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Incorporating Literary Methods and Texts in the Teaching of Tort Law

Zahr K. Said*

Tort law is frequently taught in terms of economic concepts: efficiency, capture, cost distribution, risk allocation, and so on. Alternatively, or in parallel, a philosophical perspective may wend its way into the first-year tort curriculum through discussions of distributive and corrective justice. Literature, however, is comparatively under-investigated as an arena for tort pedagogy and for first-year courses in the legal curriculum generally.¹ Where literature tends to appear in law school, it most frequently does so in the form of stand-alone law-and-literature classes,² which usually focus heavily on literature.³ For three

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* Assistant Professor of Law, University of Washington School of Law. For introducing me to the study of torts with passion, skill, and humor, I remain grateful to my former professor, Bernard Bell. Lisa Manheim offered astute comments on an early draft. Kerry Abrams, Tom Andrews, Leslie Kendrick, Liz Porter, Zachary Williams, and my Fall 2011 students at the University of Washington School of Law, all contributed to my thinking about how to embed this novel in the standard 1L torts curriculum, and therefore also to my thinking on this piece.

1. Tamara R. Piety, *Something Fishy: Or Why I Make My Students Read Fast Fish and Loose Fish*, 29 VT. L. REV. 33, 33 (2004) (discussing pedagogical impulses behind teaching an excerpt from *Moby Dick* in Civil Procedure, and imagining students responses to be “What has this got to do with the law?”).

2. C.R.B. Dunlop, *Literature Studies in Law Schools*, 3 CARDOZO STUDIES IN LAW AND LITERATURE 63 (1991). There is an interesting literature on parallel pedagogical uses of literature in professional schools. See John R. Dorocak & S.E.C. Purvis, *Using Fiction in Courses: Why Not Admit It?*, 16 LAW & LIT. 65 (2004) (describing the use of fictions in the unlikely arena of accounting education, and describing the rise of “accounting novels” by one enterprising educator in the field).

3. Simon Stern, *Literary Evidence and Legal Aesthetics*, in TEACHING LITERATURE AND LAW

years, I taught such a course at the University of Virginia School of Law. In that class, I continually tried to teach literary texts in a way that juxtaposed them with live legal issues. Still, the emphasis was, by and large, on literature, rather than on law. By contrast, in teaching a first-year tort law course at the University of Washington School of Law this year, I have explicitly used literature to aid and amplify legal analysis. The emphasis has been on law, rather than on literature. Nonetheless, literary texts and methods helped my students investigate how the law conceives of, and expresses, duties and losses among parties. My approach sought both to incorporate and to move beyond what Jane Baron has called, in characterizing aspects of first-generation law-and-literature scholarship, the “humanist”⁴ and “narrative” schools.⁵ Instead, the course drew on several diverse strands of law-and-literature methodology and it incorporated literary texts and methods into discussions of case law and legal policy to produce analysis that is deeply interdisciplinary. Content and methodology, to the extent they can be satisfactorily decoupled, informed my teaching of Torts in separate ways. First, I incorporated a central literary text that accompanied more traditional legal materials. Second, I required students to engage in close reading and I helped them theorize the act of reading itself. By emphasizing the textually mediated nature of the cases—both as a function of common law’s system of authority through analogy, and as a function of the casebook editors’ choices—I hope to have made clear to students that this is a new type of reading they are doing in law school, and that they are learning to think in new ways. In growing acculturated to legal analysis, law students are learning not just a new language, but a new awareness of how and why they read the way they do.

244–45 (Austin Sarat et al. eds., 2011).

4. Jane Baron, *Law, Literature, and the Problems of Interdisciplinarity*, 108 YALE L.J. 1059, 1064 (1999) (internal citations omitted). Baron dubs this mode of law and literature the “moral uplift” school, and characterizes it in terms of

several components: First, lawyers need to know more about human nature—especially about people different from themselves—than they can learn on their own, and literature can be a source of this knowledge. Second, lawyers tend to rely excessively on abstract reason over forms of understanding that are emotional, intuitive, and concrete, and literature can help correct this imbalance. Third, lawyers require training in making moral judgments, and literature can be a part of the necessary moral education.

Id.

