that these rules be seen in action and that attention be paid to their existence in a legal system which knows neither real legislature, effective executive nor satisfactory judicature. Legal rules must be examined in the whole context of social life, and it seems inconceivable that in a modern work on international law of more than one thousand pages no real examination—indeed almost no mention—is made of what has been called the "contemporary bipolarized world" in which the fundamental prerequisites of any legal community are being undermined and against which it is alone possible to understand the contemporary working of international law. Equally surprising, for example, is the scant attention paid to the Soviet approach to international law and the role of the doctrine of sovereignty in disputes between Communist and Western States.

This is not to say that Oppenheim has ceased to be a useful book. Provided the very real limitations of the work are kept in mind and it is not used as a comprehensive text book, it remains a most useful treatise on the content of the formal rules of international law and an invaluable source of reference material for the student. In this edition the references have been brought up-to-date with admirable thoroughness and many obsolete references have been wisely discarded.

Professor Lauterpacht has also taken note of most of the new development in formal international law, whether the developments are the result of law-making treaties or, as he claims is the case with the doctrine of the continental shelf, of the development of customary international law. Deserving of particular praise are the sections dealing with Human Rights and the long informative Appendix on Specialised Agencies of International Co-operation and Administration which appears for the first time in this edition.

On the whole, however, the volume is a disappointing one. Despite the rather grim warning on the dustcover that "to criticise this book would be presumptuous" and notwithstanding the great merits of the work, this reviewer cannot but feel the time has come to discard it as the most widely used English text book for students of international law and to assign it its place on the bookshelf among the general reference volumes.

WILLIAM DEANE*

Professional Negligence, by J. P. Eddy, Q.C., with a foreword by the Right Honourable Sir Alfred Denning. London, Stevens & Sons Ltd. Australia, The Law Book Co. of Australasia Pty. Ltd., 1955. xii and 146 pp. (19/6 in Australia).

In this work the author first reviews the general principles of the law of negligence in tort and contract. The duties and liabilities of professional men are thereafter studied profession by profession. Barristers and Solicitors are the subject of the second chapter, Bankers, Accountants, Auditors and Company Secretaries occupy the third, in the fourth Doctors, Hospitals and Dentists are examined, and there is a final chapter touching the situations in turn of Architects, Surveyors, Engineers, Valuers, Chemists and Insurance Brokers. The book is not designed primarily for reading by the legal profession, consisting as it does of the record of the Travers Memorial Lectures, a series designed for the promotion of commercial education in the City of London.

It is obvious that there is a demand for this kind of book, for it has passed through two impressions in the year of publication. Its first positive virtue is

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that it is easily read as a book, since the examinations of individual points are not laboured with detail and such detail as there is consists largely in the narration of facts and decisions in cases sufficiently interesting to hold the attention. Moreover the pigeon-holing of the material for the purposes of reference is carried out according to a system which enables a layman readily to find the material which may interest him where an ordinary legal reference book might conceal it by classifying it under some abstract principle to which the layman can find no lead. Even for the legal profession there is point in possessing a relatively inexpensive book which classifies negligence cases by reference to the profession of the defendant to supplement more analytical arrangements of negligence materials.

It is nevertheless obvious that such a scheme as the author has adopted carries with it one unsatisfactory feature. This is that significant differences in the application of legal principles do not necessarily correspond with differences in the profession of the defendant. It may happen that nothing of any important legal interest can be said in relation, say, to a valuer that has not already been said in relation say, to architects or accountants. The result is a good deal of repetition. On the other hand the duties of a doctor arise in such a different legal context from the duties of a banker that the introduction to the book gives the sort of background of general principle which may help to explain the special rules relating to the former while giving little of the necessary background to cases involving the latter.

A main theme of the work is the limited scope of tort duties in this field. "This point I emphasised throughout the lectures", says the author in the Preface, "that in tort, as distinct from contract, a duty to take care only arises where the result of a failure or omission to take care will cause physical damage to person or property. In relation to Professional Negligence, therefore, the duty of accountants, bankers and solicitors, for example, rests solely on contract".[1] This statement is, however, misleading, particularly to the layman who, it may be assumed, formed the bulk of the author's live audience. Much of his discussion of the duties of bankers is concerned with the position of the collecting bank and, as the cases discussed by the author himself show, the usual plaintiff in an action against a collecting bank is not the customer of the collecting bank, but the true owner of a cheque which has been misappropriated by the bank's customer. The action brought is either for money had and received or for the tort of conversion. The only reason why any question of negligence arises in these circumstances is that sometimes the banker can rely on a statutory defence to the action for conversion provided that he has acted in good faith and without negligence. If, therefore, the banker acts negligently in cases to which the statutory provisions apply he is liable, not because he has been guilty of a negligent breach of a professional contract, but because he has no answer to an action in tort.

The truth is that the liability of a collecting banker to the true owner of a cheque cannot be discussed adequately without reference to the general principles of the tort of conversion, emphasis being laid on the point that if a defendant has dealt with a cheque in the assertion of a title inconsistent with that of the true owner he is, apart from any special defence by statute, liable at the instance of the person immediately entitled to possession. Since the statutory protection is given only to a banker who deals with a cheque which has been crossed before he receives it,[2] the consequence is that a banker who collects an open cheque may be liable to someone with whom he has no contract and even though he has exercised all proper care. Why the statutory protection should be so restricted is not clear, the only reason the reviewer has found suggested being that a crossed cheque must be collected through a banker and that a bank would be unwilling to perform this service unless offered special

[1] At xi.
[2] Bills of Exchange Act 1909-1936 (Cwlth.), s.88.

protection by law. Since, however, Australian bankers, unlike their English counterparts, do not place any difficulties in the way of a customer who wishes to collect an open cheque, this reason seems unsatisfactory in relation to existing conditions. And it is just because of the lack of apparent reason for any legal distinction between crossed and open cheques that the uninitiated reader may be led to suppose from such a partial account as the one given in the work under review that the liability of a collecting banker always depends upon negligence.

