Supreme Court
of New South Wales

TUESDAY 2 APRIL 2024

DOUGLAS v MIKHAEL 2023/285206 (Richmond J – 18/8/23)
CONTRACT – the third respondent (FBM) is a trustee of a discretionary trust (the Trust), the Trust objects include the first respondent (Fadi) and second respondent (Mary), and the appellant (Joseph) by reason of his familial relationship with Mary – Joseph alleges that he, Fadi and Mary entered into an oral agreement in 1999 whereby Joseph would pay Fadi and Mary $75,000 to acquire a business and Joseph would receive 50% of the profits (the 1999 agreement) – Joseph claims that the Trust did not hold 50% of the assets on trust for Joseph, in breach of the 1999 agreement – alternatively, Joseph claims that in 2015, the four parties entered into an oral agreement where Joseph would be paid $1.45 million by the respondents and in consideration, Joseph would release FBM from his entitlement to be paid 50% of the profits until 2015, and FBM would pay Joseph 50% of the profits going ahead – the primary judge rejected Joseph's evidence – whether the primary judge erred in making factual findings – whether the primary judge erred in making evidentiary findings – whether the primary judge erred by taking into account irrelevant considerations – whether the primary judge erred by engaging with counsel during the course of the hearing.
Douglas v Mikhael & Ors [2023] NSWSC 979

THE LAW SOCIETY v ATTORNEY GENERAL 2024/79043
ABC INSURANCE v THE LAW SOCIETY 2024/90355
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 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).

THURSDAY 4 APRIL 2024

AZZI v SoNSW 2023/304549 (Adamson JA – 29/8/23)
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 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.
Azzi v State of New South Wales [2023] NSWSC 1028

FRIDAY 5 APRIL 2024

CARLINGFORD BOWLING v CARABETTA 2023/459517 (Henry J – 27/11/23)
CARLINGFORD BOWLING v CARABETTA 2024/71130 (Henry J – 27/11/23)
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

BROADSPECTRUM v FARMER 2023/332375 (Garling J – 28/9/23)
TORTS (negligence) – the respondent was employed by the second appellant, and worked at the Regional Processing Centre (RPC) situated on Nauru – the RPC was managed on behalf of the Commonwealth of Australia by the first appellant – in November 2016, the respondent was injured when he fell down a flight of stairs at a staff accommodation block at the RPC – the respondent alleged that the "non slip strip" on the edge of the top step to be absent, creating a hazard – the first appellant accepted it owed a duty of care, but submitted that the injury was not reasonably foreseeable, and disputed both breach of duty and causation – the second appellant disputed breach of duty and causation – the primary judge found in favour of the respondent, awarding total damages of $1,086,100 – whether the primary judge erred in factual findings regarding the hazard said to have caused the respondent to fall (the lip) – whether the primary judge erred in finding that the lip caused the respondent's fall – whether the primary judge erred in finding that the lip constituted a safety hazard.
Farmer v Broadspectrum (Australia) Pty Ltd (No 2) [2023] NSWSC 1076

Supreme Court
of New South Wales

THURSDAY 11 APRIL 2024

QBT v WILSON 2023/341933 (Ball J – 26/10/23)
CONTRACT – by a share sale agreement dated 24 September 2019 (SSA), the respondents agreed to sell to the plaintiff 100% of the shares in two companies (TravelEdge and Quay) – one asset of TravelEdge was 40% of the shares in STA Travel Academic Pty Ltd (the JV Company) – STA Travel Holding AG (STA) held the other 60% of the shares in the JV Company – the shareholders agreement (JVA) between TravelEdge and STA relating to the JV Company had a term that a change of control in one of the shareholders in the JV Company triggered a right in the other shareholder to acquire the defaulting shareholder's shares – it was a term of the SSA that $4 million of the purchase price was to be placed in an escrow account and released to the respondents if STA consented to the change of control of TravelEdge – a different amount calculated in accordance with the SSA was payable if STA did not consent to the change of control and exercised its rights to acquire TravelEdge's shares in the JV Company – the respondents brought proceedings seeking the release of the $4 million – the primary judge favoured the construction of the SSA proposed by the respondents – the primary judge also found that STA had consented to the change of control – the primary judge entered judgment for the respondents – whether the primary judge erred in their construction of the SSA – whether the primary judge erred in granting leave to the respondents to file their amended list statement – whether the primary judge erred in holding that STA's execution of the share transfer form constituted consent to a change of control for the purposes of the Share Sale Agreement.
Grant Reid Wilson atf G&L Wilson Family Trust v QBT Pty Limited [2023] NSWSC 1255

