



**Supreme Court of NSW Court of Appeal**

**Decisions Reserved as at 26 August 2022**

	Number	Case Name	Heard	Issues	Judgment Below
1	2019/110615	Nyunt v First Property Holdings Pty 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	<p>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</p>	<p><i>Williams v Fraser</i> [2021] NSWSC 416</p>
3	2021/204042	Dwyer v Volkswagen Group Pty Ltd	30/03/2022	<p>TRADE PRACTICES – the appellant brought representative proceedings on behalf of some 83,000 persons who purchased Volkswagen vehicles in which a Takata driver side airbag was installed between 2007 and 2018 – the appellant claimed that his vehicle was not of acceptable quality because, by reason of the installation of the Takata airbag, the vehicle was not free from defects and was not safe – primary judge found in favour of the respondent – whether primary judge erred in failing to find that the appellant’s vehicle was not of acceptable quality at the time of the supply to the appellant, within the meaning of s 54 of the Australian Consumer Law – whether primary judge erred as to certain factual findings – whether primary judge erred by importing a negligence or fault standard into a strict liability regime – whether primary judge erred by rejecting certain expert evidence – whether primary judge ought to have held that the appellant was entitled to damages under s 272 of the ACL</p>	<p><i>Dwyer v Volkswagen Group Australia Pty Ltd t/as Volkswagen Australia</i> [2021] NSWSC 715</p>

4	2021/321969	Secretary, Dept of Communities and Justice v KH	6/04/2022	ADMINISTRATIVE (other) – judicial review sought of orders made in <i>Children and Young Person (Care and Protection) Act 1998</i> (NSW) – whether misconstrued requirement in s83(5) that there be a “realistic possibility of restoration within a reasonable period” – whether failed to apply s9(1) in consideration the safety, welfare and well-being of child being paramount – whether taking into account alleged denial of procedural fairness in Children’s Court	<i>KH v Secretary, Department of Communities and Justice</i> [2021] NSWDC 498
5	2022/20519	Clark v Attorney General of NSW	14/04/2022	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 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	<i>Application by Peter Frederick Clark pursuant to s 78 of the Crimes (Appeal and Review) Act 2001 (NSW)</i> [2021] NSWSC 1364

				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	
6	2021/328205; 2021/328225	McMurchy v Employsure Pty Ltd; Kumaran v Employsure Pty Ltd	29/04/2022	CONTRACT – restraint of trade – whether first applicant bound by restraint in contract – whether restraint unreasonable – whether breach of fiduciary obligation by accepting employment with second applicant whilst still employed by respondent – whether first applicant induced an employee of respondent to leave – whether second applicant knowingly assisted the first applicant in the breaches	<i>Employsure Ltd v McMurchy</i> [2021] NSWSC 1179
7	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

8	2021/326602	Khadarou v Antarakis	10/05/2022	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	<i>Khadarou v Antarakis</i> [2021] NSWSC 743
9	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
10	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>
11	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	<i>Degnan v Fisher</i> [2021] NSWSC 1334

				<p>lived in secondary dwelling whilst Respondent occupied primary dwelling – on 2 July 2012, Respondent transferred \$250,000 into Appellants’ bank account and recorded transaction as payment for “house purchase” – on 20 July 2012, parties executed a Deed entitled “Deed of Loan” – Deed recorded a principal sum of \$250,000 advanced from Respondent to Appellants for purpose of “assist[ing] in purchase of property situate at [Sawtell]” – in January 2019, parcel of land was subdivided into separate lots for primary and secondary dwellings – in February 2019, Appellants sold primary dwelling and demanded that Respondent vacate the property – in November 2019, Appellants sold 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>	
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12	2021/278620	Pavlis v Pavlis	19/05/2022	<p>EQUITY – constructive trust – proprietary estoppel – Appellants are sons of the Respondents – Respondents are registered proprietors of a property at Strathfield – at the time of its purchase in 1986, the Property was in a very dilapidated state – over a period of 20 years, the Property was restored to its original condition by the Appellants – Appellants expended considerable time, effort and funds in the course of the Property’s restoration – as of 2017, a family dispute had resulted in the estrangement of the Appellants from the Respondents – Respondents made no provision for Appellants in their wills – Appellants commenced proceedings against Respondents seeking a declaration that the 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</p>	<i>Pavlis v Pavlis</i> [2021] NSWSC 1117
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				separate property	
13	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</p>	<i>Nicolitsa Togias v State of New South Wales</i> [2021] NSWSC 1588



