



Supreme Court of NSW Court of Appeal

Decisions Reserved as at 12 August 2022

	Number	Case Name	Heard	Issues	Judgment Below
1	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

2	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
3	2021/282503	Amaca Pty Ltd v Cleary	29/03/2022	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	<i>Roseanne Cleary as the Legal Personal Representative of the Estate of the late Fortunato (aka Frank) Gatt v Amaca Pty Ltd</i> [2021] NSWDDT 5
4	2021/204042	Dwyer v Volkswagen Group Pty Ltd	30/03/2022	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	<i>Dwyer v Volkswagen Group Australia Pty Ltd t/as Volkswagen Australia</i> [2021] NSWSC 715

				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	
5	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, welcome 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
6	2021/240231	Massoud v Nationwide News Pty Limited	12/04/2022	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	<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

				judge erred as to the assessment of damages	
7	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 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</p>	<p><i>Application by Peter Frederick Clark pursuant to s 78 of the Crimes (Appeal and Review) Act 2001 (NSW) [2021] NSWSC 1364</i></p>

8	2021/286249	Bryant v Quinn	19/04/2022	<p>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</p>	<i>Quinn v Bryant</i> [2021] NSWDC 570
9	2021/189912	Nitopi v Nitopi	21/04/2022	<p>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 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</p>	<i>Estate of Nitopi (No 2)</i> [2021] NSWSC 748

10	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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11	2021/328205; 2021/328225	McMurphy 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 McMurphy</i> [2021] NSWSC 1179
12	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
13	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 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	<i>Health Care Complaints Commission v Robinson</i> [2021] NSWCATOD 142

				<p>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>	
14	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>	<i>Khadarou v Antarakis</i> [2021] NSWSC 743

15	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
16	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>
17	2021/242905	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);	18/05/2022	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	<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>

		Khalil v Bluemine Pty Ltd (in liq)		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 – whether primary judge erred in failing to consider concept of imputed knowledge	
18	2021/323942	Fisher v Degnan	18/05/2022	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	<i>Degnan v Fisher</i> [2021] NSWSC 1334

				<p>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 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>	
19	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</p>	<i>Pavlis v Pavlis</i> [2021] NSWSC 1117

				<p>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 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>	
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20	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 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</p>	<p><i>Nicolitsa Togias v State of New South Wales</i> [2021] NSWSC 1588</p>
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				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”	
21	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
22	2021/299055	Miller v Secretary, Department of Communities and Justice	1/06/2022	WORKERS COMPENSATION – 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	<i>Miller v Secretary, Department of Communities and Justice (No 9)</i> [2021] NSWPCPD 29

				<p>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 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</p>	
23	2021/362894	Alora Property Group Pty Ltd v McKenna	2/06/2022	<p>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</p>	<p><i>In the matter of Alora Davies Developments 104 Pty Ltd</i> [2021] NSWSC 1583</p>

24	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>
25	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>

26	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	
27	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
28	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 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	<i>Australian Karting Association Ltd v Karting (NSW) Incorporated</i> [2021] NSWSC 1075

29	2021/358220	Shoal Bay Beach Constructions (No 1) Pty Ltd v Hickey	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 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</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>
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				<p>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>	
30	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>

31	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>
32	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</p>	<p><i>Diamond World Jewellers Pty Ltd v Catlin Australia Pty Ltd</i> [2021] NSWSC 1431</p>

				<p>\$1,691,435.70 for entirety of stock 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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33	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 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</p>	<p><i>SEMF Pty Ltd v Renown Corporation Pty Ltd</i> [2021] NSWSC 1547</p>
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				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	
34	2022/8530	Searle v McGregor	29/06/2022	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	<i>Lower Court decision not on Caselaw</i>
35	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	<i>McCormick v Mt Pleasant Stud Farm Pty Ltd (No 2) [2021] NSWDC 489</i>

