Supreme Court of NSW Court of Appeal

Decisions Reserved as at 3 November 2023

	Number	Case Name	Heard	Issues	Judgment Below
1	2022/261766	The Property Investors Alliance Pty Ltd v C88 Project Pty Ltd (in liquidation)	13/02/2023	EQUITY - Rectification - Appellant is a real estate agent retained by the First Respondent to sell apartments in a development in Carlingford - The Appellant sold 317 apartments and received $10 million in commission, with some $18 million outstanding -Appellant brought proceedings to recover the sum owed, and the Respondent failed to file a Commercial List Reply - Appellant applied for summary judgment; Hammerschlag J (as his Honour then was) gave judgment in favour of the Appellant for $18 million with interest - Respondent sought to set aside the statutory demand for the judgment sum - In May 2022, the Respondent went into liquidation, and the Appellant sought leave under s 500(2) of the Corporations Act 2001 (Cth) to proceed against the Respondent - Appellant sought rectification of the agency agreement on the	*The Property Investors Alliance Pty Ltd v CBB Project Pty Ltd (in liq)* [2022] NSWSC 1081

				basis of mutual mistake and a declaration that, under the terms of that agreement, it has an equitable charge over 27 unsold apartments – The liquidator of the Respondent opposed the relief sought and contended that any equitable charge would be void for illegality pursuant to s 49(1) of the Property and Stock Agents Act 2002 (NSW) - Primary judge dismissed Appellant's claim for rectification - Primary judge held that the caveat clauses in the agency agreement did not grant an implied equitable charge - Whether primary judge erred in failing to find that the agency agreement created an equitable charge - Whether primary judge erred in failing to find that the Appellant and the Respondent had a common intention that the monies secured by the charge included commissions for units previously sold by the Appellant - Whether primary judge erred in declining to draw a Jones v Dunkel inference - Whether primary judge erred in drawing an inference against the Appellant that it did not adduce into evidence notes or drafts of the agency agreement	
2	2022/363122	Khatib v Director of Public Prosecutions	6/03/2023	ADMINISTRATIVE LAW – judicial review of District Court following appeal from Local Court – jurisdictional error – procedural fairness – failure to give reasons for being satisfied beyond reasonable doubt that complainant did not consent alleged touching – whether erred in giving direction under s293A of Criminal Procedure Act 1986 (NSW) as to inconsistencies – whether magistrate put words into the mouth of the complainant –	Lower Court decision not on Caselaw

				failure to afford opportunity to speak – whether alleged touching met legal definition of sexual touching under s61HB of Crimes Act 1900 - bias	
3	2022/342349	Atanaskovic v Birketu Pty Ltd	1/05/2023	COSTS – declaration made as to costs entitlement during pending cost assessment of party & party costs - whether unincorporated law firm can recover costs performed by employed solicitor – whether previous right to recover derived from the now abrogated Chorley exception	*Birketu v Castagnet* [2022] NSWSC 1435
4	2022/341	Ranclose Investments Pty Ltd v Leda Management Services Pty Ltd	4/05/2023	PROCEDURE – dismissal of proceedings after non-payment of security for costs – whether UCPR 42.21(3) is inconsistent with s1335 of the Corporations Act 2001 – whether power under UCPR 42.21 enlivened – whether erred in dismissing amended statement of claim – whether erred in ordering security for costs – whether failed to take into account that applicant was a trustee with no assets COSTS – whether erred in ordering costs of the dismissal of cross-claim - whether failed to take into account an undertaking not to pursue a cross-claim	*Ranclose Investments Pty Ltd v Leda Management Services Pty Ltd* [2021] NSWDC 651
6	2022/318631	Li v Tao	16/05/2023	EQUITY – the appellant and respondent were in a de factor relationship – the appellant bought a property in North Ryde using the respondent's money for the deposit – both parties entered into a written agreement with the appellant and Mr Bao pursuant to which Mr Bao agreed to contribute 50% of the costs for the development of a North Ryde Property in return for 50% of net profits – the respondent purchased a property in St Ives and at some point the appellant's name was	*Bao v Li* [2022] NSWSC 1335

				added as co-purchaser – the parties' relationship deteriorated and the respondent and Mr Bao requested that the appellant sell the North Ryde Property but the appellant refused – Mr Bao sought an order from the court that the North Ryde Property be sold and an account taken to determine his entitlement – the respondent cross-claimed against the appellant alleging that she held the North Ryde Property and the St Ives Property on express trust for him – the primary judge held that the appellant and the respondent agreed to the creation of an express trust in relation to both properties – whether the primary judge erred in finding that the respondent and Ms Lee were honest witnesses – whether the primary judge erred in finding that the appellant was an unimpressive witness – whether the primary judge erred in finding that an express trust arose in relation to the St Ives Property – whether the primary judge erred in making various factual findings – whether the primary judge erred in making orders to effect the transfer of the St Ives Property without first ordering that the appellant was entitled to an indemnity with respect to the mortgage liabilities in her name	
7	2022/48359; 2022/173413	Anderson v Canaccord Genuity Financial Ltd	17/05/2023	EQUITY – the Ashington group of companies (Ashington) was founded and controlled by Mr Anderson, the Appellant's husband - Ashington carried on a property development business – Ashington came under financial strain and engaged the services of the First Respondent to raise capital from alternative	*Anderson v Canaccord Genuity Financial Ltd* [2022] NSWSC 58

