TORTS: SECTIONS A AND B
SYLLABUS

Fall Semester 2021
Section A: Mon. and Wed. 10-10:50 a.m.
Section B: Tues. and Thurs. 10-10:50 a.m.

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Tort law is a rich repository of legal analysis about preventing and remedying harm. We will discuss the subject’s history, which is part of its present, as well as its future. This was one of my favorite courses in law school. The ideas have stayed fresh with me and have influenced my thinking in many ways, both within the practice of law and without. I look forward to sharing these ideas with you as we work our way through the topics listed below.

Textbook and Other Class Materials

We will be using Keeton, Sargentich, & Keating, Tort and Accident Law (4th ed. 2004). Additional materials, designated with an asterisk in the assignments below, have been posted on TWEN. I may also post further materials on TWEN as necessary to enhance our discussion of a particular topic.

Class Schedule and Attendance

Our class will meet every Monday and Wednesday (Section A) or every Tuesday and Thursday (Section B) from 10-10:50 a.m. during the fall semester. Attendance will be taken by sign-in sheet, and you must attend at least 80% of the classes to receive credit. Also, to allow you to plan for and enjoy the Thanksgiving weekend, there will be no class on Wednesday, November 24 (Section A).

Office Hours

I will generally be available for office hours from 12-2 p.m. on Mondays and Wednesdays. You can also email me to arrange to talk at another time.

Questions

I encourage you to ask questions during each class. If you are confused about something, it’s likely that others are confused as well. In addition, if you find a topic confusing and have questions outside of class, please email them to me at least 24 hours before the next class so that I can address them before moving to the next topic.
Syllabus

Subject to any changes announced in class, the assignments below include all topics for fall semester in the order that they will be taken up in class discussion. The topics are listed numerically rather than by date because while most topics will be covered in a single class others may take longer due to interest, breadth, complexity, or struggle – we will adjust accordingly.

Preparation for Class

You are expected to read and think about the assigned material before each class. The syllabus lists the principal cases and legal materials by name, and you should focus on those materials in preparing for class. If we finish a class part-way through a given topic, you should be prepared at the following class to discuss the remaining cases and other materials designated for that topic as well as the cases and materials designated for the next topic.

My own sense of the best way to prepare and study for a first-year class is to brief the cases. The ultimate end of briefing a case is to be able to say what the case tells you about a subject and how it adds to your knowledge of the subject. For example, Garratt v. Dailey, in the first assignment, is about the intent necessary to commit the tort of battery. But before you can say what it tells you about the intent necessary to commit battery, you need to be able to say who the plaintiff is, who the defendant is, what the facts were, what the issue before the court was, how the court decided the issue, and its reasons for deciding as it did. In addition to mastering these points, you should ask yourself what does this case add to what I know and how does it relate to the other cases in the assignment?

In addition to principal cases, the casebook contains many shorter “squib” cases. For the most part, the syllabus does not list the squib cases included in a particular assignment, but the page numbers of the assignment, and the context of the cases, make clear which squibs should be read. The squibs are intended to add to your understanding of the principal cases; rather than brief them as described above, I suggest you carefully review them and ask yourself what does each squib add to the principal cases that precede it and how does it relate to those cases?

Participation

You are expected to contribute to class discussions – both by raising your hand and when called upon. To facilitate preparation, I will generally call on students alphabetically (by last name). This should give you a sense of when you may be called upon and when you should be optimally prepared. If something has come up so that you are less than optimally prepared for a particular class, please email me or drop a note at the podium prior to class so I will know not to call on you. You may pass in this way twice during each semester.

TWEN

I will use the TWEN page as a means of communication with you as a class. Through TWEN, I can send emails, post class materials, and post or link to other items that you may find helpful or interesting. Please add this course (Torts Section A or B) through TWEN and read the first assignment below prior to the first day of class.
**Classroom Decorum and Laptops**

You are expected to conduct yourself in a professional manner. Accordingly, all cell phones and other devices should be turned off or silenced and placed out of sight during class (unless you have a compelling reason otherwise). Laptops are permitted for note taking during class, but not for any other purpose such as email, messaging, social media, games, and surfing – which interfere with the learning process.

**Commercial supplements, topic summaries, and class outlines**

I do not recommend the use of commercial supplements because your grade on the final exam will be based on your mastery of the assigned readings and class discussions as opposed to commercial materials that may vary from those readings and discussions. To assist you in mastering the assigned readings, I will post topic summaries (a distillation of my notes) on TWEN following most classes. I also encourage you to join study groups, synthesize your notes into your own outlines or topic summaries, and/or participate in a coordinated class outline.

If you nevertheless want to purchase a commercial outline, below is a list of a few available supplements organized from most to least formal:

- Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *Hornbook on Torts*
- Marc A. Franklin, W. Jonathan Cardi & Michael D. Green, *Gilbert Law Summaries on Torts*
- Robert L. Rabin & Stephen D. Sugarman, *Torts Stories*

**Study Groups**

Joining a study group can be very useful, and I encourage you to do so. Discussing material with other people can be enormously helpful, and explaining something to someone else is an excellent way of finding out if you really know the material and can explain it clearly in class and in a final exam answer.

**Grades**

Grades will be based on the final (closed book) exam. Additionally, to encourage preparation and participation, class participation can raise (or lower) your final grade.

