Bullfry and the abominable sin

By Lee Aitken (illustrated by Poulos QC)

> There are only four ways to get on at the Bar – by *huggery* [giving dinners to their attorneys and suppers to their clerks]; by writing a law book; by quarter sessions; by a miracle.

Lord Campbell LC as quoted in JR Lewis, *The Victorian Bar* (Hale 1982) p. 38.

'Huggery? Surely there is nothing wrong with attending a drinks party?'

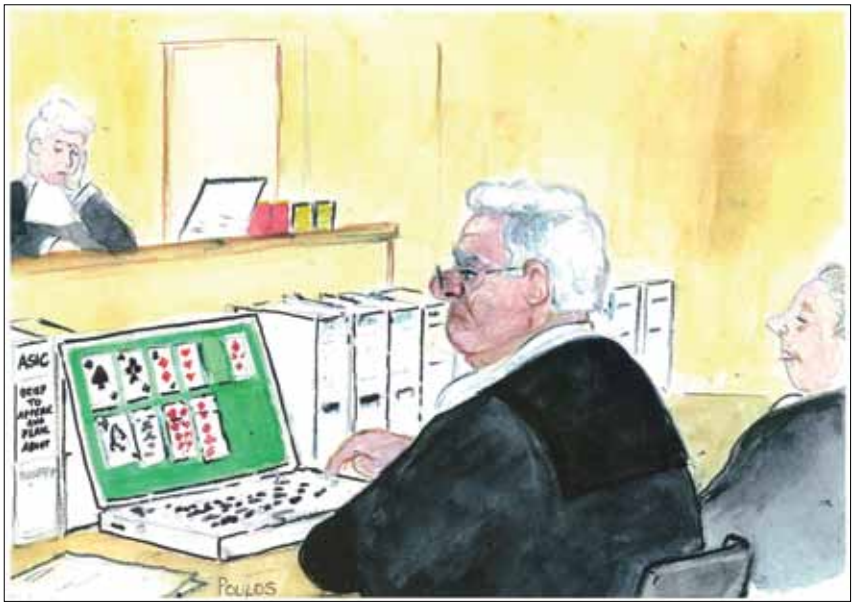
'It all depends who is giving it – if you go to a function, and meet solicitors *accidentally* that is one thing; it is another entirely to attend at their request at the firm to sip champagne and to discuss the firm's 'briefing policy'. That smacks rather too much of *touting* for work'.

'But what's wrong with that? The firm will no doubt have a quota for briefing women, and others who need a leg up, or over, but that seems fine to me as long as it is just for the Children's Court. And I can cement my already strong relationship with the commercial and banking boys. I know some fellas who send a card, flowers, and champagne, whenever someone is made senior associate!'

'Well that is certainly overdoing it – in the old days, in England on circuit, you would be fined in the bar mess for even being seen in the company of a solicitor. That was the abominable sin of huggery! Unfortunately, we have never had a class system at the Sydney Bar, unlike the UK. No-one who is 'upper class' would ever think of working as a mere 'solicitor' there – the very concept of soliciting says it all – too, too infra dig for words – no – it is either a pocket benefice, a subaltern in the Coldstreams, or the bar – that is all a gentleman can do – the third son of the family simply gets an overdraft, and comes to chambers in London after Varsity – what does Lord Haldane say? – "I raised the necessary funds under sign of my hand on the strength of what was to come to me in my time!" I am afraid a small house in Muswellbrook inherited from your father, the electrician at the local mine, does not quite have the same cachet. But it still doesn't explain why, in these free market times, one is not permitted to solicit business any way one likes – but then I suppose that is what 'solicitors' do, don't they?'

'Well, things have changed now – must keep up with the times – a spot of flannelling never goes astray. And didn't you get most of your early briefs from that cousin at Simpsons? And what about that silk who is briefed most of the time by his wife?'

'There is no sin in relying on family connections, or old retainers. How else are you to get a start at the bar?



– That's why the preferred floors sell at such a premium. Most of it is notional goodwill; some is upstream – the new juniors get the older silks into cases which their young solicitor buddies send them; some is downstream; a big ASIC instruction comes in and the three new juniors are deployed to make notes, and watch the silk play solitaire on his Mac, before some tired federal beak for three weeks! All very nice. So it's a bit like Hansel and Gretel – you get the invite after a double first from Wollongong Tech, and then you are kept in a fatting pen – the 'Annexe' to something or other they usually call it – and then when you are ripe for the plucking, they induct you on to the floor with pipes and drums, and a big dinner, and all the solemnity of joining a Guards Regiment in the British Army in days of empire when there were lots of subalterns, and the government was not scrimping on your body armour, so that ten thousand pounds of education might still succumb to a tuppenny jezzail, to quote the Bard. You can see the same principle at work with a couple of the 'virtual' chambers where they still maintain the floor name, and clerk etc., despite being at opposite ends of the street – branding is everything these days'.

'You're making it sound like some sort of business – I thought it was a profession'.

