Causes and Damages, by Alexander Peczenik, No. 33 Acta Societatis Juridicae Lundensis. Juridiska Föreningen i Lund. Lund 1979. XIX + 426 pp. 65 Kronor.

This book, addressed to an important aspect of the law of torts, brings to the readers' notice a wide range of valuable comparative materials relevant to the problem of causation in law. Examples from Scandinavian, Anglo-Saxon, French, German, Polish, and other countries' judicature and legislature serve as a basis for the author's penetrating analyses and stimulating constructive ideas. This first major English work by Alexander Peczenik, Professor in Legal Philosophy and in the Law of Torts at the University of Lund, Sweden, counts as a significant contribution to the learning in its particular area and also to general jurisprudence. It merits attention from academic legal scholars as well as from legal practitioners.

The main programme of the author is to understand and defend the current legal thinking in the area of the law of torts rather than to disturb or destroy it by dissecting and challenging the established patterns of thought through philosophical scrutiny. Peczenik's working idea is that "a study in jurisprudence must start from a *detailed description of operations* performed by lawyers" (p. 364). His "juristic operationalism" accordingly requires that a complete theory of causation pays "attention to the logic of conditional statements . . ., to laws of nature, humanistic explanation *per analogiam* and important common-sense generalizations . . ., to continuity . . ., to causal priority . . ., and to analogies to human action" (p. 360). Sections particularly relevant to these matters are 10.2, 10.4-7, and 10.9-10. The book is articulated in a most detailed and helpful manner; even its subsections are supplied with appropriate titles. It provides a table of cited cases, a list of other pertinent sources of law, an extensive bibliography, and an excellent general index.

In the framework of a review of such a rich and complicated book as the present one, I can only indicate the author's chief ideas and enter into a few points which have engaged my own thought. In this selection, I have concentrated on jurisprudential aspects of the book, leaving it to experts in the law of torts to take up matters which relate to particular problems in this area.

A basis for the author's expositions is his "four-step theory of causation in law" (pp. 6-17). This rests on the view that the problem of causation in law is much more complex than has ever been recognized, and must, therefore, be divided into sub-problems which are then to be seen in relation to each other. Step 1 of the theory deals with conditional relations, Step 2 with laws of nature together with the normal background of their effects, Step 3 with causal priority, and Step 4 with specific juristic requirements in the determination of causal

relations between an act and a damage relevant to tortious liability. In carrying out his theoretical intentions, the author gives the impression that traditional criticisms of the juristic doctrine of causations have been more primitive than the doctrine itself; this doctrine has often been very sophisticated in its attempt to meet practical requirements of the administration of law.

The author emphasizes the evaluative character of the juristic approach to causation. Thus he points out (p. 157) that the doctrine of adequacy of causes is connected with two kinds of evaluation: first, "the very problem of causation is evaluative"; second, "the question of adequacy concerns *juristic* (*social*) *evaluation of the selection of causes*". Thus the doctrine turns out to be *"competing tools in searching for causally relevant elements* within the course of events leading to the harm". It may be added, that a third kind of evaluation is involved here, namely the evaluation of the harm, in light of which the adequacy of causes is judged (*cf.* the "sociological hypotheses" relevant to this point, pp. 268-69). The multiple evaluations involved do not render the search for pertinent real causes idle, likewise not the exploration of their scientific foundation. For legal evaluations, too, must operate on empirical findings and on the requisite scientific information.

Those who address themselves to causation in law on the fundamental level are confronted with the problem of the nature of the principle of causation and of its justification. This principle is regarded as resting on the principle of uniformity of nature. Here we seem to be trapped in a circle of reasoning: "An inductive generalization shows that Nature is uniform and the induction itself is justified by the 'fact' that Nature is uniform" (p. 355). I see no difficulty in escaping from this alleged circle. The principle of uniformity of nature can be treated simply as an assumption or as a working hypothesis of science. The particular results of observation pointing to the uniformity of nature can be regarded as instances of confirmation of this assumption or working hypothesis. I cannot imagine a final proof of the principle of the uniformity of nature or of the universality of the principle of causation — the issue between determinism and indeterminism worrying also lawyers can never be ultimately settled. At any rate, the ontological status of these principles and of this issue is of no great interest for lawyers. They need only be concerned with practical applications of the principles in question, whereby pragmatic considerations determine the respect they have to pay to these in the handling of human affairs. For human action, a scope of the operation of "free will" cannot be denied, especially in dealing with the problem of responsibility (*cf.* however, p. 359, where the author says: "I rather doubt whether responsibility actually presupposes any 'free will' ").

In the Continent at least, the law of torts as a "straight-law" subject is seldom combined with legal theory or philosophy in the

designation of chairs or in academic expertise. But this branch of law, posing many challenging problems of fundamental import, is no less dependent on fundamental legal, philosophical, and scientific thought than, for example, constitutional law, criminal law, and international law, which have provided the bulk of problems for jurisprudential inquiries. Thus the author has felt a need to justify his theoretical approach to the law of torts and to defend it against "anti-theoretical style" in the area. He argues that "the theoretical style presented in this book has the following advantages . . .": (1) It makes the presentation "more readily comprehensible, systematical, and economic"; (2) it enables one to justify better "differences between decisions in various cases"; (3) it facilitates the establishment of "one's position in new cases, where decisions would be difficult to make if one could only build upon analogy of old ones" (p. 376).

The theoretical discussions of the author raise occasionally delicate terminological problems. I am not quite sure whether the terms "weak causes", "strong causes", "necessary condition", and "sufficient condition" are quite appropriate in the relevant contexts in view of the established (but by no means unchallengeable) logical terminology. I have wondered why Peczenik has avoided the use of the familiar term "reasonable man" and used instead the neologism *"vir optimus"*. I admit, however, that this term serves quite well its intended purposes.

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Underhill's Law Relating to Trusts and Trustees, thirteenth edition by David J. Hayton, London, Butterworths, 1979, cxl + 822 pp. (including index) $86.50.

Until the appearance of this edition, *Underhill* had been a venerable old man of the law of trusts. The characteristic format of broad principles or "articles" followed by more detailed exposition was well settled by the eighth edition in 1926, the last produced by Sir Arthur Underhill himself. Subsequently editors preserved the format, most of the principles and a good deal of the exposition, making few changes except where statute or case law forced them to do so. In the result, while it steadily grew in stature, the book tended to decline in dynamism and relevance to modern problems. For example, the Twelfth Edition (1970) dealt with the standard of certainty required for discretionary

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