Supreme Court of NSW Court of Appeal

Decisions Reserved as at 27 May 2024

	Number	Case Name	Heard	Issues	Judgment Below
1	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 was entitled to access the financial limit of liability of the 2011 Primary Policy, which is not the actual remaining limit under the 2010	*CIMIC Group Limited v AIG Group Limited [*2022] NSWSC 999

				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	
2	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 –	*Wild v Meduri* [2023] NSWSC 113

				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 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.	
3	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

4	2023/222134	AIDZAN Pty Ltd (in liq) v K&A Laird (NSW) (in liq)	5/12/2023	EQUITY – the proceedings arose out of the 2018 collapse of the respondent (KAL) following the third appellant's (PL) management of KAL as its sole director between 2009-2017 – KAL's liquidator commenced proceedings against PL for breach of directors' duties and fiduciary duties – KAL operated its business on its Tattersall Property until 1990, where it moved to a property in Sunnyholt – the first appellant (Aidzan) had acquired the Sunnyholt Property as trustee for PL's superannuation fund – KAL and Aidzan had entered into a facility agreement with a third party lender to fund the acquisition – Aidzan leased the Sunnyholt Property to KAL, and KAL moved its business to the Sunnyholt Property – KAL paid Aidzan excess rent, beyond the terms of the lease (Surplus Rent) – KAL claimed that it was the beneficial owner of the Sunnyholt Property, due to PL's alleged breaches of directors' duties, and that its proceeds and Surplus Rent were held on trust for KAL – KAL further claimed that PL pay compensation to KAL for his failure as a director to recover rent from the Tattersall Property whilst it was left vacant from 1990 until its sale in 2017 – KAL also claimed PL breached fiduciary duties by causing KAL to pay $1m to a superannuation account that PL was the beneficiary of (PL	K. & A. LAIRD (N.S.W.) Pty Ltd (In Liquidation) v AIDZAN Pty Ltd (In Liquidation) in its own capacity and in its capacity as trustee of the Peter Laird Trust, the Peter Alan Laird Property Trust (known as the PAL Property Trust) and the Aidzan Superannuation Fund [2023] NSWSC 603

				Superannuation Payment) – the primary judge found in favour of KAL – whether the primary judge erred as to certain factual findings regarding the attribution of PL's knowledge to KAL– whether the primary judge erred in failing to find that the claims were statutorily time barred – whether the primary judge erred in failing to find that PL had reduced the amount owed to KAL regarding the PL Superannuation Payment	
5	2023/198364	NSW v Cullen	8/12/2023	TORTS (negligence) – in January 2017 the respondent attended an Invasion Day rally as a spectator – during the rally, a physical altercation occurred leading to police officers attempting to arrest a participant in the rally (Williams) – in the course of the altercation, the respondent was knocked over and struck her head, suffering significant injury – the respondent alleged that the police owed her a duty of care that they had breached – the respondent further alleged that the arrest of Williams was unlawful and that the respondent was the victim of an assault and battery – the primary judge held that the action in negligence was successful and judgment was entered in favour of the respondent – whether the primary judge erred in finding that the police officers owed the respondent a common law duty of care – whether the primary judge erred in finding that the police	Cullen v State of New South Wales [2023] NSWSC 653

				officers breached a duty of care – whether the primary judge erred in failing to find that the exercise of force by the police officers was reasonable given their special statutory power – whether the primary judge erred in finding that there was a causal link between certain conduct of the police officers and the respondent's injuries.	
6	2023/265994	Creative Academy v White Pointer	21/02/2024	CONTRACTS – the proceedings concerned a claim by the respondents against the appellants for a debt owed under a 2017 oral contract entered into between the second respondent (Hedley, a director of the first respondent) and the seventh appellant (Larcombe, a director of the first appellant) where the respondents would source childcare sites for the first appellant (CAG) for a fee – no written agreement was entered into, but Hedley would invoice CAG for the first respondent's (WIP) consultancy services – CAG created special purpose vehicles to enter into the leases (being the second to sixth appellants, the SPVs) – in 2020, Larcombe emailed Hedley a "settlement agreement" between the first respondent (WIP) and CAG, which noted CAG was entitled to a refund of fees paid where sites did not proceed – Hedley refused to sign the settlement agreement – whether the primary judge erred in finding an oral agreement was	White Pointer Investments Pty Ltd v Creative Academy Group Pty Ltd [2023] NSWSC 817

				made between the parties – whether the primary judge erred in finding that there was no binding settlement agreement – whether the primary judge erred as to the finding that there was no binding settlement agreement between the parties – whether the primary judge erred as to the application or interpretation of the Property and Stock Agents Act 2002 (NSW) and Agents Act 2003 (ACT) where the respondents did not hold a real estate agent licence – whether the primary judge erred as to certain factual findings – whether the primary judge erred as to her findings on mistaken belief – whether the primary judge erred in finding that the respondents had no entitlement to seek restitution – whether the primary judge erred as to her conclusion on the respondents' entitlement to their fees.	
7	2023/302494	Berejiklian v ICAC	27/02/2024	ADMIN LAW (judicial review) – the plaintiff was the Premier of NSW – the Defendant (ICAC) prepared a report regarding her involvement with the then member of Parliament for Wagga Wagga (Mr Maguire) in June 2023 (the Report) which was then provided to the Legislative Council and Legislative Assembly – ICAC found that the plaintiff engaged in serious corrupt conduct through exercising her official functions in relation to funding awarded to institutions in	ICAC report to the President of the Legislative Council and the Speaker of the Legislative Assembly titled Investigation into the conduct of the then member of Parliament for Wagga Wagga and then Premier and others (Operation Keppel), June 2023