				sources – Ashington also engaged the services of the Fourth Respondents to advise the superannuation fund investors on behalf of Ashington – Ashington engaged the Second and Third respondents as Head of Funds Management and Head of Acquisitions respectively to liaise with the First and Fourth Respondents – the Second and Third Respondents abandoned attempts to secure capital raising – investors approved the removal of Ashington as trustee of the property development business – Ashington went into liquidation and the Appellant purchased the rights and interests in Ashington – Appellant commenced proceedings against the Respondents alleging that the Respondents had acted unlawfully to take Ashington's business for their own benefit – Primary judge held that Appellant had standing to sue for breach of contract but not breach of obligations owed to Ashington as a trustee – Primary judge held that Second and Third Respondents breached duties of good faith and loyalty arising from their employment with Ashington – the primary judge held that loss not established and ordered Second and Third Respondent to pay nominal damages – the primary judge dismissed claims for breach of fiduciary duty, knowing assistance and confidence against the Respondents – whether the primary judge erred in finding that Appellant lacked standing to sue for breach of confidence and fiduciary obligations – whether the primary judge erred in failing to find that the Second and Third	

				Respondents breached fiduciary duties – whether the primary judge erred in failing to find that the First, Fourth, Fifth and Sixth Respondents knowingly assisted the Second and Third Respondents – whether the primary judge erred in failing to find that the First Respondent breached fiduciary duties and duties of good faith – whether the primary judge erred in calculating Appellant's loss	
8	2022/119930	Collier v Attorney General for the State of New South Wales	18/05/2023	ADMINISTRATIVE LAW (other) – orders made under Vexatious Proceedings Act 2008 (NSW) restraining applicant from commencing proceedings in New South Wales without leave – whether primary erred in not adjourning trial – whether erred in discretion to make orders – procedural fairness – bias - findings – evidence	*Attorney General for the State of New South Wales v Collier (No 1)* [2022] NSWSC 457
9	2022/238296	SAS Trustee Corporation v Learmont	19/05/2023	WORKERS COMPENSATION – Police Regulation (Superannuation) Act 1906 (NSW) – Whether the trial judge erred in law in finding in favour of the Respondent	Lower Court decision not on Caselaw
10	2022/144952; 2022/145015	Lowe v Tu; Lowe v Lowe	29/05/2023	EQUITY – Partnership – This appeal arises out of the Sze Tu v Lowe litigation, which concerned three properties purchased by the deceased father of the Second Appellant and various of the Respondents (who died intestate) purchased with moneys derived from a partnership between the deceased and various of his children – The Second Appellant is the deceased's daughter, and the First Appellant is married to the Second Appellant – Primary judgment concerned the form of orders for the further conduct and finalisation of the various related proceedings in the litigation, specifically, the extent to	*Lowe v Pascoe (No 13)* [2022] NSWSC 320

				which the estate of the deceased should receive a distribution from the funds held by the Administrator, the calculation of notional distributions received by the First to Third Respondents, and the costs of the proceedings – Primary judge concluded that the Administrator's costs were to be paid out of the funds held by the Administrator – Primary judge directed the parties to provide orders giving effect to all conclusions reached in the proceedings – Primary judge made orders on 21 April 2022 – Whether primary judge erred in making a notation as opposed to an order regarding the value of the Net Proceeds Trust and distributions to be made therefrom – Whether primary judge erred in making a notation rather than an order as to the value of the Profits Trust and distributions to be made therefrom – Whether primary judge erred in failing to determine all relevant matters raised by the Inquiry – Whether primary judge entered orders inconsistent with orders of the Court of Appeal in Sze Tu v Lowe (No 2) [2015] NSWCA 9	
11	2022/284565	Bhatt v YTO Construction Pty Ltd	2/06/2023	TRADE PRACTICES – Misleading or deceptive conduct – the appellant is a director of Innovative Civil Pty Ltd (Innovative) – the respondent contracted Innovative to carry out excavation works – Innovative issued a progress claim to the respondent which claimed a variation amount – the respondent disputed the amounts claimed and Innovative lodged an adjudication application – the adjudicator determined to allow Innovative the variation sum sought – the respondent	*YTO Construction Pty Ltd v Bhatt* [2022] NSWDC 348

				commenced proceedings to set aside the adjudication determination on the basis that it was procured by fraud and paid approximately $1.5 million into the Supreme Court – the respondent's claims were dismissed (see [2018] NSWSC 1354) and the amount paid into court was ordered to be paid to Innovative – on appeal (see [2019] NSWCA 110) Innovative was successful and was ordered by the NSWCA to pay $399,000 plus GST and interest back into Court however Innovative did not pay that amount and subsequently entered into voluntary liquidation – the Court also remitted the proceedings to the Equity Division for further hearing – the respondent brought proceedings against the appellant in the District Court alleging that the respondent suffered damage because of three representations made by the appellant in relation to the adjudication – the trial judge held that the appellant did make the three statements and that they were representations made in trade or commerce to the adjudicator and the respondent by the appellant – the trial judge held that there was misleading or deceptive conduct in relation to claims in category 1 and 4 – the trial judge held that the adjudicator relied upon the misleading and deceptive conduct of the appellant in coming to its view that Innovative was entitled to its entire claim – the trial judge held that the respondent suffered a loss of $254,100 because of the misleading or deceptive conduct of the appellant – whether amendments sought by respondent in the	

