

**Torts and Compensation Systems Section  
Annual Newsletter  
November 2019**

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This newsletter was edited by the following at the University of Kentucky College of Law: Mary J. Davis, Interim Dean and Ashland-Spears Distinguished Research Professor of Law and Sarah A. Lewis, Faculty Services Librarian and Assistant Professor of Legal Research.

**Annual Meeting Programs  
“Torts and Compensation Systems”  
AALS Annual Meeting  
Washington, D.C.  
Friday, January 3, 2020  
1:30 to 3:15 p.m.**

Panelists will explore how autonomous vehicle technology will reshape both liability law and the insurance framework that has evolved alongside it.

Speakers include:

Aviva Abramovsky (moderator), Dean, University at Buffalo School of Law, The State University of New York;

James Davey, Professor of Contract and Commercial Law, Southampton Law School at the University Southampton;

Kyle D. Louge, Douglas A. Kahn Collegiate Professor of Law, The University of Michigan Law School; and

Adam F. Scales, Professor of Law, Rutgers Law School.

**“Law and Sports”  
AALS Annual Meeting  
Washington, D.C.  
Friday, January 3, 2020  
8:30 to 10:15 a.m.**

Participation in sports poses risks to athletes on and off the field. Given the potential for a wide range of serious injuries from athletic participation, questions about best practices and assumption of the risk pervade sports. These include the use and enforceability of liability waivers, the availability of medical personnel and equipment at practices and games, the duration and conditions of practices and games, and the scope of vicarious liability. The role of sports equipment manufacturers in protecting health and safety also remains paramount, and product liability issues persist. Further, the methods and medications used in athlete health care have generated legal concern, particularly with respect to opioid painkillers and performance enhancing drugs. This panel will provide a window into the many cross-cutting legal issues, and how the options for addressing those issues will impact athletes, institutions, and the future of sports.

Speakers include:

William W. Berry, III (moderator), Professor of Law and Montague Professor, University of Mississippi School of Law;

Ellen Michelle Bublick, Dan B. Dobbs Professor of Law, The University of Arizona James E. Rogers College of Law;

Paul H. Haagen, Professor of Law, Duke University School of Law;

Jessica L. Roberts, Director of the Health Law & Policy Institute and Leonard H. Childs Professor in Law, University of Houston Law Center; and

Alfred C. Yen, Professor of Law and Dean’s Distinguished Scholar, Boston College Law School.

## **William L. Prosser Award Winner: Anita Bernstein**

The 2020 Prosser Award winner is Anita Bernstein, the Anita and Stuart Subotnick Professor of Law, Brooklyn Law School. At Brooklyn Law School, Professor Bernstein teaches courses on legal malpractice, the legal profession, family law, torts, and professional responsibility. Professor Bernstein is a nationally recognized authority on tort law, feminist jurisprudence, professional responsibility, and products liability.

Professor Bernstein's recent book, *The Common Law Inside the Female Body* (Cambridge University Press, 2019), breaks new ground with her in-depth exploration of U.S. common law through history—focusing on crimes, contracts, torts, and property—as a fertile source for strengthening women's rights and freedoms. It is the subject of forthcoming symposia that will appear in the *Northwestern Law Review* and the *Boston College Law Review* electronic supplement.

Professor Bernstein's scholarship has been cited in decisional law by trial and appellate federal courts and the supreme courts of Pennsylvania and Texas. She has been recognized as one of the most highly cited scholars in the field of torts and products liability, according to Brian Leiter's Law School Reports, an influential legal blog. Professor Bernstein's writings have appeared in the law reviews of dozens of law schools, including Harvard, Yale, Columbia, California, Michigan, Cornell, Duke, Texas, and Vanderbilt. She also authored a series of columns on legal malpractice that appeared in the *New York Law Journal*. The author of several books addressing torts, products liability, and the law of marriage, Professor Bernstein's wide-ranging interests extend to microfinance, diversity as a rationale for affirmative action, and comparative and international law.

Prior to joining Brooklyn Law School, Professor Bernstein was the Sam Nunn Professor of Law at Emory University School of Law, the Wallace Stevens Professor of Law at New York Law

School, and Norman & Edna Freehling Scholar and Professor of Law at Chicago-Kent College of Law. She also served as a visiting professor at Michigan Law School, Cornell Law School, and the University of Iowa College of Law, where she was the Mason Ladd Distinguished Visiting Professor of Law. Before her academic career, she practiced with Debevoise & Plimpton and was a law clerk to Judge Jack Weinstein of the U.S. District Court for the Eastern District of New York.

