

TORTS I – Fall 2020
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In the fall semester (Torts I – 3 credits) we will cover:

- I. Development of Liability Based on Fault (historical intro.)
- II. **INTENTIONAL TORTS**
 - a. Intent/Reckless/Negligent/Innocent conduct
 - b. Battery (including transferred intent)
 - c. Assault
 - d. False Imprisonment
 - e. Intentional Infliction of Emotional Distress (IIED)
 - f. Trespass to Land
 - g. Trespass to Chattels
 - h. Defenses to intentional tort claims
 - i. Consent
 - ii. Self defense
 - iii. Defense of property
 - iv. Necessity
- III. **INTRODUCTION TO DAMAGES**
 - a. Compensatory Damages
 - i. Special damages
 - ii. General damages
 - b. Punitive Damages
 - c. Wrongful Death Damages
- IV. **NEGLIGENCE**
 - a. The Elements of a Negligence Claim
 - i. Duty (brief overview – to be studied in-depth in Torts II)
 - ii. Breach
 - iii. Causation (brief overview – to be studied in-depth in Torts II)
 - 1. Causation-in-fact
 - 2. Proximate cause
 - iv. Damages
 - b. Standard of care & exceptions
 - i. Mental impairment
 - ii. Physical impairment
 - iii. Children
 - iv. Professional negligence (malpractice)
 - v. Highly skilled but non-professional actors
 - c. Proving negligence (breach of duty)

- i. Cost/benefit balancing (“Is Benefit > Probability X Loss?” formula from *Carroll Towing* case)
 - ii. Safer alternatives (*T.J. Hooper* case)
 - iii. Violation of rules or standards
 - iv. Evidence of custom/role of expert testimony
 - v. Violation of criminal statute (Negligence *per se*)
 - vi. Circumstantial evidence of negligence (*Res Ipsa Loquitur*)
 - d. DUTY
 - i. Risk creation
 - ii. Special relationships that impose a duty
 - iii. No duty or limited duty in special injury situations
 - 1. Negligent infliction of emotion distress (“NIED”)
 - 2. “Economic Loss Doctrine”
 - 3. Lack of privity
 - iv. No duty or limited duty (immunities) because of defendant’s status
 - 1. Charitable immunity
 - 2. Family immunity
 - 3. Sovereign immunity
 - 4. Employer immunity (Workers’ Compensation)
 - 5. Limited duty of landowners to licensees and trespassers
- V. [Time-permitting at end of semester]
INTRODUCTION TO CAUSATION CONCEPTS (“Causation-in Fact” and “Proximate Cause”)

Course Materials

The required casebook is Torts: Cases and Materials, by Prosser, Wade & Schwartz (13th ed.), which may be supplemented with Powerpoints or handouts during the semester.

Reading/Briefing Assignments for Class

The reading assignment for the first class will also be posted to Bridges. It is: Harvard Law School “Zero-L” online modules on “How to Read a Case” (all parts 1-10), “Introduction to Tort Law” (both parts I and II), and “The Stages of Civil Litigation.” (It is highly recommended that you utilize the brief quizzes and flashcards that follow the modules.) Also, pp. 1-9 of the Prosser, et al, Casebook. (For students who want to work ahead on your case briefing, we will be proceeding sequentially through the casebook.)

At the close of each class, the reading for the next class (or two classes) will be announced. We will try to cover all the assigned cases in each class; however, adjustments will, of necessity, be made depending on our actual progress.

Skills and Expectations

A. Professionalism

- a. Attend class regularly
- b. Be punctual
- c. Prepare thoroughly (brief all assigned cases and be ready to respond if called upon)
- d. Be able to engage in self-directed learning, drawing inferences, and self-assessment. “Weekend Workout” questions (discussed below) are a useful, low-stakes tool to figure out how you’re doing.
- e. Take advantage of any review sessions provided by your Teaching Assistant and participate in after-class discussions offered by your Professor.
- f. Act with integrity, civility and maturity throughout this course and your entire law school experience. The study and practice of law necessarily deal with uncomfortable subjects. We all bring prior experiences, biases, and prejudices into consideration of these subjects, but all students of the law must cultivate a degree of reserve and objectivity which will allow them to consider and advocate different sides of issues. This is the beginning of your developing an impeccable reputation for mutual respect and integrity among your faculty, staff and peers.

B. Oral Communication and Interpersonal Skills

- a. Communicate precisely. Attorneys use what may at first appear to be fussy language – but that fussiness is not without an important purpose: to accurately and efficiently communicate concepts to others schooled in the law. From the outset, you may be asked in class to be more precise in your question, comment, or response. “Sloppy layperson” (a Professor Chung word) phrases like “I feel,” “It seems,” or “I believe” may be useful in undergraduate discussions, but they rarely advance legal analysis.
- b. Listen attentively and proactively. Listen to my questions and prepare your own answer, even if you’re not the student “on the hot seat.”
- c. Interact effectively and sensitively with a broad range of people having differing backgrounds and philosophies.
- d. Develop public speaking skills
 - i. Class is a safe space in which to develop your speaking skills
 - ii. Go forth and make mistakes boldly (it is a vital part of the learning process)
 - iii. The only sin is not being prepared
 - iv. Consider selecting the time to speak by volunteering to answer a question

C. Testing/Grading

- a. “Weekend Workouts” - Starting around the second week, I will email you a few multiple-choice questions intended to assess how you grasped material covered during the week. You will send the answers to my Teaching Assistant by midnight Sunday night. These are designed to be “low-stakes” quizzes, with your grade on all Weekend Workouts counting for only 5% of your final grade. They

are intended to let you know if you need to seek help from the Teaching Assistant, Professor, or Academic Support.

- b. Mid-Term Exam – In early October, you will take a 90-minute closed-book exam. This will count for 20% of your final grade.
- c. Final Exam – In late November, you will take a three-hour closed-book final exam. This will count for 65% of your final grade.
- d. Professionalism – Professionalism (including, especially, preparedness for class – see above) will count for 10% of your final grade. *Everyone will start with a full complement of ten percentage points for professionalism* and only be “dinged” points due to professionalism infractions. (Please note that a “wrong answer” in class is not a violation; it is *expected*. The only “participation” infraction that would result in point loss is unpreparedness to participate.)
- e. In summary, final grade will be based upon:
 - i. Weekend Workouts: 5%
 - ii. Mid-Term: 20%
 - iii. Final Exam: 65%
 - iv. Professionalism: 10%