

Case	Application	Summary	Pg/Sec
<i>Sharman v Evans</i> (1977) 138 CLR 563	Damages – Pecuniary and Non-Pecuniary Damages	<p>The plaintiff suffered serious injuries including brain damage , and was rendered a quadriplegic and epileptic after a motor accident. She was 20 years old at the time and was only expected to live another 20-30 years. The trial judge assessed the damages of \$300547.50. The claim of damages was brought in respect of medical and nursing care costs, loss of earning capacity, pain and suffering and loss of enjoyment and amenities of life.</p> <p>Question: Should loss of expectation of life be included within a claim for pain and suffering.</p> <p>Held: Ultimately, the majority of the court found that the amount awarded by the trial judge was excessive and the assessment was reduced by \$30000. The court considered, with respect to pain and suffering, loss of enjoyment and loss of amenities of life, that:</p> <p style="padding-left: 40px;">So long as the courts are careful to avoid the risk , inherent in such a procedure (of examining conventional heads of damage separately), of compensating twice over for the one detriment there seems no better way of applying processes of reasoning and the realistic and methodical evaluation of probabilities to the task of assessing compensation.</p> <p>The court also considered the damages for loss of expectation should more properly be awarded under the head of pain and suffering</p>	Withnall 6.16
<i>Dang v Chea [2013]</i> NSWCA 80	Damages – Institutional v Home Care	<p>On 7 September 2007, the claimant was struck by a motor vehicle as a pedestrian in a car park in Cabramatta. She was 83 years old at the time of the accident and sustained severe injuries including a left subdural haemorrhage, non-depressed skull fracture and a fracture to the right zygomatic arch. Two years later she fell and fractured her left femur. Since her fall, she has lived at Canley Gardens Aged Care Facility (Canley Gardens).</p>	http://cases.otes.curwoods.info/?p=2149

		<p>Held</p> <p>The claimant submitted that a reasonable assessment of damages would require a provision for her to live in suitable rental accommodation and be provided with nursing care and assistance 24 hours a day. The insurer submitted that a continuation of the claimant's living and caring arrangements in Canley Gardens would be reasonable. Due to her advanced age and progression to dementia, she had a future life expectancy of 3.5 years.</p> <p>On 11 May 2012, the trial judge[2] entered judgment in the sum of \$1,912,926. After a consideration of both options, Her Honour preferred 24 hour nursing care on the basis that the Claimant had many falls at Canley Gardens and these could be reduced with more intensive care. She found that the 24 hour care would provide "real and significant health benefits". The award for future accommodation and care amounted to \$1,095,691.</p> <p>Court of Appeal Decision</p> <p>The Court of Appeal allowed the insurer's appeal. It referred to established case law for the proposition that an award for damages was not to fulfil the ideal requirements for an injured person, but rather the reasonable requirements.[3] Merely because expenditure might be advantageous for an injured person to alleviate his or her situation does not necessarily mean it is to be provided by the tortfeasor.[4]</p> <p>The Court quoted the High Court decision of Sharman v Evans [5]:</p> <p>"The touchstone of reasonableness in the case of the cost of providing nursing and medical care for the claimant in the future is, no doubt, cost matched against health benefits to the claimant. If cost is very great and benefits to health slight or speculative the cost involving treatment will clearly be unreasonable, the more so if there is available an alternative and relatively inexpensive mode of treatment, affording equal or only slightly lesser benefits." [6]</p>	
--	--	--	--

<i>Griffiths v Kerkemeyer</i> 1977	Damages – Gratuitous Services	<p>The plaintiff became a quadriplegic as a result of a car accident in which the defendant was held negligent. In an action for damages in the Supreme Court of South Australia, the trial judge included in his assessment of damages an amount of \$15000, representing the value of gratuitous services that were provided by the plaintiff's fiancé and his family, to the date of the judgment. His honour also assessed \$80000 as the cost of future care of the plaintiff and he stated that one-half of this sum was a component for services to be rendered by the fiancé and the family in the future. The defendant appealed against the assessment of damages.</p> <p>Held:</p> <p>The trial judge was correct in allowing the plaintiff to recover the value of the gratuitous services provided and to be provided in the future by the fiancé and the family even though the plaintiff was under no legal liability to pay for those services</p>	Withnall 6.28
<i>Sullivan v Gordon</i> (1999) 47 NSWLR 319	Damages – Loss of Gratuitous Services	<p>Plf involved in motor vehicle accident where frontal lobe brain damage was sustained. It was claimed that this impacted on her moods and her abilities to interact with her children, and specifically to care for them appropriately. The Plf claimed for loss of gratuitous services she rendered to third parties as a mother.</p> <p>Interestingly, the children which were the subject of this claim were conceived between the time of the accident and the trial.</p> <p>Question: Should the Griffiths v Kerkemeyer principle be extended to include care the plf renders to</p>	Lecture Notes

		<p>third parties?</p> <p>Held:</p> <p>Yes, for a variety of legal, ethical and social policy reasons.</p> <p>Mason J – For many women, and some men, the duty to care for others extends to other members of the family as naturally as it extends to themselves. The NSW CoA extended the finding in Griffiths v Kerkemeyer, that, from a social policy perspective, the Def shouldn't be able to benefit from the care provided by family members.</p>	
<i>Kars v Kars</i>	Damages – Gratuitous Services – Defendant as carer	Defendant was the primary carer of the plaintiff. It was held that the gratuitous services of the partner (defendant) could be compensated for, in case, for whatever reason, the gratuitous services ceased, and because this was an insurance claim.	Own Notes

LS232 Case Summary