Supreme Court of New South Wales

**WEDNESDAY 6 MARCH 2024**

**TRINH v MEDICAL COUNCIL OF NEW SOUTH WALES 2022/361537** (Coleman ADCJ – 16/9/22)
**TRINH v MEDICAL COUNCIL OF NEW SOUTH WALES 2023/51686** (Coleman ADCJ – 16/9/22)
**TRINH v MEDICAL COUNCIL OF NEW SOUTH WALES 2022/307304**
DISCIPINARY – suspension of registration of doctor – Judicial review – mandamus – whether respondent failed to refer complaint to NCAT under s145D(1) of National Law.

**THURSDAY 7 MARCH 2024**

**FRANKS v CAMERON 2023/285026** (Robb J – 11/8/23)
CIVIL PROCEDURE – the parties are two brothers who, in 2020, became entitled to equitable interests in possession of a property in Port Macquarie (the Property) – in 2022, the respondent filed a summons seeking orders that independent persons be appointed under the *Conveyancing Act 1919* (NSW) as trustees for the sale of the Property, and that the trustees would be ordered to divide the balance of proceeds in accordance with the parties' equitable interests – Darke J made orders granting leave to the appellant to file a notice of motion seeking a referral for pro bono legal assistance – the solicitor and barrister engaged by the appellant filed a cross-summons seeking, *inter alia*, a declaration that the respondent had agreed to sell the appellant his one-third share of the Property and, resultantly, the respondent has no equitable or legal interest in the Property – the matter was set down for hearing on 17 April 2023 – in March 2023, on application of the appellant's solicitor, the primary judge made orders granting leave for the solicitor to cease acting for the appellant, on the basis that the appellant failed to give instructions to his pro bono lawyers – the appellant's counsel was given leave by the Duty Registrar to return the pro bono brief – the appellant did not attend the hearing – the appellant affirmed an affidavit in support for an informal application to adjourn the hearing – the primary judge held that the hearing would not have been adjourned, and subject to further orders, the respondent was entitled to the orders sought in his summons (*Cameron (No 1)*) – in May 2023, the appellant filed a notice of motion seeking a retrospective adjournment of the April 2023 hearing, claiming that his absence was due to a medical incident – the primary judge held that the appellant's reasons for failing to appear at the April 2023 hearing did not demonstrate extenuating circumstances sufficient to justify a retrospective adjournment (*Cameron (No 2)*) – whether the primary judge was biased against the appellant – whether the primary judge erred in making factual findings – whether the primary judge erred in making evidentiary findings – whether the primary judge fell into jurisdictional error by denying the appellant procedural fairness.
*Cameron v Franks (No 2)* [2023] NSWSC 929 (*Cameron (No 2)*)

**FRIDAY 8 MARCH 2024**

**KIMBERLEY DEVELOPMENTS v BALE 2023/294430** (Leeming JA – 18/8/23)
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 findings as to costs incurred by the first appellant.
*Bale v Kimberley Developments Pty Ltd (No 3)* [2023] NSWSC 973

**MONDAY 11 MARCH 2024**

**UNITED v COASTAL 2023/271139** (Peden J – 23/8/23)
CONTRACT – the appellant leased part of a property near Newcastle (the property) pursuant to a lease commencing on 1 July 2016 (the lease) – the lease contained three five-year options to renew – in July 2018, a fire destroyed a building on the property – the respondent became the registered proprietor of the property in June 2019 – the appellant and respondent became involved in a dispute involving the underpayment of rent, a purported exercise of the option to renew the lease by the appellant, and a communicated intention to terminate the lease by the respondent – some matters were settled by the parties in January 2022 – several issues remained to be determined, relating to the purported exercise of the option to extend the lease, and a notice served by the respondent asserting that they were entitled to terminate the lease as the fire damage was such as to make repair "impractical or undesirable" (the Notice of Consideration) – the primary judge held that the Notice of Consideration had been validly issued and that the respondent therefore had a right to terminate the lease, and that the renewal of the lease was effective – whether the primary judge erred in concluding that the Notice of Consideration could be given at any time after the damage had occurred – whether the primary judge erred in finding that the obligation on the landlord to act "reasonably" is limited to subjective reasonableness – whether the primary judge erred in concluding that the respondent undertook a rational, informed and genuine assessment when deciding to issue the Notice of Consideration – whether the primary judge erred in evidentiary findings relating to the assessment of the estimated costs of the rebuild and estimated extra tenant income – whether the primary judge erred in finding that the assessment of rebuild costs and extra tenant income was a genuine assessment.
*Coastal Services Centres Pty Ltd v United Petroleum Pty Ltd* [2023] NSWSC 1010

