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IS THERE ANY LAW OF CONSENT WITH RESPECT TO ASSAULT?

P W Young

The question as to whether physical contact occurred by consent or not has to be decided by courts relatively often. Although the raw question may be whether there was consent or not, the answer to that question usually involves the consideration of a number of difficult subsidiary issues. These are considered in this article. ........................................ 23
RESUSCITATING THE WILKINSON v DOWNTON TORT IN AUSTRALIA

Scott Wotherspoon

The Wilkinson v Downton tort traditionally has been understood as an action on the case involving the intentional infliction of mental harm. In 2006 the High Court of Australia rejected that understanding, saying that the tort had been subsumed by negligence principles. The author contends that both the conventional understanding of Wilkinson v Downton [1897] 2 QB 57, and the High Court’s rejection of it, are flawed. The infringement of Mrs Wilkinson’s personal safety was direct, not consequential. Wilkinson v Downton should be seen as a legitimate incremental extension to trespass to the person. The re-interpretation contended for will enhance the law’s perception of an individual’s right to personal safety and mental integrity in a principled way.

“RECOGNISING AN ELEPHANT”: EQUITABLE SET-OFF, “IMPEACHING TITLE” AND THE MODERN POSITION ON “SUFFICIENT CONNECTION”

Lee Aitken

The availability of equitable set-off has a large impact on commercial dealings between parties in conflict. The older law looked to pre-Judicature Act concepts to determine whether or not such a set-off is available. Recent English authority, now discussed, has moved away from that approach – whether or not it still controls the Australian position is a matter of argument. The Scottish law on retention provides a useful point of comparison and has been the subject of UK Supreme Court authority which is also analysed.

BOOK REVIEWS – Editor: Angelina Gomez

Sale of Businesses in Australia (2nd ed), by S A Christensen and W D Duncan
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