Professor Bernstein received her J.D. from Yale Law School and graduated from Queens College with a B.A.

The Prosser Award will be presented during the Torts and Compensation Systems Section at the AALS annual meeting in January. The Torts and Compensation Systems Section Executive Committee congratulates Professor Bernstein on this well-deserved honor.

## **2021 Prosser Award Nominations**

The 2020 AALS Annual Meeting will be held January 2-5, 2020, in Washington, DC. At the 2020 Annual Meeting, the Torts and Compensation Systems Section will once again present the William L. Prosser Award to a law professor who has made outstanding contributions of scholarship, teaching, and service in the area of tort law. Any law professor is eligible to nominate another law professor for the award.

Selection of the recipient will be made by the members of the Executive Committee of the Torts and Compensation Systems Section, based on the recommendation of an appointed special selection committee.

Nominations should be submitted to Nora Engstrom, Treasurer of the Executive Committee, at [nora.engstrom@stanford.edu](mailto:nora.engstrom@stanford.edu). Nominations must be accompanied by a brief letter of support.

Nominations must be received no later than June 30, 2020.

## Election of Section Officers

The Section on Torts and Compensation Systems will elect officers for the coming year during the business meeting following the 2020 AALS program. You are invited to participate in the election. The current members of the Executive Committee will propose a slate of candidates for election at the business meeting. The proposed slate is:

Chair: Scott Hershovits, Michigan  
Chair-Elect: Mary Davis, Kentucky  
Secretary: Timothy Lytton, Georgia State  
Treasurer: Nora Engstrom, Stanford  
Exec. Cmte. Member: Elizabeth Weeks, Georgia

## Recent Tort Law Symposium

Twenty-Fourth Annual Clifford Symposium on Tort Law and Social Policy: Patient Safety: How Might the Law Help? (DePaul Law Review):

Julia Adler-Milstein, *How to Safely Make Interoperable Health Information Exchange a Reality*, 68 DePaul L. Rev. 197 (2019).

Tom Baker & Charles Silver, *How Liability Insurers Protect Patients and Improve Safety*, 68 DePaul L. Rev. 209 (2019).

Nathan Cortez, *A Black Box for Patient Safety*, 68 DePaul L. Rev. 239 (2019).

David A. Hyman, *Bad Doctors: Naming and Blaming in a World with Much Less Claiming*, 68 DePaul L. Rev. 263 (2019).

Ross Koppel, *Uses of the Legal System That Attenuate Patient Safety*, 68 DePaul L. Rev. 273 (2019).

Jean M. Mitchell, *Assessing Quality Data Reporting by Ambulatory Surgery Center*, 68 DePaul L. Rev. 291 (2019).

Robert L. Rabin & Alyssa J. Picard, *Reassessing*

*the Regulation of High-Risk Medical Device Cases*, 68 DePaul L. Rev. 309 (2019).

Rita F. Redberg, *Improving the Safety of High-Risk Medical Devices*, 68 DePaul L. Rev. 327 (2019).

Andrew M. Ryan, *Improving Patient Safety through Policy: Is Payment Reform up to the Task*, 68 DePaul L. Rev. 333 (2019).

Catherine M. Sharkey, *Direct-to-Consumer Genetic Testing: The FDA's Dual Role as Safety and Health Information Regulator*, 68 DePaul L. Rev. 343 (2019).

Joanna Shepherd, *Regulatory Gaps in Drug Compounding: Implications for Patient Safety, Innovation, and Fraud*, 68 DePaul L. Rev. 385 (2019).

Jeffrey H. Silber, *When Public Reporting Misleads the Public: The Case of Medicare's Hospital Compare Mortality Model*, 68 DePaul L. Rev. 407 (2019).

David M. Studdert & Michelle M. Mello, *In from the Cold: Law's Evolving Role in Patient Safety*, 68 DePaul L. Rev. 421 (2019).

Kathryn Zeiler & Gregory Hardy, *Law, Technology, and Patient Safety*, 68 DePaul L. Rev. 459 (2019).

