

## Torts

Mark Boulton\*

Mitchell McInnes\*\*

In something less than one hundred and twenty pages, Mark Boulton's *Torts*<sup>1</sup>, part of Law Book Company's 'Nutshell Series', attempts to condense the law of torts into an evening's read. No matter how well-executed, such a project seems doomed by its own ambitions.

True, there exists a broad range of educational needs to which 'nutshells' respond. They profitably may be read, for example, by Year 12 or TAFE students enrolled in broad-stroke, introductory law courses. In such instances, *Torts* undoubtedly will provide a usefully concise statement of the basics of tort law. Nevertheless, it is the university undergraduate to whom *Torts* primarily is addressed and from whose perspective it must be evaluated. In a perfect world, of course, there would be no need for commercially produced summaries of law school courses. Having diligently read the assigned cases, texts and articles throughout the term, students invariably would be capable of confidently preparing their own digests for revision purposes. Moreover, they all would recognise that it is the preparation, rather than the review, of such summaries that pedagogically is most beneficial. Unfortunately, those ideals are not invariably met in reality. For a variety of reasons, students occasionally find themselves ill-prepared for fast-approaching examinations and in desperate need of overviews. Enter the 'nutshells'.

To judge from the table of contents, at least, there can be no complaint regarding the breadth of discussion presented in *Torts*. Alongside the staple subjects of intentional torts, negligence, occupiers' liability, nuisance, damages and so on, one also finds chapters devoted to topics often not considered in undergraduate courses. For example, Boulton provides a brief analysis of the law of torts as it pertains to animals, as well as a snapshot of the issues arising from the intersection of 'family relationships and torts'.

The depth of discussion, in contrast, is a matter of grave concern. While recognising the need for concision in a 'nutshell',

---

\* 1995, *Torts*, 3rd edn, Law Book Company, Sydney, pp. xii, 116.

\*\* Lecturer, Faculty of Law, University of Melbourne.

1 Boulton, M. 1995, *Torts*, 3rd edn, Law Book Company, Sydney.

one still can not help but worry about the student whose knowledge of, say, causation profits from a discussion lasting two brief paragraphs. Certainly, it is necessary to appreciate that ‘the “but-for” test is an important but not exclusive test’,<sup>2</sup> but it hardly suffices to say that the issue of causation is ‘determined by applying common sense’<sup>3</sup> and to note that an intervening act, such as medical negligence, ‘does not necessarily’<sup>4</sup> absolve an initial wrongdoer of responsibility for a subsequent injury. At the very least, the student probably should be provided with a brief description of the ‘but-for’ test. Even more dangerously, the brevity of discussion at times is positively misleading. For example, while theoretically it is true that there is no tariff by which damages for loss of amenities and enjoyment of life are assessed,<sup>5</sup> in practice, courts typically measure relief with reference to awards in similar cases.<sup>6</sup> By failing to note the approach actually employed by judges and lawyers, *Torts* conveys an impression that is not merely incomplete, but wrong.

As with any text, *Torts* also encounters the problem of currency; because of its format, however, it suffers more than usual. ‘Nutshells’ are useful only to the extent that they hit the high points and provide the essentials for a passing grade; absent anything in the way of a theoretical discussion or a critical approach, they must at least contain thumbnail references to the seminal cases. Accordingly, although the author certainly cannot be faulted, *Torts* fails its audience because (inevitably) it already has become dated. Students sitting examinations in 1996 must be familiar with, say, the High Court’s decision in *Northern Territory of Australia v. Mengel*<sup>7</sup> and the House of Lords’ decisions in *Page v. Smith*,<sup>8</sup> which were released subsequent to the text’s publication date.

Moving from substantive to stylistic matters, *Torts* generally is more successful. Though necessarily sparse, Boulton’s writing is engaging and accessible, and, notwithstanding the comments in the preceding paragraphs, manages to impart a surprising amount of information in very little space. The stylistic criticisms which can be made really are in the nature of minor quibbles. For example, while the desire to avoid the clutter of footnotes is understandable

---

2 Id at 35.

3 Ibid.

4 Ibid.

5 Id at 38; *Planet Fisheries Pty Ltd v. La Rosa* (1968) 119 CLR 118.

6 See e.g. *Government Insurance Office of New South Wales v. Bordiuk* (1988) Aust Torts Rep ¶ 80-190 per Priestley JA.

7 (1995) 129 ALR 1 (HC).

8 [1995] 2 WLR 644 (HL).

in a 'nutshell', the citation of cases might be improved in the next edition of the work. Although a textual reference to, say, '*Bryan v. Maloney* (1995) HCA' is somewhat helpful, *Torts* should include an appendicised list of cases, together with full citations, for the convenience of those students wishing to dig a little deeper.

It is hoped that this review does not seem too unkind to Boulton. The difficulties with *Torts* arise not from the author's execution of the project, but rather from the nature of the enterprise itself. While there undoubtedly always will exist a market for 'nutshells' among law students, it is difficult to regard them as anything other than a necessary evil; poor substitutes for the hard work that should have been done months before.

