

Torts

(Law 608—419)

Spring 2020
Professor Lindsay

Course Overview

This course provides an introduction to the law of torts. “Torts” refers to the body of law governing responsibility and compensation for various harms that people inflict on one another. Examples include battery, automobile accidents, professional malpractice, products liability, and defamation. We will cover negligence liability (which applies to most “accidental” harms); strict liability (which applies to some types of defective products, some animal attacks, and certain “abnormally dangerous” activities); intentional torts; theories of causation; the calculation of “damages” (i.e. compensation); and affirmative defenses such as assumption of risk, contributory negligence, comparative negligence, and qualified governmental immunity.

Class Meetings: Tuesday & Thursday, 7:00–8:50 p.m., in AL 603

Required Materials: Ward Farnsworth & Mark Grady, Torts: Cases and Questions (3rd ed. 2019)

Instructor

Professor Matthew Lindsay

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Office Hours: Wednesday, 3:00–5:00 & 7:00–8:00 p.m., and by appointment.

Course Objectives / Learning Outcomes: At the conclusion of this course, students will be equipped to:

- Identify and define a broad range of tort claims;
- Demonstrate substantive knowledge of tort law;
- Apply legal rules to varied factual situations;
- Articulate policy rationales for legal rules and deploy those rationales in legal analysis;
- Read and analyze legal cases accurately and efficiently, and identify the various component parts of those cases;
- Construct persuasive legal arguments.

Course Website: This course has a TWEN page, where I will post updated versions of the course syllabus, assignments, and other course materials. I will also use the TWEN email function to communicate important course information.

Grades: The distribution of grades will conform to the Law School's standard first-year grading curve: Between 15% and 25% will receive an A or A-; between 7% and 14% will receive a C- or lower; and the class-wide GPA will be between 2.7 and 3.0 (i.e., between a B- and B).

Your course grade will be based on the following three assessment items:

- (1) A three-hour, limited-source, in-class **Final Examination** will account for **either 100% or 80%** of your final course grade. (See #2, below.) The Final Exam is **cumulative** and can test any of the assigned readings and anything that we have discussed in class. I will distribute practice exam questions throughout the semester.
- (2) An in-class **Midterm Examination** administered on Thursday, February 27 will account for **either 20% or 0%** of your final course grade. The Midterm Exam is **redeemable**. This means that if the combined score of your Midterm and Final Examinations is lower than your Final Examination score standing alone, your Midterm score will not count toward your course grade. *For example:* If you receive an 88 on the Midterm and an 80 on the Final, your combined exam score for the course will be an 82 (i.e. the average of the two exam scores, with the Midterm weighted .2 and the Final .8). If you receive a 78, 68, or 58 on the Midterm and an 80 on the Final, your combined exam score for the course will be an 80.
- (3) **Participation** in class discussion is mandatory. Excellent class participation—regular attendance plus contributions to class discussion that reflect careful preparation—may result in a third-of-a-grade increase (e.g., from a B+ to an A-). Poor class participation—frequent absences and/or lack of informed participation—may result in a third-of-a-grade reduction (e.g., from an A- to a B+).

School of Law and Class Policies

Attendance: Class attendance is a primary obligation of each student. A student's right to be enrolled in the course and to take the final examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) may be compelled to withdraw from the course or barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed number of absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

An attendance sheet will be circulated at the beginning of every class. Students who sign in will be considered "present and prepared" (and thus eligible to be called on); students who do not sign in will be counted absent. Arriving late to class can be disruptive and distracting for other students. At my discretion, persistent late arrival to class may be counted as an absence and may factor into your participation grade.

Class Cancellation: If I need to cancel a class, notice 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 website or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should assume that classes are running on the normal schedule.

Computers: Students are permitted to use laptops for note-taking and encouraged to use them for exams. However, computer use must be respectful of others and should not impede your engagement in class. Using your computer in class for purposes other than note-taking and class-related research is highly distracting—to you and, more importantly, to your classmates—and is prohibited. I reserve the right to ban the use of the internet, or to ban laptops entirely, in the event that computer use becomes disruptive.

