary judge erred in finding that respondents had established the existence of a dishonest intent on the part of first appellant – whether primary judge erred in failing to find that the claims of the respondents were statute barred by operation of s 21 of the Limitations of Actions Act 1958 (Vic) – whether primary judge erred in failing to find that the doctrine of	Twigg v Twigg (No 4); Lambert v Twigg Investments Pty Ltd (No 3) [2020] NSWSC 1159; Twigg v Twigg (No 5); Lambert v Twigg Investments Pty Ltd (No 4) [2020] NSWSC 1782; Twigg v Twigg (No 6); Lambert v Twigg Investments Pty Ltd (No 5) [2020] NSWSC 1856

				laches barred the grant of proprietary relief in favour of respondents – whether primary judge erred in his application of tracing principles	
2	2020/340595	Dhupar v Lee	26/05/2021	PROFESSIONAL NEGLIGENCE (medical) – appellant obstetrician and gynaecologist performed elective tubal ligation procedure on respondent so as to prevent future pregnancies – respondent unexpectedly conceived child within twelve months of procedure – respondent brought claim for professional negligence in relation to failed surgery – primary judge found in favour of respondent – whether primary judge erred by reversing the onus of proof as to breach of duty and causation – whether primary judge erred as to certain factual findings – whether primary judge erred by making certain findings not available on the evidence – whether primary judge erred in finding that appellant breached her duty of care – whether primary judge erred as to causation – whether primary judge erred in interpretation of s 71 of the Civil Liability Act 2002 (NSW) – whether primary judge erred in assessment of non-economic loss	Lee (a pseudonym) v Dhupar [2020] NSWDC 717

3	2020/341834	L & A Fazzini Pty Ltd v Amaca Pty Ltd	04/06/2021	<p>TORTS (other) – appellant and respondent were co-defendants to a claim brought by a former injured employee who was diagnosed with mesothelioma after exposure to asbestos at the worksites of both the appellant and respondent – appellant and respondent settled with the injured employee without admission of liability, and consented to paying \$300,000 and \$200,000 respectively – appellant brought claims against respondent in proceedings below, seeking restitution for the money it paid to the employee or indemnity pursuant to s 5 of the Law Reform (Miscellaneous Provisions) Act 1946 (NSW) – primary judge held in favour of respondent – whether primary judge erred by characterising the consent judgment as the appellant accepting liability to the injured employee – whether primary judge erred by concluding that the only method that the appellant could seek recovery of monies from the respondent was through bringing contribution proceedings pursuant to s 5(1)(c) of the Law Reform (Miscellaneous Provisions) Act – whether primary judge erred in failing to apply the principles in Power Technologies Pty Ltd v Energy Australia [2010] NSWCA 107</p>	L & A Fazzini Pty Ltd v Amaca Pty Ltd [2020] NSWDDT 12; L & A Fazzini Pty Ltd v Amaca Pty Ltd [2021] NSWDDT 1
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4	2020/240356	Ramsey v Denton	24/06/2021	TORTS (negligence) – appellant suffered injuries and disabilities as a result of motor vehicle accident in Central Coast, in which appellant struck motor vehicle driven by respondent which turned across the path of appellant’s motor cycle – liability admitted – quantum of damages in issue – appellant had history of prior injuries, with an issue as to whether and to what degree the appellant’s injuries were from his previous injuries or the current accident – whether primary judge erred in failing to find that appellant’s psychiatric impairment caused by the accident rendered him not fit for work in any capacity into the future – whether primary judge erred in his findings as to economic loss – whether primary judge erred in certain factual findings – whether primary judge erred in failing to accept certain evidence	Ramsey v Denton [2020] NSWDC 426
5	2021/3826	Veira v Cook	09/07/2021	ADMINISTRATIVE LAW (other) – dismissal of appeal from Local Court to Supreme Court under Crimes (Appeal and Review) Act 2001 – applicant convicted of entering inclosed lands and disrupting a business – defence of necessity to rescue hens from cruelty – whether “proportionality element” a matter for Court to conclude rather than an accused’s honest and reasonable belief – whether element requires no alternate course of action to avoid the harm in question – whether	Lopes v Cook [2020] NSWSC 1776