## Recent Tort Law Journal Articles

Kenneth S. Abraham, *Plain Meaning, Extrinsic Evidence, and Ambiguity: Myth and Reality in Insurance Policy Interpretation*, 25 Conn. Ins. L.J. 329 (2019).

Kenneth S. Abraham & Robert L. Rabin, *Automated Vehicles and Manufacturer Responsibility for Accidents: A New Legal Regime for a New Era*, 105 Va. L. Rev. 127 (2019).

Kenneth S. Abraham & Robert L. Rabin, *The Future is Almost Here: Inaction is Actually Mistaken Action*, 105 Va. L. Rev. Online 91 (2019).

Kenneth S. Abraham & G. Edward White, *The Puzzle of the Dignitary Torts*, 104 Cornell L. Rev. 317 (2019).

Jamil Ammar, *Defective Computer-Aided Design Software Liability in 3D Bioprinted Human Organ Equivalents*, 35 Santa Clara High Tech. L.J. 37 (2019).

Aditi Bagchi, *Production Liability*, 87 Fordham L. Rev. 2501 (2019).

Yuval Blankovksy, *A Silent Revolution: The Talmudic Discussion about Tort Law*, 109 Jewish Q. Rev. 1 (2019).

Jonathon S. Byington, *Debtor Malice*, 79 Ohio St. L.J. 1023 (2018).

Alan Calnan, *Torts as Systems*, 28 S. Cal. Interdisc. L.J. 301 (2019).

W. Jonathan Cardi, Valerie Hans, & Gregory Parks, *Do Black Injuries Matter? Implicit Racial Bias and Juror Decision Making in Tort Cases*, 93 S. Cal. Rev. \_\_ (forthcoming 2019).

Karni A. Chagal-Feferkorn, *Am I an Algorithm or a Product? When Products Liability Should Apply to Algorithmic Decision-Makers*, 30 Stan. L. & Pol'y Rev. 61(2019).

Bryan H. Choi, *Crashworthy Code*, 94 Wash. L. Rev. 39 (2019).

William R. Corbett, *"You're Fired!": The Common Law Should Respond with the Refashioned Tort of Abusive Discharge*, \_\_ Berkeley J. Emp. & Lab. L. \_\_ (forthcoming 2019).

Mary J. Davis, *Time for a Fresh Look at Strick Liability for Pharmaceuticals*, 28 Cornell J.L & Pub. Pol'y 399 (2019).

J. Shahar Dillbary, *Multiple Causes and Stacked Interferences*, J. Inst. & Theoretical Econ. (forthcoming 2019).

J. Shahar Dillbary & Griffin Edwards, *An Empirical Analysis of Sexual Orientation Discrimination*, 86 U. Chi. L. Rev. 1 (2019).

Nathaniel Donahue & John Fabian Witt, *Tort as Private Administration*, 105 Cornell L. Rev. \_\_ (forthcoming 2019).

Robert W. Emerson, *Franchisee Independence: Still Awaiting Customer Recognition*, 15 N.Y.U. J.L. & Bus. 287 (2019).

Nora Freeman Engstrom, *The Lessons of Lone Pine*, 129 Yale L.J. \_\_ (forthcoming 2019).

Richard H. Fallon Jr., *Bidding Farewell to Constitutional Torts*, 107 Cal. L. Rev. 933 (2019).

Grant Hayes Frazier, *Defusing a Ticking Time Bomb: The Complicated Considerations Underlying Compulsory Human Genetic Editing*, 10 Hastings Sci. & Tech. L.J. 39 (2019).

A. Michael Froomkin, Ian Kerr, & Joelle Pineau, *When AIs Outperform Doctors: Confronting the Challenges of a Tort-Induced Over-Reliance on Machine Learning*, 61 Ariz. L. Rev. 33 (2019).

Barry R. Furrow, *The Limits of A.I. in Health Care: Patient Safety Policing in Hospitals*, 12 NE. U. L. Rev. \_\_ (forthcoming 2019).

Elizabeth Fuzaylova, *War Torts, Autonomous Weapon Systems, and Liability: Why a Limited Strict Liability Tort Regime Should Be Implemented*, 40 Cardozo L. Rev. 1327 (2019).

Grace M. Giesel, *A New Look at Contract Mistake Doctrine and Personal Injury Releases*, 19 Nev. L.J. 535 (2019).

