THE LAW OF TORT. By P.S. ATCHUTHEN PILLAI (8th Edition). [Lucknow: Eastern Book Company. 1987. xl + 488 pp. Hard-cover: Rs 80.00]

IF its sustained popularity is an indication, then this book is a well regarded exploration of the law of torts in India. First published in 1950, this is the eighth edition of an eminently readable book. In the preface the author expresses doubt that he will personally revise the work again. It will be regrettable if his pessimism proves well founded. His conversational style gives the book the feel of a reliable and trustworthy companion.

The text is ordered in the conventional pattern. The introductory chapters are concerned with historical development and general concepts. Individual torts or groups of related torts are then examined in subsequent chapters. Like most other texts in the area, the first to be considered are torts constituting intentional interference with the person. Thereafter, defamation, trespass, deceit, negligence, nuisance, etc. The concluding chapters deal with defences and remedies. There would appear to be no gaps, as may be demonstrated by chapters devoted to such relatively obscure issues as "Injury to Servitudes" (Chapter 16) and "Foreign Torts" (Chapter 36).

The emphasis accorded the various torts is presumably a reflection of their relative importance in India. In this regard, it is not a conventional text. Negligence is not the predominant topic as is in an English or American text. The discussion of all aspects of the law of negligence is not substantially longer than the discussion of the law of defamation.

Although it is not evident whether this is a comment on the law of negligence or the law of defamation in India, comparatively fewer Indian cases are cited in the negligence section than in the defamation section. In either event, one of the perplexing features of the text is a surprising paucity of Indian cases. A glance at the case list discloses that the cases cited are disproportionately English.

The relative unimportance of negligence may also explain its mystifying presentation. Discussion of the law of negligence begins rather illogically with the subset of principles concerned with negligent words. That occurs in Chapter 10, "Deceit & Negligent Mis-statement". Chapter 11 then deals with remoteness. Chapter 12 considers *novus actus* in conjunction with nervous shock. Finally, in Chapter 13, the basic concepts of duty, breach and damage are addressed. It is only at this late stage that a reasonable, order of presentation emerges. Chapter 13 concludes with a discussion of matters of proof and the doctrine of *res ipsa loquitor* before Chapter 14 completes the discussion with an examination of contributory negligence.

The confusion generated by this bizarre structure is compounded by the treatment of basic negligence concepts. The discussion of "Proximity" fails to disentangle duty of care from causation. The magnitude of risk and other factors relevant to standard of care are mentioned in relation to duty instead of under the heading "Breach of Duty". But the factors are not examined in depth anywhere. The discussion of breach simply proceeds under a series of headings such as "Duty of learner driver to instructor", "Cricket ball case", "Nursery school case", "Statutory duty", "Hospital negligence", "Maternity Hospital Cases", etc. The concept of damage is disposed of in a page in Chapter 13, which is really not surprising since the relevant issues of remoteness and causation have already been examined by the time the basic concept is considered.

These weaknesses are not offset by comprehensive analysis. For instance, although brief reference is made to *Anns.* v. *London Borough of Merton*[1] and to *Junior Books* v. *Veitchi*,[2] there is no consideration of either the duty of care owed by bodies exercising statutory powers or the duty of care owed in relation to pure economic loss. Also, a number

[1] [1987] 2 All E. R. 492 (H. L.).
[2] [1982] 3 W. L. R. 477 (H. L.).

of issues are examined without reference to significant recent cases. Negligent mis-statement is discussed without reference to cases such as *Howard Marine* v. *Ogden & Sons*[3] and *Shaddock* v. *Parramatta City Council*;[4] novus actus interveniens is examined without reference to *Lamb* v. *London Borough of Camden*;[5] and the nature of the duty owed by medical practitioners considered without mention of *Sidaway* v. *Behtlem Royal Hospital*.[6]

Although remoteness is the focus of the previous Chapter, Chapter 12 concludes with a comparative examination of remoteness in tort and contract. This appears to be the only consideration of issues arising out of the intersection of tort law and contract law. There is no consideration of whether a party may sue in negligence for damage incurred by reason of a breach of contract. No reference is made to *Tai Hing Cotton Mill* v. *Liu Chong Hing Bank*.[7] The extensive analysis by the Supreme Court of Canada in *Central Trust* v. *Rafuse*[8] is also overlooked, although this could be the product of bad timing. The case was decided not long before the text was published.