				Mr Maguire's electorate (the funding decisions) while in an undisclosed relationship with Mr Maguire – the plaintiff seeks an order quashing the "serious corrupt conduct" findings made in the Report – whether the assistant commissioner prepared the Report outside her authority under the Independent Commission Against Corruption Act 1988 (NSW) (ICAC Act) – whether ICAC fell into jurisdictional error by finding that the plaintiff was influenced by her relationship with Mr Maguire without any probative evidence – whether ICAC made an error of law in finding that the plaintiff's relationship with Mr Maguire was capable of amounting to an interest capable of giving rise to a conflict of interest – whether ICAC erred by making findings regarding the plaintiff's duties as Premier – whether ICAC erred by finding that the plaintiff had engaged in conduct which was a breach of public trust – whether ICAC fell into jurisdictional error by misconstruing the ICAC Act's provisions regarding corrupt conduct and dishonesty – whether ICAC fell into jurisdictional error by finding that the Ministerial Code imposed disclosure obligations on the plaintiff – whether ICAC erred in finding that the plaintiff had engaged in conduct involving the exercise of her official functions.	

8	2023/294430	Kimberly Developments v Bale	8/03/2024	PROCEDURE – the respondent owned land in Forest Lodge, Sydney (the Land) which was sold by her father to the first appellant in 2011 at a gross undervalue – in June 2022, Ward P set the sale aside as unconscionable, such that the first appellant had held the Land as constructive trustee for the respondent's father, and after his death, the respondent, and was accountable for rent it had received over the period, but made an allowance for an amount paid to discharge a mortgage; expenses reasonably incurred in the maintenance of the Land; and interest – the primary judge heard submissions on the adjustments and allowances for the repayments – the primary judge found that the first appellant was not entitled to the higher interest rate allowance – the primary judge rejected certain claims for expenses incurred by the first appellant – the primary judge rejected the first appellant's submissions as to interest regarding order 9 of Ward P's judgment – whether the primary judge erred in disallowing a claim for interest on the expenses claimed – alternatively, whether the primary judge erred in failing to offset the expenses claimed against rent receipts – whether the primary judge erred in failing to apply the correct interest rate – whether the primary judge erred in making evidentiary	Bale v Kimberley Developments Pty Ltd (No 3) [2023] NSWSC 973

				findings as to costs incurred by the first appellant.	
9	2023/259476; 2023/259477	Sinclar v Balanian; Sinclair v Burns Bay Services	14/03/2024	CONTRACT – in February 2021, two related proceedings were commenced: the first, by the second appellant (FJS) against Burns Bay Services (matter 2021/20942), and the second by FJS, the first appellant (Fiona Sinclair), and the late John Sinclair against the first respondent (Ashod Balanian) and second respondent (Launch Partners) (matter 2021/179061) – the claims arose out of a digital commodity investment fund business that Mr Sinclair, Mr Balanian and BBS were involved in – the parties attended a mediation in April 2022 without their lawyers in attendance – a document entitled “Deed of Release & Indemnity, Settlement of Proceedings” (the Deed) was signed by Fiona Sinclair, Penelope Richards (on behalf of John Sinclair as the executor and trustee of his estate) and Mr Balanian as directors of FJS, BBS and Launch Partners, and not separately as individual parties – in August 2022, Mr Balanian and Launch Partners sought a declaration under s 73 of the Civil Procedure Act 2005 (NSW) that both proceedings had been settled in accordance with the Deed and that the proceedings be dismissed – FJS sought to have the Deed declared as void and unenforceable – the primary judge found that	Fiona & John Sinclair Pty Ltd v Burns Bay Services Pty Ltd [2023] NSWSC 789

				the object of the Deed was to seek to resolve all issues in both proceedings in a single settlement – the primary judge granted the declaratory relief sought by Mr Balanian and Launch Partners – whether the primary judge erred in finding that the Deed was a binding contract – whether the primary judge erred in finding that a counterparts clause in the Deed should be discounted – whether the primary judge erred in having regard to the subjective intention of Fiona Sinclair – whether the primary judge erred in reasoning that the description of the Deed as a "deed" was objectively to be understood as referring to a document which was not a deed – whether the primary judge erred in relying on irrelevant subsequent conduct and discounting relevant subsequent conduct.	
10	2022/383423 2923/119823	McMillan v Coolah	19/03/2024	REAL PROPERTY – the first respondent purchased land in Coolah and a caravan park business in order to establish a "company title" venture, by which it was contemplated that residents would buy a share in the company which carried the right to occupy a specified site in the park – the appellants bought sixteen shares of the first respondent between themselves – the first respondent was put into voluntary administration and the park was sold to Coolah Tourist Park Pty Ltd (CTP) – the appellants brought proceedings	McMillan v Coolah Home Base Pty Ltd (No 4) [2022] NSWSC 584McMillan v Coolah Home Base Pty Ltd (No 5) [2022] NSWSC 1589