Donald G. Gifford, *Rescuing Maryland Tort Law: A Tribute to Judge Sally Adkins*, 78 Md. L. Rev. 671 (2019).

Maytal Gilboa & Omer Y. Pelled, *The Costs of Having (Too) Many Choices: Reshaping the Doctrine of Informed Consent*, 84 Brook. L. Rev.

367 (2019).

James A. Henderson, Jr., *Civil Liability for Encouraging Bad Behavior: From Cheering at a Gang Rape to Promoting Opioid Abuse*, 71 Fla. L. Rev. 123 (2019).

Wes E. Henrickson, *Scientific Knowledge Fraud*, 97 Or. L. Rev. 307 (2019).

Xan P. Ingram, *Physician Liability for Sex-Assignment Surgeries on Intersex Babies*, 49 Cumb. L. Rev. 55 (2018).

Vincent R. Johnson, *Legal Malpractice Claims: What the Data Indicate*, 9 St. Mary's J. Legal Malpractice & Ethics 138 (2018) (reviewing Herbert M. Kritzer & Neil Vidmar, *When Lawyers Screw Up: Improving Access to Justice for Legal Malpractice Victims* (2018)).

Jeffrey H. Kahn, *The Tax Treatment of Liability Insurance Coverage*, 163 Tax Notes 1381 (2019).

Adam P. Karp & Margrit Lent Parker, *Recent Developments in Animal Tort and Insurance Law*, 54 Tort Trial & Ins. Prac. L.J. 329 (2019).

Alex B. Long, *Abolishing the Suicide Rule*, 113 Nw. U.L. Rev. 767 (2018).

George Maliha, *The Distortive Effect of the National Practitioner Data Bank on Medical Malpractice Litigation and Settlement*, 56 Harv. J. Legis. 287 (2019).

Emily Mendoza, *Jesner v. Arab Bank, PLC: Corporate Enemies and the Alien Tort Statute*, 96 Denv. L. Rev. 699 (2019).

Lars Noah, *Giving Personal Injury Attorneys Who Run Misleading Drug Ads a Dose of Their Own Medicine*, 2019 U. Ill. L. Rev. 701 (2019).

Donal Nolan, *Tort and Public Law: Overlapping Categories?*, 135 Law Q. Rev. 272 (2019).

Thaddeus Mason Pope, *Informed Consent Requires*

*Understanding: Complete Disclosure is Not Enough*, 19 Am. J. Bioethics 27 (2019).

Andrew F. Popper, *Rethinking Feres: Granting Access to Justice for Service Members*, 60 B.C.L. Rev. 1491 (2019).

Dan Priel, *The Place of Responsibility in Tort Liability*, 10 Juris. 396 (2019).

Doug Rendleman, *The Defamation Injunction Meets the Prior Restraint Doctrine*, 56 San Diego L. Rev. 615 (2019).

Doug Rendleman, *Rehabilitating the Nuisance Injunction to Protect the Environment*, 75 Wash. & Lee L. Rev. 1859 (2018).

William H.T. Rice, *Serious Side Effects May Occur: The Painful Symptoms of Evolving Tort Liability*, 22 J. Health Care L. & Pol'y 99 (2019).

Ani B. Satz, *Animal as Living Accommodations*, 24 Animal L. 1 (2018).

Ani B. Satz, *The Federalism Challenges of Protecting Workers' Medical Privacy*, 94 Ind. L.J. (forthcoming 2019).

Ani B. Satz, Kamez H. Benam, Siobahn Gilchrist, Andre Kleensang, Catherine Willett, & Qiang Zhang, *Exploring New Technologies in Biomedical Research*, 24 Drug Discovery Today 1242 (2019).

Ani B. Satz & Delcianna Winders, *Animal Welfare Act: Interaction with Other Laws*, 25 Animal L. 185 (2019).

Nadia N. Sawicki, *Defining the Known Risk: Context-Sensitivity in Tort Law Defenses*, 12 J. Tort L. 9 (2019).

Nadia N. Sawicki, *The Conscience Defense to Malpractice*, 108 Cal. L. Rev. \_\_ (forthcoming 2020).

Samantha R. Sergent, *Extinguishing the Firewall: Addressing the Jurisdictional Challenges to*

*Bringing the Cyber Torts Suits against Foreign Sovereigns*, 72 Vand. L. Rev. 391 (2019).

