

TABLE OF CONTENTS

Preface	I
Table of Cases	V
Acknowledgments	XI
Chapter 1: An Overview of Modern Tort Liability	1
Chapter 2: Basic Intentional Torts	19
Chapter 3: Defenses and Privileges	65
Chapter 4: Damages	89
Chapter 5: Negligence: Basic Principles	109
Chapter 6: Proving Negligence	145
Chapter 7: Factual Causation	163
Chapter 8: Proximate Causation	193
Chapter 9: Limited Duty: Failure to Act	217
Chapter 10: Limited Duty: Premises Liability	239
Chapter 11: Limited Duty: Negligent Infliction of Severe Emotional Distress	259
Chapter 12: Limited Duty: Alcohol-Related Injuries	269
Chapter 13: Torts Involving Conception, Pregnancy, Birth, and Adoption	275
Chapter 14: Strict Liability	283
Chapter 15: Products Liability	293
Chapter 16: Defenses Based on Plaintiff's Conduct	305
Chapter 17: Joint Tortfeasors	325
Chapter 18: Immunities	339

TEACHING TORTS • FOURTH EDITION

Chapter 19: Statutes of Limitations	343
Chapter 20: Interference with Possession or Use of Land: Trespass and Nuisance	347
Chapter 21: Misrepresentation	361
Chapter 22: Defamation	387
Chapter 23: Invasion of Privacy	405
Appendix A: Sample Syllabus	415
Appendix B: Sample Essay Questions	421

PREFACE TO THE FOURTH EDITION

Teaching Torts (4th ed. 2009) is the teacher's manual for *Studies in American Tort Law* (4th ed., 2009) (SATL), both of which are published by Carolina Academic Press. As a "guide" for torts professors, this book has decidedly modest objectives. It is intended to provide neither an exhaustive discussion of prominent theories of tort liability, nor an encyclopedic compilation of references. Rather, *Teaching Torts* seeks to assist torts teachers by assembling a useful mix of information relevant to tasks of recurring importance, including:

- allocation of course time;
- stimulation of classroom discussion;
- clarification of the existing rules of tort law and of the role that public policy plays in the formation, application, and re-evaluation of those rules; and
- effective drafting of, and preparation of students for, examinations.

In my view, these tasks are an indispensable part of being a good law teacher. To be sure, wisdom and proficiency in teaching torts comes not from any teacher's manual, but from plain hard work: re-reading

TEACHING TORTS • FOURTH EDITION

cases before class; consulting treatises and articles; keeping abreast of judicial and legislative developments; thinking about how to teach well; and endeavoring to execute a sound plan each class period. I hope that this book helps to make some of that hard work easier for law professors.

The main part of *Teaching Torts* (Chapters 1 to 23) corresponds to the organization of SATL. For each chapter there is a set of introductory notes, followed by questions and comments relating to each of the principal cases. The notes suggest, in rough terms, how many class sessions may be needed to cover the material in SATL, and which portions of the text may be omitted if time is short. Some thoughts are also offered about which topics deserve the greatest attention (or at least should not be overlooked), and about strategies for efficiently teaching certain groups of cases. Occasionally, an excerpt from a particularly interesting case or article is quoted. Miscellaneous teaching tips, as well as selected references to collateral reading, are also provided. Some of the notes offer an economic analysis of legal questions.

The information relating to the principal cases is arranged by chapter, in the same order in which the cases appear in SATL. Typically, there is a brief statement about the point of the case, or why it was included in the book, followed by questions about the decision or related materials in SATL. Some of the proffered questions are obvious and elementary, others are more complex. Some inquire into the holding of the case or the opinion's relation to other decisions; others explore issues of public policy; and still others vary the facts of the case or present related hypothetical queries. While many of these questions might be used verbatim in class, they are probably more valuable simply as a list that a professor can look over in advance of class to begin thinking about issues that might be explored in dialogue with students. In some instances, "answers" are offered. In many cases, answers have been omitted, not because the questions are difficult, but because the lists of questions will be used by experienced law teachers to whom the answers (or the ways to arrive at answers) will be readily apparent.

