

By Mark Hunter, SFNT

Supreme Court No AP 17/97
Judgment of Martin CJ, Bailey J and
Morling AJ
Liquor Law – Vicarious Liability –
Section 121 (1) *Liquor Act*

The Liquor Commission suspended the licence of the Walkabout Arnhemland Resort Hotel for breaching s121 (1) to the *Liquor Act*. The section requires a "licensee or employee of the licensee" to exclude or remove, *inter alia*, intoxicated persons. The Commission had rejected the licensee's argument that he could not be held vicariously responsible under the section for the default of his employee.

The licensee's appeal was upheld by Mildren J who determined that a licensee could not be punished for breaches

of the section committed in his absence. His Honour placed reliance upon the appearance of the word "or" in the section and found that the obligation under the section was not imposed upon licensees and employees.

The Liquor Commission appealed.

The Court of Appeal HELD:

1. The appeal is allowed and the decision of the Liquor Commission is reinstated;
2. The language of s121 (1) is "tolerably clear" and imposes a duty on both licensees and employees. The "primary duty" of the licensee under the section arises whether or not he is physically on the premises at the relevant time. This construction also

enhances the purpose of the section.

In a joint judgment, the Court of Appeal commented, "The proper conduct of licensed premises is of such public importance that licensees who are granted the privilege of selling liquor can reasonably be expected to assume a responsibility for the acts of their employees when selling liquor on their behalf."

APPEARANCES

Appellant	
Counsel:	McDonald
Solicitors:	SFNT
Respondent	
Counsel:	Wyvill
Solicitors:	Noonan

St Rita of Cascia – the Saint of the Impossible and the Advocate of Desperate Causes



St Rita was discovered in a Manila church by Solicitor-General, Tom Pauling QC, whilst he was in the Philippines attending the recent LAWASIA conference.

It is a relief to know that the legal profession has someone up there batting for it.

