

TORTS AND COMPENSATION

PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY

Third Edition

By

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In thanks to and in memory of those lawyers, scholars, and students, living and dead, who have taught me most in tort law: Robert A. Leflar, Tom Pryor, Robert G. Byrd, Page Keeton, Wex Malone, and most of all, my students. —D.B.D.

To Diane, without whom my accomplishments would be fewer and far less meaningful. —P.T.H.

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Preface

Plus ça change The forces that expand tort liability and those that contract it continue to demonstrate the essential identity of tort issues that underlie a sea of change. This edition continues the effort to present both the changing and unchanging nature of tort law.

We have also tried to be faithful to the aims of the earlier editions in representing the entire scope of tort doctrine. At the same time, we are all too well aware that casebooks age quickly. This edition attempts to expose its readers to the most contemporary issues and current cases. Products liability, emotional harms, mass torts, environmental torts, sexual harassment and abuse, AIDS cases, damages limitations and other areas of concern produce many litigated cases that cast tort problems in a new light. So this edition reflects quite a few new cases as "main cases," as well as many others that appear as abstracts or in notes. A torts casebook that attempts to reflect a little of the real life behind tort law inevitably presents some painful cases and sometimes disgusting or trashy actors. We think we are right to include such cases, unpleasant as they are; but we hope in any event that the intellectual content far outweighs the distress that arises from such cases.

Statutes have been important in tort law for a long time. We have tried to be sure that students using this book become aware of statutes as a major source of law in general and an increasing source of tort law or tort law limits. This edition reflects several of the recent torts statutes (anti-stalking statutes, for example) as well as something of the social issues to which they are addressed.

This book focuses primarily on personal injury torts. That focus includes, most centrally, common law tort solutions. Yet, most injuries in America are redressed through alternative means, such as workers' compensation, social security, or private insurance. A picture of injury law, therefore, includes those topics and they remain a part of the current edition.

Although the focus is upon injury law manifested both in common law tort doctrine and in the alternative systems, we must recognize that not all tort law is about personal injury. Indeed, some of the biggest growth in tort law in recent years is found in areas involving economic torts such as interference with contract. While economic torts do not account for most of the pages in this book, students should be aware that those torts exist. The economic tort materials provided in this book are limited core materials. They cannot take the place of appropriate advanced courses that cover defamation, misrepresentation, intellectual property, interference with contract, employment law and the like. The materials in this book provide an introduction to those topics that suffices to help students rec-

ognize that tort law is not exclusively injury law and perhaps to help them decide on advanced elective courses.

Substance aside, this edition is somewhat more streamlined and accessible than its predecessors. Readers will find somewhat fewer pages, but more and shorter chapters and sections. Somewhat fewer cases are cited. Most omissions of citations go unmarked. The overall effect, we hope, is to make this edition both more readable and more usable as a teaching tool.

We cannot end this preface without acknowledging that contemporary cases and contemporary issues do not by themselves make a good casebook. The main goal is always to teach students, to challenge them, and to provide everyone involved with a good time in the process. We have tried hard to accomplish that goal and hope we have succeeded.

Note on Editing Conventions

Most of the editing conventions of earlier editions have been retained. Anyone who cares deeply about such topics can examine the explanations found in the Second Edition. We note here that while the omission of case citations was previously marked by empty square brackets, the present edition omits many cases without any editorial indication at all. This edition is also omits many (but not all) interior quotation marks. Cases may also be reformatted in small ways, by breaking long blocks of material into two or more paragraphs, or in some instances, but treating two paragraphs as one. These changes make for enhanced readability and they save space. On the other hand, lawyers wishing to quote from a case will want to check the original to restore interior quotation marks.

Finally, we note that the most important treatises on torts, W. PAGE KEETON, DAN DOBBS, ROBERT KEETON & DAVID OWEN, PROSSER & KEETON ON TORTS (1984 & Supps.) and FOWLER HARPER, FLEMING JAMES, & OSCAR GRAY, THE LAW OF TORTS (1986 & Supps.) are wonderful books with names too long to repeat very often. So we cite them as Prosser & Keeton and as Harper, James & Gray, confident that no one will misunderstand the source. Similarly, the Restatement Second and the Restatement Third of Torts is sometimes reduced to "Restatement Second" or "Restatement Third".

—DAN B. DOBBS
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—PAUL T. HAYDEN

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