

## **DONALD G. GIFFORD**

University of Maryland  
Francis King Carey School of Law  
500 W. Baltimore St. ▪ Baltimore, Maryland 21201  
(410) 706-1843 (office) ▪ dgifford@law.umaryland.edu

### **EMPLOYMENT**

#### **UNIVERSITY OF MARYLAND FRANCIS KING CAREY SCHOOL OF LAW**

*Jacob A. France Professor of Law, 2016-  
Edward M. Robertson Research Professor of Law, 2006-2016  
Professor of Law, 1999-Present*

*Dean and Professor of Law, 1992-1999*

Courses: Torts, Torts II, Advanced Torts, Products Liability, Mass Products Torts,  
Comparative Mass Products Torts, Insurance Law, Negotiation, Counseling and  
Negotiation.

#### **WEST VIRGINIA UNIVERSITY COLLEGE OF LAW**

*Dean and Professor of Law, 1989-1992*

#### **UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW**

*Professor of Law, 1984-1989  
Teacher of the Year, 1986*

*Associate Director, Academic Task Force for Review of the Florida Insurance and Tort  
Systems, Office of the Governor, State of Florida, 1986-1989*

#### **UNIVERSITY OF TOLEDO COLLEGE OF LAW**

*Associate Professor, 1982-1984  
Assistant Professor, 1979-1982*

**PRIVATE PRACTICE, 1976-1979**

### **EDUCATION**

#### **HARVARD LAW SCHOOL**

*J.D. cum laude, 1976*

#### **THE COLLEGE OF WOOSTER**

*B.A., 1973  
Liberal Arts/History major  
Valedictorian, Phi Beta Kappa*

## PUBLICATIONS

### BOOKS

LEGAL NEGOTIATION: THEORY AND PRACTICE (3d ed. West Academic 2017, 2d. ed. 2007) (originally published under the title of *Legal Negotiation: Theory and Applications* (1989) (3d ed. with Professor Robert J. Rhee).

GET A RUNNING START: YOUR COMPREHENSIVE GUIDE TO THE FIRST YEAR CURRICULUM (West Academic 2016) (with five others).

CASES AND MATERIALS ON THE LAW OF TORTS, Harry Shulman, Fleming James Jr., Oscar S. Gray & Donald G. Gifford (6th ed. 2015, 5th ed. 2010 & 4th ed. 2003) (West Academic: Foundation Press) (with Professor Emeritus Oscar S. Gray).

HARPER, JAMES AND GRAY ON TORTS, Semiannual Cumulative Supplements since December 2013 (with Oscar S. Gray and Christopher J. Robinette) (Wolters Kluwer 2013-present).

SUING THE TOBACCO AND LEAD PIGMENT INDUSTRIES: GOVERNMENT LITIGATION AS PUBLIC HEALTH PRESCRIPTION (University of Michigan Press, 2010).

A COMPARATIVE STUDY OF LIABILITY LAW AND COMPENSATION SCHEMES IN TEN COUNTRIES AND THE UNITED STATES (with Werner Pfennigstorf, 1992).

### BOOK CHAPTERS

*Torts*, AMERICAN GOVERNANCE (Stephen L. Schechter, ed.) (2016).

*Tort Reform as a Two-Way Street*, TORT REFORM-COMMENTARY AND OTHER MATERIALS (Andrew F. Popper, ed. 2010).

*Tort*, THE OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES (Kermit Hall, ed.) (1992 & 2d ed., 2004).

### ARTICLES

*Technological Triggers to Tort Revolutions: Steam Locomotives, Autonomous Vehicles, and Accident Compensation*. 11 J. TORT LAW \_\_\_\_ (forthcoming 2018).

*Keeping Cases from Black Juries: An Empirical Analysis of How Race, Income Inequality, and Regional History Affect Tort Law*, 73 WASH. & LEE L. REV. 557 (2016) (with Brian Jones).

*Apportioning Liability in Maryland Tort Cases: Time to End Contributory Negligence and Joint and Several Liability*, 73 MD. L. REV. 101 (2014) (with Christopher J. Robinette).

*The Supreme Court, CAFA, and Parens Patriae Actions: Will Principles or Biases Prevail?*, 92 N.C. L. REV. ADDENDUM 1 (2013) (online publication) (with William L. Reynolds).

*The Death of the Common Law: Judicial Abdication and Contributory Negligence in Maryland*, 73 MD. L. REV. ENDNOTES 1 (2013) (online publication).

*What's on First?: Organizing the Casebook and Molding the Mind*, 45 ARIZ. ST. L.J. 99 (2013) (with Joseph Kroart, Brian Jones and Cheryl Cortemeglia).

*A Case Study in the Superiority of the Purposive Approach to Statutory Interpretation: Bruesewitz v. Wyeth* (with William L. Reynolds & Andrew M. Murad), 64 S.C. L. REV. 221 (2012).

