

Insurance

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Hoteliers Liability for Intoxicated Drivers

In *Scott v CAL No 14 Pty Ltd (No 2)*,¹ a recent case before the Full Court of the Tasmanian Supreme Court, a hotel was held liable in tort for the death of a patron who crashed after riding his motorcycle home whilst intoxicated.

On its face, the decision seems to contradict the law established in *South Tweed Heads Rugby League Football Club Ltd v Cole*,² that licensed premises have no duty to ensure that patrons do not drive after consuming alcohol.

Background of the case

Mr Shane Scott was killed in a motorcycle accident after riding his motorcycle home from a local hotel whilst heavily intoxicated. His wife, Ms Sandra Scott, sued the hotel in negligence for allowing her husband to do so after consuming at least eight cans of pre-mixed alcohol at the hotel. Mr Scott's blood alcohol level was found to be 0.253%.

The Court held, by a 2:1 majority, that the hotel owed Mr Scott a duty of care, and that by allowing him to ride home, that duty had been breached.

We consider that this case is distinguishable from *South Tweed Heads v Cole*.

The case in-depth

Some of the distinguishing facts in this case are that the hotel in question was located in a small community, Mr Scott lived nearby and was well known to hotel staff, and Mr Kirkpatrick, an employee of the hotel, had himself served Mr Scott for almost the entire night in question and would therefore have known Mr Scott's level of intoxication. Further distinguishing this case is the level of control that Mr Kirkpatrick had to prevent Mr Scott from riding his motorcycle home.

Mr Scott had been drinking at the hotel with a friend, Mr Kube. During the evening, Mr Scott had informed both Mr Kube and Mr Kirkpatrick that his

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¹ [2009] TASSC 2.

² (2002) 55 NSWLR 113.

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wife was going to pick him up, and asked Mr Kirkpatrick if he could store his motorcycle in a hotel storeroom. This plan was agreed upon, and the motorcycle was placed in the storeroom with Mr Kirkpatrick retaining the keys to both the storeroom and the motorcycle.

Later in the evening Mr Scott was the only patron remaining in the hotel, and Mr Kirkpatrick informed him that he would no longer be served alcohol as he was becoming verbally aggressive and had been observed leaning his head and hands against the bar.

Mr Kirkpatrick asked Mr Scott if he would like for him to ring his wife to come and collect him. Mr Scott responded hostilely that he did not want his wife called. He then asked Mr Kirkpatrick for the keys to his motorcycle, and was given them.

Decision of the Court

The court held that the combination of Mr Kirkpatrick's knowledge of Mr Scott's intention to ride home and Mr Scott's obvious intoxication imposed a duty of care upon Mr Kirkpatrick to do his utmost to ensure that Mr Scott did not ride home.

The court ruled that the standard of care of the hotelier was not overly high. The hotel would have met the standard if Mr Kirkpatrick refused to hand the keys to Mr Scott. Tennett J added that it would have been reasonable for Mr Kirkpatrick to hand over the keys if Mr Scott had reacted aggressively to this refusal.

Alternatively, the court reasoned, Mr Kirkpatrick could easily have obtained Mr Scott's wife's phone number and contacted her to request that she collect her husband, or he could have driven Mr Scott home himself. The latter two options were, the court found, quite commonly undertaken by the hotel in question in relation to intoxicated patrons. Another option open to Mr Kirkpatrick was to call for the police to attend and prevent Mr Scott from riding his motorcycle.

As the hotel failed to take any of these actions, the court held that it had breached its duty of care towards Mr Scott.

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Future implications

We consider that the law remains that in all but the most exceptional of circumstances, a licensed premise does not have a duty of care to ensure that an intoxicated patron does not drive him or herself home. However, if the patron is well known to the employees of the premises or if the employees are aware that the patron is intoxicated and intending to drive, and those same employees exercise a degree of control over the ability of the patron to drive, a court may be willing to impose such a duty.

Contacts

If you have any queries regarding this Bulletin, please contact:

Kathryn Lincoln
Partner
kathryn.lincoln@finlaysons.com.au
+618 8235 7422

Mark Wood
Partner
Mark.wood@finlaysons.com.au
+618 8235 7441