
THE TORT LAW REVIEW

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PRACTICAL JOKING AND ITS PENALTY: WILKINSON v DOWNTON IN CONTEXT

Mark Lunney

Wilkinson v Downton [1897] 2 QB 57 has long puzzled writers on the law of tort. Was it an attempt to expound a wide principle of tortious liability for intentional acts or was it merely an attempt to fashion a remedy in a hard case? In light of recent decisions of the English Court of Appeal on the requirements for liability to arise under *Wilkinson v Downton*, this article considers the historical context in which the case was decided. Analysis reveals that Wright J had little time to create a new cause of action to fit the facts of the case and that he drew his inspiration from a number of distinct sources. It also appears likely that the judgment handed down to the parties was not the judgment that appeared in the Law Reports. The article concludes by considering the extent to which the recent decisions are consistent with *Wilkinson v Downton* once the latter is understood in its historical context. 168

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IS THERE A FUTURE FOR ADVOCATES' IMMUNITY?

James Goudkamp

In *Giannarelli v Wraith* (1988) 165 CLR 543 a majority of the High Court of Australia confirmed that advocates are immune to liability for negligence in respect of any acts or omissions committed in the conduct of a case in court and such out-of-court work that is intimately connected with in-court work. This article examines the foundation and scope of the immunity and the arguments for and against its continued existence as part of the common law of Australia. The author submits that the arguments in favour of the immunity are tenuous and unconvincing and are outweighed by arguments in favour of its confinement or abolition. Consideration is also given to whether it would be appropriate for the High Court to reconsider the immunity or whether this matter should be left to Parliament. 188

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