5. *Id.* at 1066. By contrast with the humanists (and a third category of law and literature scholars Baron identifies as the hermeneuts), the narrative scholars in law and literature

are far less interested in either literary works or interpretive theory than in attending to the stories told within law by clients, by lawyers, by judges, and by doctrine itself. Narrative law-and-lits are interested in those stories not for moral uplift or interpretive insight but rather for evaluating the stories’ persuasive impact, their evidentiary value, and their epistemological implications.

Id. (internal citations omitted).

I.

TEACHING A NOVEL IN FIRST-YEAR TORTS

The standard torts class at the University of Washington School of Law spans two quarters. In the autumn, in my torts class, a novel served as a focal point for several interrelated themes and problems that recur in tort jurisprudence, including how to determine blame (whom, for what, and to what extent), how to compensate those who suffer (with what, from whom, and why), and how to deter and punish tortious wrongdoing; and how to define the duties both legal and extralegal that lawyers may owe their clients and would-be clients. In the winter quarter, students read a work of nonfiction to raise awareness of the way law's regulation of torts shapes lives. Events and narrative techniques that appear in the text illuminate doctrinal discussions of the law surrounding intentional torts and the jurisprudential distinctions between causes of action sounding in property versus torts. To allow for an in-depth discussion of the details involved with teaching literature as part of a doctrinally based first-year course, this Essay will focus on the novel my students read in the autumn.

A. Incorporating a Central Literary Text: The Sweet Hereafter

Russell Banks's *The Sweet Hereafter* is a novel about a small town rocked by tragedy when a school bus crashes, killing 14 children and injuring others.⁶ The novel provided some of the structure for our opening unit, which introduced basic legal concepts such as negligence, strict liability, and the standard of care. After three introductory reading assignments from the casebook, students read tort cases alongside sections of *The Sweet Hereafter*. The novel itself was based on an actual accident and the chaos it wreaked on a small town in Texas, when a truck driven by a Coca-Cola bottling subsidiary allegedly experienced brake failure and collided with a school bus, sending it into an unbarricaded, water-filled pit.⁷ Twenty-one students died, and sixty others were injured. Many students were trapped inside the poorly designed bus and drowned. Others escaped but suffered serious injuries and emotional trauma. In one case, survivors tormented by the experience turned to drugs and lost their lives in a car accident while driving, high on cocaine, in a new sports car purchased with settlement money.⁸ An interesting dimension to our final discussion thus concerns the litigation this actual accident spawned, and the impact of monetary damages not only on the lives of those who received

6. RUSSELL BANKS, *THE SWEET HEREAFTER* (1991).

7. Lisa Belkin, *19 Texas Students Die When Bus Plunges into Water*, N.Y. TIMES, Sept. 22, 1989, available at <http://www.nytimes.com/1989/09/22/us/19-texas-students-die-when-bus-plunges-into-water.html>.

8. Lisa Belkin, *Where 21 Youths Died, Lawyers Wage a War*, N.Y. TIMES, Jan. 18, 1990, available at <http://www.nytimes.com/1990/01/18/us/where-21-youths-died-lawyers-wage-a-war.html?pagewanted=all>.

compensation, but across the entire community.⁹ Questions of professional ethics abound—at least fifteen lawyers were investigated for potential violations, and numerous lawsuits were filed by lawyers against other lawyers.¹⁰

The choice of novel is particularly apt for multiple reasons, and I can say so with little self-congratulation. The original inspiration for teaching it came not from me, but from a former student doing independent research on the way blame functions in legal and anthropological conceptions.¹¹ The novel features subject matter that clearly relates to the substantive study of torts. It raises ethical questions that ought to be somewhere on the curricular agenda for students in professional schools generally.¹² The book's formal features provide further benefits. Because it divides its narrative into the perspectives of four different characters,¹³ the students “experience” an accident from a diversity of viewpoints. The novel helps unseat—or at least challenge—some of the preconceptions students bring to their study of the law by forcing students to identify with (or reject) a character, and then revisit the issue from an orthogonal vantage-point. Each of the characters' points of view raises some important problem or question for discussion.

