

---

---

# Book Review

---

Des Butler\*

*Law of Torts* (2nd edn), RP Balkin and  
JLR Davis, Butterworths, Sydney, 1996  
i-cxiv, 1-890 pp

It has been six years since the first edition of this monograph was published. The period has seen some significant changes in the law of Torts. In Australia, the anomalous rule in *Beaudesert Shire Council v. Smith* met its demise in *Northern Territory v. Mengel* (1995) 129 ALR 1. There was also an expansion of the proximity concept in negligence, resulting in the longstanding rule in *Rylands v. Fletcher* being subsumed within the tort of negligence by a majority of the High Court in *Burnie Port Authority v. General Jones Pty Ltd* (1994) 179 CLR 520, and the recognition of a liability on the part of builders towards subsequent purchasers in *Bryan v. Maloney* (1995) 182 CLR 609. In England the House of Lords utilised a different approach to duty of care to recognise claims for economic loss resulting from a negligently prepared reference in *Spring v. Guardian Assurance plc* [1995] 2 AC 296 and a solicitor's liability to disappointed beneficiaries resulting from negligent failure to prepare a will in *White v. Jones* [1995] 2 AC 207. There, too, *Rylands v. Fletcher* was accorded a lesser significance, being relegated to merely an aspect of nuisance in *Cambridge Water Co v. Eastern Counties Leather plc* [1994] 2 AC 264.

These developments are ably charted in the second edition. Unfortunately, however, like most Torts titles currently on the market, the second edition was too early to cover the High Court's resile from its support for proximity as a unifying theme of negligence, and its embrace of an incrementalist approach of the type long advocated by Brennan CJ, in *Hill v. Van Erp* (1997) 142 ALR 687.

---

\* LLB(Hons) PhD Senior Lecturer-in-Law, Faculty of Law, QUT

The monograph contains a detailed exposition of the disparate body of law known as Torts and provides considered evaluation and comment on possible future directions. The book is divided into eight parts. It commences with a useful Introduction, which provides adequate coverage on contrasts between torts and the areas of contract, restitution and crime as well as the aims of torts including deterrence, compensation, loss distribution and economic analysis. It then progresses to examine Intentional Invasion of Personal and Property Interests (trespass to persons and goods, defences); Negligent Invasions of Personal, Property and Financial Interests (elements of the negligence cause of action, defences, compensation in personal injuries actions, alternative sources of compensation, and a chapter specifically addressing negligent infliction of purely economic loss); Invasion of Personal and Property Interests by Conduct not Necessarily Intentional or Negligent (nuisance, animals, violation of interests protected by statute); Protection of Interests in Reputation (elements of defamation, defences); Protection of Trading or Business Interests (intentional and unjustifiable interference with trade or business, statutory protection against unfair business practices, injurious falsehood, passing off and deceit); Other Interests Meriting Protection (family relations, misuse of process). It concludes with an exposition and analysis of Remedies and Parties (vicarious liability, remedies, extinction of remedies, parties).

In the second edition, as in the first, the authors have achieved their stated aim of presenting a comprehensive statement of the law of torts in Australia and New Zealand. The demise of the rule in *Rylands v. Fletcher* in Australia and England presented the authors with the decision whether to continue with an explanation of the intricacies of that rule which previously (as in other Torts books) ran to a full chapter. They understandably decided to remove that chapter (although they acknowledge the rule still has effect in New Zealand, an omission which might in theory challenge their claim to comprehensiveness of coverage for that country), reducing the case to references on only seven pages. For the most part those references are contrasts to the rule, which is not actually stated until a brief recitation on page 754 in the course of a discussion of *Burnie Port Authority*. Any confusion for a debutant to the area might be avoided by a simple cross reference in the places where the rule is distinguished to the place where the rule is more fully stated. This is not a major criticism, though, and may be more the product of thinking that the rule still has a place, as was indeed the strongly held view of Brennan CJ and McHugh J in *Burnie Port Authority*. Both judges remain on the bench unlike some members in the majority in that case.

As is potentially the case with any book of its type, the second edition unfortunately fell foul of recent changes in legislation. For example, it was marginally too early to note the repeal of the provisions of the Queensland *Common Law Practice Act* (regarding the deduction of tax from potential earnings, interest on judgments, and survival of actions) and their replacement by identical provisions in the *Supreme Court Act* 1995. The authors also fell victim to the quixotic political environment in Queensland which saw the previous Labor government redraft of the *Criminal Code*, the provisions of which are discussed by the authors in anticipation of its

enactment, withdrawn by the new Coalition government, which signalled that the provisions of the old code would continue until they had the opportunity to pass their own redrafted code. The sections of the text affected deal with the sections covering various defences to assault, conspiracy and public nuisance. In most cases it would be expected that only the relevant section numbers rather than the substance of the sections themselves will need to be corrected in the next edition. Fortunately this change of direction by the government did not affect the relocation of the provisions of the Code concerning defamation to the *Defamation Act 1889*, which provisions are discussed in the text.

A very welcome addition to the second edition is a greatly expanded Table of Contents. The detail now provided concerning the contents of chapters, combined with the Index, make the second edition easy to navigate and overall makes the text very user-friendly.

As already mentioned, the prime objective of *Law of Torts* was to be a comprehensive exposition and analysis of the law of Torts. In achieving that objective it forms a valuable resource for legal practitioners. However, it does not do so at the expense of the use of obtuse language: explanations are clear and easy to follow, and legal academics may also safely prescribe the book for use by their students.