

TORTS (LAW 608.319A)
Fall 2021

Instructor: Prof. Michael Hayes E-mail: mjhayes@ubalt.edu Phone: 443-798-8411

Assistant: Ms. Deborah Pinkham deborah.pinkham@ubalt.edu .

Class Hours: Tuesdays and Thursdays from 10:00-11:50 a.m. No class session on Thanksgiving Day (Thursday November 25) & final class session on Tuesday November 30.

Office Hours: Tuesdays & Thursdays Noon.-2:50 p.m.; W 10:30-11:50 a.m. & 2:00-4:00 p.m.

First Week of Assignments:

For the 1st class session, on Tuesday August 24, please read pages 15-30 of the Dobbs, Hayden & Bublick, Torts and Compensation Casebook (8th edition, not Concise).

For the 2^d class session, on Thursday August 26, please read in the Dobbs Torts Casebook pages pp. 35-48, up to the *White v. Muniz* decision.

By Tuesday September 7, please go back and read pages 3-14 of the Dobbs Torts Casebook for background. Any other reading assigned for September 7 will be announced at the September 2 class session.

COVID-19 Precautions: in addition to the vaccine requirement, please comply with any and all precautions (e.g. masking) that are or might be required by the University of Baltimore.

Course Description

Students will learn the law of imposed liability for personal, property, and economic harm, through case analysis and rule synthesis. Doctrinal topics will include negligence (including professional malpractice); strict liability (including products liability) and intentional torts; causation and elements of damages; and affirmative defenses and limitations of duties including: assumption of the risk, contributory negligence, comparative negligence, and limited liability of property owners.

Learning Outcomes

At the end of this class students who successfully complete the course will be competent at:

1. Articulating tort doctrine and policy;
2. Applying tort legal rules to a variety of factual scenarios; and
3. Communicating in writing and orally legal analysis of torts issues.

Syllabus and Reading Assignments

Required Material: Text – Dan B. Dobbs, Paul T. Hayden, and Ellen M. Bublick, Torts and Compensation: Personal Accountability and Social Responsibility for Injury (**8th Edition, not Concise version**, Thompson/West 2017)

Other Sources of Reading Assignments: Some other assigned cases and documents will be available on the TWEN website for the course. The TWEN site, in its Syllabus section, also includes this syllabus.

Recommended: Glannon, *The Law of Torts* (5th ed. WoltersKluwer{Aspen} 2015)

Bases for Grade: 70% Final Examination, 20% Midterm Examination, 10% Class Participation (quality not quantity)

Course Outline and Assigned Readings: All page numbers refer to the Text unless otherwise stated

I. Background **Read:** pp. 3-26, up to Appendix A.

II. Intentional Torts

A. Battery **Read:** pp. 35-48, up to the *White v. Muniz* decision.

B. Assault and False Imprisonment **Read:** Dobbs, p. 53 (starting at *Baska* excerpt)-p. 64 (stop at § 4); Restatement §16 on TWEN; Restatement §32 on TWEN; Restatement §40A, on TWEN.

C. Torts to Property **Read:** pp. 64-70 through Note 5 and p. 71, starting at Trespass to Chattels – p. 73, up to §5.

D. Defenses to Intentional Torts

(1) Protecting Against Apparent Misconduct of Plaintiff

Read: pp. 77-91, up to Subpart D, Discipline; Maryland Statute on Detention of Persons and Restatement §§70 and 80 on TWEN.

(2) Consent **Read:** pp. 93-98.

(3) Privileges Not Based on Plaintiff's conduct **Read:** pp. 99-107.

III. Negligence

A. Overview: The Elements of a Negligence Claim **Read:** pp. 111-13.

B. Duty

1. General Duty of Care **Read:** pp. 115-130; *Haney* on TWEN.
2. Statutory and Regulatory Standards **Read:** pp. 131-45.

“In-class” midterm exam distributed on Tuesday October 5

C. Breach of Care

1. Assessing Reasonable Care by Comparing Risks and Costs
Read: pp. 147-149, up to §B; Excerpts from *Halek* and *Lowery* on TWEN; p. 152, starting at Note 5-p. 158, up to *Stinnett* and pp. 167-171, up to §2.
2. Act or Omission of Defendant **Read:** p. 176, starting at §3-p. 177 and p. 182, starting at Note 2 – p. 183.
3. Industry Custom **Read:** p. 190, starting at §4-p. p. 197, up to §6.
4. Res Ipsa Loquitur **Read:** p. 197-p. 213, up to but not including Cashman Problem.

D. Causation

1. Cause in Fact **Read:** p. 220, starting at *Salinetto*-p. 237, up to *Mohr*.
2. Proximate Cause **Read:** *Berry v. Sugar Notch* on TWEN; Ch. 8, pp. 249-272, up to *Marcus*; p. 274, starting at *Collins* – p. 276; p. 280, starting at §B-p. 289, up to The Lawyer’s Role; *Gains Tabb v. ICI Explosives, USA* on TWEN.

E. Damages

F. Defenses to Negligence

1. Contributory and Comparative Fault **Read:** pp. 295-299, up to §3; pp. 305-307 (§B); p. 322, starting at §6-p. 323, up to §C.
2. Assumption of the Risk **Read:** pp. 329-51; pp. 409-14 (§4, “The Firefighter’s Rule”).