The most distressing aspect of negligence law in this text is the absence of any consideraation of the fundamentally important development of a two-stage duty of care test. There is no analysis of this feature *of Anns* v. *London Borough of Merton*[9] and no reference to the judicial criticism it attracted.[10]

This omission is arguably less damaging since the apparent demise of the two-stage test in *Yuen Kun-yeu* v. *Attorney General of Hong Kong*.[11] This latest twist in the law of duty of care has been subjected to potent criticism in a recent case note in this journal.[12] But, although the two-stage test may have possessed the virtue of clarity, it is easy to see why the judiciary became increasingly uncomfortable with it. A test of universal application incorporating the risky uncertainties of unconcealed policy adjudication was probably destined to enjoy but a short life. Such an approach is not the heritage of the Common Law. On the other hand, the so-called "incremental" approach to determining duty of care does represent the evolutionary tradition of the Common Law. It is unquestionably consistent with both Lord Atkin's conception of the duty of care[13] and Lord Diplock's detailed exposition of the methodology by which the Common Law has evolved.[14] The question which remains is whether the contrasting approaches would ever produce different results in any specific set of facts.

The development which this text was well placed to explore and explain is the fascinating decision of the Supreme Court of India in

3 [1978] Q. B. 574 (C. A.).
4 (1981) 356 A. L. R. 385 (H. C).
5 [1981] 2 All E. R. 408 (C. A.).
6 [1985] 1 All E. R. 643 (H. L.).
7 [1985] 2 All E. R. 947 (P. C).
8 (1986)31 D. L. R. 481.
9 *Supra.,* n(1), at p. 498.
10 *Governors of the Peabody Donation Fund* v. *Lindsay Parkinson* [1984] 3 All E. R 529 per Lord Keith at 534 *Sutherland Shire Council* v. *Heyman* (1985) 60 A. L. R. l, per Brennan J. at 43-44; and *Leigh & Sillavan* v. *Aliakmon Shipping* [1986] 2 All E. R. 145, per Lord Brandon at 153.
11 [1987] 2 AllE. R. 705 (P. C).
12 Tan Keng Feng, Note: "Reassertion of the Old Approach to Duty in Negligence" (1987) 29 M. L. R. 308.
13 *Donoghue* v. *Stevenson* [1932] All E. R. Rep. 1, at p. 13. (H. L.).
14 *Home Office* v. *Dorset Yacht* [1970] 2 All E. R. 294, at pp. 324-326 (H. L.).

M.C. Mehta v. *Union of India.*[15] Although the reasoning may be infected by constitutional considerations, it would appear that the Court has adopted strict liability principles which are far more extreme than even the most aggressive interpretation of *Rylands* v. *Fletcher*[16] could ever yield. The decision is the more interesting because of the steady retreat by the English courts from the notion of strict liability.[17]

Apparently the decision in *Mehta* was issued just as the preparation of this eighth edition entered its final stages. Rather than delay publication, the choice was made to deal with *Mehta* by way of an addendum which appears at the beginning of the book. Given the importance of the decision against the background of Bhopal litigation, it was a dubious choice. But, worse, the addendum could hardly be more disappointing. The Court's reasoning is simply restated in similar language. No insights are offered which are not evident on the surface of the decision itself. Indeed, because the factual context is omitted, it confuses rather than enlightens.

In summary the author's latest revision of his apparently venerable text is unlikely to reward the researcher seeking a comparative view of recent controversial issues. But it will be of value for general and comparative reference at a basic level.

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[15] [1987] A. I. R. 1086.

[16] (1866) L R. 1 Ex. 265 (Ex. Ch.); (1868) L. R. 3 H. L. 330 (H. L.).

[17] The original rule has been considerably restricted, if not reduced to the equivalent of negligence, by a succession of cases such as *Read* v. *Lyons* [1947] A. C. 156 (H. L.); *Perry* v. *Kendricks Transport* [1956] 1 W. L. R. 85 (C. A.); and *Dunne* v. *North Western Gas Board* [1964] 2 Q. B. 806 (C. A.).