Torts and Compensation Systems Section
Annual Newsletter
December 2020

Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Meeting Programs</td>
<td>1</td>
</tr>
<tr>
<td>William L. Prosser Award Winner</td>
<td>1</td>
</tr>
<tr>
<td>2022 Prosser Award Nominations</td>
<td>2</td>
</tr>
<tr>
<td>Election of Section Officers</td>
<td>3</td>
</tr>
<tr>
<td>Recent Law Review Symposia</td>
<td>3</td>
</tr>
<tr>
<td>Recent Law Journal Articles</td>
<td>10</td>
</tr>
<tr>
<td>Selected Commonwealth Scholarship</td>
<td>25</td>
</tr>
<tr>
<td>Recent Tort Law Book Chapters</td>
<td>26</td>
</tr>
<tr>
<td>Recent Tort Law Books – U.S. and International</td>
<td>26</td>
</tr>
<tr>
<td>In Memoriam</td>
<td>28</td>
</tr>
</tbody>
</table>

This newsletter was compiled by Pamela C. Brannon, Coordinator of Faculty Services, and Timothy D. Lytton, Distinguished University Professor, Professor of Law and Associate Dean for Research and Faculty Development, Georgia State University College of Law.

**Annual Meeting Programs**

**“Tort and Compensation Systems”**

**AALS Annual Meeting**
January 5, 2021
1:15pm-2:30pm

Panelists will discuss the work of the late John Gardner, who was the Professor of Jurisprudence at Oxford and a fellow of All Souls College. This session will be conducted jointly with the Jurisprudence section.

Speakers include:

**Tom Daugherty**, Associate Professor of Philosophy, University of North Carolina

**Kimberly Kessler Ferzan** (moderator), Earle Hepburn Professor of Law, Co-Director, Institute of Law & Philosophy, University of Pennsylvania Carey Law School

**John Goldberg**, Deputy Dean and Carter Professor of General Jurisprudence, Harvard Law School

**Scott Hershovitz** (moderator), Thomas G. and Mabel Long Professor of Law and Professor of Philosophy, Director, Law & Ethics Program, University of Michigan

**Leslie Kendrick**, Vice Dean and White Burkett Miller Professor of Law and Public Affairs, University of Virginia Law School

**William L. Prosser Award Winner:**

**Hon. Jack B. Weinstein**

The 2021 Prosser Award winner is Judge Jack B. Weinstein of the Eastern District of New York.

For decades, Judge Weinstein has been a towering and transformative figure. Through his teaching, scholarly writings, and fearless jurisprudence, he has left a deep and lasting imprint on American tort law, and on the U.S. justice system more broadly. His accomplishments in the law far exceed the limits of this or any award announcement—indeed, the New York Times recent reported that his resume “now runs to more than 70 pages.

Showing an early industriousness that presaged his half-century of tireless judicial service, Judge Weinstein put himself through Brooklyn College by doing part-time dock work in New York Harbor. He then served for three years as a
submarine officer in the Second World War’s Pacific theater. After the war, Judge Weinstein entered law school, earning a degree from Columbia Law School in 1948. Shortly thereafter, in 1952, he joined Columbia’s faculty—and, within a few years, became a nationally recognized expert in Civil Procedure. Alongside his burgeoning academic career, Judge Weinstein continued to make time for public service. Of particular note was his service as a member of the NAACP’s litigation team in Brown v. Board of Education and his two-year term as attorney for Nassau County.

After 15 years in academe, Judge Weinstein was appointed, and confirmed, to the federal bench, where he sat as a judge on the U.S. District Court for the Eastern District of New York. He served as a judge for almost 53 years, from 1967 to 2020 (recently retiring at age 98). He served as Chief Judge of the Eastern District from 1980 to 1988.

During his time in the Eastern District, Judge Weinstein has been a pioneering academic and jurist, shaping the law of procedure and evidence, and handling some of the most important mass tort cases, notably on Agent Orange, pharmaceuticals, tobacco, asbestos, and firearms. He has developed innovative methods—not without controversy—for resolving complex mass tort litigation, including enlarging the roles of magistrates and special masters, altering the role of expert witnesses, and simplifying questions of choice of law. At the same time, he has issued bold decisions on consequential matters including enterprise liability, market share liability, and whether damages distinctions based on race and gender violate the Fourteenth Amendment of the U.S. Constitution. (He says they do.)

In all his cases, Judge Weinstein has displayed endless energy and determination and brought uncommon courage, humanity and empathy. His innovations include, for example, enabling class action members to be heard individually, and sitting at a conference table when sentencing defendants. A notable critic of mandatory minimums and other harsh sentencing practices, he has often spoken out against the “unnecessary cruelty” of federal criminal law, molding the thinking of a generation of sentencing reformers.

