

*Law of Tort* (9<sup>th</sup> ed.) BY P.S.A. PILLAI (REVISED BY A. SINGH) [Lucknow: Eastern Book Company, 2004. lii + 692 pp. Softcover: Rs 240]

The advent of modern technology such as the fax and the internet has made the world a smaller place. Little surprise then, that an Australian academic, on sabbatical in Singapore, should be offered the chance to review a book about the Law of Torts in India. A chance he seized with much alacrity.

Singh's revision of Pillai's work is an impressive text, both for its coverage of applicable law, and for the way in which patterns of international tort principles are woven into a rich tapestry of tort law.

The Indian law of tort is, as the author notes at p. 11 of the text, based on English law principles applied in India "as rules of justice, equity and good conscience". As the author goes on to note (at the same page) this "has been a practice of selective application". Indian jurists have moulded and developed English principles to suit local conditions, in much the same way as other parts of the common law world have

done so. Thus the English concept of a reasonable man “the man on the Clapham omnibus” has been transformed in America to “the man who takes the magazines home and in the evening pushes the lawnmower in his shirtsleeves”. (p. 22) The author describes the reasonable man of India as “the man who travels by second class in the Grand Trunk Express train from Madras to Delhi and not the man who travels in a pleasure car or by aeroplane or by first class in a train.” (p. 22)

The first few chapters of the manuscript consider principles of broad application in the tort world. Discussion is made of concepts like “reasonable man”, fault as a pre-condition to liability, the purpose and function of tort and competing foundations of tortious liability. There is neither too little, nor too much detail here. Just the right amount of discussion is chosen to “set the scene” for forthcoming chapters.

The rest of this book covers the Indian tort law in as much as the latter encompasses Intentional Torts to the Person, Defamation, Trespass to Land and to Goods, Negligent Misstatement, Negligence, Nervous Shock, Nuisance, *Rylands v. Fletcher*, Liability for Animals, Occupiers Liability, Economic Torts and Consumer Protection.

There are useful chapters encompassing defences, capacity, “extra judicial remedies” and discharge of torts. The text is closely worded, clear, concise and thorough.

Case law references and discussion abound. Though the focus is upon Indian cases, there is ample reference to cases from other jurisdictions (by way of examples, the Australia case of *Hawkins v. Clayton Utz* (1988) 78 A.L.R. 69 “gets a run” in respect of solicitors’ liability at p. 195 of the text; the U.S. case of *Dillon v. Twin State Gas Co.* (unreported, cited in Fleming, *The Law of Torts* (5<sup>th</sup> ed., 1977)) is referred to in the context of causation at pp. 551 and 552 of the text). Readers from Australia, used to seeing references to the *Indian Penal Code* when examining definitions in the Queensland *Criminal Code* will find the favour has been repaid: when defining application of force in battery, reference in the text is made to section 245 of the Queensland *Criminal Code* (p. 28).

Readers from Singapore and other parts of the Commonwealth, where the law of tort is heavily English based, modified to suit local conditions, will find the comparison with Indian cases to be fascinating. It would, for example, be interesting to know how Indian law would settle the troublesome “defective structure” cases such as *Chia Kok Leong v. Prosperland Pte. Ltd.* [2005] 2 S.L.R. 484; *RSP Architects Planners & Engineers v. Ocean Front Pte. Ltd.* [1996] 1 S.L.R. 113 (“*Ocean Front*”) and *RSP Architects Planners & Engineers (Raglan Squire & Partners FE) v. MCST Plan No. 1075* [1999] 2 S.L.R. 449 (“*Eastern Lagoon*”). The assumption in the text (p. 183) seems to be that Indian courts would simply apply English orthodoxy—yet the same considerations compelling the Singapore and Australian courts to depart from Murphy might also be thought to apply in India.

Criticisms of the work are few in number, and minor in nature. On occasion, the ordering of topics seems unconventional. The chapter on nervous shock, for example, pre-dates the chapters on negligence—curious given that most common lawyers would view liability for nervous shock as deriving from negligence principles (albeit that liability is more restricted in the case of nervous shock, than it is for general negligence). The same can be noted in respect of negligent misstatement causing loss—an exceptional case of negligence—but still negligence.

The author states, at p. 3 of the manuscript that “the best definition of tortious liability is that of Professor W.H. Winfield in his brilliant Textbook on the Law of Tort:

‘Tortious liability arises from the breach of a duty primarily fixed by law, such duty is towards persons generally and its breach is redressible by an action for unliquidated damages’”. It is unfortunate that the author has chosen this definition as the paradigm of definition of tort. Wigmore (*Selected Cases on the Law of Torts*) comments: “a favourite mode of defining a tort is to declare mainly that it is not a contract. As if a man were to define chemistry by pointing out that it is not physics or mathematics”.

More precisely, the following objections have been made by Brazier and others to the use of Winfield’s definition. Although Winfield fixates on the notion that tortious duties are fixed by law, it is obvious that tortious duties can be “un-fixed”—by the use, for example, of exclusion clauses (subject, of course, to the *Unfair Contracts Terms Act 1977*—the latter having no equivalent in parts of the Commonwealth, for example in Queensland). To say that a tortious duty is owed to persons generally may also be somewhat of a misnomer—the stringent tests of negligence determine to whom a duty is owed—it is admitted by the author (at p. 162) that a person may be as negligent as he likes to someone to whom a duty is not owed. Finally, the emphasis on unliquidated damages is also unfortunate—though a predominant remedy in tort, damages is not the only remedy—others include abatement of nuisance or injunction.

Referring to the possibility that the law of tort in India may diverge from that of England, the author notes “The Court can draw upon its inherent powers under Section 9, CPC for developing this field of liability”. No guide is given on that page as to what is the CPC. A perusal through the table of statutes in the book for reference to the CPC is difficult—because the book has no table of statutes. To be fair to the author, he does point out early in the piece that tort is mainly a case based topic—and statutory interventions in the field are few and far between, and an explanation of the CPC may well be otiose for the Indian reader who would be thoroughly *au fait* with the meaning of the abbreviation CPC.

This reader enjoyed the thorough coverage of the *Occupiers Liability Act 1957 (Imp.)* and the *Defective Premises Act 1972 (Imp.)* from pp. 322 to 332, but it was only at the very end of the latter page did he realise there was no Indian statutory equivalent. Perhaps clearer “signposting up-front” that the coverage of those Acts in the book was by way of discussion of English law which *could* be legislatively adopted in India, may have been better.

Such trivial criticisms should not detract from the utility of this book. Overall, this is a first class tort text—encyclopaedic in its coverage, eminently readable and authoritative. The book is highly recommended to those readers wishing to gain an in-depth knowledge of the law of tort in India, or those wishing to conduct comparative tort law research.

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