

TORTS I

Course Syllabus Professor Dyson

Office Hours: Office hours will be held every week beginning 15 minutes after class Wednesday in room 770 located on the 7th floor. Please schedule an appointment with the faculty assistants by emailing academics@tjssl.edu with a cc: email to me. I will open additional hours on Monday to accommodate students for the midterm practice exam as well. These will be in addition to extended time allotted by the course learning assistant.

Email: mdyson@tjssl.edu

Learning Assistant(s): Elizabeth Atkins (atkinsel@tjssl.edu). The learning assistant will hold weekly office hours and group meetings and will review your practice exams answers, suggest areas for improvement and keep a record of your attendance at mandatory feedback meetings. See TWEN for further details.

Course Website: TWEN (The West Education Network). Please sign up and subscribe your correctly spelled email address. I post useful and important material on the TWEN site, including mandatory practice exercises and supplemental learning materials. I will also make group announcements via the email listserv or on the announcement page so be sure to check into TWEN regularly.

Course Description / What is a tort and what is its function? The main objective of tort law is to determine circumstances in which damages will be awarded to an injured party for her loss sustained, whether it is an injured leg, stolen property, a defamed character or loss of profits. However, the initial difficulty that arises in tort law is that the nature of any loss is such that it can never disappear, it can only be shifted. This dilemma creates additional difficulties when the costs associated with shifting that loss from one party to another is quite expensive and it is our principle objective as attorneys, judges and policymakers to justify shifting these expensive costs. Just how much are these costs? It has been asserted, for example, that the majority of the costs involved in tort law stems not from the compensation of victims, but rather the costs inherent in running the tort law system itself in the courts which has been estimated at \$152 billion per year (or some 2.2% of the American GNP; Tillinghast, 1995). If shifting loss will result in net economic loss to society, the fundamental question in tort law becomes what counts as an adequate justification for shifting that loss? How do we as lawyers justify shifting that loss on to the opposing party? Should tort liability rules place the burden of these costs on the wrongdoer, perhaps on the state vis-à-vis some form of insurance system (Abraham, 1990; Berger, 1988) or the party that is the least cost avoider in order to reduce the transactional and social costs of operating the tort system (Coase, 1960; Calabresi & Melamed, 1970)? Moreover, in an era of rising litigation, how does the tort system effectively balance the tensions that exist between its intended goals of compensation, deterrence, retribution, and corrective justice, or does it? Should tort law reflect actual human behavior and thought or should it aspire to higher ideals of community norms? Do tort rules allocate rulemaking power between the market and

the courts in an effective manner or does the very fear of tort liability deter valuable innovation in the marketplace? (See e.g. Huber & Litan, 1991). Further, how much does tort law accomplish to improve the safety of our society? Or do third party evaluators, consumer reports and underwriters accomplish more to ensure the safety of the public than does the tort system? (Klein, 1997; Rubin & Bailey, 1994; Ippolito, 1992). These and other central questions we will take up in this course as we explore the doctrinal landscape of the law of torts. Welcome!

Learning Outcome Objectives: This course will help you develop skills that are essential to (1) bar passage and to (2) effective legal practice. These skills require significant effort to master in and beyond the classroom and to meet these objectives you should be prepared to invest a significant amount of time outside the classroom in individual study. This is your chosen profession and you must give it your all to succeed. You are legal professionals-in-training and should approach this course with this mindset. Upon completion of the course you should be able to engage in and demonstrate knowledge of:

1. **Case Analysis.** After reading a case, you should be able to identify the case's procedural posture, background facts, legally significant facts, the issue(s) at hand, the legal rule(s) applied, the holding, the court's reasoning, the reasoning of any concurrence or dissent, and the court's disposition. You should also be able to synthesize a line of related cases and understand how to apply case law to new factual situations. To achieve this outcome, we will engage in Socratic dialog about the class readings and you will diligently prepare original briefs of all cases assigned. From time-to-time, I may ask students to turn in their briefs for review.
2. **Legal Argumentation.** Using the IRAC format, you should be able in writing and orally to make an effective legal argument that: identifies legal issues; provides the doctrinal rules germane to a given set of facts; applies those rules and the relevant facts in a way that supports a position and distinguishes unfavorable rules and facts; and provides the appropriate conclusion or outcome. We will develop this skill through practice exercises, a practice midterm and the final examination. In class you may be asked to analyze a problem orally using the IRAC format.
3. **Tort Doctrine Mastery.** You should be able to articulate the elements and related doctrines of the intentional torts noted above and of a claim for negligence. You should also be able to articulate the defenses and limitations applicable to the torts you learn, and the interrelationship among different torts causes of action. These concepts are tested on the bar exam and require your mastery. These rules will be covered in your readings, in PowerPoint presentations, in class discussions, weekly study questions, through the practice midterm, the midterm examination, and the final examination.
4. **Legal Problem-Solving / Client Counseling.** You should understand some basic skills required to counsel clients about legal issues. These include fact investigation, identifying legal issues in simple and complex circumstances, how evidence might be obtained to assist the client in proving a case, and identifying different alternatives that might achieve a client's goals. This outcome will be pursued primarily through role playing in class.

