

TORTS — FALL 2010

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Course Materials: The text for the course is Henderson, Pearson, Kysar & Siliciano, *THE TORTS PROCESS* (7th ed. 2007). This will be supplemented with a variety of problems and case handouts which may be found on the Twen website. We will discuss how to access the Torts Twen website during the first class.

Course Contents

Torts is the study of the rules that govern the compensation of injuries. Torts focuses on personal accountability and compensating the injured: a person in tort law is usually held liable only if he was at fault in causing the plaintiff's harm. In this class, you will learn how individuals and corporations can sue another person, corporation, or the government for damages following an injury. You will learn the basic doctrines of negligence, strict liability and intentional torts, including the policies those doctrines seek to promote. You will develop your ability to analyze judicial opinions, including the ability to identify the critical facts of a case, to isolate the holding of a case, and to consider the likely impact of a case (in terms of both its effect on future judicial opinions and its impact on heavier in the real world). You further will develop your ability to construct persuasive legal arguments in support of a position and to respond to opposing arguments. You will recognize gaps, conflicts and ambiguities in the law of torts and develop skills in making arguments for legal change. You will also learn about how the law of torts has developed and evolved, and how it continues to adapt to changing social conditions and technology. The issues we cover in this course are still hotly debated today in legislatures, courts, and the media.

We will critique whether our system for providing remedies to injured parties works as we think it should. We will also examine many court opinions and evaluate proposals for reform, including insurance and government regulatory models, as we consider the various policies that form the basis for our tort system.

We will be covering a significant amount of material in this course. Because of the speed of coverage and the volume of new material, please feel free to ask questions during class or afterwards. I am available by e-mail as well as by appointment.

Course Description

Class Participation: You will derive the maximum benefit from the course if you come prepared every day for class discussion, having read and reflected upon the reading for that day. Moreover, this Law School's policy requires regular class attendance and preparation.

The most efficient way of observing these policies is through a series of daily “spot checks.” Accordingly, I intend to call on a number of students, randomly selected, each day. If you do not wish for me to call on you on any given day, please leave a note with my secretary prior to that day’s class. Similarly, if you anticipate missing a class, please keep me apprised of this fact. The reason for your absence is not material. Whether you were interviewing for a job, caring for a sick relative, watching “The Daily Show with Jon Stewart,” etc. makes no difference to me. All I ask is that you provide me with a notice. I will not call on anyone who has provided a note, and I do not anticipate placing any arbitrary limits on the number of notes that a student may submit over the course of the semester.

Should I call on you with the unhappy result that you are either (1) completely absent or (2) absent in mind if not in body (i.e., you are not prepared for class), and you have not provided prior notice to me as set forth above, I will note this fact. If this happens three times, I will mark down your final grade.

Laptop Use: I have no problems with the use of laptop computers for note-taking purposes, but please do not use them to check e-mail, IM each other, play games, check sports scores, etc. If non-class related use of laptops creates a distraction for other students, I may have to revisit this policy and exile laptop users to the back row, or possibly prohibit the use of laptops entirely.

Final Exam and Grading: Your final grade will be based mainly on the final examination, which will be a 4-hour essay examination. The exam will be closed book. In addition, as noted above, I reserve the option of adjusting a student’s final grade for failure to observe my attendance/preparation policy.

Study Aids and Reference Materials

Some students will find it helpful to consult additional sources to clarify or supplement the assigned readings and class discussions. One valuable reference source that provides a good detailed account of tort law is the new Dobb’s tort law treatise, TORTS (West, 6th ed. 2000). I do not recommend buying this treatise as the library has several copies that you should feel free to use. In another genre, Joseph W. Glannon, THE LAW OF TORTS: EXAMPLES AND EXPLANATIONS (4th ed. 2005) or Richard L. Hasen, THE GLANNON GUIDE TO TORTS (5th ed. 2009) provide a good discussion of tort law concepts and some summary background to the development of those concepts. For interesting theoretical perspectives on tort law, I recommend Saul Levmore, FOUNDATIONS OF TORT LAW (West/Thompson 1994) and Robert L. Rabin, PERSPECTIVES ON TORT LAW (Aspen, 4th ed. 1995). Finally, Edward Kionka, TORTS IN A NUTSHELL (5th ed. 2010), provides a general level overview, good for helping to integrate your thinking about different aspects of the course, but too general to provide more than the bare starting point for more detailed analysis.