				<p>contributed to expenses of the property following the breakdown of the relationship were payments pursuant to the joint endeavour which had since terminated – Whether primary judge erred in holding that the beneficial interest should be shared equally as an application of the maxim “equity is equality”</p>	
14	2019/363483; 2021/214357	Foundas v Arambatzis	24/05/2022	<p>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</p>	<i>Foundas v Arambatzis</i> [2020] NSWCA 47
15	2021/299055	Miller v Secretary, Department of Communities and Justice	1/06/2022	<p>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</p>	<i>Miller v Secretary, Department of Communities and Justice (No 9)</i> [2021] NSWPCPD 29

				<p>“cause of injury”, under s 4(a) of the Workers Compensation Act, was the deceased’s asthma – those proceedings were dismissed successively by an Arbitrator, a Presidential Member on appeal and the Court of Appeal, on findings that the deceased’s injury was a pre-existing medical condition such that employment was not a “substantial contributing factor” to her injury and death – Appellants subsequently commenced the present proceedings on the basis that the relevant “causes of injury” were the deceased’s asthma and/or cardiac arrest – Respondent contended that present 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>	
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16	2021/362894	Alora Property Group Pty Ltd v McKenna	2/06/2022	CORPORATIONS — winding up — liquidator’s adjudication of proof of debt — appeal to Court from liquidator’s decision — effect of clause 16 of Shareholders Agreement – whether funds being available prior to there being a liability for the payment of fees – whether erred in rejecting proof of debt for \$198,165 when supported by uncontested evidence	<i>In the matter of Alora Davies Developments 104 Pty Ltd</i> [2021] NSWSC 1583
17	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 &amp; Hobhouse v L Macarthur-Onslow &amp; Ors</i> [2021] NSWSC 948
18	2021/296713	Sheppard v Smith	8/06/2022	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	<i>Sheppard v Smith</i> [2021] NSWSC 1207

				<p>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 was not obsolete – whether primary judge imposed excessive standard of proof on Appellants as to issue of substantial injury to Respondents</p>	
19	2021/269394	<p>Australian Karting Association Ltd v Karting (New South Wales) Inc</p>	16/06/2022	<p>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</p>	<p><i>Australian Karting Association Ltd v Karting (NSW) Incorporated</i> [2021] NSWSC 1075</p>

				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	
20	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</p>	<p><i>Shoal Bay Beach Constructions No. 1 Pty Ltd v Mark Hickey and the persons listed in Schedule A to this Statement of Claim trading as at all material times Sparke Helmore (No 6) [2021] NSWSC 1597; Shoal Bay Beach Constructions No. 1 Pty Ltd v Mark Hickey and the persons listed in Schedule A to this Statement of Claim trading as at all material times Sparke Helmore (No 5) [2021] NSWSC 1499</i></p>

				<p>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 judge assessed a reduction for SBB's contributory negligence at 30% – primary judge ordered that there be no order as to the costs of the proceedings – whether primary judge erred in finding that the Appellant was contributorily negligent – whether primary judge erred in finding that the Respondents are not liable for legal costs in the Equity proceedings by reason of s 5D(1)(b) of the Civil Liability Act 2002 (NSW) – whether primary judge erred in failing to find that the funds for lots 50 and 52 would have been applied to reduce the Appellant's indebtedness – whether primary judge erred in ordering pre-judgment interest – whether primary judge erred in construing UCPR r 42.34(2) – whether primary judge erred in misconstruing the Appellant's submission – whether primary judge erred in failing to award the Appellant costs of the proceedings</p>	
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21	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>
22	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</p>	<p><i>McGettigan v Coulter &amp; Anor; Coulter &amp; Anor v McGettigan [2021] NSWSC 1097</i></p>

				<p>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>	
23	2021/358543	<p>Catlin Australia Pty v Diamond World Jewellers Pty Ltd</p>	27/06/2022	<p>INSURANCE – Appellant was insurer of the Respondent’s jewellery store – robbery of the store occurred in December 2017 – Respondent subsequently lodged notice of a claim with the Appellant – Respondent’s policy of insurance covered stock that it owned and held on consignment – Respondent claimed in the sum of \$1,691,435.70 for entirety of stock 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</p>	<p><i>Diamond World Jewellers Pty Ltd v Catlin Australia Pty Ltd</i> [2021] NSWSC 1431</p>



				<p>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>	
24	2021/365743	<p>Renown Corporation Pty Ltd v SEMF Pty Ltd</p>	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</p>	<p><i>SEMF Pty Ltd v Renown Corporation Pty Ltd [2021] NSWSC 1547</i></p>

