

ACC CHEAT SHEET:

CASE	LAW
<p><u>Deputy</u> 2016</p> <ul style="list-style-type: none"> - Hip implants 	<p>Issues:</p> <ul style="list-style-type: none"> - 'top up' reparation - can you rely on the tort bar (s 317), even if you are not in NZ or paying NZ taxes? <p>S 317 – bars further action for injury already covered within the Act</p> <p>Problems with allowing people to sue for overseas products?</p> <ul style="list-style-type: none"> - Would you make it more expensive to purchase products as NZ does not produce its own complex medical products - Do not want to erect blame back into the system - Social contract with ACC – acceptance which cannot be renounced when we don't like it - Disparities with two systems of justice in place <p>Judges – narrow literal approach to prevent double dipping, underlying principle – don't look for fault, can't sue</p>

ACC & Criminal Law

ACC = NO fault

Crime = fault

CASE	LAW
<p><u>Davies v Police</u></p> <ul style="list-style-type: none"> - Recklessly driving resulting in injury - ACC paid 80% income compensation - Davies ordered to pay 20% top up reparation 	<ul style="list-style-type: none"> - S 32 (5) "the court must not order the making of reparation in respect of any consequential loss or damage, for which compensation has been, or is to be, paid under the Accident Compensation Act 2001." <p>Majority (Elias, Blanchard and Anderson):</p> <ul style="list-style-type: none"> - ACC is a no-fault scheme and therefore no reparation (above 80% compensation) - Parliament would have explicitly stated reparation was available – threaten integrity of the scheme - ACC is a social contract, give up some entitlements to get entitlements automatically - Unfair to distinguish between those who are injured through crime (top up) and those who are not (no top up) – impact the integrity of the scheme (Elias) - S 317 – cannot sue in CL for damages, pivotal to social contract that you cannot recover extra money - 100% compensation – incentive to rehabilitate for work? - Community responsibility - Victim's varying incomes, dft. has already been punished <p>Minority (McGrath J):</p> <ul style="list-style-type: none"> - You can receive reparation for the 20% that ACC does not cover (this is not double dipping) - Parliament would have been clearer if they did not want this - Reparation is about giving the victim compensation - Rather compensate victims of crime because criminal punishments are difference - Woodhouse principles – complete rehabilitation and administrative efficiency
<p><u>G v Auckland Hospital Board</u></p> <p>Ptf. was rape one day after ACC came into force</p> <p>Sued at CL for deteriorating mental health</p>	<p>Meaning of <i>personal injury by accident</i>?</p> <p>ACC:</p> <p>S 21 (Cover for mental injury caused by certain criminal acts)</p> <p>→ S 21 (1)(b) "caused by an act performed by another person"</p> <p>→ S 21 (2)(c) G would likely be covered under the act as rape comes under Schedule 3 as sexual violation</p>

Is rape an accident?	An event which was not intended by the person who suffers the misfortune OR although intended by the person who caused it, resulted in a misfortune to him which he did not intend
<p><u>Adlam</u> Rejection of hindsight analysis for HC, ACC appeals</p> <p>Membranes broke early during pregnancy, was monitored, emergency C section performed, resulting in complications and Jeremy's injury If C section had been done earlier, he would be healthy</p>	<p>Judges use narrow, literal approach to uphold illness/ accident divide 'Failure to treat' cannot occur in circumstances where there are no observable indications for a different treatment course (s 33 (1)(d) – failing to provide treatment in a timely manner)</p> <p>Treatment injury does not occur when even with the benefit of hindsight a different course of treatment could have yielded a better result</p> <p>Court must find that there was either a breach of duty of care in traditional medical sense, or that while there was no negligence, the physician should have acted in a different way given some form of observable indication was present</p> <ol style="list-style-type: none"> 1. Claimant must establish treatment was given as defined under s 33 2. Injury was caused by the treatment and the injury was not a necessary or ordinary consequence of that treatment <p>Hindsight analysis – turn the scheme into a system where perfect treatment was a guarantee (McEnteer – perfect treatment is not guaranteed)</p>

ACC and work related injury

<p><u>Priddle v ACC</u></p> <p>Appellants were exposed to asbestos during employment Cover under ACC for mesothelioma Claim for lump sum compensation</p>	<p>Clause 55 states that ptf. who fall under s 30 (2) may not receive lump sum compensation</p> <p>Confirmed distinction between workers under s 30(2) and s 30(3) which provides narrower circumstances and provides you must prove causation</p> <p>ACC – s 20(1)(c) → s 20 (2)(e) → s 30 personal injury for work related gradual process (exceptions for gradual process diseased, usually don't cover illness)</p> <p>Judges use integrity approach – extend cover, twist words of P to uphold purpose of ACC, comprehensive cover. Taken away CL rights, so compensation. Venning J – Parliament creates legislation with intent, they would not say the same thing twice using different language</p>
<p><u>Toomey</u></p> <p>Facts: Chch earthquake – Toomey was helping in building as a builder Suffers PTSD and wants cover under ACC Issue – he was volunteering, does not fit cover for MI Granted cover</p>	<ul style="list-style-type: none"> - When some is made an agent of an event through the use of their skills which they are employed, they will receive compensation under ACC for psychological damage, even though they weren't working at the time (under s 21B) - Judges – use different approach rather than the broad purpose or policy arguments for ACC, - Linguistic argument over “employment” shows how judges can twist the will of P to uphold individual rights (P took away CL rights, compensation should be allowed)

