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Update Summary

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**PERSONAL INJURY
LAW MANUAL NSW**

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Update Summary

Common Law Rights

Claims arising from injuries in the workplace

In *Paetzold v At Beach Court Holiday Villas Pty Ltd* [2024] QCA 227, the applicant caretaker for the respondent suffered injury whilst attempting to push start a ride-on mower with a flat battery. See [COM.220].

The extent of the employer's duty of care

In *Macari v Snack Brands Foods Pty Ltd* [2024] NSWCA 282, the plaintiff slipped on steps in his workplace in the defendant's factory. The plaintiff alleged he either slipped on potato debris or on steps which from wear and tear had become too slippery when wet. See [COM.60] and [OCU.820].

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

In *Agrigrain Pty Ltd v Rindfleisch* [2024] NSWCA 295, the plaintiff suffered severe physical injury working at a grain handling facility. He sued Agrigrain Pty Ltd in the District Court alleging breach of duty of care and pleading that at the time of injury his employer was a wholly owned subsidiary of Agrigrain. See [COM.460] and [LP.100].

Psychiatric injury

In *Elisha v Vision Australia Ltd* [2024] HCA 50, the plaintiff's employment was terminated by the defendant after a disciplinary hearing in which allegations upon which the decision was made were not put to the plaintiff. This was a breach of the employer's disciplinary procedure. The plaintiff was then diagnosed with a major depressive disorder said to have arisen out of the employer's misconduct. See [COM.80].

Liability of an employer for the acts of others

In *Dean v Central Highlands Region Water Corporation* [2024] VSCA 315, the plaintiff employee was severely injured in a dog attack whilst working as a water meter reader. The judge was held to have erred in directing the jury not to consider that training and provision of a spray might have resulted in less severe injury. See [COM.120] and [IIA.100].

Nervous shock generally

In *Robinson v EACH Ltd* [2024] VSCA 313, the plaintiff was a mental health support worker who claimed for psychiatric injury in the course of employment through exposure to vicarious trauma during home visits and administrative work. See [COM.100].

Medical Negligence

Causation

In *Stewart v Metro North Hospital and Health Service* [2024] QCA 225, the appellant/plaintiff suffered personal injury arising from his treatment as a patient in a hospital operated by the defendant. See [MED.220].

Motor Accidents Injuries Act 2017 (NSW)

Section 7.26

In *Insurance Australia Ltd (t/as NRMA Insurance) v Momand* [2024] NSWSC 1529, the defendant was injured in a motor accident and applied to the PIC for assessment of his WPI. He claimed injuries being PTSD and co-morbid persistent depressive disorder. See [MAIA.7.26.20].

General Principles

Deliberate or reckless acts: exemplary damages

In *Footscray Football Club Ltd v Kneale* [2024] VSCA 314, the defendant appealed on multiple grounds. In respect of the duty of care it was held that it was open to the trial judge to find that in the circumstances a duty of care broader than mere occupier's liability was owed and that it covered child sexual abuse. See [GP.800], [GP.1020], [SI.80] and [SI.180].

In *APC v Mr B (No 2)* [2024] NSWSC 1608 the plaintiff sued for damages for child sexual abuse by the defendant when he was in a de facto relationship with her mother whom he later married and who is now divorced. The defendant, appearing for himself, denied any abuse and claimed it was part of an attempt by the mother to procure a greater share in the divorce settlement. See [GP.800].

Deliberate or reckless acts: exemplary damages

In *El Assaad v Al Haje* [2024] NSWCA 306, the plaintiff alleged his career as an actor was affected by physical and psychological injuries intentionally inflicted by the defendant. See [GP.800].

Strict liability/Vicarious liability/Non-delegable duty of care

In *MC v Casa Generalizia Della Societa Dei Missionari D'Africa Detti Padri Bianchi (White Fathers)* [2024] NSWSC 1658, the plaintiff (a child) was abused by an assistant priest in the 1970s inside a church and a presbytery. See [GP.1020] and [GP.800].

In *Taylor v Trustees of the Christian Brothers* [2025] VSC 25, the plaintiff in a sexual abuse case against the defendant asked that the hearing date be vacated pending

retrospective legislative reform following the High Court decision in *Bird v DP* (a Pseudonym) [2024] HCA 41 on vicarious liability. See [GP.1020].

Institutional Insurance Cover

In *Allianz Australia Insurance Limited v Uniting Church in Australia Property Trust (NSW)* [2025] FCAFC 8, the insurer for Knox Grammar School appealed against a finding that it was liable to cover claims arising from facts and circumstances of which the insured was aware but did not advise the insurer at the commencement of the policy. See [GP.770].

Civil Liability Act

Section 32

In *Lederer Group Pty Ltd v Hodson* [2024] NSWCA 303, there was a fatal accident at a loading dock in a shopping centre when an elderly man was run over by a truck. By the time the plaintiff arrived the body had been covered with a white sheet and he never saw the deceased's injuries. The plaintiff, a cleaner, sued his employer. See [CLA.32.20] and [COM.80].

Section 50

In *Gause v Alderson* [2024] NSWCA 312, the deceased died while asleep in a fire in a single storey home. His partner and their children sued the owner for compensation to relatives in respect of the inoperative fire alarms. The deceased had some alcohol in his blood and some indicia of cannabis use. The primary judge found negligence and also found the deceased was intoxicated impairing his capacity and reducing his damages by 25%. See [CLA.50.20] and [OCU.520].

Section 43A

In *State of NSW v Cullen* [2024] NSWCA 310, the finding of negligence in police taking action to prevent a breach of the peace in a crowded situation resulting in injury to a bystander was overturned. See [CLA.43A.20].

The Australian Consumer Law

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In *Springfree Trampoline Australia Pty Ltd v Forostenko* [2024] QCA 255, the plaintiff injured his foot on a trampoline manufactured by the defendant and sued under s 138 of Australian Consumer Law and alternatively in negligence alleging a safety defect. See [ACL.138.20] and [SI.140].

Liability of educational institutions

Where the school is liable

In *Clifford v Corporation of the Society of the Missionaries of the Sacred Heart* [2024] VSC 812, the plaintiff, a student at a boarding school in the mid-1970s, alleged physical and sexual abuse by other students which was established. However, he failed against the defendant/institution because there was no negligence and no breach of non-delegable duty in respect of that abuse. There were also allegations of abuse by two brothers of the Catholic Order at the school. See [EDU.160].

