

Law 608-329 (M/W 1:30-3:20pm)
Fall 2013
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TORTS

Course Policies & Syllabus - Part I

The assigned textbook for this course is Richard A. Epstein, *Cases and Materials on Torts* (Aspen Publishers, 10th ed., 2012) (sometimes referred to below as “the casebook” or as “Epstein”). There will also be additional materials labeled *Torts-Supplemental Materials – Fall 2013*. That packet and a copy of this syllabus are also available on-line on my web page. I also recommend (but it is by no means required) *Torts* by Richard Epstein (Aspen Publishers, 1999). That monograph is keyed to our textbook and provides a good summary of the law. Other study aids may be purchased at your own discretion. *The Law of Torts: Examples and Explanations* by Joseph W. Glannon is amusing and always popular. *A Short and Happy Guide to Torts* is another book written by an amazing Torts professor (Roger Schechter) that you may wish to check out.

I have attempted to assign one major topic per class-hour and have assigned cases for each of the topics. That means, if my meagre math abilities serve me right, that we will cover one or two major topics per class. If the case appears in the Epstein casebook, it will be followed by the page numbers in parenthesis (e.g., “Smith v. Jones (5-8)”). If the case is from a handout, the parenthesis will identify it as such (e.g., “Jones v. Smith (Handout 10-12)”).

I try to cover one assignment each class day. However, the syllabus is somewhat tentative and subject to changes announced in class and/or by email notice. This is because of the inherently fluid nature of coverage in a first year, first semester class.

If we depart from rigid adherence to this syllabus - which is likely- you **should stay at least one full assignment ahead of wherever we may be**. On the other hand, please **do not read too far ahead**. You will get far more out of the class discussion if the cases are fresh in your mind when we take them up in class. There is no profit in reading material a week in advance if you only have a vague memory of it when we finally get to it in class. As a rule of thumb, expect us to get, on average through 3-4 cases per hour. (This is just an estimate, and we may end up going a little slower, especially in the beginning, if circumstances warrant).

Please note that while we may not discuss every case or topic in class, **you are responsible for all assigned material on the examination**, unless I specifically state otherwise. A second assignment sheet will be distributed at about the middle of the semester.

The Epstein handbook has “notes” and additional history following the some of the cases. Occasionally, I assign some of these notes. However, even when they are unassigned, the notes are worth reading as they will often form part of the class discussion. The notes also present important nuances to the basic rules that you will get out of reading the major cases. As such, they may be useful in preparing for the exam (as best grades on exams are usually obtained by those who notice and address the nuances). Additionally, some of the cases I assign are “note cases,” i.e., they appear in a condensed form in the notes. If they are assigned, they are to be treated as of equal importance to the “full” cases. You will be held equally responsible for both types.

I will do my best to get to know you relatively quickly; however, I am not particularly good with names. So please bear with me if I don’t recall your names right away. (In order to help me learn your names quickly, I will ask you to adhere to the seating chart. *See below.*)

Don't hesitate to stop by my office and introduce yourself during the first few weeks of class, or anytime thereafter, not just with questions about the course, but to talk about law school, the job market, the stock market, sports, politics, travelling, horseback riding, or just to vent.

A NOTE ON RESTATEMENTS

Throughout the book, you will see references to the Restatement (Second) of Torts and its piecemeal revision in the Restatement (Third) of Torts. Some of the sections of the Restatements are assigned reading. The Restatements are the work of a group of legal commentators who attempt to summarize the prevailing law on a certain subject, given the decisions issued by courts throughout the country. Occasionally, a Restatement will describe the minority position on a particular topic because the commentators believe that position to be the better reasoned one or, perhaps, because they believe it to be an indication of a trend in the courts that has not yet been fully adopted. You may find the Restatements to be a helpful guide to learning basic legal principles, but you should be careful to understand the position the Restatement takes. You should not assume the Restatements definitively express “the law,” and you should never assume that it accurately represents the state of the law in a particular jurisdiction. With these caveats, I expect you to read the assigned portions of the Restatements, and to know them for the final exam.

LAPTOPS

I ask that you do not bring laptops to class for the first two weeks. This is not some sort of novel torture invented by me. (I can’t claim credit for the invention). Rather, I ask you to do this because in the first couple of weeks, it will be more important to learn how to think like a lawyer by identifying the issues, finding distinctions, and understanding the place for policy arguments. As a result of this explorative process, much of what will be said in class in the early going will simply be wrong. Furiously typing away on laptops before learning how to separate the wheat from the chaff won’t help and will likely be detrimental.

