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ADVANCED TORT LAW: A PROBLEM APPROACH

Second Edition

Vincent R. Johnson
Professor of Law
St. Mary's University

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

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

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MATTHEW  BENDER

Dedications

To
Tom and Nancy Shaffer
at Notre Dame,
good friends for more than thirty years

Preface

Advanced Tort Law: A Problem Approach is designed for use in upper-level law school courses. This book reflects the belief that the most effective teaching materials for students beyond the first year of law school are centered on problems of the kind that lawyers face in practice.

Clear Narrative Text. The chapters in *Advanced Tort Law* focus on five intriguing subjects which normally receive little attention in basic torts courses: misrepresentation, defamation, invasion of privacy, tortious interference, and injurious falsehood. In each chapter, the law is laid out in a clear narrative format, which quotes liberally from pertinent court opinions, statutes, and other sources. Because upper-level law students are already well acquainted with the American litigation process, each topic focuses primarily on operative rules and policies, and their application to particular fact situations. The text minimizes the procedural complexities of cases that have already been decided.

Fifty-Eight Discussion Problems. The main instructional feature of *Advanced Tort Law* is the fifty-eight discussion problems. Roughly every eight to ten pages, there is a problem for students to prepare in advance of class. A good answer requires a confident grasp of the rules, concepts, and principles addressed in the text or in basic law school courses. The problems, which test whether students have learned the assigned material, are designed to form the basis for classroom discussions. If a class meets twice a week over the course of a typical law school semester, each reading assignment is likely to include about fifteen to twenty pages of reading material and two discussion problems.

Preparation for Practicing Law in the 21st Century. Many of the problems in *Advanced Tort Law* are based on actual cases or stories in the news. With rare exceptions, the names have been changed. The facts in the problems often diverge from those which gave rise to the underlying disputes in order to raise questions important to the course.

The problems challenge students to explore how the law applies to the kinds of facts they will encounter in twenty-first century law practice. The hypothetical scenarios are designed to help users of the book develop the problem-solving skills that effective lawyers need.

Cutting-Edge Legal Issues. Although the torts discussed in this book are ancient in origin, they are often on the front lines of litigation in the Digital Age. There are abundant references to issues raised by recent communications technology developments, including blogging, texting, and social networking. The text addresses numerous practical questions that Americans confront in contemporary life, such as the liability issues that arise from anonymous postings on the Internet or from corporate press releases designed to mislead investors.

Advanced Tort Law: A Problem Approach is accompanied by a comprehensive teacher's manual. I will be happy to share with professors adopting this book a set of PowerPoint slides corresponding to the various chapters. Please contact me at: vjohnson@stmarytx.edu.

Preface

I hope that you enjoy using *Advanced Tort Law: A Problem Approach*.

Vincent R. Johnson
London, United Kingdom
March 31, 2014

Acknowledgments

My work on this book benefitted significantly from the editorial efforts of several research assistants at St. Mary's University School of Law in San Antonio, Texas. Foremost among that group were Amy Bresnen, Melinda Uriegas, and Karen Oster. Each made a major contribution to the book, regularly demonstrating the skills and habits that distinguish the best lawyers.

I am grateful to Dean Charles E. Cantu and St. Mary's University School of Law for supporting this project. My St. Mary's University colleague Chenglin Liu regularly raises issues that enrich my understanding of tort law.

My largest debt of gratitude is to my wife, Jill Torbert, a very able lawyer and community leader. Jill is a wonderful source of insight, perspective, and good companionship.

Some of the language and ideas in *Advanced Tort Law: A Problem Approach* and the related Teacher's Manual borrow from my earlier writings, including: Vincent R. Johnson, *Studies in American Tort Law* (Carolina Academic Press, 5th ed. 2013); Vincent R. Johnson, *Mastering Torts: A Student's Guide to the Law of Torts* (Carolina Academic Press, 5th ed. 2013); Vincent R. Johnson, "The Boundary-Line Function of the Economic Loss Rule," 66 *Washington & Lee Law Review* 523–85 (2009); Vincent R. Johnson, "The Unlawful Conduct Defense in Legal Malpractice Law," 77 *UMKC Law Review* 43–83 (2008); Vincent R. Johnson, "Standardized Tests, Erroneous Scores, and Tort Liability," 38 *Rutgers Law Journal* 655–717 (2007); Vincent R. Johnson, "Cybersecurity, Identity Theft, and the Limits of Tort Liability," 57 *South Carolina Law Review* 255–311 (2005); and Vincent R. Johnson and Shawn Lovorn, "Misrepresentation by Lawyers about Credentials or Experience," 57 *Oklahoma Law Review* 529–77 (2004). In this book, substantial excerpts from these works are indicated by a specific citation, but brief passages have not been cited. Footnotes generally have been omitted from quoted material. The original sources contain citations to supporting authorities.

With regard to the editing in this book: An ellipsis at the end of a paragraph indicates the omission of words at the end of the paragraph and, in some cases, the omission of one or more following paragraphs. Similarly, an ellipsis at the beginning of a paragraph denotes the omission of words at the beginning of the paragraph and, in some cases, the omission of one or more preceding paragraphs.

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