

CASES AND MATERIALS ON
TORTS
Second Edition

John L. Diamond

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CASES AND MATERIALS ON
TORTS
Second Edition

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*With love to my wife, Lucia,
my son, Danny,
and my mother, Rhoda,
and in loving memory of my father,
Monroe Thomas Diamond.*

*

Acknowledgments to the Second Edition

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*

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Preface

Since there are already a large number of excellent tort casebooks available to law professors and students, I thought I should briefly outline the contributions I hope this book can make.

The casebook strives to invigorate the study of intentional torts by going beyond the traditional personal injury approach. Battery is considered not simply in its traditional personal injury context, but also in its increasing application in environmental litigation. Students are presented with a second-hand smoke case and another case of university students suing for battery after being exposed to radiation on a field trip.

False imprisonment is studied as it interacts with malicious prosecution and abuse of process. Students consider this interaction in a provocative case in which a university arranges a sham mental commitment to keep a first year student from dropping out of school. The important role of these torts in defining society's relative permissiveness toward litigation is explored along with possible trends toward expanding the torts.

The torts of intentional interference with contractual and economic relations, which almost all students will encounter in whatever field of practice (e.g. corporate, entertainment, public interest) they ultimately choose, are introduced in the basic intentional tort section. The torts are considered in contexts ranging from a lawyer losing his client, the case that nearly bankrupt Texaco, and the potential liability of an environmental public interest group for encouraging a boycott. The notes articulate the issues posed by the increasing pervasiveness of these economic torts.

After a brief introduction to the highly limited tort of assault, and its historical recognition of psychological harm as damage, the tort of intentional infliction of mental distress is considered as it applies in different contexts including sexual harassment. The civil case prompting President Clinton's impeachment is included as a principal case.

Wrongful termination is briefly considered in one principal case that raises issues of when tort law should overrule a contractual relationship and provide potential punitive damages. Similarly, another principal case introduces tortious breach of the covenant of good faith and fair dealing and, in the context of a plaintiff dependant on his insurance company, explores when, if ever, tort remedies may need to supplement a contract remedy. Intentional misrepresentation is explored in a case brought by consumer advocate Ralph Nader, and in a lawsuit against the tobacco industry. The necessity defense is considered in the context of the Katrina hurricane.

The negligence section provides focus on current issues confronting tort law and includes cases concerning parental liability for failure to prevent a child from committing homicide and mental distress for exposure

to toxic pollutants. The O.J. Simpson case is utilized to help illustrate wrongful death issues. Contemporary issues in causation including medical uncertainty, informed consent, and environmental issues are explored. Negligence is critiqued from feminist, economic, and other perspectives. The products liability section includes cases addressing tobacco liability and changes to the law proposed in the new Restatement (Third).

Statutory replacements to torts including workers' compensation and no-fault are available for exploration. No-fault is compared with the traditional torts regime under perspectives ranging from corrective justice to economic efficiency. Defamation and privacy sections emphasize new approaches utilized by litigants to attempt to impose media liability. Reprints from pages of the *National Enquirer* and *New York Times* are included to help illustrate defamation controversies. Special issues related to internet defamation are also considered. Trespass and nuisance are treated together in the context of environmental litigation.

Most importantly, cases (both new and classics) have been selected for their teachability and stimulation for students. Notes are straightforward and designed to allow professors freedom to explore policy concerns rather than struggle with clarifying black letter law. Newspaper articles and editorials have been reprinted to emphasize the public controversies surrounding tort law decisions.

Torts is an incredibly exciting subject to study. Many fundamental social issues are confronted and addressed in tort decisions. Despite increasing statutory modifications, torts remain a common law subject empowering the courts (its judges, law clerks, and litigants) to formulate new rules and solutions for a society seeking to be more just. I hope these materials convey this excitement.

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