
*RESTATEMENT (THIRD) OF TORTS: COORDINATION
AND CONTINUATION*

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With the near completion of the project on Physical and Emotional Harm, the *Restatement (Third) of Torts* now covers a wide swath of tort territory, including many of the subjects that have evolved most dramatically since the *Restatement (Second) of Torts*. The very scope and complexity of the work thus far raise some important questions. One is coordination of the three completed projects. The other relates to continuation of the *Restatement (Third)*.

This Essay addresses these two topics—coordination and continuation. The Essay begins with the history of these two issues and then discusses the status of each.

I. AT THE OUTSET: FORESEEING COORDINATION AND CONTINUATION

When the American Law Institute (“ALI”) began the *Restatement (Third) of Torts*, it anticipated the eventual need to address coordination and continuation. Both topics appeared in then-Director Geoffrey Hazard’s proposal to the ALI Council, on October 8, 1991, that “the Institute commence a project for a Restatement of Products Liability as the next component of the eventual revision of the Restatement Second of Torts.”¹

The proposal recognized the issue of continuation:

[The project] would supersede the Restatement Second of Torts in the matters addressed, but would otherwise recognize the continued authority of the Restatement Second of Torts until other segments of the latter are revised.

It is further contemplated that, after the Restatement of Products Liability is well begun, further topics in the field of torts will be undertaken.²

The proposal also recognized the issue of coordination:

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1. Memorandum from Geoffrey C. Hazard, Jr., Dir., Am. Law Inst., to the Am. Law Inst. Council 1 (Oct. 8, 1991) (on file with author).

2. *Id.*

The proposed plan would take up, one by one, major topics within the domain of torts; publish those as Restatements standing on their own; and only then consider a Restatement Third of Torts that would integrate these components. At a later stage, some years from now, consideration could be given to revising those portions of the Restatement Second of Torts that had not by then been covered by revisions. This seems more manageable than undertaking a comprehensive revision of the present Restatement The Council might conclude that there is no need for an integrated Restatement Third if the field had been largely covered by the more particularized Restatements.³

Two years ago, Director Lance Liebman gathered together a working group to discuss a plan for coordination and continuation of the *Restatement (Third) of Torts*. A slightly expanded group met several months later and reviewed multiple memos and draft outlines arising from the first discussion. The rest of this Essay sketches out the basic decisions that emerged from these discussions.⁴ In addition, the Essay explains the steps that have been taken thus far and the work that remains.

For convenience, this Essay refers to the existing *Restatement (Third)* projects as follows: Products Liability (“PROD”),⁵ Apportionment of Liability (“APP”),⁶ and Liability for Physical and Emotional Harm (“PHY-EM”).⁷

II. A COMPLETE AND INTEGRATED *RESTATEMENT (THIRD)*?

The first and most basic question that the working group considered was the final outcome of a coordination project. Two possible but very different choices were (1) an integrated “full” *Restatement (Third) of Torts* or (2) an integration of the existing *Restatement (Third)* projects (PROD, APP, PHY-EM) with several others yet to be commissioned, along with a catalog or index guiding the user as to which portions of the *Restatement (Second)* remain current even after the completion of the *Restatement (Third)* projects.

The working group agreed that the preferable goal is to produce an integrated and complete *Restatement (Third) of Torts*. The goal, in other words, is a *Restatement (Third)* that eventually will supersede and replace all the volumes of the *Restatement (Second)*.

3. *Id.* at 2.

4. The author was a key participant in these discussions.

5. RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. (1998).

6. RESTATEMENT (THIRD) OF TORTS: APPORTIONMENT OF LIAB. (2000).

7. RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL HARM (Proposed Final Draft No. 1, 2005); *see also* RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL HARM (Tentative Draft No. 6, 2009); RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL HARM (Tentative Draft No. 5, 2007).

The rub, of course, is how to reach this goal.

One possible option that the working group considered was whether some topics within tort law—such as intentional torts—could be revised and updated through a process less exhaustive than a full restating of the topics. This might be the case if the law in an area has remained relatively stable and if a revised, updated version of the topic could be shaped to fit within a coordinated *Restatement (Third)*.