Appendix A contains a syllabus suggesting how assignments might be allocated in a five-credit torts course meeting 70 times during the year and proceeding through the materials from front to back. An effort has been made to divide the coverage into relatively equal assignments, taking into account the need to identify logical stopping points and to make allowance for especially easy or difficult materials.

Appendix B contains several essay questions that I have used in past torts classes. The general scope of each essay question (*e.g.*,

“negligence and simple intentional torts” or “defamation and privacy”) has been noted. Professors are invited to use these questions in any way and for any purpose that seems desirable. One possibility is to distribute the questions to students, or place them on reserve, for use as practice problems. If you are considering using one of these questions on a final exam, be sure to vary the facts substantially because these questions are in the public domain.

I have a long-standing interest in classroom technology and have argued that many students are more comfortable with abstruse discussions of legal theory if they know that periodically the basic path will be made clear. I use Power Point and a document projector in virtually every class, and would be happy to provide you with my Power Point file, which contains approximately 230 slides (vjohnson@stmarytx.edu).

Alan Gunn was my excellent co-author on the first three editions of *Studies in American Tort Law* (1994, 1998, and 2005) and *Teaching Torts* (1995, 1999, and 2005). Following the completion of the third editions of those books, Alan assumed emeritus status at the University of Notre Dame and did not participate in the preparation of the fourth editions. Alan’s contributions to the text are still very much a part of this book, particularly the law and economics comments.

Students may benefit from using *Mastering Torts: A Student’s Guide to the Law of Torts* (4th ed. 2009, by Vincent R. Johnson, Carolina Academic Press). The study guide explains, in narrative format, how the principal cases in SATL illustrate the main features of the American tort system.

In the production of this book, research assistance and proofreading were provided by several law students at St. Mary’s University, including Jane R. Dure, Christopher L. Gordon, Eminence Northcutt, Kayla Wells, Stratos L. Apostolou, Christopher R. Konneker, Mark S. Poling, and Jahannah C. Lemay. The tireless efforts of Allen K. Lowe II and Laura Long (daughter of Armistead M. Long, who worked on the third edition) greatly assisted the work.

I am deeply grateful to Dean Charles E. Cantu and St. Mary’s University School of Law for supporting this project. My faculty colleague, Chenglin Liu, contributed valuable ideas that have enriched this text.

iv TEACHING TORTS • FOURTH EDITION

~~I hope that this book is useful to you. Please give me your~~
suggestions for future editions of *Teaching Torts*.

Vincent R. Johnson
San Antonio, Texas
July 2, 2009

TABLE OF CASES

Adams v. Gillig, 373	299
Albritton v. Neighborhood Ctrs. Ass'n for Child Dev., 342	Biomet Inc. v. Finnegan Henderson, LLP, 125
Altamuro v. Milner Hotel, Inc., 207	Bird v. Jones, 46
American Motorcycle Ass'n v. Superior Court, 331	Bonney v. Canadian Nat'l Ry. Co., 240
Anderson v. Minneapolis, St. P. & S.S. M. Ry. Co., 169	Boyce v. Brown, 127
Anderson v. Sears, Roebuck & Co., 90	Boyd v. Racine Currency Exch., Inc., 255
Andrushchenko v. Silchuk, 244	Boyles v. Kerr, 266
Anjou v. Boston Elevated Ry. Co., 150	Breunig v. American Family Ins. Co., 124
Bailey v. Lewis Farm, Inc., 210	Brochner v. Western Ins. Co., 334
Banker v. McLaughlin, 243	Bruckman v. Pena, 329
Baptist Mem. Hosp. Sys. v. Sampson, 287	Brudney v. Ematrudo, 30
Barker v. Kallash, 86	Burr v. Board of County Comm'rs of Stark City, 281
Barker v. Lull Engineering Co.,	Campbell v. Weathers, 246
	Chicago, B & Q. R. R. Co. v. Krayenbuhl, 118

