DAVIES & DAVIES

Davies & Davies Associates Ltd
Solicitors & Chartered Surveyors

31 Pearce Drive Faringdon Oxfordshire SN7 7ND
0800 840 4025 enquiries@dda.law **www.dda.law**

February 15, 2026

Common Sense Prevails Over The Accountants: A Conclusion on Stewart v Metro North Hospital and Health Service HCA 34

Stewart v Metro North Hospital and Health Service [2025] HCA 34

Date: 3 September 2025

Judges: Gageler CJ, Gordon, Edelman, Jagot, Beech-Jones JJ

Key Words:

Personal injury damages, assessment of damages, reasonableness, mitigation of loss, cost of home care, institutional care, Sharman v Evans, compensatory principle, autonomy, mental well-being, Stewart v Metro North Hospital and Health Service

Summary

On 3 September 2025, the High Court of Australia unanimously allowed the appeal of Michael Stewart against Metro North Hospital and Health Service (MNHHS). The case concerned the assessment of damages for personal injury, specifically whether it was "reasonable" for the appellant to claim the cost of medical and nursing care in his own home (approximately $4.9m) rather than in an institutional setting (approximately $1m) [13].

The High Court overturned the decisions of the Queensland Supreme Court and Court of Appeal, which had denied the home care costs based on a balancing exercise of health benefits against financial cost [3]. The High Court held that the lower courts applied an erroneous test derived from a misunderstanding of the 1977 case Sharman v Evans (1977) 138 CLR 563 [48]. The correct approach is to first determine if the plaintiff's choice is a reasonable response to **repair the consequences of the tort and restore their pre-injury position**. If it is, the onus shifts to the defendant to prove that the plaintiff unreasonably failed to mitigate their loss by refusing a cheaper alternative [4]. The matter was remitted to the Supreme Court of Queensland for the assessment of damages.

Key Themes:

1. ***The Compensatory Principle****: The primary goal of tort damages is to put the injured party in the same position they would have been in had the tort not been committed, so far as money can do [1].*
2. ***Reasonableness vs. Mitigation****: The Court distinguished between the reasonableness required to prove a loss (an onus on the plaintiff) and the reasonableness regarding mitigation*

of loss (an onus on the defendant to prove the plaintiff unreasonably refused an alternative) [21, 25].

3. ***Autonomy and Choice****: The judgment emphasises respecting the injured plaintiff's choice to live in a "home setting" rather than an institution, treating it as a matter of dignity and restoration of their pre-injury life [41-44].*
4. ***Clarification of Sharman v Evans****: The Court clarified that the 1977 precedent Sharman v Evans should not be interpreted as a rigid rule that balances cost against health benefits, nor should it exclude benefits that are "entirely one of amenity" from being reasonable grounds for higher costs [37-38, 43].*
5. ***Mental Well-being****: The Court recognised that living at home offers benefits beyond strict physical health, including mental well-being and the ability to live with family and pets [11-12, 45].*

Background

1. **Pre-Injury Life:** Prior to 2016, Mr. Stewart lived in a rental property with his brother. He had a close relationship with his son, Jesse, and his dogs, who would often stay with him [2, 5].
2. **The Negligence:** In 2016, Mr. Stewart suffered catastrophic injuries due to the negligence of MNHHS at Redcliffe Hospital, resulting in bowel perforations, sepsis, cardiac arrest, stroke, and extreme brain injury [6].
3. **Current Situation:** At the time of trial, Mr. Stewart resided in an aged care facility (Ozanam). He was miserable, his physical condition was deteriorating due to a lack of therapy, and he was separated from his son and dog, who were not permitted to stay at the facility [7-8].
4. **The Dispute:** Mr. Stewart sought damages to fund care in a rented home (Option 3: ~$4.9m). MNHHS argued for the cost of care at the institution with additional external therapy (~$1m) [12-13]. The Trial Judge and Court of Appeal ruled that because home care did not offer "significantly better" health benefits than Option 2, the high cost of home care was unreasonable [15-16].

Legal Issues and Analysis

The Error of the Lower Courts: The Trial Judge and Court of Appeal applied a test of "reasonableness" that balanced the financial cost of home care against the physical health benefits it provided. They concluded that because additional therapy at the institution could theoretically provide similar physical health outcomes, the extra cost of home care was unreasonable [3, 17-18]. The High Court ruled this approach erroneous because it reduced the inquiry to a simple balance sheet exercise [48].

