but disappeared in some of the other Australian States (Hale, J, "Juries: The Western Australian Experience", (1973) 11 *WA LR* 99, at 104) seemingly following English developments rather than American preferences.

Valuable as a historical analysis of legal institutions in New South Wales before 1840, this volume also serves as a careful overview of the legal historiography of that period. It provides valuable insights for legal professionals and a new interpretation of the political history of New South Wales in its most formative period.

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ESSAYS ON DAMAGES by P D Finn (ed), Sydney, Law Book Company Ltd, 1992, 229pp, $79.50(HC), ISBN 0 455 21169 8.

This book is part of a series of essay collections which are the products of small seminars at the Australian National University. The series to date comprises Essays on Torts, Contracts, Equity and Restitution. As noted in the preface to this volume, its predecessors were concerned, for the most part, with the shaping and development of legal doctrine. By contrast, this collection deals with a seemingly more prosaic subject, but one which represents to the practitioner the sharp end of legal doctrine. These essays are therefore a valuable contribution from eminent lawyers to an area which is somewhat neglected in Australian legal scholarship.

The volume contains nine essays. In the first Professor Waddams takes up the issue of the tension between, on the one hand, the notion that it is the duty of the court to seek, by means of an award of damages, to achieve precise *restitutio in integrum* tailored to the individual plaintiff's situation; and on the other hand, the search for rules that are clear, predictable, fair between one claimant and another, and relatively inexpensive to apply. His conclusion is that the conflict between the objective of perfect justice and pragmatic considerations of convenience and efficiency is one which can never be resolved, because a working system of law must always pay attention to the cost of the process to the parties, the court and the community at large. In the next essay Ipp J is concerned with problems and progress in remoteness of damage. He makes the case for discarding the conventional view that, in the tort of negligence, remoteness of damage is a subject for inquiry separate from that relating to liability. He submits that the separation between liability and remoteness of damage was in effect eliminated by the *Wagon Mound (No 1)*. As the notion of proximity, which is now recognised as the test for the existence of a duty of care, involves the "closeness or directness of the relationship between the particular act and the injury sustained", factors relating to the concept of remoteness of damage become part of the inquiry into proximity. He argues for a balance sheet approach to all issues of remoteness whether in tort or contract. By this he means that it should be expressly acknowledged that all relevant factors for and against liability for particular damage are to be listed and

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weighed and it should be left to the judge's discretion to arrive at a solution which is "fair, just and reasonable".

J D Heydon QC provides a detailed and useful examination of the cases on remedies in the nature of damages under the *Trade Practices Act* 1974. Jennifer Stuckey-Clarke considers the relationship between the doctrines and principles of equity and common law in the assessment of monetary awards by way of compensation in the exclusive jurisdiction of equity, with particular reference to breach of the fiduciary duty of confidence. In an essay on factors inflating damages awards Professor Tilbury deals with aggravated, exemplary, vindicatory and restitutionary damages. He reaches the negative conclusion that punishment, restitution or vindication are not purposes properly to be pursued through the medium of damages. Handley J's concern is with rules which reduce damages awards. He examines primarily the areas of mitigation and contributory negligence, noting however the close relationship between these doctrines and the rules on remoteness and causation. Professor Davis looks at the legislation and case law concerning interest on damages, critically examining both the rationales for the rules and recent developments.

Derrington J discusses in depth the effect of insurance on the law of damages, noting that insurance considerations have not solely tended to increase damages, but have sometimes acted as a spur to the reduction of awards. His study is particularly concerned with the areas of nervous shock and purely economic loss where the courts have shown restraint in awarding damages even where the plaintiff has suffered foreseeable loss as the result of the defendant's negligent conduct. Lastly Professor Hammond addresses the question whether compensatory damages retain and should retain their primacy in the scheme of remedies in the common law legal world. He concludes that, though other forms of remedy such as performance-based and declaratory relief are increasingly available, compensatory damages still predominate. He argues for a more open regime in which judges are called upon to consider all possible forms of relief and exercise a discretion to make the most appropriate order for the individual case. He suggests that a suitable task for a law reform body might be to draw up a code embodying such principles.

The above outline of the contents of this volume of essays reveals that it ranges well beyond an examination of the remedy of damages alone. "Remedies" in the civil law are the subject matter of increasing attention recently both in Australia and elsewhere (see, for example Burrows, A S, *Remedies for Torts and Breach of Contract*, 1987; Harris, D, *Remedies in Contract and Tort*, 1988; Treitel, G H, *Remedies for Breach of Contract, a Comparative Account*, 1988; Kercher, B, & Noone, M, *Remedies*, 2nd ed, 1990; Tilbury, M, *Civil Remedies*, 1990). The topic is clearly one which deserves global attention rather than being viewed as an addendum to the substantive law of tort, contract and so on. Courses in "Remedies" are now commonly offered in law schools. Theorising and attempts at rationalisation of the principles underlying civil remedies can only be beneficial to the development of coherent legal doctrine. This volume is therefore an important addition to the literature in an evolving area in Australian law.

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