				purpose element available to a person who accused is bound to protect – whether defence available in respect of harm to an animal	
6	2021/117125 ; 2021/166404	Australian Federation of Islamic Councils v United Muslims New South Wales Incorporated	13/07/2021	ASSOCIATIONS – dispute between appellant and first respondent began when persons associated with first respondent raised concern as to propriety of the conduct of the President of the first appellant – issue as to whether the appellant’s constitution permitted the removal or displacement of an existing “State Council” by member societies electing a new State Council – primary judge found in favour of respondents – whether primary judge erred as to his construction of the appellant’s constitution – whether primary judge erred as to certain factual findings	United Muslims New South Wales Incorporated v Australian Federation of Islamic Councils [2021] NSWSC 421

7	2020/003106 03; 2020/003106 09; 2020/003105 90; 2020/003110 15; 2020/003110 16; 2020/003110 17	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” 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	Plaintiff A and B v Bird; Plaintiff C v Bird; Plaintiff D v Bird [2020] NSWSC 1379
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				<p>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>	
8	2019/103863 ; 2019/170998	Michael Wilson & Partners Ltd v Emmott	20/07/2021	<p>PROCEDURE – appellant served originating process on respondent outside Australia – respondent sought an order that service be set aside on the basis that process was served in circumstances not permitted by Uniform Civil Procedure Rules 2005 (NSW) or, alternatively, that proceedings be stayed on forum non conveniens grounds – primary judge ordered a permanent stay – whether primary judge erred in declining to assume jurisdiction – whether primary judge erred in finding contribution claim had insufficient prospects of success – whether primary judge erred in finding claim for</p>	Michael Wilson & Partners Ltd v Emmott [2019] NSWSC 218

				breach of directors' duties and partnership claims did not fall within UCPR, Sch 6 – whether primary judge erred in finding UCPR, r 11.5(5) was not satisfied – whether primary judge erred in finding claims had no real and substantial connection with Australia – whether primary judge erred in finding Australia was not an appropriate forum for the trial	
9	2021/96251	IWC Industries Pty Ltd v Sergienko	04/08/2021	EQUITY – dispute between the appellants and respondents concerning claims to an equitable interest in property located in Killarney Heights – primary judge found in favour of respondents – whether primary judge erred in finding that the first respondent's interest in the property took priority over the second appellant's interest in the property – whether primary judge erred in finding that the second appellant did not give valuable consideration for its interest in the property – whether primary judge erred as to certain factual findings	Sergei Sergienko v AXL Financial Pty Limited [2021] NSWSC 297

10	2020/294167	Boros v Pages Property Investments Pty Ltd	11/08/2021	CORPORATIONS – appellant was CEO of respondent from 2003 to 2008, and was sole director and secretary from 2008 to 2016 – respondent pleaded that appellant breached his statutory and general law duties as director – primary judge found in favour of respondent – whether primary judge erred in certain factual findings – whether primary judge misapplied s 180 of the Corporations Act 2001 (Cth) – whether primary judge made findings not based on the evidence	Pages Property Investments Pty Ltd v Attila Boros & Ors [2020] NSWSC 1270
11	2020/365141	Dickinson v Chapman	13/08/2021	TORTS (negligence) – respondent suffered an injury on an industrial worksite in 2014 and commenced proceedings for damages under the Civil Liability Act 2002 (NSW) against the first appellant (an employee involved in the incident) and the second appellant (as business owner) – the respondent often visited the worksite and did tasks of his own choosing and usually received money for these tasks – the appellants contended that the respondent was a “worker” or “deemed worker” under the Workplace Injury Management and Workers Compensation Act 1998 (NSW), and that the Civil Liability Act thus did not apply – primary judge held that there was no contract of service or contract for services between the parties and found in favour of the respondent – whether primary judge erred as to certain factual findings – whether primary judge erred	Chapman v Dickinson (No 2) [2020] NSWDC 847

