

THE COMMON LAW LIBRARY

McGREGOR
ON
DAMAGES

BY

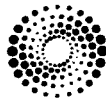
HARVEY McGREGOR
Q.C., D.C.L., S.J.D.

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

CHAPTERS 44–46 ON PROCEDURE REVISED BY
JULIAN PICTON

EIGHTEENTH EDITION

SWEET & MAXWELL



THOMSON REUTERS

CONTENTS

	PAGE
<i>Table of Cases</i>	xxvii
<i>Table of Statutes</i>	cxliv
<i>Table of Statutory Instruments</i>	clii
<i>Table of Civil Procedure Rules</i>	cliv

BOOK ONE

GENERAL PRINCIPLES

	PARA.
1. DEFINITION, SCOPE, OBJECT AND TERMINOLOGY	1-001
1. Definition of the term damages	1-001
2. Scope of a textbook on damages.	1-019
3. Object of an award of damages	1-021
4. Terminology	1-029

PART ONE

THE HEADS OF COMPENSATORY DAMAGES

2. PECUNIARY LOSSES	2-001
I. CONTRACT	2-002
1. Basic pecuniary losses: the normal measure of damages	2-002
2. Consequential pecuniary losses.	2-026
II. TORT	2-042
1. Basic pecuniary losses: the normal measure of damages	2-043
2. Consequential pecuniary losses.	2-046
3. NON-PECUNIARY LOSSES	3-001
I. TORT	3-002
II. CONTRACT	3-013

CONTENTS

PART TWO

THE LIMITS OF COMPENSATORY DAMAGES

4.	THE GENERAL PROBLEM OF LIMITS	4-001
	1. Interrelation of existence and extent of liability	4-002
	2. Interrelation of various facets of the extent of liability.	4-014
5.	REDUCTION OF DAMAGES FOR CONTRIBUTORY NEGLIGENCE.	5-001
	1. Liability in tort	5-003
	2. Liability in contract	5-009
	3. Liability under the Misrepresentation Act	5-017
6.	REMOTENESS OF DAMAGE	6-001
	I. TORT	6-004
	(A) CAUSATION	6-005
	1. Cause in fact and cause in law	6-005
	2. Cause in fact: the norm and the exceptions	6-015
	3. Cause in law: direct consequences	6-029
	4. Cause in law: consequences following upon a new intervening force	6-033
	(B) SCOPE OF PROTECTION: THE LIMITS OF POLICY	6-080
	1. Damage where no separate liability has been estab- lished	6-081
	2. Foreseeable damage caused in an unforeseeable manner or to an unforeseeable degree where a breach of duty to the claimant to take care has been established	6-084
	3. Damage to a secondary interest where a separate liability in respect of a primary interest has been established	6-120
	4. Damage outside the scope of the duty	6-130
	II. CONTRACT	6-136
	(A) CAUSATION	6-137
	1. Direct consequences	6-139
	2. Consequences following upon a new intervening force	6-140
	(B) SCOPE OF PROTECTION: CONTEMPLATION OF THE PARTIES	6-155
	1. The rule in <i>Hadley v Baxendale</i>	6-157
	2. The rule restated in <i>Victoria Laundry v Newman</i> in 1949	6-159
	3. The restated rule as qualified in <i>The Heron II</i> in 1967	6-161
	4. The decision in <i>The Achilleas</i> in 2008	6-165
	5. The degree of likelihood required	6-174