Professionalism: Because unprofessional or uncivil behavior inhibits learning, I expect your conduct in class to conform to basic norms of professionalism. This includes arriving to class on time and prepared to participate; not leaving the room in the middle of class; turning off your cell phone; and avoiding computer use that is unrelated to class. While I encourage you to voice reasoned disagreement with each other and/or with me, it is essential that you do so with courtesy and respect.

Time Expectations: American Bar Association Standards for Law Schools establish guidelines for the amount of time that students should expect to devote to law classes. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work per week for each credit earned in a class.

Academic Integrity: Students must refrain from acts that they know or 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/.

Disability Policy: If you are a student with a documented disability who requires an accommodation for academic programs, exams, or access to the University's facilities, please contact the Office of Academic Affairs, at ublawaacadaff@ubalt.edu or (410) 837-4468.

Title IX Sexual Misconduct and Nondiscrimination Policy: 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>.

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.

Syllabus

The syllabus and other course materials will be posted on the course TWEN website. Please consult the posted syllabus regularly, as I expect to update reading and other assignments throughout the term.

Reading Assignments: I will generally assign ten to twenty pages of reading per class. Sometimes it will be less and sometimes more. Because the material is often dense and challenging, please allow yourself sufficient time to read it carefully. (As a rough guideline, if I were reading this material for the first time in preparation for class, I would expect to spend, on average, between five and eight minutes per page.) Reading case excerpts “carefully” includes the following:

- Note the key *facts* of the case. I will often begin our discussion of a case by asking a student to summarize the facts. This includes both the “background” facts that gave rise to the lawsuit as well as the legally important facts—often called “material” or “determinative” facts—that bear on the court’s analysis of the legal issue(s) under consideration.
- Identify the legal *issue* that the case addresses. Sometimes the court will announce the issue explicitly, but sometimes it will not. If the case excerpt describes the dispositions of the lower (i.e., trial and intermediate appellate) courts that have heard this case, make a note of those. If the case excerpt describes the parties’ legal arguments on appeal, make a note of those, too.
- Identify the *rule of law* that the court applies in the case. This includes the court’s explanation of what the rule means and how it applies.
- Identify the *holding* of the case. What is the court’s legal conclusion, based on how the rule of law applies to the specific facts of this case?
- Understand the court’s *reasoning*. How does the applicable rule of law apply to the facts? Are there other values or considerations—e.g., fairness, justice, judicial administrability, economic efficiency, public policy, etc.—that inform the court’s analysis?
- Identify the *disposition* of the case: What did the court do? Affirm the lower court, reverse it, vacate its decision and remand the case for further proceedings?

This Syllabus designates specific readings for specific dates. Because the pace at which we cover various topics are influenced by the particular needs of and dynamics within each class, there will probably be times when we fall behind the schedule indicated on the Syllabus. When this happens, I will adjust the reading schedule accordingly and inform the class.

The Syllabus uses the following abbreviations:

F & G = Farnsworth and Grady, *Torts: Cases and Questions*
t, m, & b = top, middle, and bottom (of the page)

WEEK 1

Tues., 1/14

Introduction to Tort Law

- F & G, Introduction (pp. xxvii–xxxix)

Thurs., 1/16

Intentional Torts—Battery

- F & G, pp. 1–11b (Intent and Voluntariness); 17t–21b (Consent)

WEEK 2

Tues., 1/21

Intentional Torts

- F & G, pp. 26t–34t (Trespass); pp. 37t–39m, 42b–44b (Conversion); 59b–64t (Assault)

Thurs., 1/23

Privileges to Commit Intentional Torts

- F & G, pp. 79–86m (Defense of Person and Property)

WEEK 3

Tues., 1/28

Privileges to Commit Intentional Torts

- F & G, pp. 89m–96b (Private Necessity); 97b–99m, 100t–101m (Public Necessity)

