

# Book Review: The Law of Torts, by C. A. Wright and A. M. Linden

Raymond E. Brown

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/ohlj>  
Book Review

---

## Citation Information

Brown, Raymond E.. "Book Review: The Law of Torts, by C. A. Wright and A. M. Linden." *Osgoode Hall Law Journal* 9.3 (1971) : 667-670.  
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol9/iss3/6>

This Book Review is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

THE LAW OF TORTS. BY C. A. WRIGHT AND A. M. LINDEN.  
Fifth Edition. Toronto: Butterworths. 970. Pp. xviii, 1006.  
(\$37.50 Students \$22.75)

Professor Allen M. Linden of Osgoode Hall Law School of York University has undertaken the thankless task of editing the late Cecil A. Wright's cases on "The Law of Torts". (Butterworths) Dean Wright had earned for himself a place of preminence in the field of Torts, or, as one jurist recently described him, "... the authority of his time ...". MacDonal, J., in *McDonald v. Little* (1970), 14 D.L.R. (3d) 114 (Alta. S.C.). The fourth edition of his casebook was called by no less an authority than John Fleming as the best in any common law country. It will be a formidable accomplishment, indeed, if Professor Linden suffers only minor scars in his revision of such a critically acclaimed work.

Professor Linden, who has established his own credentials for legal scholarship, has not been unduly constrained by the reputation of the original author. In fact, the fifth edition is a major revision of the Wright materials. Deleted are the chapters on vicarious liability, nuisance, misrepresentation, defamation, abuse of legal process and interference with advantageous relations. Substantially altered are sections dealing with intentional torts, legislation and civil liability, contributory negligence and assumption of risk, damages and products liability. Added are two new chapters covering automobile accident compensation and the future of tort law. In addition, leading cases are supplemented with a series of questions and comments on their application and significance and citations of additional case and text authority. The influence of Dean William Prosser is readily apparent, a fact which the author acknowledges in his preface.

The casebook begins with Intentional Interference with the Person and Property. Professor Linden fills a gap in previous editions by introducing materials on the concept of intent. One wonders, though, why he did not include within that section cases later placed under "Battery" such as *Tillander v. Gosselin*, *Morriss v. Marsden* and *Carnes v. Thompson*.

The balance of materials on intentional torts, except for interference with land, is largely a duplication of the previous edition. For some reason, however, the author has seriously reduced the content of trespass to land. This decision is lamentable, from this reviewer's point of view, for a number of reasons not least of which are the historical insights the study of trespass provides the student (in Canada history does, to a considerable extent, rule us from the grave) and the number of policy discussions it stimulates on current issues dealing with the use of property.

Defenses to intentional torts are separated into the third chapter. Missing, surprisingly, is the interesting case of *Depue v. Flatau* or any cases dealing with defenses to trespass to chattel or conversion (except in note form on page 130).

The section on damages for intentional torts is misplaced between Intentional Infliction of Mental Suffering and False Imprisonment. Even at that, the material consists solely of a note excerpt from *Atrens*, "Intentional Interference with the Person", printed in Linden, *Studies in Canadian Tort Law* (1968.) Excellent as this discussion is, it necessarily omits more recent developments in Canadian and English law with regard to punitive and aggravated damages.

Professor Linden wastes little time introducing the student to negligence concepts. (Chapter 4) Having, unfortunately, eliminated the historical decisions of the *Case of Thorns*, *Weaver v. Ward* and *Stanley v. Powell*, the author introduces the reader to the concept of risk with the seminal case of *Bolton v. Stone*. Except for the historical omission, this introduction is far preferable to the fourth edition where Dean Wright confronted students with the far too complex cases of *Palsgraf v. Long Island Railroad Co.* and *M'Alister (or Donoghue) v. Stevenson*.

The author then proceeds to explore concepts dealing with the standard of care such as the reasonable man, custom, mental capacity, age and the professional skills. It would seem preferable to use *Vaughan v. Menlove* as the introductory case and it seems, to this reviewer at least, that any section on professional skills is deficient unless it contains at least one case on the professional negligence of lawyers.

The subsection on custom illustrates the author's disconcerting habit, at times, of printing articles more for weight than for usefulness. While Professor Morris has contributed much to the scholarly writings in this area, Professor Linden's excerpts from his own article are sufficient for the purposes of the topic.

In the standard of care section the author omits any cases dealing with emergencies. Since this is a recurring consideration others might wish to supplement their materials with the recent New Brunswick case of *Walls v. Mussels*, (1969), 11 D.L.R. (3d) 245 (N.B.S.C.), or a personal favorite, the urbane and witty opinion written by Justice Carlin in the American case of *Cordas v. Peerless Transportation Co.*, (1941), 27 N.Y.S. 2d 198 (City Ct.).

Tucked away at the end of Chapter 4 is a small note on the Necessity of Damage. This section on one of the essential elements in the tort of negligence is not only misplaced but rather meagre given the number of problems with which it confronts the practicing lawyer, particularly with respect to the statute of limitations.

