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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 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. 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


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


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


Recent Tort Law Journal Articles


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).


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


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


Recent Tort Law Book Chapters


Recent Book Reviews


Selected Commonwealth Scholarship


Recent Tort Law Books – U.S. and International


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