

ADVANCED TORT LAW:
A PROBLEM APPROACH

Vincent R. Johnson



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Dedication

To
Tom and Nancy Shaffer
at Notre Dame,
good friends for more than thirty years

Preface

Advanced Tort Law: A Problem Approach is a new textbook, designed for use in upper-level law school courses. This book reflects the belief that the most effective teaching materials for students beyond the first year of law school are centered on problems of the kind that lawyers face in practice.

Clear Narrative Text. The chapters in *Advanced Tort Law* focus on five intriguing subjects which normally receive little attention in basic torts courses: misrepresentation, defamation, invasion of privacy, tortious interference, and injurious falsehood. In each chapter, the law is laid out in a clear narrative format, which quotes liberally from pertinent court opinions, statutes, and other sources. Because upper-level law students are already well acquainted with the American litigation process, each topic focuses primarily on operative rules and policies, and their application to particular fact situations. The text minimizes the procedural complexities of cases that have already been decided.

Fifty-Six Discussion Problems. The main instructional feature of *Advanced Tort Law* is the fifty-six discussion problems. Roughly every eight to ten pages, there is a problem for students to prepare in advance of class. A good answer requires a confident grasp of the rules, concepts, and principles addressed in the text or in basic law school courses. The problems, which test whether students have learned the assigned material, are designed to form the basis for classroom discussions. If a class meets twice a week over the course of a typical law school semester, each reading assignment is likely to include about fifteen to twenty pages of reading material and two discussion problems.

Preparation for Practicing Law in the 21st Century. Many of the problems in *Advanced Tort Law* are based on actual cases or stories in the news. With rare exceptions, the names have been changed. The facts in the problems often diverge from those which gave rise to the underlying disputes in order to raise questions important to the course.

The problems challenge students to explore how the law applies to the kinds of facts they will encounter in twenty-first century law practice. The hypothetical scenarios are designed to help users of the book develop the problem-solving skills that effective lawyers need.

Cutting-Edge Legal Issues. Although the torts discussed in this book are ancient in origin, they are often on the front lines of litigation in the Digital Age. There are abundant references to issues raised by recent communications technology developments, including blogging, texting, and social networking. The text addresses numerous practical questions that Americans confront in contemporary life, such as the liability issues that arise from anonymous postings on the Internet or from corporate press releases designed to mislead investors.

Advanced Tort Law: A Problem Approach is accompanied by a comprehensive teacher's manual. I will be happy to share with professors adopting this book a set of PowerPoint slides corresponding to the various chapters. Please contact me at: vjohnson@stmarytx.edu.

Preface

I hope that you enjoy using *Advanced Tort Law: A Problem Approach*.

Vincent R. Johnson
San Antonio, Texas
November 23, 2009

Acknowledgments

My work on this book benefitted significantly from the editorial efforts of several research assistants at St. Mary's University School of Law in San Antonio, Texas. That talented group of law students included William L. Calhoun III, Joshua P. Garza, Jonathan R. Geserick, Christopher L. Gordon, Trevor Andrew Hall, Christopher R. Konneker, Allen K. Lowe, Miguel Vela, and Sherri Wilson. Allen Lowe handled a large and challenging part of the work. Trevor Hall expertly performed an array of important tasks, including compilation of source material for the chapter on injurious falsehood.

I am deeply grateful to each of the persons mentioned above, and to Dean Charles E. Cantu and St. Mary's University School of Law for supporting this project. My St. Mary's University torts colleague Chenglin Liu regularly raises issues that enrich my understanding of tort law. The preparation of this book was aided by my opportunity to teach an early draft of the manuscript as a visiting professor at Notre Dame Law School.

My largest debt of gratitude is to my wife, Jill Torbert, a very able lawyer and community leader. Jill is a wonderful source of insight, perspective, and good companionship.