*The Constitutional Bounding of Adjudication: A Fuller(ian) Explanation for the Supreme Court's Mass Tort Jurisprudence*, 44 ARIZ. ST. L.J. 1109 (2012).

*Climate Change and the Public Law Model of Torts: Reinvigorating Judicial Restraint Doctrines*, 62 S.C. L. REV. 201 (2011).

*Impersonating the Legislature: State Attorneys General and Parens Patriae Products Litigation*, 49 B.C. L. REV. 913 (2008).

*The Death of Causation: Mass Products Torts' Incomplete Incorporation of Social Welfare Principles*, 41 WAKE FOREST L. REV. 943 (2006).

*Market Share Liability Beyond DES Cases: The Solution to the Causation Dilemma in Lead Paint Litigation?* (with Paolo Pasicolan), 58 S.C. L. REV. 115 (2006).

*The Challenge to the Individual Causation Requirement in Mass Products Torts*, 62 WASH. & LEE L. REV. 873 (2005).

*The Peculiar Challenges Posed By Latent Diseases Resulting From Mass Products*, 64 MD. L. REV. 613 (2005).

*Public Nuisance as a Mass Products Tort*, 71 U. CIN. L. REV. 741 (2003).  
Republished in 7 PEKING U. L. REV. 31-354 (2006) (Chen Xin, trans.) (Chinese translation).

*The Causes of the Medical Malpractice Crisis: An Analysis of Claims Data and Insurance Company Finances*, 76 GEO. L. J. 1495 (1988) (with David Nye, Bernard Webb and Marvin Dewar).

*The Myth of the Insurance Claims Explosion*, 41 VAND. L. REV. 909 (1988) (with David Nye).

*Litigation Trends in Florida: Saga of a Growth State*, 39 U. FLA. L. REV. 829 (1987) (with David Nye).

*The Synthesis of Legal Counseling and Negotiation Models: Preserving Client-Centered Advocacy in the Negotiation Context*, 34 UCLA L. REV. 811 (1987).

*A Context-Based Theory of Strategy Selection in Legal Negotiation*, 46 OHIO ST. L. J. 43 (1985).

*A Constitutional Analysis of Ohio's New Drunk Driving Law*, 15 U. TOL. L. REV. 133 (1983).

*Meaningful Reform of Plea Bargaining: The Control of Prosecutorial Discretion*, 1983 U. ILL. L. REV. 37 (1983).

*Equal Protection and the Prosecutor's Charging Decision: Enforcing an Ideal*, 49 GEO. WASH. L. REV. 659 (1981).

#### SELECTED OTHER PUBLICATIONS

*Why Trump's Climate Order Might Backfire*, THE HILL, March 31, 2017, available at <http://thehill.com/blogs/pundits-blog/the-judiciary/326721-trumps-climate-order-might-backfire-lead-to-judicial>.

*Trump's EPA Cuts: An Invitation to Litigation*, Progressive Policy Institute, available at [http://www.progressivepolicy.org/wp-content/uploads/2017/03/PPI\\_TrumpAdministration2017.pdf](http://www.progressivepolicy.org/wp-content/uploads/2017/03/PPI_TrumpAdministration2017.pdf).

*The Wise and Gentle Bomber Pilot: In Memory of Professor Abe Dash*, 74 MD. L. REV. 409 (2015).

*The Power of Nice: A Tribute to Professor Susan Leviton*, 73 MD. L. REV. 1052 (2014).

*The Youthful Sage of Max Day's: A Tribute to Professor Bill Richman*, 45 TOL. L. REV. 701 (2014).

*Tribute to Professor Robert I. Keller*, 71 MD. L. REV. 1 (2011).

"The Inherently Distributive Aspects of Many Bargaining Interactions," Henry Stewart Talks on Negotiation and Bargaining, Online Seminar (London: 2011), available at [http://hstalks.com/main/view\\_talk.php?t=2125&r=606&c=250](http://hstalks.com/main/view_talk.php?t=2125&r=606&c=250).

*No Ordinary Tort: Climate Change and Judicial Restraint*, 53 FOR THE DEFENSE 10 (February 2011).

"No 'Ordinary Tort'—Climate Change Tort Actions and the Supreme Court," Guest Blog, *TortsProf Blog*, September 20, 2010, <http://lawprofessors.typepad.com/tortsprof/2010/09/guest-blogger-don-gifford-on-no-ordinary-tortclimate-change-tort-actions-and-the-supreme-court.html>

*Rhode Island Win is Just a Battle in the Public Nuisance War to Come*, 23 THE CORPORATE COUNSELOR 5 (February 2009).

*Foreword, Symposium: Calabresi's The Costs of Accidents: A Generation of Impact on Law and Scholarship*, 64 MD. L. REV. 1 (2005).

