

before the Governor-General signs the Act into law (p. 141);<sup>25</sup> and the Appropriation Bills listed in the Table of Statutes (XVII) for 1864 and 1952 should be placed under 'Victoria' and not 'Commonwealth'.

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*Torts: Cases and Commentary* by H. Luntz, A. D. Hambly and R. Hayes, (Butterworths, Sydney, 1980), pp. i-xxxii, 1-1158. ISBN 0 409 44350 6.

No self respecting law teacher will ever totally agree with the way any particular case book is put together. One lives with a case book far more than a text and thus becomes familiar with its foibles. Case books are like one's spouse; texts are more like passing acquaintances. Perhaps also, as with one's spouse, teachers see great room for improvement in most case books. Few though, accept the challenge of attempting to produce the perfect case book.

I have lived with the Luntz, Hambly and Hayes case book for a year. It has been a prescribed case book at the Australian National University Law School since the beginning of the 1980 academic year. The first year is supposed to be the most difficult. Naturally, we have had disagreements but generally I find it to be a happy match.

The availability of the book now gives consumers a real choice in case books. Professor Morison's case book, now into a fifth edition,<sup>1</sup> exclusively occupied the territory until the appearance of this book. Professor Morison's book takes a traditional approach. Its structure is taken from the historical development of tort law; the materials lend themselves to analytical discussion of the law. It is a book of quality. The new edition seems to sustain that tradition. On the other hand, the Luntz, Hambly and Hayes book takes students directly to questions of social policy. Chapter 1 establishes unequivocally the tone of the book. It asks the student to ponder the purpose and function of tort law, and especially the law of negligence. The case for reform of the law of negligence is stated boldly and reiterated throughout. This on the whole has been accomplished with no sacrifice of rigour. The chapter on Causation (Chapter 4), for instance, contains an extremely clear presentation of an analytically difficult branch of the law.

The book promotes views that are well within the mainstream of ideas about tort law that have emerged predominantly since the Second World War. In Negligence the emphasis has been on compensation. As a compensation system the inadequacies of negligence have been consistently shown. The book brings home forcefully the inequities and the inefficiencies of negligence as a compensation system. However, I was disappointed that more emphasis was not given to the economic analysis of tort law. After an excellent discussion of the basic premises of economic analysis<sup>2</sup> it is scarcely discussed again.<sup>3</sup> Whatever one's views are about the Law and Economics movement — whether you hate it or love it — it cannot be ignored. It is the most intellectually challenging development of the last thirty years of scholarship in private law. In contrast to most Australian scholarship to date, and to their credit, the editors do acknowledge the Law and Economics literature, but in my view insufficiently.<sup>4</sup>

<sup>25</sup> See 'Safeguards to ensure that the wrong Bill is not assented to', (1977) 51 *Australian Law Journal* 800.

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<sup>1</sup> *Morison, Sharwood, Phegan and Sappideen's Cases on Torts* (5th edition, 1981); Dr Sharwood has retired from active editorship.

<sup>2</sup> See 56-61.

<sup>3</sup> Oblique reference is made to economic analysis as it applies to nuisance, at 940.

<sup>4</sup> It may be mentioned that this gap may be partially filled by the publication of the proceedings of a Law and Economics Workshop sponsored by the Research School of Social Sciences, at the Australian National University, November 1980. The forthcoming book will be edited by Dr Ross Cranston, Senior Fellow, R.S.S.S., A.N.U.

As a teaching tool the book is flexible. Comments are heavily used. Almost without exception they are helpful and add valuable perspective to the law. The questions are carefully constructed and when used in class have the happy knack of stimulating discussion and debate about important aspects of the particular part of the law of torts in issue.

I have reservations about some sections of the book. In particular, I found Chapter 19, the chapter on Nuisance, difficult to use in its present form. I have to re-order the treatment of the materials to treat the area systematically in class. In my opinion the chapter does not at the outset sufficiently present materials which give students an understanding of the underlying basis of the law in Nuisance. Similarly, the presentation of cases and materials in Chapter 15, relating to Defamation, leads to some repetition if covered in the order presented. For instance, the materials extracted in respect of the construction and meaning of words appear before materials on the definition of defamatory matter. It seems necessary to me that students understand the latter before looking at the former. Chapter 6 deals with Damages. It usefully includes cases on the measure of damages for property damage. However, that portion of the chapter dealing with assessment of damages for personal injuries is, I think, less satisfactory. Here the desire to highlight the weaknesses of negligence liability works to the detriment of the presentation of the material from which principles for the assessment of damages can be drawn.

But these are minor quibbles. The depth of scholarship is impressive and that sets it apart. Indeed, it has the unusual combination of attributes for a case book of presenting the material clearly and provocatively and of taking students to a deeper understanding of the law of Torts and its functioning in society. The editors are to be congratulated.

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