Supreme Court of NSW Court of Appeal

Decisions Reserved as at 26 April 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 policy – whether primary judge erred in finding that CIMIC was entitled to indemnity from the	CIMIC Group Limited v AIG Group Limited [2022] NSWSC 999

				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 – whether the deceased knew and approved the contents of the 2009 will – whether the primary judge erred in evaluating and giving weight to various lay and expert evidence – whether the primary judge denied procedural fairness to the appellant by reason of the extent, nature and frequency of his Honour's	Wild v Meduri [2023] NSWSC 113

				interventions in the cross-examination of the appellant and witnesses called by the appellant – whether the property is held on trust for Dominic and John as tenants in common in equal shares.	
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	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

				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 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	Cullen v State of New South Wales [2023] NSWSC 653

				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 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	White Pointer Investments Pty Ltd v Creative Academy Group Pty Ltd [2023] NSWSC 817

				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 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	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

				relation to funding awarded to institutions in 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	2023/217399	Quarry Street v Minister	28/02/2024	ADMIN LAW (judicial review) – Aboriginal land claim – Crown land (the Land) was subject to a claim lodged by the second and third respondents (the Land Councils) under the	Quarry Street Pty Ltd v Minister Administering the Crown Land Management Act 2016 [2023] NSWLEC 62

				Aboriginal Land Rights Act 1983 (NSW) (the Act) to the first respondent (the Minister) – the land had been the subject of a special lease which was granted to the Paddington Bowling Club Ltd (the Club) in 1962 until its expiry in 2010 – a new registered lease was then granted to the Club, for a period of 50 years (the Lease) – in 2018, the Lease was ultimately assigned to the appellant, with the Crown's consent – in 2021, the Minister transferred the Land to the Land Councils under the Act – the appellant sought judicial review of the Minister's decision, claiming that he had misconstrued s 36(1) of the Act, that the Land had been used lawfully when it was leased out, and that he had denied the appellant procedural fairness – the primary judge held that none of the grounds were established – whether the primary judge erred in failing to find that the Minister's decision was affected by jurisdictional error.	
9	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	Bale v Kimberley Developments Pty Ltd (No 3) [2023] NSWSC 973

				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.	
10	2023/271139	United v Coastal	12/03/2024	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	Coastal Services Centres Pty Ltd v United Petroleum Pty Ltd [2023] NSWSC 1010

				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.	
11	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	Fiona & John Sinclair Pty Ltd v Burns Bay Services Pty Ltd [2023] NSWSC 789

				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.	
12	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 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	McMillan v Coolah Home Base Pty Ltd (No 4) [2022] NSWSC 584 McMillan v Coolah Home Base Pty Ltd (No 5) [2022] NSWSC 1589

				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.	
13	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	Shazbot Pty Ltd v Warner Capital Pty Ltd (No 3) [2023] NSWSC 527

				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.	
14	2023/265769	McKinlay v Woods	20/03/2024	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	Woods v McKinlay (No 2) [2021] NSWSC 1510 Woods v McKinlay (No 3) [2023] NSWSC 489 Woods v McKinlay (No 4) [2023] NSWSC 873

				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.	
15	2023/226954	Gomez v Woolworths	21/03/2024	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	Gomez v Woolworths Group Ltd [2023] NSWDC 221

				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.	
16	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 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	Medical Device Technologies Pty Ltd v Health Administration Corp [2023] NSWSC 602

				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	
17	2023/219358	Reeves v State of NSW	25/03/2024	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	Reeves v State of New South Wales [2023] NSWDC 196

				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.	
18	2023/263694	Wakim v Senworth Capital	26/03/2024	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

19	2023/188549 2023/179691	Camilleri v Alexakis; Schwanke v Alexakis	27/03/2024	CAMILLERI v ALEXAKIS: 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	Alexakis v Masters (No 2) [2023] NSWSC 509; Alexakis v Masters (No 3) [2023] NSWSC 694

				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. SCHWANKE v ALEXAKIS: 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.	
20	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	Drummond v Gordian Runoff Ltd [2023] NSWSC 607 Drummond v Gordian Runoff Ltd (No 2) [2023] NSWSC 731

				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.	
21	2024/107445 2024/107482	The Law Society v Attorney General; ABC Insurance v The Law Society	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 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	Orders for separate questions (8/3/24)

				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).	
22	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 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	Azzi v State of New South Wales [2023] NSWSC 1028

				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.	
23	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	Carabetta & Anor v Carlingford Bowling, Sports & Recreation Club [2023] NSWSC 1442

				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.	
24	2023/341933	QBT v Wilson	11/04/2024	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	Grant Reid Wilson atf G&L Wilson Family Trust v QBT Pty Limited [2023] NSWSC 1255

				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.	
25	2024/74092	South East Forest v Forestry Corporation	16/04/2024	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	South East Forest Rescue Incorporation INC9894030 v Forestry Corporation of New South Wales [2024] NSWLEC 7

				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.	
26	2023/193143	Western Freight v Toll	17/04/2024	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	Western Freight Management Pty Ltd v Toll Transport Pty Ltd [2023] NSWDC 176

				respondent had mistakenly made payments to the appellant.	
27	2023/335818	Boensch v Bingham	22/04/2024	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,	Bingham v Boensh [2023] NSWSC 1187

				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.	
28	2023/323415	Sydney Metro v C & P Automotive	23/04/2024	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

29	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 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
30	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	Oxford (NSW) Pty Ltd v KR Properties Global Pty Ltd trading as AK Properties Group (No 3) [2023] NSWSC 881

				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.	
31	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	Badra v Value Constructions Pty Ltd & Ors [2023] NSWSC 1307

				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.	
32	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 compensation under the Comcare workers compensation scheme, nominating the Department of Immigration and Border Protection (the Department) as his employer,	BBY v The GEO Group Australia Pty Ltd [2023] NSWPICPD 60

				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.	

33	2023/276701	Boensch v Transport for NSW	26/04/2024	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	Boensch v Transport for NSW and Registrar General of New South Wales [2023] NSWLEC 82

				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.	