				in failing to find that the respondent was a worker or deemed worker – whether primary judge erred in determining the respondent’s claim under the Civil Liability Act – whether primary judge erred in failing to identify and articulate the duty of care owed by the appellants – whether primary judge erred in his assessment of contributory negligence – whether primary judge erred as to the assessment of damages	
12	2021/12694	Royal Carribbean Cruises Ltd v Rawlings	17/08/2021	TORTS (other) – wrongful detention on cruise ship – respondent accused of sexual assault against a passenger – whether detention necessary for preservation of order and discipline of vessel – whether reasonable to continue detention after Police in Noumea declined to investigate – whether necessary to stop respondent from contacting other potential witnesses on board – whether legal test to detain includes a subjective element	Lower court decision not available on Caselaw
13	2021/146866	Sam v Mortimer	17/08/2021	CONTRACT – underlying proceedings concerned a document signed by the appellant purchaser and respondent vendor in 2019 over lunch at the Casino at Broadbeach, for a purported sale of 50% of a property comprising some 86 acres of land in Murwillumbah, NSW – issue as to whether the document was a legally binding agreement – respondent sought declarations that if the agreement was binding,	Mortimer v Ah Sam [2020] NSWSC 1763

				that it be set aside for unconscionability on the part of the appellant – primary judge found in favour of respondent – whether primary judge erred as to certain factual findings – whether primary judge erred as to his findings that the appellant acted unconscionably – whether primary judge denied the appellant procedural fairness – whether the hearing being conducted virtually was unduly prejudicial to the appellant – whether primary judge displayed bias toward the appellant	
14	2021/15614	Huynh v Attorney General of New South Wales	19/08/2021	CONSTITUTION — appellant was tried in the District Court and convicted of one count of a conspiracy to import a commercial quantity of a border-controlled drug precursor with the intention of the substance being used to manufacture a controlled drug – applicant was sentenced to 12 years imprisonment – appellant applied for an inquiry into his conviction pursuant to s 78 of the Crimes (Appeal and Review) Act 2001 – primary judge dismissed the application – whether primary judge erred in his jurisdiction by performing an administrative task which was not within his judicial capacity – whether primary judge erred in law by not applying relevant principles – whether Commonwealth Attorney General was proper respondent in respect of an inquiry for a Commonwealth offence – whether Garling J was a Commonwealth officer for the purposes	Application of Huy Huynh under Part 7 of the Crimes (Appeal and Review) Act 2001 for an Inquiry [2020] NSWSC 1356

				of the application	
15	2020/234084	Muriniti v Kalil	25/08/2021	<p>COSTS – underlying proceedings concerned claims in defamation, in which the defendant was at all times represented by the appellants – first respondent alleged that the appellants exhibited serious incompetence in their legal representation, and provided inadequate defences with respect to the claim of defamation – primary judge made personal costs orders against appellants – whether primary judge erred in not applying the correct test with respect to a finding of liability relating to serious incompetence pursuant to s 99 of the Civil Procedure Act 2005 (NSW) – whether primary judge erred by failing to provide adequate reasons – whether primary judge erred in not finding that the respondents were motivated by an improper collateral purpose in making the personal costs application – whether primary judge erred as to certain factual findings – whether primary judge erred by taking into account irrelevant considerations</p>	Kalil v Eppinga [2020] NSWDC 407

				<p>– whether primary judge erred by failing to take into account relevant considerations – whether primary judge erred by denying the appellants procedural fairness – whether primary judge erred by failing to consider submissions made on behalf of the appellants – whether primary judge’s conduct and reasons gave rise to a reasonable apprehension of bias</p>	
16	2021/28293; 2021/103515	Sydney Cosmetic Specialist Clinic Pty Ltd v Hu	30/08/2021	<p>PROCEDURE – underlying proceedings concerned allegedly defamatory claims against appellants, arising out of remarks made in the course of a lengthy series of posts by a WeChat group broadcast to 495 users – primary judge struck out certain paragraphs of the appellants’ statement of claim, without leave to re-plead and otherwise dismissed the proceedings – whether primary judge erred in striking out certain paragraphs from the statement of claim – whether primary judge erred in dismissing the proceedings COSTS - whether costs order should stand if applicant successful in appeal</p>	The Sydney Cosmetic Specialist Clinic Pty Ltd (ACN 151 319 032) v Hu [2020] NSWDC 786

