

Episode 54: Summary

Episode name: Symptoms and Causes - Causation and Quantum in Medical Negligence

Guest(s): Clare Eves

What area(s) of law does this episode consider?

Medical negligence and the calculation of damages.

Why is this topic relevant?

Beyond film and television medical negligence is not often sensational, it is often tragic and requires compassion and understanding from lawyers working in the field.

Legal practitioners in the field must be methodical and willing to consult medical experts with a range of expertise, as each claim is highly complex and can often involve highly technical medical questions rather than questions of law.

What legislation is considered in this episode?

Civil Liability Act 2002 (NSW)

Civil Liability Act 2003 (Qld)

What cases are considered in this episode?

Wallace v Kam [2013] HCA 19

- Mr Wallace mounted an argument that Dr Kam's failure to warn him of the risk of paralysis was the legal cause of an unrelated medical condition - neurapraxia - triggered by surgery. The High Court held that the distinct nature of the two risks, and Mr Wallace's willingness to accept the risk of neurapraxia, combined to support the finding that Dr Kam's failure to warn of paralysis could not be the legal cause of his neurapraxia.

What are the main points?

- If both the hospital and, for example, non-employee surgeon, are jointly liable for medical negligence then both parties will pay damages to the aggrieved party in proportion to their liability for the act.
- It must be determined whether the actions of the relevant medical professional were considered below the standard of a competent professional.
- Damages are determined by considering both economic and non-economic loss. Each state has a limit on the amount of damages payable to a successful claimant.

What are the practical takeaways?

- Be thorough when selecting and briefing a medical expert. Ensure they have specialised knowledge, training and clinical experience in the area the claim relates to. Evaluate how effective their communication is when briefing them on the issues.
- Clare speculates that the future of medical negligence law will be dictated by technological advances in the medical field. As technology is increasingly used for surgery, reading scans and diagnosing, the margin for human error will be

reduced. Where there is an error, however, it may be a product or software issue rather than a claim against a specific individual or hospital.

Show notes

[NSW Australian Medical Association 2021 Hospital Health Check key findings report](#)

[Queensland Australian Medical Association Hospital Health Check key findings report](#)