Supreme Court of NSW Court of Appeal

Decisions Reserved as at 18 November 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	2021/326602	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

4	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 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	*Pavlis v Pavlis* [2021] NSWSC 1117

5	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
6	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
7	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	*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

				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 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	
8	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*
9	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	*Diamond World Jewellers Pty Ltd v Catlin Australia Pty Ltd* [2021] NSWSC 1431

				that Appellant was not liable for melted jewellery – in October 2019, Appellant offered $500,000 to Respondent for resolution of claim – Respondent rejected this offer – Respondent commenced proceedings against Appellant seeking damages in the sum of $1,431,759.00 – primary judge found in favour of Respondent and awarded damages in quantum as sought by Respondent – whether primary judge erred in applying test of unreasonableness under the insurance policy – whether primary judge erred in considering evidence unavailable to the Respondent at the relevant time – whether primary judge failed to make certain findings of fact – whether primary judge relied upon matters not pleaded by Respondent – whether primary judge erred in making various findings of fact	
10	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	*International Management Group of America Pty Ltd v Media Niugini Ltd t/as EMTV* [2021] NSWSC 1590

				that Appellant repudiated the agreement and the Respondent accepted that repudiation – primary judge awarded damages calculated as the difference the Respondent was entitled to receive under the contract and the amount it will receive for those rights from the other party – whether primary judge erred in construing the Appellant's bid – whether primary judge erred in finding that the Respondent did not make a misrepresentation or engage in deceptive and misleading conduct – whether primary judge erred in finding the parties reached a complete binding contract	
11	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*
12	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	*Neil Carpenter v Damian James Russell* [2021] NSWDC 447

				implemented reasonably practicable measures to ensure the safety of the stairs – Appellants contended that there was no evidence that they were in breach of their duty of care and that the Respondent's injury was a result of his failure to exercise reasonable care for his own safety – primary judge found in favour of the Respondent and awarded damages in the sum of $248,092.18 – whether primary judge erred in finding that Appellants breached their duty of care – whether primary judge erred in finding that the content of the Appellants' duty of care was modified by their entry into a short-term rental contract with the Respondent – whether primary judge erred in finding that the Appellants were under a positive duty to ensure the safety of the property – whether primary judge erred in relying upon a SafeWork Australia Code of Practice to determine the scope of the Appellants' duty of care – whether primary judge erred in making various findings of fact regarding liability – whether primary judge erred in failing to reduce the damages recoverable on the basis of contributory negligence – whether primary judge erred in the assessment of damages – whether primary judge failed to provide adequate reasons for findings of fact	

13	2021/262212; 2021/17031; 2021/258153	Anchorage Capital Master Offshore Ltd v Bakewell; Banco Bilbao Vizcaya Argentaria SA v Sparkes	5/08/2022	CORPORATIONS – the proceedings arose from the collapse in April 2016 of Arrium Limited and a number of its subsidiaries – the respondents were respectively the Group Treasurer and the CFO of the Arrium Group at all material times – the proceedings concerned a claim by the appellant banks against the respondents for misleading or deceptive conduct in relation to certain misleading statements said to be contained in or made by virtue of a number of drawdown notices issued by the Arrium entities, pursuant to facility agreements in 2016 – the respondents were alleged to have been responsible for causing the drawdown notices to be executed and issued – primary judge found in favour of the respondents – whether primary judge erred as to the correct legal test for insolvency – whether primary judge erred as to certain factual findings – whether primary judge erred as to his conclusion on misleading or deceptive conduct – whether primary judge erred as to his findings on causation – whether primary judge erred as to his findings on loss and damage	*Anchorage Capital Master Offshore Ltd v Sparkes (No 3); Bank of Communications Co Ltd v Sparkes (No 2)* [2021] NSWSC 1025
14	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	*Lower court decisions not available on NSW Caselaw*

				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 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	

15	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
16	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	123 259 932 Pty Ltd v Cessnock City Council (No 2) [2021] NSWSC 1329 (Adamson J)

				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	

17	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
18	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	*Dean v Pope* [2021] NSWDC 670

				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	

19	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
20	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
21	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	*Zhang and Mills v JSW Property Projects Pty Ltd and Ors* [2021] NSWDC 655

				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	
22	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*
23	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	*Ausbao (286 Sussex St) Pty Ltd v The Registrar-General of New South Wales* [2021] NSWSC 1651

				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 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	

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

				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	
25	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	*Galati v Deans* [2021] NSWSC 1094

