> together with the widely applied practice of "public enquiries" it shows a peculiar approach of English law towards the exercise of public functions. The principle is a method of making a decision: by calling the relevant sides which might be interested before the public authority, the English system shows its favour for an exercise of power which is not remote, not kept apart from the subjects affected; it is the spirit of self-government which pervades most parts of administrative law.

In contrast with this, Profressor Galeotti says[39] that

> the Italian approach betrays the autocratic origin of its Executive. . . . If it may be conceded that judicial control has in Italy reached a more systematic and riper organisation . . . one must acknowledge on the other hand that the administrative process takes place in Italy in a more secret and bureaucratic atmosphere. . . . If it is true that the Italian citizen, as opposed to the English, is afforded wider opportunities of attacking an administrative decision after it has been taken, it is equally true that he has almost no chance of influence in the process of its making.

In the reforms which, it is hoped, will take place in English administrative law, it would be tragic if this spirit in administration were lost.

D. G. BENJAFIELD*

Cases on Torts, selected and edited by W. L. Morison, D. Phil., B.A., LL.B., Barrister-at-Law, Associate Professor of Law in the University of Sydney. Sydney, Law Book Co. of Australasia Pty. Ltd. 1955. xviii and 811 pp. (£4/15/- in Australia.)

Cases on the Law of Torts by Cecil A. Wright, Q.C., Dean of the School of Law, University of Toronto. Butterworth & Co. (Canada) Ltd., 1954. xix and 905 pp. (£3/8/6 in Australia).

These two casebooks, despite similarity of title, format and size, are very different kettles of fish. Both are produced by tort teachers of considerable experience and outstanding merit in their field; the former is published at the request of the Australian Universities Law Schools Association, while the latter represents in permanent form previously mimeographed material which for some time past has been widely used in Canadian law schools with notable success.

Apart from these superficial links, however, there is remarkably little ground between them; and the justification for bracketing them together in this context is primarily to focus attention on the divergence of teaching techniques between the North American casebook method and the traditional pattern of instruction followed in most British and Australian law schools. This wider perspective be-

[39] At 184.

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[1] The fostering of the production of casebooks in Australia has been the policy of the Australian Law Schools Association since its inaugural meeting in 1946, when Professor Sawer was invited to prepare his *Cases on Constitutional Law*. In 1950 a resolution was passed that steps should be taken to assist Mr. Justice Kriewaldt in the preparation of a book of materials on Real Property, which had been hampered by lack of time, a project later taken over by Professor Harrison at the Association's request. In 1951 a resolution was passed that Dr. Morison should prepare the book reviewed above, and at the same meeting it was resolved that "this meeting stresses the urgency of the task of preparing casebooks on the principal law subjects." The same resolution laid down procedure whereby general agreement among the Law Schools on the contents of casebooks published might be ensured before publication. Conference discussions have stressed the dual value of teaching insruments which provide much-needed materials in handy form for the use of students in traditional courses, while at the same time offering opportunities for initial experimentation in the direction of adaptation of American case-method teaching to local conditions.

comes relevant here, because each of the books under review is a characteristic representative of its own genre, and because, read together, they cannot fail to drive home the point that casebooks, written with an eye to these divergent systems of legal instruction, in effect proceed on a wholly different level of discourse.

Dr. Morison's volume was prepared with the explicit object of reducing the strain on library facilities caused by the growth of the student body in the larger Australian law schools. Perhaps inevitably, it assumes that case-reading is but a secondary curricular activity, supplementary to the time-honoured lecturing method of instruction. Since most of us received our initiation under this system, it is unnecessary to dilate upon its details, except to emphasize that it pivots on the acquisition of theoretical, black-letter, learning through the medium of lecture and textbook. Reference to case-law there is, to be true, but the material is pre-digested and in that process loses most of its nourishing quality, because the student is spared that essential, if arduous, task of analysing legal problems and evaluating the judicial reaction to them for himself. It hardly needs a reminder that, since much of the life-blood of the legal process is already drained away through the filter of law reporting (see Llewellyn, *The Bramble Bush*, and Frank, *Courts on Trial*), this further process of distillation produces a degree of abstraction which cannot fail to distort seriously a realistic perception of law in operation. This unfortunate tendency, the bane of our legal education, is barely mitigated by the fact that the student at some time or other (need we deceive ourselves? more often than not, in the last few weeks prior to examination) reluctantly follows the ritual of glancing at a few decisions in the reports in order to verify the lecturer's discourse or textwriter's precis.