G. Limiting or Expanding the Duty of Care Based on Relationship or Context

1. Landowners **Read:** p. 380, starting at *Gladon* - p. 386, up to §B and p. 392, starting at §C-p. 406.

2. Medical and other Professionals **Read:** pp. 417-28, up to §2.

3. Duty to Protect Against Third Persons **Read:** pp. 569-80, up to *Marquay*; p. 596, starting at *Tarasoff* - p. 602, up to *Brigance*.

4. The No Duty to Act Rule, and Exceptions **Read:** pp. 517-23, up to *B.R.*

5. Governmental Entities and Officers

IV. Other Torts Issues

A. Vicarious Liability **Read:** pp. 685-89.

B. Emotional Harm **Read:** p. 625, starting at *Mitchell* – p. 633, up to *Boucher*.

C. Wrongful Death **Read:** pp. 665-75, up to Final Report and p. 679, starting at §3- p. 682.

V. Strict Liability

A. Trespass and Nuisance

B. Products Liability

1) 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/.

2) 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>.

3) **Disability Policy**

Disability Policy: If you are a student with a documented disability who requires an academic accommodation, please contact please contact Keri Hickey, Director of Student Support in the Office of Academic Affairs, at khickey@ubalt.edu .

4) **Class Cancellation:**

If the instructor must cancel a class, notices will be sent to students via email. If the University is open, students should presume that classes are running on the normal schedule.

5) **Assignments:** I will tell you in class the assignments that you will be responsible for in the next few classes. We will proceed in the order on the syllabus, if you want to read ahead.

6) **Computers:** Students may use laptop computers for class related purposes only.

7) **Attendance policy:** Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to receipt of a grade for the course is conditioned upon a record of attendance satisfactory to the professor. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

For this class, which meets more than twice a week, students are permitted a maximum of five absences. My general approach is that I don't differentiate between excused or unexcused absences. If a student reaches five absences (other than for religious holidays, discussed below) I will contact that student to discuss how many absences that student will be permitted for the remainder of the semester.

Religious holidays are handled somewhat differently. If a student exceeds the five allowed absences because of absences due to religious holiday(s), I won't impose the penalties described below, but instead the student will be required to do some kind "makeup work" to compensate for exceeding the allowed number of absences.

If a student exceeds the number of absences that, based on the discussion between professor and student have been established, there will be a grade sanction for exceeding that limit. The grade sanction means a deduction of a step in a grade, such as a deduction from a B+ to a B.

If after imposition of such a grade sanction, the student has an additional absence, I reserve the right to withdraw the student from the course, which would result in a course grade of "FA" referenced above.

I understand that there can be special circumstances, like serious health problems or family issues, that cause frequent absences. That is why I have arranged my attendance policy so that

the sanctions are not automatic, but are worked out with the student. But I would emphasize that, whenever possible, this be worked out in advance. I will be more understanding with students who do that than students who bring excuses to me at the end of the semester, or after I have notified them that I intend to impose a grade sanction on them.

I strongly recommend that you attend as many class sessions as you can. In this course, considerable material will be covered only in the lectures and not in the assigned readings. It is likely that much of the material covered exclusively in lecture will be tested on the midterm and final examinations.

8) Lateness: Over the years, I have sometimes received complaints from students that classmates who come to class five or more minutes late are extremely disruptive. I think these complaints are legitimate, and therefore urge all students to come to class on time. If disruption by late-arriving students becomes a problem, I reserve the right to establish a policy barring students from attending class sessions to which they arrive late by 10 minutes or more.

9) Recordings of Class Sessions: All class recordings are for the sole use of the class and may not be reproduced by students for any other purpose. Faculty cannot reproduce students' voices or images from the class for any other purpose without additional student consent. All such recordings are protected by a UB login process based on where they are posted, so students who remain in class while a class session is being recorded will also be recorded if they speak in class in any way.

10) Calling on students, and student responsibility for assigned material: As mentioned above, all students will be expected to have read the assigned material for each class session. My method for calling on students by name will be that at each class session, I will choose a student name at random, and starting from that name will call on students in that class session in alphabetical order. Then I'll start from a new point at the next class session. I expect to call on 1 to 3 students by name at each class session. Also, I will ask for volunteers on more general questions.

11) Course Evaluations

It is a requirement of this course that students complete a course evaluation. The evaluation will be available later in the semester and is entirely anonymous. Faculty members will not have access to the feedback provided on course evaluations until after all grades are submitted.

12) Other Useful Contact Information

Mental health/general student issues: Dean Paul Manrique (pmanrique@ubalt.edu; 410-837-5283) or Ms. Keri Hickey, Director of Student Support (khickey@ubalt.edu; 410-837-4414). Both are located in the 7th floor Dean's Suite and welcome students to walk in (in person!) and are also able to schedule phone and zoom appointments.

Academic Support: Prof. Marta Baffy (mbaffy@ubalt.edu; 410-837-6370.). Prof. Baffy is located on the 5th floor in Room 513.

Bar Exam Support/Questions: Prof. Neal Kempler (nkempler@ubalt.edu; 410-837-4358). Prof. Kempler is located on the 5th floor in Room 514.

Writing Center: Information about the UB Law Writing Center may be found here: http://law.ubalt.edu/academics/academic-support/legal_writing_center/index.cfm . Claudia will send an announcement to faculty and students when the Writing Center is open for business.