FRIDAY 12 APRIL 2024

WESTERN SYDNEY LOCAL HEALTH v GHORBANZADEH 2023/426842 (Elkaim AJ – 6/11/23)
PRIVILEGE – the primary judge held that handwritten notes prepared by a medicolegal expert *"as the basis for"* communications with the applicant's solicitors when preparing an expert report were (a) not subject to legal professional privilege at common law as they were only *"working notes"* and that (b) in any event, any such privilege was waived by the applicant filing and serving the expert report – parties agreed that the applicable test was that at common law and not under sections 118 and 119 of the Evidence Act – questions of principle as to whether preparatory notes are communications covered by legal professional privilege and whether service of a report is an implied waiver of privilege – conflicting authorities.
Ghorbanzadeh v Western Sydney Local Health District [2023] NSWSC 1330

MONDAY 15 APRIL 2024

NSW BAR ASSOCIATION v ROLLINSON 2022/265826
DISCIPLINARY PROCEEDINGS – Legal profession – Respondent practised as a solicitor from 1995, and as a barrister from 1995, until 30 June 2021 – Respondent failed to pay the whole amount of the renewal fees for his certificate – Respondent ceased to hold a practising certificate as of 30 June 2021 – Respondent continued to practice as a lawyer – On 6 August 2021 the Respondent provided

an undertaking to the effect that he would not engage in legal practice – Respondent breached that undertaking – On 16 August 2021 an injunction was issued to restrain the Respondent from engaging in legal practice – Respondent breached that injunction – A further injunction was issued on 16 September 2021, which was also breached – Respondent was found to be in contempt of the Court and committed to a correctional centre for nine months, which term of imprisonment was suspended on the condition that the respondent comply with the order that he refrain from practising as a lawyer for a period of three years – Respondent continued to act in breach of those orders – Applicant seeks a declaration that the respondent is not a fit and proper person to remain on the roll of lawyers pursuant to s 22 of the *Legal Profession Uniform Law* (NSW).

TUESDAY 16 APRIL 2024

SOUTH EAST FOREST v FORESTRY 2024/69016 (Pritchard J – 8/2/24)
SOUTH EAST FOREST v FORESTRY 2024/74092 (Pritchard J – 8/2/24)
LAND & ENVIRONMENT – the appellant sought that that the respondent be restrained from conducting any forestry operations unless "broad area habitat searches" were conducted in a manner including particular searches required by condition 57 of the *Coastal Integrated Forestry Operations Approval* dated 16 November 2018 (CIFOA) – the searches related to nest, roost or den trees related to three species of gliders (one of which is listed as endangered and two of which are listed as vulnerable) – the primary judge held that, while a person with a special interest may have standing at common law to bring proceedings to enforce compliance with an integrated forestry operations approval, the appellant did not have standing even on a *prima facie* basis as it did not have sufficient special interest to bring proceedings to enforce the conditions of the CIFOA – whether the primary judge erred in finding that the court had discretion to dismiss the proceedings on the basis that the appellant did not have standing – whether the primary judge erred in finding that the appellant did not have standing – whether the primary judge denied the appellant procedural fairness by failing to provide the appellant an opportunity to adduce further evidence as to standing.
South East Forest Rescue Incorporation INC9894030 v Forestry Corporation of New South Wales [2024] NSWLEC 7

WEDNESDAY 17 APRIL 2024

WESTERN FREIGHT v TOLL 2023/193143 (Montgomery DCJ – 26/5/23)
CONTRACTS – the appellant (a road freight service provider) entered into a contract with the respondent (the Contract) to provide road freight line haul services between Sydney and Melbourne – the appellant alleged that the respondent has failed to pay it in accordance with Contract, and brought proceedings seeking recovery of debt, or alternatively, damages for breach of contract – the appellant contended that the respondent was obligated under the Contract to engage the appellant for a minimum number of trips between Sydney and Melbourne – the primary judge held that there was no obligation under the Contract for the respondent to pay the appellant for trips not performed – whether the primary judge erred in failing to construct the Contract properly – whether the primary judge erred in failing to find that the appellant had a claim in debt separate from its claim in damages – whether the primary judge erred in finding that the respondent had satisfied its obligations under the Contract – whether the primary judge erred in finding that the respondent had mistakenly made payments to the appellant.

