Supreme Court of NSW Court of Appeal

Decisions Reserved as at 7 September 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 *Foreign Judgments Act 1991* (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	*First Property Holdings Pte Ltd v Nyunt* [2019] NSWSC 249

2	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 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	*Dwyer v Volkswagen Group Australia Pty Ltd t/as Volkswagen Australia* [2021] NSWSC 715
3	2021/321969	Secretary, Dept of Communities and Justice v KH	6/04/2022	ADMINISTRATIVE (other) – judicial review sought of orders made in *Children and Young Person (Care and Protection) Act 1998* (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	*KH v Secretary, Department of Communities and Justice* [2021] NSWDC 498

4	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 *Crimes (Appeal and Review) Act 2001* (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 *Crimes Act 1900* (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 *Crimes Act 1900* (NSW) – Applicant's appeal against conviction dismissed in 2011 – in October 2017, Applicant made application under s 78 of the *Crimes (Appeal and Review) Act 2001* (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	*Application by Peter Frederick Clark pursuant to s 78 of the Crimes (Appeal and Review) Act 2001 (NSW)* [2021] NSWSC 1364

5	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	*Employsure Ltd v McMurchy* [2021] NSWSC 1179
6	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	*Khadarou v Antarakis* [2021] NSWSC 743
7	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	*Ming v R* [2021] NSWDC 223

8	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 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	*Degnan v Fisher* [2021] NSWSC 1334

				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	
9	2021/278620	Pavlis v Pavlis	19/05/2022	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	*Pavlis v Pavlis* [2021] NSWSC 1117

				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	
10	2022/4794	NSW Trustee and Guardian v Togias	23/05/2022	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	*Nicolitsa Togias v State of New South Wales* [2021] NSWSC 1588

				facto partner formed a joint relationship and endeavour pursuant to which the Respondent made contributions to the acquisition of the properties – Whether primary judge erred in making various factual findings – Whether primary judge erred in finding that money borrowed for and contributed to expenses of the property following the breakdown of the relationship were payments pursuant to the joint endeavour which had since terminated – Whether primary judge erred in holding that the beneficial interest should be shared equally as an application of the maxim "equity is equality"	
11	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	*Foundas v Arambatzis* [2020] NSWCA 47
12	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	*Mount Gilead Pty Ltd & Hobhouse v L Macarthur-Onslow & Ors* [2021] NSWSC 948

13	2021/358220	Shoal Bay Beach Constructions (No 1) Pty Ltd v Hickey	21/06/2022	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 judge	*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

				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	
14	2021/363142	Larsen v Tastec Pty Ltd	23/06/2022	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	*Lower court decision not available on Caselaw*

15	2021/358543	Catlin Australia Pty v Diamond World Jewellers Pty Ltd	27/06/2022	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 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	*Diamond World Jewellers Pty Ltd v Catlin Australia Pty Ltd* [2021] NSWSC 1431

				by Respondent – whether primary judge erred in making various findings of fact	
16	2021/365743	Renown Corporation Pty Ltd v SEMF Pty Ltd	29/06/2022	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	*SEMF Pty Ltd v Renown Corporation Pty Ltd* [2021] NSWSC 1547

				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	
17	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	*Lower Court decision not on Caselaw*
18	2022/83410	Jarvis v Allianz Australia Ltd	20/07/2022	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	Jarvis v Allianz Australia Insurance Ltd [2022] NSWSC 161

				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	
19	2021/358329	Media Niugini Ltd v International Management Group of America Pty Ltd	22/07/2022	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 erred in	*International Management Group of America Pty Ltd v Media Niugini Ltd t/as EMTV* [2021] NSWSC 1590

				finding the parties reached a complete binding contract	
20	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	*Lower decision not available on Caselaw*
21	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 – whether primary judge erred in finding that the	*Neil Carpenter v Damian James Russell* [2021] NSWDC 447

				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	
22	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	*Anchorage Capital Master Offshore Ltd v Sparkes (No 3); Bank of Communications Co Ltd v Sparkes (No 2)* [2021] NSWSC 1025

				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	
23	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 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 –	*Lower court decisions not available on NSW Caselaw*

				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	
24	2022/65750	Creak v Ford Motor Company of Australia Ltd	10/08/2022	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	*Ford Motor Company of Australia Limited v Tallevine Pty Ltd (as trustee for Thornleigh Trading Trust) (in liq)* [2022] NSWSC 83