				– 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	

26	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	
27	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	
28	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	

29	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	
30	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	
31	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 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)	*Aquamore Credit Equity Pty Ltd v Hung; First on First Development Pty Ltd v Aquamore Credit Equity Pty Ltd* [2021] NSWSC 1681

				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	

32	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
33	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 assigned the debt owed by Hua Cheng to the financier under the loan agreement and the registered mortgage, which was subsequently	*18 Woodville Holding Pty Ltd v Hua Cheng International Holdings Group Pty Ltd (in liq) (No 2)* [2022] NSWSC 947

				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	

34	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	
35	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	
36	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	
37	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

38	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.	
39	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
40	2022/14029	Carpenter v Morris	24/10/2022	CONTRACT – Partnership – First Appellant and First Respondent extracted granite from the Grandee Quarry – From 1996 to 2003, quarrying undertaken for a business conducted by Second Appellant in partnership with Second Respondent – Second Appellant extracted granite from the Quarry from 2003 to 2014 – Granite mined at Quarry falls into two categories in terms of its grade, being first and second grade rock, there being greater demand for the former – Quarry situated on two adjacent parcels of land upon which granite boulders, overburden, and other material extracted from the land or disturbed during quarrying operations were piled (Stockpiles) – Stockpiles largely consisted of second grade rock – Under mining agreement First Respondent entitled to quarry, remove and sell the granite, and required to pay annual rent plus royalties in respect of the two lots – Proceeds of the sale of granite was	*Carpenter v Morris* [2021] NSWSC 1700

				distributed in various ways, including in order to make monthly payments to First Respondent, the amount of which varied from month to month – Appellants sought an order requiring repayment of 50% of those monthly payments as money had and received – Appellants claimed for breach of an oral quarrying agreement with the Respondents insofar as First Respondent failed to make payment to Appellants in respect of certain sales, and in respect of sales made from the Stockpile – Appellants claimed First Respondent repudiated oral agreement insofar as he was not ready, willing or able to perform his obligation to sell the Stockpile due to his lack of authority to do so without permission of the owners of the lots on which the Stockpile is situated – Whether primary judge erred in failing to order damages with respect to monthly payments – Whether primary judge erred by failing to apply Commonwealth v Amann Aviation (1991) 174 CLR 64 in respect of damages vis-à-vis the Stockpiles – Whether primary judge erred in allowing the difficulty in assessing damages bar all relief to the Appellants with respect to the Stockpiles – Whether primary judge erred in making various factual findings – Whether primary judge erred in rejecting certain evidence – Whether primary judge erred in failing to imply a term into the agreement – Whether primary judge erred in failing to find that the Appellants were entitled to damages for breach of contract, or quantum meruit for the work done	

				in exposing he rock faces for future mining	
41	2022/91354	Bellevarde Constructions Pty Ltd v Monahan	25/10/2022	TORTS (negligence) – First respondent assisted another workman employed by a different employer (the Appellant) to manually lift and move a heavy metal door and load it onto a truck and sustained spinal injuries as a result – Trial judge held that all the persons who participated in the lifting and loading of the door owed a duty of care to the other participants that could only be discharged by ensuring the task was adequately planned and supervised – Trial judge found that defendants did not take precautions that a reasonable person would have taken – Trial judge held that the defence of contributory negligence was not established – Trial judge found each defendant negligent as concurrent wrongdoers – Trial judge held that the Appellant's responsibility as the major actor should be apportioned at 80 per cent and the Second Respondent's responsibility should be apportioned at 20 per cent – whether trial judge erred in apportioning liability between Appellant and second and third respondents when such a finding was prohibited by s 34 of the Civil Liability Act and entering judgment in an amount in excess of the Court's jurisdictional limit – whether trial judge erred in finding that the first respondent's employer was only required to take reasonable care and had no duty to provide first respondent with training in lifting techniques – whether trial judge erred in finding there was no contributory negligence – whether trial judge erred in finding the Appellant's liability for	*Monahan v Bellevarde Constructions Pty Ltd & Ors* [2022] NSWDC 50

