

the preparation of matter to be put before a class. In most respects it is a very good text book. It is perhaps of particular interest to a non-American teacher, because (although as Professor Fuller says in his review article in the *Journal of Legal Education*⁵, the book is not as American as "blueberry pie") it is a book by an American who concentrates most of his attention on American legal philosophy and reveals best the American attitude to the legal system, rather than Continental or traditional English attitudes.

If a feeling of dissatisfaction is left after reading the book, it is not because it fails to hold the interest of the reader, or because the work done is not of a high standard, but because the author has revealed sufficient of himself in his criticisms to make the reader feel that the thinking to support the author's asserted views should go further and be more satisfying. Most of the merits, one feels, lie in the careful and in the main accurate summarizing and sorting of other people's theories and opinions, rather than in explanations and theories which the author is confident to assert for himself.

Jurisprudence: Men and Ideas of the Law should not be thought of as a substitute for suitably chosen "readings" in jurisprudence, to be used in class discussions. If it were so thought of and were used as some text books have been used in the past, i.e., as matter to be 'learned', it would prove to be a disservice to American legal education. If, however, it is used as a synthesizing and clarifying tool by a class bent on discussing selected readings from original works, it should prove of great value.

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Negligence on the Highway by O. C. Mazengarb, M.A., LL.D., 2nd ed. 1952, Butterworth & Co. (Australia) Ltd., lxiv + 344pp., £3/5/0 in Australia.

When Sir George Rich in 1939 spoke of the "development which the law of tort has undergone in its progress towards its present amorphous condition¹," he did rather less than justice to the work of those judges and text-book writers who have attempted to place new doctrines and novel situations in the field of tort on a proper basis of principle. Amongst the learned authors of text-books, the work of Dr. Mazengarb on the subject of highway negligence deserves serious attention. In the second edition of his *Negligence on the Highway*, he has set a high standard for those writers who set out to perform the dual function of covering a branch of the law in a manner worthy of the legal scholar and of providing for legal practitioners a useful guide for the preparation and conduct of cases in the Courts.

Written in New Zealand, but with a judicious use of statutes and of the recent case law of Great Britain, Australia and other Dominions, the book covers virtually every aspect of the subject indicated in the title. Commencing with the theoretical and historical basis of liability (trespass, case, negligence), Dr. Mazengarb proceeds to a discussion of the principles of vicarious liability. Each situation where the liability of the owner of a motor vehicle for the negligence of his servant is in question is illustrated by decided cases. The decisions in *Twine v. Bean's Express Ltd.*² and *Conway v. Geo. Wimpey & Co. Ltd.*³ recent examples of non-responsibility to gratuitous passengers, are discussed. Unfortunately, the book was published before the decision of the Court of Appeal in *Ormrod v. Crosville Motor Services Ltd.*⁴ a decision

⁵ (1954) 6 *Journal of Legal Education* 457.

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¹ *Chester v. The Council of the Municipality of Waverley* (1932) 62 C.L.R. 1.

² (1946) 1 All E.R. 202, 62 T.L.R. 458.

³ (1951) 1 All E.R. 363.

⁴ (1953) 2 All E.R. 753.

relating to the liability of an owner for the negligence of a friend in driving the owner's car.

On the subject of contributory negligence and the Contributory Negligence Acts in the Dominions (including Australia), there are several lively chapters. A wide variety of English, Australian and New Zealand cases is covered, including the Victorian Full Court decision in *State Electricity Commission of Victoria v. Gay*.⁵ The learned author joins issue with Lord Wright, who has recently written of the "last opportunity" rule that "the rule was dead before the Contributory Negligence Act" (1945 in Great Britain) "and is now dead *in toto*⁶ under the Act." Dr. Mazengarb comments:—"Jurists may declare that the rule of 'last opportunity' has been killed, but, like the proverbial cat with nine lives, the principle of a last opportunity as a means or a test by which responsibility for an occurrence may be determined still survives. *Davies v. Mann*⁷ has not been overruled." It is made abundantly clear in the author's treatment of the Contributory Negligence Acts (some of which have been enacted in very recent years in Australian States) that the introduction of the apportionment principle in cases of dual fault has already raised some nice questions relating to "last opportunity". Thus, although the Privy Council in *Nance v. British Electric Railway Co.*⁸ approved the exposition of the law in *Davies v. Swan Motor Co.*,⁹ it did not resolve the difference which appeared in the Court of Appeal as to whether, if *Davies v. Mann* were to be decided now, it would remain unaffected by the Act or whether it would now be a case for apportionment.

Chapters 11 to 17 will be of real value to practitioners — they deal with the practical problems which face the profession in making and litigating claims for damages for negligence (parties, particulars, damages, preparation for trial and the conduct of the case in Court). Both solicitors and counsel will derive assistance from the careful and detailed treatment of practice and procedure at the various stages of the action. Chapter 13 on Particulars of Negligence may be especially mentioned, since it covers the "heads" of negligence most frequently seen in pleadings in running down and collision cases, with illustrations from the case law of Great Britain, New Zealand and Australia. The heads range from "failing to keep a proper lookout" to "driving with insufficient or defective headlights." In addition, there are useful appendices containing precedents of pleadings in each of the more common types of action—including actions by pedestrians, actions between two motorists, actions by passengers and actions by minors and widows.

"The Case in Court" (with which the author deals in Chapter 17) will appeal to counsel as a valuable guide to the conduct of the trial and to the problems of substance and procedure which arise during the hearing. The circumstances under which a new trial may be had, and the basis of attack on the trial form part of the same Chapter.

The volume concludes with two chapters on criminal liability (offences by drivers of vehicles) and on problems relating to and arising from the insurance of motor vehicles involved in highway accidents.

Although this book was written and published in New Zealand, it is none the less valuable for Australian practitioners. It is never local or insular in approach, and the wealth of illustrative material from Great Britain, Australia, and the other Dominions makes for easy appreciation of the principles which the learned author has made the basis of his work

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⁵ (1951) A.L.R. 543.

⁶ (1951) L.Q.R. 528, 531.

⁷ (1842) 10 M. & W. 546.

⁸ (1951) A.C. 601.

⁹ (1949) 2 K.B. 291.

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