CONTENTS

6. The degree of knowledge required	6-186
7. The overall requirements of public policy	6-200
8. Main types of contract in which the rule in <i>Hadley v Baxendale</i> has been developed	6-203
7. MITIGATION OF DAMAGE	7-001
I. VARIOUS MEANINGS OF THE TERM "MITIGATION"	7-001
1. Principal meaning: the three rules as to the avoiding of the consequences of a wrong	7-002
2. The two subsidiary or residual meanings	7-008
II. THE RULE AS TO AVOIDABLE LOSS: NO RECOVERY FOR LOSS WHICH THE CLAIMANT OUGHT TO HAVE AVOIDED	7-014
1. Various aspects of the rule	7-015
2. The rule and its relationship to the normal measure of damages	7-033
3. Illustrations of circumstances raising the issue of whether loss should have been avoided	7-041
4. Standard of conduct which the claimant must attain when assessing what steps should have been taken by him	7-070
III. THE COROLLARY: RECOVERY FOR LOSS INCURRED IN ATTEMPTS TO MITIGATE THE DAMAGE	7-091
IV. THE RULE AS TO AVOIDED LOSS: NO RECOVERY FOR LOSS WHICH THE CLAIMANT HAS AVOIDED, UNLESS THE MATTER IS COLLATERAL	7-097
1. The three subdivisions of the rule	7-099
2. Various aspects of the rule	7-102
3. Actions taken after the wrong by the claimant	7-106
4. Actions taken after the wrong by third parties	7-137
5. Actions taken before the wrong by the claimant	7-147
8. CERTAINTY OF DAMAGE	8-001
I. THE PROBLEM OF CERTAINTY	8-001
II. CIRCUMSTANCES IN WHICH DAMAGES MAY BE AWARDED ALTHOUGH THE NATURE OF THE DAMAGE PREVENTS ABSOLUTE CERTAINTY OF PROOF	8-004
1. Where damage is presumed	8-004
2. Where the loss is non-pecuniary	8-007
3. Where it is uncertain how a pecuniary loss is to be measured	8-008
4. Where it is uncertain how much of the loss, pecuniary or non-pecuniary, is attributable to the defendant's breach of duty	8-010

CONTENTS

5. Where it is uncertain whether a particular pecuniary loss will be or would have been incurred	8-021
9. PAST AND PROSPECTIVE DAMAGE	9-001
I. INTRODUCTORY: CIRCUMSTANCES IN WHICH THE SAME SET OF FACTS GIVES RISE TO MORE THAN ONE CAUSE OF ACTION	9-003
1. Where there are two separate acts resulting in two separate wrongs	9-003
2. Where a single act violates two separate interests protected by the law	9-004
3. Where a single act constitutes a continuing wrong	9-010
4. Where a single act not actionable <i>per se</i> causes separate damage on two separate occasions	9-014
II. PAST LOSS: DAMAGE BEFORE ACCRUAL OF THE CAUSE OF ACTION	9-015
III. PAST LOSS: DAMAGE BEFORE COMMENCEMENT OF THE ACTION	9-018
IV. PROSPECTIVE LOSS: DAMAGE AFTER COMMENCEMENT OF THE ACTION	9-024
1. The rule	9-024
2. The corollary	9-030

PART THREE

DAMAGES NOT BASED STRICTLY ON COMPENSATION

10. NOMINAL DAMAGES	10-001
I. CIRCUMSTANCES GIVING RISE TO AN AWARD OF NOMINAL DAMAGES	10-001
1. Where there is <i>injuria sine damno</i>	10-001
2. Where damage is shown but its amount is not sufficiently proved	10-004
II. AMOUNT AWARDED; NOMINAL AND SMALL DAMAGES DISTINGUISHED	10-006
III. PRACTICAL FUNCTIONS OF NOMINAL DAMAGES	10-007
11. EXEMPLARY DAMAGES	11-001
I. THE GENERAL BAN ON EXEMPLARY DAMAGES	11-001
II. CASES IN WHICH EXEMPLARY DAMAGES MAY BE AWARDED.	11-009
1. Types of claim in which exemplary damages are possible	11-011

CONTENTS

2. The three categories in which exemplary awards are possible	11-017
III. COMPUTATION OF THE EXEMPLARY AWARD	11-033
1. Various criteria applied by the courts.	11-033
2. The question of vicarious liability.	11-047
3. The irrelevance of the criteria in the second common law category.	11-050
12. RESTITUTIONARY DAMAGES	12-001
I. CONCEPT AND MEANING OF RESTITUTIONARY DAMAGES	12-001
II. CIRCUMSTANCES GIVING RISE TO RESTITUTIONARY DAMAGES	12-007
1. Liability in tort.	12-007
2. Liability in contract	12-023
III. PARTICULAR ASPECTS OF THE CLAIM	12-045
13. LIQUIDATED DAMAGES	13-001
1. Historical development of liquidated damages and penalties	13-003
2. Nature and effect of liquidated damages and penalties.	13-009
3. Rules for distinguishing liquidated damages from penalties.	13-027
4. Main types of contract in which the rules have been developed	13-051
5. Related situations.	13-089

