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美国侵权法

American Tort Law

王 军 高建学 编著

对外经济贸易大学出版社
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王 军 高建学 编著
责任编辑：王 煜

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总　序

自1984年设立国际法专业以来，对外经济贸易大学法学院（原国际经济法系）已经走过了20个年头。在20年的时间里，经过几代人的努力，在培养懂法律、懂经贸和熟练运用外语（英语）的综合型人才、满足国内市场和国际市场的人才需求的道路上，对外经济贸易大学法学院已成为国内外经贸法律教育中一个具有自己特色和风格的人才培养基地和输送站。

对外经济贸易大学法学院的教学特色体系是从“国际商法”开始的，为了适应国际经贸全球化的发展潮流，我们希望，从对外经济贸易大学法学院走出的人才能够从国际化的视角理解和把握我国的法律，并且客观地认识不同国家的法律、国际法律之间的相互作用和影响。为此目的，我院几代教师编辑的教材，包括案例教材，都在强调具有国际化视角的教学和比较研究的重要性。

对外经济贸易大学法学院以独特的教学方法——案例教学和双语教学为代表，旨在通过引导学生对“原汁原味”的英文案例的阅读和研讨，学习不同国家在国际商贸领域的法律原理和规则，也通过对经典案例事实和纠纷场景的分析，帮助学生认识现实生活中经贸活动的规律和特点。

我们多年的教学实践已经证明：案例教学对于培养学生发现和归纳问题、分析和处理问题的综合能力，对于培养学生在错综复杂的事实和现象中分清真伪和主次、结合事实和法律推理的能力有直接的促进作用。

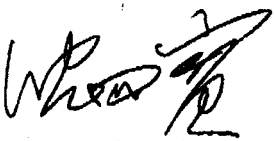
除了国际商法以外，对外经济贸易大学法学院国际法专业的

另一个教学和研究方向是以 WTO 法律为主的国际经济法（公法）。本套英文案例选编丛书包含了这样两个方面的内容。

我院鼓励教师在教学、科研和法律实践中全面拓展才能和发掘潜力，同时，我们强调：教师的工作应以教学为中心，科研和法律实践应为提升教师的专业素质、提高教学水平而服务。参与本套丛书编写的同志都是我院具有多年教学经验的中青年教师，本套丛书是他们在对自己的教学心得的积累和总结的基础上精心编辑而成的，是他们对多年摸索的教学方法的总结；本套丛书也是我院几代人的教学成果的延续，更是我院“211 工程”建设成果的组成部分。

20 年来，我们欣慰地看到：对外经济贸易大学法学院的教学风格和特色也得到国家和社会的认可，早在 20 世纪七、八十年代，我院就经批准设有可招收国际经济法专业方向的硕士点和博士点；我院的“国际商法”教材和案例教材也广为流传；2002 年我院的国际法专业被评为国家重点建设学科，现又增设了博士后流动站；学生和教师的规模日益扩大。我衷心希望：我院有更多的教师和学生加入案例教学和双语教学的尝试和探索中来，保持和发展特色，早日走上国际人才培养和学科全面发展的道路。

对外经济贸易大学
法学院　院长



2004 年 7 月

前　言

随着我国的经济发展和社会进步，人们的交流和接触更加密切和频繁，进而导致人们之间的权利冲突越来越常见。在这种情况下，“侵权”和“被侵权”事件在日常生活中时有发生。因此，在今天的社会条件下，侵权法恐怕已成为所有法律领域中与人们日常生活关系最为密切的法律，并且，它所调整的各种社会关系复杂多样，涉及到社会生活的方方面面。

目前，我国的侵权行为法即将正式开始起草，而我国在该领域的研究水平还相对较低。学习、借鉴西方发达国家成熟的侵权法律制度，无疑可以促进我国侵权法理论和实务水平的提高。英美国家的侵权法律制度已经有几百年的历史，且自成体系，独具特色。遗憾的是，由于我国传统上受大陆法系的影响比较深，目前我国对英美侵权法的研究还比较薄弱。虽然，我国的学者已经认识到英美侵权法的价值和地位，开始重视对英美侵权法的研究，并取得了一些学术成果，但总体来说，还缺乏系统和深入地研究。鉴于英美法的主要渊源是案例法，笔者认为，通过学习“原汁原味”的英美侵权法的案例去理解、领会和掌握英美侵权法的精髓，是不无裨益的。

对外经济贸易大学法学院一直以来注重对英美法的研究，提倡案例教学法和双语教学法。自 1999 年开始，笔者就在对外经济贸易大学法学院的研究生课程中设置了“英美侵权法案例选读”课程，并一直延续至今。适逢对外经济贸易大学法学院国家重点学科建设项目国际经济法英文案例汇编系列丛书出版之际，我们精心选取了 42 个美国侵权法的权威案例编辑成书，希望能够使读者对美国侵权法有所了解。这些案例的判决时间有的