				damages was 80% - whether trial judge erred in assessing future economic loss as $450,000	
42	2022/254111	Bonanno v Finamore	25/10/2022	EQUITY – Trusts – Property at Rosebery was jointly owned by the Respondents and operated as a boarding house – Appellant and Respondents executed a deed in 2011 which provided for Appellant to make an advance of $130,000 to Respondents and contained a term that gave Appellant a right to require Respondents to transfer a one third share in the property to Appellant – Appellant advanced $30,000 of the moneys, but Respondents did not transfer interest in property to Appellant – Appellant sought declaration that Respondents held one third interest in property on trust for him, and an order for the sale of the property – Respondents alleged breach of deed – Respondents alleged that agreement was in substance a mortgage and term giving Appellant one third interest in the property was an unfair and unenforceable collateral advantage on the equity of redemption – Whether primary judge erred by declaring that Respondents did not hold a one third share of property on trust for Appellant – Whether primary judge erred in finding that the deed incorporated an option to require the transfer of the property – Whether primary judge erred in finding that the deed was in effect a mortgage – Whether primary judge erred in finding that the term of the deed providing for the transfer was unconscionable – Whether primary judge erred in applying Lord Parker's	*Bonanno v Finamore* [2021] NSWSC 1558

				Proposition (3) from Kreglinger (G & C) v New Patagonia Meat and Cold Storage Company Ltd [1914] AC 25 to find the transfer provisions invalid – Whether primary judge erred in ordering Appellant to pay 60% of the Respondents' costs of the proceedings on the ordinary basis	
43	2022/136307; 2022/140758	Scenic Tours Pty Ltd v Moore	26/10/2022	TRADE PRACTICES – the Respondent brought representative action claiming compensation and damages arising out of a European river cruise – the Respondent claimed against the Appellant that contrary to consumer guarantees, the Appellant did not provide a "once in a lifetime cruise" in all-inclusive luxury – primary judge held that it was reasonable for group members to rely on the skill and judgment of the Appellant – primary judge found that the s 61(3) defence was not established by the Appellant – the primary judge upheld the group members' claim of an entitlement of damages pursuant to s 267(4) of the Australian Consumer Law in respect of the monies they paid for return airfares to embark on the cruise and for distress or disappointment – the primary judge awarded damages pursuant to s 267(3) of the ACL by way of lost value – whether the primary judge erred in failing to find that the group members did not rely on, or that it was unreasonable for the group members to rely on, the skill or judgment of the Appellant – whether the amounts awarded for reduction in the value of the Services with respect to Cruises 3, 4, 6, 7, 8 and 11 were excessive – whether the primary judge erred in preferring	*Moore v Scenic Tours Pty Limited (No 4)* [2022] NSWSC 270

				the Respondent's valuations and failed to give adequate reasons for this preference – whether the amounts awarded for distress and disappointment were excessive – whether the primary judge erred in awarding damages for the cost of airfares to those group members for whom the sole purpose of incurring the airfares was to take the Cruise	
44	2022/187172	BCC Trade Credit Pty Ltd v Thera Agri Capital No 2 Pty Ltd	26/10/2022	INSURANCE – whether entitled to indemnity under a "Trade Credit Insurance Police" – where some of the drawdown requests were a sham – where "Murabaha" facility was not Sharia-compliant – whether claim on policy involved an insured risk as there was no "Debt Obligation" or "Advanced Payment" as required by clause	*Thera Agri Capital No 2 Pty Ltd v BCC Trade Credit Pty Ltd t/as The Bond & Credit Co* [2022] NSWSC 669
45	2022/189157	Wipro Ltd v State of New South Wales	28/10/2022	ADMINISTRATIVE LAW (other) – entitlement of employee to long service leave under Long Service Leave Act – whether employee's service in India to be taken into account in determining 10 years' service – meaning of service – whether Court should follow the Victorian Court of Appeal decision in Infosys Ltd v State of Victoria (2021) 64 VR 61	*No lower case decision available on Caselaw*
46	2022/119934	Ritchie v Insurance Australia Ltd	31/10/2022	INSURANCE – representative action in respect of losses suffered as a result of bushfire caused by sparks from a power cutter to cut steel – "Welding Endorsement" exclusion clause in policy for "spark producing equipment" - whether the power cutter was a "spark producing equipment" – whether spark was produced by contact with certain materials rather than the equipment	*Ritchie v Advanced Plumbing and Drains Pty Ltd* [2022] NSWSC 330

