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PEPPERDINE UNIVERSITY

School of Law

A Pepperdine Law Review Symposium

Honoring the Honorable Allen M. Linden

DOES THE WORLD STILL NEED UNITED STATES TORT LAW? *Or Did it Ever?*

FRIDAY, APRIL 16, 2010

8:30 a.m. to 5:30 p.m.

PEPPERDINE UNIVERSITY SCHOOL OF LAW
Malibu, California

law.pepperdine.edu/symposium



Pepperdine University School of Law • Malibu, California

Over the past century, United States tort law has served as a model, in many ways, for the world. Although most nations are less litigious and award less in damages, many nations have looked to the more active United States courts for guidance in forming and reforming tort doctrines. However, at the same time that globalization has rapidly expanded, since the 1980s United States tort law has retrenched on many fronts.

As we enter into the second decade of a new century: Is United States tort law still a beacon for the rest of the world? Should it be? Does 21st century United States tort law or the United States tort system have anything to offer the world to make it a better place?

Topics Include:

The State of American Tort Law:
States of Argument

Damages in Personal Injury Cases:
Can Nations Learn from Each Other?

Tort Law as Consumer Watchdog

Forum, Form, Fill, and Function:
Lessons from United States Tort Law

Forming and Deforming American Tort law
(the Role of the Jury)

International Tobacco Litigation:
A Worthy Export?

Using Domestic Tort Law to Inform the
Alien Tort Statute

Harms From Exposure to Toxic Substances:
The Limits of Liability Law

SPEAKERS

ROGER P. ALFORD has been a professor at Pepperdine Law School since 2000. Before joining the faculty at Pepperdine, Alford served as a senior legal advisor with the Claims Resolution Tribunal for Dormant Accounts in Switzerland, the tribunal established by the Volcker Commission to resolve claims to Holocaust-era dormant Swiss bank accounts. He clerked for the Honorable James L. Buckley, U.S. Court of Appeals, District of Columbia, and the Honorable Richard C. Allison, Iran-United States Claims Tribunal, in The Hague, Netherlands.

MICHAEL BIDART is a partner at Shernoff Bidart Echeverria LLP. In 1999 Bidart received a landmark \$120.5 million verdict against Aetna over its refusal to pay for care recommended by the health plan's own physicians. It was the largest jury verdict ever rendered against an HMO. In *State Farm v. Superior Court*, he helped establish definitively that "unfair business practice" statutory liability applies to insurance companies in California. For victims of the 1994 Northridge earthquake he won more than \$300 million.

ELLEN BUBLICK is the Dan B. Dobbs Professor of Law at the University of Arizona. She is the author of many prominent publications, including the coauthor of a leading textbook, *Torts and Compensation: Personal Accountability and Social Responsibility for Injury* and coauthor of *Advanced Torts: Economic and Dignitary Torts-Business, Commercial and Intangible Harms*. Professor Bublick is a nationally renowned speaker in the torts field and has documented the growth in civil suits by sexual assault victims. She is also an advisor to the *Restatement of the Law Third, Torts* and *Restatement Third, Torts: Economic Torts and Related Wrongs*.

RICHARD L. CUPP, JR., serves as the John W. Wade Professor of Law at Pepperdine Law School. He is widely recognized as a leading scholar and commentator in the fields of torts and products liability law. He has authored more than 20 significant scholarly articles and numerous shorter articles. Cupp is an elected member of the American Law Institute, and he has served as chair of the Association of American Law Schools Section on Torts and Compensation Systems.

