



New Law Bulletin

SHIFT WORK – Are you, the operators, at risk?

The Court of Appeal in Western Australia recently handed down the decision in Fraser v Burswood Resort (Management) Ltd [2014] WASCA130.

Although this case concerned the liability of the employer for the actions of an employee who drove home very late at night, it is considered possible that implications of this case could flow onto the taxi industry. Where, although drivers are not employees but rather Bailees, it is possible that the same principles could apply from this case.

In this case, the employee was driving home at 4:00am and crashed her vehicle which resulted in injury. She sued the employer because she claimed that the employer breached duties that would have reduced the risk of this occurring.

Fraser said that the employer failed to warn her about the biological rhythms which affect the human body as the result of working shifts and the resultant risk of falling asleep.

The Court found the employer did owe a duty to the claimant to warn her of the increased risk of having an accident whilst driving home due to fatigue arising out of accumulated sleep debt.

The Court also said that even though the risk of driving at such an hour was obvious, there was still an obligation to warn. The Court found that the employer should have been well aware of the well known phenomena associated with these factors and their affect on fatigue.

Unfortunately for the claimant however, her case failed because she could not prove that the employer's failure actually caused her to fall asleep as well as causing the accident.

IMPLICATIONS

It is well known in the taxi industry that drivers drive night shifts or single shifts. It may be advisable to consider a fatigue management strategy in order to prevent potential for such claims occurring in the future. It would also be advisable that such measures be constantly reviewed.