Please do not feel obligated to consult any of these materials. In fact, if you are confused by the readings, it may be a better use of your time to read the assigned material more than once, rather consulting additional texts.

Schedule and Syllabus – Torts 2010

Page numbers refer to the Henderson, Pearson, Kysar & Siliciano casebook. These assignments may be altered from time to time during the semester. Any supplemental readings will be made available before class.

Class	Date	Pages	Topic
1	8/23	pp. 1-11; 11-18	Introduction, Procedure, Intentional Torts
2	8/25	pp. 19-29	Battery
3	8/26	pp. 29-37	Offensive Battery
4	8/30	pp. 38-48	Defenses: Consent
5	9/1	pp. 48-71	Informed Consent in Medical Malpractice; Consent and the Rules of Social Practices
6	9/2	pp. 71-84	Defenses: Self-Defense; Defense of Property
NO CLASS	9/6	NO READING	LABOR DAY
7	9/8	pp. 84-93	Finish Defense of Property, start Defense: Necessary
8	9/9	Problem 5 pp. 93-103	Finish Defenses
9	9/13	pp. 681-692	Intentional Torts: Assault and False Imprisonment
10	9/15	pp. 692-711	Intentional Infliction of Emotional Distress
11	9/16	pp. 711-721	IIED in Employment
12	9/20	pp. 149-166	Negligence: Basic Standard
13	9/22	Problem 11 pp. 166-177	Negligence: Carroll Towing Standard
14	9/23	pp. 177-189	Proof of Negligence: Negligence per se
15	9/27	pp. 189-203	Proof of Negligence: Custom
16	9/29	pp. 203-214; 214-217	Proof of Negligence: Res Ipsa Loquitur Strict Liability Preview
17	9/30	pp. 217-229	Modified Duties: Landowners
18	10/4	pp. 105-119	Cause-in-Fact
19	10/6	pp. 119-134	Alternative Causation

Class	Date	Pages	Topic
20	10/7	pp. 134-148	Concurrent and Successive Causation, Vicarious Liability
NO CLASS	10/11-1015	NO READING	FALL BREAK
22	10/18	pp. 259-274	Legal or Proximate Causation
23	10/20	pp. 275-291	Application of Proximate Cause
24	10/21	pp. 291-300	Proximate Cause (continued)
25	10/25	pp. 359-362 Handouts	Defenses: Contributory Negligence
26	10/27	pp. 362-377	Defenses: Assumption of the Risk
27	10/28	No Reading	Review Session/Guest Speaker
28	11/1	pp. 423-434	Strict Liability
29	11/3	pp. 434-450	Strict Liability (continued)
30	11/4	pp. 451-459	Products Liability
31	11/8	pp. 460-480	Products Liability (continued)
32	11/10	pp. 480-486	Products Liability: Causation
33	11/11	pp. 487-494	Products Liability: Defenses
34	11/15	pp. 494-513	Products Liability: Failure to Warn
35	11/17	pp. 514-530	Products Liability: Design Defects
36	11/18	pp. 531-544	Products Liability: Design Defects
37	11/22	pp. 723-739	Defamation: General Principles
38	11/24	pp.739-749	Defamation: Defenses
NO CLASS	11/25	NO CLASS	HAPPY THANKSGIVING DAY
39	11/29	pp. 749-768	Defamation: Constitutional Issues
40	12/1	pp. 769-792	Invasion of Privacy
41	12/2	pp. 792-815	Invasion of Privacy