Furthermore, it might surprise some of you, but (despite the fact that I cannot see your computer screens) I can tell when you are taking notes and when you are chatting, browsing facebook, or playing videogames. If this becomes a problem, I reserve the right to ban laptops altogether, or to mark those individuals who are engaged in extraneous activities as absent.

CLASS ATTENDANCE

I consider regular attendance, preparation and participation part of your obligation in taking this course. Because I expect students to attend class, I do not formally excuse absences and there is no need to inform me in advance that you will be absent. I presume that students who miss class must be doing so for good reason. Attendance will be taken as per the Law School rules. If, however, any kind of personal emergency arises that will cause you to miss multiple classes, please inform either me or the Dean of Students so that we can make the arrangements necessary to minimize the adverse impact on your studies.

Please also note that **I reserve the right to bar students from taking the final examination if attendance, participation or preparation have been inadequate.** In this regard, please also see the information on “Attendance” in the 2013-14 Law School Bulletin.

CLASS PARTICIPATION

Law school policy permits me to raise grades by one “step” (e.g., from “B” to “B+”) for superior class participation. I expect to make use of that policy. Conversely, the policy permits me to lower grades one “step” for poor participation. While I don’t expect to grades based on *non*-participation, I may (and will) lower grades for lack of preparation, or for unprofessional conduct in class (e.g., booing, hissing, or insulting your classmates). Please keep in mind that the purpose of law school is to explore ideas, even if those ideas seem outrageous at first blush. To that end, I require that you give due respect to your classmates and the thoughts they express in class. On the other hand, when speaking in class please attempt to make your comments thoughtful and keep them on-point.

This class, like every class, works best with widespread student participation. I hope much of that participation will come voluntarily, but I will regularly call on students to ensure broad participation. I do this for two reasons.

First, many of the issues we will talk about this semester are contested ones, and they often are the subject of current debate in courts, legislatures, and academic publications. We may not be able to resolve these issues in class, but all of us will understand them much better after in-class debate. Second, the ability to think and speak on your feet is an essential skill in virtually all forms of legal practice. You are much better off learning that skill in law school than when you are in practice. You should therefore treat our classroom time as an opportunity to practice your advocacy skills.

If you have not been able to prepare for class on a particular day, please let me know before class begins and I will not call on you that day. You will, however, receive only ONE (1) such pass this semester. If you are present and have not taken a pass for the day, I will assume you are prepared to participate fully. If you are called on and are not prepared, I will mark you as absent for that day, because in my view being “present” involves more than just being physically in your seat; it also involves being mentally present.

Please keep in mind that the subject matter of Torts often deals with sensitive subjects including, but not limited to, outrageous conduct, violence, sexual harassment, racial discrimination, and the like. Consequently, the language in some of the opinions we read and/or hypotheticals posed in class may sometimes be unsettling. Please understand that this is not done to offend

anyone or make anyone uncomfortable. Instead, it is part of learning how the law deals with such behavior. If at any point you feel uncomfortable about anything we discuss in class please let me know right away, and I will do my best to minimize such feelings.

SEATING CHART

Early in the semester I will circulate a seating chart. As I mentioned, it will greatly help me learn your names. To that end, **you must sit in your assigned seat for EVERY SESSION. Even if you have not done the reading assignment you must sit in your assigned seat. Even if you arrive late (and please do your best to be on time as late arrivals are highly disruptive) you must sit in your assigned seat — and that is so even if it requires you to walk in front of other students to take your seat. If you are not sitting in your assigned I will interrupt the class and ask you to move.**

OFFICE HOURS; COMMENTS & SUGGESTIONS

I don't have formal "office hours," because it implies that those are the only times I am willing to see students, and because my schedule, especially this semester is somewhat unpredictable. Rather, I welcome students to stop by my office whenever I am there. If I am unable to talk with you on the spot we can set aside another time. If you stop by and I am not at my desk, you can send me an e-mail or leave a voicemail. If you prefer to set up an appointment time in advance (rather than just showing up) that is perfectly fine.

