

TORTS

**Professor Abrams
Fall Semester 2010**

COURSE OUTLINE & READING ASSIGNMENTS

We will be using Franklin & Rabin, TORTS LAW AND ALTERNATIVES: CASES AND MATERIALS, 8th edition.

I. COURSE INTRODUCTION

1. A Balancing of Interests – Hotdogs in Kansas City
2. Pp. 1-6 (Hammontree); 7-17; 17-24 (Christensen).

II. NEGLIGENCE: DUE CARE

A. Historical Development of Fault Liability

1. Pp. 35-39 (Brown v. Kendall).

B. Standard of Care

1. Pp. 39-49 (Adams v. Bullock) (Carroll Towing).

C. Reasonable Person

1. Pp. 50-60 (Bethel).

D. Judge and Jury

1. Pp. 60-66 (Goodman) (Pokora).

E. Custom

1. Pp. 69-75 (Trimarco).
2. T.J. Hooper (handout)

F. Statutes

1. Pp. 75-86 (Martin v. Herzog) (Tedla v. Ellman).

G. Proof of Negligence

1. Proof by inference from circumstantial evidence (hypos).
2. *Res ipsa loquitur*: pp. 95-110 (McDougald) (Ybarra v. Spangard).
3. Medical Malpractice: pp. 110-115 (Sheeley); pp. 123-131 (Matthies).

III. CAUSATION

A. Cause in Fact (“Actual Cause”)

1. Pp. 339-347 (Stubbs).
2. Joint and Several Liability: pp. 369-371.
3. Causal Uncertainty: pp. 375-392 (Summers v. Tice) (Hymowitz).

B. Proximate Cause (“Legal Cause”)

1. Unexpected Harm: pp. 401-415 (Benn) (Polemis) (Wagon Mound).
2. Superseding Causes: McLaughlin (handout); pp. 423-425
3. Unexpected Victim: pp. 425-437 (Palsgraf v. L.I. RR.)
4. Liability to a Rescuer: Wagner (handout)

IV. DUTY

A. Affirmative Duty to Act (“Rescue”)

1. Pp. 132-148 (Harper) (Farwell)
2. Pp. 157-162 (Tarasoff).

B. Premises Liability

1. Duty of Care: pp. 201-209 (Heins).

C. Emotional Distress

1. Pp. 264-273 (Falzone).
2. Pp. 286-295 (Portee).

V. NEGLIGENCE: AFFIRMATIVE DEFENSES

A. Contributory Fault

1. Plaintiff’s Fault: pp. 440-447.

- B. **Immunities: Intra-family, governmental and sovereign** (lecture).
- C. **Assumption of Risk**
 - 1. Express A/R: pp. 466-475 (Dalury).
 - 2. Implied A/R: pp. 475-482 (Murphy)

VI. DAMAGES

- A. **Compensatory Damages**
 - 1. Pp. 698-718 (Seffert).
 - 2. Collateral source rule (lecture)
- B. **Punitive Damages** (lecture)

VII. INTENTIONAL TORTS

- A. **Prima Facie Case**
 - 1. Intent: Pp. 884-891 (Garratt).
 - 2. Assault/Battery: Pp. 891-894 (Picard).
 - 3. False Imprisonment: Pp. 902-908 (Lopez).
 - 4. Intentional Infliction of Emotional Distress: Pp. 908-915 (Womack).
- B. **Defenses and Privileges**
 - 1. Consent: Pp. 931-934 (Hart).
 - 2. Self Defense: Pp. 934-937 (Courvoisier).
 - 3. Protection of Property: Pp. 937-942 (Katko v. Briney).

VIII. STRICT LIABILITY

- A. **Historical Development**
 - 1. Pp. 506-519 (Rylands v. Fletcher) (Sullivan).

IX. PRODUCTS LIABILITY

- A. **The Demise of Privity and the Emergence of Strict Product Liability**
 - 1. Pp. 550-567 (McPherson) (Escola)

B. Defects

1. In manufacture: pp. 567-569.
2. In design: pp. 569-584 (Soule).
3. Instructions and warnings: pp. 595-607 (Hood)

C. Defenses (lecture).

X. *DEFAMATION*

A. The Prima Facie Case at Common Law

1. Libel, Slander, Defamatory Utterance, Publication, Inducement, Colloquium: pp. 972-993; (Romaine) (Matherson)

B. Defenses and Privileges

1. Pp. 997-1000; 1002-1007.

C. Public Plaintiffs and the Constitution

1. Pp. 1027-1038 (Times v. Sullivan).

XI. *PRIVACY*

A. The Right to be Left Alone

1. Public Disclosure of Private Facts: pp. 1121-1129 (Haynes).
2. False Light: pp. 1158-1162 (Cantrell).
3. Intrusion: pp. 1167-1173 (Nader)
4. Appropriation: pp. 1208-1215 (Zacchini, "The Human Cannonball")

B. Conclusion