17	2020/339522 ; 2020/351426	Franca v Lorenzato; Burwood Council v Lorenzato	09/09/2021	TORTS (negligence) – first respondent purchased property located in Burwood, NSW from the appellant vend or in March 2011 – first respondent brought claim against appellant for negligent misstatement relating to answers that appellant gave to requisitions that were raised prior to completion, which failed to disclose the existence of a 400mm diameter pipe owned by Burwood Council that had been laid beneath the property in the early 1900s – primary judge found in favour of first respondent – whether primary judge erred in finding that appellant’s answers to the requisitions were misleading or erroneous – whether primary judge erred in certain factual findings – whether primary judge erred as to the assessment of damages	Lorenzato v Burwood Council [2020] NSWSC 1659
18	2021/111247	McNab v Director of Public Prosecutions	14/09/2021	ADMINISTRATIVE LAW (judicial review) – whether primary judge denied the appellant procedural fairness due to bias – whether primary judge failed to take into account relevant evidence and submissions	Lower court decision not available on Caselaw

19	2021/194026 ; 2021/197122	State of New South Wales v Kaiser	21/09/2021	CRIME – appellant sought orders that the respondent be made the subject of an extended supervision order pursuant to the Crimes (High Risk Offenders) Act 2006 (NSW) – issue as to whether, for the purpose of the application of s 5B(b) of the Act, the appellant had shown that the respondent was a “supervised offender” – primary judge held that the respondent was not a supervised offender – whether primary judge erred in finding that the respondent was not a “supervised offender”	State of New South Wales v Kaiser [2021] NSWSC 646
20	2021/139709	Hopper v D J Sincock Pty Ltd	29/09/2021	CONTRACT – whether primary judge erred as to certain factual findings – whether primary judge erred as to findings on promissory estoppel	Lower court decision not available on Caselaw

21	2020/340576 ; 2021/97126	Melhem v Katter	05/10/2021	PRACTICE AND PROCEDURE – whether primary judge erred in determining that appellant’s judgment entered in the District Court in 2012 was unenforceable – whether primary judge erred in dismissing the notices of motion for an examination order filed by the appellant against each respondent – whether primary judge erred in setting aside examination orders addressed to respondents	Lower court decision not available on Caselaw
22	2021/202307	Holland v Attorney General of New South Wales	06/10/2021	CRIME – appellant was convicted in 2002 of one count of aggravated sexual intercourse without consent, and one count of attempted sexual intercourse without consent – appellant had lodged two previous applications under Pt 7 of the Crimes (Appeal and Review) Act for an inquiry into his convictions – the underlying proceedings concerned a third application under s 78 of that Act – primary judge refused the application – whether primary judge fell into jurisdictional error	Application by Peter James Holland pursuant to s 78 Crimes (Appeal and Review) Act 2001 [2021] NSWSC 384

23	2021/237261	Quinn v Director of Public Prosecutions	06/10/2021	JUDICIAL REVIEW (other) – sentence appeal from Local Court to District Court dismissed – whether failed to take into account community safety as paramount consideration under s66(1) of Crimes (Sentencing Procedure) Act 1999 – whether failed to consider whether making an intensive correction order was more likely to address risk of reoffending – whether failed to assess the likelihood of addressing any risk of reoffending	Lower court decision not available on Caselaw
24	2021/90028	Council of the New South Wales Bar Association v EFA (a pseudonym)	08/10/2021	DISCIPLINARY PROCEEDINGS – disciplinary proceedings brought against the respondent barrister in relation to a complaint about his alleged conduct at a dinner in 2017 for barristers’ clerks – Tribunal found respondent’s conduct did not amount to professional misconduct, but did amount to unsatisfactory professional conduct – whether Tribunal erred by failing to apply the correct test for professional misconduct at common law – whether Tribunal erred in failing to find that the respondent’s conduct constituted professional misconduct – whether Tribunal erred by failing to find that the respondent’s conduct at the dinner occurred in connection with the practice of law	Council of the New South Wales Bar Association v EFA [2021] NSWCATOD 21