The best way to test out this “Restatement-light” approach—updating and revising rather than restating certain topics—was to produce a sample version of an updated, revised topic. Thus, the working group created and reviewed a Restatement-light version of sections 1–64 of the *Restatement (Second)*.⁸ Although the Restatement-light approach had seemed an appealing option in theory for some topics, the sample quickly led to abandonment of the option. The problems included an overall disconnect between the style and particularized approach of the *Restatement (Second)* and the *Restatement (Third)*, as well as the inability to alter the deeper architecture of Division One (“Intentional Harms to Persons, Land, and Chattels”) of the *Restatement (Second)*⁹ in the ways that might be necessary to fit with future restated topics.

Having rejected the use of a Restatement-light approach to any subpart of the *Restatement*, the working group agreed that completion of a full *Restatement (Third)* requires two different tasks. One, which can be completed in the near future, is coordinating PROD, APP, and PHY-EM. The second is identifying and launching the projects that, when combined with the three existing projects, will form a complete *Restatement (Third)*. Part III discusses coordination in more detail, and Part IV addresses additional projects.

III. COORDINATING *PRODUCTS LIABILITY*, *APPORTIONMENT OF LIABILITY*, AND *LIABILITY FOR PHYSICAL AND EMOTIONAL HARM*

The three completed or nearly completed segments of the *Restatement (Third)* are PROD, APP, and PHY-EM.¹⁰ Even if the *Restatement (Third)* were to proceed no further, some coordination work would be necessary.¹¹ Given that the *Restatement (Third)* will

8. This tentative “Restatement-light” is on file with the author.

9. RESTATEMENT (SECOND) OF TORTS §§ 1–280 (1965) (comprising Division One).

10. See *supra* notes 5–7.

11. For instance, the term “legal cause” appears in both APP and PROD. See, e.g., RESTATEMENT (THIRD) OF TORTS: APPOINTMENT OF LIAB. §§ 4, 7, B18 (2000); RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. §§ 2 cmt. i, 11 cmt. e, 17 cmt. a (1998). Later, PHY-EM would disfavor the use of “legal cause,” instead enunciating and distinguishing between “factual cause” and “scope of liability.” See RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL HARM § 29 cmt. g (Proposed Final Draft No. 1, 2005). Thus, it is both consistent and helpful to

include other projects,¹² however, this coordination should be undertaken in a way that is most workable in light of future projects while retaining the integrity and content of the completed segments. An additional guiding principle should be that coordination not alter the substantive and doctrinal decisions underlying previous work.

Through most of 2008, coordination work on the three existing segments took place, beginning with a coordination-oriented review and revision of these projects.¹³ The tentative revisions then were distributed to the Reporters of each project. To a large extent, agreement now exists on the necessary areas of coordination and the proposed revisions.

For purposes of this Essay, it is not necessary to review all the coordination areas or revisions. Rather, what follows is a discussion of a few topics that convey the nature of the coordination work.

A. *“Harm to Persons or Property” in Products Liability; “Physical Harm” in Liability for Physical and Emotional Harm*

PROD was completed before PHY-EM.¹⁴ PROD section 21 uses the phrase “harm to persons or property,”¹⁵ while PHY-EM section 4 uses the term “physical harm” and defines it to include bodily harm and property damage.¹⁶ Both terms could be retained if the two phrases meaningfully signaled different harms. By contrast, if both phrases carry the same meaning, then using the same term would be preferable.

At first glance, the two sections differ from each other in several respects.¹⁷ Yet, on closer inspection, the reasons for the differences are not about the core meaning of “physical harm” in PHY-EM or “harm to persons or property” in PROD. Rather, the difference is that PROD, in enunciating the meaning of “harm to persons or property,” addresses several doctrinal points not reached under section 4 of PHY-EM. These points are (1) the issue of harm to the

modify PROD and APP to clarify when “legal cause” means “factual cause,” “scope of liability,” or both.

12. *See infra* Part IV.

13. These revisions, drafted by the author, are on file with her.

14. *See supra* notes 5, 7.

15. RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. § 21 (1998).

16. RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL HARM § 4 (Proposed Final Draft No. 1, 2005).

17. *Compare* RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. § 21 (1998) (“For purposes of this Restatement, harm to persons or property includes economic loss if caused by harm to: (a) the plaintiff’s person; or (b) the person of another when harm to the other interferes with an interest of the plaintiff protected by tort law; or (c) the plaintiff’s property other than the defective product itself.”), *with* RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL HARM § 4 (Proposed Final Draft No. 1, 2005) (“Physical harm’ means the physical impairment of the human body or of real property or tangible personal property. The physical impairment of the human body includes physical injury, illness, disease, and death.”).

property itself,¹⁸ (2) the fact that some economic losses—lost wages and medical bills—are not excluded from the coverage of these sections,¹⁹ and (3) the fact that the definition of “physical harm” (or “harm to persons or property”) does not exclude coverage for economic losses based on derivative claims.²⁰

Put another way, if PHY-EM, in section 4, had addressed these topics, the substantive law associated with section 4 would have been basically the same as that of PROD section 21. Thus, one could simply change the phrase “harm to persons and property” in PROD to “physical harm.” This would probably be fine, but it leaves something to be desired. The problem is that the three doctrinal points above also apply to negligence, which of course is the core coverage of PHY-EM. Thus, there would be some awkwardness in having an initial definition of “physical harm” that failed to address several of the topics covered by the corresponding provision in PROD.

After considering these points, the working group agreed on the following:

- (1) A new comment *e* should be added to PHY-EM section 4 that will briefly refer to the “damage to property itself” doctrine without purporting to address it as fully as does PROD or as will a later project on pure economic loss.
- (2) “Harm to persons or property” in PROD should be changed to “physical harm.”
- (3) All of PROD section 21 should be retained. Including the three doctrinal issues not addressed in PHY-EM section 4 will not create a problem for section 4 because a new comment *e* will contain a “looking ahead” reference to the “damage to property itself” issue. And the other two issues addressed in section 21 arguably warrant discussion notwithstanding the failure of section 4 to address them. This is because, in a volume devoted to products liability, a rule that need not be noted in general negligence coverage might require special attention in PROD.

B. Cause

PROD section 1 includes the phrase “subject to liability for harm to persons or property *caused by the defect*.”²¹ Section 1 contains no comment on “cause”; rather, section 15 sets out the general rule on cause in products liability: “Whether a product

18. See RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. § 21(c) & cmts. e–f (1998).

19. See *id.* § 21 & cmt. b.

20. See *id.* § 21(b) & cmt. c.

21. *Id.* § 1 (emphasis added).

defect caused harm to persons or property is determined by the prevailing rules and principles governing causation in tort.”²²

At the time that PROD was drafted to include a reference to the “prevailing rules and principles governing causation,” the notion of causation in the *Restatement (Second)* included what, in current understanding as reflected in PHY-EM, has been separated into the distinct concepts of factual cause and scope of liability.²³ Thus, the phrase “prevailing rules and principles governing causation in tort” needs to be understood as referring both to factual cause and to scope of liability.

Thus, it is necessary to alter section 15 slightly and then change other references to causation as necessary. For instance, the word “cause” in the black letter of sections 1, 5, 6, 7, and 8 needs to be changed to include a reference to both factual cause and scope of liability.²⁴

C. Section 5 of Liability for Physical and Emotional Harm

Section 5 of PHY-EM contains an umbrella rule relating to intentional torts.²⁵ The coordination edit on this section was primarily mindful that a future ALI project will likely restate the law on intentional torts. Thus, the edit of section 5 omitted many specific references in the comments to the *Restatement (Second)* on various intentional torts and the defenses to those torts.²⁶ The benefit of not citing these is to omit, to the extent possible, references to the *Restatement (Second)* when we expect that a future *Restatement (Third)* project will address the topic. The text that remains in section 5 is safe—that is, the text will be valid and not outdated when an intentional-torts project is undertaken.

IV. FUTURE PROJECTS, WITH THE GOAL OF A COMPLETE *RESTATEMENT (THIRD)*

The coordination work is largely complete. The more challenging task is defining and launching the projects that should be commenced in order to make the *Restatement (Third)* complete. Many specific decisions about the definition and ordering of projects still remain. But there is agreement on a number of important questions and principles. This Part discusses these.

22. *Id.* § 15.

23. *See supra* note 11; *see also* RESTATEMENT (SECOND) OF TORTS §§ 430–462 (1965) (explaining the pre-PHY-EM doctrine of causation).

