

## TORTS

FALL TERM – 2025 (§§ 5, 6)  
PROFESSOR ALEX L. WANG

Mon, Wed, Fri 1:45 – 3:00pm | Room 1357

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Welcome to first-year Torts!

The required casebook for this course is Franklin, Rabin, Green, Geistfeld, & Engstrom, *Tort Law and Alternatives* (11<sup>th</sup> ed. 2021) (“CB”). Our other main source of readings is Kenneth Abraham’s *The Forms and Functions of Tort Law* (6<sup>th</sup> ed. 2022) (“A”), which provides a useful “big picture” description of the material we will be discussing. The online version of Abraham is available for free through a link on our class BruinLearn page. I am also using some materials from Witt & Tani’s *Torts: Cases, Principles, and Institutions* (6<sup>th</sup> ed. 2022) (“TW”). These excerpts will be posted as handouts to BruinLearn. You need not obtain the casebook itself. Otherwise, I will also post additional supplementary readings to BruinLearn.

### Grading and Classroom Participation

Your grade will be determined by (i) an in-class, open-book final exam and (ii) class participation.

Our class will be discussion oriented. To make the most of this approach, the vast majority of us must be ready to participate on any given day. The class participation system for this class will offer you the flexibility to determine the days on which you participate, while ensuring that enough of you are ready to engage on any given day to keep discussion lively and challenging. For days when you might not feel prepared enough to be called on, this system gives you a safe space to come to class without the fear of a “cold-call.” It also allows me to give you credit toward your final grade if you consistently come prepared.

Starting in our third class, Friday, August 29, I will arrive a few minutes early with a copy of the seating chart dated for that day. If you are ready to be called on, please circle your name on one of the charts. Then, whether I call on you or not, I will count you as “present and prepared,” which means having read the assigned material and any material not covered from the prior class. When I do call on you, I am not asking for perfect answers, just your willingness to engage in informed discussion.

If you circle your name for 75 percent of our classes (28 of 37 classes), your grade will be eligible to increase by one increment above your exam grade (e.g., B plus to A minus). If you circle for fewer than *one-third* (12 or fewer) of our classes, your grade will drop one increment. My hope is that everyone will take advantage of the flexibility this system provides so that no one will face a grade drop. In exceptional cases, I may raise or lower grades based on the quality (not quantity) of class participation, but not beyond one grade increment. Practically speaking, given the curve, this system typically only affects grades that are close to the line between grades.

If you ask me how many times you have circled, I will let you know. I will not, however, send you routine updates. If you have anxieties about speaking in class, please let me know as soon as possible. We can try to work out a way for you to contribute comfortably to discussion.

### **Office Hours**

My office is in Room 3441. Office hours will be from 3:30-4:30pm on Mondays in Room 3441 or by appointment.

### **Syllabus Changes**

Please note that the dates included here on the syllabus are preliminary and subject to change. Every year I adjust the syllabus given the needs of each class. I may move faster or slower. I may edit the readings. This occasionally causes some students a bit of consternation. I am therefore giving you warning here to let you know that such changes are normal and will almost certainly happen. I will make every effort to notify you well in advance of any changes.

## I. INTRODUCTORY OVERVIEW (CHAPTER I)

### Week 1

#### Introduction to Tort Liability (Mon., Aug. 25)

- Casebook: pp. 1-6 (Intro and *Hammontree* – up to Notes and Questions)
- Abraham, The Forms and Functions of Tort Law: pp. 1-5
- View this short video before class: <http://www.nytimes.com/2013/10/21/booming/not-just-a-hot-cup-anymore.html>

#### Liability or Not? - *Hammontree v. Jenner* (Wed., Aug. 27)

- CB: pp. 1-9 (*Hammontree* and notes)
- Supp. 1: *Hammontree* Worksheet

#### The Tort Litigation Process; Functions of Tort Law (Fri., Aug. 29)

- CB: pp. 9-20 (on the litigation process)
- A: 16-24 (on the nature of tort law)