25	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 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 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	*Olivia Ross v Patrick Lane (No 2)* [2021] NSWLEC 121

				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	
26	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	*Council of the Law Society of New South Wales v Terepo (No 2)* [2019] NSWCATOD
27	2022/50536	Australian Capital Financial Management Pty Ltd v Australian Financial Complaints Authority Ltd	22/08/2022	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	*Australian Capital Financial Management Pty Ltd v Australian Financial Complaints Authority Limited* [2021] NSWSC 1577

				$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' 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	

28	2021/320994	123 259 932 Pty Ltd v Cessnock City Council	25/08/2022	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 McRae v Commonwealth Disposals	123 259 932 Pty Ltd v Cessnock City Council (No 2) [2021] NSWSC 1329 (Adamson J)

				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	
29	2021/361913	Sunwater Limited v Liberty Mutual Insurance Company	29/08/2022	INSURANCE – Appellant found liable for breaches of duty committed by its employee – Appellant maintained an "Excess Liability Policy" with the Respondent which provided cover in respect of the first excess layer of insurance under the Appellant's general liability insurance – the policy contained an exclusion clause which excluded liability for claims arising out of the rendering of or failure to render professional advice or service for a fee by the Appellant – Respondent sought declaratory relief that it was not liable to indemnify the Appellant because the exclusion clause was engaged – primary judge found that the claim made against the Appellant was a claim excluded from cover by the exclusion in the primary policy – whether primary judge erred in concluding that the claims arose from professional advice or service given within the meaning of the exclusion clause – whether primary judge erred in concluding that the exclusion applied to claims made by persons who were not the recipient or intended	*Liberty Mutual Insurance Company, Australia Branch v Sunwater Limited (No 2)* [2021] NSWSC 1582

				recipient of the professional advice or service given for a fee by the Appellant	
30	2022/7729	Dean v Pope	30/08/2022	PROFESSIONAL NEGLIGENCE MEDICAL – Unnecessary operation – Neurosurgery – Appellant presented to Respondent with abnormal sensory symptoms in his right lower limb referred from his spine – Appellant alleges that the Respondent conducted an inadequate assessment which led the Respondent to recommend that the Appellant have surgery to his lumbar spine – Appellant alleged that a proper assessment would have revealed the presence of a tumour in the thoracic spine – Appellant alleged that, had the Respondent performed a proper assessment, he would have avoided the progression of otherwise avoidable neurological damage – Primary judge found that the Respondent had acted in a manner that was widely accepted in Australia by professional peer practice pursuant to s 5O(1) of the Civil Liability Act 2002 (NSW) – Whether primary judge erred in making various factual findings – Whether primary judge erred in finding the existence of relevant peer professional practice – Whether primary judge erred in failing to assess damages on the basis that the surgery was unnecessary – Whether primary judge erred in not awarding damages for non-economic loss – Whether the primary judge erred by failing to find that if the “practice point” described in McKenna v Hunter and New England Local Health District [2013] NSWCA 476 forms part of the law in NSW, the Respondent conformed with	*Dean v Pope* [2021] NSWDC 670

				a practice in existence at the time of the provision of services to the Appellant, and that the practice was widely accepted by peer professional opinion as competent professional practice	
31	2022/7355	Zaya v Damirgjian	31/08/2022	TORTS (Negligence) – Motor accidents – First Respondent involved in vehicular accident in 2011 which caused the First Respondent physical and psychological injury – First Respondent injured when a white van attempted to make a U-turn without signalling causing the First Respondent to brake suddenly which in turn caused First Respondent to lose control of his motorcycle – Identity of the driver of the white van unknown until the Appellant was joined as a defendant to the proceedings in 2019 – Primary judge found that Appellant was the owner and driver of the white van – Primary judge entered judgment for the First Respondent in the amount of $375,000 – Whether primary judge erred in making various factual findings dependent upon the acceptance of the evidence of a witness whose testimony lacked credibility and was inconsistent – Whether primary judge failed to consider contrary evidence	*Armin Damirdjian v Nominal Defendant & Zaya* [2021] NSWDC 703