				continuing Equity Division proceedings are inconsistent with respondent's appeal – whether an issue estoppel arises – whether the contents of the payment claim were representations made in trade or commerce	
12	2021/349602	Garslev Holdings Pty Ltd v Overdean Developments Pty Ltd	9/06/2023	EQUITY – Third Respondent ("BAD Nominees") was trustee of a self-managed superannuation fund ("Dean Super Fund") for the sole benefit of the Second Respondent ("Mr Dean") – Mr Dean was sole shareholder and director of BAD Nominees – First Respondent ("Overdean") replaced BAD Nominees as trustee of the Dean Super Fund in September 2018 – Mr Dean is sole director and shareholder of Overdean – in February 2013, BAD Nominees made a secured loan of $2m to Beechworth Land Estates Pty Ltd ("BLE") to fund the acquisition of a mortgage over 39 properties in regional Victoria ("mortgaged properties") – where the mortgagor had defaulted – BAD Nominees also made a secured loan to Griffith Estates Pty Ltd ("GEP") – in July 2014, BLE and GEP went into administration – BAD Nominees lodged a proof of debt claimed to be owed by BLE under the loan advanced to it – early in May 2016, Mr Dean was introduced to the Second and Third Appellants ("Mr L Smits" and "Mr Mahommed") by a mutual acquaintance who was the sole director of BLE ("Mr Photios") – Messrs L Smits and Mahommed were notified that BAD Nominees was yet to receive any payment out of the administration of BLE and lacked legal representation – on 9 May 2016, BAD	*Overdean Developments Pty Ltd v Garslev Holdings Pty Ltd (No 3)* [2021] NSWSC 1482

				Nominees executed a Power of Attorney in favour of Messrs L Smits and Mahommed for a period of three years and for the purposes of the BLE and GEP administrations – Mr Mahommed is the sole director and shareholder of the Fourth Appellant ("Vestecorp") – also on 9 May 2016, BAD Nominees, Vestecorp and Mr L Smits entered into a consultancy agreement and an "irrevocable authorisation and direction" ("IAD") – consultancy agreement set out terms on which Vestecorp and Mr L Smits would provide services to BAD Nominees and exercise functions and powers in respect of the BLE and GEP administrations – the IAD provided for the payment to Vestecorp and Messrs L Smits and Mahommed of 25% of all monies payable to BAD Nominees under the administrations – on 2 August 2017, BLE and BAD Nominees entered an agreement for the transfer of nine of the mortgaged properties in consideration of the reduction of the debt owed to BAD Nominees by $1m – on 21 February 2018, BLE went into liquidation – Fifth Appellant ("Mr J Smits") is the sole director and shareholder of the First Appellant ("Garslev") – on 20 March 2018 and 5 November 2018 respectively, BAD Nominees executed deeds to transfer to Garslev the nine mortgaged properties and other of its rights in relation to the BLE administration in consideration of $850,000 – those deeds were signed by Mr Mahommed on behalf of BAD Nominees – the earlier of those deeds permitted Garslev to pay the consideration by	

				setting off monies allegedly owed by BAD Nominees to Vestecorp and Messrs L Smits and Mahommed – by the latter of the deeds, Vestecorp and Messrs L Smits and Mahommed assigned to Garslev the debts allegedly owed to them by BAD Nominees in consideration for payment out of the profits of a separate property development being undertaken by Garslev – Garslev became registered proprietor of the nine mortgaged properties on 5 November 2018 without making any monetary payment to BAD Nominees – Garslev subsequently sold the nine mortgaged properties for an aggregate price of $1.126m – late in 2018, Mr Mahommed executed a deed on behalf of BAD Nominees to retain Mr L Smits as the company's solicitor in litigation concerning the administration of BLE – on 13 December 2018, Respondents commenced proceedings against Appellants seeking declarations that the Power of Attorney, consultancy agreement and IAD were rescinded for breach of fiduciary duty, that the deeds of 20 March and 5 November 2018 were rescinded for breach of fiduciary duty, that the Garslev holds the proceeds of the sale of the nine mortgaged properties on constructive trust for BAD Nominees or Overdean – Appellants defended the proceedings and cross-claimed for damages comprising fees said to be owed to Vestecorp and Messrs L Smits and Mahommed under the consultancy agreement and IAD, offset against the $850,000 paid to Garslev – Appellants also contended that the	

				Respondents' proceedings were precluded by the doctrines of res judicata, issue estoppel and/or Anshun estoppel by reason of earlier judgments in related proceedings concerning the BLE administration and the Dean Super Fund – primary judge found in favour of Respondents and ordered the relief that they sought – whether primary judge erred in finding that Respondents had standing to bring the proceedings – whether primary judge erred in finding that the proceedings were not precluded by any of the doctrines of res judicata, issue estoppel or Anshun estoppel – whether primary judge erred in finding that there was fraud on the Power of Attorney – whether primary judge erred in finding that recission was available in respect of the deed of 20 March 2018 – whether primary judge erred in finding that the Appellants had breached fiduciary duties owed to the Respondents – whether primary judge erred in the application of the principle in Barnes v Addy – whether primary judge erred in making, or failing to make, various findings of fact – whether primary judge erred in the quantification of debts said to be owing between the parties – whether primary judge erred in the assessment of costs in view of the principle in Bell Lawyers Pty Ltd v Pentelow (2019) 269 CLR 333	
13	2022/382189	Anderson v Indigenous Land and Sea Corporation	24/07/2023	ADMIN LAW (judicial review) – the respondent is the registered proprietor of parcels of rural land in NSW and Queensland – the first and second appellant occupy the lands without the consent of the respondent –	*Indigenous Land and Sea Corporation v Anderson* [2022] NSWSC 1650