The Correct Approach to Reasonableness: The High Court established a two-step analysis rooted in the compensatory principle:

1. **Plaintiff's Proof of Loss (Reasonableness of Choice):** The plaintiff must show that their choice (e.g., home care) is a reasonable response to **"repair the consequences of the tort"** and restore them to their pre-tort position [4].
    1. In this case, returning to a home setting (even a rented one) restores Mr. Stewart's position far closer than remaining in an institution because it allows him to live with his son and dog [43-44].
    2. The Court noted that in 2025, it is "not unusual" for a severely injured person to choose home care, and such a choice is generally reasonable [45].
2. **Defendant's Proof of Mitigation:** Once the plaintiff establishes their choice is reasonable,

the onus shifts to the defendant (MNHHS) to prove that the cost could be avoided by an alternative option that the plaintiff **unreasonably refused** [45-47].

1. This is a rule of mitigation. The defendant must show the plaintiff failed to mitigate their loss [28].

Application to Mr. Stewart: The High Court found that Mr. Stewart's choice to live at home was reasonable as it improved his quality of life and mental health. Consequently, the burden was on MNHHS to prove that refusing the cheaper "institutional care + extra therapy" option was unreasonable [48-52].

MNHHS failed to discharge this onus. The lower courts found that the cheaper option relied on an external care assistant developing a rapport with Mr. Stewart to motivate him. MNHHS did not establish the likelihood that this rapport would actually develop in an institutional setting to the extent necessary to match the benefits of home care [47]. Therefore, Mr. Stewart's refusal of the institutional option was not unreasonable [48-52].

Conclusion

The High Court allowed the appeal with costs. The Court held that Mr. Stewart is entitled to damages calculated based on receiving care in his own home. The total quantum of damages agreed upon by the parties on this basis—and which the Court indicated should be awarded—was approximately **$5.88 million** [55]. The orders of the lower courts were set aside, and the matter was remitted to the Supreme Court of Queensland for the formal assessment of damages and consequential orders [56].

Key Takeaway:

The "touchstone of reasonableness" in assessing damages is not a simple cost-benefit analysis where a judge weighs health outcomes against dollars.

*Instead, if a plaintiff's choice to live in their own home is a reasonable attempt to restore their pre-injury life, autonomy, and mental well-being, they are entitled to the cost of that care. The defendant can only avoid paying this higher cost if they can prove (with the onus on them) that the plaintiff is acting **unreasonably** by refusing a cheaper alternative [4].*

Parting Thoughts

It turns out that if you negligently destroy a man's life to the point where he requires 24-hour care, you cannot simply force him to live in an institution because it looks better on a spreadsheet.

For decades, lawyers and lower courts have looked at the 1977 precedent of Sharman v Evans and treated it like a biblical commandment to be miserly. They convinced themselves that "reasonableness" was nothing more than a cold, actuarial balance sheet where a plaintiff's dignity was weighed against the defendant's bank balance [37-38]. The Supreme Court of Queensland essentially told Mr. Stewart that while living at home with his son and his dog would be nice, a nursing home with a visiting therapist was "good enough" because it was cheaper [3, 11-12].

The High Court has, thankfully, looked at this logic and decided it is absolute rubbish.

The Court has clarified that we are not shopping for a used hatchback; we are trying to put a broken human being back in the position they would have been in had the hospital not ruined everything [23-24]. The new rule of thumb is delightfully simple: living in a home is normal. Living in an institution is not [42, 50]. Therefore, if a plaintiff chooses to live in a home to repair the shattered remnants of their autonomy, that is a reasonable choice [45].

Crucially, the High Court flipped the burden of proof. It is no longer up to the victim to prove that their home is "significantly better" than the discount option. Once the victim proves their choice is reasonable—and wanting to live with your dog is eminently reasonable—the burden shifts to the negligent party to prove that the victim is being unreasonable by refusing the cheaper alternative [45-46].

Metro North Hospital failed to do this. They could not prove that an external therapist visiting a miserable man in a nursing home would generate the same "spark" as a man living in his own lounge room with his son [47].

Mr. Stewart gets his $5.88 million [55]. He gets to leave the nursing home. He gets to live with his dog. And the legal system has finally acknowledged that the value of a human life cannot be calculated solely by a bean-counter with a calculator. And on that bombshell, the appeal is allowed.

#StewartvMetroNorth #HighCourtofAustralia #PersonalInjuryLaw #Damages #HomeCare #TortLaw #AusLaw #PatientAutonomy #SharmanvEvans #LegalPrecedent #HCA34 #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