32	2022/134465	Verde Terra Pty Limited v Central Coast Council	1/09/2022	LAND AND ENVIRONMENT – development consent for golf course and waste management facility in 2008 – subsequent consent orders made for remediation of land in 2014 – application for alteration of 2008 development consent – whether there is an existing or approved development on the site - whether further EIS required - whether development was within meaning of cl 35 of Schedule 3 of Environmental Planning and Assessment Regulation 2000	*Verde Terra Pty Ltd v Central Coast Council; Central Coast Council v Environment Protection Authority (No 9)* [2022] NSWLEC 29
33	2022/74273	Chief Commissioner of State Revenue v Elanor Operations Pty Ltd	2/09/2022	TAX – Appellant issued payroll tax assessment notices to the Respondents on the basis that the Respondents were a single "group" – the Respondents made an application to the Appellant to exercise discretion to exclude separate groups within the single group pursuant to s 79 of the Payroll Tax Act 2007 (NSW) (Payroll Act) – the Appellant rejected that application and the Respondents sought review of the decision of the Appellant – primary judge found that the businesses of the Respondent entities were carried on independently of and not connected sufficiently in a material sense with the business of any other Respondent entity – the primary judge held that the discretion to de-group the Respondents should be exercised – whether the primary judge erred in law by taking into account irrelevant matters in applying s 79 of the Payroll Act – whether the primary judge erred in law by finding that it was significant for the purposes of s 79 of the Payroll Act that the capacity of the director to control the	*Elanor Operations Pty Ltd v Chief Commissioner of State Revenue* [2022] NSWSC 104

				group of companies was constrained – whether the primary judge erred in fact by finding that the key personnel supplied by the First Respondent to the other Respondents performed limited functions restricted to oversight – whether primary judge erred by finding that the First Respondent rendered fees for its services to the other Respondents – whether primary judge erred in finding that the businesses of the Respondents were carried on independently of and not connected sufficiently in a material sense with the businesses carried on by the First Respondent	
34	2022/211026	Owners of Strata Plan 74232 v Tezel	5/09/2022	ADMINISTRATIVE (other) – action for damages for loss of rental income following water ingress into strata lot - meaning of the words “the loss” in s 106(2) of Strata Schemes Management Act 2015 (NSW) – whether “the loss” is the loss occasioned only when an ongoing breach ceases with effect – whether respondent’s claim was out of time	*Tezel v Owners of Strata Plan 74232* [2022] NSWCATAP 149
35	2022/9246	Zhang v Walsh	7/09/2022	BUILDING & CONSTRUCTION – Appellant engaged Respondent’s company JSW Property Projects (JSW) to renovate her residential property – a contract was not in place at the time demolition works commenced – over time the Appellant changed her instructions – relationship between parties deteriorated and the Appellant ceased making progress payments – JSW ceased building works – Appellant demolished renovation works part-completed by JSW – Appellant brought claim against the Respondent and JSW for compensation for alleged defects, for recovery of moneys paid	*Zhang and Mills v JSW Property Projects Pty Ltd and Ors* [2021] NSWDC 655

				under mistake of law, and for misleading and deceptive conduct – primary judge found that the contract was a contract which evolved over time and the Respondent was not a party to the contract – primary judge found that the Appellant had not relied on the representations made by the Respondent and JSW – primary judge found that Appellant did not prove loss – primary judge entered judgment for the Respondent against the Appellant – whether primary judge erred in finding Appellant did not establish loss – whether primary judge erred in finding that the Appellant did not rely on the representations made by the Respondent and JSW – whether primary judge erred in concluding that the Respondent was not a party to the contract – whether primary judge erred in finding that the Appellant's demolition of the property was an act of spoliator – whether primary judge erred in making various findings of fact	
36	2021/360651	Stein v Ryden	9/09/2022	TORTS (negligence) – motor accidents – whether primary judge erred in finding that the explanation provided by the Appellant for the delay in commencing proceedings was not satisfactory or full – whether primary judge applied the wrong legal test	*Lower decision not available on Caselaw*

