

Decisions Reserved in the Court of Appeal as at 12 December 2011

	NUMBER	CASE NAME	AREA OF LAW
1	2008/290119	DAVID & ANOR v. ABDISHOUS & ORS	<b>Defamation:</b> publication; directions given to jury
2	2009/326261	SAS TRUSTEE CORPORATION v COX	<b>Police Superannuation:</b> application of <i>Police Regulation (Superannuation) Act 1906</i> , s 9(A)(4) and <i>Superannuation Administration Act 1996</i> , s 51(2)(c)
3	2010/316566	DARLEY AUSTRALIA PTY LTD v. WALFERTAN PROCESSORS PTY LTD	<b>Land and Environment:</b> approval of modified waste disposal facility for existing tannery;
4	2010/244324	SYDNEY SOUTH WEST AREA HEALTH SERVICE v. QY & ANOR	<b>Discrimination:</b> <i>Anti-Discrimination Act 1977</i> (NSW) – meaning of “relative and associate” provisions – meaning of “person”
5	2009/291532	BE AUSTRALIA WD PTY LTD & ORS v. SUTTON	<b>Corporations:</b> administration of company
6	2008/281514	SAHAB HOLDINGS PTY LTD v. REGISTRAR-GENERAL & ANOR	<b>Real Property:</b> Torrens title; easements and covenants; powers of Registrar-General; decision of Registrar-General to remove right of way from folio of register for servient tenement
7	2010/68048	BONDI BEACH ASTRA RETIREMENT VILLAGE PTY LTD v GORA	<b>Real Property:</b> option to purchase land; contractual scheme of retirement village; <b>Procedure:</b> amendment to defence at trial; delay: failure to plead defences
8	2009/298570; 2009/298572; 2009/298571	TONTO HOME LOANS AUSTRALIA PTY LTD v. TAVARES; FIRSTMAC LTD v. DI BENEDETTO & ANOR; FIRSTMAC LTD v. O'DONELL & ANOR	<b>Contracts:</b> loan and mortgage agreements; Low Documentation loan; whether unjust contract under <i>Contracts Review Act 1980</i> (NSW); relationship between finance broker, mortgage manager and lender; agency; whether unjust asset lending
9	2006/266967	GASKIN v. OLLERENSHAW	<b>Negligence:</b> duty of care; occupier's liability
10	2010/151065	NOMINAL DEFENDANT v. McLENNAN	<b>Motor accidents:</b> unidentified motor vehicle; challenge to inferences drawn by trial judge
11	2007/285058	TADROUS v TADROUS	<b>Real Property:</b> equitable charge; equitable remedies
12	2007/291149	DARCY v. STATE OF NEW SOUTH WALES	<b>Torts:</b> false imprisonment; adult plaintiff with intellectual disability subject to guardianship orders; claim by tutor against State for wrongful detention by Department of Community Services; damages
13	2010/274964	VERO INSURANCE LTD v. KASSIM & BARNDEN IN THEIR CAPACITY AS JOINT ADMINISTRATORS OF UNGUL PROPERTIES PTY LTD & ORS	<b>Corporations:</b> voluntary administration; deed of company arrangement; meeting of creditors
14	2010/292993	JARDIM v METCASH LTD	<b>Employment:</b> contract; termination of employment relationship; validity of restraint of trade clause
15	2011/106649	MACQUARIE GENERATION v GRAY	<b>Environment and Planning:</b> <i>Protection of the Environment Operations Act 1997</i> (NSW), Ch 3; whether implied limitation on carbon dioxide emissions at power station

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16	2007/265252	WALLACE v. KAM	<b>Professional negligence:</b> neurosurgeon; failure to warn of inherent risks in procedure; scope and content of duty of care; breach; causation; application of <i>Rosenberg v Percival</i> (2001) 205 CLR 434
17	2008/289517	KONSTANTOPOULOS v. R & M BEECHEY CARRIERS PTY LTD	<b>Contracts:</b> construction of lease; whether lessees liable for damage caused to premises; <b>Torts:</b> negligence; duty of care; breach
