

# Different Jurisdictions' Approaches to Emerging Risks

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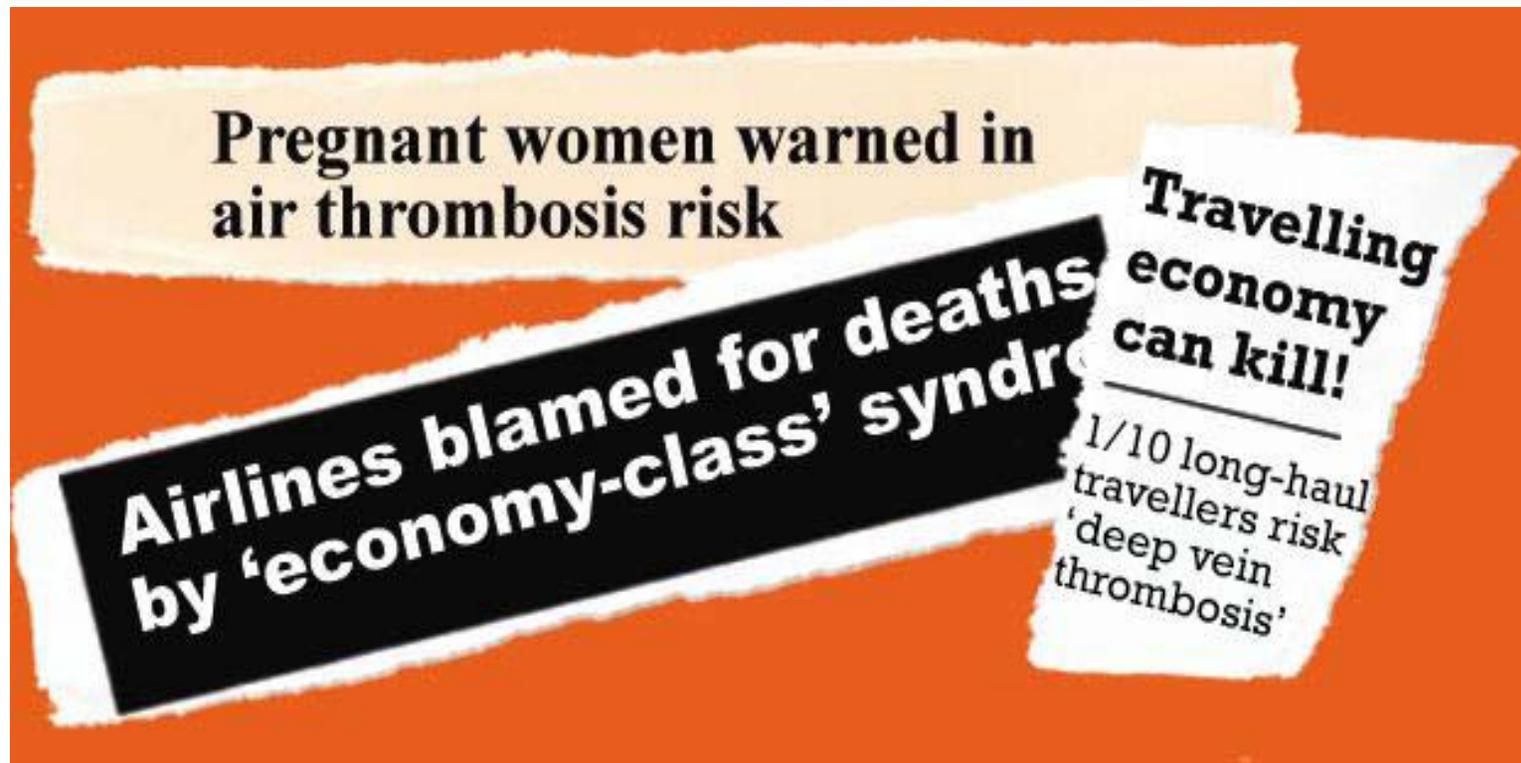


