

Licensees' duty of care to drunken patrons (Part II)

In another break-through decision for licensees, the High Court of Australia recently upheld an appeal by the licensee of Adeels Palace restaurant in New South Wales, against two former patrons who sued the licensee for breaching its duty of care to them. The two patrons were shot and wounded at a New Years Eve function at Adeels Palace by a disgruntled patron who had been injured in a fight at the premises earlier that evening.

The two wounded men alleged that they had suffered injury as a result of Adeels Palace's negligence in not providing security during the function. The High Court held this licensee's duty of care to its patrons had not been breached.

The Court ruled that to prevent a breach of duty to patrons, licensees must ordinarily assess:

1. the probability that harm may occur at the premises as a result of violent and antisocial behaviour;
2. the likely seriousness of the harm that may occur; and
3. what precautions ought to be taken to avoid that harm.

Duty of care owed by licensees

A duty of care is owed by licensees to patrons because licensed premises are well recognised as places where care must be taken to prevent harm arising from violence and other anti-social behaviour. This includes a duty to take reasonable care to prevent or hinder the occurrence of violent, quarrelsome or disorderly conduct. The duty of care may also be reinforced by a statutory duty, as was the case in *Adeels Palace*. The equivalent statutory duty in WA is stated in s115 of the *Liquor Control Act* (WA).

A licensee's duty is not absolute. It is a duty to take reasonable care and not a duty incapable of performance by reasonable means.

Breach of duty of care

The Court held that the relevant test was what a reasonable person in the position of Adeels Palace would have done in the circumstances.

Whilst there is always a risk that there will be some altercation between patrons at almost any kind of event, particularly if the patron is consuming alcohol, that risk is to be weighed against whether the level of altercation that occurred was sufficiently foreseeable and of such a nature as to require the presence of crowd controllers.

The injured parties asserted that having licensed security personnel was the appropriate response to a risk of violence at the New Years Eve function. The licensee argued that it was not reasonably foreseeable that violence of that nature would erupt in or around the restaurant, given the low number and non-violent types of persons that were expected to be in attendance at the function and because there was no history of violence that demonstrated a need for security personnel.

In balancing these considerations, the Court took into account the number of patrons expected to attend the premises for the function, the atmosphere that could reasonably be expected at the premises at such a function, and whether there had been any suggestion of violence at similar events held in comparable circumstances at the premises.

Ultimately, the High Court held that it could not be proven that the reasonable response would have been for the licensee to employ licensed security personnel because it could simply not have foreseen the risk of violent behaviour of the nature that occurred at the function.

Therefore, the licensee's failure to provide security was not a breach of its duty of care.

Conclusion and recommendations

The outcome in *Adeels Palace* turned, very much, on the facts of the case, particularly that there was no history of violence at the premises and the violence that occurred was far more serious than could have been reasonably foreseen by the licensee. Therefore, the same outcome would not necessarily result for other licensees with a history of violence at their premises.

The decision reinforces the need for licensees to always be conscious of their duty of care to patrons. Licensees should assess the foreseeable risks and determine the appropriate response required to fulfil this duty so they are not exposed to liability for the injuries of their patrons.