

COMMON LAW PRACTICE UPDATE 83

Aviation Injuries

The plaintiff was a passenger on a flight from Samoa to Melbourne in *Casey v Pel-Air Aviation Pty Ltd; Helm v Pel-Air Aviation Pty Ltd* [2015] NSWSC 566. When the aircraft crashed near Norfolk Island, the plaintiff suffered physical and post-traumatic stress disorder. The defendant, the operator of the airline, accepted that the crash occurred as a result of the negligence of its pilots (for which it was vicariously liable). Consequently the defendant was also liable for physical injuries compensable under the *Civil Aviation (Carriers' Liability) Act 1959* (Cth).

The question for the primary judge was whether the psychological injuries were compensable. Schmidt J held that although compensation for personal injury was limited to "bodily injury" under the Montreal Convention, the plaintiff's PTSD was compensable because it was a "bodily injury". The plaintiff was entitled to the damages she claimed in accordance with the *Civil Liability Act 2002* (NSW) in respect of economic and non-economic loss.

Admissibility of Psychiatric Evidence

A psychiatrist, Dr Quadrio, commented upon circumstances in which a 12 year old child was allowed to be towed on a skateboard by a motor vehicle in *Verryt v Schoupp* [2015] NSWCA 128. She gave evidence that a boy in these circumstances was likely to trust in the judgment of the adult present and to go along with what other boys were doing while lacking any real understanding of the dangers of the activity.

Meagher JA [51] noted:

"The questions which Dr Quadrio was asked to consider did not require or involve any psychiatric assessment of the respondent, either current or at any earlier point in time. Those questions did no more than invite her to express views as to how she thought an ordinary boy of 12 was likely to have acted and thought in the circumstances in which the respondent found himself in January 2007. That subject was not one that her evidence showed to be a field of "specialised knowledge" in which she was expert by reason of her training, study or experience: cf Evidence Act 1995(NSW), s 79(1); Dasreef Pty Ltd v Hawchar [2011] HCA 21; 243 CLR 588 at [37]."

At [58] he added that:

"Dr Quadrio's views were with respect to matters of ordinary human experience. Unlike the position under the common law and because of s 80(b), they were not admissible for that reason alone. However, they were not shown to be based on any specialised knowledge of a 12 year old's ordinary behaviour in circumstances such as those confronting the respondent. For that reason, the evidence was not admissible under s 79 and, if objected to, should have been rejected."

Sackville AJA expressed similar views, however ultimately it was held that the admission of the evidence did not result in any material error.