

TORTS

LAWS #529, § 2

Fall Semester 2024

Mondays, Wednesdays, and Thursdays 10:45-12:05 p.m., Room 288

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INTRODUCTION AND COURSE OBJECTIVES

Tort law is a system of civil (non-criminal) liability that allocates legal responsibility for losses not based in contract—in other words, tort law concerns the legal duties we owe to each other as members of society. You are no doubt familiar at some level with the tort system, if only by viewing advertisements by lawyers who solicit injured clients. We concentrate on three broad categories of torts: liability based on wrongful conduct performed intentionally; liability based on negligence; and liability without fault (strict liability), usually in the context of injuries caused by defective products. Intentional torts will occupy roughly the first 20% of the course; negligence (the most important subject in Torts) the next 65%; and strict liability the remaining 15%.

It should be no surprise to you that Torts is an important subject, and one that leads to a huge amount of litigation over auto accidents and medical malpractice, for example. Tort liability not only results in great transfers of money from defendants (and defendants' insurance companies) to plaintiffs; it also affects the behavior of everyone who wants to avoid liability in the future.

Perhaps more surprising, because less frequently in the news, is the fundamental importance of the policy judgments that are in the background of tort law. For example, while we easily see the benefits of encouraging people to be safe and avoid injury, sometimes fear of liability can cause people to avoid socially beneficial conduct. Thus, tort law involves an attempt to weigh the interests in favor of liability against the interests opposed to liability, leading to a host of questions, such as the following: What injuries should be compensable? What conduct should lead to liability? Who should bear the risk of harm when all parties are equally at fault (or when nobody is at fault)? Should the law try to shape future behavior or provide compensation for past conduct? Both? And because tort law is mostly judge-made, Torts allows us to discuss the proper role of the judiciary (as opposed to the legislature or administrative agencies) in setting these policies.

The objectives of this course are twofold. First, you need to learn doctrine (legal rules). Tort liability requires the plaintiff to satisfy certain “elements” to present a valid claim. The elements differ depending on which tort is at issue, and you need to know the elements for the torts that we

will be studying. Likewise, certain defenses may be available to defendants, depending on the tort, and you need to know those rules as well. Sometimes the law differs from jurisdiction to jurisdiction. You will need to know the law as it has developed through the British common law and as formulated in the “Restatement (Second [and sometimes Third]) of Torts,” keeping in mind that there are variations.

Second, you need to appreciate the reasons for, and implications of, the doctrine. That is, why is the doctrine shaped the way that it is, and what does the doctrine mean for the types of cases that will lead to liability? Understanding the principles behind tort law will allow you to make arguments in close cases. Law is not just memorization. The more important skill is applying legal knowledge to create persuasive arguments within the constraints established by existing law. Thus, the second objective of the course is for you to be able to harness the principles behind the law and use them to help your future clients.

TEXTS

The required texts are as follows:

- VICTOR E. SCHWARTZ ET AL., PROSSER, WADE, AND SCHWARTZ’S TORTS (Foundation Press, 15th ed. 2024), ISBN 979-8-89209-229-6 (Casebook). Be sure that you obtain the Casebook Plus version. Enroll in the Casebook Plus course by signing on to eproducts.westacademic.com and using this code: CRSE-X554-94RY-7WRF-ZJ6R.
- ANITA BERNSTEIN, QUESTIONS AND ANSWERS: TORTS (Carolina Academic Press, 5th ed. 2023), ISBN 978-1-5310-2330-0. You can use the book independently as a study aid, but we will also discuss several of the book’s questions in class as review exercises.

I recommend (but do not require) that you purchase one of the following three study aids:

- MARSHALL S. SHAPO, PRINCIPLES OF TORTS (West Academic, 4th ed. 2016), ISBN 978-0-314-28562-1.
- JOHN L. DIAMOND ET AL., UNDERSTANDING TORTS (Carolina Academic Press, 7th ed. 2023), ISBN 978-1-5310-2343-0.
- JOSEPH W. GLANNON, EXAMPLES AND EXPLANATIONS: THE LAW OF TORTS (Aspen Publishing, 6th ed. 2020), ISBN 978-1-5438-0769-1.

CLASS DISCUSSIONS

I use a mix of Socratic dialogue, lecture, and volunteer participation. Class discussions focus on identifying and critiquing the arguments that were offered, or that could have been offered, in the cases. We will often use problems and hypotheticals to develop your ability to apply caselaw, to think about the language and implications of the cases we read, and to construct arguments when

precedent leaves issues unsettled. Where problems are included within an assignment, work through them on your own or in groups in advance of class and/or as a way of preparing for the final exam. I am happy to read written responses to the problems and to discuss your responses.

Classes will be recorded on Zoom and the links will be posted on TWEN. The recordings will be deleted after 30 days or on the day of the exam, whichever is earlier. Students may not distribute, save, or copy the class recordings or any portion thereof. Students are welcome to watch class recordings as many times as they wish—no special code or permission is necessary to access the recordings. Watching a class on Zoom (even in real time) does not count as class attendance.