B. Using The Sweet Hereafter to Highlight Themes in Tort Law

Accordingly, I used the text to move between several important themes to which this unit introduced students: blame, the standard of care, professional ethics, and the role played by damages in the lives of victims and their surrounding communities. Before our first discussion, I circulated a list of study questions designed to draw students' attention to the ways our readings intersect. I asked them, in sum, to analogize and distinguish between the facts of the novel and the facts in the first case we covered.¹⁴

9. *Id.*

10. *Id.*

11. Zachary Williams, J.D. University of Virginia, 2010, first brought the novel to my attention. We agreed that it wasn't the best novel ever written, but both remained fascinated by the deep philosophical and moral questions it raises.

12. See Tony McAdams, *Blame and The Sweet Hereafter*, 24 LEG. STUD. F. 599 (2000).

13. The novel begins from the voice of Dolores, the driver of the bus that crashes. It continues with the voice of Billy Ansel, the town hero, a widower who is driving behind the school bus the day of the accident, and who loses his twins when the bus crashes. The third voice is that of Mitchell Stephens, the plaintiff's attorney who comes to upstate New York from Manhattan, lured by the potential payoff. The fourth voice is that of Nichole Burnell, the teenage former cheerleader and town beauty who survived the accident, but only just: she has been consigned to a wheelchair for life. The novel concludes through a return to Dolores's voice.

14. See *infra* Appendix I for a list of the study questions. The case is *Hammontree v. Jenner*, 20 Cal. App. 3d 528 (1971) (finding no error in jury verdict for plaintiff, based on negligence standard rather than strict liability, when defendant was an epileptic driver carefully controlling his condition through medication who nonetheless had a seizure that likely caused him to crash his car through plaintiff's bicycle shop, injuring plaintiff and doing damage to the shop).

1. *Class 1: The Form and Content of Dolores' "Testimony"*

In our first class discussing the novel, we spent a great deal of time analyzing the form and content of Dolores's "testimony," probing which aspects seem necessary for the narration (to introduce characters;¹⁵ to set the stage leading up to the accident and to create the emotional tenor;¹⁶ and to offer facts about the road and weather conditions¹⁷). We also noted that Dolores seems to be putting herself on trial,¹⁸ and we recognized that although she is clearly defending her sterling reputation and her forty-five years of driving experience¹⁹ and turning her own potential accountability over and over in her mind, she is also proffering a good deal of habit evidence of her regularly non-negligent driving.²⁰

2. *Class 2: Dolores's Conduct and the Reasonable Person Standard*

The "habit evidence" Dolores provides created a segue to our next class, in which we would discuss the reasonable person standard.²¹ Dolores's perspective on her own conduct makes vivid and concrete what is otherwise an elusive and abstract concept of "due care." The choice between objective and subjective standards of care (and tort law's use of an objective standard for the reasonable person's conduct) prompts confusion. Students tend to think that the terms possess their ordinary meanings, and they protest that the standard couldn't possibly be *objective* if juries can vary from trial to trial, in their *subjective* definitions of appropriate conduct. Reading this novel is helpful in dispelling that confusion. It clarifies that the difference between subjective and objective standards is less one of empirical accuracy or legal consistency, as students are wont to see it at first, and more a difference of perspective. The law is saying, effectively, that it refuses to look out through the eyes of the tortfeasor, and instead will look upon the facts through the eyes of jurors. We

15. Dolores introduces characters as she describes picking them up and seeing their parents send them off to school. See BANKS, *supra* note 6, at 6–12, 12–14, 20–24.

16. Once she has gathered all the children, Dolores talks about the atmosphere on the bus in poignant terms that foreshadow the unfairness of the tragedy visited on these innocent lives. *Id.* at 16.

17. See *id.* at 4–5 (attesting to her habits of keeping the bus "in tiptop condition" and being unwilling to delegate the duty of maintenance to the local mechanics: "I was like the pilot of an airplane—no one was going to treat my vehicle as carefully as I did myself."); *id.* at 17 (describing weather conditions and her plan to put snow chains on her tires); *id.* at 16 (telling the reader that when she passed her own house, she "gave [her husband] a blast of the horn, as [she] always [did]"). Her account plants many seeds of her constancy and adherence to routines.

18. For example, she obsessively reviews her memories of an animal she saw, or thinks she saw, in the road, because she purportedly swerved to avoid it, creating additional risk of accident. The book opens with an expression of her anxiety about the fragility of memory and the limits of perception, discussing whether or not she saw a dog in the snow. *Id.* at 1; see also *id.* at 2, 30–31, 34 (revisiting her doubts about the dog's reality).

