

# Smith & Prosser: Cases and Materials on Torts

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more grave matter of preservation of liberty under free government, it is both interesting and reassuring that Robson quotes Pound's view (page 623), delivered in regard to the American situation but considered by Robson to be equally applicable in England, that we need not fear for the liberty provided by the Constitution, in the working of administrative adjudicators.

CHARLES H. KINNANE\*

*Cases and Materials on Torts.* By YOUNG B. SMITH and WILLIAM L. PROSSER. Brooklyn: Foundation Press, 1952. Pp. xix, 1239. \$9.00.

Dean (now Emeritus) Smith and Dean Prosser have made a significant contribution to the field of torts casebooks and at the same time have enlarged upon the pattern of the "Cases and Materials" type of book. While topical arrangement is essentially traditional, the outstanding feature of this work is to be found in the amount and style of the supplementary materials.

Adequate coverage of such a vast field as torts in the time allowed in the ordinary curriculum requires considerable evaluation and selection of topical subject matter, as well as emphasis upon the selected material. By economical treatment of the more stable areas of the subject, the authors have been able to gear the book to expansion in the area of present day problems arising in a rapidly changing and increasingly complex social and economic order. They have limited the number of principal cases to 415, which in their words "is as many as can adequately be discussed in class." By the inclusion of some text and a great amount of carefully selected case notes and commentaries, together with case problems and comparisons, considerable material is provided for independent student assimilation. The instructor is thus allowed more classroom time for the more intricate and subtle concepts and, for purposes of exposition, is supplied with a wealth of material with which the student has had an opportunity to familiarize himself before class. This inclusion of background and supplementary material is in accord with a trend evidenced by most of the newer books of this type and represents a retreat from the pure casebook of the past. It differs from many casebooks in that it is more extensive in scope and is so organized as to permit broad or limited use of the supplementary material as desired without affecting the coherence of the topical subject matter.

The selection of cases and commentary notes demonstrates a need for re-evaluation of many of the principles heretofore regarded as sound and basic, since modern technological, scientific and social advancements have minimized many of the considerations upon which such principles were predicated. This is particularly brought out in the treatment of (a) emotional and mental injuries as independent wrongs, with related problems of damages and causation, (b) liability of manufacturers to third persons, and (c) defamation.

Cogently emphasized are the need for care in analyzing an opinion with regard to the factual problems before the court, and the danger of over-generalization. An illustration of this is to be found in the section dealing with unusual or ultrahazardous activities and the doctrine of the precedent setting case of *Rylands v. Fletcher*. The interpretation placed upon that decision by some courts and many writers, which may be attributed to generalization, was strictly limited in England in the case of *Read v. Lyons & Co., Ltd.*,

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decided by the House of Lords in 1946. The court, having occasion to interpret its own prior opinion in *Rylands v. Fletcher*, denied recovery for personal injuries resulting from an explosion in a privately owned and operated munitions factory. It rested its decision upon the ground that there was no escape of the dangerous substance from the land. At the same time it cast additional doubt upon the meaning of the heretofore doubtful and troublesome term "non-natural" user and also questioned the application of the doctrine to personal injuries.

A necessary emphasis upon procedural and practical considerations relating to the extent and nature of liability is woven throughout the book. This is manifested in dealing with the problems of proof, measure of damages, apportionment of damages, release, contribution and indemnity among joint tortfeasors, contributory fault and survival and wrongful death actions. It is likewise evident in the treatment of both legal and equitable remedies in the topics of nuisance and misrepresentation, where equitable remedies are of great importance.

The book's 1239 pages make it a large volume, but as previously indicated much of the space is taken up with text and supplementary notes. One might speculate that the absence of an index is predicated upon the theory that the customary index in casebooks is usually inadequate and therefore useless, and that the additional space required for a complete index would not justify its inclusion in the light of an already imposing number of pages. The table of cases includes only the principal cases, omitting the multitude of cases cited in the notes. This omission was probably likewise due to space considerations. In the writer's opinion it is to be regretted.

The book is not without refreshing humor. It is apt to appear at the most unexpected but far from unwelcome times. This trait has more than once manifested itself in other literary ventures of one of the authors.

The authors have, according to the objective expressed in the preface, achieved a casebook which will permit coverage of the most important elements of the subject in the time allotted to the course in torts in the usual curriculum. They have provided the teacher with a casebook adaptable to his own theories regarding emphasis and scope.

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