				<p>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 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</p>	
36	2022/83410	Jarvis v Allianz Australia Ltd	20/07/2022	<p>ADMINISTRATIVE LAW – Application for judicial review of decision of Review Panel under Motor Accidents Compensation Act 1999 (NSW) – Appellant involved in a car accident occasioning minor physical injuries, but alleged to have caused significant psychological harm, including post-traumatic stress disorder in light of Appellant's history of traumatic vehicular accidents – Review panel concluded that the degree of permanent impairment was not greater than 10% on the basis that accident in question did not contribute to the Appellant's psychiatric symptoms – Primary judge rejected Appellant's grounds for review – Whether primary judge erred in concluding that there was no jurisdictional error – Whether primary</p>	Jarvis v Allianz Australia Insurance Ltd [2022] NSWSC 161

				judge made various factual errors	
37	2022/8762	Forte Sydney Construction Pty Ltd v N Moit & Son (NSW) Pty Ltd	21/07/2022	<p>CONTRACT – offer and acceptance – Appellant was builder engaged by developer on a site located in Ryde – Respondent was a subcontractor engaged by Appellant to carry out various excavation works on the site – parties agreed that they entered into an arrangement for Respondent to supply, install and undertake various works on the site in consideration of approx. \$1.7 million – Appellant asserted that agreement comprised of written subcontract and further terms agreed orally, subsequent to formation of subcontract in May 2018 – Appellant contended that written contract included “Letter of Engagement” which was not signed – Appellant pleaded that Respondent accepted subcontract by its conduct in commencing work at the site in May 2018 – Respondent contended that terms of agreement were not formalised until June 2018 by way of document entitled “Final Tender Revision” – Appellant brought claim against Respondent for damages including a liquidated sum of \$210,000 arising under the pleaded subcontract – Respondent brought cross-claim for sum comprising cost of works said to arise under variation to “Final Tender Revision” contract – primary judge found in favour of Respondent on claim and cross-claim – whether primary judge erred in holding that contract between the parties comprised “Final Tender Revision” document – whether primary judge erred in making various findings of fact – whether contract as</p>	<i>Forte Sydney Construction Pty Ltd v N Moit & Sons (NSW) Pty Ltd [2021] NSWDC 673</i>

				found by primary judge was inconsistent with terms of Respondent's engagement on project – whether terms of documents submitted to Respondent by Appellant were capable of acceptance	
38	2021/358329	Media Niugini Ltd v International Management Group of America Pty Ltd	22/07/2022	<p>CONTRACT – Appellant made a bid for certain television broadcasting rights to rugby league matches from the Respondent – Respondent accepted the Appellant's bid – a draft contract was prepared by the Respondent – Appellant stated it would not be taking the rights – Respondent purported to terminate the agreement and sold the rights to another party – Respondent alleged that the parties reached a binding contract and claimed damages for wrongful repudiation by the Appellant – primary judge held that the Respondent and the Appellant reached a binding contract – primary judge found that the Respondent did not make a misrepresentation or engage in misleading and deceptive conduct – primary judge held that Appellant repudiated the agreement and the Respondent accepted that repudiation – primary judge awarded damages calculated as the difference the Respondent was entitled to receive under the contract and the amount it will receive for those rights from the other party – whether primary judge erred in construing the Appellant's bid – whether primary judge erred in finding that the Respondent did not make a misrepresentation or engage in deceptive and misleading conduct – whether primary judge</p>	<i>International Management Group of America Pty Ltd v Media Niugini Ltd t/as EMTV [2021] NSWSC 1590</i>

				erred in finding the parties reached a complete binding contract	
39	2021/304575	Burton v DPP	26/07/2022	ADMINISTRATIVE LAW (other) – judicial review - declarations sought by applicants during committal proceedings that Children and Young Persons (Care and Protection) Act 1998 (NSW) was not constitutionally valid – whether s105 restricts political free speech – whether a restraint on telecommunications power – whether judicial power was able to be invoked as the committal was administrative	<i>Lower decision not available on Caselaw</i>
40	2021/270700	Russell v Carpenter	4/08/2022	TORTS (NEGLIGENCE) – occupier’s liability – Respondent was injured at a property owned by the Appellants when he slipped and fell down a set of stairs leading down from a verandah at the back of the property – Respondent claimed damages for the complete loss of earning capacity owing to his injury, pursuant to the Civil Liability Act 2002 (NSW) – Respondent suffered two subsequent accidents in the course of his employment as a truck driver – Respondent contended that Appellants could have implemented reasonably practicable measures to ensure the safety of the stairs – Appellants contended that there was no evidence that they were in breach of their duty of care and that the Respondent’s injury was a result of his failure to exercise reasonable care for his own safety – primary judge found in favour of the Respondent and awarded damages in the sum of \$248,092.18 – whether primary judge erred in finding that Appellants breached their duty of care –	<i>Neil Carpenter v Damian James Russell [2021] NSWDC 447</i>

