SUPREME COURT OF QUEENSLAND

CITATION:	***Smith v Capella State High School Parents and Citizens Association & Ors*** **[2004] QSC 109**
PARTIES:	**JOHN WILLIAM SMITH** (Plaintiff) v **CAPELLA STATE HIGH SCHOOL PARENTS AND CITIZENS ASSOCIATION (Queensland Incorporation Number IA00327)** (First Defendant) and **CENTRAL RODEO COWBOYS ASSOCIATION INCORPORATED (Queensland Incorporation Number IA07127)** (Second Defendant) and **JAMES CURRAN** (Third Defendant)
FILE NO:	S118/01(Mackay)
DIVISION:	Trial Division
DELIVERED ON:	1 March 2004
DELIVERED AT:	Mackay
HEARING DATES:	25-28 November and 3 December 2003 in Mackay
JUDGE:	Dutney J
ORDERS:	1. Judgement for the plaintiff against the third defendant in the sum of TWO HUNDRED AND FORTY THOUSAND FIVE HUNDRED AND FORTY-SIX DOLLARS AND EIGHTEEN CENTS ($240,546.18). 2. The plaintiff's action against the first and second defendants is dismissed.
CATCHWORDS:	NEGLIGENCE – CAUSATION – whether construction of temporary laneway causative of plaintiff's injuries – whether poor lighting of temporary laneway causative of plaintiff's injuries – whether third defendant's failure to warn about bull coming down laneway causative of plaintiff's injuries - where third defendant always had sole responsibility

for conduct of bull which injured plaintiff – where injuries could have been prevented with as little as a shout or a check of the laneway

NEGLIGENCE – APPORTIONMENT OF RESPONSIBILITY – where third defendant should have been aware that there was a real possibility that there might be someone in the laneway – where plaintiff should have been aware that there was a real possibility that there might be bulls in the laneway – where plaintiff's distraction unnecessarily increased risk to himself

NEGLIGENCE – VOLENTI NON FIT INJURIA – whether plaintiff assumed the risk of injury when walking in laneway – contrast with cowboys riding bulls in the ring

ANIMALS – SCIENTER – whether bull wild by nature (*ferae naturae*) or exhibited a particular vicious or dangerous propensity (*mansuetae naturae*) - whether liability of third defendant absolute – whether third defendant knew the bull was aggressive and could be hostile

Cruttendon v Brenock [1949] VLR 366, cited
Romana v Spagnol (NSWCA 40566 of 1994 – 17 October 1994 – unreported, cited
Hudson v Roberts (1951) 6 Ex 697; 155 ER 724, cited
Jackson v Smithson (1946) 15 M & W 563; 153 ER 973, cited
Barnes v Lucille (1907) 96 LT 680, cited
Higgins v William Inglis & Son Pty Ltd (1978) 1 NSWLR 649, discussed and followed
Mary Aird v Grantham (1998) WASCA 254, followed
Rootes v Shelton (1967) 116 CLR 383, referred to and distinguished

COUNSEL: Mr GF Crow for the plaintiff
Mr DA Reid for the first defendant
Mr JS Miles for the second and third defendants

SOLICITORS: Macrossan and Amiet for the plaintiff
Jensen McConaghy for the first defendant
Moray & Agnew for the second and third defendants

Facts

[1] The plaintiff, Mr Smith, was injured by a bull at the Capella bullarama on 15th July 2000. He was in a temporary laneway between a set of permanent pens in which the bulls for the rodeo were housed when not required in the arena, and the arena in which the bull riding was taking place.

[2] Mr Smith was "hooked" by a bull called "Ridgy Didge" owned by the third defendant, Mr Curran. The bull caught Mr Smith in the right hip area with his horns and tossed him up in the air. Mr Smith also believes the bull trod on him. Mr Smith did not see the bull coming. He was facing back towards the arena when the bull struck. There was as issue as to whether Mr Smith was looking back over his shoulder towards the arena or had turned completely around to face the arena. I do not think the difference is material.

[3] The Capella bullarama was a bull riding competition held at the Capella show grounds by the first defendant, the Capella State High School Parents and Citizens Association ("the P & C Association"), as a fund raising event for the school.

[4] Mr Smith is a breeder and supplier of bulls for such events. Mr Curran is also a breeder and supplier of bulls. On this occasion Mr Curran approached Mr Smith to provide about fifteen bulls for the event. Mr Smith quoted a price of $30.00 for each time a bull was ridden out of the starting chute and $1.80 per kilometre for transport.

