

Preface

Like most of my colleagues, I teach torts from a casebook. Casebooks are, naturally enough, full of cases. These “cases” comprise a series of excerpts from judicial opinions—usually issued by appellate courts—that accompany holdings entered at just one moment in time within the life cycle of a given legal dispute. Most of the time that’s a relief; both teachers and students would be overwhelmed trying to assimilate the full docket of a single typical case, much less the full range of activities that take place outside the courthouse records—phone calls, strategy sessions, negotiations, depositions. Judicial opinions are critical to learning and understanding the law, especially in a common law field such as torts, where there usually aren’t statutes from which judges (and students) can draw guidance.

But I found when teaching that over the course of a term, a certain unreality can set in precisely as the legal doctrines and surrounding arguments begin to feel natural. It becomes too easy to think of the practice of law as simply being a volley of arguments, followed by a glance to the judge to see whose barrage apparently scored more points. Law in general and litigation in particular is so much more than that: it’s strategizing and fencing and negotiation among real people, and even in the simplest cases are such activities rarely neatly divided between a single plaintiff and single defendant, each with neatly opposing interests.

Two years ago I shared with my students some tales and primary documents from a particular case not found in any casebook, not merely because it has yet to generate an appellate opinion but also because all of the interesting action took place nowhere near the courthouse. It turns out that almost all cases have this extra-judicial dimension, and once immersed in them, one finds their storylines and internal conflicts genuinely interesting—and relevant to an understanding of how the legal system actually works.

The materials were a success in class, and this book shares them. It offers a window into a single simple case, attempting to capture the realities of dealing with a lawsuit that stand apart from the doctrinal arguments that rightly consume most of a first-year law school curriculum, while also showing the mutual influence between those realities and the doctrinal questions that arise in a case.

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Both Jennifer Harrison and I were grounded in—and taught to love—the law at early ages by our parents, she by her father, K. Mike Kimball, of the Kimball Law Firm, and I by my father and mother, Lester E. Zittrain and Ruth A. Zittrain, of Zittrain & Zittrain. (Neither ever said which comes first in the firm's title.) It is to our parents that this book is dedicated with love and thanks.

Jonathan Zittrain
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