				<p>whether primary judge erred in finding that the content of the Appellants' duty of care was modified by their entry into a short-term rental contract with the Respondent – whether primary judge erred in finding that the Appellants were under a positive duty to ensure the safety of the property – whether primary judge erred in relying upon a SafeWork Australia Code of Practice to determine the scope of the Appellants' duty of care – whether primary judge erred in making various findings of fact regarding liability – whether primary judge erred in failing to reduce the damages recoverable on the basis of contributory negligence – whether primary judge erred in the assessment of damages – whether primary judge failed to provide adequate reasons for findings of fact</p>	
41	<p>2021/262212; 2021/17031; 2021/258153</p>	<p>Anchorage Capital Master Offshore Ltd v Bakewell; Banco Bilbao Vizcaya Argentaria SA v Sparkes</p>	5/08/2022	<p>CORPORATIONS – the proceedings arose from the collapse in April 2016 of Arrium Limited and a number of its subsidiaries – the respondents were respectively the Group Treasurer and the CFO of the Arrium Group at all material times – the proceedings concerned a claim by the appellant banks against the respondents for misleading or deceptive conduct in relation to certain misleading statements said to be contained in or made by virtue of a number of drawdown notices issued by the Arrium entities, pursuant to facility agreements in 2016 – the respondents were alleged to have been responsible for causing the drawdown notices to be executed and issued – primary judge found in favour of the respondents – whether</p>	<p><i>Anchorage Capital Master Offshore Ltd v Sparkes (No 3); Bank of Communications Co Ltd v Sparkes (No 2) [2021] NSWSC 1025</i></p>

				primary judge erred as to the correct legal test for insolvency – whether primary judge erred as to certain factual findings – whether primary judge erred as to his conclusion on misleading or deceptive conduct – whether primary judge erred as to his findings on causation – whether primary judge erred as to his findings on loss and damage	
42	2021/292457	Binetter v Binetter	8/08/2022	<p>PRACTICE AND PROCEDURE – loan recovery proceedings – by executor of estate of the deceased – Appellant is executor of estate of the deceased – Respondent is uncle of the Appellant and nephew of the deceased – Appellant sued Respondent to recover \$1 million he was alleged to have borrowed from the deceased in September 2010 – Respondent denied that loan was made – Respondent contended that Appellant’s action was statute barred, having been commenced more than six years after the loan allegedly occurred pursuant to s 14 of the Limitation Act 1969 (NSW) – Appellant contended that limitation period was suspended from at least the time it would otherwise have expired as the deceased was subject to a “disability” for the purposes of s 52 of the Limitation Act 1969 (NSW) – primary judge found that the loan had been made – primary judge found in favour of the Respondent and held that the deceased was not under a disability so as to extend the relevant limitation period – whether primary judge erred in various findings of fact in light of medical and expert reports – where Respondent never required authors of the reports for cross-examination –</p>	<p><i>Ida Wolff bht Steven Binetter v Binetter</i> [2021] NSWSC 1249</p>

				whether primary judge erred in application of s 11(3) of the Limitation Act 1969 (NSW) – whether primary judge erred in holdings that Appellant did not discharge onus of proof	
43	2021/289643; 2021/94958	Edwards v State of NSW	9/08/2022	TORTS (other) – the appellant claimed damages for malicious prosecution and false imprisonment against the respondent – the primary judge found in favour of the respondent – whether the primary judge failed to have regard to certain evidence – whether the appellant was denied procedural fairness – whether the primary judge erred as to certain factual findings	<i>Edwards v State of New South Wales</i> [2021] NSWSC 181
44	2021/339057	Brittliffe v Brown	9/08/2022	TORTS (NEGLIGENCE) – motor vehicle accident – personal injury – Appellant and First Respondent were involved in a motorcycle accident – Appellant suffered injury in the accident – dispute as to whether First Respondent was driving the motorcycle while the Appellant rode as a pillion passenger – Appellant commenced proceedings seeking damages for personal injury against the First Respondent and the Second Respondent compulsory third party insurer – primary judge entered judgment for Respondents and dismissed Appellant’s proceedings – primary judge ordered that the Appellant pay Second Respondent’s costs on an indemnity basis after 15 June 2020 – whether primary judge erred in making, or failing to make, various findings of fact – whether primary judge erred in failing to apply s 177(3) of the Road Transport Act 2013 (NSW) to contemporaneous documentary evidence – whether primary	Lower court decisions not available on NSW Caselaw