Some of the language and ideas in *Advanced Tort Law: A Problem Approach* and the related Teacher's Manual borrow from my earlier writings, including: Vincent R. Johnson & Alan Gunn, *Studies in American Tort Law* (Carolina Academic Press, 4th ed. 2009); Vincent R. Johnson, *Mastering Torts: A Student's Guide to the Law of Torts* (Carolina Academic Press, 4th ed. 2009); Susan Saab Fortney & Vincent R. Johnson, *Legal Malpractice Law: Problems and Prevention* (Thomson/West 2008); Vincent R. Johnson, "The Boundary-Line Function of the Economic Loss Rule," 66 *Washington & Lee Law Review* 523-85 (2009); Vincent R. Johnson, "The Unlawful Conduct Defense in Legal Malpractice Law," 77 *UMKC Law Review* 43-83 (2008); Vincent R. Johnson, "Standardized Tests, Erroneous Scores, and Tort Liability," 38 *Rutgers Law Journal* 655-717 (2007); Vincent R. Johnson, "Cybersecurity, Identity Theft, and the Limits of Tort Liability," 57 *South Carolina Law Review* 255-311 (2005); Vincent R. Johnson and Shawn Lovorn, "Misrepresentation by Lawyers about Credentials or Experience," 57 *Oklahoma Law Review* 529-77 (2004). In this book, substantial excerpts from these works are indicated by a specific citation, but brief passages have not been cited. Footnotes generally have been omitted from quoted material. The original sources contain citations to supporting authorities.

With regard to the editing in this book: An ellipsis at the end of a paragraph indicates the omission of words at the end of the paragraph and, in some cases, the omission of one or more following paragraphs. Similarly, an ellipsis at the beginning of a paragraph denotes the omission of words at the beginning of the paragraph and, in some cases, the omission of one or more preceding paragraphs.

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Table of Contents

Chapter 1	BEYOND PHYSICAL HARM	1
A.	THE SUBJECT MATTER OF “ADVANCED” TORT LAW	1
1.	Unifying Themes	2
a.	Doctrinal Relationship	2
b.	Practical Considerations	3
c.	First Amendment Considerations	4
B.	LIABILITY FOR ECONOMIC LOSSES	4
1.	The So-Called “Economic Loss Rule”	5
a.	Three Areas of Concern	5
b.	Types of Tort Claims Barred	6
c.	Doubts and Exceptions	6
d.	One Rule or Several?	7
e.	Abundant Litigation	7
Chapter 2	MISREPRESENTATION	9
A.	FRAUD	11
	PROBLEM 2-1: THE WIDOW’S FARM	15
1.	The <i>Scienter</i> Requirement	16
2.	What Constitutes an Actionable Misrepresentation?	17
a.	Words and Actions	17
b.	Silence and the Duty to Speak	18
(1)	Half Truths	19
(2)	Duty to Correct Prior Statements	20
(3)	Fiduciary and Confidential Relationships	21
(4)	Facts “Basic to the Transaction”	23
(5)	Facts “Not Reasonably Discoverable”	24
(6)	Disclosures Required by Reasonable Care	27
	PROBLEM 2-2: THE CHURCH OF THE TRUE TOMORROW	28
c.	Limits on Disclosure Obligations	30
(1)	General Principles	30
(2)	Fraud Versus Professional Malpractice	34
	PROBLEM 2-3: THE ADDICTED DOCTOR	40
d.	Statements of Opinion	41
(1)	Puffing	41
(2)	State of Mind	42
	PROBLEM 2-4: THE DISAPPOINTED ASSOCIATE	44
(3)	Implicit Statements of Fact	44
(4)	Statements of Law	46

