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EXPLORING TORT LAW

Tort law provides individuals or groups redress for wrongful harm to every dimension of life from physical injury to property damage to personal insult. Over past decades no body of law within the civil justice system has experienced greater ferment than the law of torts. This edited collection comprises new scholarship from many of today's most influential contributors to the evolving law of torts. Topics include provocative analyses of original tort-type norms; punitive damages, proportional liability; the political-legal dynamics of the Restatement process; landmark modern torts decisions; the future of collateral source rules relative to various types of insurance; the role of risk information in assignment of seller liability; privity and freedom of contract; the vitality of negligence and duty rules, and optimal rules for vicarious liability. The collection closes with chapters from civil code nation authorities on the European view of causation in toxic harm suits and on collective rights and actions in South America and in Europe.

M. Stuart Madden is Distinguished Professor of Law at Pace University School of Law. His primary teaching and scholarly interests are in the areas of torts, environmental torts, and products liability. He is an elected member of the American Law Institute and serves on various policy advisory groups and scholarly advisory boards. He has lectured internationally on tort and accident prevention subjects and has given testimony before both Houses of Congress on tort reform issues.

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For my precious wife, Maria, with all of my love.

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PREFACE

This collection originated in a colloquium held at Pace University School of Law in November 2003. The title of the colloquium and the title originally envisioned for this collection was *THE FUTURE OF TORTS*. The scholars invited to give papers at this gathering include many of the leading torts scholars in the United States, with contributions also from scholars from Australia, Canada, Colombia, and Italy. Each was asked to prepare a paper responding in some way to the question of what will be the future directions of tort law. All, with the exception of the University of Milan's Federico Stella, were able to present their papers at the School of Law, and the eleven invited papers, together with that of Prof. Stella, were each of the highest quality, innovative, and provocative.

However, by the time the participants completed their final papers some months later, two things had become clear. First, and a point mentioned by some early on, it is unlikely that any volume today could fulfill the promise entailed in a title *THE FUTURE OF TORTS*. Moreover, even if such an ambitious title could be validated by the work of some individual author or authors, no one could reasonably expect that a group of such highly individualistic scholars as convened here would cleave harmoniously to any single objective, even one so deceptively simple as that of viewing torts prospectively.

The inevitable and desirable result is that this collection of some of the finest torts scholarship that has found recent publication was renamed *EXPLORING TORTS*, a title that more accurately represents the work product. The chapters, derived from the colloquium papers, emphasize a large proportion of the themes that engage the attention of persons pursuing the study and evaluation of modern tort themes.

EXPLORING TORTS is published with the expectation that it will find interested audiences among jurists, scholars, attorneys, and students, including students studying law, political science, and philosophy. With specific

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Preface

reference to law students, the editor and the publisher believe that this volume might well suit upper-level torts, jurisprudence, or law and philosophy offerings.

Principally, however, we hope that you will find it stimulating and enjoyable to read the scholarship of many of the finest torts thinkers and writers of this era.

Appreciation is due several persons the help of whom has been instrumental to this project: Faculty Assistant Mary Stagliano, Kay Longworth and Carol DelBalzo of the School of Law staff, Marie Newman, Professor of Law and Librarian, and also Vickie Gannon, Circulation Librarian, Marilyn Belo, Maryam Afif and Michael Stalzer, my Research Assistants, and my wife, Maria Madden.

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