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**BASIC TORT LAW**  
Cases, Statutes, and Problems

*Third  
Edition*



Wolters Kluwer  
Law & Business

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# BASIC TORT LAW

*Cases, Statutes, and  
Problems*

Third Edition

**Arthur Best**

Professor of Law  
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**Wolters Kluwer**

Law & Business

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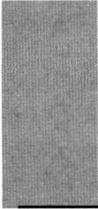
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# PREFACE

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This book takes a modern approach to teaching Torts. What makes its approach modern?

Without sacrificing the best of the classic cases, we frequently use *contemporary cases* with language, fact patterns, and issues that capture the interest of today's law school students. Our cases are edited to preserve and convey the language of the law, the factual context for judicial decisions, and the logic and precedents on which those decisions are based.

Although traditionally it has been thought that common law forms the foundation of tort law, increasingly we are coming to find that tort law is greatly influenced by legislative action, reflected in *statutory law*. Our book supplements judicial opinions with statutes, clearly delineated to support student understanding of salient topics.

Rather than inundating the student with a preponderance of undifferentiated exposition, we recognize that note material ought to be supplied judiciously with the aim of facilitating a deeper understanding of the cases and theory. We have gone one step further and organized our notes according to their function:

- *Introductory and transitional notes* promote close attention and deeper insight into doctrinal themes and issues
- "*Perspective Notes*" provide a window to seminal legal scholarship, critical analysis, and legal theory

Our students have responded with great enthusiasm to the *problem exercises* that we've created as a vehicle for analyzing the policy implications of doctrine. Increasingly, problem exercises are becoming a staple of pedagogy in newer course books. Ours are drawn for the greater part from actual cases, with citations provided. We have varied their difficulty, so students have the chance to work with both relatively easy and increasingly challenging examples.

When one looks at the interior of an older casebook, one often has difficulty discerning where a case ends and other material begins. We see no reason to add confusion to an amply challenging subject by obscuring the divisions between cases, notes, statutory material, and problem exercises. Generous use of heading levels and

consistently clear design elements make it a pleasure to navigate through *Basic Tort Law*.

We have modeled our writing style for this book on the clarity and directness that have always been the hallmarks of fine legal analysis and writing. As with the appearance of our pages, we hope that our readers will find that a straightforward writing style helps set the stage for effective learning.

This edition reflects the incorporation of suggestions from colleagues who have used earlier editions. It also contains added cases on the revised approach to duty and proximate cause adopted in the Restatement (Third) of Torts, and it offers expanded legal malpractice coverage; the latter may be of interest to professors who wish to respond to the recent Carnegie Report findings that students need more exposure to ethics issues and need better acculturation and professionalization. This edition also reflects changes in statutes and adds new cases intended to help improve students' understanding of "loss of a chance" and the consumer expectation test. It is our hope that colleagues will find these materials as stimulating to teach from as we have in our own classes. Even more important, we hope that students will enjoy our modern style of teaching, which uses clarity as a springboard for a deeper and more nuanced understanding of the law.

Arthur Best  
David W. Barnes

September 2010



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This work is the joint product of its two authors. We have ascribed authorship to “Arthur Best and David W. Barnes” because Arthur Best initiated the project and was responsible for some early decisions about its style and content, but we consider our contributions to be equal and to be reflected throughout the book. For their generosity in commenting on various parts of earlier versions of the manuscript, we thank Professors John Jacobi, Ahmed Bulbulia, Timothy Glynn, Tristin Green, Denis McLaughlin, Thomas Russell, Joyce Saltalamachia, Alexander Tsesis, and Edward Hartnett. We also thank Douglas Lipsky, Shlomo Singer, and Cynthia Wilson for work as research assistants.

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# **BASIC TORT LAW**

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# SUMMARY OF CONTENTS

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<i>Contents</i>	<i>ix</i>
<i>Preface</i>	<i>xxvii</i>
<i>Acknowledgments</i>	<i>xxix</i>
<b>Chapter 1</b> Introduction	1
<b>Chapter 2</b> Intentional Torts	15
<b>Chapter 3</b> Negligence: The Duty of Reasonable Care	91
<b>Chapter 4</b> Proving Breach	137
<b>Chapter 5</b> Legal Cause: Cause-in-Fact	175
<b>Chapter 6</b> Limits on Liability: Duty and Proximate Cause	223
<b>Chapter 7</b> Defenses	293
<b>Chapter 8</b> Apportionment of Damages	369
<b>Chapter 9</b> Professionals	417
<b>Chapter 10</b> Owners and Occupiers of Land	465
<b>Chapter 11</b> Special Duty Rules	513
<b>Chapter 12</b> Damages	581
<b>Chapter 13</b> Traditional Strict Liability	641
<b>Chapter 14</b> Products Liability	663
<b>Chapter 15</b> Trespass and Nuisance	739
<b>Chapter 16</b> Defamation	783
<b>Chapter 17</b> Alternatives to Litigation	841
<i>Table of Cases</i>	<i>871</i>
<i>Table of Statutes and Other Authorities</i>	<i>883</i>
<i>Index</i>	<i>893</i>