His writings have been similarly influential. His publications on mass torts and compensation systems include hundreds of judicial opinions, numerous academic articles, and several books including Individual Justice in Mass Tort Litigation: The Effect of Class Actions, Consolidations, and Other Multiparty Devices (1995); Mass Torts: Cases and Materials (with Kenneth Feinberg) (1992); and Weinstein’s Evidence (with Margaret Berger) (1975–1979).

Professor John C. P. Goldberg, a former clerk, aptly summed up Judge Weinstein’s extraordinary body of work: “No one in modern American law has played a more important role in pressing lawyers, fellow judges, and law professors to reconsider the potential of tort law to contribute to a just polity.”

The Prosser Award will be presented at this year’s annual meeting. The Torts and Compensation Systems Section Executive Committee congratulates Judge Weinstein on this well-deserved honor.

2022 Prosser Award Nominations

The 2021 AALS Annual Meeting will be held January 5-9, 2021, virtually via videoconference technology due to the COVID-19 pandemic. At the 2021 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 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 Elizabeth Weeks, Treasurer of the Executive Committee, at weeksleo@uga.edu. Nominations must be accompanied by a brief letter of support. Nominations must be received no later than June 30, 2021.

**Election of Section Officers**

The Section on Torts and Compensation Systems will elect officers for the coming year during a business meeting following the 2021 AALS program. You are invited to participate in the election. The current members of the Executive Committee will propose the following slate of candidates for election at the business meeting:

Chair: Mary Davis, Kentucky  
Chair-Elect: Timothy D. Lytton, Georgia State  
Secretary: Nora Freeman Engstrom, Stanford  
Treasurer: Elizabeth Weeks, UGA  
Exec. Committee Member: Tom Kadri, UGA  
Exec. Committee Member: TBA

**Recent Law Review Symposia**

**Class Actions, Mass Torts, and MDLs: The Next 50 Years (Lewis & Clark Law Review):**


**Common Law for the Age of AI (Columbia Law Review):**


**Comprehensive Tort Reform Through House Bill 4 (H.B. 4) by the Texas Legislature (Texas Tech Law Review):**


**Parts One and Two: The Crisis in Access to Medical Care**, 51 TEX. TECH L. REV. 393 (2019).


**Part Six: Chapter 41, Section 41.0105 of the Texas Civil Practice and Remedies Code: “Paid or Incurred”**, 51 TEX. TECH L. REV. 445 (2019).


**Conclusion**, 51 TEX. TECH L. REV. 617 (2019).

David A. Hyman, Are We Driven by Data? The Problem of Bad Doctors, 96 DENV. L. REV. 761 (2019).


Krystia Reed, Valerie P. Hans, Valerie F. Reyna, Accounting for Awards: An Examination of Juror Reasoning Behind Pain and Suffering Damage Award Decisions, 96 DENV. L. REV. 841 (2019).


Embryonic Injuries and Nascent Remedies in the Age of CRISPR-CAS and Advanced IVF (Chicago-Kent Law Review):

Amit Choudhary, Problems with CRISPR and What is Being Done About It, CHI-KENT L. REV. (forthcoming).

Dr. Svetlana Rechitsky, Advances in IVF and Human Leukocyte Antigens Matching and the Use of Preimplantation Genetic Testing for Late Onset Conditions, CHI-KENT L. REV. (forthcoming).


David Heyd, Does the Non-Identity Problem Apply to Wrongful Birth Claims? – or, Can You Sue If You Wouldn’t Have Been Born?, CHI-KENT L. REV. (forthcoming).

Dov Fox, Causation and Compensation of Intergenerational Harm, CHI-KENT L. REV. (forthcoming).


MDL Turns 50: A Look Back and the Way Forward (Georgia Law Review):


Myriam Gilles & Gary Friedman, Rediscovering the Issue Class in Mass Tort MDLs, 53 GA. L. REV. 1305 (2019).


#MeToo in the Workplace (Employee Rights and Employment Policy Journal):


New Voices (Journal of Tort Law):


Remedies in Complex Litigation (Texas Law Review):


Bert I. Huang, Coordinating Injunctions, 98 TEX. L. REV. 1331 (2020).


Symposium on Anita Bernstein’s The Common Law Inside the Female Body (Boston College Law Review E-Supplement):


Nadia B. Ahmad, Re-Reading Anita Bernstein’s The Common Law Inside the Female Body From the Bottom of the Well: Analysis of the Central Park Five, Border Drownings, the Kavanaugh Confirmation, and the Coronavirus, 61 B.C. L. REV. E-SUPP. I.-69 (2020).