JOHN C. P. GOLDBERG has been a professor at Harvard since 2008. Before joining Harvard he served on the faculty of Vanderbilt Law School, where he served as associate dean for research from 2006 to 2008. Professor Goldberg is an expert in tort law, tort theory, and political philosophy. He is an author of a leading tort law casebook, *Tort Law: Responsibilities and Redress*, now in its second edition. Professor Goldberg is a member of the editorial board of *Legal Theory* and a senior editor of the peer-reviewed *Journal of Tort Law*. *photo by Phil Farnsworth*

MICHAEL D. GREEN holds the Bess and Walter Williams Chair at Wake Forest University School of Law. He currently serves as a coreporter for the *Restatement Third, Torts: Liability for Physical and Emotional Harm*, a publication of the prestigious American Law Institute. Professor Green is a coauthor of one of the best-selling torts casebooks and of the most popular products liability texts. He was ranked as the sixth-most cited law professor writing about torts and product liability in a recent survey. He is a coauthor of the "Reference Guide on Epidemiology" in the Federal Judicial Center's *Reference Manual on Scientific Evidence*.

ELLEN S. PRYOR is the associate provost at Southern Methodist University (SMU) and directs the Hunt Leadership Scholars Program. She is the coauthor of the fourth edition of *The Law of Torts*, and *Advanced Torts*, and is an advisor and coordinating reporter for the American Law Institute's *Restatement of the Law Third, Torts*. Pryor has written numerous articles about the law of disability, compensation, professional responsibility, mental disability, and tort law. Her writings have appeared in, among other journals, *Harvard Law Review*, *Virginia Law Review*, *Journal of Legal Studies*, and *Texas Law Review*.

ROBERT L. RABIN is the A. Calder Mackay Professor of Law at Stanford Law School. He is an expert on torts and legislative compensation schemes. Professor Rabin is the coeditor of a classic casebook on tort law. He is currently an advisor to the ongoing American Law Institute (ALI) *Restatement of the Law Third, Torts* project and has been the program director for the Robert Wood Johnson Foundation's Tobacco Policy Research and Evaluation Program. He is also a reporter for the ALI project on Compensation and Liability for Product and Process Injuries.

MICHAEL L. RUSTAD is the Thomas F. Lambert, Jr. Professor of Law and codirector of the Intellectual Property Law Concentration at Suffolk University Law School. He is an elected member of the American Law Institute and belongs to the Member Consultative Groups of the *Restatement of the Law Third, Torts* and *Principles of Software Contracts*. Professor Rustad serves as chair-elect of the Association of American Law Schools Torts Section. He has authored many books and articles, including coauthoring a leading torts casebook *Tort Law: Cases, Materials, Perspectives*.

VICTOR E. SCHWARTZ coauthors the nation's leading torts casebook, Prosser, Wade, and Schwartz's *Torts*, and *Comparative Negligence*. His amicus briefs and articles on key public policy issues have been cited in decisions by the Supreme Court of the United States and state supreme courts. He is the former dean of the University of Cincinnati College of Law. He serves as the general counsel to the American Tort Reform Association, and as a cochair of the American Legislative Exchange Council's (ALEC) Civil Justice Task Force. Schwartz serves on the advisory committees of all three of the American Law Institute's *Restatement of the Law Third, Torts* projects. He currently chairs the Public Policy Group at Shook, Hardy & Bacon.

MARSHALL S. SHAPO is the Frederic P. Vose Professor at Northwestern University School of Law. Previously he was the Joseph M. Hartfield Professor of Law at the University of Virginia and was a member of the faculty of the University of Texas School of Law. He is a nationally recognized authority on tort and product liability law. Professor Shapo has been a Visiting Fellow at Wolfson College at Oxford University, Cambridge University, and at the Juristisches Seminar at the University of Göttingen. In 2005 he was the principal speaker, delivering five lectures on various aspects of tort and injury law, at a seminar attended by leading European torts scholars at the University of Girona.

STEPHEN D. SUGARMAN is the Roger J. Traynor Professor of Law at UC Berkeley School of Law. He has written numerous books, including *Torts Stories*, *Regulating Tobacco*, and *Pay at the Pump Auto Insurance*. He has been a visiting professor at the London School of Economics; University College, London; the University of Paris; the European University Institute, Florence; Kobe University Faculty of Law; Kyoto University Faculty of Law; and Columbia University School of Law. Before coming to UC Berkeley, Sugarman served as acting director of the New York State Commission on the Cost, Quality, and Financing of Education.

