**MENTAL HEALTH EPISODE MASTER (1).mp3**

**Speaker 1** [00:00:02] Hello, you are listening to the School of Law podcast from the University of Aberdeen. Hello Lauren Mitchell.

**Speaker 2** [00:00:08] Hi there Neil Whitman, good to see you again today, and it can only mean one thing, it's time for another episode.

**Speaker 1** [00:00:15] I know, it's time to push out another episode to the ever-growing series, just looking at some of the episodes we've done so far. Episodes on anti-slap laws, copyright, do you want to give us a couple?

**Speaker 2** [00:00:28] Energy and also crypto. You know what Neil, I'm actually beginning to learn more and more about the subject of law the more we record for this series and I just find it so interesting each and every different bit of it. And today we're covering, shall I tell everyone,

**Speaker 1** [00:00:45] Go on, do it.

**Speaker 2** [00:00:46] Mental health. We recorded this one a little earlier and we spoke with Dr Ewan West and Professor Greg Gordon.

**Speaker 3** [00:00:54] One of them is to do with the fact that, frankly, physical injuries are far more difficult to fame or fabricate than mental injuries.

**Speaker 4** [00:01:06] They change the law thinking this seems sensible, but they're setting a precedent for the future and the precedent might have unwelcome consequences that they haven't been able to foresee.

**Speaker 3** [00:01:16] What the secondary victim suffers should not have to come up to the level of a Greek tragedy.

**Speaker 4** [00:01:23] You've got two very well-qualified psychiatrists standing in front of you. One says, yeah, it's clearly post-traumatic stress disorder, and the other says, no it's not.

**Speaker 3** [00:01:32] And perhaps for good reason, we still maintain some distinction in the law between ordinary suffering and abnormal suffering.

**Speaker 2** [00:01:44] More on that shortly. Also later, we will be taking on a tour of the university campus.

**Speaker 1** [00:01:50] We are. We're going to be shown around by one of the brilliant university ambassadors, Kirsten Koss. And we're going the University Student Union. And it's been a while since I've been in a student's union. About 20, er, 25 years. So it was great to see it and I absolutely loved it.

**Speaker 2** [00:02:09] I was really surprised by it to be honest, I didn't know what to expect fully, but it's such a great place and let's face it, all students will be interested in seeing it and will probably visit themselves anyway when they come and study here at the University of Aberdeen.

**Speaker 1** [00:02:23] Indeed, so more on that later, after our episode, which Lauren has already alluded to, is all about mental health and the law.

**Speaker 2** [00:02:31] We started our conversation with Professor Greg Gordon. We wanted to set out the wider context of mental health. So we asked, to what extent does the law take into account mental health?

**Speaker 4** [00:02:45] It's a bit patchy and a bit episodic. There are some particular rights and some particular protections that are offered. But the law is often criticised for not having a fully thought out strategy in this area. It tends to be issue by issue. So for instance, in the context of workplace stress, it is possible in some circumstances to claim for unfair dismiss a lot to seek remedies based on. Based on a stressful working environment, but the thresholds for that are pretty high. It's quite difficult to bring yourself within the ambit of that. There are some specific protections for the elderly around guardianship and powers of attorney that kind of bears on mental health issues too. And there are some protections, but really probably not systematic enough, if someone safe for the sake of argument. Suffering a mental health episode and enters into a contract that was very kind of inadvisable and maybe very onerous, there are some circumstances where you can get out of that contract, have the contract kind of overturned, but it's not easy and the protections that are offered are quite limited in that regard and haven't really moved on very far for the last few hundred years. So, yeah, the law does take cognizance of mental health issues and is probably gradually getting a little better at it. It's a patchy kind of picture. It's far from perfect. I think you and you had an example that you were aware of as well.

**Speaker 3** [00:04:19] Yes, in a very specific respect is protection of debtors in certain circumstances from enforcement of their debts if they're going through a mental health crisis. So that would be one example in which the law is moving, albeit maybe slowly and incrementally, to recognise the impact of...

**Speaker 1** [00:04:44] Mental health issues on people. Why is it then, mental harm is so difficult to claim for, and why is the law slower to grant compensation for such suffering versus physical harm?

