Supreme Court of NSW Court of Appeal

Decisions Reserved as at 21 October 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	2021/326602	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
6	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	*Pavlis v Pavlis* [2021] NSWSC 1117

				judge found in favour of Respondents and dismissed proceedings – whether primary judge erred in failing to find that the restoration was a joint endeavour for the mutual benefit of the parties – whether primary judge erred in finding that Respondents were motivated by their own commercial benefit – whether primary judge erred in factual finding as to ownership of a separate property	
7	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	*Nicolitsa Togias v State of New South Wales* [2021] NSWSC 1588

				Respondent established that she and the de facto partner formed a joint relationship and endeavour pursuant to which the Respondent made contributions to the acquisition of the properties – Whether primary judge erred in making various factual findings – Whether primary judge erred in finding that money borrowed for and contributed to expenses of the property 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"	
8	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
9	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

10	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	
11	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*
12	2021/358543	Catlin Australia	27/06/2022	INSURANCE – Appellant was insurer of the	*Diamond World Jewellers Pty Ltd v*

		Pty v Diamond World Jewellers Pty Ltd		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 by Respondent – whether primary judge erred	*Catlin Australia Pty Ltd* [2021] NSWSC 1431

				in making various findings of fact	
13	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 assess damages as at the date of breach of	*SEMF Pty Ltd v Renown Corporation Pty Ltd* [2021] NSWSC 1547

				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	
14	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*
15	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 contribute to the Appellant's psychiatric	Jarvis v Allianz Australia Insurance Ltd [2022] NSWSC 161

				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	
16	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 finding the parties reached a complete binding	*International Management Group of America Pty Ltd v Media Niugini Ltd t/as EMTV* [2021] NSWSC 1590

				contract	
17	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*
18	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 content of the Appellants' duty of care was	*Neil Carpenter v Damian James Russell* [2021] NSWDC 447

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

				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	
20	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 – whether primary judge erred in placing, or	*Lower court decisions not available on NSW Caselaw*

				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	
21	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

22	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	
23	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
24	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	123 259 932 Pty Ltd v Cessnock City Council (No 2) [2021] NSWSC 1329 (Adamson J)

				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 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	
25	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 recipient of the professional advice or service given for a fee by the Appellant	*Liberty Mutual Insurance Company, Australia Branch v Sunwater Limited (No 2)* [2021] NSWSC 1582
26	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	*Dean v Pope* [2021] NSWDC 670

				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 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	

27	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
28	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
29	2022/74273	Chief Commissioner	2/09/2022	TAX – Appellant issued payroll tax assessment notices to the Respondents on	*Elanor Operations Pty Ltd v Chief Commissioner of State Revenue* [2022]

		of State Revenue v Elanor Operations Pty Ltd		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 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	NSWSC 104

30	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
31	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 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	*Zhang and Mills v JSW Property Projects Pty Ltd and Ors* [2021] NSWDC 655

				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	
32	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*
33	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
34	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*

35	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 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	*Ausbao (286 Sussex St) Pty Ltd v The Registrar-General of New South Wales* [2021] NSWSC 1651

				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	
36	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 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	*Aust-One Investment Pty Ltd v New World Investments Pty Ltd* [2022] NSWSC 137

				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	
37	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	*Feldkirchen Pty Ltd v Development Implementation Pty Ltd* [2021] NSWLEC 116

				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	
38	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	*Galati v Deans* [2021] NSWSC 1094

				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 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	

39	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 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	*Nassif v Sun* [2021] NSWSC 990

				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	
40	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	*Milevski v Paltos* [2022] NSWSC 261

				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	
41	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	*David Anthony Lord v Broken Hill Cobalt Project Pty Limited* [2021] NSWLEC 126

				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 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	

42	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 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	*Admiral International Pty Ltd v Insurance Australia Ltd; Brightcity International Trading Pty Ltd v Admiral International Pty Ltd* [2021] NSWSC 1440

				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	
43	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	*MindChamps Preschool Limited v M & W Zaki Pty Limited ATF the Zaki Group Trust & Ors* [2022] NSWSC 881