				against the respondents claiming equitable ownership in the sites which they occupied in the park and breach of directors' duties, and sought an order rescinding the transfer of the park to CTP in addition to compensatory damages – the primary judge dismissed the appellants' claims to equitable proprietary interests in their sites and to have the transfer of the park rescinded – the primary judge held that some of the actions by the directors of the first respondent were oppressive and the conduct of the first respondent's affairs was generally oppressive, but none of the relief sought by the appellants was appropriate – the primary judge also dismissed the appellants' monetary claims for compensation – the primary judge gave effect to the appellants' order for the winding up of the first respondent but otherwise dismissed the appellants' claims – whether the primary judge erred in assessing the credit of Ms Kelly and Mr Booker – whether the primary judge erred by finding that the appellants were not promised ownership of the sites – whether the primary judge erred by failing to grant appropriate relief for oppressive conduct of the directors – whether the primary judge erred by failing to find that the directors breached some of their duties including fiduciary duties – whether the primary judge	

				erred by failing to find that the sale of the park itself was oppressive – whether the primary judge erred by dismissing the appellants' claims for misleading or deceptive conduct and unconscionable conduct – whether the primary judge erred in assessing accessorial liability for the directors' breaches of duty – whether there was a denial of procedural fairness.	
11	2023/191618	Warner Capital v Shazbot	19/03/2024	EQUITY – the second appellant (Warner) and second respondent (Kugel) established an insolvency practice (CWK) in 2007 – Warner and Kugel later established the fourth appellant (Debt Free) to undertake bankruptcy administrations – in 2014, Warner decided to continue an insolvency practice on his own, and the work and assets of CWK were divided between Warner and Kugel – most of the work was retained by Warner, who was left with the ownership of Debt Free and of CWK (now known as the third appellant) – although CWK had purportedly been run by a company (CWK Pty Ltd), in 2018, the primary judge found that both it and Debt Free had in law been run as a partnership between Warner and Kugel personally – Warner, Kugel and their associated corporate entities were therefore under an obligation to account to the partnership for their partnership assets and liabilities – two issues arose in finalising the	Shazbot Pty Ltd v Warner Capital Pty Ltd (No 3) [2023] NSWSC 527

				account: the first issue was the value of the in-progress administrations taken over by Warner; the second issue was the value of the websites owned by the partnership – the primary judge found in favour of the respondents in respect of both issues – whether the primary judge erred in the application of the anti-inducement provisions available to insolvency practitioners and s 595 of the Corporations Act 2001 (Cth) regarding the prohibition on discounts – whether the primary judge erred in giving weight to the lack of evidence of actual market transactions – whether the primary judge erred in finding that the whole book of administrators did not have an overall negative value.	
12	2023/214615	Medical Device v Health Administration	22/03/2024	CONTRACTS – as part of the NSW Government's response to COVID-19, the respondent, a statutory corporation, entered into two agreements with the appellant, to purchase 348 ventilators (the Ventilators) for a total of almost $20.8 million – the respondent paid the appellant half of this purchase price in April 2020 – the respondent received the Ventilators between June-July 2020 – the respondent contended that the Ventilators were unfit for clinical use and purported to reject the Ventilators, terminate the agreements and demanded a refund of the $10.4 million paid – the primary judge held	Medical Device Technologies Pty Ltd v Health Administration Corp [2023] NSWSC 602

				that the Ventilators were not fit for purpose pursuant to s 19 of the Sale of Goods Act 1923 (NSW) (the SoGA) and that the appellant should repay the $10.4 million – the primary judge further found that the appellant had engaged in misleading and deceptive conduct, pursuant to s 18 of the Australian Consumer Law – whether the primary judge erred in making findings as to the communicated purpose and quality of the Ventilators to the respondent for the purposes of s 19 of the SoGA – whether the primary judge erred in finding that the respondent had not accepted the Ventilators pursuant to the SoGA – whether the primary judge erred in making findings as to the Ventilators not operating in accordance with the user manuals and accompanying documents provided by the appellants – whether the primary judge erred in upholding the respondent's claim under s 18 of the Australian Consumer Law	
13	2023/215770	Drummond v Gordian Runoff Limited	28/03/2024	INSURANCE – the appellants sought an order that the respondent, an insurer, indemnify them for a "delayed claim" under a "last resort" home warranty insurance policy – the policy was issued under a statutory scheme established by the Home Building Act 1989 (NSW) (the Act) to provide cover to homeowners in the event that compensation	Drummond v Gordian Runoff Ltd [2023] NSWSC 607 Drummond v Gordian Runoff Ltd (No 2) [2023] NSWSC 731