18	2010/299162	ALTARANESI v. ADMINISTRATIVE DECISIONS TRIBUNAL	<b>Practice and Procedure:</b> Administrative Decisions Tribunal (Appeal Panel); whether findings of fact supported by evidence; failure to consider relevant material and reliance on irrelevant material
19	2010/81646	RIDOLFI v HAMMOND	<b>Negligence:</b> assessment of damages; evidence; findings of credit; adequacy of reasons
20	2005/269424; 2004/176923; 2004/176922; 2004/176924	TATI v. STONEWALL HOTEL PTY LTD; BUTLER v. STONEWALL HOTEL PTY LTD; TURDMAN v. STONEWALL HOTEL PTY LTD; MCKENZIE v. STONEWALL HOTEL PTY LTD	<b>Negligence:</b> personal injury; collapse of ceiling; duty of care owed by operator of hotel license under <i>Liquor Act 1982</i> (NSW); causation; <i>Civil Liability Act 2002</i> (NSW), s 5D
21	2011/ 129207; 2011/84040	MARTIN v. STATE OF NEW SOUTH WALES; MARTIN –V- STATE OF NEW SOUTH WALES	<b>Judicial Review:</b> mining; validity of grant of exploration license by minister's delegate; <b>Procedure:</b> striking out of points of claim; procedural fairness
22	2009/293847	MOSS v. EAGLESTONE	<b>Negligence:</b> proceedings permanently stayed to appellant's bankruptcy; respondent's failure to include claim for defamation; <u>whether inclusion of defamation claim would have prevented stay</u>
23	2010/418497	NOMINAL DEFENDANT v ROOSKOV	<b>Motor accidents:</b> unidentified motor vehicle; evidentiary onus; causation; whether findings open on the evidence
24	2007/255809	LAHOUD v LAHOUD	<b>Professions and Trades:</b> auditors; whether auditor's report was an expert determination made in accordance with Deed; <b>Practice and Procedure:</b> claim for interest under <i>Civil Procedure Act 2005</i> (NSW), s 100
25	2003/85446	WILLETT v THOMAS & ORS	<b>Trade and Commerce:</b> investment in business by first and second respondents on appellant's recommendation; fiduciary relationship - misleading and deceptive conduct - representations as to future matters
26	2010/55277	UNITED AIRLINES INC v. SERCEL AUSTRALIA PTY LTD	<b>Workers Compensation:</b> recovery by employer under <i>Workers Compensation Act</i> s151Z; employee injured on plane on landing in Houston after departing from Sydney; claim not brought within timeframe prescribed by Warsaw Convention; whether <i>Civil Aviation Carriers Liability Act 1959</i> (Cth) applies
27	2010/143563	RIL AVIATION HL 7740 AND HL 7741 PTY LTD v. ALLIANCE & LEICESTER PLC	<b>Contracts:</b> suite of agreements for financing of commercial aircraft; construction of clause for payment of manager

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28	2010/423230	VIEIRA v O'SHEA	<b>Contract:</b> construction; purchase of horse for competitive racing; misleading and deceptive conduct
29	2009/40414	SUNOL v COLLIER	<b>Discrimination:</b> registration of conciliation agreement; breach of agreement; questions stated; constitutional implication of freedom of political communication; <i>Anti-Discrimination Act 1977</i> (NSW), ss 49ZT, 91A(6)-(9)
30	2009/296795	GUIJAR v AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD; AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD v GUIJAR	<b>Contract:</b> whether there was a contract relating to the deposit of funds; whether there was a contract relating to termination of services; adequacy of reasons; <b>Appeal:</b> <i>Local Court Act 2007</i> (NSW), s 39
31	2004/187484	OLD v HODGKINSON	<b>Partnership:</b> accounts; acquisition of share in patent attorney firm; <b>Costs:</b> offers of compromise; whether costs should have followed event
