contract was not the sole or dominant cause of Cole's damage, it causally contributed to the loss, and thus Hurst was liable for damages for the agreed $25,000 sum.[16] Neither, sections 6(c) or 10[17] applied to the contractual claim.[18] PL

ENDNOTES:

1 Fleming J.G., (1998) *The Law of Torts*, 9th ed., LBC, Sydney, 1998, p. 206; *Donoghue v Stevenson* [1932] AC 562.
2 McMurdo P, McPherson JA and Helman J.
3 A device which controls the flow of gas to an oven.
4 At [15] and [20].
5 At [16] and [20].
6 *Law Reform Act* 1995 (Qld).
7 At [15-16] and [20].
8 At [18].
9 At [26].
10 At [27-28].
11 At [28-30].
12 At [2] and [34-35].
13 In that the contract to install a manual value was an agreement to do an act constituting an offence under the *Gas Act* 1965 (Qld) and *Gas Regulation* 1989 (Qld)
14 At [43].
15 McMurdo P and McPherson JA.
16 At [3-4], [5], [21-22] and [35].
17 *Law Reform Act* 1995 (Qld).
18 At [8], [32-33] and [35].

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Is it GBS or SNG?

Smit v Brisbane South Regional Health Authority [2002] QSC 312 (9 October 2002)

If you thought you ever had a bad day in court, spare a thought for Mr Smit who took on the Brisbane South Regional Authority (the body that ran public hospitals in Queensland at the relevant time).

His plight began in August 1992.

On 5 August, at night, the plaintiff had a shower and found lumps in his neck and groin. He went to the Redland Hospital, but they took too long so he left. He went to see his general practitioner later that night.

Over the next eight days, he went to his general practitioner repeatedly and attended at three hospitals.

Finally, on 12 August, a provisional diagnosis of Guillain-Barre Syndrome (GBS) was made. The diagnosis was not 'confirmed' until 13 August. The plaintiff was then given plasma exchange on 14, 16 and 19 August.

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Just to keep up with the medical lingo, GBS is a disease that attacks the nervous system. To make things confusing, there is a condition known as acute sensory neuropathy (SNG) which also attacks the nervous system. The two conditions share some of the same symptoms.

The plaintiff called an immunologist who said the plaintiff had a form of GBA. The condition is a medical emergency and requires plasma exchange within six to eight hours. According to that expert, the plaintiff had a 70 per cent chance of the treatment working had it been done in time.

The defendant called two neurologists and an employee of one of the hospitals who saw the plaintiff. These doctors said that the plaintiff suffered from SNG. The judge agreed.

Worse still, the judge, Muir J, said that even if the plaintiff had GBA, the plaintiff did not prove that plasma transfers should have been given earlier and did not prove they would have made a difference. According to the accepted evidence of the defendant's experts, plasma is not given until a patient cannot walk. One has to wonder why it is given at all or whether a doctor can ever be negligent in missing this condition.

Anyway, putting aside the nature of the condition and the supposed lack of causation, the court ruled that the doctors at the hospital had not even been negligent. As junior members of staff they did all that could be expected of them (and their level of experience) in assessing the condition and further, that they were not obliged to refer the patient to a specialist.

Incidentally, the claim was initially against several doctors, the hospitals and the medical centre. All but the hospitals were released from the claim before trial. Quantum was agreed at $900,000. But that is all academic now.

You have to wonder what it takes to win a medical negligence trial these days. Maybe it is just an isolated case where the evidence came out the defendant's way. You decide. PL