
MASTERING TORTS

FOURTH EDITION

A STUDENT'S GUIDE TO
THE LAW OF TORTS

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To the memory of
Thomas E. Fairchild (1912-2007),
whose service on the Wisconsin Supreme Court
and the United States Court of Appeals for the Seventh Circuit
exemplified the best traditions of American justice

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PREFACE

TO THE FOURTH EDITION

Mastering Torts is a book for law students – although others may find it useful as well. The book attempts to present, in a clear narrative form, a doctrinal overview of the law of torts. By clarifying the basic rules governing tort liability and illuminating their application to specific fact situations, *Mastering Torts* provides the reader with a firm understanding of the main features of the American tort system.

Concise descriptions of more than two hundred cases are used as illustrations in *Mastering Torts*. Most of those cases were decided with court opinions which appear, in edited form, in the fourth edition of *Studies in American Tort Law* (SATL).¹ Law students who are using SATL in their classes will find *Mastering Torts* to be particularly helpful, for it clarifies how each of the principal cases in SATL fits into the larger legal scheme for providing compensation to victims of personal injury or property damage. Students who are using other casebooks will also benefit from *Mastering Torts* since it is organized along traditional subject lines and follows a mainstream approach to the task of learning this area of the law.

¹ Vincent R. Johnson and Alan Gunn, *STUDIES IN AMERICAN TORT LAW* (Carolina Academic Press 4th ed. 2009).

No law student should think that *Mastering Torts* is a substitute for reading and briefing assigned cases before class, or for the process of consolidating one's knowledge of torts by reviewing notes and materials after class and building an outline of the subject. Rather, *Mastering Torts* is intended to supplement those efforts by providing a brief hornbook-style treatment of the law of torts.² One possible approach is for a student to read the relevant sections of *Mastering Torts* before preparing class assignments, because it is usually easier to reach a destination if one knows where one is going. Another approach is to read *Mastering Torts* after class and before starting to work on an outline, as a means for clarifying the material covered in prior readings and class discussions.

There are many important issues which *Mastering Torts* does not address. For example, the role of public policy in the shaping and application of tort rules is only lightly explored, and many important perspectives on tort law (such as those offered by the law-and-economics school) are almost entirely omitted. The decision not to deal with those subjects in this book does not mean they are unimportant. Rather, it reflects a judgment that, for most students, the best place to begin the study of tort law is with a clear understanding of the current rules. Once that foundation is in place, students are better able to undertake the more-challenging task of considering crucial questions about what the law should be.

In the end, the process of mastering tort law is a matter of personal effort. As John W. Davis, a twentieth-century lawyer-statesman, once said:

What [one] does for [oneself] is more important than what any school can do.... If you work hard, you'll come out quite [a] good lawyer.... After all, there are only two classes of lawyers in the world – those who work and those who do not.

This book is intended to help those law students who are willing to work to become good lawyers by making their tasks easier and more effective.

I am indebted to Alan Gunn, John N. Matthews Emeritus Professor of Law at the University of Notre Dame and my co-author on the first three editions of *Studies in American Tort Law* and its companion volume, *Teaching*

² Authority for the legal propositions advanced in MASTERING TORTS can be found in the fourth edition of STUDIES IN AMERICAN TORT LAW, which cites more than 2,500 cases. SATL follows the same pattern of organization as MASTERING TORTS.

Torts (Carolina Academic Press), for reviewing and commenting upon the first edition of this book. Alan's wisdom has deepened my understanding of many subjects.

Valuable assistance in the production of the fourth edition of *Mastering Torts* was provided by several students at St. Mary's University School of Law. I am particularly grateful to Jane R. Dure, Christopher L. Gordon, Eminence Northcutt, Kayla Wells, and Stratos L. Apostolou. I also want to thank Christopher R. Konneker, Mark S. Poling, and Jahannah C. Lemay. The tireless efforts of Allen K. Lowe II and Laura Long (daughter of my former research assistant, Armistead M. Long, who worked on the third edition) greatly assisted the production process.

I am deeply grateful to Dean Charles E. Cantu and St. Mary's University School of Law for supporting this project. Frequent discussions with my faculty colleague, Chenglin Liu, have enriched the text of this book.

The second edition of *Mastering Torts* has been published in Beijing in two Chinese editions by China Renmin University Press, under the title *American Tort Law*. One edition is a full Chinese translation³; the other is published in English with Chinese keywords.⁴ Both editions were translated by Professor Zhao Xiuwen of Renmin University, a valued colleague with whom I have collaborated on many occasions. The full translation was assisted by the work of my former student and friend Cao Jian, who reviewed the translation while pursuing his LL.M. degree at St. Mary's University. The third edition of *Mastering Torts* is published in traditional complex, rather than modern simplified, Chinese characters by Wu-Nan Books in Taipei, Taiwan.⁵ That translation is based in part on the Zhao Xiuwen translation.

³ Vincent R. Johnson, *MEI GUO QIN QUAN FA (American Tort Law)* (Legal Studies Translation Series—Civil and Commercial Law Collection) (Zhao Xiuwen trans., China Renmin Univ. Press 2004) (ISBN 7-300-05469-2).

⁴ Vincent R. Johnson, *AMERICAN TORT LAW (with Chinese Annotations)* (21st Century Legal Studies Textbook Series) (Zhao Xiuwen trans., China Renmin Univ. Press 2004) (ISBN 7-300-05774-8).

⁵ Vincent R. Johnson, *MASTERING TORTS* (Zhao Xiuwen *et al.* trans., Wu-Nan Books, Inc., Taipei, Taiwan 2006) (ISBN 978-957-11-4496-7).

Mastering Torts is dedicated to the Honorable Thomas E. Fairchild, a judge for whom I had the pleasure of clerking many years ago when he was Chief Judge of the United States Court of Appeals for the Seventh Circuit. As a jurist and member of the Council of the American Law Institute, Judge Fairchild, over the course of five decades, made a major contribution to American law. He greatly influenced the young lawyers who worked in his chambers by providing an example of how a member of the legal profession can combine compassion with competence and professionalism with good humor. Thomas Fairchild served as a judge in the best traditions of the Common Law.

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Finally, I owe a deep debt of gratitude to my wife, Jill Torbert, for the superb example she continually sets in public-spirited lawyering and community service.

Vincent R. Johnson
San Antonio, Texas
June 30, 2009

⁶ Those works include:

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