				<p>loss incurred in attempting to fix, and eventually replacing, the Dynamics software, including the loss of employee productivity – the terms of the contract between the parties, and the specific documents comprising that contract, were in issue in the proceedings – the primary judge found in favour of the Respondent and awarded damages in the sum of \$751,291.00 – whether primary judge erred in failing to assess damages as at the date of breach of the contract – whether the primary judge erred in making certain findings of fact – whether primary judge erred in quantifying the Respondent’s loss contrary to the joint opinion of the parties’ respective experts – whether primary judge erred in failing to make an allowance for the eventual improvement of the Dynamics software in the quantification of damages</p>	
25	2022/8530	Searle v McGregor	29/06/2022	<p>CONSTITUTION – claim for common law damages for motor vehicle accident between residents of NSW and Victoria – lack of jurisdiction for PIC to hear claim - leave sought under 26 of Personal Injuries Commission Act for leave to bring claim in District Court rather than PIC – whether claim for statutory benefits are common law compensation – whether application form lodged with PIC complied with s26(4)(a)(1) – whether applicant needed to comply with UCPR 15.12 and 15.14 – whether ought to have been dismissed for failure to comply</p>	<i>Lower Court decision not on Caselaw</i>

26	2021/275201	Mt Pleasant Stud Farm Pty Ltd v McCormick	1/07/2022	<p>TORTS (NEGLIGENCE) – Appellant owns and operates a thoroughbred horse stud farm – Respondent was employed by Appellant as manager and horse trainer – on 29 December 2014, Respondent was breaking a horse in – Respondent fell off that horse and sustained injuries to his neck, right arm and shoulder – Respondent brought a claim against the Appellant for negligence, pursuant to s 151E of the Workers Compensation Act 1987 (NSW) – Respondent contended that his injuries deprived him of his entire capacity to earn future income – Appellant denied any breach of its duty of care – Appellant contended that Respondent’s injuries did not render him permanently unfit for employment – Appellant contended that Respondent had been contributorily negligent and voluntarily assumed risk when breaking the horse in – primary judge found in favour of Respondent and awarded damages in the sum of \$1,395,525 – whether primary judge erred in accepting expert report over objection of the Appellant – whether primary judge erred in 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>	<p><i>McCormick v Mt Pleasant Stud Farm Pty Ltd (No 2)</i> [2021] NSWDC 489</p>
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27	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 judge made various factual errors</p>	Jarvis v Allianz Australia Insurance Ltd [2022] NSWSC 161
28	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</p>	<i>Forte Sydney Construction Pty Ltd v N Moit &amp; Sons (NSW) Pty Ltd</i> [2021] NSWDC 673

				<p>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 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</p>	
29	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</p>	<p><i>International Management Group of America Pty Ltd v Media Niugini Ltd t/as EMTV [2021] NSWSC 1590</i></p>

				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 erred in finding the parties reached a complete binding contract	
30	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>
31	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	<i>Neil Carpenter v Damian James Russell [2021] NSWDC 447</i>

				<p>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 – 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>	
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32	2021/262212; 2021/17031; 2021/258153	Anchorage Capital Master Offshore Ltd v Bakewell; Banco Bilbao Vizcaya Argentaria SA v Sparkes	5/08/2022	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 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	<i>Anchorage Capital Master Offshore Ltd v Sparkes (No 3); Bank of Communications Co Ltd v Sparkes (No 2)</i> [2021] NSWSC 1025
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33	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 – 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</p>	<p><i>Ida</i>  <i>Wolff bht Steven Binetter v Binetter</i> [2021] NSWSC 1249</p>
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34	2021/289643; 2021/94958	Edwards v State of NSW	9/08/2022	<p>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</p>	<i>Edwards v State of New South Wales</i> [2021] NSWSC 181
35	2021/339057	Brittliffe v Brown	9/08/2022	<p>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 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</p>	Lower court decisions not available on NSW Caselaw

				<p>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>	
36	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 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</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>

37	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
38	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 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	<i>Olivia Ross v Patrick Lane (No 2)</i> [2021] NSWLEC 121

				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	
39	2021/75408	Terepo v Council of the Law Society of New South Wales	16/08/2022	DISCIPLINARY PROCEEDINGS – the Tribunal recommended that the name of the appellant be removed from the Roll of Australian Legal Practitioners on the basis that she was not a fit and proper person to be an officer of the Supreme Court – whether Tribunal erred by denying the appellant natural justice and procedural fairness – whether Tribunal failed to take into account relevant factors – whether the Tribunal’s decision was otherwise unreasonable	<i>Council of the Law Society of New South Wales v Terepo (No 2)</i> [2019] NSWCATOD