**Torts Coffees**

Subject to social distancing rules, I will post sign-up sheets for Torts Coffees where we can meet in small groups to talk about whatever you would like to talk about, class-related or not. Please sign up! I would very much like to meet all of you.
PART ONE
INTRODUCTION TO TORT LAW

Overview: Five Forms of Liability for Physical Harm

1. Intentional and negligent harming
   1-4, 7-13

   Torts and writs
   Garratt v. Dailey
   Blyth v. Birmingham Waterworks
   *Zokhrabov v. Park (squib)

2. Negligence and vicarious liability
   14-19

   The Hand Formula
   Kohlman v. Hyland
   *Map of North Dakota (Kohlman)
   Restatement of Agency, Second

3. Strict liability and no-fault plans
   20-29

   Exner v. Sherman Power Construction Co.
   Restatement of Torts, Second
   Larson’s Workers’ Compensation Law
   Whetro v. Awkerman

PART TWO
INTENTIONAL TORTS

Battery: Anatomy of an Intentional Tort

4. Harm and offense, intentionality, tort remedies
   7-10, 30-36, 40-41, 44-52

   Garratt v. Dailey (again)
   *City of Watagua v. Gordon
   Ellis v. D’Angelo
   Jones v. Fisher
5. **Consent in general**
52-62

Mink v. University of Chicago
O’Brien v. Cunard Steamship Co.
Markley v. Whitman

6. **Medical consent and consent to illegal acts**
62-69

Elkington v. Foust
Kennedy v. Parrott

7. **Self-defense**
69-81

Fraguglia v. Sala
Dupre v. Maryland Management Corp.
Commonwealth V. Drum
Hattori v. Peairs
State v. Leidholm

8. **Other privileges**
83-91

People v. Young
*New York Penal Code § 35.15 (overruling Young)*
Katko v. Britney
Kirby v. Foster

**Personal Harm without Physical Impact**

9. **Assault and interference with peace of mind**
94-111, 117-18

I. de S. and Wife v. W. de S.
Read v. Coker
State Rubbish Collectors Assn. v. Siliznoff
Eckenrode v. Life of America Ins. Co.
Restatement of Torts, Third
Interference With Property

10. **Trespass and nuisance**
    123-36

    Smith v. Stone
    Gilbert v. Stone
    Cleveland Park Club v. Perry
    Wheat v. Freeman Coal Mining Corp.
    O’Cain v. O’Cain
    *Restatement of Torts, Second

11. **Property and privilege**
    137-38, 140-52

    Monongahela Nav. Co. v. United States
    Wegner v. Milwaukee Mutual
    Ploof v. Putnam
    Crescent Mining Co. v. Silver King Mining Co.

PART THREE
NEGLIGENCE

The Rise of Classical Accident Law

12. **From excuse to justification**
    2-4, 283-93

    Torts and writs (again)
    The Case of the Thorns
    Weaver v. Ward
    Brown v. Kendall
    The Nitro-Glycerin Case

13. **The contest between negligence and strict liability**
    293-307

    Rylands v. Fletcher
    Losee v. Buchanan
Reasonable Care: General Considerations

14. **Foreseeability of harm: determining duty**
   11-14, 328-41

   Blyth v. Birmingham Waterworks (again)
   Restatement of Torts, Third
   Van Skike v. Zussman
   Stagl v. Delta Airlines
   *Zokhrabov v. Park

15. **Reasonable care and utility: the Hand formula**
   14, 309-28

   The Hand formula (again)
   Chicago, B. & Q. RR v. Krayenbuhl
   Restatement of Torts, Third
   Davis v. Consolidated Rail
   Snyder v. AABB
   Restatement of Torts, Second

16. **Reasonable care and culpability: objective or subjective assessment**
   345-53, 356-58, 360-68

   Vaughan v. Menlove
   La Marra v. Adam
   Myhaver v. Knutson
   Restatement of Torts, Third
   Smith v. Sneller
   Wright v. Tate
   Breunig v. American Family Ins.

Standard of Care and Proof of Fault

17. **Customary and professional standards**
   369-84, 393-98

   The T.J. Hooper
   Professional Malpractice
   Rossell v. Volkswagen
   Helling v. Carey
18. **Statutory standards: negligence per se**
   398-418

   Martin v. Herzog
   Tedla v. Ellman
   Bauman v. Crawford
   Consumer Product Safety Act
   Compliance With Statute
   *Myrick v. Mastagni
   Gore v. People’s Savings Bank

19. **Proof and probability: res ipsa loquitur**
   418-30, 436-40

   Thompson v. Frankus
   Newing v. Cheatham
   Ybarra v. Spangard

**Basic Defenses: Victim Conduct and Choice**

20. **Careless victims: contributory negligence**
   292-93, 503-13

   Butterfield v. Forrester
   Washington Transit v. Johnson
   Spier v. Barker

21. **Careless victims: comparative fault**
   513-28

   Li v. Yellow Cab Co.
   Comparative Fault Provisions
   Blazovic v. Andrich

22. **Assumption of risk: classical doctrine**
   528-37

   Clayards v. Dethick
   Farwell v. Boston & W. R.R.
   Lamson v. American Ax & Tool Co.
23. **Assumption of risk: modern conceptions**
   537-54

   Siragusa v. Swedish Hospital
   Scott v. Pacific West Mountain Resort
   *Coomer v. Kansas City Royals and Note on Inherent Risk
   Moody v. Delta Western

24. **Express assumption of risk**
   554-62

   Tunkl v. Regents of University of California
   Cooper v. Aspen Skiing Company (squib)
   *Colorado Revised Statute § 13-22-107 (overruling Cooper)