24. *See* RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. §§ 1, 5–8 (1998).

25. *See* RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL HARM § 5 (Proposed Final Draft No. 1, 2005) (“An actor who intentionally causes physical harm is subject to liability for that harm.”).

26. *See supra* note 13 and accompanying text.

A. *Organization of the Restatement (Third)*

The working group did not make final recommendations at the level of a detailed table of contents for a full *Restatement (Third)*. But it did agree on the major topics that should form a *Restatement (Third)*, including the scope of each topic. Each topic would probably form the basis of a *Restatement* project. In addition, each topic would eventually yield a volume or volumes with sections that are numbered separately rather than sequenced with section numbers from other volumes. What follows is the list of major topics that might someday constitute the volumes of the *Restatement (Third)*:

- (1) Accidental Physical and Emotional Harm
- (2) Products Liability
- (3) Apportionment
- (4) Damages for Accidental Physical and Emotional Harm (each future substantive tort project would address remedies pertinent to the torts covered in the project, with reference as appropriate to this stand-alone volume)
- (5) Intentional Torts to Persons
- (6) Economic Torts
- (7) Torts Relating to Interests in Land and Water
- (8) Defamation and Privacy
- (9) Additional Topics (for instance, some have urged a project on the uniquely complex aspects of medical- or other professional-malpractice torts not present in the usual negligence cases)

The first volume of the *Restatement (Third)*—Accidental Physical and Emotional Harm—would be basically the content of PHY-EM.²⁷ The next two volumes would be, respectively, the coordinated and revised PROD and APP. More detail about the

27. Those familiar with the coverage of PHY-EM might wonder about the reference to “accidental” because PHY-EM starts with definitions of “intent” and “recklessness.” See RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL HARM §§ 1–2 (Proposed Final Draft No. 1, 2005). Yet these definitions can plausibly and helpfully be retained at the start of PHY-EM even though intentional torts will actually be taken up in a separate project. The general definition of these three levels of fault is a useful backdrop even though the rest of the volume concentrates on negligence and common-law strict liability. An additional section that might seem out of place is coverage of intentional infliction of emotional distress (“IIED”). See RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL HARM § 45 (Tentative Draft No. 5, 2007). Initially, the working group proposed taking this section out. But the reconciliation edit of PHY-EM kept it in. The risk of confusion that section 45 poses to the final, reconciled *Restatement (Third) of Torts* is not high. When an intentional-torts project commences, the project can reference this one intentional tort—IIED.

other major topics appears below.²⁸

B. Clarifying Which Parts of the Restatement (Second) Remain Effective

Thus far, each *Restatement (Third)* project (PROD, APP, and PHY-EM) has described in detail which sections of the *Restatement (Second)* are modified or supplanted by the project as a whole or by particular sections in the project.²⁹ This mapping process, understandably, has led to concerns that everyday users of the *Restatement (Third)* are unable to keep track of which portions of the *Restatement (Second)* remain effective and which are supplanted.

The publication of these first three volumes as coordinated, which is not far in the future, will do much to clarify the relationship of the *Restatement (Third)* to the *Restatement (Second)*—especially which portions of the latter have been supplanted by the former. Basically, the first three volumes of the *Restatement (Third)* will replace entirely Division Two (Volume 2) of the *Restatement (Second)*.³⁰

28. The working group concluded that it would not be necessary to include, as does the *Restatement (Second)*, an initial chapter defining “terms used throughout the Restatement.” See generally RESTATEMENT (SECOND) OF TORTS §§ 1–12A (1965). Instead, references to definitions at certain junctions could work just as well, without posing the hazards of defining a key term in a way that applies “throughout the Restatement.” In Chapter One of the *Restatement (Second)*, the definition of “consent” in section 10A is not especially useful because it is narrower than the later discussions of “consent” in sections 892–892D. Compare RESTATEMENT (SECOND) OF TORTS § 10A (1965), with *id.* §§ 892–892D (1979).

29. See, e.g., RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL HARM § 1 cmt. a (Proposed Final Draft No. 1, 2005); RESTATEMENT (THIRD) OF TORTS: APPOINTMENT OF LIAB. § 1 cmt. a (2000); RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. intro. (1998).

