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TOPIC 1: DAMAGES

- Source of damages award is CL. *Wrongs Act* modifies CL principles.
- Applicable for any claim for damages for personal injury or death resulting from negligence, regardless of whether claim brought in tort, contract, equity, or under a statute or other cause of action.

CATEGORIES OF DAMAGES

- Compensatory
 - Living Ps
 - Dead Ps
- Aggravated
 - Awarded to compensate P for humiliating, malicious or insulting circumstances (***Canterbury Bankstown***)
 - Compensate for circumstances of the injury rather than loss
- Exemplary / punitive
 - ***Lamb v Cotogno***
 - Awarded to punish D and act as deterrent
 - Where D has acted in conscious and contumelious disregard for P's rights
 - Still ok where compulsory insurer is the one being sued in place of tortfeasor
 - ***Gray v Motor Accident Commission***
 - Available in negligence where conduct was deliberate and flagrant disregard for P's personal safety
 - Not available if substantial punishment already inflicted as a criminal proceeding
 - Not available where P has died

COMPENSATORY DAMAGES FOR LIVING PLAINTIFFS

4 FUNDAMENTAL PRINCIPLES

- *Todorovic v Waller*

- Compensatory objective
 - P put in monetary position as if injury had not been sustained)
- Damages awarded once and for all (*Todorovic v Waller*)
 - Lump sum award that cannot be varied even if P gets worse, better or dies (*Fetter v Beal*)
 - Courts must make predictions about P's future health, employment etc (*Wynn v NSW IMC* – vicissitudes of life normally 5-20% discount)
 - *Malec v JC Hutton*
 - Whether past event has occurred assessed on balance of probabilities. If >50%, treated as certainty.
 - **All damages for future and hypothetical events must be discounted for:**
 - Probability they will occur, and
 - **Probability P would suffer same loss independent of the tort due to pre-existing medical condition**
 - Future event to be ignored where speculative (less than 1%)
 - Court can now approve an agreement between parties to settle by a structured settlement (*Wrongs Act s 28N*)
 - Not taxable