				cannot be recovered from their builder for breach of statutory warranties imposed by the Act due to the builder's disappearance, insolvency or death – s 54 of the Insurance Contracts Act 1984 (Cth) (the Insurance Act) provides that an insurer may not refuse to pay claims in certain circumstances – the primary judge held that s 54 did not apply and that s 103BB does not operate to restrict or impair s 54 of the Insurance Act – the primary judge ordered that part of the respondent's costs should be paid by the appellants on an indemnity basis – whether the primary judge erred in the application of s 103BB of the Act and s 54 of the Insurance Act – whether the primary judge erred in limiting the manner in which statute could modify the parties' contractual rights – whether the primary judge erred in determining that the respondent was entitled to part of its costs on an indemnity basis – whether the primary judge erred in failing to find that the there was no genuine offer of compromise.	
14	2024/107445 2024/107482	The Law Society v Attorney General; ABC Insurance v The Law	2/04/2024	INSURANCE – proceedings removed from the Common Law Division to the Court of Appeal by Harrison CJ at CL for the Court to determine separate questions – can the Law Society grant or renew a practising certificate if the applicant does not hold approved professional indemnity insurance and is	Orders for separate questions (8/3/24)

		Society		otherwise not exempt from the requirement to do so, and, if the answer to that is yes, is the ABC Insurance Professional Indemnity Insurance Policy for Solicitors in Australia (the ABC policy) a policy issued or provided by an insurer authorised by APRA and does the ABC policy comply with the minimum standards specified in the Uniform Rules as required by section 210(1)(b)(i) of the Legal Profession Uniform Law (NSW).	
15	2023/304549	Azzi v State of NSW	4/04/2024	ADMIN LAW (judicial review) – the appellant was employed by the respondent with the Department of Customer Service (the Department) in the State Insurance Regulatory Authority (SIRA) – on 12 July 2022, the CEO of SIRA informed the appellant that his employment had been terminated (the first decision) – on 30 November 2022, the Secretary of the Department wrote to the appellant to inform him of her decision to terminate his employment (the second decision) – the conduct forming the basis of the terminations involved the appellant allowing an employee (Ms A) that reported to him to continue to perform work for SIRA after relocating to Germany, despite directions being made to the appellant to require Ms A to stop performing work – the appellant challenged the validity of the first and second decisions by two summonses – the primary	*Azzi v State of New South Wales* [2023] NSWSC 1028

				judge found that neither decision was affected by jurisdictional error and dismissed the summonses – whether the primary judge erred in finding that there had been a lawful exercise of the power in s 69(4) of the Government Sector Employment Act 2013 (NSW) – whether the primary judge erred in treating the appellant's grounds as to the failure of the respondent to undertake an obvious inquiry into a critical fact as an allegation of a failure to afford procedural fairness – whether the primary judge erred in failing to find that the respondent could not accept the evidence of Mr Darren Parker where credit was an issue – whether the primary judge erred in failing to address the appellants' grounds that the respondent had failed to comply with Part 8 of the Government Sector Employment (General) Rules 2014 (NSW) – whether the primary judge erred in finding that the respondent had afforded the appellant procedural fairness – whether the primary judge erred in holding that the respondent could lawfully find that its directions were lawful – whether the primary judge erred in holding that the CEO of SIRA was the agent of the Secretary of the Department – whether the primary judge erred in refusing the appellant's second application for documents sought in his Notice to Produce	

				dated 1 March 2023.	
16	2023/459517 2024/71130	Carlingford Bowling Club v Carabetta	5/04/2024	CORPORATIONS – the appellant is a public company limited by guarantee and a registered club, operating from its main premises in Carlingford – the appellant is governed by a Constitution adopted in November 2019 and amended in November 2022 (the Constitution) – the appellant amalgamated with the Denistone Sports Club Ltd and the Brush Park Bowling Club (the Clubs) in April 2017 and March 2018 respectively, with all members of the Clubs becoming members of the appellant – in September 2023, the Board of Directors of the appellant (the Board) approved three new By-laws – certain of the new By-laws limited the rights of certain members to vote, and placed a limit on the number of directors that could be elected from the former members of the Clubs – the respondents commenced proceedings seeking declarations that By-Laws 10(f) and 18(c) are inconsistent with the Constitution and therefore invalid – the primary judge granted the declaratory relief sought – whether the primary judge erred in finding that By-Laws 10(f) and 18(c) are inconsistent with the Constitution.	Carabetta & Anor v Carlingford Bowling, Sports & Recreation Club [2023] NSWSC 1442
17	2023/323415	Sydney Metro v C & P	23/04/2024	LAND & ENVIRONMENT – the appellant compulsorily acquired a property in Clyde (the	Nohra v Sydney Metro; C & P Automotive Engineers Pty Ltd v Sydney