[5] Although he was approached by Mr Curran, who was also supplying bulls for the event, Mr Smith was to be paid directly by the P & C Association.

[6] The Capella showgrounds contain a large covered permanent shed. There are also a number of stock pens permanently erected approximately thirty metres south of the shed. In order to hold the event the P & C Association had to arrange for the erection of a temporary race or laneway from the pens to the shed to bring the bulls from the yards to the shed. They had also to arrange for the erection of a series of forcing yards, crushes and chutes in the shed together with an arena for the rides themselves and a return chute for the bulls

to leave the arena. Apart from the laneway between the yards and the shed the facilities were supplied and erected by a Mr Simpson who was also a supplier of bulls for the event. The temporary laneway was erected by members of the P & C Association. There has been criticism of the laneway but I am not persuaded that the manner of construction of the laneway itself contributed to the injuries suffered by Mr Smith.

[7] As erected, the gate by which bulls left the arena was positioned centrally with two buck out gates at either side. The gate gave access to a chute which connected through one or more holding pens to the laneway. This connected with the temporary laneway from the yards. This was not a common configuration for such facilities. Normally, the exit gate and return chute is separated from the laneway through which bulls are brought to the arena and offset to the side of the buck out chutes.

[8] Some allegations were based around this configuration in the pleadings but Mr Smith conceded in evidence that the configuration was not really a material factor in his being injured.

[9] In my opinion, the only relevance of the configuration was that Mr Smith's bulls were not used to exiting the arena in this position. Despite his having walked his bulls through the system earlier in the day at least two of his first seven bulls did not leave the arena quickly after they had bucked. It is desirable to have the bulls leave the arena as soon as the ride is complete not only for safety but to keep the spectacle flowing and provide better entertainment.

[10] The two bulls which did not leave the arena quickly were "Rapdancer" and "Figjam". "Figjam" was the later of the two. When a bull refuses to leave the arena one technique is to bring a "coaching bull" into the arena. That bull's task is to coax the recalcitrant animal to follow it out through the return chute.

[11] A coaching bull is usually one of the other bucking bulls. I accept the evidence of Mr Smith, Mr Simpson, Mr Gill and Mr Walmsley that one

desirable characteristic for the coaching bull is that it be a bull with which the recalcitrant bull feels comfortable. The coaching bull must also be a bull that the recalcitrant bull gets on with. I accept the evidence that bulls are territorial and will often fight if put together with bulls with which they are not familiar. For these reasons the coaching bull is invariably from the same herd as the bull in the arena. At the rodeo the stock contractor remains responsible for the handling of his animals throughout the event. This means that he is responsible for getting his bulls out of the arena. I accept that a quieter bull is generally to be preferred as a coaching bull because it can be used as a shield for the clowns herding the recalcitrant bull towards the return chute. The use of a "hooky" or aggressive bull runs the risk that there may be two unpredictable bulls in the arena simultaneously and that poses a greater risk for the clowns.

[12] The circumstances in which Mr Smith was injured can be stated shortly. "Figjam" had bucked and was reluctant to leave the arena. Mr Smith was standing on the back of buck out chutes 1 and 2. These are the two chutes to the left of the exit gate as the bulls leave the arena. Chutes 3 and 4 are to the right of the exit gate. Mr Smith's version is that he jumped down and went up the laneway to get a coaching bull. In the laneway near the shed he saw Mr Curran. He said to Mr Curran, "I've got to get a coacher." Mr Curran said, "I'll give you a hand". Mr Curran went up the lane ahead of Mr Smith. As Mr Smith was following he heard a commotion in the arena consistent with the bull charging the rails. He heard the announcer say, "Look out! He'll jam your fingers." Mr Smith's partner, Carolyn Mayne, and her daughter Carrie were above the return chute in a walkway where they were removing the flanking ropes from the bulls as they went out through the return chute. Concerned that they might be in some danger, Mr Smith turned to look back. While he was looking back he was "hooked" by the bull, "Ridgy Didge" which was coming down the laneway from the yards towards the arena. The bull "hooked" Mr Smith in the side of the right knee or right hip area and flung him up into the air.

