

Studies in American Tort Law

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SEVENTH EDITION

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*To the happy memory of my parents,
Anna Ruth Johnson and Harry P. Johnson,
who provided a world of care and inspiration*
— VRJ

To Xue, Jennie, and Vincent
— CL

Summary of Contents

Chapter 1 · An Overview of Modern Tort Liability: Intentional Injury, Failure to Exercise Care, and Strict Liability	3
Chapter 2 · Basic Intentional Torts	43
Chapter 3 · Defenses and Privileges	149
Chapter 4 · Damages	199
Chapter 5 · Negligence: Basic Principles	259
Chapter 6 · Proving Negligence	359
Chapter 7 · Factual Causation	397
Chapter 8 · Proximate Causation	457
Chapter 9 · Limited Duty: Failure to Act	519
Chapter 10 · Limited Duty: Premises Liability	583
Chapter 11 · Limited Duty: Negligent Infliction of Severe Emotional Distress	631
Chapter 12 · Limited Duty: Alcohol-Related Injuries	667
Chapter 13 · Torts Involving Conception, Pregnancy, Birth, and Adoption	689
Chapter 14 · Strict Liability	715
Chapter 15 · Products Liability	767
Chapter 16 · Defenses Based on Plaintiff's Conduct	833
Chapter 17 · Joint Tortfeasors	881
Chapter 18 · Immunities	911
Chapter 19 · Statutes of Limitations	945
Chapter 20 · Interference with Possession or Use of Land: Trespass and Nuisance	967
Chapter 21 · Misrepresentation	1015
Chapter 22 · Defamation	1063
Chapter 23 · Invasion of Privacy	1129
Index	1169

Contents

Table of Cases	xxiii
Table of Books and Articles	liii
First Edition Preface	lix
Seventh Edition Preface and Acknowledgments	lxi
Chapter 1 · An Overview of Modern Tort Liability: Intentional Injury, Failure to Exercise Care, and Strict Liability	3
A. Intentionally Inflicted Injury	12
<i>Garratt v. Dailey</i>	12
B. Actions Based on Lack of Care	16
<i>Doe v. Roe</i>	16
<i>Cohen v. Petty</i>	23
C. Strict Liability Conduct	26
<i>Harris v. Anderson County Sheriff's Office</i>	26
D. An Introduction to Insurance	35
1. Liability Insurance	36
2. First-Party Insurance	41
Chapter 2 · Basic Intentional Torts	43
A. The Concept of Intent	43
1. Intent to Injure	44
<i>Lambertson v. United States</i>	44
2. Intent and Mistake	47
<i>Ranson v. Kitner</i>	47
3. Intent and Insanity	48
<i>McGuire v. Almy</i>	48
4. Transferred Intent	53
<i>Keel v. Hainline</i>	53
<i>Brudney v. Ematrudo</i>	59
B. Battery and Assault	61
<i>Noble v. Louisville Transfer Co.</i>	62
<i>Picard v. Barry Pontiac-Buick, Inc.</i>	65
<i>Moore v. El Paso Chamber of Commerce</i>	67
<i>Western Union Telegraph Co. v. Hill</i>	69

C. Intentional or Reckless Infliction of Severe Emotional Distress	75
1. In General	75
<i>Harris v. Jones</i>	78
2. Abusive Language	88
<i>Slocum v. Food Fair Stores of Florida, Inc.</i>	89
3. Domestic Violence and Harassment	92
<i>Feltmeier v. Feltmeier</i>	92
4. Bystanders and Third Persons	102
D. False Imprisonment	108
1. Unconsented Intentional Confinement within Boundaries	108
<i>Bird v. Jones</i>	108
2. Unlawful Force, Threat of Force, or Assertion of Legal Authority	112
<i>Morales v. Lee</i>	112
<i>Enright v. Groves</i>	115
<i>Johnson v. Barnes & Noble Booksellers, Inc.</i>	118
3. Defenses	121
<i>Peterson v. Sorlien</i>	121
E. Trespass to Land	126
F. Trespass to Chattels and Conversion	127
<i>CompuServe, Inc. v. Cyber Promotions, Inc.</i>	129
<i>Henson v. Reddin</i>	132
<i>Russell-Vaughn Ford, Inc. v. Rouse</i>	137
<i>Kremen v. Cohen</i>	142
Chapter 3 · Defenses and Privileges	149
A. Consent	149
1. Consent in Fact	150
<i>Davies v. Butler</i>	150
2. Apparent Consent	152
<i>O'Brien v. Cunard S.S. Co.</i>	153
3. Implied Consent	154
<i>Miller v. HCA, Inc.</i>	155
4. Consent Given Because of a Mistake	158
<i>DeMay v. Roberts</i>	158
B. Defense of Self and Others	164
<i>Silas v. Bowen</i>	164
<i>Drabek v. Sabley</i>	169
C. Privileges Relating to Property	172
1. Defense of Property	172
<i>Katko v. Briney</i>	172
2. Recapture of Chattels	176
3. Detention for Investigation	177
<i>Dillard Department Stores, Inc. v. Silva</i>	177
D. Public Necessity and Private Necessity	181

<i>Surocco v. Geary</i>	181
<i>Wegner v. Milwaukee Mutual Insurance Co.</i>	183
<i>Vincent v. Lake Erie Transp. Co.</i>	185
<i>Ploof v. Putnam</i>	188
E. Unlawful Conduct	190
<i>Barker v. Kallash</i>	190
Chapter 4 · Damages	199
A. In General	199
1. Introduction	199
<i>Anderson v. Sears, Roebuck & Co.</i>	199
<i>Meyer ex rel. Coplin v. Fluor Corporation</i>	207
2. The Collateral-Source Rule	211
<i>Helfend v. Southern California Rapid Transit District</i>	211
3. The Avoidable-Consequences Rule	214
<i>Zimmerman v. Ausland</i>	214
4. Pre-Judgment Interest	217
B. Survival and Wrongful-Death Actions	218
<i>Gonzalez v. New York City Housing Authority</i>	222
Economic Analysis: Damages, Deterrence, and Compensation: Valuing Lives and Safety Precautions	228
C. Damages for Loss of Earning Capacity	230
1. Earning History	231
<i>O'Shea v. Riverway Towing Co.</i>	231
2. Taxation of Awards	234
D. Punitive Damages	236
<i>State Farm Mutual Automobile Insurance Co. v. Campbell</i>	240
Problem: Overbilling Clients	255
E. Statutory Limits on Damage Recoveries and Related "Reform" Legislation	256
Chapter 5 · Negligence: Basic Principles	259
A. The Concept of Duty	259
<i>Palsgraf v. Long Island Railroad Co.</i>	260
B. The Negligence Balancing Test	267
<i>Nussbaum v. Lacopo</i>	267
<i>Gulf Refining Co. v. Williams</i>	269
<i>United States v. Carroll Towing Co.</i>	271
<i>Negligence as an Economic Concept</i>	274
<i>Chicago, B & Q. R.R. Co. v. Krayenbuhl</i>	277
C. The Reasonable-Person Standard	280
1. Jury Instructions on Reasonable Care	281
a. The Actor's Good Faith	282
b. Sudden Emergencies	283

<i>Bedor v. Johnson</i>	283
c. Physical Disabilities	288
d. Religious Beliefs	290
<i>Williams v. Bright</i>	290
e. Age	293
<i>Donovan v. Sutton</i>	293
f. Mental Deficiencies	297
<i>Breunig v. American Family Ins. Co.</i>	298
g. Superior Skills or Knowledge	300
h. Professional Credentials: Legal Malpractice and Medical Malpractice	300
<i>Biomet Inc. v. Finnegan Henderson LLP</i>	301
<i>Russo v. Griffin</i>	310
<i>Boyce v. Brown</i>	314
<i>Scott v. Bradford</i>	320
i. Race, Gender, and Ethnicity	327
<i>John Doe BF v. Diocese of Gallup</i>	329
2. Judge-Made Standards	331
<i>Helling v. Carey</i>	332
3. Standards Created by Statute	334
4. Standards Adopted by Courts Based on Legislation	336
a. In General	336
<i>Gipson v. Kasey</i>	336
<i>Stachniewicz v. Mar-Cam Corp.</i>	339
b. Unexcused Violations of Statute	344
<i>Martin v. Herzog</i>	344
c. Excused Violations of Statute	346
<i>Ranard v. O'Neil</i>	346
<i>Zeni v. Anderson</i>	348
d. Compliance with Statute	351
<i>Montgomery v. Royal Motel</i>	351
e. Defenses to Liability Based on Statute	354
D. Special Standards of Care	355
Chapter 6 · Proving Negligence	359
A. Evidence of Custom	359
The T.J. Hooper	359
<i>Low v. Park Price Co.</i>	361
B. Circumstantial Evidence	364
1. Constructive Notice	365
<i>Goddard v. Boston & M.R. Co.</i>	365
<i>Anjou v. Boston Elevated Ry. Co.</i>	366
2. Mode of Operation	368
<i>Sheehan v. Roche Brothers Supermarkets, Inc.</i>	368

C. <i>Res Ipsa Loquitur</i>	370
1. Probably the Result of Negligence	371
2. Facts Pointing to the Defendant	374
a. Control	374
<i>Mobil Chemical Co. v. Bell</i>	374
b. Greater Access to Information	380
<i>Mahowald v. Minnesota Gas Co.</i>	380
c. <i>Res Ipsa</i> , the Plaintiff's Own Conduct, and Other Possible Causes	383
d. Procedural Effect	384
D. Multiple Defendants	385
<i>Ybarra v. Spangard</i>	385
E. Disposing of Unfavorable Evidence	389
<i>Trevino v. Ortega</i>	389
Chapter 7 · Factual Causation	397
A. An Overview of Causation	397
<i>Williams v. Steves Industries, Inc.</i>	397
B. The Traditional Rules of Factual Causation	400
1. <i>Sine Qua Non</i> : The But-For Test	400
<i>Reynolds v. Texas and Pacific Railway Co.</i>	400
<i>Kramer Service, Inc. v. Wilkins</i>	402
<i>Saelzler v. Advanced Group 400</i>	404
2. Independently Sufficient Causes and Related Problems	409
<i>Anderson v. Minneapolis, St. P. & S.S.M. Ry. Co.</i>	409
3. The "Loss of a Chance" Rule	414
<i>Matsuyama v. Birnbaum</i>	414
"Loss of a Chance" and Deterrence	419
C. Modifications of the Traditional Approach	420
1. Multiple Fault and Alternative Liability	420
<i>Summers v. Tice</i>	420
2. Market-Share Liability and Enterprise Liability	423
<i>Sindell v. Abbott Laboratories</i>	423
<i>Hymowitz v. Eli Lilly and Co.</i>	431
D. Liability Based on Concerted Action	439
<i>Herman v. Wesgate</i>	439
<i>Kubert v. Best</i>	440
<i>Lussier v. Bessette</i>	443
E. Incitement	450
Chapter 8 · Proximate Causation	457
A. Introduction	457
B. Direct Causation	460
C. Foreseeability	462

("Wagon Mound No. 1") <i>Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co., Ltd.</i>	463
("Wagon Mound No. 2") <i>Overseas Tankship (U.K.) Ltd. v. Miller Steamship Co.</i>	466
1. The "Eggshell Skull" Doctrine	468
<i>Simeonidis v. Mashantucket Pequot Gaming Enterprise</i>	468
Economic Analysis: "Eggshell Skulls" and Proximate Cause	470
2. Manner of Occurrence and Kind and Extent of Harm	471
<i>Merhi v. Becker</i>	471
("Kinsman No. 1") Petition of Kinsman Transit Co.	473
("Kinsman No. 2") Petition of Kinsman Transit Co.	477
D. Result within the Risk	478
1. In General	478
<i>Thompson v. Kaczinski</i>	479
2. Policy and Proximate Cause	486
Economic Analysis: Avoiding Over-Deterrence	487
E. Intervening and Superseding Causes	489
1. Foreseeable End Results	489
<i>Derdiarian v. Felix Contracting Corp.</i>	489
2. Intervening Acts	491
<i>Johnson v. Jacobs</i>	492
3. Special Applications of the Rules on Intervening and Superseding Causes	497
a. Rescuers	497
<i>Altamuro v. Milner Hotel, Inc.</i>	497
b. Victim Suicide	504
4. Relationship to Comparative Principles	507
F. Shifting Responsibility	508
<i>Goar v. Village of Stephen</i>	510
<i>Bailey v. Lewis Farm, Inc.</i>	513
Chapter 9 · Limited Duty: Failure to Act	519
A. The Traditional Rule of No Liability for Nonfeasance	519
<i>Johnson v. Minnesota</i>	520
B. Qualifications and Exceptions	524
1. Duties Based on the Defendant's Relationship to the Victim or the Injurer	524
<i>De Vera v. Long Beach Public Transportation Co.</i>	524
<i>Munn v. The Hotchkiss School</i>	527
2. Protection from Crime	534
<i>Remsburg v. Docusearch, Inc.</i>	534
<i>Wolfe v. MBNA America Bank</i>	537
3. Mental Health Professionals	539
<i>Peck v. Counseling Service of Addison County, Inc.</i>	539

4. Creation of a Dangerous Situation	545
<i>Borrack v. Reed</i>	545
5. Voluntarily Assumed Duties	548
<i>Coffee v. McDonnell-Douglas Corp.</i>	548
<i>Sall v. T's, Inc.</i>	555
6. Negligent Entrustment	562
<i>McKenna v. Straughan</i>	562
7. Statutes Relating to Rescue	564
C. Abrogation of the General Rule	567
D. The Public-Duty Rule	568
<i>Riss v. City of New York</i>	569
<i>Sorichetti v. City of New York</i>	574
Chapter 10 · Limited Duty: Premises Liability	583
A. The Traditional Categories: Trespassers, Licensees, and Invitees	583
1. Trespassers	584
<i>Bonney v. Canadian National Railway Co.</i>	584
<i>Humphrey v. Twin State Gas & Electric Co.</i>	587
<i>Banker v. McLaughlin</i>	589
2. Licensees and Invitees	592
<i>Andrushchenko v. Silchuk</i>	594
<i>Campbell v. Weathers</i>	598
<i>Inkel v. Livingston</i>	601
3. Known or Obvious Dangers	604
B. Modification of the Traditional Approach	605
1. Abrogation	605
2. Recreational Use Statutes	607
C. The Demands of Reasonable Care for Possessors	608
1. Ill and Injured Invitees	609
2. Protection Against Crime	609
<i>Trammell Crow Central Texas, Ltd. v. Gutierrez</i>	610
<i>Boyd v. Racine Currency Exchange, Inc.</i>	614
3. Duties to Persons Outside the Premises	616
a. Persons “Invited” onto the Land of Another	616
<i>Orthmann v. Apple River Campground, Inc.</i>	616
D. Lessors and Lessees	623
<i>Matthews v. Amberwood Associates Ltd.</i>	
<i>Partnership, Inc.</i>	624
<i>Restatement, Third, of Torts: Liability for Physical and Emotional Harm</i>	629
Chapter 11 · Limited Duty: Negligent Infliction of Severe Emotional Distress	631
A. Serious and Genuine Harm	632
<i>Lewis v. Westinghouse Electric Corporation</i>	632
B. Some Special Cases	636

