



## Supreme Court of NSW Court of Appeal

### Decisions Reserved as at 3 December 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	<p>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</p>	Ramsey v Denton [2020] NSWDC 426
5	2021/3826	Veira v Cook	09/07/2021	<p>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</p>	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	<p>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</p>	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	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 in failing to find that the respondent was a worker or deemed worker – whether primary judge erred in determining the respondent’s	Chapman v Dickinson (No 2) [2020] NSWDC 847



				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	
10	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
11	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, that it be set aside for unconscionability on the part of the appellant – primary judge found in favour of respondent – whether primary judge	Mortimer v Ah Sam [2020] NSWSC 1763

				<p>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</p>	
12	2021/15614	Huynh v Attorney General of New South Wales	19/08/2021	<p>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 of the application</p>	<p>Application of Huy Huynh under Part 7 of the Crimes (Appeal and Review) Act 2001 for an Inquiry [2020] NSWSC 1356</p>

13	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 – 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>	Kalil v Eppinga [2020] NSWDC 407
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14	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</p> <p>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
15	2020/339522 ; 2020/351426	Franca v Lorenzato; Burwood Council v Lorenzato	09/09/2021	<p>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</p>	Lorenzato v Burwood Council [2020] NSWSC 1659

				findings – whether primary judge erred as to the assessment of damages	
16	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
17	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

18	2021/139709	Hopper v D J Sincok 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
19	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
20	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

21	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
22	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

23	2021/83723	State of New South Wales v Skinner	15/10/2021	<p>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 disorder in assessing damages</p>	Skinner v The State of New South Wales (No 2) [2021] NSWDC 49
24	2021/72965; 2021/72975	Thorn v Monteleone; Thorn v Kelly	19/10/2021	<p>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</p>	Kelly v Thorn; Monteleone v Thorn (No 8) [2021] NSWSC 118



				<p>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 assessment of loss and damages</p>	
25	2021/113307	Queanbeyan Racing Club v Burton	20/10/2021	<p>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</p>	<p>Lower court decision not available on Caselaw</p>

26	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 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	Bassett v Cameron [2021] NSWSC 207
27	2021/101885	Lichaa v Boutros	27/10/2021	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	Lower court decision not available on Caselaw

28	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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29	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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30	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
31	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

32	2021/192227	Di Liristi v Matautia Development Pty Ltd	03/11/2021	<p>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</p>	<p>Di Liristi v Matautia Developments Pty Ltd (No 6) [2021] NSWSC 663; Di Liristi v Matautia Developments Pty Ltd (No 7) [2021] NSWSC 760</p>
33	2021/181517	Hamzy v Commissioner of Corrective Services	04/11/2021	<p>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</p>	<p>Lower court decision not available on Caselaw</p>

				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	
34	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