47	2022/112930	Commissioner of Police, NSW Police Force v Merrell	1/11/2022	ADMINISTRATIVE LAW (other) – respondent convicted of three offences under s91H(2) of Crimes Act 1900 (NSW) for possessing child abuse material – each offence arose of identical material being stored on three separate USB drives – respondent not a registrable person under Child Protection (Offenders Registration) Act 2000 (NSW) if a single offence committed – s3A(5) provides that single offence includes a reference to more than one offence of the same kind arising from the same incident – meaning of the phrase "arising from the same incident" – whether primary judge erred in not finding respondent a registrable person	*Merrell v Commissioner of NSW Police* [2022] NSWSC 337
48	2022/35553	Farriss v Axford	3/11/2022	TORTS (negligence) – First appellant is the lead guitarist in the band INXS – First appellant hired a boat through the third respondent belonging to the first respondent – First appellant sustained injuries to his left hand as a result of an accident on the boat – Appellants allege that the injuries were caused by the respondents' failure to take care – Primary judge held that there was no failure by the respondents to warn or instruct because the first appellant was aware of the relevant matters prior to the accident – Primary judge found that the exercise of reasonable care on the part of the respondents did not require any of them to arrange for additional componentry to be installed prior to the accident because the probability that harm would occur if care was not taken was low – Whether primary judge erred by failing to find that the respondents	*Farriss v Axford (No 3)* [2022] NSWSC 20

				ought to have taken precautions and that failure was a breach of their duties of care which caused the appellants' loss – Whether primary judge erred by failing to find that the respondents breached their duty of care by failing to warn or instruct the first appellant which caused the appellants' loss – Whether primary judge erred by failing to find that the respondents breached the statutory guarantee in s 61 of the Australian Consumer Law which caused the appellant's loss	
49	2022/134398	Lim v Lim	3/11/2022	SUCCESSION – The Appellant and the Respondent are adult children of the deceased – probate of the deceased's executed will dated 2019 was granted to the Appellant as executor – the Respondent brought proceedings seeking revocation of probate of the 2019 will and an order that probate of an earlier will made by the deceased in 2011 be granted to him – the Respondent alleged that the deceased did not have testamentary capacity when she executed the 2019 will and she did not know and approve its contents – the primary judge found that the Appellant did not discharge the burden of establishing testamentary capacity at the time the deceased executed the 2019 will – the primary judge held that the grant of probate of the 2019 will should be revoked and there should be a grant of probate of the 2011 will – whether the primary judge erred in holding that the deceased did not have testamentary capacity – whether the primary judge erred in holding that the facts displaced the presumption of knowledge and approval	*Lim v Lim* [2022] NSWSC 454

				by the deceased of his will while ignoring the effect of the revocation and attestation clauses and the evidence of the interpreter – whether the primary judge erred in holding that the deceased did not know and approve the contents of the will – whether the primary judge erred in finding that the deceased did not comprehend the claims upon her bounty – whether the primary judge erred in finding that the fact that the deceased decreased the amount of provision to the Respondent was evidence of lack of testamentary capacity	
50	2022/187883	Misan v Markham Real Estate Partners (KSW) Pty Ltd	4/11/2022	CONTRACT – guarantee and indemnity provisions of sub-lease – recovery of rental arrears, loss of bargain, make-good costs and legal costs - failure to pay rent by sub-lessee when it went into administration - whether landlord unlawfully re-entered into possession of retail tenancy – whether re-entry a repudiation of sub-lease – whether re-entry unlawful as contrary to s440B of Corporations Act 2001 (Cth) – whether respondent could terminate sub-lease prior to expiry of breach notice issued under s 129 Conveyancing Act 1919 (NSW) – whether changing of locks amounted to a re-entry	*Markham Real Estate Partners (KSW) Pty Limited v Misan* [2022] NSWSC 733

51	2022/66164	Bowers v Northern Beaches Council	4/11/2022	ADMINISTRATIVE LAW (judicial review) – Second respondent lodged a development application to build a caretakers flat in existing industrial premises – Appellant lodged various objections on the basis the proposal constituted prohibited development – First respondent granted development consent subject to conditions - Appellant commenced proceedings alleging that the first respondent's decision was tainted by fraud or bad faith and the proposal constituted prohibited development – Primary judge found that appellant had not established that the application itself and/or the first respondent's consideration and determination thereof were tainted by fraud – Primary judge held that the first respondent was entitled to be satisfied that characterisation of the development as a caretaker's residence was ancillary to industrial development and thus the proposal was permissible – Whether the primary judge erred in not taking a view – Whether the primary judge erred in allowing and upholding late objections to affidavits by the second respondent – Whether the primary judge erred in not finding fraud by the first respondent and bad faith by the second respondent – Whether the primary judge erred in applying Jones v Dunkel and Brown v Dunn – Whether the primary judge erred by not finding the second respondent's decision on ancillary use to be perverse	*Bowers v Northern Beaches Council and Anor* [2022] NSWLEC 8