25	2021/117171	Sdrolias v Allianz Australia (Insurance) Limited	12/10/2021	TORTS (negligence) – appellant claimed damages for psychiatric harm allegedly sustained as a result of witnessing an electrical explosion by which two workmen were severely burned – primary judge found in favour of respondent – whether primary judge erred as to certain factual findings – whether primary judge erred in rejecting the appellant’s account of the aftermath of the explosion – whether primary judge erred in finding that the appellant had not established that she suffered psychiatric injury or damage as a consequence of the explosion and its aftermath	Sdrolias v Power Distribution Services Pty Limited [2021] NSWSC 321
26	2021/83723	State of New South Wales v Skinner	15/10/2021	TORTS (other) – respondent was former member of the NSW Police Force from 1992 to 2010 – respondent suffered from psychological injuries, in the form of PTSD and major depression, and brought a “work injury damages” proceeding against the Police Force, pursuant to the Workplace Injury Management and Workers Compensation Act 1998 (NSW) – primary judge found in favour of respondent – whether primary judge erred in finding that the appellant’s failure to conduct a thorough mental health assessment of the respondent was a breach of the duty of care owed to the respondent – whether primary judge erred in failing to have regard to the respondent’s comorbid non-tortious psychiatric conditions of PTSD and major depressive	Skinner v The State of New South Wales (No 2) [2021] NSWDC 49

				disorder in assessing damages	
27	2021/72965; 2021/72975	Thorn v Monteleone; Thorn v Kelly	19/10/2021	TORTS (negligence) – respondent alleged that he sustained serious injuries in an accident caused by the negligence of the appellants whilst working on a property near Narrawa in 2013 – at the time of the accident, the respondent was employed by the Kellys – the Kellys did not have compulsory Workers Compensation Insurance when the respondent made a claim for Workers Compensation payments and thus payments were made by the Workers Compensation Nominal Insurer, who then sought recovery of those payments directly from the Kellys – the Kellys sought to recover the workers compensation paid directly from the appellants – the primary judge awarded the respondent judgment exceeding \$1.4m, and judgment for the Kellys against the appellants – whether primary judge erred in his evaluation of the utility of certain evidence – whether primary judge erred as to certain factual findings – whether primary judge erred in placing excessive weight on certain expert evidence – whether primary judge erred in the	Kelly v Thorn; Monteleone v Thorn (No 8) [2021] NSWSC 118

				assessment of loss and damages	
28	2021/113307	Queanbeyan Racing Club v Burton	20/10/2021	WORKERS COMPENSATION – dismissal of judicial review application of decision of appeal panel constituted under s328 of Workplace Injury management and Workers Compensation Act 1998 (NSW) – whether appeal panel must find error particularised in applicant’s written submissions before there is jurisdiction – whether appeal erred in not confining itself to those errors – whether procedural unfairness in identifying its own error – whether failed in the task of making its own assessment by providing no reasons	Lower court decision not available on Caselaw