<i>Johnson v. New York</i>	637
C. Distress Occasioned by Harm to Another	642
<i>Eskin v. Bartee</i>	644
D. Relationship to Other Actions	653
1. Loss of Consortium	653
<i>Lozoya v. Sanchez</i>	653
2. Breach of Fiduciary Duty	656
<i>F.G. v. MacDonell</i>	657
E. Abrogation of Independent Actions Based on Negligence	662
<i>Boyles v. Kerr</i>	662
Chapter 12 · Limited Duty: Alcohol-Related Injuries	667
A. Liability of Sellers	668
New York General Obligations Law	668
B. Liability of “Social Hosts”	672
<i>Kelly v. Gwinnell</i>	672
C. Possessors of Property	678
<i>Del Lago Partners, Inc. v. Smith</i>	678
D. Other Theories of Liability	682
<i>West v. East Tennessee Pioneer Oil Co.</i>	682
Chapter 13 · Torts Involving Conception, Pregnancy, Birth, and Adoption	689
A. Unwanted Pregnancy	690
<i>McKernan v. Aasheim</i>	690
B. Wrongful Birth and Wrongful Life	696
<i>Smith v. Cote</i>	696
C. Prenatal Injuries	705
<i>Farley v. Sartin</i>	705
D. Wrongful Adoption	709
<i>Burr v. Board of County Commissioners of Stark County</i>	709
Chapter 14 · Strict Liability	715
A. Employer and Employee	716
1. Workers’ Compensation	716
New York Workers’ Compensation Law	718
2. Respondeat Superior	720
<i>Smith v. Lannert</i>	720
<i>John R. v. Oakland Unified School District</i>	728
3. Non-delegable Duties	733
<i>Davis v. Devereux Foundation</i>	735
Economic Analysis: Deterrence under Negligence and Strict Liability	741
4. Ostensible or Apparent Agency	743

<i>Baptist Memorial Hospital System v. Sampson</i>	743
5. The Fellow-Servant Rule	747
B. Harm Inflicted by Animals	747
Maryland Code, Courts and Judicial Proceedings, § 3-1901	748
C. Abnormally Dangerous Activities	750
<i>Stout v. Warren</i>	751
Economic Analysis: Single-Injurer Accidents	756
Economic Analysis: Tort Liability and Cross-Subsidization	758
D. Other Theories	760
1. Motor Vehicle Owner Responsibility Laws	760
2. Family Purpose Doctrine	761
<i>Starr v. Hill</i>	761
Chapter 15 · Products Liability	767
A. Historical Background	767
1. From “No Liability” to Negligence	767
2. From Negligence to Strict Liability	768
<i>Escola v. Coca Cola Bottling Co. of Fresno</i>	772
Restatement, Second, of Torts § 402A (1965)	775
Restatement, Third, of Torts: Product Liability	777
B. Manufacturing Defects	782
<i>Linden v. CNH America, LLC</i>	782
C. Design Defects	784
<i>Pannu v. Land Rover North America, Inc.</i>	784
<i>Richetta v. Stanley Fastening Systems, L.P.</i>	790
D. Failure to Warn	796
<i>Lavin v. Conte</i>	796
E. Damage to Property	807
1. Harm to the “Product Itself”	807
2. The Economic Loss Rule(s)	809
Liability for Economic Losses	809
a. The Broad Formulation of Economic Loss Rule	809
b. Narrow Formulations of the Economic Loss Rule	812
c. The Economic Loss Rule Today	813
<i>Sharyland Water Supply Corp. v. City of Alton</i>	814
F. Defenses	819
1. State-of-the-Art Defense	819
Economic Analysis: Risk Spreading	820
2. Government Contractor Defense	821
3. “Misuse” and Other Plaintiff Misconduct	822
4. Pre-Emption by Federal Law	824
<i>Wyeth v. Levine</i>	824
G. Policy Issues	830

Economic Analysis: Liability and Safety	830
1. Product-Category Liability	831
Chapter 16 · Defenses Based on Plaintiff’s Conduct	833
A. Traditional Contributory Negligence	833
1. In General	833
2. Imputed Contributory Negligence	834
<i>Western Union Tel. Co. v. Hoffman</i>	834
3. Last Clear Chance	836
B. Comparative Negligence	837
<i>Hilen v. Hays</i>	837
C. Assumption of the Risk	840
1. Introduction	841
<i>Coleman v. Ramada Hotel Operating Co.</i>	841
2. Express Assumption of the Risk	844
<i>Gross v. Sweet</i>	844
3. Primary Implied Assumption of the Risk	853
<i>Turcotte v. Fell</i>	853
<i>Trupia v. Lake George Central School District</i>	860
<i>Minnich v. Med-Waste, Inc.</i>	863
4. Secondary Implied Assumption of Risk	866
<i>Pachunka v. Rogers Construction, Inc.</i>	866
D. Comparative Fault	870
<i>Kaneko v. Hilo Coast Processing</i>	871
E. The “Seatbelt Defense”	878
Chapter 17 · Joint Tortfeasors	881
A. Joint and Several Liability	881
1. Definitions	881
2. Divisibility and Apportionment of Harm	883
<i>Michie v. Great Lakes Steel Division, National Steel Corp.</i>	883
<i>Bruckman v. Pena</i>	885
3. Effect of Comparative Negligence and Comparative Fault	887
Economic Analysis: Incentives Relating to Joint and Several Liability	892
B. Contribution and Indemnity	892
<i>Brochner v. Western Insurance Company</i>	892
<i>Leung v. Verdugo Hills Hospital</i>	897
C. Mary Carter Agreements	904
<i>Elbaor v. Smith</i>	904
Chapter 18 · Immunities	911
A. Family Immunities	911
1. Spousal Immunity	911
2. Parental Immunity	912

<i>Rousey v. Rousey</i>	913
<i>Sepaugh v. LaGrone</i>	916
3. Sibling Immunity	922
<i>Lickteig v. Kolar</i>	922
B. Sovereign Immunity and Governmental Immunity	924
1. The Federal Tort Claims Act	925
2. State Tort Claims Acts	926
3. Governmental Immunity of Local Entities	928
a. Historical Development	928
b. Local Government Immunity Today	929
<i>Parker v. St. Lawrence County Public Health</i>	
<i>Department</i>	931
C. Official Immunity	932
1. Federal Officials and Employees	933
2. State Officials and Employees	934
D. Charitable Immunity	938
<i>Albritton v. Neighborhood Centers Association for</i>	
<i>Child Development</i>	938
Chapter 19 · Statutes of Limitations	945
A. Introduction	945
New York C.P.L.R. § 214	946
B. Tolling the Statute of Limitations	947
<i>Tyson v. Tyson</i>	948
C. Statutes of Repose	960
<i>Schramm v. Lyon</i>	962
Chapter 20 · Interference with Possession or Use of Land:	
Trespass and Nuisance	967
A. Trespass to Land	968
<i>Gavcus v. Potts</i>	968
B. Trespass and Private Nuisance	972
1. Trespass and Nuisance Distinguished	972
a. The Traditional Distinction	972
b. The Tangible-Mass “Requirement”	974
2. Significant Harm	975
3. Assessing Unreasonableness	976
<i>Prah v. Maretti</i>	978
<i>Winget v. Winn-Dixie Stores, Inc.</i>	982
<i>Smith v. Jersey Central Power & Light Co.</i>	985
Economic Analysis: The Coase Theorem and the	
Law of Nuisance	989
C. Public Nuisance	993
1. In General	993

2. Public Nuisance and Products Liability	994
<i>NAACP v. AcuSport, Inc.</i>	995
<i>State ex rel. Hunter v. Johnson & Johnson</i>	1001
D. Remedies in Nuisance Cases	1006
<i>Spur Industries, Inc. v. Del E. Webb Development Co.</i>	1008
Chapter 21 · Misrepresentation	1015
A. Fraud	1015
1. Intentional or Reckless Misrepresentation	1015
<i>John Doe 1 v. Archdiocese of Milwaukee</i>	1017
<i>Sovereign Pocohontas v. Bond</i>	1021
2. Silence and the Duty to Speak	1023
<i>Weintraub v. Krobatsch</i>	1024
3. Statements of Opinion, Prediction, Intention, and Law	1030
<i>Oltmer v. Zamora</i>	1031
<i>Tessier v. Rockefeller</i>	1036
<i>National Conversion Corp. v. Cedar Building Corp.</i>	1039
4. Justifiable or Reasonable Reliance	1041
<i>Italian Cowboy Partners, Ltd. v. Prudential Ins. Co.</i>	1044
B. Negligence and Strict Liability	1049
1. Negligent Misrepresentation in Business Transactions	1049
2. Negligence Causing Physical Harm	1051
3. Strict Liability	1051
<i>Richard v. A. Waldman and Sons, Inc.</i>	1051
C. Liability to Third Parties	1053
1. Based on Deceit	1054
2. Based on Negligent Misrepresentation	1054
<i>Cast Art Industries, LLC v. KPMG, LLP</i>	1055
Economic Analysis: Audits and the Cheaper Cost Avoider	1062
Chapter 22 · Defamation	1063
A. What Statements Are Defamatory?	1063
1. Harm to Reputation	1063
<i>Grant v. Reader's Digest Association, Inc.</i>	1064
2. The False Fact Requirement	1066
3. Truth	1067
4. Of and Concerning the Plaintiff	1069
<i>Rose v. Daily Mirror, Inc.</i>	1072
5. Publication	1074
<i>Economopoulos v. A. G. Pollard Co.</i>	1074
B. Libel and Slander	1079
C. Constitutional Considerations	1081
1. Public Officials and Public Figures	1082
<i>New York Times Co. v. Sullivan</i>	1082

2. Plaintiffs Who Are Not Public Figures	1092
<i>Gertz v. Robert Welch, Inc.</i>	1092
3. Presumed Damages Today	1102
<i>W.J.A. v. D.A.</i>	1102
<i>Smith v. Durden</i>	1106
4. Retraction Statutes	1108
5. “Fact” vs. “Opinion”	1109
<i>Milkovich v. Lorain Journal Co.</i>	1109
D. Privileges and Defenses	1117
1. Absolute Privileges	1118
a. Judicial-Proceedings Privilege	1118
b. Other Absolute Privileges	1119
2. Qualified Privileges	1120
a. Employers and Employees	1120
b. Others	1120
c. Loss of a Qualified Privilege	1121
d. Statutes Relating to Former Employees	1121
3. The Validity of Releases	1122
4. Other Privileges	1122
5. SLAPP Suits	1124
Comparative Defamation Law: England and the United States	1126
Chapter 23 · Invasion of Privacy	1129
A. Disclosure of Private Facts	1131
<i>Sidis v. F-R Publishing Corp.</i>	1131
<i>McNamara v. Freedom Newspapers, Inc.</i>	1135
<i>Vassiliades v. Garfinckel’s, Brooks Brothers</i>	1137
B. Intrusion upon Seclusion	1142
<i>In re Marriage of Tigges</i>	1145
<i>Koeppe v. Speirs</i>	1148
C. False Light	1153
<i>West v. Media General Convergence, Inc.</i>	1153
D. Unauthorized Use of the Plaintiff’s Name or Picture	1159
1. The “Right of Publicity”	1159
<i>Tanner v. Ebbole</i>	1160
2. Deceased Celebrities	1165
Index	1169

Table of Cases

- 532 Madison Ave. Gourmet Foods, Inc.
v. Finlandia Ctr., 996, 997
- A & M Records, Inc. v. Heilman, 144
- A.H. Belo Corp. v. Corcoran, 522
- Abrams v. United States, 1113
- Abresch v. Northwestern Bell Tel. Co.,
560
- Achtermann v. Bussard, 613
- Adamo v. Brown & Williamson Tobacco
Corp., 795
- Adams v. Bullock, 279
- Adams v. Gillig, 1038
- Adams v. Ursell, 992
- Adams v. YMCA of San Antonio, 738
- Adelson v. Harris, 1123
- Adkins v. Thomas Solvent Co., 976
- Aetna Health, Inc. v. Davila, 320
- Agis v. Howard Johnson Co., 77
- Agrobiotech, Inc. v. Budd, 1050
- Aka v. Jefferson Hosp. Ass'n, Inc., 707
- Akins Funeral Home, Inc. v. Miller, 641
- Albritton v. Neighborhood Centers
Association for Child Development*, 938
- Alderson v. Bonner, 83, 103, 1152
- Aleo v. SLB Toys USA, Inc., 247
- Alexander v. McKnight, 1026
- Alleman v. Vermilion Publ'g Corp., 1068
- Allen v. Albright, 503, 598
- Allen v. Camp, 183
- Allen v. Dover Co-Recreational Softball
League, 859
- Allen v. Virginia Hill Water Supply
Corp., 973
- Allied Marketing Group, Inc. v. Para-
mount Pictures Corp., 1071
- Allstate Ins. Co. v. Ginsberg, 1143
- Allstate Ins. Co. v. Mugavero, 32
- Allstate Ins. Co. v. Sunbeam Corp., 394
- Alpin v. Tew, 295
- Alston v. Caraco Pharmaceutical, Inc.,
805
- Altamuro v. Milner Hotel, Inc.*, 497, 870
- Althaus v. Cohen, 317
- Altschuler v. University of Pa. Law Sch.,
1078
- Alvarado v. City of Dodge City, 179
- Alvarez v. Clasen, 87
- Am. Fam. Mut. Ins. Co. v. AN/CF Acq.
Corp., 449
- Amaya v. Potter, 722
- Ambrosino v. Rodman & Renshaw, Inc.,
1041
- American Motorcycle Ass'n v. Superior
Court, 882, 887–888
- American Powerlifting Ass'n v. Cotillo,
868
- Ammon v. Baron Automotive Group,
101
- Amoako-Okyere v. Church of the
Messiah United Methodist Church,
24
- Anand v. Kapoor, 859
- Anderson v. Fisher Broad. Co., Inc.,
1136
- Anderson v. Lewis, 766
- Anderson v. Liberty Lobby, Inc., 1090
- Anderson v. Miller, 685
- Anderson v. Minneapolis St. P. & S.S.M.
Ry. Co.*, 409
- Anderson v. Sears, Roebuck & Co.*, 199
- Anderson v. Wagner, 964

- Andrade v. Chojnacki, 934
 Andrews v. Stallings, 1157
 Andrews v. United Airlines, Inc., 356
Andrushchenko v. Silchuk, 594
 Anicet v. Gant, 52
 Anjou v. Boston Elevated Ry. Co., 366
 Antoniato v. Long Island Jewish Med. Ctr., 388
 Antwaun A. v. Heritage Mut. Ins. Co., 334
 Archer v. Farmer Bros., 91
 Armory Park Neighborhood Association v. Episcopal Community Services in Arizona, 993
 Arnold v. U. of N. Carolina at Chapel Hill, 313
 Aroma Wines & Equip, Inc. v. Columbian Distrib. Services, Inc., 128
 Arredondo v. Dugger, 196
 Ashe v. Radiation Oncology Assoc., 323
 Associated Press v. Walker, 1091
 Association of Unit Owners v. Dunning, 777
 Astroworks, Inc. v. Astroexhibit, Inc., 143
 Atcovitz v. Gulph Mills Tennis Club, Inc., 526
 Atkins v. Swimwest Family Fitness Ctr., 849
 Atlanta-Journal Constitution v. Jewell, 1097
 Atlantic Sounding Co., Inc. v. Townsend, 247
 Augillard v. Madura, 141
 Avellone v. St. John's Hospital, 938
 Aversano v. Palisades Interstate Pkwy. Com'n, 935
 Ayers v. Johnson & Johnson Baby Prods. Co., 820

