

Cambridge University Press
978-1-108-48429-9 — Feminist Judgments: Rewritten Tort Opinions
Edited by Martha Chamallas, Lucinda M. Finley
Frontmatter
[More Information](#)

FEMINIST JUDGMENTS: REWRITTEN TORT OPINIONS

By rewriting both canonical and lesser-known tort cases from a feminist perspective, this volume exposes gender and racial bias in how courts have categorized and evaluated harm stemming from prenatal malpractice, pregnancy loss, domestic violence, sexual assault and harassment, invasion of privacy, and the award of economic and noneconomic damages. The rewritten opinions demonstrate that when confronted with gendered harm to women, courts have often distorted or misapplied conventional legal doctrine to diminish the harm or deny recovery. Bringing this implicit bias to the surface can make law students, and lawyers and judges who craft arguments and apply tort doctrines, more aware of inequalities of race, gender, class, and sexual orientation or gender identity. This volume shows the way forward to make the basic doctrines of tort law more responsive to the needs and perspectives of traditionally marginalized people, in ways that give greater value to harms that they disproportionately experience.

Martha Chamallas, the Robert J. Lynn Chair in Law at Ohio State University, is known for her scholarship on the devaluation of emotional and reproductive harm and on gender and race bias in damages. She is the author of the leading treatise on feminist legal theory and *The Measure of Injury: Race, Gender, and Tort Law* (with Jennifer B. Wiggins).

Lucinda M. Finley, the Raichle Professor of Law at the University of Buffalo, SUNY, is a leading feminist torts scholar whose foundational articles examining tort law from a feminist perspective have influenced new generations of legal scholars. She coedited a leading torts casebook that directly considers issues of gender, racial, class, and sexual identity equity in tort law.

Cambridge University Press
978-1-108-48429-9 — Feminist Judgments: Rewritten Tort Opinions
Edited by Martha Chamallas , Lucinda M. Finley
Frontmatter
[More Information](#)

Feminist Judgments Series Editors

Bridget J. Crawford
Elisabeth Haub School of Law at Pace University

Kathryn M. Stanchi
University of Nevada, Las Vegas, William S. Boyd School of Law

Linda L. Berger
University of Nevada, Las Vegas, William S. Boyd School of Law

Advisory Panel for Feminist Judgments Series

Kathryn Abrams, Herma Hill Kay Distinguished Professor of Law, University of California, Berkeley, School of Law

Katharine T. Bartlett, A. Kenneth Pye Professor Emerita of Law, Duke University School of Law

Mary Anne Case, Arnold I. Shure Professor of Law, University of Chicago Law School

April L. Cherry, Professor of Law, Cleveland-Marshall College of Law

Margaret E. Johnson, Professor of Law, University of Baltimore School of Law

Sonia Katyal, Distinguished Haas Chair, University of California, Berkeley, School of Law

Nancy Leong, Professor of Law, University of Denver Sturm College of Law

Rachel Moran, Michael J. Connell Distinguished Professor of Law and Dean Emerita, University California, Los Angeles, School of Law

Angela Onwuachi-Willig, Dean and Professor of Law, Boston University School of Law

Nancy D. Polikoff, Professor of Law Emeritus, American University Washington College of Law

Daniel B. Rodriguez, Harold Washington Professor of Law, Northwestern University Pritzker School of Law

Susan Deller Ross, Professor of Law, Georgetown University Law Center

Dean Spade, Associate Professor of Law, Seattle University School of Law

Robin L. West, Frederick J. Haas Professor of Law and Philosophy, Georgetown University Law Center

Verna L. Williams, Dean and Nippert Professor of Law, University of Cincinnati College of Law

Cambridge University Press
978-1-108-48429-9 — Feminist Judgments: Rewritten Tort Opinions
Edited by Martha Chamallas , Lucinda M. Finley
Frontmatter
[More Information](#)

Cambridge University Press
978-1-108-48429-9 — Feminist Judgments: Rewritten Tort Opinions
Edited by Martha Chamallas, Lucinda M. Finley
Frontmatter
[More Information](#)

Feminist Judgments: Rewritten Tort Opinions

Edited by

MARTHA CHAMALLAS

Ohio State University

LUCINDA M. FINLEY

University of Buffalo, SUNY



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-1-108-48429-9 — Feminist Judgments: Rewritten Tort Opinions
Edited by Martha Chamallas, Lucinda M. Finley
Frontmatter
[More Information](#)

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781108484299
DOI: 10.1017/9781108613293

© Cambridge University Press 2020

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2020

A catalogue record for this publication is available from the British Library.

ISBN 978-1-108-48429-9 Hardback
ISBN 978-1-108-70624-7 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Contents

<i>Notes on Contributors</i>	page xi
<i>Preface</i>	xix
<i>Table of Cases</i>	xxi
PART I INTRODUCTION	1
1 Introduction to <i>Feminist Judgments: Rewritten Tort Opinions</i>	3
<i>Martha Chamallas and Lucinda M. Finley</i>	
PART II THE CLASSICS	25
2 <i>Palsgraf v. Long Island Railroad Co.</i>, 162 N.E. 99 (N.Y. 1928)	27
Commentary: <i>Taunya Lovell Banks</i>	
Judgment: <i>Maurice R. Dyson</i>	
3 <i>Escola v. Coca-Cola Bottling Co. of Fresno</i>, 150 P.2d 436 (Cal. 1944)	54
Commentary: <i>Mary J. Davis</i>	
Judgment: <i>Zanita E. Fenton</i>	
4 <i>Farwell v. Keaton</i>, 240 N.W.2d 217 (Mich. 1976)	73
Commentary: <i>E. Christi Cunningham</i>	
Judgment: <i>Sarah L. Swan</i>	
5 <i>Tarasoff v. Regents of the University of California</i>, 551 P.2d 334 (Cal. 1976)	93
Commentary: <i>Jamie R. Abrams</i>	
Judgment: <i>Sharmila Lodhia and Stephanie M. Wildman</i>	

PART III INTENTIONAL TORTS	119
6 <i>Robinson v. Cutchin</i> , 140 F. Supp. 2d 488 (D. Md. 2001)	121
Commentary: Yvonne Lindgren	
Judgment: Alena Allen	
7 <i>Guthrie v. Conroy</i> , 567 S.E.2d 403 (N.C. Ct. App. 2002)	147
Commentary: L. Camille Hébert	
Judgment: Sandra F. Sperino	
8 <i>Lyman v. Huber</i> , 10 A.3d 707 (Me. 2010)	172
Commentary: Caroline Forell	
Judgment: Jeffrey E. Thomas and Leah Thomas	
9 <i>Sipple v. Chronicle Publishing Co.</i> , 201 Cal. Rptr. 665 (Cal. Ct. App. 1984)	194
Commentary: Anna Lauren Hoffmann	
Judgment: Scott Skinner-Thompson	
PART IV NEGLIGENCE AND VICARIOUS LIABILITY	215
10 <i>Sharon P. v. Arman, Ltd.</i> , 989 P.2d 121 (Cal. 1999)	217
Commentary: Jessica Hynes	
Judgment: Yifat Bitton	
11 <i>Broadnax v. Gonzalez</i> , 809 N.E.2d 645 (N.Y. 2004)	237
Commentary: Elizabeth Kukura	
Judgment: Eileen Kaufman and Laura Dooley	
12 <i>Boyles v. Kerr</i> , 855 S.W.2d 593 (Tex. 1993)	261
Commentary: Lisa R. Pruitt	
Judgment: Cristina Tilley	
13 <i>Emerson v. Magendantz</i> , 689 A.2d 409 (R.I. 1997)	291
Commentary: Lucinda M. Finley	
Judgment: Katharine B. Silbaugh	
14 <i>McCarty v. Pheasant Run, Inc.</i> , 826 F.2d 1554 (7th Cir. 1987)	314
Commentary: Molly Wilder	
Judgment: Hannah Brenner Johnson	

<i>Contents</i>		ix
15	<i>Lisa M. v. Henry Mayo Newhall Memorial Hospital</i> , 907 P.2d 358 (Cal. 1995) Commentary: <i>Christine M. Tamer</i> Judgment: <i>Stacey A. Tovino</i>	335
PART V DAMAGES		359
16	<i>G.M.M. v. Kimpson</i> , 116 F. Supp. 3d 126 (E.D.N.Y. 2015) Commentary: <i>Twila L. Perry</i> Judgment: <i>Jennifer B. Wiggins and Sara Cressey</i>	361
17	<i>Simpkins v. Grace Brethren Church of Delaware, Ohio</i> , 75 N.E.3d 122 (Ohio 2016) Commentary: <i>Jill Wieber Lens</i> Judgment: <i>Shaakirah Sanders</i>	390
	<i>Index</i>	415

Cambridge University Press
978-1-108-48429-9 — Feminist Judgments: Rewritten Tort Opinions
Edited by Martha Chamallas , Lucinda M. Finley
Frontmatter
[More Information](#)

Notes on Contributors

Jamie R. Abrams is a law professor at the University of Louisville Brandeis School of Law where she teaches torts, women & law, and family law. Her research focuses on reproductive and birthing decision-making, gendered violence, legal protections for immigrant victims of domestic violence, and legal education pedagogy.

