

TORT LAW:
CASES, PERSPECTIVES, AND
PROBLEMS

REVISED
FOURTH EDITION



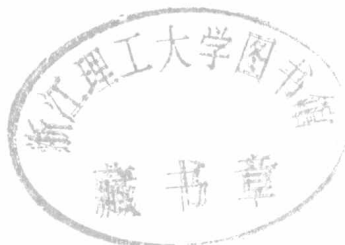
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**CASES, PERSPECTIVES,
AND PROBLEMS**

Revised Fourth Edition



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TORT LAW: **Cases, Perspectives, and** **Problems**

Revised Fourth Edition

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PREFACE

In this fourth edition we place increased emphasis on problems and perspectives as a means of promoting dialogue and thought about the critical issues in tort law which courts, legislatures, practitioners, and other participants in the legal system face today. This edition presents cases, statutes, relevant sections of Restatements (including proposed drafts), empirical data, and competing tort theories in a problem-oriented format that is designed to help students acquire a sophisticated understanding of tort law through active learning. Each of the substantive chapters contains informative notes and at least four problems in order to teach tort law doctrine and procedural issues through applied examples. Many chapters contain more than this minimum number of practice problems to help students hone their skill at applying legal principles to concrete fact patterns.

Chapter One sets the stage for the substantive chapters by introducing the basic concepts and methods of torts. The first chapter is unique among American torts casebooks in its examination of how the dominant twenty-first century tort theories influence judicial decision-making and scholarship. Being introduced to multiple perspectives helps students to understand the larger public policies underlying tort verdicts. Tort law is "a battleground of social theory." W. PAGE KEETON, ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 3, p.15 (5th ed. 1984). In order to be effective advocates, attorneys must understand the broader societal context such as the role of culture, economic efficiency, corrective justice, race, gender, and political conflict in order to be effective advocates.

The first chapter helps first-year students understand the complexities of tort doctrine by introducing the concepts and methods of tort law and provides examples and explanations of the key procedural steps in the life of a tort case from the complaint stage to the appellate level. The chapter includes basic information on how to read and brief appellate cases. This introductory chapter also describes legal and equitable remedies, the social functions of tort law, and explains how tort law interacts with civil procedure.

First year law students should not be studying tort cases in isolation. Students need to understand the broad public policies and tort politics underlying civil liability, not just the black-letter law. The seven editors of this casebook have diverse backgrounds and views that represent varying jurisprudential traditions. Judges, legislators, administrators, and juries face value conflicts when resolving tort claims. Case law analysis often draws upon concepts from other fields. Law and economics topics such as loss spreading, risk attitude, moral hazard, transactions costs, and cost minimization or social efficiency are useful tools in examining tort law. Race, class, gender, pragmatism, social justice, and other sociological factors play a role in many tort cases.

The cases, problems, and questions in this text present an opportunity to learn about the broader jurisprudential theories underlying all of tort law. The

six tort perspectives addressed in Chapter One are: (1) *Law and Economics*; (2) *Corrective Justice*; (3) *Critical Race Theory*; (4) *Critical Feminism*; (5) *Pragmatism*; and (6) *Social Justice*. These competing perspectives shed light on many of the appellate cases and issues raised in the text. Chapter One, for example, explains how the competing perspectives illuminate different views of the McDonald's hot coffee case, perhaps the most famous tort story in the past decade. The McDonald's case helps students understand the difference between the three bases of tort liability: intentional torts, negligence, and strict liability. The six tort perspectives also illuminate the appellate decision presented in the chapter, *Perez v. Wyeth Laboratories, Inc.*, 734 A.2d 1245 (N.J. 1999). Each of the subsequent chapters features cases, problems, and perspectives that can be easily adapted to either a traditional case-method or problem approach. The updated edition includes teachable cases both classic and new.

The overarching goal of this book is to provide students with the tools to go beyond passive memorization of case holdings and to feel empowered to be active participants in the discussion of the important issues raised in torts. This edition emphasizes the development of critical inquiry skills by offering students opportunities to utilize what they have learned in response to the problems and contemporary tort law debates raised in the notes in each chapter. The book builds upon the belief that students are best served by being exposed to more than the distilled view of law which often comes from reading appellate cases in a vacuum and without an understanding of the legal system and social environment that informs the legal context of decided cases.

Chapter One provides law students with an overview of the torts system and how this subject fits into the larger picture. It will help students understand the differences between tort law and their other first year subjects. Subsequent chapters invite the students to return to the competing perspectives and policy discussion offered in the first chapter while they are acquiring increased understanding of the substantive law and attaining competence in problem-solving.

The authors dedicate this book to the memory of Jerry J. Phillips, whose dynamic classroom and thoughtful writings took the broad perspective reflected in this edition. Jerry was one of the greatest tort teachers and scholars of his generation and the senior editor on the first three editions of this casebook. He encouraged his students and colleagues to see the interrelationship between concepts. Professor Phillips found ideas fascinating and he lived life with a smile on his face and in his heart.

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