19. See BANKS, *supra* note 6, at 17.

20. I defined habit evidence for students and explained its general relevance at trial. Dolores describes precautions that she routinely takes. See, e.g., *id.* at 18–19, 25, 33.

21. During this subsequent class, students continued to read ahead in the novel, but it remained in the backdrop of our discussion.

as readers care about what Dolores says about why she did what she did, and how she did it, but the law cares about what Dolores did and should have done. That the novel examines the conduct leading up to an accident from multiple vantage points underscores tort law's choice of a generalized, third-party perspective rather than a particularized, first-person perspective for its due care analysis.

3. Class 3: *Mitchell Stephens and Professional Ethics in Tort Law*

In the next class, our focus returned to the novel, as we examined Mitchell Stephens's account of himself as a lawyer who crusades for the downtrodden. I paired his section with the Washington State Rules of Professional Conduct, Rule 7.3, which prohibits certain forms of attorney solicitation of potential clients.²² I asked students to imagine the policies behind regulating how lawyers approach tort victims. Readers see in the novel what would clearly amount to legal violations, and Stephens's actions are depicted and judged both through his own eyes and through those of the other townspeople. Rule 7.3, which penalizes pecuniary motive, prompts an inquiry about the feasibility of determining motive, especially in light of what Stephens claims to be his (noble, not solely pecuniary) motives. Students could all too readily see how his actions might seem unethical or actually unlawful. They found it more difficult to bring themselves to credit his altruistic motives. When a lawyer ostensibly seeking to do good profits financially from his good works, first-quarter, first-year law students may tend to become suspicious. This suspicion is especially likely to arise when students read a rule that directs them to consider a lawyer's pecuniary interests and effectively holds those against the lawyer.

Yet in a fundamental way, Stephens positions himself as the quintessential torts lawyer. Stephens says of his own attraction to mass accidents like this one:

[A]nytime I hear about a case like that school bus disaster up there, I turn into a heat-seeking missile, homing in on a target that I know in my bones²³ is going to turn out to be some bungling corrupt state

22. The rule reads, in relevant part:

RPC RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not directly or through a third person, by in-person, live telephone, or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted: (1) is a lawyer; (2) has a family, close personal, or prior professional relationship with the lawyer; or (3) has consented to the contact by requesting a referral from a not-for-profit lawyer referral service.

WASH. PROF. COND. R. 7.3.

23. We discussed whether a lawyer should "know in his bones" that fault will be found when an accident happens, or whether such an "intuition" produces unethical, teleological lawyering. Stephens offers a meaty passage for students to analyze:

So that winter morning when I picked up the paper and read about this terrible event in a small town upstate, with all those kids lost, I knew instantly what the story was; I knew at once that it wasn't 'an accident' at all. There are no accidents. I don't even know what the word means, and I never trust anyone who says he does. I knew that somebody somewhere

agency or some multinational corporation that's cost-accounted the difference between a ten-cent bolt and a million-dollar out-of-court settlement and has decided to sacrifice a few lives for the difference. They do that, work the bottom line They calculate ahead of time what it will cost them to assure safety versus what they're likely to be forced to settle for damages when the missing bolt sends the bus over the cliff, and they simply choose the cheaper option. And it's up to people like me to make it cheaper to build the bus with that extra bolt, or add the extra yard of guardrail, or drain the quarry. That's the only check you've got against them. That's the only way you can ensure moral responsibility in this society. Make it cheaper.²⁴

Stephens may initially seem an unlikely figure to admire (especially when students learn of how tangled the lines of legal representation became in the real town of Alton, Texas).²⁵ But if his actions truly produce industry reforms that make bus riders safer, isn't society better off? Students could see that there are times when in spite of the ensuing financial benefits to lawyers, tort lawsuits end up producing positive social change. As the *New York Times* reported in the wake of the Alton accident:

Though it is easy to condemn the recruiting zeal of the lawyers, as even the lawyers themselves are doing in their attacks on one another, the families say it is virtually the only attention they are still getting. The financial and emotional support that poured into Alton from around the country in the days after the accident soon waned, as other tragedies grabbed the headlines.²⁶

The point, of course, was neither to leave students with a normative impression of plaintiffs' lawyers as champions of the underprivileged, wholly unmotivated by money, nor to paint such counsel as nefarious exploiters of the suffering of grief-addled victims. The point was to ask that students identify preconceptions they bring with them, and test them against literary and legal conceptions of justice they encounter throughout the course.

