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Virginia Torts Case Finder

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BOOK REVIEW

VIRGINIA TORTS CASE FINDER. By Brien A. Roche. Charlottesville, Va.: The Michie Company, 1984. 596 pages, \$45.00.

*Reviewed by Paul J. Zwier**

Brien Roche's *Virginia Torts Case Finder* ("Case Finder") provides a useful research aid for the students and practitioners of tort law in this state. This *Case Finder*, as the name implies, is a digest-like research tool for tort cases found in the *Virginia Reports*.¹

The book is more than a digest, however. It provides in one volume what might normally take many volumes to find. It is not just another compilation of the cases found under "Torts" in the *Southeastern Digest* or in *Michie's Jurisprudence*. The *Case Finder* provides citations to cases involving a broader range of subject matter than is usually found in other sources. The *Case Finder* includes, for example, references to evidence cases, procedure cases, worker's compensation cases, and cases involving insurance principles. The *Case Finder* also provides citations to *Virginia Code Annotated* sections relevant to the various issues raised by tort law. The author's coordination of both case and statutory authority enables the practitioner to access, in one reference, most of the Virginia law on a particular torts problem.

Mr. Roche warns the practitioner that this *Case Finder* is not meant to be the end-all and be-all of his or her research. In his preface he writes, "The statements set forth as to each case are intended as capsulizations of the relevant legal principles and are no substitute for a thorough reading of the case."² Roche's preface gives the practitioner clear notice that his book is not meant to be a comprehensive scholarly treatise. A practitioner would not be able to quote from this book concerning the meaning of these cases. In this way, the *Case Finder* summaries are headnotes very much like those which appear in West's *Southeastern Digest* and in the

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1. "The book itself is a collection of all the tort cases from Virginia Reports 180 through 224 Va. 544 . . . The statutes are current as of July 1983." B. ROCHE, VIRGINIA TORTS CASE FINDER at iii (1984).

2. *Id.*

Virginia and Southeastern Digests. This format has its limitations to the practitioner. Roche's *Case Finder*, like the aforementioned digests, generally does not provide citations to specific pages on which the summary is based or quoted.³ The *Case Finder* is therefore in and of itself an inappropriate tool for the quick dictation or drafting of last minute briefs and motions. It would, however, save the practitioner from consulting more than one index to find cases and statutes on point.

Roche's book is divided into twenty-two chapters: General Principles, Defenses, Vehicles, Common Carriers, Pedestrians, Falling Objects, Falls, Landlord/Tenant, Notice, Products Liability, Medical Malpractice, Non-medical Malpractice, Workmen's Compensation (perhaps should be entitled Workers' Compensation), Wrongful Death, Other Miscellaneous Cases, Vicarious Liability, Intentional [sic] Torts, Nuisance, Evidence, Procedure, Damages, and Insurance Law. Each chapter is further divided into numerous subtopics for specific reference uses.

This chapter organization is somewhat confusing. As noted above, it appears to be organized along the lines of the encyclopedia and digests. The encyclopedia and digests, however, have separate sections for negligence. Roche however does not single out negligence for separate treatment. Roche's chapter heading, General Principles, includes not only assorted negligence principles, but also includes other "General Principles" of selected tort law issues. Roche does not deal with the general principles of intentional torts in this section, but treats intentional torts in a later chapter. The first chapter therefore provides a confusing mix of such widely divergent subjects as active/passive negligence, attractive nuisance, comparative negligence, concurrent negligence, contribution, inherently dangerous activity, liens, limitations of actions, OSHA regulations, and minors. Roche might have instead broken out negligence into a separate chapter heading and grouped his cases around the prima facie elements of negligence.

The second chapter, Defenses, seems to suggest that the cases cited in this chapter will provide examples of defenses to all tort cases. This organizational implication might lead to some confusion. For instance, subsection 2-4 on Contributory Negligence and subsection 2-7 on the Doctrine of Last Clear Chance have questionable application to both absolute liability cases and products liability cases.⁴ Roche might have avoided this confusion by naming the chapter to indicate the torts to which the defenses apply.

