

Law 608–319A (T/Th 10:00–11:50am)
Law 608-319C (T/Th 1:00–2:50pm)
Fall 2023
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TORTS

Course Policies & Syllabus – Part I

Welcome to the University of Baltimore School of Law and to Torts. Below you will find a description of the course and course expectations.

LEARNING OUTCOMES

By the end of this course, the successful student will be able to:

- a. Identify claims and defenses arising under the common law of torts under different factual scenarios;
- b. State the legal elements of these claims and defenses;
- c. Cite authority in support of statements of law of torts;
- d. Construct arguments using the facts to demonstrate that the elements of claims and defenses are satisfied;
- e. Assess the strengths of the claims and defenses;
- f. Construct arguments regarding interpretations of law based on other legal sources, theory, and policy.

TEXTBOOK & READING ASSIGNMENTS

The assigned textbook for this course is Richard A. Epstein, *Cases and Materials on Torts* (Aspen Publishers, 12th ed., 2020) (sometimes referred to below as “the casebook” or as “Epstein”). There will also be additional materials labeled *Torts–Supplemental Materials – Fall 2023*. 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, although the math doesn’t always hold because some topics are more difficult than others. As a rule of thumb, expect to cover 20-25 pages of reading or 3-4 cases per class hour (This is just an estimate, and we may end up going a little slower, especially in the beginning, if circumstances warrant). 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)”).

Please note that 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– for each subsequent class you **should read at least 40-50 pages ahead of wherever we finished the preceding class**. 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.

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 casebook 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 **three** 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.

I understand that these are uncertain times and that COVID, and other various maladies may still impact the ability of students to come to class. To that end, I do plan to provide, if necessary, lectures on Zoom in addition to the live lecture. However, attendance via Zoom is NOT considered "attendance" within the meaning of the school or American Bar Association rules. Consequently, while you are welcome to listen in on lectures via Zoom, you may NOT mark yourself as "present" unless you are physically in class (or unless the entire class is held on Zoom).¹ It goes without saying that marking yourself present when you were not physically in class, constitutes academic dishonesty and subjects you to appropriate sanctions.

A student who exceeds the maximum allowed absences (generally 20% of class sessions) may be compelled to withdraw from the course or may be barred from sitting for the final exam. 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. **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 2023–24 Law School Bulletin.

To keep attendance, this class will use attendance software called **Quickly**. Quickly is hosted in Canvas, UB's official learning management system. At the beginning of each class you

¹ Some classes may be held entirely on Zoom. In those cases, Zoom attendance does "count" and you may mark yourself present. Simply stated, the rule is "If Dolin is in the lecture hall, students must be too, or are considered absent."

will have to check-in using a pin number generated at the start of class.

To check-in for class using a pin number, you must log into the Canvas site for the course via myUB. Click “Qwickly Attendance (Law)” on the left side of the navigation bar and enter the pin.

Qwickly will automatically email you if you are marked absent for the day. If you believe this email was sent in error, please contact the professor and their administrative assistant **by the close of business** of the day that the class took place. Lack of the Qwickly sign-in (or same-day correction) constitutes **final, conclusive, and irrebuttable presumption** of your absence. I simply am unable to recollect who was in what class weeks (or even days) after the class took place.

CLASS PREPARATION & 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, 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(S)

I have hired two teaching assistants for this course. They may share their duties in terms of holding their review sessions and you are welcome to attend either or both of their sessions. Their names are Philip Glaser and Rory Rightmyer. You can contact them via email at philip.glaser@ubalt.edu and rory.rightmyer@ubalt.edu, respectively. I highly encourage you to make use of their experience and knowledge not just as a Torts students, but as a recent 1Ls who know your plight all too well.

TAPING POLICY²

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 three 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.
- (3) When required to do so in order to accommodate any student's disability. In this circumstance, the decision is made by the University Administration and is then communicated to me.