# Emerging Risk

Focus on:-

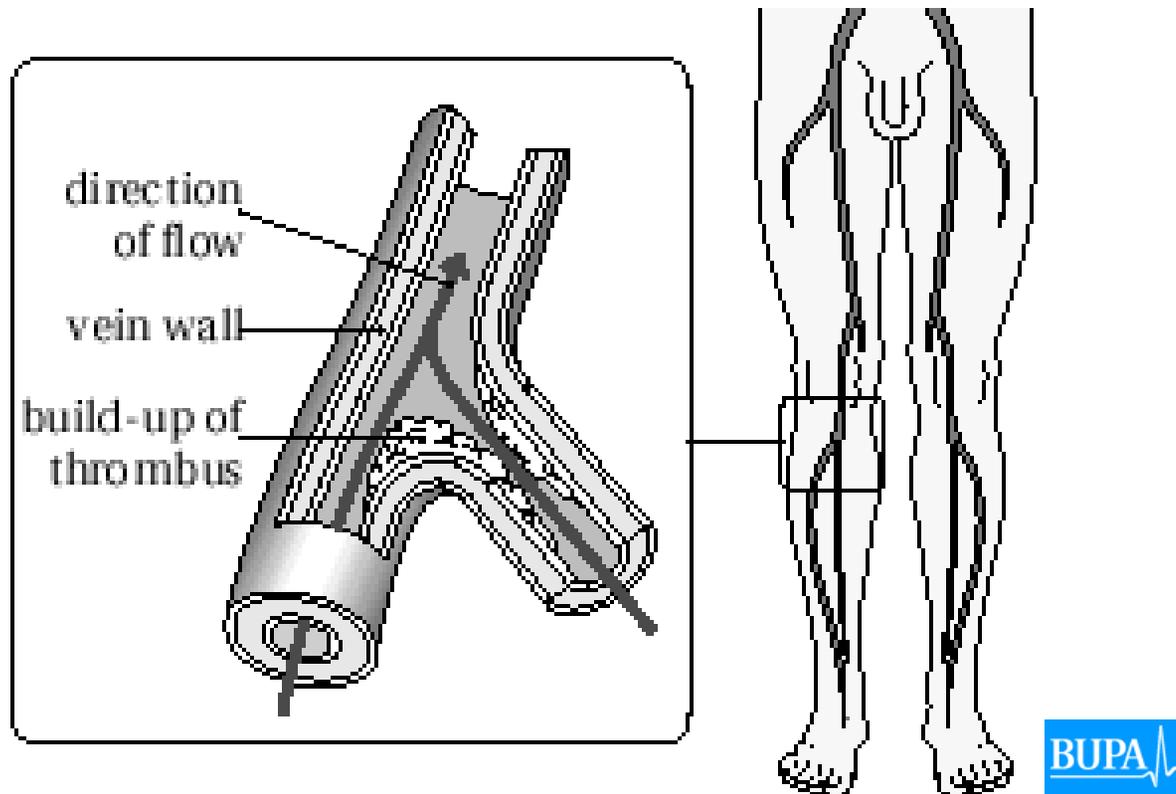
- DVT
  - Mobile phones/EMF
  - Passive smoking
  - Welding rod litigation/Manganese
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- Nanotechnology
  - Diesel fumes
  - Obesity
  - Benzene

# Deep Vein Thrombosis



# DVT – what is it?

## Deep vein thrombosis



## Signs and symptoms

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- Around half of cases may be asymptomatic
- Warmth, swelling, redness, pain in calf
- Generally affects one leg only
- Fatalities from PE in 1:100 symptomatic cases

## Risk factors & incidence

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- General incidence 1:1,000
- Inherited blood clotting
  - Tendency of 20% of population
- Age – over 40
- Heart disease/blood circulatory disorders
- Pregnancy or recently given birth
- HRT/oral contraceptives
- Surgery/immobility for a day or more

## Association with travel



## Association with travel

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- Deckchair and immobility study
  - 1940
- First association with air travel
  - 1954
- 'Economy class syndrome'
  - 1988
- DSE advise on DVT
  - 2002
- Government Select Committee on Science and Technology
  - Nov 2000
  - December 2007

## Postulated risk factors for travel

↑ Duration of travel

↑ Frequency of travel

Immobility and seating constraints

↑ Cabin pressure / ↓ Oxygen → blood-clotting tendency

↑ Alcohol/tea/coffee consumption → dehydration

## Increased risk from travel?

- Expected incidence 1:1,000 owing to general incidence in population
- WRIGHT REPORT (WHO) June 2007
  - Travelling for ↑ 4 hours doubles risk
  - 1:6000 risk for flights of 4+ hours
  - 1:1000 for longer journeys/multiple flights
  - short, tall, obese ↑ risks

