

The Torts Game: Defending Mean Joe Greene. Jonathan L. Zittrain and Jennifer K. Harrison. NY: Aspen Publishers, 2004. 162p. ISBN 0-7335-4509-X. \$36.00

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In this excellent new book, Harvard Law School Professor Jonathan Zittrain and attorney Jennifer Harrison effectively combine a doctrinal study of tort law with a guide to the realities of civil procedure and insurance law. The book explores the borderline between negligence and intentional torts through a careful study of an actual torts case involving NFL Hall of Famer and media star, Charles "Mean Joe" Greene. Greene was not only a terrifying defender on the field but also a mesmerizing presence on television. Perhaps the most famous Greene appearance was an award-winning Coca Cola commercial in which a young boy offers an exhausted Mean Joe a bottle of Coke As he limps off the field after what has clearly been a bruising game. Greene thanks him by giving him his jersey and a soul-warming smile.

This book is destined to be a classic teaching tool. It is guaranteed to be a favorite with students and instructors alike. Professor Zittrain's father represented Greene in this garden variety torts case that will never be included in appellate-oriented casebooks because, as in the overwhelming majority of torts cases, all of the interesting events occurred outside of court. Zittrain and Harrison focus on the heart and soul of tort law, the pretrial and settlement stages. It is rare that first year students receive the opportunity to study a case file. This book achieves its objective of introducing students to a variety of the tools of litigation as well as teaching first-year torts concepts.

Chapter One provides a cogent (11 pages) introduction to the case. The factual setting for this tort story arises out of an incident that occurred at the end of a NFL football game. At the time of the incident, Greene, having completed his career as an active player, was an assistant coach for the Arizona Cardinals. Greene walked across the field after his team had suffered a stinging defeat at the hands of the New England Patriots. Greene was startled by a near collision with a sound engineer driving a flatbed golf cart. He used profanity, angrily chiding the driver for his reckless driving. The workman then apparently ran over Greene's foot. Greene responded by striking the driver, knocking his glasses to the ground and allegedly causing him to suffer a punctured ear drum, causing persistent ringing in the man's ear.

Chapter Two further explores the factual setting by drawing upon actual deposition transcripts. The story spelled out in the transcripts in this case is a quick read and far

more fascinating than most cases because of its element of celebrity. The chapter provides several statements and recitations of fact. Law professors should use this chapter to illustrate the give and take that often occurs when fact witnesses are confronted by opposing counsel. The authors carefully demonstrate how ambiguities, contradictions, and opposing contentions shaped the legal arguments. However, the authors go much further. They sent court documents of the actual case to a jury consulting service for its evaluation. Sociologists and law and society scholars will find the Schlesinger Associates' analysis of social science principles to be fascinating. (pp. 44-46, Supplemental Materials). The teacher's manual provides excellent probing questions that are sure to enhance class discussion.

The attorney for the plaintiff sound engineer writes a demand letter for a written apology from Mean Joe and a payment of \$100,000 as compensation for assault, battery, and emotional distress. The authors do an excellent job of elementizing these torts as well as providing a nuanced discussion of how law relates to the factual allegations. The complaint names both Greene and his employer, the St. Louis Cardinals football team, as co-defendants. The plaintiff charged the Cardinals' organization with negligent supervision as Greene's employers and with negligent hiring. Greene's refusal to settle the case at the demand letter stage begins a sophisticated and complex series of legal maneuvers. The authors note in their teacher's manual that this particular lawyer's demand letter was more verbose than average (p. 3, Manual).