37	2022/151232	Ye v Chen	13/09/2022	CONTRACT – appeal from Local Court to Common Law Division – appeal dismissed – construction of handwritten document as a personal guarantee of separate contract – meaning of refund in handwritten document – whether refund meant a return of funds by company rather than guarantee of the director - whether applicant's name on handwritten document was consistent with her being a director rather than guarantor	*Ye v Chen* [2022] NSWSC 494
38	2022/118789	Cooper v DPP	13/09/2022	ADMINISTRATIVE LAW (judicial review) – termination of Drug Court program for applicant – whether primary Court failed to condition mandatory considerations under ss 10(1)(b) and 11 of Drug Court Act – whether erred by taking into account irrelevant considerations	*Lower decision not available on Caselaw*
39	2021/363148	Ausbao (286 Sussex Street) Pty Ltd	14/09/2022	REAL PROPERTY – Claim for payment of compensation from the Torrens Assurance Fund – Appellant purchased land in the City of Sydney for $55 million described by reference to four lots in identified deposited plans – Deposited plans described the area of the parcels as having a total site area of 1,337.4 m^2 – Appellant discovered after completion of sale that total site area was only 1,255.9 m^2 – Site area of the land was a critical determinant under the relevant planning instruments of the maximum floor area of the completed redevelopment – Appellant sought compensation for the difference in value, or, alternatively, for loss of chance to acquire the land for a lesser price – Primary judge found that the error as to the area of the Lot stated in the plan was an error as to measurement within the meaning of s 129(2)(e) of the *Real Property Act 1900* (NSW) (RPA) because "measurement" includes a stated or ascertained size as well as the	*Ausbao (286 Sussex St) Pty Ltd v The Registrar-General of New South Wales* [2021] NSWSC 1651

				process of ascertaining a size and thus that the claim for compensation failed – Primary judge found (in the alternative) that the material cause of any loss or damage suffered by the Appellant was an act or omission by the Appellant for the purposes of s 129(2)(a) of the RPA – Whether primary judge erred in finding that s 129(2)(a) excluded the Appellant's entitlement to compensation – Whether primary judge erred in finding that s 129(2)(a) does not create an apportionment of responsibility regime – Whether primary judge erred in applying *Kumar v Registrar-General of New South Wales* [2021] NSWSC 1103 and *Wassell v Ken Carr Bobcat & Tipper Hire Pty Ltd* [2021] NSWSC 1415 as authorities for the proposition that s 129(2)(a) does not create an apportionment of responsibility regime rather than finding that those authorities were incorrectly decided – Whether primary judge erred in making various factual findings – Whether primary judge erred in holding that "measurement" in s 129(2)(e) of the RPA refers to both a stated size and the process of ascertaining size – Whether primary judge erred in finding that damages should have been assessed by reference to the difference between the price paid for the land and its market value at the date of acquisition	
40	2022/65396	Aust-One Investment Pty Ltd v New World Investments Pty Ltd	15/09/2022	REAL PROPERTY – the Appellant and the Respondent are owners of adjoining retail buildings in a shopping centre – the previous owners of these buildings agreed to redevelop the buildings – the previous owner of the Respondent's building granted easement to the previous owner of the Appellant's building on terms that included a covenant given by the previous owner of the Appellant's building that they (and successive owners of the Appellant's building) would pay one quarter of	*Aust-One Investment Pty Ltd v New World Investments Pty Ltd* [2022] NSWSC 137

				its gross rentals each calendar month to the owner of the Respondent's building – the Appellant ceased to pay the share of the rentals and claimed that the payment covenant was not enforceable and made a claim for an order requiring the Respondent to repay the total amount of gross rentals that the Appellant had paid on the basis that these amounts were paid under a mistake of law – the Respondent made a cross-claim for a declaration that the payment covenant was enforceable on the basis that the amount required to be paid is one quarter of the net rent and outgoings – the primary judge found that the payment covenant was reasonable commercial solution – the primary judge found that the Appellant was not entitled to say that it was prevented from rejecting or disclaiming the benefit of the easements – the primary judge found that the Appellant was not entitled to deduct from the actual rentals received its own business costs not recoverable from the lessees – the primary judge dismissed the Appellant's claim and the Respondent's cross-claim – whether the primary judge erred in having regard to the Council Deed for the purposes of construing the easement – whether the primary judge erred in holding that the performance of the covenant was a condition of the Appellant's right to enjoy the easement and that the payment covenant bound the Appellant as the successor registered proprietor of the dominant tenement	

41	2022/16926	Feldkirchen Pty Ltd v Development Implementation Pty Ltd	16/09/2022	LAND AND ENVIRONMENT – Judicial review – Appellant challenged validity of the approval granted by Second Respondent to modify the development consent for a subdivision of land in Mittagong – Appellant alleged that the Second Respondent failed to consider the reasons given for the original grant of the consent in circumstances where those reasons were mandatory relevant considerations under s 4.55(3) of the Environmental Planning and Assessment Act 1979 (NSW) – Appellant alleged that the Second Respondent did not form the requisite mental state of satisfaction that the development was substantially the same development as that for which the original consent was granted – Primary judge found that the Second Respondent's decision was not affected by jurisdictional error – Whether primary judge erred in making various factual findings – Whether primary judge erred in holding that the reasons for the original consent were not a mandatory consideration – Whether primary judge erred in finding that the relevant state of satisfaction had been reached – Whether primary judge erred in finding that the reasons for the original grant of consent were required to be publicly notified – Whether there was no evidentiary basis for factual findings made by the primary judge	*Feldkirchen Pty Ltd v Development Implementation Pty Ltd* [2021] NSWLEC 116

