Torts
Professor Nancy Modesitt
nmodesitt@ubalt.edu
410-837-1902
LC 308

Texts


Office Hours for Professor Modesitt

Mondays and Wednesdays, 11-12, or by appointment.

What is “Torts” and what will you learn in this course?

You probably already know a lot about tort law from the media. The popular perceptions of personal injury law are generally negative. Phrases like “ambulance chaser” and “runaway jury verdicts” are illustrative of some common perceptions of personal injury attorneys and the cases they bring. In this class, we will challenge these popular perceptions as we work together to master how the legal system operates in torts cases. By the end of the semester, if you complete all the assignments and study effectively, you will understand the three main types of personal injury tort claims (intentional torts, negligence, and strict liability). You will be able to identify the common issues that arise in various types of personal injury cases. I also expect that when you are provided with a factual scenario, you will be able to identify specific claims could be brought, analyze those claims, and then assess any plausible defenses to the claims. I look forward to reading your answers to your midterm and final exams, where you will demonstrate these skills and your understanding of tort law.

How do you succeed in this class?

My goal is for you to do well in this class. I believe that we are partners in this endeavor. Your job is to prepare effectively for class by doing the following: (1) reading the assigned material; (2) briefing all the main cases; and (3) understanding how the notes that follow the main cases modify and/or explain the legal rules in the main cases. After class, you must integrate what you learned in class with your case briefs/reading notes into an outline. On my part, I will produce in-class materials that will aid in your understanding of the readings and then test your ability to apply that understanding in new factual scenarios. I will also teach you how to develop a master outline for this course.
The students who have had the most success in this course have devoted significant time and effort to understanding the material in the course in detail. Some students create flashcards to assist them. Students create flashcards with elements of tort claims on them, and then more specific flash cards with explanations of the elements/considerations courts use in analyzing whether an element is present. Others develop mind maps. There is no one system that will work for everyone. I encourage you to consider a couple of different approaches to see what works best for you.

**How much time will all this take?**

You have probably heard that law school is a lot of work. It is. But it is also very manageable, if you focus on classes and work efficiently. For this four-credit class, I expect you to work eight hours a week outside of class. At the beginning of the semester, most of that time will be spent preparing for class. Reading a case book is different from reading other materials and it will be a slow process at the outset. However, you will soon develop greater facility with the materials. At that point, the time you save on reading and preparing will be needed for after-class integration of your notes and the class materials. You will also be spending time memorizing legal rules and practicing your analysis skills.

**Are there other resources to help me?**

Yes! Your class has an assigned law scholar who will be working with you every week during the semester. The law scholar is an integral part of your learning process. The law scholar will run a one-hour session in which s/he will work on specific skills to assist in your understanding of torts. The work done in the law scholar sessions is designed to help you prepare for the midterm and final. The session will include practice questions to which you will write out responses. You will discover that it's harder to write out legal rules than to say them in class, and the law scholar sessions will improve this skill.

**What are your expectations on attendance?**

You may have heard the phrase, “half of success is showing up.” I conduct class in an interactive format - getting notes from a classmate isn't a good substitute for being there. I look forward to seeing you in class at every session. Of course, sometimes things happen that prevent you from attending class - but do your best to be there. And just as it is my job to be prepared to teach, it is your job to be prepared to learn. If you are not prepared for a class, please let me know by sending an email before class that day. It's excruciating for everyone when someone who isn't prepared tries to bluff their way through the material. I can tell the difference between a student who has prepared but is nervous or anxious and struggling and a student who has only skimmed or hasn't read the material.
Timeliness is also critically important in the legal profession. Do not be late for class. Traffic will be bad and events will conspire to make you late. Plan for contingencies.

Also, I’m required to tell you that if you miss more than 5 classes, you will be barred from taking the final exam. In my experience, the more classes you miss, the more your final grade suffers. I have never had a student who missed 3 or more classes earn a grade higher than a C on the final exam.

How will I know I am learning?

You will be able to gauge your progress at three points during the semester. First, you will hand in a case brief in the second week of the semester. This will be worth 5% of your final grade and will used to assess your ability to read cases accurately and distill the information into a usable format. Next, you will prepare an outline of one torts claim (also worth 5% of your final grade) to check on your ability to combine information from multiple classes and your textbook. Third, you will take a midterm assessment. We will discuss in class the format of this assessment and its grading. The culmination of the semester is the final exam, where you will demonstrate your understanding of the law and apply it in new factual settings.

This course follows the Law School’s academic standards requiring 15-25% of the class to receive a grade of A- or higher; 7-14% a C- or lower, and an average grade between 2.67 and 3.0. Thus, how your performance compares to that of your peers will be far more determinative of your grade than any fixed grading scale could reflect. Accordingly, there is no fixed grading scale, but I will provide you with information so that you will get a sense of where you stand relative to your colleagues.

Readings and Assignments:

Reading and other assignments generally will follow the order listed below. However, assignments may be added or changed. Changes to the syllabus will also be announced in class and/or posted on TWEN. You must use TWEN for this class.

Week 1, August 19
Topics: Introduction to this course, introduction to intentional torts; battery

Monday: Chs. 1 & 2. I suggest you read Chapter 2 first, because it will help you read Chapter 1 more effectively.

Questions to help you understand Chapter 1: How does the court define "fault" in Van Camp v. McAfoos? Should "fault" be required in order to recover damages for personal injury? What recovery should injured persons receive (i.e. what kind of damages should courts award)?
Wednesday: Ch. 3, pp. 27-33
Questions to help you understand battery: Which case more clearly articulates the elements of a battery? In Snyder v. Turk, which element does Dr. Turk believe is missing? In Cohen v. Smith, what would be the outcome if Patricia Cohen had not informed the hospital of her religious beliefs? What if the hospital had said it could not accommodate her beliefs?