It is also difficult to understand the sequence of Roche's chapters. For instance, the chapter heading, Other Miscellaneous Cases, is sandwiched between Chapter 14, Wrongful Death, and Chapter 16, Vicarious Liabil-

3. Roche provides specific page cites to certain selected principles of tort law.

4. See M. SHAPO, PRODUCTS LIABILITY 624 (Found. Press 1980).

ity. It is not clear from this chapter heading whether these cases are meant to be other miscellaneous wrongful death cases, other miscellaneous negligence cases, or other miscellaneous tort cases in general.

While Roche indicates that the *Case Finder* is not purported to substitute for a careful reading of the cases, perhaps the *Case Finder* could have been a more valuable tool had it given a slightly more consistent indication of the factual context of the various cases. In the Other Miscellaneous Cases chapter, for instance, the cases are described in a factually rich, though somewhat confusing, way. Under subsection 15-3, Airplanes, the following case summary appears:

1975—*Surface v. Johnson*, 215 Va. 777, 214 S.E.2d 152.

Since it is matter of common knowledge that aircraft may fall or crash in absence of negligence or fault on part of its pilot, *res ipsa loquitur* not applied. Moreover, gross negligence rule does not extend to guests who are traveling by aircraft. However, in present case, although "precise reason" for crash not established, evidence shows defendant's decedent, inexperienced student pilot not licensed, undertook night flight with other person aboard his aircraft, under extremely adverse weather conditions over rugged mountainous territory and against advice of his instructor. Error to strike plaintiff's evidence as jury question presented.⁵

This last sentence fragment is particularly confusing because it fails to identify the specific facts and issue presented.

The factual context Roche gives in the Other Miscellaneous Cases chapter is lacking in the General Principles chapter. Section 1-1 Active/Passive Negligence appears as follows:

See Indemnity, § 1-15.

1966—*Busch v. Gaglio*, 207 Va. 343, 150 S.E.2d 110. Court appears to adopt distinction between active and passive negligence.

1965—*Bradshaw v. Minter*, 206 Va. 450, 143 S.E.2d 827. Brief discussion of active/passive negligence as to owner of land in reference to duty to social guest.

1957—*Simmons v. Craig*, 199 Va. 338, 99 S.E.2d 641. Reference made to all kinds of negligence, primary, contributory, continuous and concurring.

1953—*Huffman v. Sorenson*, 194 Va. 932, 76 S.E.2d 183. Mention of inactive negligence at 194 Va. 939.

1949—*Scott v. Simms*, 188 Va. 808, 51 S.E.2d 250. Reference to inactive negligence at 194 Va. 819.

1946—*Gray v. Van Zaig*, 185 Va. 7, 37 S.E.2d 751. Court refers to all kinds of negligence, primary, contributory, continuous and concurring.

5. B. ROCHE, *supra* note 1, § 15-3.

1943—*Veeco v. Courtney*, 182 Va. 175, 27 S.E.2d 917. Court refers to various types of negligence, primary, contributory, continuous and concurring.⁶

If Roche had given a more extensive factual treatment to the cases in the General Principles chapter, the ambiguities and limitations of these cases could be better understood. It would also give the practitioner a better indication of the distinguishable features of the holding of each case. The *Case Finder* also does not indicate whether later cases overruled or modified the general principles stated in the earlier cases. Perhaps, however, the practitioner is meant to use other research tools or his or her own reading of the cases to learn this information.

These specific comments and other limitations, however, should not detract from the overall usefulness of Mr. Roche's work. He presents in a succinct 596 pages most of the Virginia cases and statutes. He has provided an admirable one-volume reference tool for the Virginia practitioner. I would therefore recommend this *Virginia Torts Case Finder* as a welcome and useful addition to the torts practitioner's library.

6. *Id.* § 1-1.