

Preface to the Sixth Edition



Tort law continues to evolve with the emergence of AI and the eruption of public health crises. In this edition we include recent caselaw addressing the COVID pandemic, the opioid epidemic, and the impact of social media algorithms on children. We have also revised and added notes to reflect important developments in the field, including notes on AI and products liability, as well as significant revisions to the treatment of medical monitoring and vicarious liability for sexual assault in the third Torts Restatement.

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John C.P. Goldberg
Leslie C. Kendrick
Anthony J. Sebok
Benjamin C. Zipursky

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Preface to the First Edition



This book has been written to help a new generation of law students learn an area of law—Torts—that is at once ancient and contemporary, rule-governed and flexible, well-established and controversial.

American tort law traces back to the law of medieval England, a time and place in which government efforts to secure citizens' security from injury were relatively modest. Today, tort law—itsself a complex institution—exists within a vastly more complex regulatory state that devotes substantial effort to promoting safety and to providing for citizens' welfare. We hope to give students a sense of where tort law has come from, and of the roles it plays, and might play, in our modern system of government.

As an evolving body of doctrine shaped in courtrooms around the country, tort law simultaneously empowers and limits individuals in their ability to invoke the legal system, and likewise empowers and limits legal decision-makers such as judges and juries faced with the task of deciding whether to hold one person liable for another's injuries. We aim to help students appreciate both the constraining and the power-conferring aspects of tort law.

Tort has been a part of American law since the nation's founding. Today, however, it is at a crossroads: Lawyers, politicians, and academics disagree sharply about its continued utility and viability. We seek to enable students to see why tort law is basic to our legal system, but also why it has become a source of controversy.

In pursuing these pedagogic goals, we have been guided by five themes:

1. As its title suggests, this book is organized around the general theme of responsibilities and redress. Tort law, in our view, has two fundamental features. First, it articulates and imposes on members of society a set of legal obligations—i.e., responsibilities—to avoid injuring others. Second, it empowers persons to bring suit to establish that they have been injured by another's failure to heed this sort of obligation—i.e., to pursue and obtain redress. Tort is a core part of the first-year curriculum for these reasons: It examines the law's imposition of basic obligations not to injure others, as well as the law's recognition of the right of aggrieved persons to seek redress through the courts for violations of those obligations.

2. We have edited the cases in this book lightly, in a conscious effort to allow readers to experience the “thick” contexts out of which tort law emerges. Put simply, we aim to allow students to read the facts of each case for themselves. We also try to let the judges speak for themselves through their opinions. Our hope is that this approach will

help beginning law students appreciate the degree to which judgments about legal responsibilities are sensitive to facts, and to see that common-law principles are not extracted from some “heaven of legal concepts,” but instead derive from ordinary experience. Further, we hope that, by presenting cases edited in this way, we will aid students in developing the capacity to read carefully, an essential tool for good lawyering.

3. The cases and the notes in this book aim to demonstrate to students how the substance of a body of law like torts is heavily influenced by rules of procedure, by the institutions that have been created to handle tort litigation, and by other bodies of law that address some of the same conduct and issues addressed by tort law. Thus, throughout the book, we point out ways in which the demands of trial and appellate processes shape tort doctrine. In various places, we also explore the role played by legislatures in developing, or responding to developments in, tort doctrine. Another of the book’s aspirations is to ensure that students appreciate that tort is but one part of the law, and that it can only be adequately understood in relation to other areas of law, including civil procedure, contracts, property, employment law, anti-discrimination law, and constitutional law.

4. Apart from retaining “classic” tort opinions that all law students are expected to know, we have sought as much as possible to use contemporary cases presenting situations that students will be able to recognize. We hope that, by employing these sorts of cases to illuminate the basic concepts of tort law, we will make the subject less archaic and mysterious to novice lawyers, while also helping them to begin to think for themselves about the various choices that courts and lawmakers must make as they carry tort law forward into the future. We also believe that the use of relatively recent cases will help students perceive the relevance of the subject and the significance of the issues that are currently in play in the law of tort.

5. This book adopts a perspective on law that we hope is refreshing. It is, of course, vital that first-year law students come to appreciate that “the law” is not a rule book—that there is play in its joints and deep tensions in its soul. Yet it is equally important that students not be left with the skeptical lesson that law is nothing more than what a particular judge or jury says it is. Thus, in these materials, we strive to help students grasp how the key concepts of tort—concepts such as “reasonable care,” “causation,” and “intent”—structure and organize legal analysis even as they point it in new directions. A good lawyer, we hope to demonstrate, is one who appreciates both the limits and the flexibility of tort doctrine; one who has a sense of how to make innovative and progressive arguments from within the law. For these reasons, our book has a number of distinctive features. Particularly in its early chapters, it contains a good deal of expository text, in part to help students overcome the steep learning curve encountered in the first weeks of law school. It also contains a number of opinions from intermediate appellate courts, in part because these courts tend to approach cases as presenting problems in the application of law, rather than occasions to rework it. The book also includes some “easy” cases. These opinions can help students avoid basic confusions by providing clear examples of certain torts, or certain concepts. Lastly, the notes following the principal cases strive to be explanatory rather than Delphic. If our own engagement with this subject has taught us anything, it is that tort law, even when

presented in a relatively straightforward way, is more than rich enough to captivate students and professors alike.

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John C. P. Goldberg
Anthony J. Sebok
Benjamin C. Zipursky

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