

The upshot of it all, then, is that one still cannot recommend the work unreservedly. The earlier embarrassment is not wholly dispelled. But no textbook is without its faults, and no author can hope to please everybody. It remains the reviewer's opinion that the book is a welcome addition to the current library of Australian law books. And he will look forward to the 'considerably longer' (and considerably rewritten?) volume which the authors promise in their Preface.

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*Principles of the Law of Damages*, by HARRY STREET, LL.M., PH.D., (Sweet & Maxwell Limited, London, 1962). Pp. i-xxii, 1-272. Australian price, £4 8s.

Many laymen who have moved from the view that all law is criminal law still entertain the notion that all civil law is concerned with the assessment of damages. Of course they are wrong, but to the lay question 'How important is that body of rules of law which is applicable to questions of damages', every lawyer must answer 'Extremely important'. One need only sit in those courts in Melbourne where the myriads of motor accident cases are tried to notice the large numbers of such cases wherein there is no dispute about the liability of the defendant, but lengthy and complex litigation about the damages he must pay. It is unfortunate that the rules which the court should apply, or instruct the jury to apply, to compute the amount which the successful plaintiff is to receive have not often been made the subject of serious academic study in England or Australia. Professor Street's new book may fairly be regarded as a first-rate addition to the existing collection. This work eschews any consideration of problems of causation; and is devoted solely to those questions which arise when it is decided that the defendant is liable to compensate for the various sorts of injury or damage alleged by the plaintiff and that these fall within the ambit of the particular cause of action in tort or contract (p. 2).

This is a book of principles, which the author believes underlie the plethora of reported and unreported decisions on damages, and as such it is not a mound of all the cases and the latest cases on every aspect of damages. It contains other treasures which makes it so much more valuable than a book which collects every decision; *Street on Damages* has closely-reasoned argument, exposition of what are considered to be fundamental principles; and this coupled with polite, lucid but often devastating criticism of judicial, professional and academic views on aspects of the law of damages. The author is properly not content to criticize without constructing; throughout the book there are his own suggestions for new rules, new modes of assessment, new solutions for old (and sometimes unrealized and unappreciated) problems.

In the first chapter, Professor Street postulates the general overriding principle that the aim of an award of damages is to put the plaintiff in that position he would have occupied had the defendant's wrong not occurred—the principle of *restitutio in integrum*. He then launches a broadside at the current English judicial view which goes to two matters: firstly, that awards for non-pecuniary losses in personal injury cases, (that is, pain and suffering) must be based on previous awards in similar cases;

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and secondly, that such computations should be made by judges sitting alone. Professor Street contends, rightly it is submitted, that juries have in fact, if not in law, been abolished in personal injury cases in England and that has been a disaster as far as the law of damages for non-pecuniary losses is concerned. His proposition is that juries should compute these damages on the basis of what the community, whose contemporary standards and beliefs they reflect, thinks is proper at that time. The learned author consequently approves the present position in Australia, though he realizes that there is strong judicial and other opinion in this country which favours the abolition of jury-trials in personal injury cases. With respect, this reviewer shares Professor Street's views entirely, and endorses his criticism on page 12 that some of the judges are somewhat less-qualified than juries 'to interpret society's attitudes to scales of damages'. Particularly is that so if some of the judges also retain attitudes in this area based on notions that persons of lower social class cannot be trusted (or ought not to be allowed?) to make proper use of a 'windfall' award of damages.

The next chapter is entitled 'A Vocabulary of the Law of Damages', and contains succinct explanations of the various adjectives with which lawyers prefix the word 'damages'. Chapter 3 deals with 'Personal Injuries' in some detail, and has a particularly impressive account of the doctrines relating to damages for loss of expectation of life, a much-debated question still today. In the next chapter, Professor Street deals with 'Collateral Benefits'—the effect on awards of damages of other payments made or to be made to the plaintiff as a result of the injuries caused by the defendant. This matter, which is here introduced by a quotation from the judgment of Sholl J. in *Johns v. Prunell*,<sup>1</sup> has increasingly occupied the attention of the courts in the last few years, and is correctly considered as raising fundamental dilemmas—ought the defendant to pay less, and thereby benefit, because the plaintiff has already received something from his employer, or from a social security fund, private or public, or because the plaintiff, in case of earnings, would be liable to pay income tax upon them? There is an incisive critique of the now-famous case of *British Transport Commission v. Gourley*,<sup>2</sup> which the author concludes has resulted in 'anti-plaintiff' awards in many cases, since the principle in the case takes no account of any changes which may occur in rates of tax—as witness the Australian taxpayer's experience in the last few years!