Additionally, my experience was that *The Sweet Hereafter* gave students a real-world simulation with which to engage with law and economics. Though scholars take economic modes of analysis for granted as one of many potential approaches to legal problems, the first time law students encounter this kind of thinking, it can strike them as callous, impersonal, or unfair. For instance, when they read in the first ten pages of their casebook an excerpted article in which Richard Posner speaks of an "efficient" or "cost-justified" number of accidents,

had made a decision to cut a corner in order to save a few pennies, and now the state or the manufacturer of the bus or the town, somebody, was busy lining up a troop of smoothies to negotiate with a bunch of grief-stricken bumpkins a settlement that wouldn't displease the accountants.

BANKS, *supra* note 6, at 91–92.

24. *Id.* at 91.

25. *See supra* note 8 and accompanying text.

26. Belkin, *supra* note 8.

many students have strong (negative) reactions.²⁷ The intuitive response asks, how can any number of accidents be sanctioned in advance, when they may lead to serious losses and injuries? In other words, how could it possibly be ethical to apply Judge Learned Hand's now-famous negligence calculus? He proposed a formula for determining when negligence should be found, known as $B < PL$, which stipulates that when the burden (B) of implementing risk-minimizing precautionary measures is less than the probability (P) of the risk's occurrence multiplied by the severity of likely losses (L), liability should flow from defendant's conduct when defendant failed to implement preventive measures and harm did in fact arise.²⁸ By the time we read *The Sweet Hereafter*, students have learned that tort law has competing goals, among them fairness, compensation, deterrence, and efficiency. But effectuating tort law's purposes remained up until this point a theoretical mandate for students. Reading this novel gave them a glimpse into how a potential tension in tort law's aims could play out in practice and it made the legal analysis more accessible and clear.

Stephens's pragmatic conceptualization of money damages in the passage above also paved the way for a discussion of the purpose and impact of damages awarded under tort law. In the curricular foreground, students read a case involving a repeat drunk driver, and we discussed the policy goals of compensatory and punitive damages.²⁹ In the backdrop, however, we continued to draw on both the novel and the actual circumstances in Alton, Texas, to query the efficacy of damages and tease out some of the intricate moral dilemmas damages may raise.³⁰ Students mused over whether the fictional town of Sam Dent seemed to have recovered (in spite of receiving no money damages, in a twist at the novel's conclusion). We compared the novel's ending with the real-life tragedies in Alton, Texas, in which compensatory and punitive damages flooded the town, solving some problems but creating new ones.³¹ The question of damages also set the stage for a discussion of contributory negligence we would reach in subsequent classes, helping them frame what sorts of behavior on the part of the plaintiff can, and should, minimize the amount of damages she might be entitled to receive.

27. FRANKLIN & RABIN, TORT LAW AND ALTERNATIVES, CASES AND MATERIALS 7 (9th ed. 2011) (citing Posner, *A Theory of Negligence*, 1 J. LEGAL STUD. 29, 33 (1972)).

28. *United States v. Carroll Towing Co.*, 159 F.2d 169, 173 (1947).

29. *Taylor v. Superior Court*, 157 Cal. Rptr. 693 (1979).

30. See, e.g., Lisa Belkin, *Alton Journal: In Deaths of Children, Lives Are Transformed*, N.Y. TIMES, Dec. 23, 1990 ("The way to find most of the families of the victims now is to look for the homes that are too rich for the neighborhood, standing as cavernous monuments to the dead."). As Belkins reported in an earlier article, the money damages that flowed into the town sowed social dissent. "People who got money and who were at first offered sympathy now complain that the new cars, jewelry and clothes are driving a wedge between them and their relatives, friends and neighbors." Belkin, *supra* note 8.