35	2021/143047	Dyco Hotels Pty Ltd v Laundry Hotels (Quarry) Pty Ltd	15/11/2021	<p>CONTRACT – contract entered into between first and second appellant as purchaser, and respondent as vendor, for the sale of a freehold hotel property in Pymont, along with the associated hotel licence, gaming machine entitlements and hotel business – an additional clause in the contract provided that in the period from the date of the contract until completion, the vendor must carry on the business in the usual and ordinary course – performance of that obligation became affected by the making of various orders under s 7 of the Public Health Act 2010 (NSW) in response to public health risks associated with the outbreak of COVID-19 – central issue as to whether as a result of such orders, the contract for sale was discharged by frustration – primary judge found in favour of respondent – whether primary judge erred as to the construction of the contract – whether primary judge erred in failing to find that the respondent was unable to carry on the business in the usual and ordinary course – whether primary judge ought to have held that the conduct of the respondent in purporting to terminate the contract constituted a repudiation by the respondent which was accepted by the appellant</p>	Dyco Hotels Pty Ltd v Laundry Hotels (Quarry) Pty Ltd [2021] NSWSC 504
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36	2021/270254	Hardy v State of New South Wales	16/11/2021	<p>CRIME – underlying proceedings concerned an application for an extended supervision order in relation to the appellant, who had committed various offences in 2017 – primary judge granted the extended supervision order for a period of 18 months – whether primary judge erred in finding that the appellant was a “convicted NSW terrorism activity offender” pursuant to ss 10 and 20(c) of the Terrorism (High Risk Offenders) Act 2017 (NSW) – whether primary judge failed to properly consider whether the appellant had previously “carried out an activity advocating support” for “violent extremism” as required by s 10(1)(c)(i) of the Act – whether primary judge erred by rejecting the evidence of certain Court-appointed experts – whether primary judge erred by improperly considering the appellant’s failure to give evidence at the hearing</p>	State of New South Wales v Hardy (Final) [2021] NSWSC 900
37	2020/346991	Murdoch v Mudgee Dolomite & Lime Ltd	16/11/2021	<p>CORPORATIONS – alleged diversion of business - breach of fiduciary and statutory duties by company director – account of profits – equitable compensation – derivative proceedings – whether erred in finding there was no sub-contract – whether double compensation by retaining benefit of work done whilst requiring money paid under sub-contract to be refunded – whether scope of duties of director ought to be moulded to the nature of the relationship – whether</p>	Mudgee Dolomite & Lime Pty Ltd v Robert Francis Murdoch; In the matter of Mudgee Dolomite & Lime Pty Ltd [2020] NSWSC 1675

				respondents stood with knowledge of the relationship – whether diversion of work caused a loss when respondent did not have sufficient equipment	
38	2021/95022	Woolworths Group Ltd v Gazcorp Pty Ltd	19/11/2021	CONTRACT – underlying proceedings concerned two adjoining blocks of land in Alexandria – respondent was interested in developing the site by building a shopping centre upon it, and engaged in negotiations with the appellant about a lease of space in the proposed development – in 2007, respondent lodged a development application with the Sydney City Council in respect of the proposal, for which deferred commencement approval was issued, and which envisaged a Woolworths supermarket on the lower ground level of the shopping complex – in 2008, the parties entered into an Agreement for Lease in relation to the land – issue arose as to whether the Agreement remained on foot, with respondent contending that the Agreement came to an end, either due to frustration or by reason of mutual abandonment – primary	Gazcorp Pty Ltd v Woolworths Group Ltd [2021] NSWSC 308

				judge declared that the Agreement was no longer on foot – whether primary judge erred as to certain factual findings – whether primary judge erred by making certain findings that were not pleaded by the respondent – whether primary judge erred by concluding that the parties had evinced a mutual intention to no longer be bound by the Agreement – whether primary judge erred by concluding that the Agreement was terminated by frustration	
39	2021/159930	Starr v Miller	22/11/2021	SUCCESSION – deceased suffered a stroke before making the will in dispute – issue as to testamentary capacity – primary judge held that the deceased did have testamentary capacity – whether primary judge erred as to certain factual findings – whether primary judge erred in finding that the deceased knew and approved of the contents of the will – whether primary judge erred as to his findings on testamentary capacity	Starr v Miller [2021] NSWSC 426

40	2021/102300	Nestle Australia Ltd v Metri	23/11/2021	TORTS (negligence) – first respondent brought a damages claim for injuries sustained as a result of a forklift injury, which led to amputation of his left leg below the knee – first respondent alleged that the injuries were caused by the appellant employer and/or the second respondent forklift manufacturer – primary judge found in favour of the first respondent with respect to his claim against the appellant employer – whether primary judge erred as to certain factual findings – whether primary judge erred in the identification of the appropriate risk of harm and in finding that the risk of harm was foreseeable to the appellant – whether primary judge erred in finding that the appellant’s negligence caused the injury to the first respondent	Metri v Nestlé Australia Ltd [2021] NSWSC 343
41	2021/172122	Eliezer v Sydney Water Corporation	23/11/2021	ADMINISTRATIVE LAW (judicial review) – underlying proceedings related to non-payment by the appellant of a debt with respect to the supply of water, sewerage or stormwater drainage services by the first respondent – primary judge found in favour of first respondent – whether primary judge’s decision was illogical, irrational or unreasonable – whether primary judge failed to take into account that the proceedings as commenced by the first respondent was allegedly vexatious – whether primary judge erred by making	Eliezer v Sydney Water Corporation [2021] NSWDC 66

