

Books for Lawyers

ance with which it abounds. He carefully points out the legitimacy of certain Latinisms as well as the turpitude of others. Perhaps heretically, he suggests that some legal doublets, like *last will and testament*, "even enrich" our language. He recognizes

that legal argot, with its "strong in-group property," is sometimes acceptable ("when one lawyer talks with another or addresses a judge") and sometimes not ("when the purpose of using it is to demonstrate how much more the speaker or writer

knows as a specialist than ordinary listeners or readers do").

The dictionary functions best, accordingly, as a manual for legal writers who care enough about precision and style to bother trying hard to get things right. It contains entries of value to writers of all stripes, including essays on possessives and their formation, on the sequence of tenses, and on punctuation. And it includes a thoughtful and sensitive article on sexism in the English language.

Garner declares that his goal was to produce a work that will "allow readers to resolve at a glance the myriad questions of grammar and style that arise in legal writing." One will have to use the dictionary for a year or two before deciding whether that ambitious objective has been achieved. What is immediately clear is that Garner has produced a work of learning, taste, care and wit.

And since *logorrhoea* (diarrhea of the mouth) is described as "an affliction of which lawyers must beware," it is time to stop.

Douglas Connah, a private practitioner in Baltimore, is a former editor of Litigation, a former member of the ABA Journal's Board of Editors, and a former reporter for The Baltimore Sun.

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THE TORT LOTTERY

LIABILITY: PERSPECTIVES AND POLICY

Edited by Robert E. Litan
and Clifford Winston
The Brookings Institution,
Washington, D.C.
248 pages; \$28.95 cloth
\$10.95 paper

*Reviewed by Stephen D.
Sugarman*

In Cook County, Ill., between 1980-84, there were 67 personal injury jury verdicts of \$1 million or more. Together these few jumbo awards accounted for 85 percent of all the money awarded in that jurisdic-

diction in personal injury cases during the period.

Between 1982 and 1986, the frequency of malpractice claims per 100 doctors increased from 13.5 to 17.2 a year. Yet of the patients throughout the country who suffer a loss because of medical negligence, "at most 1 in 25 received compensation through the tort system."

Priest favors removing strict liability from product liability

These are a few of the many interesting findings reported in "Liability: Perspectives and Policy," edited by Robert Litan and Clifford Winston, who contributed three of the book's eight chapters. This collection of essays arises from a conference on civil liability held by the Brookings Institution in June 1987.

The authors point to a number of problems in the present system. John Calfee and Clifford Winston explain in Chapter Two that although defenders of tort law see the compensation of victims and the promotion of safety as its two central goals, there is good reason to believe, in both theory and practice, that these goals are fundamentally inconsistent and that the current system serves neither end very well.

As for those calling for insurance reform instead of tort reform, Scott Harrington in Chapter Three concludes that increased regulation of commercial liability insurance rates is unwarranted.

In Chapter Five, Peter Huber notes that "demands for regulation of suspected environmental hazards are ... growing, as are demands for compensation for those who can vigorously and plausibly claim to have suffered injury from them."

He concludes, however, that "the new generation of environmental suits and settlements is ... an edifice of compromise, the product of igno-

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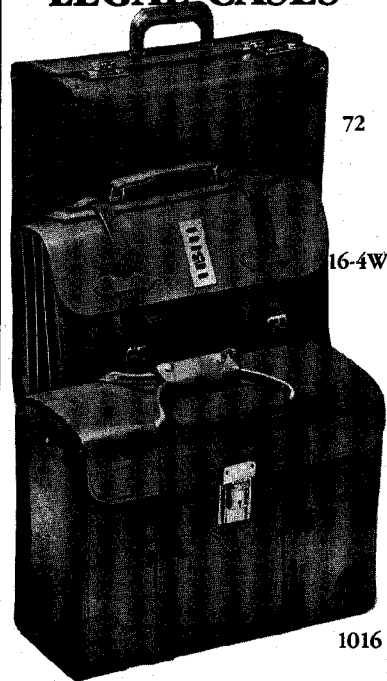


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rance and emotion, not knowledge or understanding. ... The result has been a series of settlements detached from any objective measure of harm."

Moreover, he argues that "attempting to meet these demands through a capricious liability system will force a steady erosion of industrial activity on many fronts without concomitant improvement in environmental quality or benefit to the true victims of diffuse pollution."

George Priest in Chapter Seven reiterates a conclusion from his earlier research that "... the attempt to provide insurance through [tort] law is largely responsible for the recent insurance crisis and ... insurance availability could be increased and poor and low-income consumers benefited if the insurance component of modern law were excised completely."

When it comes to recommendations for tort reform, however, the authors are fairly timid. For exam-

ple, Patricia Danzon in Chapter Four calls for replacing the current system of open-ended, jury-determined awards for pain and suffering with a lower cost and more consistent "schedule of compensation based on the age of the plaintiff and the severity of the injury." She also endorses the curtailing of long and unrestricted statutes of limitation.

Priest favors removing strict liability from product liability law; this includes manufacturing-defect cases, a step that even leading congressional product liability reformers have been unwilling to propose.

Thus, out would go "consumer expectations" and retrospective "risk-benefit" tests that now apply in many product-defect and product-warning cases. Instead, Priest favors "standards that place liability on manufacturers only when it can be shown that there was some practicable method for the manufacturer to have prevented the accident."

While this may sound to many like a negligence standard, Priest means it to be more demanding on plaintiffs than negligence law often is; for example, he calls for "rigorous cost-benefit analysis in every products case."

Although some of the essays in this book are likely to be of little interest to practitioners, other chapters—especially those by Danzon on medical malpractice and Huber on liability for environmental hazards—provide a fascinating picture of the civil liability system.

That the book does not amount to a sustained argument on behalf of a single position is hardly surprising given the nature of the enterprise. It is nonetheless a useful contribution to the growing literature on modern tort law and its reform. ■

Stephen D. Sugarman is a professor at the University of California at Berkeley School of Law.

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