

# Understanding Torts

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# Understanding Torts

SIXTH EDITION

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*JLD: With love to my wife, Lucia, my son, Danny, and my mother, Rhoda Diamond, and in loving memory of my father, Monroe Thomas Diamond.*

*LCL: With love to my sister, Diane, and to my nephews, Ben and Alex, and with thanks to my students for making each class a new adventure.*

*AB: In honor of Guido Calabresi, a Torts mentor to many, and with thanks to my Torts students, from whom I learn every new year.*





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# Preface

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We are pleased to present the sixth edition of *Understanding Torts*. The response to the first five editions from students and professors has been gratifying. We hope and expect that you will find this updated version of the book equally helpful.

This book examines the common law of torts. A tort is a civil wrong beyond a breach of contract for which the law provides relief. The law of torts focuses on private rights of redress, where aggrieved parties bring actions in tort to recover damages for the harm caused by defendants. Contrast this to the criminal law where the State, through government-employed prosecutors, pursues the action and exacts the punishment.

Tortious wrongs can take various forms, such as personal injury or death, harm to property, or interference with other protectable interests such as the right to be free from unwarranted invasions of privacy. Although state and federal statutes define some facets of tort law, by and large contemporary tort law remains defined by judicial decisions. Tort law, then, provides an excellent vehicle for viewing the dynamic nature of the common law, and for observing how a given body of law, with its often complex rules, evolves over time.

Writing foremost for law students, we have endeavored to provide a readable and concise treatise without oversimplifying the rules or the policy considerations that affect those rules. We examine the key topics covered in virtually every torts course—intentional torts and privileges, negligence, strict liability, and products liability. We also explore other important areas—damages, joint and several liability, nuisance, economic torts, misuse of legal process, defamation, and privacy. We cover contemporary developments in the law of torts, such as continuing efforts to redefine the scope of strict products liability, the modern treatment of intentional infliction of emotional distress, and the first-ever free-standing Restatement of intentional torts. We have provided primary and secondary authority to support our textual analyses without overburdening the reader with excessive footnotes.

Central to the study of tort law is the fundamental question of the purposes to be served by the imposition of liability on wrongdoers (tortfeasors). The contours of the tort system reflect broad policy concerns and often conflicting goals on a larger societal basis. The system is pervasive and raises the threshold issue of how the legal system should compensate, if at all, those who suffer injury at the hands of another. A cornerstone of the debate involves the extent to which tort liability should rest on fault, as opposed to strict liability. Resolution of this central issue depends upon one's perspective of the goal of tort liability. For example, the tort system could rely primarily on notions of corrective justice, seeking to right a wrong perpetrated on a specific individual. Alternatively, a utilitarian approach could be adopted instead that would seek to effect the greatest good for society as a whole. Or economic efficiency could serve as the driving force of the tort system.

All these models, and more, are represented in American tort law. We have presented them as appropriate in the text. Our goal in so doing has not been to resolve the debate

about the proper justifications for the tort system, but to illuminate the divergent, and often complex, policy issues confronting courts and legislatures as they seek to fine-tune, or even substantially alter, the tort system.

We have organized this treatise in a traditional format. We begin with an examination of intentional torts and privileges and turn next to negligence. Later chapters consider strict liability and other torts such as nuisance, misrepresentation, and defamation. We have tried to incorporate cases that students will confront in their study of torts, and we provide citations to Restatements of the law, particularly the Third and Second Restatements of Torts, cited respectively as “Restatement (Third)” and “Restatement (Second).” These references make *Understanding Torts* compatible with most casebooks and patterns of instruction in U.S. law schools.

Tort law has been undergoing unprecedented scrutiny. Within the legal community and in the public at large, there has been a sense that the civil litigation system generally, and personal injury law specifically, merit retooling and even wholesale restructuring. In addition to helping readers understand the existing torts system, this text provides the basis from which an evaluation of the current torts system can be made with an eye toward understanding future developments.

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