**TUESDAY 12 MARCH 2024**

**UNITED v COASTAL 2023/271139** (Peden J – 23/8/23)

Day 2

**McDONALD v MAK CONSTRUCTIONS 2023/255864** (Olsson SC DCJ – 21/7/23)
BUILDING AND CONSTRUCTION – parties entered into a contract for renovations and additions to the applicant's residence – respondent terminated the contract when the works were not complete – applicant commenced NCAT proceedings seeking damages for defective works – respondent obtained adjudication certificate for $232,925 – NCAT proceedings transferred to the District Court – respondent succeeded in NOM seeking a stay of the District Court proceeding pending payment of the adjudication debt - whether the primary Judge's discretion miscarried – whether the primary Judge erred in her findings in respect of the Building and Construction Industry Security of Payment Act 1999 (NSW).
*Kylie McDonald & Anor v Mak Constructions & Building Services Pty Ltd*

**WEDNESDAY 13 MARCH 2024**

**MANDOUKOS v ALLIANZ 2023/297678** (Chen J – 28/8/23)
ADMIN LAW (judicial review) – the appellant was involved in a motor vehicle accident whereby he sustained injuries to his knee and cervical spine, but his insurance claims for compensation of those injuries were largely rejected by the first respondent (the insurer) – the appellant sought judicial review of a decision of the third respondent (Dr Assem) and a decision of a delegate of the second respondent (the delegate), which had refused the appellant's application for review of Dr Assem's assessment – the primary judge held that there was no error in Dr Assem's assessment, and resultantly, there was no error demonstrated by the delegate – whether the primary judge erred in finding that Dr Assem was not legally required to consider the consequences of the appellant's surgery – whether the primary judge erred in failing to consider that the nature and consequences of injury formed part of the "injury" – whether the primary judge erred in differentiating between the concepts of "injury" and "condition" – whether the primary judge erred in treating the absence of specific evidence as decisive against the appellant's claim for relief – whether the primary judge erred in treating the dismissal of the application for judicial review of Dr Assem's as necessarily dispositive of the orders sought regarding the delegate's decision.
*Mandoukos v Allianz Australia Insurance Limited* [2023] NSWSC 1023

**THURSDAY 14 MARCH 2024**

**HO HO PROPERTY v PREMIER FINANCE 2023/174949** (Rees J – 21/4/23)
EQUITY – the first appellant company was established by Mr Ho and Ms Ly (the couple) to pursue property development – the couple obtained a loan to finance the purchase of land – the respondent was retained to source financing for the loan, and brokered a loan between the appellant and Bass Finance No 37 Pty Ltd (the Lender), for which the couple were the guarantors –

