

BOOK REVIEW

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Harold Luntz, *Assessment of Damages for Personal Injury and Death* (4th ed, LexisNexis Butterworths 2002) 731pp

The year 2002 saw much debate over the assessment of damages for personal injury, leading to a review by a Panel of Experts resulting in the Ipp Report¹ and initial steps for reform. As no Australian jurisdiction is moving towards a no-fault compensation scheme, but appear content to modify the common law through legislation, this text is still very relevant despite the recent changes to the assessment of damages.

The majority of texts provide only the bare principles and leading cases in this area of tort law in a single chapter. This text in contrast provides 12 chapters of detailed analysis of the various principles and cases.

The text is very thorough in its approach to the topic and is well structured – starting with a discussion of the different forms of damages and the general principles that provide the framework for the common law assessment of damages in Chapter 1. As Luntz notes in the Preface, since the previous edition of the text, many cases have gone before the High Court, as the general principles of assessment cannot answer all questions.² The first chapter allows Luntz to discuss the need for reform with reference to the underlying principles of assessment. Despite being a firm advocate for the common law being replaced by a social insurance scheme, Luntz highlights the issues without any obvious bias providing arguments for and against in the same detail.

Chapter 2 considers the issues of causation and remoteness of damage. This chapter appears to be overwhelmed by footnotes, but the references provide useful notes and explanations. This allows the reader to determine the relevance of the authority cited with more accuracy - something that all researchers will be grateful for in an area that can raise complex issues, such as negligent medical treatment and psychiatric illness. Unfortunately the book was published before the High Court decisions on nervous shock in *Tame v New South Wales; Annetts v Australian Stations Pty Ltd.*³

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¹ Final Report after Review of the Law of Negligence by a Panel of Eminent Persons, 2 October 2002.

² ix.

³ (2002) 76 ALJR 1348.

Chapters 3 to 5 consider the various heads of damages. The non-pecuniary losses are dealt with in Chapter 5, the pecuniary losses in Chapter 6 and the complicated head of loss of earning capacity is examined in Chapter 6. When reading these chapters it is important to keep in mind the recent introduction of legislation that has placed limits on the recovery of many of these heads of damages, for example in Queensland, s 51 of the *Personal Injuries Proceedings Act 2002* decrees that the loss of earning capacity is to be capped at three times the average weekly earnings per week. However, the law otherwise in relation to loss of earning capacity remains the same and therefore the discussion is still current and the chapter provides an array of situations, providing very useful authorities.

Chapters 6 and 7 examine the value of the damages awarded, explaining the courts' approaches and the legislation requirements in seeking to ensure that an injured plaintiff is not overcompensated nor under compensated. The subject of contingencies forms the majority of Chapter 6 and provides many statistics on the various events that may arise in a plaintiff's working life. The last paragraph of that chapter points to the other sections of the book that are also relevant in this area, allowing the reader to refer to specific topics of interest. Chapter 7 focuses on the effect of inflation and the discount rate applied to future losses that are compensated. With reference to the economic theory, it is clear that applying set discount rates to what can only be hypothetical scenarios does not in reality meet the requirement of compensation.

Chapter 8 is a practical chapter that covers all of the other benefits an injured plaintiff may receive and how each is dealt with by the court. Such things as insurance, sick pay, charitable gifts and superannuation are dealt with.

Chapter 9, 'Wrongful Death', covers the survival of actions and the Lord Campbell action. The chapter provides explanations as to how damages are calculated by the courts under the relevant legislation and a run down of the various items that may affect the assessment. Once again, the text was published too early for the High Court decision of *De Salles v Ingrilli*⁴ to be included in relation to the benefit of remarriage. As claims for wrongful death are governed by statute, where necessary separate headings for each jurisdiction are used. This makes the chapter thorough and very easy to read.

Chapter 10 examines claims by third parties for losses suffered. The chapter covers claims for injury to a spouse, a parent's claim for injury to a child and the relatively unheard of employer's claim for injury to an employee.

Chapter 11 is entitled 'Miscellaneous' and covers a wide range of topics, from statutory limits on damages in each State and Territory to actions for wrongful birth or wrongful life. This is a necessary chapter as no discussion of the assessment of damages would be complete without a discussion, for example, of interest, however it does mean that a reader needs to be aware of this chapter and its contents.

The final chapter, 'Appeals', looks at the functions and powers of appellate courts in considering appeals. This chapter provides useful law on an appellate court's power to receive further evidence, classified by whether the events occurred before or after

⁴ [2002] HCA 52 (14 November 2002).

judgment, as well as separate treatment of the principles applying to appeals from jury trials and appeals from a trial judge alone.

The book contains a lengthy appendix that contains 14 arithmetical and actuarial tables for the calculation of future loss. These are a useful inclusion as it means the text contains all of the necessary information used in assessing damages and the reader does not have to refer to another source.

The title page states the year of publication as 2002, however, in the Preface Luntz states that the book was written from 1998 to 2000 and some later developments have been taken into account. This means that many of the more recent High Court decisions and the legislative reforms could not be included, so the reader needs to be aware of the actual currency of the book.

Assessment of Damages for Personal Injury and Death is an excellent text, providing knowledge on a wide range of law and policy in an ever-changing area. As usual *Assessment of Damages for Personal Injury and Death* was first published in 1974, this being the fourth edition. For the last two decades, this text has been a leading authority in assessment of damages, as evidenced by the many High Court citations. References to the various editions of this work can be found in such well-known torts cases as *Griffiths v Kerkemeyer*,⁵ *Sharman v Evans*,⁶ *Kars v Kars*⁷ and most recently in *De Sales v Ingrilli*.⁸ Luntz has written a clear and concise text, one that is easy to read and makes even the difficult concepts more readily understood.

⁵ (1977) 139 CLR 161.

⁶ (1977) 138 CLR 563.

⁷ (1996) 187 CLR 354.

⁸ [2002] HCA 52 (14 November 2002).