 B & O R. Co. v. Goodman, 331
 Badall v. Durgapersad, 227
 Bader v. Johnson, 634, 703
 Bagley v. Bagley, 227, 850
 Bagley v. Mt. Bachelor, Inc., 850
 Bailey v. C.S., 57
 Bailey v. Fed. Home Loan Bank of Topeka, 100
 Bailey v. Gallagher, 146
Bailey v. Lewis Farm, Inc., 513
 Bain v. Gillespie, 269
 Baldwin v. Butcher, 706
 Balido v. Improved Mach., Inc., 516
 Ballou v. Sigma Nu Gen. Frat., 152
 Ballstadt v. Pagel, 981
Banker v. McLaughlin, 589
 Banker's Trust Co. v. Old Republic Ins. Co., 1016
Baptist Memorial Hospital System v. Sampson, 743
 Barb v. Farmers Ins. Exch., 388
 Barcelo v. Elliott, 306
 Bard v. Jahnke, 749
Barker v. Kallash, 190
 Barker v. Lull Engineering Co., 788
 Barnes v. Geiger, 503
 Barnett v. Bachrach, 158
 Barnett v. Ludwig and Company, 338
 Barr v. Jacobson, 486
 Barr v. Matteo, 933
 Barry v. Quality Products, Inc., 508
 Barth v. Coleman, 874
 Bartlett v. Northern Pac. Ry. Co., 279
 Baska v. Scherzer, 56
 Bass v. Nooney Co., 632
 Batra v. Clark, 627
 Bauman v. Crawford, 294
 Baye v. Diocese of Rapid City, 955, 958
 Beach Bait & Tackle v. Bull, 367
 Beard v. Graff, 677
 Beckman v. Butte-Silver Bow Cty., 734-735
Bedor v. Johnson, 283
 Been v. MK Enterprise, Inc., 670
 Behr v. Redmond, 1041
 Bell & Hudson P.C. v. Buhl Realty Co., 533
 Bell v. Hutsell, 686

- Belli v. Orlando Daily Newspapers, Inc., 1065
- Bence v. Crawford Sav. and Loan Ass'n, 616
- Bennett v. Dunn, 175
- Bennett v. Reynolds, 139
- Bentley v. Bunton, 1116
- Benton v. YMCA, 941
- Berberian v. Lynn, 52
- Berger v. Hanlon, 972
- Bergman & Lefkow Insurance Agency v. Flash Cab Co., 1032
- Bergob v. Scrushy, 840
- Berlangieri v. Running Elk Corp., 850
- Berman v. Allan, 698
- Bernard v. Cameron and Colby Co., Inc., 87
- Bernstein v. Seacliff Beach Club, 847
- Berry v. National Medical Services, Inc., 554
- Berry v. Sugar Notch Borough, 486
- Beshada v. Johns-Manville Products Corp., 819-821
- Best v. Taylor Machine Works, 890
- Best v. U.S., 552
- Bethel v. N.Y. City Transit Auth., 356
- Bettis v. Islamic Republic of Iran, 102
- Beynon v. Montgomery Cablevision L.P., 222
- Bhatia v. Debek, 78
- Biakanja v. Irving, 563
- Biddle v. Warren Gen. Hosp., 326
- Bilodeau-Allen v. American Media, Inc., 1159
- Bily v. Arthur Young & Co., 1054, 1060
- Bindrim v. Mitchell, 1070
- Biomet, Inc. v. Finnegan Henderson LLP*, 301
- Bird v. Jones*, 108
- Birke v. Oakwood Worldwide, 999
- Birmingham Coal & Coke Co., Inc. v. Johnson, 636
- Bishop v. City of Chicago, 522
- Bishop v. Texas A & M Univ., 725
- Bissett v. DMI, Inc., 670
- Blakely v. Camp Ondessonk, 587
- Blanchard v. Bass, 585
- Block v. Tanenhaus, 1065
- BMW of North America, Inc. v. Gore, 241, 242, 246, 302
- Boim v. Quranic Literacy Institute, 448
- Boll v. Sharp & Dohme, 847
- Bollaert v. Witter, 73
- Bolton v. Dept. of Human Services, 1067
- Bonbrest v. Kotz, 706
- Bonham v. Texas Dept. of Crim. Justice, 497
- Bonkowski v. Arlan's Dept. Store, 179
- Bonney v. Canadian National Railway Co.*, 584
- Bonte v. Bonte, 708
- Boomer v. Atlantic Cement Co., 977, 1007
- Boone v. Mullendore, 691
- Booth v. Mary Carter Paint Co., 904
- Boring v. Google, Inc., 127
- Borman v. Raymark Indus., Inc., 885
- Born v. Mayers, 669
- Borne v. Celadon Trucking Services, Inc., 203
- Borrack v. Reed*, 545
- Bose Corp. v. Consumers U. of the U.S., Inc., 1090
- Boucher v. Dixie Med. Ctr., 648
- Bourhill v. Young, 464
- Bouton v. Allstate Ins. Co., 72, 363
- Bowen v. Niagara Mohawk Power Corp., 776
- Bowie v. Murphy, 61
- Bowman v. City of Baton Rouge, 561
- Bowman v. Davis, 691
- Boyce & Isley PLLC v. Cooper, 1098
- Boyce v. Brown*, 314
- Boyd v. Racine Currency Exchange, Inc.*, 614
- Boyd v. Travelers Ins. Co., 394
- Boyle v. United Technologies Corp., 821
- Boyles v. Kerr*, 662

- Boynton v. Burglass, 543
 Bradacs v. Jacobone, 750
 Braitman v. Overlook Terrace Corp.,
 628
 Brandenburg v. Ohio, 450
 Bratt v. IBM, 1141
 Braun v. New Hope Twp., 512
 Braun v. Soldier of Fortune Magazine,
 451
 Brenner v. American Cyanamid Co.,
 430
 Brenteson Wholesale v. Public Serv. Co.,
 978
 Breunig v. American Family Ins. Co.,
 298
 Brewer v. Memphis Publ'g Co., 1098
Brochner v. Western Insurance Company,
 892
 Brodsky v. Osunkwo, 324
 Brookshire Bros. Ltd. v. Aldridge, 394
 Broussard v. St. Edward Mercy Health
 System, Inc., 318
 Brown v. Adair, 717
 Brown v. Birman Managed Care, Inc.,
 447
 Brown v. Dibbell, 325
 Brown v. Dover Downs, 608
 Brown v. Shyne, 343
 Brown v. Superior Court, 432, 433
 Brownsville Med. Ctr. v. Gracia, 561
 Brucker v. Mercola, 964
Bruckman v. Pena, 885
Brudney v. Ematrudo, 59
 Bruegger v. Faribault County Sheriff's
 Dept., 342
 Bruesewitz v. Wyeth LLC, 29, 401
 Bryson v. News Am. Pubs., Inc., 1081,
 1116
 Brzica v. Trustees of Dartmouth College,
 1028
 Bucki v. Hawkins, 604
 Buckley v. City of New York, 747
 Budden v. United States, 551
 Bullock v. Philip Morris USA, 247
 Bumpurs v. New York City Hous. Auth.,
 224
 Bunting v. Sea Ray, Inc., 802
 Burbach v. Canwest Inv. LLC, 621
 Burcina v. City of Ketchikan, 193
 Burgess v. Perdue, 85
 Burgess v. Superior Court, 649
 Burke v. Webb Boats, Inc., 903
 Burnam v. Patterson, 35
 Burns v. Martin, 287
Burr v. Board of County Commissioners
 of Stark County, 709
 Burrell v. Meads, 596
 Burroughs v. Massachusetts, 726
 Bushnell v. Mott, 548
 Butler v. Moore, 58
 Byers v. Southeastern Newspaper Corp.,
 Inc., 1098
 Byrne v. Boadle, 375

 Cadek v. Great Lakes Dragway, Inc.,
 1016
 Cafazzo v. Central Med. Health Services,
 Inc., 776
 Cahalin v. Rebert, 105
 Cain v. Cain, 531, 1158
 Cain v. Hearst Corp., 1158
 Caldwell v. City of Philadelphia, 578
 Caldwell v. Ford Motor Co., 868
 Callahan v. Cardinal Glennon Hosp., 412
 Callahan v. Stanley Works, 390
 Callanan v. Gilman, 996
 Campbell v. Chaney, 308
Campbell v. Weathers, 598
 Canida v. Canida, 59
 Canterbury v. Spence, 321, 322
 Cantrell v. Forest City Publishing Co.,
 1156
 Cantu v. Flanigan, 205
 Cantwell v. Connecticut, 1084
 Capital Solutions LLC v. Konica Minolta
 Business Solutions U.S.A., Inc., 239
 Caporale v. C.W. Blakeslee & Sons, Inc.,
 755

- Capra v. Thoroughbred Racing Ass'n, 1141
- Capriotti v. Chivukula, 99
- Caputo v. Boston Edison Co., 87
- Carey v. Pure Distributing Corp., 398
- Carlson v. Illinois Farmers Ins. Co., 648
- Carlson v. Okerstrom, 202
- Carrel v. National Cord & Braid Corp., 806
- Carroll Air Systems, Inc. v. Greenbaum, 686
- Carsanaro v. Colvin, 496
- Carson v. Here's Johnny Portable Toilets Inc, 1164
- Carter v. Innisfree Hotel, Inc., 1151
- Carter v. Kinney, 596
- Carter v. Pain Ctr. of Arizona P.C., 152
- Carter v. Reese, 566
- Casebolt v. Cowan, 685
- Cass v. Higenbotam, 136
- Cassidy v. Daily Mirror Newspapers Ltd., 1066
- Cast Art Industries LLC v. KPMG LLP*, 1055
- Castello v. County of Nassau, 868
- Castiglione v. Galpin, 74
- Castillo v. City of Las Vegas, 636
- Castro v. Melchor, 707
- Catsouras v. Department of California Highway Patrol, 1136
- Caudle v. Betts, 34
- Caviglia v. Royal Tours of Am., 196
- Chaffee v. Seslar, 693
- Champion ex rel. Ezzo v. Dunfee, 441
- Chancellor v. Pottsgrove School Dist., 99
- Chapman v. Milford Towing & Service, Inc., 491
- Chapman v. Superior Ct., 193
- Charles v. Florida Foreclosure Placement Center LLC, 446
- Charlie Stuart Oldsmobile, Inc. v. Smith, 636
- Charvat v. NMP LLC, 1151
- Chase Securities Corp. v. Donaldson, 435
- Chauvlier v. Booth Creek Ski Holdings, Inc., 851
- Chavers v. Gatke Corp., 447
- Chavez v. Desert Eagle Distributing Co. of N.M., 671
- Chenault v. Huie, 708
- Chepkevich v. Hidden Valley Resort L.P., 849
- Chester v. Deep Roots Alderwood LLC, 19
- Chicago B & Q. R.R. Co. v. Krayenbuhl*, 277
- Childers v. A.S., 64, 533
- Childs v. Haussecker, 957
- Chizmar v. Markie, 634
- Christian v. New London, 928
- Christians v. Christians, 98
- Chrysler Corp. v. Batten, 961
- Churchill Forge, Inc. v. Brown, 896
- Chuy v. Philadelphia Eagles Football Club, 1098
- Cianci v. New Times Publishing Co., 1113
- Ciofalo v. Vic Tanney Gyms, 846
- Cipollone v. Liggett Group, Inc., 824, 829
- Citizen Publishing Co. v. Miller, 106
- City of Bellmead v. Torres, 608
- City of Cincinnati v. Beretta U.S.A. Corp., 994
- City of Denton v. Paper, 598
- City of Rapid City v. Boland, 182
- City of Richmond Hill v. Maia, 505, 506
- City of Rome v. Jordan, 578
- City of San Antonio v. Peralta, 608
- City of San Antonio v. Wheelabrator Air Pollution Control, Inc., 930
- City of Sundown v. Shewmake, 977
- Clark v. Allstate Ins. Co., 57
- Clark v. Darden Rest., Inc., 372
- Clarke v. Oregon Health Sciences Univ., 936

- Clauson v. Kempffer, 627
 Clayton v. New Dreamland Roller Skating Rink, 64
 Clayton v. Richards, 1146
 Cleveland v. Rotman, 460, 461
 Clinkscales v. Nelson Securities, Inc., 371
 Coath v. Jones, 739
 Coffee v. McDonnell-Douglas Corp., 548–551, 553
 Coffman v. Keene Corp., 802
 Cohen v. Herbal Concepts, Inc., 1159
 Cohen v. Lamko, Inc., 711
Cohen v. Petty, 23, 276
 Cohen v. Smith, 64
 Cole v. Rush, 667
 Cole v. Taylor, 193
 Cole v. Turner, 63
 Colella v. JMS Trucking Co. of Illinois, 227
 Coleman v. Cintas Sales Corp., 799
 Coleman v. East Joliet Fire Protection Dist., 580
 Coleman v. Hoffman, 623
 Coleman v. MacLennan, 1086
Coleman v. Ramada Hotel Operating Co., 841
 Collins v. Lilly & Co., 431, 432
 Collins v. Red Roof Inns, Inc., 1118
 Colon v. Wal-Mart Stores, Inc., 99
 Columbia/HCA Healthcare Corp. v. Cottey, 1027
 Coman v. Baker, 998
 Comeau v. Lucas, 681
 Comedy Three Productions, Inc. v. Gary Saderup, Inc., 1166
 Community Voice Line L.L.C. v. Great Lakes Commun. Corp., 129
 Compton v. Sims, 137
CompuServe, Inc. v. Cyber Promotions, Inc., 129
 Comuso v. National Railroad Passenger Corp., 91
 Conant v. Rodriguez, 548
 Conaway v. Roberts, 371
 Congini by Congini v. Portersville Valve Co., 677
 Conley v. Romeri, 162
 Conner v. Menard, Inc., 380
 Contreras v. Crown Zellerbach Corp., 99
 Control Techniques, Inc. v. Johnson, 508, 871
 Cook v. MillerCoors LLC, 667
 Cook v. Minneapolis, 410
 Cook v. Whitsell-Sherman, 28
 Cooper v. Barnickel Enterprises, Inc., 716
 Cooper v. Parker-Hughey, 1119
 Corbin v. City of Philadelphia, 498
 Cordero v. Christ Hosp., 745
 Corrections v. Cowles, 927
 Cosgrove v. Grimes, 306
 Couch v. Red Roof Inns, Inc., 875
 County of Dallas v. Poston, 343
 County of Sacramento v. Valley Health-care Sys., Inc., 896
 Courvoisier v. Raymond, 166
 Cowan v. Hospice Support Care, Inc., 941
 Coward v. Baddeley, 63
 Cowles Publ'g Co. v. State Patrol, 1131
 Cox Broadcasting Corp. v. Cohn, 1134
 Cox Texas Newspapers v. Wootten, 87
 Cox v. Shelter Ins. Co., 203
 Cox v. Stretton, 947
 Craig v. Driscoll, 671
 Credit Alliance Corp. v. Arthur Andersen & Co., 1056, 1058
 Creditwatch, Inc. v. Jackson, 100
 Cremeans v. Willmar Henderson Mfg. Co., 869
 Crews v. Hollenbach, 869
 Crisci v. Security Insurance Co. of New Haven, 37
 Crosland v. New York Transit Auth., 573
 Crown Cork & Seal Co. v. Hires Bottling of Chicago, 1034

