

## Master case file

### ***Adeels Palace Pty Ltd v Moubarak* [2009]**

- **Facts:**
  - The defendant conducted restaurant/nightclub premises at Punchbowl known as Adeels Palace.
  - On 31 December 2002 to 1 January 2003 it held a New Year's Eve function attended by members of the public by payment of an admission price.
  - In the early hours of 1 January 2003 a dispute on the dance floor erupted and came to involve a fight between the plaintiff, Mr Moubarak, and a Mr Abbas.
  - Mr Abbas left the premises and returned with a gun. It was agreed that when he returned, Mr Abbas shot Mr Moubarak and Mr Bou Najem.
  - The plaintiffs brought proceedings against the defendant in the District Court, claiming damages for negligence or in the alternative, for breach of contract.
- **Issues:**
  - Was Adeels Palace's lack of security an act of negligence?
- **Decision:**
  - The event which caused the plaintiffs' injuries was deliberate criminal wrongdoing, and the wrongdoing occurred despite society devoting its resources to deterring and preventing it through the work of police forces and the punishment of those offenders who are caught.
  - That being so, it should not be accepted that negligence which was not a necessary condition of the injury that resulted from a third person's criminal wrongdoing was a cause of that injury.
  - Accordingly, the submission that the plaintiffs' injuries in these cases were caused by the failure of Adeels Palace to take steps that might have made their occurrence less likely, should be rejected.
  - The effect of this finding by the HCA was that the absence of security personnel at Adeels Palace on the night the plaintiffs were shot was not a necessary condition of their being shot, and thus the "but for" test (of causation) was not satisfied.

### ***ACCC v Berbatis Holdings Pty Ltd* [2003] HCA 18**

- **Facts:**
  - The Respondents [CG Berbatis, owners, lessors] leased out land to Mr and Mrs Roberts, who are represented by the Appellant [ACCC].
  - The Appellants had to pay the Respondents some extra fees. They later sought to recover them with the other clients of the Respondents.
  - Meanwhile, the Appellants also wanted to sell their business but their lease was ending. They found a purchaser who signed a contract to buy the business if they got their lease renewed.
  - The Appellants needed the Respondents to agree to a new lease, and the Respondents leveraged this position to get the Appellants to agree to forfeit their claim regarding the extra fees (Clause 14 of the contract).
  - The Appellants are now seeking to recover the extra fees on the basis that Clause 14 was procured through unconscionable dealing.
- **Issues:**
  - Did the respondents display unconscionable conduct?
- **Decision:**
  - The court held that the respondent had not engaged in unconscionable conduct. Just because one party has more bargaining power than the other, it doesn't mean it is acting unconscionably. Furthermore, even if it manages to use this power to procure a bargain which is much better for them than the other side, this is not unconscionable - it is merely a hard bargain.
  - Unconscionable dealing requires a special disadvantage, like one owing to being blind or illiterate etc. It is only when such a special disability is taken advantage of that a party is said to have acted unconscionably. In this case, the Appellants had no special disadvantage or disability. In fact, the Respondents didn't even have to renew their lease.