PART FOUR

VARIOUS GENERAL FACTORS IN THE ASSESSMENT OF DAMAGES

14. THE INCIDENCE OF TAXATION	14-001
I. INCOME TAX.	14-002
(A) THE RULE IN <i>GOURLEY'S CASE</i>	14-002
(B) TYPE-SITUATIONS IN WHICH THE RULE IN <i>GOURLEY'S CASE</i> MAY APPLY	14-005
1. General considerations	14-005
2. Tort.	14-024
3. Contract	14-041
(C) THE PRACTICAL APPLICATION OF THE RULE IN <i>GOURLEY'S CASE</i>	14-055
1. Burden of proof.	14-055
2. Calculation of the tax	14-059

CONTENTS

II. CAPITAL GAINS TAX	14-062
1. General considerations	14-062
2. Tort	14-066
3. Contract	14-071
15. THE AWARDING OF INTEREST	15-001
I. INTRODUCTORY	15-001
II. THE POSITION BEFORE <i>SEMPRA METALS</i>	15-005
A. INTEREST OUTSIDE STATUTE: INTEREST AS DAMAGES	15-005
B. INTEREST CONFERRED BY STATUTE: INTEREST ON DAMAGES	15-030
1. Limits of the statutory provision	15-036
2. Categories to which statutory interest applies	15-043
III. THE POSITION AFTER <i>SEMPRA METALS</i>	15-060
1. The decision.	15-061
2. The analysis.	15-065
3. The results	15-069
IV. CALCULATION OF THE AMOUNT OF INTEREST	15-073
1. Period of time for which interest is awarded	15-073
2. Rate of interest awarded	15-104
3. Amount on which interest is awarded: interest and taxation	15-135
16. THE EFFECT OF CHANGES IN VALUE	16-001
1. Changes in the value of property.	16-002
2. Changes in the value of services.	16-006
3. Changes in the value of money	16-008
17. THE RECOVERY OF COSTS, DAMAGES AND FINES INCURRED IN PREVIOUS PROCEEDINGS	17-001
I. INTRODUCTORY: THE RECOVERY AS DAMAGES OF THE NOW CLAIMANT'S OWN COSTS IN THE PREVIOUS PROCEEDINGS	17-003
II. COSTS IN PREVIOUS PROCEEDINGS BETWEEN THE SAME PARTIES	17-020
1. Further proceedings where no separate independent cause of action is available	17-021
2. Further proceedings where a separate independent cause of action is available	17-023
III. COSTS, DAMAGES AND FINES IN PREVIOUS PROCEEDINGS BETWEEN THE NOW CLAIMANT AND THIRD PARTIES	17-039
1. The rule as it has developed	17-039
2. Main type-situations in which costs, damages and fines have been claimed as damages	17-045
3. The various aspects of remoteness of damage involved	17-056
4. Amount recoverable	17-085

CONTENTS

18. DAMAGES IN ACTIONS SURVIVING DEATH	18-001
1. Damages in actions surviving death.	18-001
2. Measure of damages in such actions	18-003

