

Damages: Personal Injury, Death, Aggravated and Exemplary

Personal Injury

Civil Liability Act 2002 (NSW) – Part 2

Section 11A – Application of Part

- 1) This Part applies to and in respect of an award of personal injury damages, except an award that is excluded from the operation of this Part by section 3B.
- 2) This Part applies regardless of whether the claim for the damages is brought in tort, in contract, under statute or otherwise.
- 3) A court cannot award damages, or interest on damages, contrary to this Part.

*key distinction from **Part 1A** which applies when claim is a claim for negligence

Section 3B – Civil liability excluded from Act

- 1) The provisions of this Act do not apply to or in respect of civil liability (and awards of damages in those proceedings) as follows:
 - a) Civil liability of a person in respect of an intentional act that is done by the person with intent to cause injury or death or that is sexual assault or other sexual misconduct committed by the person – the whole Act except:
 - (i) section 15B and section 18(a) (in its application to damages for any loss of the king referred to in section 18(1)(c)); and
 - (ii) Part 7 (Self-defence and recovery by criminals) in respect of civil liability in respect of an intention act that is done with intent to cause injury or death, and
 - (iii) Part 2A (Special provisions for offenders in custody)...

Common law

- Personal injury consists of:
 - physical injury
 - recognised psychiatric illnessesbut not mere transient emotional responses (disappointment, distress, anxiety, etc.)
- Subjective emotional responses may be claimable as non-economic loss, but not injury.

Civil Liability Act

Section 11 – Definitions in Part 2

Injury means personal injury and includes the following:

- (a) Pre-natal injury;
- (b) Impairment of a person's physical or mental condition,
- (c) Disease.

Personal injury damages means damages that relate to the death of or injury to a person.

*(b) captures transitory emotional responses to tort/breach of contract!!

Economic Loss

- Claims for actual, identified, specific financial loss = special damages

- Claims for future, potential losses = general damages
- Economic loss/special damages encompasses actual financial loss, including:
 - charges of medical, hospital and professional nursing services;
 - travel and accommodation expenses incurred in obtaining those services;
 - costs of rehabilitation needs
 - special clothing and special equipment
 - costs of modifying houses;
 - costs of funds management;
 - costs of professionally supplied home maintenance services
 (CSR Limited v Eddy)
- Not necessary for costs to be incurred by the time of trial but it IS necessary that they will be incurred (CSR Limited v Eddy)
- Claim must be based on what the reasonable requirements of the plaintiff are, not what the ideal requirements are (Sharman v Evans)
- If costs are great and benefits to health slight – unreasonable (Sharman v Evans)

Sharman v Evans

- Plaintiff horrifically injured in car accident – totally paralysed unable to breath/talk but fully conscious
- Damages = \$ for permanent hospitalisation but also some to allow her to spend a week or two at home
- Included modifying her house + hiring professionals to look after her
- HC: refused to give extra amount to have a few weeks at home – not significant additional medical benefit for her and unreasonable for defendant to have to pay extra