

## Atiyah's Accidents, Compensation and the Law

Ninth Edition

Now in its ninth edition, *Atiyah's Accidents, Compensation and the Law* explores the recent and continuous developments in personal injury law by applying social context to the relevant legal principles. Those principles remain in need of radical reform.

Updates to the text include discussion of the major changes to the way compensation is calculated and claimed, evolving funding arrangements for personal injury litigation, and dramatic shifts in the claims management industry.

Suitable for both undergraduate and postgraduate students taking courses in tort law, this new edition balances theory, practice and context. It draws on new legislation, research and case law to offer the reader thought-provoking examples and analysis.

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CAMBRIDGE  
UNIVERSITY PRESS



CAMBRIDGE  
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of education, learning and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781108431743](http://www.cambridge.org/9781108431743)

© Cambridge University Press & Assessment 2006, 2013

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First published 1970

Seventh edition first published by Cambridge University Press 2006

Eighth edition 2013

Ninth edition 2018

Reprinted 2018

*A catalogue record for this publication is available from the British Library*

ISBN 978-1-108-43174-3 Paperback

Cambridge University Press & Assessment has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

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## Preface

It is almost fifty years since the first edition of this book was published in 1970. The world is a very different place than it was then. But – as Jean-Baptiste Alphonse Karr famously said way back in 1849: *plus ça change, plus c'est la même chose*. It is a sobering thought that the basic picture of the tort system as a mechanism for compensating for death and personal injury painted by the Pearson Commission on Civil Liability and Compensation for Personal Injury in its 1978 Report, though it has never been systematically 'restored', remains, in many respects, as good a likeness as it was 40 years ago. That is why the Report still figures prominently in the pages that follow (as it has in the pages of every edition since the third). What has changed is the 'gaze' with which the picture is approached.

One fact stood out then and stands out now: not much more than half the total cost of the tort system reaches injured people in the form of compensation. The rest is spent on delivering that compensation (on 'administrative' costs). Back in 1970, Atiyah argued that this fact provided a good reason to abolish the tort system and replace it with a more efficient compensation mechanism. Then, his preferred mode of delivery was the social security system. In the late 1990s (after he had ceased to be directly involved with this book), he changed his mind and opted instead for private, personal insurance (rather like travel insurance) rather than public, tax-funded provision. Both of these very different solutions were primarily designed to reduce the cost of delivering compensation, allowing the savings to be used to compensate more injured people than were eligible to receive compensation under tort law. And both involved significant dismantling of the tort system.

Ironically, by the time Atiyah promoted the private insurance reform, policy and law makers had already begun to adopt a quite different approach to controlling the administrative costs of the tort system, which involved – if anything – *increasing* the importance of the tort system as a source of compensation while, at the same time, taking steps to reduce delivery costs and the taxpayer's contribution to meeting those costs. We know that in some areas – notably, clinical negligence claims against the NHS – such attempts to reduce delivery costs have failed dismally.



Although this book has been very substantially revised over the years, it is still (inevitably) a product of its time. If it were being written from scratch in the second decade of the twenty-first century, it would probably look very different. Nevertheless, the issues with which it deals are as salient and important today as they were half a century ago. It is deeply regrettable that scholarly interest in the field of accident compensation has waned, to the great impoverishment of public debate, which now tends to be dominated by interest groups and partisan politics.

Having been solely responsible for *Accidents, Compensation and the Law* for more than thirty of its fifty years, Peter Cane is delighted (and relieved) to have had the invaluable and expert assistance of James Goudkamp in preparing this edition. James and Peter have shared the load more or less equally, but jointly take full responsibility for the whole. James has the great advantage of being two academic generations younger than Peter, relieving him of much of the baggage of the past that Peter carries around. Another significant boon, which we share, is Australian nationality. Australia is a 'foreign country', and they (we) do things rather differently there. This no doubt affects the way we 'gaze' on English law and British society – productively, we trust. Living in England, as we both currently do, is a privilege and an education!

As we were completing correction of the page-proofs, we learned the very sad news that Patrick Atiyah passed away on 30 March 2018. For some years, ill health had prevented Patrick from taking an active interest in legal scholarship, to which he contributed so much in the second half of the twentieth century. Patrick was, without doubt, one of the very finest scholars of the common law of his, or any other, generation. He made fundamental contributions to our understanding of contract law as well, of course, as tort law. He authored major works in legal history and legal theory. To all his research and writing Patrick brought the utmost intellectual integrity and the highest academic standards. For those of us who had the opportunity, it was a privilege and a pleasure to know Patrick, to witness and benefit from his boundless enthusiasm for the law, and to learn from him. He will be much missed. This edition is gratefully and respectfully dedicated to his memory.

Peter Cane, Cambridge  
James Goudkamp, Oxford

# Abbreviations

A	Atlantic Reporter (USA)
ABI	Association of British Insurers
AC	Appeal Cases
ADR	alternative dispute resolution
All ER	All England Law Reports
ALR	Australian Law Reports
APIL	Association of Personal Injury Lawyers
App Cas	Appeal Cases (nineteenth century)
ATE insurance	after-the-event insurance
BA	bereavement allowance
Beveridge Report	<i>Social Insurance and Allied Services, Report by Sir William Beveridge</i> (Cmnd 6404, 1942)
BMLR	Butterworths Medico Legal Reports
BTE insurance	before-the-event-insurance
CA	Court of Appeal
CAA	constant attendance allowance
Cal Rptr	California Reporter
CFA	conditional fee agreement
Ch	Chancery Division Reports
CICA	Criminal Injuries Compensation Authority
CICB	Criminal Injuries Compensation Board
CICS	Criminal Injuries Compensation Scheme
Civil Justice Review	<i>Civil Justice Review: Report of the Review Body on Civil Justice</i> (Cm 394, 1988)
CLR	Commonwealth Law Reports (Australia)
Cm	Command Paper (HMSO)
CMC	claims management company
Cmnd	Command Paper (HMSO)
CPR	Civil Procedure Rules
CRU	Compensation Recovery Unit
DBA	damages-based agreement
DLA	disability living allowance
DLR	Dominion Law Reports (Canada)