Alena Allen is an associate professor at the University of Memphis Cecil C. Humphreys School of Law. She teaches courses in torts, family law, health law, and feminist jurisprudence, and writes about the impact of gender on health policy and legislation. She would like to thank Lucinda Finley for thoughtful and helpful editing, Jan Stone for excellent research assistance, and Lee Harris for encouragement and support.

Taunya Lovell Banks is the Jacob A. France Professor of Equality Jurisprudence at the University of Maryland School of Law where she teaches torts, and seminars on law in popular culture (film or literature), citizenship, and critical race theory. Professor Banks's recent publications explore the continuing impact of gender, race, racial formation, and racial hierarchies on the quest for social equality.

Yifat Bitton is an associate professor of law at the Haim Striks School of Law, College of Management Academic Studies, in Israel. Professor Bitton specializes in tort law, anti-discrimination law, and critical-egalitarian theory of law. She is cofounder and chair of Tmura, the Israeli Anti-discrimination Legal Centre, which advocates for the rights of women who have suffered sexual violence and violations of their economic rights.

Martha Chamallas is the Robert J. Lynn Chair in Law at Ohio State's Moritz College of Law where she teaches torts, gender and the law, and

employment discrimination. She is the coauthor of *The Measure of Injury: Race, Gender and Tort Law* (2010) (with Jennifer B. Wriggins) and *Introduction to Feminist Legal Theory* (3rd ed. 2013), as well many foundational articles applying feminist theory to tort law. She received the University Distinguished Scholar Award in 2013. She is a member of the American Law Institute, Torts Consultative Group, and has participated on gender and race bias task forces for the states of Iowa and Pennsylvania.

Sara Cressey received her JD in 2018 from the University of Maine School of Law, and worked as a law clerk for Chief Judge Jon D. Levy at the US District Court for the District of Maine during the 2018–19 clerkship term and is clerking for Judge Kermit Lipez at the First Circuit Court of Appeals during the 2019–20 clerkship term. She graduated *magna cum laude* with a BA from Wheaton College in Norton, MA, where she studied cultural anthropology, and received the Paul F. Cressey Prize for excellence in that field.

E. Christi Cunningham is a professor at the Howard University School of Law and Director of the Education Law Institute. She served as Associate Assistant Secretary for Regulatory Affairs at the Department of Labor as part of the Obama administration (2009–12). She teaches torts, education law, labor and employment law, law and poverty, and gender and the law. In addition to publishing scholarly works in her areas of expertise, she writes plays with the Black Women Playwrights' Group.

Mary J. Davis, Interim Dean and the Ashland-Spears Distinguished Research Professor of Law at the University of Kentucky College of Law, teaches and writes in the field of torts and products liability. She is the coauthor of *Products Liability and Safety: Cases and Materials*, now in its eighth edition, and a four-volume products liability treatise, both with Prof. David Owen, and a first-year torts casebook, *The Law of Torts* (with Profs. Christie, Sanders, and Cardi). She is an elected member of the American Law Institute and serves as an adviser to the Restatement (Third) of Torts: Intentional Torts project.

Laura Dooley, a professor of law at Touro Law Center in New York, has been teaching about the civil justice system for almost thirty years. Professor Dooley has published widely in top-tier academic journals, including the flagship journals at NYU, Vanderbilt, Cornell, and Illinois. Her work has been cited by both federal courts and the popular press, including the *Wall Street Journal*, and most recently *Vice News*.

Maurice R. Dyson is a professor of law at Suffolk University Law School. He has published numerous articles on education, civil rights, criminal justice reform, constitutional law, and critical race theory. He served as the Special Projects team attorney for the US Department of Education Office for Civil Rights (OCR) where he was recognized for his work in inter-district equitable school funding enforcement. He has also served as the Chair of the Association of American Law Schools (AALS) Section on Education Law, and as a national executive board member of the AALS Section of Minority Groups.

Zanita E. Fenton is a professor of law, University of Miami School of Law, where she teaches courses in constitutional law, family law, torts, race and the law, and seminars on critical race feminism, and women and the law stories. Fenton's research interests cover issues of structural inequality and forms of subordination, including those of disability, race, gender, and class. For her contribution to this volume she thanks her colleague Andrew Elmore for his sharp insight, and the library staff at the University of Miami School of Law, particularly Nicholas Mignanelli who is well versed in critical race theory.

Lucinda M. Finley is the Frank Raichle Professor of Law at the University at Buffalo Law School, State University of New York. She researches and teaches in the areas of gender and tort law, feminist legal theory, and reproductive rights and justice. Several of her articles are considered foundational works in applying feminist theory to tort law. She was the coauthor of the second and third editions of *Tort Law & Practice* (Vetri, Levine, Finley, and Vogel), a leading torts casebook that incorporates issues of gender, race, class, and sexual orientation into the study of tort law.

Caroline Forell is a professor emerita at the University of Oregon School of Law. Her teaching and research focused on tort law and gender issues, including the critically acclaimed book: *A Law of Her Own: The Reasonable Woman as a Measure of Man* (2000) (with Donna Matthews). Her articles about the legal and ethical standards appropriate for intimate relationships involving various professionals and those they are responsible for, including attorney–client, faculty–student, and doctor–patient, have spurred law reform and revision of codes of ethical conduct.

L. Camille Hébert is the Carter C. Kissell Professor of Law at Ohio State's Moritz College of Law. Her teaching and research focus on employment

discrimination and employment law. She is the author of a leading treatise on employee privacy law, and she makes frequent presentations to academic and professional audiences on issues of sexual harassment and employee privacy. Professor Hébert served as Chair of the Employment Discrimination Section of the Association of American Law Schools.

Anna Lauren Hoffmann is an assistant professor with the Information School at the University of Washington. Her scholarship centers on issues in information, data, and ethics, particularly the ways that discourse, design, and uses of information technology work to promote or hinder the pursuit of equality, respect, and justice. She earned a Ph.D. and an MLIS from the School of Information Studies, University of Wisconsin-Milwaukee. She has published her work in interdisciplinary journals, as book chapters, and conference proceedings.

Jessica Hynes is an associate professor of legal studies at Quinnipiac University, where she teaches and researches in the areas of legal writing and rhetoric, legal history, gender and law, alternative dispute resolution, family law, and education law. She received a BS degree from Cornell University and a JD from Boston College Law School.

Hannah Brenner Johnson is the Vice Dean for Academic and Student Affairs and associate professor of law at California Western School of Law where she teaches torts; gender, power, law, and leadership; and the clinical externship seminar. She studies the perpetration of sexual violence, and the related reporting, investigation, and adjudication, in institutional settings like prisons, the military, and institutions of higher education. She is grateful to Eric Clarkson for exceptional research assistance on her opinion.

Eileen Kaufman is professor emerita at Touro Law School, and her publications focus on civil rights, women's rights, and human rights. She served as copresident of the Society of American Law Teachers, Chair of the Bar Admission and Lawyer Performance Committee of the American Association of Law Schools, cochair of the Committee on Legal Education and Admission to the Bar of the New York State Bar Association, and currently serves as a member of the New York State Bar Association Task Force on the New York Bar Exam.