		Automotive		property) for the Sydney Metro Project in March 2021 – the property was subject to a lease between the registered proprietors and the respondent – the respondent is a hire, storage, sales and repair business with a large fleet of heavy machinery – the registered proprietors and the respondent brought proceedings against the appellant under the Land Acquisition (Just Terms Compensation) Act 1991 (NSW) – the primary judge awarded the respondent the $2.4 million it sought, including $1.9 million in relocation costs – whether the primary judge erred in finding that the respondent was entitled to compensation for fit-out works at a new site – whether the primary judge erred in failing to assess the respondent's claim for rent differential to take into account the additional per metre space leased by the respondent.	Metro [2023] NSWLEC 95
18	2023/301064	Slade v Brose	24/04/2024	EQUITY – the proceedings arose out of an intergenerational dispute about five farming properties in Quandialla, NSW (the Properties) – the first respondent is the daughter of the appellants – the respondents claimed beneficial ownership of the Properties due to alleged representations of future benefits made by the appellants to the respondents if they stayed on the farm – in 2019, the parties entered into a Deed of Family Arrangement (the Deed) – in 2021, the	Brose v Slade [2023] NSWSC 1025

				parties fell out, and in 2022 the appellants renounced any obligations they had regarding property transfers to the respondents – the primary judge found that the appellants clearly and unambiguously represented to the respondents that the Properties would be given to them, and the respondents relied on the representations to their detriment – the primary judge held that the Properties were held on trust for the respondents by the appellants – whether the primary judge erred in finding that the appellants had made the impugned representation to the respondents – whether the primary judge erred in finding that the respondents had relied on the representations – whether the primary judge erred in finding that the respondents acted detrimentally in reliance on the impugned representation – whether the primary judge erred in finding that there was a change in the circumstances.	
19	2023/277906	Kazzi v KR Properties	24/04/2024	BUILDING AND CONSTRUCTION – the respondents entered into a contract with a building company (the Builder) – the appellant was the sole director and shareholder of the Builder – the respondents brought a claim for damages against the appellant and the Builder, including a claim for Hungerfords v Walker (1989) 171 CLR 125 damages for the delay of the building works – in April 2023, the	Oxford (NSW) Pty Ltd v KR Properties Global Pty Ltd trading as AK Properties Group (No 3) [2023] NSWSC 881

				primary judge found that the respondents had established an entitlement to damages from the Builder, but not against the appellant personally (the principal judgment) – the respondents later raised the Hungerfords point again and invited the primary judge to consider it, noting that the primary judge had overlooked a concession as to breach (regarding two defects) made by the appellant during the principal hearing – the primary judge found that the Hungerfords interest should also be awarded against the appellant – whether the primary judge erred in permitting the respondents to reopen their case – whether the primary judge erred in permitting the respondents run an argument for damages which had not been previously claimed and caused the appellant prejudice – whether the primary judge erred in finding that the two defects caused the respondents to incur interest – whether the primary judge erred in making evidentiary findings.	
20	2023/364755	Value Constructions v Badra	24/04/2024	TORTS (negligence) – in June 2020, the first respondent was working on a construction site in Peakhurst (the site) – the first respondent was an employee of the second respondent – the site was under the management and control of the appellant – the first respondent fell into a stormwater drain hole which was covered with black plastic, causing him injury	Badra v Value Constructions Pty Ltd & Ors [2023] NSWSC 1307

				– the first respondent brought proceedings claiming damages for personal injury – the primary judge found that the appellant had been negligent, assessing damages totalling $806,500 against the appellant (having been slightly reduced due to the operation of the Workers Compensation Act 1987) – whether the primary judge erred in finding that the appellant had breached its duty of care – whether the primary judge erred in failing to find that the risk of harm was not reasonably foreseeable – whether the primary judge erred in finding that the appellant was 50% culpable with the second and third respondents – whether the primary judge erred in failing to find that the conduct of the second and third respondents caused the harm to eventuate – whether the primary judge erred in not deducting the weekly compensation payments from the damages awarded to the first respondent – whether the primary judge erred in ordering that the appellant pay in excess of 50% of the first respondent's costs.	
21	2023/336151	BBY v The GEO Group	26/04/2024	WORKERS COMPENSATION – the appellant worked for the respondent as an immigration detention officer at the Villawood Detention Centre from August 1998 to November 2001 – the appellant pursued employment with other entities from November 2001 to January 2017 – in June 2017, the appellant made a claim for	BBY v The GEO Group Australia Pty Ltd [2023] NSWPICPD 60

				compensation under the Comcare workers compensation scheme, nominating the Department of Immigration and Border Protection (the Department) as his employer, alleging that he had suffered post-traumatic disorder, major depressive disorder and anxiety as a consequence of his duties, predominantly at the Villawood Detention Centre – the appellant concurrently lodged a claim for psychological injury against a subsequent Commonwealth employer – the appellant discontinued the claim against the Department on the advice that he was employed by a non-government entity – in the resolution of the claim against the subsequent employer, a Senior Member of the Administrative Appeals Tribunal determined that the appellant's work with the respondent contributed to his psychological condition – in January 2021, the appellant made a claim for compensation and treatment expenses, nominating the respondent as his employer – the respondent disputed liability for the claim, and the appellant commenced proceedings in the Personal Injury Commission – a Member determined the date of the appellant's injury to be 20 January 2017, and barred the appellant's claim – the Deputy President dismissed an appeal against the Member's decision – whether the Deputy President erred	