**Speaker 3** [00:04:57] Teasing out what we mean when we say we're claiming for something, what we're typically talking about here is seeking compensation for the likes of personal injury. Now there's an area in Scots law that deals with this called Delict. We're all to some extent familiar with the situation in which someone's been hit by a car and they seek compensation for their resultant injuries. What we're concerned with is a situation in which someone Maybe a bystander who witnesses the car accident seeks to claim not for physical injuries but for psychiatric injuries. Greg will be able to add to what I say here. I don't want to monopolise this huge issue about why mental harm is such a difficult thing to claim for, but here briefly are a few of the reasons. One of them is to do with the fact that, frankly, physical injuries are far more difficult to feign or fabricate than mental injuries. The notion that mental illness is in some sense less real than physical illness has largely disappeared, it's been discredited, but there remains the risk of mental illness being fabricated by a potential claimant. Of course there is a risk of that because there is potential for compensation.

**Speaker 4** [00:06:32] And if I can just come in here, I mean, obviously this is a controversial area, but you know, there are cases where it has been proved quite conclusively that this is what happened. You know, the case of Ormsby, for instance, which is one that I often give to my class, a woman, a female police officer who was caught up in a disturbance in Glasgow sued her employer. Claiming that she'd suffered serious mental health consequences as a result of being caught up in what was a violent disturbance. But there was clear evidence in that case that she was feigning her symptoms with a view towards obtaining compensation, including the time when she'd just been diagnosed by a psychiatrist. She came out into the waiting room and said to her partner, you know, Kerching. As if to say, you know, that's the payout secured. So it's very rare that these sorts of things happen, but there are such cases out there. And it does, at least to some extent, lead to a certain degree of hesitance on the part of the law to granting compensation. There's much less emphasis on that than there used to be in the case law. But it's still in there as a kind of an undercurrent, I would say.

**Speaker 3** [00:07:54] It's such a huge issue. I mean, there are what might broadly be called good reasons and more questionable reasons as to why the courts have been slow to award compensation. If I might, if I may, I'll just give you one of the more subtle ones. What we're concerned with in Delict is often negligence, people who've been careless, whether behind the wheel of a car or while operating heavy machinery. What we're thinking about is, to whom? Is this careless person potentially liable? To whom did they owe a duty of care? And there is a view that while it's perfectly straightforward to hold someone liable for the physical harm that they cause, because it would be easy for them to predict whom they might physically harm, it's not straightforward where the harm caused is psychiatric. And the reason for this, if someone hits me with a car, or I don't know, someone who's a bodybuilder or something like that, that there's gonna be physical harm in each case. That's really predictable. And a driver should be able to predict that sort of harm. Hence, that driver should owe a GT to me or to the bodybuilders. But someone standing at the roadside could have any sort of reaction to this. It could range from complete indifference to PTSD. Something in between it might just ruin the person's day and those are difficult things for the driver So that's one of the more subtle, arguably more principled reasons why the law is a bit slower to impose a duty where mental harm is concerned.

**Speaker 2** [00:09:40] If I can ask you, Greg, do you think it's time for a reform of some description?

**Speaker 4** [00:09:47] Various attempts have been made to reform the law around mental harm. One of the main mechanisms by which the law gets reformed in Scotland and also in England and Wales is through the Law Commission. And at various points both the Scottish Law Commission and the Law commission of England and Wales have looked at reforming the area of negligently inflicted psychiatric injury. They've made some proposals. And they've never actually been implemented by Parliament yet. The last time the Scottish Government looked at these proposals I would suggest it was quite a low-quality consultation. They looked at the number of responses that they got and said well some people are in favour, some people are against, therefore because there's not consensus we're not really going to we're going to do anything about it. I think that's a pretty weak form of consultation because there is almost never going to be consensus. It's not a question of what do the numbers say. It's a question really of looking at the arguments and seeing what happens. I think there is a real concern that if the law is liberalised here, the wrongdoer has made a mistake. Perhaps behind the wheel of a car, as Ewan said, or perhaps while trying to direct a large crowd at a football match. A person makes a mistake, there could be a lot of people physically injured. The mental health ramifications of that could be vast. There could be thousands, literally, of claimants. And so the law's very cautious about kind of opening the box, changing radically the way in which the bounds of liability exist. It's become very conservative. The most recent major attempt to change the law in this regard came with a case called Paul, which went to the Supreme court last year. And in that case, the Supreme Court made some minor adjustments to the circumstances in which liability would be held established, but more or less held the line of the previous conservative cases. The courts have looked at this, they've looked at it time and time again, but certainly since the 1970s it's been quite a conservative approach that's been taken, largely because of this fear that if they shift the dial on liability the bounds of liability are going to get completely out of hand.