- Crussell v. Electrolux Home Products, Inc., 708
- Cruz ex rel. Alvarez v. City of Philadelphia, 84
- Cubby, Inc. v. CompuServe, Inc., 1075
- Cuesta v. Immaculate Conception Roman Cath. Church, 858
- Cuffy v. City of New York, 578
- Cummins v. Lewis County, 578
- Cunningham v. Braum's Ice Cream & Dairy Stores, 556
- Curl v. Key, 1027
- Currier v. Washman LLC, 597
- Curtis Publishing Co. v. Butts, 1112
- Customer Co. v. City of Sacramento, 185
- Czajkowski v. Meyers, 84
- D.S.A., Inc. v. Hillsboro Indep. Sch. Dist., 1051
- Daily Times-Democrat Co. v. Graham, 1136
- Dalury v. S-K-I Ltd., 850
- Daly v. General Motors Corp., 871
- D'Amico v. Christie, 669
- Daniel v. Reeder, 671
- Darby & Darby P.C. v. VSI Int'l, Inc., 307
- Darryl A. v. Christopher P., 564
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 804
- Davies v. Butler*, 150, 289, 687
- Davies v. Mann, 836
- Davis & Alcott Co. v. Boozer, 111
- Davis v. Devereux Foundation*, 735
- Davis v. Equibank, 120
- Davis v. Protection One Alarm Monitoring, Inc., 554
- Davis v. Richardson, 74
- Davis v. The Tennessean, 1100
- Davis v. Wal-Mart Stores, Inc., 395
- Davison v. Snohomish County, 279
- Day v. Heller, 694
- Dayton Hudson Corp. v. Altus, 117
- De Anda v. Blake, 58
- De Blanc v. Jensen, 564
- De Gregorio v. Malloy, 287, 338
- De Long v. County of Erie, 576
- De Luca v. Bowden, 57
- De Vera v. Long Beach Public Transportation Co.*, 524
- Dean v. Young, 388
- Decorso v. Watchtower Bible and Tract Society of N.Y., 660
- Del Lago Partners, Inc. v. Smith*, 678
- Delao v. Carlson, 273
- Dellapenta v. Dellapenta, 879
- Delta Airlines, Inc. v. Townsend, 670
- DeMay v. Roberts*, 158, 162
- Demelus v. King Motor Co. of Fort Lauderdale, 266
- Dempsey v. Nat. Enquirer, 1144
- Denbo v. DeBray, 945
- Denton v. Chittenden Bank, 1152
- Denton v. Paper, 598
- DePass v. United States, 415
- Depue v. Fleteau, 186, 609
- Derdiarian v. Felix Contracting Corp.*, 489
- Dermatossian v. New York City Transit Auth., 379
- Desjarlais v. USAA Ins. Co., 206
- Desnick v. ABC, 972
- Dewey v. Lutz, 1029
- Di Ponzio v. Riordan*, 479
- Dias v. Brigham Med. Assoc., 723
- Diaz v. Oakland Tribune, Inc., 1134
- DiGeronimo v. Fuchs, 704
- Dillard Dept. Stores v. Gonzalez, 100
- Dillard Dept. Stores Inc v. Silva*, 177
- Dillon v. Legg, 642, 643, 649, 664
- Dillon v. Twin State Gas & Elec. Co., 420
- Dilworth v. Dudley, 1116
- DiMarco v. Lynch Homes-Chester County, Inc., 317, 554
- Dimick v. Schiedt, 203
- Dinsdale Constr. LLC v. Lumber Specialties Ltd., 1049
- Distinctive Printing & Packaging Co. v. Cox, 239

- District of Columbia v. Brown, 355
Dodge-Farrar v. American Cleaning Services Co., Inc., 401
Doe A. v. Diocese of Dallas, 964
Doe Parents No. 1 v. State Dept. of Educ., 641
Doe v. Archdiocese of Cincinnati, 713, 958
Doe v. Associated Press, 1023
Doe v. Corporation of Pres. of Church of Jesus Christ of Latter-Day Saints, 107
Doe v. Holt, 921
Doe v. Issacs, 237
Doe v. Liberatore, 660
Doe v. Marion, 543
Doe v. Maskell, 955
Doe v. Meth. Hosp., 1134
Doe v. Moe, 859
Doe v. Oregon Conference of Seventh-Day Adventists, 532
Doe v. Roe, 16, 956
Doe v. SexSearch.com, 648
Doe v. TCI Cablevision, 1159, 1163
Doherty v. Merck & Co., Inc., 694
Donohue v. Copiague Union Free Sch. Dist., 313
Donovan v. Sutton, 293
Dorsey v. Apple Computers, Inc., 945
Dougherty v. Stepp, 970
Dove Audio, Inc. v. Rosenfeld Meyer & Susman, 1124
Dover Elevator Co. v. Swann, 373
Dowdle Butane Gas Co. v. Moore, 395
Downs v. E.O.M. Entertainment, Inc., 599
Drabek v. Sabley, 169
Draper v. Airco, Inc., 869
Drugs. Mut. Pharm. Co., Inc. v. Bartlett, 829
Dube v. Lanphear, 678
Dubinsky v. United Airlines Master Exec. Coun., 1117
Ducheneaux v. Miller, 1029
Duffy v. Irons Area Tourist Ass'n., 608
Duge v. Union Pac. R. Co., 686
Dugger v. Arredondo, 196
Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 1071, 1081, 1100
Duncan v. Cessna Aircraft Co., 902
Dunlap v. Dunlap, 914
Dunlea v. Dappen, 955
Dunphy v. Gregor, 647, 654
Duplechain v. Turner, 172
Dupont v. Aavid Thermal Tech., Inc., 532
Durbin v. City of Winnsboro, 33
Dwyer v. American Express Co., 1143, 1163
Dynas v. Nagowski, 681
Dzenutis v. Dzenutis, 914
Dziubak v. Mott, 935
Eads v. Wolpoff & Abramson LLP, 102
Eason v. Cleveland Draft House, 836
East River Steamship Corp. v. Transamerica Delaval, 808
Ebel v. Eli Lilly & Co., 805
Economopoulos v. A. G. Pollard Co., 1074
Eddy v. Brown, 1141
Edwards v. Basel Pharmaceuticals, 805
Edwards v. Honeywell, Inc., 488
Edwards v. Max Thieme Chevrolet Co., 136
Edwards v. National Audubon Soc'y, Inc., 1123
Eilers v. Coy, 126
Eisel v. Board of Educ., 543
Elam v. Alcolac, Inc., 208
Elbaor v. Smith, 904
Elliott v. Elliott, 306, 635
Ellis v. City of Dallas, 141
Employers Casualty Co. v. Tilley, 40
Endresz v. Friedberg, 707
Ennabe v. Manosa, 669
Enright v. Groves, 115
Entex v. Gonzalez, 522
Entwistle v. Draves, 338

- Environmental Network Corp. v. Goodman Weiss Miller L.L.P., 308
- Ernst & Young L.L.P. v. Pac. Mut. Life Ins. Co., 1054
- Escamilla v. Shiel Sexton Company, Inc., 233
- Escola v. Coca Cola Bottling Co.*, 426, 772
- Eskin v. Bartee, 644
- Eskin v. Castiglia, 874
- Esposito-Hilder v. SFX Broadcasting, Inc., 106
- Estate of Gordon-Couture v. Brown, 608
- Estate of Lambert v. Fitzgerald, 1042
- Estate of Re v. Kornstein Veisz & Wexler, 412
- Etan Indus., Inc. v. Lehmann, 958
- Ethyl Corp. v. Daniel Constr. Co., 848
- Euclid v. Ambler Realty Co., 978
- Ex parte BASF Const. Chemicals LLC, 552
- Exxon Shipping Co. v. Baker, 247
- Exxon v. Sofec, Inc., 508
- F.F.P. Operating Partners L.P. v. Duenez, 670
- F.G. v. MacDonell*, 657
- Fairview Ritz Corp. v. Borough of Fairview, 928
- Faniel v. Chesapeake & Potomac Telephone Co., 114
- Farias v. Mr. Heater, Inc., 806
- Farina v. Pan American World Airlines, Inc., 755
- Farley v. Sartin*, 705
- Farm Bureau Ins. Group v. Phillips, 294–295
- Farm Credit Bank of St. Louis v. Whitlock, 97
- Farmers Ins. Group v. County of Santa Clara, 727
- Farwell v. Keaton, 531
- Fassett v. Delta Kappa Epsilon, 677
- Fay v. Thiel College, 559
- Fehrenbach v. O'Malley, 958
- Felder v. Physiotherapy Assoc., 232
- Feldman v. Lederle Labs., 819
- Feltmeier v. Feltmeier*, 92
- Feres v. United States, 926
- Ferguson v. Lieff Cabraser Heimann & Bernstein, 309
- Fernandez v. Walgreen Hastings Co., 207, 654
- Ferris v. Benbow Chem. Packaging, Inc., 355
- Fetick v. American Cyanamid Co., 897
- Field v. Philadelphia Elec. Co., 69
- Figueiredo-Torres v. Nickel, 107
- Filiberto v. Herk's Tavern, Inc., 531
- Fineran v. Pickett, 647
- Firemen's Ins. Co. v. Jones, 1041
- Firestone v. Firestone, 633, 1100
- First Assembly of God v. Texas Utilities, 458, 579
- Firth v. State, 1078
- Fischer v. Famous-Barr Co., 111
- Fisher v. Carrousel Motor Hotel, Inc., 66
- Fisk v. City of Kirkland, 573
- Fitzpatrick v. Natter, 323
- Flamm v. American Assoc. of Univ. Women, 1116
- Fleck v. KDI Sylvan Pools, Inc., 800
- Fleischer v. Hebrew Orthodox Congregation, 600
- Fletcher v. Dorchester Mut. Ins. Co., 395
- Florence v. Goldberg, 574
- Flores v. Exprezit! Stores 98-Georgia LLC, 670
- Florida B. v. Christensen, 1061
- Florida Dept. of Corrections v. Abril, 635
- Florida Publ'g Co. v. Fletcher, 972
- Florida Star v. B.J.F., 1134
- Flowers v. Carville, 1075, 1099
- Floyd v. Park Cities People, Inc., 1136
- FMC Corp. v. Capital Cities/ABC, Inc., 147
- Folz v. New Mexico, 635

- Ford Motor Co. v. Ledesma, 484
 Ford Motor Co. v. Wagoner, 516
 Fordham v. Oldroyd, 865
 Forsher v. Bugliosi, 1134
Foster v. Costco Wholesale Corp., 605
 Foster v. de Cholnoky, 707
 Foster v. Duggin, 310
 Fournell v. Usher Pest Control Co., 642
 Fox v. Hayes, 205
 Fraguglia v. Sala, 166
 Franklin Med. Assoc. v. Newark Pub. Schools, 446
 Franklin Prescriptions, Inc. v. New York Times Co., 1098
 Fredeen v. Stride, 139, 636
 Freeman v. Eichholz, 600
 Fricke v. Owens-Corning Fiberglass Corp., 149
 Friedman v. Merck & Co., 633
 Frye v. City of Detroit, 884
 Frye v. Frye, 803, 884
 Frye v. United States, 803
 Fuentes v. Alecio, 193
 Fulk v. Roberts, 117
 Fuller v. Preis, 505

 G.M.M. ex rel. Hernandez-Adams v. Kimpson, 233
 Gaines-Tabb v. ICI Explosive USA, Inc., 495
 Galayda v. Lake Hosp. Sys., Inc., 231
 Gallimore v. Children's Hosp. Med. Ctr., 206
 Galveston H. & S.A. Ry. Co. v. De Groff, 999
 Gambill v. Stroud, 317
 Gantt v. Security USA, 34
 Garcia v. Joseph Vince Co., 422
 Garcia v. Windley, 412
 Garland Grain Co. v. D-C Home Owners Improvement Ass'n, 977, 1000
 Garr v. Alden, 1035
Garratt v. Dailey, 12, 15, 43

 Garrison v. State of Louisiana, 1089
 Gates v. Jensen, 334
 Gaulding v. Celotex Corp., 429, 430
 Gause v. Smithers, 766
Gavcus v. Potts, 968
 General Mills Restaurants, Inc. v. Texas Wings, Inc., 970
 Genovay v. Fox, 614
 George v. City of Houston, 999
 Gerber v. Veltri, 64
Gertz v. Robert Welch, Inc., 1081, 1092, 1101, 1103, 1112, 1155, 1158
 Gibbs v. Ernst, 712
 Gibbs v. Jackson, 749
 Gibson v. American Cyanamid Co., 430
 Gibson v. Brewer, 104
 Gibson v. Leonard, 864
 Gilchrist Timber Co. v. ITT Rayonier, Inc., 1051
 Gilmer v. Ellington, 552
 Ginther v. Domino's Pizza, Inc., 726
 Giovine v. Giovine, 94, 98, 959
Gipson v. Kasey, 336
 Glanzer v. Shepard, 1059
 Gleitman v. Cosgrove, 697
 Glenmar Cinestate, Inc. v. Farrell, 723
 Glidden v. Syzbiak, 55
 Gliemmo v. Cousineau, 288
 GNOC Corp. v. Aboud, 672
 Goady v. Utopia Home Care Agency, 203
Goar v. Village of Stephen, 510
Goddard v. Boston & Maine R.R., 366
 Goff v. Taylor, 51
 Goldberg v. Florida Power & Light Co., 579
 Goldberg v. Housing Auth. of Newark, 673
 Golden Bear Distrib. Sys. v. Chase Revel, Inc., 1088
 Golden Spread Council, Inc. v. Akins, 551
 Golden v. Mullen, 1119
 Goldfuss v. Davidson, 175

