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CASES AND MATERIALS ON
TORTS

Fourth Edition



David W. Robertson, William Powers, Jr.,
David A. Anderson & Olin Guy Wellborn III

WEST

CASES AND MATERIALS ON TORTS

Fourth Edition

■ ■ ■

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610 Opperman Drive

St. Paul, MN 55123

1-800-313-9378

Printed in the United States of America

ISBN: 978-0-314-90687-8

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PREFACE

There are many intellectual prisms through which tort law can usefully be observed and evaluated. We believe that the best one for the purpose of learning tort law is the litigation perspective. We take note of the most prominent theoretical strands of tort jurisprudence in this book, but our emphasis is on the law as it appears today to the tort lawyer and judge, with all of its controversies, uncertainties, and complex dynamics. For one thing, litigators can access academic theory more readily and proficiently than pure theoreticians can access the realities of litigation. More importantly, we are committed to providing enough of a grounding in procedure, evidence, and litigation practices for the beginning student to make a start on understanding tort law in action. No one can become a good tort lawyer without a deep appreciation of the ways in which the substantive law of torts is influenced by the realities of litigation, such as difficulties of proof and division of responsibility between judge and jury.

The book's organizational scheme reflects our determination to present tort law as it appears to the litigator. The opening chapter is designed to give the beginning law student a primer on the procedural and tactical framework within which tort matters are resolved. After a concise survey of the distinctive world of intentional torts, negligence law is presented in the way lawyers approach it: elements of the *prima facie* case, defenses, and immunities. We then branch out to other bases of liability, such as strict liability and nuisance.

In every state, tort law today is an amalgam of common law (court-created law) and legislation. In this book we use cases to show the law in action, but we provide a number of representative tort statutes and require students to pay close and rigorous attention to the ways in which they are structured, worded, and (ultimately) applied.

The cases have been tightly edited in recognition of the fact that introductory tort courses, which once were allocated five or six semester hours, now rarely receive more than three or four. Omission of text is indicated by * * *. Footnotes and citations are omitted without indication. We have corrected minor errors of spelling, grammar, and punctuation without indication. Numbered footnotes within the opinions are the courts' and retain their original numbering, although a few may have been relocated to accommodate our editing of the text. Our own footnotes within the opinions generally are indicated with an asterisk and are signed "[Ed.]"

This edition pays significantly more attention to the Torts Restatements than previous ones. The Restatement (Third) of Torts: Products Liability (1998) is sometimes cited as Products Restatement. The Restatement (Third) of Torts: Apportionment of Liability (2000) is sometimes cited as Apportion-

ment Restatement. The Restatement (Third) of Torts: Liability for Physical and Emotional Harm (2010) is sometimes cited as Third Restatement.

We wish to thank other users of the previous editions, especially our good friend Professor William Childs, for very welcome comments and advice. We are also grateful for the assistance of Elizabeth Fitch, Tania Culbertson, Kathryn Hutchinson, and Angel Leffingwell.

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