

Torts: FALL 2007

MW, 1:00-2:50 (ROOM 101)

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Office Hours: Wednesday, 3-5 Room 387

SYLLABUS AND COURSE INFORMATION

Course Materials

Required:

PROSSER, WADE & SCHWARTZ, TORTS: CASES AND MATERIALS (Foundation Press, 11th ed.)

Course Requirements and Grading

A. Class Participation

On the second day of class, I will pass out a seating chart, so please be aware that you will be choosing your assigned seat for the remainder of the semester. I will use this chart as an aid to learn students' names, to take attendance, and to facilitate class discussion.

For class discussion, I will utilize a "present and prepared" system, which requires all students to be prepared each session to be called on in class (although volunteers are always welcomed and encouraged). There will be a sign-in sheet posted outside the door to Room 101, starting on the second day of class. You must sign in before each class to indicate that you are present and prepared for class discussion. You will be ineligible for a participation bonus if you are unprepared for or miss three or more classes. The purpose of the bonus is to reward all students who are regularly prepared *and* who

contribute in thought-provoking ways, through questions and responses during class, through Blackboard participation, and office hours.

If you are unable to attend class, please make arrangements with a classmate to obtain notes, new assignment announcements, etc. I will only videotape or podcast classes on religious holidays or if a student has a medical or family emergency.

Because much of our class discussion will involve review of the cases, I will ask each of you to prepare case briefs for each class. Your briefs should include the following categories:

- 1) **The facts:** What facts influenced the final outcome in this case? What is the procedural posture or status of the case (e.g., what was the lower court ruling, if any)?
- 2) **The issues:** What legal questions does the case address? (Some of these legal issues may be stated explicitly and some may be implicit. Try also to identify the latter, when possible.)
- 3) **The holding:** Who won? What is the specific legal rationale for this result? What are the consequences of the court's opinion for the litigants?
- 4) **The opinion:** Briefly summarize the rationale for the court's holding. On what principles or theories has the court relied?
- 5) **The rule(s):** What is the ruling of the court? Try to state the rule(s) without reference to the specific facts of the case. What are the implications for other cases?
- 6) **The dissent:** Where there is a dissenting opinion, briefly summarize the views or arguments of the dissenting judges. Why did they object and what different rule do they argue controlled the case?

You should view these categories as general guidelines, and you should feel free to modify them in a way that you believe will be most helpful for your class preparation. Although I will not be grading your briefs, they are an important component of your class participation. At a few points in the semester, I will ask you occasionally to turn in your briefs at the end of class, through the "Digital Dropbox" function on Blackboard, so it is important that you come to each class with your briefs prepared. Generally, we will cover 5-6 cases in each class, so you should always try to review approximately the next 25-30 pages in the casebook for each class. I will offer weekly assignment memos (discussed below under "Class Communications"), to provide you with more specific guidance about the upcoming week's class assignments.

During the first week of class, you will form “law firms” of four or five students for purposes of participating in-class exercises such as oral arguments and debates. Your law firms will be a significant element of your torts class participation, and they will work best if you offer them your most creative and enthusiastic participation. I will always give you advance notice if there will be an in-class exercise involving your law firms, and typically these assignments can be completed by the group “virtually,” using email. But on occasion you may find it useful to set aside time to meet as a group, depending on the particular activities we have scheduled for an upcoming class.

B. Course Grading

The primary component of your course grade will be based on your performance on the four-hour open book final examination, which will be scheduled by the Registrar’s Office.

In addition, there is a required midterm examination, which will offer each of you the opportunity to practice answering two “hypotheticals” under exam conditions, and to receive written feedback and a grade. Please note that the midterm is required, but it will only count if it raises your final course grade: If your grade on the mid-term examination is higher than the grade you earn on the final examination, the mid-term grade will count one-third and the final examination two-thirds in computing your overall grade for the course. If, however, your grade on the final examination is equal to or higher than the grade you earn on the mid-term examination, your mid-term grade will not be counted at all in computing your overall course grade.