- Goldsmith v. Howmedica, Inc., 956
Goller v. White, 914
Gonsalves v. Nissan Motor Corp., 1076
Gonzales v. City of Bozeman, 579
Gonzalez v. New York City Housing Authority, 222
Gonzalez v. Otis Elevator Co., 379
Goodwin v. Hare, 866
Goodwin v. Kingsmen Plastering, Inc., 947
Goodwin v. Reilley, 756
Gorman v. McMahon, 107
Goss v. Allen, 296
Gould v. American Family Mut. Ins. Co., 296
Graceland Corp. v. Consol. Laundries Corp., 997
Graham v. Freese & Nichols, Inc., 553
Grandeson v. International Harvester Credit Corp., 636
Grant v. Reader's Digest Ass'n, Inc., 1064
Graubard Mollen Dannett & Horowitz v. Moskovitz, 1038
Graves v. Diehl, 993
Graves v. Estabrook, 647
Graves v. Trudell, 175
Gravis v. Physicians & Surgeons Hospital, 156
Greco v. United States, 703
Green v. Alpharma, Inc., 408
Green v. Donroe, 110
Green v. Ensign-Bickford Co., 755
Greenbelt Cooperative Publishing Assn., Inc. v. Bresler, 1112
Greenhalgh v. Casey, 1116
Greenwood v. Anderson, 921
Greenwood v. Mitchell, 217
Gregory v. Clive, 573
Gregory v. Cott, 53, 297
Grecyas, Inc. v. Proud, 1043
Grisham v. Philip Morris U.S.A., Inc., 956
Gross v. Sweet, 844
Grosz v. Museum of Modern Art, 945
Grotheer v. Escape Adventures, 90
Grover v. Stechel, 533
GTE Southwest, Inc. v. Bruce, 88, 727
Guarina v. Bogart, 978
Guccione v. Hustler Magazine, Inc., 1069
Guckeen Farmers Elevator Co. v. South Soo Grain Co., 135
Guckian v. Fowler, 203
Gudin v. 6108 Hudson Ave. LLC, 317
Guille v. Swan, 755
Guinn v. Church of Christ of Collinsville, 107
Gulf Refining Co. v. Williams, 269, 465
Gum v. Dudley, 909
Gushlaw v. Milner, 686
Gustafson v. City of Austin, 1069
Gutierrez de Martinez v. Lamagno, 934
Gutman v. Klein, 394
Gyrc v. Dayton-Hudson Corp., 237
H&S Homes L.L.C. v. McDonald, 728
Haben v. Anderson, 152
Habershaw v. Michaels Stores, Inc., 367
Hackbart v. Cincinnati Bengals, 855
Haehl v. Wabash R. Co., 721
Haft v. Lone Palm Hotel, 429
Hagan v. Coca-Cola Bottling Co., 641
Hagberg v. California Federal Bank FSB, 120
Hagebak v. Stone, 1120
Hakimoglu v. Trump Taj Mahal Assoc., 672
Hakkila v. Hakkila, 93
Hale v. Hale, 596, 914
Hall v. E. I. Du Pont de Nemours & Co., Inc., 425
Hall v. May Stores Co., 106
Hall v. Post, 1134
Hall v. Toreros II, Inc., 668
Hamilton v. Ford Motor Credit Co., 84, 101
Hanberry v. Hearst Corp., 1035
Hancock v. Variyam, 1080

- Hannah v. Heeter, 394
Hardy v. Southwestern Bell Telephone Co., 419
Hariri v. Amper, 1125
Harper v. Illinois Cent. Gulf R.R., 648
Harrington v. Brooks Drugs, Inc., 207
Harrington v. Hall, 58, 175
Harris v. Anderson County Sheriff's Office, 26, 749
Harris v. Fulton-DeKalb Hosp. Auth., 666
Harris v. Jones, 78
Harris v. McCray, 935
Harrison v. Hardin Cty. Comm. Unit Sch. Dist., 927
Hart v. Electronic Arts, Inc., 1166
Hart v. Geysel, 163
Harte-Hanks Communications, Inc. v. Connaughton, 1089
Hartford Accident and Indemnity Co. v. Village of Hempstead, 250
Harting v. Dayton Dragons Professional Baseball Club, 857
Haryanto v. Saeed, 117
Haselhorst v. State, 496, 647
Hatch v. O'Neill, 57
Haugh v. Jones & Laughlin Steel Corp., 597
Havner v. E-Z Mart Stores, Inc., 401
Hawkins v. Harris, 1118
Haybeck v. Prodigy Services Co., 726
Hayes v. Malkan, 621
Haygood v. De Escabedo, 214
Hazen v. Municipality of Anchorage, 390
Hearn v. City of Overland Park, 626
Heath v. La Mariana Apts., 342
Hedgepeth v. Whitman Walker Clinic, 649
Heiner v. Moretuzzo, 634
Heintz v. Jenkins, 102
Heinz v. Heinz, 554
Helfend v. Southern California Rapid Transit District, 211
Helling v. Carey, 332, 334
Hellums v. Raber, 446
Helms v. Church's Fried Chicken, Inc., 616
Henderson v. Wellman, 101, 1118
Henebema v. Raddi, 927
Hennessey v. Pyne, 973
Henrickson v. Sebanc, 48
Henriksen v. Cameron, 93
Henry v. Houston Lighting & Power Co., 484
Henson v. Reddin, 132
Herceg v. Hustler Magazine, Inc., 452
Herman v. Wesgate, 439, 450, 882
Herrera v. Quality Pontiac, 496
Herron v. Anigbo, 945
Herzfeld v. Herzfeld, 920, 921
Hester v. Brown, 110
Hewellette v. George, 913
Hewitt v. Allen, 309
Hickman v. Carven, 961
Hicks v. Korean Airlines Co., 687
Hicks v. Nunnery, 310
Highway Trailer Co. v. Janesville Electric Co., 928
Hildebrand v. Hildebrand, 955
Hilen v. Hays, 837
Hill v. City of Glenwood, 288
Hill v. Edmonds, 404
Hill v. Kimball, 663
Hills v. McGillvrey, 514
Hinish v. Meier & Frank Co., 1163
Ho v. University of Texas at Arlington, 1028
Hockema v. J.S., 206
Hodgeden v. Hubbard, 176
Hoffman v. Board of Educ., 313
Hoffman v. Capital Cities/ ABC, Inc., 1166
Hoffman v. Eppers, 63
Hoffman-La Roche, Inc. v. Zeltwanger, 100
Hogan v. Herald Co., 1123
Hojnowski v. Vans Skate Park, 852

- Holbert v. Noon, 72
Holder v. Mellon Mortgage Co., 266
Holguin v. Sally Beauty Supply, Inc., 180
Holiday Inns, Inc. v. Shelburne, 616
Holt v. Rowell, 636
Holytz v. City of Milwaukee, 924, 928
Homac Corp. v. Sun Oil Co., 458
Homeland Express L.L.C. v. Seale, 497
Hopewell v. Vitullo, 1117
Hopkins v. Fox & Lazo Realtors, 616
Horne v. Peckham, 307
Horner v. Sani-Top, Inc., 226
Horvath v. Ish, 858
Horvath v. Lindenhurst Auto Salvage, Inc., 760
Hotze v. Miller, 1091
Hougum v. Valley Mem. Homes, 1151
Hoult v. Hoult, 955
Hovermale v. Berkeley Springs Moose Lodge, 609
Howard v. Univ. of Med., 324
Howell v. New York Post, 1162
Hower v. Ulrich, 58
Hoyal v. Pioneer Sand Company, Inc., 235
Huddleston v. Union Rural Elec. Ass'n, 735
Hudson v. Craft, 163
Huggins v. Citibank N.A., 538
Hughes v. Klein, 311
Hughes v. Seven Springs Farm, Inc., 860
Hughes v. Stusser, 1025
Humphrey v. Glenn, 589
Humphrey v. Twin State Gas & Electric Co., 587
Humphreys-Mexia Co. v. Arsenaux, 973
Hunter v. Board of Educ., 313
Hurst v. East Coast Hockey League, Inc., 857
Hurt v. Philadelphia Housing Auth., 430
Hustler Magazine v. Falwell, 106, 1127
Hutcherson v. Alexander, 977
Hutchings v. Childress, 213
Hutton v. Logan, 502
Hyde v. City of Columbia, 454
Hyde v. Roman Catholic Bishop of Providence, 955
Hyer v. Pittsburgh Corning Corp., 961
Hymowitz v. Eli Lilly and Co., 431, 964
Hyson v. White Water Mt. Resorts, 849
I de S et ux. v. W de S, 61
IDA Moorhead Corp. v. Leach, 897
Ileto v. Glock, Inc., 994
Illinois Central Railroad Co. v. Bloodworth, 270
Imig v. Beck, 371
In McPeake v. William T. Cannon Esq. P.C., 506
In re 91st Street Crane Collapse Litig., 222
In re Air Crash Disaster Near Chicago on May 25, 1979, 235
In re Air Crash Disaster Near New Orleans, 636
In re Arbitration Between Polemis and Furness Withy & Co. Ltd., 460
In re Estate of Folcher, 1035
In re Facebook Internet Tracking Litig., 1152
In re Galbasini, 733
In re Haw. Fed. Asbestos Cases, 820
In re Marriage of Tigges, 1145
In re Matthys, 341
In re Methyl Tertiary Butyl Ether (MTBE) Products Liab. Litig., 436
In re Nickelodeon Consumer Priv. Litig., 1152
In re S.K.H., 87
In re Spencer, 141
In re Starlink Corn Products Liability Litig., 1006
In re Tylenol (Acetaminophen) Mktg. Sales Practices and Products Liab. Litig., 253
In Tayar v. Camelback Ski Corp., Inc., 852

- Indiana Harbor Belt Railroad v. American Cyanamid Co., 756
Inkel v. Livingston, 601
 Inland Steel v. Pequinot, 343, 756
 Intel Corp. v. Hamidi, 132
 International U. v. Garner, 1136
 Irwin v. Ashurst, 1118
 Irwin v. Town of Ware, 687
 Isaacs v. Huntington Mem. Hosp., 612
 Iseberg v. Gross, 522
Italian Cowboy Partners Ltd. v. Prudential Ins. Co., 1044
 Ivancic v. Olmstead, 621
- J.C. Penney Co., Inc. v. Chavez, 366
 J.S. v. R.T.H., 533
 Jackson Jordan, Inc. v. Leydig Voit & Mayer, 959
 Jackson v. AEG Live LLC, 553
 Jackson v. H.H. Robertson Co., Inc., 388
 Jackson v. Nestle-Beich, Inc., 820
 Jackson v. Ray Kruse Constr. Co., 628
 Jacobs v. Halper, 1023
 Jacobsen v. Allstate Ins. Co., 633
 Jacobson v. Dahlberg, 894
 Jacobus v. Trump, 1063
 Jagger v. Mohawk Mountain Ski Area, Inc., 860
 Jaillet v. Cashman, 1059
 James v. Gannett Co., Inc., 1065
 James v. Jackson, 529
James v. Lieb, 642
 James v. Meow Media, Inc., 453
 Janice H. v. 696 N. Robertson LLC, 609
 Jarrett v. Jones, 649
 Jasko v. Woolworth Co., 370
 Javier v. City of Milwaukee, 929
 Jaworski v. Kiernan, 859
 Jea v. Cho, 408
 Jean v. Commonwealth, 580
 Jefferson County Sch. Dist. v. Moody's Investor's Services, Inc., 1117
 Jelly v. Dabney, 166
 Jews For Jesus, Inc. v. Rapp, 1158
- Jimenez v. Superior Court, 808
 John B. v. Superior Court, 19
 John Doe 2 v. Associated Press, 1134
John Doe BF v. Diocese of Gallup, 329
John Doe v. Archdiocese of Milwaukee, 1017
 John Morrell & Co. v. Royal Caribbean Cruises, 604
John R. v. Oakland Unified School District, 728
 Johnson & Johnson v. Aetna Cas. & Surety Co., 250
 Johnson County Sherriff's Posse, Inc. v. Endsley, 628
Johnson v. Barnes & Noble Booksellers, Inc., 118
 Johnson v. Jacobs, 492
 Johnson v. Jamaica Hosp., 649
 Johnson v. Johnson Chem. Co., Inc., 801
Johnson v. Minnesota, 520
Johnson v. New York, 637
 Johnson v. Souza, 560
 Johnson v. Weedman, 132
 Johnson v. West Va. Univ. Hosp., 633
 Johnson v. Woman's Hospital, 82
 Johnstone v. City of Albuquerque, 505
 Jones v. Baisch, 726
 Jones v. Billings, 592
 Jones v. Clinton, 1118
 Jones v. Harris, 78
 Jones v. Howard University, Inc., 635
 Jones v. Owings, 625
 Jones v. Secord, 536
 Jones v. Shipley, 62, 72
 Jones v. Southwestern Newspapers Corp., 345
 Jones v. Thomas, 874
 Judd v. Walker, 1042
 Judge Hand in Conway v. O'Brien, 274
 Judge v. Saltz Plastic Surgery P.C., 1140
 Juhl v. Airington, 446
 Juisti v. Hyatt Hotel Corp., 470
 Jurado v. Western Gear Works, 822
 Jurs v. City of Omaha, 29

- Jury v. Giant of Md., Inc., 180
Jutzi-Johnson v. U.S., 204, 506
Juvenalis v. District of Columbia, 836
- K.H. v. J.R., 533
K.M. v. Alabama Dept. of Youth Services, 99
Kampen v. American Isuzu Motors, Inc., 822
Kaneko v. Hilo Coast Processing, 871
Kapres v. Heller, 677
Kassama v. Magat, 704
Kassis v. Lease and Rental Management Corp., 521
Katapodis v. Brooklyn Spectator, Inc., 1064
Katko v. Briney, 172
Keel v. Banach, 703
Keel v. Hainline, 53
Keene v. Brigham and Women's Hosp., Inc., 942
Keeton v. Hustler Mag., Inc., 1078
Kellermann v. McDonough, 532
Kelley v. Bonney, 1118
Kelly v. Gwinnell, 672
Kelly v. Storey County Sheriff, 185
Kemp v. Estate of Crabtree, 252
Kennedy v. Wal-Mart Stores, 365
Kent v. Commonwealth, 512
Kent v. Gulf States Utilities Co., 758
Kentucky Fried Chicken v. Superior Ct., 616
Kentucky River Med. Ctr. v. McIntosh, 604
Kenyon v. Hospital San Antonio, 567
Kersh v. Heffner, 32
Kessler v. Mortenson, 592
Keyes v. Tallahassee Mem. Reg. Med. Ctr., 371
Khan v. Houston NFL Holdings LP, 739
Kilduff v. Adams, Inc., 1049
Kilian v. Doubleday & Co., Inc., 1068
King v. Northeast Security, Inc., 573
King v. Phillips, 464
Kingsbury v. Smith, 697
Kinsman v. Unocal Corp., 628
Kinsman No. 1, Petition of Kinsman Transit Co., 473
Kinsman No. 2, Petition of Kinsman Transit Co., 477
Kircher v. City of Jamestown, 578
Kirk v. Denver Publishing Co., 252
Kissinger v. Mannor, 34
Kituskie v. Corbman, 310
Kleinknecht v. Gettysburg College, 530
Kline v. 1500 Massachusetts Ave. Apartment Corp., 526
Klingerman v. Sol Corp., 670
Klopp v. Wackenhutt Corp., 604
Kmart Corp. v. Bassett, 378
Knierim v. Izzo, 106, 632
Knorpp v. Hale, 596
Knox v. Anderson, 1035
Kobza v. Kutac, 937
Koch v. Southwestern Elec. Power Co., 269
Koepnick v. Sears Roebuck & Co., 130
Koepfel v. Speirs, 1148
Koestler v. Pollard, 107
Kolegas v. Heftel Broad. Corp., 1157
Komornik v. Sparks, 237
Konick v. Berke Moore Co., 723
Kozup v. Georgetown Univ., 154
Kramer Service, Inc. v. Wilkins, 402
Kratz ex rel. Kratz-Spera v. MedSource Community Services, Inc., 958
Krebs v. Charlotte Sch. of L. LLC, 313
Kremen v. Cohen, 142
Kubert v. Best, 440
Kuechle v. Life's Companion P.C.A., Inc., 1076, 1120
Kumho Tire Co. v. Carmichael, 804
Kurowski v. Town of Chester, 608
Kuzmicz v. Ivy Hill Park Apts., Inc., 620
- L.A. Fitness Intern. LLC v. Mayer, 526
L.S. Ayres & Co. v. Hicks, 548
La Bruno v. Lawrence, 47