				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	
44	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
45	2022/12119	Hung v Aquamore Credit Equity Pty Ltd	10/10/2022	CONTRACT – Loan agreement – Primary judge determined two proceedings in tandem – Plaintiff in the first proceeding (First Respondent) advanced moneys to the Third Appellant pursuant to a Facility Agreement which was secured by a registered first mortgage over a development owned by Third Appellant in Blacktown – Loan was extended twice – Parties reached an in principle agreement to extend the loan a further time, with a Deed of Amendment and Restatement being signed by the Appellants and returned to the First Respondent – First Respondent became aware of a security interest registered under the PPSA and a caveat against dealing in relation to the property – First Respondent determined not to proceed with the Deed of Amendment and Restatement – Third Appellant defaulted in the payment of the secured money – First Respondent issued a s 57(2)(b) notice, the validity of which depended on the existence of a money default by that date – Mortgage provided for the exercise of a	*Aquamore Credit Equity Pty Ltd v Hung; First on First Development Pty Ltd v Aquamore Credit Equity Pty Ltd* [2021] NSWSC 1681

				power of sale “at any time while an Event or Default subsists” – First Respondent exercised power of sale – First Respondent sought a money judgment against two director/guarantors of the advance, being the Second and Third Respondents – Plaintiff in the second proceeding (Third Appellant) sought equitable compensation from Second and Third Respondents for breach of equitable and statutory duties in exercising power of sale and when acting as directors of First Respondent – Primary judge found that Deed of Amendment and Restatement was binding and that there was no monetary default as at the date that the s 57(b) notice was issued and served – Primary judge concluded that First Respondent was not authorised to exercise any power of sale under s 58 of the Real Property Act – Primary judge concluded that there was no breach by First Respondent of its obligation to take all reasonable care in selling the property for not less than market value – Whether primary judge failed to give reasons, or to give adequate reasons, for preferring the evidence of one expert over another – Whether primary judge erred in making various factual findings – Whether primary judge erred in failing to find lack of good faith and declining to make orders for equitable compensation or damages – Whether primary judge erred in finding that clause 7.1 of the facility agreement was unenforceable as a penalty – Whether primary judge erred with respect to the applicable interest rate – Whether primary	

				judge misconstrued clause 5.2 of the facility agreement – Whether primary judge erred with respect to post-judgment interest	
46	2022/9556	Health Care Complaints Commission v Hill	11/10/2022	DISCIPLINARY – review of decision to prosecute respondent for unsatisfactory professional conduct – where respondent conducted an examination not within his area of speciality – where examination was fleeting - whether primary judge erred in concluding that decision to prosecute was legally unreasonable – whether decision to prosecute is conditioned on reaching a2* particular state of mind – whether primary judge ignored that the tribunal was the relevant body that needed to decide whether the complaint was made out	*Dr Hill v Health Care Complaints Commission* [2021] NSWSC 1645
47	2022/240730	Huang v 18 Woodville Holding Pty Ltd	11/10/2022	REAL PROPERTY - Torrens title - Hua Cheng International Holdings Group Pty Ltd (Hua Cheng) developed a number of commercial and residential developments in Hurstville - Appellants purchased a unit in the development pursuant to a contract for sale entered into in 2009 - Appellants paid purchase price of the property and received an acknowledgement of receipt of payment which foreshadowed an exchange of the certificate of title - Hua Cheng entered into a loan agreement secured by a registered mortgage over Hua Cheng's interest in the land and fixtures thereon to obtain financing - Hua Cheng defaulted in making loan repayments - Appellants lodged a caveat claiming a legal and equitable interest pursuant to contract of sale - Hua Cheng went into liquidation in 2017 - Respondent was	*18 Woodville Holding Pty Ltd v Hua Cheng International Holdings Group Pty Ltd (in liq) (No 2)* [2022] NSWSC 947

				assigned the debt owed by Hua Cheng to the financier under the loan agreement and the registered mortgage, which was subsequently transferred to the Respondent – The receiver of Hua Cheng gave notice to the Appellants terminating any tenancy at will in March 2022 - Respondent (as mortgagee) sought possession of units occupied by inter alios, the Appellants - Appellants filed a cross-claim seeking specific performance - Appellants claimed a tenancy at will as purchasers in possession prior to settlement - Appellants claimed an equitable interest in the property commensurate with the availability of specific performance - Primary judge dismissed Appellants' claims on the basis of s 42 of the Real Property Act 1900 (NSW) insofar as the Respondent's registered mortgage took priority over the Appellants' unregistered interest in the land in circumstances where no exception to s 42 was made out- Whether primary judge erred in construing s 42 of the Real Property Act 1900 (NSW) as not picking up, and giving notice of, the interests of the Appellants under a contract for sale which was specifically enforceable - Whether primary judge erred in failing to find that the Appellants' interest took priority over that of the Respondent	