Elizabeth Kukura is a visiting assistant professor at Drexel University's Thomas R. Kline School of Law. Her scholarship examines laws and

policies that affect women's agency to make healthcare decisions, from terminating pregnancies to refusing to undergo procedures such as cesarean sections and episiotomies. Her articles have appeared in journals including *Georgetown Law Journal*, *Nebraska Law Review*, *Berkeley Journal of Gender Law & Justice*.

Jill Wieber Lens is an associate professor of law at the University of Arkansas School of Law (Fayetteville). She teaches courses in torts, remedies, products liability, and women and the law. Her current scholarship focuses on legal recognition and treatment of stillbirth, mainly within the contexts of tort law and reproductive justice. She has also written extensively on tort compensatory and punitive damages.

Yvonne ("Yvette") Lindgren is a visiting assistant professor of law at University of San Francisco Law School. She was a postdoctoral fellow at the Center on Reproductive Rights and Justice at Berkeley Law, and was executive editor of *Cases on Reproductive Rights and Justice* (2015), coauthored by Melissa Murray and Kristin Luker. Her research and scholarship focus on reproductive rights and justice, constitutional law, and health law policy. She thanks Maya Manian and Tristin Green for their invaluable feedback on an early draft.

Sharmila Lodhia is an associate professor of women's and gender studies at Santa Clara University. She earned her JD from Hastings College of Law and her Ph.D. in women's studies from the University of California, Los Angeles. Her research examines legal responses to violence against women through a transnational feminist lens, specifically why certain dominant frameworks of legal intervention can hinder rather than advance women's rights. She is the coeditor of *New Directions in Feminisms and Human Rights* (2011), and she is widely published in leading feminist studies and women and the law journals.

Twila L. Perry is a professor of law and Judge Alexander P. Waugh, Sr. Scholar at the S.I. Newhouse Center for Law and Justice, Rutgers Law School. Professor Perry writes in the area of family law with a particular interest in the intersection of critical race theory and feminist legal theory. She has published articles on numerous subjects, including trans-racial and international adoption, the legal obligations of marriage, the black family and family law, no-fault divorce, and alimony.

Lisa R. Pruitt is the Martin Luther King, Jr. Professor of Law at the University of California, Davis, School of Law, where she has taught

torts for two decades. Her early scholarship brought a feminist critique to communicative torts, but her more recent work regards rural and working-class white women. She also writes about rural poverty and other aspects of rural–urban difference in relation to the law. She thanks Jacqueline M. Nguyen for excellent research and editorial support of her commentary, and Liliana C. Moore for her indispensable administrative and editorial support.

Shaakirrah Sanders is a professor of law at the University of Idaho College of Law. She teaches courses related to US constitutional law and criminal procedure, and her publications focus on felony sentencing reform; civil and criminal jury trial rights; religious freedom; and agriculture security or “ag-gag” legislation. She formerly chaired the AALS Section on Constitutional Law (2018–19) and currently chairs the Idaho State Advisory Committee for the US Commission on Civil Rights.

Katharine B. Silbaugh is a professor of law at Boston University School of Law. She teaches family law, employment discrimination, women, work, and families, and gender and the law. Widely recognized for her work on gender, family care, and household labor, including the landmark article *Turning Labor into Love: Housework and the Law* for *Northwestern Law Review*, she is also coauthor with Judge Richard Posner of a survey of sexual regulation, *A Guide to America's Sex Laws* (1996), and of *The Essentials of Family Law* (2009) with Katharine K. Baker.

Scott Skinner-Thompson is an associate professor of law at the University of Colorado Law School, where his research and teaching center on constitutional law, civil rights, and privacy law, with a particular focus on LGBTQ and HIV issues. Prior to joining Colorado Law School, he was an acting assistant professor of lawyering at New York University School of Law. In 2014, he was selected as one of the Best LGBT Lawyers under 40 by the National LGBT Bar Association.

Sandra F. Sperino is the Judge Joseph P. Kinneary Professor of Law at the University of Cincinnati College of Law. She teaches in the areas of civil procedure, torts, and employment law, and her scholarship focuses on employment discrimination and on the intersection of tort and discrimination law. Her books include *Unequal: How America's Courts Undermine Discrimination Law* (with Thomas) (2017) and *Employment Discrimination: Cases and Materials* (with Grover and Gonzalez) (2013).

Sarah L. Swan is an assistant professor at Florida State University College of Law. She teaches courses in torts, criminal law, family law, and state and

local government law. She received her LLM and JSD degrees from Columbia Law School, and her scholarly work has appeared in the *Duke Law Journal*, the *UCLA Law Review*, and the *Vanderbilt Law Review*, among others. She gratefully acknowledges the contributions of works by Peter F. Lake, Amelia J. Uelmen, and Leslie Bender to the ideas underlying this rewritten judgment.

Christine M. Tamer is Assistant Professor of Law and Assistant Director of Legal Writing at the University of North Texas, Dallas College of Law. She earned her JD from the University of Texas and practiced law with the firm of Baron & Budd, focusing on appellate and motion practice. Her law review articles include: *Arab Americans, Affirmative Action and a Quest for Racial Identity*, 16 *Tex. J. on C.L. & C.R.* 101 (2010) and *Toddlers, Tiaras and Pedophilia: The Borderline Child Pornography Embraced by the American Public*, 13 *Tex. Rev. Ent. & Sports L.* 85 (2012).

Jeffrey E. Thomas is the Daniel L. Brenner Faculty Scholar, Professor of Law, and Associate Dean for International Programs at the University of Missouri – Kansas City School of Law. He received his BA from Loyola Marymount University and earned his JD from University of California, Berkeley. He has been teaching torts for twenty-five years and wishes to thank the editors and his daughter, Leah Thomas, for providing a rich opportunity to learn more about feminist perspectives on tort issues through this project.

Leah Thomas is a senior at Georgetown University studying women and gender studies and computer science. She has been interested in the intersection of marginalized communities since early in her college career. After taking gender and the law at Georgetown, she wanted to continue exploring the topic in a more nuanced way so was pleased to participate in this project. She would like to thank her father, Jeffrey E. Thomas, for including her in this project and for their collaboration.

Cristina Tilley is an associate professor of Law at the University of Iowa College of Law. She writes in the areas of tort and media law, focusing on the appropriate treatment of speech and speech injuries. Her scholarship has appeared in *Yale Law Journal*, *Northwestern University Law Review*, and *University of Pennsylvania Journal of Constitutional Law*. Prior to her law career, she was a news reporter, specializing in business and legal affairs.

Stacey A. Tovino is the Judge Jack and Lulu Lehman Professor of Law at the William S. Boyd School of Law, University of Nevada Las Vegas. She

publishes on health law, bioethics, and the medical humanities, with particular expertise in the civil, regulatory, operational, and financial aspects of health law. She is a member of the American Law Institute, and has chaired the AALS Sections on Torts and Compensation Systems, and Law and Mental Disability.

Molly Wilder is a Ph.D. candidate in philosophy at Georgetown University, where she has taught courses on philosophy and the law, political philosophy, ethics, autonomy, friendship and the good life, and ancient ethics. She received her JD from Georgetown Law Center and her BA in linguistics from Swarthmore College. Her dissertation uses feminist philosophy of autonomy to analyze how lawyers promote the autonomy of their clients and what autonomy means in the context of the lawyer–client relationship. She thanks her committee members Robin West and Heidi Li Feldman for their helpful comments on her commentary.

Stephanie M. Wildman is Professor Emerita at Santa Clara University School of Law, where she held the John A. and Elizabeth H. Sutro Chair and directed the Center for Social Justice and Public Service. Author of numerous books on women and the law, race, and social justice, her coauthored book *Privilege Revealed: How Invisible Preference Undermines America* (with Margalynne Armstrong, Adrienne D. Davis, & Trina Grillo) won the 1997 Outstanding Book Award from the Gustavus Meyers Center for Human Rights.

Jennifer B. Wriggins is the Sumner T. Bernstein Professor of Law and Codirector of the Information Privacy Program at the University of Maine School of Law. Her scholarship focuses on race, racism, gender, domestic violence, torts, insurance, and health law. Professor Wriggins is the coauthor of *The Measure of Injury: Race, Gender, and Tort Law* (2010, with Martha Chamallas). She thanks her coauthor, Sara Cressey, as well as the editors of and contributors to this volume.