# CONTENTS

---

<i>Preface</i>	xxvii
<i>Acknowledgments</i>	xxix
<b>CHAPTER 1. INTRODUCTION</b>	<b>1</b>
<hr/>	
<b>I. In General</b>	<b>1</b>
<b>II. Categories of Tort Law</b>	<b>1</b>
<b>III. Organization of This Book</b>	<b>2</b>
<b>IV. Typical Stages of Tort Litigation</b>	<b>2</b>
<b>V. How Tort Law Works Now: An Empirical View</b>	<b>4</b>
<i>Michael J. Saks, Do We Really Know Anything about the     Behavior of the Tort Litigation System — And Why Not?</i>	4
<b>VI. How Tort Law Serves Society</b>	<b>8</b>
<i>Steven D. Smith, The Critics and the “Crisis”: A Reassessment     of Current Conceptions of Tort Law</i>	11
<b>CHAPTER 2. INTENTIONAL TORTS</b>	<b>15</b>
<hr/>	
<b>I. Introduction</b>	<b>15</b>
<b>II. Battery</b>	<b>15</b>
<b>A. Intent to Contact</b>	<b>16</b>
<i>Waters v. Blackshear</i>	16
<i>Polmatier v. Russ</i>	18
Perspective: Historical Developments	23

<b>B. Intending Contact That Is Harmful</b>	<b>23</b>
<i>Nelson v. Carroll</i>	23
Perspective: Judgments as a Matter of Law	27
<b>C. Intending a Contact That Is Offensive</b>	<b>28</b>
<i>Leichtman v. WLW Jacor Communications, Inc.</i>	28
<i>Andrews v. Peters</i>	29
Perspective: Motion for a Directed Verdict	31
<i>White v. Muniz</i>	31
<b>D. Damages for Intentional Torts</b>	<b>36</b>
<i>Taylor v. Barwick</i>	37
Perspective: Summary Judgment	39
<b>III. Assault</b>	<b>39</b>
<b>A. Intending Apprehension of Imminent Contact</b>	<b>40</b>
<i>Cullison v. Medley</i>	40
<i>Brower v. Ackerley</i>	42
Perspective: Motion to Dismiss	46
<b>B. Transfer of Intent Among People and Between Torts</b>	<b>46</b>
<i>Hall v. McBryde</i>	46
Perspective: Transferred Intent	49
<b>IV. Defenses to Assault and Battery</b>	<b>49</b>
<b>A. Consent</b>	<b>49</b>
<i>McQuiggan v. Boy Scouts of America</i>	50
Perspective: Who Proves Consent?	52
<i>Hogan v. Tavzel</i>	53
<i>Richard v. Mangion</i>	54
Statute: <i>Disturbing the Peace</i>	58
<b>B. Defense of Self and Others — The Proportionality Principle</b>	<b>59</b>
<i>Slayton v. McDonald</i>	59
<i>Young v. Warren</i>	62
Statute: <i>Use of Deadly Physical Force against an Intruder</i>	65
Statute: <i>Use of Force in Defense of a Person</i>	65
Statute: <i>Home Protection; Use of Deadly Force; Presumption of Fear of Death or Great Bodily Harm</i>	66
<b>C. Defense of Land and Personal Property</b>	<b>66</b>
<i>Woodard v. Turnipseed</i>	67
Statute: <i>Force in Defense of Property</i>	71
Statute: <i>Use of Force in Defense of Premises and Property (N.D.)</i>	72
Statute: <i>Use of Force in Defense of Premises or Personal Property (N.J.)</i>	72