Negligence Systems: Contributory Negligence, Comparative Fault, and Joint and Several Liability (with others), Maryland Department of Legislative Services (2004).

*How Does the Dean Resemble the Islets of Langerhans?*, 31 U. TOL. L. REV. 599 (2000).

*Tribute to Professor Oscar Gray*, 55 MD. L. REV. 1065 (1996).

*Tribute to Professor John M. Brumbaugh*, 55 MD. L. REV. 519 (1996).

*Glasnost and Perestroika at West Virginia: The College of Law's Soviet Exchange Program*," 94 W.V. L. REV. 165 (1991).

*What are Professional Skills and Why Should Law Schools Teach Them?*, ABA National Conference on Professional Skills and Legal Education, 19 N.M. L. REV. 14 (1989).

Final Fact-Finding Report on Insurance and Tort Systems, Report of Academic Task Force for Review of Insurance and Tort Systems to Florida Legislature (1988) (537 pages) (Reporter, with five others).

Final Recommendations, Report of Academic Task Force for Review of Insurance and Tort Systems to Florida Legislature (1988) (193 pages) (Reporter, with five others).

Preliminary Fact-Finding Report on Medical Malpractice, Report of Academic Task Force for Review of Insurance and Tort Systems to Florida Legislature (1987) (263 pages) (Reporter, with six others).

Medical Malpractice Recommendations, Report of Academic Task Force for Review of Insurance and Tort Systems to Florida Legislature (1987) (56 pages) (Reporter, with three others).

Abraham S. Goldstein's *The Passive Judiciary: Prosecutorial Discretion and the Guilty Plea*, 10 J. LEGIS. 435 (1983) (book review).

## TEACHING ABROAD

### LSU SUMMER PROGRAM

Lyon, France

*Visiting Professor*, Summer 2010

Course taught: European and American Approaches to Mass Products Liability

### UNIVERSITY JEAN MOULIN LYON 3

Lyon, France

*Visiting Professor*, Fall 2000

Course taught: An Introduction to American Tort Law

## SELECTED RECENT PRESENTATIONS

“The South’s Peculiar Response to Prevailing Tort Theory: 1965 – 1985,” AALS Annual Meeting, Torts and Compensation Systems Section, San Diego, CA, January 5, 2018.

“Life After Dean-ing,” Deans’ Annual Meeting, Washington, DC, June 30, 2017.

“Autonomous Vehicles and Other Cyber-Physical Systems: Causation and Apportionment in Tort Liability,” Roundtable on Security for Cyber-Physical Systems, University of Pennsylvania Law School Center for Technology, Innovation & Competition, Philadelphia, PA, May 23, 2016.

“Keeping Cases from Black Juries,” Faculty Presentation, Widener Commonwealth Law School, Harrisburg, PA, September 22, 2015.

“Recent Impact Decisions of the Maryland Appellate Courts” (tort decisions), Litigation Section of Maryland State Bar Association, Annapolis, MD, March 13, 2014.

“Negotiation Techniques in Bankruptcy,” 28th Annual Mid-Atlantic Institute on Bankruptcy and Reorganization Practice, Charlottesville, VA, September 20, 2013.

“Who Gets to Sue? Maryland’s Shifting Fault Line,” Maryland Association of County Officials, Ocean City, MD, August 16, 2013.

“Governing through Tort Litigation: Global Warming, Tobacco, and Lead,” Public Health Litigation, American University Washington College of Law Summer Institute, Washington, D.C., June 25, 2013.

“Advanced Negotiation Skills,” University of Maryland Carey School of Law Apprentice Program-Professional Development Series, Baltimore, MD, March 19, 2013.

“Strategic Negotiation,” Professional Skills Program in Dispute Resolution, Center for Dispute Resolution at University of Maryland Carey School of Law and Straus Institute for Dispute Resolution at Pepperdine University School of Law, Baltimore, MD, March 14-16, 2013 (with Barry Gogel).

“What’s on First: Organizing the Casebook and Molding the Mind,” Villanova Law School Faculty Workshop, Villanova, PA, February 22, 2013 (with Joey Kroart & Brian Jones).

“Negotiation Techniques: How to Maximize Value and Get the Job Done,” 86th Annual National Conference of Bankruptcy Judges, San Diego, CA, October 25, 2012 (with Hon. Shelley C. Chapman).

“Governing through Tort Litigation: Global Warming, Tobacco, and Lead,” University of Maryland School of Public Policy, Tuesday Policy Forum, College Park, MD, October 11, 2011.

Mock Supreme Court Argument, “Public Nuisance at the Crossroads: Should the Tort System Regulate Climate Change?” International Association of Defense Counsel Annual Meeting, Whistler, British Columbia, July 12, 2011.