Preface

What would tort law look like if feminist perspectives had influenced judicial opinions? Would feminist perspectives bring to the surface the implicit bias present in its supposedly neutral doctrines so as to make lawyers and judges who craft arguments and apply tort doctrines more aware of inequalities based on race, gender, class, and sexual orientation or gender identity? And if so, would its basic doctrines be more responsive to the needs and perspectives of traditionally marginalized people, in ways that give greater value to harms that they disproportionately experience? To begin to answer these questions, we brought together a group of scholars, lawyers, and students to rewrite, using feminist reasoning, sixteen tort cases spanning many of the major doctrinal areas of torts: intentional torts, privacy, negligence, duty, vicarious liability, and damages. Some of the rewritten cases are canonical classics, appearing in all major US casebooks and thus influencing generations of law students about the scope and possibilities of tort law. Other cases are ones that have received critical analysis from feminist scholars, or involve issues such as reproductive harm and sexual assault that are of central importance to women.

The sixteen rewritten opinions in this volume demonstrate that the insights of feminist legal theory and methods, when incorporated into the judicial task of interpreting and evaluating facts and precedents and applying policies that influence doctrinal developments, can indeed significantly influence and change tort doctrine. This influence can impact all areas of tort law, from the standards for assessing whether actions are negligent, to whether individuals or business entities owe any legal duty or obligation to protect people against certain types of harm, to determining whether an injury entails physical or emotional harm, to whether all-too-commonplace forms of harassment should be deemed beyond the acceptable bounds of social decency. The rewritten opinions highlight that incorporating feminist theories and methods into tort cases is consistent with judicial duties and accepted methods of legal

interpretation – and in many instances is more consistent with standard torts principles, which too often have been distorted by courts to deny redress to women for their commonly experienced harms. The rewritten opinions also demonstrate that much of what have been assumed to be gender-neutral principles and doctrines are neither neutral nor inevitable, and that implicit and explicit biases can be overcome through feminist reasoning. The opinions and commentaries in this volume aid in showing a path forward to make tort law more equitable in its impact on women and other marginalized people, and more accessible as a tool to redress and reduce gendered injuries.

Table of Cases

<i>Abbott v. Abbott</i> , 67 Me. 304 (1877)	174
<i>Adarand Constructors, Inc. v. Pena</i> , 515 U.S. 200 (1995)	382, 384
<i>Alma W. v. Oakland Unified School Dist.</i> , 176 Cal. Rptr. 287 (Cal. App. 1981)	346, 351
<i>Am. Ass'n of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ.</i> , 717 N.E.2d 286 (Ohio 1999).....	404
<i>Am. Civil Liberties Union of Ill. v. Alvarez</i> , 679 F.3d 583 (7th Cir. 2012) ...	317
<i>Andrews v. City of Philadelphia</i> , 895 F.2d 1469 (3d Cir. 1990)	147
<i>Ann M. v. Pacific Plaza Shopping Ctr.</i> , 863 P.2d 207 (Cal. 1993)	219–20, 222, 224–5, 227–8, 236
<i>Anthony v. Slaid</i> , 52 Mass. 290 (1846)	51
<i>Apollo Fuel Oil v. United States</i> , 73 F. Supp. 2d 254 (E.D.N.Y. 1999)	336
<i>Arbino v. Johnson & Johnson</i> , 880 N.E.2d 420 (Ohio 2007)	392–4, 400, 405–6, 409–12
<i>Ashton v. Brown</i> , 660 A.2d 447 (Md. 1995)	133
<i>Ballard v. United States</i> , 329 U.S. 187 (1946).....	287
<i>Bang v. Charles T. Miller Hosp.</i> , 88 N.W.2d 186 (Minn. 1958)	140
<i>Baskerville v. Culligan Int'l Co.</i> , 50 F.3d 428 (7th Cir. 1995).....	315
<i>Baskin v. Bogan</i> , 766 F.3d 648 (7th Cir. 2014)	317
<i>Battala v. State of New York</i> , 176 N.E.2d 729 (N.Y. 1961).....	253
<i>Becker v. Schwartz</i> , 386 N.E.2d 807 (N.Y. 1978).....	292
<i>Bigbee v. Pacific Tel. & Tel. Co.</i> , 665 P.2d 947 (Cal. 1983)	230
<i>Birdsall v. Coolidge</i> , 93 U.S. 64 (1876)	413
<i>B.N. v. K.K.</i> , 538 A.2d 1175 (Md. 1988).....	142–4
<i>Bonin v. Gralewicz</i> , 146 N.W.2d 647 (Mich. 1966).....	90
<i>Bourquin v. Melsunger</i> , 1990 WL 290127 (Conn. Superior Ct. Sept. 4, 1990)	255
<i>Bovsun v. Sanpieri</i> , 461 N.E.2d 843 (N.Y. 1984)	250, 253
<i>Boyce v. Greeley Square Hotel</i> , 126 N.E. 647 (N.Y. 1920)	42
<i>Boyles v. Kerr</i> , 806 S.W.2d 255 (Tex. App. 1991)	273–4, 280–1
<i>Boyles v. Kerr</i> , 855 S.W.2d 593 (Tex. 1993)	11, 13, 17, 19–20, 22, 261–71, 273, 279–80, 282, 287, 289

<i>Bradwell v. Illinois</i> , 83 U.S. 130 (1873).....	36
<i>Brewer v. Hillard</i> , 15 S.W.3d 1 (Ky. Ct. App. 1999).....	152
<i>Brewer v. Teano</i> , 47 Cal. Rptr. 2d 348 (Cal. 1995).....	227
<i>Briggs v. Rosenthal</i> , 327 S.E.2d 308 (N.C. App 1985).....	148
<i>Briscoe v. Reader's Digest Ass'n</i> , 483 P.2d 34 (Cal. 1971).....	209
<i>Broadnax v. Gonzalez</i> , 809 N.E.2d 645 (N.Y. 2004)	13–14, 17, 20, 22, 237, 239, 241, 247
<i>Brown v. Burlington Indus., Inc.</i> , 378 S.E.2d 232 (N.C. Ct. App. 1989).....	159, 165
<i>Brown v. Dermer</i> , 744 A.2d 47 (Md. 2000).....	133
<i>Bruce–Terminix Co. v. Zurich Ins. Co.</i> , 504 S.E.2d 574 (N.C. Ct. App. 1998).....	158
<i>Bryant v. Thalhimer Bros., Inc.</i> , 437 S.E.2d 519 (N.C. Ct. App. 1993).....	165
<i>Buch v. Armory Mfg. Co.</i> , 44 A. 809 (N.H. 1897).....	84
<i>Burgess v. Superior Court</i> , 831 P.2d 1197 (Cal. 1992).....	238, 256, 268
<i>Burke v. Rivo</i> , 551 N.E.2d 1 (Mass. 1990).....	295, 308, 311
<i>Burlington Indus. Inc. v. Ellerth</i> , 524 U.S. 742 (1998).....	170
<i>Burton v. Wilmington Parking Auth.</i> , 365 U.S. 715 (1961).....	379
<i>Califano v. Webster</i> , 430 U.S. 313 (1977).....	388
<i>Camden Nat'l Bank v. S.S. Navigation Co.</i> , 991 A.2d 800 (Me. 2010)....	182
<i>Canterbury v. Spence</i> , 464 F.2d 772 (D.C. Cir. 1972).....	135
<i>Carey v. Lovett</i> , 622 A.2d 1279 (N.J. 1993).....	238, 255
<i>Carey v. Population Servs. Int'l</i> , 431 U.S. 678 (1977).....	140
<i>Carr v. Wm. C. Crowell Co.</i> , 171 P.2d 5 (Cal. 1946) ..	337, 346–8, 350–1, 356
<i>Chaffee v. Seslar</i> , 786 N.E.2d 705 (Ind. 2003).....	292
<i>Christensen v. Thornby</i> , 255 N.W. 620 (Minn. 1934).....	291
<i>City of Cleburne v. Cleburne Living Ctr.</i> , 473 U.S. 432 (1985).....	404
<i>City of Richmond v. J.A. Croson Co.</i> , 488 U.S. 469 (1989).....	384
<i>Coates v. Wal-Mart Stores, Inc.</i> , 976 P.2d 999 (N.M. 1999).....	161
<i>Cobbs v. Grant</i> , 502 P.2d 1 (Cal. 1972).....	135
<i>Cockrum v. Baumgartner</i> , 447 N.E.2d 385 (Ill. 1983).....	307
<i>Coffey v. Derby Steel Co.</i> , 434 A.2d 564 (Md. App. 1981).....	133
<i>Coryell v. Colbaugh</i> , 1 N.J.L. 90 (1791).....	412
<i>Cox Broad. Corp. v. Cohn</i> , 420 U.S. 469 (1975).....	206–7
<i>Craig v. Boren</i> , 429 U.S. 190 (1976).....	381
<i>Curlender v. Bio-Science Labs.</i> , 165 Cal. Rptr. 477 (1980).....	292
<i>Curtis v. Porter</i> , 784 A.2d 18 (2001).....	185–6
<i>Danile v. Oak Park Arms Hotel, Inc.</i> , 203 N.E.2d 706 (Ill. 1964).....	326
<i>Davis v. Poland</i> , 66 A. 380 (Me. 1906).....	192
<i>Davis v. Thornton</i> , 180 N.W.2d 11 (Mich. 1970).....	91
<i>Davis v. United States</i> , 824 F.2d 549 (7th Cir. 1987).....	330
<i>Daza v. L.A. Cmty. Coll. Dist.</i> , 202 Cal. Rptr. 3d 115 (Cal. App. 2016) ...	337
<i>Depue v. Flatau</i> , 111 N.W. 1 (Minn. 1907).....	76–7, 85–6
<i>Dick v. Mercantile-Safe Dep. & Trust</i> , 492 A.2d 674 (Md. Ct. Spec. App. 1985).....	142–3
<i>Dillon v. Legg</i> , 441 P.2d 912 (Cal. 1968).....	267
<i>Dimick v. Schiedt</i> , 293 U.S. 474 (1935).....	411–12
<i>Doe v. Dominion Bank of Wash., N.A.</i> , 963 F.2d 1552 (D.C. Cir. 1992)....	218

