from the legacies of Sir Mackenzie Chalmers. Deprived of familiar resources and tools of interpretation, we must then turn to other legal systems for guidance. Given the problems of amending a multilateral Convention (not unlike a Constitution), courts must consciously emphasise flexibility and uniformity in the development of principles which can regulate contracts for an indefinite period. The commentary in this book, based on comparative methodology with extensive bibliographic notes, will be invaluable. It certainly would not attract the criticism of Lord Diplock in *Fothergill* v. *Monarch Airlines* when he dismissed much learned commentary as containing 'more assertion than ratiocination',[2] thus rightly having little influence on the minds of judges.

This book makes some important observations on the future development of domestic sales law in the field of commercial contracts, by analogy with the Convention. The necessity to agree multilaterally made most State representatives reflect on the proper allocation of costs between contracting parties of unanticipated or improbable events in the course of their transaction. It also raised the fundamental issue of the social and economic functions of sanctions for breach of contract. These are areas where the common law has developed its own peculiar view. Agreement was reached in the Convention on 'force majeure', although the ambiguity of the provisions may cloak dissent. But the priority and availability of remedies defied agreement, and machinery now exists (in article 28) to ensure that the Convention has not enlarged the scope of operation of specific performance in common law jurisdictions. The emphasis on procedures could also benefit domestic sales law. In many circumstances, the Convention requires parties to communicate with each other. This enlarges available courses of action for the parties and is commercially more realistic. The parties' conduct, subsequent to the contract, now has an importance in fixing the scope of their contractual relations that was previously lacking.

Problems do remain with the operation of the Convention. Some gaps are already apparent, and others will emerge. For Australian lawyers, the interaction of Convention law and existing sales law will be difficult. There may be no easy answer as to whether and how the Convention applies. We will have to characterize problems by their factual content rather than be controlled by the existing doctrinal labels of our law. But in commercial transactions, Australian lawyers and businessmen have gained considerable experience in applying foreign legal systems. It will now be necessary to domesticate that experience. Professor Honnold's work will be an invaluable guide.

MARY E. HISCOCK*

Assessment of Damages for Personal Injury and Death by Professor Harold Luntz (Butterworths, Australia, 1983) pp. i-xvii, 1-570. Price $49.00. ISBN 0 409 491322.

This is the second edition of Professor Luntz's acclaimed study of the principles for the assessment of damages for personal injury and death in Australia. In his preface the author laments the need for a second edition, as he had hoped that the Australian Woodhouse Committee would have seen the end to the 'fault' system of personal injuries compensation at common law. At the time he wrote his preface the author saw little chance of a National Compensation Scheme being implemented in the foreseeable future. Ironically, since the completion of the book there has been a change of government at the Federal level, accompanied by a revival of the debate over a 'no fault' National Compensation Scheme. Professor Luntz's provocative critique of the law of damages thus assumes a new relevance. He notes that there has been much judicial activity since the first edition, particularly in the highest courts in England, Australia and Canada, but is quick to point out that while the decisions of the courts have to some extent reduced the illogicality of the subject, they have also made more apparent 'the inadequacy of the mechanism available to the courts for doing justice in those cases which have come before them'.[1]

[2] *Ibid.* 225.

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[1] Luntz, *Assessment of Damages for Personal Injury and Death* (Butterworths, Australia 1983) p. viii.

It is clear from a comparison of the first and second editions that the intervening nine years have seen a deepening of Professor Luntz's insight into his subject. His prolific reading of all reported and unreported cases on damages in the common law jurisdictions has resulted in an impressive depth of scholarship. The book retains its emphasis as an academic study of the law and its concern is not with the recording of particular awards, but with an analysis of principles and rules. Its undoubted value to the practitioner has been enhanced by the inclusion, first, of practical points that have come to the attention of the author and, secondly, of various tables set out in the Appendix.

As Professor Luntz notes in his preface, much of the book has been extensively rewritten and not much of the original text remains intact. In particular, chapter one of the book has been revised, rearranged and expanded to give a more satisfying, logical and systematic treatment. The chapter deals with the general principles of damages for personal injuries and death and provides a penetrating critical analysis of the principles underlying the current law. It is here that the author launches his attack on the existing law and presents a convincing case for reform. The section on causation and remoteness of damage has been expanded in scope and has been placed in a separate chapter. Chapter four deals with pecuniary loss and combines the third and fourth chapters of the first edition into a more coherent analysis, and also has a new section devoted to voluntary assistance and services rendered to an injured plaintiff. Chapter eight, dealing with benefits from collateral sources, has two new sections which deal with no-fault motor accident benefits and criminal injuries compensation. In a review of the first edition of this book, Mr Robert Brooking Q.C. (now Mr Justice Brooking of the Supreme Court of Victoria) suggested that Professor Luntz might add a chapter on appeals against awards of damages for personal injury.[2] This suggestion has been taken up in the second edition. Chapter twelve deals with the general principles relating to appeals, the appellate court's power to receive further evidence, appeals from jury trials, appeals from a judge alone and the assessment by appellate courts. This addition is to be welcomed, particularly because Professor Luntz's treatment is lucid and well organized.