[13] Mr Curran's version is different. Mr Curran said that Mr Smith was standing on the back of buck out chutes 1 and 2. Mr Curran was standing on the ground behind the chutes. Mr Curran said that Mr Smith called down to him, "Jimmy can you go and get a coacher bull. One of yours for a coacher bull. Mine are having a hard time coming out." Mr Curran said, "Yeah. Righto." He then went to get the bull. Mr Curran and his brother walked quickly up the lane to the yards. When he got to pen 3 as marked on exhibit 2, "Ridgy Didge" was the in the pen with a group of about 10 bulls. "Ridgy Didge" was nearest the gate. Mr Curran decided "Ridgy Didge" would make an appropriate coaching bull. Pen 2 was empty. The stock yards were constructed so that the gate to each pen was the same width as the lane between the pens. If the gate to pen 2 was opened it would block the lane between the pens. If the wrong bull came out of pen 3 when Mr Curran opened the gate it was his brother's job to open the gate to pen 2 so that the bull would be directed into pen 2. In that way only one bull would be allowed to exit from the yards into the laneway.

[14] When the gate to pen 3 was opened, "Ridgy Didge" was the first bull out. He trotted down to the laneway and around the corner where the laneway turns and vision of it is obscured by the Athol Pine shown in the photographs, exhibits 16M and 16N. When the bull went around the Athol Pine it could not be seen by someone in the lane between the pens in the yards.

[15] When Mr Curran got to the corner and could again see the bull it was about 10 or 12 metres down the lane and about to "hook" Mr Smith. It was too late to call out a warning. Mr Smith was in the middle of the lane facing the arena and had plainly no idea the bull was coming.

[16] The responsibility for bulls at a rodeo remains throughout with the stock contractor. They handle their own bulls and are responsible for getting them in and out of the arena. I accept that Mr Curran as the contractor always had sole responsibility for the conduct of "Ridgy Didge".

[17] Mr Curran's evidence, which I accept on this point, is that he believed Mr Smith asked him to get a coaching bull. He then went down to the yards and got "Ridgy Didge" out of the pen and sent him down the laneway. I also accept Mr Smith's evidence as to the effect of what he actually said. In other words, I find that Mr Smith in fact asked Mr Curran to help him get a coaching bull but, whether because of the ambient noise or otherwise, Mr Curran understood that what he was being asked was to get a coaching bull from his own herd. The release of "Ridgy Didge" thus seems to me to have been a misunderstanding. Whether "Ridgy Didge" was an appropriate bull to get as a coaching bull for a bull from another herd is doubtful on the evidence. Neither Mr Simpson nor Mr Walmsley, when asked, would criticise Mr Curran for complying with a request to get a coaching bull if the request was made by the contractor who owned the bull in the arena. Subject to the misunderstanding regarding the original request I accept Mr Curran's account of what he did and saw up until Mr Smith was injured.

Negligence

[18] What bull to get is a matter of judgement on which minds might differ. I am not prepared to say that Mr Curran was negligent in his selection of a bull having heard his reasons for that selection. While I am satisfied that "Ridgy Didge" could be unpredictable with persons with whom it was unfamiliar I also accept that almost any bull confronted with a person obstructing its passage down the laneway is likely have "hooked" or butted that person out of the way. In this respect I accept Mr Curran's evidence that if confronted by a person standing towards the middle of the laneway "80% [of bulls] would either hit someone or otherwise brush past them or – or bump them – some form of contact more than likely." I also accept the evidence of Mr Simpson that it was quite likely that a bull confronted by a person in the laneway, unless it was a particularly quiet animal, would "give them a bunt, a hook".

[19] The negligence of Mr Curran is revealed in these passages from the cross-examination by Mr Reid of counsel:

"And over the course of the … night, I take it there would be various people who would be moving up and down the laneway? – Yes

Including people who might be around the arena and wanting to go back and check on their bulls in the pens but not necessarily bringing bulls up or take them back? – Yes.

And so whenever you move bulls in the laneway you've got to ensure that there's some system to warn people who might be there? – Yes.

And when your brother took all of your bulls back, I suggest that your brother going ahead would've been a good way of ensuring that other people in the laneway could be warned? – Yes.

And if you saw someone he could yell out to them and they could either climb the fence or duck through the rails and get out of the way? – Yes.

And that sort of care is needed to ensure that people aren't confronted by a mob of bulls or when they're by a single bull? – Yes.

…

And you said that the incident when Mr Smith was injured happened about three to five minutes after you'd gone down the laneway? – Yes.

…

It's true however that you didn't take any precautions to ensure no-one else would be in the laneway, did you? – No.