It would appear, therefore, that the explanation of the distinctions between duties in tort and contract might have been somewhat more comprehensively dealt with, though the above criticism in point of detail is not intended to throw doubt on the correctness in general of the point which the author seeks to make in this respect. A second major point of interest in the present work, to which the author draws the reader's attention in the preface, is the transformation in recent years of legal notions of the field within which a man may be vicariously liable for the acts of another. The author is particularly concerned with this in the context of hospitals' liability, in the evolution of which he regards *Cassidy* v. *Ministry of Health*[3] as a landmark. He points out that litigation in this field has markedly increased since the case was decided,[4] but considers that it does no more than apply strictly a well established principle of law.

Thus he says:

> And here we must keep in mind a vital and well-established principle: A person who is himself under a duty to take care cannot get rid of his responsibility by delegating the performance of it to someone else.
>
> A person is answerable for the wrongful acts of his servants or agents committed in the course of their employment.[5]

Later he adds:

> Whether the duty arises out of tort or whether it arises out of contract, a person is answerable for the wrongful acts of his servants or agents committed in the course of their employment. It is, I think, the strict application of this principle which has transformed the liability of hospital authorities in cases of professional negligence.[6]

These remarks are clearly to be connected with Denning, L.J.'s words in *Cassidy's Case:*

> I take it to be clear law, as well as good sense, that, where a person is himself under a duty to use care, he cannot get rid of his responsibility by delegating the performance of it to someone else, no matter whether the delegation be to a servant under a contract of service or to an independent contractor under a contract for services. Lord Blackburn laid that down on many occasions; and so have other great judges.[7]

These passages have been quoted in full for the reason that it is believed that this notion involves difficulties that require a careful weighing of the words used. And it may be suggested that some elaboration of what is meant would have been desirable in order to justify an assertion that we have here a principle sufficiently definite to be capable of strict application. It will be immediately obvious that the above assertions cannot be understood completely literally. If a person were himself under an obligation to use care in relation to a task undertaken the consequence would seem to be that he incurs liability if he delegates the task at all, whether the person to whom it is delegated exercises care or not. The defendant has failed to fulfil his obligation to use care *himself*. The principle stated, however, is obviously intended rather to apply to cases

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[3] (1951) 2 K.B. 343.
[4] At 79.
[5] At 16.
[6] At 21.
[7] (1951) 2 K.B. 343, 363.

where the obligation resting on the defendant is to see at his peril that care is taken either by himself or the person to whom the task is delegated. The difficulty which then arises, however, is that the principle asserted, when interpreted in this fashion, becomes circuitous. If one requires to know *in what circumstances* a duty of this kind rests on the defendant it is of no assistance to learn that in the circumstances where a duty of this kind exists the defendant will be liable for the negligence of the person to whom he has delegated the task. It follows that where in the absence of specific authority such a duty is supposed to be derived from such a principle, what is really happening is that a judicial innovation is taking place and this is what appears to have happened in Denning, L.J.'s judgment in *Cassidy's Case*, rather than the strict application to the circumstances of a settled principle. It may indeed be questioned whether the proposition which his Lordship derives from his argument, namely that a hospital is liable for the negligence of any surgeon it selects, whether resident or consultant, can yet be regarded as settled law.

It may be concluded that in its formulation of general principles the work under review offers some examples of over-simplification. In the light of its modest aims, however, it would be carping to withhold a recommendation of it to those who seek a short and readable account of an interesting subject.

W. L. MORISON*

Inquiries into the Nature of Law and Morals, by Axel Hägerström (ed. K. Olivecrona, transl. C. D. Broad). Uppsala, Sweden, Almquist & Wiksells, 1953. xxxii and 377 pp., with biblio. and index.

This work—an excellent translation by Professor C. D. Broad—makes available to the English reader some basic thoughts of the Swedish legal and moral philosopher, Axel Hägerström (1868-1939), who has had a considerable influence on the contemporary legal theory of Northern Europe. From his philosophy springs the vigorous school of Scandinavian legal realism, whose main living exponents are Vilhelm Lundstedt and Karl Olivecrona in Sweden, and Alf Ross in Denmark. This school has a notable affinity with American legal realism as regards its general spirit and its directions of inquiry. The affinity of both schools carries possibilities of cross fertilisation: the Americans can offer empirical material gathered and elaborated for practical purposes in exchange for many valuable theoretical insights of the Scandinavians derived from their struggle against ideas in which lie the roots of the rival traditional and modern schools of jurisprudence.

The general tendency of Hägerström's thought is expressed in the motto he selected for his philosophy: "*Praeterea censeo metaphysicam esse delendam*".[1] The anti-metaphysical attitude announced in this motto links Hägerström's thought with Anglo-American logical positivism as expounded, for example, by Alfred Ayer in the United Kingdom and Hans Reichenbach in the United States.[2] The other characteristic feature of Hägerström's thought is expressed in his thesis that scientific theories can be founded only on spatial and temporal data of experience. From the anti-metaphysical and empiricist orientation of his thought it follows that Hägerström must deny the objective existence of values. He contends that values are not *found* in real entities but are *ascribed*

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[1] See p. xi of the work under review.

[2] See A. J. Ayer, *Language, Truth, and Logic* (1948); H. Reichenbach, *The Rise of Scientific Philosophy* (1951).