				in finding that the date of injury was determined by the date of first incapacity – whether the Deputy President erred in finding that the appellant's entitlement to claim treatment expenses was precluded by s 261 of the Workplace Injury Management and Workers Compensation Act 1998 – whether the Deputy President erred in their consideration of relevant case law.	
22	2023/271325 2023/271345 2023/271359	SoNSW v Randall; SoNSW v Dickens; SoNSW v Jensen	29/04/2024	TORTS (other) – the respondents were arrested on several sexual offences in company of others and were remanded in custody – the respondents stood trial and were acquitted - the senior detective constable on the matter committed wrongful conduct during the investigation and was in breach of his duty under s 15A of the Director of Public Prosecutions Act 1986 (NSW) – the primary judge held that the senior detective constable had charged Randall without reasonable and probable cause and that his conduct was so egregious that the prosecution was malicious – the primary judge further found that the appellant was liable for misfeasance in public office – the primary judge held that Randall was falsely imprisoned during the investigation process and he was awarded $730,000 in damages – Dickens and Jensen were each awarded $30,000 - whether the primary judge erred in making findings as	Randall v State of NSW; Dickens v State of NSW; Jensen v State of NSW (Decision not available on Caselaw)

				to the credibility of witnesses – whether the primary judge erred in making findings that the appellant was liable for malicious prosecution – whethe	
23	2023/465559	Radovanovic v Stekovic	2/05/2024	CONTRACTS – the respondents are married, and the appellant is the brother of the second respondent – the respondents sought declarations and orders for specific performance of an alleged settlement agreement with the appellant, regarding a dispute over the distribution of proceeds from the sale of a property in Queanbeyan – the primary judge found that the agreement alleged by the respondents did exist, as letters sent between the parties dated 2 June 2022 and 3 June 2022 constituted a valid offer and acceptance – whether the primary judge erred in finding that the objective intention of the parties was to be immediately bound by the counteroffer made by the solicitors for the appellant on 2 June 2022 – whether the primary judge erred in failing to find that the purported agreement was incomplete – whether the primary judge erred in finding that the appellant was the person with authority over the Baker Deane & Nutt trust account – whether the primary judge erred in failing to find that entry into a deed of settlement was a term of the agreement – whether the primary judge placed excessive weight on the	Stekovic v Radovanovic [2023] NSWSC 1471

				inclusion of the phrase “without prejudice save as to costs” in communications between the parties.	
24	2023/465352	Enermech v Acciona	6/05/2024	BUILDING & CONSTRUCTION – the first, second and third respondents (Acciona) comprise an unincorporated joint venture formed to construct the WestConnex M4-M5 Link – Acciona entered into a subcontract (the Contract) with the appellant to perform electrical installation works for an adjustable contract sum of $75.6 million – the appellant was obliged to provide security under the Contract, and procured the issue of a $9.23 million (the Security Amount) undertaking from HSBC (the Security) – in July - September 2022, there was a dispute as to amounts owing under the Contract, ultimately determined by an Adjudicator who found that the appellant was entitled to $5.6 million, which was paid by Acciona – in October - December 2022, there was a further dispute, again determined by the Adjudicator who determined that $9.1 million was payable by Acciona to the appellant, which was paid by Acciona – as the position determined by the Adjudicator now differed from the position as assessed by Acciona’s Representative under the Contract, Acciona alleged that EnerMech was obliged to repay $7.2 million under the Contract – on 26 May 2023, Acciona made a	Acciona Infrastructure Projects Australia Pty Ltd v EnerMech Pty Ltd [2023] NSWSC 1565

				demand on HSBC for the Security Amount, which HSBC paid – on 8 June 2023, the appellant served on Acciona a document purporting to be a "payment claim" for the purposes of s 13 of the Building and Construction Industry Security of Payment Act 1999 (NSW) (the Act) which included a claim for $9.23 million correlating to Acciona's recourse to the Security (Payment Claim 29) – on 25 July 2023, the Adjudicator made a determination in favour of the appellant for $10.2 million (the Third Determination) – Acciona alleged that the Third Determination was made without jurisdiction – the primary judge held that Payment Claim 29 was not a valid payment claim for the purposes of the Act and quashed the Third Determination – whether the primary judge erred in holding that a payment claim is not a "payment claim" for the purposes of the Act if the claim is not in substance a claim for "construction work" – whether the primary judge erred in holding that Payment Claim 29 was not a claim for "construction work".	
25	2024/45446	ACN 627 087 030 v Poche	7/05/2024	ADMIN LAW (judicial review) – the applicant, a legal firm, represented the respondent in proceedings involving the estate of the respondent's deceased mother – Henry J made orders handed down in June 2020 increasing the amount of provision for the	A.C.N. 627 087 030 Pty Ltd trading as Yates Beaggi Lawyers v Poche [2023] NSWDC 551

				respondent – her Honour awarded capped costs of $125,000 to the respondent, having described the costs accrued by the respondent as “excessive” – in May 2021, a Costs Assessor determined that the applicant should refund to the respondent the sum of $98,541.15 – in March 2022, a Review Panel issued Certificates of Determination upholding that Cost Assessor’s assessment – the applicant, by way of summons, sought review of the Review Panel’s determination – the primary judge dismissed the summons, upholding the Review Panel’s determination – whether the primary judge erred in determining that the Review Panel had properly discharged its statutory function – whether the primary judge erred in determining that the Review Panel’s adoption of the determination of costs by the Costs Assessor involved no error when the Costs Assessor’s determination was infected by a number of errors – whether the primary judge erred in determining that the Review Panel’s determination was without error – whether the primary judge erred in failing to find that the Review Panel denied the applicant procedural fairness.	
26	2023/315725	Curtis v Curtis	8/05/2024	SUCCESSION – Mr Barry Curtis (the deceased), grandfather of the respondents and brother of the appellant, died on 11	Curtis v Curtis [2023] NSWSC 1164