BOOK TWO

PARTICULAR CONTRACTS AND TORTS

19. THE MEASURE OF DAMAGES IN CONTRACT AND TORT COMPARED.	19-001
---	--------

PART ONE

CONTRACT

20. SALE OF GOODS	20-001
I. BREACH BY SELLER	20-002
1. Non-delivery	20-002
2. Delayed delivery	20-036
3. Breach of condition: goods properly rejected	20-056
4. Breach of condition or warranty as to quality, fitness or description: goods accepted	20-057
5. Breach of condition as to title or of warranty of quiet possession	20-105
6. Breach of condition: loss of the right to reject the goods	20-107
II. BREACH BY BUYER	20-109
1. Non-acceptance.	20-110
2. Failure to procure the opening of a letter of credit	20-127
3. Other breaches	20-129
21. HIRE AND HIRE-PURCHASE OF GOODS.	21-001
I. BREACH BY LENDER	21-001
1. Non-delivery	21-001
2. Breach of warranty	21-003
II. BREACH BY HIRER	21-009
1. Non-acceptance and related breaches.	21-009
2. Damage to the goods or their destruction	21-018
3. Failure to surrender the goods	21-021
22. SALE OF LAND	22-001
I. BREACH BY SELLER	22-001
(A) FAILURE TO COMPLETE.	22-003

CONTENTS

(B) DELAY IN COMPLETION	22-010
(C) BREACH OF COVENANTS	22-013
1. The four usual covenants of title	22-014
2. Covenant for quiet enjoyment	22-018
3. Covenant for good right to convey.	22-026
4. Covenants other than of title.	22-030
II. BREACH BY BUYER	22-031
(A) FAILURE TO ACCEPT.	22-032
(B) BREACH OF COVENANTS	22-040
1. Positive covenants	22-041
2. Restrictive covenants	22-049
23. LEASE OF LAND	23-001
I. BREACH BY LESSOR	23-001
(A) FAILURE TO COMPLETE	23-003
(B) DELAY IN COMPLETION	23-007
(C) BREACH OF COVENANTS	23-010
1. Covenant for quiet enjoyment and covenant against incumbrances	23-012
2. Covenant to repair	23-023
3. Covenant of fitness for habitation	23-033
4. Covenant to renew and option to purchase	23-034
II. BREACH BY LESSEE	23-037
(A) FAILURE TO ACCEPT.	23-038
(B) BREACH OF COVENANTS	23-040
1. Covenant to repair	23-042
2. Other covenants on the condition and use of the premises	23-081
3. Covenant against assignment or underletting	23-091
4. Covenant to deliver up possession	23-095
24. SALE OF SHARES AND LOAN OF STOCK	24-001
I. BREACH BY SELLER.	24-003
1. Non-delivery	24-003
2. Other breaches	24-006
II. BREACH BY BUYER	24-008
1. Non-acceptance.	24-008
2. Other breaches	24-011
III. BREACH BY LENDER	24-012
25. CONTRACTS TO PAY OR TO LEND MONEY	25-001
I. BREACH BY PARTY PROMISING TO PAY.	25-001
1. Failure to pay money in general	25-002
2. Dishonour of bills of exchange and promissory notes	25-011
II. BREACH BY LENDER	25-028

CONTENTS

III. BREACH BY BORROWER	25-030
26. BUILDING CONTRACTS	26-001
I. BREACH BY BUILDER	26-004
1. Failure to build at all or in part	26-004
2. Delay in completing building	26-008
3. Defective building	26-011
II. BREACH BY OWNER	26-022
1. Prevention resulting in non-completion	26-022
2. Prevention resulting in delay	26-025
3. Other breaches	26-026
27. CONTRACTS OF CARRIAGE	27-001
I. BREACH BY CARRIER	27-002
(A) CARRIAGE OF GOODS	27-002
1. Non-delivery including delivery in a damaged condition	27-002
2. Delayed delivery	27-026
3. Failure to carry or to carry to the right place	27-048
(B) CARRIAGE OF PERSONS	27-055
1. Injury and death in carriage	27-055
2. Delay in carriage	27-056
3. Failure to carry or to carry to the right place	27-058
II. BREACH BY CARGO OWNER	27-060
1. Failure to supply cargo	27-062
2. Detention of the transport	27-075
3. Damage to the transport	27-077
28. CONTRACTS OF EMPLOYMENT	28-001
I. BREACH BY EMPLOYER	28-001
1. Wrongful dismissal	28-001
2. Breach of obligation of trust and confidence	28-027
3. Injury and death	28-029
4. Miscellaneous breaches	28-030
II. BREACH BY EMPLOYEE	28-031
1. Failure or refusal to work	28-032
2. Careless or defective work	28-035
3. Miscellaneous breaches	28-036
29. CONTRACTS FOR PROFESSIONAL AND OTHER SERVICES	29-001
I. BREACH BY THE PARTY ENGAGING THE SERVICES.	29-002
II. BREACH BY THE PARTY RENDERING THE SERVICES	29-003
(A) IN GENERAL	29-003
(B) PARTICULAR CATEGORIES	29-006
1. Solicitors	29-007
2. Surveyors and valuers	29-043