29	2020/140939	Carter v Mehmet	20/10/2021	<p>CONTRACT – first to fourth respondents as purchasers and appellants as vendors entered into a contract for sale of land in Byron Bay – purchasers commenced proceedings alleging the vendors had repudiated the contract, the principal allegation being that the vendors were not ready, willing and able to show that there were no “Aboriginal objects” in or on the land within the meaning of the National Parks and Wildlife Act 1974 (NSW) – primary judge found in favour of the purchasers – whether primary judge erred in finding the memorial stone and plaque were Aboriginal objects within the meaning of the Act, and constituted a defect in title – whether primary judge erred in failing to find any vested interest of the Crown under s 83(1) of the Act was not a relevant property interest in the subject land – whether primary judge erred in failing to find that, if there were a defect, it was a patent defect or otherwise a defect in quality – whether primary judge erred in failing to find the putative Aboriginal objects did not affect the lawful use of the land or otherwise were not material – whether primary judge erred in failing to find that the purchasers were not entitled to rescind the contract – whether primary judge erred in finding the vendors repudiated the contract – whether primary judge erred in relying on reputation evidence – whether primary judge erred in</p>	Mehmet v Carter [2020] NSWSC 413
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				finding it would be unjust for the vendors to retain the deposit – whether primary judge erred in finding the fifth respondent did not sign a personal guarantee	
30	2021/133082	Sebie v Pham	21/10/2021	PROCEDURE – bias – procedural unfairness – failure of Court to provide hearing device at hearing of motion to late Ramzy Sebie, the former director of ENA Development Pty Ltd - leave refused to director to appear for corporation - motion sought leave to file a cross-claim – dismissal of motion - whether ENA's caveat was valid – payment out of Court – whether ENA's legal costs ought to be paid out of fund held following sale of premises – whether resolution of competing claims to funds ought to wait until hearing of cross-claim in Division – costs – whether erred in making gross sum costs orders	Pham v Enterprise ICT Pty Ltd and Others; Pham v Sebie (No. 3) [2018] NSWSC 381; Pham v Enterprise Pty Ltd; Sebie v Pham [2021] NSWSC 339

31	2020/236175	Hampshire v Health Care Complaints Commission	22/10/2021	DISCIPLINARY – appellant was a psychiatrist who allegedly failed to observe proper professional boundaries with a patient and breached conditions placed on his registration as a medical practitioner – respondent sought an order cancelling appellant’s registration as a medical practitioner – Tribunal cancelled appellant’s registration – whether Tribunal erred in law in determining that the appellant was not competent to practise medicine – whether Tribunal erred in law in rejecting particular evidence and in failing to give sufficient reasons for rejecting that evidence – whether Tribunal erred in law in cancelling the registration of the appellant – whether Tribunal erred in law in ordering that the appellant may not make an application for review for three years	Health Care Complaints Commission v Hampshire [2020] NSWCATOD 79
32	2021/94946	Bassett v Bassett	25/10/2021	SUCCESSION – underlying proceedings concerned a dispute between four adult children in relation to their deceased parent’s estate – first respondent brought a family provision claim pursuant to s 59 of the Succession Act 2006 (NSW) – primary judge found in favour of the first respondent – whether primary judge’s discretion miscarried in awarding the first respondent additional provision of one-half of the deceased’s 50% interest in the property known as “The Springs” – whether primary judge erred as to certain	Bassett v Cameron [2021] NSWSC 207

				<p>factual findings – whether primary judge erred by placing undue weight on certain evidence – whether primary judge erred by making a “wholly excessive” provision claim to the first respondent – whether primary judge erred as to the assessment of costs</p>	
33	2021/16812	Insurance Australia Group Ltd v Keen	26/10/2021	<p>ADMINISTRATIVE LAW (other) – in 2014, first respondent was involved in a motor vehicle accident – appellant was the CTP insurer of the vehicle at fault – prior to the accident, first respondent had suffered a significant work-related lower back injury in 2012, for which he was receiving treatment at the time of the car accident – first respondent submitted a CTP claim in relation to the accident in 2018, by which the third respondent assessor concluded that the first respondent was subject to 15% whole person impairment, thereby exceeding the “greater than 10%” WPI threshold required under the Motor Accidents Compensation Act 1999 (NSW) for the purposes of proceedings for non-economic damages – an appeal of this decision to the Proper Officer of the State Insurance Regulatory Authority was refused, as the Proper Officer was not satisfied that</p>	<p>Insurance Australia Group Limited t/as NRMA Insurance v Keen [2021] NSWSC 113</p>

