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Update Summary

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**PERSONAL INJURY
LAW MANUAL NSW**

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General Principles

Setting settlements aside and stay applications

In *Kwu v State of NSW* [2024] NSWSC 666, the plaintiff appeared in a mediation via audio-visual technology since he was in prison. The plaintiff by his lawyers eventually offered to accept \$200,000 inclusive of costs, which was accepted by the defendant. A draft Deed of Release was prepared and sent. However, the plaintiff's lawyers served Notice of Ceasing to Act as the plaintiff thought he was under undue pressure to settle. See [GP.1030].

Deliberate or reckless acts: exemplary damages

In *Brooks v Operator, National Redress Scheme for Institutional Child Sexual Abuse* [2024] FCA 725, the applicant had applied to the respondent for redress under the National Redress Scheme for Institutional Child Sexual Abuse. See [GP.800] and [GP.1020].

In *AJ v KM* [2024] NSWDC 272 and *TM v KM* [2024] NSWDC 271, AJ sued for sexual abuse by her stepfather, and her mother TM claimed for psychological injury. The defendant was imprisoned and did not attempt to defend the claims. See [GP.800].

In *TT v The Diocese of Saint Maron, Sydney and SS (No 3)* [2024] NSWSC 943, the first defendant in a child sexual abuse case was the Diocese and the second defendant a priest. The Court accepted that the second defendant's abuse had occurred but rejected any finding of negligence against the first defendant. That left the issue of vicarious liability in respect of a priest who was not strictly an employee. See [GP.800] and [GP.1020].

The duty of care and causation

In *Marhaba v Chen* [2024] ACTSC 241, the plaintiff was involved in a multiple vehicle car accident and sued the owner of the car that caused the accident in negligence. Breach of duty of care was admitted but at issue was whether the accident caused any injury. See [GP.260].

Occupier's Liability

Other areas of public access – Parks

In *Hornsby Shire Council v Salman* [2024] NSWCA 155, the plaintiff rolled her ankle when stepping from an area covered in mulch to a raised artificial surface in a public park under the control of the Council. She sued in negligence and the judge accepted her claim with a 15% reduction for contributory negligence. The Council appealed. See [OCU.400].

Medical Negligence

The test of medical negligence

In *Melissa Reis v Emil Gayed* [2024] NSWDC 269, the defendant/medical practitioner was a fellow of the Royal Australian and New Zealand College of Obstetricians and

Gynaecologists. He performed procedures which were not justified, and which were probably performed for his financial advantage. See [MED.40] and [GP.800].

Breach of duty of care

In *Fuller v Australian Capital Territory* [2024] ACTCA 19, the plaintiff underwent a planned caesarean section at the Canberra Hospital. There was an attempt to administer a spinal anaesthetic but the spinal needle broke into two pieces one of which remained in the plaintiff's back. The plaintiff claimed she suffered psychological, neurological and physical injury from the failed attempt at injecting spinal anaesthetic. See [MED.160] and [MED.340].

Common Law Rights

Duty of Care to Independent Contractors and their Employees

In *Sawyer v Steeplechase Pty Ltd* [2024] QSC 142, the plaintiff was an employee of a subcontractor working as a concreter for a concreting business. He claimed for lower back injury and aggravation of a pre-existing depressive condition as a consequence of his physical injury. He sued both his employer and the head contractor for the project in negligence. See [COM.140].

Liability of an employer for the acts of others

In *DAC Finance (NSW/QLD) Pty Ltd v Cox* [2024] NSWCA 170, the plaintiff suffered injury from being jolted when a descending lift stopped without warning as a consequence of power testing by other employees at the workplace. See [COM.120] and [OCU.760].

Claims arising from injuries in the workplace

In *Value Constructions Pty Ltd v Badra* [2024] NSWCA 181, the plaintiff was injured at a residential construction site when he fell over some black plastic placed over a large open drainage hole in the floor of the garage. He sued the builder who controlled the site, his employer and the workers' compensation nominal insurer. The primary judge found builder and employer liable, and the builder appealed alleging it was the employer's responsibility. See [COM.220] and [COM.140].

The Australian Consumer Law

Section 21

Added new commentary under section 21 with reference to case *McNickle v Huntsman Chemical Company Australia Pty Ltd (Initial Trial)* [2024] FCA 807, in which there was a finding in an initial trial of a Class Action over alleged carcinogenic effects of the product Roundup produced by the Monsanto Company. See [ACL.21.20].

Evidence

Evidence of conversations and improperly obtained evidence

In *Gan v Xie* [2023] NSWCA 163, witnesses or parties providing an affidavit did not claim to precisely remember the words used by the defendant. They gave a version in direct

speech qualified by the statement that the words were “*to the effect of*” the words originally used. See [EVD.800].

Boating injuries

Cruise Ships

In *Langdon v Carnival PLC* [2024] NSWCA 168, the appellant alleged injury to his cervical spine, left shoulder and psychological injury when he fell a short distance after a step gave way beneath him on the Pacific Aria. The defendant admitted breach of duty of care on the basis that the step gave way and collapsed when stepped on but denied liability on the basis that the injuries and disabilities alleged were not caused by the incident. See [BI.40].

Work related claims

Definitions

In *Coca-Cola Europacific Partners API Pty Ltd v Pombinho* [2024] NSWCA 191, the plaintiff/respondent claimed permanent impairment arising from injuries said to have been caused at work. The plaintiff obtained judicial review on the basis that the Appeal Panel had exceeded its jurisdiction. See [WRC.60].