52	2022/14130	Jennings v Wilden	7/11/2022	TORTS – Marital rape – Appellant was at all material times a high profile rugby league player – Appellant and Respondent were in a relationship (and ultimately married) from 2010 to 2016 – Primary judge found that Appellant had sexually abused Respondent throughout the course of their marriage – Primary judge reached conclusions as to liability (erroneously) applying the standard for appellate review of findings of fact in Fox v Percy [2003] HCA 22 at [29], namely that the Court was to look to objective facts and, where they exist, incontrovertible facts, where they do not exist, questions should be asked as to whether the plaintiff's claims are "glaringly improbable" or contrary to compelling inferences – Primary judge awarded general damages, aggravated damages, exemplary damages, expenses for future treatment, and damages for economic loss (in total, $490,091.05) – Whether primary judge erred in applying the standard for appellate review of findings of facts – Whether damages awarded for future economic loss were excessive and unsupported by the evidence	*Wilden v Jennings* [2021] NSWDC 705
53	2022/83330	Ray v Southon	7/11/2022	TORTS – Personal injury – Assault and battery – Domestic violence – Appellant and Respondent were former partners in de facto relationship for approximately 17 years – Respondent alleged that Appellant grabbed her, shook her and pushed her, causing her to fall and strike her head on a coffee table – Respondent sought damages for personal injury – Respondent alleged self-defence and	*Southon v Ray* [2022] NSWDC 32

				provocation – Respondent brought an alternative claim in negligence, claiming that the pushing and/or shoving exposed her to a foreseeable risk that she would lose her balance and injure herself – Respondent claimed general damages, aggravated damages, damages for past and future economic loss, past and future medical expenses, and past and future domestic assistance – Primary judge held that Appellant committed assault and battery without a lawful defence – Primary judge awarded general and aggravated damages, damages for medical expenses, and for past and future domestic assistance – Whether primary judge erred in rejecting evidence relevant to the issue of self-defence – Whether primary judge erred in concluding that Appellant had not acted in self-defence – Whether primary judge erred in admitting medical evidence into evidence in circumstances where the medical professional did not possess specialised knowledge – Whether primary judge failed to give sufficient reasons for his findings as to past and future domestic assistance – Whether primary judge erred in awarding damages for past and future domestic assistance – Whether primary judge erred in concluding that Appellant had an intention to injure Respondent at the time that he pushed her, and that the Civil Liability Ac 2005 (NSW) did not therefore apply	

54	2022/151935	Roberts v Goodwin Street Developments Pty Ltd	8/11/2022	CONSTRUCTION – Respondent owned land in Newcastle – Respondent entered into building contract with DSD Builders Pty Ltd (DSD), of which Appellant's wife was the sole director – Appellant supervised the construction work carried out by DSD – Dispute arose between Respondent and DSD concerning defective building works for which a Notice to Remedy Defaults was served – Substantial damage was done to the building site, and materials, fixtures and/or fittings were removed from the site – Primary judge found that although Respondent did not have exclusive possession of the site at the time of damage, it was a reversioner in a position shortly to obtain exclusive possession of the reversion and thus entitled to bring an action on the case for trespass – Primary judge held that Respondent entitled to damages reflecting the costs of repair, as opposed to any diminution in the value of the reversionary interest – Primary judge found that Appellant caused the damage to the building site – Primary judge found that Appellant carried out construction work for the purposes of s 36 of the Design and Building Practitioners Act 2020 (NSW) and acted in breach of his duty of care under s 37 of that Act – Primary judge held that Appellant liable to pay Respondent the cost of making good the damage and rectifying the defects – Whether a competent person would agree that the flesh of "Daniel" or "Daniel Roberts" is not the same as the office of Trustee "Daniel" or "Daniel Roberts" – Whether Appellant, as a living man with flesh	*Goodwin Street Developments Pty Ltd atf Jesmond Unit Trust v DSD Builders Pty Ltd (in liq)* [2022] NSWSC 624