Malinda L. Seymore, *Adopting Civil Damages: Wrongful Family Separation in Adoption*, 76 Wash. & Lee L. Rev. 895 (2019).

Jason C. Sheffield, *Congress Prescribes Preemption of State Tort-Reform Laws to Remedy Healthcare Crisis: An Improper Prognosis*, 32 J.L. & Health 27 (2019).

Yehonatan Shiman, *Voting on Negligence*, 88 Miss. L.J. 51 (2019).

George C. Sisk, *Holding the Federal Government Accountable for Sexual Assault*, 104 Iowa L. Rev. 731 (2019).

Hannah R. Sullivan & Scott J. Schweikart, *Are Current Tort Liability Doctrines Adequate for Addressing Injury Caused by AI?*, 21 AMA J. Ethics 160 (2019).

Benjamin Sundholm, *Strict Liability for Genetic Privacy Violations in the Age of Big Data*, 49 U. Mem. L. Rev. 759 (2019).

Paul David Stern, *Tort Justice Reform*, 52 U. Mich. J.L. Reform 649 (2019).

Jean Thomas, *The Promise of Contractualism in Tort Law*, 10 Juris. 408 (2019).

Izabelle Tully, *The Courtroom Turned Classroom: A Model Procedure for Educating the Gatekeepers of Expert Evidence in Complex Toxic Tort Cases*, 40 Cardozo L. Rev. 2405 (2019).

W. Kip Viscusi, *Medical Malpractice Reform: What Works and What Doesn't*, 96 Den. L. Rev. 775 (2019).

Tory A. Weigand, *Tort Law-The Wrongful Demise of But For Causation*, 41 W. New. Eng. L. Rev. 75 (2019).

Helene E. White, *Making Black Lives Matter:*

*Properly Valuing the Rights of the Marginalized in Constitutional Torts*, 128 Yale L.J. 1742 (2019).

Mark Wilde, *A History of Tort Law: 1900-1950*, 40 J. Legal Hist. 97 (2019).

## Recent Tort Law Book Chapters

Susan S. Fortney & Vincent R. Johnson, *Legal Malpractice, in Legal Ethics, Professional Responsibility, and the Legal Profession* (West Acad. Press, 2018).

Barry R. Furrow & Karl Solveg, *Medical Malpractice in Comparative Perspective*, in *Oxford Handbook on Comparative Health Law* (David Orentlicher & Tamara Hervey eds., Oxford Univ. Press, forthcoming 2019).

Nathan B. Oman, *Private Law and Local Custom*, in *Oxford Handbook of New Private Law Theory* (Henry Smith et al. eds., Oxford Univ. Press, forthcoming 2020).

Richard J. Peltz-Steele, *Torts Through the Looking Glass*, in *The Media Method: Teaching Law with Popular Culture* (Christine Corcos ed., Carolina Acad. Press, 2019).

Ani B. Satz, *Health Care as Eugenics*, in *Disability, Health, Law, and Bioethics* (I. Glenn Cohen, Carmel Shachar, Anita Silvers, & Michael Ashley Stein eds., Cambridge Univ. Press, forthcoming 2020).

## Recent Book Reviews

Mark A. Lemley, *Privacy, Property, and Publicity*, 113 Mich. L. Rev. 113 (2019) (reviewing Jennifer E. Rothman, *The Right of Publicity: Privacy Reimagined for a Public World* (2018)).

David Partlett, *The Spirit of the Common Law and the Rights of Women: A Review of Bernstein, the Common Law inside the Female Body*, 12 J. Tort L. 127 (2019) (book review).

James E. Penner, *John Gardner's From Personal Life to Private Lawyer*, 10 Juris. 300 (2019) (book



review).

### **Selected Commonwealth Scholarship**

Christoph Busch, *When Product Liability Meets the Platform Economy: A European Perspective on Oberdorf v. Amazon*, 8 J. Eur. Consumer & Mkt. L. 173 (2019).

Mark A. Geistfeld, *The Law and Economics of Tort Liability for Human Rights Violations in Global Supply Chains*, 10 J. Eur. Tort L. 130 (2019).

Michael D. Green, *All You Ever Wanted to Know about Adequate Proof of Causation in Tort Law*, 9 J. Eur. Tort L. 308 (2018).

Mark Lunney, *Innovation in the Shadows of Deference: Urban Environment and the Law of Tort in Australia, 1901-1945*, 6 Law & Hist. 1 (2019).