**Symposium on Anita Bernstein’s The Common Law Inside the Female Body (Northwestern University Law Review Online):**


**Symposium on Convergence and Divergence in Private Law (Southern California Law Review):**


Texas Alliance for Patient Access (TAPA) and the Texas Trial Lawyers Association (TTLA) on Medical Malpractice Claims in Texas (Texas Tech Law Review):


Kathryn Snapka & William J. Chriss, Periodic Payment of Future Damages in Medical Malpractice Cases, 51 TEX. TECH L. REV. 847 (2019).

Gavin McInnis, To Arbitrate or Not to Arbitrate, That Is the Question, 51 TEX. TECH L. REV. 859 (2019).

Truth Decay: Deep Fakes and the Implications for Privacy, National Security, and Democracy (Maryland Law Review):


Twenty-Fifth Annual Clifford Symposium on Tort Law & Social Policy

Rising Stars: A New Generation of Scholars Looks at Civil Justice (DePaul Law Review):


**2019 Climate Change Symposium (Columbia Journal of Environmental Law):**


**Recent Law Journal Articles**


Christopher M. Abiuso, Note, “*You’re Fake News*”: Preserving Both Free Speech and Defamation Lawsuits, 47 Hofstra L. Rev. 1359 (2019).


Doris DelTosto Brogan, Reviving the Intracorporate Communications No-Publication Rule: A Strategy to Encourage Effective Investigation of Internal Misconduct, 71 BAYLOR L. REV. 620 (2019).


Elizabeth Chamblee Burch, Nudges and Norms in Multidistrict Litigation: A Response to Engstrom, 129 YALE L.J. FORUM 64 (2019).


Nanci K. Carr, Social Media and the Internet Drive the Need for a Federal Statute to Protect the Commercial Value of Identity, 22 TUL. J. TECH. & INTEll. PROP. 31 (2020).

Benjamin Caryan, Held Accountable: Should Gun Manufacturers Be Held Liable for the Criminal Use of Their Products, 13 J. BUS. ENTREPRENEURSHIP & L. 23 (2020).


Andrew Chiang, Two to Tango: Rethinking a Unilateral Duty of Care, 46 OHIO N.U. L. REV. 83 (2020).


Scott M. Cumming, *Applying Oregon’s Abuse of a Vulnerable Person Statute to Date Rape Cases: Defendants Are in Treble*, 98 OR. L. REV. 325 (2020).


Joel Edan Friedlander, *Confronting the Problem of Fraud on the Board*, 75 BUS. LAW. 1441 (2019-2020).


Rebecca Green, Candidate Privacy, 95 WASH. L. REV. 205 (2020).

Betsy J. Grey, Sex-Based Brain Differences and Emotional Harm, 70 DUKE L.J. ONLINE 29 (2020).


Ridge Howell, Overlooking Canon: How the Alabama Supreme Court Used a Footnote to Disregard Tribal Sovereign Immunity in Wilkes v. PCI Gaming Authority, 43 AM. INDIAN L. REV. 437 (2019).


Gregory R. Jones, Will the Real Independent Contractor Please Stand Up? ILL. B.J., July 2020, at 44.


Sarah Kamensky, Artificial Intelligence and Technology in Health Care: Overview and Possible Legal Implications, 21 DEPAUL J. HEALTH CARE L. 1 (2020).


Peter Y. Kim, Where We’re Going We Don’t Need Drivers: Autonomous Vehicles and AI-Chaperone Liability, 69 CATH. U. L. REV. 341 (2020).


Ryan M. Mardini, *The Quantification of Remedy Change: How the Proliferation of


Timothy Nicolette, Note, *Williams v. Quest: The South Carolina Supreme Court’s Misdiagnosis of Quest Diagnosis as a Health Care Provider and the Poor Prognosis for Plaintiffs in Medical Malpractice*, 13 CHARLESTON L. REV. 393 (2019).


Brittany Norman, *Strategic Apologies in Medical Malpractice Litigation*, 20 PEPP. DISP. RESOL. L.J. 60 (2020).


Boaz Segal, *Practical Alternatives to the Rule of Joint and Several Liability: Regulatory

Andrew D. Selbst, Negligence and AI’s Human Users, 100 B.U. L. REV. 1315 (2020).


Henna J. Shah, Space Tort(e): A Not So Delightful Dessert for Private Astronauts, 10 WAKE FOREST J.L. & POL’Y 331 (2019).


