

TORTS I – Fall 2018
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In the fall semester (Torts I, 3-credits) we will cover:

- I. **BASIC TORTS PROCEDURE**
- 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
 - F. Trespass to Land
 - G. Defenses to Intentional Tort Claims
 1. Consent
 2. Self Defense
 3. Defense of Property
 4. Necessity
- III. **REMEDIES FOR TORTS**
 - A. Compensatory vs. Punitive Damages
 - B. Converting Tort liability into payouts (introduction to Vicarious Liability)
- IV. **THE NEGLIGENCE CAUSE OF ACTION**
 - A. Why require proof of negligence for unintended injuries?
 - B. The basic Standard of Care and exceptions:
 1. Mental handicaps
 2. Physical handicaps
 3. Kids
 4. Professional negligence (“malpractice”)
 5. Highly skilled but “non-professional” actors
 - C. Proving negligence (“fault” or “breach of duty”)
 1. Cost/benefit balancing (the “BPL formula” from US v. Carroll Towing)
 2. Untaken Safer Alternatives

3. Choosing between rules and standards
4. Evidence of custom/expert testimony
5. Violation of criminal statutes (Neg Per Se)
6. Circumstantial evidence of negligence/Res Ipsa Loquitor

D. Duty

1. Risk creation and its variations
2. Special relationships that impose a duty w/out risk creation
3. No Duty or Limited Duty because of the type of injury P suffers
 - a. Negligent Infliction of Emotional Distress
 - b. “Pure Economic Harm”
 - c. Lack of privity
4. No Duty or Limited Duty because of Ds status (aka immunities)
 - a. Charitable Immunity
 - b. Family Immunity
 - c. Sovereign Immunity
 - d. Employer Immunity (Workers Comp)
 - e. Limited Duties of landowners to Licensees and Trespassers on the land
5. Special Duty problems associated with alcohol, DES, and asbestos

Course Materials

The required casebook is Torts: Cases and Materials, by Prosser, Wade & Schwartz (13th ed.), which I will supplement with handouts throughout the semester. I have no specific recommendation for study aids or other supplementary materials. Check with your Teaching Assistants for advice.

Learning Outcomes for this Course

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

A. Doctrinal & Substantive Knowledge

1. Explain the role of the civil justice system in resolving conflict in the United States.
2. Identify, explain, and apply the basic and advanced Torts concepts available to rectify personal injuries.
3. Prepare themselves to succeed on the Torts portion(s) of the bar licensing exam.

B. Legal Analysis Skills

1. Analyze and form sound judgments on a range of Torts issues.

2. Identify and synthesize Torts principles by engaging in a close reading of cases.
3. Identify the legal rules and facts necessary to competently analyze torts issue(s) in an actual case or hypothetical problem.
4. Assess the strengths and weaknesses of potential arguments and counter-arguments involving Torts issues.
5. Differentiate the types and relevance of various legal authorities bearing upon Torts issues, including constitutional provisions, statutes, and case law, as well as Restatements and other secondary authorities.

C. Writing Skills

1. Be able to effectively brief cases.
2. Be able to provide clear and concise evaluations of hypothetical cases.
3. Analyze issues in a closed-book, timed exam context and present that analysis in an effective manner.

V. OTHER SKILLS OR VALUES TO DEVELOP IN THIS COURSE

A. Professionalism

1. Attend class regularly.
2. Be punctual.
3. Prepare thoroughly.
4. Be able to engage in self-directed learning, reflection, and self-assessment. This will be done when you submit your answers to the “Weekend Workout” (discussed below). Also, take advantage of the review sessions provided by your Teaching Assistant and participate in after-class discussions with your professor.
5. Act with complete integrity and civility throughout this course and your entire law school experience. This will provide the solid foundation necessary for the successful practice of law. Also, strive to have an impeccable reputation for integrity among your faculty, staff, and peers.

B. Oral Communication and Interpersonal Skills

1. Communicate precisely. You may be asked in class to be more precise with your language and rephrase your question, comment, or response.
2. Listen attentively and proactively. It is important to engage in “active learning,” that is, listening closely to my questions and preparing your own answer even if you are not the student being called upon.
3. 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.
4. 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 safe space in which to develop your public speaking skills because an actual client is not depending on your performance and because most of your classmates are at the same level of development as you. You will not be graded for your class performance in Torts.
- b. It is perfectly natural to be nervous about being called upon in class, so consider selecting the time to speak by volunteering to answer a question. Also, take advantage of opportunities to engage your TAs and teachers outside of class.

VI. **“FORMATIVE” AND “SUMMATIVE” ASSESSMENTS**

Starting the end of the second week of classes, I will email you a question or two (the “Weekend Workout”). Weekend Workouts are “formative assessments” that help improve comprehension, application, analysis, and synthesis of specific doctrinal issue(s). They also provide concrete data on how a student is doing. Weekend Workouts are designed to be “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 5% of the final grade.

In early October, you will have an ungraded midterm in Torts. Like the final exam in Torts, and the bar exam, the format for the mid-term will be closed book and timed.

The final component of your grade will be based upon your performance on a timed, closed-book final exam in early December. There is no grade for class performance.

The assignment for the first class is pp. 1-4 from the casebook; **also** be prepared to define the following terms, which provide the procedural context in which we will learn Torts doctrine:

BASIC TORTS PROCEDURE

I. Pleading Stage

- a. Complaint
- b. Motion to Dismiss for Failure To State a Claim (“MTD”)
- c. Answer

II. Pre-Trial Discovery

- a. Depositions
- b. Interrogatories
- c. Motion for Summary Judgment (“SJ”)

III. Trial

- a. Voir Dire
- b. Opening Statement
- c. Direct/Cross-examination of Witnesses (“fact witnesses” v. “expert witnesses”)
- d. Motion for a Directed Verdict (or “Judgment as a Matter of Law” or “Nonsuit”) (“DV”)
- e. Closing Argument
- f. Jury Instructions, including “Burden of Proof” and “Compensatory Damages”
- g. Verdict (liability/damages)

IV. Post-Trial

- a. “Judgment as a Matter of Law” (“JNOV”)
- b. Motion for a New Trial (“NT”)
- c. Issues appropriate for appeal:
 - i. How the trial judge handled “dispositive motions” (MTD/SJ/DV/JNOV)
 - ii. The trial judge’s evidentiary rulings, including the requirement for “Contemporaneous Objection” and the “Harmless Error Rule”
 - iii. The trial judge’s jury instructions