**Speaker 1** [00:12:17] So when judges are making decisions, do they look at each case individually, like case by case, and decide based on the specific details? Because it seems to me that there's a bit of a balancing act. On one hand, they have to follow the law, but on the other, every situation is a little bit different. How does it all work?

**Speaker 4** [00:12:37] The common law is made up essentially of an aggregation of decisions that have been handed down by the judges over the years. In the context of statute law, the judge's job is to interpret what the statute says and to make a final decision which is binding on the parties but also has some precedential value going forward on what the statutes says. In the context of the common law, the judges themselves have built the law up. Over generations and they can change it. I mean there's quite an interesting debate about the extent to which the judges actually change the law or the extent which they simply reveal what was always implicit in the law. I think if one takes a realistic approach they do change the law, they do make the law as they make these decisions. I don't think there's anything wrong in that because I think the law has to have freedom to evolve. And change to fit modern circumstances. But in particular, if you're sitting at quite a high level of the judicial hierarchy, so if you are sitting in the Supreme Court or an appeal court, judges that are below you will look at your decision and will be bound by it in future cases, as long as the cases are the same. There is the potential for creativity in at least some circumstances. Judges can take the law out into other directions. But it is limited by, as I say, the judge's worry that they're going to almost let a genie out of the bottle, that they change the law thinking, oh, this seems sensible. But they're setting a precedent for the future, and the precedent might have unwelcome consequences that they haven't been able to foresee. Because, frankly, there have been occasions when the courts have had their fingers burnt in the past by trying to change the laws, and then, oh, my goodness, what has happened here? The law may be five years later and say actually we're gonna have to rein this back in, we may have got that wrong.

**Speaker 1** [00:14:40] Recently I saw a video, a piece of media, where Robbie Williams was talking about how much the conversation around mental health has changed since the 90s. There's less stigma now, and people are more open about it, and he was talking just about that. Do you think that the law has kept up with this shift? Has there been a similar acceleration in how the legal system deals with mental health, or has it been slower to change?

**Speaker 3** [00:15:09] This idea, as Greg said, that the most recent decision of the Supreme Court is quite a conservative one, at least conservative with a small C. In cases involving so-called secondary victims, that is people who witness someone else being physically injured, typically, there was a perception for a long time that there is a requirement of a shock that the secondary victim suffers. It's one of the aspects of psychiatric injury law that has been, frankly, the most mocked and derided because it seemed to reflect an outdated view of how mental illness develops. They also dismissed the idea that there had to be a horrifying event. Lord Leggett and Lady Rose, who gave the leading judgement in the case. Majority judgement were very, frankly, quite withering about some of the statements in previous cases. So there's one in which a judge describes what a secondary victim suffered as Sophoclean or something to that effect, to which Lord Leggett and Lady Rose retort. What the secondary victim suffers. Should not have to come up to the level of a Greek tragedy. They've restricted liability in a different way, however, because they've said that to claim as a secondary victim, there has to have been some sort of accident, like a car accident or a tragedy like the Hillsborough disaster, something sudden and external. But one thing that the Supreme Court held on to was the need to show that you've suffered a recognised psychiatric disorder. In a way, following on from what Greg was saying to do with the difference between legislation and judicial reasoning, sometimes legislation is more up to the job. There was a case called Rothwell. Well, there were a number of claimants, but basically, they had inhaled asbestos. Now asbestos, it's well known, can cause cancer. But the claimants hadn't contracted cancer, at least not yet. What they were claiming for were these things called plural plaques. Indicate that one has been exposed to asbestos but in themselves are symptomless. Almost everyone who claimed in this case had this physical change inside their bodies, in the lungs, and as anyone probably would be, they were anxious, they were worried, but that wasn't enough. They couldn't claim for the physical change They couldn't claim for the quite understandable anxiety, and they couldn't sort of try to combine the two. What happened in Scotland was the Scottish Parliament did pass legislation to say that this internal change to the lungs was actionable loss. It doesn't mean that the House of Lords decision is irrelevant. It just means that in this one very specific area, and it's an illustration, it's often pointed to as an illustration of the benefits of legislation here, because Parliament... And the Scottish Parliament have the luxury in a way of making targeted amendments, perhaps for good reason we still maintain some distinction in the law between ordinary suffering if it abnormal suffering, which people should not have to contend with.