距今已有100多年，堪称“里程碑式”的经典案例；有的距今不过几年而已，反映了英美侵权法的最新发展状况。

本书所选取的案例比较系统地反映了美国侵权法的主要制度。为了便于读者能够在较短的时间内获得美国侵权法最为基础的知识，编者特意在每一章或每一节的开头部分对该章节所涉及的法律原理用中文进行了简要的表述；此外，又在每个英文案例之后附上思考题，使读者可以带着问题阅读案例，加深对案例中阐明的法律原理的理解。笔者希望，读者能够在阅读这些案例的过程中，不仅弄懂每一个案例的事实、判决结果和法官的推理过程，而且能透过这些案例了解英美国家的法律制度，以及它们所体现的社会价值观念和公共政策。

本书适合于国内大学法律教育在双语教学和案例教学中作为教材使用，也适合从事法律实践工作的律师为了提高专业英语水平而使用。

书中的疏漏和不足之处在所难免，笔者期待读者，特别是法律界的同行们就该书的改进提出宝贵意见，以共同提高专业法律英语的教学水平。

王 军

2006年12月于北京

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第一章　故意侵权

故意侵权（Intentional Torts）是英美侵权法中最古老的诉因。构成故意侵权责任的要件包括：故意、行为和因果关系。涉及侵犯人身权益方面的故意侵权之诉有：威吓（Assault）、殴打（Battery）、非法拘禁（False Imprisonment）和故意精神伤害（Intentional Infliction of Emotional Distress）；涉及侵犯财产权益方面的故意侵权之诉有：侵入土地（Trespass to Land）、侵犯动产（Trespass to Chattels）和侵占（Conversion）。本章的案例将主要涉及侵犯人身权益方面的故意侵权之诉。

第一节　威吓和殴打

威吓和殴打是故意侵权之诉中两种不同的诉因，但二者经常在同一个案件中出现。威吓是指使用或威胁使用会引起他人对即将发生的、伤害性的、侵犯性的接触产生合理恐惧的暴力行为；殴打是指对他人使用暴力行为，导致了伤害性的、侵犯性的接触。案例1涉及的是未成年人的故意侵权责任问题，案例2涉及的则是精神病人的故意侵权责任问题。

案例 1

Vosburg v. Putney

50 N. W. 403, 14 L. R. A. 226, 80
Wis. 523, 27 Am. St. Rep. 47
Supreme Court of Wisconsin
Nov. 17, 1891

The action was brought to recover damages for an assault and battery, alleged to have been committed by the defendant upon the plaintiff on February 20, 1889. The answer is a general denial. At the date of the alleged assault the plaintiff was a little more than 14 years of age, and the defendant a little less than 12 years of age. The injury complained of was caused by a kick inflicted by defendant upon the leg of the plaintiff, a little below the knee. The transaction occurred in a school-room in Waukesha, during school hours, both parties being pupils in the school. A former trial of the cause resulted in a verdict and judgment for the plaintiff for $2,800. The defendant appealed from such judgment to this court, and the same was reversed for error, and a new trial awarded. 78 Wis. 84, 47 N. W. Rep. 99. The case has been again tried in the circuit court, and the trial resulted in a verdict for plaintiff for $2,500. The facts of the case, as they appeared on both trials, are sufficiently stated in the opinion by Mr. Justice ORTON on the former appeal, and require no repetition. On the last trial the jury found a special verdict, as follows: "(1) Had the

plaintiff during the month of January, 1889, received an injury just above the knee, which became inflamed, and produced pus? Answer. Yes. (2) Had such injury on the 20th day of February, 1889, nearly healed at the point of the injury? A. Yes. (3) Was the plaintiff, before said 20th of February, lame, as the result of such injury? A. No. (4) Had the tibia in the plaintiff's right leg become inflamed or diseased to some extent before he received the blow or kick from the defendant? A. No. (5) What was the exciting cause of the injury to the plaintiff's leg? A. Kick. (6) Did the defendant, in touching the plaintiff with his foot, intend to do him any harm? A. No. (7) At what sum do you assess the damages of the plaintiff? A. Twenty-five hundred dollars." The defendant moved for judgment in his favor on the verdict, and also for a new trial. The plaintiff moved for judgment on the verdict in his favor. The motions of defendant were overruled, and that of the plaintiff granted. Thereupon judgment for plaintiff, for $2,500 damages and costs of suit, was duly entered. The defendant appeals from the judgment.

LYON, J. (after stating the facts)

Several errors are assigned, only three of which will be considered.