Timothy D. Lytton, *Exposing Private Third-Party Food Safety Auditors to Civil Liability for Negligence: Harnessing Private Law Norms to Regulate Private Governance*, 27 Eur. Rev. Priv. L. (forthcoming 2019).

John Murphy, *Malice as an Ingredient of Tort Liability*, 78 Cambridge L.J. 355 (2019).

Paul Wragg, *Recognising a Privacy-Invasion Tort: The Conceptual Unity of Informational and Intrusion Claims*, 78 Cambridge L.J. 409 (2019).

### **Recent Tort Law Books – U.S. and International**

Jean-Louis Baudouin, *Tort Law in Quebec* (Kluwer Law Int'l, 2018).

*Injury and Injustice: The Cultural Politics of Harm and Redress* (Anne Bloom, David M. Engel & Michael McCann eds., Cambridge Univ. Press 2019).

Elizabeth Chamblee Burch, *Mass Tort Deals: Backroom Bargaining in Multidistrict Litigation*

(Cambridge Univ. Press, 2019).

Andrew S. Burrows, *Remedies for Torts, Breach of Contract, and Equitable Wrongs* (Oxford Univ. Press, 4th ed. 2019).

*Feminist Judgments: Rewritten Torts Opinions* (Martha Chamallas & Lucinda Finley eds., Cambridge Univ. Press, forthcoming 2020)

George Christie, Joseph Sanders, Jonathan Cardi, & Mary Davis, *Cases and Materials on the Law of Torts* (West Acad. Pub., 6th ed. 2019).

Andrew Clarke, John Devereux, Julia Day, & Murray Greenway, *Torts: Principles, Skills and Application* (LexisNexis Butterworth 2019).

*Tort Law Desk Reference: A Fifty State Compendium, 2020 Edition* (Morton F. Daller & Nicholas Daller eds., Wolters Kluwer, 2019).

Simon F. Deakin & Zoe Adams, Angus Johnston, and Sir Basil Markesinis, *Markesinis and Deakin's Tort Law* (Oxford Univ. Press, 8th ed. 2019).

B. Lance Entekin, *Legal Malpractice Litigation* (Bloomberg Law, 2019).

*Contributory Negligence in the Twenty-First Century* (James Goudkamp & Donal Nolan eds., Oxford Univ. Press, 2019).

*Scholars of Tort Law* (James Goudkamp & Donal Nolan eds., Hart Pub., 2019).

Peter Charles Hoffer, *Litigation Nation: A Cultural History of Lawsuits in America* (Rowman & Littlefield, 2019).

Kirsty Horsey & Erika Rackley, *Kidner's Casebook on Torts* (Oxford Univ. Press, 15th ed. 2019).

Kirsty Horsey & Erika Rackley, *Tort Law* (Oxford Univ. Press, 6th ed. 2019).

Vincent R. Johnson, *Mastering Torts: A Student's Guide to the Law of Torts* (Carolina Acad. Press,

6th ed. 2018).

Vincent R. Johnson & Chenglin Liu, *Studies in American Tort Law* (Carolina Acad. Press, 6th ed. 2018).

Nancy S. Kim, *Consentability: Consent and Its Limits* (Cambridge Univ. Press 2019).

Timothy D. Lytton, *Outbreak: Foodborne Illness and the Struggle for Food Safety* (The Univ. of Chicago Press, 2019).

Miquel Martin-Casals, *Borderlines of Tort Law: Interactions with Contract Law (Principles of European Tort Law)* (Intersentia, 2019).

Frank McClellan, *Healthcare and Human Dignity: Law Matters (Critical Issues in Health and Medicine)* (Rutgers Univ. Press, 2019).

Andrew Mckie, *Personal Injury and Clinical Negligence 2019 Update: Cases, Updates and Key Decisions* (Law Brief Pub., 2019).

Gerald Fridman and the Law of Obligations: Past, Present and Future (Jason Neyers, Andrew Botterell, & Zoe Sinel eds., LexisNexis Canada 2019).

Nigel Poole, *Clinical Negligence Made Clear: A Guide for Patients and Professionals* (Bath Pub. Ltd., 2019).

Robert M. Solomon, Mitchell McInnes, Erika Chamberlain, & Stephen G.A. Pitel, *Cases and Materials on the Law of Torts* (Thomson Reuters Canada, 10th ed. 2019).