				January 2022 – the appellant is executor of the deceased's will (the Will), which makes no provision for the respondents – the sole beneficiary is Mr Rodney Curtis (Rodney), the son of the deceased – the respondents made an application for provision pursuant to s 59 of the Succession Act 2006 (NSW) (Succession Act) – the primary judge found that the respondents were dependent on the deceased and that there were factors warranting provision for the respondents, and made orders for provision for the respondents in the form of 20% of the proceeds of sale of the deceased's property (the property) – whether the primary judge erred in finding that the respondents were "wholly or partly dependent on the deceased person" – whether the primary judge erred in finding that there were factors warranting provision for the respondents – whether the primary judge erred in the consideration of Rodney's "needs" – whether the primary judge erred in the process of determining "adequate" provision for the respondents.	
27	2024/86203	Commissioner of Police v LECC	9/05/2024	ADMIN LAW (judicial review) – the respondent determined that s 114(3)(d) of the Law Enforcement Conduct Commission Act 2016 (NSW) (LECC Act) obliged the second and third applicants to produce certain documents – the applicants seek interim	Decision of the Hon Peter Johnson SC, Chief Commissioner, Law Enforcement Conduct Commission, dated 28 February 2024

				orders that no person other than a party may inspect the confidential reasons of the respondent – the applicants seek final orders including a declaration that s 114(3)(d) of the LECC Act does not compel the provision to the respondent of access to the documents in question – whether s 114(3)(d) of the LECC Act imposes on the recipient of a notice to provide access to a document a requirement to provide that access even where public interest immunity attaches to those documents, or alternatively where the public interest in not providing the respondent with access to the documents outweighs the public interest in providing the respondent with access to those documents.	
28	2024/14852	Piety Developments v Cumberland	10/05/2024	CONTRACT – the proceedings involve land in Lidcombe owned by the first respondent (the Council) and used as an open-air carpark – in June 2020, the first respondent issued a public invitation to tender for the sale and development of the land – following this process, the Council continued to negotiate with the appellant and another tenderer – the appellant's final offer following negotiation involved payment of $2.25 million and the construction of car parking valued at $9.75 million – at a Council meeting in November 2021, the Council resolved to accept the appellant's offer – the resolution passed	

				narrowly, and certain councillors immediately gave notice of a recission motion – due to the recission motion, no steps were taken to execute documents giving effect to the sale, nor was formal notification of the passage of the motion given to the appellant – as the resolution was public, the directors of the appellant became aware of its passing – the appellant commenced proceedings seeking specific performance of the alleged contract, submitting that the resolution constituted acceptance of their offer by the Council – the primary judge found that the alleged contract was not legally effective, as the purported acceptance was not validly communicated to the appellant, and further would be unenforceable pursuant to s 54A of the Conveyancing Act 1919 – whether the primary judge erred in finding that acceptance of the offer by the Council was not sufficiently communicated to the appellant to constitute a binding and enforceable contract – whether the primary judge erred in finding that there was not compliance with s 54A of the Conveyancing Act 1919 – whether the primary judge erred in finding that the Mayor of the Council was not authorised to sign the relevant document.	
29	2023/429523	CAO v ISPT	16/05/2024	REAL PROPERTY – the respondents are the proprietors of World Square Shopping Centre	ISPT Pty Ltd and AWPF Management No. 2 Pty Ltd v Cao and Zhao [2023]

		Pty Ltd		in the Sydney CBD – in early 2020, the respondents leased two shops to Beijing Roast Duck Sydney Pty Ltd (the tenant) – the lease was executed by each of the appellants as guarantors, and by the second appellant as director of the tenant – the lease was for a term of three years with an option to renew a further three years – when the first lockdown commenced in response to the COVID-19 pandemic on 23 March 2020, the tenant was already significantly in arrears in its payment of rent, having failed to make any payments for January, February or March 2020 – the tenant shut the restaurant on 23 March 2020 and did not re-open – the respondents issued a breach notice to the tenant in May 2021, claiming unpaid rent and other amounts under the lease – on 26 May 2021, the tenant went into liquidation – on 10 June 2021, the respondents issued a termination notice – the respondents brought proceedings claiming from the appellants, pursuant to their guarantee and indemnity, the outstanding arrears of rent and other amounts under the lease – the respondents also claimed the loss of rent, the promotion levy for the balance of the term of the lease, legal costs of enforcement, and certain “make good” costs – the appellants contended that the lease had been frustrated by the Public Health (COVID-	NSWSC 1115

