

TORTS
Fall 2009, Sections A & D
Room 30
Mondays, Tuesdays, and Wednesdays 2:30-3:45 p.m.

Professor Klass

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Office Hours: Tuesdays, 1:15 p.m.-2:15 p.m. and by appointment

SCOPE OF COURSE: Welcome to the first-year course in Torts. We will be studying private law remedies for harms arising out of intentional or accidental conduct. While criminal law provides for government suits against individuals and entities that cause harm (with prison sentences and criminal fines available as remedies), tort law allows ordinary, private citizens to bring suit against harm-causing agents (with monetary and other types of relief available). Tort law should also be contrasted with contract law in the sense that torts are typically nonconsensual events, rather than agreed-upon relationships between parties as in a contractual setting. We will be discussing broadly the legal standards that must be met in order to obtain relief for tortious conduct, the theoretical justifications for those standards, and the alternative rules that, for one reason or another, have not been preserved or adopted by courts and legislatures.

COURSE GOALS: By the end of the course you should be able to: (a) analyze a torts problem in terms of traditional doctrinal categories; (b) appreciate the process by which those doctrinal categories evolved, including the jurisprudential considerations, policy arguments, socioeconomic and cultural changes, and other factors that drive the application, modification, extension, and limitation of legal rules; (c) recognize key aspects of the interplay between procedural and substantive law (i.e., how such rules impact tort settlement and bargaining power); and (d) discuss the application of tort law and theory to contemporary issues such as products liability reform, workplace safety, etc.

This class has several objectives in addition to learning the substantive law of torts: (a) to develop your ability to analyze court decisions and apply them to new situations; (b) to consider the legal issues from a lawyer's perspective and learn how to make arguments for and against a legal position; (c) to improve your oral advocacy skills through class discussion.

REQUIRED READING MATERIALS:

HENDERSON, PEARSON, KYSAR & SILICIANO, THE TORTS PROCESS (Aspen, 7th ed. 2007) (textbook)

There may be some supplemental reading assignments throughout the semester which will either be distributed in class or posted on TWEN in advance.

I do not recommend the use of commercial outlines, as their content is of highly varying quality and, at any rate, rarely correspond well to the particular course you are taking (this course being no exception). However, Kenneth S. Abraham, *THE FORMS AND FUNCTIONS OF TORT LAW* (Foundation Press, 2007) provide a useful overview of tort law if you are looking for a “big-picture” description of some of the material that we will be reviewing in more detail. In addition, *PROSSER AND KEETON ON THE LAW OF TORTS* (5th ed., 1984) remains the most widely-used hornbook in the field and *DAN B. DOBBS, THE LAW OF TORTS* (West 2001) contains a comprehensive discussion of many of the issues we will cover in class. These books will be on reserve in the Law Library.

EXAM: The exam for this course will be in December (date and time to be announced). It will be an open-book, open-note, 3-hour, in-class exam.

ASSIGNMENTS: All readings are in HENDERSON, PEARSON, KYSAR & SILICIANO unless stated otherwise. There will be some supplemental readings posted on TWEN.

In completing your reading for each week, you should make sure that you: (1) are prepared to give an oral summary of the facts, legal issues, holding and reasoning of the cases assigned; and (2) have an answer (it is not required to be correct) to any problems or questions contained in the reading assignment. In addition to the cases, we will be covering most of the numbered problems in the text (which contain fact patterns to test your understanding of the concepts presented through the case law) during class. You will best benefit from the discussion of the problems if you have thought about them carefully and made some effort to come up with tentative responses to the problems before coming to class. You will find that spending the time to analyze the textbook problems both before and after class will go a long way toward helping you understand the legal concepts presented as well as prepare for the final exam.

I strongly urge you to handwrite or type out your case briefs and answers to the textbook numbered problems in advance of class so you have something written to help you during class discussion. This can be as simple as writing notes out in the margins of your text or preparing more formal summaries, whichever assists you most. Please review the separate handout posted on TWEN with instructions on how to prepare a case brief.