Western Freight Management Pty Ltd v Toll Transport Pty Ltd [2023] NSWDC 176

FRIDAY 19 APRIL 2024

SYDNEY TRAINS v ARGO 2023/323670 (Andronos SC DCJ – 15/9/23)
CONTRACT – Infrastruction Pty Ltd (Infrastruction) was contracted by the appellant to perform upgrade works at Penshurst Station, including the replacement of the tiles in all public staircases – in August 2016, a commuter slipped and fell on tiles laid by Infrastruction, and recovered $409,000 in damages and $207,500 in costs against the appellant – Infrastruction went into liquidation on 29 June 2017 and was deregistered on 16 June 2020 – the appellant brought proceedings against the respondent, the products and liability insurer of Infrastruction, under s 601AG of the *Corporations Act 2001* (Cth) – the appellant alleged that its liability to the commuter was caused by Infrastruction's breaches of contractual obligations relating to the completion of the upgrade works – the primary judge held that Infrastruction's breach of the implied warranty of fitness for purpose did not cause Sydney Trains' loss – the primary judge entered judgment in favour of the respondent – whether the primary judge erred in finding that the chain of causation had been broken by the appellant – whether the primary judge erred in failing to find that the respondent's breach of contract had caused the damage – whether the primary judge erred in their factual findings as to the appellant's knowledge of the slipperiness of the staircase.
Sydney Trains v Argo Syndicate AMA 1200 (No 2) [2023] NSWDC 381

MONDAY 22 APRIL 2024

SINGH v HCCC 2023/300820 (Deputy President Hennessy – 25/8/23)
ADMINISTRATIVE LAW – leave is sought to appeal from the Decision and Appeal Panel Decision of NCAT pursuant to Schedule 5, clause 29(2)(b) of the Civil and Administrative Tribunal Act 2013 (NSW) - concerning the setting aside of 2 Summonses issued by the Applicant against the Police and the Western Sydney Local Health District – appeal also brought in relation to an order for the payment of costs.
Singh v Health Care Complaints Commission [2023] NSWCATAP 240

BOENSCH v BINGHAM 2023/335818 (Peden J – 6/10/23)
REAL PROPERTY – the respondent provided legal services to the appellant in 2019 – the appellant had granted the respondent an unregistered mortgage as security for the continuing provision of legal services in March 2019 (the mortgage) – the respondent subsequently registered a caveat over the appellant's property in Rydalmere (the property) – after receiving a lapsing notice, the respondent in November 2021 commenced proceedings in the Supreme Court of NSW seeking a declaration that the caveat is valid and that the mortgage binds the parties – the appellant filed a cross-claim seeking the removal of the caveat and declarations that any costs agreements between the parties were void – the primary judge made declarations that the mortgage secures costs incurred for the provision of legal services, and that if the fees are quantified, the first respondent is entitled to enforce the terms of the mortgage in relation to the payment of fees – whether the primary judge erred in failing to find that the costs agreement is void – whether the primary judge misinterpreted the related proceedings involving the appellant and first respondent – whether the primary judge erred in their interpretation of s 178 of the *Legal Profession Uniform Law 2014* –

whether the primary judge erred in finding that the mortgage was valid, separate to the costs agreement – whether the primary judge erred in misinterpreting the relevant case law, and failing to consider relevant case law – whether the primary judge erred in failing to find breach of contract – whether the primary judge erred in their interpretation of the *Contracts Review Act 1980* – whether the primary judge erred in finding that the appellant accepted the mortgage agreement as binding – whether the primary judge erred in their application of State laws relating to caveats and Commonwealth laws relating to bankruptcy proceedings – whether the primary judge misinterpreted the judgments in previous proceedings involving the appellant.
Bingham v Boensh [2023] NSWSC 1187