- Coffee v. McDonnell-Douglas Corp., 228
Cohen v. Herbal Concepts, Inc., 412
Cohen v. Petty, 9
Coleman v. Ramada Hotel Operating Co., 310
CompuServe Inc. v. CyberProductions, Inc., 55
Credit Alliance Corp. v. Arthur Andersen & Co., 383
Crisci v. Security Ins. Co. of New Haven, 14
Davies v. Butler, 66
De May v. Roberts, 71
De Vera v. Long Beach Public Transp. Co., 219
Derdiarian v. Felix Contracting Corp., 205
Dillard Department Stores, Inc. v. Silva, 82
Di Ponzio v. Riordan, 202
Doe v. Archdiocese of Cincinnati, 281
Doe v. Roe, 6
Drabek v. Sabley, 75
Economopoulos v. A.G. Pollard Co., 394
Elbaor v. Smith, 337
Enright v. Groves, 50
Escola v. Coca Cola Bottling Co. of Fresno, 294
Eskin v. Bartee, 263
Farley v. Sartin, 278
Feltmeier v. Feltmeier, 42
F.G. v. MacDonnell, 265
Garratt v. Dailey, 3
Gavcus v. Potts, 347
Gertz v. Robert Welch, Inc., 398
Gipson v. Kasey, 135
Goar v. Village of Stephen, 209
Goddard v. Boston & M.R. Co., 149
Goins v. The Clorox Co., 300
Gonzalez v. New York City Hous. Auth., 98
Goss v. Allen, 122
Grant v. Reader's Digest Ass'n., 388
Greenman v. Yuba Power Prods. Corp., 296
Gross v. Sweet, 312
Guccione v. Hustler Magazine, Inc., 389
Gulf Refining Co. v. Williams, 115
Halberstam v. Welch, 188
Hamilton v. Beretta U.S.A. Corp., 232
Harkey v. Abate, 410
Harris v. Jones, 37
Helfend v. Southern California Rapid Transit Dist., 96
Helling v. Carey, 131
Herman v. Wesgate, 185
Hilen v. Hays, 309
Holytz v. City of Milwaukee, 340
Hossenlopp v. Cannon, 10
Hoyal v. Pioneer Sand Cp., Inc., 100
Hughes v. Emerald Mines Corp., 352
Humphrey v. Twin State Gas & Elec. Co., 242
Hymowitz v. Eli Lilly and Co., 183
Inkel v. Livingston, 249
In re Marriage of Tigges, 409
Jaillet v. Cashman, 382
John Doe No. 1 v. Archdiocese of Milwaukee, 363
John R. v. Oakland Unified Sch. Dist., 286
Johnson v. Barnes & Noble Booksellers, Inc., 52
Johnson v. Minnesota, 218
Johnson v. New York, 261
Kaneko v. Hilo Coast Processing, 322
Katko v. Briney, 77
Keel v. Hainline, 26