“Climate Change and the Limits of the Judicial Function,” Monsanto Conference on Civil Litigation as a Tool for Regulating Climate Change, Valparaiso University School of Law, February 18, 2011, Valparaiso, IN.

“The Combination of Public Nuisance and *Parens Patriae* Standing: Using Ancient Doctrines to Support Mass Products Liability,” National Foundation for Judicial Excellence 2010 Annual Judicial Symposium, July 17, 2010, Chicago, IL.

“Distorting Public Nuisance Law to Create a New ‘Supertort’” U.S. Chamber of Commerce Climate Change Litigation Roundtable: The Evolution of a New Mass Tort? July 14, 2010, Washington, DC.

“Expanding Public Nuisance Liability and the Limits of the Judicial Process,” Northwestern Law Judicial Education Program Judicial Symposium on Expansion of Liability under Public Nuisance, April 26, 2010, Chicago, IL.

“Climate Change: The New Mass Tort for the 21st Century?” U.S. Chamber of Commerce Institute for Legal Reform, 10th Annual Legal Reform Summit, October 28, 2009, Washington, DC.

“Premature Burial? The Resuscitation of Public Nuisance Litigation,” BNA Webinar, October 22, 2009.

“The Future of Public Nuisance Litigation,” U.S. Chamber of Commerce—Institute for Legal Reform Webinar, December 11, 2008.

“Public Nuisance Litigation: Protecting the Public or Expanding Products Liability Law,” National Center for State Courts Justice Roundtable, November 21, 2008, Washington, DC.

“Public Nuisance Litigation—The State’s New Regulator,” Program of Tort Trial and Insurance Practice Section, American Bar Association Annual Meeting, August 10, 2008, New York, NY.

“The Mouse Roars! Rhode Island Supreme Court Refuses to Expand Public Nuisance,” Thomson Reuters Webcast, August 6, 2008.

“Public Nuisance for Private Gain? Lead Litigation as a Case Study in Abuse of Ancient Legal Principle,” Webcast Panel Discussion sponsored by Washington Legal Foundation, March 21, 2007, Washington, DC.

“Panacea or Placebo: Using Public Nuisance Principles to Redress Environmental Harms,” BNA Audio-conference, February 27, 2007.

“Virtual Public Law and the Politics of Tort Law,” *Tort Litigation and Policy Making*, Law and Society Association Annual Meeting, July 6, 2006, Baltimore, Maryland.

Interview, National Public Radio’s *All Things Considered*, following February 22, 2006 verdict in Rhode Island lead pigment litigation.

“The New Wave: Collective Actions and Responsibilities,” Thomas F. Lambert Tort Law Conference on Sophisticated New Tort Theories, Center for Advanced Legal Studies, Suffolk University Law School, Boston, October 29, 2004.

“Tobacco, Handguns, Lead Paint and Public Nuisance: The Mouse that Roared,” Faculty Workshop Presentation, University of Missouri-Columbia School of Law, February 17, 2003.

“Using Nuisance to Address Environmental Problems,” National Environmental Law Societies Conference, Baltimore, March 29, 2003.

### **SELECTED PROFESSIONAL SERVICE**

*Member, SEALS (Southeastern Association of American Law Schools) Resource Team for Tort Law, 2016- Present*

*Member, Consulting Panel on Torts, ABA Legal Education, ADR, and Problem-Solving Task Force, 2011- Present.*

*Member, American Law Institute and its Consultative Groups on various Torts-related projects, 2000 - Present.*

*Advisor on Childhood Lead Poisoning Prevention and Lead Litigation Issues, National Paint and Coatings Association (2001-2007) and DuPont (2000-2008).*

- \* Drafted or revised childhood lead poisoning prevention legislation introduced in United States Congress and in numerous state legislatures; extensive state legislative testimony.

*Faculty Coordinator, Symposium—Calabresi’s *The Costs of Accidents: A Generation of Impact on Law and Scholarship*, University of Maryland School of Law, Baltimore, Maryland, April 23 and 24 (2004).*

*Co-chair, American Bar Association, Section of Legal Education and Admissions to the Bar, Law School Development Committee, 1999-2001.*

*Vice-Chair, Maryland Alternative Dispute Resolution Commission Task Force, 1998-2000.*

*Chair, Federal Public Defender for the District of Maryland Selection Committee, 1997-1998.*

*Co-Chair, American Bar Association Section of Legal Education and Admissions to the Bar Deans’ Workshop, 1995 and 1996.*

*Chair, State of Maryland Lead Poisoning Prevention Commission, 1992-1994.*

- \* Recommendations adopted as Maryland Lead Poisoning Prevention Act.

*Advisory Board, *The Oxford Companion to American Law*, 1994.*

*Chair, Search Committee for Federal Public Defender for Southern District of West Virginia, 1990.*



*Member, Search Committee for West Virginia Attorney General, 1989.*