42	2021/264875	Galati v Deans	20/09/2022	EQUITY – Appellant was sole director and shareholder of Fifth Respondent – First Respondent is sole director and shareholder of Second Respondent – Appellant and First Respondent were engaged in a joint venture concerning the proposed redevelopment of the area at Blackwattle Bay comprising the Sydney Fish Markets – as part of arrangements for the sale of land at the site, in April 2015 the Second and Fifth Respondents entered into a call option agreement regarding the purchase of shares in the Fourth Respondent, which held an indirect interest in the manager and operator of the Sydney Fish Markets – call option came to be exercised on 20 November 2015 by the Third Respondent as nominee of the Appellant and First Respondent – TRHS became registered owner of shares in Fourth Respondent – Third Respondent was under the control of First Respondent – Appellant asserted a 50% beneficial interest in the shares of Fourth Respondent as held by Third Respondent – First and Second Respondents refused to acknowledge the asserted interest – Appellant commenced proceedings against Respondents seeking declaration that Third Respondent held 50% of its shares in Fourth Respondent on trust for Appellant and Fifth Respondent – First and Second Respondents brought cross-claim seeking equitable compensation for breach of fiduciary duties, damages for misleading and deceptive conduct and damages for tort of deceit – relating to Appellant's alleged receipt of a	*Galati v Deans* [2021] NSWSC 1094

				secret commission of $1,799,820.95 from purchaser of call option rights to land at the development site – primary judge found in favour of Respondents – Appellant's claim dismissed – cross-claim successful and Appellant ordered to pay equitable compensation, damages for misleading and deceptive conduct and exemplary damages for deceit – whether primary judge erred in failing to find an express trust had been agreed between Appellant and First Respondent – whether primary judge erred in ordering a constructive trust over 50% of shares of Fourth Respondent in Appellant's favour – whether primary judge erred in refusing to refer Appellant's claims for enquiry as to monetary relief – whether primary judge erred in holding Appellant liable for half-share of the secret commission payment – whether primary judge erred in awarding exemplary damages against Appellant	
43	2021/252548	Macquarie Units Pty Ltd v Sunchen Pty Ltd	21/09/2022	EQUITY – equitable remedies – recission in aid of rights at law –Second Appellant is director and shareholder of Third Appellant – Second Respondent is director and shareholder of First Respondent – Second Appellant and Second Respondent entered into a joint venture to purchase and develop three resort business at Cairns, Queensland – Second and Appellant and Second Respondent incorporated Third Respondent for purposes of funding joint venture – on incorporation of Third Respondent, 50% of issued share capital was held by Third Appellant with the remaining 50% held by the	*Nassif v Sun* [2021] NSWSC 990

				First Respondent – Third Appellant's shares subsequently transferred to First Appellant, which is another company controlled by Second Appellant – issue arise as to Second Appellant's ability to meet his share of the financing obligations for the joint venture prior to the purchase of the relevant assets at Cairns – First Respondent subsequently acquired 50% of First Appellant's shares in Third Respondent in order to reduce Appellants' burden of financing obligation – purchase of the Cairns assets by Third Respondent was completed – Second Appellant provided no funds to the joint venture personally – Second Respondent arranged for transfer to First Respondent of First Appellant's remaining 25% shareholding in Third Respondent for nil consideration pursuant to compulsory acquisition clause in Third Respondent's Shareholders' Agreement – transfer of shares executed without proper authority – Appellants commenced proceedings seeking declarations that share transfer was void and of no effect, and liable to be rescinded in equity – in the alternative, Appellants sought equitable compensation – Respondents contended that Appellants had no standing to bring proceedings, that Shareholders' Agreement granted right to enact transfer, that Appellants had unclean hands, and that defence of laches applied – primary judge found in favour of Respondents and dismissed Appellants' claims with costs – whether primary judge erred in finding that share transfer had been carried into legal	