				findings contrary to law – whether primary judge failed to make findings that the first respondent had engaged in unconscionable conduct – whether the primary judge’s decision gave rise to a reasonable apprehension of bias	
42	2021/144138	Top Hut Banoon Pastoral Co Pty Ltd v Walker	24/11/2021	TORTS (negligence) – first respondent fell off a step and sustained injuries on certain premises, and brought a claim in negligence against the appellant occupier of the premises – the appellant filed a cross-claim against the second respondent, who was the employer of the first respondent, alleging a breach of duty of care on the basis that it failed to inspect the premises of the occupier prior to the arrival of its employees at those premises – primary judge found in favour of the first respondent – whether primary judge erred in failing to find that the second respondent employer did not breach its duty of care to the first respondent – whether primary judge erred by failing to have regard to certain expert evidence – whether primary judge erred in the assessment of damages	Julie Walker v Top Hut Banoon Pastoral Co Pty Limited trading as Trustee the Wakefield Family Trust; Shear Away Pty Limited v Top Hut Banoon Pastoral Co Pty Limited trading as Trustee the Wakefield Family Trust [2021] NSWDC 147

43	2020/370174	PPK Willoughby Pty Ltd v Baird	25/11/2021	<p>PROFESSIONAL NEGLIGENCE (legal) – in 2009, appellant purchased a 4.78 hectare site in Willoughby for \$25.5 million and subsequently constructed a number of townhouses upon the land which were marketed and sold – respondents were collectively the partners at HWL Ebsworth, which acted for the appellant in the transaction – appellant alleged that respondents’ negligence and misleading or deceptive conduct meant that the appellant was left unaware until after purchasing the property that the land was adversely affected by flood control restrictions which necessitated unforeseen work before it could be developed as intended – primary judge found in favour of the respondents – whether primary judge erred in determining the appellant’s recoverable loss – whether primary judge failed to consider relevant evidence – whether primary judge took into account irrelevant considerations – whether primary judge erred in certain factual findings – whether primary judge misapplied <i>Henville v Walker</i> (2001) 206 CLR 459</p>	PPK Willoughby Pty Ltd v Baird [2020] NSWSC 1757
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44	2021/36540	Turner v O'Bryan	26/11/2021	EQUITY – first appellant who suffered from advanced dementia was formerly the sole registered proprietor of six rural properties in Trundle, NSW – dispute arose as to the transfer of the Trundle Properties under an Enduring Power of Attorney between 2015-2016 for a nominal sum from the first appellant to the first-third respondents – a further dispute arose as to two promissory notes signed by first appellant in favour of the trustee of the second appellant totalling around \$2.5 million – primary judge declared the promissory notes to be void and of no effect – whether primary judge erred in finding that the transfer under the Enduring Power of Attorney had a “dishonest and fraudulent design” – whether primary judge erred as to certain factual findings – whether primary judge failed to have regard or give adequate consideration to certain evidence – whether primary judge failed to apply s 42(1) of the Real Property Act 1900 (NSW)	Turner v O'Bryan-Turner [2021] NSWSC 5; Turner v O'Bryan-Turner (No 2) [2021] NSWSC 101; Turner v O'Bryan-Turner (No 3) [2021] NSWSC 338
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45	2021/161015	Harris v Harris	29/11/2021	<p>CORPORATIONS – the first appellant was appointed as a director of the third respondent company, Sirrah, in 2002 – Sirrah carried on business as a provider of aged care services – in 2017, Sirrah entered into a contract for the sale of its assets and undertaking to a third party for an amount exceeding \$25m – by way of derivative claims, the first and second respondents (who held 47% shares in Sirrah) sought declarations that by engaging in specified conduct, the appellants had breached their director duties owed to Sirrah, and that any money paid to the appellants pursuant to any loan arrangements between them and Sirrah were held on constructive trust for Sirrah – primary judge found in favour of respondents – whether primary judge erred by finding that the first appellant breached his duties to Sirrah by causing the payment of certain management fees – whether primary judge erred by dismissing an application seeking to vacate the hearing date</p>	<p>In the matter of Sirrah Pty Ltd (in prov liq) [2021] NSWSC 413; In the matter of Sirrah Pty Ltd (in prov liq) [2021] NSWSC 492</p>
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46	2021/303731 ; 2021/317873	Kazzam v Hazzard; Henry v Hazzard	30/11/2021	ADMINISTRATIVE (other) – whether orders made for improper purpose - whether power to make a law whose operation is to coerce others to submit to an assault - Constitution – whether correct to characterise order as a mere “incentive” rather than oppressive - meaning and extent of guarantee against civil conscription in s51(xxiiiA) – costs – whether costs appropriate in matter of considerable public importance	Kassam v Hazzard; Henry v Hazzard [2021] NSWSC 1320
47	2021/106115 ; 2021/229140	Osei v P K Simpson & Co Pty Ltd	01/12/2021	TORTS (negligence) – whether primary judge erred in holding that the appellant’s sole right to compensation was for his loss of the opportunity to proceed with his case before the Workers Compensation Commission for weekly compensation benefits – whether primary judge erred as to the assessment of damages – whether primary judge erred as to the application of ss 32A, 38 and 39 of the Workers Compensation Act 1987 (NSW)	Lower court decision not available on Caselaw