You didn't, for example, ask your brother to go ahead of Ridgy Didge? – No.

…

And you didn't anticipate in the relatively short period of time it took you to go down the laneway and get a bull and bring him back, that someone might have entered the laneway? – Yes

If they had though, an accident like this was likely to happen, wasn't it? – Well most people that would have been in the laneway would have been walking up the laneway, so they would have seen the bull coming.

Yes. And as you say, if they kept their attention about them – kept looking ahead … ? – Yes.

…they would have seen Ridgy Didge, and the reason John Smith didn't is he got distracted by the activity in the arena? – Yes"

[20] It seems to me to be a basic proposition that it would be negligent to release "Ridgy Didge" into the laneway if any other person was in it, or might have been in it, without giving sufficient warning to allow them to get out of the laneway or at least watch the bull. I accept that by nature bucking bulls are unpredictable and capable of causing severe injury even if they are not of the aggressive disposition of "Ridge Didge". Therefore it seems to me that a warning would be required before releasing any bull. Mr Gill, a very experienced supplier of bulls to bullriding events, gave evidence that, particularly where there were a number of stock contractors at an event, communication was critical. He would normally have expected the person releasing the bull to call out something to the effect of, "Watch out! There is bull coming". Alternatively, he would expect the releaser of the bull to ensure by some other means that the laneway was clear. In this case, Mr Curran's brother could have gone ahead of "Ridgy Didge" as it went from the yard to the laneway to ensure that no-one was in the laneway. I did not understand Mr Curran to dispute that it is important to ensure that no-one is in the laneway before releasing a bull into it in any direction. Similar evidence was given by Mr Simpson, another experienced stock contractor.

[21] Mr Curran said that it had been some little time between when he went up the laneway to pen 3 and when he returned to find Mr Smith about to be struck. He initially estimated 3 to 5 minutes. That may be an overestimate but it was sufficient time to get to pen 3, decide to use "Ridgy Didge" as the coaching bull, open the gate, draft "Ridgy Didge" out, close the gate and proceed back to the start of the laneway. Mr Curran was aware that a number of people at the event, both contractors and stockmen at least, had legitimate reasons for being in the laneway. Riders also used the laneway to go to look at the animals they had drawn for their ride. Apart from Mr Smith who he believed had asked him to get a bull and his brother who went with him, Mr Curran was not aware of anyone else who would have been aware that he was going to bring down a bull. It was in my view readily foreseeable that someone could be in the laneway when the bull was released. It was likely such a person could be injured in the way Mr Smith was injured. The injury might have

been prevented by as little as a shouted warning that a bull was coming or by having one of the two Currans go to the start of the laneway to make sure it was clear before releasing "Ridgy Didge". That would have taken at most 5 or 10 seconds. It was only between 12 and 18 metres from pen 3 to the start of the laneway. The gate of the empty pen 2 which, by being opened across the lane between the rows of pens, was being used to prevent the release of the wrong bull could have been used to restrain "Ridgy Didge" until the lane was checked.

[22] There was considerable evidence concerning the light in the yards and laneway. There was a pole mounted light at the side of the yards furthest from the laneway. It would have been unlikely to penetrate into the laneway because of a line of trees on the laneway side of the yards. There was evidence from Mr Walmsley that from the lane one could not see the pole mounted light. There was also light from the shed. The shed was well lit with ceiling mounted fluorescent lights. There were no sides on the shed although there was an eave as shown in the photographs in exhibit 16. Nonetheless the light would have penetrated from the shed in decreasing intensity towards the yards. There was evidence from Ms Mayne that she could see Mr Smith from her position in the unsaddling area of the arena immediately after he was hit. Mr Curran could see Mr Smith when he got to the laneway from the yards. Mr Curran could not see Mr Smith when he released "Ridgy Didge" because from pen 3 his view was blocked by the Athol Pine immediately to the right of the entrance to the yards as they were faced from the arena. Therefore even if the lighting was better in the laneway it would not have enabled Mr Curran to see Mr Smith at the critical time when the bull was released. I am satisfied that better lighting would have made no difference to Mr Smith seeing the bull in time because he was distracted by the announcement from the arena.

[23] In the circumstances I am not satisfied that the lack of lighting was causative of the accident.