the Lender pressed the appellant and the couple for completion before all of the finalised documents had been provided and in the absence of an interpreter – the couple's solicitor resisted, insisting that the couple required an interpreter – the respondent told the appellants that the Lender would not advance the loan if their solicitor continued to act for them – the respondent arranged new solicitors, aided the appellants in terminating the retainer with their existing solicitor and provided initial instructions to the new solicitors – following completion, the appellants went into default – the primary judge held that the respondent made unconscientious use of its superior position and engaged in unconscionable conduct but the Court did not have the jurisdiction to order that the respondent was not entitled to its broker's fees – the primary judge held that the Lender failed to prove that the appellants owed it any moneys – whether the primary judge erred in finding that the respondent's unconscionable conduct occurred after the respondent became entitled to the service fee – whether the primary judge erred in failing to declare that the respondent was not entitled to the services fee under the services contract due to the unconscionable conduct – whether the primary judge erred in awarding nominal damages only rather than an amount to set off the service fee.
*Hoho Property Pty Ltd v Bass Finance No 37 Pty Ltd* [2023] NSWSC 411

**SINCLAIR v BALANIAN 2023/259476** (Henry J – 18/7/23)
**SINCLAIR v BURNS BAY SERVICES 2023/259477** (Henry J – 18/7/23)
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 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.
*Fiona & John Sinclair Pty Ltd v Burns Bay Services Pty Ltd* [2023] NSWSC 789

**ELLEY v NSW POLICE 2023/299712** (Hennessy ADCJ of NCAT – 25/8/23)
ADMINISTRATIVE LAW – leave is sought to appeal from the Appeal Panel of NCAT (including Cole DCJ) concerning a refusal of a firearms licence. Confined to questions of law which include that the

Appeal Panel failed to find that the original decision was not accompanied by *"any or adequate"* reasons and thatthere was a denial of procedural fairness.
*Elley v Commissioner of Police, NSW Police Force* [2023] NSWCATAP 237

**FRIDAY 15 MARCH 2024**

**JACKSON v FURNER 2023/258319** (Harrison AsJ – 3/8/23)
TORTS (negligence) – on 18 January, the respondent attended an open house inspection at a property owned by the first and second appellants (the property) – the respondent slipped and fell on the property's driveway, sustaining an injury – the respondent brought proceedings in negligence against the appellants – the third appellant is the real estate agent engaged by the first and second appellants to sell the property – the respondent contended that remedial works performed on the driveway, including painting it, had rendered the driveway dangerously slippery – the primary judge made an award of $1.5 million in damages to the respondent – whether the primary judge erred in her findings regarding the evidence of the second appellant – whether the primary judge erred in her findings regarding the paint used by the first appellant – whether the primary judge erred in failing to find that the appellants had discharged their duty owed to the respondent – whether the primary judge erred in failing to find that the appellants were unaware that there was a risk of harm – whether the primary judge erred in attributing evidence given by the second appellant to the fourth appellant – whether the primary judge erred in finding that the risk of falling was foreseeable to the appellants.
*Furner v Jackson* [2023] NSWSC 914

**MONDAY 18 MARCH 2024**

**McMILLAN v COOLAH 2022/383423** (Parker J – 8/7/22)
**McMILLAN v COOLAH 2023/119823** (Parker J – 8/7/22)
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 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.
McMillan v Coolah Home Base Pty Ltd (No 4) [2022] NSWSC 584
McMillan v Coolah Home Base Pty Ltd (No 5) [2022] NSWSC 1589

**AAI LIMITED v AMOS 2023/348161** (Rothman J – 6/10/23)
ADMIN LAW (judicial review) – the first respondent (Amos) suffered an eye injury as a result of a motor vehicle accident and was insured by the appellant – Amos claimed that the eye injury was caused by the injuries suffered in the accident – the injury was disputed and referred to the Personal Injury Commission – an initial assessment was performed by Dr Steiner, who assessed a permanent injury of 29% - the appellant applied for a review of Dr Steiner's decision – the third respondent (the Review Panel) concluded that the eye injury was not caused by the accident – Amos sought judicial review of the Review Panel's decision – the primary judge quashed the Review Panel's decision on the basis that it had failed to afford procedural fairness to Amos by failing to provide him with a reasonable opportunity to address issues on appeal; namely any distinctions between "paroxysmal positional vertigo" and "dizziness" – whether the primary judge erred in finding that the Review Panel denied Amos procedural fairness – whether the primary judge erred in treating the symptoms of paroxysmal positional vertigo as a critical issue which was required to be brought to Amos' attention – whether the primary judge erred in finding that the Review Panel failed to ask

