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Book Reviews

Reviewed by William L. Summers*

RECOVERY FOR WRONGFUL DEATH, by Stuart M. Speiser. The Lawyers Co-operative Publishing Company, Rochester, N. Y., 1966, 1094 pp. \$28.50.

Wrongful death is a tort for which statutory law has set arbitrary limitations upon recovery of damages in twenty percent of the American jurisdictions today. This is but one of the peculiarities of the individual Wrongful Death Acts. The various legislatures of every American jurisdiction have enacted some form of wrongful death statutes.

Lord Ellenborough established, in *Baker v. Bolton*¹ that although a person lost his life through the tortious actions of another, the decedent's heirs could recover damages only for the period between the commission of the tortious act and the death of the decedent. He stated that "In a Civil Court, the death of a human being could not be complained of as an injury." This illogical rule was followed by the American Courts.

In 1846 the first Wrongful Death Statute was passed in England. The following year, beginning with New York, the state legislatures began enacting similar statutes. The purpose of the various enactments is to right the wrong done by Lord Ellenborough in the *Baker* decision. These statutes raise new problems, mainly stemming from the variances among the statutes.

Mr. Speiser argues that there are numerous areas which should be made uniform in all jurisdictions. Thus, in the area of breach of contract he feels that there might conceivably be an action for wrongful death as the outcome for a breach of contract, arising from the default. Breach of warranty, he points out, is a hybrid between tort and contract. The weight of authority has been against a right of recovery for wrongful death as a result of a breach of warranty. Indeed, recent developments in product liability have caused the courts to begin to take a different view of recovery for wrongful death arising from a breach of warranty.

Since the basis for death litigation is purely statutory, one must look to the statutes for a basis of recovery. There are seven basic aspects in each of the statutes. In the Appendix to this book, the author shows, by jurisdiction, how each legislature has handled the specific areas. The first of these areas is "The Basis for Liability." The majority of the states, as well as the

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¹ (1808) 1 Campb. 493, 170 Engl. Repr. 1033.

federal (and District of Columbia) laws have used the wording of Lord Campbell in England's Wrongful Death Statutes. Recovery is provided against a person who, by his wrongful act, neglect or default, caused the death of another.

There is an "Extent of Liability" provision in the statutes in some jurisdictions, which limits the amount of recovery. Mr. Speiser feels that there is need for elimination of such limitation. The limitation, in cases of conflict of laws, can cause the parties to seek out the jurisdiction where they may receive the most favorable settlement. If there are to be limitations, it is felt that they should be uniform across the country.

Another section found in the various statutes is that setting out "who may bring such actions." The sections either directly, by specifying the heirs or next of kin, or by limiting the recovery in some way to the estate, specify who may bring such actions.

The area of "distribution of damages" is given varied treatment in the different enactments, both state and federal. These variances have caused difficulties, especially in cases of conflict of laws.

Still another section, labeled "miscellaneous," is employed to answer questions pertaining to such matters as statutes of limitations, and pleadings.

With respect to "survival," the various statutes have attempted to spell out the bases for recovery and joinder of issue upon death following commencement of an action in tort for personal injury.

The final section dealt with in the discussion of the enactments is that of "conflict of laws." There is much to be said for the merits of a Uniform Wrongful Death Act in this area.

Mr. Speiser has done a good job in presenting the various ways in which the different jurisdictions have dealt with the problems of administering their respective wrongful death statutes. He has given to the legal profession a valuable tool to use in preparing a case of this type.

He has demonstrated need for enactment of a Uniform Wrongful Death Act. The book may well evoke sufficient interest to impel legislators to begin the work necessary to enact such a law.