



The Duty to Act: Tort Law, Power, and Public Policy

Marshall S. Shapo

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A woman terrified by the threats of a jilted suitor is denied police protection. A workman collapses on the job and the employer is slow to help him. A bully in a bar begins to carry out threats of serious injury to a customer, after the bartender's lackadaisical response. Springing from varied areas of human activity, such cases occupy an important area of the legal battleground called modern tort law. They also provide the basis for a fascinating legal analysis by Marshall S. Shapo.

Tort law is an important social mediator of events surrounding personal injuries. It impinges on many other areas of the law—those dealing with crime, constitutional protections against government officials and agencies, and property rights. Since litigated tort cases often involve brutal treatment or accidents inflicting severe physical harm, this area of the law generates much emotion and complex legal doctrine.

Shapo cuts through the emotion and the complexity to present a view of these problems that is both legally sound and intuitively appealing. His emphasis is on power relationships between private citizens and other individuals, as well as between private persons and governments and officials. He undertakes to define power in a meaningful way as it relates to many tort issues faced by ordinary citizens, and to make this definition precise by constant reference to concrete cases. His particular focus is on an age-old problem in tort law: the question of when a person has a duty to aid another in peril.

In analyzing a large number of cases in this category, Shapo develops an analysis that blends considerations of economic efficiency and humanitarian concern. Recognizing that economic considerations are significant in judicial analysis of these cases, he emphasizes elements that go beyond a simple concern with efficiency, especially the ability of one person to control another's actions or exposure to risk.

These considerations of power and corresponding dependence provide the basis for Shapo's study of the duties of both private citizens and governments to prevent injury to others. Calling on a broad range of legal precedents, he also refers to social science research dealing with the behavior of bystanders when fellow citizens are under attack.

Beyond his application of a power-based analysis to litigation traditionally based in tort doctrine, Shapo offers some speculative suggestions on the possible applicability of his views to several controversial areas of welfare law: medical care, municipal services, and educational standards.

This book was written with a view to readership by interested citizens as well as legal scholars, judges, and practicing attorneys.

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