'It's only a "profession" in the sense that you are paying others for being able to take the high moral ground in your dealings with them – there used to be so much psychical esteem from being a "top silk" that you didn't mind a roomful of merchant wankers in your chambers, even though they were getting six times your annual screw for knowing sweet FA about anything, except where the dollars were and how to "structure" some piece of chicanery. Add to that the constant monitoring by the government, and regulators, and the absolute crowing in the press and public generally when there is some minor fall from grace by one of the team. Face it – journalists mainly despise the bar – they have either been cross-examined to death about something, or think that they too could have hit the forensic heights but for some unfortunate episode early in their education, or life story.'

'Still, the firms can't do without us'.

'Well, they'd like to. But, of course, they face two very large problems. First, to be an effective advocate you need to be in court, day after day, training up – if it costs $2000 to 'open a file', a firm is not going to be able to send a young junior up every morning from its office to mention something before the Registrar, or call on a subpoena. But it is an intimate knowledge of the workings of every court which is the independent junior bar's stock in trade. Secondly, of course, the largest enterprises don't have a monopoly on the best work. Someone may come in to chambers from Five Dock with a brief for the High Court. If you worked for one operation only, you could only do the work which it attracted. Anyway, what they like to do now is hang on to matters for as long as possible. Deploy a large team, billing a couple of hundred hours a month, and when the matter comes up for trial, wheel the client's managing director in to chambers to be told that the case is unwinnable, and it should be

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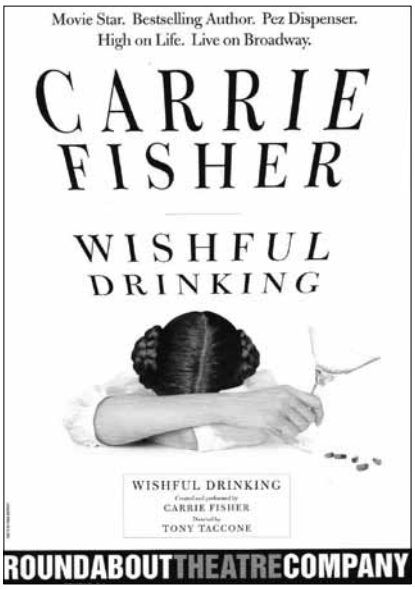
publicity, it would need to address the issue of potential inheritance of the right'. My rights = my property = others' rights to property.

And so the flipside to celebrity. Last night I saw Carrie Fisher give her monologue 'Wishful Drinking'. With approximately half the bar behind my dozen years' admission and with a median age put at 33 to 34 years, I guess about half my readers were merely concepts when Carrie said 'Help me Obi-Wan Kenobe', so eclipsing her parents' combined celebrity.

Fisher deals with manic depression, gay iconicity and celebrity, defining the last as obscurity waiting in the wings. There is a trade-off to keep it at bay: 'George Lucas owns my image; every time I look in the mirror, I owe him money.'

The *Sydney Morning Herald* recently described Gleeson as 'famously taciturn'[7]; least of all for this is he the authors' apt choice to pen the foreword.

Moreover, as an appellate and constitutional judge for over two decades in a common law country, he is well-suited to assess the worth of a book whose minor premise is the minor premise of any effective commentary on the law, a questioning of the proposition that old law must adapt to new circumstances.



In particular, the authors' deft traverse asks the question that ineffective commentators avoid: are the circumstances we are dealing with forensically 'new' at all, or has the law touched on the problem before?

Each of the authors' and Gleeson's comments on *Dow Jones & Co Inc v Gutnick* seem to me to validate the proposition that orthodoxy is not exactly the worst starting place to assess novelty.

In the future, the past may only have been famous for fifteen minutes. If some of those fifteen minutes could have been spent picking through this readable summary, seize the day. As Carrie Fisher has found, it won't be here tomorrow.

Review by David Ash

Endnotes

1. OED online ('celebrity') [accessed 20/10/2010]. See also Stefan Collini, *Absent minds: intellectuals in Britain*, 2006, OUP, page 478.
2. 'Childe Harold's pilgrimage', Canto III verse 112.
3. *Legal Profession Act 2004*, section 9(1)(a).
4. Clause 6(2)(k).
5. Compare Collini: 'my starting-point is that we need to get away from such implicitly binary classifications ('British'/'normal')', page 5.
6. www.foxnews.com/story/0,2933,451804,00.html [accessed 20/10/2010].
7. Gibson, Snow and Sexton, 'Jogging and yoga help curb anxiety', SMH, 18 October 2010, page 7.

Bullfry (continued)

settled at all costs!'

'Your cynicism is becoming very unattractive – I thought it was the highest calling to compose other mens' quarrels, and to counsel them in time of stress.'

'Well, it still is. But the days have long gone when barristers were household names – all the frisson went when they reduced the penalty for capital murder to 15 on top with a nine year non-parole period. I expect I could get you off on a bond as long as it only your wife you kill'.

'So I shouldn't be going to this drinks thing then?'

'Of course, you can go – but only if you promise to get me an invitation too'.