During class, I will call on students randomly each day to present a summary of the facts, legal issues, holdings, rules of law, and analysis of each case in the textbook assignment, and then open it up to class discussion to address other aspects of each case, as well as the questions posed by the book authors after each case. I will also call on students randomly to start off our discussion of each of the numbered problems in the text, and then open it up to class discussion to elaborate on the initial presentation of the problem. If, because of unusual circumstances, you are unprepared for class on a particular day, please let me know in advance of class by e-mail and I will not call on you that day. Please do not invoke this “privilege” more than once during the semester. Most weeks we will cover all the numbered problems in the text. Although we may skip some occasionally if time pressures require (or if indicated on the syllabus), please be prepared to discuss all of the problems contained in the reading assignment for that week.

You will be expected to abide by the Rules of Scholastic Requirements set forth in your student handbook. Rule 1.1 indicates, “Regular class attendance and adequate preparation are required.” Law school policy also prohibits unauthorized use of laptop computers during class, including, but not limited to, playing games, reading or writing e-mail, and internet surfing. I reserve the right to lower your final grade in the event you fail to comply with the rules requiring regular attendance, adequate preparation, or computer usage. Class starts on time. Anyone arriving late (without a good excuse communicated to me in advance) runs the risk of being called on to answer questions immediately upon entering the classroom.

Please use the Discussion Board on TWEN to post articles, web sites, or blogs you come across (outside of class of course) that are relevant to the materials we are studying this semester. This will help us connect what we are learning in Torts to what is going on in the world around us. Please also use the Discussion Board to respond to postings by other students.

I have given you the assignments for the semester by week, rather than by class. We will generally cover 50 pages per week (slightly more than 15 pages per class period). Thus, I recommend that you read the first 20 pages of the week’s assignment for Monday’s class and then stay at least 20 pages ahead of where we left off at the end of the previous class until you get to the end of that week’s assignment. Some days or weeks we will move more slowly through the material, other days or weeks we will move more quickly, and I expect everyone to be prepared for the material we are likely to cover. Also, please do not try to “get ahead” by reading more than the current week’s assignment. If you get too far ahead, you will find it difficult, if not impossible, to retain that material for more than a couple of days prior to class, making it difficult for you to benefit from class discussion and adequately participate in class.

There will be at least one week during the semester when we will have our class on a different day and time instead of at our regularly scheduled class time. For the one day I am aware of so far (September 28), the changed day and time for class (October 2, at 8:45 a.m.) is indicated on the chart below. There may be other weeks where we will also need to substitute class days or times. I will attempt to give you as much notice as possible if that is required. Please note that I reserve the right to amend or edit the syllabus at any time during the semester.

<u>CLASS DATES</u> <u>(Mon., Tues., Wed. unless otherwise indicated)</u>	<u>ASSIGNMENT</u>
Sept. 8, 9	pp. 1-37 (Introduction and Offensive Battery) & TWEN Supp. “Introduction to Briefing a Case”
Sept. 14, 15, 16	pp. 38-84 (Offensive Battery continued)
Sept. 21, 22, 23	pp. 85-103 (Offensive Battery continued) & pp. 681-99 (Dignitary Wrongs and Intentional Inflection of Mental Upset)

Sept. 29, 30, Oct. 2 (no class on 9/28; makeup on 10/2 at 8:45)	pp. 105-157 (Actual Causation and Negligence) (skip Prob. 9 on pp. 137-38)
Oct. 5, 6, 7	pp. 157-203 (Negligence continued)
Oct. 12, 13, 14	pp. 203-257 (Negligence continued)
Oct. 19, 20, 21	pp. 259-305 (Negligence continued)
Oct. 26, 27, 28	pp. 305-317; 344-383 (Negligence continued)
Nov. 2, 3, 4	pp. 385-433 (Trespass, Nuisance, and Strict Liability)
Nov. 9, 10, 11	pp. 434-474 (Strict Liability (continued) and Products Liability); Practice Test Supplement on TWEN
Nov. 16, 17, 18	pp. 474-524 (Products Liability continued)
Nov. 23, 24, 25	pp. 524-575 (Products Liability continued and Damages)
Nov. 30, Dec. 1, 2 (guest speaker one day this week)	pp. 575-86; 610-622 (Damages continued) & TWEN Supplement
Dec. 7	REVIEW