				the respondent brought a claim against the appellants for possession of the lands or alternatively sought an injunction to restrain the appellants' trespass – the primary judge held that s 23 of the Supreme Court Act 1970 (NSW) was not displaced and – whether the primary judge erred in failing to have regard to the dispute between the liquidator and the respondent as to who owns the land – whether the primary judge erred by finding that Ngurampaa Ltd held land on trust for the respondent – whether the primary judge erred in failing to consider whether the respondent and the liquidator acted in bath faith or engaged in unconscionable conduct	
14	2022/387702	Mao v Bao	25/07/2023	EQUITY – the appellant sought judgment for the unpaid amount of a loan he made to the respondent (it being agreed that a sum of $800,000 was paid off the loan) – the respondent made a cross-claim against the appellant concerning a property in Vaucluse that the appellant bought with money which had been provided by the respondent, claiming that the appellant held the property as trustee for the respondent – both the appellant's claim and the respondent's cross-claim succeeded – the parties disputed when the set-off should take place – the primary judge found that the requirements of an equitable set-off were met and the set-off should be taken at the date of 5 May 2014 (and noted that no point was taken about this by the appellant) – whether the primary judge erred by finding that the requirements of an equitable set-off were satisfied, as between	*Mao v Bao (No 2)* [2022] NSWSC 1699

				the parties' respective claims – whether the primary judge erred by finding that the set-off between the parties' respective claims is to be undertaken at 5 May 2014 rather than the date of judgment pursuant to s 21 of the Civil Procedure Act 2005	
15	2023/107603	Dahdah v White	10/08/2023	MOTOR VEHICLE ACCIDENTS – dismissal of proceedings – failure to provide a full and satisfactory explanation under s109(3)(a) of Motor Accidents Compensation Act 1999 (NSW) – whether applicant/plaintiff had provided such an explanation – whether primary judge's findings on delay were incorrect – whether erred in taking into account that as the applicant's son was a lawyer, that it was reasonable to conclude that his son would have provided advice on delay	Lower court decision not on Caselaw
18	2023/32732	Jay v Petrikas	17/08/2023	TORTS (other) – injurious falsehood – dispute between members and office holders of the NSW Rural Fire Service (RFS) regarding three publications made between August and September 2016 – the appellants were informed that these publications would result in them being a subject of a private investigation, although there was insufficient evidence for any breach of RFS standards such that any disciplinary actions needed to be taken – first two publications purported concern regarding the appellants' "continued bullying and disruptive behaviour" and requested steps for "appropriate disciplinary action" to be taken – the third publication concerned a relationship between a member and the first appellant's daughter, which resulted in that member alleging that the first	*Jay v Petrikas (No 4)* [2022] NSWDC 628; *Jay v Petrikas (No 5)* [2023] NSWDC 707

				appellant had bullied him and he felt intimidated – the primary judge found that there were a very limited number of false representations which in any event were not actuated by malice and immaterial to the decision to investigate – the primary judge gave judgments for the respondents – whether the primary judge erred in finding against the appellants with respect to the contested representations – whether the primary judge erred in finding that the statements were not directed to the appellants' economic interests due to the volunteer nature of their respective positions – whether the primary judge erred in finding that the occupation here was not economic or a profession for the purposes of the tort of injurious falsehood – whether the primary judge erred in not considering or giving weight to the failure of the respondents in giving evidence regarding the contested representations – whether the primary judge erred in finding that the representations were not published with an improper purpose – whether the primary judge erred by not finding that actual damage was caused by the representations – whether the primary judge erred in finding that aggravated and exemplary damages should not be awarded	
19	2022/386040	State of New South Wales v Madden	22/08/2023	TORTS (other) – in December 2019 the respondent was stopped, searched and detained by NSW Police officers – the police officers uncovered a knife in the respondent's bag and arrested the respondent for custody of a knife in a public place – there was a	*Madden v The State of New South Wales* [2022] NSWDC 647

				physical altercation between the police officers and the respondent – the respondent was charged for three offences before being refused bail and remanded in custody – the respondent was released in June 2020 following a successful bail application and all charges were dismissed in October 2020 – the primary judge held that the respondent's detention, search and subsequent arrest was unlawful – the primary judge held that s 43A of the Civil Liability Act 2005 (NSW) did not apply to the respondent's claim – the primary judge awarded the respondent damages for false imprisonment, battery and malicious prosecution – whether the primary judge erred in determining that the stopping, searching and detaining of the respondent was not lawfully authorised by s 21 of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) (Act) – whether the primary judge erred in determining that s 43A of the Civil Liability Act 2005 (NSW) had no application to the exercise by police of a power contained in the Act – whether the primary judge erred in finding that the charges against the respondent were brought without reasonable and probable cause and with malice and there was a malicious prosecution	
20	2023/15573	J&Z Holding (Aust) Pty Ltd v Vitti Pty Ltd	23/08/2023	EQUITY – conveyancing – between August 2018 and August 2021 the appellant was a prospective purchaser of land in Ultimo, NSW (the Property) – the respondents were the registered proprietors of the Property and prospective vendors – dispute as to whether the option fee paid by the appellant for the	*J&Z Holding (Aust) Pty Ltd v Vitti Pty Ltd* [2022] NSWSC 1718

