

Advanced Torts
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Office hours by appointment

Syllabus Spring 2009
Subject to change with advanced notice

Text: Franklin and Rabin
Tort Law and Alternatives 8th edition
You do not need to read the notes following the text cases.
Cases not in the text are posted on my TWEN site. There may be additional postings during the semester—I'll give you advance notice when this occurs.

Assignment for first class
Read the cases in the first segment, "Tort Duties of Insurers"

Breach of Duty or Breach of Contract?

Introduction to Insurance

TORT DUTIES OF INSURERS

Gruenberg v. Aetna Ins. Co., 9 Cal.3d 566, 510 P.2d 1032, 108 Cal. Rptr. 480 (1973) (TWEN)

Pavia v. State Farm Mutual Automobile Ins. Co, 82 NY2d 445, 626 N.E.2d 24 (1993) (text p. 798)

Campbell v. State Farm Mut. Auto Ins. Co. 840 P.2d 130 (Utah court of appeals)(TWEN)

PUNITIVE DAMAGES

Can they be too high?

Taylor v. Superior Court, 598 P.2d 854 (1979)(text p. 740)

Pacific Mut. Life Ins. v. Haslip, 499 U.S. 1(1991) (TWEN)

BMW of North America v. Gore, 517 U.S. 559 (1996) (TWEN)

Dardinger v. Anthem Blue Cross & Blue Shield, 2002-Ohio-7113 (TWEN)

**State Farm Mut. Auto Ins. Co. v. Campbell 123 S. Ct. 1513 (2003)
(text p. 749)—note—full dissent by Justice Ginsburg is on the TWEN site**

Campbell v. State Farm Auto Ins. Co. (on remand from the U.S. Supreme Court), 2004 UT 34 (TWEN)

**Mathias v. Accor Economy Lodging Inc., 347 F.3d 672 (7th circuit 2003)
(TWEN)**

**Philip Morris U.S.A. v. Williams, 127 S. Ct. 1057 (2006).
(TWEN)**

Exxon Shipping Co. v. Baker, 554 U.S.____ (2008) (TWEN)

**Flax v. DaimlerChrysler Corp.
Tennessee Supreme Court July 24, 2008
2008 WL 2831225
(TWEN)**

Class assignment-end of this segment

**Find a recent post-Campbell punitive damages case that discusses the
ratio—be prepared to discuss in class**

TORT REFORM

Do we need it?

Arbino v. Johnson & Johnson, 2007-Ohio-6948 (TWEN)

PRIVACY: IS THERE REALLY SUCH A THING?

Text pp1121-1123

A. Public Disclosure of Private facts

Text p.1123

Haynes v. Alfred A. Knopf, Inc., 8 Fed. 3d 1222 (1993) (text p.1124)

Ozer v. Borquez, 940 P.2d 371 (1997)

Constitutional Privilege

Text p. 1133-1135

Cox Broadcasting v. Cohn 420 U.S. 469 (1975) (TWEN)

Smith v. Daily Mail Publishing Co. 443 U.S. 97 (1979) (TWEN)

The Florida Star v. B.J.F. 491 U.S. 524 (1989) (text p.1135) (TWEN)

Breach of Confidence

**Humphers v. First Interstate Bank of Oregon, 696 P.2d 527 (1985)
((text p.1149)**

B. Intrusion On Seclusion

Galella v. Onassis 487 F.2d 986 (1973)(text p.1177)

**Desnick v. American Broadcasting Companies, Inc. 44 F.3d 1345
(1995)(text p.1181)**

Schulman v. Group W Productions, Inc. 955 P.2d 469 (1998)(text p.1188)

Bartnicki v. Vopper, 532 U.S. 514 (2001) use the TWEN version, not the text version

Boehner v. McDermott, 484 F.3d 573 (D.C. Circuit, en banc, 2007) (TWEN)

C. False Light Privacy

Text p. 1158-1159

Cantrell v. Forest City Publishing Co. 419 U.S. 245 (1974) (text p.1141)

Bueno v. Denver Publishing Co. 32 P.3d 491 (2001) (TWEN)

Godbehere v. Phoenix Newspapers, Inc. 162 Ariz. 335, 783 P.2d 781 (1989) (TWEN)

D. Appropriation

Text pp1186-1187

Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977) (text p.1187)