- La Page v. Smith, 193
La Raia v. Superior Court, 548
 Labaj v. VanHouten, 749
 LaBrier v. Anheuser Ford, Inc., 90
 Ladd v. Honda Motor Co. Ltd., 1053
 Lahr v. Fulbright & Jaworski L.L.P., 100
 LaMartiniere v. Allstate Ins. Co., 1151
 Lamb v. Rizzo, 1100
 Lambert v. Parrish, 503
Lambertson v. United States, 44
 Lambeth v. Media General, Inc., 553
 Lambrecht v. Schreyer, 69
 Lamprecht v. Schluntz, 371
 Lance v. Senior, 615
 Landers v. East Texas Salt Water Disposal Company, 884
 Langan v. Bellinger, 976
 Langan v. Valicopters, Inc., 755
 Langeslag v. KYMN, Inc., 87, 88
 Langford v. Shu, 58
 Langle v. Kurkul, 677
 Larsen v. Banner Health System, 666
 Larson v. City of Chicago, 621
 Laser v. Wilson, 531
 Lasley v. Combined Transport, Inc., 289
 Lauer v. City of N.Y., 578
 Lavigne v. Chase, 310
Lavin v. Conte, 796
 Law v. Superior Court, 878
 Lawson v. Citizens & S. Nat'l Bank, 1026
 Lawson v. Mitsubishi Motor Sales of Am., Inc., 383
 Lazard Freres & Co. v. Protective Life Ins. Co., 1043
 Leaders v. Dreher, 501
 Lear Siegler, Inc. v. Perez, 497
 LeBlanc v. Skinner, 1079
 Lebron v. Gottlieb Memorial Hosp., 256
 Lechuga v. Southern Pac. Transp. Co., 598
 Lee v. GNLV Corp., 526
 Lee v. Nationwide Mut. Ins. Co., 193
 Lehner v. Pittsburgh Rys. Co., 497
 Leichtman v. WLW Jacor Comm., Inc., 75
 Leith v. Frost, 140
 Lemmerman v. Fealk, 955
 Leo v. General Elec. Co., 997
 Leppke v. Segura, 686
 Lerner v. Laufer, 306
 Lesser v. Neosho County Comm. Coll., 71, 154
 Letter Carriers v. Austin, 1113
 Leuer v. Johnson, 422
Leung v. Verdugo Hills Hospital, 897
 Levine v. The Kramer Group, 1023
 Levy v. Franks, 87
Lewis v. Westinghouse Electric Corporation, 632
 Li v. Yellow Cab Co., 838
 Liberty Mut. Ins. Co. v. Steadman, 91
Lickteig v. Kolar, 922
 Life Ins. Co. of Ga. v. Johnson, 248, 255
 Liley v. Cedar Springs Ranch, Inc., 749
 Lilya v. Greater Gulf State Fair, Inc., 604
 Limestone Products Distrib., Inc. v. McNamara, 724
 Lincoln General Ins. Co. v. Detroit Diesel Corp., 808
Linden v. CNH America LLC, 782
 Linder v. Bidner, 533
 Lipman v. Atlantic Coast Line R. Co., 90
 Liriano v. Hobart, 800
 Lisa M. v. Henry Mayo Newhall Mem. Hosp., 732
 Litchford v. Hancock, 840
 Livesay v. Ambassador Operating Co., 166
 LLMD of Mich., Inc. v. Jackson-Cross Co., 319
 LM v. United States, 553
 Lomando v. United States, 942
 Lompe v. Sunridge Partners, 236
 Lonzo v. Lonzo, 911
 Loomis v. Terry, 277
 Lopez v. Surchia, 166
 Lord v. Fogcutter Bar, 193

- Lovinger v. Hix Green Buick Co., 135
Low v. Park Price Co., 361
Lowe v. Philip Morris USA, Inc., 209
Lozoya v. Sanchez, 207, 653
Lucas v. Hamm, 305
Lucas v. Hesperia Golf & Country Club, 401
Lucchesi v. Frederic N. Stimmell M.D., 86
Lucero v. Richardson & Richardson, Inc., 608
Luensmann v. Zimmer-Zampese & Assoc., 977
Lugosi v. Universal Pictures, 1165
Lundman v. McKown, 531
Lussier v. Bessette, 443
Lybrand v. Trask, 87
- MacDermid v. Discover Financial Services, 101, 504
MacGregor v. Walker, 558
MacGregor v. Watts, 138
Mack Trucks, Inc. v. Conkle, 252
Mack v. Carmack, 707
MacPherson v. Buick Motor Co., 768, 772
Maddox v. Townsend and Sons, Inc., 603
Maddux v. Donaldson, 884, 886
Maddy v. Vulcan Materials Co., 974
Magnaleasing, Inc. v. Staten Is. Mall, 1034
Mahowald v. Minnesota Gas Co., 380
Majca v. Beekil, 633
Maldonado v. Gateway Hotel Holdings L.L.C., 734
Malicki v. Doe, 660
Mandell v. Pivnick, 993
Mangual v. Berezinsky, 384
Manning v. Metropolitan Life Ins., 100
Marathon Corp. v. Pitzner, 407
Marcano v. Northwestern Chrysler-Plymouth Sales, Inc., 111
Marcus v. Liebman, 114
- Mark v. Oregon, 998
Marlow v. City of Sisters, 161
Marmelstein v. Kehillat New Hempstead, 660
Marquay v. Eno, 335, 529
Marsallis v. LaSalle, 561
Marshall v. Burger King Corp., 613
Marshall v. Celotex Corp., 429
Marshall v. Nugent, 465, 485
Marshall v. Ranne, 868
Martin Luther King Ctr. for Soc. Change, Inc. v. Am. Heritage Products, Inc., 1165
Martin v. Abbott Labs., 431–433
Martin v. Herzog, 344
Martin v. Petta, 371
Martinez Management, Inc. v. Caston, 146
Martino v. Wal-Mart Stores, Inc., 394
Masters v. New York Central R. Co., 840
Mathis v. Cannon, 1108
Matsuyama v. Birnbaum, 414
Matthews v. Amberwood Associates Ltd. Partnership, Inc., 624
Mauri v. Smith, 1143
Maussner v. Atlantic City Country Club, 334, 551
Mawe v. Piggot, 1064
Mayes v. LIN Television of Tex., Inc., 1143
McCahill v. New York Transp. Co., 420, 468
McClenahan v. Cooley, 458
McClure v. Rich, 596
McConkey v. AON Corp., 1039
McCue v. Klein, 151
McCulloh v. Drake, 98
McCullough v. McAnelly, 166
McDonald v. City of Red Wing, 184
McDonald v. Ford, 74
McDonald v. Highline School Dist. #401, 598
McDougald v. Garber, 204
McDougall v. Lamm, 648

- McElrath v. Electric Inv. Co., 1038
McGee v. A C And S, Inc., 203
McGee v. Alexander, 669
McGee v. Chalfant, 686
McGrath v. Zenith Radio Corp., 1028
McGuiggan v. New England Tel. & Tel. Co., 677
McGuire v. Almy, 48, 52, 504
McIntosh v. Omaha Public Schools, 600
McIntyre v. Smoke Tree Ranch Stables, 90
McKee v. Cosby, 1097
McKenna v. Straughan, 562, 685
McKernan v. Aasheim, 690
McKinney v. State, 712
McLennan v. American Eurocopter Corp., Inc., 802
McMillen v. Klingensmith, 901
McNair v. Lend Lease Trucks, Inc., 727
McNamara v. Freedom Newspapers, Inc., 1135
McNeil v. Nabors Drilling USA, Inc., 553
McNeil v. Wagner College, 559
McQueen v. Burkhart, 998
M'Culloch v. Maryland, 824
Meat Producers, Inc. v. McFarland, 976, 988
Medlar v. Mohan, 280, 352
Medlen v. Strickland, 139
Medlin v. Bass, 32, 732, 739
Meeropol v. Nizer, 1162
Meighan v. Shore, 305
Mellon Mortgage Co. v. Holder, 266
Melvin v. Reid, 1134
Memorial Med. Ctr. of E. Tex. v. Keszler, 902
Memphis Publishing Co. v. Nichols, 1156
Meny v. Carlson, 388
Mercado v. Mount Sinai Hosp. Med. Ctr., 161
Merchants Fast Motor Lines v. State, 371
Merhi v. Becker, 465, 471, 490
Merkel v. Safeway Stores, Inc., 619
Merrick v. Thomas, 554
Merrill v. Trump Ind., Inc., 672
MetLife Auto & Home v. Joe Basil Chevrolet, Inc., 395
Meyer ex rel. Coplin v. Fluor Corporation, 207
Meyers v. Medford Lakes Bd. of Educ., 313
Micari v. Mann, 31, 162
Miceli v. Ansell, Inc., 694
Michie v. Great Lakes Steel Division National Steel Corp., 883
Michigan Coalition for Responsible Gun Owners v. City of Ferndale, 924
Mieske v. Bartell Drug Co., 138
Miglino v. Bally Total Fitness of Greater New York, 343
Mikolajczyk v. Ford Motor Co., 790
Milkovich v. Lorain Journal Co., 1066, 1109
Miller v. Brooks, 1145
Miller v. Grand Union Co., 903
Miller v. HCA Inc, 155
Miller v. NBC, 1153
Miller v. Stouffer, 888
Minn. Fire & Cas. Ins. Co. v. Paper Recycling of La Crosse, 608
Minnich v. Med-Waste, Inc., 863
Minyard Food Stores, Inc. v. Goodman, 726
Mirand v. City of N.Y., 529
Mitchell v. Davis, 912
Mitchell v. Gonzales, 411
Mitchell v. Ridgewood E. Apts. LLC, 613
Mobil Chemical Co. v. Bell, 374
Mobley Law Firm PA v. Lisle Law Firm PA, 91
Moffat v. Cauldwell, 1064
Mohr v. Commonwealth, 712
Moll v. United States, 119
Monell v. Department of Soc. Servs., 930
Money v. Manville Corp. Asbestos Disease Comp. Trust Fund, 401

- Montgomery Elevator Co. v. Gordon, 383, 870
 Montgomery v. Devoid, 446
Montgomery v. Royal Motel, 351
 Montgomery Ward v. Andrews, 971
 Monzon v. U.S., 925
 Moore v. Big Picture Co., 1164
Moore v. El Paso Chamber of Commerce, 67
 Moore v. Francis, 1064
 Moore v. Regents of the Univ. of Cal., 147, 324
Morales v. Lee, 112
 Moranko v. Downs Racing LP, 685
 Moreno v. Sanchez, 959
 Morgan v. Greenwaldt, 112
 Morgan v. Horton, 1013
 Morgan v. Scott, 217
 Morganroth & Morganroth v. Norris McLaughlin & Marcus, 450
 Morrison v. MacNamara, 302
 Morrison v. National Broadcasting Co., 1067
 Morrissey v. Yale University, 87
 Morrow Shoe Mfg. Co. v. New England Shoe Co., 135
 Moser v. Ratinoff, 859
 Moss v. Rishworth, 156
 Mostert v. CBL & Assoc., 619
 Mower v. Leicester, 928
 Muela v. Gomez, 521
 Mueller v. McMillan Warner Ins. Co., 501
 Muhammad v. Strassburger et al., 307
 Mulcahy v. Lilly & Co., 431
 Mullin v. Municipal City of South Bend, 578
 Mullins v. Parkview Hosp., Inc., 64
 Mulraney v. Auletto's Catering, 619
Munn v. The Hotchkiss School, 527
 Murillo v. Seymour Ambulance Assn., 522
 Murphy v. E. R. Squibb & Sons, Inc., 429, 776
 Murphy v. I.R.S., 234
 Murphy v. Implicito, 64, 887
 Murphy v. Neely, 287
 Murphy v. Smith, 959
 Murphy v. Steeplechase Amusement Co., 842, 843
 Murray v. Ford Motor Co., 808
 Murray v. Great Gorge Resort, Inc., 860
 Muzikowski v. Paramount Pictures Corp., 1070
 Myers v. Lee, 87
 Myrick v. Barron, 1144
NAACP v. Acusport, Inc., 995
 Nabors Well Services Ltd. v. Romero, 879
 Nabozny v. Barnhill, 855
 Nader v. General Motors Corp., 1151
 Namath v. Sports Illus., 1162
 Napieralski v. Unity Church, 532
 Nasser v. Parker, 543
 National Cas. Co. v. Northern Trust Bank of Fla., 708
National Conversion Corp. v. Cedar Building Corp., 1039
 National Sav. Bank v. Ward, 303
 Neighborhood v. Anytime Fitness-Kingsville, 604, 851
 Neff v. Time, Inc., 1136
 Neiman v. Upper Queens Med. Group City Ct., 639
 Neiman-Marcus v. Lait, 1069
 Nelson v. Burnham & Morrill Co., 586
 Nelson v. Salt Lake City, 574
 Neubauer v. Disneyland, Inc., 90
 Neufeldt v. L.R. Foy Constr. Co., 86
 New Prime, Inc. v. Brandon Balchune Constr., Inc., 892
 New York Times Co. v. Connor, 1088
New York Times Co. v. Sullivan, 1082, 1112
 New York Chicago & St. Louis R.R. v. Mushrush, 599

- Newbury v. Vogel, 886
 Newell v. Montana W., Inc., 619
 Newsom v. B.B., 533
 Ney v. Yellow Cab Co., 339
 Nichols v. Dobler, 678
 Nicholson v. St. Anne Lanes, Inc., 368
 Nielsen v. Dickerson, 102
 NKC Hosps., Inc. v. Anthony, 509
Noble v. Louisville Transfer Co., 62
 Nobrega v. Edison Glen Assoc., 1027
 Noguchi v. Nakamura, 112
 Noll v. Marian, 614
 Noone v. Chalet of Wichita, 668
 Normand v. City of New Orleans, 726
 North Carolina ex rel. Cooper v.
 Tennessee Valley Auth., 994
 Norton v. Wilbur Waggoner Equip.
 Rental, 334
 Nova Univ. v. Wagner, 533
 Nunez v. Carrabba's Italian Grill, Inc.,
 671
Nussbaum v. Lacopo, 267

 O.L. v. R.L., 595
 O'Banner v. McDonald's Corp., 745
 Obde v. Schlemeyer, 1025
O'Brien v. Cunard S.S. Co., 62, 153
 O'Brien v. Muskin Corp., 831
 O'Connell v. State, 942
 Oddo v. Queens Village Comm. for
 Mental Health, 530
 Ogden v. Claycomb, 166
 Ohler v. Tacoma Gen. Hosp., 949
 O'Keeffe v. Snyder, 141
 Okoli v. Paul Hastings LLC., 74, 1067
 Old Island Fumigation, Inc. v. Barbee,
 755
 Ollman v. Evans, 1111
Oltmer v. Zamora, 1031
 Opperman v. Path, Inc., 1148
 Orozco v. Dallas Morning News, Inc.,
 454
 Ortega v. City of New York, 395
 Ortega v. K-Mart Corp., 367

*Orthmann v. Apple River Campground,
 Inc.*, 616
 Ortiz v. John D. Pittenger Builder, Inc.,
 647
 Osborn v. Irwin Mem. Blood Bank, 318,
 319
 Osborne v. U.S., 509
O'Shea v. Riverway Towing Co., 231, 234
 Osland v. Osland, 955
 Otis Engineering Corp. v. Clark, 686
 O'Toole v. Carr, 727
 O'Toole v. U.S., 926
 Ouellette v. Carde, 501
 Overbaugh v. McKutcheon, 677
 Overseas Tankship (U.K.) Ltd. v. Morts
 Dock & Engineering Co., 463, 475
 Oviatt v. Pearce, 110
 Owens Corning v. R.J. Reynolds Tobac-
 co Co., 461
 Owings v. Jones, 625