Table of Cases

xxiii

<i>Doe v. Fulton-Dekalb Hosp. Auth.</i> , 628 F.3d 1325 (11th Cir. 2010)	337
<i>Duren v. Missouri</i> , 439 U.S. 357 (1979)	287
<i>Edmonson v. Leesville Concrete Co.</i> , 500 U.S. 614 (1991)	378–9
<i>EEOC v. Madison Community Unit School Dist.</i> , 818 F.2d 577 (7th Cir. 1987)	315
<i>Eisenstadt v. Baird</i> , 405 U.S. 438 (1972)	291, 295
<i>El Chico Corp. v. Poole</i> , 732 S.W.2d 306 (Tex. 1987)	281
<i>Ellison v. Brady</i> , 924 F.2d 872 (9th Cir. 1991)	188
<i>Emerson v. Magendantz</i> , 689 A.2d 409 (R.I. 1997)	13–14, 17, 19–20, 22, 293–5, 300
<i>Endresz v. Friedberg</i> , 248 N.E.2d 901 (N.Y. 1969)	239, 250
<i>Erllich v. Menezes</i> , 981 P.2d 978 (Cal. 1999)	229
<i>Escola v. Coca-Cola Bottling Co. of Fresno</i> , 3 Civ. No. 6916, Cal. Ct. of Appeal, 3d Dist., (Dec. 12, 1942)	56
<i>Escola v. Coca-Cola Bottling Co.</i> , 140 P.2d 107 (Cal. Ct. App. 1943)	57
<i>Escola v. Coca-Cola Bottling Co.</i> , 150 P.2d 438 (Cal. 1944)	12, 17, 20, 54–6, 58–60, 63–4, 66, 70, 234
<i>Exxon Shipping Co. v. Baker</i> , 554 U.S. 471 (2008)	410–11
<i>Faragher v. City of Boca Raton</i> , 524 U.S. 775 (1998)	170
<i>Farmers Ins. Group v. County of Santa Clara</i> , 906 P.2d 440 (Cal. 1995) ...	353
<i>Farwell v. Keaton</i> , 215 N.W. 2d 753 (Mich. App. 1974)	82
<i>Farwell v. Keaton</i> , 240 N.W.2d 217 (Mich. 1976) ...	13, 16, 20, 73–6, 80, 82–3
<i>Fassoulas v. Ramey</i> , 450 So. 2d 822 (Fla. 1984)	298, 308, 310
<i>Faya v. Almaraz</i> , 620 A.2d 327 (Md. 1993)	142
<i>Fearing v. Bucher</i> , 977 P.2d 1163 (Or. 1999)	336
<i>Feltmeier v. Feltmeier</i> , 798 N.E.2d 75 (Ill. 2003)	175, 191
<i>Ferrara v. Bernstein</i> , 613 N.E.2d 542 (N.Y. 1993)	254–5
<i>Figueiredo-Torres v. Nickel</i> , 584 A.2d 69 (Md. 1991)	141
<i>Finn v. Lipman</i> , 526 A.2d 1380 (Me. 1987)	185
<i>First National Bank v. Otis Elevator Co.</i> , 406 P.2d 430 (Ariz. 1965)	169
<i>Fisher v. Carousel Motor Hotel, Inc.</i> , 424 S.W.2d 627 (Tex. 1967)	275
<i>Ford v. Revlon, Inc.</i> , 734 P.2d 580 (Ariz. 1987)	168–9
<i>Fortes v. Ramos</i> , 2001 WL 1685601 (R.I. Super. Ct., Dec. 19, 2001)	255
<i>Galayda v. Lake Hosp. Sys., Inc.</i> , 644 N.E.2d 298 (Ohio 1994)	405
<i>Gallagher v. Delaney</i> , 139 F.3d 338 (2d Cir. 1998)	158
<i>Gay All. of Students v. Matthews</i> , 544 F.2d 162 (4th Cir. 1976)	211
<i>Gay Lib v. Univ. of Mo.</i> , 558 F.2d 848 (8th Cir. 1977)	209
<i>Gay Students Org. of Univ. of N.H. v. Bonner</i> , 509 F.2d 652 (1st Cir. 1974)	211
<i>Gerber v. Farber</i> , 129 P.2d 485 (Cal. Ct. App. 1942)	57
<i>Ghassemieh v. Schafer</i> , 447 A.2d 84 (Md. Ct. Spec. App. 1982)	139
<i>Glasser v. U.S.</i> , 315 U.S. 60 (1942)	36
<i>Gleitman v. Cosgrove</i> , 227 A.2d 689 (N.J. 1967)	291
<i>G.M.M. v. Kimpson</i> , 116 F. Supp. 3d 126 (E.D.N.Y. 2015)	16–17, 19–20, 22, 361–2, 371
<i>Gonzales v. Carhart</i> , 550 U.S. 124 (2007)	245
<i>Greenman v. Yuba Power Prod., Inc.</i> , 377 P.2d 897 (Cal. 1963)	62
<i>Griswold v. Connecticut</i> , 381 U.S. 479 (1975)	140, 206, 295, 302

