

From the Kitchen

21 September 2011



I want to look at some other aspects of responsibility.

In Australia, following on the heels of the trend in the USA, there is a growing perception that if something bad happens to you, someone should be made to pay. There are many consequences of this and not many of them are positive.

There is much to be said in favour of Forrest Gump's attitude of "shit happens".¹ Taking the view that from time to time things may happen to you apparently randomly and that it's no-one's fault, allows you to get on with your life. Mind you, I am not saying that if an identifiable individual, group or company or a government department does something that affects you badly, you should not consider taking appropriate legal action. However, taking legal action can have unwanted consequences.

In the late 1950s and into the 1960s, my father worked as an insurance loss assessor. His job was to find out how badly someone was injured and whether their claim was genuine. Very often, lawyers would advise their clients to not appear healed, even to appear more badly injured and disabled than they really were, until their claims were settled, in order to increase the amount of the compensation. In many cases claimants did this so successfully that, once their claims were settled, they found it extremely difficult to return to good health. There was often documentation in these cases that people's injuries had healed, but the pretence became the reality.

There is research² which confirms that people heal faster after injury if they do not concern themselves that getting healthy again as quickly as possible is going to affect their compensation or insurance claims. This seems to be part of the reasoning behind the introduction of no-fault insurance for motor vehicle and workplace injuries – if the injured person will be compensated without having to find someone at fault and also the possibility of compensation for pain and suffering is removed, recovery time is reduced. There are, of course, arguments that such schemes are unfair.

It is also often the case that the winner in a civil case is still worse off financially than if they had not sued. Is the satisfaction of being proven right worth the cost?

There are many cases, and the number is increasing, where people sue authorities for failing to make their lives safer. In Australia, gumtrees are known to drop heavy branches without warning; they are often referred to as 'widow-makers'. Yet people often camp underneath them and occasionally someone is killed or injured by a branch squashing them in their tent. Local councils and statutory authorities responsible for forests and parks have been sued on a number of occasions for failing to erect adequate signs warning campers of the potential danger of falling branches. In one case, the judge (Bart JA) said:

*... to enter a forest or its immediate surrounds, like entering the surf, is to take a risk of injury albeit a remote risk. The risk is "endemic" or part and parcel of the recreation of camping, walking and indeed living outdoors in the Australian bush and in particular in forest reserves.*³

There was also a tragic case of an infant falling over the edge of a cliff. The child's parents had sat down for a picnic near the cliff edge and the infant had crawled or toddled too close. The parents successfully sued the local council for their failure to erect a fence at the edge of the cliff.

Are we prepared to assume the inherent risks of life?

What has happened to people's common sense? If they have any, why aren't they using it? Should local councils be held responsible for every mishap that occurs on land they maintain? Does the growing propensity to make someone else responsible for what befalls us make us less careful, less willing to exercise due care ourselves? Is the world around us becoming less safe because we are too ready to make others responsible for our safety?

The burgeoning internet and use of emails has created a growth in scams in which 'innocent' people lose money. But are they innocent, or stupid or greedy or both? I learned many decades ago that if something seemed too good to be true, it probably was. Yet people who are duped by offers of large amounts of money for allowing their bank accounts to be used to help the widow of a deposed finance or agriculture minister's funds to be made available to starving people, often want to shift the responsibility for their losses to their banks. All of this in the face of a long-running advertising campaign, warning people against getting involved in such schemes.

Would you be duped by someone knocking on your door asking for your bank details in order to transfer large amounts of money from overseas? How much would they need to offer you as a 'fee' before you would be tempted? And, if you gave your bank details and lost all your savings, would you hold the bank responsible?

1. A character in the novel *Forrest Gump* by Winston Groom, New York, Double Day 1986, played by Tom Hanks in the film of the same name, Paramount Pictures 2004
2. See for instance "Low Back Pain after Traffic Collisions: A Population-Based Cohort Study." J. David Cassidy et al., *Spine*, May 15, 2003, Vol. 28 No. 10, pp 1002-09.
3. "Secretary, Department of Natural Resources and Energy v Harper" (2000) 1 VR 133 at 148

[to be continued in next post]