

## BOOK REVIEWS

CLERK & LINDSELL ON TORTS. General Editor: A. L. ARMITAGE.  
(London, Sweet & Maxwell 1969 ccvii + 1528 pages (including index) ). 13th Edition Common Law Library No. 3.

The new edition of this practitioner's compendium has been subjected to a thorough revision and updated to March 31st, 1969. As a consequence, various chapters have been extensively rewritten and in particular there has been a deletion of the chapter on felonious torts. A new segment on damages and liability to trespassers in occupier's liability has, quite desirably, been added.

A major setback of many practitioner's works lies in the absence of any attempt to delineate future trends and reforms. Admittedly, it is inevitable that any work meant essentially for practitioners has the primary object of stating the law as it is with wide reference to existing cases. However, it is felt that some dealing with the question of future trends and reforms, particularly in the summaries to each segment, would be most desirable, as it would help to keep busy lawyers abreast of legal developments. A fruitful area of research would be in the realm of the growing expanse of invasion of privacy. The common law, ostensibly is incapable of dealing adequately with such problems. In the United States, the legislature has intervened to protect individuals from the invasion of privacy and it would be interesting to consider the nature and form of possible reform in English law.

While this edition makes extensive reference to decisions from other common law jurisdictions, it is felt that even more extensive reference can, with advantage, be made. This approach has a two-fold advantage. Firstly, while this book admittedly seeks to state the law as applicable in England, it is to be noted that the common law readership, most probably outnumbers that of purely English readers. As such a service to the non-English common law practitioner is desirable. Secondly, in areas where English caselaw is scant, helpful reference can and should be made to the caselaw of other common law jurisdictions, particularly those from Canada and Australia. Reference can also advantageously be made to these United States cases which have attempted solutions to common legal problems. ,

Thus in the problem of causation in negligence actions, educative reference can be made to *Reed v. Ellis* (Appellate Division of the Sup. Ct. of Ontario (1916) 32 D.L.R. 592) and on the question of remoteness, where English cases are comparatively scant, reference can be made to, inter alia, the Canadian cases of *Winnipeg Electric Railway v. Canadian Northern Railway Co.* (Sup. Ct. of Canada (1919) 50 D.L.R. 194) and the *Mercer v. Gray* (Ontario Ct. of Appeal 1914 3 D.L.R. 564) and the American cases of *Mauney v. Gulf Refining Co.* ( (1942) 9 So 2d. 780 Sup. Ct. of Mississippi) ), *re: Guardian Casualty Co.* ( (1938) 2 N.Y.S. 2d. 323 (App. Div. Sup. Ct. of N.Y.) ) and *Henningsen v. Markowitz* ( (1928) 230 N.Y.S. 313, Sup. Ct. of N.Y.) ). While these cases are undoubtedly not binding or even highly persuasive, a consideration of the different approaches to common problems would enlarge the perspective of judges and lawyers, and thus widen the field of choice from which justice can be achieved.

In many areas of tort law, the common law has been modified in England and extended by legislation. Thus, inter alia, the Occupier's Liability Act (5 & 6 Eliz. 2, c 31) and the Highways (Miscellaneous Provisions) Act of 1962 have verified the common law radically. However this does not mean that an analysis of the pre-legislation era has to be abandoned. Thus a one paragraph review of the non-feasance/misfeasance dichotomy in paragraph 1468 is highly unsatisfactory. This book is the primary source book of tort law to practitioners not only in UK, but all over the common law world. It would not be fair to its user therefore to con-

centrate primarily on present English law, to the neglect of the common law as it has been developed in other common law jurisdictions. Thus in the highly controversial (outside the United Kingdom) area of misfeasance and nonfeasance, the New Zealand case of *A.C. v. Hocking* (1963 N.Z.L.R. 513 Ct. App.) is instructive. Here it was decided that if in the course of the repair of a road, a highway authority installs a culvert which proves to be of insufficient capacity to prevent flooding and erosion of the road, these consequences are not to be regarded as arising from mere nonfeasance. In adopting this approach the majority were adopting the Canadian approach which had long since rejected the misfeasance/nonfeasance anachronism (*Sowles v. Surrey Municipality* (1952) 1 L.D.R. 648), thereby attaining the present UK position without legislation.

While this work will continue to be the major text and reference for practitioners, its interest and value to students and academics can be enhanced, together with the widening of its market over the common law countries, with more extensive reference to caselaw of other common law jurisdictions, as well as by keeping an eye on future trends and legislative reform. The acceptance of any or all the suggestions made in this review would entail an even bulkier volume. The already huge volume that exists, could therefore, if expansion is envisaged, be split into two volumes.