				<p>there was reasonable cause to suspect material error in the Assessor's decision – primary judge held that there was no error of law or jurisdiction in either the decision of the Assessor the Proper Officer – whether primary judge failed to consider and apply <i>Campbelltown City Council v Vegan</i> (2006) 67 NSWLR 372, when considering whether the Assessor had provided lawful reasons for his decision – whether primary judge failed to determine a substantial part of the appellant's case below</p>	
34	2021/101885	Lichaa v Boutros	27/10/2021	<p>BUILDING & CONSTRUCTION – whether primary judge erred as to certain factual findings – whether primary judge erred as to construction of the relevant building contract – whether primary judge erred by failing to give adequate reasons</p>	<p>Lower court decision not available on Caselaw</p>

35	2021/76890	Scrivener v Cappello	28/10/2021	<p>CONTRACT – underlying proceedings concerned an oral agreement between appellant and first respondent concerning the proposed consolidation and possible development of three adjoining sites – neither party made a note of the agreement, nor confirmed to the other in writing an understanding of the agreement – issue arose as to whether the agreement was subject to the “Sunset Condition”, that the respondent find a purchaser for the combined sites by the Sunset Date – primary judge found that the Sunset Condition was not a term of the oral agreement – whether primary judge erred in finding that the appellant was liable for equitable compensation in the sum of over \$6 million – whether primary judge failed to make any specific determinations of fact that could support the determination of accessorial liability – whether primary judge erred in failing to give adequate reasons – whether primary judge failed to have regard to certain evidence</p>	Cappello v Scrivener (No 2) [2021] NSWSC 168
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36	2021/133519 ; 2021/256478	Balagiannis v Balagiannis	28/10/2021	<p>CONTRACT – the second respondent is the former trustee of a trust established by the first appellant, and the third respondent is the current trustee of that trust – the first and second appellant sought an order that the second respondent render accounts of a loan which was the subject of a deed of assignment between the first and second appellant on the one hand, and the first appellant on the other – the first and second appellant further sought an order that the second respondent pay them the amount due to them on the taking of the account, out of the assets of the relevant trust – in their defence, the respondents had raised issues as to undue influence, unconscionable conduct and the application of the Contracts Review Act 1980 (NSW) in respect of the entry into the deed of assignment – primary judge found in favour of the respondents, setting aside the deed of assignment under the Contracts Review Act – whether primary judge erred to as findings that the deed of assignment was unjust – whether primary judge erred as to certain factual findings – whether primary judge erred by failing to take into account certain evidence</p>	In the matter of Reserve Hotels Pty Limited [2021] NSWSC 487
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37	2021/155408	Sui v Jiang	29/10/2021	CONTRACT – underlying proceedings concerned an agreement written in Mandarin Chinese and prepared by the non-lawyer appellant, with respect to certain Crown leases on land located near Alice Springs – appellant brought a claim for breach of contract against the first respondent in the sum of \$1.5 million – primary judge found in favour of respondents – whether primary judge erred as to certain factual findings – whether primary judge erred in his construction of the agreement	Sui v Jiang [2021] NSWSC 435
38	2021/54620; 2021/54621	Cheng v Pan; Cheng v Zhou	29/10/2021	DEFAMATION – issue in the proceedings below as to whether appellant was the person who sent a series of anonymous letters and publications containing material defamatory of the respondents – primary judge found that appellant was the author of the defamatory material and awarded damages against the appellant – whether primary judge erred in finding that the appellant published each of the matters complained of – whether primary judge erred as to certain factual findings – whether primary judge erred by admitting certain evidence – whether primary judge erred in the assessment of damages – whether primary judge erred by failing to give any sufficient reasons for his findings	Pan v Cheng; Zhou v Cheng [2021] NSWSC 30

