

Course Information for Torts § 6

Professor Tarkington

Class Location and Time

Room 100A on M, W, @ 3:05 to 4:30 pm

Room 204 on Th @ 1:30 to 2:25 pm

Course Objectives

I: Learn the basic fundamentals of *how law works*: While few of you may end up in a personal injury practice, Torts will teach you the elemental building blocks of how law, and particularly, common law, works. Notably the study of Torts will readily demonstrate for you **the basic structure of law**, including

- What is a cause of action
- What are *elements* in a cause of action
- What is a defense
- Why it matters if something is couched as an element of the cause of action, or alternatively as a defense thereto
- What is a “burden of proof” and why does it matter who has it

Torts will also introduce you to many **basic legal concepts** that pervade law, such as

- Intention
- Reasonableness
- Duty
- Breach
- Causation
- Damages

Torts will introduce you to **overarching principles and debates in law**, including:

- Whether a judge or jury should decide an issue (and why and how that matters)
- What are the pros and cons of bright-line rules as compared to standards
- What are pros and cons of statutory law as compared with the common law
- Problems in allocating costs when people are harmed in society (to the victims, to the person(s) at fault, to government or the public at large, to industry, etc.)
- Exploring cost-benefit analysis and Coase theorem, especially as compared with norms of justice
- Federalism problems and Constitutional preemption of state law

II: Learn the basic principles of the substance of Tort law. Torts is one of the subjects tested on the bar exam, and which you will need to know in order to become a lawyer—regardless of whether you end up practicing it. Moreover, you will always have friends, associates, and family members who will ask you about torts issues and potential torts suits—whether you want them to or not.

Text

The text for the course is Prosser, Wade and Schwartz’s Cases and Materials on Torts (12th Edition). Supplementary materials will be handed out in class throughout the semester.

Exam

A **CLOSED BOOK and CLOSED NOTES** final examination will be held at the end of the semester. I will provide a practice exam for you to take and will review it with you approximately half way through the

semester.

Grades & Participation

Approximately 95% of your raw score in the class will be based on the final exam. Approximately 5% of your raw score will be based on participation as follows. I will give most, if not all, students 7 out of 14 possible points for participation. However, the participation score may be increased or decreased for student performances that are particularly outstanding or particularly poor. Outstanding performance will be based on quality rather than quantity. I define lack of preparation as the failure to make a good faith effort to read and understand the materials.

Passes for Being Unprepared

I expect you to be prepared every day for class. Nevertheless, I will give each student 2 passes on preparation, which will allow you to avoid both public humiliation (from being called on when unprepared) and any lowering of the 5% participation portion of your grade. In order to use a pass, you must give me a note with your name and the date on it before class begins and before I call on you—I will then refrain from calling on you on that day. You cannot pass me a note or attempt to use a pass once class begins. I will keep track of who has turned in passes and when each student has exhausted their passes. Use of passes will not be considered lack of preparation and will **not** affect the participation portion of your grade.

Seating

On Wednesday, August 25, 2010, I will distribute a blank seating chart for you to fill in. Please sit in your chosen seat thereafter to help me learn your names.

Outlines and Outside Sources

I strongly recommend that you prepare your own outline for torts, as well as your other classes. Preparing your own outline will greatly assist you in understanding and digesting the materials covered. There are numerous Torts study aids, hornbooks, and outlines that have been published. You are free to consult such materials if you find them helpful. The hornbook, *Prosser and Keeton On Torts*, should be particularly user-friendly because its organization follows that of the Prosser casebook which we use.

Office Hours

I will be in my office for student questions and consultation on Thursdays from 12:20 until 1:20 p.m. and also at other times by appointment. Feel free to email me (tarkington@law.byu.edu) or call me at home ((812) 932-2344) or on my cell ((812) 717-0344) with any questions or to make an appointment. If you call and I am not there, please leave a message. There is no need to feel intimidated about approaching me or asking me questions—they are encouraged and welcomed.

Comments Regarding Class

Please feel free to email me or talk to me about any concerns, comments or questions you may have about the course. It will NOT negatively affect your grade to do so (the tests are anonymous). However, if you would feel more comfortable sending me an anonymous comment or concern, you can use the following gmail account and then send an email to my regular account (tarkingtonm@law.byu.edu).

The anonymous gmail account that you can use is:

Username/account: narkontark@gmail.com

Password: 4tarkington