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Advanced Torts

Cases and Materials

THIRD EDITION

Peter B Kutner

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THE UNIVERSITY OF OKLAHOMA

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CAROLINA ACADEMIC PRESS

Durham, North Carolina

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ISBN 10: 1-59460-297-2
ISBN 13: 978-1-59460-297-9
LCCN: 2006936996

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, NC 27701
Telephone (919) 489-7486
Fax (919) 493-5668

Printed in the United States of America

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Preface

The first-year Torts course is a fixture of American legal education. This course is primarily concerned with tort remedies for personal injury and property damage. Most of the torts concerned with intangible harm are never examined. They cannot be, in the hours allotted to the first-year course. Thus, students are never exposed to such major subjects as defamation, the rights of privacy and publicity, harm to family relationships, malicious prosecution, interference with common law civil rights, injurious falsehood, liability for economic loss, interference with contract, misappropriation of trade secrets, unfair competition and other business torts. For these subjects—now the principal “growth areas” of tort liability—one or more courses for upperclass students must be offered.

This book is designed primarily for an Advanced Torts course addressing the subjects mentioned above. It is also appropriate for courses and seminars on economic torts (or business torts), using Chapters 2, 3, 4 and the first section of Chapter 5; defamation and privacy, using Chapters 5 and 6; and the family and tort law, using Chapter 1. None of the casebooks published for the first-year course is suitable for these purposes—hence the need for an Advanced Torts casebook.

The influence of Dean Leon Green, who introduced a casebook on “injuries to relations” in 1940, must be acknowledged. His concept of injuries to relations, which encompasses all the subjects covered in our book, is outlined in the introductory chapter. Some theories of tort liability for economic harm, such as misrepresentation, tortious breach of contract and wrongful discharge from employment, do not involve interference with a “relational interest” and are not addressed in this book. Practical reasons for their exclusion are the impossibility of covering both these torts and a good variety of other “advanced torts” in a single course and the likelihood that they will be addressed in other courses, such as Remedies.

The format of the book is the familiar one of principal cases followed by textual notes. The materials emphasize the facts and decisions of reported cases rather than secondary sources, such as law review commentaries. The principal cases have been substantially edited. Deletions of text, other than citations and footnotes, are indicated by ellipses. Editors’ footnotes are followed by “[Ed.]”

Apart from subject-matter, the main respect in which this book differs from other casebooks is the inclusion of cases from outside the United States. They are included for the same reasons as American cases: their roles as legal precedents and value for instructional purposes. In addition, use of non-American cases and treatises makes the point that for many subjects, including Torts, the law is “common,” not “American,” and cases and literature from other countries with common law legal systems are sources of law and legal analysis for the United States.

This involves more than noting that American law and the law of other places once within the British Empire have foundations in the common law of England, or making references to old, familiar English cases. It means that it is necessary for Americans to undertake research of modern law and literature from common law jurisdictions outside the United States and utilize the results of this research in writing, teaching and practice. It strikes us as strange that practitioners and academics will spare no effort to find some precedent in the lower courts of distant American states but ignore the possibility that there are relevant decisions by such eminent courts as the (English) Court of Appeal, Supreme Court of Canada and High Court of Australia.

We wish to express our appreciation to all of the many persons who assisted and encouraged us in the production of the present edition and previous editions of this book. For the present edition we particularly acknowledge the efforts of the Faculty Support Staff of the University of Oklahoma College of Law, the librarians and personnel of the law library of the University of Oklahoma and other libraries at which research for the book was conducted, Lisa Bowles, student research assistants (now graduates of the College of Law), and Keith Sipe, Linda Lacy, Tim Colton and staff of Carolina Academic Press.

We thank the Richard-Wagner-Museum, Photofest, Professor William M. Roberts of Memphis State University, the Special Collections/Archives of the University Library, University of Louisiana at Monroe, and Professor Darin Fox, Director of the University of Oklahoma Law Library, for providing photographs used as illustrations in the book. Specific credits appear with each photograph. Excerpts from the Restatement of Torts are Copyright 1934, 1938, 1939 by The American Law Institute. Excerpts from the Restatement (Second) of Torts are Copyright 1965, 1977, 1979 by The American Law Institute. Excerpts from the Restatement of Unfair Competition are Copyright 1995 by The American Law Institute. Excerpts from the Restatement of the Law Governing Lawyers are Copyright 2000 by The American Law Institute. Reprinted with the permission of The American Law Institute. All rights reserved. Basic Concepts: Persons, Property, Relations, by Leon Green, is Copyright 1938 by the American Bar Association. Reprinted with permission from ABA Journal, The Lawyer's Magazine.

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