39	2021/235883	CBRE (V) Pty Ltd v Trilogy Funds Management Ltd	01/11/2021	PROCEDURE – refusal of summary dismissal application – where earlier proceedings brought against applicant by earlier trustee of the First Mortgage Fund – whether respondent had notice of earlier proceedings and did not seek joinder – whether primary proceedings an abuse of process - whether erred in finding that proceedings were not substantially the same	Lower court decision not available on Caselaw
40	2021/192227	Di Liristi v Matautia Development Pty Ltd	03/11/2021	CONTRACT – appellant was lessee of a property situated in Austral NSW, pursuant to a residential tenancy agreement with the first respondent – the first appellant purported to terminate the tenancy agreement – appellant alleged that first respondent was not entitled to terminate the tenancy agreement or was estopped from terminating the agreement – primary judge found that first respondent had validly terminated the agreement – whether primary judge lacked the power and jurisdiction to make a declaration that the first respondent was entitled to possession of the property – whether primary judge erred as to certain factual findings – whether primary judge erred as to the assessment of damages – whether appellant was denied procedural fairness – whether primary judge erred by refusing the appellant’s adjournment application	Di Liristi v Matautia Developments Pty Ltd (No 6) [2021] NSWSC 663; Di Liristi v Matautia Developments Pty Ltd (No 7) [2021] NSWSC 760

41	2021/181517	Hamzy v Commissioner of Corrective Services	04/11/2021	CONSTITUTION – applicant a high risk restricted prisoner – dismissal of judicial review summons – challenge to decision to deny applicant access to AVL to confer with legal advisers – challenge to decision to limited monitoring of calls with legal representative – challenge to decision to require legal practitioners to undertake criminal background check – whether decisions restricted the ability to choose a legal practitioner – whether decisions restricted ability to speak in language of choice – whether requirement unlawful by virtue of ss9(1) and/or 10(1) of Racial Discrimination Act 1975 (Cth) – whether impinges on the right to access to legal representation under Chapter III of Constitution	Lower court decision not available on Caselaw
42	2021/187780	Cromarty Resources Pty Ltd v Thalanga Copper Mines Pty Ltd	04/11/2021	CONTRACT – under an Asset Sale Agreement, the respondent sold certain mineral exploration permits and mining leases in Queensland to Kagara Copper Pty Ltd for \$2m – an issue arose as whether the respondent was entitled to terminate the Agreement in 2018, or whether its purported termination was a repudiation of the Agreement entitling the first appellant itself to terminate the agreement in 2019 – primary judge found in favour of respondent – whether primary judge erred in the construction of the Asset Sale Agreement – whether primary judge erred as to certain factual findings –	Thalanga Copper Mines Pty Ltd v Cromarty Resources Pty Ltd; Cromarty Resources Pty Ltd v Thalanga Copper Mines Pty Ltd [2021] NSWSC 640

				whether primary judge erred as to his findings in relation to the termination and repudiation of the Asset Sale Agreement – whether primary judge erred as to the assessment of damages	
43	2021/268284	Stanley v Director of Public Prosecutions	08/11/2021	ADMINISTRATIVE LAW (judicial review) – appellant brought an appeal against the severity of his sentence as imposed by the Local Court – primary judge dismissed the appeal – whether primary judge fell into jurisdictional error by failing to consider whether the appellant’s risk of re-offending was more likely to be addressed by the making of an intensive correction order or full-time detention	Lower court decision not available on Caselaw

44	2021/241737	Ulladulla Creative Images Pty Ltd v Tibbles	10/11/2021	CONTRACT – underlying proceedings concerned an action for damages for breach of contract, to which the appellant and respondents were parties – issue as to the interpretation of a clause in the contract regarding insurance – primary judge found in favour of respondents – whether primary judge erred by failing to exclude certain evidence – whether primary judge erred by relying upon certain evidence – whether primary judge erred in the interpretation of the contract	Tibbles v Ulladulla Creative Images Pty Ltd (No 1) [2021] NSWDC 404
45	2021/222017	Palasty v Lendlease Building Pty Ltd	11/11/2021	WORKERS COMPENSATION – whether primary judge erred as to certain factual findings – whether primary judge erred by failing to exercise jurisdiction pursuant to s 352 of the Workplace Injury Management and Workers Compensation Act 1998 (NSW)	Lower court decision not available on Caselaw