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## Review of “Cases and Materials on Torts,” By Young B. Smith & William L. Prosser

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CASES AND MATERIALS ON TORTS. By Young B. Smith and William L. Prosser. New York: The Foundation Press, Inc., 1952. Pp. xix, 1239. \$9.00.

When two such distinguished authorities on the law of torts as Professor Smith, former dean of the Columbia University School of Law, and Professor Prosser, Dean of the University of California School of Law, collaborate to edit a casebook, we should naturally expect a superior product to result. Professor Prosser is, of course, a long-time teacher of torts and the author of a torts handbook<sup>1</sup> which is not only the leading work of its kind in the torts field, but is one of the finest short treatises ever produced by an American legal scholar. Professor Smith has likewise taught the law of torts for a great many years, and thousands of the leading lawyers of the Eastern seaboard owe their training in that field to him. The expectation of a superior product is not disappointed. The book is a fine one and a tribute to the knowledge and teaching experience of its authors.

In their preface the authors point out that the course in torts is always a crowded one. The vastness of the tort field and the necessity of taking time to give the first-year student intensive training in the reading and analysis of cases combine to make it very difficult to cover properly voluminous materials found in the average torts casebook. The authors have concluded that the only solution lies in resort to a considerable amount of textual material, and accordingly they have interspersed a good deal of such material amid 415 principal cases. Their objective has been to include a more extended treatment than is found in most casebooks of topics such as nuisance, the interrelation of tort and contract, the problems of joinder, satisfaction, release, contribution and indemnity as to joint tort-feasors, the apportionment of damages among multiple causes, survival of actions and wrongful death, punitive damages, the measure of damages for personal injuries, and equitable remedies. On the other hand, in order to keep the book within reasonable limits they have omitted or curtailed considerably topics such as actions for breach of promise to marry, alienation of affections, seduction and criminal conversation, and the immunity of the state, husband and wife, parent and child, infants and charities.

The organization of the volume, aside from the inclusion of the fairly large amount of textual material, is, generally speaking, the traditional one. First the authors deal with intentional torts. After a preliminary discussion of the development based upon fault, trespass to person and property is covered, followed by conversion. Next a chapter on punitive damages appears, followed by a discussion of the privileges of consent, self-defense, defense of property, necessity, recovery of property, and legal authority. Then consideration is given to various aspects of negligence under such heads as actual cause, joint and several tort-feasors, proximate cause, assumption of risk, contributory negligence, measure of damages in actions for personal injuries, and survival and wrongful death. These topics are succeeded by chapters on strict liability and nuisance. Thereafter a series of more or less unrelated areas of the law of torts is dealt with, including owners and occupiers of land, tort and contract, misrepresentation, defama-

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1. PROSSER, TORTS (1941).

tion, injurious falsehood, rights of privacy, malicious prosecution and abuse of process, and interference with advantageous relations.

Within the lines of demarcation which the authors have established for themselves, there is little to be said for their work that is not highly laudatory. The selection of cases is excellent. A thoughtful mixture of the older English cases with modern ones from a great variety of jurisdictions produces a pedagogical tool which will be a joy to the teacher of torts and to his students as well.

I am particularly happy that the authors have presented their cases and materials in a way that should be thoroughly intelligible to the legally inexperienced mind of the first-year student. The casebook system of approach has been vastly overdone in this country. Too often the editors of casebooks seem to feel that a suitable objective for their endeavors is to mystify the student rather than to educate him in an orderly way. To that end they fill their books with one exotic case after another, with no explanatory notes to aid the student in separating the wheat from the chaff. The excuse for such an approach is that "it makes the student think for himself." Unfortunately, it seldom does more than leave the student in a complete muddle and places upon the teacher the burden of dislodging erroneous ideas from the student's mind as well as implanting correct ones.

The work of Smith and Prosser does not suffer from that vice. On the contrary, their book moves forward in a logical and organized sequence. A landmark case like *Weaver v. Ward*,<sup>2</sup> for example, is not simply shot at the student without explanation. It is preceded with a three page background discussion and followed by a one page explanatory note. In that way the case is immediately given meaning for the student. If he reads his casebook diligently he will come into class armed with knowledge that will enable him to appreciate the class discussion better and at the same time will save precious minutes of class time for analysis rather than for the mere imparting of background information. How far a casebook should be a textbook is of course a much debated question for which I confess I have no answer. But certain it is that Professor Smith and Professor Prosser have shown that a judicious use of textual material can aid substantially in presenting cases in clearer focus.

I do not mean to leave the impression that this book simply sets forth the law of torts in one-two-three fashion with no attempt at raising questions in the student's mind. Far from it. The textual matter has been utilized as an aid to the stimulation of individual thought, not as a substitute for it. Moreover, numerous note cases throughout the work have been framed in the form of problems. The facts of these note cases are briefly stated, but the holding is not given, the student being referred to the report of the case for that information. These note cases can serve as an excellent "jumping-off" point for class discussion.

When a book is as well-done as this one is, it is perhaps captious to say anything unfavorable about it. Unfavorable remarks in book reviews frequently are much more the expression of personal preference than genuine

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2. Hobart 134, 80 Eng. Rep. 284 (K.B. 1616).

criticism. Nonetheless I shall venture a few words in this direction. First of all, I am a bit disappointed at the lack of an index to the book. An index is not as essential in a casebook as in a text, but it is still of considerable aid, particularly to the student. When a student is studying during the course of the term, and especially when he is reviewing in preparation for examinations, it is a great help to him to be able to lay hands on the cases and materials covering a particular point in a matter of seconds. The table of contents is seldom an adequate device for that purpose. It might also have been helpful to have included the note cases in the table of cases.

Secondly, I should like to have seen some textual discussion in the negligence section dealing with the social and economic aspects of negligence law, including Workmen's Compensation statutes and the trends towards strict liability. There has been a growing recognition in recent years that the devastating economic effects of accidents should be distributed over wide groups in order to avoid their ruinous impact upon any one individual, and rules of law have shifted in accordance with that recognition. Changes in legal rules, unnecessary to detail here, have broadened the scope of liability immeasurably, and the tendency to let all issues be resolved by juries has helped to solidify and extend this trend. The omission of discussion of such matters in a casebook which is a casebook in the narrow sense, and only that, is, of course, readily understandable. But, since Professor Smith and Professor Prosser have seen fit to inject a relatively large amount of textual matter—and this with excellent results—I am sorry that they did not go even further in this regard. Numerous leading scholars have done a great deal of work concerning the impact of liability insurance on the law of negligence, and the changing patterns of liability in negligence, but little or no reference to their work or criticism of it is made in the book. Then too, calendar congestion, which is the largest single practical problem in the administration of negligence law in many large cities, is not treated. The usefulness of the book might well have been enhanced by some discussion of these important topics. I, of course, recognize that no book can include everything, and where to draw the line is, in the last analysis, a matter of personal taste. Nevertheless, it is somewhat incongruous to find Professor Smith and Professor Prosser including a three and a half page note on "Statutory Modification of the Common Law Trespassing Cattle Rule,"<sup>3</sup> and little or nothing about some of the most pressing problems of modern negligence law.

In summary then, the authors have, in my opinion, produced a splendid casebook. As a classroom tool, it will have few equals, for the many years of experience which the authors have had in teaching torts have left an unmistakable mark upon its pages. While its analysis of the law of negligence is perhaps somewhat inadequate in the respects above particularized, this deficiency, if it be such, is far outweighed by the book's many virtues.

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3. Pp. 662-665.

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