I also welcome any comments or suggestions that you may have regarding the class. These can be made at anytime during the semester by whatever medium you find most convenient. Feel free to send me an email, give me a call, or drop by my office. Rest assured I won't take offense at any constructive criticism, but if you wish to remain anonymous, feel free to just slide a note under my door.

TEACHING ASSISTANT

I have a teaching assistant for this course. Her name is Laura Gagne. You can contact her via email at laura.gagne@ubalt.edu. I highly encourage you to make use of her experience and knowledge not just as a Torts student, but as a recent 1L who knows your plight all too well.

TAPING POLICY

You may not make your own tape recordings of the class, either for yourself, for a classmate, or for any other person or purpose. I will only authorize taping by the Law School Media Center in two circumstances:

(1) I will arrange taping on days when it is likely that a large number of students will likely be absent because of religious, professional, or political commitments or because of logistical difficulties. Examples falling into this category would include class sessions that fall on major Religious Holidays, those that coincide with major

public or political demonstrations taking place in Baltimore/Washington area, or those that occur on days where weather conditions or transportation disruptions make it difficult to get to campus even though the law school remains open.

(2) I will permit taping if any given student is likely to miss **2 or more sessions** because of a documented medical or family emergency. Examples falling into this category involve serious illnesses such as the flu, protracted hospitalizations after surgery or an accident, or the need to travel out of town for extended period to attend to the needs of a seriously ill loved one.

Please do not approach the Media Center or the Dean of Students Office with requests to tape my class. They have been instructed not to do so unless I authorize the taping. **Please do not request me to tape if you will need to miss only one session for reasons such as a family wedding or funeral, a business trip, a minor illness, or a job interview. In that case, you should get notes from a classmate and then (if you so desire) see me in my office if you have any questions. Please do not request me to tape a class if the reason for you missing it is insufficiently serious (e.g., day at the beach).**

FINAL EXAMINATION

Your grade in the course will be based on your performance on the final examination with possible upward adjustment for class participation as indicated above. The examination will be conducted according to the schedule set by the Records Office. **Please note, that information in the published exam schedule and/or promulgated by the Records Office supercedes any information to the contrary that I may mention in class or elsewhere, and you are responsible for keeping apprised of the date, time and location of the exam.**

I will not prohibit you from using commercially prepared outlines for the exam, but I strongly discourage you from doing so because those materials are not always correct. It should go without saying that, to the extent there is a conflict between a commercial outline and course materials, the course materials govern.

I will provide further detailed information about the format of the exam later in the semester.

OTHER POLICES

All law school policies that appear in the 2013-2014 Bulletin are applicable to this class and are fully incorporated by reference. If you are in doubt about the propriety of certain action or inaction, ask first. It is always easier to receive permission than forgiveness.

Class 1:

Introduction to Law School, the class, legal process, and Tort Law:

Syllabus & Policies

Epstein xxxiii-xl

The Orlando Brown Case (Handout 1-12)

INTENTIONAL TORTS

Class 2:

Battery:

Introduction (3-4)

Vosburg v. Putney (4-7; Notes 1-2)

Garratt v. Dailey (7-8)

Cohen v. Smith (Handout 13-14)

Talmage v. Smith (Handout 15-16)

Restatement (2d) of Torts § 13 (9)

Restatement (3d) of Torts on Intent § 1 (9)

Class 3:

Assault:

I de S & Wife v. W de S. (55-56)

Tuberville v. Savage (56)

Blackstone Commentaries (56)

Restatement (2d) of Torts § 21 (58)

Cullison v. Medley (Handout 17-18)

False Imprisonment:

Bird v. Jones (61-62)

Coblyn v. Kennedy's Inc. (63-65)

Sindle v. NYC Transit Auth. (66-67)

Restatement (2d) of Torts §§ 35, 42 (Handout 19)

Class 4:

Intentional Infliction of Emotional Distress:

Wilkinson v. Downton (68-70, Note 1)

Restatement (2d) of Torts § 46 (71-72)

Brandon v. County of Richardson (Handout 20-25)

Trespass to Land and to Chattel:

Dougherty v. Stepp (11-12, Notes 1-2)

SVA v. Kuprewicz (Handout 26-27)

DEFENSES TO INTENTIONAL TORTS

Class 5:

Insanity:

McGuire v. Almy (28-30)

Anicent v. Gant (Handout 28-30)

Consent:

Mohr v. Williams (14-16)