<b>V. Infliction of Emotional Distress</b>	<b>73</b>
<b>A. Outrageousness</b>	<b>73</b>
<i>Zalnis v. Thoroughbred Datsun Car Co.</i>	73
<i>Strauss v. Cilek</i>	76
<b>B. Severe Emotional Distress</b>	<b>78</b>
<i>Miller v. Willbanks</i>	78
<b>C. Intent and Recklessness</b>	<b>82</b>
<i>Dana v. Oak Park Marina, Inc.</i>	82
Perspective: Frontiers of the Outrage Tort	84
<b>D. Transferred Intent for Infliction of Emotional Distress</b>	<b>85</b>
<i>Green v. Chicago Tribune Company</i>	85

---

**CHAPTER 3. NEGLIGENCE: THE DUTY OF REASONABLE CARE** **91**

---

<b>I. Introduction</b>	<b>91</b>
<b>II. The “Reasonable Person” Standard</b>	<b>93</b>
<b>A. Defining and Justifying the “Reasonable Person” Standard</b>	<b>93</b>
<i>Vaughan v. Menlove</i>	93
Perspective: Law and Gender	94
<i>Parrot v. Wells, Fargo &amp; Co. (The Nitro-Glycerine Case)</i>	95
Perspective: Social Costs and Benefits	97
<b>B. Reasonable Conduct as a Balancing of Costs and Benefits</b>	<b>97</b>
<i>McCarty v. Pheasant Run, Inc.</i>	98
Perspective: Law and Economics	101
<b>III. The Range of Application of the Reasonable Person Standard</b>	<b>102</b>
<b>A. Especially Dangerous Instrumentalities</b>	<b>102</b>
<i>Stewart v. Motts</i>	102
Perspective: Explicit and Implicit Overruling	106
<b>B. Emergencies</b>	<b>106</b>
<i>Myhaver v. Knutson</i>	106
<b>C. An Actor’s Knowledge and Skill</b>	<b>109</b>
<i>Cervelli v. Graves</i>	109
Perspective: The Reasonable Person Test and Juror Discretion	112
<b>D. Youth: Special Treatment for Minors</b>	<b>113</b>
<i>Robinson v. Lindsay</i>	113
Perspective: Fairness to Victims?	116
<i>Peterson v. Taylor</i>	116
<i>Statute: Liability of Parent or Guardian for Willful Destruction of Property by Infant Under 18</i>	119

<i>Statute: Parental Liability for Willful, Malicious or Criminal Acts of Children</i>	120
<i>Statute: Natural Guardian; Liability for Torts of Child</i>	120
<b>E. Physical and Mental Disabilities</b>	<b>121</b>
<i>Poyner v. Loftus</i>	121
<i>Creasy v. Rusk</i>	125
Perspective: Scientific Knowledge and Judges' Knowledge	129
<b>IV. Recklessness</b>	<b>130</b>
<i>Sandler v. Commonwealth</i>	130
Perspective: Recklessness in the Contexts of Neuroscience and Neuroeconomics	135
<b>CHAPTER 4. PROVING BREACH</b>	<b>137</b>
<hr/>	
<b>I. Introduction</b>	<b>137</b>
<b>II. Violation of a Statute</b>	<b>138</b>
<i>Martin v. Herzog</i>	138
<i>Thomas v. McDonald</i>	141
<i>Wawanesa Mutual Insurance Co. v. Matlock</i>	145
<i>Sikora v. Wenzel</i>	148
<i>Statute: Breach of Duty—Evidence of Negligence—Negligence Per Se</i>	153
<i>Statute: Presumptions Affecting the Burden of Proof</i>	154
<b>III. Industry Custom</b>	<b>154</b>
<i>The T.J. Hooper</i>	155
<i>Elledge v. Richland/Lexington School District Five</i>	156
Perspective: Compliance with Custom as “Only Some Evidence”	158
<i>Wal-Mart Stores, Inc. v. Wright</i>	159
<b>IV. Res Ipsa Loquitur</b>	<b>161</b>
<i>Byrne v. Boadle</i>	162
<i>Shull v. B.F. Goodrich Co.</i>	163
<i>Dover Elevator Co. v. Swann</i>	169
Perspective: Counter-Intuitive Statistical Likelihood of Negligence	172
<b>CHAPTER 5. LEGAL CAUSE: CAUSE-IN-FACT</b>	<b>175</b>
<hr/>	
<b>I. Introduction</b>	<b>175</b>
<b>II. Basic Cause-in-Fact: The But-for Test</b>	<b>176</b>
<i>Cay v. State of Louisiana, Department of Transportation and Development</i>	176

