

Personal Injury Damages Structure

1. **Cause of Action**
2. **Compensation principle:** The aim is to compensate X to put them back in the position as if the tort had never occurred (restitutio in integrum). Where an injury is to be compensated by damages the sum of damages should seek to put the injured party in the same position as he would have been in if D had not sustained the wrong. (*Livingstone v Raywards Coal; Parramatta City Council v Lutz*) This compensation is in the form of an unconditional once and for all lump sum at date of judgement.
 - **NoteS21 CLA:** Court cannot award exemplary/aggravated damages for personal injury caused by negligence
3. **Other rules:** Date of assessment (trial date); unconditional award; governed by the CLA. (Check Book)
4. **The P suffered these losses...**
5. **P bears the onus to prove they are entitled to each and every head of the damages claimed.**
6. **Economic Loss: (CLA Division 2)** Go first to CLA then back it up with CL
 - **S12: Damages for Past or Future Economic Loss= Maximum for loss of earnings etc**
 - (1a) Past economic loss of earning or earning capacity
 - (1b) Future economic loss of earning or earning capacity
 - (1c) Loss of expectation of financial support
 - **Cap:** 3x average weekly earnings at the date of the award (**s12(2)**)
 - Case Law: In assessment of damages for future economic loss, evidence as to inflation and possible increases in wages/prices inadmissible. (*Todorovic v Waller Jetson v Hankin*)
 - Economic loss must have regard to the total period during which P could have been expected to earn if the lifespan had not been curtailed by the accident (*Skelton v Collins*; reaffirmed in *Sharman v Evans and Griffiths v Kerkemeyer*)
 - Sole traders, partnerships, trading trusts are irrelevant (see *Husher v Husher*)
 - **S13: Future Economic Loss- Claimant's prospects and adjustments**
 - (1) Onus on the P to satisfy court assumptions about future earning capacity
 - (2) Court must adjust for **vicissitudes of life**
 - **+/- Contingencies:** prospects for promotion, future education, likelihood of unemployment, prison, child bearing responsibilities, marriage (*Wynn v NSW Insurance*)
 - Sickness, accident, unemployment, industrial disputes are 4 major contingencies which expose employees to the risk of loss of income (*Wynn*)
 - **S14: Damages for Future Economic Loss- Discount rate**
 - (2) Discount rate 5% must be applied on the lump sum for all future losses (in addition to the adjustments (vicissitudes of life)
 - **Future:** Obtain lump sum for all future losses; use table to compute present value of future continuing losses, Discounted 5% (**s14**), Vicissitudes of life (**s13**)
 - **S15: Damages for Gratuitous Attendant Care Services: general** (*Griffiths v Kirkemeyer; Kars v Kars*)
 - **S15(2)** Must show reasonable need (2a), solely because of injury (2b) and would not be needed but for the injury (2c); only in respect to those defined in Act.
 - **S15(3)** Service must be at least 6hrs/pw (3a) and for at least 6 consecutive months (3b)
 - **S15(B): Damages for loss of capacity to provide domestic services** Damages for loss of domestic capacity if P cannot fulfil responsibilities anymore. Only in respect to those defined in act; reasonable need and expectation to provide care; least 6 hours per week for 6 months.
 - **S15(c) Damages for loss of Superannuation entitlements**

- **S12: Loss of Earning Capacity**
 - **Step 1:** Estimate earnings over lifetime if uninjured (Eggshell skull rule)
 - **Step 2:** Deduct what now capable of earning; work related expenses; lost years.
 - **Step 3:** Convert to Lump sum (5% discount)
 - **Step 4:** Adjust for Contingencies (+ and – **s13 CLA**).
 - Prospects for promotion, future education, likelihood of unemployment, prison, child bearing responsibilities, marriage (*Wynn v NSW Insurance*)
 - **Lost Years Rule:** Allow recovery but costs of P's own maintenance in lost years must be deducted (*Skelton v Collins*)
 - **Loss of Entitlements:** Sickpay, holiday pay are allowed (*Graham v Baker*)
- **S15: Damages for Gratuitous care (*Griffiths v Kirkemeyer*)**

7. **Non-Economic loss (CLA Division 3)**

- **S16: Determination of damages for non-economic loss**
 - **S16(1)** Minimum threshold is 15% of the MEC; if P does not meet threshold, they are not entitled to the damages
 - **S16(2):** Capped at \$350,000 for a MEC
- **S17:** Maximum cap changes every year in October
- **S17A:** Tariffs for damages for non-economic loss
 - Court may refer to earlier decisions for determining appropriate award (1); lawyers may refer to previous court decisions too (3)
- **Others**
 - **Pain and suffering** (subjective)
 - **Loss of amenities/enjoyment of life** (objective and subjective element)
 - **Loss of expectation of life** (moderate amount only)

8. **Conclusion**