An unqualified and inexperienced driver of a motor vehicle is not subject to a lower standard of care on account of his or her lack of qualification and inexperience. In the discharge of the duty of care to avoid injury to passengers, including a front-seat supervising licensed driver, and other road users, an unqualified and inexperienced driver is subject to the same objective standard of reasonable care that is required of a qualified and experienced driver. In this regard, the fact that a passenger, including a front-seat supervising licensed driver, or other road user, is aware of the driver’s lack of qualification and inexperience is not material.
53. The basic considerations of principle may be stated as follows. First, the inquiry is about the applicable standard of care. Secondly, the standard to be applied is objective. It does not vary with the particular aptitude or temperament of the individual. Thirdly, it is, and must be, accepted that a learner driver owes all other road users a duty of care that requires the learner to meet the same standard of care as any other driver on the road. The learner may have to display “L-plates” for all other road users to see, but that learner will be held to the same standard of care as any other driver in fulfilling the learner’s duty to take reasonable care to avoid injuring other road users. Fourthly, it was not suggested in argument, and there is nothing in Cook v Cook that would suggest, that a learner driver owes a lesser standard of care to any passenger in the vehicle except the licensed driver who sits in the adjoining seat. In particular, it was not suggested that any knowledge of another passenger that the driver was inexperienced affects the standard of care that the driver must observe to avoid injury to that other person.

54. Knowledge of inexperience can thus provide no sufficient foundation for applying different standards of care in deciding whether a learner driver is liable to one passenger rather than another, or in deciding whether that learner driver is liable to a person outside the car rather than one who was seated in the car, in the adjoining seat. The other passenger will ordinarily know that the driver is a learner driver; the road user outside the car can see the L-plates. Yet it is not disputed that the learner driver owes each of those persons a standard of care determined by reference to the reasonable driver.

55. To reject knowledge of inexperience as a sufficient basis upon which to found a different standard of care is to reject the only basis, other than proximity, for the decision in Cook v Cook. Yet rejection of knowledge as a basis for applying a different standard of care is required not only by the observation that knowledge of inexperience is held not to affect the standard of care owed to other passengers or other road users who observe a display of L-plates, but also by the essential requirement that the standard of care be objective and impersonal. …

69. The common law recognises many circumstances in which the standard of care expected of a person takes account of some matter that warrants identifying a class of persons or activities as required to exercise a standard of care different from, or more particular than, that of some wholly general and “objective community ideal” (Fleming, The Law of Torts, 9th ed (1998) at 119). Chief among those circumstances is the profession of particular skill. A higher standard of care is applied in those cases. That standard may be described by reference to those who pursue a certain kind of occupation, like that of medical practitioner, or it may be stated, as a higher level of skill, by reference to a more specific class of occupation such as that of the specialist medical practitioner. See, for example, Rogers v Whitaker (1992) 175 CLR 479. At the other end of the spectrum, the standard of care expected of children is attenuated: McHale v Watson (1966) 115 CLR 199.

70. But what distinguishes the principle established in Cook v Cook from cases of the kind just mentioned is that Cook v Cook requires the application of a different standard of care to the one defendant in respect of the one incident yielding the same kind of damage to two different persons, according to whether the plaintiff was supervising the defendant’s driving or not. In all other cases in which a different level of care is demanded, the relevant standard of care is applied uniformly. No distinction is drawn according to whether the plaintiff was in a position to supervise, even instruct, the defendant although, of course, if the plaintiff was in that position, a failure to supervise or instruct may be of great importance in deciding whether the plaintiff was contributorily negligent.

71. There is no warrant for the distinction that was drawn in Cook v Cook. Cook v Cook should no longer be followed in this respect.

72. The principle adopted in Cook v Cook departed from fundamental principle and achieved no useful result. … The plaintiff who was supervising the learner driver, the plaintiff who was another passenger in the vehicle, the plaintiff who was another road user are all entitled to expect that the learner driver will take reasonable care in operating the vehicle. The care that the learner should take is that of the reasonable driver. …

88. Although this matter was decided at trial and on appeal to the Court of Appeal by application to the first respondent of too lax a standard of care, he was found not to have satisfied that standard. It follows that the appellant was entitled to succeed in his claim against both respondents. …

90. The findings of contributory negligence in the courts below proceeded from the premise that, taking reasonable care for his own safety, the appellant would have given different
instructions to the first respondent [with particular regard to acceleration and change of direction on a dirt road and how to respond to the presence of tyre debris on the road surface]. …

[After reviewing the evidence, their Honours concluded that the appellant had been guilty of contributory negligence in failing adequately to instruct the first respondent and that the primary judge’s reduction of 30% in the appellant’s damages should be restored.]

97. For those reasons, we would order that the appeal to this Court be allowed with costs. …

[In separate judgments, Gleeson CJ, Kirby and Crennan JJ agreed with the reasons of Gummow, Hayne and Kiefel JJ. However, Kirby J stressed the relevance, in his view, of the existence, in substantially the same statutory form in each Australian state and territory, of compulsory third party insurance in respect of the common law liability of drivers and registered owners for personal injury or death arising out of the use of motor vehicles on public roads. According to Kirby J (at [181]), “this reality should be acknowledged as affecting the existence and content of the duty of care owed by the driver of a motor vehicle to others reliant on that driver’s skill”.

Heydon J, although agreeing that the judgment of the primary judge should be restored, found it unnecessary to consider the correctness of *Cook v Cook* (1986) 162 CLR 376.]

Appeal allowed