The Interpretation and Application of Sharman v Evans

1. ***Sharman v Evans* [1977] 1HCA 8; (1977) 38 CLR 563 at 573**—*The central authority under review; the High Court clarified that the "touchstone of reasonableness" discussed by Gibbs and Stephen JJ regarding the cost of home care versus institutional care was a proposition of fact relevant to that specific case (where health risks were higher at home and benefits were "entirely one of amenity"), not a rigid legal principle requiring a balancing of health benefits against financial costs in all cases.*
2. ***Arthur Robinson (Grafton) Pty Ltd v Carter* [1968] HCA 9; (1968) 122 CLR 649**—*Cited to contextualise the reasoning in Sharman v Evans; emphasises that the court must determine the "reasonable requirements" of the plaintiff, not the "ideal requirements."*
3. ***Wieben v Wain* (1990) Aust Torts Reports ¶81-051 at 68,189**—*Relied on to support the proposition that the outcome in Sharman v Evans concerned findings of fact specific to that case, and to acknowledge that subjective preference plays a role in whether an institution is a "safe haven" or a "prison."*
4. ***McNeilly v Imbree* (2007) 47 MVR 536 at 571 [155]**—*Cited for the observation that it is "commonly accepted nowadays" that significant benefits flow to a person from living at home, supporting the view that autonomy of choice is associated with mental well-being.*
5. ***Government Insurance Office of NSW v Mackie* (1990) Aust Torts Reports ¶81-053 at 68,211**—*Cited as an example of courts recognising that maintenance in a home environment can be "vital" to a plaintiff's well-being, justifying the cost of home care.*
6. ***Burford v Allan* (1993) 60 SASR 428 at 437**—*Identified as an example of an intermediate appellate decision that erroneously interpreted Sharman v Evans to mean high-cost home care requires "particular and special needs."*
7. ***Farr v Schultz* (1988) 1 WAR 94 at 112-113**—*Identified as an example of an erroneous approach that contrasted "reasonableness" with restitutio in integrum, treating it as a matter of fairness to the tortfeasor rather than proper compensation.*
8. ***Imbree v McNeilly* [2008] HCA 40; (2008) 236 CLR 510**—*Cited to reference the appeal history of McNeilly v Imbree.*

The Compensatory Principle: Proof of Loss and Mitigation

1. ***Haines v Bendall*** **[1991 HCA 15; (1991) 172 CLR 60 at 63**—*Cited for the definitive statement of the compensatory principle: the injured party should receive compensation to put them in the same position they would have been in had the tort not been committed, so far as money can do.*
2. ***Watts v Rake*** **[1960] HCA 58; (1960) 108 CLR 158 at 159**—*Relied on to distinguish the two limits of reasonableness: the plaintiff's onus to prove the reasonable cost of restoring their position, versus the defendant's onus to prove the plaintiff failed to mitigate loss by unreasonably refusing an alternative.*
3. ***Arsalan v Rixon*** **[2021] HCA 40; (2021) 274 CLR 606 at 615-616 and 626**—*Used to illustrate the application of reasonableness in proving loss (e.g., the cost of a substitute vehicle) and the onus on the defendant to prove that such costs could have been avoided.*
4. ***Livingstone v Rawyards Coal Co*** **(1880) 5 App Cas 25 at 39**—*Cited as the historical source of the compensatory principle.*
5. ***XX v Whittington Hospital NHS Trust*** **[2020] UKSC 14; [2021] AC 275 at 322**—*Cited to support the principle that steps taken to restore what was lost (e.g., surrogacy) must be reasonable ones, and the costs incurred must be reasonable.*
6. ***Armstead v Royal & Sun Alliance Insurance Co Ltd*** **[2024] UKSC 6; [2025] AC 406 at 429**—*Cited for the principle that the onus is on the wrongdoer to show a "good reason" why they should not be liable for the full extent of the loss.*
7. ***British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd*** **[1912] AC 673 at 689**—*Cited to support the view that the assessment of reasonableness regarding mitigation depends on what is ordinary in the circumstances.*
8. ***Fazlic v Milingimbi Community Inc*** **[1982] HCA 3;(1982) 150 CLR 345 at 353-354**—*Cited regarding the defendant's onus to prove that loss could have been reduced by medical treatment unreasonably refused by the plaintiff.*
9. ***Lewis v Australian Capital Territory*** **[2020] HCA 26; (2020) 271 CLR 192**—*Cited to affirm the aim of the compensatory principle is to rectify wrongful acts and repair consequences.*
10. ***CSR Ltd v Eddy*** **[2005] HCA 64; (2005) 226 CLR 1**—*Cited for the requirement that a plaintiff must prove the reasonable cost of steps they have taken or will take.*
11. ***Munce v Vinidex Tubemakers Pty Ltd*** **[1974] 2 NSWLR 235**—*Cited to articulate the difference between the issue of damages (proof by plaintiff) and the issue of mitigation (proof by defendant).*
12. ***Chulcough v Holley*** **(1968) 41 ALJR 336**—*Cited for the "first task" of determining whether a claimed loss is a reasonable consequence of the tort before calculating cost.*
13. ***State Rail Authority of New South Wales v Brown*** **[2026] NSWCA 220**—*Cited in support of the "first task" principle in Chulcough.*
14. ***Jones v Watney, Combe, Reid, and Co Ltd*** **(1912) 28 TLR 399**—*Cited for the principle that the reasonableness of steps taken is assessed at the time they are taken, even if the result worsens the condition.*
15. ***Bloor v Liverpool Derricking and Carrying Co Ltd*** **[1936] 3 All ER 399**—*See Jones v Watney.*
16. ***Lamb v Winston [No 1]*** **[1962] QWN 18**—*See Jones v Watney.*
17. ***Admiralty Commissioners v SS Susquehanna*** **[1926] UKHL J0618-1; [1926] AC 655**—*Cited within Lewis v Australian Capital Territory.*
18. ***O'Brien v McKean*** **[1968] HCA 58;(1968) 118 CLR 540**—*Cited within Lewis v Australian*

