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Update Summary

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**PERSONAL INJURY
LAW MANUAL NSW**

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Update Summary

General Principles

The duty of care under special relationships

In *Maragol v Berry Patch Preschool Kellyville Ridge Pty Ltd* [2024] NSWSC 1077 (Rothman J), a claim was brought following the death of a sleeping child at a Childcare Centre operated and owned by the first defendant. The second defendant was the State of NSW. The allegation is a failure to exercise or properly exercise its supervisory and regulatory functions over the Childcare Centre. See [GP.920], [GP.1020] and [CLA.43.20].

Setting settlements aside and stay applications

In *TT v Diocese of Saint Maron, Sydney (No 4)* [2024] NSWSC 1102 (Elkaim AJ), the plaintiff sued for sexual abuse as a child by a Deacon at the church where he and his family regularly attended. He sued both the Deacon and the Diocese and succeeded against the Deacon and against the Diocese only in vicarious liability but not in negligence. See [GP.1030], [GP.1020] and [GP.800].

In *DZY (A Pseudonym) v Trustees of the Christian Bros* [2024] HCA SL 245, special leave was granted to appeal from the partial exclusion from the setting aside of settlement in respect of economic loss. See [GP.1030].

Deliberate or reckless acts: exemplary damages

In *AA v Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle* [2024] NSWSC 1183, the plaintiff sued for damages including punitive and aggravated damages for physical and sexual abuse by a parish priest in Wallsend in 1969 when a teenager. Under Victorian authority (judgment reserved in the High Court) vicarious liability is not limited to employment situations and was established here because of the authority the Diocese had given the abusing priest and his special role. See [GP.800], [GP.1020], [CLA.3B.20] and [EVD.660].

Motor Accident Injuries Scheme

The meaning of threshold injury

In *Insurance Australia Ltd (t/as NRMA Insurance) v Le* [2024] NSWSC 1022, the claimant was injured in a motor accident and lodged a claim for statutory benefits with the CTP insurer of the vehicle at fault. See [MAIA.1240] and [GP.710].

Medical Negligence

What must be established

In *Monash Health v Carina* [2024] VSC 486, the plaintiff underwent a left inguinal hernia operation at Monash Medical Centre. She claimed the surgery was unnecessary because there was no direct or indirect hernia and Monash Health was negligent in its surgical assessment, surgical management, medical treatment and post operative care. See [MED.120].

Common Law Rights

Psychiatric injury

In *Griffin v Brisbane City Council* [2024] QCA 157, the plaintiff worked for the defendant in a call centre and suffered psychiatric injury as a result of the conduct of a particular serial caller. The plaintiff sued unsuccessfully for damages for personal injury and loss arising from negligence and/or breach of contract. See [COM.80] and [COM.120].

Liability of an employer for the acts of others

In *Manhattan Homes Pty Ltd v Burnett* [2024] NSWCA 219, the plaintiff was seriously injured in a fall on a work site. The occupier was held 80% and the employer 20% responsible by Schmidt AJ. His conduct was found to be inadvertence and not contributory negligence. See [COM.120] and [COM.180].

The employer's non-delegable duty of care and vicarious liability

In *Bartlett v De Martin and Gasparini Pty Ltd* [2024] NSWSC 1172 (Elkaim AJ), the plaintiff was injured when a worker of the first defendant was negligent in a joint lifting task. It was held he should be treated as if he were a direct employee in the circumstances, so the first defendant was vicariously liable. See [COM.40], [COM.140] and [COM.180].

Evidence

Interrogatories – summary

In *Nemes v South Eastern Sydney Local Health District* [2024] NSWSC 1143, the plaintiffs sued in medical negligence. After the trial concluded, they sought to tender an expert report from a practitioner who had not participated in the expert conclave or been present during the hearing. See [EVD.640].

Limitation Periods

Civil Liability Act 2002

In *Waldron v O'Callaghan* [2024] VSCA 196, the plaintiff obtained an extension of time to sue in medical negligence against a doctor. The defendant appealed. See [LP.120].

In *Doughty v Hillier* [2024] NSWSC 1220, the plaintiff underwent six spinal procedures of which three occurred before the insertion of discoverability provisions into the *Limitation Act 1969* in December 2002 and three after. See [LP.120] and [MED.380].

Civil Liability Act

Section 50

In *Polson v Harrison* [2024] NSWCA 224, the plaintiff's appeal from a verdict for the defendant/surgeon was dismissed. See [CLA.50.20] and [MED.120].

Assessment of damages

Restriction on personal injury damages claims

The maximum award for non-economic loss has increased to \$761,500. See [ASD.60].

Motor vehicle accident claims

In *Puga v Allianz Australia Insurance Ltd* [2024] NSWSC 1235 the plaintiff injured in a motor accident sought review of an adverse medical assessment that he did not meet the greater than 10% requirement for whole person impairment. See [ASD.240] and [MACA.58.20].