International Torts Scholars

PETER CANE taught at Corpus Christi College, Oxford, as lecturer, reader, and professor for the first 20 years of his academic career. Since 1997 he has been professor of law at the Australian National University, until 2007 in the Research School of Social Sciences.

In 2002 he was a member of the panel of eminent persons appointed to conduct a review of the law of negligence for the nine Australian governments. He is a Corresponding Fellow of the British Academy, and a Fellow of the Academy of Social Sciences in Australia. Cane is the author of numerous books, including a leading torts textbook in Australia, *The Law of Torts in Australia*.

BRUCE FELDTHUSEN is the common law dean of the University of Ottawa in Canada. He is the author of *Economic Negligence* and his analysis of pure economic loss has been adopted by the Canadian Supreme Court and provides the framework of all negligence actions. He coauthored the leading Canadian tort text *Canadian Torts* with Justice Allen Linden. Feldthusen won the 2006-2008 Canadian Journal of Law and Society Article Prize for his article "Civil Liability for Sexual Assault in Aboriginal Residential Schools: The Baker Did It." He also works frequently as a litigation consultant and has had a major role in the preparation of numerous Supreme Court of Canada factums and arguments during the past decade.

LEWIS N. KLAR is a professor at the University of Alberta Faculty of Law in Canada. He is the author of *Tort Law*, which is in its fourth edition, and the coauthor of a national casebook, *Canadian Tort Law: Cases, Notes, and Materials*, now in its 13th edition. He is an elected member of the American Law Institute. Klar was designated as a Queen's Counsel in 2002, received the Law Society of Alberta and Canadian Bar Association's Distinguished Service Award in Legal Scholarship in 2005, and the J. Gordin Kaplan Award for Excellence in Research in 2007. He is a member of the Alberta Automobile Insurance Rate Board and the American Law Institute. *photo by Greenwood Photography*

THE HONORABLE ALLEN M. LINDEN is currently a Distinguished Visiting Jurist at Pepperdine School of Law. Previously he served as a supernumerary judge of the Federal Court of Appeal of Canada and as a judge of the Supreme Court of Ontario. Justice Linden taught at Osgoode Hall Law School from 1961-1978. He has been a visiting professor at Universities of California, British Columbia, Melbourne and Monash (Australia), and a Visiting Fellow at Oxford University's Institute of Socio-Legal Studies.

REGISTRATION

Register by April 2, 2010

Register online at law.pepperdine.edu/symposium or return the following with payment to:

PEPPERDINE UNIVERSITY SCHOOL OF LAW
Attn: Margaret Barfield
24255 Pacific Coast Hwy.
Malibu, CA 90263-4611

Phone: 310.506.4653
Fax: 310.506.7467

Clip along dotted line and mail in a #10 envelope, or fax to Margaret Barfield.

Name: _____

Firm/Business name: _____

Address: _____

Telephone: _____ Fax: _____

E-mail (required): _____

Bar membership number: _____

*REGISTRATION FEES (includes continental breakfast and luncheon):

Attendance with MCLE credit.....\$150

Attendance with NO MCLE credit.....\$75

Student (non-Pepperdine).....\$15

Pepperdine law studentNO COST *but registration required*

I plan to attend the luncheon: Yes No

Enclosed is my check in the amount of \$ _____
Payable to **Pepperdine University**.

Please charge \$ _____ to my VISA Mastercard

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CONTINUING LEGAL EDUCATION: This symposium has been approved for Minimum Continuing Legal Education (MCLE) credit by the State Bar of California for 6 credit hours. Pepperdine University School of Law certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

*A limited number of stipends are available for law professors who wish to attend the symposium. Please contact Professor Richard Cupp at richard.cupp@pepperdine.edu regarding stipend applications.