A casebook suited to this pattern of education inevitably reflects its preoccupation with so-called *leading* cases, singling out for attention the *ipse dixit* of the highest appellate courts whilst underplaying the uncertainties of the legal process, and thereby perpetuating the make-believe of jural generalizations. Submitting to these severe limitations, Dr. Morison has acquitted himself well of the task of bringing together just over one hundred reported decisions nearly all of which, on any count, deserve this ranking. At the cost of suppressing his personality, the author has not only abstained from adding any explanatory notes, even keeping the mere mechanics of editing to the barest essentials, but has also scorned the temptation of supplying his own plan of arranging the various topics. Whilst it is true that the framework of presentation in a book such as this is of no great consequence, I cannot quite suppress my disappointment at the choice of following Salmond's order which, in my opinion, is the least apt to introduce the beginner expeditiously to the essentials of tort law. No palliative has ever been suggested to me to aid the digestion of an *hors d'oeuvre* consisting of such diverse morsels as personal immunities, survival of actions, concurrent tortfeasors and so forth, prior to tackling principles of substantive liability. Moreover, in this year of 1955, I cannot help feeling an aversion to the postponement of the all-important consideration of negligence until surfeited with a heavy diet of nuisance, conversion, interference with advantageous relations, defamation and injurious falsehood. I must also once more register my disagreement with a plan which thrusts *Re Polemis* upon the reader's attention at p. 123 under the ambivalent heading of 'remoteness of damage', whilst relegating a discussion of the duty of care and other 'hedging-devices' for negligence liability to a place some three hundred pages further down, without so much as a cross-reference — an editorial technique otherwise freely employed. Another anachronism of the same order is the enforced separation of *Thompson* v. *Deakin* and the conspiracy cases by a gap of more than 400 pages.

Whilst it would be carping to criticise in detail the editor's selection of decisions by the standard of my own preferences, I cannot omit to express my doubt concerning the inclusion of such esoteric items as *Harrison* v. *Duke of Rut-*

land and *Nicholls* v. *Ely Sugar Beet Factory* which might well have made room for an ampler coverage of 'live topics'. The selection of defamation cases seems unevenly balanced: of eight reported decisions, no less than three deal with the problem of 'reference to the plaintiff', leaving space for only one to the difficult subject of privilege. In this connection, the omission of *Meldrum* v. *A.B.C.* seems regrettable, even if it is conceded that the irrational distinction between libel and slander has rather lost its sting in N.S.W. There are a few references to relevant legislation, but the list is far from comprehensive or complete. Thus, we note omission on p. 156 of the Wrongs (Damage by Aircraft) Act, 1953 (Vic.), on p. 574 of the Wrongs Act, 1936-51, s.27a (introducing apportionment of loss in S.A.), and on p. 611 of the Wrongs Act (Amendment) Act, 1939, s. 6 (nullifying the *Coultas* decision in South Australia). Understandable, though a trifle vexing to me, is the suppression of the Law Reform (Miscellaneous Provisions) Ordinance, 1955 of the Australian Capital Territory. These, however, are slight matters, and the editor deserves our gratitude for ably discharging a task that the Australian Universities Law Schools Association entrusted to him.

Dean Wright's casebook provides a startling contrast in conception and design. Instead of conservatism, we encounter a spirit of adventure; instead of concentration on 'safe law', ample space for decisions which have tentatively probed the frontiers of legal control. Refusing to regard law as an aggregate of static solutions clothed in oracular pronouncement, the stress is on the experimental nature of court reactions to the manifold social conflicts of our time. Hence the juxtaposition of divergent rulings and the space afforded to dissents, with a view to stimulate questioning rather than submission. As the author himself underlines, "the cases in this book should not be read in isolation in order to memorize what a given court said or did — the search must always be why the court did what it did; might the court within the framework of existing common law method and principles have done something else, and how?"

This radical approach to the study and understanding of law is in the best tradition of the casebook method of instruction. In America, it has been long realized that the dogmatic exposition of so-called legal principles in textbooks and orthodox lectures provides an inadequate introduction to legal method and falls down on the job of furnishing the novice with the technical equipment required for successful practice. Rather than cramming the student's mind with detailed information of an abstract nature, the object of education is to make him detect legal problems embedded in a hard crust of facts, to develop a critical faculty in the evaluation of fact situations and the judicial reaction to them, to approach case-reading not with a view to extracting theoretical information so much as to observe the court's method of tackling a concrete problem, to familiarize himself with the course of trial and appellate practice and appreciate the significance of proof on the outcome of litigation. For short, the emphasis is on case-study rather than study of abstract judicial opinions, on the Concrete rather than Generalization.