Jeffrey W. Stempel & Erik S. Knutsen, Protecting Auto Accident Victims From the UM/UM Insurer Identity Crisis, 26 CONN. INS. L.J. 1 (2019).


Megan Sword, To Err Is Both Human and Non-Human, 88 UMKC L. REV. 211 (2019).

Zahra Takhshid, Retrievable Images on Social Media Platforms: A Call for a New Privacy Tort, 68 BUFF. L. REV. 139 (2020).


Edmund Ursin, Roger Traynor, the Legal Process School, and Enterprise Liability, 71 HASTINGS L.J. 1101 (2020).


Sean Valentine, Geophysical Trespass, Privacy, and Drones in Oil and Gas Exploration, 84 J. AIR L. & COMMERCE 507 (2019).


Weiwei Wang, Tort Law in China, 77 JUSGENTIUM 75 (2020).


Heidi R. Weimer, Up the Ethical Creed Without a Paddle: How Impossible Demands on Plaintiffs’ Attorneys in the Flint Water Crisis Class Actions Demonstrate the Need to Redefine Ethical Duties in Mass Tort Cases, 33 GEO. J. LEGAL ETHICS 855 (2020).


Christopher L. Williams, Injured Victims and Robbed Spouses: Reconciling Tort Awards With the Community Property System, 61 ARIZ. L. REV. 403 (2019).


Selected Commonwealth Scholarship

Haim Abraham, Tort Liability for Belligerent Wrongs, 39 OXFORD J. LEG. STUD. 808 (2019).


Recent Tort Law Book Chapters


Matthew A. Shapiro, *Civil Wrongs and Civil Procedure*, in *CIVIL WRONGS AND JUSTICE IN PRIVATE LAW* 87 (Paul B. Miller & John Oberdiek, eds. 2020).


Recent Tort Law Books – U.S. and International

**JAMIE R. ABRAMS, TORT LAW SIMULATIONS: A BRIDGE TO PRACTICE** (2020).

**CAROL BERMINGHAM & VERA BRENNA JAN, TORT LAW DIRECTIONS** (2020).


**ROGER CALDWELL, EMERALD GUIDE TO LAW OF TORT: REVISED EDITION 2020** (2020).

SANMEET KAUR DUA & CHRIS TURNER, UNLOCKING TORTS (5th ed. 2020).


RICHARD Epstein & CATHERINE SHARKEY, CASES AND MATERIALS ON TORTS (12th ed. 2020).

DUNCAN FAIRGRIEVE & RICHARD S. GOLDBERG, PRODUCT LIABILITY (3d ed. 2020).


ROBERT L. GARDANA, DAMAGES RECOVERABLE IN MARITIME MATTERS (2d ed. 2020).

JOHN GARDNER, TORTS AND OTHER WRONGS (2020).

MARK GEISTFELD, PRINCIPLES OF PRODUCT LIABILITY (3d ed. 2020).


JOHN C.P. GOLDBERG & BENJAMIN C. ZIPURSKY, RECOGNIZING WRONGS (2020).


KIRSTY HORSEY & ERIKA RACKLEY, KINDER’S CASEBOOK ON TORTS (15th ed. 2019).


EDWARD J. KIONKA, TORTS IN A NUTSHELL (7th ed. 2020).

PETER B. KUTNER, KUTNER’S ADVANCED TORTS IN A NUTSHELL (2020).

ALEXANDRA LAHAV, IN PRAISE OF LITIGATION (2019).

LARRY LEVINE, LEVINE’S SUM AND SUBSTANCE AUDIO ON TORTS (5th ed. 2019).

CLAUDIO LOMBARDO, CAUSATION IN COMPETITION LAW DAMAGES ACTIONS (2020).


JULIA MARCO, RIZZI MARCO, & KATE DAVID OFFER, CONNECTING WITH TORT LAW (2020).


RACHAEL MULHERON, PRINCIPLES OF TORT LAW (2d ed 2020).


DAVID G. OWEN & MARY J. DAVIS, PRODUCTS LIABILITY & SAFETY: CASES AND MATERIALS


R. KEITH PERKINS, DOMESTIC TORTS: CIVIL ACTIONS ARISING FROM CRIMINAL CONDUCT WITHIN FAMILY RELATIONSHIPS (2d ed. 2020).


GEOFFREY C. RAPP, TORT LAW IN FOCUS (2020).

BRADLEY D. REMICK, PENNSYLVANIA PRODUCTS LIABILITY (5th ed. 2020).

JAMES J. RIGOS, LAW SCHOOL AND UBE TORTS PRIMER (2020).

