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THE TORTS PROCESS

*Fifth
Edition*



ASPEN LAW & BUSINESS

The Torts Process

Fifth Edition

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To Marcie, Danella, and Rosanne

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Preface to the Fifth Edition

The book is premised on the view that tort law is more than a collection of doctrines and policies, and that it cannot realistically be understood apart from the processes by which tort disputes are resolved. It is as important for students to grasp the roles of the lawyer, the trial judge, the jury, and the appellate court in resolving a tort claim as it is to understand the doctrinal and policy elements that are at play. We find that providing students with this process perspective greatly enhances their appreciation for the actual nature, functions, and limits of tort law. To aid this effort to study tort law in motion, the book includes a series of problems that challenge students to apply their doctrinal understanding to concrete circumstances. We have found that students, even in their first weeks of law study, benefit significantly from the effort and find it interesting and rewarding. There is no need, however, to assign all, or indeed any, of the problems, for the book is also designed to function as a traditional casebook. Finally, the book seeks to enrich and broaden students' understanding by providing integrated discussions of tort theory and policy issues and by raising important ethical considerations.

The fifth edition is somewhat shorter than the fourth, carrying on our efforts to tighten the text and render it more manageable. Thus, old Chapter 3 on vicarious liability has been eliminated, and its content included in the last section of Chapter 2, dealing with cause-in-fact. Several new problems have been added and a few deleted. We have placed the deleted problems in the teacher's guide, in a format ready for easy duplication. New cases and supplemental materials have been added where appropriate. Additional materials on professional responsibility, including a new problem, have been added. Proximate cause has been somewhat reworked and the chapter on products liability now reflects the adoption of the Restatement of Torts (Third): Products Liability, for which Professor Henderson served as Reporter. Notwithstanding these changes, the book retains most of its original character. Those who used earlier editions should find this fifth edition not only freshly invigorated but also comfortably familiar.

James A. Henderson, Jr.
Richard N. Pearson
John A. Siliciano

February 1999

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This book is now in its fifth edition, and the authors would like to thank all those who over the years have made significant contributions. Some of the major contributors to this fifth edition deserve mention. Jylanda Diles, at Cornell, assembled and typed the manuscript and has also helped us with several editions. We could not have done it without her help. We also would like to thank the student research assistants at the Cornell Law School who helped with this edition: John Hoggan, Jr., David McCusker, Heather Pellegrino, Alexandria Ray, and Robert Riva. We thank Russell K. Osgood and Interim Dean Charles W. Wolfram for their help.

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