TUESDAY 23 APRIL 2024

SLADE v BROSE 2023/301064 (Lindsay J – 29/8/23)
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 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.
Brose v Slade [2023] NSWSC 1025

SYDNEY METRO v C & P AUTOMOTOVE 2023/323415 (Pain J – 15/9/23)
LAND & ENVIRONMENT – the appellant compulsorily acquired a property in Clyde (the 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.
Nohra v Sydney Metro; C & P Automotive Engineers Pty Ltd v Sydney Metro [2023] NSWLEC 95

WEDNESDAY 24 APRIL 2024

SLADE v BROSE 2023/301064 (Lindsay J – 29/8/23)

Day 2

KAZZI v KR PROPERTIES 2023/277906 (Stevenson J – 15/8/23)
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 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.
Oxford (NSW) Pty Ltd v KR Properties Global Pty Ltd trading as AK Properties Group (No 3) [2023] NSWSC 881

VALUE CONSTRUCTIONS v BADRA 2023/364755 (Cavanagh – 3/11/23)
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 – 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.
Badra v Value Constructions Pty Ltd & Ors [2023] NSWSC 1307

THURSDAY 25 APRIL 2024

ANZAC DAY

Supreme Court
of New South Wales

FRIDAY 26 APRIL 2024

FOX v PLANNING MINISTERIAL 2023/420522 (Moore J – 26/10/23)
LAND & ENVIRONMENT – the appellants owned a property in McMahons Point, NSW (the Land), having purchased it in 2009 for $7.5 million – in 2021, the Land was compulsorily acquired by the respondent under the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act), and was valued at approximately $9.4 million – the appellants contested the valuation – the parties disagreed as to the definition of public purpose regarding the statutory disregard under s 56(1) of the Act – the primary judge agreed with the respondent's understanding of public purpose – whether the primary judge erred in making factual findings regarding the public purpose of the Land – whether the primary judge erred in making findings as to the zoning of the Land as a result – whether the primary judge erred in the valuation calculus.
David Fox v Planning Ministerial Corporation [2023] NSWLEC 109

BBY v THE GEO GROUP 2023/336151 (Deputy President Elizabeth Wood – 28/9/23)
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 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.
BBY v The GEO Group Australia Pty Ltd [2023] NSWPICPD 60 (Deputy President Elizabeth Wood)
(**note:** decision not available on Caselaw, but available on Austlii)

BOENSCH v TRANSPORT FOR NSW 2023/276701 (Robson J – 28/7/23)
PROCEDURE – these proceedings relate to the boundary which comprises the eastern border between land owned by the appellant and land owned by the first respondent in Rydalmere – in June 2021, the first respondent commenced proceedings in the Supreme Court of NSW against the appellant in respect of a claim for trespass, alleging that the appellant had placed a number of large items and erected a wall on land owned by the first respondent – the appellant filed a cross-claim seeking declaratory relief as to the position of the boundary – to resolve the preliminary question of the position of the boundary, Darke J made orders requiring the appellant to seek a determination of the boundary from the second respondent – in July 2022, the second respondent refused to make a determination, on the basis that the boundary had previously been determined

in 1996 (the 1996 determination) and no new evidence compelling reconsideration of that boundary determination had been provided (the 2022 outcome) – in August 2022, the appellant commenced proceedings in the Land and Environment Court challenging both the 1996 determination and the 2022 outcome – in November 2022, the respondents each filed a notice of motion seeking dismissal of the proceedings – the primary judge dismissed the proceedings as frivolous or vexatious – whether the primary judge erred in their interpretation of the second respondent's powers under Part 14A of the *Real Property Act 1900* – whether the primary judge erred in distinguishing between a "determination" or "decision" for the purposes of an appeal under Part 14A of the *Real Property Act 1900* – whether the primary judge erred in their application of s 28 of the *Coastal Management Act 2016* – whether the primary judge erred in failing to find that the second respondent had acted without jurisdiction – whether the primary judge erred in failing to find that the second respondent had failed to comply with its duty to consider new evidence – whether the primary judge erred in restricting the right of appeal under s 135J of the *Real Property Act 1900* – whether the primary judge erred in taking into account an irrelevant consideration, and failing to take into account a relevant consideration.
Boensch v Transport for NSW and Registrar General of New South Wales [2023] NSWLEC 82