

## Negligence

### Questions:

The case is called Cole v. South Tweed Heads Rugby League Football Club and as you can see it is a very actual case - 15th of June 2004

*What were the facts of the case?*

It was 6.20 pm on a dark Sunday Evening in 2004.

The appellant – 45 year old Rosellie Jonnell Cole - walked along a roadway. Careless, in dark clothes - Totally drunk. A car hit her, the driver was unable to avoid her.

And who should be responsible for this accident? Yes, right! Of course - The South Tweed Heads Rugby League Football Club! Because in this club Mrs Cole was the whole day long, since 9.30 am. And she was drinking wine, a lot of wine. And the costumer of the club gave her this wine. At 12.30 she got her last bottle of wine from the respondent. At first her speech was “a bit funny”. At 3 pm she ordered a new one, but she was refused. There was no further supply to Mrs Cole by the respondent.

At 5.30 the manager knew she was “very, very drunk”. She had more than 2 promille.

Then Mrs Cole left the club with two men she have met there.

The manager of the respondent's club offered her to provide free transport home or alternatively to obtain a taxi to take her home.

But she didn't want a taxi. She just answered: “Get fucked”

One of the guys said: "We'll look after her."

As you already know, one hour later Mrs Cole walked along a roadway. Careless - Totally drunk. A car hit her, the driver was unable to avoid her and she suffered injuries.

*Why is that a case for the High Court of Australia?*

In the first court Mrs Cole claims that the driver and the club is liable to her in damages for negligence. The club had been negligent in continuing to serve the appellant alcohol when the club knew or should haven known she was intoxicated.

The decision of the court was, that is Mrs Cole is responsible for her injuries by 40 per cent. The driver by 30 per cent and the club also by 30 per cent.

The Club appealed to this decision at the Court of Appeal of New South Wales.

The club's appeal and the driver's cross-appeal were both allowed.

So Mrs Cole tried it again and appealed at the High Court of Australia.

*What was the order of the Court?*

The High Court followed the decision of the Court of Appeal.

The Appeal dismissed with costs.

*Who won the case?*

The Club won the case

*Who were the dissenting judges?*

In this case the dissenting judges were six old guys. Six of the seven current members of the High court.

We have already seen their pictures in the internet.

Chief Justice Gleeson - The appeal should be dismissed with costs.

Justice McHugh - The appeal should be allowed with costs.

Justice Gummow, Hayne - The appeal should be dismissed with costs.

Justice Kirby - The appeal should be allowed with costs.

Justice Callinan - The appeal should be dismissed with costs.

*Who formed the majority?*

CJ Gleeson, Gummow, Hayne, Callinan

Minority: McHugh and Kirby

*What difference existed among the majority judges?*

**Let's have a closer look at the decisions.**

Negligence means a breach of duty.

In this case could be two breaches of duty.

The first one is that the club should control how much alcohol Mrs Cole drinks.

In general supplier of alcohol, in either a commercial or a social setting, is under a duty to take reasonable care to protect a consumer of alcohol against the risk of physical injury resulting from consumption of alcohol.

But it is not easy for a supplier to “monitor” alcohol consumption. There were over hundred people in this club at this day. The manager or the employees couldn't know how much alcohol Mrs Cole has drunk.

Mrs Cole said that the respondent (the club) should have done by way of controlling her behaviour.

Chief Justice Gleeson say, that most adults know that drinking to excess is risky and a control of the club would be a fairly high degree of interference with her privacy, and her freedom of action.

Also at 3 pm – as Mrs Cole was very drunk – she wanted a new bottle of wine. But the club refused her.

So she drank the wine some guys she met have given her.

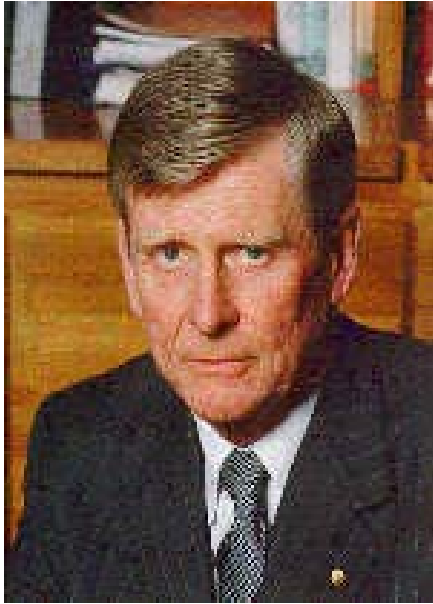
The club couldn't control that.

The second breach of duty could be that the manager of the club allowed her to leave, even they knew she was intoxicated.

But the manager asked her to leave the premise and offered to provide her a courtesy bus to drive her home. Alternatively, he said that, he would call for a taxi. She refused both offers in blunt and abusive terms.

And one of the two companions told that they would look after her.

**The appeal should be dismissed with costs**



Chief Justice Gleeson



Gummow

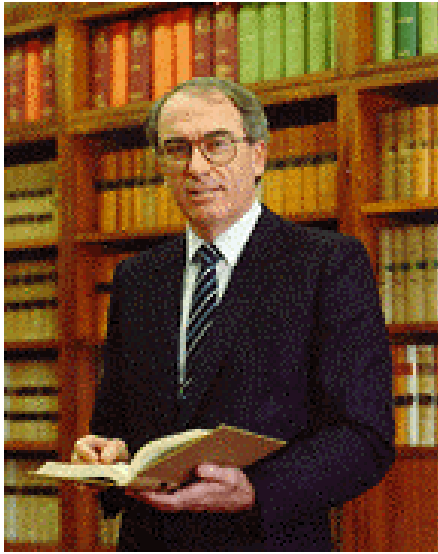


Hayne

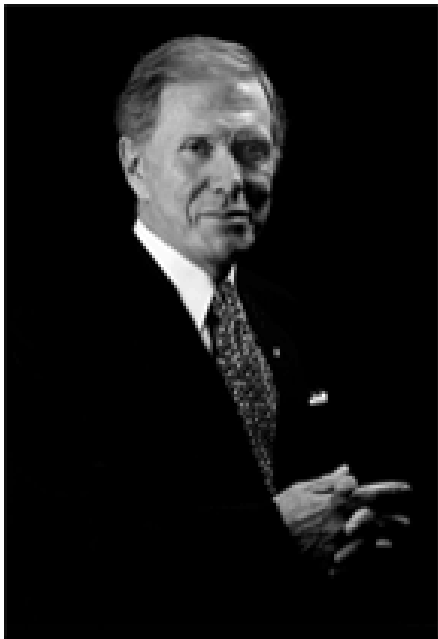


Callinan

**The appeal should be allowed with costs**



Mc Hugh



Kirby