

BOOK REVIEWS

The Law of Torts in New Zealand

By S Todd (general editor), with J Hughes, J Burrows,
R Chambers, C Hawes, M Bedggood, A Beck

2nd edition, Brooker's, Wellington, 1997

This is more than a work on the law of torts. At 1.7 kilos and 1316 pages it is now capable of causing physical injury itself, through the external application of force. If you drop it on your toe the chapters on the strange new law of accident compensation will guide you through the maze to the relevant principles of recovery. There may be no financial benefits available, but there is always physiotherapy.

Levity aside, the clear and concise account of the accident compensation scheme is a particularly useful feature of the work; and the need to connect that statutory compensation scheme to the scope of tort is, of course, one reason for its inordinate length. Indeed, the joinder of statutory and common law material in each chapter is now a feature of the work. In chapters on defamation, privacy and unfair competition, for example, both are fully treated. This generosity provides coherence to each chapter, considered as a unit. It produces, regrettably, an unwieldy volume as a whole.

The work could now be described as monumental, encyclopaedic, perhaps even Falstaffian. It is still a book of many virtues. The quality of writing is consistently high. The New Zealand material is fully covered, as are less celebrated areas of the law, such as parties, vicarious liability and contributions. It is well organized, properly indexed, the text is easy to read. A consistency of voice is achieved, despite multiple authorship, due to the massive contribution of Todd. In writing half the 26 chapters in addition to general editorship he has made a major contribution to national torts scholarship.

Nevertheless, the work is so encompassing it is, at times, barely recognisable as a work on 'Torts' at all. For instance, the chapter 'Tortious aspects of unfair competition' covers, in addition to the action for passing off, the Fair Trading Act, statutory protection of intellectual property and the equitable action for breach of confidence. Burrows' interesting chapter on abuse of public office describes the *Baigent* action, although the Court of Appeal was at pains to tell us this is not a tortious action at all. There is even an extended account of the privacy principles developed by the Broadcasting Standards Authority!

Certainly it makes little sense to write on the common law alone when its principles are so encrusted with legislation. But when one includes the full range of marginal material a distinctive 'law of torts' hardly exists. One is left with a work on anomalous forms of civil liability, some based on statute, some on

precedent - a work, in effect, on all forms of civil liability not based on contract, equity or the corporate form. The puzzling thought then arises that in the very era in which this text has become a standard work the distinctive field of law whose name it bears has seemingly disappeared.

Serious decisions will have to be made about the scope of cover next time around. To steal a phrase from another area of law that might yet be included, the present rate of growth is not sustainable. Might one suggest that Glanville Williams' lead in criminal law be followed. The standard text could be reduced to a general part, with several, specific works around that core. The notion that one can adequately treat an entire field called 'Torts' in a single, portable work is, perhaps, an idea whose time has passed.

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