

简明法学案例丛书(影印版)

briefcase on TORT LAW

侵权法简明案例

(第二版)

(Second Edition)

约翰·洛根

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本书导读

英美侵权法建立在案例的基础上。侵权法领域内各种各样的理论、原则、规则,基本上都来源于案例,制定法的规定相当部分也只是这些理论、原则或规则的成文化。所以,要了解英美侵权法,必须了解这一领域的案例。本书共收集了约 600 个英国侵权法的案例,涉及了侵权法的各个方面,对于读者了解英国侵权法上的代表性案例,本书非常有帮助。

根据英国侵权法理论的一般体系,本书收集的案例基本上可以分为三个部分。第一部分案例主要是为了说明英国侵权法领域内的一些基本概念,如过失、因果关系、损害的遥远性、共同过失、神经系统震扰以及经济损失等。第二部分案例主要是各种侵权行为类型的代表性案例,包括有过失的错误陈述、占有人的责任、侵害他人人身、违反制定法义务、雇主的责任、动产所有人的责任、诽谤、替代责任、侵害他人土地、侵害他人动产、严格责任以及火灾等类型。最后一个部分是关于抗辩事由的典型案列。

总的来说,本书具有如下特色。首先,所有的案例根据英国侵权法理论的一般体系来编排,体系比较清晰,便于读者查找相关内容。其次,在对案例进行评述的同时,作者大量引用了审理该案法官的评论,方便读者了解英国侵权法理论的来源和发展。再次,作者还针对一些案例提出问题,以便加深读者对案例及其相关理论的理解,很适合不熟悉英国法的读者阅读。由于篇幅的限制,本书对有些案例的介绍过于简略,不过,在网络信息发达的今天,这基本上已不再是理解的障碍。

本书相关部分的翻译者为武汉大学博士研究生冯兴俊。在此需要说明的是,本书最后的附录包含了全书所涉及到的绝大多数案例及其术语,少数案例术语既不是该案事实的关键词,也不是涉及法律问题的提示语,译者对一些术语的翻译作了一些灵活的处理,使其更符合我们的思维习惯。若有谬误之处,敬请学界前辈、同仁及读者批评指正。

译 者

2004 年 4 月

Preface

The law of tort is built on cases. This represents a challenge to the learning capacity of the student, there is so much information to be digested. A case book is an aid to that digestion. Cases are presented here in an explanatory style and an accessible form. The student is warned that he would be wise to read some of the cases in the original; he will then get a feel for the fabric of the law of tort. However, life is short and tort is long, so some assistance is necessary. Most cases here are presented in short form, but with some, a lengthier, more explanatory style is adopted.

Interspersed in the text are some moot questions. They are designed to test the student's understanding of what he has read. To answer a problem, the student is required, first, to identify the issues involved; secondly, he must cite the relevant cases; thirdly, he is to apply those cases to the facts given; finally, he should give a reasoned solution. In short, the student has to decide who sues whom and for what.

In this second edition, over 50 new cases have been added. The attention of the reader is drawn to *R v Bournewood*, p 69, where a unanimous House of Lords overturned a unanimous Court of Appeal. The student may well feel:

'Quot homines, tot sententiae.'

So many men, so many opinions!

JL
August 1998

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