

BACKGROUND MEMO #1: COURSE OVERVIEW - FALL 2021

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I. COURSE MATERIALS

The required casebook is Torts: Cases and Materials, by Prosser, Wade & Schwartz (Foundation Press, 14th ed.), which I will supplement with other materials throughout the semester. I am keenly aware that law books are expensive, so I have no required additional texts, study aids, or other supplementary materials. However, some students have found Abraham, The Forms and Functions of Tort Law (Foundation) to be useful. There is a 5th edition, but the 4th edition may be available at a lower price point and is just as useful. Also, check with your Teaching Assistants (TAs) for their advice (see below).

II. TEACHING ASSISTANTS

Your learning can be greatly enhanced by taking advantage of the availability of my Teaching Assistants (aka “TAs”), Arianna Gabriel (agabriel038@g.rwu.edu) for Section A and Colten Erickson (cerickson781@g.rwu.edu) for Section C. They were top students in Torts I last fall, so they are knowledgeable about doctrine, developed strong study habits, and wrote excellent exams. Plus, they know how to excel in my class and law school more generally. They are available to discuss doctrine, how to write effective case briefs, how to put together a course outline, and how to do well on your various assessments. They also will hold a weekly “Study Session” to answer your questions (TBA), as well as being available via email. In short, they are my “force multipliers,” and I encourage you to take advantage of their wisdom early and often.

III. CLASS PREPARATION AND PROCEDURES

Learning the law is akin to learning a new language so before our first class session I encourage you to participate in the “Zero-L” program that is designed to familiarize you with some basic terms and concepts that will come up as a 1L. These materials will make the first few weeks of your law studies less stressful.

I teach a highly interactive class, featuring Q&A between me and the students who are designated as “on call” for the particular class session. On Fridays, I will identify who is “on call” for the following week as well as the materials that I plan to cover. I expect all students to prepare all of the materials, whether or not “on call;” you will struggle if you don’t keep up with the material.

Close reading is perhaps the single most important skill needed to survive as a law student and thrive as a lawyer. Most class sessions will focus on materials in the casebook, which typically involve an appellate decision followed by a number of “Notes and Questions;” (“N&Qs”). Treat each assigned reading as if you were studying a sacred text.

In addition to materials in the casebook, for some class sessions I will provide “Background Memos” or other “Supplemental Materials,” which you must also read closely.

While I will from time-to-time lecture—typically to set up or wrap up a topic—the bulk of class time will be Q&A. As you prepare for class, try to anticipate my questions and prepare your answers in advance and be alert to the fact that the N&Qs may offer clues to what questions I am likely to ask. Here are some important tips:

- 1. Define all terms and concepts.**
- 2. What authority cited for the rule or doctrine?**
- 3. What policies that support the rule or doctrine?**
- 4. What are the counter-arguments that undercut the wisdom of the rule or doctrine? (These can often be found in a dissenting opinion or a N&Q.)**
- 5. Identify whether the rule or doctrine is consistent with other rules that we have previously discussed, and if it is different, why the distinction is justified.**

Friday is also when I will send out the Weekend Workout (discussed below in section on “assessments”).

I do not plan to use Bridges once the semester starts **be sure to get in the habit of regularly checking your email;** I often write emails to clarify something or add an

important comment that came up in after class discussions. I may also occasionally tinker with the reading assignment via email.

Please do not interrupt the flow of the class with questions or comments. After 38(!) years of teaching Torts, I am pretty good at anticipating what material is likely to raise questions and so I will often reteach a case or concept, but from a slightly different perspective so be patient! When I think we have covered a topic adequately, I will ask if there are any questions; at such points, feel free to inquire (or catch me after class or via email).

If the COVID situation permits, I encourage you to take advantage of “Hang Time,” which occurs immediately after each class session. It is an excellent opportunity to ask the questions that occurred to you during class but that were not answered, to seek clarification, or to pursue topics in more breadth and depth. But Hang Time is not limited to questions raised by the materials: you may be interested in something in the news or have questions about summer clerkships or the upper-level experience, and I am generally glad to discuss almost any topic with Hang Timers. **Hang Time is totally voluntary**, but based on past experience many students consider it a good opportunity to nail down comprehension, as well as to chat about other aspects of the amazing 1L experience.

Also, I can book a time for a private appointment and I am always glad to correspond via email, and at any time; I try to respond promptly, even on weekends, but always remember that Colten and Arianna are also terrific resources.

Finally, I am Old School, and I generally refer to my students by their last names, so I have two requests: first, if it would help me get the correct pronunciation, please send me a phonetic version of your last name, and second, if you would prefer that I use “Mx.,” rather than “Mr.” or “Ms.,” please let me know.

IV. IV. LEARNING OUTCOMES FOR THIS COURSE

By the end of Torts I, students should be able to:

1. Identify, explain, and apply basic and advanced Torts concepts.
2. Explain the role of the civil justice system in resolving conflicts.