DWP	Department for Work and Pensions
EC	European Community
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EHRR	European Human Rights Reports
ER	English Reports (nineteenth century)
ESA	employment and support allowance
ESDA	exceptionally severe disablement allowance
EU	European Union
EWCA	Court of Appeal of England and Wales
EWHC	High Court of England and Wales
F	Federal Reporter (USA)
F Supp	Federal Supplement (USA)
FSA	Financial Services Authority
FSCS	Financial Services Compensation Scheme
FtT	First-tier Tribunal
GLO	Group Litigation Order
GP	general practitioner
Harris 1984 Survey	D. R. Harris <i>et al.</i> , <i>Compensation and Support for Illness and Injury</i> (Oxford, 1984)
Harvard Medical to Practice Study	Report of the Harvard Medical Practice Study the State of New York, <i>Patients, Doctors and Lawyers: Medical Injury, Malpractice Litigation, and Patient Compensation in New York</i> (1990)
HC	House of Commons
HCA	High Court of Australia
HL	House of Lords
HMRC	Her Majesty's Revenue and Customs
HMSO	Her Majesty's Stationery Office
IB	incapacity benefit
ICR	Industrial Cases Reports
IIAC	Industrial Injuries Advisory Council
IIDB	industrial injuries disablement benefit
IIS	industrial injuries scheme
ILGS	index-linked Government Stocks
IPI	income protection insurance
IRC	Inland Revenue Commissioners
IRLR	Industrial Relations Law Reports
IS	income support
J	Justice
KB	King's Bench Reports
KIR	Knight's Industrial Reports
Law Com.	Law Commission Report
LJ	Lord/Lady Justice of appeal

Lloyd’s Rep	Lloyd’s Reports
LR . . . Ex	Law Reports (Exchequer)
LR . . . HL	Law Reports (House of Lords)
MIB	Motor Insurers’ Bureau
Monckton Committee	Committee on Alternative Remedies (Cmnd 6860, 1946)
MR	Master of the Rolls
MVR	Motor Vehicle Reports (New South Wales)
NHS	National Health Service
NHSLA	National Health Service Litigation Authority
NSWCA	New South Wales Court of Appeal
NSWLR	New South Wales Law Reports
NW	North Western Reporter (USA)
NZLR	New Zealand Law Reports
OFT	Office of Fair Trading
OPCS Disability Survey	Report 1: Martin, Meltzer and Elliott, <i>The Prevalence of Disability Among Adults</i> (HMSO, 1988)
	Report 2: Martin and White, <i>The Financial Circumstances of Disabled Adults Living in Private Households</i> (HMSO, 1988)
	Report 3: Bone and Meltzer, <i>The Prevalence of Disability Among Children</i> (HMSO, 1989)
	Report 4: Martin, White and Meltzer, <i>Disabled Adults: Services, Transport and Employment</i> (HMSO, 1989)
	Report 5: Smyth and Robus, <i>The Financial Circumstances of Families with Disabled Children Living in Private Households</i> (HMSO, 1989)
	Report 6: Meltzer, Smyth and Robus, <i>Disabled Children: Services, Transport and Education</i> (HMSO, 1989)
<i>Paths to Justice</i>	H. Genn, <i>Paths to Justice: What People Do and Think about Going to Law</i> (Oxford, 1999)
Pearson Commission	Royal Commission on Civil Liability and Compensation for Personal Injury (appointed in 1973)
Pearson Report	<i>Report of the Royal Commission on Civil Liability and Compensation for Personal Injury</i> (Cmnd 7054, 1978, 3 volumes)
PIP	personal independence payment
PIQR	Personal Injury and Quantum Reports
PMI	private medical insurance
PPO	periodical payment order

PTSD	post-traumatic stress disorder
QB	Queen's Bench Reports
QBD	Queen's Bench Division Reports (nineteenth century)
QdR	Queensland Reports
Robens Committee Report	<i>Report of the Committee into Safety and Health at Work</i> (Cmnd 5304, 1972)
RRL	Road Research Laboratory
RTR	Road Traffic Reports
SB	supplementary benefit
SCR	Supreme Court Reports (Canada)
SERPS	State Earnings-Related Pension Scheme
SI	Statutory Instrument
SLT	<i>Scots Law Times</i>
SSP	statutory sick pay
TRL	Transport Research Laboratory
TRRL	Transport and Road Research Laboratory
UC	universal credit
UKHL	United Kingdom House of Lords
UKPC	Privy Council
UKSC	Supreme Court of the United Kingdom
UT	Upper Tribunal
WALR	Western Australian Law Reports
WAR	Western Australian Reports
Winn Committee Report	<i>Report of the Committee on Personal Injuries Litigation</i> (Cmnd 3691, 1968)
WLR	Weekly Law Reports
WN	Weekly Notes (New South Wales)
WPA	widowed parent's allowance
WTC	working tax credit

# Tables

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