				grant of a call option by the respondents was a 'deposit' credited against the purchase price of the Property upon the contract for the sale of the Property coming to an end otherwise than by completion – Contract was terminated as a result of each party alleging repudiatory conduct of the other – at first instance, the appellants claimed that they terminated the contract due to the respondents' conduct, and was entitled return of the 'deposit' – the appellants further claimed that the 'deposit', as it was equal to 20% of the purchase price, was a penalty and therefore unenforceable – the primary judge held that the question turned on whether the sum was a "conventional deposit" or a credit against the purchase price equal to the call option fee – upon construction of the relevant terms, the primary judge held that the sum paid was not a payment to bind the appellant to the bargain, but a mere credit that would be offset upon completion of the Contract – whether the primary judge erred in finding that the sum paid was a Call Option Fee under the Contract and therefore not returnable upon termination of the Contract.	
21	2023/84277	Kramer v Stone	4/09/2023	EQUITY – estoppel by encouragement – the deceased owned a farming property that was operated by a farmer (the respondent) – by her will, the deceased left the farming property to her daughter (the first appellant) and left a bequest of $200,000 to the respondent – the respondent brought proceedings alleging that, by leaving the property to the first appellant, the deceased and her late husband acted	*Stone v Kramer* [2021] NSWSC 1456; *Stone v Kramer (No 2)* [2022] NSWSC 1716

				unconscionably in conflict with three representations that had been made by them to the respondent that he would receive the property in return for his share of the farming work done on the property under an oral share farming agreement – the primary judge found that, despite the respondent's evidence being the sole evidence regarding the representations, the representations were made out on the balance of probabilities – the primary judge found that it would be unconscionable for the deceased to resile from her representation due to the respondent's entitlement to rent-free accommodation not being sufficiently valuable – the primary judge found that the appropriate relief was for the estate of the deceased to make good the third representation by which the property would pass to the respondent – the primary judge held that it would not be equitable for the respondent to keep the bequest in circumstances where the property was to be transferred to him – whether the primary judge erred in finding that the deceased had made the third representation – whether the primary judge erred in finding that the respondent relied on the representation to his detriment – whether the primary judge erred in making findings regarding the deceased's (lack of) knowledge regarding the respondent's motivation for continuing work – whether the primary judge erred in finding that the deceased objectively assumed or knew that the respondent was motivated by an expectation he would receive the property –	

				whether the primary judge erred in finding the deceased acted unconscionably despite the gift of $200,000 – whether the primary judge erred in finding, as a result, that the executors of the deceased's estate hold the property on trust for the respondent	
22	2023/128462	Christian Community Ministries Ltd v Minister for Early Education and Early Learning	12/09/2023	ADMINISTRATIVE LAW – the appellant controlled a company which operated The Lakes Christian College (the School) – the respondent minister was empowered under the Education Act 1990 (NSW) (the Act) to make decisions regarding financial assistance to non-government schools – the Act establishes a Committee for non-for profit schools which is empowered to carry out investigations for, give advice and recommendations to the responsible minister – the Committee made investigations into the School and found it was operating for profit between the years 2015-2020 – it recommended that the respondent make a declaration of non-compliance – the appellants sought a review by NCAT, which made consent orders regarding non-compliance orders for the years 2017-2021 – on 10 May 2021, the respondent notified the appellant of her non-compliance declaration – in December 2021 the respondent minister made a decision requiring the appellant repay to the NSW government an amount of $3,856,286.36, being moneys received whilst operating for profit, and therefore ineligible for government funds, with the repayments to be made by way of deductions from financial assistance otherwise payable to the School –	*Christian Community Ministries Ltd v Minister for Education and Early Learning* [2023] NSWSC 272

				the parties challenged the statutory interpretation of the Act, primarily turning on the purported tense engaged within ss 83E, 83F, 83J – where the complaint turned on administrative error and procedural fairness – where the primary judge found that a decision maker could examine and set aside irrelevant considerations without falling into error – whether the primary judge erred in finding that the School was a non-compliant school under s 83E of the Act before the respondent formed the requisite level of satisfaction required under s 83E – whether the primary judge erred in holding that s 83J of the Act permitted the respondent to recover financial assistance prior to 10 May 2021	
23	2023/119871	Neilson v Secretary, Department of Planning & Environment	15/09/2023	LAND & ENVIRONMENT – the appellant owns an oyster lease in Nelson Lagoon in Mimosa Rocks National Park (the Park) – the respondent delegated the management of the Park to National Parks and Wildlife Service – since 2010, the appellant has been unable to access his oyster lease via the two trails leading to Nelson Lagoon (Cowdroys Road and Lagoon Trail) with a 4WD vehicle and boat trailer – the appellant claimed that the respondent had a duty to ensure there was all weather access for 2WD and 4WD vehicles along Cowdroys Road and Lagoon Trail respectively , pursuant to s 81 of the National Parks and Wildlife Act 1974 (NSW) (the Act) and the relevant plan of management (PoM), and that the respondent had breached this duty by failing to maintain the trails to this standard, or otherwise there has been	*Neilson v Secretary, Department of Planning & Environment* [2023] NSWLEC 32

				unreasonable delay in doing so – the primary judge held that there was no duty under the PoM to manage the trails to the submitted standards – the primary judge held that there was no unreasonable delay in implementing the PoM – whether the primary judge erred in failing to find that the respondent had such a duty, and breached the duty – whether the primary judge erred in applying the correct standard for unreasonable delay in performing a duty – whether the primary judge erred in failing to find that there was unreasonable delay	
24	2023/115883	Bondi Beach Foods v Chadwick	21/09/2023	TORTS (negligence) – the appellant owned and operated a premises and employed the second respondent to provide security services at the premises – the first respondent visited the premises, where he was assaulted physically by another patron and was left with psychiatric and psychological impairments – the primary judge accepted that there was a duty of care – evidence was given that there were no security guards or licensed guards available at the time – the primary judge found that the appellant was content for the premises to operate without licensed security guards on duty, and that if properly staffed, there was a real possibility that the fight could have been avoided – the primary judge also found that the second respondent supplied an inadequate contingent of security personnel in both quantity and capacity – the primary judge concluded that the absence of proper security staff made the appellant and second respondent equally liable – the primary judge	*Chadwick v Bondi Beach Food Pty Ltd; Bondi Beach Food Pty Ltd v Crossguard Group Pty Ltd* [2023] NSWSC 197

