



Examining Tort Law Frameworks for Psychiatric Injury Caused by Cyberbullying & the Accountability Gap in Digital Platform Liability

1 Introduction

Cyberbullying is the deliberate infliction of psychological harm, carried out with new technology.

English tort law frameworks allow a bullied person to sue the individual who bullied them, and recover in full. However, it does not let them sue the platform that hosted, distributed, and amplified the abuse.

2 Background

English tort law offers two established routes to recover for psychiatric injury: negligence & the intentional tort in *Wilkinson v Downton* (1897)

Both routes are built to hold a person with a guilty state of mind liable - neither was built with a platform defendant in view

3 Research Objectives

- ✓ Test the tort law frameworks on both individuals causing the harm and platforms who regulate the algorithmic content
 - Looking at different legal avenues where individuals can hold platforms liable (mainly Acts: Protection from Harassment Act, Online Safety Act, & Misuse of Private Information)
- ✓ Test whether the platform shaped gap is structural in the common law system or inherent in English law
 - Achieved through a comparative test with Canadian common law (in the provinces of Nova Scotia & British Columbia)

An important reason why platforms are not held liable is that English law is generally more reluctant to impose liability for omissions—such as failing to prevent another person’s wrongdoing—than for positive acts that directly cause harm.

Theoretical Layer

Neither tort theory actually justifies excluding platforms — corrective justice can accommodate liability for a platform’s own design choices (not just third-party content), and under the "cheapest cost avoider" principle, platforms are often better placed than an individual teenager to prevent the harm. The exclusion is not intentional; rather, it is a structural consequence of the common law.

4 Research Method

Doctrinal analysis of English case law and statute governing negligence, *Wilkinson v Downton* & Protection from Harassment Act 1997

Looking at alternative routes where platforms could potentially be held liable

Hypothetical case study one factual scenario, tested against each legal route

Comparative case study Canadian court decisions, provincial statutes (platform liability gap is structural & inherent in the common law system)

Individual Liability vs Platform Liability

5 KEY FINDINGS

Pathway Tested	Outcome
Negligence — individual	Works
<i>Wilkinson v Downton</i> — individual	Works
Protection from Harassment Act — individual	Works
Negligence — platform	Fails (omission, not act)
Online Safety Act 2023 — platform	Fails (regulatory only)
Misuse of private information — platform	Fails (narrow, untested)
Canada, Nova Scotia — platform	Fails (even free of precedent)

Routes tested, by defendant

Individual defendant

3 of 3 succeed

Platform defendant

0 of 4 succeed

****Tort law frameworks work for individual liability, however fail when tested against platforms**

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6 Key Authorities

Wilkinson v Downton [1897] 2 QB 57

Rhodes v OPO [2015] UKSC 32

Smith v Littlewoods [1987] AC 241

Crouch v Snell 2015 NSCC 340