

Studies in American Tort Law

Fifth Edition

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Studies in American Tort Law

Fifth Edition

Vincent R. Johnson

PROFESSOR OF LAW
ST. MARY'S UNIVERSITY



CAROLINA ACADEMIC PRESS

Durham, North Carolina

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ISBN: 978-1-61163-165-4
LCCN: 2013935168

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

To the happy memory my parents,
Anna Ruth Johnson and Harry P. Johnson,
for providing a world of opportunity and inspiration

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Fifth Edition Preface and Acknowledgments

The fifth edition of *Studies in American Tort Law* reflects the highly dynamic nature of the torts field. The book includes thirty-one new principal cases, hundreds of citations to recent judicial opinions and statutes, and references to the Restatement, Third, of Torts: Liability for Physical and Emotional Harm (2010 and 2012).

A Power Point file for *Studies in American Tort Law* is available to law professors adopting the book. Contact: vjohnson@stmarytx.edu. Students may wish to use the companion volume: Vincent R. Johnson, *Mastering Torts: A Student's Guide to the Law of Torts* (Carolina Academic Press, 5th ed. 2013).

Alan Gunn was my excellent co-author on the first three editions of *Studies in American Tort Law* (1994, 1998, and 2005). Following the completion of the third edition, he assumed emeritus status at the University of Notre Dame. Alan's contributions to the text are still very much a part of this book. His language informs the discussion of virtually every important topic. In particular, *Studies in American Tort Law* continues to be enriched by Alan Gunn's lucid explorations of how law-and-economics scholarship sometimes illuminates the study of tort issues. Many of those discussions are now set off as separate notes on "Economic Analysis" bearing his name.

Work on the fifth edition was ably assisted by several students at St. Mary's University School of Law in San Antonio, Texas, including Steven Barnett, Eric Campolo, Brandon Clem, Warren Craig, Matthew Decker, Justin Knodle, Leo R. Morales, Karen Oster, and Chance Shoemaker.

I am deeply grateful to the persons mentioned above for their work on the fifth edition, and to St. Mary's University School of Law for supporting this project. Frequent discussions with my faculty colleague, Chenglin Liu, have enhanced in numerous ways the manuscript for this book and the teacher's manual.

Proofreading the page proofs for a book this size—well over a half million words—is a daunting task. That phase of the work was ably assisted by several upper-level students at St. Mary's University (notably Eric Campolo, Karen A. Oster, Kelly O'Neil, Leo R. Morales, Steven Barnett, and Theresa Clarke), as well as by a large group of volunteers from my first-year Torts II class. The latter group included: Hershall L. Brown Jr., Jennifer Bruning, Trevor Calligan, Jule Chung, Lindsay Forbes, Rosemary Gonzalez, Drew Grant, Chris Guymon, Clement Hayes, Kenny Yu-Sung Lam, Amber Macias, Leslie Roussev, Edgar Enrique Quijada Mendez, Michael J. Rogers, Jr., Miguel A. Sanchez, Michael R. Sauls, James Alexander Smith, Sarah Soret, and Bill Woolsey. In particular, Amy Bresnen, Chad Christenson, Taylor Jenkins, Maggie Langley, Bruce A. Minor, and Melinda Urigas addressed the work with alacrity and were especially helpful.

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Since before this project began, I have enjoyed the friendship and counsel of my wife Jill Torbert, an attorney whose intelligence, independence, and integrity bring honor to the practice of law.

Vincent R. Johnson
St. Mary's University School of Law
San Antonio, Texas
February 18, 2013

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First Edition Preface

Tort law is a prime battleground in the ongoing debate over social policy. This book attempts to illuminate that debate through the use of cases and materials that clearly reflect not only the current rules on injury compensation, but also the policy choices underlying those rules.

Lawyers must know what the law is now, and how to apply it to the facts of a client's case. But they must also understand public policy, if they are to effectively participate in the important (and inevitable) legal processes through which existing rules are continually challenged, reaffirmed, discarded, and replaced.

As an instructional text, *Studies in American Tort Law (SATL)* does not speak from an ideological perspective. In that sense, the book is intended to be both “balanced” and “mainstream.” Within a clear doctrinal framework (which is undoubtedly influenced by the work of the late William Prosser), a range of views is presented, reflecting dominant themes and issues in tort law, such as fault, proportionality, deterrence, internalization of costs, and distribution of losses. These views are then linked, juxtaposed, and explored with the purpose of assisting students in the task of assessing the merits and limitations of these positions. In the end, however, the evaluation of the public policies which have shaped the current tangle of rules on liability for personal injury and property damage is left to the reader. This book attempts to promote a better understanding of the values advanced and the interests sacrificed by the adoption or application of particular rules in given contexts.

In terms of organization, SATL moves from simple concepts and elementary rules to ones that are more complex or elusive. The book has a strong doctrinal framework and strives for clarity, to the extent that clarity is possible, on the assumption that if simple points are dealt with efficiently, time can then be profitably spent on difficult or uncertain questions.

In selecting or writing material for the book, students and professors have been foremost in mind. At each juncture, the test has been whether the selection is both readable and teachable. The goal has been to include material that is vivid, provocative, and worthy of the reader's time.

A few features of SATL deserve mention. First, although cases are used as the principal vehicle for teaching torts, a special effort has been made to integrate statutory law into the text. In particular, careful attention has been paid to the give-and-take process through which judge-made law and legislation influence one another. Second, the significance of liability insurance is highlighted, for students must come to appreciate the critical role that insurance (or the lack of it) plays in the resolution of real cases. Third, “ethics notes” have been included throughout the book for the purpose of sensitizing students to the difficult ethical questions that practicing lawyers face each day. These notes demon-

strate, in part, that lawyers are subject to higher standards than persons in other callings. Fourth, the materials in SATL explore a number of issues associated with the law and feminism movement. These issues raise questions of social justice that should be of concern to all lawyers.

SATL introduces students to—but is careful not to overwhelm them with—law and economics. At appropriate junctures in SATL, economic issues are explored, as in connection with the negligence balancing test and the materials discussing computation of damages, liability for nuisance, and strict liability. The goal is not to view all of tort law through an economic lens, but to employ economic analysis when it is particularly useful. This approach allows professors from the law-and-economics “school” to use the materials in the text as a starting point for classroom discussions; those faculty members who eschew economic analysis can allow the economic commentary to stand on its own, without need for in-class elaboration.

By emphasizing doctrinal clarity and the role of public policy, SATL seeks to afford professors maximum flexibility in teaching the law of torts. At the same time, it endeavors to ensure that all students develop a firm foundation in both what the law is and what it can be. We hope that SATL will prove to be a book that can be productively taught by professors and readily grasped by students.

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