Amos questions about his pre-accident symptoms – whether the primary judge erred in finding that the Dr Steiner's diagnosis had probative value.
*Amos v AAI Limited t/as GIO* [2023] NSWSC 1193

**TUESDAY 19 MARCH 2024**

**McMILLAN v COOLAH 2022/383423** (Parker J – 8/7/22)
**McMILLAN v COOLAH 2023/119823** (Parker J – 8/7/22)
Day 2

**AIG v HANNA 2023/278712** (Gibb DCJ – 31/8/23)
INSURANCE – the respondent was the builder responsible for a building site in Campsie – in October 2018, Mr Hasan, a worker employed by a third party, suffered an injury while working on the site – Mr Hasan brought proceedings against the respondent – the respondent filed a cross-claim against the appellant, from whom he had obtained a public liability insurance policy covering the period in which Mr Hasan's injury was suffered (the policy) – the appellant avoided the insurance policy – in the proceedings brought against the respondent by Mr Hasan, judgment in favour of Mr Hasan was entered by consent – the respondent sued the appellant for damages for failing to honour the contract of insurance – the primary judge entered judgment in favour of the respondent – whether the primary judge erred in finding that the respondent incurred a liability in respect of which the policy obliged the appellant to indemnify – whether the primary judge erred in accepting certain expert evidence – whether the primary judge erred in finding that any breach of duty by the respondent materially contributed to Mr Hasan's injury – whether the primary judge erred in holding that the "insuring clause" in the policy responded to liability assumed by the respondent – whether the primary judge erred in entering the consent judgment in favour of Mr Hasan.
*George Hanna (first cross-claimant) v AIG Insurance Ltd (first cross-defendant)* (unreported)

**WARNER CAPITAL v SHAZBOT 2023/191618** (Parker J – 18/5/23)
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 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.
*Shazbot Pty Ltd v Warner Capital Pty Ltd (No 3)* [2023] NSWSC 527

**WEDNESDAY 20 MARCH 2024**

**HUYNH v LEDINH 2023/332105** (Davies J – 26/9/23)
CONTRACT – the appellants are the registered proprietors of a property in Fairfield East (the property) – in August 2018, the second respondent (CT Stone), of which the appellants were the sole directors and shareholders, borrowed $140,000 from the first respondent (Ledinh) – the appellants and CT Stone executed a mortgage over the property to Ledinh – the mortgage provided for the loan to be repaid by November 2018 – the loan was not repaid – Ledinh claimed that the mortgage consisted of a document titled "Ayoub Lawyers 2017 Memorandum" (the Memorandum), and two schedules to that document – the terms and conditions of the mortgage were contained in the Memorandum itself – the default interested rate specific in the Memorandum was 6% per month – Ledinh sought possession of the property and judgment for the amount owing – the appellants and CT Stone disputed that the Memorandum formed part of the mortgage, and further alleged that the contract was unjust, and that the conduct of Ledinh was unconscionable – the primary judge found in favour of Ledinh, entering judgment for $695,000 (which included a substantial sum of interest) – whether the primary judge erred in holding that the term setting the interest rate was not unjust – whether his Honour erred in declining to exercise discretion as to costs and enforcing the term stating that the appellants and CT Stone were to pay Ledinh's costs – whether his Honour erred in not holding that each party bear their own costs.
*Ledinh Sovereign Super Pty Ltd v CT Stone Pty Ltd* [2023] NSWSC 1079
*Ledinh Sovereign Super Pty Ltd v CT Stone Pty Ltd (No 2)* [2023] NSWSC 1157