48	2022/163191	Coshott Family Pty Ltd v Lyons	12/10/2022	CONTRACT – payment out of monies held in controlled monies account – whether onus in proving that the respondent did not have the authority to deal with the monies fell on the appellant – whether failed to consider prohibition in s139 of Legal Profession Uniform Law (NSW) 2015 which prohibited respondent from dealing with funds without the appellant's authority – whether failure to repay monies upon demand was an "injustice" – whether judgment ought have been entered on admissions made in the pleadings	*Lower court decision not on Caselaw*
49	2022/217751	Proietti v Proietti	14/10/2022	REAL PROPERTY – Co-ownership and statutory trust for sale – The Appellant and Respondent are brothers who inherited the family home in Marsfield from their late mother – The Appellant and Respondent held the property as tenants in common – The Respondent brought proceedings for orders under s 66G of the Conveyancing Act 1919 (NSW) – The Appellant raised proprietary and promissory estoppel in defence to the s 66G orders – The Appellant raised contract as a defence to the s 66G orders, namely that he and the Respondent had entered into an agreement pursuant to which the Appellant would receive security of housing in exchange for the payment of rent to the Respondent – Primary judge dismissed the Appellant's claims and made the s 66G order – Whether unfair judicial process, bias, errors of law in relation to estoppel defences and inappropriate relief	*Proietti v Proietti* [2022] NSWSC 875

50	2022/123736	Flanagan v Bernasconi	18/10/2022	TORT (Professional negligence) – The Respondent provided the Appellant with insurance brokering services in respect of insurance products – in 2012 the Appellant took out a homeowner's insurance policy with Vero – in 2013 the swimming pool at the Appellant's property was substantially damaged – the Appellant made a claim on the Vero policy with respect to the pool damage – the claim was rejected on the basis that the policy excluded events involving swimming pools – the primary judge found that the pool damage occurred as a result of the swimming pool having been left empty and defects in the pool valves – the primary judge held that the Appellant had failed to take reasonable precautions in circumstances where she left the swimming pool empty and did not take steps to repair or refill the swimming pool – whether the primary judge erred in failing to find that the policy the Appellant would have obtained but for the Respondent's breach of duty would have responded to the pool damage that was the subject of the Appellant's claim – whether the primary judge erred in failing to find that the Respondent bore the burden of proof as to whether the damage was caused by a defect in an item or a failure to take reasonable precautions – whether the primary judge erred in finding that the loss was caused by a defect in an item – whether the primary judge gave insufficient weight to effect of heavy rain on pool damage – whether the primary judge erred in finding that the Appellant failed to take reasonable	*Flanagan v Bernasconi* [2022] NSWSC 381

				precautions – whether the primary judge erred in concluding that the cross-respondent would have taken out insurance cover of a kind that did not contain the exclusion that appeared in the Vero policy – Whether primary judge erred in making various factual findings, failed to take into account evidence, or gave insufficient weight to evidence – Whether primary judge erred in finding hat the cross-respondent was not reckless	
51	2022/73239	Sahab Holdings Pty Ltd v Tonks	19/10/2022	CORPORATIONS – the Appellant is a family company – the parents commenced proceedings against their son Ken for engaging in improper conduct in relation to their affairs and the ownership of the Appellant – the Court made orders appointing the Respondents as receivers and managers of the Appellant until final determination of the parents' proceedings – meanwhile Senses commenced proceedings against the Appellant – the Respondents defended the Senses proceedings – the Court upheld Senses' claims and ordered that the Appellant pay Senses' costs – the Appellant sought an inquiry into the receivership and management conducted by the Respondents – the primary judge was not satisfied that there was a prima facie case that there was some act or omission that required inquiry – the primary judge declined to grant leave for an inquiry to be conducted into the receivers' conduct of the Senses proceeding – whether the primary judge erred in concluding that the receivers were obliged to defend the Senses proceedings – whether the primary judge	*In the matter of Sahab Holdings Pty Ltd* [2022] NSWSC 4

