

Salmond and Heuston on the
Law of Torts

Eighteenth Edition

R. F. V. Heuston
R. S. Chambers

Sweet & Maxwell

SALMOND AND HEUSTON

on the

LAW OF TORTS

EIGHTEENTH EDITION

by

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DEDICATION OF SIXTH EDITION

[*By the Author*]

TO THE MEMORY OF

MY SON

WILLIAM GUTHRIE SALMOND

A CAPTAIN IN THE NEW ZEALAND ARMY

WHO IN FRANCE ON THE 9TH DAY OF JULY, 1918

GAVE UP HIS LIFE

IN THE TWENTY-SIXTH YEAR OF HIS AGE

PREFACE

The scope and object of this work remain as they were stated by Sir John Salmond in the preface to the first edition in which he said: "I have endeavoured in this book to set forth the principles of the law of torts with as much precision, coherence, and system as the subject admits of, and with as much detailed consideration as is necessary to make the work one of practical utility."

For this edition, published nearly 75 years after the first by the original author, my name has been joined with his on the title page. The decision to do this (which was not made at my request) has naturally been a source of pleasure to me. It has also been a pleasure to be joined for the first time by an assistant editor, Dr. R. S. Chambers, from Sir John Salmond's own country. Dr. Chambers has undertaken primary responsibility for Chapter 4 (Nuisance) and Chapter 13 (Rylands v. Fletcher and Fire), as well as for Section 7 of Chapter 2 (Insurance). I have had primary responsibility for the other chapters. But each of us has read and commented on the first drafts of the other's chapters.

To me it is important that the book continues to be trusted by judges and practitioners throughout the common law world. I have notes of nearly 300 judgments in which different passages (or sometimes the same passage) in the text have been approved. A prominent academic has said that "the criteria of relevance of *Salmond on Torts* are very close, but not identical, to the criteria of a rather formalistic appellate court judge dealing with questions of law within that general area" (W. L. Twining (1974) *British Journal of Law and Society* 148, at p. 154). I regard this statement as being complimentary and not critical. While attention has been paid to the social implications of decisions, there are limits to what can be done within the limits of what is intended to be a readable legal textbook and not a volume in an encyclopedia of the social sciences.

Events have made it unnecessary to consider in much detail one social change which five years ago was being confidently forecast — the replacement of torts by some system of insurance. The cool reception given by Parliament to the Pearson Report (see below, §7), while very disappointing to those who had worked so hard for so long to improve the admittedly unsatisfactory state of the law relating to compensation for personal injuries, has at least meant that the present structure will remain for the foreseeable future. I may be permitted to draw attention, approvingly, to the remarks of the Minister of State for Consumer Affairs (Mrs. Sally Oppenheim, M.P.) in the House of Commons on November 4, 1980: "In no way would she wish to see any reform which undermined the law of tort in this country. That law was part of the fabric of society, depending as it did on the philosophy of duty and personal responsibility."

In the text the law is stated in the light of the reports and other literature available to me on December 31, 1980, although it has occasionally been possible to note briefly later developments. But experience has taught me the importance of adhering to the cut-off date and resisting the temptation to make changes in the text without full consideration. Some other points of editorial technique may be mentioned. First, the relevant periodical literature is cited at the beginning of each section and thereafter referred to only when really necessary. I hope this will achieve brevity in the footnotes without being unfair to the many authors who will find their ideas

reproduced in the following pages. Secondly, there has been a slight decrease in the number of Commonwealth and Irish cases cited. Twenty years ago it was not so easy to find significant judgments from those jurisdictions. Now there are helpful publications like *Canadian Cases on the Law of Torts*, and the (forthcoming) textbook on the Irish Law of Torts by Professor B. McMahon and Mr. W. Binchy. Thirdly, the present edition attempts to take proper account of all recent decisions (including the very important *Anns v. Merton L.B.C.* [1978] A.C. 727) and statutes. But there has been an exceptional number of complex and difficult statutes since the last edition, e.g. the Civil Liability (Contribution) Act 1978, and the Limitation (Amendment) Act 1980, and I confess that I have left the Unfair Contract Terms Act 1977 to be dealt with in textbooks on contracts.

My sincere thanks are due to Mr. A. Kerr, LL.M., of University College, Dublin, and Mr. P. Ward-Perkins, M.A. of the Middle Temple, for help with the proofs. My thanks are also due to the Law Library, St. Cross, Oxford, for special facilities. Dr. Chambers in his turn would like to acknowledge his debt to New College, Oxford, of which he was Salvesen Fellow while working on his chapters.

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May 1981*

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