Chapter 5 on the Proof of Negligence is a considerable improvement over previous editions both in arrangement and content. One may, however, wish to add the case of *Walker v. Coates*, [1968] S.C.R. 599, illustrating the use of *res ipsa loquitur* to prove gross negligence. Chapter 6 on Negligence and Violation of Criminal Statutes reflects Professor Linden's own considerable expertise in that area.

Chapters 7 and 8 deal with "Duty: Failure to Act" and "Causation" respectively, an order which might be reversed and, thus, complement the materials in Chapter 9 dealing with Duty: Proximate Cause and Remoteness.

The first of these chapters combines a number of cases used in the previous edition with several new ones including the fascinating cases of *Menow v. Honsberger* and *Matthews v. MacLaren*. Too much time, however, is spent on the question of the good samaritan and too little time on the distinction drawn by our courts between nonfeasance and misfeasance. There are some surprising deletions including *L. S. Ayres & Co. v. Hicks*, (1942), 40 N.E. 2d 334, and *H. R. Moch Co. v. Renssalaer Water Co.*, (1928), 159 N.E. 896, and unfortunate omissions such as the recent English case of *Home Office v. Dorset Yacht Company*, [1970] 2 All E.R. 294 (H.L.).

In Chapter 8 on "Causation", Professor Linden sacrifices completeness for brevity, but this is just as well given the limitations of space. Chapter 9 is largely a reproduction of materials from the previous edition. It may have been helpful, however, to have inserted the full text of *Doughty v. Turner Manufacturing Company* next to *Hughes v. Lord Advocate* so that students could engage in the interesting exercise of reconciling the two cases.

Chapter 10 treats of imperfectly protected interests such as mental suffering and economic loss. The section on mental suffering is excellent for the most part though any student of the recent "spectacular reversal in California" might want to read the case of *Archibald v. Braverman*, (1969) 79 Cal. Repr. 723. The section on economic loss, on the contrary, is disappointing, given the wealth of Canadian material engendered by *Hedley Byrne*, and the more recent Privy Council case of *Mutual Life and Citizens Assurance Lt. v. Evatt*, [1971] 2 W.L.R. 23.

This reviewer was also disappointed that the new edition did not include any material on prenatal injuries in this chapter. American law is developing rapidly in this area and, in no small way, has been influenced by the Quebec case of *Montreal Tramways v. Lavelle*. With the advent of liberalized abortion laws, advances in medical science, and interdisciplinary exchanges on the question of human life, no casebook on torts should fail to treat the policy implications in this area of the law.

Chapter 11 on "Damages for Personal Injuries" is considerably revised but quite adequate for an introductory course in Torts. Chapter 12 on "The Conduct of the Plaintiff: Voluntary Assumption of Risk and Contributory Negligence" consists of fewer materials on the "Last Opportunity Rule" and a new section on recent developments in the seat belt defence. The latter section is an interesting overview of the interrelationship between advances in science technology, legislation imposing safety standards and judicial responses by the Courts.

Occupier's liability is in such a state of disarray that this reviewer could not even begin to assay the collection and arrangement of materials in Chapter 13. One does wish, however, that the author had included at least some cases on liability to persons outside the premises.

Chapter 14's title of "Strict Liability" is somewhat misleading since it is really (with the exception of brief notes) a collection of materials dealing with the rule in *Rylands v. Fletcher* which, of course, by no means exhausts questions of strict liability.

Chapter 15 is by far the best in the book and the revision reflects the author's own scholarly writings. The materials on "Products Liability" bring us up to date on the phenomenal changes that have occurred in American law as well as the more conservative approach by our own courts. One only hopes that the insertion of this material toward the end of the book will not detract from its usefulness, which this reviewer solves by placing it before the section on Occupier's Liability.

The final two chapters contain new and interesting discussions on compensation systems and the future role of tort law. The latter is introduced by Linden's rhetorical question "Is it true that Torts is Dead". The former chapter suggests possible versions of an appropriate requiem. I suspect that, like Mark Twain, reports of its death are greatly exaggerated. To the extent however that these two chapters pose imaginative and provocative questions, and offer worthwhile suggestions for alternative systems, we will have moved a considerable distance toward, as inevitably we must, the decision to alter radically the common law approach for compensating and treating persons beset by injuries or illnesses.

For the most part Professor Linden has done a meticulous job in collecting and collating material for the fifth edition of this casebook. The notes and comments inserted throughout each section are invaluable teaching aids, particularly to those of us who incline toward the socratic methodology. The print is considerably improved though certainly not to the extent suggested by the almost prohibitive price of the book.

Finally, a comment must be added on Professor Linden's decision to delete a number of substantive areas of tort law. Obviously, the author wished to minimize the inflated cost of the book. On the other hand his selection of areas seemed to be dictated by nothing more than the arrangement of materials in the fourth edition, i.e. the retention of the first 800 pages and omission of the last 400 pages. Given the present, albeit grudging, trend toward non-fault systems of auto compensation, the materials on negligence may be less important in future courses on Torts than a number of areas omitted in the fifth edition. To that extent the fourth edition was a more flexible and serviceable collection of materials than the recent revision.

RAYMOND E. BROWN\*

---

\*Professor of Law, University of Windsor.