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).**

² UB Law Recording Statement:

Any class recordings, audio or video, are for the sole use of that specific class instruction and study and may not be used or reproduced by students for any other purpose. Similarly, students may not capture video, audio, images or chat text from a class without permission from the instructor for use specific to that class instruction and study, and such images may not be used or reproduced by students for any other purpose. Violating these directions is an honor code violation.

UB University Recording Statement:

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. Students may mute their microphone or turn off their camera if they do not consent to be recorded, but this may mean they need to find additional ways to participate in the class discussion. Students may be required to turn on their cameras and participate in graded class activities. In addition, students who turn off their camera and do not remain present for the class session may be subject to the Honor Code for misrepresenting attendance.

GRADES, MIDTERM, & FINAL EXAMINATION

Your grade in the course will be based on your performance on the combination of midterm and final examinations with possible upward adjustment for class participation as indicated above. The midterm will likely be a take-home exam and will be scheduled at some point in late September/early October (TBD). It will be worth between 10 and 20% of your grade (depending on how much material we have covered by then).³ The final examination will be an in-class, open book examination, 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.**

All exams will be entirely open book. I will not prohibit you from using commercially prepared outlines for either 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 final exam later in the semester.

CLASS CANCELLATIONS & MAKE-UPS

There is a high likelihood of some classes being cancelled due to religious holidays or other conflicts (such as conferences that I am expected to attend). I hope to avoid all other cancellations, but unforeseen events such as weather or family emergencies, COVID outbreaks, and the like, cannot be ruled out.

I will schedule make up classes to substitute for the cancelled ones. I will do my best to schedule the make-up classes at such times and in such format (live vs Zoom) as is convenient for the vast majority of the students.

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 the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports. The School of Law Honor Code and information about the process is available at <https://bit.ly/3J81G1K>.

³ However, given that I am teaching 138(!) students this semester, across two sections of Torts, an essay take-home exam midterm may not be feasible, and may have to be substituted for an in-class multiple choice exam. We will discuss this matter in more detail once the semester starts.

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.

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

The law school works hard to ensure compliance with the Americans with Disabilities Act (ADA). For detailed information on reasonable accommodations, please see pp. 115-118 of the student handbook. 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 Law School's Office of Academic Affairs, at ublawaacadaff@ubalt.edu or the University's Office of Disability and Access Services at das@ubalt.edu. Note that classroom accommodation requests should be submitted 3 weeks before the start of the semester. Exam accommodation requests should be submitted no later than 2 weeks after the start of the semester.

OTHER POLICES

All law school policies that appear in the 2023–2024 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:

Please read both handouts that are posted online and be prepared to discuss the hypothetical problem presented

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

INTENTIONAL TORTS

Topic 1

Battery:

Introduction (3–4)

Vosburg v. Putney (4–6; Notes 1–2)

Garratt v. Dailey (7–8 (discussed in Note 3))

Cohen v. Smith (Handout 1–2)

Talmage v. Smith (Handout 3)

Restatement (2d) of Torts § 13 (9)

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

Restatement (3d) of Torts on Intent § 2 (9-10)

Topic 2:

Assault:

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

Tuberville v. Savage (55)

Blackstone Commentaries (56)

Notes 1-2 (56-57)

Restatement (2d) of Torts on Intentional Torts § 105 (58)

Restatement (2d) of Torts on Intentional Torts § 25 (58)

Cullison v. Medley (Handout 4–5)

Topic 3:

False Imprisonment:

Bird v. Jones (62-63 (discussed in Note 1))

Coblyn v. Kennedy's Inc. (60-62)

Sindle v. NYC Transit Auth. (Handout 6-7)

Restatement (2d) of Torts §§ 35, 42 (Handout 8)

Topic 4:

Intentional Infliction of Emotional Distress:

Wilkinson v. Downton (65–72, Notes 1-3)

Restatement (2d) of Torts § 46 (66–67)

Brandon v. County of Richardson (Handout 9–14)

Topic 5:

Trespass to Land and to Chattel:

Dougherty v. Stepp (11-15, Notes 1-4)

SVA v. Kuprewicz (Handout 15-16)

DEFENSES TO INTENTIONAL TORTS

Topic 6:

Insanity:

McGuire v. Almy (29-31, Note)

Anicent v. Gant (Handout 17-19)

Topic 7:

Consent & Invalid Consent:

Mohr v. Williams (15-16)

Kennedy v. Parrott (Summarized in Note 1; 16-17)

O'Brien v. Cunard Steamship Co. (Summarized in Note 5; 22)

Hudson v. Craft (23-25; Note 1)

Barton v. Bee Lines (Handout 20)

Topic 8:

Necessity:

Ploof v. Putnam (44-45)

Vincent v. Lake Erie Transport (47-49)

Surroco v. Geary (Handout 21-22)

Wegner v. Milwaukee Mutual (Handout 23-24)

Topic 9:

Self-Defense & Defense of Property:

Courvoisier v. Raymond (33-37, Notes 1-4)

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

Katko v. Briney (Handout 25-27)

Restatement (3d) of Torts on Intentional Torts § 31 (42-43)

NEGLIGENCE

Topic 10:

Reasonableness as Duty of Care:

Epstein 143-145

Losee v. Buchanan (Discussed in Note 1; 115-116)

Vaughan v. Menlove (145-147)

Topic 11:

Emergencies:

Breunig v. American Family Insurance (159-162; Note 1, 3)

Lehman v. Haynam (Handout 29–30)

Topic 12:

Beginners, Experts, & the Handicapped:

Roberts v. Ring (152-53)
Daniels v. Evans (155–156, Notes 1–2)
Cervelli v. Graves (Handout 31–34)
Epstein, Note 4 (152)
Robinson v. Pioche, Bayerque & Co. (Handout 35)
Fletcher v. City of Aberdeen (164–165)
Denver & Rio Grande R.R. v. Peterson (166)
Epstein, Note 3 (166)

Topic 13:

Statutes as Standards:

Anon. (226)
Ezra Ripley Thayer (227)
Martin v. Herzog (235–236)
Tedla v. Ellman (Summarized in Note 1, 237–238)
Brown v. Shyne (Handout 36-37)
O’Guinn v. Bingham County (Handout 38–41)
Restatement (2d) of Torts § 286 (229)
Restatement (3d) of Torts Liability for Physical & Emotional Harm § 14 (222)

Topic 14:

Customs as Standards:

Titus v. Bradford (189–191)
Mayhew v. Sullivan Mining Co. (191–193)
Texas & P. R. Co. v. Behymer (Handout 42)
Helling v. Carey (Handout 43–44)
Epstein, Notes 1–2 (195–198)
Murray v. UNMC Physicians (208–210)

Topic 15:

Breach of Duty:

Cooley v. Public Service Co (173–175)
Pipher v. Parsell (Handout 45–46)
Stinnet v. Buchele (Handout 47–48)

Topic 16:

Calculus of Risk & Negligence Definition:

US v. Carrol Towing Co. (177–178)
The T.J Hooper (194–195; *N.B. Facts for this case appear on pages 193–194, District Court’s opinion*)

Andrews v. United Airlines (186–188)
Restatement (3d) of Torts Liability for Physical & Emotional Harm § 3 (181)
Epstein, Note 5 (182–183)

Topic 17:

Res Ipsa Loquitur:

Epstein 259

Byrne v. Boadle (259–260, Note 1)

Larson v. St. Francis Hotel (Summarized in Note 2; 261)

Connoly v. Nicollet Hotel (Handout 49–50)

Colmenares Vivas v. Sun Alliance (265–268, Notes 1-2; 4)

Ybarra v. Spangard (273–277)

Persinger v. Step-by-Step (Handout 51–52)

Prosser Test (262)

Restatement (2d) of Torts § 328D (262)

Restatement (3d) of Torts Liability for Physical & Emotional Harm § 17 (263)

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