KYNDRA MILLER ROTUNDA, CIVIL PROTECTIONS AND REMEDIES FOR SERVICEMEMBERS (2020).

ANDREW SCHOLZ & COURTNEY WARD-REICHARD, MASS TORTS IN THE UNITED STATES (2020).

VICTOR E. SCHWARTZ, KATHRYN KELLY, & DAVID F. PARTLETT, PROSSER, WADE, SCHWARTZ, KELLY, AND PARTLETT'S TORTS, CASES AND MATERIALS (14th ed., West Academic 2020).


In Memoriam

FRANCIS MCGOVERN
(from the Washington Post)

Francis Edward McGovern II passed away unexpectedly on February 14, 2020, at age 74. Francis's birth in Albemarle County, Virginia marked his family's sixth generation. Francis graduated from Yale University and the University of Virginia School of Law, and served his country as a Captain in the U.S. Marine Corps.

A widely revered and innovative legal scholar and gifted teacher, Francis was a tenured Professor of Law at Duke University and Associate Professor at The University of California Hastings College of Law and taught in various capacities at dozens of law schools nationally and internationally. He was a prolific author in leading legal publications, highlighting his innovative and insightful approaches to the practical application of the law and strategic thinking. Not only were students broadened and enriched by Francis, but throughout the United States and abroad Francis worked with esteemed members of the federal and state judiciaries, mediators, and attorneys, helping them apply and improve the law to resolve intractable problems with creative solutions.

Francis was a frequent lecturer or moderator at professional conferences and also served on dozens of legal and university boards and committees, serving as President of the academy of Court-Appointed Masters as well as numerous settlement trust or compensation centers and institutes. As a court-appointed special master or neutral expert, Francis
developed innovative and lasting solutions in most of the significant US mass-claim litigation, including the DDT toxic exposure litigation, Dalkon-Shield controversy, and silicone gel breast implant litigation. More recently, Francis was serving as the special master addressing abatement of mold in New York public housing, and global settlement efforts to address the national opioid crisis.

ALAN CALNAN
(from Debbie Leathers, Associate Dean, Southwestern Law School)

In the words of Dean Susan Prager, “Though he had been teaching Southwestern students for 30 years, Alan Calnan always seemed, and was, young and vibrant. He lived and breathed torts. He was an accomplished, well-cited scholar and, as many of you know so well, he was a pathbreaking, creative teacher, one who encouraged his colleagues to see technology as opening new avenues for effective teaching. Many of you were pioneers with him in the classroom.”

“At the Southwestern Law Review’s request, Professor Calnan in close collaboration with his friend and colleague Professor Byron Stier and students put together one of the most extraordinary symposium days that I have ever experienced. It was the inaugural public event for the Panish Civil Justice Program. I will always remember him as he was that day beaming with pride and excitement. But that is actually the way Alan Calnan always seemed, exuding energy and enthusiasm. The written issue from the conference was destined to be one of the most significant in the history of our law review, and it now takes on added significance for Southwestern.”

PIERRE WIDMER
(from the European Group on Tort Law)

On 13 May 2020, Pierre Widmer passed away at the age of 82. A native of Berne (Switzerland), he studied law at the University of Berne, where he also served as a university assistant from 1965 to 1973 with Professor Hans Merz, interrupted by one year of research at Unidroit in Rome. He subsequently served at the Swiss Federal Office of Justice for seventeen years, first as a staff legal advisor, then as a deputy-director, where he was in charge of legislative projects in private national and international law. In 1990, he became the director of the Swiss Institute of Comparative Law in Lausanne, retiring in 2003.

From 1981 to 2001, Pierre lectured tort law at the University of St. Gallen, where he was awarded a titular professorship in 1986. He also taught at the universities of Zurich and Lucerne. He was a member and chair of various Swiss and international expert commissions, including at the Council of Europe, UNCITRAL and Unidroit, of whose Governing Council he was a member from 2004 to 2009 and an honorary member thereafter.

Pierre became one of the first members of the European Group on Tort Law in 1993. From 1999 to 2011, he chaired the Supervisory Board of the European Centre of Tort and Insurance Law (ECTIL), whose honorary member he was.

In addition to a wide range of publications, one of his many outstanding contributions to the research and practice of tort law was his co-authorship of the internationally acclaimed draft of a comprehensive reform and unification of Swiss tort law (1988-2000, together with Pierre Wessner). His excellence was acknowledged inter alia by the Great Walter Hug Award (1996) and an honorary doctorate at the University of Berne (2006).

The European Group on Tort Law has lost one of its founding members, a brilliant scholar, and a dear friend.