<i>Grutter v. Bolinger</i> , 539 U.S. 306 (2003)	384–5
<i>Guille v. Swan</i> , 19 John 381 (1822)	49
<i>Gulf, Colorado & Santa Fe Ry. v. Luther</i> , 90 S.W. 44 (Tex. Civ. 1905)	51
<i>Guthrie v. Conroy</i> , 567 S.E.2d 403 (N.C. Ct. App. 2002)	13, 16, 18–21, 147–9, 156, 159, 163, 168–9
<i>Hager v. Griesse</i> , No. CA-3143, 1986 WL 3915 (Ohio Ct. App. Mar. 19, 1986)	76
<i>Hall v. Gus Constr. Co.</i> , 842 F.2d 1010 (8th Cir. 1988)	166
<i>Hamilton v. Beretta U.S.A. Corp.</i> , 750 N.E.2d 1055 (N.Y. 2001)	251–2
<i>Hamilton v. Ford Motor Credit Co.</i> , 502 A.2d 1057 (Md. 1986)	141, 143
<i>Handiboe v. McCarthy</i> , 151 S.E.2d 905 (Ga. Ct. App. 1966).....	84
<i>Harbeson v. Parke-Davisi, Inc.</i> , 656 P.2d 483 (Wash. 1983)	292
<i>Harris v. Jones</i> , 380 A.2d 611 (Md. 1977)	142–143
<i>Heaven v. Pender</i> , 11 Q.B.D. 503 (1883)	114
<i>Heckler v. Mathews</i> , 465 U.S. 728 (1984).....	387
<i>Henricksen v. Cameron</i> , 622 A.2d 1135 (Me. 1993)	174, 179
<i>Hill v. Kimball</i> , 13 S.W. 59 (Tex. 1890)	267, 276, 281–2
<i>Hirsch v. Blish</i> , 142 Cal. Rptr. 646 (1977)	227
<i>Hofmann v. Blackmon</i> , 241 So. 2d 752 (Fla. App. 1970)	113
<i>Holloway v. Martin Oil Serv., Inc.</i> , 262 N.W.2d 858 (Mich. Ct. App. 1977)	77
<i>Holloway v. Wachovia Bank & Tr. Co.</i> , 452 S.E.2d 233 (N.C. 1994)	166
<i>Hooks v. Southern Cal. Permanente Medical Group</i> , 165 Cal. Rptr. 741 (1980)	227
<i>Howard v. Lecher</i> , 366 N.E.2d 64 (N.Y. 1977)	253
<i>Hutchinson v. Dickie</i> , 162 F.2d 103 (6th Cir. 1947)	77, 85
<i>Hynes v. New York C.R. Co.</i> , 131 N.E. 898 (N.Y. 1921)	35, 43–4
<i>I de S et ux. v. W de S.</i> , at the Assizes, Y.B.Lib.Ass folio 99, placitum 60 (1348)	51
<i>Isaacs v. Huntington Mem'l Hosp.</i> , 695 P.2d 653 (Cal. 1985)	218–19, 228–9, 233
<i>Jackson v. Metro. Edison Co.</i> , 419 U.S. 345 (1974).....	378
<i>Jacobs v. Theimer</i> , 519 S.W.2d 846 (Tex. 1975).....	291
<i>James v. Caserta</i> , 332 S.E.2d 872 (W. Va. 1985).....	292–3
<i>J.E.B. v. Alabama</i> , 511 U.S. 127 (1994).....	387–8
<i>John R. v. Oakland Unified School Dist.</i> , 769 P.2d 948 (Cal. 1989).....	346
<i>John Y. v. Chaparral Treatment Ctr., Inc.</i> , 124 Cal. Rptr. 2d 330 (Cal. App. 2002).....	337
<i>Johnson v. Superior Court</i> , 177 Cal. Rptr. 63 (Cal. Ct. App. 1981)	255–6
<i>Johnson v. Univ. Hosps. of Cleveland</i> , 540 N.E.2d 1370 (Ohio 1989).....	293, 307
<i>Jones v. Harris</i> , 371 A.2d 1104 (Md. Ct. Spec. App. 1977).....	141
<i>Jones v. Malinowski</i> , 473 A.2d 429 (Md. 1984).....	312
<i>Kirlin v. Halverson</i> , 758 N.W.2d 436 (S.D. 2008).....	337
<i>Kline v. 1500 Mass. Ave. Apartment Corp.</i> , 439 F.2d 477 (D.C. Cir. 1970)	84, 326
<i>Korematsu v. United States</i> , 323 U.S. 214 (1944)	384
<i>Kveragas v. Scottish Inns</i> , 733 F.2d 409 (6th Cir. 1984).....	326

Table of Cases

xxv

<i>Ky. Fried Chicken of Cal., Inc. v. Superior Court</i> , 927 P.2d 1260 (Cal. 1997)	227, 235
<i>Latremore v. Latremore</i> , 584 A.2d 626 (Me. 1990)	175, 191
<i>Lindsey v. Miami Dev. Corp.</i> , 689 S.W.2d 856 (Tenn. 1985)	77
<i>Lipscomb v. Memorial Hospital</i> , 733 F.2d 332 (4th Cir. 1984)	136
<i>Lisa M. v. Henry Mayo Newhall Hospital</i> , 907 P.2d 358 (Cal. 1995).....	13, 18, 20, 22, 335–9, 341, 343
<i>Loe v. Town of Thomaston</i> , 600 A.2d 1090 (Me. 1991)	185–7
<i>Lovelace Med. Ctr. v. Mendez</i> , 805 P.2d 603 (N.M. 1991)	305
<i>L.S. Ayres & Co v. Hicks</i> , 40 N.E.2d 334 (Ind. 1942)	84
<i>Lugar v. Edmondson Oil Co.</i> , 457 U.S. 922 (1982)	212, 378
<i>Lyman v. Huber</i> , 10 A.3d 707 (Me. 2010)	16–21, 172, 174–6, 178, 180–1
<i>Lyman v. Huber</i> , Civil Action No. CV-06-145 (Me. Super. Ct., Jul. 24, 2009)	183–4
<i>Lyon v. Carey</i> , 533 F.2d 649 (D.C. Cir. 1976)	350
<i>McCarty v. Pheasant Run, Inc.</i> , 826 F.2d 1554 (7th Cir. 1987) ...	13, 16, 19–20, 22, 314, 316, 319, 322, 325, 328, 330, 333
<i>McCarty v. Pheasant Run, Inc.</i> , No. 82 C 1310, 1985 WL 2069 (N.D. Ill. July 31, 1985)	323, 326
<i>McClees v. Cohen</i> , 148 A. 124 (Md. 1930)	133
<i>McClung v. Delta Square Ltd. Partnership</i> , 937 S.W.2d 891 (Tenn. 1996)	219
<i>MacFarlane and Another v. Tayside Health Board (Scot.)</i> , [2000] 2 AC 59 (HL)	299
<i>McGee In re McGee v. Chalfant</i> , 806 P.2d 980 (Kan. 1991)	77
<i>McKernan v. Aasheim</i> , 687 P.2d 850 (Wash. 1984)	293, 306
<i>McMillan v. New York</i> , 253 F.R.D. 247 (E.D.N.Y. 2008)	363–4, 377, 381, 385, 388
<i>MacPherson v. Buick Motor Co.</i> , 111 N.E. 1050 (N.Y. 1916)	58, 67, 283–4
<i>Marciniak v. Lundborg</i> , 450 N.W.2d 243 (Wisc. 1990)	305, 308–9, 311–12
<i>Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.</i> , 770 P.2d 278 (Cal. 1989)	268
<i>Marston v. Minneapolis Clinic of Psychiatry and Neurology</i> , 329 N.W.2d 306 (Minn. 1982)	349–50, 352
<i>Martinez v. Hagopian</i> , 227 Cal. Rptr. 763 (Cal. App. 1986)	347
<i>Martinez v. Long Island Jewish Hillside Medical Center</i> , 512 N.E.2d 538 (N.Y. 1987)	245, 254
<i>Mary M. v. City of Los Angeles</i> , 814 P.2d 1341 (Cal. 1991)....	338, 345–6, 349, 351, 353–4
<i>Mason v. Sportsman's Pub</i> , 305 N.J. Super. 482 (App. Div. 1997)	337
<i>Merchants Nat. Bank & Trust Co. of Fargo v. United States</i> , 272 F. Supp. 409 (D.N.D. 1967)	113
<i>Meritor Savings Bank, FSB v. Vinson</i> , 477 U.S. 57 (1986)	315
<i>Middleton v. Whitridge</i> , 108 N.E. 192 (N.Y. 1915)	84
<i>Miller v. Johnson</i> , 343 S.E.2d 301 (Va. 1986)	293
<i>Miss. Univ. for Women v. Hogan</i> , 458 U.S. 718 (1982)	382
<i>Mitchell v. Rochester Ry. Co.</i> , 45 N.E. 354 (N.Y. 1896)	267