[24] Just as Mr Curran was aware that there was a real possibility that there might be someone in the laneway, Mr Smith was aware of the real possibility that a

bull or bulls might be in the laneway and that if he failed to observe them he could be "hooked" and injured. Mr Smith was very experienced with bulls. He knew Mr Curran had gone ahead of him to the yards. He knew Mr Curran had done so for the purpose of getting or assisting him to get a coaching bull. He knew that it was important to get the coaching bull and get "Figjam" out of the arena as quickly as possible. Despite this he was not keeping an appropriate lookout in the direction from which danger was likely to come. By standing in the laneway in such a position as to constitute an obstruction to any bull approaching the shed he unnecessarily increased the risk that the bull would see him as an obstacle to be removed.

[25] In the circumstances I am satisfied that the responsibility for the accident should be shared equally between Mr Curran and Mr Smith and that, subject to any finding of strict liability, Mr Smith should contribute 50% to the causing of the accident.

[26] I am not satisfied that any of the allegations against the first or second defendants has been made out in the circumstances here. Apart from allegations directed to the construction and design of the arena and ancillary infrastructure (including lighting) - which I have found not to be causative of the injuries - the allegation against the first defendant is that it failed to ensure that coacher pens were available in the shed so that a bull did not have to be brought from the yards. I am satisfied by the evidence that had Mr Smith wanted to have a coaching bull in the shed when "Figjam" bucked there were sufficient yards for him to have done so. "Figjam" was not being ridden as part of the group of Mr Smith's bulls. I accept that he was brought to the arena separately as a result of being overlooked earlier. It is thus unlikely Mr Smith would have gone to the trouble of bringing up another bull as a coacher on the off chance it would be needed.

Scienter

[27] The plaintiff submitted that the liability of Mr Curran for any injury caused by "Ridgy Didge" was absolute because bucking bulls are by nature dangerous or

ferocious animals. Dangerous or ferocious animals are classified into two classes – *ferae naturae* or *mansuetae naturae* – depending upon whether the animal is of a class of animals regarded as wild by nature, irrespective of whether the particular animal has been domesticated, and an animal which although not of a species regarded generally as ferocious, exhibits a propensity to be vicious or dangerous. In the latter case the owner of the animal must be aware of the dangerous or vicious propensity although the evidence necessary in this regard has been said to be slight.[1]

[28] Although there are no reported cases to which I have been referred where cattle have been found to be *ferae naturae*, it was submitted that bucking bulls are a distinct class of animal distinguished by their wild and aggressive dispositions. I do not think the evidence supports this submission. The evidence in this case is that there is nothing distinctive about bucking bulls that would justify classifying them as a class separate from other domestic cattle. Under cross-examination by Mr Reid, Mr Smith described his bulls as Simmental Brahman cross breeds selected for their physiques as well as some feature of their personality which makes them buck when ridden. Mr McPhee gave evidence that at his rodeos he used as a coacher bull a quiet animal that was in the nature of a pet notwithstanding it would itself also jump at the event. Mr Curran agreed in cross examination that bucking bulls were selected from among the herd bulls for their more aggressive natures, a trait that was enhanced by selective breeding. The evidence is thus contrary to any submission that bucking bulls are by definition any different to ordinary cattle as a generic class.

[29] In view of the above finding the only basis on which the third defendant could be exposed to strict liability would be if the bull, "Ridgy Didge", had, and was known by Mr Curran to have, a propensity to be dangerous or vicious to humans.

---

[1] See *Cruttendon v Brenock* [1949] VLR 366 at 368; *Romana v Spagnol* (NSWCA 40566 of 1994 – 17 Oct 1994 – unreported) at 3.

[30] The evidence as to the particularly dangerous tendencies of this bull depends upon whether the witness's experience was based on behaviour inside the arena or outside. Inside the arena the preponderance of evidence supports the conclusion that "Ridgy Didge" was what cowboys describe as a "hooky bull". This means that when the cowboy was thrown the bull would be likely to try to hook the cowboy with his horns while the cowboy was on the ground. While this is not unusual behaviour for bucking bulls I accept that "Ridgy Didge" was at the higher end of the range of acceptable aggressiveness in this regard. Outside the ring, Mr Curran described "Ridgy Didge" as "a little savage but not extremely savage". Mr Smith who had himself once owned the animal described him as "a hunting bull – an old vicious bull." Peter Williamson described how the bull had caused him to jump up on the fence a number of times and Lionel Simpson said that he had been charged in the back yards at Moranbah. Mr Curran described how "Ridgy Didge" was sufficiently docile in its home environment for him to allow his daughters to handle him.

