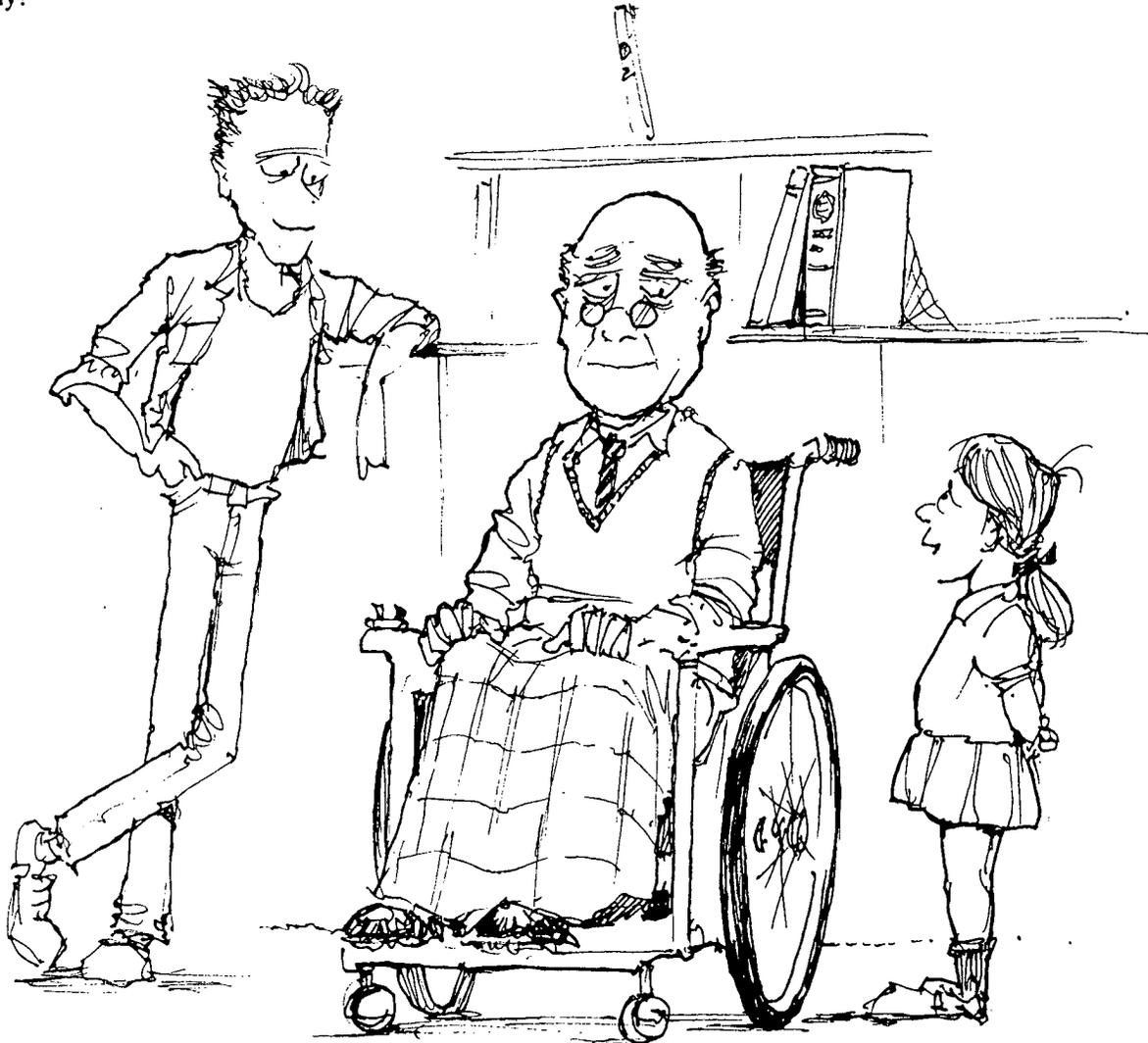


How the Giannarellis made a Real Barrister Out of Me

Gd Grandpa...Grandpa.
Gf mmm.
Gd Wake up Grandpa.
Gf What is it?
Gd Were you a barrister once?
Gf Oh that...yes...So was your grandmother.
Gd When?
Gf Oh, I don't remember exactly.
Gs In 1988?
Gf Yes.
Gs When barristers ate vogel bread and drank light beer.
Gd That long ago. Were you a real barrister? Were you fearless and powerful?
Gf Fearless..powerful..let me think....Powerful....well of course I was powerful, as I have often told you over dinner; but fearless...I wasn't the only one.....
Gd Tell us about it again Granpa....what was it like to be a barrister in 1988.
Gf There was a fear.
Gd I bet Grandma wasn't afraid.
Gf Yes even your grandmother....but it was the Victorians who were most afraid.
Gs They still are, but what were they afraid of then?
Gf Section 10 of the Legal Profession Practice Act.
Gd Why?