One of the truly outstanding features of this superb book and teaching manual is its user-friendly approach. Zittrain and Harrison provide a variety of materials which will be helpful for students. The teacher's manual, for example, provides a cogent checklist of the factors in a plaintiff's attorney's analysis of a case followed by a parallel checklist for the defense of Mean Joe Greene. This is one of those rare books that combine *theorie und praxis*. The book raises questions of not only legal doctrine but whether any causes of action will stimulate settlement. For example, Chapter Three provides a sophisticated discussion of the doctrinal similarities and differences between negligence and intentional torts. Many first year students are confused that a complaint can plead negligence as well as assault and battery. This book explores how pleading given torts can impact insurance coverage. Chapter Four provides a sophisticated treatment of the concept of vicarious liability that is the basis of the NFL team's involvement in the case. No existing text does a better job of exploring the role of insurance company lawyers in tort litigation.

This book is an effective vehicle for teaching tort law from a legal realist perspective. This book contains many original documents including depositions by both litigants and a fact witness's recollections. Professor Zittrain and Ms. Harrison annotate each form and explain its significance in terms of the litigation process. The authors brilliantly characterize the legal issues in a format that is suitable for law and society

students, undergraduate students, as well as their target audience, first year law students. This is the first book that effectively combines tort law with basic civil procedure documents. Civil procedure teachers should also consider adopting this book to supplement the usual casebook. The reader is brought inside the murky world of litigation in which the distinction between negligence and intentional infliction of harm is manipulated to maximize or minimize the exposure of the two insurance companies.

The authors effectively illustrate how so much of legal analysis involves the flipping and manipulating of legal concepts. This is the first torts book to effectively show the key role the insurer plays in tort litigation. Since Greene, as an individual, does not have deep pockets, the plaintiff wants an insurance company to be held responsible for paying any award. Greene's personal insurance covers negligence but not any intentional harm that he causes, so the plaintiff can only collect from this insurer if Greene struck out reflexively. On the other hand, the argument that the Cardinals should be liable because they employed a man of "Mean Joe's" fearsome reputation without providing proper safeguards is most compelling if Greene struck out in a rage, purposefully attempting to cause injury. Lawyers for Greene face cross-pressures because they are being paid by one of the insurance companies that sometimes has interests that diverge markedly from that of the defendant. Zittrain and Harrison do a remarkable job in explaining the role that the insurer plays in settlement. They set the stage for an analysis of bad faith settlement causes of action as well.

The plaintiff and defendant, who are theoretically in an adversarial relationship, eventually agree to let Mean Joe Greene off the hook in return for his cooperation in obtaining an award that will be paid by his homeowner's insurance policy. A judgment was entered against Greene for \$100,000 but the plaintiff agreed in writing "that he will not now or ever execute or come after you or Agnes to satisfy the judgment." In the end, the plaintiff lost his case in a summary judgment ruling that was upheld on appeal.

Since the vast majority of cases are settled out of court, this book fills an important gap in the legal literature. The rare glimpse that it provides into the shadow of the law is extremely valuable for law students and others who wish to understand the realities of the litigation process. As the book cover notes, "Being a good lawyer requires much more than mastering legal doctrine. When preparing cases, attorneys apply legal doctrine within the context of larger strategic and ethical choices. This book depicts professional lawyers facing such choices on multiple sides of a dispute."

The appeals court decisions that comprise most introductory torts textbooks show nothing of the complex negotiations that are at the center of many torts cases. In *The Torts Game*, aspiring attorneys and potential litigants are introduced to a legal world very

different than the one they see in the media. There are no good guys and bad guys in this drama. The lawyers are only interested in advancing the interests of their clients, not in broad issues of social justice.

The Torts Game is extremely well written and accessible for students with no legal training, even though it is designed to be supplementary reading in law school torts and civil procedure classes. It contains several sets of written exercises and questions that can be used to stimulate class discussion. This book is also highly recommended for legal process and writing courses. I plan to use this book in both my graduate and undergraduate legal studies classes. I urge others to do the same. The Teacher's Manual and Supplemental Materials is a model of excellence. It illustrates questions that can be raised in a variety of law school and legal studies classes. The Manual also provides the instructor with additional handouts which will be very appreciated by students and instructors alike.