				applied a 20% reduction for contributory negligence and awarded damages totalling $200,706.40 – whether the primary judge erred by failing to appropriately identify the duty of care – whether the primary judge failed to identify the risk of harm that the appellant knew or ought to have known – whether the primary judge failed to apply s 5B of the Civil Liability Act properly – whether the primary judge made errors of fact which suggested there was a foreseeable threat – whether the primary judge erred in assessing causation – whether the primary judge erred in only apportioning 20% of liability to the first respondent – whether the primary judge erred in making allowances for past and future economic loss – whether the primary judge failed to provide adequate reasons for his findings	
25	2022/334264; 2022/334409; 2022/335502; 2022/336236	Arch Underwriting v CIMIC; Zurich v CIMIC; Chubb Insurance v CIMIC; Berkely Insurance v CIMIC	22/09/2023	INSURANCE – the Australian Federal Police instituted various proceedings against CIMIC and some of its officers – CIMIC sought a declaration that various insurers (including the appellant) were severally liable to indemnify it for the costs expended and damages for their failure to indemnify pursuant to the 2011 Primary Policy between CIMIC, AIG and the appellant – the primary judge held that the proper construction of clause 5.3 of the 2011 Primary Policy is that payment for a clause 5.3 claim is made under the 2011 Primary Policy but applying the 2010 policy terms, including the 2010 Limit of Liability, without regard to payments made paid pursuant to the 2010 policy – the primary judge held that	*CIMIC Group Limited v AIG Group Limited* [2022] NSWSC 999

				CIMIC was entitled to access the financial limit of liability of the 2011 Primary Policy, which is not the actual remaining limit under the 2010 policy – whether primary judge erred in finding that CIMIC was entitled to indemnity from the appellant under clause 5.3 of the 2011 Primary Policy identified, notwithstanding that the limits of the indemnity under the 2010 first excess policy had been exhausted	
27	2023/74333	NSW v Torronen	6/10/2023	TORT – assault and battery – strip search by police outside apartment block and injured during course of search - procedural fairness – rule in Brown v Dunn - whether factual findings made about significant matters not put to witnesses – whether Briginshaw standard applied to findings.	Decision of the District Court not available on Caselaw
28	2022/328002	Black Head Bowling Club Ltd v Harrower	11/10/2023	ADMIN LAW (judicial review) – the appellant applied to the respondent to have its gaming machine shutdown period reduced from 6 hours on weekends and public holidays – the respondent considered that the application fell within one of the circumstances provided for under cl 1 of the applicable Minister's Guidelines and refused the application – the appellant sought judicial review of the respondent's refusal of its application – the primary judge held that the construction argued for by the appellant was not open on the words used in the Minister's Guidelines – whether the primary judge erred in finding that cl 1 of the Minister's Guidelines required more than one other hospitality and entertainment venue to be open to 6am on Saturdays or Sundays or public holidays for the appellant to	*Royal Granville Hotel v Independent Liquor and Gaming Authority* [2022] NSWSC 1408

				satisfy the relevant section – whether the primary judge erred in finding that the appellant did not satisfy c 1 of the Minister's Guidelines.	
29	2022/354320	Islam v Linfox Australia Pty Ltd	12/10/2023	TORTS (negligence) – whether the primary judge erred in making various findings of fact – whether the primary judge erred in failing to find that the defendants were in breach of their duties of care to the plaintiff – whether the primary judge erred in finding that causation was established – whether the primary judge erred in finding the plaintiff guilty of contributory negligence – whether the primary judge erred in the assessment of damages.	Lower Court decision not on Caselaw
30	2023/127087; 2023/127091	Mangoola Coal Operations v Mussellbrook Shire Council	13/10/2023	LAND & ENVIRONMENT – the appellant owned land in the Local Government Area of the respondent council (the Land) – the Land had a coal mine – in FY17, the Land was re-categorized from "farmland" to "mining" by the respondent – the appellant successfully challenged the recategorization in earlier proceedings and later commenced proceedings to recover the extra $3.8m in rates paid whilst the Land was categorised as "mining" pursuant to the Local Government Act 1993 (NSW) (the LG Act) ss 527 and 674 – the primary judge held that the Recovery of Imposts Act 1963 (NSW) (the Imposts Act) applied, such that there was a 12-month limitation period from the date of the last rate payment, as the LG Act did not specify a limitation period – whether the primary judge erred in finding that the proceedings engaged the limitation period under the Imposts Act –	*Mangoola Coal Operations Pty Ltd v Muswellbrook Shire Council* [2023] NSWSC 262

				whether the primary judge erred in applying s 527 of the LG Act, such that the appellant should have been granted relief pursuant to s 674 of the LG Act.	
34	2023/93737; 2023/93752	Wild v Meduri	19/10/2023	SUCCESSION – the deceased left a professionally drawn will dated 2009 (the 2009 will) and six surviving adult children – four of the children brought proceedings making different probate and trust claims which were heard concurrently – Dominic and John (the first and second respondents) propounded the 2009 will, while Rose (the appellant) asserted that the 2009 will was not a valid will – alternatively Dominic and John sought a declaration that a property was held on trust by the estate for them – the primary judge held that the deceased had capacity to make the 2009 will and thus it was not strictly necessary to decide the trust issue – notwithstanding the primary judge was satisfied that Dominic and John had made out their claim for a trust arising out of their reliance on their parents' promises that they would have beneficial ownership of the property which gave rise to a proprietary estoppel in their favour against the estate of the deceased – whether the deceased had testamentary capacity to make the 2009 will – whether the deceased knew and approved the contents of the 2009 will – whether the primary judge erred in evaluating and giving weight to various lay and expert evidence – whether the primary judge denied procedural fairness to the appellant by reason of the extent, nature and frequency of his Honour's	*Wild v Meduri* [2023] NSWSC 113