## II. THE NEGLIGENCE PRINCIPLE (CHAPTER II)

### Week 2

Labor Day Holiday (no class) – Mon., Sept. 1

#### **A. Standard of Care, Part I – General Approaches**

#### Historical Development, Standard of Care, and the Hand Rule (Wed., Sept. 3; Fri., Sept. 5)

- CB: pp. 37-42 (notes 2 & 3; do not read note 1 or *Brown*), 46-49 (*Adams v. Bullock* and notes 1-4)
- CB: pp. 49-55 (*Carroll Towing* and notes 1-7)
- A: pp. 78-85 (i.e., III. *The Negligence “Calculus”*)
- Rest. 3d. § 3 Negligence (p. 1)
- Supp. 2: Critiques of Cost-Benefit Reasoning: First Principles, Distributive Justice, Administrability (WT 171-174)
- Supp. 3: The Hand Formula and the Value of Life

### Week 3

#### The Reasonable Person (Mon., Sept. 8)

- CB: pp. 55-64 (*Bethel* and notes)
- A: pp. 68-77 (i.e., II. *The Reasonable Person Standard*)
- Supp. 4: Sex and Gender: The Reasonable Woman? (WT 158-162)
- Rest. 2d. § 283 Conduct of a Reasonable Man: The Standard (p. 1)
- Rest. 3d. § 10 Children (p. 1)
- Rest. 3d. § 11 Disability (p. 2)
- Rest. 3d. § 12 Knowledge & Skills (p. 2)

## **B. Role of Judge and Jury – Who Decides?**

### Overview (Wed., Sept. 10)

- CB: pp. 64-73 (*Goodman, Pokora & Andrews* and notes, except do not read notes 3, 4 on p. 73)
- Supp. 5: Negligence Elements Table

## **C. Standard of Care, Part II**

### Custom (Fri., Sept. 12)

- CB: pp. 74-78 (*Trimarco* and notes)
- A: pp. 85-89 (i.e., IV. *Custom*)
- Supp. 6: Trimarco numbers
- Rest. 3d. § 13 Custom (p. 2)

## *Week 4*

### Statutes and Regulations (Mon., Sept. 15)

- CB: pp. 78-81 (*Martin v. Herzog* and notes); 81-88 (*Tedla* and notes, excluding note 8)
- A: pp. 99-103 (i.e., VI. *Violation of Statutes*)
- Supp. 7: California Cell Phone Statutes
- Rest. 3d. § 14 Statutory Violations as Negligence Per Se (p. 2)
- Rest. 3d. § 15 Excused Violations (p. 3)

## **D. Proof of Negligence**

### Circumstantial Evidence and Res Ipsa Loquitur (Wed., Sept. 17)

- CB: pp. 89-95 (*Negri, Gordon & Byrne v. Boadle*, notes)
- A: pp. 109-114 (i.e., *Introduction & I. Burden of Proof*)

### More on Res Ipsa Loquitur (Fri., Sept. 19)

- CB: pp. 95-100 (*McDougald v. Perry*, notes 1-7), 102-109 (*Ybarra* and notes 1, 3, 4, 6)
- A: pp. 114-123 (i.e., II. *Res Ipsa Loquitur*)
- Rest. 2d. § 328D Res Ipsa Loquitur (p. 3)
- Rest. 3d. § 17 Res Ipsa Loquitur (p. 3)

## *Week 5*

## **E. Professional Negligence - The Special Case of Medical Malpractice** (Mon., Sept. 22)

- CB: pp. 109-117 (*Sheeley* and notes 1-4, 6, 7, 10)
- A: pp. 89-93 (to C. *The Duty to Disclose...*), 98-99 (i.e., D. *Medical Malpractice Reform*)

## **F. Tommy Turbo Exercise** (Wed., Sept. 24)

- Supp. 8a., b., c.: Class Exercise Materials

### III. FACTUAL CAUSATION (CHAPTER V)

#### A. Basic Doctrine of “But For” Causation (Fri., Sept. 26)

##### Proving Causation; *Stubbs v. City of Rochester*

- CB: pp. 341-351 (notes 1, 3, 5, 6, 7, 8)
- A: pp. 125-128 (to A...), 131-137

Week 6

##### Multiple Sufficient Causes; Self-Proving Causation (Mon., Sept. 29)

- CB: pp. 352-353 (multiple sufficient causes)
- CB: pp. 353-362 (*Zuchowicz* and notes 1, 2, 5)
- A: pp. 128-130 (i.e., A.)
- Rest. 3d. § 26 Factual Cause (p. 4)
- Rest. 3d. § 27 Multiple Sufficient Causes (p. 4)
- Rest. 3d. § 28 Burden of Proof (p. 4)

