

TORTS (LAW 608.319A)
Fall 2020

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

Class Days & Hours: Mondays and Wednesdays from 10:00-11:50 a.m.

Online “Office” Hours: Mondays and Wednesdays from Noon-1:15 p.m. and 4:00-5:00 p.m.; Tuesdays from 10:30 – 11:30 a.m. and 1:30-4:00 p.m. Send an e-mail (see address above) at any time and professor will get back to you as soon as possible.

Assistant: Ms. Gloria Joy. gjoy@ubalt.edu. 410-837-4631.

First Week of Assignments:

For the 1st class session, on Monday August 24, please read pages 15-30 of the Dobbs, Hayden & Bublick, Torts and Compensation Casebook

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

By Monday August 31, please go back and read pages 3-14 of the Dobbs Torts Casebook for background. Any other reading assigned for August 31 will be announced at the August 26 class session.

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, Thompson/West 2017)

Other Sources of Reading Assignments: Some other assigned cases and documents will be available on the TWEN website for the course.

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 by no later than 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 *Sinnott* 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 Karyn Schulz, Director, Center of Educational Access, Office of Disability and Access Services, at 410-837-4141 or kschulz@ubalt.edu.

4) Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

5) **Computers:** Students may use computers in the classroom for class related purposes only.

6) **Seating & Arrivals/Departures to the Classroom:** 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.

Similar issues of course arise with students who leave early from class, or who leave the classroom at times other than any "designated break time," a five-minute break that will be taken some time during the Monday and Wednesday afternoon class sessions. Again, please try to be as careful and non-disruptive as possible when leaving your seat during class time.

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) 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 1-3 students by name at Monday morning class sessions, and 3-6 students by name during Monday and Wednesday afternoon class sessions. Also, I will ask for volunteers on more general questions.