<i>Modaber v. Kelley</i> , 348 S.E.2d 233 (Va. 1986)	238, 257
<i>Mohr v. Williams</i> , 104 N.W. 12 (Minn. 1905)	133–4
<i>Molien v. Kaiser Hosp. Found.</i> , 616 P.2d 813 (Cal. 1980)	252
<i>Morin v. Henry Mayo Newhall Mem'l Hosp.</i> , 34 Cal. Rptr. 535 (1995)	343, 345
<i>Morin v. Henry Mayo Newhall Mem'l Hosp.</i> , 886 P.2d 1252 (Cal. 1995)....	343
<i>Morris v. Savoy</i> , 576 N.E.2d 765 (Ohio 1991)	392, 404–5
<i>Mrzlak v. Ettinger</i> , 323 N.E.2d 796 (Ill. 1975)	326
<i>NAACP v. Ala. ex rel Patterson</i> , 357 U.S. 449 (1958)	208
<i>N. Broward Hosp. Dist. v. Kalitan</i> , 219 So. 3d 49, 61 (Fla. 2017)	398
<i>Nelson v. Carroll</i> , 735 A.2d 1096 (Md. 1999)	139
<i>New York v. Ferber</i> , 458 U.S. 747 (1987)	384
<i>New York Central R.R. v. White</i> , 243 U.S. 188 (1917)	71
<i>New York Times Co. v. Sullivan</i> , 376 U.S. 254 (1964)	212
<i>Nguyen v. INS</i> , 533 U.S. 53 (2001)	382, 386–7
<i>Ochs v. Borrelli</i> , 445 A.2d 883 (Conn. 1982)	295, 308
<i>Oncale v. Sundowner Offshore Servs., Inc.</i> , 523 U.S. 75 (1998)	167
<i>Osterlind v. Hill</i> , 160 N.E. 301 (Mass. 1928)	84
<i>Owens-Illinois v. Zenobia</i> , 601 A.2d 633 (Md. 1992)	145
<i>Palmore v. Sidoti</i> , 466 U.S. 429 (1984)	380, 382
<i>Palsgraf v. Long Island Railroad Co.</i> , 162 N.E. 99 (N.Y. 1928)	12, 15, 20, 27, 31–2, 38, 41, 43, 46, 51–2
<i>Palsgraf v. Long Island R.R. Co.</i> , 164 N.E. 564 (N.Y. 1928)	32
<i>Palsgraf v. Long Island R.R. Co.</i> , 222 A.D. 166 (N.Y. 1927)	29–30, 39
<i>Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1</i> , 551 U.S. 701 (2007)	382, 384
<i>Patel v. Hussain</i> , 485 S.W.3d 153 (Tex. App. 2016)	272
<i>Patterson v. Blair</i> , 172 S.W.3d 361 (Ky. 2005)	337
<i>People v. Beardsley</i> , 113 N.W. 1128 (Mich. 1907)	90
<i>People v. Burnick</i> , 535 P.2d 352 (Cal. 1975)	96
<i>People v. Disbrow</i> , 545 P.2d 272 (Cal. 1976)	112
<i>People v. Poddar</i> , 518 P.2d 342 (Cal. 1974)	105
<i>People v. Sears</i> , 465 P.2d 847 (Cal. 1970)	113
<i>People v. Wilson</i> , 462 P.2d 22 (Cal. 1969)	112
<i>Perez v. Van Groningen & Sons, Inc.</i> , 719 P.2d 676 (Cal. 1986)	346
<i>Perry-Rogers v. Obasaju</i> , 723 N.Y.S.2d 28 (N.Y. App. Div. 2001)	281–2
<i>Pers. Adm'r of Mass v. Feeney</i> , 442 U.S. 256 (1979)	382
<i>Peterson v. San Francisco Community College Dist.</i> , 685 P.2d 1193 (Cal. 1984)	233
<i>Phelps v. Vassey</i> , 437 S.E.2d 692 (N.C. Ct. App. 1993)	169
<i>Pittman v. Atlantic Realty Co.</i> , 754 A.2d 1030 (Md. 2000)	132
<i>Planned Parenthood of S.E. Pa. v. Casey</i> , 505 U.S. 833 (1992)	140, 303
<i>Planned Parenthood of Wis., Inc. v. Schimel</i> , 806 F.3d 908 (7th Cir. 2015)	317
<i>Plessy v. Ferguson</i> , 163 U.S. 537 (1896)	69
<i>Ploof v. Putnam</i> , 71 A. 188 (Vt. 1908)	84
<i>Poole v. Copland, Inc.</i> , 498 S.E.2d 602 (N.C. 1998)	165
<i>Pratt v. Davis</i> , 118 Ill. App. 161 (1905), aff'd, 79 N.E. 562 (1906)	134, 139

Table of Cases

xxvii

<i>Prigden v. Bos. Hous. Auth.</i> , 308 N.E.2d 467 (Mass. 1974)	78, 84
<i>Procanik v. Cillo</i> , 478 A.2d 755 (N.J. 1984)	292
<i>Pucci v. USAIR</i> , 940 F. Supp. 305 (M.D. Fla. 1996)	147
<i>Randi W. v. Muroc Joint Unified Sch. Dist.</i> , 929 P.2d 582 (Cal. 1997)	233
<i>Reagan v. Rider</i> , 521 A.2d 1246 (Md. Ct. Spec. App. 1987)	144, 190
<i>Regents of Univ. of Cal. v. Bakke</i> , 438 U.S. 265 (1978)	381
<i>Regents v. Superior Ct.</i> , 413 P.3d 656 (Cal. 2018)	100
<i>Relf v. Weinberger</i> , 372 F. Supp. 1196 (D.D.C. 1974)	127–8, 138
<i>Retherfold v. AT&T Commc'ns of Mountain States, Inc.</i> , 844 P.2d 949 (Utah 1992)	155
<i>Riss v. City of New York</i> , 240 N.E.2d 860 (N.Y. 1968)	116
<i>Robinson v. Cutchin</i> , 140 F. Supp. 2d 488 (D. Md. 2001)	13, 16–17, 19–21, 121–2, 127, 131
<i>Rodgers v. Kemper Construction Company</i> , 124 Cal. Rptr. 143 (Cal. App. 1975)	347–8, 351, 356
<i>Roe v. Wade</i> , 410 U.S. 113 (1973)	140, 291, 295, 302–3, 384
<i>Roland Mach. Co. v. Dresser Indus.</i> , 749 F.2d 380 (7th Cir. 1984)	317
<i>Rowland v. Christian</i> , 443 P.2d 561 (Cal. 1968)	114, 229, 235
<i>Ruff v. Reeves Bros., Inc.</i> , 468 S.E.2d 592 (N.C. Ct. App. 1996)	165
<i>St. Elizabeth Hospital v. Garrard</i> , 730 S.W.2d 649 (Tex. 1987) ...	264, 276–7
<i>St. Louis, Iron Mountain & S. Ry. Co. v. Craft</i> , 237 U.S. 648 (1915)	412
<i>Salgo v. Leland Stanford Jr. Univ. Bd. of Trustees</i> , 317 P.2d 170 (Cal. Ct. App. 1957)	135
<i>Samuels v. Southern Baptist Hosp.</i> , 594 So. 2d 571 (La. Ct. App. 1992)	335, 350
<i>Sard v. Hardy</i> , 379 A.2d 1014 (Md. 1977)	141
<i>Saugerties Bank v. Delaware & Hudson Co.</i> , 141 N.E. 904 (N.Y. 1923)	42
<i>Schaefer v. Miller</i> , 587 A.2d 491 (Md. 1991)	145
<i>Schlesinger v. Ballard</i> , 419 U.S. 498 (1975)	382
<i>Schloendorff v. Society of N.Y. Hospital</i> , 105 N.E. 92 (N.Y. 1914)	133
<i>Scott v. Shepherd</i> , 2 Wm. Bl 892 (1773)	49
<i>Shaheen v. Knight</i> , 11 Pa. D & C. 2d 41 (1957)	302
<i>Sharon P. v. Arman, Ltd.</i> , 989 P.2d 121 (Cal. 1999)	13–14, 16, 19–21, 217, 219–20, 225
<i>Sharp v. W.H. Moore</i> , 796 P.2d 505 (Idaho 1990)	233
<i>Sheets v. The Brethren Mut. Ins. Co.</i> , 679 A.2d 540 (Md. 1996)	132–3
<i>Shelley v. Kraemer</i> , 334 U.S. 1 (1948)	212, 379
<i>Sherlock v. Stillwater Clinic</i> , 260 N.W.2d 169 (Minn. 1977)	312
<i>Sidis v. F-R Publ'g Corp.</i> , 113 F.2d 806 (2d Cir. 1940)	210
<i>Siebrand v. Gosnell</i> , 234 F.2d 81 (9th Cir. 1956)	168–9
<i>Siegman v. Equitable Trust Co.</i> , 297 A.2d 758 (Md. 1972)	145
<i>Sierocki v. Hieber</i> , 425 N.W.2d 477 (Mich. Ct. App. 1988)	77
<i>Simpkins v. Grace Brethren Church of Delaware, Ohio</i> , 75 N.E.3d 122 (Ohio 2016)	13, 17–18, 20, 23, 391–4, 399, 413
<i>Supple v. Chronicle Publ'g Co.</i> , 201 Cal. Rptr. 665 (Cal. Ct. App. 1984)	13, 18–21, 194, 196–7, 203
<i>Skinner v. Oklahoma</i> , 316 U.S. 535 (1942)	144
<i>Smith v. First Union Nat. Bank</i> , 202 F.3d 234 (4th Cir. 2000)	171

