

SKILLS AND VALUES: TORTS

LEXISNEXIS LAW SCHOOL PUBLISHING ADVISORY BOARD

William Araiza

Professor of Law
Brooklyn Law School

Lenni B. Benson

Professor of Law & Associate Dean for Professional Development
New York Law School

Raj Bhala

Rice Distinguished Professor
University of Kansas, School of Law

Ruth Colker

*Distinguished University Professor & Heck-Faust Memorial
Chair in Constitutional Law*
Ohio State University, Moritz College of Law

David Gamage

Assistant Professor of Law
UC Berkeley School of Law

Joan Heminway

College of Law Distinguished Professor of Law
University of Tennessee College of Law

Edward Imwinkelried

Edward L. Barrett, Jr. Professor of Law
UC Davis School of Law

David I. C. Thomson

LP Professor & Director, Lawyering Process Program
University of Denver, Sturm College of Law

Melissa Weresh

Director of Legal Writing and Professor of Law
Drake University Law School

SKILLS AND VALUES: TORTS

Christine D. Ver Ploeg

Professor of Law

William Mitchell College of Law

Peter B. Knapp

Professor of Law and Co-Director of Clinics

William Mitchell College of Law

Library of Congress Cataloging-in-Publication Data

Ver Ploeg, Christine D.

Skills and values. Torts / Christine D. Ver Ploeg, Peter B. Knapp.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-4224-2146-8 (soft cover : alk. paper) 1. Torts—United States—Problems, exercises, etc. I. Knapp, Peter B., 1958- II. Title.

KF1250.Z9V47 2011

346.7303076—dc22

2011013560

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc. Copyright © 2011 Matthew Bender & Company, Inc., one of the LEXIS Publishing companies. All Rights Reserved.

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material exceeding fair use, 17 U.S.C. § 107, may be licensed for a fee of 10¢ per page per copy from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

Editorial Offices

121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800

201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200

www.lexisnexis.com

MATTHEW  BENDER

(Pub.3257)

Table of Contents

| | |
|--|-----------|
| Chapter One: Battery and Assault | 1 |
| Overview | 1 |
| Introduction | 1 |
| Exercise Case File: Marcel Maxfield..... | 2 |
| Exercise Task One: Preparing for the Meeting with Mr. Maxfield | 3 |
| Exercise Task Two: Next Steps | 3 |
| Chapter Two: False Imprisonment and the Shopkeeper’s Privilege..... | 5 |
| Overview | 5 |
| Introduction..... | 5 |
| Exercise Case File: Wilmar Electronics..... | 7 |
| Exercise Task One: Preliminary Steps..... | 8 |
| Exercise Task Two: Advising Ms. Wilmar About a New Policy | 9 |
| Chapter Three: Intentional Torts, Putting it Together..... | 11 |
| Introduction..... | 11 |
| Exercise Case File | 12 |
| Your Role..... | 13 |
| Assignment | 14 |
| Exercise Task One:..... | 15 |
| Exercise Task Two:..... | 15 |
| The Hearing: | 15 |
| Practice Tips..... | 16 |
| Chapter Four: The Reasonable Person | 19 |
| Overview | 19 |
| Introduction..... | 19 |
| Exercise Case File: Pendergrass v. Dillard | 20 |
| Exercise Task One: Preliminary Steps..... | 21 |
| Exercise Task Two: Thinking Beyond the Law..... | 22 |

Chapter Five: Risks and Burdens..... 23

| | |
|--|----|
| Introduction..... | 23 |
| The Risk-Utility Formula..... | 23 |
| <i>When is a risk unreasonable?</i> | 23 |
| <i>Probability of injury</i> | 24 |
| <i>Magnitude of injury</i> | 24 |
| <i>Burden of taking precautions</i> | 24 |
| Exercise Case File..... | 25 |
| Your Role..... | 28 |
| Assignment | 28 |
| Exercise Task One:..... | 28 |
| <i>Discussion of the Law</i> | 28 |
| <i>Discussion of the Facts</i> | 29 |
| Exercise Task Two: Deposition goals | 29 |
| Exercise Task Three: Deposition questions..... | 29 |
| Exercise Task Four: Preparation of client | 30 |
| Exercise Task Five: Ethical considerations | 30 |
| Additional Information | 30 |
| Task 2: Preparing for the Depositions: | |
| General Guidelines | 30 |
| Task 3: Opposing Counsel's Questioning | 31 |
| Task 4: Preparing Your Client: The Theory of the Case..... | 31 |
| Task 5: Ethical and Strategic Considerations..... | 31 |

Chapter Six: Causation: Cause in Fact, Proximate Cause, Superseding Causes 33

| | |
|-------------------------------|----|
| Introduction..... | 33 |
| Exercise Case File | 34 |
| Your Role..... | 36 |
| Assignment | 37 |
| Exercise Task One:..... | 38 |
| Exercise Task Two:..... | 44 |
| Material facts..... | 44 |
| <i>Applying the law</i> | 44 |
| Exercise Task Three: | 47 |

Chapter 7 Negligence, Putting it Together 51

| | |
|--------------------------------|----|
| Introduction..... | 51 |
| Exercise Case File | 51 |
| <i>Background</i> | 51 |
| <i>This Case</i> | 52 |
| <i>Litigation status</i> | 54 |
| Your role..... | 54 |

| | |
|--|-----------|
| Assignment | 55 |
| Exercise Task One:..... | 55 |
| Exercise Task Two:..... | 56 |
| Exercise Task Three:..... | 57 |
| Exercise Task Four:..... | 59 |
| Chapter 8 Landowner Liability | 61 |
| Overview | 61 |
| Exercise Case File: Funchess v. Cecil Newman Corporation | 62 |
| Exercise Task One: Preparing for the Argument on Law and Policy..... | 62 |
| Exercise Task Two: Conducting the Argument | 70 |
| Chapter 9 Governmental Liability and Duty to Protect | 71 |
| Introduction..... | 71 |
| Exercise Case File | 73 |
| <i>Litigation status</i> | 74 |
| Your Role..... | 74 |
| Assignment | 74 |
| Exercise Task: | 75 |
| Chapter 10 Professional Malpractice..... | 77 |
| Overview | 77 |
| Introduction..... | 77 |
| The Duty of Informed Consent | 77 |
| Exercise Case File: Trooyer v. Julien..... | 78 |
| Exercise Task One: Evaluating the claim | 79 |
| Exercise Task Two: Rewriting the Law..... | 80 |
| Chapter 11 Negligence Special Topics, Putting it Together | 81 |
| Introduction..... | 81 |
| Exercise Case File | 81 |
| <i>Litigation status</i> | 84 |
| Mediation | 84 |
| Your Role..... | 85 |
| Assignment | 85 |
| Exercise Task One:..... | 86 |
| Exercise Task Two:..... | 87 |
| Exercise Task Three:..... | 87 |
| Exercise Task Four:..... | 88 |
| Exercise Task Five:..... | 88 |
| Exercise Task Six:..... | 88 |

| | | |
|---|--|-----------|
| Chapter 12 | Design and Warning Defects..... | 89 |
| Overview | | 89 |
| Introduction..... | | 89 |
| Design and Warning Defects | | 89 |
| Exercise Case File: Urbom v. The Grind | | 90 |
| Exercise Task One: Assessing the Claim | | 91 |
| Exercise Task Two: Evaluating the Proposed Changes..... | | 92 |
| Exercise Task Three: Explaining the System..... | | 94 |