**Speaker 1** [00:19:20] Okay, so we've been talking about how the law deals with complex harm, like psychiatric injury, but I'm curious, if someone is claiming to have PTSD or another mental health condition, how does the court actually access that? Is it based on a doctor's evaluation or some kind of questionnaire? How much weight does the Court give to expert witnesses in making those types of decisions.

**Speaker 4** [00:19:46] The court's role is in Scotland and also in England and Wales, the court is an adjudicator. It's not really an investigator. You can think of the judge essentially as like a referee in a football match. So you've got the pursuer who is trying to establish the case. The pursuer has the burden of basically proving the case, and the purser will be the person who has suffered the harm, and they will be suing the person that they seek to hold accountable. Be sensible for the pursuer to hire a lawyer who's got a track record and some expertise in this area, who understands what you actually need to bring to the court to persuade a judge to find in their favour. So the whole question of how you deal with the expert witness, there are some circumstances in which the judge will get drawn into dealing with that, in particular if it's a court appointed witness or if it is a joint witness, but classically the parties will hire their their own experts and then sometimes the court has got the very difficult task of you've got two very well qualified psychiatrists standing in front of you. One says yeah it's clearly post-traumatic stress disorder and the other says no it's not. The person has suffered some consequences but they don't meet the threshold of being a recognised psychiatric condition and if they're not a recognised psychiatrist condition it doesn't constitute harm that the law allows people to recover damages You know, that's another layer of complexity aside from aside from what you might call the fully legal Questions, you've also just got the whole question of how you manage the factual dispute And and all of the evidence around that It's it's also tricky

**Speaker 2** [00:21:31] Ewan, we always like to finish up asking the following question. Anyone listening to the podcast and interested in studying what we have been discussing today, what does the University of Aberdeen have on offer for us?

**Speaker 3** [00:21:43] So one opportunity you have at undergraduate level to study mental health is in the Law of Delict course, Delict and Unjustified Enrichment as it's known, but it's something you'll have to study in first year. You'll also encounter it in other subjects, for example, those concerning the law of succession.

**Speaker 4** [00:22:06] And in the context of a research degree, obviously, given that this is such a difficult area of law, it's an area of low where you can see that there may actually be some problems with the law. This is ripe for someone to conduct research, either within the law school or perhaps some sort of interdisciplinary research across law and economics, or law and public policy, or law in medical science. And these are all things that we can. Or things that we can do here at the University of Aberdeen.

**Speaker 1** [00:22:37] Professor Greg Gordon and Dr. Ewan West, it has been for us, Lauren and myself, yet another fascinating chat. Many thanks for taking the time out to discuss with us today's topic. We both really appreciate it. Thank you. It's a pleasure, thanks. Professor Greg Gordon and Dr. Ewan West, it has been for us, Lauren and myself, yet another fascinating chat. Many thanks for taking the time out to discuss with us today's topic. We both really appreciate it.

**Speaker 4** [00:23:07] Thank you. It's a pleasure.

**Speaker 2** [00:23:09] What a great subject we had today. I will be honest though, it was a little bit heavy in places. Do you know what I mean?

**Speaker 1** [00:23:15] It was, but I think it was all relevant, isn't it? And to get a real feel for the subject, there's no avoiding it really, is there? So those kind of questions that are on topic just have to be asked.

**Speaker 2** [00:23:26] Yeah, I do, Neil. Really well put. But we're not quite ready for signing off just yet, are we?

**Speaker 1** [00:23:31] No. We have something a little different for this episode. We thought, since we have an Access All Areas Pass to the University, we should use it.

**Speaker 2** [00:23:42] But just let everyone know, we haven't been given lanyards.

**Speaker 1** [00:23:46] Yet. We haven't been given lanyards yet. I'm asking for those for the next episode.

**Speaker 2** [00:23:53] We were invited to take a tour of some of the key areas of the University of Aberdeen by University Ambassador Kirsten Koss. And we headed, of course, to the most important part, the University Student Union.