<i>Smith v. London Southwestern Ry. Co.</i> , [1870-71] 6 C.P. 14	51
<i>Snow v. Villacci</i> , 754 A.2d 360 (Me. 2000)	192
<i>Sorrell v. Thevenir</i> , 633 N.E.2d 504 (Ohio 1994)	405
<i>Speck v. Finegold</i> , 439 A.2d 110 (Pa. 1981)	292-3
<i>State ex rel. Ohio Academy of Trial Lawyers v. Sheward</i> , 715 N.E.2d 1062 (Ohio 1999)	405
<i>Strauder v. West Virginia</i> , 100 U.S. 303 (1880)	36
<i>Stropes v. Heritage House Child. Ctr.</i> , 547 N.E.2d 244 (Ind. 1989)	350
<i>Stuart v. Western Union Tel. Co.</i> , 13 S.W. 59 (Tex. 1890)	267
<i>Stuart v. Western Union Telephone Co.</i> , 18 S.W. 351 (Tex. 1885)	281, 284
<i>Swartz v. Huffmaster Alarms Sys., Inc.</i> , 377 N.W.2d 393 (Mich. Ct. App. 1985)	77
<i>Szekeris v. Robinson</i> , 715 P.2d 1076 (Nev. 1986)	292, 301
<i>Talley v. California</i> , 362 U.S. 60 (1960)	208
<i>Tan v. Arnel Mgmt. Co.</i> , 88 Cal. Rptr. 3d 754 (2009)	223
<i>Tarasoff v. Regents of Univ. of California</i> , 529 P.2d 553 (Cal. 1974)	93
<i>Tarasoff v. Regents of Univ. of California</i> , 551 P.2d 334 (Cal. 1976)	13, 16, 20-1, 93-6, 102-3, 106-7, 114-16, 118
<i>Tarpeh-Doe v. United States</i> , 771 F. Supp. 427 (D.D.C. 1991)	363, 377
<i>Taylor v. Centennial Bowl, Inc.</i> , 416 P.2d 793 (Cal. 1966)	235
<i>Taylor v. Franko</i> , No. 09-00002 JMS/RLP, 2011 WL 2746714 (D. Haw. June 12, 2011)	272
<i>Tebbutt v. Virostek</i> , 483 N.E.2d 1142 (N.Y. 1985)	238, 247, 249-51
<i>The Saginaw and The Hamilton</i> , 139 F. 906 (S.D.N.Y. 1905)	362
<i>Trashansky v. Hershkovitz</i> , 147 N.E. 63 (N.Y. 1925)	51
<i>Troupe v. May Dep't Stores Co.</i> , 20 F.3d 734 (7th Cir. 1994)	315
<i>Trout v. Watkins Livery & Undertaking Co.</i> , 130 S.W. 136 (Mo. Ct. App. 1910)	85
<i>Tubbs v. Argus</i> , 225 N.E.2d 841 (Ind. Ct. App. 1967)	84
<i>Tulsa Profl Collection Servs., Inc. v. Pope</i> , 485 U.S. 478 (1988)	378
<i>Twyman v. Twyman</i> , 855 S.W.2d 619 (Tex. 1993)	265-6, 279
<i>Union Pac. Ry. v. Cappier</i> , 72 P.2d 281 (Kan. 1903)	84
<i>United States v. Bedonie</i> , 317 F. Supp. 2d 1285 (D. Utah 2004)	363, 377
<i>United States v. Carroll Towing Co.</i> , 159 F.2d 169 (2d Cir. 1947)	321, 328
<i>United States v. Salerno</i> , 481 U.S. 739 (1987)	384
<i>United States v. Serawop</i> , 505 F.3d 1112 (10th Cir. 2007)	377
<i>United States v. Stanley</i> , 109 U.S. 3 (1883)	378
<i>United States v. Virginia</i> , 518 U.S. 515 (1996)	382
<i>Univ. of Ariz. Health Sciences Centr. v. Superior Court of Ariz.</i> , 667 P.2d 1294 (Ariz. 1983)	308, 311-12
<i>Unjian v. Berman</i> , 256 Cal. Rptr. 478 (1989)	227
<i>Vaccaro v. Squibb Corp.</i> , 418 N.E.2d 809 (N.Y. 1980)	253
<i>Vanderburgh v. Truax</i> , 4 Denio 464 (1847)	49
<i>Vasquez v. Residential Investments, Inc.</i> , 12 Cal. Rptr. 3d 846 (2013)	223
<i>Vicnire v. Ford Motor Credit Co.</i> , 401 A.2d 148 (Me. 1979)	175, 177-8, 185-6, 190-1
<i>Waddle v. Sparks</i> , 414 S.E.2d 22 (1992)	159, 165

Table of Cases

xxix

<i>Wallace v. Coco-Cola Bottling Plants, Inc.</i> , 269 A.2d 117 (Me. 1970).....	178
<i>Watson v. Dixon</i> , 502 S.E.2d 15 (1998) aff'd, 532 S.E.2d 175 (N.C. 2000)	148
<i>Webstad v. Stortini</i> , 924 P.2d 940 (Wash. Ct. App. 1996)	77
<i>Wedeman v. City Chevrolet Co.</i> , 366 A.2d 7 (Md. 1976)	145
<i>Weeks v. Krysa</i> , 955 A.2d 234 (Me. 2008)	185
<i>Weicker v. Weicker</i> , 237 N.E.2d 876 (N.Y. 1968).....	180
<i>Weirum v. RKO Gen.</i> , 539 P.2d 36 (Cal. 1975)	230
<i>Wells v. Bowie</i> , 622 N.E.2d 1170 (Ohio 1993).....	350
<i>Wilkinson v. Downton</i> , 2 Q.B. 57 (1897)	173
<i>Williams v. Gen. Motors Corp.</i> , 187 F.3d 553 (6th Cir. 1999).....	185
<i>Wilson v. Bellamy</i> , 414 S.E.2d 347 (N.C. Ct. App. 1992)	168
<i>Windham Land Trust v. Jeffords</i> , 967 A.2d 690 (Me. 2009).....	185
<i>Wood v. Penn. R.R.</i> , 35 S. 699 (Pa. 1896).....	51
<i>Woods v. Lancet</i> , 102 N.E.2d 691 (N.Y. 1951).....	238, 250–1
<i>Wytupek v. Camden</i> , 136 A.2d 887 (N.J. 1957)	79, 86
<i>Yania v. Bigan</i> , 155 A.2d 343 (Pa. 1959)	84
<i>Yonaty v. Mincolla</i> , 945 N.Y. 2d 774 (App. Div. 2012)	200
<i>Zoppo v. Homestead Ins. Co.</i> , 644 N.E.2d 397 (1994).....	405
<i>Z.V. v. County of Riverside</i> , 189 Cal. Rptr. 3d 570 (Cal. App. 2015)	337

Cambridge University Press
978-1-108-48429-9 — Feminist Judgments: Rewritten Tort Opinions
Edited by Martha Chamallas , Lucinda M. Finley
Frontmatter
[More Information](#)
