



LEGAL ACTION GROUP

PERSONAL INJURY PRACTICE

THE GUIDE TO LITIGATION
IN THE COUNTY COURT AND
THE HIGH COURT

JOHN HENDY, QC
MARTYN DAY
ANDREW BUCHAN

SECOND EDITION

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The guide to litigation
in the county court and
the High Court

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Martyn Day

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(with assistance from Jenny Kennedy)

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Personal Injury Practice

Foreword to the first edition

By the Hon J Melville Williams QC, President of the Association of Personal Injury Lawyers, 1990 to 1994.

Personal injury accidents potentially concern everyone in society. Individually or through family and friends any one of us is vulnerable to the kind of personal tragedy that an accident can bring. Accidents can strike at any time, on the way to work, on holiday, in hospital, as well as on the road or at work. It is vital, therefore, that society should have a system of redress which can deal efficiently, quickly and fairly with the problems created. For such a system to work as it should, it must be administered by well-informed and competent people, in particular the lawyers who operate the legal process.

Twenty years ago, personal injury litigation arose almost exclusively as a result of road traffic accidents or accidents at work; it was relatively simple and was treated by the legal world as neither very important nor very interesting. Although I am afraid that that attitude lingers on, it is disappearing. The press and the public know that this is a subject of vital concern to individuals involved and, largely I think as a result of public pressure, the legal system and the legal process are responding to criticism, much of it fully justified and much based on our own failings. Reforms are being introduced to improve the service to litigants. In particular, the increase in the jurisdiction of the county court, the proposed introduction of personal injury and medical negligence specialist panels and the debate on no-fault liability, if it results in a scheme, will lead to radical changes in the way in which personal injury claims are handled.

In this climate of change and increasing complexity in personal injury cases, it is vital that all those who offer their services to litigants should be fully competent to advise properly and handle a case expeditiously and efficiently. That is why I welcome this handbook, written as it is by three very experienced practitioners, who between them cover the whole range of practice from the moment that the victim comes through the door to

the final appeal in the House of Lords and beyond. It has a refreshingly practical approach and will answer all those nagging questions which so often can be solved only by those who have done it all before. The authors have done it all before and in the book they share their experience with the reader, who can use it either as a guide to the whole process or to dip into to solve those awkward and pressing problems that arise in any case, usually at the most troublesome time.

I believe that this book will make a significant contribution to raising the standards of those who practise in personal injury work. Perhaps it can help particularly those whose main practice is in other fields, but who from time to time are pressed by faithful clients to act when there has been an accident, to understand what they should do or to recognise when they need help.

J Melville Williams QC

Foreword to the second edition

By the Hon J Melville Williams QC, President of the Association of Personal Injury Lawyers, 1990 to 1994.

Even in the comparatively short time since the first edition of this very useful handbook was published there have been many important developments in the field of personal injury law. Indeed it sometimes seems as though we are under siege from changes and new regulations. It is all the more important therefore that practitioners have available in a convenient and reliable form a guide to help them achieve justice for their clients. This guide continues to fill that need.

John Melville Williams QC

Preface

This book is intended for solicitors, legal executives and barristers who handle personal injury work. The authors hope that it will be useful to specialists, to those who handle the occasional personal injury case, and to trainees and advanced students alike. It is intended to be comprehensive – covering every aspect of practice from the first interview through to appeal. The text is written to enable the reader to ‘dip in’ to the book to answer specific problems, as well as to guide the reader through the case, stage by stage.

We have written this book primarily for practitioners who act for plaintiffs. This has been done for two reasons. First of all, because the expertise of the three authors is in plaintiffs’ work. Secondly, because the spread of solicitors who handle personal injury claims for plaintiffs is much greater than the relatively small number of firms who do the bulk of insurers’ work. This means that many plaintiffs’ lawyers are not specialists in this field, though they will usually be pitted against highly experienced defendants’ lawyers. This problem was recognised by the 1988 Civil Justice Review.

Between 1990 and 1994 there has been a revolution in personal injury litigation, the key element of which has been the transfer of most work from the High Court to the county court. One of our main objectives has been to explain and clarify the new regime. In addition, the legal aid scheme has been transformed. These radical changes have given rise to some serious procedural problems and it may be a long time before they are properly resolved. As a consequence, in some areas, we have been able only to highlight the difficulties and not to provide solutions.

We have sought not only to write about law and procedures, but rather to focus on the strategies and tactics of the personal injury lawyer. To give these considerations more space, we have not dealt with the substantive law on liability or quantum of damages, nor with the highly specialised areas of practice of medical negligence and environmental law.

The authors would like to express their thanks to Paul Crane, their original editor at Legal Action Group, for his care, patience and inspiration. We would also like to thank his more than capable successor, James Lamb. Jenny Kennedy gave us enormous assistance in the writing of this second edition, as did Helen Curtis, who checked the references, and Carol Ellison, who helped with the chapter on structured settlements. We are indebted to them all. For any errors or omissions that are in the book, we remain responsible.

The law in England and Wales is stated as on 1 May 1994.

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Martyn Day
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