**McKINLAY v WOODS 2023/265769** (Parker J – 9/2/22)
EQUITY – the first appellant is the respondent's sister, and the second appellant's mother – the appellants had purchased a property in Parramatta in 2001 (the property), financed with a loan for $415,000, with the intention that the respondent would live there – the appellants remained the registered proprietors of the property – the respondent had paid a net sum of $115,000 off the loan principal – the respondent maintained and improved the property, and paid nearly all associated rates – the respondent had made and continued to make regular payments towards the loan to the appellants – the respondent claimed that the property was subject to a joint endeavour constructive trust – the respondent sought an order that the property be sold, and that the parties receive repayment of their respective contributions to the capital cost – the appellants argued that the respondent's repayments were rental payments – the primary judge found that a constructive trust should be imposed over the property and made orders for the sale of the property and the division of the proceeds – whether the primary judge erred in finding that the property was subject to a joint endeavour constructive trust and would be sold, with the proceeds applied first in repayment of the respondent's contribution (as indexed), then equally between the parties– whether the primary judge erred in finding that it would be unconscionable for the appellants to retain their legal title to the property – whether the primary judge erred in finding that the appellants would receive a disproportionate benefit if they retained their legal title to the property

– whether the primary judge erred in finding that the second appellant was effectively the first appellant's nominee – whether the primary judge erred in finding that the respondent's capital contributions to the property should be indexed.
*Woods v McKinlay (No 2)* [2021] NSWSC 1510
*Woods v McKinlay (No 3)* [2023] NSWSC 489
*Woods v McKinlay (No 4)* [2023] NSWSC 873

**WRIGHT v SoNSW 2023/245099** (Basten JA – 4/7/23)
**WRIGHT v SoNSW 2023/346838** (Basten JA – 4/7/23)
ADMINISTRATIVE LAW – appeal brought from a determination of Basten JA sitting in the Common Law Division quashing a decision of the Appeal Panel of the PIC – general question of principle as to the construction of consent orders – whether the primary Judge erred in finding that the consent orders prevented the assessor considering the effects of the subsequent employment when assessing the impairment that resulted from the prior accepted injury - whether the primary Judge erred in failing to apply the settled law of causation in workers compensation to exclude an assessment that considered all of the impairment resulting from the accepted injury.
*State of New South Wales v Wright* [2023] NSWSC 757

## THURSDAY 21 MARCH 2024

**MEDICAL DEVICE v HEALTH ADMINISTRATION 2023/214615** (Stevenson J – 7/6/23)
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 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
*Medical Device Technologies Pty Ltd v Health Administration Corp* [2023] NSWSC 602

**GOMEZ v WOOLWORTHS 2023/226954** (Dicker SC DCJ – 21/6/23)
TORTS (negligence) – the appellant allegedly suffered injuries in a slip and fall accident inside a supermarket owned by the respondent and brought a negligence claim – the primary judge found that there had been a breach of a duty of care by the respondent, but found that causation had not been established – the primary judge noted that, had causation been established, damages of

$147,500 would have been allowed (below the claimed amount of $545,000) – whether the primary judge erred in failing to find that there had been a further breach of duty of care in relation the conduct of some of the respondent's staff – whether the primary judge erred in failing to find that there was causation under s 5D of the *Civil Liability Act 2002* (NSW) – whether the primary judge erred in his assessment of damages for future economic loss and future care.
*Gomez v Woolworths Group Ltd* [2023] NSWDC 221