Kennedy v. Parrott (16)

O'Brien v. Cunard Steamship Co. (17-18)

Class 6:

Invalid Consent:

Hudson v. Craft (21-24; Note 1)

Barton v. Bee Lines (Handout 31)

Necessity:

Ploof v. Putnam (44-46)

Vincent v. Lake Erie Transport (47-50)

Surroco v. Geary (Handout 32-33)

Wegner v. Milwaukee Mutual (Handout 34-35)

Class 7:

Self-Defense & Defense of Property:

Courvoisier v. Raymond (32-34, Notes 1-2)

Bird v. Holbrook (37-40, Note 1)

Katko v. Briney (Handout 36-38)

Restatement (2d) of Torts § 85 (41)

Restatement (2d) of Torts §§ 77, 79 (Handout 39)

NEGLIGENCE

Reasonableness as Duty of Care:

Epstein 145-147

Losee v. Buchanan (116-117)

Vaughan v. Menlove (147-150)

Class 8:

Emergencies:

Breunig v. American Family Insurance (161-164; Note 1)

Lehman v. Haynam (Handout 40-41)

Beginners, Experts & the Handicapped:

Roberts v. Ring (154-155)

Daniels v. Evans (156-158, Note 2)

Cervelli v. Graves (Handout 42-45)

Epstein, Note 2 (165-166)

Robinson v. Pioche, Bayerque & Co. (Handout 46)

Shepherd v. Gardner Wholesale (Handout 47)

Class 9:

Statutes as Standards:

Anon. (235)

Martin v. Herzog (247-248)

Tedla v. Ellman (248-249)

Brown v. Shyne (244-245)

O'Guinn v. Bingham County (Handout 48-51)

Restatement (2d) of Torts § 286 (239-240)

Restatement (3d) of Torts § 14 (240)

Customs as Standards:

Titus v. Bradford (195-197)

Texas & P. R. Co. v. Behymer (Handout 52)

Helling v. Carey (Handout 53-54)

Class 10:

Breach of Duty:

Cooley v. Public Service Co (178-180)

Pipher v. Parsell (Handout 55-56)

Stinnet v. Buchele (Handout 57-58)

Calculus of Risk & Negligence Definition:

US v. Carrol Towing Co. (181-83)

The T.J Hooper (199-200; *N.B. Facts for this case appear on page 198, District Court's opinion*)

Andrews v. United Airlines (190-192)

Restatement (3d) of Torts § 3 (184)

Class 11:

Res Ipsa Loquitur:

Epstein 271-272

Byrne v. Boadle (272-273, Note 1)

Larson v. St. Francis Hotel (274-275)

Connolly v. Nicollet Hotel (Handout 59-60)

Colmenares Vivas v. Sun Alliance (280-283, Notes 3)

Ybarra v. Spangard (289-293)

Persinger v. Step-by-Step (Handout 61-62)

Wigmore on Evidence § 2509 (275)

Restatement (2d) of Torts § 328 (276)

Restatement (3d) of Torts § 17 (276)

Class 12:

Contributory Negligence:

Epstein 301-302

Butterfield v. Forrester (302-303)

Leroy Fibre v. Chicago, Milwaukee & St. Paul Rail (316-318)
Gyerman v. United States Lines (307-311, Note 1)
Smithwick v. Hall Upson Co. (Handout 63-64)
Padula v. State (Handout 65)
Dernheim v. N. Fiorito Co. (320-321)

Class 13:

More Contributory Negligence, Last Clear Chance, Misconduct, and Illegality:

Fuller v. Illinois Central RR (325-327)
Beems v. Chicago, Rock Island & Peoria RR (303-304)
Christensen v. Royal School Dist. (Handout 66-68)
Restatement (2d) of Torts § 479 (327)

Assumption of Risk:

Lampson v. American Axe & Tool (333-334)
Dalury c. SKI Ltd (347-350)
Murphy v. Stepplechase Amusement Co. (338-340)
Avila v. Citrus Community College (Handout 69-72)
Fireman's rule (346-347)

Class 14:

Comparative Negligence:

Epstein 355-357
Li v. Yellow Cab (357-363)
Various Statutes (370-372)
Restatement (3d) of Torts § 7 (372)
Note 1 (372-373)

Second Part of the Syllabus and Second Part of the Handout to be Distributed Mid-Semester