Hand in a hard copy of your brief of Snyder v. Turk. You will be handing this in at the beginning of the class, so please make sure you have another copy available to use in class.

Week 2, August 26
Topics: Battery (revisiting intent); assault; intentional infliction of emotional distress

Monday: Ch. 3, pp. 33-44.
Questions to help you understand intent: In Garrett v. Dailey, what was the contact that would be the basis for a battery claim? Do all courts follow the approach of Garrett v. Dailey? Which approach do you think is better: White v. Munoz or Wagner v. State?

Wednesday: Ch. 3, pp. 44-48; Ch. 19, pp. 475-481 (stop before Roth v. Islamic Republic of Iran). In class today, we will work out outlining the claim of battery, so please make sure that you have your class notes and class preparation materials from the two classes on battery.
Questions to help you understand the readings: In Cullison v. Medley, which actions/statements by Ernest were most critical to analyzing the assault claim? Are IIED claims easy or hard to establish?

Week 3, September 2
Topics: False imprisonment; property torts; civil rights claims

Monday: No class - Labor Day.

Check-in assignment to ensure you are understanding Torts: Outline of battery claim must be submitted to Assignment Dropbox on TWEN by 9 a.m. on Tuesday.

Wednesday: Ch. 3, pp. 48-60.
Questions to help you understand the readings: In McCann v. Wal-Mart Stores, Inc., what does the First Circuit Court of Appeals think that the District Court misunderstood about Maine’s law on false imprisonment? Can you write out the legal rule that would apply in question 10(a) on page 53 and apply it to the facts of the hypo? Similarly, can you write out the applicable legal rule and apply it in question 2(c) on page 57?

Week 4, September 9
Topics: Defenses to intentional torts; self-defense; defense of others; defending property; consent; public and private necessity

Monday: Ch. 4, pp. 61-81
Questions to help you understand the readings: What differences are there between self-defense and defense of others? How do courts determine what is reasonable force? What could the property owners in Katko v. Briney and Brown v. Martinez have done to protect their property without incurring tort liability? What is the difference between the common law approach to the shopkeeper’s privilege and the Arizona statute in Gortarez v. Smitty’s Super Valu, Inc.? Why did the common law approach fall out of favor (hint: think about how purchasing goods changed since the late 1800s)? Should the common law approach to consent be reconsidered given the prevalence of sexual assaults and harassment that have come to light in the “me too” era?

Wednesday: Ch. 4, pp. 81-88.
Questions to help you understand the readings: What tort claim was the basis for the plaintiff’s lawsuit in Surocco v. Geary (note: the case doesn’t use the name of the claim; you’ll need to identify it based on the facts provided)? What’s the alternative to the approach taken in Surocco v. Geary? Taking into account both Ploof v. Putnam and Vincent v. Lake Erie Transportation Co, what rights does a landowner have to remove people from her property, what are the limits on those rights, and when is compensation owed to the landowner?

Week 5, September 16
Topic: Midterm; introduction to negligence; duty

Monday: Midterm. The midterm will be on everything we have covered to date. It will be closed book, but you may bring with you to the midterm one 8”x11” piece of paper with your handwritten outline on it. You will hand in the outline with your midterm. The handwritten outline must be your own work; you may not collaborate with any other student on it, except for any feedback or insight provided by your law scholar. Your outline will be graded; please put your blind grading number on it and not your name.

Wednesday: Ch. 5, pp. 91-108.

Week 6, September 23
Topics: Duty, con’t; breach

Monday: Ch. 5; pp. 108-120.
Wednesday: Ch. 6, pp. 121-144.

**Week 7, September 30**
*Topic: Breach; res ipsa loquitur; actual harm*

Monday: Ch. 6, pp. 149-165.

Wednesday: Ch. 6, pp. 165-176; Ch. 7 pp. 177-179.

**Week 8, October 7**
*Topics: Factual cause; scope of liability (proximate cause)*

Monday: Ch. 7, pp. 179-204.

Wednesday: Ch. 8

**Week 9, October 14**
*Topics: Defenses to negligence claims; contributory and comparative fault; assumption of the risk*

Monday: Ch. 9.

Wednesday: Ch. 10

**Week 10, October 21**
*Topics: Statutes of limitation and repose; preemption; revisiting duty (landowner/possessor duty)*

Monday: Ch. 11.

Wednesday: Ch. 12.

**Week 11, October 28**
*Topics: Revisiting duty (medical professional duties); governmental immunity*

Monday: Ch. 13

Wednesday: Ch. 15, pp. 375-385; 390-399

**Week 12, November 4**
*Topics: Nonfeasance; duty to protect from third persons; negligent infliction of emotional distress*
Monday: Ch. 16, Ch. 18 pp. 443-460.

Wednesday: Ch. 18, pp. 460-472, Ch. 19, pp. 483-99 (stop at Section E.)

Week 13, November 11
Topics: Vicarious liability, strict liability

Monday: P. 529 and Ch. 22.

Wednesday: Ch. 23.

Week 14, November 18
Topic: Products liability

Monday: Ch. 24, pp. 575-594 (up to Barker v. Lull).

Wednesday: Ch. 24, pp. 594-622.

Week 15, November 25
Topics: TBD

Monday (make up day for Labor Day): TBD.
Other Important Law School Policies

Academic Integrity

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/.

Title IX Sexual Misconduct and Nondiscrimination Policy

The University of Baltimore’s Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB’s nondiscrimination policies can be found at: http://www.ubalt.edu/titleix.

Disability Policy

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schulz, Director, Center of Educational Access, Office of Disability and Access Services, as 410-837-4141 or KSchulz@ubalt.edu.