- Kelly v. Gwinnell, 270
Kent v. Gulf States Utilities Co., 290
Kinsman No. 1, Petition of Kinsman Transit Co., 200
Kinsman No. 2, Petition of Kinsman Transit Co., 201
Kline v. 1500 Massachusetts Ave., Apartment Corp., 220
Kramer Serv., Inc. v. Wilkins, 167
Kremen v. Cohen, 62
La Raia v. Superior Court, 227
Lambertson v. United States, 20
Larsen v. General Motors Corp., 297
Lewis v. Westinghouse Elec. Corp., 260
Low v. Park Price Co., 147
Lozoya v. Sanchez, 265
Mahowald v. Minnesota Gas Co., 155
Martin v. Herzog, 139
Matsuyama v. Birnbaum, 173
Mattews v. Amberwood Associates Ltd., 252
McCahill v. New York Transp. Co., 197
McGuire v. Almy, 24
McKenna v. Straughan, 232
McKernan v. Aasheim, 276
McMillen v. Klingensmith, 332
McNamara v. Freedom Newspapers, Inc., 407
Merhi v. Becker, 198
Meyer ex rel. Coplin v. Fluor Corp., 95
Michie v. Great Lakes Steel Div. Nat'l Steel Corp., 327
Milkovich v. Lorain Journal Co., 402
Miller v. HCA, Inc., 69
Minnich v. Med-Waste, Inc., 319
Mobil Chemical Co. v. Bell, 152
Montgomery v. Royal Motel, 140
Moore v. El Paso Chamber of Commerce, 33
Morales v. Lee, 49
NAACP v. Acusport, Inc., 353
National Conversion Corp. v. Cedar Building Corp., 376
New York Times Co. v. Sullivan, 396
Nichols v. Progressive Northern Insurance Co., 273
Noble v. Louisville Transfer Co., 31
Nussbaum v. Lacopo, 113
O'Brien v. Cunard S.S. Co., 67
O'Shea v. Riverway Towing Co., 100
Oltmer v. Zamora, 369
Orthmann v. Apple River Campground, Inc., 256
Pachunka v. Rogers Construction Inc., 320
Palsgraf v. Long Island R.R. Co., 110
Peck v. Counseling Serv. of Addison County, Inc., 223
Peterson v. Sorlien, 53
Picard v. Barry Pontiac-Buick, Inc., 32
Ploof v. Putnam, 85
Prah v. Maretti, 349
Ranard v. O'Neil, 139
Ranson v. Kitner, 22
Remsburg v. Docusearch, Inc., 222
Reynolds v. Texas & Pac. Ry. Co., 166
Richard v. A. Waldman and Sons, Inc., 381
Riss v. City of New York, 234
Rocha v. Faltys, 228
Rose v. Daily Mirror, Inc., 392
Rousey v. Rousey, 340
Rowland v. Christian, 250
Russell-Vaughn Ford, Inc. v. Rouse, 60

- Russo v. Griffin, 127
Saelzler v. Advanced Group
400, 168
Sall v. T's, Inc., 230
Schramm v. Lyon, 345
Scott v. Bradford, 128
Seim v. Garavalia, 141
Sheehan v. Roche Brothers
Supermarkets, Inc., 150
Sheppard-Mobley v. King, 279
Sidis v. F-R Publishing Corp.,
405
Silas v. Bowen, 73
Sindell v. Abbott Labs., 180
Slocum v. Food Fair Stores of
Florida, Inc., 40
Smith v. Cote, 277
Smith v. Lannert, 284
Sorichetti v. City of New York,
236
Sovereign Pocohontas v. Bond,
364
Spears v. Coffee, 206
Spur Industries, Inc. v. Del E.
Webb Dev. Co., 256
Stachniewicz v. Mar-Cam Corp.,
137
State Farm Mutual Automobile
Insurance Co. v. Campbell,
101
State v. Lead Industries
Association, Inc., 354
Summers v. Tice, 177
Surocco v. Geary, 83
The T.J. Hooper, 146
Time, Inc. v. Firestone, 400
Trammell Crow Central Texas,
Ltd. v. Gutierrez, 254
Trevio v. Ortega, 160
Turcotte v. Fell, 317
Tyson v. Tyson, 344
United States v. Carroll Towing
Co., 116
Vassiliades v. Garfinckel's,
Brooks Bros., 408
Vincent v. Lake Erie Transp.
Co., 84
Vosburg v. Putney, 2
Wagon Mound No. 1, Overseas
Tankship (U.K.) Ltd. v. Morts
Dock & Eng'g Co., Ltd., 195
Wagon Mound No. 2, Overseas
Tankship (U.K.) Ltd. v. Miller
Steamship Co., 196
Wegner v. Milwaukee Mut. Ins.
Co., 83
Weintraub v. Krobatsch, 366
West v. East Tennessee Pioneer
Oil Co., 273
West v. Media General
Convergence, Inc., 412
Western Union Tel. Co. v. Hill,
35
Western Union Tel. Co. v.
Hoffman, 306
Williams v. Bright, 120
Williams v. Rank & Son Buick,
Inc., 377
Williams v. Steves Indus., Inc.,
164
Winget v. Winn Dixie Stores,
Inc., 351
Wolfe v. MBNA America Bank,
223
Wyeth v. Levine, 303
Ybarra v. Spangard, 157
Yommer v. McKenzie, 289
Young v. Clark, 118
Zaslow v. Kroenert, 56
Zeni v. Anderson, 140
Zimmerman v. Ausland, 97