				and blood, cannot defend himself in a civil jurisdiction – Whether Appellant as a member of the homo sapiens species owns Divine Trust Rights to a Good Soul, Body, Mind and Property – Whether Appellant can be converted to a Thing via Civil Controversy – Whether Respondent, as a fictional person, cannot make a claim against a living natural person	
55	2022/84666	Woodhouse v Woodhouse	9/11/2022	EQUITY – Appellant and Appellant's husband were proprietors of a number of parcels of farmland – Appellant's father made gift of farmland to First Respondent – First Respondent entered into five-year, rent-free lease with respect to two further parcels of land – Appellant alleged that she made a loan to First Respondent pursuant to an oral agreement, under which loan $250,000 remained outstanding – By cross-claim, First Respondent alleged that Appellant breached fiduciary duties owed to him, committed fraud and the tort of deceit relating to her use of First Respondent's cheque book to transfer sums for her own benefit – First Respondent alleged that the estate of the Second Respondent's late wife was liable to repay moneys paid to the estate pursuant to an agreement to transfer land and satisfy the alleged loan made to the Appellant – First Respondent suffered from learning difficulties both in childhood and adulthood – Appellant assisted First Respondent with his taxation and financial affairs – Appellant was in possession of all but one of First Respondent's chequebooks – Primary judge	*Woodhouse v Woodhouse* [2022] NSWSC 204

				found that Appellant's claim failed that any loan agreement was statute barred – Primary judge found that Appellant breached fiduciary duties to First Respondent – Primary judge held that agreement existed between First Respondent and Second Respondent's late wife for the transfer of land, but that First Respondent had terminated that agreement – Whether primary judge erred in failing to find that there was an enforceable loan agreement between Appellant and First Respondent – Whether primary judge erred in finding any agreement was not one which First Respondent would have understood where no defence of non est factum or unconscionability had been alleged – Whether primary judge erred in failing to consider whether a loan agreement substantially similar to that alleged was established – Whether primary judge erred in concluding that loan agreement was no longer enforceable by virtue of the Limitation Act – Whether primary judge erred in finding that payments of interest not authorised by First Respondent	
56	2022/104639	Pascoe v SAS Trustee Corporation	9/11/2022	WORKERS COMPENSATION – Appellant was employed as a police officer – Appellant suffered various injuries during the course of his employment – Appellant alleged that he suffered from Post-Traumatic Stress Disorder – Whether primary judge erred by determining that the trustee's decision was within the power conferred by s 26 of the Superannuation Administration Act 1987 (NSW) (Act) – Whether primary judge erred in finding that the notifications of	No lower case decision available on Caselaw

				decisions complied with s 27 of the Act – Whether primary judge failed to determine the controversies and facts in issue between the parties – Whether primary judge erred in failing to make various factual findings – Whether primary judge erred by failing to address the medical case presented by Appellant – Whether primary judge erred by taking into account irrelevant matters	
57	2022/144781	Synergy Scaffolding Services Pty Ltd v Alelaimat	11/11/2022	WORKERS COMPENSATION – Personal injury – The First Respondent was paid by DJ's Scaffolding Pty Limited (represented by the Second Respondent) for work as a sub-contracting truck driver delivering and collecting scaffolding materials to the Appellant – The First Respondent was injured when he was struck by a falling scaffolding bench caked in cement while he assisted in dismantling scaffolding he had been directed to collect – Appellant alleged that the proceedings were statute barred by the Limitation Act 1969 (NSW) – Primary judge held that claim was not statute-barred, insofar as it was unclear that the First Respondent knew that his injury was caused by the fault of the Appellant, as opposed to DJ Scaffolding – The First Respondent alleged that the Appellant should be considered to be in the position of his employer and to owe the Respondent a non-delegable duty of care – The Appellant conceded that it owed the First Respondent a duty of care, however alleged that it had not assumed the role of employer and was not responsible for the system of work on the site – Primary judge found that	*Alelaimat v Synergy Scaffolding Services (No 3)* [2022] NSWSC 536

				the Appellant owed a duty of care to the First Respondent to ensure that the system of work for dismantling the scaffolding was safe, that the Appellant breached that duty, and that therefore the Appellant was liable in damages – Primary judge awarded various heads of damages amounting to $1,356,533.39 – Whether primary judge erred in failing to find that the First Respondent's claim was statute barred – Whether primary judge erred in finding that the Second Respondent was not liable to the First Respondent in negligence – Whether primary judge ought to have held that the Appellant was not liable to pay damages in respect of medical expenses paid for by the Second Respondent – Whether primary judge erred in failing to find contributory negligence against the First Respondent – Whether primary judge erred in finding a causal link between the accident and the resultant level of disability – Whether primary judge's award for non-economic loss was manifestly excessive	