3. Be prepared to perform well on the various course assessments.
4. Be prepared to succeed on the Torts portion(s) of the bar exam.
5. Display Legal Analysis Skills
 - a. Analyze and form sound judgments on a range of Torts issues.
 - b. Identify and synthesize Torts principles by engaging in a close reading of cases.
 - c. Identify the legal rules and facts necessary to analyze Torts issue(s) in an actual case or hypothetical problem.
 - d. Assess the strengths and weaknesses of potential arguments and counter-arguments involving Torts issues.
 - e. Understand the types and relevance of various “primary” legal authorities that bear upon Torts issues, including case law, constitutional provisions, and statutes, as well “secondary” authorities, such as Restatements and treatises.
6. Display Legal Writing Skills
 - a. Be able to brief cases effectively, and over the course of the semester, expeditiously.
 - b. Be able to provide clear and concise evaluations of hypothetical cases.
 - c. Analyze issues in a closed-book, timed exam context and present that analysis in an effective manner.
7. Other Important Skills or Values to Develop in this Course
 - a. **Professionalism**
 - i. **Follow the Student Code of Conduct, in all of its particulars.**¹
 - ii. **Always act with integrity and civility, even if something is not covered by the Student Code of Conduct. From Day 1 you are building your professional reputation with faculty, staff, and**

¹ The Student Code of Conduct (aka “Honor Code,”) can be found in the [Student Handbook](#).

colleagues, and a good reputation is essential for professional success, while a poor reputation harms you and your clients.

iii. **Prepare for class thoroughly.**

iv. **Attend class regularly.²**

v. **Be punctual. I take a dim view of tardiness, as will judges, clients, and my colleagues.**

b. Be able to engage in self-directed learning, reflection, and self-assessment. This skill is enhanced when you submit your answers to the “Weekend Workouts” (discussed below). Also, take advantage of the review sessions provided by your Teaching Assistant and participate in after-class discussions with your professor.

c. Oral Communication and Interpersonal Skills

i. Communicate precisely. A lot rides on whether lawyers make their points clearly and this can be a challenge as you learn a new language, so be prepared for me to ask the “please clarify” question.

ii. Listen attentively and proactively. **It is VERY important that you engage in “active learning” during class, that is, listening closely to my questions and preparing your own answers even if you are not being called upon.** This is a sure-fire way to maximize the value from your preparation and class attendance.

iii. Interact effectively and sensitively with a broad range of people with differing backgrounds and philosophies, and take advantage of opportunities to collaborate with an array of your classmates and, where possible, with upper-level students.

8. Develop public speaking skills.

a. Law school may be the first context in which you have been required to speak in front of a large group of people. Class is intended to be a relatively safe space for you to develop your public speaking skills; an actual client is not depending on your performance and most of your classmates are at the same level of development as you are. You will not be graded for

² The attendance policy can be found in the [Student Handbook](#).

your class performance in Torts but becoming a competent public speaker is important regardless of whether you end up practicing in a courtroom or across the table in a negotiation.

b. It is perfectly natural to be nervous about being called upon in class. One way to build confidence is to take advantage of opportunities to volunteer—YOU get to select the time to speak and I will often ask for volunteers beyond those who are “on call.” Also, you can enhance your confidence by taking advantage of opportunities to engage with your TA and teachers outside of class.

c. **RESPECT:** Lawyers often discuss sensitive matters, about which people of good faith may disagree but there are norms of engagement that must be followed: the rules that regulate lawyers’ conduct specifically prohibit “harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.” The same goes in class.

Similarly, you should be prepared for in-class discussions that implicate race, gender, sexual orientation, or some other potentially contentious matter. You need to be respectful in your words, tone, and manner; you will undoubtedly disagree with your classmates (and even your TAs and professor!); that comes with the territory, but disagreements must be expressed respectfully. Being an advocate is not a license to be a jerk, and a classroom is not a barroom, so respect for decorum is essential.

V. “FORMATIVE” AND “SUMMATIVE” ASSESSMENTS

At the end of the second week of classes, and every Friday thereafter, I will email you your “Weekend Workout” (aka “WW”), which will consist of a Multiple Choice (“M/C”) question or two, or a Short Answer question or two. WWs are “formative assessments” that help you improve comprehension, application, analysis, and synthesis of doctrine. They also provide concrete data on how you are doing. WWs are not designed to cause undue stress, so they are “low stakes”: a student can earn a zero or one on each question, and at the end of the semester the

grade for all Weekend Workouts will represent only 5% of the final grade. Still, this is a good way to chart your progress.

In mid-October, you will have a graded midterm, worth about 25% of your final grade. Like the final exam, and the bar exam, the mid-term will be closed book and timed.

The final component of your grade (about 66%) will be based upon your performance on a timed, closed-book final exam in December.

There is no grade for class performance, but active participation is an important part of the learning process and is encouraged, especially if you want me to serve as a reference for externships and/or jobs down the road.

Final grades are assigned according to the guidelines set out in the Student Handbook.

VI. WHERE WE ARE

As you embark on what I hope is a long and meaningful career in the law I urge you to take a moment to reflect on the historical significance of the beautiful piece of land upon which RWU SOL is located.

For generations before the arrival of English colonists, the Pokanokets, the principal tribe of the Wampanoag Confederacy, lived in Sowams, what is now the town of Bristol and surrounding areas. In the 1670s, colonists in what is now Massachusetts pushed to the south; conflicts arose that eventually resulted in King Phillip's War (1675-76).

Both sides experienced great losses and the hostilities largely ended with the killing of PoMetacom ("King Phillip") at his home on Mt. Hope, about a mile north of campus. About 40% of the Wampanoags, including their Narragansett, Pocasset, and Nipmuc allies, were killed in the war and many of the survivors were enslaved by the victors or sold into slavery elsewhere.

Despite the adversity then, and for centuries to follow, these first inhabitants of our area have survived and managed, despite steep odds, to continue to reflect a proud culture that all of us who have come later should know acknowledge, understand, and respect. If you would like more information, check out

<https://pokanokettribe.com/clans> and
<http://sowamsheritagearea.org/wp/pokanoket-tribal-history/>.

For those with even deeper interest, RWU Law has a chapter of the American Indian Law Student Association, which has exciting programs on tap for the fall semester. For more information go to aisla@g.rwu.edu.

See you soon!

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