The criticism is sometimes made by those least acquainted with the casebook method, that it unavoidably produces fragmentation and neglect of theoretical foundations. This reproach is unjustified, because regard for legal principles is not incompatible with the conviction that the way to synthesis lies through the thorny undergrowth of prior analysis of concrete instances. But it is true that the more meticulous the attention given to a court's wrestling with a concrete problem, the more sceptical we grow of the mechanistic theory of judicial adjudication. It becomes more obvious that there are influential factors other than the mere application of verbal formulae which shape conclusions, that precedents are only guide-posts or "starting-points" of legal reasoning, that the "agony of decision" is constantly present. This realisation is particularly important for an understanding of the law of torts which, perhaps more than any other branch of our legal system, lacks a basis of uniform and accepted judicial

theory and, instead, abounds with indeterminate, frequently divergent, legal concepts that cannot provide inevitable answers.

Dean Wright realises this ambitious objective by reproducing in his book almost 250 cases at considerable length, supplemented by abstracts of as many more. As he tells us in the Preface, "a choice had to be made between a multiplicity of fact-situations with a limited reproduction of court judgments on those facts, and a complete presentation of a few judgments more or less in full. The choice in favour of the former was deliberately and unhesitatingly made." This was inevitable, bearing in mind that his casebook constitutes a primary teaching tool which aims at displacing text-books as the principal source of instruction. In the result, very little is lost through the process of rigorous, but careful, pruning, and the gain in terms of additional material is immense. The cases have, of course, been selected with an eye to their relevance for Canadian students, but this does not detract from the usefulness of this book in other Commonwealth countries. In the first place, rather more than half of the reported cases are decisions of English courts, with no notable omissions from the stock of obviously significant case law. Secondly, the inclusion of American, Canadian and Australian cases helps to broaden the canvas with challenging fact-situations and suggestions of alternative solutions, and thereby strengthens the claim that the present collection was intended as "a sampling of judicial thought from which a student can gather broad principles for the tort cases of to-morrow in which he will participate".

Since this volume is designed as a substitute for text-books, it follows the American pattern of including both introductory comments to the various topics and additional notes appended to many of the reported decisions. The first, in particular, contain a wealth of shrewd observations directing the reader's attention in advance both to linguistic traps and particular viewpoints the author seeks to stimulate. At all times, they reveal an impatience with empty formalism and word-magic, coupled with perspicacious insights penetrating the austere facade of judicial opinions, which has been a characteristic feature of all of Dean Wright's many contributions to legal literature.

The general plan of presentation strikes me as eminently commendable. The author has avoided the pitfalls of so many American case books which confront the student with unnecessary difficulties by adopting esoteric schemes of arrangement widely at variance with commonly accepted legal classifications. Instead, he approaches the subject in the first place from the standpoint of the nature of the defendant's conduct: starting with intentional torts, and advancing through negligence to strict liability; due emphasis, however, being placed throughout on the particular interest for which the plaintiff is seeking protection. The remainder of the book is devoted to a discussion of particular fields of liability which by reason of their inherent importance or special features, are generally accorded separate treatment, such as occupiers' liability, nuisance, misrepresentation, defamation, abuse of legal process and interference with advantageous relations. This is basically the structure familiar to all readers of *Prosser on Torts* and, in my opinion, the most convenient and expeditious method of getting through this diversified and complex subject. One of its greatest virtues is a speedy introduction to the problem of liability for negligence, which should be in the forefront of discussion in any realistically planned course on torts. The space allotted to it is in fact little short of 400 pages, exclusive of the duties of occupiers and owners of land, and provides the most favourable contrast to the nonchalant treatment of that topic in the principal English texts.

A brief review such as this can only do inadequate justice to the subtle and complex manner in which Dean Wright has pursued his aim of furnishing an effective instrument for the study of the judicial process against the canvas of contemporary problems of tortious liability. This volume has to be read from cover to cover in order to appreciate the finesse and thoughtfulness which has

gone into its execution, and I make bold to predict that those who take the trouble to do so will be amply rewarded. If this work fails to convince teachers of the superiority of the casebook method, that cause is indeed lost, since I know of no other collection which, for its inherent excellence and ready usability in British common law countries, holds out so much attraction. Australian law schools stand on the threshhold of decision on this issue, and our advocates of caselaw-teaching are fortunate indeed in being able to add to their armoury, at this critical juncture, a weapon which could well tip the balance.

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