Capital Territory.

19. ***Johnson v Perez* [1988] HCA 64; (1988) 166 CLR 351**—*Cited within Lewis v Australian Capital Territory.*

International Jurisprudence on Home Care Reasonableness

1. ***Thornton v Board of School Trustees of School District No 57 (Prince George)* [1978] 2 SCR 267 at 276, also 280**—*Cited for the "enlightened concept" that damages should dignify the injured person; supports the reasonableness of home care over institutional care.*
2. ***Andrews v Grand & Toy Alberta Ltd* [1978] 2 SCR 229 at 245**—*Cited for the observation that it is difficult to conceive of a reasonably-minded person of means who would not choose home care over institutional care.*
3. ***Rialis v Mitchell* [1984] 128 Sol Jo 704 (unreported, Court of Appeal of England and Wales, 6 July 1984)**—*Cited for the principle that the plaintiff's pre-tort position is the "starting point" and if their choice is reasonable, the defendant is answerable even if cheaper treatments exist.*
4. ***Sowden v Lodge* [2004] EWCA Civ 1370; [2005] 1 WLR 2129 at 2144 [38]; [2005] 1 All ER 581 at 594**—*Cited to emphasise that judicial "paternalism" regarding what is in a plaintiff's best interests does not replace the claimant's right to make a reasonable choice.*

Legislation:

Assessment of General Damages

1. ***Civil Liability Act 2003 (Qld)***—*Sections 61 and 62 are relied upon as the statutory authority governing the assessment of general damages for personal injury in Queensland, requiring the court to follow specific regulatory rules and injury scales.*
2. ***Civil Liability Regulation 2014 (Qld)***—*Schedule 3, Part 2 and Schedule 4 are relied upon to provide the specific rules and "injury scale values" (ISV) for calculating damages. The judgment notes the application of Item 5.1 of Schedule 4 to classify the appellant's injury as "Extreme brain injury" and Schedule 3, Part 2, Division 2, s 9 to allow the court to consider "other matters," such as pain, suffering, and loss of amenities, when assigning an ISV.*

Legal Texts & Commentary:

Reasonableness of Choice and Mitigation Standards

1. ***A Summers, Mitigation in the Law of Damages (2025) at 31***—*Cited to support the principle that the assessment of reasonableness—specifically regarding whether a plaintiff acted unreasonably by failing to take alternative action to mitigate their loss—is significantly affected by what is considered "ordinary" in the circumstances.*
2. ***A Burrows, Remedies for Torts, Breach of Contract, and Equitable Wrongs, 4th ed (2019) at 240***—*Relied upon for the observation that private treatment may offer valid compensable advantages that are "more than merely medical in nature," such as speed and comfort, and that it is difficult to see how it could be unreasonable for a claimant to choose such options.*

General Principles of Damages Assessment

1. ***H Luntz, Assessment of Damages for Personal Injury and Death: General Principles (2006) at 178 [10.8]***—*Cited to establish that the assessment of whether steps taken by a*

plaintiff to restore their position are reasonably required must be carried out at the time those steps are taken or proposed; consequently, costs for a reasonable decision (e.g., medical treatment) are recoverable even if the result ultimately worsens the plaintiff's condition.

2. ***A Tettenborn and D Wilby (eds), The Law of Damages, 2nd ed (2010) at 723 [29.37]****—Cited to affirm the fundamental requirement that, when seeking to restore what has been lost, the steps taken or proposed by a plaintiff must be reasonable ones, and the costs incurred for those steps must also be reasonable.*

Nigel Davies BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, CArb, GMBPsS, Panel Registered Adjudicator, Mediator, Mediation Advocate, Chartered Builder & Chartered Construction Manager, Chartered Surveyor & Civil Engineering Surveyor, Chartered Arbitrator, Author, and Solicitor-Advocate

Adjudicator Assessor and Re-Assessor for the ICE and the CIArb
Arbitrator Assessor for the CIArb
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012