 P.C. v. Bank of America N.A., 146
 Pachowitz v. Le Doux, 1141
Pachunka v. Rogers Construction, Inc.,
 866
 Padula v. New York, 299
 Pagelsdorf v. Safeco Ins. Co. of Am., 629
 Pakos v. Clark, 81
 Palm Springs-La Quinta Development
 Co. v. Kieberk Corp., 144
 Palmer v. Warren St. Ry. Co., 496
Palsgraf v. Long Island R.R. Co., 56, 260,
 438, 465
*Pannu v. Land Rover North America,
 Inc.*, 784
 Papieves v. Lawrence, 105
 Paris v. Division of State Compensation
 Ins. Funds, 81
 Parker & Wobber v. Miles & Stockbridge
 P.C., 306
 Parker v. Arthur Murray, Inc., 1031
*Parker v. St. Lawrence County Public
 Health Department*, 931
 Parvi v. City of Kingston, 117, 561

- Patrick v. McGowan, 1120
Patten v. Raddatz, 163
Pattershall v. Jenness, 167
Paul v. Watchtower Bible and Tract Society, 107
Pavlik v. Kornhaber, 95
Payne v. Jones, 253
Payne v. Jones, 253
Paz v. Brush Engineered Materials, Inc., 209–210
Pearson v. BP Products N.A., Inc., 379
Pearson v. Canada Contracting Co., 864
Pearson v. Dodd, 127
Peck v. Counseling Service of Addison County, Inc., 539
Peck v. Tribune Co., 1064
Pedroza v. Lomas Auto Mall, Inc., 447
Peek v. Gurney, 1025
Peeler v. Hughes & Luce, 310
Pegasus v. Reno Newspapers, 1097
Pelkey v. Brennan, 338
Pellegrini v. Cliffwood-Blue Moon Joint Venture, Inc., 1028
Pelletier v. Fed. Home Loan Bk. Bd., 933
Pelman v. McDonald's Corp., 823
Penn v. Henderson, 167
People ex rel Spitzer v. Sturm Ruger & Co., Inc., 998
People v. Conagra Grocery Products Co., 1006
Perez v. Lopez, 505
Perez v. Wyeth Labs., Inc., 801, 805
Pero's Steak and Spaghetti House v. Lee, 957
Perry v. Whitley County 4-H Clubs, Inc., 944
Perry-Rogers v. Obasaju, 650
Pesaturo v. Kinne, 975
Peter Scalamandre & Sons, Inc. v. Kaufman, 1089, 1090
Peterson v. Haffner, 54
Peterson v. Sorlien, 121
Peterson v. Superior Court of Ventura Co., 250
Petrillo v. Bachenberg, 306
Pfenning v. Lineman, 863
Phelps v. Hamlett, 174
Philadelphia Newspapers, Inc. v. Hepps, 1067, 1112
Philip Morris USA v. Williams, 246
Picard v. Barry Pontiac-Buick, Inc., 65
Pickering v. Pickering, 93
Pierce v. Cook, 98
Pippin v. Potomac Electric Power Co., 840
Pittman v. Frazer, 449
Pleasant Glade Assembly of God v. Schubert, 107
Ploof v. Putnam, 188
Plotkin v. Club Valencia Condo. Ass'n, 971
Plotnik v. Meihaus, 139
Plumley v. Birge, 295
Podias v. Mairs, 442
Poe v. San Antonio Express-News Corp., 1069
Pokora v. Wabash Ry. Co., 281, 331
Pontbriand v. Sundlun, 1135
Ponticas v. K.M.S. Invs., 738
Pope v. City of Houston, 976
Potocnik v. Carlson, 1152
Potter v. Firestone Tire & Rubber Co., 633
Poyser v. Peerless, 1097
Prah v. Maretti, 978, 992
Prescott v. Leaf River Forest Products, Inc., 999
President & Directors of Georgetown College v. Hughes, 938
Pressey by and through Pressey v. Children's Hosp. Colorado, 709
Pressil v. Gibson, 695
Price v. Halstead, 446
Price v. Hartford Accident and Indemnity Co., 250
Price v. Purdue Pharma Co., 193
Priebe v. Nelson, 865
Prince v. Out Publ'g, Inc., 1070, 1136

- Pring v. Penthouse Int'l Ltd., 1070
 Pringle v. Valdez, 879
 Pritchard v. Stanley Access Technologies LLC, 373
 Progressive Ins. Co v. General Motors Corp., 808
 Provence v. Doolin, 842
 Provenzano v. Integrated Genetics, 703
 Provenzo v. Sam, 500, 502
 Providence Health Center v. Dowell, 505
 Pruitt v. Savage, 628
 Prukala v. Elle, 1151
 Public Health Trust v. Brown, 690
 Pucalik v. Holiday Inns, Inc., 561
 Pulka v. Edelman, 523
 Pulliam v. Gentry, 1035
 Purtle v. Shelton, 295
 Pyeritz v. Com., 394

 Quackenbush v. Superior Ct., 258
 Quackenbush v. Lackey, 935
 Quinn v. Limited Express, Inc., 162

 R.D.J. v. Vaughan Clinic P.C., 126
 Rabideau v. City of Racine, 648
 Rabinowitz v. Wahrenberger, 91
 Railroad v. Cathey, 403
 Ramcharan v. Pariser, 512
 Ramos v. Tex. Dept. of Pub. Safety, 935
Ranard v. O'Neil, 346
 Randall's Food Markets, Inc. v. Johnson, 87, 109, 1120
Ranson v. Kitner, 47
 Rasky v. Columbia Broadcasting System, Inc., 1066
 Ray v. American Natl. Red Cross, 364
 Ray v. Cutter Labs., 430
 Reardon v. Windswept Farm LLC, 850
 Reddell v. Johnson, 858
 Reeves v. Melton, 82
 Reilly v. Anderson, 888
 Rein v. Benchmark Const. Co., 269
 Rein v. Fog, 909

 Rekab, Inc. v. Frank Hrubetz & Company, 516
Remsburg v. Docusearch, Inc., 534, 1144, 1163
 Remsburg v. Montgomery, 338, 522
 Remy v. MacDonald, 708
 Reno v. D'Javid, 191
 Renwick v. News and Observer Publishing Co., 1154
 Renzi v. Paredes, 418
 Reynolds v. Pierson, 48
Reynolds v. Texas and Pacific Railway Co., 400
 Rhodes v. E.I. du Pont de Nemours & Co., 63, 970
 Rhodes v. Illinois Cent. Gulf R.R., 588
 Rhudy v. Bottlecaps, Inc., 619
 Rice v. Press, 1035
Richard v. A. Waldman and Sons, Inc., 1051
 Richards v. Richards, 1146
Richetta v. Stanley Fastening Systems L.P., 790
 Richter v. Wagner Oil Co., 1028, 1042
 Riddle v. Perry, 1119
 Ridley v. Safety Kleen Corp., 878
 Rieck v. Medical Protective Co., 691
 Rios v. Sifuentes, 755
 Rios v. Smith, 564
Riss v. City of New York, 569
 Rivas v. Overlake Hosp. Med. Ctr., 958
 Riverbend Country Club v. Patterson, 725
 Rizzuto v. Davidson Ladders, Inc., 394
 Roa v. Lodi Medical Group, Inc., 257
 Roach v. Dental Arts Lab., Inc., 495
 Roberts v. Speck, 176
 Roberts v. Waldbaum's, 716
 Roberts v. Williamson, 206
 Robins v. Consecro Fin. Loan Co., 1141
 Robinson Property Group Ltd. Partnership v. McCalman, 669
 Robinson v. Lindsay, 295
 Robinson v. Omer, 1049

- Robinson v. Reed-Prentice Division of Package Machinery Co., 823
- Rocha v. Faltys, 546
- Rochford v. G.K. Dev., Inc., 605
- Rochford v. Woodloch Pines, Inc., 858
- Rodebush v. Oklahoma Nursing Homes Ltd., 722
- Rodrigues v. Hawaii, 636
- Rodriguez v. Suzuki Motor Corp., 238
- Roe v. Wade, 696, 698
- Rogers v. Board of Road Comm'rs for Kent County, 971
- Rogers v. Peeler, 166
- Roman Catholic Archbishop of Boston v. Rogers, 971
- Romero v. Byers, 653
- Rose v. Daily Mirror, Inc.*, 1072
- Rose v. National Tractor Pullers Ass'n, Inc., 851
- Rosemont Ent., Inc. v. Choppy Productions, Inc., 1163
- Rosen v. Capital City Press, 1068
- Rosenberg v. Helinski, 1123
- Rosenblatt v. Baer, 1091
- Rosenbloom v. Metromedia, Inc., 1088, 1091, 1092, 1101, 1112
- Ross v. Columbia Newspapers, Inc., 1065
- Ross v. Glaser, 564
- Ross v. Souter, 58
- Rossi v. Del Duca, 189
- Rouch v. Enquirer & News of Battle Creek, 1068
- Rousey v. Rousey*, 913
- Rowe v. Bennett, 641
- Rowland v. Christian, 605
- Rucker v. Fed. Natl. Mortg. Assn., 603
- Rudeck v. Wright, 317, 409
- Ruple v. Brooks, 46
- Rush v. Commercial Realty Co., 868
- Russell v. American Real Estate Corp., 135, 971
- Russell v. The Men of Devon, 928
- Russell-Vaughn Ford, Inc. v. Rouse*, 137
- Russo v. Griffin*, 310, 317
- Russo v. White, 83
- Ruth v. Dight, 948, 949
- Ruth v. Fletcher, 85
- Ryan v. New York Cent. R.R. Co., 458
- Rylands v. Fletcher, 755
- S & F Corporation v. Daley, 73
- S & W Seafoods v. Jacor Broadcasting, 453
- S. Shore Baseball LLC v. DeJesus, 857
- S.H. Kress & Co. v. Brashier, 66
- S.V. v. R.V., 234, 533, 595, 955
- Saba v. Darling, 36, 53, 65, 688
- Sabra v. Lucent Tech., Inc., 1143
- Sabrina W. v. Willman, 1151
- Saelzler v. Advanced Group*, 404
- Sage Title Group LLC v. Roman, 147, 318
- Sahlie v. Johns-Manville Sales Corp., 949
- Saiz v. Belen Sch. Dist., 735
- Sakon v. PepsiCo, Inc., 453
- Saks v. Sawtelle Goode Davidson & Troilo, 193
- Salevan v. Wilmington Park, Inc., 620
- Sall v. T's, Inc.*, 555
- Saller v. Crown Cork & Seal Co., Inc.*, 787
- Sampson v. U. of Texas at Austin, 600
- San Benito Bank & Trust Co. v. Landair Travels, 522
- Sanchez v. Schindler, 227
- Sanders v. Acclaim Entertainment, Inc., 452–453
- Sands ex rel. Sands v. Green, 958
- Santiago v. Sherwin Williams Co., 430
- Sarwer v. Conde Nast Publications, Inc., 1073
- Sawyer v. Midelfort, 955
- Scheckel v. NLI, Inc., 620
- Schivarelli v. CBS, Inc., 1117
- Schmidt v. Bishop, 955
- Schmidt v. Mahoney, 317

- Schneider Nat. Carriers, Inc. v. Bates, 1007
- Schneider v. Amazon.com, 1075
- Schneider v. Haws, 317
- Schoeps v. Whitewater Adventures LLC, 851
- Schramm v. Lyon, 962
- Schultz v. Foster-Glocester Reg. Sch. Dist., 574
- Schurk v. Christensen, 647
- Schuster v. City of New York, 576
- Scott v. Bradford*, 320, 326
- Scott v. Minneapolis Pub. Sch. Spec. Dist. No. 1, 335
- Scurlock Oil Co. v. Smithwick, 907
- Seals v. Snow, 50
- Searcy v. Auerbach, 1123
- Seim v. Garavalia, 29, 355, 715
- Sepaugh v. LaGrone*, 916
- Shafer v. Berger, 1041
- Shain v. Racine Raiders Football Club, Inc., 844
- Sharpe v. St. Luke's Hosp., 554
- Sharpe v. Turley, 193
- Sharyland Water Supply Corp. v. City of Alton*, 814
- Sheahan v. Northeast Illinois Reg'l Commuter R.R. Corp., 207
- Sheehan v. Anderson, 1120
- Sheehan v. Roche Brothers Supermarkets, Inc.*, 368
- Sheehan v. St. Paul & Duluth Ry. Co., 588
- Shelby v. Sun Printing & Pub. Ass'n, 1072
- Sheltra v. Smith, 76
- Sherbert v. Alcan Alum. Corp., 317
- Shideler v. Habiger, 465
- Shipley v. City of New York, 641
- Shockley v. Hoechst Celanese Corp., 755
- Shoemake v. Fogel Ltd., 904
- Shor Int'l. Corp. v. Eisinger Enterprises, Inc., 1068
- Shulman v. Group W Productions Co., 1153
- Shypulski v. Waldorf Paper Products Co., 865
- Sidis v. F-R Publishing Corp.*, 1131
- Sierocki v. Hieber, 534
- Silas v. Bowen*, 164
- Silberstein v. Cordie, 533
- Simeonidis v. Mashantucket Pequot Gaming Enterprise*, 468
- Simmons v. Loose, 185
- Sims v. Giles, 599
- Sinclair v. Brill, 955
- Sindell v. Abbott Laboratories*, 423
- Sindle v. N.Y.C. Transit Auth., 196
- Singer v. Marx, 54
- Sippy v. Cristich, 1043
- Sitzman v. Schumaker, 34
- Skipworth v. Lead Indus. Ass'n, Inc., 430
- Slater v. Skyhawk Transp., Inc., 904
- Sloan v. South Carolina Dep't of Pub. Safety, 1164
- Slocum v. Food Fair Stores of Florida, Inc.*, 89, 632
- Smiley v. Corrigan, 891
- Smith & Gaston Funeral Directors v. Wilson, 636
- Smith v. Atkinson, 394
- Smith v. Baptiste, 39
- Smith v. Borello, 708
- Smith v. Calvary Christian Church, 154
- Smith v. Cote, 696
- Smith v. Cutter Biological, Inc., 430
- Smith v. Durden*, 1106
- Smith v. Howard Johnson Co., 390
- Smith v. Jersey Central Power & Light Co.*, 985
- Smith v. Lannert*, 720, 726, 882
- Smith v. Lewis, 306
- Smith v. Lockheed Propulsion Co., 755
- Smith v. Moody Gardens, Inc., 944
- Smith v. Murray, 303
- Smith v. State Dept. of Health & Hosp., 418

