

LAW OF TORT. By B. M. GHANDI. [Lucknow: Eastern Book Company, 1987. 15 + xlviii + 1012 pp. Hardcover: Rs. 200.00 ]

THIS tome on tort law in India touches on just about every aspect of the law in the field, giving both a historical perspective and an examination of such up-to-date matters as the Bhopal tragedy. Its aim, according to the author's preface, is to look at the constitutional aspects of tort law, together with its philosophical and social background. It seeks to explain the "aims, reason, effect and operation of the law" in the area, and the author claims that "every legal doctrine has been dealt with right from inception to its final development".

The author, the Principal of the Law College at Modasa, devotes the first eight of the twenty-three chapters in the book to general principles of tort law. These eight chapters account for almost half of the book. The other fifteen chapters, dealing with specific torts, together comprise the remaining half.

The chapters dealing with general principles of tort law include an examination of the meaning and nature of tort (chapter I) and an analysis of the various definitions of tort law formulated by academic writers over the years (chapter II). Chapter II also includes discussion of the differences between tort law and other areas such as contract and crime, and looks at the policy behind tortious liability. It points out that there has, historically, been a paucity of tort litigation in India - which is clearly one of the reasons why the author often refers to jurisprudence from other jurisdictions, notably England, the United States and Australia. Cases from these jurisdictions are used primarily for comparative purposes, but in those areas where local case law is insufficiently extensive, or where the development of the law can only be examined by reference to other jurisdictions (as is the case, for example, in relation to negligence and defamation), their use is also explanatory. Even given the lack of local litigation, the author nevertheless adopts a positive view of the future development of tort law in India, considering the emergence of such new torts as invasion of privacy and abuse of statutory powers.

In his preface, the author claims that the chapters on specific torts have been organised "according to their importance". In writing the introduction of the book, B. B. Pande, a Reader in the Faculty of Law, University of Delhi, points out that, in terms of the actions brought in India since 1914, the longstanding preference for actions for malicious prosecution and defamation has given way during the past ten years or so to cases dealing with issues of negligence, nuisance and strict liability - with almost 50% of appellate cases since 1975 relating to actions in these areas.

This being so, it is a little surprising to find the chapters on negligence, nuisance and strict liability appearing only as the sixteenth to eighteenth chapters of the twenty-three (behind matters such as trespass to land and reversion and miscellaneous rights) and to note that only just over one hundred and fifty pages of the thousand are devoted to these crucial areas. It is particularly surprising that the vast, and rapidly developing, area of negligence has only eighty pages to itself.

The chapter on negligence, as well as being comparatively short, is also organised in what will be an unfamiliar and surprising way to most tort lawyers. The standard of care is awarded a good deal of attention, but under the title "duty to take care" rather than as part of breach of duty, which is dealt with separately. *Res ipsa loquitur* and the defence of contributory negligence, normally only accorded a limited amount of attention by textbook writers, also feature very prominently. Causation and remoteness of damage are, on the other hand, given only the most cursory analysis, and do not even appear in the index. The emphasis given to respective areas is, of course, in part due to particular considerations and developments in India, but this does not entirely explain the view taken.

Of even more significance, is the fact that the “duty” concept proper (as distinct from standard), normally regarded as the most complex and detailed aspect of negligence, is given very little specific attention. This is in part because several of what are generally considered to be “duty” considerations are dealt with under other titles, such as nervous shock and economic loss through negligent misstatements, which are discussed under “consequential harm”. Even given this explanation, however, the amount of discussion given to duty appears inadequate. Although the book was published before the recent Privy Council decision in *Yuen Kun-Yeu v Attorney General of Hong Kong*,<sup>1</sup> it could, and should, have given detailed consideration to the major English case of *Anns v Merton London Borough Council*,<sup>2</sup> which revolutionised the approach to the duty of care, but which it barely mentions, and to the leading Australian case of *Sutherland Shire Council v Heyman*,<sup>3</sup> which was among the first of several cases to criticise *Anns*, to which it does not refer at all.

Other omissions also give rise to concern, as, at times, despite the volume of cases covered, the author seems to gloss over the important aspects of whole areas of legal development. For example, in discussing the law on negligent misstatement following the English House of Lords decision in *Hedley Byrne & Co. Ltd v Heller & Partners Ltd*,<sup>4</sup> reference is made to the Privy Council decision on appeal from Australia in *Mutual Life & Citizens' Assurance Co. Ltd v Evatt*.<sup>5</sup> This case purported to place on liability under *Hedley Byrne* the restriction that such liability could only arise if the person making the statement was either in the business of giving advice in the relevant area or had held himself out as possessing the necessary expertise. The author, after mentioning *Mutual Life*, simply states that “this is a useful restriction on the doctrine of the principal case of *Hedley Byrne*”.

Although the author goes on, a couple of pages later, to mention than an alternative view, requiring only that the advice be given in a “business or professional” context, or in a situation where the advice is “serious and considered”, has been adopted in subsequent cases (including, *inter alia*, that of the English Court of Appeal in *Howard Marine & Dredging Co. Ltd v A Ogden & Sons (Excavations) Ltd.*,<sup>6</sup> he never clearly indicates which view prevails. He does acknowledge, somewhat confusingly, given his apparent approval of *Mutual Life*, that the “unduly restrictive interpretation of the principle of reasonable reliance has therefore to be checked so as to expand the ambit of liability for negligent misrepresentation”, but he makes no reference to the very significant fact that this restrictive view has been emphatically rejected by the majority of the High Court of Australia in the case of *Shaddock v Parramatta City Council*.<sup>7</sup> As a result of the decision in *Shaddock*, it is very unlikely that *Mutual Life* will now be followed anywhere. Failure to refer to this case leaves the reader with a feeling of uncertainty and confusion which is unwarranted and misleading.

The writer’s style is, by standards outside the Indian sub-continent, idiosyncratic and, at times, awkward, complex and difficult

<sup>1</sup> [1987] 2 A11 E.R. 705.

<sup>2</sup> [1978] A.C. 728.

<sup>3</sup> (1985) 9 A.L.J.R. 564.

<sup>4</sup> [1964] A.C. 465.

<sup>5</sup> [1971] A.C. 793.

<sup>6</sup> [1978] 2 W.L.R. 515.

<sup>7</sup> (1981) 36 A.L.R. 385.

to follow. At other times, particularly, for example in his description of the Bhopal incident (analysis of which is to be found in a specially added appendix), his linguistic approach is literary rather than academic, and a reader unfamiliar with Indian texts might find it somewhat out of place in a law text-book.

Nevertheless, the book is extensive in scope, and the author evinces a tangible fascination for his subject. Even given the fairly frequent references to foreign jurisprudence, this work remains predominantly Indian both in emphasis and content, and the sheer volume of Indian case law examined means that the book must prove valuable to anyone requiring an Indian perspective on tort law.

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