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PROFESSIONAL NEGLIGENCE

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Professional Negligence

To our parents

Preface

In the seven years since the publication of the first edition, the law has developed at an ever increasing pace. In a period of unparalleled activity the appellate courts have been reconsidering the fundamental principles of the law on such issues as the boundaries of duty, the proof of causation and the impact of exclusion clauses. The lower courts have provided a plethora of examples across the professions. Legislation has intervened in the important area of limitation periods with the Latent Damage Act. We have been fortunate in being able to complete this edition at a time when the pattern of development is becoming clearer. From the higher courts we have been able to incorporate decisions reported in 1988 such as *Clarke v Bruce Lance & Co* (solicitors' liability), *Harris v Wyre Forest DC* (surveyor's liability), *Wilsher v Essex AHA* (medical negligence, and *D & F Estates* (construction professions) into the text and we have indicated the way we think the law is likely to develop in the light of these and the other leading decisions of the last few years.

As in the first edition we have structured the book around the general principles of law rather than around particular professions, in the belief that it is the general principles which are of fundamental importance. However, many of the chapters dealing with the principles now contain a concluding section of examples detailing the way in which the principle in question has been applied to particular professions. We hope that this combination of principle and example will enable the practitioner to both find the case law relating to the profession in question and explore its relationship to the general principles involved.

The increasing availability of case reports through Lexis, new series such as the Construction Law Reports and the Estates Gazette Reports, coupled with wider researching of Commonwealth material and the flexibility provided by the word processor has enabled us to add greatly to the quantity of case law cited in the book. Much of this new material has been discussed in the footnotes rather than the text, but inevitably it has resulted in a longer book. Pressure of space has led us to omit two chapters contained in the first edition, those on indemnity insurance and professional discipline and ethics. The first topic is now covered by specialist texts and the second merits such treatment. We have made other structural changes: the discussion of contractual duties has been brought forward to start the book. The sections on miscellaneous tortious liability and those on causation have each been consolidated. In response to requests we have added a chapter on issues of civil procedure relevant to professional negligence litigation. We hope that this chapter and its accompanying appendix will be of

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assistance to practitioners engaged in such litigation.

In the preparation of this edition we have been assisted by two colleagues; John Parkinson who has taken responsibility for the sections on contract, company law and protection from liability, and Della Evans who has taken responsibility for the section on equity. We are grateful to them for their help and encouragement. Robert Johnson, a partner in a leading Bristol firm of solicitors, has acted as our consultant editor in relation to the procedure chapter. We are grateful to him for his advice on the presentation of that chapter and for preparing the appendix. We are also grateful to David Feldman who read and advised on Chapter 9, to Paul Rowe who did the same in relation to chapter 28, and to Rhona Wyles, Head of Legal Services at the National House Building Council. Finally, we would like to express our thanks to Frank Cass for allowing us to make use of material first published in the journal, *Professional Negligence*.

August 1988

AMD
KMS

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