



EVERSOL'S weekly law

Contributed by Mark Grady

RESPONSIBILITIES OF PUBLICANS

The High Court has recently looked at what is expected of a publican or licensee in the cases of *Adeels Palace Pty Ltd v Moubarak* [2009] HCA 48 ('Adeels') and *CAL No. 14 Pty Ltd t/as Tandara Motor Inn & Ors v Motor Accidents Insurance Board* [2009] HCA 47 ('CAL No. 14').

In the matter of *Adeels*, a fight broke out on the dance floor of a restaurant on New Year's Eve. One of the participants in the fight then went to his car, obtained a gun, and returned and shot two males one of which was involved in the fight. The injured persons bought a claim against the restaurant saying that there was inadequate security (there was none) and if there had been security present the shooting would have been avoided. The NSW Court of Appeal initially held that if there was security the incident 'might' have been avoided. The High Court disagreed and found that the injured person needed to show that it was 'more probable than not' that a security guard would have prevented the shootings taking place and the Court was not satisfied that a security guard would have prevented the shootings and therefore the restaurant was not responsible for the injuries.

The second case is *CAL No. 14*, which arose when a motor bike rider was killed when he ran into a tree on the way home from a hotel. The deceased had gone to the hotel after finishing work. During the course of the evening he consumed a quantity of liquor. The deceased decided to put his motor bike out the back of the hotel and gave the keys to the publican for safe keeping. The deceased became more intoxicated and the publican asked him to leave. The publican enquired if he was right to ride or whether he wanted to call his wife to which he replied no. The publican then gave the deceased his keys and the deceased started to travel home however died on route.

It was held by the High Court that the publican did not have a duty to stop the deceased from riding home. The publican's duty was to stop serving him alcohol and to get him to leave the premises, however it does not extend to getting the patron home safely.

If you should have any queries in respect to your duties to patrons, please do not hesitate to contact Everingham Solomons because ***Helping You is Our Business.***



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