40	2022/8500	SAS Trustee Corporation v Colquhoun	17/08/2022	<p>WORKERS COMPENSATION – Respondent is a former police officer who resigned from that role in 1983 – Respondent made an application for benefits payable under s 10 of the Police Regulation (Superannuation) Act 1906 (NSW) (Act) – Police Superannuation Advisory Committee declined to certify that the Respondent was incapable of discharging the duties of his office due to a specified infirmity and STC Member Services Committee confirmed the decision – Respondent appealed the decision – whether primary judge erred in law by misinterpreting or misapplying s 9A(4) of the Act</p>	Lower Court decision not available on Caselaw
41	2021/175377	Marino (a pseudonym) v B Bello (a pseudonym)	18/08/2022	<p>TORTS (other) – Appellant sought leave to file a proposed amended statement of claim for damages for malicious prosecution and abuse of process against his sister and brother-in-law and to enlarge the defendants to include three solicitors retained by the respondents and the State of NSW – Appellant also sought stay of proceedings to finalise hearings in the Supreme Court of NSW, the High Court of Australia and the Local Court of NSW – Trial judge refused to grant application for stay of proceedings – Trial judge held that the malicious prosecution and abuse of process claims brought against the respondents were clearly hopeless in terms of the General Steel test and should be struck out and dismissed with costs – whether the trial judge erred in applying the general law finding that the respondents did not initiate – whether the trial judge acted contrary to ss 56-59 of the Civil Procedure Act</p>	<i>Marino v Bello</i> [2021] NSWDC 52

				2005 (NSW) in refusing to grant leave to replead	
42	2022/50536	Australian Capital Financial Management Pty Ltd v Australian Financial Complaints Authority Ltd	22/08/2022	<p>CONTRACT – whether loan agreement enforceable – the Second and Third Respondents carried on a business ('ASSH') in Australia – the Appellant agreed to lend ASSH an amount of up to \$2 million in connection with ASSH's business – the Second and Third Respondents agreed to guarantee ASSH's obligations under the agreement and each granted a mortgage over property – the Third Respondent's property was sold and the Appellant received \$254,646.10 from the sale proceeds – First Respondent is the operator of a financial services external dispute resolution scheme ('AFCA scheme') – on 24 January 2019 the Appellant was admitted to membership of the First Respondent – on 3 March 2019 a complaint was lodged with the First Respondent on behalf of the Second and Third Respondents – on 17 February 2021 the First Respondent made a determination that the guarantees provided by the Second and Third Respondents and the mortgages over the Second Respondent's property were invalid and unenforceable – Appellant sought to set aside the First Respondent's determination – primary judge dismissed Appellant's proceedings subject to qualification that the award in respect of legal costs be reduced to an amount of \$5,000 for each of the Second and Third Respondents – whether primary judge erred by finding that the Second and Third Respondents'</p>	<i>Australian Capital Financial Management Pty Ltd v Australian Financial Complaints Authority Limited [2021] NSWSC 1577</i>

				complaint did not exceed the jurisdictional limit under rule C.1.2(e) of the AFCA scheme rules – whether primary judge erred by finding that the First Respondent did not deny the Appellant procedural fairness – whether primary judge erred in failing to find that the decision by the First Respondent was so unreasonable that no reasonable decision-maker could have made it – whether primary judge erred in finding that the First Respondent was only required to consider what was fair in all of the circumstances	
43	2021/346396	Radar v Haines	23/08/2022	DEFAMATION – whether erred in making a suppression order – whether primary judge ought to have recused herself – bias – whether imputations were capable of being conveyed – whether erred in finding that there was serious harm to his reputation – whether publication was protected by common law qualified privilege – whether publication was actuated by malice - inferences – admissions of evidence – whether contingent assessment of damages manifestly inadequate	Lower decision not available on Caselaw
44	2021/369585	Scott v Scott	23/08/2022	SUCCESSION – family provision – application by adult child of deceased – Appellant and Respondent are sisters and the deceased was their mother – Respondent is executrix and major beneficiary of deceased's estate – deceased's last will was made in May 2019, approximately two months before her death at the age of 89 – deceased's main asset was a property at Fairfield – by her last will, deceased left the Fairfield property, its contents and effects to the Appellant – legacies of \$40,000 were paid to Respondent	<i>Scott v Scott</i> [2021] NSWSC 1619