CONTENTS

3. Accountants	29-075
3. Bankers	29-076
4. Stockbrokers	29-081
5. Estate Agents	29-084
6. Travel Agents	29-085
30. CONTRACTS CONCERNING PRINCIPAL AND AGENT	30-001
I. BREACH BY PRINCIPAL	30-002
II. BREACH BY AGENT	30-005
(A) AGENTS EMPLOYED TO ENTER INTO CONTRACTS ON BEHALF OF THE PRINCIPAL	30-005
1. Breach by failure to conclude the contract as instructed	30-006
2. Breach other than by failure to conclude the con- tract as instructed	30-008
(B) AGENTS DEALING WITH THE PRINCIPAL'S PROPERTY.	30-010
31. CONTRACTS OF WARRANTY OF AUTHORITY BY AGENT	31-001
1. The contractual measure of damages	31-001
2. Warranty of authority to contract on the principal's behalf	31-003
3. Other warranties of authority by an agent	31-017

PART TWO

TORT

32. TORTS AFFECTING GOODS: DAMAGE AND DESTRUCTION.	32-001
I. DAMAGE	32-003
1. Normal measure	32-003
2. Consequential losses	32-013
II. DESTRUCTION	32-052
1. Normal measure	32-052
2. Consequential losses	32-058
33. TORTS AFFECTING GOODS: MISAPPROPRIATION.	33-001
I. INTRODUCTORY: AND IN PARTICULAR OF THE DEMISE OF DETINUE	33-001
II. CONVERSION	33-006
1. Normal measure	33-006
2. Time at which value is to be taken: changes in the value of the goods.	33-011
3. Place at which value is to be taken	33-042
4. Some special cases of value.	33-043
5. Claimant with a limited interest in the goods	33-050

CONTENTS

6. Consequential losses	33-066
7. Effect on damages of redelivery of the goods or their equivalent	33-074
8. Exemplary damages	33-081
III. TRESPASS	33-083
IV. WRONGFUL DISTRESS	33-088
1. Distress for rent	33-090
2. Other forms of distress	33-101
V. REPLEVIN	33-102
34. TORTS AFFECTING LAND	34-001
I. DAMAGE	34-003
1. Normal measure	34-003
2. Consequential losses	34-023
3. Prospective loss	34-031
4. Claimant with a limited interest	34-034
5. Aggravation and mitigation; exemplary damages	34-040
II. OCCUPATION AND USER	34-042
1. Normal measure	34-044
2. Consequential losses	34-052
3. Prospective loss	34-053
4. Claimant with a limited interest	34-059
5. Aggravation and mitigation; exemplary damages	34-062
6. The statutory action	34-067
35. TORTS CAUSING PERSONAL INJURY	35-001
I. FORMS OF AWARD AND OF COMPENSATION	35-003
1. Interim awards	35-004
2. Provisional awards.	35-006
3. Periodical Payments Awards	35-008
II. CERTAINTY OF LOSS	35-033
1. Changes before the decision of the court of first instance	35-036
2. Changes before the decision of the appeal court	35-045
3. Changes after the litigation has ended	35-054
III. HEADS OF DAMAGE: FUNCTION AND INTERRELATION	35-055
1. Function	35-056
2. Interrelation	35-058
IV. LOSS OF EARNING CAPACITY AND RELATED BENEFITS	35-061
(A) GENERAL METHOD OF ASSESSMENT.	35-065
(B) CALCULATION OF THE MULTIPLICAND AND OF THE MUL- TIPLIER	35-074
1. Diminution in earnings: the basic factor for the multiplicand	35-074
2. Earnings of different categories of person	35-078