Carson v. Here's Johnny Portable Toilets Inc., 698 F.2d 831 (1982) (TWEN)

White v. DC Comics (California Supreme Court) text p. 1215

Class assignment

Find a current (2 years old or less) privacy case involving any of the four privacy torts, and be prepared to present it in class

NEW IDEAS FOR MEDICAL CLAIMS

Interference with Procreation and End of Life Decisions

Text p. 326

**Johnson v. University Hospital, 44 Ohio St.3d 49, 540 N.E.2d 496 (1989)
(TWEN)**

Marciniak v. Lundborg, 153 Wisc.2d 59, 450 N.W.2d 243 (1990) (TWEN)

Emerson v. Magendantz (text p. 326)

Simmerer v. Dabbas, 89 Ohio St.3d 586 (2000) (TWEN)

Hester v. Dwividi, 89 Ohio St.3d 575 (2000) (TWEN)

**Harbeson v. Parke-Davis, Inc, 98 Wash.2d 460 (1983)
(TWEN)**

**Schirmer v. Mt. Auburn Obstetrics and Gynecologic Associates Inc., 2006-
Ohio-942 (TWEN)**

Miller v. HCA, Inc. 118 S.W.3d 758 (2003)(TWEN)

Stewart-Graves v. Vaughn, 162 Wash.2d 115 (2007)(TWEN)

**Anderson v. St. Francis-St. George Hospital,
1995 WL 109128 (Ohio App. 1 Dist.) (TWEN)**

**Anderson v. St. Francis-St. George Hospital, 77 Ohio St. 3d 82, 671 N.E.2d
225 (TWEN)**

Informed consent

**Johnson by Adler v. Kokemoor, 199 Wis.2d 615, 545 N.W.2d 495 (1996)
(TWEN)**

INTERSECTION OF TORTS AND CONTRACTS

WRONGFUL DISCHARGE

Tameny v. Atlantic Richfield Co., 610 P.2d 1330 (1980)(TWEN)

**Reust v. Alaska Petroleum Contractors
2005 WL 2812745 (TWEN)**

Class assignment

Find a current (2 years or less) wrongful discharge tort case and be prepared to discuss it in class

FRAUD AND MISREPRESENTATION

**Idress v. American University of the Caribbean, 546 F. Supp. 1342 (1982)
(TWEN)**

**Burr v. Board of Commissioners of Stark County, 23 Ohio St.3d 69, 491
N.E.2d 1101 (1986)
(TWEN)**

**Hanks v. Hubbard Broadcasting Inc., 493 N.W.2d 302 (1992)
(TWEN)**

**Singer v. Beach Trading Co. Inc., 379 N.J. Super. 63 (2005)
(TWEN)**

**Passmore v. Multi-Management Services, Inc.
801 N.E.2d 1022 (2004) (TWEN)**

Ollerman v. O'Rourke Co. Inc. (Wisconsin Supreme Court) (text p.1236)

LAWYERS GIVING BAD ADVICE

Simon v. Zipperstein, 32 Ohio St.3d 74, 512 N.E.2d 636 (1987) (TWEN)

**Elam v. Hyatt Legal Services, 44 Ohio St.3d 175, 541 N.E.2d 616
(1989)(TWEN)**

**Lewis v. Star Bank, N.A., 90 Ohio App.3d 709, 630 N.E.2d 418 (1993)
(TWEN)**

Orshoski v. Krieger, (Ct. of Apps. Ottawa Cty, Nov. 9, 2001) (TWEN)

Noble v. Bruce, 349 Md. 730, 709 A.2d 1264 (1997)(TWEN)

Guy v. Liederbach, 459 A.2d 744 (1983) (TWEN)

Pure Economic Loss

Nycal Corp. v. Peat Marwick LLP (text p. 306)

**Crigger v. Fahnstock and Co. Inc., 443 F.3d 230 (C.A.2 2006)
(TWEN)**

**Board of Trustees of the Worthington Public Library v. Hickson
Corporation 1999WL 1455661 (TWEN)**

**People Express Airlines, Inc. v. Consolidated Rail Corp.
(TWEN)**

**532 Madison Avenue Gourmet Foods, Inc. v. Finlandia Center, 96 N.Y.2d
280, 750 N.E.2d 1097 (2001) Text p. 317**