Wrongdoing by mental patients: who bears the loss?

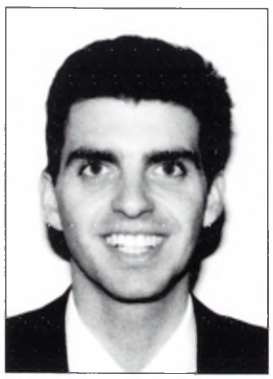
Based on the unreported case of *Carrier v Bonham*, (Brisbane District Court, McGill DJS on 4 August, 2000) this article considers the liability involved when escaped mental patients cause injury to others.

If a mental patient escapes from hospital and injures a member of the public, who is liable? Oddly enough, the only reported case of such an occurrence in Australia took place some fifty years ago in Western Australia. That is until 10 January, 1996 when John Bonham, a chronic schizophrenic, escaped from the Royal Brisbane Hospital ("RBH") and stepped in front of a Brisbane City Council bus driven by Keith Carrier.

John Bonham had been in and out of hospital since age twenty-six. As with many schizophrenics, he smoked heavily, was a regulated patient, was frequently non-compliant with his medication, absconded on a number of occasions from hospitals, sometimes threatened violence and had previously attempted suicide.

Keith Carrier was a bus driver who had worked for the Brisbane City Council since 1991.

The incident occurred at approximately 10.00pm. Carrier was driving his bus along the main road next to the RBH. Earlier that day Bonham was admitted to the RBH on fifteen-minute observations because he had expressed suicidal thoughts but no concrete plans. Bonham stepped in front of the bus after contemplating that he was a drain on society and that forty-five was a good age to die. He thought the bus was empty and therefore selected it rather than the vehicles in front or behind it. Carrier tried to stop the bus but could not avoid the collision. Bonham was injured but not seriously. He apologised for being a nuisance.



Michal Horvath is a solicitor at Quinn & Scattini, Level 10, MBF House, 116 Adelaide Street Brisbane Qld 4000
PHONE (07)3221 1838 **FAX** (07) 3221 5350
EMAIL mhorvath@quinnscattini.com.au

Carrier continued to drive buses until approximately eighteen months later when he was diagnosed with an adjustment disorder. He has not driven since and will not do so again.

Causes of action

The claim was framed as one of trespass (both assault and battery) and negligence. Initially, Bonham was the only defendant. After discovery of the RBH notes, the State of Queensland, in its capacity as the administrator of hospitals, became defendants also. The notes revealed that Bonham had escaped on a number of occasions from the RBH including in July, 1995 and on 18 December, 1995, some twenty days before the incident.

The trial

The hearing went for five days with no less than seven psychiatrists. Bonham did not give evidence as he had recently been re-admitted to hospital with another bout of schizophrenia. The two nurses from the ward gave evidence that Bonham was the only patient in the ward at the time of his escape. He apparently went out for a smoke before he disappeared. He was not missed until he was brought to casualty by the ambulance.

His Honour Judge McGill QC of the Brisbane District Court subsequently delivered a fifty-page judgment.

MENTAL PATIENT'S LIABILITY

Trespass

Bonham's actions did not amount to battery or assault. There was no intentional and direct application of force, nor the intention to apply such force. Also, the psychological injury was not caused by the application of force, but by Carrier's appreciation of what occurred. Therefore, no battery. Along the same lines, there was no assault because Carrier could not say he was aware of any battery when his fear was for Bonham and not for himself.

Negligence

Prima facie a pedestrian owes a duty to other road users.[1]

Also, it is reasonably likely that attempting to commit suicide in front of a motorist's vehicle could psychologically damage the motorist.

The duty of care being objective, applies to mental patients as much as anyone else. However, should the standard of care be adjusted to take into account Bonham's condition? This would be the corollary to employers and people with special abilities being imposed with higher standards. When considering contributory negligence, the standard is lowered for mental patients and children. For questions of negligence, the standard of care for children is that of a reasonable child of that age.[2] There is, however, no authority to suggest what the standard of care for a mental patient should be. The only relevant Australian authority, briefly mentioned earlier, suggests that "lunacy" is no defence to trespass and that the ordinary standard of care applies.[3] That case involved a motor vehicle accident (the importance of this will become apparent later).

