

Hotel operator and licensee's duty of care to drunken patrons

Last week the High Court handed down a decision highly anticipated by licensees and insurers alike, in relation to an appeal instituted by the Tandara Motor Inn, a licensed hotel in Tasmania, against the Motor Accidents Insurance Board and the widow of a former patron of the hotel.

The patron rode his motorcycle home from the hotel intoxicated and suffered fatal injuries. Both the deceased's widow and the Board originally instituted proceedings against the licensee and proprietor of the hotel. It was alleged both the hotel licensee and proprietor:

- were aware the deceased was intoxicated at the time of his departure from the hotel; and
- owed and had breached their duty of care to the deceased by their omissions which included a failure to call the deceased's wife to collect him and a failure to confiscate the deceased's motorcycle or hold on to his keys.

The trial judge initially found that the licensee and proprietor did not owe a duty of care to the deceased, but if they had, they would have breached that duty by not preventing the deceased from riding home. On appeal, the Full Court of the Supreme Court of Tasmania, held that the licensee and proprietor did owe and consequently had breached their duty of care to the deceased. A large sum in damages was then awarded to the deceased's widow and the Insurance Board.

In the High Court's decision, the majority of judges set aside the Full Court's decision, imposed their own decision to allow the appeal, and awarded costs against the deceased's widow and the Insurance Board.

The High Court's reasoning differed from both the Full Court and the trial judges in three respects. The High Court found:

- that even if there were a duty of care, and even if it was breached, it was not satisfied that the breach caused the deceased's death; and
- there was no duty of care owed by the licensee and proprietor to the deceased.

The High Court found it would not have been reasonable in the circumstances for the licensee to attempt to contact the deceased's widow and that it could not predict whether that action would have made any difference to the outcome. Therefore, it could not be established that the licensee or proprietor had caused the deceased's death.

Most importantly, the case has established several principles which are of assistance to licensees in determining their duty of care when dealing with intoxicated patrons. These include that:

- save for in *exceptional circumstances*, proprietors and licensees owe no general duty of care at common law to customers requiring them to monitor and minimise the service of alcohol or to protect customers from the consequences of the alcohol they choose to consume themselves;
- whether the circumstances are exceptional will depend on individual patrons' circumstances and will only arise where, for instance, a person is:

- so intoxicated as to be completely incapable of any rational judgment, of looking after himself or herself, and the intoxication results from alcohol knowingly supplied by the licensee for consumption on-premises;
 - an intellectually impaired or mentally ill drinker; or
 - the patron has become unconscious.
-
- the responsibility for how much a particular drinker chooses to consume is more fairly to be placed on the drinker than the seller of drink. It is difficult for liquor servers at licensed premises or ordinary observers to assess whether a drinker has reached the point of intoxication or to gauge how many drinks precisely a person consumes;
 - it would be too onerous for there to be a further duty on licensees to take reasonable care to ensure that patrons, whose capacity to care for themselves is impaired by their own doing, are safeguarded; and
 - save in exceptional circumstances, publicans only owe a duty of care to particular plaintiffs and not to the world or third parties who may be damaged by reason of the intoxication of their patrons. Another decision of the High Court, handed down the same day as the Tandara Motor Inn decision explores this point in greater depth and will be canvassed in a subsequent Snapshot.

Throwing ambiguity on the issues expressed by the majority, Chief Justice French refused to express an opinion on more general questions about the duty of care owed by publicans to their customers or to third parties. He suggested that the resolution of these questions in future will be likely to require consideration of the liquor licensing laws and the civil liability statutes of the relevant State or Territory. Whether that approach is favoured remains to be seen.

The Court acknowledged it is difficult to assess whether a person is drunk or intoxicated. This decision provides considerable relief for servers of liquor but it does not absolve licensees of their commitment to the responsible service of liquor. In fact, the majority of the High Court maintained that licensees were bound by important statutory duties in relation to the service of alcohol and the conduct of the premises in which it is served. Licensees should bear in mind their obligations in this regard during the impending festive season trade.