

## BOOK REVIEWS

TORTS IN THE NINETIES EDITED BY NICHOLAS J MULLANY. [Australia: LBC Information Services, 1997. xlv + 342 pp (including index). Hardcover: A\$135]

THIS interesting and stimulating volume of chapters on various aspects of tort law brings together eminent academics, practitioners and judges from Australia, New Zealand, Canada, the United Kingdom and the United States. Its eleven chapters deal with matters as diverse as defamation, false imprisonment, economic loss and liability for psychiatric disorder, and the perspectives brought by each of the writers to their chosen subjects will add much to the jurisprudence in this field.

In his foreword, the Honourable Sir Gerard Brennan AC KBE indicates the role and value of the book when he states that: “The informed observer of developments in the law of torts needs to know the object or purpose of the law, its underlying values and principles and the terms in which the law is articulated. The chapters ... in this volume address their several topics from these broad perspectives”. And the editor, Professor Nicholas J Mullany (who is himself a contributor to the volume) draws attention in his preface both to the diversity of subjects examined and the wide variety of countries from which the contributors are drawn – the latter being a deliberate focus to reflect the fact that: “Cross-fertilisation of and mutual respect for the views prevailing in other jurisdictions has been an especially prevalent (*sic*) feature of the maturation of the law of tort”.

The first chapter, by the Honourable Sir Anthony Mason AC KBE (from Australia), deals with the recovery and calculation of economic loss. The chapter begins with a clear and thorough examination of the changes brought about in this area by the landmark decision in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, and it goes on to give an extremely useful comparative analysis of the developments which have taken place in the United Kingdom, Canada, Australia, New Zealand and the United States in recent years, as well as to discuss the ways in which causes of action for economic loss arise and how damages in such actions are calculated.

This is followed by a very well-analysed chapter by Professor Keith Stanton (from the United Kingdom) on the incremental approach to the duty of care, as espoused by the High Court of Australia in *Sutherland Shire Council v Heyman* (1985) 157 CLR 424 and subsequently embraced by the House of Lords in England in both *Caparo Industries plc v Dickman* [1990] 2 AC 605 and *Murphy v Brentwood District Council* [1991] 1 AC 398. The third chapter, by Professor John Fleming (from the United States), harks back in places to the area of economic loss in dealing with the thorny and unresolved subject of preventive damages. It also contains an examination of the law relating to latent injuries.

The fourth chapter, by Professor Harold Luntz (from Australia) appears at first sight to have a much more specific focus. It deals with negligently manufactured heart valves, and the various attempts made by recipients or their dependants to bring actions in the United States against the manufacturers. The chapter focuses,

in particular, on attempts to bring class actions, and the possible lessons which Australia might learn in this respect. As a member of the panel of experts appointed in the United States to help settle the actions under discussion, Professor Luntz offers a unique insight to the complexities of dealing with such matters. Although of limited scope in terms of the immediate subject-matter, the chapter contains interesting general discussion of product liability and the problems experienced by individual plaintiffs in seeking to establish negligence in actions against large corporate defendants.

The chapter contributed by the editor, Professor Nicholas J Mullany (from Australia) is, at over seventy pages, the longest and most-detailed in the volume. It deals with liability for the infliction of psychiatric disorder (otherwise known as nervous shock), and is an exhaustive – and heavily footnoted – evaluation of the law in the area. The law in every jurisdiction represented in the book is discussed in depth, although the focus is on current and future position in Australia.

There follows Professor Stephen Todd's topical chapter on the protection of privacy (which appears to have been written before the passing of the English Protection from Harassment Act of 1997). This contains very full analysis of the law in the major Commonwealth jurisdictions on all aspects of privacy – encompassing disclosure of private facts and information, breach of confidence and intrusions upon solitude in all their various forms.

In his chapter, the Honourable Justice Robert S French, the President of the Australian Native Title Tribunal, considers the impact of statutory law in the realm of torts, and concludes that, while tort law is not in need of codification, there is a place for the development of "broad statutory principles to subsume the myriad of existing [common law] rules".

The eighth chapter, which is contributed by Professor Francis A Trindade (also from Australia), is an excellent study of the modern tort of false imprisonment – including discussion of the controversial topics of whether convicted prisoners should be able to sue for wrongful restraint if their liberty is deprived to a greater extent than is justifiable, and whether Lord Denning's sweeping dismissal of actions for negligent false imprisonment in *Letang v Cooper* [1965] 1 QB 232 led to the unjustifiable extinction (in England, if not in Australia) of a valuable cause of action in tort.

The Honourable Justice Dennis Mahoney AO (again from Australia), contributes a chapter on defamation. His thesis is that this is an area of tort law which requires "fundamental reconsideration and redrafting", largely because of the problems associated with the media and mass communication. This is followed by a chapter from Canada, contributed by Professor Bruce Feldthusen, who writes about the recent tendency of victims of sexual abuse in that country (in contrast with other parts of the Commonwealth) to initiate civil actions in tort against their alleged abusers. The chapter examines the basis for such actions, and attempts to analyse why they have proliferated in Canada but not elsewhere.

The final contributor is Professor Gerald HL Fridman (also from Canada), who examines "the way divergences have occurred between the courts in England and those in Australia, Canada and New Zealand in relation to the law of torts". The focus is primarily on the last decade, and it covers negligence (discussing the extent of liability, economic loss, public authorities, statutory negligence, illegality and consent) strict liability, conspiracy, and defamation, as well as examining areas (such as harassment) where the "mother of the common law has learned from her children".

Some of the chapters are more accessible in both style and content than others, and this is not a book for readers who are unfamiliar with the complexities of tort law. But for any serious student who is interested in new perspectives and a

challenging examination of selected areas of what Professor Mullany describes as “the most fascinating branch of the common law of obligations” this is a book to be highly recommended.

MARGARET FORDHAM