Table of Contents

	PROBLEM 2-5: THE UNEXPECTED PREMIUM	48
3.	Intent to Induce Reliance or Expectation of Reliance	49
a.	Direct Recipients	49
b.	Unintended Recipients	49
(1)	Commercial Documents	49
(2)	Public Filings	51
(3)	Special Reason to Expect Reliance	52
	PROBLEM 2-6: THE RENOVATED MANSION	56
4.	Justifiable Reliance	57
a.	Actual Reliance (Cause in Fact)	57
b.	Reasonableness of Reliance (Comparative Negligence)	60
c.	Duty to Investigate	61
(1)	Questioning Affirmative Statements	62
(a)	Reliance by Sophisticated Persons	62
	PROBLEM 2-7: THE “ABSOLUTELY BEAUTIFUL” JAGUAR	63
(2)	Danger Signals	64
(3)	Assumption of the Risk	67
d.	Written Disclaimers of Reliance	67
	PROBLEM 2-8: THE OVERSTATED SQUARE FOOTAGE	69
5.	Damages	71
a.	Proximate Causation	71
	PROBLEM 2-9: THE FACEBOOK SUICIDE	73
b.	“Benefit of the Bargain” and “Out of Pocket” Damages	74
c.	The Economic Loss Rule and Fraud Relating to a Contract	80
	PROBLEM 2-10: THE DEFECTIVE CELL PHONE	86
d.	Noneconomic Losses	86
e.	Punitive Damages	87
(1)	State-Law Restrictions	88
(2)	Constitutional Limitations	89
	PROBLEM 2-11: THE PONZI SCHEME	94
6.	Defenses and Other Obstacles to Recovery	96
a.	Federal and State Preemption of Fraud Claims	96
b.	Statutory Obligations That are Not Privately Enforceable	96
c.	Inactionability of Fraud in Non-Business Settings	97
d.	Ratification of a Fraudulent Transaction	98
	PROBLEM 2-12: THE PROFESSIONAL FOOTBALL TEAM	100
e.	Unlawful Conduct Defense	102
f.	Other Public Policy Issues	113
	PROBLEM 2-13: THE DEFRAUDED NIGHTCLUB	113
B.	NEGLIGENT MISREPRESENTATION	115
1.	Negligence Rather than <i>Scienter</i>	119

Table of Contents

2.	Recovery for Negligent Nondisclosure	119
3.	Scope of Liability	121
a.	Three Views: Foreseeability, Privity, and Intended Reliance	124
	PROBLEM 12-14: THE SOLAR ENERGY TAX SHELTER	127
4.	Damages for Negligent Misrepresentation	128
5.	Defenses and Other Obstacles to Recovery	129
a.	Comparative Negligence	129
C.	STRICT LIABILITY FOR MISREPRESENTATION	129
1.	Sale, Lease, and Exchange Transactions	129
2.	Misrepresented Products That Cause Physical Harm	132
D.	CONSTRUCTIVE FRAUD	133
	PROBLEM 2-15: THE LEAKY BASEMENT	138
E.	REVIEW	139

Chapter 3 DEFAMATION 149

A.	TRADITIONAL RULES AND CONSTITUTIONAL TRANSFORMATION	152
B.	LIBEL AND SLANDER	155
C.	WHAT STATEMENTS ARE DEFAMATORY?	157
1.	Disgrace Is Essential	157
2.	Defamatory in Whose Eyes?	160
3.	Rules of Construction	161
4.	Pleading Extrinsic Facts to Prove Defamation	164
	PROBLEM 3-1: THE TEENAGE SEX EPIDEMIC	164
D.	FALSITY REQUIREMENT	165
1.	Assertion of Fact	165
a.	<i>Milkovich v. Lorain Journal Co.</i>	165
b.	Applying <i>Milkovich</i>	171
	PROBLEM 3-2: THE EX-GOVERNOR'S DIVORCE	175
2.	Defamation Based on Conduct	176
3.	Substantial Truth	176
E.	COLLOQUIUM REQUIREMENT: "OF AND CONCERNING THE PLAINTIFF"	179
1.	Group Defamation	180
2.	Fictional Portrayals	182
3.	Institutional Plaintiffs	182
4.	Criticism of Ideas	184
5.	Defamation of the Dead	184
6.	Unintended Reference to the Plaintiff	184
	PROBLEM 3-3: THE POOR BAR PASS RATE	185
F.	PUBLICATION	185