CONTENTS

3. Adjustments for variation in annual earnings loss	35-094
4. Period of years of claimant's disability: the basic factor for the multiplier	35-100
5. Adjustments where life expectancy is cut down by the injury	35-103
6. The appropriate discount rate for the multiplier	35-117
7. Adjustments to the multiplier for contingencies	35-133
8. No specific adjustments for unearned income	35-144
9. No specific adjustments for inflation	35-146
10. Adjustments for taxation	35-147
(C) THE DEDUCTIBILITY OF COLLATERAL BENEFITS	35-150
1. Insurance moneys	35-151
2. Wages, salary, sick pay	35-153
3. Pensions	35-155
4. Gratuitous payments privately conferred	35-160
5. Monetary social security benefits	35-163
6. Social security benefits other than monetary.	35-183
V. MEDICAL AND RELATED EXPENSES.	35-185
(A) EXPENSES INCLUDED	35-185
1. Medical expenses	35-185
2. Related expenses	35-198
(B) GENERAL METHOD OF ASSESSMENT.	35-212
(C) THE DEDUCTIBILITY OF COLLATERAL BENEFITS	35-224
1. Insurance moneys	35-225
2. Payments under obligation by private third parties other than insurers	35-226
3. Payments made gratuitously by third parties	35-227
4. Care provided gratuitously by relatives and others.	35-228
5. Monetary social security benefits	35-239
6. Social security benefits other than monetary.	35-247
VI. NON-PECUNIARY DAMAGE	35-258
1. A conventional award.	35-258
2. Heads of non-pecuniary damage	35-259
3. Various aspects of non-pecuniary award.	35-272
4. Level of awards	35-279
VII. ENVOI: THE PARTICULAR CASE OF CLAIMS BY PARENTS ARISING OUT OF THE BIRTH OF THEIR CHILDREN	35-288
1. Setting the scene	35-288
2. Developments before <i>McFarlane v Tayside Health Board</i>	35-291
3. The new thinking: <i>McFarlane v Tayside Health Board</i>	35-294
4. The new thinking extended: <i>Rees v Darlington Memorial Hospital NHS Trust</i>	35-295
5. The position today.	35-300
6. Addendum: Issues of avoided loss	35-307

CONTENTS

36. TORTS CAUSING DEATH	36-001
I. CLAIMS FOR THE BENEFIT OF THE DECEASED'S DEPENDANTS.	36-003
(A) THE STATUTORY ACTION	36-004
1. The entitled dependants	36-005
2. The entitlement of the dependants	36-008
(B) THE STATUTORY MEASURE OF DAMAGES	36-017
1. Losses in respect of which damages are not recoverable or are recoverable only within limits	36-018
2. The value of the dependency	36-026
3. The non-deductibility of collateral benefits	36-103
II. CLAIMS SURVIVING THE DEATH FOR THE BENEFIT OF THE DECEASED'S ESTATE	36-118
1. Prospective losses of deceased	36-119
2. Accrued losses of deceased	36-124
3. Losses for which the deceased could not have sued	36-132
37. ASSAULT AND FALSE IMPRISONMENT	37-001
I. ASSAULT	37-001
1. Heads of damage	37-001
2. Aggravation and mitigation	37-002
3. Exemplary damages	37-010
II. FALSE IMPRISONMENT	37-011
1. Heads of damage	37-011
2. Remoteness of damage: continuation of the imprisonment by judicial order	37-016
3. Aggravation and mitigation	37-017
4. Exemplary damages	37-019
38. MALICIOUS INSTITUTION OF LEGAL PROCEEDINGS	38-001
I. TYPES OF ACTIONABLE DAMAGE	38-002
II. PARTICULAR TORTS	38-004
1. Malicious criminal prosecutions	38-004
2. Malicious bankruptcy and company liquidation proceedings	38-008
III. AGGRAVATION AND MITIGATION	38-012
IV. EXEMPLARY DAMAGES	38-014
39. DEFAMATION	39-001
I. SLANDERS ACTIONABLE ONLY ON PROOF OF SPECIAL DAMAGE	39-002
1. Meaning of special damage	39-002
2. Remoteness of special damage	39-010
3. Pleading and proof of special damage	39-020
4. Additional general damages	39-022