Perhaps the most important chapter of this book, if such a selection can be made, is chapter 5, 'The Utility of Actuarial Calculations'. This chapter is described by the author, on page v, as the one which cost him the most effort, but it was worth it. It deals at some length, but in straightforward fashion, with the use of actuarial calculations in the computation of damages for personal injuries, and ends with a reasoned plea for their adoption by the courts, which seems unanswerable. The next two chapters deal with damages in actions founded on death and the effects on damages of events occurring after the vesting of the cause of action. Chapter 8 is devoted to questions of damages where injury is caused to property, and Chapter 10 to damages in contract. Chapter 9, 'Domestic Relations', is an important chapter worth special mention. Here Professor Street considers those aspects of the law of damages which are influenced by the parent-child and husband-wife relationships. The case-law on these questions, which are of the greatest day-to-day importance,

<sup>1</sup> [1960] V.R. 208.

<sup>2</sup> [1956] A.C. 185.

is anything but complete, and here as elsewhere, Professor Street suggests rules to fill the gaps. It is interesting to notice that in the very recent Victorian case of *Lloyd v. Lewis*,<sup>3</sup> Pape J. decided that a father is entitled to recover the costs of medical expenses he has paid out in respect of injuries suffered by his child from the tortfeasor responsible. The learned judge so decided on the basis that the father has an independent cause of action, which vests in him because of his obligation to maintain the child. This is Professor Street's conclusion also, on page 223, to which it appears Pape J.'s attention was not directed.

The last chapter of this book is concerned with 'Alternative Remedies', and compares and contrasts the rules for computing damages in contract and tort, tort and quasi-contract, and finally in an action for an account. This ultimate part deals with a remedy which is often unknown to practitioners, though it is of the greatest importance in, say, a passing-off action. Professor Street notes the dearth of English writing on this remedy (page 259, n. 77); his work is an immediate easing of the drought.

In conclusion let me say how pleasing it is to find a constant reference to judicial and academic opinion in common law jurisdictions outside England. There is a great deal of Australian material which Professor Street uses, and this alone makes this book more valuable to the Australian reader than other English texts on damages. Australian reviewers have often lamented the insularity of the English academic; how pleasant to see that that plaint can no longer generally be made. When one recalls that there is much more frequent judicial reference<sup>4</sup> to Commonwealth cases these days, it is perhaps proper to conclude that the common law world has come of age at last, and that the parent can learn from the children, as well as continue to teach them.

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*Australian Federal Politics and Law 1929-1949* by GEOFFREY SAWER, B.A., LL.M. (Melb.), (Melbourne University Press, Melbourne, 1963), pp. 1-244. Price £3 10s.

This volume is the second instalment of Professor Geoffrey Sawer's detailed survey of the political and legal development of Australian federalism. Together with its companion volume *Australian Federal Politics and Law 1901-1929*, which was published in 1956, it is an essential reference work, and research tool, for anyone who pretends an interest in the political and legal history of the first fifty years of the Commonwealth of Australia. Between them the two volumes constitute a selective index to the Commonwealth Parliamentary Debates, Commonwealth Parliamentary Papers, and the Commonwealth Law Reports for that period. But it is an index of a special and extremely useful type because it contains explanatory background material to enable the user to appreciate the significance of the indexed material.

The arrangement is chronological and the life of each Parliament con-

<sup>3</sup> [1963] V.R. 277.

<sup>4</sup> See, for instance, the references in *Director of Public Prosecutions v. Smith* [1961] 290, 334 (referring to the judgment of Martin J. in *The King v. Miller* [1951] V.L.R. 346); and *Attorney-General v. Clough* [1963] 2 W.L.R. 343; *Attorney-General v. Mulholland*, *Attorney-General v. Foster* [1963] 2 W.L.R. 658; (all referring to the judgment of the High Court in *McGuinness v. Attorney-General of Victoria* (1940) 63 C.L.R. 73).

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