Table of Contents

1.	“Compelled” Self-Publication	186
2.	Distributors of Defamatory Publications	189
3.	Statements on the Internet	189
4.	Intra-Entity and Fellow Agent Communications	190
	PROBLEM 3-4: THE BOTCHED COVER LETTER	190
G.	FAULT AS TO FALSITY UNDER CONSTITUTIONAL PRINCIPLES	191
1.	Category I: Public Officials and Public Figures Suing with Respect to Matters of Public Concern	191
a.	Strict Liability at Common Law	191
b.	<i>New York Times v. Sullivan</i>	192
c.	Who Is a Public Official?	198
d.	Treating Public Figures the Same as Public Officials	199
	PROBLEM 3-5: THE LAW CLERK AT THE STATE SUPREME COURT	199
e.	Proving “Actual Malice”	201
(1)	The Meaning of “Actual Malice”	201
(2)	Standard of Proof and Judicial Review	204
(3)	Applying Supreme Court Principles	204
(a)	Example: <i>Freedom Newspapers of Texas v. Cantu</i>	204
	PROBLEM 3-6: THE RACIAL PROFILING STORY	210
2.	Category II: Private Persons Suing with Respect to Matters of Public Concern	211
a.	<i>Gertz v. Robert Welch, Inc.</i>	212
b.	Applying the <i>Gertz</i> standards	217
c.	Defamation in Politics	222
	PROBLEM 3-7: THE DEFAMED TELEMARKETER	223
3.	Category III: Anyone Suing with Respect to Matters of Private Concern	224
a.	<i>Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.</i>	224
b.	Distinguishing Private Concern from Public Concern	226
(1)	Example: <i>Quigley v. Rosenthal</i>	229
c.	Doubts About Presumed Damages Today	232
	PROBLEM 3-8: THE FIRED PROFESSOR	233
H.	DAMAGES	234
1.	Emotional Distress	234
2.	Limitations on Punitive Damages	237
	PROBLEM 3-9: THE ALUMNI MAGAZINE	238
I.	DEFENSES AND OBSTACLES TO RECOVERY	238
1.	The Communications Decency Act of 1996	238
a.	The Congressional Language	239
b.	Internet Service Providers and Distributor Liability	242
c.	Website Operators	244

Table of Contents

d.	Individual “Users” of the Internet	244
e.	Anonymous Postings on the Internet	247
(1)	Example: <i>Krinsky v. Doe No. 6</i>	247
	PROBLEM 3-10: THE SBA SURVEY	251
f.	Exceptions to Communications Decency Act Immunity	252
(1)	Example: <i>Barnes v. Yahoo! Inc.</i>	252
g.	Internet Publications and Foreign Libel Laws	257
2.	Retraction Statutes	258
	PROBLEM 3-11: THE DANGEROUS SCHOOL TEACHER	259
3.	Absolute Privileges	260
a.	Judicial Proceedings Privilege	260
(1)	Example: <i>Cassuto v. Shulick</i>	263
(2)	Quasi-Judicial Proceedings	265
(3)	Limits of the Judicial Proceedings Privilege	269
	PROBLEM 3-12: THE ACCUSED CATERER	271
b.	Legislative and Executive Branch Absolute Privileges	272
c.	Westfall Act and Federal Officers and Employees	274
d.	Other Absolute Privileges	277
	PROBLEM 3-13: THE BAR ADMISSION APPLICANT	278
4.	Qualified Privileges	289
a.	Privileges of Employers and Employees	280
b.	Fair Comment	282
c.	Abuse of Qualified Privileges	284
	PROBLEM 3-14: THE SUSPECTED PLAGIARIST	285
5.	Fair Report Privilege	286
	PROBLEM 3-15: THE EMPLOYER WHO SUBORNED PERJURY	292
6.	Neutral-Reportage Privilege	294
7.	SLAPP Laws (Strategic Lawsuits Against Public Participation)	294
8.	Statutes of Limitations	296
a.	The Single-Publication Rule	297
(1)	Application to Internet Publications	297
	PROBLEM 3-16: THE NEWSPAPER’S ONLINE ARCHIVE	300
9.	The Libel-Proof Plaintiff Doctrine	301
10.	The Employment-at-Will Doctrine	303
11.	Separation of Church and State	304
	PROBLEM 3-17: THE ERRONEOUSLY DISBARRED ATTORNEY	304
J.	REVIEW	305