				interventions in the cross-examination of the appellant and witnesses called by the appellant – whether the property is held on trust for Dominic and John as tenants in common in equal shares.	
35	2023/11410	Whittington v Newman	23/10/2023	DEFAMATION – leave granted to file a fourth amended statement of claim on terms - meaning of "serious harm" in s10A of Defamation Act – whether a reasonably clear injustice occurred in making submissions after judgment was reserved – whether s12B does not apply to allegedly defamatory matter that a plaintiff seeks to add to an amended statement of claim – whether erred in rejection applicant's objection that amended statement of claim did not identify the jurisdiction of publication, the identities of readers, and dates of publication – whether erred in not required respondent to plead facts relating the appellant being the alleged publisher – effect of a lack of a concerns notice	*Newman v Whittington* [2022] NSWSC 1725
36	2023/199686	Chief Commissioner of State Revenue v Integrated Trolley Management Pty Ltd	24/10/2023	TAX –the respondent (ITM) provided trolley collection services and cleaning services to large supermarket chains – ITM would engage subcontractors to perform these services – the appellant assessed ITM for payroll tax on the basis that all payments made to the subcontractors were "taxable wages" paid by ITM as an employer – the assessments totalled $3.63 million – ITM sought a review of these assessments – the central issue was the application of s 37(1) of the Payroll Tax Act 2007 (NSW) (the Act), which concerned whether the services were provided "in and for" the conduct of the	*Integrated Trolley Management Pty Ltd v Chief Commissioner of State Revenue* [2023] NSWSC 557

				businesses of the relevant supermarkets – the primary judge found that the services provided by ITM were not services procured under an employment agency contract and revoked the assessments – whether the primary judge erred by misconstruing s 37(1) of the Act – whether the primary judge erred in the application of the "in and for" test.	
37	2023/124961	Mark Filby v TEG Live Pty Ltd	25/10/2023	EQUITY – breach of confidence – the respondent's subsidiary was a tour promoter – the appellant discussed a marketing concept for a band's (One Direction) 2013 Australian tour with the subsidiary – the subsidiary's actual promotion resembled the marketing concept – the appellant contended that the marketing concept was his confidential information and the subsidiary's use was a breach of confidence – the primary judge held that the appellant failed to establish a breach of confidence – whether the primary judge erred in finding that the information conveyed was not specific, not imparted in circumstances which imported an obligation of confidence, and not misused – whether the primary judge erred in finding that the appellant had to alert those who heard his information of its confidential nature – whether the primary judge erred in failing to consider evidence which impacted the finding of the appellant's credibility.	*Filby v TEG Live Pty Ltd (No. 2)* [2023] NSWSC 327
38	2023/00224415	DN v Secretary, Department of Communities and Justice	30/10/2023	CHILD WELFARE – a children's court Magistrate made orders which had the effect of denying DN any parental responsibility for her 2 children and allocating parental responsibility to both the Minister and to the	*DN v Secretary, Department of Communities and Justice* [2023] NSWSC 595

				childrens' UK carers – claim for jurisdictional review dismissed – involves Aboriginal children who do not ordinarily live in NSW - issues regarding the correct construction of the Children and Young Persons (Care and Protection) Act 1998 (NSW).	
39	2022/379291	Mie Force Pty Ltd v Allianz Australia Insurance Ltd	31/10/2023	INSURANCE – the appellant has been sued in two proceedings concerning demolition work for which Rohrig (NSW) Pty Limited was responsible – the appellant sought an indemnity in relation to the defence of those proceedings from the respondent on the basis that the respondent's insurance Policy with Rohrig also insured the appellant – the primary judge found that the term "Named Insurer" was intended to include only those legal entities that had a direct legal relationship with Rohrig and based on this construction, sub-subcontractors were only covered by the Policy if they satisfied the requirements in cl 3(c) or another provision – the primary judge held that the appellant was not a sub-subcontractor of Rohrig – the primary judge held that the appellant was not a "Named Insurer" within the meaning of the Policy – whether the primary judge erred in finding that the appellant was not the agent of a "Named Insured" within the meaning of the Policy – whether the primary judge erred in making various factual findings	*Mie Force Pty Ltd v Allianz Australia Insurance Limited* [2022] NSWSC 1606
40	2021/259930	Chandrasekaran v Western Sydney Local Health District	31/10/2023	CONTRACT/EMPLOYMENT AND INDUSTRIAL LAW – Appellant was a qualified medical practitioner and specialist psychiatrist – in late December 2017, the Appellant commenced employment with the	*Chandrasekaran v Western Sydney Local Health District* [2021] NSWSC 920

