REVIEW BY WILLIAM D. SHELDON

UA Professor Pens New Torts Volume

EARLIER THIS YEAR, legal history was quietly made with the publication of *The Law of Torts* by one of the nation's premier experts. Professor Dan B. Dobbs of the University of Arizona, James E. Rogers College of Law has written a completely new volume as the successor to the final edition of *Prosser and Keeton on Torts.* Last issued in 1984 and last updated in 1988, the Prosser text was cited as authoritative in more than 11,000 state and federal appellate opinions—including more than 100 U.S. Supreme Court opinions. Professor Dobbs was a contributor to that prestigious volume and is the sole author of the new one, which weighs in at more than 1,600 pages. Professor Dobbs has created a vastly broader and more current volume, one that already has garnered several appellate citations.

The Prosser–Keeton volume (which, when cited, often includes the name of Dan Dobbs) has been relied on by the U.S. Supreme Court in such recent influential cases as *Bragdon v. Abbott,*[1] *Faragher v. City of Boca Raton,*[2] *and Burlington Industries, Inc. v. Ellerth.*[3] It also has played a significant role in defining tort law in Arizona.[4] Courts already have begun citing Dobbs's new volume in cases ranging from legal malpractice to battery on a health care provider.[5]

The Law of Torts
(Hornbook Series)
by Dan B. Dobbs,
West Publishing, 2000
(ISBN 0-314-21187-X)
1,648 pages, $50.00
Available at
http://store.westgroup.com/

Dobbs's other treatise, *The Law of Remedies*, is a staple both in Arizona case law and nationwide.[6] With nearly 1,700 citations to that treatise and thousands more to the Prosser edition he helped write, Dobbs's name has become synonymous with reliable, authoritative legal definitions. The new tort law volume is completely reorganized and contains a wider range of subjects as well as a clear snapshot of the current state of the evolving law of torts. Plaintiff and defense counsel alike will find a great deal of new material to mine.

The negligence portions of this text are radically expanded, as required by the evolution of negligence law. At the time of the Prosser–Keeton fifth edition, comparative negligence statutes were new in many states. Twelve years of case law and statutory reforms since that time have altered the landscape. The same is true, of course, for employment law and economic torts. He has included statutory employment discrimination claims along with the growing area of governmental and other immunities. His chapter on interference with contract and economic opportunity provides a satisfying overview of a good deal of new terrain. Professor Dobbs also manages to demystify the advancing tort law relating to intellectual property.

What is splendid about this volume (and the same can be said of many portions of the predecessor volume) is the attempt to clearly pronounce the prevailing and minority views on difficult tort areas. The writing throughout this hornbook is lively and clear—direct without being oversimplified.

Obviously, case law in many tort areas varies from state to state. What is good law in Minnesota may not be good in Arizona. This every law school graduate understands. What a hornbook of this quality can do for the practitioner, however, is give the rationale and history of varieties of rules, make clear what rules have gained national acceptance and expound the critical arguments. Whether one is arguing before the Arizona Supreme Court to request that a longstanding rule be abandoned or arguing that other states have erred whereas Arizona has been on the correct path, Dobbs's new hornbook, like Prosser's before, will be a valuable ally.

Here are a few examples of questions I found readily addressed in this new volume:

You are visited by the parent of a child whose vaccination has led to a serious illness. Is there a statutory remedy or do you have to file a product liability suit against the manufacturer? See page 1112.

What "secrets" of a business can an employee use when he moves on to other employment? See Chapter 33, "Harms to Interests in Intangibles and Unfair Competition."

Does the federal government have any immunity to liability under the Federal Tort Claims Act? See § 262.

What factors may juries consider in evaluating the risks associated with a defendant's alleged negligence? See § 162.

What are the theories, presumptions and problems of causation proof in product liability cases that revolve around allegedly inadequate warnings? See § 367.

Like the predecessor volume, this one contains an enormous Table of Cases

(more than 100 pages), and West Publishing provides an appendix as an aid to refining Westlaw searches. The one-volume edition reviewed here is the edition sold in law school bookstores. There is also a dressier two-volume edition in the "Practitioner Treatise" series that has an appendix with references to several hundred Restatement sections combined with references to appropriate locations in the book. It sells for $145.

Attorneys with an active motion or appellate practice in any tort area—automobile accidents, product liability, premises liability, intellectual property, defamation, professional malpractice or employment law (including statutory claims and even contract claims in which a tort theory may be intertwined)—will want this new volume close at hand. Legislators and academics concerned with creating or amending tort liability laws also would do well to spend many hours in this book.

William D. Sheldon *is a certified specialist in workers' compensation living in Flagstaff. He represents employers and the State Compensation Fund.*

1. 524 U.S. 624 (1998)—A major case relating to the definition of *disability* under the Americans With Disabilities Act in which a dentist required an HIV-positive patient to be treated in the hospital rather than in his regular dental office.
2. 524 U.S. 775 (1998)—Defining vicarious liability (and defenses thereto) for acts of a supervisor under Title VII of the 1964 Civil Rights Act.
3. 524 U.S. 742 (1998)—Defining both vicarious liability of an employer for a supervisor's act of sexual harassment and an employer's affirmative defense of exercise of reasonable care to prevent and promptly correct sexually harassing behavior.
4. *See, e.g.*, *Broadbent by Broadbent v. Broadbent*, 907 P.2d 43 (Ariz. 1995), abrogating parental immunity to tort claims; *Linthicum v. Nationwide Life Ins. Co.* 723 P.2d 675 (Ariz. 1986), defining conduct and intent required for imposition of punitive damages in insurance bad faith claims. The list of topics, from control of premises to product liability, is substantial.
5. *White v. Muniz*, 2000 WL 387585 (Colo. Apr. 17, 2000) (battery on a health care worker by an Alzheimer's patient; the intentional tort in question requires both the intent to have contact with another and the intent that the contact cause harm or offense); *Warren v. Williams* (unpublished opinion) (Ill. App. Ct. Dist. 1, May 16, 2000) (a legal malpractice claim against an attorney who claimed to owe no duty to the plaintiff because he never entered into a contract to represent the plaintiff—the court disagreed).
6. Almost 1,700 reported state and federal cases appear in a Westlaw search for cases citing *The Law of Remedies.* Significant Arizona Supreme Court cases relying on this treatise are numerous. Here are a few examples: *O'Day v. McDonnell Douglas Helicopter Co.* 959 P.2d 792 (Ariz. 1998) (distinguishing lost future earnings in a specific job from diminished earning capacity in tort actions); *Maxwell v. Fidelity Financial Services, Inc.,* 907 P.2d 51 (Ariz. 1995) (defining *unconscionability* in defense to contract claim); *Gemstar Ltd. v. Ernst & Young*, 917 P.2d 222 (Ariz. 1996) (defining time period for calculation of prejudgment interest); *Taylor v. Southern Pac. Transp. Co.,* 637 P.2d 726 (Ariz. 1981) (application of collateral source rule). The variety of issues for which the various editions of Dobbs's *The Law of Remedies* has been a defining authority is astounding.