				effect – whether primary judge erred in upholding defence of laches – whether primary judge erred in various findings of fact, including that value of shares was not established	
44	2022/126858	Paltos v Milevski	21/09/2022	EQUITY – dissolution of partnership – Appellant and First Respondent formed a partnership and practised under the name "Paltos Milevski Family Lawyers" – Appellant suffered a number of strokes, and was unable to contribute to the running of the practice – Appellant was significantly indebted to the partnership – Partnership was dissolved by order of the Court in April 2016, on First Respondent's application – Second and Third Respondents appointed as receivers and managers of the partnership by the Court – Receivers made arrangements with First Respondent to take over assets and associated liabilities, with almost all of the active files provided to First Respondent's practice – Partnership's staff commenced employment with First Respondent's practice – In separate proceedings, Westpac obtained judgment against Appellant and First Respondent in debt recovery proceedings vis-à-vis a $460,000 business loan obtained by the partnership – Primary judge concluded that the assets transferred to First Respondent had no demonstrated intangible value and that First Respondent was entitled to judgment against Appellant – Whether primary judge failed properly to determine (and award) the value of the goodwill and/or business and/or intangibles due to Appellant	*Milevski v Paltos* [2022] NSWSC 261

45	2021/348680	Broken Hill Cobalt Project Pty Ltd v Lord	23/09/2022	LAND AND ENVIRONMENT – class 8 proceedings – proceedings under the Mining Act 1992 (NSW) – Respondents are proprietors of Thackaringa, a sheep station in the Far West of New South Wales – Respondents are "landholders" of Thackaringa for the purposes of the Mining Act – Appellants are mining companies – Appellants separately hold the benefit of three Exploration Licences issued under part 3 of the Mining Act – those licences cover land forming part of Thackaringa – Appellants sought to agree an access arrangement with the Respondents in accordance with s 140 of the Mining Act – to enable prospecting operations on the land – parties were unable to come to agreement – it was not in dispute that the Appellants should be entitled to access for prospecting operations – parties disagreed as to compensation to be payable by the Appellants pursuant to any access arrangement – Respondents sought compensation for non-financial loss – Appellants contended that financial loss alone was compensable – the access arrangement negotiation was referred to an arbitrator pursuant to part 8, division 2 of the Mining Act – the Arbitrator issued a Final Determination, concluding that the Respondents were entitled only to compensation in respect of financial loss – Respondents commenced proceedings seeking a review of the Arbitrator's Final Determination, pursuant to s 155 of the Mining Act, and the grant of an access arrangement	*David Anthony Lord v Broken Hill Cobalt Project Pty Limited* [2021] NSWLEC 126

				with provision for compensation of non-financial loss – primary judge found in favour of the Respondents and granted access arrangement as they sought – whether primary judge erred by making findings unsupported by evidence – whether primary judge failed to afford procedural fairness to Appellants – whether primary judge erred in construction and application of "compensable loss" in s 262 of the Mining Act – whether primary judge failed to give adequate reasons for a material finding	
46	2021/341356	Admiral International Pty Ltd v Insurance Australia Ltd	26/09/2022	INSURANCE – Appellant operated a warehouse at Alexandria, New South Wales – Respondent insured against damage to, or destruction of property at, the Appellant's warehouse under an Industrial Special Risks Policy – on 16 April 2018, a person entered into the warehouse and set it alight – the ensuing fire destroyed the warehouse and its contents – those contents included stock that the Appellant held on behalf of its clients – it was not in dispute between the parties that the fire was deliberately lit – the Appellant lodged a notice of claim with the Respondent seeking indemnity for the destruction of the warehouse and its contents, and for the consequential loss of gross profits – the Respondent rejected the Appellant's claim on the basis that the Appellant had committed arson fraud – the Respondent alleged that large quantities of goods were removed from the warehouse imminently prior to the fire with the knowledge and consent of the Appellant and without the authority of the Appellant's	*Admiral International Pty Ltd v Insurance Australia Ltd; Brightcity International Trading Pty Ltd v Admiral International Pty Ltd* [2021] NSWSC 1440

				customers – the Appellant denied these allegations and commenced proceedings against the Respondent seeking damages for breach of the insurance policy and for breach of the Respondent's duty of utmost good faith in s 13 of the Insurance Contracts Act 1984 (Cth) – primary judge entered judgment for the Respondent and dismissed the proceedings – whether primary judge erred in failing to apply Worth v HDI Global Specialty SE [2021] NSWCA 185 when drawing certain inferences – whether the primary judge erred by misapplying the onus of proof as to certain material facts – whether the primary judge erred in making various findings of fact, including by way of inference – whether the primary judge erred in considering the mental element of fraud – whether the primary judge erred in failing to observe the Browne v Dunn rule – whether the primary judge erred by engaging in speculative reasoning – whether the primary judge erred in construing condition 8.16 of the insurance policy – whether the primary judge erred in the hypothetical assessment of damages	