**FRIDAY 22 MARCH 2024**

**MEDICAL DEVICE v HEALTH ADMINISTRATION 2023/214615** (Stevenson J – 7/6/23)
Day 2

**MONDAY 25 MARCH 2024**

**CAMILLERI v ALEXAKIS 2023/188549** (Henry J – 16/5/23)
EQUITY – the deceased died in November 2017 from cancer, with no close family and few friends – the deceased left an estate of some $27 million – the deceased made two wills in 2017, each left the bulk of the estate to his GP (Dr Alexakis) and the remainder to Mr Camilleri and the Schwankes (being those the deceased saw on a regular basis) – the final will increased the bequests to Dr Alexakis from 65% to 90% of the estate, and included the deceased's Strathfield home – the 2017 wills departed from a 2016 will which left the bulk of the estate to the Salvation Army (represented by Mr Masters) – the 2017 wills were prepared by a lawyer introduced to the deceased by Dr Alexakis – disputes arose between the parties as to the validity of the 2017 wills and the gifts to Dr Alexakis, or whether Dr Alexakis held the gifts on constructive trust, on the basis of undue influence, unconscionability and/or fraud by Dr Alexakis – the parties contended that Dr Alexakis was in a position of trust, confidence and loyalty as the deceased's GP – Mr Camilleri further contended that the circumstances gave rise to an *inter vivos* dealing between the deceased and Dr Alexakis – the primary judge found that the final 2017 will was valid and that the gifts to Dr Alexakis were not procured by undue influence, unconscionable conduct or fraud, despite finding that Dr Alexakis was aware the deceased was suffering from a special disability – whether the primary judge erred in failing to find unconscionable conduct or undue influence in the conduct of Dr Alexakis – whether the primary judge erred in finding that the unconscionable conduct claim turned on whether there was an *inter vivos* dealing – whether the primary judge erred in failing to find that there was an *inter vivos* dealing
*Alexakis v Masters (No 2)* [2023] NSWSC 509

**SCHWANKE v ALEXAKIS 2023/179691** (Henry J – 16/5/23 and 23/6/23)
EQUITY – the deceased died in November 2017 from cancer, with no close family and few friends – the deceased left an estate of some $27 million – the deceased made two wills in 2017, each left the greater part of the estate to his GP (Dr Alexakis) and the remainder to Mr Camilleri and the Schwankes (being those the deceased saw on a regular basis) – the final will increased the bequests to Dr Alexakis from 65% to 90% of the estate, and included the deceased's Strathfield home – the

2017 wills departed from a 2016 will which left the substantial part of the estate to the Salvation Army (represented by Mr Masters) – the 2017 wills were prepared by a lawyer introduced to the deceased by Dr Alexakis – disputes arose between the parties as to the validity of the 2017 wills and the gifts to Dr Alexakis, as to whether Dr Alexakis held the gifts on constructive trust, and as to whether they were the result of undue influence, unconscionability and/or fraud of Dr Alexakis – the parties contended that Dr Alexakis was in a position of trust, confidence and loyalty as the deceased's GP – Mr Camilleri further contended that the circumstances gave rise to an *inter vivos* dealing between the deceased and Dr Alexakis – the primary judge found that the final 2017 will was valid and that the gifts to Dr Alexakis were not procured by undue influence, unconscionable conduct or fraud, despite finding that Dr Alexakis was aware the deceased was suffering from a special disability – on costs, the primary judge held that Dr Alexakis' costs be calculated on an indemnity basis, and paid out of the deceased's estate – whether the primary judge erred in finding that there was not a presumption of undue influence in probate proceedings – whether the primary judge erred in finding that that Dr Alexakis had proven that the deceased had known and approved the impugned clauses in the 2017 wills – whether the primary judge erred in failing to find that the gifts in either of the 2017 wills were not held on trust for the appellants and Mr Masters, as they were obtained by Dr Alexakis by undue influence – whether the primary judge erred by failing to make evidentiary findings against Dr Alexakis' evidence – whether the primary judge erred by failing to order that the Schwankes' costs of the proceedings be paid from the estate.
*Alexakis v Masters (No 2)* [2023] NSWSC 509 (Henry J)
*Alexakis v Masters (No 3)* [2023] NSWSC 694 (Henry J) – Costs judgment