Ernest J. Weinrib, *Tort Law: Cases and Materials* (Emond Montgomery, 5th ed. 2019).

## **In Memoriam**

OSCAR S. GRAY  
(tribute written by Don Gifford)

Sadly, I must share the news that our colleague

Oscar S. Gray passed away on October 3 in New York City. Oscar, the Jacob A. France Professor Emeritus of Torts at the University of Maryland Carey School of Law, was one of the nation's preeminent tort scholars from the 1970s until the time of his death. He published the second and third editions of the definitive six-volume treatise on tort law, *Harper, James and Gray on Torts*. He also was a co-editor of the influential torts casebook, *Cases and Materials on Torts*, along with Harry Shulman, Fleming James, Jr., and Don Gifford. During the mid-1990s, he served as chair of the AALS Section on Torts and Compensation Systems, and in 2010, he received the William L. Prosser Award for lifetime service from the section.

A memorial event in honor of Professor Gray will be held at the University of Maryland Carey School of Law on Tuesday, December 10, at 2 p.m. If you are able to attend, please RSVP at the following link by December 3, 2019:

<https://oscargraymemorial.eventbrite.com>.

Oscar, a native of Maryland, graduated Phi Beta Kappa from Yale College. He decided to attend Yale Law School because, as he said in a 2011 interview, "law [is] a mechanism for bringing about social change, and ... a way—perhaps the most striking way—of fighting for the righting of wrongs." There he received, from Harry Shulman and Fleming James, Jr., what he described as "the best introduction to Torts I could have hoped for." He also worked as a research assistant with Fowler Harper.

In the early 1950s during the anti-Communist hysteria of the McCarthy era, Professor Gray served as an attorney-adviser in the Legal Adviser's Office of the U.S. Department of State. Both in this role and when he applied for admission to the Maryland Bar, he was asked, but refused as a matter of principle, questions about his political beliefs or the people whom he knew. From 1957 until 1971, he became a vice president and director of a start-up company in the nuclear materials field. He later served the government as special counsel to the President's Task Force on Communications Policy



and as acting director of the Office of Environmental Impact for the U.S. Department of Transportation where, as he later described it, he “had a dandy time trying to prevent roads from doing unnecessary environmental harm.”

As a result of this work, in the late 1960s, Oscar received offers to teach the newly developing subject, Environmental Law, at Georgetown and Catholic. While doing so, he assembled a casebook on environmental law because there were no commercial offerings in the field. In 1970, Georgetown Law School offered him a full-time faculty position teaching Torts. Oscar’s first step was to visit his own Torts teacher, Fleming James, at Yale to seek his advice. At the end of their encounter, Professor James asked Oscar if he was willing to coedit a new edition of the Shulman and James tort casebook and Oscar enthusiastically accepted the offer. A year or so later, Oscar joined James as a coeditor of the torts treatise. When asked in the 2011 interview what he regarded as his most important professional accomplishment, Oscar answered that it was “keeping alive the voices of Shulman and James, and Harper, so that they can continue to speak to new generations of students and scholars.” Oscar was extremely active in the activities of the American Law Institute and its drafting of the earlier parts of the *Restatement (Third) of Torts*.

In 1971, Oscar joined the faculty at the University of Maryland School of Law where he actively taught until 1996. To his colleagues, he was a steadfast figure of uncompromising integrity and commitment to scholarly excellence and precision in the use of language.

**JIM HENDERSON**  
(tribute written by Aaron Twerski)

After thirty-four years of collaboration with Jim Henderson when we talked to each other multiple times each day, it is very hard for me to talk about Jim in the past tense. Our relationship was more than professional we became the best of friends; the line between the personal and academic blurs in my mind. There is no way that I can be objective.

Having made the disclaimer, I offer the following thoughts.

Jim Henderson was a brilliant scholar. Few will equal him as a torts scholar. Beginning with his landmark article in 1973 where he argued that design defect litigation was polycentric and tested the limits of justiciability, he continued throughout his career to examine tort doctrine from a procedural perspective. His insights will enrich tort dialogue for many years to come. His colleagues in the academy had great respect for his work and he enjoyed nothing more than reading and discussing their works with them.