Thurs., 1/30

The Negligence Standard

- F & G, pp. 111–123m (The Reasonable Person)

WEEK 4

Tues., 2/4

The Negligence Standard

- F & G, pp. 123m–128b (Child Standard of Care); 128b–135b; 138b–40m, 142b–45t (Risks and Precautions; the Hand Formula)

Thurs., 2/6

The Negligence Standard

- F & G, pp. 146t–151m (Custom); 151m–56t (Medical Malpractice)

WEEK 5

Tues., 2/11

Negligence Per Se

- F & G, pp.156b–63b, 168b–73b

Thurs., 2/13

Res Ipsa Loquitur

- F & G, pp. 174–79b, 184b–86t, 188t–90b

WEEK 6

Tues., 2/18:

Duties

- F & G, pp. 195–202b (Affirmative Acts); 205b–209b (Undertakings)

Thurs., 2/20

Duties

- F & G, pp. 211m–16b (Special Relationships); 216b–21t (Third Parties); 225t–28t (Public Duty Doctrine)

WEEK 7

Tues., 2/25

Duties

- F & G, pp. 228t–29b, 230m–37t, 238t–40b (Owners and Occupiers of Land—Trespassers, Licensees, and Invitees)

Thurs., 2/27

MIDTERM EXAM

WEEK 8

Tues., 3/3

Cause in Fact

- F & G, pp. 271–76t (But-for Causation); 290m–94t (Alternative Liability); pp. 300m–304 (Apportionment)

Thurs., 3/5

Proximate Causation

- F & G, pp. 305–18m (Remoteness and Foreseeability)

Prior to class on Thursday, 3/12, please complete the reading below and listen to the recorded lecture [posted on TWEN]:

Proximate Causation

- F & G, pp. 328–36t, 340m–41b (*Palsgraf* and Limitation of Duty)
- Warr v. JMGM Group (Md. 2013) (posted on TWEN)

WEEK 9

Tues., 3/10

Proximate Causation

- F & G, pp. 305–18m (Remoteness and Foreseeability, continued)

Thurs., 3/12

Proximate Causation

- F & G, pp. 318m–22b (Intervening Causes)
- Kiriakos v. Phillips (Md. 2015) (posted on TWEN)

***** SPRING BREAK: March 16–22 *****

WEEK 10

Tues., 3/24

Strict Liability

- F & G, pp. 343–50t (Animals)
- Tracey v. Solesky (Md. 2012) (posted on TWEN)

Thurs., 3/26

Strict Liability

- F & G, pp. 353m–56m, 361m–63b, 368m–70t (abnormally dangerous activities); pp. 372m–76t, 377t–80b (Respondeat Superior)
- Toms v. Calvary Assembly of God (Md. 2016) (posted on TWEN)

WEEK 11

Tues., 3/31

Products Liability

- F & G, pp. 391–94b, 397m–405t, 410m–12m (Manufacturing Defects); pp. 412m–21b (Design Defects)

Thurs., 4/2

Products Liability

- F & G, pp. 424b–31m, 435t–42b (Defective Instructions and Warnings)

WEEK 12

Tues., 4/7

Defamation

- Packet of readings posted on TWEN

Thurs., 4/9

Damages

- F & G, pp. 443–46m, 451m–56t (Lost Earnings); 462t–65t, 469m–71t, 473t–75t (Pain and Suffering)

WEEK 13

Tues., 4/14

Damages

- F & G, pp. 475–485m, 487t–89t (Punitive Damages)

Thurs., 4/16

Torts: Defenses

- F & G, pp. 493–504t, 506m–507m (Contributory and Comparative Negligence)
- Coleman v. Soccer Assoc. of Columbia (Md. 2013) (posted on TWEN)

WEEK 14

Tues., 4/21

Defenses

- F & G, pp. 508–513m, 514b–15m (Express Assumption of Risk); pp. 515m–19m, 520b–23m (Primary Assumption of Risk)

Thurs., 4/23

Catch-up/Exam Review

- No new readings