In general terms, the standard of care can take into account personal capacity and features of the defendant.[4] However, the standard of care of a particular defendant can vary depending on whom the defendant's conduct affects.[5] The judge considered such a distinction unsatisfactory.

There is also a distinction between a person suffering from a heart attack who causes an accident (such a person would not be liable[6]), as opposed to a person who has a stroke but continues to drive, causing an accident (such a person would be liable[7]).

His Honour found a way of reconciling all these apparent inconsistencies as follows:

Where there is compulsory insurance and a child or a mental patient is the tortfeasor, the standard is that of a reasonable person. This will ensure that victims of car and workplace accidents receive compensation.

Where there is no compulsory insurance, the standard of care considers the question "does the person have the capacity to appreciate the possibility of harm to others?"

On the facts, His Honour considered that Bonham did not appreciate that he may harm others by his actions and therefore he had not breached his duty.

Action on the case

As far back as 1897, English courts held that a wilful act, done without lawful justification, and calculated to injure another, was actionable.[8] Debate continues on whether that is an example of trespass or an action on the case. If it is the latter, unsoundness of mind is an available defence.

There are two reported cases of successful suicides where lodgers in two unrelated incidents killed themselves in rented accommodation and were subsequently found by their landlords.[9] Both incidents were actionable as an intentional infliction of harm had occurred.

While His Honour considered whether this doctrine should now be subsumed into the general law of negligence, he thought it better left to a higher court to decide. ▶

In this instance, His Honour considered that the intent to do harm does not have to be actual, it could be imputed from the action itself. Since the result (that is, the harm to Carrier) was a natural consequence of the willed act of suicide, the intent was imputed. Carrier therefore succeeded against Bonham, on this ground.

Hospital's liability

There being no direct precedent on point, the closest case was one of a nursery school next to a busy road having a duty imposed on it.[10] In England, there had been examples of a hospital and a youth hostel being held responsible for damage caused by escapees to third parties.[11] On the facts, His Honour considered there was a duty of the hospital at least to the people in the immediate vicinity of it. His Honour adopted the standard of care imposed by the National Mental Health Policy which promotes minimal interference with the patient. The only question was whether that policy had been followed and in His Honour's opinion, it had. This was despite the previous absconding history and non-compliance with medication.

Further, even if it was accepted that the fifteen (15) minute observations had not been carried out, the plaintiff had failed to establish that there was a causative connection between that failure and his injuries.

Carrier's claim against the hospital failed.

Quantum

The plaintiff was awarded a little over $113,000 including pain and suffering ($18,000), past economic loss ($40,000), and future economic loss ($50,000 – global).

The appeal

The Public Trustee, who is conducting Bonham's affairs, has appealed the decision to the Queensland Court of Appeal. A hearing is expected early next year.

Footnotes:

1. *Nance v British Columbia Electric Railway Co Ltd* (1951) AC 601 at 611
2. *McHale v Watson* (1966) 115 CLR 119 at 223
3. *Adamson v Motor Vehicle Insurance Trust* (1957) 58 WALR 56
4. *Goldman v Hargrave* (1967) 1 AC 645
5. *Cook v Cook* (1986) 162 CLR 376
6. *Waugh v James K Allen Ltd* (1964) 2 L1.Rep.1
7. *Roberts v Ramsbottom* (1980) 1 WLR 823
8. *Wilkinson v Downton* (1897) 2 QB 57
9. *A v B's Trustees* (1906) 13 SLT 830; *Blakeley v Shortal's Estate* 20 NW 2D 28 (1945)
10. *Carmarthenshire County Council v Lewis* (1955) AC 594
11. *Holgate v Lancashire Mental Hospital Board* (1937) 4 All ER 19; *Dorset Yacht Co v Home Office* (1970) AC 1004 at 1062.