				19 Places of Social Gathering) Order 2020 (NSW) and the subsequent public health orders made under the Public Health Act 2010 (NSW) (the Lockdown Restrictions) – the primary judge found that the lease had not been frustrated and entered judgment in favour of the respondents in the amount of $4.2 million, finding for the respondents on all points except for their claim for "make good" costs – whether the primary judge erred in finding that the lease was not frustrated by the Lockdown Restrictions – whether the primary judge erred in [failing to] find that compliance with the Public Health Orders would have required a radical transformation in the business operated by the tenant, or would have rendered the tenant's business unviable for the remainder of the lease – whether the primary judge erred in finding that the imposition of the Lockdown Restrictions did not have the result that a condition of the lease was incapable of performance, or that performance of that condition would have contravened the law.	
30	2023/312939	Novelly v Tamqia	21/05/2024	PROCEDURE – the appellant leases an apartment (the premises) in Sydney from the first respondent – the second respondent is the controlling mind of the first respondent – an initial dispute between the parties came before Peden J (Novelly v Tamqia Pty Ltd	Novelly v Tamqia Pty Ltd (No 2) [2023] NSWSC 10901

				[2022] NSWSC 1607) which was in part resolved by undertakings given to the Court by the respondents – several of the undertakings were not completed, including the emptying of a storeroom in the premises – the appellant sought relief against the respondents for contempt of court for alleged breaches of the undertakings – the primary judge was satisfied beyond reasonable doubt that the respondents had committed a civil contempt by failing to comply with the undertakings – the primary judge found that the appellant's contention that the respondents' breaches were contumelious amounted to a contention that the breaches constituted criminal contempts – the primary judge dismissed the allegations of contumelious conduct on the basis that they had not been made out beyond reasonable doubt – the primary judge therefore dismissed the appellant's notice of motion – whether the primary judge erred in finding that the proceedings were proceedings for criminal contempt, rather than civil contempt – whether the primary judge erred in equating each of the statements of charge to an indictment or criminal charge – whether the primary judge erred in finding that the allegations of contumacious conduct had to be proved beyond reasonable doubt.	

31	2023/361841	Crackin' Snack v Gamekeeping	22/05/2024	TRADE PRACTICES – whether the primary judge pre-determined the case – whether the primary judge acted with bias – whether the primary judge erred in their application of relevant principles in determining whether there had been misleading and deceptive conduct – whether the primary judge erred in determining that the transaction was an asset sale – whether the primary judge erred in failing to find that appellants would not have entered into the transaction but for the misleading conduct – whether the primary judge erred in their construction of the Business Sale Agreement – whether the primary judge erred in not applying the statutory presumption in s 4 of the Australian Consumer Law (ACL) – whether the primary judge erred in finding that the respondents took all reasonable steps to facilitate the first appellant receiving all credit card takings – whether the primary judge erred in their application of ss 4 and 18 of the ACL regarding the first appellant's entitlement to takings – whether the primary judge erred in several factual findings, including the finding that completion had occurred – whether the primary judge failed to apply s 22 of the ACL – whether the primary judge erred in their application of s 22 of the ACL – whether the primary judge misapplied the principles of	Decision of Gibb DCJ dated 20/10/2023

				election and affirmation – whether the primary judge erred in determining the loss suffered by the appellants.	
32	2023/421080	Council of the Law Society v Duncan	22/05/2024	DISCIPLINARY PROCEEDINGS – in November 2019, the respondent entered into a plea of guilty and was convicted and sentenced of two offences of “dishonestly obtain financial advantage or cause disadvantage by deception” and was sentenced to 3 years and 9 months’ imprisonment – the applicant seeks a declaration that the respondent is not a fit and proper person to remain on the Roll of Australian lawyers (the Roll) and an order that the respondent’s name be removed from the Roll.	
33	2023/363435	oOh!media v Transport for NSW	24/05/2024	LAND & ENVRIONMENT – the appellant held a leasehold interest in land on Qantas Drive in Mascot, on which it owned and operated large advertising billboards – in September 2020, the appellant’s leasehold interest was compulsorily acquired by the respondent for the purposes of the Roads Act 1993 – in February 2021, the Valuer General determined that the compensation to be paid by the respondent was $3.8 million – the appellant commenced proceedings pursuant to s 66 of the Land Acquisition (Just Terms Compensation) Act 1991 (Just Terms Act)	oOh!media Fly Pty Limited v Transport for NSW [2023] NSWLEC 26

				seeking judicial determination of the correct compensation – having considered the claim, the primary judge determined that the compensation payable was $2.7 million – whether the primary judge denied the appellant procedural fairness in rejecting the profit rent approach to market value compensation – whether the primary judge applied the wrong test in respect of s 56(1)(a) of the Just Terms Act – whether the primary judge erred by not allowing compensation under s 55 of the Just Terms Act – whether the primary judge erred in rejecting the “tax gross up” in the discounted cash flow calculation used to determine compensation – whether the primary judge failed to provide adequate reasons for rejecting the “tax gross up” claim.	