**REEVES v STATE OF NSW 2023/219358** (Abadee DCJ – 13/6/23)
TORTS (other) – in 2020, the appellant was stopped and arrested in North Sydney for "stalking" by two officers – the appellant was subject to a "pat down" search before being moved to Chatswood police station – the appellant declined to participate in an interview, but one officer (Michaelson, being the arresting officer) asserted a "common law right to interview" him, and commenced asking questions – the stalking charge was dismissed by the Local Court in 2021 and the prosecutor was ordered to pay the appellant his professional costs – in 2022, the appellant commenced proceedings against the State claiming compensatory, aggravated and exemplary damages for wrongful arrest, false imprisonment and malicious prosecution – the primary judge dismissed the claims, subject to a single false imprisonment finding due to the appellant's detention being protracted – the primary judge ordered that the appellant pay 50% of the State's costs – whether the primary judge erred by considering evidence which was not available to support Michaelson arresting the appellant with regard to s 99 of *Law Enforcement Powers and Responsibilities Act 2002* (NSW) (LEPRA) – whether the primary judge erred in construing s 99 of LEPRA – whether decisions of this Court regarding s 99 of LEPRA are incorrect – whether the primary judge erred in failing to make adverse evidentiary findings against the State for failing to call certain witnesses – whether the primary judge erred in failing to find that the relevant officers acted with malice – whether the primary judge erred in failing to award aggravated and exemplary damages for the false imprisonment – whether the primary judge erred in finding that the appellant pay 50% of the State's costs.
*Reeves v State of New South Wales* [2023] NSWDC 196

**BUGMY v DPP 2023/250414** (Wilson J – 25/7/23)
APPEAL - BAIL – Local Court conviction following arrest for using a carriage service to menace or harass in breach of bail conditions when Bugmy made a telephone call to the Broken Hill Police Station – appeal against conviction to the Supreme Court dismissed - whether the Judge erred in finding that the arrest was lawful and in accordance with the Bail Act 2013 (NSW) (Act) – whether the primary Judge erred in holding that the exercise of the power of arrest was unfettered or not qualified by the operation of the Act.
*Bugmy v Director of Public Prosecutions (NSW)* [2023] NSWSC 862

**TUESDAY 26 MARCH 2024**

**CAMILLERI v ALEXAKIS 2023/188549** (Henry J – 16/5/23)
**SCHWANKE v ALEXAKIS 2023/179691** (Henry J – 16/5/23 and 23/6/23)
Day 2

**KELLY v LAZIO FORMWORK 2023/253100** (Deputy President Snell – 17/7/23)
WORKERS COMPENSATION – since 1984, the appellant worked in the building industry and has worked for multiple employers – the appellant sustained several physical injuries in 1988, 1992 and 1994 – the appellant began working for the respondent in February 2010 – the appellant described the work for the respondent as "particularly heavy" – while doing that work, the appellant's right knee and back became very painful, but there was no specific injury – the appellant stopped work with the respondent on 9 April 2010 and has not worked since – a series of physical assessments were conducted between 2002 and 2017 regarding the appellant's injuries – in April 2022, the appellant gave notice to the respondent of a weekly claim from October 2017 – the Member at first instance found in favour of the appellant in respect of the injury to his knee, and in favour of the respondent in respect of the injuries to his neck and back – on appeal, the Deputy President found in favour of the respondent in respect of all injuries – whether the Deputy President erred in his application of s 322A of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) (the Act) – whether the Deputy President erred in applying the wrong principles of law to the assessment of injuries under s 39 of the Act.
*Lazio Formwork Pty Ltd v Kelly; Kelly v Lazio Formwork Pty Ltd* [2023] NSWPICPD 40 (not available on Caselaw)