Chapter 4 INVASION OF PRIVACY 309

A.	OVERVIEW	311
B.	DISCLOSURE OF PRIVATE FACTS	313

Table of Contents

1.	Liability for Telling the Truth	314
2.	Private Versus Public	317
	PROBLEM 4-1: THE UNFORTUNATE FOOTBALL PLAYER	319
3.	Publicity Versus Publication	320
a.	In General	320
b.	Two Types of Publicity	321
(1)	Example: <i>Yath v. Fairview Clinics, N.P.</i>	321
c.	Special Relationship Exception	324
d.	Publicity in the Twenty-First Century	324
	PROBLEM 4-2: THE ADULT BOOKSTORE PATRON	326
4.	Highly Offensive to a Reasonable Person	326
5.	Not of Legitimate Concern to the Public	328
a.	In General	329
b.	Limits on “Legitimate Public Interest.”	330
	PROBLEM 4-3: THE ABORTION CLINIC PROTESTERS	332
6.	Damages	333
7.	Special Issues	334
a.	Actions Against Churches	334
b.	Waiver	334
c.	Consent	334
d.	The Disclosure Tort and Open Records Laws	336
e.	Relatives of Deceased Family Members	337
f.	Statutory Rights Relating to Disclosure of Private Facts	338
	PROBLEM 4-4: THE ABUSIVE TEACHER	338
C.	INTRUSION UPON SECLUSION OR PRIVATE AFFAIRS	339
1.	Intentional Intrusion, Physical or Otherwise	340
a.	Culpability	340
	PROBLEM 4-5: THE STOLEN LAPTOP	342
b.	Actionable Intrusions	342
c.	Conduct Not Amounting to Intrusions	345
2.	Solitude, Seclusion, and Private Affairs	346
	PROBLEM 4-6: THE NAKED PHOTOS	348
a.	Privacy in the Workplace	348
(1)	Example: <i>Hernandez v. Hillsides, Inc.</i>	348
b.	Privacy in Marriage	350
(1)	Example: <i>In re Marriage of Tigges</i>	350
3.	Highly Offensive to a Reasonable Person	352
	PROBLEM 4-7: THE OFFICE WITH THE HIDDEN CAMERA	353
4.	Damages	354
5.	Special Issues	354
a.	First Amendment Considerations	354

Table of Contents

b.	Consent	354
c.	Proximate Causation	356
	PROBLEM 4-8: THE SALESMAN AT THE PHYSICAL EXAM	357
D.	FALSE LIGHT	357
1.	Defamation Distinguished	359
a.	Judicial Reluctance to Recognize False Light	360
	PROBLEM 4-9: THE TEENAGE RIFT	362
2.	Constitutional Limitations	363
a.	Actual Malice or Other Fault	363
b.	Provably False Assertion of Fact	365
3.	Publicity	367
4.	Highly Offensive to a Reasonable Person	369
5.	Special Issues	370
a.	Statutes of Limitations	370
	PROBLEM 4-10: THE ALTERED WORKFORCE PHOTOGRAPH	371
6.	Review	372
E.	APPROPRIATION OF NAME OR LIKENESS	373
1.	Name, Likeness, or Other Indicia of Identity	374
2.	Appropriation for Commercial Benefit	377
a.	Use for Purposes of Trade	378
	PROBLEM 4-11: THE FIRED FERRARI SALESMAN	379
b.	Activities Not Included in Purposes of Trade	379
(1)	First Amendment Protection for News & Entertainment	379
(a)	Broad Range of Protected Expression	380
(b)	Actual Malice and Noncommercial Speech	385
(2)	Limits on Newsworthiness and Public Interest	386
(a)	Lack of Artistic Relevance	386
(b)	Lack of a Transformative Element	387
(c)	Example: <i>Toffoloni v. LFP Publishing Group, Co.</i>	387
c.	Monetary Relief	391
d.	Injunctive Relief	391
	PROBLEM 4-12: THE SUBWAY HERO	392
3.	Appropriation for Noncommercial Benefit	392
4.	Celebrities	393
a.	Persons Playing Fictional Characters	393
b.	Deceased Celebrities	393
5.	Defenses	395
a.	Communications Decency Act	395
b.	Statutory Authorization	397
c.	Single-Publication Rule	397
	PROBLEM 4-13: THE NIGHTCLUB BENEFIT	398