				First Respondent as a Visiting Medical Officer ("VMO") for a fixed term set to expire on 2 March 2018 – the relevant employment arrangement had been organised through the Second Respondent, which provides recruitment services in the health sector – the Appellant was assigned to work at a youth psychiatric in-patient facility ("Redbank House") under the supervision of a Dr Padhi, the clinical director – in the course of her work at Redbank House, the Appellant cared for two children known by the pseudonyms "Olive" and "Tina" – following a conversation with the Appellant on 12 January 2018, Dr Padhi became concerned that she was exhibiting symptoms of paranoia – on 15 January 2018, Dr Padhi purported to terminate the Appellant's appointment with the First Respondent – the Appellant was not provided with written reasons for her termination – Dr Padhi prepared a risk assessment document in respect of the Appellant's employment with the First Respondent – that document referred to complaints regarding the treatment of "Olive" and "Tina" but made no mention of symptoms of paranoia – the Second Respondent subsequently resolved not to engage the Appellant in any further VMO appointments – on 9 February 2018, Dr Padhi filed complaints with the NSW Health Care Complaints Commission and the Australian Health Practitioner Regulation Agency – the Appellant commenced proceedings against the Respondents seeking damages for unfair	

				dismissal by way of breach of contract, misleading and deceptive conduct, injurious falsehood and breach of confidence – the primary judge found in favour of the Respondents and entered judgment for them – whether primary judge erred in making various findings of fact – whether primary judge erred by failing to take material considerations into account – whether primary judge's decision was plainly unreasonable – whether primary judge demonstrated actual or apprehended bias – whether primary judge failed to afford procedural fairness to the Appellant – whether primary judge failed to provide adequate reasons – whether primary judge erred in refusing leave to the Appellant to admit fresh evidence following the hearing of the proceedings	
41	2023/84603	The Owners - Strata Plan No 84674 v Pafburn Pty Ltd	1/11/2023	PROCEDURE – refusal to strike out respondents' proportionate liability defence – owner sues builder and developer for building defects – whether a person with a duty under s37 of Design and Building Practitioners Act 2020 (NSW) is "vicariously liable" within the meaning of s39(a) of Civil Liability Act 2002 (NSW) for the acts of those to whom the duty has been delegated – whether duty is a "non-delegable duty" within the meaning of 5Q – whether breach of the duty is a "liability in tort" – whether leave to amend defence ought to have refused on limitation grounds	*Owners of Strata Plan 84674 v Pafburn Pty Ltd* [2023] NSWSC 116
42	2023/88479	Riechelmann v McCabe	1/11/2023	TORT (negligence) – from 2010 to 2018 the appellant was in an intimate personal relationship with Mr Lavers – during this time there were incidents of interpersonal conflict	*McCabe v Riechelmann* [2023] NSWDC 44

				between the appellant and the respondent, who was a friend of Mr Lavers – in 2018 the respondent commenced proceedings for damages against the appellant based on four incidents, including three assaults by the appellant and damage by the appellant to the respondent's motor vehicle – the appellant filed a cross-claim seeking damages for the tort of assault – the primary judge found that the tort alleged by the appellant was not established and rejected the appellant's claims – the primary judge gave judgment for the respondent and dismissed the cross-claim – whether the primary judge erred in rejecting the cross-claim – whether the primary judge erred in rejecting the evidence of Melanie Wells – whether the primary judge engaged in impermissible speculation – whether the primary judge erred in failing to address the submissions of the appellant	
43	2023/91369	Alldinger v Du Ranot	2/11/2023	MOTOR ACCIDENTS – the appellant was struck by the respondent's vehicle whilst riding his bicycle – the respondent admitted liability, but contested the claim for damages – the appellant admitted to prior occasions of dishonesty in disclosing his income to the ATO to avoid taxation liability – the appellant had run a café before the accident – the accident impaired the appellant's ability to run the café, which was later disposed of, resulting in the appellant becoming unemployed and homeless – the primary judge held that the award for past and future economic loss was impacted by his prior tax evasion – the primary judge awarded total	

				damages of $1.1m – whether the primary judge erred in failing to deal with the question of causation – whether the primary judge erred in failing to consider the duty of care owed to the appellant by the respondent – whether the primary judge erred in failing to consider various factual matters, including the appellant's future accommodation, in determining the quantum for damages	
44	2023/203814	Rabah Enterprises Pty Ltd v LCM Operations Pty Ltd	3/11/2023	ADMINISTRATIVE LAW (judicial review) – appellant was tried in the District Court and convicted of one count of a conspiracy to import a commercial quantity of a border-controlled drug precursor with the intention of the substance being used to manufacture a controlled drug – applicant was sentenced to 12 years imprisonment – appellant applied for an inquiry into his conviction pursuant to s 78 of the Crimes (Appeal and Review) Act 2001 – primary judge dismissed the application – whether primary judge erred in his jurisdiction by performing an administrative task which was not within his judicial capacity – whether primary judge erred in law by not applying relevant principles.	*Application of Huy Huynh under Part 7 of the Crimes (Appeal and Review) Act 2001 for an Inquiry* [2020] NSWSC 1356
45	2023/203814	Huy Huynh v Attorney General (NSW)	3/11/2023	CONTRACT – the appellant and a related company (316 Group, now in liquidation) were owned by two brothers – through their companies, the brothers undertook a property development – 316 Group charged the appellant a fee of $14.8 million for the development's construction – the appellant claimed a tax deduction for the fee but did not pay it – 316 Group was wound up on the application of the Australian Taxation Office –	*LCM Operations Pty Ltd v Rabah Enterprises Pty Ltd* [2023] NSWSC 590 (Rees J)

				the respondent sued as assignee of 316 Group's debt, having purchased that right from 316 Group's liquidator – the primary judge held that there was a debt owed by the appellant to 316 Group, and the appellant had failed to pay that debt – whether the primary judge erred in finding that the payment had not already been made by the appellant – whether the primary judge erred in the construction of the contract between the appellant and 316 Group regarding the recovery of the claimed amount, the cancelling out of payment obligations, and the contractual right of set-off – whether the primary judge erred in concluding that the amount of set-off had not been quantified.	