The book has a number of outstanding characteristics. First, it presents the existing law clearly and in a way that the busy practitioner can find quickly and confidently. At the same time there is a thorough analysis of the development of the legal principles in such a way that the reader is left with a clear understanding of the growth of the law and its likely future developments. Professor Luntz is not satisfied with a mere enunciation of legal rules. Instead his concern is with the organic growth of the law, and the current position is to be seen as an aspect or stage in the law's development. This appoach is illustrated by the section in chapter six entitled 'Income Tax on Investments'. There the author states the current position as laid down in *Todorovic v. Waller*,[3] namely 'that the discount rate there laid down "is intended to make the appropriate allowance . . . for tax (either actual or notional) upon income from investment of the sum awarded" and that no further allowance should be made therefor'.[4] He then concedes that the rest of the section has no real 'practical importance'[5] but goes on to include a discussion of the past development of the law because this remains 'significant in relation to the theory on which damages are assessed',[6] and because it departs from the practice approved by the High Court in *Cullen v. Trappell*,[7] and recognized as logical by the Privy Council in *Paul v. Rendell*.[8] The reader is thus left with a clear understanding of the tensions in the development of the law and is given an idea of the likelihood of the existing position remaining as it is, or being modified by a subsequent decision.

Secondly, the case law is analysed against the backdrop of well-articulated policy considerations. On numerous occasions there are inserted subsections laying out the policy evaluations appropriate to the decisions under discussion. This results in a greater understanding of the issues involved and their underlying themes and at the same time facilitates constructive criticism of the decided cases. Statistics are also sensitively used to reinforce policy arguments and to give substance to points of criticism.

[2] (1974) 9 *M.U.L.R.* 796.
[3] (1981) 37 A.L.R. 481.
[4] Luntz, *op. cit.* 284.
[5] *Ibid.*
[6] *Ibid.*
[7] (1980) 29 A.L.R. 1, 7-12.
[8] (1981) 34 A.L.R. 569, 576.

Thirdly, the case citations are contained in the body of the text, making the book easy to read. The footnotes are devoted to the odd discussion, to points of comparison, to examples and to citing numerous articles, Law Reform Commission Reports, cases and other references. The result is a digest of information and an excellent springboard to further research. Finally, at various points in the book the author sees fit to insert a short subsection cross-referencing the section under discussion with other related areas. This reviewer found this to be a particularly useful device, especially in the middle chapters of the book where many sections link up to discussions elsewhere in the work.

The most impressive aspects of Professor Luntz's work are its thoroughness, clarity, scholarship and depth of insight. It is an excellent book. The only pity is that Professor Luntz has not yet seen fit to publish a work covering the whole field of damages in Australia. Perhaps the next few years will see such a publication.

RICHARD JOHNSTONE*

Wills and Intestacy in Australia and New Zealand by I. J. Hardingham, M. A. Neave and H. A. J. Ford. (Law Book Company Limited, Sydney, 1983) pp. i-xlviii, Index 495-518. Price $54.00 (hardback), $36.00 (soft cover). ISBN 0 455 20415 2; 0 455 204160 (paperback)

This book is a revised and consolidated version of the authors' *Law of Wills*[1] published in 1977 and Dr Hardingham's *Law of Intestate Succession*[2] published in 1978. There had theretofore been a distinct lacuna in indigenous writing on the law of wills and succession generally. By contrast, the coverage of those fields by English texts was rich and distinguished. Admittedly Jarman[3] (1951) was a little out of date though it remains probably the most authoritative and certainly the most detailed and comprehensive coverage of the area up to 1951. Theobald[4], like Jarman, has a long lineage. It was first published in 1876; Jarman in 1841-3. Williams[5] (1952) is a comparative newcomer to the field, and although its footnotes provide a remarkable glimpse of the main Commonwealth cases, it is still essentially an English law text.

Thus, in 1978 *The Law of Wills* was warmly welcomed by law teachers and practitioners. In updated form Part I of the present volume (Chapters 1 to 12) deals with the material that was formerly in the 1978 text. Chapter 1 — 'The General Nature of a Will' — distinguishes a will from dispositions and transactions which are not testamentary but have some of the characteristics or indicia of a will. The aim of the distinguishing process is to isolate the features of a true testamentary disposition. Chapter 2 deals with formal requirements such as signatures and witnesses. There is an interesting discussion of the relaxation in South Australia and Queensland of the formal requirements for the making of a will. In South Australia a document may be admitted to probate as the last will of a deceased person although not executed in conformity with the standard requirements, if a judge 'is satisfied that there can be no reasonable doubt that the deceased intended the document to constitute his will'.[6] There have now been seven reported decisions in South Australia, and they are examined at pp. 24-25. The Queensland provision is slightly different. There a court may admit a document to probate if it is 'executed in substantial compliance with the formalities prescribed . . . if the Court is satisfied that the instrument expresses the testamentary intention of the testator'.[7] Other aspects of this innovative Act, which repays study by anyone interested in the area of administration of estates, are explored. Chapter 3 is

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[1] Law Book Company Limited, Sydney, 1977.

[2] Law Book Company Limited, Sydney, 1978.

[3] Jarman T., *A Treatise on Wills*, 8th. ed. by R. Jennings and J. C. Harper, 1951.

[4] Theobald Sir H. S., *A Concise Treatise on the Law of Wills*, 13th ed. by S. Cretney and G. Dworkin, 1971.

[5] Williams W. J., *The Law Relating to Wills;* Butterworths, London, 1952.

[6] Wills Act 1936-75 (S.A.), s. 12, as amended by Wills Act Amendment Act (No. 2) 1975, s. 9.

[7] Succession Act 1981 (Qld), s. 9.