#### B. Multiple Defendants (Wed., Oct. 1)

- CB: pp. 376-388 (Intro. to Jt & Several Liability; *Summers v. Tice* and notes; *Hymowitz*)
- A: pp. 137-140; 143-146 (4. *Market Share Liability*)

### IV. PROXIMATE CAUSE/SCOPE OF LIABILITY (CHAPTER VI)

##### Unexpected Harms (i.e., Eggshell Plaintiff) (Fri., Oct. 3)

- CB: pp. 405-410 (*Benn* and notes)
- A: pp. 149-155 (stop at B.), 159-160 (C.), 164-66.
- Rest. 3d. § 31 Preexisting Conditions and Unforeseeable Harm (p. 4)

Week 7

##### *Polemis & Wagon Mound* (Mon., Oct. 6)

- CB: pp. 410-412 (*Polemis* and notes), 413-419 (*Wagon Mound* and notes 1-5, 8)
- A: pp. 167-172
- Rest. 3d. § 29 Limitations of Liability for Tortious Conduct (p. 5)
- Rest. 3d. § 30 Risk of Harm Not Generally Increased by Tortious Conduct (p. 5)

##### Superseding Causes (Wed., Oct. 8)

- CB: pp. 419-429 (*Torres* and notes)
- A: pp. 155-159 (*Intervention and Enablement*)
- Rest. 3d. § 34 Intervening Acts and Superseding Causes (p. 5)

Unexpected Victims (*Palsgraf*) (Fri., Oct. 10)

- CB: pp. 429-441 (all notes)
- A: pp. 160-164 (*Unforeseeable Plaintiffs*)
- Supp. 9: *The Passengers of Palsgraf* excerpt

Week 8

Blodgett Class Exercise - Motion Argument (Mon., Oct. 13)

- Supp. 10, a.: Materials for Blodgett Exercise

V. DUTY (CHAPTERS III & IV)

A. Duty - Physical Injury

Duty to Rescue (Wed., Oct. 15)

- CB: pp. 129-137 (*Harper v. Herman* and notes)
- CB: pp. 137-143 (*Farwell v. Keaton* and notes 1-2, 4-6)
- A: pp. 261-268
- Rest. 3d. § 37: No Duty of Care with Respect to Risks Not Created by Actor (p. 6)
- Rest. 3d. § 39: Duty Based on Prior Conduct Creating a Risk of Physical Harm (p. 6)
- Rest. 2d. § 324: Duty of One Who Takes Charge of Another Who is Helpless (p. 6)
- Rest. 2d. § 327: Negligently Preventing Assistance (p. 6)
- Supp. 11: California and VT Good Samaritan and Rescue Statutes

Duty to Warn (Fri., Oct. 17)

- CB: pp. 152-162 (*Tarasoff*)
- Supp. 12: *Regents of U. of Ca. v. Rosen* (2018)
- Rest. 2d. § 315: General Principle (p. 7)
- Rest. 2d. § 314A: Special Relations Giving Rise to Duty to Aid or Protect (p. 7)

Week 9

Policy Bases for Invoking No Duty; Enabling Torts (Mon., Oct. 20)

- CB: pp. 179-184 (*Reynolds v. Hicks* and notes)
- CB: pp. 184-189 (*Vince v. Wilson* and notes)

Landowners and Occupiers (Wed., Oct. 22)

- CB: pp. 190-195 (*Carter*); 195-204 (*Heins*); 205-212 (*Posecai*, stop at “E. A Reprise of Duty”)
- A: pp. 268-271
- Rest. 2d. § 339: Artificial Conditions Highly Dangerous to Trespassing Children (p. 8)

**B. Duty - Nonphysical Harm** (Fri., Oct. 24)

- CB: pp. 261-268 (*Falzone* and notes), 276-281 (*Gammon* and notes)
- CB: pp. 286-299 (*Portee* and notes)
- A: pp. 271-278
- Supp. 13: *Dillon v. Legg* (1968)
- Supp. 14: *Ko v. Maxim Healthcare* (2020)

Week 10

**Wrap-up Duty and Review** (Mon., Oct. 27)

- Class Exercise (Supp. 15: George materials)