We co-authored twenty-four law review articles, eight editions of a products liability casebook and four editions of a torts casebook. In each endeavor Jim brought his superb analytical abilities to the project. If an argument was not true it would offend him - like screeching chalk on a blackboard. He had no tolerance for facile arguments. In short, he was the epitome of an honest scholar.

In our work on the Products Liability Restatement we were importuned to compromise on several controversial positions. Jim would have none of it. Not because he was a purist, but he deeply believed that our positions were correct and that they would stand the test of time.

As a teacher, Jim won the respect of his students. He could be critical without being judgmental and firm while encouraging students to be open and engaging. On the occasions when we team taught a class, students were overwhelmed by his brilliance.

One aspect of Jim’s personality is probably known to only two people in this world, his wife, Marci and myself. Jim worked hard on himself to be a better person. It is rare to find a person who is self-critical and works to truly improve himself. We both shared a trait that needed correction. We were both short-tempered - too quick on the draw. Over the years Jim got very much better. I still have work to do.

In short. Jim was a great scholar; a great teacher; a

great colleague; a great friend; above all a great human being. I will miss him terribly.

WILLIAM C. POWERS, JR.  
(tribute written by Michael D. Green)

Tort law lost one of its leading luminaries this year. Bill Powers died on March 10, 2019 from pneumonia that was a consequence of a tragic fall at the law school of University of Texas, the institution that Bill loved and served for 41 years.

Bill was a deeply respected and important scholar of tort law and an equally effective and beloved teacher (not to mention a whole lot more, see below). His early scholarship tended to focus on products liability, and, in an important article, he made the case for a substantial return to negligence principles at a time when strict products liability was continuing to course through the country's legal veins. Prescient that case was, as courts began to walk back the excesses of yet another progressive reform that went too far. He also wrote a number of telling book reviews, including one about the definitive biography of Benjamin Cardozo, authored by Andy Kaufman, one of Bill's professors at Harvard.

Perhaps Bill's most important contribution to tort law was his work on the *Restatement (Third) of Torts*. Tapped by the iconic Charles Alan Wright, then the President of the ALI and Bill's colleague at Texas, to be the Reporter for Apportionment of Liability, Bill grappled with the changes required by the adoption of comparative fault and the modification of joint and several liability. As I said at his funeral, the luckiest day of my life was when I was asked to assist him in that endeavor. Thus, began a multi-decade collaboration and friendship that included two Restatement projects—we were co-Reporters for Physical and Emotional Harm as well—several editions of a Products Liability casebook, and a handful of articles. A couple of months before his fall, we had agreed to saddle up once again and work together on the last piece of the Torts Restatement, covering subjects that had fallen through the cracks of the project-by-project process of restating torts.

Bill's professional career went beyond scholarship and teaching. He was a highly successful Dean at a large nationally ranked law school. His acumen as a Dean is revealed in microcosm in his response to 9/11. UT had a large number of New York students and Bill encouraged them to return home to be with family, offering to pay for those students to do so.

Outside the context of his work as a scholar, Bill conducted the internal investigation into the collapse of Enron. *The New York Times'* obituary focused on this work and began by reporting on questions raised at the outset of the investigation on Bill's objectivity because of the substantial contributions by Enron to the University of Texas. Those raising the questions clearly did not know Bill, whose integrity and honesty never failed to impress me. During his incredibly demanding tenure as President of the University, I would periodically respond to invitations to write something about a subject we covered together in our restatement work. I would consult with Bill and ask him to join as a co-author, but he would never agree to be listed as an author unless he contributed substantially to that work.

After his deanship, Bill was selected by the Board of Regents to be the President of the University, where he served for nine years. Talk to any student who studied at UT during that time and odds are you will get a big smile and thumbs up—unusual for a university President, but a testament to his commitment and love for students. His achievements in furthering his vision of UT—being the best public University in the nation—are too long to list.

Having mentioned his integrity, one other trait deserves mention: his generosity. I observed one significant example shortly after we began working together. Without my knowledge, Bill prevailed on the ALI leadership to promote me from Associate Reporter to co-Reporter with him. Nothing in it for him, but just an honest conviction that we were doing the same job and no need on his part for top billing. I should add that Bill was the UT faculty member who reached out to visiting faculty,

inviting them to lunch and other events and generally making them feel welcome during their short-term stays.

Losing Bill was a tremendous personal loss but also a loss for all who had the good fortune to cross paths with him during his remarkable career.