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McGREGOR ON DAMAGES

麦格雷戈论损害赔偿

（第18版）

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〔英〕哈维·麦格雷戈　著

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Harvey McGregor

McGREGOR ON DAMAGES

Eighteenth Edition

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McGREGOR
ON
DAMAGES

BY

HARVEY McGREGOR
Q.C., D.C.L., S.J.D.

CHAPTER 43 ON THE HUMAN RIGHTS ACT CONTRIBUTED BY
MARTIN SPENCER Q.C.

CHAPTERS 44–46 ON PROCEDURE REVISED BY
JULIAN PICTON

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TO MY
MOTHER AND FATHER

PREFACE

Life for the legal author is not as easy as it used to be. There are two reasons for this. The first comes from the sheer weight of authority that today must be examined. Whereas in earlier days the legal author had only to concern himself with cases that appeared in the law reports, today everything is available. The modern engines of technology churn out case after case, at all levels, and do so right away so that the decisions of yesterday await one on the computer in the morning. Many of these cases will never reach print in a law report, or in a commonly used law report, boasting only a neutral citation, and this can be true even of cases which have reached the Court of Appeal—I cite as an example *Browning v Brachers* where the Court of Appeal dealt comprehensively with a number of interesting damages points. The second factor making life difficult is the sheer length of judgments. They just get longer and longer. Whereas Lord Mansfield in the 18th century and Sir George Jessel M.R. in the 19th could frame their decisions within a few pages, sometimes in a single short paragraph, a judge today may well continue paragraph after paragraph, even into the high hundreds. This unfortunate method of pronouncing judgment is particularly prevalent at first instance. It is of course true that important issues may need a full and detailed analysis, but the length today found is seldom justified. Yet all of this has to be read and examined, at least by the diligent author. In the preface to the first edition of this book that came my way some 50 years ago I boldly stated that I had read every single reported case referred to in the text or footnotes. For cases reported and unreported since the last edition I can say the same today; somehow I have managed to find the time to achieve this.

Only six years may have passed since the last edition but much has happened, and change has been rife, in the interim. The House of Lords has shown itself prepared to abandon long-standing unattractive rules. Impecuniosity has gone with *Lagden v O'Connor.* Compound interest has been brought in by the revolutionary *Sempra Metals* case, requiring a wholesale revision of the chapter on interest. At the same time brakes have been applied to expanding areas—applied in *World Wildlife Fund v World Wrestling Federation* to restitutionary damages—and braking has been attempted in established areas—attempted in *The Achilleas* on the rules as to remoteness of damage in contract. Sometimes the House of Lords has been interestingly divided, either by three to two—as in *Gregg v Scott* and *Chester v Ashfar* featuring clinical negligence and in *The Golden Victory* concerning cancellation of charterparties—or divided even by four to three—as in *Rees v Darlington* on the damages available to the parent of an unwanted child—so that one wonders what in these heavily disputed areas the future holds. Awards have

started to appear where there was little or nothing before. This has needed the invention of a new chapter to deal with the somewhat disparate topics of invasion of privacy and misfeasance in public office. First instance courts have continued to go wrong on the recovery of costs as damages; this has required a complete rewriting of the relevant chapter. The coverage of personal injury has substantially grown, mainly to deal with the advent of periodical payments and with the introduction in the Ogden Tables of an entirely different methodology for the calculation of contingencies. With the decision in *Arnup v White* the deduction of collateral benefits can be said to have entirely disappeared in fatal accident cases; recasting has been needed here too. So I trust that the book that now is will be recognised from the book that was.

The introduction of all this new material has been partially balanced by the omission of whatever has been clearly overtaken by it. Yet while it is vital to see that modern developments are fully documented, it is important not to omit wholly the older law. Otherwise it will be lost forever. So I offer no excuse for continuing to include sometimes substantial passages showing how the law has developed in a particular area, particularly where this assists in showing how the present legal position has been reached. Moreover, there are still sections of the law of damages where up-to-date authorities are either non-existent, so that reliance on much earlier cases must suffice, or are sparse, so that earlier cases must be brought in to assist. Beyond this, there are matters of damages where old authorities still dominate. Thus the leading case on the measure of damages for the improper dishonouring of cheques by banks, *Rolin v Steward*, which has the distinction of sharing the same mid-19th century date with the still omnipresent *Hadley v Baxendale*, was much in evidence in a case in which I appeared only last year. And on a particular issue effectively concerning mitigation, *Rodocanachi v Milburn* of the 1880s and *Williams v Agius* from the beginning of the 20th century still rule the day, though it is suggested in the text that perhaps they no longer should.

A few technical matters may be touched on. I have taken the trouble personally to check, and correct where necessary, the myriad of cross-references in the footnotes of this lengthy work, knowing how irritating it is to be guided to something which turns out not to be there. For this edition I have conducted an overview of the table of cases so as to eliminate, as far I could, such errors as have crept in, in section numbering and particularly in the references to cases which appear in two or three guises. As for the index my publishers have agreed to retain it in the form in which I had originally constructed it; again I have conducted an overview. Finally, there is the use of page and paragraph references. The growing tendency for decisions to be read electronically rather than from the printed page appears to be behind two changes, the one in judgments and the other in law reports, the one advantageous and the other disadvantageous. Since the turn of the century judgments have become paragraphed. This means that should the reader of the text turn to a law report other than that cited in the text, he need not be concerned that

the page reference within the report referred to or cited in the text differs from the page in the report he or she is reading; now the reference is made by paragraph and whatever the law report the paragraph number is always the same. As against this, publishers of law reports have started to cite cases not by the page in the volume but by the number of the case in the volume. For those who still wish to read their cases in traditional fashion from a book in the hand rather than electronically from a computer on the table, this form of citation is an inconvenience, as what one wants is to be able to go directly to a page rather than have to hunt for case numbers. It is therefore thought that for the convenience of such readers the page reference should be added to the case number in the volume and, when any such case is first referred to in any paragraph of the book, I have sought to make the necessary addition throughout. This is only in the footnotes as it has been impossible in the publishers' table of cases at the beginning.

The law is stated as it stood on completion of the text at the beginning of 2009. References to case reports appearing afterwards and before final proof stage of cases included in the text have been added. So too where a higher court has affirmed, or reversed, a case appearing in the text, this is commented on by way of addendum, as with the important decisions of the Court of Appeal in *Peters v East Midlands Health Authority*, considering the rights of the severely injured claimant to choose between costly private care and free institutional care, and in *Copley v Lawn*, dealing with an issue as to damages where cars are hired from credit hire companies, an issue which has split first instance courts.

I am again immensely grateful to my two Chambers colleagues, Martin Spencer Q.C. and Julian Picton, to the former for doing wonders with damages under the now not so new Human Rights Act and to the latter for doing equal wonders with the procedural aspects of damages under the also not so new Woolf reforms. This has allowed me to concentrate on the vast panorama of the substantive common law of damages, for which I still consider a unity in content, and also in style, essential.

Hailsham Chambers
4 Paper Buildings
Temple
September 2009

HARVEY MCGREGOR Q.C.

CONTENTS

BOOK ONE

GENERAL PRINCIPLES

PART ONE

THE HEADS OF COMPENSATORY DAMAGES

PART TWO

THE LIMITS OF COMPENSATORY DAMAGES

PART THREE

DAMAGES NOT BASED STRICTLY ON COMPENSATION

PART FOUR

VARIOUS GENERAL FACTORS IN THE ASSESSMENT OF DAMAGES

BOOK TWO

PARTICULAR CONTRACTS AND TORTS

PART ONE

CONTRACT