				<p>and the deceased's son respectively – remainder of the estate was to be divided equally among the three children – an earlier will of the deceased, made in September 2015 and mirrored by that of her husband, left the entirety of the estate to the three children in equal shares – at the same time, an appointment of enduring guardianship was executed in favour of the Appellant and Respondent jointly – in November 2018, the relationship between the Appellant and the Respondent deteriorated to the eventual point of estrangement – the process of the deceased making her last will commenced in April 2019 – the deceased's last will was accompanied by a statement of testamentary disposition – Respondent became aware of the deceased's last will following her death – Respondent purchased a property at Narellan Vale for her primary residence – Respondent subsequently commenced proceedings seeking a family provision order under s 59 of the Succession Act 2006 (NSW) – on the basis that adequate provision for her proper maintenance and advancement had not been made by the deceased's last will and that the deceased was under a moral obligation to make such provision – Appellant occupied the Fairfield property at the time that the proceedings were commenced – primary judge found in favour of the Respondent and awarded her provision of \$180,000, to be funded out of the Fairfield property, in lieu of the provision made by the deceased's last will – whether primary judge erred in finding that</p>	
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				<p>the deceased had a moral obligation to make provision for the Respondent – whether primary judge erred in making various findings of fact – whether primary judge erred in finding that the basis for the Respondent’s disinheritance in the deceased’s last will was false – whether primary judge erred in rejecting the tender of particular documentary evidence – whether primary judge erred in making a finding as to the valuation of the Respondent’s property at Narellan Vale – whether primary judge erred in finding that deceased was not under a moral obligation to provide a property to the Appellant for her residence – whether primary judge erred in applying the principle in <i>Taylor v Farrugia</i> [2009] NSWSC 801 – whether the primary judge erred in exercising the s 59 discretion by having regard to irrelevant considerations</p>	
45	2022/5327	Holcim (Australia) Pty Ltd v Thomas	24/08/2022	<p>WORKERS COMPENSATION – claim for hearing aid – no claim made against present employer - claim against former employer – liability for two earlier hearing aids accepted in 2010 and 2016 – respondent worked in subsequent noisy environment with new employer – whether s17(3) of Workers Compensation Act 1987 permitted 2020 claim against former employer</p>	<p><i>Holcim (Australia) Pty Ltd v Thomas</i> [2021] NSWPCPD 46</p>

46	2021/320994	123 259 932 Pty Ltd v Cessnock City Council	25/08/2022	<p>CONTRACT – Appellant operated a business conducting adventure flights – Respondent is the owner of Cessnock Airport – in July 2007, Appellant and Respondent executed deed entitled “Agreement for Lease” in respect of a piece of land at the Airport referred to as Lot 104 – Agreement for Lease provided that if proposed plan of subdivision was registered by 30 September 2011, then Appellant would be granted 30-year lease over Lot 104 – Appellant erected hangar on Lot 104 and commenced business there – plan of subdivision not registered by sunset date as Respondent could not meet necessary costs – Appellant did not exercise right to terminate Agreement for Lease and eventually abandoned Lot 104 – Appellant deregistered as a company prior to September 2015 – Respondent terminated Agreement for Lease and purchased Lot 104 for \$1 – Appellant was reinstated in June 2017 – Appellant commenced proceedings against Respondent for breach of contract – Appellant claimed damages in sum of approx. \$3.7 million for expenditure incurred on Lot 104 and loss of chance to make profit – Respondent contended that Agreement for Lease excluded such liability and that Appellant had not suffered actionable loss – primary judge held that while Respondent had breached Agreement for Lease, Appellant had suffered no loss – primary judge awarded Appellant nominal damages in sum of \$1 – whether primary judge erred in misapplying principles in <i>McRae v Commonwealth Disposals</i></p>	123 259 932 Pty Ltd v Cessnock City Council (No 2) [2021] NSWSC 1329 (Adamson J)
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				Commission (1951) 84 CLR 377 and Commonwealth v Amann Aviation Pty Ltd (1991) 174 CLR 64 in respect of situation where damages difficult to prove – whether primary judge erred in application of cl 12.3 of Agreement for Lease – whether primary judge erred in assessment of two limbs in Hadley v Baxendale – whether primary judge erred in finding that Amann Aviation presumption had been rebutted in light of various factual matters – whether primary judge erred in failing to make certain findings of fact	
47	2022/204603	Guan v Li	25/08/2022	PROCEDURE – jurisdiction - interim preservation - freezing orders – separate proceedings commenced in Federal Circuit and Family Court of Australia – respondent/plaintiff seeks to use provisions of Family Law Act 1975 (Cth) to set aside transactions in Supreme Court – whether appeal lies to this Court as a consequence of Jurisdiction of Courts (Cross-vesting Act) 1987 (Cth) – resolution of the jurisdiction of this Court to be determined first – whether motion for freezing orders sought to invoke federal jurisdiction – whether interpretation of the Family Law Act was a matter arising under that Act rather than an incidental consideration	Lower decision not available on Caselaw