				erred in concluding that the valuation reports indicated that it was in the interests of the Appellant to defend the Senses proceedings – whether the primary judge erred in concluding that the approach taken by the receivers to the Senses proceedings made commercial sense – whether the primary judge erred in concluding that the Appellant failed to establish a prima facie case that there was conduct on the part of the receivers deserving of inquiry	
52	2021/295739	Chief Commissioner of State Revenue v E Group Security Pty Ltd	19/10/2022	TAX – employment agency contracts – Respondent is main operating entity of group of companies involved in provision of asset and personal security services for clients in commercial, government, retail, events and hospitality industries – Respondent entered into contracts with third party clients for supply of subcontracted security guards – accepted that those security guards were not the employees of the Respondent – on 3 September 2018, Appellant issued Assessment Notices to Respondent in respect of payroll tax liability for financial years ended 30 June 2016–2018 – Appellant assessed wages paid to subcontracted security guards as liable to payroll tax in each of the relevant financial years – Respondent objected to those assessments – Appellant disallowed that objection on the basis that subcontractor security guards were engaged pursuant to "employment agency contracts", as defined in s 37 of the Payroll Tax Act 2007 (NSW) – Respondent commenced proceedings in Equity Division seeking review of the	*E Group Security Pty Ltd v Chief Commissioner of State Revenue* [2021] NSWSC 1190

				assessments, pursuant to s 97 of Taxation Administration Act 1996 (NSW) – Respondent contended that contracts with third party clients and/or its related group entities were not "employment agency contracts" as it did not procure services of security guards "in and for the conduct of the business of" its third party clients and/or related group entities – Respondent relied upon application of Security Industry Act 1997 (NSW) to its operations – primary judge found in favour of Respondent and revoked the assessments, pursuant to s 101(1)(a) of the Taxation Administration Act – whether primary judge erred in finding that Respondent's related group entities did not procure services of security guards during the relevant financial years, for the purposes of ss 37–38 of the Payroll Tax Act – whether primary judge erred in making various findings of fact – whether Respondent is jointly and severally liable for related group entities' payroll tax liabilities, under s 81 of the Payroll Tax Act	
53	2022/309126	Lahoud v Willoughby City Council	19/10/2022	PROCEDURE – joinder – refusal of motion to join Willoughby Local Planning Panel to judicial review proceedings in LEC – whether UCPR 59.3(4) mandates joinder of body which was "responsible for the decision" being reviewed – whether necessary to join when decision made by first respondent as a consequence of the Panel's decision - whether joinder necessary to bind the Panel to outcome from proceedings – whether Panel ought to have been joined to enable applicant to seek interrogatories against the Panel	*Lahoud v Willoughby City Council* [2022] NSWLEC 125

54	2022/78092	Jamal v Workers Compensation Nominal Insurer	20/10/2022	WORKERS COMPENSATION – Appellant was the sole director at all material times of Al Maamoun & Co Pty Ltd, which company operated a grocery store in Auburn between 6.00am and midnight – The company did not have any workers' compensation insurance at all relevant times from its formation until Mr Khaled Jamal's injury – Mr Jamal was employed by the Appellant's company on a temporary basis to assist with the fitout of premises in Bondi Junction – Mr Jamal's employment was intended to last no more than six weeks, for which he was to be paid $1,156 per week, making a total of $6,936 – The statutory maximum amount that is reasonably expected to be paid in wages to an employee in order to meet the description of "exempt employer" under s 155AA of the Workers Compensation Act 1987 (NSW) (Act) is $7,500 – Primary judge found that the Appellant did not have reasonable grounds for believing that the wages paid to Mr Khaled would not have exceeded the limit of $7,500 – Primary judge found the Appellant liable to reimburse the insurance fund as a culpable director insofar as the Appellant was aware that Mr Jamal was entitled to sums in excess of the statutory limit, or at least wilfully ignorant of this – Whether primary judge erred in finding that the corporation contravened s 155 of the Act with the Appellant's actual knowledge – Whether primary judge erred in finding that Appellant was wilfully ignorant of the contravention of s 155 – Whether primary judge erred in finding that the Appellant was in	*Workers Compensation Nominal Insurer v Jamal* [2022] NSWDC 10

				a position to influence the conduct of the corporation in relation to the contravention of s 155 – Whether the primary judge erred in finding that the amount recoverable from the Appellant was $258,565 as opposed to $103,771.29.	
55	2022/112467	Hong v Gui	21/10/2022	CONTRACT – conveyancing - whether respondent's notice of termination constituted a repudiation of contract which the appellant was entitled to accept – whether appellant ready, willing and able to perform – whether current land tax certificate a condition precedent to performance – entitlement to deposit	*Hong v Gui* [2022] NSWSC 431