32	2011/186755	EATON v INDUSTRIAL RELATIONS COMMISSION OF NSW	<b>Jurisdiction:</b> decision of Full Bench reinstating applicant to employment with second respondent (Commissioner of Police) – whether Industrial Relations Commission had jurisdiction under <i>Industrial Relations Act 1996</i> (NSW) Pt 6 to hear application by a constable appointed and dismissed pursuant to s 80 of the <i>Police Act 1990</i> (NSW)
33	2010/312500	CHAN v HEAK	<b>Personal injury:</b> negligence; contributory negligence; assessment of damages
34	2009/298275	PRYNEW PTY LTD v. NEMETH	<b>Conveyancing:</b> duty of care; right of support for land and building; breach of development consent; <b>costs:</b> Calderbank offer; indemnity costs
35	2009/287452	SIDAMENEO (NO 456) PTY LTD v. ALEXANDER	<b>Restraint of Trade:</b> medical practitioner services agreements; reasonableness of post-term restraint clause; whether void as against public policy; whether restraints to be read down and enforced pursuant to the <i>Restraints of Trade Act 1976</i>
36	2009/298381; 2006/258004	MITCHELL MORGAN NOMINEES PTY LTD v VELLA; PERMANENT MORTGAGES PTY LTD v VELLA	<b>Mortgage:</b> enforceable interest; priorities; <b>Apportionment:</b> whether apportionable claim under <i>Civil Liability Act 2002</i> , ss 35-36; <b>Restitution:</b> money had and received; <b>Commercial Law:</b> money advanced by appellant finance company to joint account because of fraud
37	2011/54792	EDELBRAND PTY LTD v H M AUSTRALIA HOLDINGS PTY LTD	<b>Building and Construction:</b> adjudication of payment claim; validity of adjudication determination; whether "construction contract" within the meaning of the <i>Building and Construction Industry Security of Payment Act 1999</i> (NSW)
38	2010/304657	CARDINAL PROJECT SERVICES PTY LTD v HANA VE PTY LTD	<b>Building and Construction:</b> adjudication of payment claim; validity of determination; where prior adjudication made on same payment claim declared void

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39	2010/423568	C G MALONEY PTY LTD v NOON	<b>Contracts:</b> construction; agreement for sale of property which included buy-back option; <b>Estoppel:</b> anshun estoppel; <b>Costs:</b> indemnity costs
40	2010/159275	DR LUCIRE v. DR PARMEGIANI & ANOR	<b>Defamation:</b> summary dismissal; complaint to Medical Board; whether absolute privilege; whether <i>Rajski v Carson</i> (1988) 15 NSWLR 84 correct
41	2005/269546	GATTELLARO v SPENCER	<b>Professional negligence:</b> conduct of solicitors in litigation; claims for negligence and breach of retainer
42	2011/4833	WORKERS COMPENSATION NOMINAL INSURER v AL OTHMANI	<b>Workers compensation:</b> appeal from Workers Compensation Commission; whether Acting Deputy President erred in failing to apply principle in <i>Devries v Australian National Railways Commission</i> (1979) 177 CLR 472; whether respondent was a "worker" as defined in s 4 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i>
43	2011/16442; 2011/21072; 2011/21072; 2011/21072	ALLIANZ AUSTRALIA LTD v SIM; WORKCOVER AUTHORITY (NSW) v SIM; WORKCOVER AUTHORITY (NSW) v SIM; WALLABY GRIP (BAE) PTY LTD (in liquidation) v SIM	<b>Dust diseases:</b> suit brought by widow of asbestos worker who contracted asbestosis and lung cancer; negligence of employer; causation; damages; judicial review
44	2011/262574	AMP CAPITAL PROPERTY NOMINEES LTD v WESTFIELD MANAGEMENT LTD	<b>Corporations:</b> injunction to restrain unitholders in registered management investment scheme from voting for extraordinary resolution to wind up the scheme pursuant to ss 601NB and 601NE of the <i>Corporations Act 2001 (Cth)</i>