Perspective: But-for Cause and Toxic Substances	179
<i>Lyons v. Midnight Sun Transportation Services, Inc.</i>	180
Perspective: Moral Role of Causation	182
<b>III. Alternatives to the But-for Test</b>	<b>182</b>
<b>A. Reasons for Alternatives</b>	<b>182</b>
<b>B. Multiple Sufficient Causes</b>	<b>183</b>
<i>Kingston v. Chicago &amp; Northwestern Railway Co.</i>	183
<i>Brisboy v. Fibreboard Paper Products Corporation</i>	186
Perspective: Preemptive Causes	190
<b>C. Concert of Action</b>	<b>190</b>
<i>Shinn v. Allen</i>	191
<b>D. Alternative Liability</b>	<b>194</b>
<i>Summers v. Tice</i>	195
<i>Burke v. Schaffner</i>	198
Perspective: Alternative Liability	202
<b>E. Market Share Liability</b>	<b>202</b>
<i>Hymowitz v. Eli Lilly and Company</i>	202
Statute: <i>Infancy, Insanity</i>	208
Statute: <i>Actions to Be Commenced Within Three Years . . .</i>	208
Statute: <i>Certain Action to Be Commenced Within Three Years of Discovery</i>	208
Perspective: Shifting Burden of Scientific Proof	209
<i>Black v. Abex Corp.</i>	210
Perspective: Fungibility and Market Share Liability	214
<b>F. Liability for Lost Chance of Recovery or for Increased Risk of Eventual Harm</b>	<b>214</b>
<i>Matsuyama v. Birnbaum</i>	215
<i>Petriello v. Kalman</i>	219

---

**CHAPTER 6. LIMITS ON LIABILITY: DUTY AND PROXIMATE CAUSE** **223**

<b>I. Introduction</b>	<b>223</b>
<i>Palsgraf v. Long Island Railway Co.</i>	224
Perspective: Duty as a Question of Law	230
<b>II. Duty</b>	<b>230</b>
<i>Hegyes v. Unjian Enterprises, Inc.</i>	231
<i>Dykema v. Gus Macker Enterprises, Inc.</i>	233
<i>Graff v. Beard</i>	235
Statute: <i>Civil Liability for Social Hosts</i>	237

<i>Statute: Civil Liability of Persons Providing Alcoholic Beverages</i>	238
<i>Eisel v. Board of Education of Montgomery County</i>	238
<b>III. Proximate Cause</b>	<b>243</b>
<b>A. Introduction</b>	<b>243</b>
<b>B. Directness</b>	<b>244</b>
<i>In Re an Arbitration Between Polemis and Furness,</i> <i>Withy &amp; Co., Ltd.</i>	244
<i>Laureano v. Louzoun</i>	245
<i>Statute: Occupational Diseases; Proximate Causation</i>	247
Perspective: The Necessity of a Proximate Cause Doctrine	247
<b>C. Substantial Factor</b>	<b>248</b>
<i>American Truck Leasing, Inc. v. Thorne Equipment</i> <i>Company</i>	248
<i>Chelcher v. Spider Staging Corp.</i>	250
<i>Taylor v. Jackson</i>	252
<b>D. Foreseeability</b>	<b>255</b>
1. Linking Liability to Foreseeability	255
<i>Tieder v. Little</i>	255
Perspective: Who Decides Whether a New Cause of Action Is Valid?	259
2. Relating the “Eggshell Plaintiff” Rule to a Foreseeability Analysis	259
<i>Schafer v. Hoffman</i>	260
3. Difficulty in Applying Foreseeability Analysis	264
<i>Petition of Kinsman Transit Co.</i>	264
<b>E. The Restatement (Third) Approach</b>	<b>268</b>
<i>Thompson v. Kaczinski</i>	269
<i>Behrendt v. Gulf Underwriters Insurance Co.</i>	272
<b>F. Combining Approaches</b>	<b>276</b>
<i>Statute: Legislative Findings; Proximate Cause</i>	277
<i>Statute: Proximate Cause; Standard of Proof</i>	277
<b>G. Intervening and Superseding Forces</b>	<b>278</b>
1. In General	278
2. When Is an Intervening Force Treated as Superseding?	279
<i>Price v. Blaine Kern Artista, Inc.</i>	279
<i>McClenahan v. Cooley</i>	280
<i>Statute: Proximate Cause</i>	284
Perspective: Superseding Causes and the Direct Cause Test	284
3. Negligent Treatment of a Plaintiff’s Injury: Intervening or Superseding?	285
<i>Weems v. Hy-Vee Food Stores, Inc.</i>	285
<i>Corbett v. Weisband</i>	287