ACC and pregnancy:

CASE	LAW
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<p><u>ACC v D 2007</u></p> <p>Pregnancy following failed sterilisation Compensation following birth of child? Medical misadventure</p>	<p>CA majority:</p> <ul style="list-style-type: none"> - Pregnancy is not a physical injury under ACC - 1992 Act was too narrow - Not physical injury – no harm or damage - Accepted the oddity that unwanted pregnancy would be the only result of medical misadventure for which cover was not available - Difficulty in seeing why other unplanned pregnancy wasn't included - Policy: do not want to burden concept of pregnancy with injury - Pregnancy unlike disease is not pathological <p>Minority:</p> <ul style="list-style-type: none"> - William Young P - Act was wide enough to cover – little difference between (b) and (f) - (f) – paradigm case – misdiagnosed cancer, treatable disease becoming untreatable – process of disease was not a physical or personal injury but cover was still available
<p><u>Allenby v H 2012</u></p> <p>Sterilisation procedure by A, H fell pregnant</p> <p>A appealed to the SC – pregnancy is not regarded as PI as it is a natural process</p>	<p>Majority:</p> <ul style="list-style-type: none"> - Personal injury was used in an expansive way, as pregnancy following rape was a personal injury, pregnancy resulting from medical misadventure (failed sterilisation) is also personal injury - Elias – pregnancy involves physical impacts greater than a 'strain or sprain' - <i>Woman who becomes pregnant (personal injury) following failed sterilisation (treatment injury) has cover within s 20 (2)(b) "treatment injury" and further personal injuries during the pregnancy are covered by s 20(2)(f)&(g) – personal injury caused by gradual process</i>
<p><u>J v ACC</u></p> <p>Decision took place before Allenby and was appealed on that basis</p> <p>Pregnancy following failed sterilisation Claim compensation following birth of child</p>	<p>Women cannot receive compensation after pregnancy, despite their situation clearly effecting their income (she was medically able to work – you must show you are physically/ mentally incapable of participating in the work force)</p> <p>She could not claim further compensation as there was a distinction between the fact that at some point the baby is no longer the consequence of the injury</p>
<p><u>Harrild 2003</u></p> <p>Avoiding the statutory bar</p> <p>Child was a still born Parents claim obstetrician failed to take RC and skill Claim for ED</p>	<p>Exemplary damages are statutorily barred by s 317 Stillbirth is a treatment injury for purposes of ACC s 20(2)(b)</p> <p>BUT – 1998 Act; the unborn child was not covered and an injury to the unborn child did not constitute an injury to the mother</p> <p>Majority:</p> <ul style="list-style-type: none"> - Foetus is not part of the woman, but it's a unique situation which should not be excluded from the Act

Avoiding the statutory bar:

S 317 – you can't receive damages for injury covered by ACC

S 319 – ED is not barred, but must be for punishment rather than compensation

CASE	LAW
<p><u>Palmer</u> 1998 CA ACC and NS, compensatory damages</p> <p>Tourists in rafting incident, wife drowns, husband witnesses and suffers PTSD</p>	<p>Could not sue on wife's behalf because of the ACC bar s 317 through s 26(1)(a) "death of a person"</p> <p>Palmer sought damages for his own personal injury Under earlier legislation Palmer would have received compensatory damages for mental trauma (and would not have been able to sue), but the 1992 Act removed cover for mental injury</p> <p>If there is no cover for a particular injury a claim exists, if the injury is covered but there is no compensation for its particular consequence, the bar applies</p> <p>Policy: you can sue for ED unless/ until the person dies, if you cannot receive compensation you should be able to sue, American should be able to sue?</p>
<p><u>Yarrall</u></p> <p>S sued as a result of a car accident she said was caused by Yarrall</p> <p>Did S suffer mental injury because of PI caused by Y</p>	<p>Multitude of causes for S's mental state; trauma of accident, death of unborn child, death of mother, own injuries, loss of marriage – no financial/ emotional support</p> <p>S cannot sue for unborn child (<i>Harrild</i> says injury to unborn child is injury to the mother) and can't sue for own injuries because that is a mental consequence of physical injury → both barred by s 317</p> <p>Can continue common law proceedings for other causes</p>