**WAKIM v SENWORTH CAPITAL 2023/263964** (Campbell J – 16/8/23)
PROCEDURAL – leave is sought to appeal from an interlocutory decision refusing to set aside default judgment, leaving a judgment in excess of $3 million against the applicant on a guarantee. The applicant seeks to rely upon difficulties in reconciling the High Court's judgments in *Kakavas v Crown Melbourne Limited* (2013) 250 CLR 392 and *Thorne v Kennedy* (2017) 263 CLR 85 identified in *Nitopi v Nitopi* (2022) 109 NSWLR 390 at [9], [121] and [199], as to the extent of knowledge that is required by the third party lender in relation to her claims of unconscionability under the Contracts Review Act.
*Senworth Capital Pty Ltd as trustee for the Car Loan Security Trust v W & W Investment Group Pty Ltd* [2023] NSWSC 989

**WEDNESDAY 27 MARCH 2024**

**CAMILLERI v ALEXAKIS 2023/188549** (Henry J – 16/5/23)
**SCHWANKE v ALEXAKIS 2023/179691** (Henry J – 16/5/23 and 23/6/23)
Day 3

**TMA AUSTRALIA v 100% BOTTLING 2023/234945** (Newlinds DCJ – 28/6/23)
CONTRACT – the appellant is a commercial printer – the appellant claimed that an exchange of emails between the parties formed the basis of a contract dated November 2015 (the email exchange) pursuant to which the respondent owed it approximately $180,000 for bottling labels – the primary judge dismissed the appellant's claim on the basis that the evidence did not demonstrate that the email exchange occurred – whether the primary judge erred in failing to find that the respondent agreed to purchase the bottling labels– whether the primary judge erred in failing to make findings regarding the purported email exchange – whether the primary judge erred as to certain evidentiary findings.
*TMA Australia Pty Limited v 100% Bottling Company* [2023] NSWDC 231

**THURSDAY 28 MARCH 2024**

**CAMILLERI v ALEXAKIS 2023/188549** (Henry J – 16/5/23)
**SCHWANKE v ALEXAKIS 2023/179691** (Henry J – 16/5/23 and 23/6/23)
Day 4

**DRUMMOND v GORDIAN RUNOFF 2023/215770** (Rees J – 9/6/23 and 3/7/23)
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 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.
*Drummond v Gordian Runoff Ltd* [2023] NSWSC 607 (Rees J) (the primary judgment)
*Drummond v Gordian Runoff Ltd (No 2)* [2023] NSWSC 731 (Rees J) (the costs judgment)

**RIVA v KEY NOMINEES 2023/227184** (Meek J –7/7/23)
PROCEDURE – there has been considerable litigation between the parties arising out of events in 2004 and 2005 involving a property in Point Piper (the property) – arising from those proceedings,

13 costs orders have been made by NSW courts against the appellants – orders were made in October 2017 staying the proceedings pending the appellants paying certain assessed costs, and providing security for the respondents' costs – the respondent filed a notice of motion seeking the appointment of a receiver of the income of the property – the third appellant filed a notice of motion seeking to set aside orders previously made in the proceedings – the appellants also applied to adjourn the hearing of the notices of motion – the primary judge made orders appointing a receiver to enforce the costs orders – the primary judge dismissed the appellants' setting aside and adjournment motions – whether the primary judge erred in his exercise of discretion by refusing the adjournment – whether the primary judge erred in refusing to permit the appellants to file and serve further evidence – whether the primary judge erred in failing to find that the notice of motion seeking the appointment of a receiver was an abuse of process – whether the primary judge erred in concluding that the Court was able to regulate its own processes even where the proceedings were stayed – whether the primary judge erred in concluding that a costs order made in the Supreme Court does not merge in a judgment of another court – whether the primary judge erred in concluding that the Court was able to make orders facilitating enforcement of a judgment registered in the Local Court – whether the Court erred in appointing a receiver and sequestrator of the property.
*Riva NSW Pty Ltd v Key Nominees Pty Ltd* [2023] NSWSC 711

**FRIDAY 29 MARCH 2024**

**GOOD FRIDAY**