31. See *supra* notes 8–10 and accompanying text.

C. Cultivating Both Dispassion and Empathy

Though there is clear interplay with doctrinal developments in tort law, a larger purpose of embedding this novel in the Torts curriculum is certainly “humanist” in orientation. We aim to learn from complex representations of those who commit torts, those who suffer injury therefrom, and those who seek to represent the various parties. Examination of these figures affords law students a unique perspective. On the one hand, because the characters are just that—characters, as opposed to parties in an actual proceeding with real-life consequences attached—students are free to distance themselves in some sense; there are no consequences that flow from empathizing or arriving at judgment. Students can afford to be, in a manner that sometimes eludes them early on in the first year, dispassionate, because nothing “real” is at stake. On the other hand, at least when reading most modern literature, students may find themselves much closer to the characters than they might be to clients or opposing parties in a legal proceeding, due to the many forms of conveying characters’ interior lives that real-life clients would, naturally, never be able to convey with the same richness and detail and candor.³² The nature of interior monologue is precisely to grant a privileged perspective into the *truth* of characters’ existences (even when this truth involves self-deception). Thus digging into representations of accidents and their tragic consequences can illuminate for law students the ways the law can, and perhaps should, act when bad things happen.³³

II.

BORROWING FROM LAW AND HUMANITIES: AN INTEGRATED APPROACH

I was delighted to learn that AALS would be putting together a panel on incorporating humanistic methods into the legal curriculum, because integrating humanistic approaches has been central to my teaching law. For the three years prior to teaching torts, I taught a “silo” law-and-literature class, that is, one in which the content and methodology were both explicitly humanistic. Yet I sought at brief moments throughout the course to incorporate discrete points of law, in asylum law, in immigration law, in criminal law, and in torts, to model interdisciplinary analysis for students. Prior to teaching in a law school, I taught in an undergraduate interdisciplinary program, History and Literature, at Harvard University. My courses included a yearlong methodologies course and a seminar on immigration in law and literature. In

32. Modern literature is known in substantial part for the evolution of complex narrative techniques that enable authors to present sophisticated glimpses into the inner workings of their characters. *See, e.g.*, BLAKEY VERMEULE, WHY DO WE CARE ABOUT LITERARY CHARACTERS? 52 (2009); H. PORTER ABBOTT, THE CAMBRIDGE INTRODUCTION TO NARRATIVE (2d ed. 2008); and DORRIT COHN, TRANSPARENT MINDS (1978).

33. Scholarship in other pedagogical contexts has argued that fictional storytelling is uniquely suited to honing valuable critical thinking skills by virtue of its immersive qualities. Dorocak & Purvis, *supra* note 2, at 69.

my seven years of teaching in interdisciplinary fields at various institutions, both with respect to law students and to undergraduates, it has been my experience that the most rewarding moments for students consistently correlated with the moments when law truly interwove with literature, rather than when literature was taken merely to be reflecting law. The moments of deep integration are where the pedagogical benefits of interdisciplinary methods lie.

In addition to the focus on literary texts as a source of amplification for legal analysis, therefore, my torts course relies informally but regularly on literary methodology. Methods include close reading the facts of a case: closely comparing the recitation of facts in the majority with the dissent's version of events or the story put forth by the parties, and detecting significant rhetorical choices and noteworthy shifts in tone or style. We emphasize, through this style of reading, the idea that "law and legal language are always bound up in ethical choices."³⁴

Finally, I place considerable attention on the status of the case (or statute) as a text. I make clear to students that their casebooks' cases are heavily edited, and I talk to them about issues that arise in comparing the excerpts they have read with the full case. Sometimes, I assign the full case, when extensive comparison illuminates the issues. These teaching methods, by themselves, may not seem like such a departure from the general approach to teaching case law in the Langdellian tradition. However, I focus my students on the strategies attendant on their reading as though I were introducing them to theories of reading familiar to any advanced literature or history major from their undergraduate days. In other words, we treat cases like primary sources and think about the ways in which they both mediate and have been mediated. Accordingly, their final exam consists of two essays. The first is a standard "issue-spotter" designed to test students' abilities to make fine distinctions based on small factual differences; draw on a broad field of precedents; and analogize and distinguish based on doctrinal, philosophical, and economic rationales we have discussed throughout the course. The second involves close reading a case that students have not yet read for the class, but that draws on issues of law we covered together. It requires that students engage with the opinion as a text, and analyze the strength and substance of the legal reasoning, the framing of the argument and the court's use of precedents, the appeal to various authorities and the reliance on extralegal rationales, and the rhetorical devices used to bolster its own authority.

