

CASES ON TORTS. By W.L. Morison, Robin L. Sharwood and C.L. Pannam. (Australia: The Law Book Company Limited. 1968. xxvii + 1161 pp.).

The complimentary remarks made by the English Court of Appeal about the High Court of Australia in the recent case of *Lane v. Holloway* are a timely reminder of the great and valuable contribution that country has made to the common law. This contribution has been particularly significant in the field of Torts, and for this reason the publication of this casebook is of special interest.

A cursory perusal of the standard English textbooks on Torts will reveal how many leading English cases have an Australian origin—the two *Wagon Mound* cases (remoteness of damage in negligence and nuisance), *Commissioner for Railways v. Quinlan* and *Commissioner for Railways v. McDermott* (occupiers' liability), *Balmian New Ferry Co. Ltd. v. Robertson* (false imprisonment), *Goldman v. Hargrave* (liability for nuisance and fire), and *Grant v. Australian Knitting Mills Ltd.* (defective products), to name the more obvious examples. But the Australian influence spreads further than providing fact-situations as a basis for English judicial pronouncements, and it is the wealth of cases decided by the Australian courts, ranging from the High Court of Australia right down to the Gosford District Court, that makes careful study of this book so rewarding. This is especially true for readers in Singapore and Malaysia, for the book shows that the English common law, however venerable, is not sacrosanct; it can be and has been modified and developed in directions other than those sign-posted by the English courts.

The reasons for Australia's refusal to follow English precedent in certain cases are instructive: part of the explanation is that different social conditions and different policy-values require different rules of law; the other part is simply that Australian courts are not quite so enshackled by the doctrine of *stare decisis*

as their English counterparts, and accordingly they have felt free to lay down new rules of law (or retain old ones) in the teeth of English cases to the contrary when they have considered the English authorities to be wrong.

Any Torts student would gain immeasurably from reading *White v. Pile* (insanity and assault: cf. *Morris v. Marsden*), *Chester v. Waverley Corporation* (nervous shock in a "rugged society": cf. *Bourhill v. Young*), the New South Wales "Nervous Shock" Statute (which confers a statutory right to compensation for nervous shock), *Insurance Commissioners v. Joyce* (drunken drivers and willing passengers: cf. *Dann v. Hamilton*), the long line of Australian cases on *Res Ipsa Loquitur* which directly contradict the English doctrine, the Australian cases on measure of damages in personal injury cases, especially *Skelton v. Collins* (cf. *West v. Shephard* and *Oliver v. Ashman*), and *Uren v. John Fairfax & Son Pty. Ltd.* (punitive damages: cf. *Rookes v. Barnard*).

The Australian cases on occupiers' liability are particularly instructive. The notorious case of *London Graving Dock Co. Ltd. v. Horton*, which was only overcome in England by the Occupiers' Liability Act, 1957, has had its fangs drawn very effectively in Australia by *James v. Kogarah Municipal Council* and *Commissioner for Railways v. Anderson*. Likewise, the battle against the cold inhumanity of *Addie v. Dumbreck* has been waged gallantly by the High Court of Australia in *Thompson v. Bankstown Corporation* and *Commissioner for Railways v. Cardy*; but it seems to have suffered a gallant defeat in view of the recent decision in *Quinlan's* case.

But this book is not all controversy; all the standard English cases are here, and where there are gaps or uncertainties in English case-law, there is often an Australian contribution. See, for instance, *Penfolds Wines v. Elliott* (conversion by user and trespass to goods), *Deatons Pty. Ltd. v. Flew* (liability of master for assault by his servant), *Adamson v. Motor Vehicle Insurance Trust* (insanity and negligence), and the famous case of *Victoria Park Racing and Recreation Grounds Co. Ltd. v. Taylor* (interests protected by the law of nuisance).

With three distinguished editors, it is perhaps not surprising that this book is conspicuous for its depth and breadth. The very fundamentals of tortious liability are examined in the chapter on the Action on the Case; and the prospects of creating new torts are shown by a chapter on the American law of privacy.

This is an excellent sourcebook for the intelligent and ambitious student and practitioner, although timorous souls may well boggle at the task of reading, marking and inwardly digesting 1100-odd pages of materials, with nary a comment to help him extract the *ratio decidendi* of the cases.

An added feature of this book is that it is the most up-to-date casebook of those at present available; and in a subject as fast-changing as the law of Torts, this is no inconsiderable asset.