

to do with the content of political viewpoints up until the point that such political content meets the criteria of seeking to overthrow the basic democratic constitutional structure of the state.

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*Justice in Private Law*. By PETER JAFFEY. [Oxford: Hart Publishing, 2023. xi + 179 pp. Hardback £85.00. ISBN 978-1-50995-388-2.]

Arguments about the proper place of corrective and distributive justice are a perennial feature of private law scholarship and so it might be thought that there is little new to be said about the topic. Peter Jaffey's monograph, *Justice in Private Law*, suggests a "new approach" to these debates (p. 1).

The early chapters cover familiar topics, such as private law's structure, its remedies and critiques of corrective and distributive justice. This provides a useful overview of these issues but for those who research private law theory, it is the middle part of the book where the real novelty lies. Here, the focus is on distributive justice and what Jaffey calls the standpoint limitation. For Jaffey, a distinction can be made between the evidence-based (subjective) concept of a moral duty and the fact-based (or objective one). With the former, "D's duty depends on what D knows or ought to know, that is to say, on the facts D has access to" (p. 84). By way of contrast, the fact-based concept treats D's duty as dependent "on all the actual facts, irrespective of what D knows or ought to know" (p. 84). The concepts are relevant in different contexts, with the former applicable to whether a defendant is morally responsible for the consequences of a wrongful act whereas the latter should be used when considering what it would be best for D to do if advised or instructed "by an omniscient person or at least someone well placed to give advice or instructions" (p. 85).

When it comes to remedial liability, it is, according to Jaffey, D's moral responsibility that is in issue and so the evidence-based concept should apply. He maintains that the law developed by the courts is made subject to the standpoint limitation because it "requires that new rules be constructed from the standpoint of people to whom the law applies, on the basis of ordinary common knowledge" (p. 86). This does not mean adopting the parties' own moral standards. Rather, the court "applies the moral considerations that it determines are sound, but it is confined to those considerations that apply in the light of the facts that were accessible to the parties at the time of the interaction" (p. 86). Under this standpoint limitation, private law "depends on what is required by distributive justice – justice with respect to benefits and harms across society – on the basis of ordinary common knowledge" (p. 96).

Application of the theory to various areas of private law then occupies the latter part of the book before conclusions are offered. In a book of 180 pages, trying to cover torts, contract and property law is ambitious and so some sacrifices have to be made. As much as I am keen to read further work on how the standpoint

limitation would apply to other aspects of tort law beyond negligence, the authorial choices are sufficient to show how the theory works.

Yet if I have a qualm with the book, it is that there are quite a few places where detail is lacking. For example, in places we are told that some commentators have defended a position but their identity is not always revealed (e.g. p. 21). The thorny issue of wrongful life is dispatched in four sentences and no authorities are cited on the topic (p. 108). A discussion of the standard of care states that it “should take account of risks assessed relative to ordinary common knowledge, and disregard risks that are apparent only on the basis of specialist or esoteric knowledge, at the time of the interaction” (p. 97). This might be true in a general sense but ignores the *Bolam* test (and will not be very reassuring to anyone entering a hospital). There are also a few places where a general rule is stated without exceptions being indicated or where the description is imprecise. For example, tort law is said to be concerned with “rights with respect to harm to or interference with person or property” (p. 1) but this phrasing does not capture the economic interests that tort law protects against interference. Elsewhere, it is said that “The law traditionally makes a distinction between causing harm and failing to provide a benefit. There is no claim for failing to provide a benefit, even, it would seem, in an extreme case such as failing to rescue a baby drowning in a shallow pool” (p. 110). True, but there are well-established exceptions to this general rule. It might seem like nit-picking to fault an author for failing to add words like “including” or “usually” but these minor omissions soon began to add up.

That said, when one takes a step back from the micro and focuses on the macro, the work has a compelling central argument with some effective application of the theory to the doctrine. Jaffey therefore succeeds in his aim of suggesting a new approach to these debates and so *Justice in Private Law* makes a useful contribution to the private law literature that will be of interest to scholars working in the area.

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*Social Enterprises in Asia: A New Legal Form.* By ERNEST LIM. [Cambridge University Press, 2023. xvii + 196 pp. Hardback £85.00. ISBN 978-1-108-83815-3.]

In recent decades, there has been a rise in the prevalence of social enterprises worldwide. Social enterprises are business organisations operated with a social or environmental mission. Different to conventional businesses which are aimed towards the pursuit of profit, the basic objective of social enterprises is to provide for social benefit. This is achieved through a business enterprise, with profits ploughed back for attainment of the enterprise’s particular social goals. Social enterprises play an increasingly vital role in addressing problems such as socioeconomic inequality and in working towards environmental sustainability. This is done, for instance, by providing employment and training to the disadvantaged, by making available affordable goods and services to neglected