[31] In this case the evidence establishes to my satisfaction that "Ridgy Didge" was a bull that was at the more aggressive end of the normal range of behaviour for bucking bulls. This necessarily made him more aggressive and dangerous than the usual herd bull of the same breed. Despite this, Professor Fleming[2] suggests that the fact that the behaviour an animal engages in is not abnormal to its species is insufficient to avoid liability where the behaviour is inherently hostile. Various examples cited in relation to behaviour which could not be considered abnormal include a bull "seeing red"[3], a ram given to butting[4] and a bitch with pups snapping[5]. The aggressive tendencies of "Ridgy Didge" while not abnormal in either type or degree for a bucking bull were indicative of a propensity to behave in a dangerous or vicious manner when confronted by people in and around the bull ring. In *Higgins v William Inglis & Son Pty Ltd*[6] Glass JA found that a bull described by the trial judge as "merely a bull which would butt people from time to time" was of a sufficiently vicious

---

2 *The Law of Torts*, 9th ed, LBC Information Services, 1998 at p 403.
3 *Hudson v Roberts* (1851) 6 Ex 697; 155 ER 724.
4 *Jackson v Smithson* (1846) 15 M & W 563; 153 ER 973.
5 *Barnes v Lucille* (1907) 96 LT 680.
6 (1978) 1 NSWLR 649 at 652.

nature to attract strict liability, although in that case the consequences on the two reported occasions of people being butted were quite severe. It seems to me therefore that consistent with authority that the bull "Ridgy Didge" was of a sufficiently dangerous or vicious propensity within the meaning of the rule that provided Mr Curran had knowledge of this propensity he would be strictly liable for damage of the type suffered by Mr Smith.

[32] I have no difficulty accepting that Mr Curran knew that the bull was aggressive and could be hostile. The video evidence shows his aggressiveness in the arena. Mr Curran would have seen the bull perform regularly. He also acknowledged that it was "a little vicious".

[33] Professor Fleming [7] states that the better view is that strict liability does not run to any injury a dangerous animal happens to cause but only to harm which is attributable to its vicious propensity. [8] I do not understand the learned author to be going as far as to suggest that if the particular hostile behaviour is common to animals of the species it is not to be regarded as of a vicious propensity. Here the evidence is that making physical contact with a person obstructing the laneway is a normal characteristic of a bucking bull and not attributable to a vicious propensity. Nonetheless the behaviour itself is hostile and for that reason the fact that it is common among bulls does not avail the third defendant.

[34] Where a defendant is strictly liable within the *scienter* principle there is debate in the authorities as to whether or not contributory negligence is available. The preponderance of authority in Australia represented by the decision of the New South Wales Court of Appeal in *Higgins v William Inglis & Son Pty Ltd*[9] and the decision of the West Australian Court of Appeal in *Mary Aird v Grantham*[10] is that it is not available. While I am sympathetic with the submission by Mr Miles on behalf of the third defendant that the modern trend

---

7 Op cit p 403.

8 Professor Fleming cites *Behrens v Bertram Mills Circus* [1957] 2 QB 1 at 17 and *Glanville v Sutton* [1928] 1 KB 571 and notes that the distinction is more controversial in the case of animals ferae naturae.

9 [1978] 1 NSWLR 649.

10 (1998) WASCA 254.

in the High Court - exemplified by cases in other areas such as *Rylands v Fletcher*, occupier's liability and liability of highway authorities - to subsume a range of tortious liabilities into the general scope of the law of negligence I do not consider that in the absence of direct authority I should ignore a well established basis of legal liability.

[35] A defence of *volenti non fit injuria* was raised on behalf of the third defendant. I do not accept that the conduct of Mr Smith in using the laneway to walk from the arena to the yards could be seen to be such a disregard of obvious risk as to amount to an assumption of liability. The most appropriate expression of the rule in cases like the present is that of Barwick CJ in *Rootes v Shelton*[11]:

> "By engaging in a sport or pastime the participants may be held to have accepted risks which are inherent in that sport or pastime: the tribunal of fact can make its own assessment of what the accepted risks are: but this does not eliminate all duty of care of the one participant to the other."