Well before students encounter theories of textual interpretation in their Constitutional Law courses, therefore, students will have a sense of what it means to choose to read a text in a particular way. They emerge from Torts with an understanding—admittedly a very general understanding—of textual

34. Richard H. Weisberg, *Three Lessons from Law and Literature*, 27 *LOY. L.A. L. REV.* 285, 286 (1993).

foreground and background (instantiated in theories of formalism, historicism, structuralism, cultural studies, and so on). They understand that the way we choose to read can steer us to certain legal outcomes, and that how we decide how we read may be just as important as how we do so.

CONCLUSION

The main focus of this Essay has been on the potential value of integrating a literary text into a first-year course. Nonetheless, my emphasis in class emphatically includes not just literary content, but literary methods. In framing the value of drawing on literary methods in an organic interdisciplinary way, it is helpful to analogize to an existing debate in the legal literature over how professional ethics should be taught. The analogy between the teaching of ethics and the teaching of interdisciplinary subjects shows how in both cases, areas of interest deemed to be beyond the law are framed as topics that stand apart from the real stuff of legal education. Yet in both cases, law students stand to benefit a great deal from pedagogical approaches that emphasize the way interdisciplinary approaches can operate more effectively *within* the law than alongside it. Deborah L. Rhode pioneered the “pervasive” method of legal ethics in response to her belief that a single-course requirement in ethics left law students underserved and underprepared.³⁵ Rhode argues that “[t]he primary rationale for addressing ethical issues throughout the curriculum is that they arise throughout the curriculum. In law, professional responsibility considerations figure in all substantive areas.”³⁶ I consider the same to be true of humanistic considerations and methodologies. Professors who are so inclined will find numerous ways to draw attention to theories of authorship, reading, or interpretation in teaching their legal subject matters. Literary methods can augment students’ understanding of texts, and perhaps the intentions of parties who created them, and literary texts have the capacity to deepen students’ understanding of the importance of the legal question at issue. True interdisciplinary thinking empowers students to try on different perspectives, to wield different tools, and to surprise themselves with fresh insights.

To be clear, I am not suggesting there is no value to a stand-alone law-and-literature class, and indeed, Rhode argues for a combination of a required course in ethics and adoption of the pervasive method of teaching ethics. Yet I would urge legal educators to think about the value they can offer students when they adopt an integrated approach to law and the humanities. Grounding larger humanistic concerns in substantive law shows students how relevant these approaches are to what they are learning, and what they may be doing in practice for the rest of their lives. Weaving humanistic elements into the legal curriculum provides the benefits of a stand-alone law and literature course,

35. Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31 (1992).

36. *Id.* at 50.

such as promoting empathy, sharpening critical thinking skills, and sensitizing law students to the difference between text and context. Moreover, because these moments of interplay with the humanities in law courses occur as a function of organically arising legal issues, students are likelier to view them as methods they can transport into practice. Indeed, they may be likelier to do so. Instead of teaching law and literature as a course that feels like a curricular holiday, in other words, law and literature may be interwoven at opportune moments in general law courses, to make our students sharper readers, and better lawyers.

APPENDIX I

STUDY QUESTIONS FOR *THE SWEET HEREAFTER* DISCUSSION

1. What do you think are the purposes of Dolores's telling her story? Both narratively (that is, for the structure of the book) and psychologically or personally (for the character herself)? Put another way, why do you think Russell Banks begins with Dolores? How do the ways in which she tells her story further those purposes?
2. In what ways does Dolores's version of events resemble legal testimony, and in what ways does it strike you as different?
3. How do law and literature differ, for the purposes of thinking about fault in a tragedy such as this one? How are they similar?
4. Imagine a fictionalization of *Hammontree v. Jenner* [the personal injury case with which the course begins]³⁷ How you think Jenner's account might sound? Test your intuitions against descriptive and normative theories of tort law we've been exploring. How might the case have felt different if he had
 - a) injured a child instead of Ms. Hammontree;
 - b) injured several children;
 - c) been driving a school bus? Under (c), who else might have been found at fault?
5. What does the text suggest about
 - (a) the existence and kind of duty Dolores owed;
 - (b) to whom she might have owed it;
 - (c) her standard of care; and, lastly,
 - (d) whether she breached her duty?
6. Does it affect your reading of the novel to know that it was based on a true story? What ethical or legal implications might flow from that fact?

37. 20 Cal. App. 3d 528 (1971).