47	2022/219808	M & W Zaki Pty Ltd v Mindchamps Preschool Ltd	4/10/2022	CONTRACTS – Misleading and deceptive conduct – Breach of contract – The Respondent is an international provider of childcare services – The First Appellant operates childcare centres under the name "Little Zak's" in New South Wales – In 2016 the Respondent executed an agreement with the Appellants as co-vendors to acquire nine of the First Appellant's childcare centres for a consideration of $68 million – Two weeks later, the Respondent communicated to the Appellants that it did not intend to proceed with the purchase – The Respondent alleged that it was induced to enter into the agreement by the misleading and deceptive conduct of the Appellants and that it was therefore entitled to rescission and return of the deposit paid pursuant to the agreement – The Respondent alleged breach by the Appellants of the sellers' obligations of due diligence and to afford exclusive negotiations to the Respondent – Primary judge dismissed the Respondent's claim of misleading and deceptive conduct – Primary judge found Appellants liable for breach of contract – Whether primary judge erred as to construction of the contract	*MindChamps Preschool Limited v M & W Zaki Pty Limited ATF the Zaki Group Trust & Ors* [2022] NSWSC 881

48	2022/178925	Sara Investments (NSW) Pty Ltd v West Asset Holdings Pty Ltd	5/10/2022	CONTRACTS – First Respondent brought an application for specific performance of a contract for the purchase of a warehouse from the First Appellant following the First Respondent's exercise of a call option – the primary judge held that both the put and call option, and the contract, between the First Appellant and the First Respondent were valid and binding on the parties – the primary judge ordered that the contract be specifically performed – whether the primary judge erred in failing to find that the total purchase price for the sale of the property was $7,500,000 – in the alternative whether the primary judge erred in failing to find that there was a collateral agreement that $115,000 of the purchase price was to be paid by the First Respondent to the First Appellant as a condition of completion – whether the primary judge erred in failing to find that the First Respondent was under an obligation to pay $115,000 to the First Appellant and that sum was never paid – in the alternative whether the primary judge erred in granting equitable relief when the sum of $115,000 was never paid – in the alternative whether the primary judge erred in finding that the First Appellant made a decision not to bind itself to the proposed lease in favour of the First Respondent – whether the primary judge's finding involved a breach of natural justice – whether the primary judge erred in drawing an inference and failing to give reasons for so doing	*West Asset Holdings Pty Limited v Sara Investments (NSW) Pty Limited* [2022] NSWSC 674

49	2022/160057	Wang v Meng	5/10/2022	EQUITY – specific performance – grant of leave to amend claim after hearing – effect of grant is that applicant now faces a second hearing after first trial – whether s63 of Supreme Court Act 1970 was determinative in exercise of discretion to grant leave – whether discretion miscarried	*Meng v Wang* [2022] NSWSC 833
50	2022/65772	Priority Matters Pty Ltd v Deputy Commissioner of Taxation	6/10/2022	CORPORATIONS – taxation – dismissal of application to set aside statutory demand – recovery of estimates due under Division 268 in Schedule 1 to Taxation Administration Act 1953 (Cth) - service by respondent of a Notice of Estimate of Liability for PAYG withholding amounts – applicant lodged a Revocation Affidavit under s268-40 within the prescribed time after a step is taken proceedings in recovery of the estimate– effect of filing of affidavit revokes the estimate – whether statutory demand a proceeding to recover estimate – whether a genuine dispute	*In the matter of Priority Matters Pty Ltd* [2022] NSWSC
51	2022/152434	Landrey v Director of Public Prosecutions (NSW)	7/10/2022	ADMINSTRATIVE LAW (judicial review) – committal proceedings – requirement of Criminal Procedure Act 1986 for magistrate to commit for trial – whether requirement ultra vires by offending the institutional integrity of the Local Court under the Kable principle – declaration that case certification certificate is invalid	*No lower decision available on Caselaw*