- Smith v. Toney, 647
 Smith v. Wal-Mart Stores, Inc., 604
 Smitherman v. McCafferty, 180
 Smrtka v. Boote, 338, 604
 Snodgras v. Martin & Bayley, Inc., 669
 Snow v. City of Columbia, 967
 Soldano v. O’Daniels, 567
 Solomon R. Guggenheim Foundation v. Lubell, 141
 Solomon v. City of New York, 578
 Sonoran Desert Investig., Inc. v. Miller, 196
 Sorenson v. Gardner, 1041
Sorichetti v. City of New York, 574
 Sorkin v. Lee, 692
 Soto v. New York City Transit Auth., 458
 Soule v. General Motors Corp., 786
 South v. McCarter, 556
 Southwest Key Program, Inc. v. Gil-Perez, 408
 Souza v. City of Antioch, 579
 Sovereign Pocohontas v. Bond, 1021
 Sparks v. Peaster, 1097
 Spears v. Coffee, 495
 Spence v. Three Rivers Bldrs. & Masonry Supply, 356
 Spiess v. Brandt, 1035
 Spokane Truck & Dray Co. v. Hoefler, 239
 Sprecher v. Adamson Co., 620
 Springmeyer v. Ford Motor Co., 516
Spur Industries, Inc. v. Del E. Webb Development Co., 1008
 Squaw Valley Ski Corp. v. Superior Ct., 90
 Squeglia v. Squeglia, 912
 St. Amant v. Thompson, 1088
 St. Elizabeth Hospital v. Garrard, 663
 St. Joseph Hosp. v. Wolff, 449
 Staab v. Diocese of St. Cloud, 891
Stachmiewicz v. Mar-Cam Corp., 339
 Standing Comm. v. Yagman, 1117
 Stanton v. Univ. of Maine, 529
 Staples v. Bangor Hydro-Elec. Co., 1116
Starr v. Hill, 761
 Starr v. Pearle Vision, Inc., 1076
 State ex rel. Elvis Presley Int’l Mem. Foundation v. Crowell, 1165
 State ex rel. Hunter v. Johnson & Johnson, 1001
 State Farm Fire & Cas. Co. v. White-Rodgers Corp., 967
 State Farm Mut. Auto. Ins. Co. v. Traver, 725
State Farm Mutual Automobile Insurance Co. v. Campbell, 240
 State v. Crow, 73
 State v. Floyd, 165
 State v. Furr, 119
 State v. McGraw, 129
 State v. Second Jud. Dist. Ct., 935
 State v. Seventh Regiment Fund, Inc., 135
 State v. Tidwell, 21, 530
 States v. Lourdes Hosp., 373
 Statler v. George A. Ray Mfg. Co., 768
 Stender v. Blessum, 661
 Sterling v. Rust Communications, 1066
 Stevenson v. Delahaye, 502–503
 Stevenson v. E.I. DuPont de Nemours and Co., 974
 Stien v. Marriott Ownership Resorts, Inc., 1157
 Stimson v. Carlson, 859
 Stokes v. Lyddy, 627
 Stone v. N.C. Dept. of Labor, 573
Stout v. Warren, 751
 Stratmeyer v. U.S., 573
 Strauss v. Belle Realty Co., 579
 Strickland v. Medlen, 139
 Stringer v. Minnesota Vikings Football Club, 34
 Struempfer v. Estate of Kloepping, 500
 Strunk v. Zoltanski, 626
 Sullivan v. Conway, 1116
 Sullivant v. City of Okla. City, 185
 Summers v. Bailey, 1151
Summers v. Tice, 382, 420, 424, 432

- Surocco v. Geary*, 181
Svendsen v. State Bank of Duluth, 1067
Swanson v. Swanson, 82, 1045
Sweeney v. Erving, 376
Swenson v. Bender, 1027
Swenson v. Waseca Mut. Ins. Co., 565
Swerdlick v. Koch, 1144
Swierczek v. Lynch, 725
Swinton v. Whitinsville Sav. Bank, 1025
- Taber v. Maine, 926
Taboada v. Daly Seven, Inc., 90
Taco Bell Corp. v. Cracken, 306
Taco Bell, Inc. v. Saleme, 117
Tanberg v. Ackerman Inv. Co., 217
Tanner v. Ebbola, 1160
Tarasoff v. Regents of the University of California, 540
Tarlton v. Kaufman, 977
Taylor v. John Crane, Inc., 891
Taylor v. KTVB, Inc., 1136
Taylor v. Muncie Med. Investors, 713
Taylor v. Vallelunga, 104
Teachout v. Van Hoesen, 1035
Temple-Inland Forest Products Corp. v. Carter, 634
Tenuto v. Lederle Labs., 317
Terhell v. American Commonwealth Assoc., 865
Terwilliger v. Wands, 1099
Tesar v. Anderson, 226, 267, 709
Tessier v. Rockefeller, 1036
Texas Dept. of Transp. v. Garrison, 927
Texas Dept. of Transp. v. Ramirez, 927
Texas Diamond Int'l v. Tiffany & Co., 136
Texas Drydock, Inc. v. Davis, 561
Texas Home Mgt., Inc. v. Peavy, 532
Texas v. United States, 304
Thabault v. Chait, 308
Thapar v. Zezulka, 543
The T.J. Hooper, 359, 361
Theroux v. Kedenburg Racing Assn., 846
Thing v. La Chusa, 643, 664
- Thomas v. L.A. Times Communications, 1097, 1117
Thomas v. Winchester, 768
Thompson v. Best, 1027
Thompson v. Kaczinski, 479
Thompson v. Nason Hosp., 319
Thompson v. UBS Fin. Services, Inc., 146
Thornhill v. Wilson, 180
Three Amigos SJL Rest., Inc. v. CBS News, Inc., 1071
Threlkeld v. Total Petroleum, Inc., 365
Thrifty-Tel, Inc. v. Bezenek, 129, 145
Thyroff v. Nationwide Mut. Ins. Co., 146
Tidelands Automobile Club v. Walters, 86
Time, Inc. v. Firestone, 1100
Time, Inc. v. Hill, 1155, 1157
Time, Inc. v. Page, 1088
Times Mirror Co. v. Superior Court (Doe), 454
Tobin v. AMR Corp., 566
Tomkiewicz v. Detroit News, Inc., 1091
Tompkins v. Cyr, 1142
Toombs v. Alamo Rent-A-Car, Inc., 761
Tousley v. Board of Education, 47
Townsend v. Townsend, 247, 603, 670
Tracey v. Solesky, 748
Trammell Crow Central Texas Ltd. v. Gutierrez, 610
Tran v. Fiorenza, 107
Trapp v. Vess, 502
Trevino v. Ortega, 4, 389
Triangle Sheet Metal Works, Inc. v. Silver, 239
Tripoli v. Gurry, 165
Trotter v. Okawa, 162
Trupia v. Lake George Central School District, 860
Turcotte v. Fell, 853, 861
Turman v. Central Billing Bureau, 101
Turnbough v. Ladner, 849
Turner v. Anderson, 193

- Turner v. Jordan, 874
Turner v. Mandalay Sports Entertainment LLC, 857
Turner v. Shop Rite, Inc., 875
Turpin v. Merrell Dow Pharmaceuticals, Inc., 403, 803
Twardy v. Northwest Airlines, Inc., 727
Twohig v. Briner, 879
Twyman v. Twyman, 98, 665
Tyson v. Tyson, 948
- U.S. Fid. & Guar. Co. v. Jadranska Slobodna Plovidba, 274
U.S. v. Gilman, 925
U.S. v. Stevens, 522
Uccello v. Laudenslayer, 626
Union Pac. Res. Group, Inc. v. Rhone-Poulenc, Inc., 1027
Union Pac. Resources Co. v. Cooper, 976
Union Park Mem. Chapel v. Hutt, 551
Union Pump Co. v. Allbritton, 484
Uniroyal Goodrich Tire Co. v. Martinez, 803
United Blood Servs. v. Quintana, 354
United States v. Carroll Towing Co., 271
United States v. Causby, 970
United Zinc & Chemical Co. v. Britt, 174
University of Notre Dame du Lac v. Twentieth Century-Fox Film Corp., 1126
Urie v. Thompson, 957
Uriell v. Regents of University of California, 282
UTV of San Antonio, Inc. v. Ardmore, Inc., 1068
- Vahila v. Hall, 308, 419
Valentino v. Philadelphia Triathlon LLC, 851
Van Horn v. Watson, 501
Van v. Pena, 671
Varrenti v. Gannett Co., Inc., 1116
- Varwig v. Anderson-Behel Porsche/Audi, Inc., 1054
Vasquez v. Macri, 318
Vassallo v. Baxter Healthcare Corp., 820
Vassiliades v. Garfinckel's, Brooks Brothers, 1137
Vaughan v. Menlove, 282
Vaughn v. Fedders Corp., 961
Veazey v. Elwood Plantation Associates Ltd., 874
Veile v. Martinson, 101
Venetoulis v. O'Brien, 686
Verdugo v. Target Corp., 501
Vergara by Vergara v. Doan, 313
Verrett v. Houma Newspapers, Inc., 723
Villarreal v. Grant Geophysical, Inc., 974
Villasenor v. Villasenor, 93
Villers v. County of San Diego, 338
Vince v. Wilson, 564
Vincent v. Lake Erie Transp. Co., 185
Viner v. Sweet, 308, 411
Vitale v. Henchey, 152
Vitale v. National Lampoon, Inc., 1098
Vmark Software, Inc. v. EMC Corp., 1043
Vosburg v. Putney, 15
Voss v. Tranquilino, 670
Vulcan Metals Co. v. Simmons Mfg. Co., 1033
- W.J.A. v. D.A.*, 35, 1102
Wagner v. International Railway Co., 498
Wagner v. State, 50
Wagon Mound No. 1 (Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co. Ltd.), 463, 475
Wagon Mound No. 2 (Overseas Tankship (U.K.) Ltd. v. Miller Steamship Co.), 466
Wakulich v. Mraz, 688
Wallace v. Ohio Dept. of Commerce, 580

- Wallace v. Smyth, 912
Wallace v. Wilson, 681
Wal-Mart Stores, Inc. v. Diaz, 370
Wal-Mart Stores, Inc. v. Reece, 367
Walsh v. Constantinopoulos, 203
Walt Disney Prods., Inc. v. Shannon, 453
Ward v. K Mart, 604
Warr v. JMGM Group LLC, 668
Warren v. Davis, 755
Washington v. John T. Rhines Co., 648
Waters v. New York City Hous. Auth.,
267
Weathers v. Marshalls of MA, Inc., 99
Webb v. Rome W. & O. R. Co., 458
Webb v. Snow, 171, 600
Wegner v. Milwaukee Mutual Insurance
Co., 183
Weinberg v. Dinger, 579
Weintraub v. Krobatsch, 1024
Weirum v. RKO General, Inc., 451
Welling v. Weinfeld, 1159
Welty v. Heggy, 86
Wendt v. Host Int'l, Inc., 1166
Wertheim v. U.S. Tennis Ass'n, Inc., 858
West v. East Tennessee Pioneer Oil Co.,
682
West v. Media General Convergence,
Inc., 1153
Westby v. Gorsuch, 1034
Westchester Fire Ins. Co. v. Admiral Ins.
Co., 250
Western Union Telegraph Co. v. Hill, 69
Western Union Tele. Co. v. Hoffman, 834
Westfall v. Erwin, 933
Whelan v. Van Atta, 600
Whetham v. Bismarck Hosp., 648
Whitaker v. Kruse, 484
White v. County of Orange, 731
White v. University of Idaho, 65
Whitehead v. Food Max of Miss., Inc.,
873
Whitney v. California, 1084
Whittaker v. Sanford, 111
Whitworth v. Bynum, 356
Widera v. Ettco Wire and Cable Corp.,
532
Wieder v. Chemical Bank, 147
Wietecha v. Peoronard, 865
Wilbur v. Kerr, 693
Wilk v. Georges, 605
Will v. Michigan Dept. of State Police,
930
Williams v. Pentecostal Church Int'l, 531
Williams Ford, Inc. v. Hartford Courant
Co., 1050
Williams v. Bright, 216, 290
Williams v. Crist, 289
Williams v. Kearbey, 50
Williams v. Manchester, 707
Williams v. Pasma, 1098
Williams v. Rank & Son Buick, Inc., 1042
Williams v. Roberts, 136
Williams v. State, 462
Williams v. Steves Industries, Inc., 397
Wilson v. Dimitri, 171
Wilson v. Ferguson, 640
Winfrey v. GGP Ala Moana LLC, 609
Winget v. Winn-Dixie Stores, Inc., 982
Winter v. G.P. Putnam's Sons, 453, 1061
Winterbottom v. Wright, 767, 768
Winterstein v. Wilcom, 850
Wolf v. Brungardt, 1030
Wolfe v. MBNA America Bank, 537, 819
Wolfson v. Lewis, 1151
Womack v. Eldridge, 80
Womack v. Von Rardon, 139
Wooten v. Caesars Riverboat Casino
LLC, 858
Wright v. Brooke Group Ltd., 800
Wright v. Carter, 378
Wrights v. Red River Fed. Cr. U., 1048
Wyckoff v. George C. Fuller Contracting
Co., 593
Wyckoff v. Mogollon Health All., 956
Wyeth v. Levine, 824
Wyman v. Wallace, 953
Wynberg v. National Enquirer, Inc.,
1099

Xiaokang Xu v. Xiaoling Shirley He, 1081	Young v. Williams, 963
	Yowell v. Piper Aircraft Corp., 226
Yancey v. Lea, 840	
Yath v. Fairview Clinics N.P., 1140	Zafft v. Lilly & Co., 431
<i>Ybarra v. Spangard</i> , 385, 421, 424	Zedella v. Gibson, 564
Yommer v. McKenzie, 750	Zeni v. Anderson, 346, 348
Yonaty v. Mincolla, 1080	Zeran v. America Online, Inc., 1075
Young v. Allstate Ins. Co., 87	Zerby v. Warren, 355
<i>Young v. Clark</i> , 283	Ziegelheim v. Apollo, 307
Young v. Salt Lake City Sch. Dist., 530	<i>Zimmerman v. Ausland</i> , 214
Young v. Warren, 171	Zimny v. Cooper-Jarrett, Inc., 503

Table of Books and Articles

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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 demonstrate, 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.

VINCENT R. JOHNSON
San Antonio, Texas

Seventh Edition Preface and Acknowledgments

The seventh edition of *Studies in American Tort Law* reflects the highly dynamic nature of the torts field. It includes several new principal cases, scores of citations to recent judicial opinions and statutes, and many references to the Restatement, Third, of Torts.

My PowerPoint 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, 7th ed. 2022).

Alan Gunn was my excellent co-author on the first three editions of *Studies in American Tort Law*. 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'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.

Chenglin Liu, my colleague at St. Mary's University, has been my co-author since the sixth edition of *Studies in American Tort Law*. Educated in China, Sweden, and the United States, Liu is an outstanding teacher and the author of influential articles published in journals at Harvard, Stanford, Penn, Hastings, Texas, Arizona, Cornell, Virginia, Washington (in St. Louis), and other fine universities. Liu is one of the leading American scholars on Chinese tort law, and has published two books on Chinese law, including most recently *Chinese Law in Context* (2020 Carolina Academic Press).

Work on the seventh edition was ably assisted by several law students at St. Mary's University. In particular, Professor Chenglin Liu thanks his research assistants for their excellent work. That talented group included: RJ Ruiz, Kathryn L. Cantu, Meghan L. Rockwell, Falak A. Momin, Jamie I. Weber, Hannah E. Ward, and Daisy J. Ramirez.

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I am grateful to Dean Patricia Roberts for her leadership of the law school and her support of a wide range of scholarly endeavors. St. Mary's University School of Law provided generous support for this work.

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February 13, 2022

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