# Aviation DVT claims

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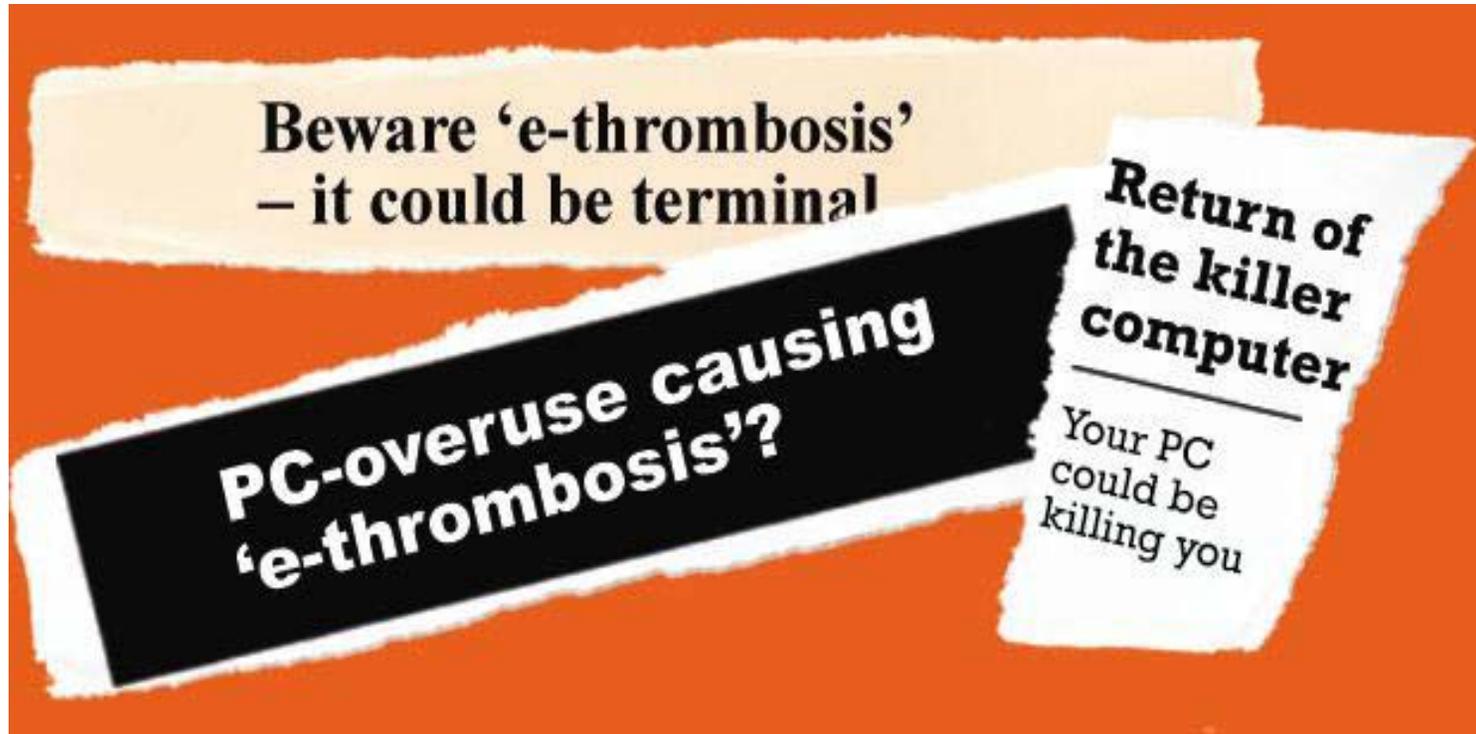
- Definition of accident under Article 17 of the Warsaw Convention
- Australia
  - *Povey v Civil Aviation Safety Authority and others* (December 2003, Victoria CA)
- UK
  - *DVT group actions, CA, HL* (December 2005)
- USA
  - *Blansett v Continental Airlines* (2004)
  - *Olympic Airways v Husain* (2004)
  - *Montalvo v Spirit Airlines* (October 2007)
  - *Deep Vein Thrombosis Litigation* (October 2007)
  - *Twardowski v American Airlines* (July 2008)

## Other claim areas?

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- Traveller's thrombosis
- Car, bus, coach and train travel
  - Fourfold increase in risk of DVT after 4 hours' travel

## Office Workers



## Mobile phones

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- 45m mobile handsets in UK
- Used by 85% of all 10- to 15-year-olds
- Mobile phones and masts emit radio frequency (RF) radiation

# Biological effects of RF waves

- Thermal effects
- Non-thermal effects
- Initiators/promoters of cancer?