30. Division Two of the *Restatement (Second)* contains other doctrines that require restating and are not covered by any of the *Restatement (Third)* projects. One is current Chapter 15, titled “Liability of an Employer of an Independent Contractor.” RESTATEMENT (SECOND) OF TORTS §§ 409–429 (1965). This material needs to be included in PHY-EM. See *infra* Part IV.C. The working group also considered whether Chapter 14 of the *Restatement (Second)* contains any material that still needs restating. The title of Chapter 14 is “Liability of Persons Supplying Chattels for the Use of Others.” It consists of sections 388–408 and includes section 402A (on strict liability for “sellers of products”) as well as several other doctrines that are restated in PROD. See, e.g., RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. § 1 cmt. a (1998) (discussing the relationship between the old section 402A and PROD). But PROD does not completely supplant Chapter 14. PROD addresses “the liability of commercial product sellers and distributors for harm caused by their products.” *Id.* intro. A “commercial product seller or distributor” is not coextensive with a “person supplying chattels for the use of others.” Nonetheless, the working group determined that Chapter 14 does not contain any significant unrestated material, given the combination of PHY-EM and PROD.

C. *Adding to Liability for Physical and Emotional Harm a New Chapter on Liability of Employers of Independent Contractors*

Currently, PHY-EM ends with Chapter 9 on the duty of land possessors.³¹ I have been engaged to draft a new Chapter 10 restating current Chapter 15 of the *Restatement (Second)* (“Liability of an Employer of an Independent Contractor”).³² Several reasons support including this topic within the coverage of PHY-EM. First, this body of law is frequently invoked and fits within the umbrella of negligence. Second, it is not possible to “stretch” the current content of PHY-EM to cover the subjects of the old Chapter 15. Third, locating this topic after a chapter on the duty of land possessors is conceptually appropriate because, like land possessors, independent contractors are subject to limitations on liability that stem from reasons other than the risk-creation rationale behind the basic duty rules in PHY-EM.

D. *Remedies/Damages*

On the critical topic of damages, the working group discussed two possible approaches. The first was to produce a comprehensive treatment of remedies in tort, which would (1) start with general principles about remedies in tort and then (2) contain comprehensive coverage of remedies and damages in tort law, including compensatory damages for personal injury, economic torts, defamation and privacy, property damage, etc., as well as punitive damages, restitution, injunctions, and other remedies.

The second approach was to cover remedies with respect to each major project or area in tort law. Thus, the first remedies-damages project would probably be limited to damages for physical harm and emotional distress (whether under strict liability, products liability, negligence, or intentional torts). Other projects (for example, economic torts, defamation and privacy, land-water torts) could include within their scope coverage of remedies and damages specific to those torts, resorting as necessary to the general principles at the outset of the initial damages volume.³³

The group favored the second approach. The reasons were both

31. RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL HARM §§ 49–54 (Tentative Draft No. 6, 2009).

32. RESTATEMENT (SECOND) OF TORTS §§ 409–429 (1965) (comprising Chapter 15).

33. The ALI is in the process of writing its first restatement of employment law, and the chapter on public-policy tort law was approved in May 2009. *See generally* RESTATEMENT (THIRD) OF EMPLOYMENT LAW §§ 4.01–.03 (Tentative Draft No. 2, 2009) (discussing “the tort of wrongful discipline in violation of public policy”). The proposed scope of this *Restatement* includes a remedies chapter, presumably addressing employment torts as well as other employment claims. *See id.* § 4.01 cmt. a. In addition, other ALI projects do or may speak to tort remedies pertinent to those projects; to the extent that they do, the *Restatement (Third) of Torts* can reference the other ALI works.

practical and conceptual: First, it is much easier to envision the completion of “primary” damages rules for personal injuries. Second, finishing this project sooner rather than later is appealing because the damages project would complete the “accident law” segment of tort law that has been the main subject of the three projects to date. Finally, restating all remedies for torts would be conceptually difficult since the restatement process for some of the underlying torts has not even begun. One example of this difficulty is in the areas of defamation and privacy, where damages are closely intertwined with other elements of the torts.