**Speaker 1** [00:24:05] It's been a while since I've been inside a student union. Lauren, what about yourself?

**Speaker 2** [00:24:10] I think it's been about 10 years because I am a dinosaur now.

**Speaker 1** [00:24:13] You can double that number for me. Kirsten, what can we expect when we go inside?

**Speaker 5** [00:24:16] I mean, this is absolutely the place to be on campus. Let's walk and talk, shall we?

**Speaker 1** [00:24:21] Tell me about a violet then.

**Speaker 5** [00:24:22] Yeah, so the student union, I would say, is the one stop shop for hanging out, for having your lunch, but it also doubles as a study space as well. So there's lots of different things that I'd like to show you inside the building.

**Speaker 1** [00:24:33] Great. We've walked through the foyer and we're going through to, I guess, the main area where there's lots going on. There's, uh, places to sit, places, to study places to eat.

**Speaker 5** [00:24:43] Yeah, I mean, so upstairs we've got the University Food Court, which serves a range of different foods, has vegan, vegetarian and lots of different cuisines as well. And then we also have various different services in the building as well

**Speaker 1** [00:24:57] Over to our side here, we've got what? It's a coffee shop.

**Speaker 5** [00:25:00] So this is Union Brew. This is the Student Union's cafe, which sells the cheapest tea and coffee on campus. And they also have some microwaves as well, where you can take your own food as well which is obviously perfect for students who maybe budgets are a bit tight.

**Speaker 1** [00:25:14] Being an ambassador, being a student ambassador, you've used that line before, the line about the cheapest place to grab a coffee, haven't you?

**Speaker 5** [00:25:20] For sure, but it's also my favourite place to grab a cup of tea as well.

**Speaker 2** [00:25:22] I can see down the corridor, is it a swap shop that's there?

**Speaker 5** [00:25:26] Yeah, so the Student Union has a lot of initiatives actually. A few of them you can actually see just here. There's the Student Unions Clothes Swap Shop. All the clothes and bedding and cutlery and things there are free. Super useful for international students especially, to grab things that perhaps would be a bit more difficult to take. There is also a food kind of sharing hub as well, where all of the food is free. How does that work? The Student Union purchase things from local shops, but also they get donations from local charities too. And anyone can take whatever they like there, so it's good and there's no judgement as well.

**Speaker 1** [00:25:59] You spotted Lauren, you spotted the stop shop arcade machines have also grabbed my attention.

**Speaker 5** [00:26:03] Yeah, so the room you can see at the end here is called Kamila's Game Room, named after the student officer who created the idea, I guess. And it has pool tables, air hockey, and also PlayStation, whatever number we're on there. What are the opening hours? The student union, goodness knows what time it opens, but it finishes at 8pm, so it is open until quite late at night. Oh, there's a shop as well, let's give that a quick mention. Yeah, so Bate Essentials is the university-owned shop, and it sells a range of different things. Sells some snacks and sandwiches, and some essentials like tea bags. But the main thing is that it's really useful for our stationery and university merchandise. You can get hoodies and things like that there as well.

**Speaker 1** [00:26:41] There's a, just to finish off, there's a wee stage just behind us with a PA system.

**Speaker 5** [00:26:45] Yeah, there was actually a quiz just here last night for the class reps, but we also host things like, last week there was a Ukrainian music night, and also we host things like election results and that there as well, so it really is a multi-purpose space.

**Speaker 1** [00:26:58] Kirsten, thank you very much.

**Speaker 2** [00:26:59] How good is this? This is brilliant.

**Speaker 1** [00:27:01] Wasn't like this when I was a student yourself.

**Speaker 2** [00:27:03] I've never been to a student union before, but I love it. It's just, it's quite a nice feeling about it. Everyone's just chilling out.

**Speaker 1** [00:27:08] It's a good vibe. Kirsten, thank you very much for your time. Thank you. And there it was, our latest episode of the School of Law podcast from the University of Aberdeen. A massive thank you to Kirstin Goss once more. We'll hear more from her, by the way, in future episodes.

**Speaker 2** [00:27:23] We absolutely will, Neil. She was fab. Also, our appreciation has to go out to Professor Greg Gordon and Dr Ewan West once more. Thank you so much for your time today. For this, our latest episode, all about mental health.

**Speaker 1** [00:27:38] Now if you would like to share this podcast and subscribe of course we'd be forever in your debt.

**Speaker 2** [00:27:45] Yep, you're right, Neil. It really helps get the podcast heard by more and more people and we'd love it if you could share.

**Speaker 1** [00:27:52] Thank you if you have already and thank you for listening to this, our latest episode. Until next time, goodbye.