

Inside



Torts

What Matters and Why

J.P. Ogilvy



Wolters Kluwer

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Columbus School of Law
The Catholic University of America*



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With love to Louise, Alex, and Andrew

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Preface

Torts is a course that most law students enjoy. Compared to civil procedure, which is sometimes likened to learning a foreign language, torts is a subject that is familiar to most of us. It involves traffic accidents, animal bites, and exploding products. For the most part, the cases in the casebooks are tightly edited and are, therefore, usually short and relatively easy to read, and they tell interesting stories of the risky activities of everyday life. You may read about a young man who dove headfirst from the roof of a garage into his neighbor's shallow, above-ground pool and sued the pool manufacturer for failing to adequately warn him that diving headfirst into the pool was dangerous. You may read about a photographer who captured a monkey that had escaped from the zoo and was sued when the monkey bit someone. You will read cases about shoppers falling on train platforms and in stores after slipping on some foreign substance like a banana, grape, or spilled milk.

This book is designed to explain the major topics in torts and be of use to students first learning the subject or wanting a quick review before sitting for the bar examination. As with the other volumes in the *Inside* series, you will not find extensive citations of cases and law review articles on each topic. Neither will you find the exceptions to the exceptions to the exceptions of the doctrine. Although, to be sure, you will sometimes be alerted when those exceptions might be present so that you do not get in the bad habit of only superficially analyzing what could be a very complex issue. What I have tried to do with this book is give you clear explanations of the topics commonly covered in a first-year course in torts.

The book has features common to all of the other volumes in the *Inside* series. The **Overview** at the beginning of each chapter provides a brief abstract of the coverage of the chapter. Throughout the book, you will see words and phrases that have been printed in boldface type. These words and phrases are among the most important terms to learn as you master the subject. Be certain, by the end of your torts course, that you can define and appropriately use these words and phrases. The **Frequently Asked Questions (FAQs)** give answers to questions that my colleagues and I often encounter in teaching torts, and they attempt to clear up common mistakes and misconceptions. You may need to unlearn, for example, the commonly-held notion that a criminal assault and a tortious assault involve exactly the same conduct. **Sidebars** offer insights, study tips, and practice pointers. The sidebars are designed to remind you that the topic is more complex than it might at first glance appear and to encourage you to think creatively in pursuit of solving a client's problem. When a client tells you her story at the first interview, she is not going to start by saying, "I have a tort case." She is most likely going to relate some facts that form the basis of a problem that she needs your help in resolving. You are going to need to gather additional facts and begin the reiterative process of defining the problem, or problems, and the possible solutions. Sometimes the problem will be a relatively straightforward tort problem: The client was injured in an automobile accident

and her car was damaged. Sometimes, the problem is more complex and may involve both tort doctrines and other legal subjects: The client was fired from his job (he claims a breach of contract), and the client also has reason to believe that a third person was responsible for his job loss (possible tortious interference with contract).

The **Summary** feature near the end of each chapter gives you a quick guide to the most basic points covered in that chapter. Together with the **Chapter Outline** at the head of each chapter, the summary feature can help you prepare your study outline for the torts course. The chapter outline can provide the backbone for your outline, which should be amplified and adjusted from your class notes to reflect the subject as your professor has presented it, and the chapter summaries can provide quick reviews of the major topics in the course. Finally, the **Connections** feature at the end of each chapter helps you to relate the points made in the chapter with other topics covered elsewhere in the book. These should help you as you review for your final examination by reminding you of the relationships among the various topics that you have covered in serial fashion during your torts course.

I hope that you enjoy studying the law as much as I enjoy teaching it—which is a great deal. And, I hope that you will find this book useful to your initiation into the law of torts. I have tried to present the topics as clearly as possible, without oversimplifying what can be a complex set of doctrines. Learning some torts law is not easy; learning how to practice law is even harder and is something you will do throughout your career. But, if you approach the tasks of learning torts and becoming an effective, efficient, and creative practitioner with determination and dedication, you will be successful in both. Good luck, and enjoy!

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