

2007

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Recommended Citation

Field, David (2007) "Responsible alcohol service in the spotlight," *The National Legal Eagle*: Vol. 13: Iss. 2, Article 6.
Available at: <http://epublications.bond.edu.au/nle/vol13/iss2/6>

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Responsible Alcohol Service in the Spotlight

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A report on the 2007 Bond University High Schools' Mooting Competition, proudly sponsored this year by 'SpartaMatrix'

How much is 'enough'?

Every year, the Faculty of Law at Bond University hosts its national High Schools' Mooting Competition, and in so doing, searches for a topic for legal argument which is of personal relevance to the participants. Keeping up that tradition, the overall theme for 2007 was 'the responsible service and consumption of alcohol', in light of the High Court's ruling in the watershed case of *Cole v South Tweed Heads Rugby League Football Club* (2004) 217 CLR 469. It was held in that case, by a majority, that the club was not liable for injuries sustained by a member following a day-long drinking session in the club, even though the alcohol in question was supplied by the club.

The hypothetical problem set for the 120 schools around Australia which took part in the preliminary rounds of moot-ing concerned a brewery which organised a 'wild horse riding' competition in a local pub, the object of which was to remain on the mechanical horse after drinking progressive amounts of a new brand of whiskey being promoted by the brewery. Almost inevitably, a man was seriously injured when he fell off the horse whilst intoxicated, and the question for the school moot-ing teams was whether or not the brewery and the pub should pay damages to him because of their irresponsibility in organising such a recipe for disaster.

In cases such as this, it is not long before the 'public policy' argument of ensuring responsible service of alcohol by those who gain financially from it runs headlong into the counter argument based on the 'principle' that individuals should be required to take responsibility for their own unwise actions. The many members of staff of the Bond Law Faculty, who travelled from Cairns to Adelaide in order to judge the preliminary rounds of competition, heard spirited arguments on either side of this debate.

Somehow the judges succeeded in choosing the best team from each region, and on Saturday 28 July 2007, the 14 finalists gathered in the new Legal Skills Centre at Bond University in order to battle it out for the prestigious awards on offer, this time on the basis of a brand new problem scenario, but on a related theme.

Making their parents' hair stand on end

The hypothetical problem for the finals was not just of direct relevance to the students, but guaranteed to raise the

neck-hairs of their parents as well. In this scenario, the plaintiff was a 15 year old school student ('Vicki Blakey'), who was suing both her school and the Chairman of its Trustees for damages in respect of serious injuries she sustained during an accident with a ride-on lawnmower at the home of the Chairman of the Trustees one Saturday evening.

On that day, the school had organised a special barbecue at the home of the Chairman, to celebrate the fact that the school had won a highly prestigious public speaking award for the third year in succession. Among those invited to attend the barbecue were the members of the school team which had won the award, including Vicki Blakey. The Chairman's home was chosen because it was the most suitable and attractive off-school venue for such an event, being a 25-acre rural block ten kilometres into the hinterland above the local town.

In negotiating with the Chairman for the use of his property as the venue for the barbecue, the school made a substantial financial donation to him to cover the costs, but insisted that, since young people from the school would be in attendance, there was to be 'responsible' service of alcohol. This was agreed, but the school officials made no further effort to ensure that suitable arrangements *had* been made, and the Chairman, for his part, simply hired a catering company ('Bashes R Us') to provide the service of alcohol, along with a spit-roast and full barbecue.

The Chairman was supervising proceedings while 'Bashes' were setting up earlier in the day, and firmly advised their function manager, Amy Barton, that 'No-one is to be allowed to get legless, understood?' Amy confirmed that she understood, and passed the instruction on to her waiting staff. The Chairman also asked Amy to ensure that no damage was done to a new swimming pool which was under construction at the immediate rear of the house, and she agreed.

The barbecue proved to be a great success, and everyone entered into the spirit of the celebration – some more than others. A particular favourite was a special punch prepared by 'Bashes' especially for the occasion, of which everyone – including Vicki – consumed several glasses. It was a mixture of rum, orange juice, crème de cacao, brandy, vodka and mango juice, and Vicki experienced no difficulty in obtaining at least six generous glasses of it from one of the casual waiters working for 'Bashes' that evening, who was a former boyfriend of hers.

Vicki's behaviour became louder and more irresponsible as the evening wore on, and she was warned at least twice by the Chairman that if she did not behave herself, she would be ejected from the celebrations, because she was becoming an embarrassment to the Trustees, most of whom were in attendance. The Chairman added, 'And don't have any more to drink – it's not safe for a young girl like you to drink so much.' He then walked straight across the front lawn to Amy Barton, pointed out Vicki to her, and firmly instructed Amy that no more alcohol was to be served to Vicki.

Undeterred, Vicki acquired two more glasses of punch from her friend the waiter, then, shortly before 10 pm, began staggering around the property in search of further amusement. Under a covered carport at the side of the main house, she discovered the Chairman's ride-on mower, with the keys still in the ignition. With a whoop of glee, she sat on the mower,

started it up, and began doing 'wheelies and donuts' around the front lawn. When she saw an obviously incensed Chairman racing towards her, she put the mower into reverse gear and zoomed around the rear of the house, straight into the newly-dug hole for the swimming pool. The injuries she sustained necessitated a long stay in hospital, and required her to drop back a year in her academic studies. She sued both the school and the Chairman for damages for their alleged negligence.

The 14 teams attending the finals caused considerable amusement to the judges (once again drawn from Bond Law Faculty staff), and no doubt considerable alarm to their accompanying parents, by downplaying the behaviour of our hypothetical plaintiff, Vicki. One school went so far as to suggest that this was normal – and predictable – Saturday night behaviour for a 15 year old girl, while another suggested that a ride-on mower with the key in its ignition was 'fair game' for any adventurous school student with too much alcohol on board. Both arguments were of course aimed at supporting the claim that the defendants in this case had been negligent in not taking more effective steps to prevent the predictable from happening, but the looks on the faces of the adults ranged around the spectator seats of Moot Court 1 suggested that they were gaining new insights into the behaviour of their proud progeny whilst out of their sight and supervision.

And the winner is ...

Fun though this all was for the judges (who long since ceased to have any illusions regarding the behaviour of young people when fuelled by jet propellant), they then had to buckle down to the serious task of choosing two teams to compete in the grand final later that afternoon. After careful consideration, these proved to be Sydney Grammar School and Brauer Secondary College from Warrnambool, Victoria. At 5 pm the grand final teams went through their paces for a second time that day, before a fresh panel of judges chaired by Judge John Newton of the Queensland District Court at Southport, and ably supported by Emeritus Professor Mary Hiscock of Bond University's Law Faculty, and Bernard McCabe, Senior Member of the Administrative Appeals Tribunal in Brisbane.

To describe the task of selecting an ultimate winner from this moot as 'difficult' is to re-define 'difficult', but eventually Brauer Secondary College emerged as the Bond University High School Mooting Champions for 2007. Winners of individual prizes (which consist of partial scholarships to study Law at Bond) for meritorious performance during the day were Justin Powell of Brauer Secondary College ('Outstanding Advocate'), and Domenico Cucinotta of Sydney Grammar School, and Sahil Shekhar of Haileybury College, Melbourne (both recipients of 'Best Advocate' awards).

Enrolments for the 2008 Competition will begin later this year, and any school which may be interested in taking part should contact Cherie Daye, Events Manager for the Bond Law Faculty, on cdaye@bond.edu.au.

Discussion topic:

What sorts of skills are necessary for effective advocacy?