Gf They thought it meant that barristers were like solicitors.
Gd You never thought that did you Grandpa?
Gf Certainly not. We didn't think much about Victoria; that is until our premiums started to rise, thanks to Marks J.: and then we heard rumors about.....them.
Gd Who was them?
Gf The Giannerellis
Gd Gee, where did they come from?
Gf The docks.
Gd What for?
Gf For being wrongly sentenced: one on a bond; and two to prison.
Gd Who did they blame?
Gf Three barristers.
Gd What did they have to do with it?
Gf They appeared for them, one at the committal, one at their trial and the third in the appeal court.
Gs What did that Victorian Act have to do with us?
Gf That tricked a few people. At first we felt O.K.; only the Victorians' houses were on the line. As it turned out that Act shouldn't have worried them either, it had nothing to do with work in court.
Gs Didn't Toohey think it did?
Gf Oh yes....he did.



- Gs Gaudron agreed with him.
- Gf Her! She was a dissenter!
- Gs So was Deane.
- Gf Who cares about dissenters. You probably don't remember Bob Askin.
- Gs Who was he?
- Gd Were the barristers negligent Grandpa?
- Gf No-one knows, but they were immune anyway.
- Gd Why doesn't anyone know if they were negligent?
- Gf Because it was decided on a preliminary question not pleadings after a trial.
- Gd What were pleadings Grandpa?
- Gf They were an art last practised in New South Wales in the 60's my darling.
- Gs Did the preliminary question clarify anything?
- Gf No, it never does.
- Gs Did it clear up anything?
- Gf Of course.
- Gd What?
- Gf A lawyer can't be sued for what he does in court no matter how badly he does it. He is immune.
- Gd Did many people enjoy immunity.
- Gf Most didn't appreciate how enjoyable it was until they lost it. Politicians in Parliament and judges in court enjoyed it; but it was being lost systematically: local councils found theirs shrank in the 80's.
- Gd Grandpa, is it good to be immune?
- Gf Yes, it's good for everyone - well, practically everyone.
- Gs Why?
- Gf It stops the fear!
- Gs Why shouldn't you be afraid if you are negligent?
- Gf Public schools! You don't understand the fear. It was the fear of being sued when you were not negligent.
- Gd What was that?
- Gf The fear of the claim that was likely to fail.
- Gs Oh..that fear.
- Gd Was there anything else good about immunity?
- Gf Oh yes, it stopped the fear of endless lawsuits arising out of the same incident, some of which might succeed although the first failed. And then there was the "cab rank" principle.
- Gs Most of the Court didn't think it justified immunity.
- Gf Them!.....Well....It was a principle I often expounded in our Common Room.
- Gs Deane wasn't convinced either.
- Gf Him! All he could think about was negligence, gross and callous in its nature and devastating in its consequences. It is hard to accept that he had been a member of the New South Wales Bar.
- Gd Did you change after the Giannarellis' case Grandpa?
- Gf Oh yes, and so did your grandmother.
- Gs How?
- Gf After the Giannarellis' case I became totally fearless.
- Gs Let me help you with your rug....There now, tell us about the fearless bit.
- Gf After the Gianarellis' case, I became decisive in Court.
- Gs No more unnecessary arguments, defences, questions or witnesses?
- Gf Well, I don't remember that so well. But once I realised he couldn't make me a cross defendant I stopped asking my solicitor if I had forgotten any questions.
- Gs Did you become manifestly independent?
- Gf What is independence?
- Gs Did you use your immunity to strip away false issues?
- Gf "Strip away".....that sounds like your old Grandad.
- Gs Did you use this immunity to dismiss witnesses who would waste time?
- Gf Always, at least before lunch I always did.
- Gs Did anything else change for you after the Giannarellis' case?
- Gf Oh yes, my premiums went down. And the Bar Council and the brokers both claimed credit.
- Gs Did you lower your fees?
- Gf Did I what?
- Gs Remember what Brennan said.
- Gf He didn't say anything wrong, he was in the majority.
- Gs He said the immunity to the extent it was based on the "cab rank" principle was in turn based on reasonable fees.
- Gf Oh, reasonable fees, Oh yes, I missed you the first time. I thought for a moment you said lower fees.
- Gd What else did you do after the big case Grandpa?
- Gf I told my solicitors that only barristers should settle pleadings.
- Gs That's not what the headnote in the A.L.J. said.
- Gf You know that, and I know it; but a lot of them didn't, and the ones that did, I told to read Wilson J. again. He never said solicitors were immune for out of court work.
- Gs Aren't barristers in the same boat?
- Gf What was that?
- Gs All Wilson's remarks were confined to advocacy in court. So there was no majority on that point. And even Brennan left aside a failure where that failure impairs the conduct of the case in court in the way intended.
- Gf Intended by whom?
- Gs He didn't say. Anyway all that stuff about work out of court was obiter if you read the questions carefully.
- Gf It was! But what about the headnote in the A.L.J.?
- Gs You could have read the headnote in the A.L.R..
- Gf It read more like a novel than a note.
- Gs Grandfather, after the Gianarellis' case was your mind entirely free?
- Gf I liked Brennan J.'s idea that a barrister lends his exertions to all, but himself to none; but he didn't say that anything had to be free: ha ha ha.
- Gd Ha ha.
- Gs Were you prolix before the Giannarellis' case?
- Gf I don't think I ever laboured under such a reputation. I wouldn't have listened to such a suggestion. I feel sure I can say, without fear of contradiction, that I learned nothing on that particular subject.
- Gs Indeed.
- Gf Let me reiterate.
- Gs Must you.
- Gf I suppose I can sum it up in this way. It was the Giannarelli's case that made me a real barrister. □

P.M. Donohoe

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