Perhaps we expect too much of these attempts to solve the problem of competing policies, for our solutions will vary with the changing conditions of modern society. Perhaps some of the contributors saw the problem as the simple conflict of two individual policies—one of liberty and one of repression—when the problems are far more complex. Yet the problems are ones to which a working solution must be found if democratic values are to survive, and when a working solution is being sought the material in the book will prove of inestimable value.

D.J.M.

Selected Topics on the Law of Torts, by WILLIAM LLOYD PROSSER (University of Michigan Law School, Ann Arbor, Michigan, 1953), pp. i-xi, 1-627. No price given. (Our copy from the publishers.)

Dean Prosser is one of the foremost torts authorities and each additional publication of his work is eagerly sought far beyond the confines of his native United States. This volume, consisting of his Thomas M. Cooley lectures, delivered at the University of Michigan in February 1953, and the re-publication of two law review articles, is a valuable collection of his most important studies of recent years. It presents in the form of seven essays an intensive re-appraisal of the basic concepts of seven topics of torts law.

The opening chapter on 'Comparative Negligence' (apportionment in contributory negligence cases) has considerable significance for all jurisdictions which have adopted this means of rationalising their negligence law. Dean Prosser takes it for granted that apportionment is desirable, but argues that the irresponsible jury is one of the major difficulties in the way of ensuring the successful operation of this concept. To overcome this problem he urges the introduction of special verdicts to keep juries under control and force them to reveal more of the reasoning behind their decisions. This would eliminate the need for judges to give long and complicated instructions and would often prevent costly appeals and subsequent remittals on the question of damages.

The 'Interstate Publication' chapter, presents a problem which has not been pressing in Australia, but which could prove at any time a bone of contention. In the United States the nineteenth-century law of defamation is proving itself inadequate. In an age of simultaneous transmission of radio and television programmes, and of newspapers, magazines and films circulating in every state, multiple actions for defamation can and do occur. Late in the nineteenth century Annie Oakley, the original Annie of 'Annie Get Your Gun', brought fifty actions for libel against the Associated Press. She won forty-eight awards ranging from $500 to $27,500. More recently Professor Hartmann brought six different actions in different States against the national magazine *Life*. The host of problems which arise in such cases, particularly in the field of private international

law, cannot be canvassed here. Dean Prosser's conclusion that a possible solution lies in legislation making each radio broadcast or newspaper edition a single publication giving rise to a single cause of action is no doubt the ideal. But the possibility of legislation along these lines is probably as remote in Australia as it is in the U.S.A.

The essay on 'The Principle of Rylands v. Fletcher' is a fine analysis of the tortuous path United States courts have followed in dealing with that decision. Many jurisdictions began by rejecting the case as a 'foreign aberration going beyond all reason'. Blackburn J.'s judgment in the Exchequer Chamber was singled out for special attention and courts conveniently neglected or dismissed the limitation placed on the decision by Lord Cairns in the House of Lords. A number of States still refuse to apply it but their rejection is in name only. In its original form or in the guise of 'absolute nuisance' or some other similar doctrine, Dean Prosser shows that it is now generally accepted throughout the United States.

The most interesting and rewarding discussion is 'Palsgraf Revisited'. Here Dean Prosser retracts his view, propounded in the first edition of his Handbook of the Law of Torts, that the courts had been wrong in their approach to causation. He offers no concrete solution to the many problems which clutter up this area of the law. Instead, he enters a powerful plea to regard *Palsgraf* as a warning that arbitrary rules of causation, claimed to be of universal application, should be avoided. Such terms as direct causation, scope of risk, natural and probable consequences, which have been utilized to determine the extent of liability, should be set aside. In their place a return to 'proximate' and 'remote' to convey merely the idea of a reasonable connection between the original negligence and its consequences is said to be desirable. All that a formula for causation should be expected to show is that 'there is no substitute for dealing with particular facts, and considering all the factors that bear on them, interlocked as they must be'. This is a sensible approach which could well be emulated by many of the writers on torts, who have complicated this question by unnecessary verbal distinctions. Particularly where juries are retained in civil cases, the more this question is left to a common sense approach to the individual fact situation the better it usually is for all concerned in the litigation.

The third report of the Law Reform Committee (Cmd. 9305) has focused attention on the desirability of retaining the distinction between invitees and licensees. Dean Prosser's fifth chapter, 'Business Visitors and Invitees', is a timely re-publication of an article, first published in the *Minnesota Law Review* in 1942, drawing attention to the uncertainty which has dogged the development of this section of the law. It leaves little doubt in the mind of the reader that reform is needed on both sides of the Atlantic and that the view of

the Law Reform Committee should receive more sympathetic consideration than it seems to have been accorded to date.

Much of ch. vi, 'Res Ipsa Loquitur in California', is of limited value to all but Californian lawyers. But it does give an interesting insight into Dean Prosser's general views on the subject. He refers to the Latin catchword as an obstacle to clear thinking which has never been anything but a hindrance. 'It is the illegitimate offspring of a chance remark of an English judge eighty-six years ago, hybridized with the carrier's burden of proof.'

The final essay is one of the too infrequent visits to 'The Borderland of Tort and Contract'. It is a study of a large selection of cases out of which Dean Prosser attempts to show the rules that have been developed for tort actions arising out of contract. Again this study is primarily of interest to practitioners in the United States. It is interesting to note, however, that the learned author does not ncessarily view with disfavour the uncertainty which fills this field of law and feels that this leads to a degree of desirable flexibility.

The easy-to-read style lifts this book far above the usual run of legal writing. Even the dullest facet of a topic is made interesting without departing from painstaking standards of scholarship. The only regret for the Australian reader is the fact that the essays are basically for use in the United States. As a result, Dean Prosser's keen analytical mind is not brought to bear on many problems of English case law which complicate most topics discussed in these essays. Nevertheless, this does little to lessen the value of this volume. Prosser on Torts is already a recognized students' textbook in Australia, and these more extensive studies, not possible in a general treatise, make this an indispensable supplement to the main work.

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