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Faculty Scholarship

CONSTITUTIONAL TORTS: COMBINING DIVERSE DOCTRINES & PRACTICALITY

Constitutional Torts is, in part, a response to our sense that the upper level curriculum could be improved by courses that bring together areas of doctrine that are often studied in isolation. We think there is substantial value in bringing together seemingly disparate areas of doctrine that bear on a common real-world problem. Students benefit from learning how to put together concepts from different substantive areas in order to solve problems they will face in practice.

A suit for damages arising from a constitutional violation is a complex project, consisting of elements from torts, constitutional law, federal courts, civil procedure, and statutory interpretation. Constitutional law furnishes the substantive basis for liability, while tort concepts heavily influence constitutional tort rules on causation, damages, and immunity. Yet the relevant principles of substantive tort and constitutional law are rarely taught in introductory courses in those areas, which must be devoted to matters of more general interest.

By studying jurisdictional and procedural principles in a substantive context, students deepen their understanding of those doctrinal areas as well. In introductory courses on these topics, it is necessary to push the substantive law into the background, so as to focus attention on jurisdictional and procedural concepts that cut across doctrinal categories. Focusing, as we



(l. to r.), Eaton and Wells

Professors Mike Wells and Tom Eaton, both J. Alton Hosch Professors of Law, collaborated in 1994 on a cutting-edge casebook, *Constitutional Torts*. Although the book was released in the middle of the academic year, the publisher has already received many inquiries from law schools. In this article, Professor Wells and Professor Eaton explain the concepts behind the book and its application as a practical teaching tool.

Professor Wells joined the law school faculty in 1978, and Professor Eaton in 1979. Both are widely respected for their scholarship and instructional excellence.


do, on the particular substantive area of constitutional torts reminds students that the resolution of procedural and jurisdictional issues is always influenced by the substantive context in which they arise.

Most constitutional tort suits are brought under the Civil Rights Act of 1871, 42 U.S.C. section 1983. The statute, which provides in very general terms for a cause of action to redress constitutional injuries, remained largely dormant for 90 years before the Supreme Court revived it in *Monroe v. Pape*. In the 34 years since *Monroe*, the Supreme Court has confronted a

variety of interpretive problems posed by this old and unspecific statute. The course provides a vehicle for considering how the Court should respond to such problems.

Besides bringing diverse doctrinal categories together to solve problems, the materials in *Constitutional Torts* also enable us to construct practical exercises to show students how doctrine bears on what lawyers do. In this way, students are afforded an opportunity to simulate the work of a lawyer, and observe and critique the efforts of other students as well. For example, students have been asked to take newspaper clippings regarding the recent Union Point boycott and draft a complaint. Other students were asked to prepare a motion to strike a defense of qualified immunity asserted by a private corporation that had contracted to provide health care in a state prison. Others have prepared briefs and argued before the class a variety of questions recently before the Supreme Court and the circuit courts, such as the scope of a policeman's constitutional duty to protect persons endangered by

drunk drivers and the problem of whether a given act of an official is properly attributable to his governmental employer, so that the government may be held liable as an entity.

In each of these ways, our materials provide upper level students with a sophisticated learning experience that will help to prepare them for the real world of lawyering. 

—Professor Michael L. Wells and
Professor Thomas A. Eaton