## Guideline limits on RF exposure

- National Radiological Protection Board (NRPB) Guidelines
- International Commission on Non-Ionising Radiation Protection (ICNRP)
- Both guidelines based on adverse consequences of thermal effects of RF

## Can RF exposure cause cancer?

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- 'The Stewart Report', May 2000
- No known adverse health risk from exposure below NRPB Guidelines
- Medical knowledge lacking to say **no** risk; latency
- MTHRP Report 2007
- Precautionary approach whilst further studies carried out

## Case law

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- US
  - Christopher Newman v Motorola (*Sep 2002*)
- England
  - Davies & Docherty v Balfour Kirkpatrick Ltd and others (*CA, 9 May 2002*)
- Claimants cannot prove medical causation

# Mobile Phones & Hearing Loss

- Bluetooth Headset Products Liability litigation
  - Volume levels up to 106dB
  - NIHL
  - Failure to warn

# Passive smoking

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- What is it?
- Second hand smoke (SHS)
- Environmental tobacco smoke (ETS)
- Involuntary smoking

# Tobacco Smoke

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- Complex mixture of 4000 chemicals
- 100 chemical poisons
- Over 50 carcinogens
- 'Side stream' smoke
- 'Main stream' smoke

## Levels of exposure to ETS

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- How is it measured?
  - *Nicotine in air*
  - *Questionnaire*
  - *cotinine*
- The levels of exposure?
  - *smoking households;*
  - *Workplaces*

## The levels and extent of exposure

- 50% no smoking workplaces;
- 36% with some restriction;
- 14% without restriction;
- 3 million exposed workers
- Greatest exposure in leisure industry workers

## Health risks of ETS

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- Class 1 carcinogen (IARC);
- 20-30% risk of lung cancer;
- 20-30% risk of CHD;
- Exacerbation / cause of asthma in children and adults.

# Epidemiology

- What is it?
- 150 epidemiological studies since 1981
- Lung cancer
  - underlying risk 10:100,000*
  - increased risk (RR) 20-30%*
  - 12/13:100,000*
  - additional 2/3 cases*

## How strong is the epidemiology?

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- Most studies statistically insignificant
- Process of meta-analysis flawed
- Bias and confounding;
- Compare to childhood leukaemia and EMF

## Limiting workplace exposure

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- HSE Guidance 1988
- HSC draft ACOP 1999
  - *complete ban*
  - *separation / segregation*
  - *ventilation*
- Gov. White Paper November 2004
- Public Place Ban 01/07/2007

# Litigation

## Australia

- Sharp v Port Kemble Hotel (2001) NSWSC 336

## USA

- Class action by flight attendant
- Husain v Olympic Airways (2007)

## UK

- Mainly for respiratory exacerbation
- *Sparrow v St Andrews Homes Ltd* 1998
- *Muir v Whitbread Plc* 21.3.05
- 'Nottingham test cases'

# Litigation

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- Common law negligence
  - *Foreseeability and date of knowledge*
  - *Duty of care*
- Statutory duty
  - *Workplace regulations*
  - *COSHH regulations*
  - *Effect of strict liability*

# Litigation

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- Causation issues
  - *Respiratory exacerbation*
  - *Lung cancer and CHD*
  - *General causation*
  - *Individual causation-doubling risk*
- Fairchild / Wilshire

## What is the potential for claims?

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- 3 million exposed at work
- 2 million non smokers exposed to ETS
- 200 lung cancer cases (underlying risk)
- Additional 60 lung cancer cases
- Estimates SCOTH, BMA, ASH
- Respiratory exacerbation claims

# Welding Rod Litigation

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- Manganese
- Welding litigation since 1990's
- Manganism
- Parkinson like disease

## Developing Knowledge

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- 1837 – Parkinsonism caused by industrial exposure to manganese
- 1920's – Introduction of manganese alloy welding rods
- 1930's – First reports of adverse health risk
- 1970-90's – Unsuccessful law suits
- 2001 - Elan v A.O Smith - \$1 million judgment for plaintiff

## Health Effects of Manganese & Welding

- Essential nutrient/naturally occurring
- Manganism accepted
- Evidence of manganism associated with welding?
- 3 stage disease
- No cure, progressive disease
- Idiopathic Parkinson's disease, other brain diseases, drug induced parkinsonism

# Claims

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- Manufacturers
- \$1 million damages (2001)
- Defendants succeeded in 20/23 trials in last 6 years

## UK

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- Chronic bronchitis
- Asthma (chromium/nickel fumes)
- Welders lung (iron particles)
- Metal fume fever
- Manganism?