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Torts

Cases and Materials

Third Edition

Aaron D. Twerski

Irwin and Jill Cohen Professor of Law
Brooklyn Law School

James A. Henderson, Jr.

Frank B. Ingersoll Professor of Law
Cornell Law School

W. Bradley Wendel

Professor of Law
Cornell Law School



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*From Aaron
to
Kreindel*

*From Jim
to
Marcie*

*From Brad
“to my father, Harry W. Wendel,
and to the memory of my mother,
Barbara J. Wendel”*

Preface

In putting together the third edition of this casebook we sensed that although the book was doctrinally sound and fun to teach from, there was something missing. Those who litigate tort cases are faced daily with issues of professional responsibility or legal ethics. Clients relate the factual background of their cases to their lawyers. Can their lawyers suggest to them that there are important missing pieces of information necessary to make out a valid cause of action? When does the lawyer cross the line between helping a client to recall crucial facts and helping the client invent a useful story? When may a lawyer represent two or more plaintiffs or defendants in the same case? Might a lawyer find himself in conflict if at some foreseeable stage in the litigation he might be required to take a position with regard to one client that may be inimical to the interests of another client? Must the lawyer refuse at the outset to represent one client, or may the client wait to see whether a real conflict surfaces? These and many, many more questions arise in tort litigation. These ethical questions should be confronted when discussing the substantive law issues that we take up in torts and not be relegated to a course on professional responsibility.

We are fortunate to have one of the nation's leading scholars in the field of professional responsibility join us as a coauthor in this third edition. Professor Bradley Wendel has taught torts for many years and brings to the project his expertise in both fields. You will see his fingerprints throughout the book. Brad has interlaced fascinating professional responsibility issues at many points in the text. We promise that you will be challenged by them.

We have also continued to review our materials not only to include interesting new cases but to delete cases that have not taught well. A good author must have both a pencil and an eraser in his arsenal. We have labored to utilize both in this third edition.

Both students and professors who have used this book have supplied us with observations and sometimes compliments about the book. We appreciate both. All three of us are in love with the law of torts. We hope it shows and that you will join in this romance.

A.D.T. and J.A.H., Jr.

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American Law Institute, *Restatement of Torts*, Third: *Liability for Physical and Emotional Harm*, § 3 and comment e; § 5; § 8; § 10; § 12 and comment b; 14 and comment c and illustration 1; § 17 and comment a; § 20; § 26 comment n; § 27; 29 and comment d and Reporters' Notes p. 517; § 34; § 35; § 42; § 45 illustration 6; § 46.

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American Law Institute, *Restatement of Torts*, Third: *Products Liability* § 1; § 2 and comments f and i; § 3.

American Law Institute, *Uniform Commercial Code*: § 2-313 and comment 3; § 2-314(2)(c); § 9-503 (short quote).

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