GRADING

Your course grade will be based on your performance on the closed-book, no-notes final exam, subject to an adjustment for the quality and quantity of class participation. The exam will contain both multiple-choice questions and an essay question. Most, if not all, of the multiple-choice questions will be of the sort likely to appear on the Multistate Bar Exam, requiring you to know and apply established doctrine. Other questions may require you to state the elements of doctrinal tests or otherwise to demonstrate your knowledge of cases or principles that we have covered through the semester.

The essay will consist of a hypothetical scenario that will require you to analyze the legal issues presented and craft arguments about how those issues should be resolved. Unlike the multiple-choice questions, which will primarily test your knowledge of cases and established doctrine, this question will primarily test your ability to argue persuasively about how to resolve ambiguities in the established doctrine, and how to apply that doctrine to ambiguous factual situations. In making persuasive arguments about legal issues that have not been definitively resolved by precedent or other established doctrine, you should be ready to employ arguments based on the principles and policies that have shaped the law.

ASSIGNMENTS

Be sure you come to class knowing not only *what* the court decided in each case, but *why* the court reached that decision.

You must complete the assigned Casebook Plus questions (denoted as CB+), by the date of the final exam. You need not complete the cumulative-review and black-letter-law questions, but I recommend that you do so; they are good tools for exam preparation.

This syllabus includes dates by which I recommend that you complete each chapter's multiple-choice questions, but there is no penalty for missing those deadlines. If you do the questions on time, they will serve as "formative assessment" tools that allow you to assess your progress in the course and to ask me any questions necessary to solidify your understanding of the material before we move on to the next portion of the course.

The grade you receive on the Casebook Plus questions will not become part of your course grade, but I require you to make a good-faith effort to answer the questions correctly. If you merely click-through the questions, you will be depriving yourself of the opportunity the questions provide to review material and to reinforce your understanding of important concepts.

Tuesday, August 20: Overview of Tort Law
 Pages 1-32

Thursday, August 22: Intent
 Pages 32-55

Monday, August 26: Assault; False Imprisonment
 Pages 56-75

Wednesday, August 28: Intentional Infliction of Emotional Distress
 Pages 75-96

Thursday, August 29: Trespass to Land; Trespass to Chattels
 Pages 97-114

Monday, September 2: No Classes (Labor Day)

Wednesday, September 4: Conversion
Pages 114-136

Thursday, September 5: Actual & Apparent Consent
Pages 137-162
CB+: Chapter 2

Monday, September 9: Self-Defense; Necessity
Pages 162-187

Wednesday, September 11: Reasonable Care
Pages 188-212
CB+: Chapter 3

Thursday, September 12: The Reasonable Person
Pages 212-235

Monday, September 16: The Professional
Pages 235-261

Wednesday, September 18: The Professional, Continued; Judge and Jury Responsibilities
Pages 261-282

Thursday, September 19: Negligence *Per Se*
Pages 283-303

Monday, September 23: Circumstantial Evidence of Negligence
Pages 303-326

Wednesday, September 25: *Res Ipsa Loquitur*; But-For Causation
Pages 326-349
CB+: Chapter 4

Thursday, September 26:	But-For Causation, Continued Pages 349-374
Monday, September 30:	Proving Causation of Disease; Direct Versus Remote Causes Pages 374-402
Wednesday, October 2:	Foreseeability Pages 402-423 CB+: Chapter 5
Thursday, October 3:	Intervening Causes Pages 423-449
Monday, October 7:	Joint and Several Liability Pages 449-476 CB+: Chapter 6
Wednesday, October 9:	Contribution and Indemnity; Privity Pages 489-498 and 505-516
Thursday, October 10:	Foreseeability as a Limit on Duty Pages 515-540 CB+: Chapter 7
Monday, October 14:	Failure to Act: Special Relationship Pages 540-565
Wednesday, October 16:	Voluntary Undertaking; Economic Damages Pages 565-588
Thursday, October 17:	No Classes (Fall Break)

Monday, October 21: Emotional Distress; Unborn Children
Pages 589-623

Wednesday, October 23: Landowners
Pages 625-648
CB+: Chapter 8

Thursday, October 24: Lessors and Lessees
Pages 648-674

Monday, October 28: Compensatory Damages
Pages 674-698
CB+: Chapter 9

Wednesday, October 30: Punitive Damages
Pages 698-717

Thursday, October 31: Wrongful Death and Survival
Pages 719-742

Monday, November 4: Contributory and Comparative Negligence
Pages 742-765

Wednesday, November 6: Assumption of Risk; Statutes of Limitations
Pages 765-789

Thursday, November 7: Vicarious Liability
Pages 843-868
CB+: Chapter 12

Monday, November 11: Abnormally Dangerous Activities
Pages 883-909
CB+: Chapter 13

Wednesday, November 13: Limits on Strict Liability; Development of Products Liability
Pages 909-934

Thursday, November 14: Product Defects
Pages 934-959
CB+: Chapter 14

Monday, November 18: Warnings; Defenses Based on Plaintiff's Conduct
Pages 959-980

Wednesday, November 20: Products Liability Defenses
Pages 980-1006

Thursday, November 21: Alternatives to Tort Law
Pages 1007-1017 and 1451-66
CB+: Chapter 15