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## Issue Editor's Preface

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## Issue Editor's Preface

For the first time since the topic format was adopted, the *Hastings Law Journal* is repeating a topic. However, since the field of torts is not only broad but also dynamic, the scope of this issue is significantly different from that in Volume 13. Many papers appearing herein are, frankly, presented to provoke debate. They examine present law in the hope of encouraging critical assessment of trends in the field. If any one theme can be said to be common to these papers, it is that of emphasis on compensation rather than the affixation of fault. Liability questions center around problems of which one of two comparatively innocent, but not necessarily blameless, parties must bear a given loss. The authors have presented standards by which the alternative liabilities may be evaluated in non-traditional ways.

Using for his touchstone the products liability cases which were predictable but not yet law at the time of the first torts issue, Professor Roscoe Steffen examines the area of enterprise liability. Those who have been privileged to study with Mr. Steffen at Yale, Chicago, and Hastings will no doubt recognize the strains of a familiar refrain. However, I caution the reader to study this article with care. To do less would result in a failure to appreciate the implications of the textual material and the advocated guidelines for the solution of liability problems.

If the law fails to provide an adequate forum for the airing of legitimate grievances, the aggrieved parties may be driven to extralegal or illegal methods of achieving their goals. Mr. Nathaniel Colley has outlined the opportunities in California and federal courts for bringing damage actions for violations of civil rights. The blend of philosophy and practicality in this article should prove useful in both the trial of such tort actions and the shaping of law in this area.

Professor Dale W. Broeder has submitted an article which the reader may find very irritating. However, the unusual style and format are designed to drive home the point that the vast area of interrelationship between tort recoveries and the just compensation clause of the fifth amendment is as yet unexplored. The paper raises far more questions than it answers.

Compensation for the consequences of pain and suffering has come to constitute a major element of tort recoveries. Mr. Jack H. Werchick has constructed a practical guide for the proof of damages in this area. It includes suggested methods of examination, argumentation, and jury instruction, as well as a critique of those cases limiting the per diem method of summation.

Torts courses often leave the field of interference with business and contractual relationships to classes in contracts, equity, labor law, patent law, or trade regulation. Nevertheless, such actions as those for inducement of breaches of contract and for infringements of patents or copyrights are properly classified as tort actions for interference with business advantage. In his article on the use of presumptions of inducement where there have been breaches of no-strike labor agreements, Mr. Owen Fairweather considers trends of labor litigation and advocates the use of the presumptions from which the paper takes its title. Mr. Timothy H. Fine compares patent misuse and copyright misuse as defenses to infringement actions and distinguishes them from violations of antitrust laws. He concludes that copyright misuse should be an accepted defense to copyright infringement suits.

The student papers in this issue continue the pattern of critical analysis. Mr. Berger's article on wilful misconduct makes understandable a definition which has become more confused with each successive judicial interpretation. Mr. Cook predicts extensions of the privileges established by *New York Times Co. v. Sullivan*. Mr. Cox suggests that an examination of the imposition on the medical profession of strict liability in tort for products defects be undertaken. Mr. Nelson places the liability of creditors for the abuse of collection methods in the broader context of the trend of recoveries for emotional distress. Recent cases noted include *Hill v. Hayes*, *Seely v. White Motor Co.*, *Erllich v. Etner*, and *Williams v. State*.

The book review section opens with an incisive study by Professor Banks McDowell of Blanshard's *Religion and the Schools: The Great Controversy*. An unusual dialogue, in the form of a critique of *The Trial of Jack Ruby* by J. W. Ehrlich and a rebuttal by Professor Jon R. Waltz, has been assembled. As the starting point for his rebuttal, Professor Waltz expresses his dismay with the *Journal* for allowing such a "diatribe" to appear in print. Although I am not prepared to concur with all of Mr. Ehrlich's opinions, I suggest that to shield *The Trial of Jack Ruby* from debate and criticism would be singularly inappropriate. Such criticism ought to be refuted with facts, not suppression. If it has accomplished nothing else, the publication of Mr. Ehrlich's remarks has at least brought the honorable professor to the pages of this periodical. We are glad to have them both.

I am indebted to Messrs. Horton, Lewis, Liebert, Mahoney, and Riggs, of the *Journal* staff, for their valuable assistance, and to the members of the Editorial Board and the Hastings faculty and administration for their contributions.

The *Hastings Law Journal* notes with regret the retirement of Professor Albert J. Harno from the Hastings faculty. Professor Harno served as our faculty advisor in the years 1959-1960 and 1964-1965. It was he who developed the topic format which we have followed since Volume 12.

JEROME SAPIRO, JR.  
*Issue Editor*

