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12-2014

### Business Torts and Unfair Competition Handbook, 3rd edn

Maurice Stucke

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#### Recommended Citation

Stucke, Maurice, "Business Torts and Unfair Competition Handbook, 3rd edn" (2014). *UTK Law Faculty Publications*. 755.

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DATE DOWNLOADED: Wed Apr 13 14:16:02 2022

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Citations:

Bluebook 21st ed.

Maurice E. Stucke, *Business Torts and Unfair Competition Handbook*, 3rd edn, 37 *World Competition* 606 (2014).

ALWD 7th ed.

Maurice E. Stucke, *Business Torts and Unfair Competition Handbook*, 3rd edn, 37 *World Competition* 606 (2014).

APA 7th ed.

Stucke, M. E. (2014). *Business torts and unfair competition handbook*, 3rd edn. *World Competition*, 37(4), 606-607.

Chicago 17th ed.

Maurice E. Stucke, "Business Torts and Unfair Competition Handbook, 3rd edn," *World Competition* 37, no. 4 (December 2014): 606-607

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Maurice E. Stucke, "Business Torts and Unfair Competition Handbook, 3rd edn" [2014] 37:4 *World Competition* 606.

AGLC 4th ed.

Maurice E. Stucke, 'Business Torts and Unfair Competition Handbook, 3rd edn' [2014] 37(4) *World Competition* 606

MLA 9th ed.

Stucke, Maurice E. "Business Torts and Unfair Competition Handbook, 3rd edn." *World Competition*, vol. 37, no. 4, December 2014, pp. 606-607. HeinOnline.

OSCOLA 4th ed.

Maurice E. Stucke, 'Business Torts and Unfair Competition Handbook, 3rd edn' (2014) 37 *World Competition* 606

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of the European Union (TFEU) to non-collusive oligopoly pricing are addressed. The book can be recommended for a basic course on competition law and policy.

Valentine Korah  
UCL

*Business Torts and Unfair Competition Handbook*, 3rd edn (ABA Book Publishing, 2014), ISBN: 978-1-61438-933-0, USD 199, 466 pp.

Before leaving the US Department of Justice for academia, I was considering what other courses to teach besides evidence and competition law. A highly regarded antitrust lawyer at a Wall Street firm suggested business torts. Business torts, also known as economic torts, commercial torts, or financial torts, do not result in physical injuries to individuals or their property; instead, the torts (many of which are intentional) harm individuals and companies purely economically. Business torts primarily protect a company's or individual's economic interests.

Antitrust and business torts in the United States both arise from the common law on unfair competition. The US Supreme Court continues to treat the Sherman Act as a common-law statute: 'Just as the common law adapts to modern understanding and greater experience, so too does the Sherman Act's prohibition on "restraint[s] of trade" evolve to meet the dynamics of present economic conditions.' *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 899, 127 S. Ct. 2705, 2720, 168 L. Ed. 2d 623 (2007).

But despite their common-law foundation, business torts and antitrust law have diverged over the past forty years. For one thing, the focus differs. Antitrust looks at markets, market power, and the effects of the challenged behaviour on competition; business torts look more at the effect of the challenged behaviour on the plaintiff, i.e., whether the plaintiff is economically harmed. For another, antitrust is very much economics-oriented whereas business torts are not.

So why should business torts be of interest to a competition lawyer? Harvey I. Saferstejn, in his article, *The Ascendancy of Business Tort Claims in Antitrust Practice*, 59 *Antitrust Law Journal* 379, 382 (1991), noted the decline in the US of private federal antitrust claims, and the rise of business tort claims, in particular, tortious interference claims. Why are private plaintiffs in the United States increasingly using state business tort claims in addition to (or instead of) federal antitrust claims? Business torts can be easier to allege, without the need to show antitrust standing and a competitive injury. Business torts also can be easier to prove than antitrust rule-of-reason claims, without the need for prolonged discovery and extensive (and often expensive) economic expert testimony.

So what does the rise of business tort claims mean for competition policy? If conduct is legal (and encouraged) under the federal antitrust laws, should it be legal under state and federal business tort law? Is there an affirmative right to compete? These issues are important in counselling clients. But one problem, as Dyson Heydon, Justice of the High Court of Australia, observed, 'there cannot be any account of the economic tort which is comprehensible without effort.'

Enter the ABA's most recent edition of its *Business Torts and Unfair Competition Handbook*. Aiming to be 'a practical litigator's guide for the handling of the substantive and procedural issues that abound in the intersection of antitrust and business tort law', the ABA handbook delivers. It first discusses the evolution of business tort and antitrust claims, and the extent to which antitrust concepts have been successfully invoked in business tort claims and defences. The handbook next surveys the more common statutory and common law business tort claims (federal law of unfair competition, commercial disparagement and defamation, tortious interference claims, fraud and misrepresentation claims, and misappropriation of trade secrets). After examining the Supreme Court's and lower courts' limits on punitive damages, the handbook then touches on issues that commonly arise in antitrust and business tort litigation, including personal and subject matter jurisdiction, venue, forum selection, removal and remand, issues relating to parallel litigation, and preemption and Commerce Clause issues.

I found the handbook (especially its survey of business tort claims) helpful in advising clients and preparing for my business torts class, and overall, a good resource on the substantive and procedural issues that frequently arise when business torts and competition law intersect.

*Maurice E. Stucke*  
*The Konkurrenz Group*  
*University of Tennessee College of Law*

Daniel Zimmer, *The Goals of Competition Law*, Ascola Competition Law (Cheltenham: Edward Elgar, 2012), ISBN 978-08-579-3660-8, GBP 124, xi + 512 pp.

The 5th workshop on comparative Competition was held by the Academic Society for Competition law (ASCOLA) in May 2010 and the papers have now been published. Twenty-six contributors were chosen on the basis of a call for papers from an outstanding committee consisting of Eleanor Fox, Josef Drexler, Wolfgang Kerber and the organizer of the workshop, Daniel Zimmer. The length of the contributions is variable.