



For a Better Result.....

Who's Right & Who's Wrong?

This is a difficult question to answer in some cases.

In many accident cases, fault is not clear even though there may be no contest about what happened.

Here are just two different scenarios which deserve comment.

First, where both parties agree to exactly what happened and it is believed to be a clear case of where fault lies. A collision occurs at night on an intersection where the Traffic Lights are not working. The road rules state that the old "right of way" rule applies. Both parties agree to the accident description – open & shut! However the High Court has also said that the road rules whilst instructive, are not the "be all and end all" of determining fault. In such instances, it can be a matter of an apportionment, and thus a matter for the discretion of the court.

Second, there can be a contest on the facts. This is often the most difficult scenario to predict, because there will be (at least) 2 different versions, with each party believing in his own position. Sometimes, pointing to objective and independent evidence can assist, e.g. photos at the scene of the accident. Again the dispute can give rise to an apportionment, or a decision that may appear unjust.

As most of our traffic cases in Qld will now be within the jurisdiction of the Magistrates Court (up to \$150,000.00), it pays to consider the nature of those who could determine your dispute in court. Most of the current Magistrates have come from the court system itself, and so are not originally lawyers. However, there is a growing trend to appoint new magistrates from the legal profession. Unfortunately, in the meantime, this means that sometimes legal argument will fall on deaf ears, and the court will consider matters other than purely legal ones.

Only by experience then, can you truly hope for the best opinion in any particular case, where the outcome is not clear.

For more information on this and other traffic law issues, please contact

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