48	2021/140048 ; 2021/83984	Alexandrova v Owners of Strata Plan 87265; Owners of Strata Plan 87265 v Saaib	02/12/2021	<p>BUILDING &amp; CONSTRUCTION – dispute as to construction of 11 townhouses located in Marrickville – respondent brought claims against the appellant on the basis that she was liable for the costs of rectifying defects in the building works, on the basis that she engaged in misleading or deceptive conduct in contravention of s 18 of the ACL – the conduct alleged to be misleading or deceptive was an implied representation that the appellant was authorised by the builder to submit documents to obtain home warranty insurance for the Marrickville property, when she was in fact not so authorised – respondents alleged that her misleading or deceptive conduct was a material cause of the issuance of the home warranty insurance and construction of the defective Marrickville property – primary judge found in favour of the respondent and awarded damages exceeding \$3.4 million – whether primary judge erred in holding that the appellant engaged in conduct that was misleading or deceptive – whether primary judge erred in holding that s 18 of the ACL was applicable, in circumstances where the relevant conduct occurred prior to the ACL coming into operation – whether primary judge erred in finding that there were representations by the appellant as to actual authority – whether primary judge erred as to certain</p>	The Owners – Strata Plan No 87265 v Saaib; The Owners – Strata Plan No 87265 v Alexandrova [2021] NSWSC 150
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				<p>factual findings – whether primary judge erred as to findings on causation, reliance and loss – whether primary judge erred as to the calculation of damages</p>	
49	2021/175402	Transport for NSW v Eureka Operations Pty Ltd	03/12/2021	<p>LAND &amp; ENVIRONMENT – the appellant compulsorily acquired land in which the respondent held a leasehold interest in Dubbo – the respondent was offered compensation pursuant to s 66 of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW) but objected to the amount of compensation offered – primary judge determined compensation in the sum of over \$633k – whether primary judge erred in the assessment of compensation – whether primary judge erred by failing to apply the test in <i>Spencer v Commonwealth</i> (1907) 5 CLR 418</p>	Eureka Operations Pty Ltd v Transport for New South Wales [2021] NSWLEC 41