# Bullfry and the hot chip

By Lee Aitken

'Mr Smith, I suggest to you that the chip was not still steaming when you first saw it?'

Another 'slip and fall' – Bullfry's common law case of choice for the plaintiff, now that the CLA had removed all other traditional opportunities for recovery for negligence. No wonder Mr Warren Buffett was 'long' in insurance companies. With his old football knee, Bullfry himself was sometimes tempted to take a tumble on a topsy turvy footpath and come against a convenient County Council after sustaining a massive psychogenic illness – he had two problems with this stratagem: a section 50 'defence' would in his case provide an insurmountable barrier to recovery, and his usual mental state was difficult to define at the best of times – a charitable ex-wife had once described it as 'all mania, and no depression'.

Who would have thought that a thirty-five year legal career would culminate here? Bullfry could have been a contender – in his dreams, he had soared to forensic heights, running a complex (but bloodless) Part IV application before a Full Federal Court with econometricians piled to the roof; or, a difficult appeal to a full High Court, taking on the Commonwealth, and overpowering her Solicitor-General, to show that money could not be disbursed to give every pensioner a birthday cardigan without a special appropriation.

But no, here he was. Here, in 17B on a cold winter's morning before Judge Snowdrop SC, struggling to show that a chip had been on the floor of the fast-food shop for at least 35 minutes, it had been missed by the recalcitrant cleaner, it had not been thrown by another customer's younger son onto the floor, and that the manager of 'Harry's Hot Chips and Fryup' had failed to follow the 'dropped chip protocol' – ergo, negligence!

OH & S had removed most of the charm and risk of modern life. We lived in a severely risk averse world – a patient of 86 might be admitted *in extremis* for open pancreatic surgery, and die under the knife – there would be immediate demands for a coronial inquest, allegations of negligence, or worse, on the more meretricious of the 'current affairs' programmes – interviews with sobbing relatives complaining that a very old, very sick, man undergoing a dangerous medical procedure had died – letters before action suggesting a mistake by someone or other.

Mind you, of course, much of the distaff side of Bullfry's burgeoning medico-legal practice involved defending quacks on the welcome instructions of the MDU from egregious iatrogenic 'errors' – removal of the wrong eye, or leg! Misdiagnosis of a sinister spot as a benign 'ink mark' – failure to check the patient for the presence of blood pressure, or a heart beat, upon admission. Medicine was an art, not a science and an expert could frequently be conjured up to 'hot tub' and swear that the treatment advanced had been entirely appropriate if not, perhaps, a little before its time. Bullfry was waiting for leeches to make a come-back.

'I object as to form – invites argument' – the laconic forensic interjection of 'Sissy' Cyril Cuthbertson SC always got on Bullfry's nerves, though he never showed it.

'Argumentative? That is only something that a callow SC, whose practice began to flower during the sad, recent, ascendancy of the Uniform Evidence Act, could possibly contend, your Honour. In olden times, a silk might argue with and badger a witness in a common law trial in order to seek the truth. *Magna est veritas et praevalebit*. We are not in your etiolated Equity Division world now, Cuthbertson, with its affidavits, set-offs, and nice demurrers, whispering away – this is the real world of hamburgers and chips'.

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'Mr Bullfry, please calm down – luckily for us you have not had the chance yet to have your usual lunchtime 'refresher' – just rephrase the question if you would. And at some stage you will need to focus on the 5D issue. And please also remember, to paraphrase Gleeson CJ - 'The fact that a chip shop could be made safer does not mean it is dangerous or defective.".

'As your Honour pleases. Might the question be read back?'

Bullfry swung to the lectern. It was going to be a long, hard struggle to avoid a 'V for the D'.

Would he not be better off sitting at his favourite fish and chip shop in Umina himself and watching the pelicans, rather than arguing about where, and when, a bucket of chips had been spilt?

That was the great problem with the practice of law – the amount of time devoted to mundane facts, most of which were in dispute, and which, tomorrow, would matter to no-one at all.

The plaintiff had returned Cuthbertson's fire with gusto when cross-examined, although the video of him doing a handstand on the skateboard, shortly after the 'accident', must have damaged his credit to a small degree. Nothing that Bullfry could not 'paper over' in address.

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Bullfry was also right up to date on the 'co-efficient of friction' with respect to a hot chip or any other fried food – indeed, he had given a well-received paper on the topic only recently to the Plaintiffs' Lawyers' Association - much more troubling was the section 5D issue – how long had that hot chip been on the ground? And was it, in any event, within the curtilage of the shop? Could Snowdrop DCJ be 'comfortably persuaded', on the balance of probabilities, that it had been missed by the negligence of the cleaning staff? Was there, in fact, a safe system in place?

The more Bullfry mulled this over, the more he fretted. He knew to a nicety the 'tariff' for a badly broken leg, the out-of-pockets, his solicitor's WIP – he leant over to Cuthbertson –

'Sissy, is that $420K 'incl' still on the table?'

'Indeed it is Jack, but only until lunchtime'.

'Your Honour, might my learned friend and I have the court's indulgence briefly to discuss a matter which might permit your Honour a free afternoon to catch up on judgments, reading, or golf.'

'Music to my ears, Mr Bullfry, music to my ear. I will rise for 10 minutes. Let my associate know when you are ready'.