				<p>judge erred in making various credit findings, including one adverse to the Appellant – whether primary judge erred in failing to draw certain inferences on the evidence – whether primary judge erred in drawing a Jones v Dunkel inference against the Appellant – whether primary judge erred in placing, or failing to place, weight on particular pieces of evidence – whether primary judge failed to provide adequate reasons for certain findings – whether primary judge failed to afford procedural fairness to the Appellant – whether primary judge erred in the construction and application of UCPR r 42.15A in order to award costs in favour of the Second Respondent</p>	
45	2022/65750	Creak v Ford Motor Company of Australia Ltd	10/08/2022	<p>CONTRACT – Appellant entered into a deed of settlement with the Respondent – under the deed the Appellant accepted inter alia that he would cease production and supply of a range of Ford vehicles and parts that are not manufactured with the authority of the Respondent or its related bodies corporate – Respondent sought injunctive relief against the Appellant for breach of a settlement of proceedings – primary judge found that deed of settlement was valid and the Appellant was bound by its terms – primary judge found that Appellant had failed to adhere to the terms of the deed – primary judge entered judgment for the Respondent – whether primary judge erred in construing the deed of settlement – whether primary judge erred in finding that the restraint of trade doctrine did not apply to the deed – whether primary judge erred in finding</p>	<p><i>Ford Motor Company of Australia Limited v Tallevine Pty Ltd (as trustee for Thornleigh Trading Trust) (in liq) [2022] NSWSC 83</i></p>

				it was open to the Respondent to recover damages which it had incurred in other proceedings – whether primary judge erred in making orders for injunctive relief	
46	2021/358248	Sims v Commonwealth of Australia	11/08/2022	Ford Motor Company of Australia Limited v Tallevine Pty Ltd (as trustee for Thornleigh Trading Trust) (in liq) [2022] NSWSC 83 (Schmidt AJ)	<i>Commonwealth of Australia (Royal Australian Navy) v Sims</i> [2021] NSWDC 690
47	2021/333379	Ross v Lane	11/08/2022	LAND & ENVIRONMENT – class 4 proceedings – judicial review – First Respondent is the owner of an apartment at Elizabeth Bay – Appellant is the owner of an apartment in a nearby complex – on 25 May 2019, First Respondent applied to Second Respondent for development consent to undertake additions and alterations to the apartment – on 12 August 2020, development consent was granted by Second Respondent on certain conditions – on 11 November 2020, Appellant commenced judicial review proceedings in the Land and Environment Court seeking a declaration that the Second Respondent’s development consent was invalid – Appellant contended that the First Respondent’s proposed additions and alterations fell within the scope of cl 4 of State Environmental Planning Policy (“SEPP”) No 65 and were therefore required to be considered by a Design Review Panel – accepted that the First Respondent’s development application was not referred to a Design Review Panel – Appellant contended that this amounted to a failure to satisfy a jurisdictional fact – First Respondent contended that SEPP	<i>Olivia Ross v Patrick Lane (No 2)</i> [2021] NSWLEC 121

				<p>No 65 was not engaged as the proposed additions and alterations did not amount to a “substantial redevelopment or refurbishment of an existing building” – primary judge found in favour of the First Respondent and dismissed the proceedings – whether primary judge erred in failing to consider the impact of the proposed additions and alterations on private views from adjoining buildings – whether primary judge erred in construing cl 4(1)(a)(ii) of SEPP 65 without regard to objectives and principles of the Policy as a whole – whether primary judge erred in failing to consider impact of the proposed additions and alterations on the design quality of neighbouring buildings – whether primary judge erred in failing to find that the proposed addition of a new level in the apartment gave rise to a “new building” for the purposes of s 1.4 of the Environmental Planning and Assessment Act 1979 (NSW) and cl 3(2) of SEPP No 65</p>	
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