E. Intentional Torts to Persons

A new tort project should produce a restatement volume covering battery, assault, false imprisonment, intentional infliction of emotional distress,³⁴ relevant defenses and privileges, and relevant remedies. This volume would not include intentional torts to land or personal property, because these topics are envisioned to be included in a separate restatement project on torts relating to land and water.³⁵ Nor would it include personal-property torts, which might be better included within a volume on economic torts.³⁶

In covering defenses and privileges, the Reporter for the contemplated future work should be mindful of the best way of setting the conceptual framework for similar defense-privilege concepts that will appear in other topics. For instance, in the *Restatement (Second)*, consent is the subject of fourteen sections under intentional torts to persons,³⁷ nine sections under trespass to land,³⁸ and six sections under trespass to chattels.³⁹ In addition, five sections relating to consent appear in one of the final chapters of the *Restatement (Second)*: Chapter 45 on “Justification and Excuse.”⁴⁰ Even granting that important differences exist for defenses and privileges for various torts, the *Restatement (Third)* should aim to identify common conceptual territory and articulate it in ways that can apply to multiple torts.

F. Torts Relating to Interests in Land and Water

The *Restatement (Second)* separately addresses trespass to land,⁴¹ nuisance,⁴² invasions in the support of land,⁴³ and

34. As to intentional infliction of emotional distress, see *supra* note 27.

35. See *infra* Part IV.F.

36. See *supra* Part IV.A.

37. RESTATEMENT (SECOND) OF TORTS §§ 49–62 (1965).

38. *Id.* §§ 167–175.

39. *Id.* §§ 252–256.

40. *Id.* §§ 892–892D (1979).

41. *Id.* §§ 157–215 (1965).

42. *Id.* §§ 821A–833 (1979).

43. *Id.* §§ 817–821.

interference with use of water rights.⁴⁴ The tentative recommendation is to combine these into a project on torts relating to land and water.⁴⁵ The common law in these areas remains important, continues to evolve, and is unsettled on some points. Conceptually and as a matter of litigation, the four topics listed above often overlap.

G. *Additional Topics*

The list in subpart A includes a place for “Additional Topics.”⁴⁶ This does not mean that every topic not yet covered within one of the other items on the list will be included in a volume titled “Additional Topics.” Rather, the reference to “additional topics” acknowledges the need to consider how to address several topics not obviously covered elsewhere. One example is Division Eight of the *Restatement (Second)*: “Interference in Domestic Relations.” The division includes two chapters, one relating to the “Marriage Relation”⁴⁷ and one relating to the “Relation of Parent and Child.”⁴⁸ Both areas have expanded and contracted doctrinally since the publication of the *Restatement (Second)*. In addition, some doctrines in this division (such as consortium, both as to spouses and as to the parent-child relationship) might best be incorporated into the volume on damages and remedies.⁴⁹

CONCLUSION: COORDINATED CONTINUATION

This Essay has tried to give a concise but useful sense of how the ALI can proceed with producing a coordinated and complete (or nearly complete) *Restatement (Third) of Torts*. The steps described in this Essay, however, prompt an important question. Given that the proposal would require several Reporters and projects to be engaged over a period of years, how can these efforts remain “coordinated” and coherent? For several reasons, continued work on a *Restatement (Third)* should be able to go forward in a way that is mindful of, and consistent with, a coordinated *Restatement (Third)*.

First, the need to reconcile and coordinate will not again arise “ex post.” Second, the work completed thus far covers a wide yet bounded territory that forms a clear backdrop for future projects. Third, new tort projects will generally not be contingent on how certain principles are worked out in other, still-to-be-completed projects. Thus, for instance, a land-water torts project will not require significant conceptual decisions linked to the content of an intentional-torts project or a defamation-privacy project.

44. *Id.* §§ 841–864.

45. *See supra* Part IV.A.

46. *See supra* Part IV.A.

47. RESTATEMENT (SECOND) OF TORTS §§ 683–698 (1977).

48. *Id.* §§ 699–707A.

49. *See supra* Part IV.D.

The Reporters and others thus far involved in the *Restatement (Third)* efforts have restated a wide territory of tort law with great clarity, conceptual depth, and practical value. On its own, this accomplishment is both significant and durable. Yet this work has yielded even greater benefit because its quality and scale now provide a sufficient foundation to envision and work towards an integrated, comprehensive *Restatement (Third) of Torts*.