

TORTS – FALL 2007

Professor Betsy Malloy
Phone: 556-0115
Office Hours: By appointment

E-Mail: Betsy.Malloy@uc.edu
Office: 411
TWEN: www.westlaw.lawschool.com
(access information in intro packet)

Course Materials: The text for the course is Dobbs and Hayden, TORTS AND COMPENSATION (5th ed. 2006). This will be supplemented with a variety of problems and case handouts which may be found on the TWEN class website. We will discuss how to access the 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 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 on the reading for that day. Moreover, this Law School's attendance 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 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 problem 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 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 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 Dobb's tort law treatise, TORTS (West, 6th ed. 2000 & updates through 2007). In another genre, Diamond et al., UNDERSTANDING TORTS (3d ed. 2007) provides 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 (Foundation Press 1994) and Robert L. Rabin, PERSPECTIVES ON TORT LAW (Aspen, 4th ed. 2003). Finally, Edward Kionka, TORTS IN A NUTSHELL (4th ed. 2005), 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.

For a good overall guide to law school, law school classes, legal writing and law school exams, I recommend, THE COMPLETE LAW SCHOOL COMPANION: HOW TO EXCEL AT AMERICA'S MOST DEMANDING POST-GRADUATE CURRICULUM, by Jeff Deaver. 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 than consulting additional texts. If you choose to use a commercial outline you do so at your own risk. In an effort to make things easier to understand, commercial outlines tend to oversimplify complex issues, often at the expense of accuracy. I suggest you be careful if you decide to use them.

Schedule and Syllabus

Page numbers refer to the Dobbs casebook. These assignments may be altered from time to time during the semester.

| CLASS | DATE | PAGES | TOPIC |
|-------|-------------------|---------|---|
| 1 | 8/21* (4:30pm) | 2-34 | Introduction, Procedure |
| 2 | 8/22* (4:30pm) | 37-44 | Intent, Battery |
| 3 | 8/28 | 44-59 | Battery |
| 4 | 8/29* (4:30pm) | 59-65 | Assault |
| 5 | 8/30 | 65-68 | False Imprisonment |
| 6 | 8/31 | 82-91 | Self-Defense, Defense of Property |
| 7 | 9/4* (TBA) | 91-98 | Consent |
| 8 | 9/5* (TBA) | 98-100 | Consent (continued) |
| 9 | 9/11 | 100-109 | Necessity |
| 10 | 9/12* (TBA) | 111-124 | Negligence- Duty of Care |
| 11 | 9/13 | 125-133 | Negligence- Duty of Care |
| 12 | 9/14 | 133-147 | Negligence – Per Se |
| 13 | 9/18 | 148-160 | Breach of Duty |
| 14 | 9/20 | 160-169 | Hand Formula |
| 15 | 9/21 | 169-187 | Proving Negligence |
| 16 | 9/25 | 187-193 | Res Ipsa Loquitur |
| 17 | 9/27 | 193-207 | Res Ipsa Loquitur (continued) |

| CLASS | DATE | | TOPIC |
|--------------|-------------|------------|---|
| 18 | 9/28 | No Reading | Guest Speaker |
| 19 | 10/2 | 208-221 | Actual Harm Cause-in-Fact |
| 20 | 10/4 | 221-233 | Cause-in-Fact (continued) |
| 21 | 10/5 | 234-247 | Proximate Cause |
| 22 | 10/9 | 247-259 | Proximate Cause (continued) |
| 23 | 10/11 | No Reading | Neurolaw Conference |
| 24 | 10/12 | 259-270 | Proximate Cause (continued) |
| NO CLASS | 10/15-10/19 | NO READING | FALL BREAK |
| 25 | 10/23 | 271-277 | Negligence Defenses – Comparative Negligence |
| 26 | 10/25 | 283-302 | Comparative Negligence (continued) |
| 27 | 10/26 | 303-307 | Assumption of the Risk (express) |
| 28 | 10/30 | No Reading | Guest Lecturer: UC Law Alumni |
| 29 | 11/1 | 307-312 | Assumption of the Risk (implied) |
| 30 | 11/2 | 312-319 | Assumption of the Risk (implied) |
| 31 | 11/6 | 345-355 | Landowner Duties |
| 32 | 11/8 | 355-363 | Landowner Duties (continued) |
| 33 | 11/9 | 363-373 | Landowner Duties (continued) |
| 34 | 11/13 | 382-391 | Medical Malpractice, Duties of Professionals |

| CLASS | DATE | | TOPIC |
|--------------|-------------|------------|---------------------------------------|
| 35 | 11/15 | 392-409 | Medical Malpractice (continued) |
| 36 | 11/16 | 392-409 | Medical Malpractice (continued) |
| 37 | 11/20 | 410-417 | Medical Malpractice, Informed Consent |
| 38 | 11/22 | No Reading | Happy Thanksgiving |
| 39 | 11/23 | No Reading | Happy Thanksgiving |
| 40 | 11/27 | 561-569 | Emotional Harms |
| 41 | 11/29 | 569-581 | Emotional Harms (continued) |
| 42 | 11/30 | 624-635 | Vicarious Liability (continued) |
| 43 | 12/4 | 635-641 | Vicarious Liability (continued) |
| 44 | 12/6 | 641-655 | Vicarious Liability |
| 45 | 12/7 | No Reading | Review Session |