45	2010/384257	FAHD v KENNEALLY	<b>Professional negligence:</b> legal; whether breach of duty of care in failing to advise on enforceability of oral contract
46	2010/298193	TALLUGA v. AUSTRALIAN INTERNATIONAL ACADEMY OF EDUCATION PTY LTD	<b>Lease:</b> assignment; whether assignor abandoned lease; whether lease void for uncertainty; rectification
47	2011/119744	CLARENCE VALLEY COUNCIL v MACPHERSON	<b>Negligence:</b> liability; apportionment; assessment of damages; non-economic loss pursuant to s 16 of <i>Civil Liability Act 2002</i> (NSW); past economic loss, future economic loss and gratuitous domestic assistance
48	2011/156186	QBE INSURANCE (AUST) LTD v DUST DISEASES TRIBUNAL	<b>JURISDICTION</b> – excess of jurisdiction – whether no jurisdiction to appoint insurer under Workers Compensation Act 1987 s151AC and 151AB
49	2008/55729	CUR 24 [SPILLANE] v DIRECTOR OF PUBLIC PROSECUTIONS	<b>Judicial Review:</b> prohibition and mandamus; extra-judicial comment; recusal; apprehended bias
50	2011/180273	VALUER-GENERAL OF NEW SOUTH WALES v IN ADAM PTY LTD	<b>Land Tax:</b> valuation; "heritage restricted" land; "heritage cost penalty" deduction
51	2008/287026	MILJUS v. WATPOW CONSTRUCTIONS PTY LTD	<b>Negligence:</b> plaintiff injured on public roadway while delivering concrete to site; whether builder owed duty of care; <b>Procedure:</b> amendments to pleadings

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52	1996/31364	KABLE v. STATE OF NEW SOUTH WALES	<b>Intentional Torts:</b> malicious prosecution; collateral abuse of process; false imprisonment; <b>Constitutional Law:</b> constitutional validity of <i>Community Protection Act 1994</i> (NSW)
53	2009/293578	MONAS v PERPETUAL TRUSTEES VICTORIA LTD	<b>Consumer Credit:</b> Consumer Credit (New South Wales) Code 1995, ss 80(2), 80(3) and 80(4)©; statutory construction
54	2007/265236	LAOULACH v. IBRAHIM	<b>Negligence:</b> duty of care; contributory negligence; dangerous recreational activity; obvious risk; Civil Liability Act 2002 (NSW), ss 5F and 5L
55	2011/115646	CURRENT IMAGES PTY LTD	<b>Contracts:</b> construction of Purchase Agreement and Shared Maintenance Agreement - whether document incorporated pricing conditions referred to in correspondence
56	2008/289548	STATE OF NEW SOUTH WALES v. GILLETT	<b>Limitation of Actions:</b> <i>Limitation Act 1969</i> (NSW) s50D(1);
57	2009/296222	AZAR v CITIGROUP PTY LTD	<b>Mortgage:</b> loan agreement; order of possession of land by mortgagee on default of mortgagor; whether unjust contract; <i>Contracts Review Act 1980</i> (NSW), s 7
58	2009/297613	ASSOCIATION OF QUALITY CHILD CARE CENTRES OF NSW INC v. MANEFIELD	<b>Defamation:</b> whether matter complained of carried imputations alleged; malice; whether published in protection of legitimate interests; quantum of damages
59	2005/270010	PROTHONOTARY v KEARNS	<b>Legal Profession:</b> professional misconduct
60	2009/337610	ANDY'S EARTH WORKS PTY LTD v VEREY	<b>Negligence:</b> motor vehicle accident; <i>Motor Vehicle Accidents Compensation Act 1999</i>
61	2006/255754	KOPAS v CELERMAJER HOLDINGS PTY LTD	<b>Lease:</b> "protected" premises per <i>Landlord and Tenant (Amendment) Act 1948</i> ; whether appropriate to reopen judgment; whether <i>Barilla v James</i> [1964-65] NSWLR 741 misapprehended
62	2011/156102	NORTH SYDNEY LEAGUES' CLUB LTD v SYNERGY PROTECTION AGENCY PTY LTD	<b>Contracts:</b> breach; assessment of damages; whether fixed overhead costs should be taken into account; application of <i>Commonwealth v Amann Aviation Pty Ltd</i> (1991) 174 CLR 64