CONTENTS

II. SLANDERS ACTIONABLE <i>PER SE</i> AND LIBEL	39–023
1. Level of awards	39–023
2. Heads of damage	39–029
3. Remoteness of damage	39–035
4. Pleading and proof of damage	39–036
5. Aggravation and mitigation: relevance of the conduct, character and circumstances of the parties	39–039
6. Vindictory damages: the effect of the judge’s com- ments in his judgment	39–070
7. Exemplary damages	39–073
40. ECONOMIC TORTS	40–001
I. INDUCEMENT OF BREACH OF CONTRACT	40–004
II. INTIMIDATION: THIRD PARTY ASPECTS	40–009
III. INJURIOUS FALSEHOOD	40–011
1. Injurious falsehoods other than passing off	40–011
2. Passing off	40–018
IV. UNLAWFUL INTERFERENCE WITH ECONOMIC INTERESTS.	40–021
V. CONSPIRACY	40–022
VI. BREACH OF CONFIDENTIAL INFORMATION	40–027
VII. INFRINGEMENT OF RIGHTS IN INTELLECTUAL PROPERTY	40–031
1. Infringement of trade marks.	40–033
2. Infringement of patents	40–036
3. Infringement of copyright and design right	40–042
41. MISREPRESENTATION	41–001
I. FRAUDULENT MISREPRESENTATION: DECEIT	41–002
1. The tortious measure of damages	41–002
2. Heads of damage	41–007
3. Exemplary damages	41–040
II. NEGLIGENT MISREPRESENTATION	41–041
1. Liability at common law and under statute	41–041
2. The tortious measure of damages	41–043
3. Heads of damage	41–049
III. INNOCENT MISREPRESENTATION	41–060
42. INVASION OF PRIVACY AND MISFEASANCE IN PUBLIC OFFICE	42–001
I. INVASION OF PRIVACY	42–002
1. Heads of damage	42–003
2. Aggravation and mitigation	42–013
3. Exemplary damages	42–015
II. MISFEASANCE IN PUBLIC OFFICE.	42–018
1. Heads of damage	42–019
2. Aggravation and mitigation	42–023
3. Exemplary damages	42–025

CONTENTS

BOOK THREE

HUMAN RIGHTS

43. DAMAGES UNDER THE HUMAN RIGHTS ACT	43-001
1. Introduction	43-001
2. Scope of the cause of action	43-007
3. Criteria for decision whether to award damages	43-020
4. The court's approach to determining quantum	43-032
5. Particular aspects of quantum.	43-041
6. Damages under particular convention articles.	43-054

BOOK FOUR

PROCEDURE

44. THE STATEMENT OF CASE	44-001
1. The claim form	44-002
2. Particulars of claim	44-004
3. Defence.	44-034
45. THE TRIAL	45-001
I. PROOF	45-001
1. Burden of proof	45-001
2. Evidence	45-007
II. JUDGMENT	45-015
1. Province of judge and jury: law and fact	45-015
2. Assessment of damages	45-018
46. APPEALS	46-001
I. APPEALS FROM AN AWARD OF DAMAGES BY A JURY	46-002
1. Powers available to the appellate court	46-003
2. Grounds for granting a new trial: misleading and misconduct of the jury	46-007
3. Grounds for reassessing the damages: miscalculation by the jury	46-018
II. APPEALS FROM AN AWARD OF DAMAGES BY A JUDGE	46-024
1. Power to reassess the damages.	46-024
2. Grounds for reassessing the damages.	46-025

<i>Index</i>	1891
------------------------	------