VI. DEFENSES (CHAPTER VII)

**A. Plaintiff's Fault**

**Contributory and Comparative Negligence** (Wed., Oct. 29)

- CB: pp. 443-461 (*Butterfield, Davies*, after p. 155 – only notes 1-5, 8); stop at “Apportionment of Liability...”)
- A: pp. 173-188 (to 4. *Strict Liability*)
- Rest. 2d. § 463 Contributory Negligence Defined (p. 8)
- Rest. 2d. § 465 Causal Relation Between Harm and Plaintiff's Negligence (p. 8)
- Rest. 3d. § 7: Effect of Plaintiff's Negligence When Plaintiff Suffers an Indivisible Injury (p. 9)

**B. Assumption of Risk**

**Express and Implied Assumption of Risk** (Fri., Oct. 31)

- CB: pp. 474-485 (*Hanks* and notes 4, 6-9)
- A: 190-195 (*Assumption of Risk*)
- Rest. 2d. § 496C Implied Assumption of Risk (p. 9)
- Rest. 2d. § 496B Express Assumption of Risk (p. 9)

Week 11

**Implied Assumption of Risk (cont.)** (Mon., Nov. 3)

- CB: pp. 486-491 (*Murphy* and notes 3-5)
- CB: pp. 491-498 (*Davenport* and notes 4-7)

## VII. STRICT LIABILITY (CHAPTERS VIII)

### Strict Liability (Wed., Nov. 5)

#### Historical Development

- CB: pp. 519-528 (notes 2, 3, 4)

#### Modern Strict Liability

- CB: pp. 533-544 (*Indiana Cyanamid*, notes 2, 5, 7)
- Rest. 2d. § 519: General Principle (p. 10)
- Rest. 2d. § 520: Abnormally Dangerous Activities (p. 10)
- Rest. 3d. § 20: Abnormally Dangerous Activities (p. 10)

### Vicarious Liability (Fri., Nov. 7)

- CB: pp. 21-27 (*Christensen* and notes 3, 4, 6, 8)
- A: pp. 212-214 (i.e., *III. Vicarious Liability*)
- Note on vicarious liability in sexual abuse cases (WT 498)

Week 12

## VIII. PRODUCTS LIABILITY (CHAPTER IX)

### MacPherson and Escola (Mon., Nov. 10)

- CB: pp. 569-589
- A: pp. 215-225

### Manufacturing and Design Defects (Wed., Nov. 12)

- CB: pp. 589-605 (*Soule v. GM*)
- A: pp. 225-230

#### The Restatements

- Rest. 2d. § 402A: Special Liability of Seller of Product for Physical Harm to User or Consumer – and selected comments (p. 11)
- Rest. 3d (Products Liability) § 1: Liability of Commercial Seller or Distributor for Harm Caused by Defective Products (p. 11)
- Rest. 3d (Products Liability) § 2: Categories of Product Defect – and selected comments (p. 12)
- Rest. 3d (Products Liability) § 3: Circumstantial Evidence Supporting Inference of Product Defect (p. 12)



Duty to Warn (Fri., Nov. 14)

- CB: pp. 618-626 (*Hood v. Ryobi* and notes)
- A: pp. 230-234
- Revisit Restatement (3d.) (Products Liability) § 2 (c)

Week 13

Plaintiff's Conduct (Mon., Nov. 17)

- CB: pp. 642- top of 644 (do not read *Sanchez*)
- *Daly v. General Motors Corp.* & notes (WT 594-600)
- Rest. 3d (Products Liability) § 16: Increased Harm Due to Product Defect (p. 13)
- Rest. 3d (Products Liability) § 17: Apportionment of Responsibility Between or Among Plaintiff, Sellers, and Distributors (p. 13)

IX. DAMAGES (CHAPTER XI)

Damages (Wed., Nov. 19)

- CB: pp. 717-734 (*Seffert* and notes 14, 6, 8, 11, 13)
- Note on collateral source rule (WT 632-633)
- Note on Death Cases (wrongful death and survival) (WT 662-664)
- California Wrongful Death and Survival Statutes

Fri., Nov. 21 – **Hot Coffee**

Week 14

Mon., Nov. 24 – finish **Hot Coffee**, Wrap Up

Wed., Nov. 26 – NO CLASS! This is an administrative make-up day on which Tuesday classes meet.

Sample exam and review during official exam period review session.