[36] One of the purposes of the laneway was to provide pedestrian access between the yards and the shed. The laneway itself was not such a hazard that mere resort to it could give rise to an inference of assumption of risk. Being struck without warning by a bull was not, on the evidence before me, a risk inherent in making use of the laneway. But for Mr Smith being distracted by the announcer in the arena it is likely there would have been no injury. Mr Smith's conduct in this instance goes no further than a failure to take sufficient and proper care for his own safety such as would in other circumstances result in his award being reduced by reason of contributory negligence. This is in contrast to the position of a cowboy "hooked" following a ride. This is prima facie within the category of an inherent risk of participating in the sport.

[37] It follows in my view that, despite my indication of the degree to which I regard Mr Smith as having contributed to his own injury, by reason of the strict liability imposed on the owners of animals with a known dangerous or

---

11 (1967) 116 CLR 383 at 385.

vicious propensity I must find Mr Curran, the third defendant, wholly liable for Mr Smith's damages.

Quantum

[38] The plaintiff was 62 years old at trial and 58 when injured. He worked on the land and trained bulls for the arena. He had had a hard physical life but was until the 15th July 2000, still healthy. He had had earlier fractures of the hip, both wrists and left leg, had an arthroscopy of his right knee and had degeneration in his spine. Nonetheless I consider he would have been likely to work until at least 70 years of age, an age described by Dr Cook as not unusual.

[39] Mr Smith suffered injuries to his neck, right wrist , right knee and lower back. Of these the most serious were multiple fractures to the cervical spine. Mr Smith continues to have difficulty with his right wrist and lower back. His neck flexion is reduced to 30 degrees which Dr Cook said represented a moderate to severe loss of movement. Dr Cook assessed the degree of permanent partial impairment at 15% of the whole person for the neck injury and the C6/7 disc. The plaintiff suffered a further 3% disability as a result of the lower back problem.

[40] I assess general damages at $50,000.00 together with interest at 2% on $25,000.00 for 3.63 years amounting to $1,815.00.

[41] Past economic loss is difficult to assess. In the 4 years prior to the incident the plaintiff averaged $21,112.00 gross and $17,914.00 net per year. The plaintiff sought to quantify the loss of income by reference to expenses that would not otherwise have been incurred but that is in my view too simplistic. As was demonstrated in cross examination some additional expenses merely replaced other equally expensive means of doing the same task and some income sources, such as rodeo income actually peaked in the year after the accident. In the end I accept the defendants' submission that I should adopt a notional figure of $300.00 per week and the same figure for the future. This represents

almost the whole of the plaintiff's pre-accident average income. This is despite the plaintiff continuing to work. Nonetheless, the defendant has adopted this figure, no doubt having regard to the fact that rural incomes are variable with seasonal conditions and the fact that the conventional profit and loss sheet might not necessarily be an accurate indicator of the actual loss.

[42] For the past this represents a loss of $56,700.00 up to the date of judgement (189 weeks). I allow interest on this sum in the amount of $10,291.05 (5% for the whole period or 10% for half the period).

[43] For the future I take the same approach and allow $300.00 per week for 8 years (multiplier at 5% = 346) discounted by 15% for contingencies, making $88,230.00.

[44] For past care I accept the defendants' submission that 4 hours per day for 6 weeks is appropriate, making $2,016.00. Thereafter I allow a lump sum for less intensive care in the amount submitted by the defendants of $2,000.00. The plaintiff should also be allowed mowing costs of $1,344.00 less something for expenses. I allow $1,040.00. I allow interest on these sums at 4% for 3.63 years, totalling $734.13.

[45] For future mowing I allow $10.00 per week for 15 years (multiplier at 3% = 632), making $6,320.00.

[46] For future pain relief in the form of neck treatments I allow $10.00 per week for 15 years at $6,320.00. This represents about 11 physiotherapy visits a year at $48.00 per visit.

[47] Other special damages are agreed at $15,080.00.

[48] In the result damages are assessed as follows:

General damages	50,000.00
Interest	1,815.00

Past economic loss	56,700.00
Interest	10,291.05
Future economic loss	88,230.00
Past care	5,056.00
Interest	734.13
Future mowing	6,320.00
Future pain relief	6,320.00
Special damages	15,080.00
TOTAL	**240,546.18**

[49] In the result I give judgement for the plaintiff against the third defendant in the sum of TWO HUNDRED AND FORTY THOUSAND FIVE HUNDRED AND FORTY-SIX DOLLARS AND EIGHTEEN CENTS ($240,546.18). The plaintiff's action against the first and second defendants is dismissed. I will hear argument in relation to costs.