Class Communications

My office hours will be held on Wednesdays from 3-5, and also by appointment. I encourage you to come visit me! I will also provide opportunities for informal feedback about the course. Throughout the semester, I will on occasion ask the entire class to fill out free writing feedback sheets, either to discuss whether certain concepts in class are confusing or to discuss general classroom dynamics. For announcements, I will rely on Blackboard’s email list function. Please make the email you listed with your Blackboard registration is current, and that you regularly check mail at that address.

In addition, on Thursday mornings of each week, I will post an announcement on Blackboard, to update the class on where we are in the syllabus, and to provide some guidance concerning the upcoming week’s readings (including review questions, longer hypotheticals, or in-class group exercises). Please check Blackboard regularly. These memos are designed to be a key aid for your class participation and preparation for the following week’s classes.

Reading Assignments

I. Introduction to Torts

- A. Development of Liability Based Upon Fault pp 1-16.

II. Intentional Torts pp 17-90

- A. Intent
- B. Battery
- C. Assault
- D. False Imprisonment
- E. Intentional Infliction of Mental Distress
- F. Trespass to Land
- G. Trespass to Chattels
- H. Conversion

III. Privileges, pp 91 -130

- A. Consent
- B. Self-Defense
- C. Defense of Others
- D. Recovery of property
- E. Necessity
- F. Authority of Law
- G. Discipline
- H. Justification

IV. Negligence

- A. History and Elements, p. 131-33
- B. A Negligence Formula, pp 133-45
- C. Standard of Care
 - (1) The Reasonable Prudent Person, pp 145-68
 - (2) The Professional, pp 168-97
 - (3) Aggravated negligence, pp 197-200
- D. Rules of Law, pp 200-04
- E. Violation of Statute, pp 204-29
- F. Proof of Negligence
 - (1) Court and Jury: Circumstantial Evidence, pp 229-37
 - (2) Res Ipsa Loquitor, pp 237-58

V. Causation in Fact

- A. Sine Qua Non, pp 259-62
- B. Proof of Causation, pp 262-82

- C. Concurrent Causes, pp 282-85
- D. Problems in Determining Which Party Caused Harm, pp 285-92

VI. Proximate or Legal Cause

- A. Unforeseeable Consequences, pp 293-325
- B. Intervening Causes, pp 325-44
- C. Public Policy, pp 344-60

VII. Joint Tortfeasors

- A. Liability and Joinder of Defendants, pp 361-71
- B. Satisfaction and Release, pp 371-83
- C. Contribution and Indemnity, pp 383-92
- D. Apportionment of Damages, pp 392-402

VIII. Duty of Care (Limits of Duty)

- A. Privity of Contract, pp 403-417
- B. Failure to Act, pp 417-38
- C. Pure Economic Loss, 438-50
- D. Emotional Distress, 450-64

IX. Damages

- A. Personal Injuries, pp 519-48
- B. Physical Damage to Property, pp 548-50
- C. Punitive Damages, pp 550-64

X. Defenses

- A. Plaintiff's Conduct, pp 586-614
 - (1) Contributory Negligence
 - (2) Comparative Negligence
 - (3) Assumption of Risk

XI. Immunities pp 621-59

XII. Vicarious Liability

- A. Respondeat Superior pp 660-67
- B. Independent Contractors, pp 667-73
- C. Joint Enterprise, pp 673-78

XIII. Strict Liability

- A. Animals, pp 686-92
- B. Abnormally Dangerous Activities, pp 692-710
- C. Limitations on Strict Liability, pp 710-17

XIV. Products Liability

- A. Development of Theories of Recovery, pp 718-38
 - (1) Negligence

- (2) Express Warranty
- (3) Implied Warranty
- (4) Strict Liability in Tort
- B. Product Defects, pp 738-64
- C. Proof, pp 765-69
- D. Defenses, pp 769-83

XV. Nuisance, pp 799-828

XVI. Defamation, pp 829-50, 869-79

XVII. Civil Rights, pp 984-1003