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# MASTERING TORTS

## SIXTH EDITION

A STUDENT'S GUIDE TO  
THE LAW OF TORTS

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CAROLINA ACADEMIC PRESS

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ISBN: 978-1-5310-0912-0  
e-ISBN: 978-1-5310-0913-7  
LCCN: 2018949112

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Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
(919) 489-7486  
FAX (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

To the memory of  
Thomas E. Fairchild (1912-2007),  
whose service on the Wisconsin Supreme Court  
and the United States Court of Appeals for the Seventh Circuit  
exemplified the best traditions of American justice



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# PREFACE

## TO THE SIXTH EDITION

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*Mastering Torts* is a book for law students – although others may find it useful as well. This work attempts to present, in a clear narrative form, a doctrinal overview of the American law of torts. By clarifying the basic rules governing tort liability and illuminating their application to specific fact situations, *Mastering Torts* provides the reader with a firm understanding of the main features of the American tort system.

Concise descriptions of more than three hundred and fifty cases are used as illustrations in *Mastering Torts*. Most of those cases were decided with court opinions which appear, in edited form, in the sixth edition of *Studies in American Tort Law* (SATL).<sup>1</sup> Law students who are using SATL in their classes will find *Mastering Torts* to be particularly helpful, for it clarifies how each of the principal cases in SATL fits into the larger legal scheme for providing compensation to victims of personal injury or property damage. Students who are using other casebooks will also benefit from *Mastering Torts* since it is organized along traditional subject lines and follows a mainstream approach to the task of learning this area of the law.

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<sup>1</sup> VINCENT R. JOHNSON AND CHENGLIN LIU, *STUDIES IN AMERICAN TORT LAW* (6th ed. 2018) (Carolina Academic Press).

No law student should think that *Mastering Torts* is a substitute for reading and briefing assigned cases before class, or for the process of consolidating one's knowledge of torts by reviewing notes and materials after class and building an outline of the subject. Rather, *Mastering Torts* is intended to supplement those efforts by providing a brief hornbook-style treatment of the law of torts.<sup>2</sup> One possible approach is for a student to read the relevant sections of *Mastering Torts* before preparing class assignments, because it is usually easier to reach a destination if one knows where one is going. Another approach is to read *Mastering Torts* after class and before starting to work on an outline, as a means for clarifying the material covered in prior readings and class discussions.

There are many important issues which *Mastering Torts* does not address. For example, the role of public policy in the shaping and application of tort rules is only lightly explored, and many important perspectives on tort law (such as those offered by the law-and-economics school) are almost entirely omitted. The decision not to deal with those subjects in this book does not mean they are unimportant. Rather, it reflects a judgment that, for most students, the best place to begin the study of tort law is with a clear understanding of the current rules. Once that foundation is in place, students are better able to undertake the more-challenging task of considering crucial questions about what the law should be.

In the end, the process of mastering tort law is a matter of personal effort. As John W. Davis, a twentieth-century lawyer-statesman, once said:

What [one] does for [oneself] is more important than what any school can do.... If you work hard, you'll come out quite [a] good lawyer.... After all, there are only two classes of lawyers in the world – those who work and those who do not.

This book is intended to help those law students who are willing to work to become good lawyers by making their tasks easier and more effective.

I am deeply grateful to Dean Stephen M. Sheppard and St. Mary's University School of Law for supporting this project. Frequent discussions with my faculty colleague, Professor Chenglin Liu, my co-author on the

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<sup>2</sup> Authority for the legal propositions advanced in MASTERING TORTS can be found in the sixth edition of STUDIES IN AMERICAN TORT LAW, which cites more than 2,000 cases. SATL follows the same pattern of organization as MASTERING TORTS.

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sixth edition of *Studies in American Tort Law*, have enriched the text of this book.

This book has Chinese counterparts. A translation of the fifth edition of *Mastering Torts* was published by China Renmin University Press in 2017.<sup>3</sup> Three other translations of the second and third editions of *Mastering Torts* were published earlier by China Renmin University Press in Beijing and by Wu-Nan Books in Taipei, Taiwan.

*Mastering Torts* is dedicated to the Honorable Thomas E. Fairchild, a judge for whom I had the pleasure of clerking many years ago when he was Chief Judge of the United States Court of Appeals for the Seventh Circuit. As a jurist and member of the Council of the American Law Institute, Judge Fairchild, over the course of five decades, made a major contribution to American law. He greatly influenced the young lawyers who worked in his chambers by providing an example of how a member of the legal profession can combine compassion with competence and professionalism with good humor. Thomas Fairchild served as a judge in the best traditions of the Common Law.

Excerpts from the various Restatements of the Law cited in the book are reproduced with the permission of the American Law Institute, which holds the copyrights to those works.<sup>4</sup>

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<sup>3</sup> VINCENT R. JOHNSON, *MASTERING TORTS: A STUDENT'S GUIDE TO THE LAW OF TORTS* (Zhao Xiuwen, trans., China Renmin Univ. Press, 5th ed. 2017) (published in Chinese), 260 pp., ISBN: 9787300251325

<sup>4</sup> Those works include:

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Finally, I owe a deep debt of gratitude to Jill Torbert, my wife. Jill is an excellent example of how a lawyer can enrich the life of the community through active involvement with the arts, parks, and local institutions.

Vincent R. Johnson  
Beijing, China  
June 24, 2018

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