I. The jury having found that the defendant, in touching the plaintiff with his foot, did not intend to do him any harm, counsel for defendant maintains that the plaintiff has no cause of action, and that defendant's motion for judgment on the special verdict should have been granted. In support of this proposition counsel quotes from 2 Greenl. Ev. § 83, the rule that "the intention to do harm is of the essence of an assault." Such is the rule, no doubt, in

actions or prosecutions for mere assaults. But this is an action to recover damages for an alleged assault and battery. In such case the rule is correctly stated, in many of the authorities cited by counsel, that plaintiff must show either that the intention was unlawful, or that the defendant is in fault. If the intended act is unlawful, the intention to commit it must necessarily be unlawful. Hence, as applied to this case, if the kicking of the plaintiff by the defendant was an unlawful act, the intention of defendant to kick him was also unlawful. Had the parties been upon the playgrounds of the school, engaged in the usual boyish sports, the defendant being free from malice, wantonness, or negligence, and intending no harm to plaintiff in what he did, we should hesitate to hold the act of the defendant unlawful, or that he could be held liable in this action. Some consideration is due to the implied license of the playgrounds. But it appears that the injury was inflicted in the school, after it had been called to order by the teacher, and after the regular exercises of the school had commenced. Under these circumstances, no implied license to do the act complained of existed, and such act was a violation of the order and decorum of the school, and necessarily unlawful. Hence we are of the opinion that, under the evidence and verdict, the action may be sustained.

II. ...

III. Certain questions were proposed on behalf of defendant to be submitted to the jury, founded upon the theory that only such damages could be recovered as the defendant might reasonably be supposed to have contemplated as likely to result from his kicking the plaintiff. The court refused to submit such questions to the jury. The ruling was correct. The rule of damages in actions for torts was

held in Brown v. Railway Co., 54 Wis. 342, 11 N. W. Rep. 356, 911, to be that the wrongdoer is liable for all injuries resulting directly from the wrongful act, whether they could or could not have been foreseen by him. The chief justice and the writer of this opinion dissented from the judgment in that case, chiefly because we were of the opinion that the complaint stated a cause of action ex contractu, and not ex delicto, and hence that a different rule of damages — the rule here contended for — was applicable. We did not question that the rule in actions for tort was correctly stated. That case rules this on the question of damages. The remaining errors assigned are upon the rulings of the court on objections to testimony. These rulings are not very likely to be repeated on another trial, and are not of sufficient importance to require a review of them on this appeal. The judgment of the circuit court must be reversed, and the cause will be remanded for a new trial.

思考题

1. 本案的诉讼过程有哪些?
2. 本案适用的法律规则是什么?
3. 本案的判决理由是什么?
4. “可预见原则”是否适用于不法行为?

案例 2

McGuire v. Almy

Supreme Judicial Court of Massachusetts, Essex.
297 Mass. 323, 8 N. E. 2d 760
May 26, 1937

QUA, Justice

This is an action of tort for assault and battery. The only question of law reported is whether the judge should have directed a verdict for the defendant.

The following facts are established by the plaintiff's own evidence: In August, 1930, the plaintiff was employed to take care of the defendant. The plaintiff was a registered nurse and was a graduate of a training school for nurses. The defendant was an insane person. Before the plaintiff was hired she learned that the defendant was a "mental case and was in good physical condition," and that for some time two nurses had been taking care of her. The plaintiff was on "24 hour duty". The plaintiff slept in the room next to the defendant's room. Except when the plaintiff was with the defendant, the plaintiff kept the defendant locked in the defendant's room. There was a wire grating over the outside of the window of that room. During the period of "fourteen months or so" while the plaintiff cared for the defendant, the defendant "had a few odd spells", when she showed some hostility to the plaintiff and said that "she would like to try and do something to her". The defendant had

been violent at times and had broken dishes "and things like that", and on one or two occasions the plaintiff had to have help to subdue the defendant.

On April 19, 1932, the defendant, while locked in her room, had a violent attack. The plaintiff heard a crashing of furniture and then knew that the defendant was ugly, violent and dangerous. The defendant told the plaintiff and a Miss Maroney, "the maid", who was with the plaintiff in the adjoining room, that if they came into the defendant's room, she would kill them. The plaintiff and Miss Maroney looked into the defendant's room, "saw what the defendant had done", and "thought it best to take the broken stuff away before she did any harm to herself with it". They sent for a Mr. Emerton, the defendant's brother-in-law. When he arrived the defendant was in the middle of her room about ten feet from the door, holding upraised the leg of a low-boy as if she were going to strike. The plaintiff stepped into the room and walked toward the defendant, while Mr. Emerton and Miss Maroney remained in the doorway. As the plaintiff approached the defendant and tried to take hold of the defendant's hand which held the leg, the defendant struck the plaintiff's head with it, causing the injuries for which the action was brought.

The extent to which an insane person is liable for torts has not been fully defined in this Commonwealth. Dickinson v. Barber, 9 Mass. 225, 6 Am. Dec. 58, turned upon questions of evidence in an action for slander. However, the implication of the case seems to favor liability. In Lawton v. Sun Mutual Ins. Co., 2 Cush. 500, at page 516; it is said that one "bereft of reason and judgment, and the use of his moral powers and intellectual faculties is no longer a