5. **Critical Thinking.** Because a healthy, sound and effective democracy and legal system rest on critical thinking, it is important to develop this skill. You will evaluate cases, statutes, arguments, documents and attorney's actions on their effects on clients, the civil tort system, and society. You will challenge assumptions made by lawyers, judges, legislators, students, professors and those of your own. You will demonstrate your critical thinking through class discussion and writing assignments that test your ability to think beyond the black letter law to understand why the law is the way it is or whether it should be reformed. Remain open minded and be engaged in the dialogue to make our time together productive and enjoyable.

6. **Legal Drafting.** In addition to IRAC, you will have the opportunity to draft a complaint, jury instructions, and an advocacy memo as practicing attorneys will be expected to do. These may at times be incorporated into the practice essay exams/exercises or as stand alone assignments. See TWEN for further details.

7. **Values of Morality, Ethics, Professionalism and Compassionate Lawyering.** An effective attorney abides by a sense of morality and a sense of independent values that serves human needs. Indeed, much of the crises resulting in the recent economic turmoil today and the resulting loss of confidence in the legal profession results from the public's perception of the immoral attorney. From Watergate, Worldcom, Arthur Andersen, Enron, the Great Recession of 2008, the failure of SEC lawyers as watchdog, the robo-signatures of in house bank attorneys in the foreclosure crisis, and the failure of attorneys to serve and protect the public often occurs when attorneys abdicates these values which have exacerbated or made possible some of the worse crises seen today. On the other hand, attorneys in civil rights litigation, lawyer whistleblowers, and consumer advocates have made society, services and products more safe, just and honorable. We will examine cases, review documentaries and examine contemporary issues in society such as tort reform, the judicial system and the effects of tort doctrines on socioeconomic conditions with an eye to exploring the role that values play in the legal profession and how attorneys can uphold the best traditions of the American bar.

Disability Accommodation: The Student Services Office strives to support the needs of all students. Students who believe they may need accommodations for a documented disability, temporary or permanent, are encouraged to contact Angela Bayne, Assistant Director of Student Services, as early as possible. The law school works collaboratively with students in an interactive process to determine reasonable and appropriate accommodations. Interested students are required to complete an application for accommodation and submit supporting documentation at least one month prior to the need for accommodation. Accommodation requests are reviewed on a case-by-case basis. Accommodation requests for emergency situations are also available. The process for emergency accommodations must be accompanied by appropriate documentation. To request a packet or to find out more about disability services on campus, please contact Student Services Assistant Director Angela Bayne at abayne@tjsl.edu or at 619.961.4203.

Audio-recording / Recording of Class Lectures: I do not permit recording of any kind of class lectures except as an accommodation for a disability. However, you are free to ask me to repeat as much as you like or to ask me to re-explain a concept you have difficulty with during and after class time as I will be happy to oblige.

Religious Observance: Religiously observant students wishing to be absent on holidays that require missing class should notify their professors in writing at the beginning of the semester, and should discuss with them, in advance, acceptable ways of making up any work missed because of the absence.

Excused Absences for Extracurricular Activities: Students participating in an officially sanctioned, scheduled extracurricular activity will be given the opportunity to make up class assignments or other graded assignments missed as a result of their participation. It is the responsibility of the student to make arrangements with the instructor prior to any missed scheduled examination or other missed assignment for making up the work.

Mandatory Practice Exams/Exercises: There will be at least ten (10) or more mandatory feedback opportunity practice exams/exercises and one (1) practice midterm exam (this will count as attendance/class preparation credit and if not submitted, will count as an absence). I will distribute these based on our coverage and timing. You must (a) complete the exams, (b) submit the exams through the assignment drop box on TWEN, (c) review the posted sample answer on our course TWEN site, (d) compare your answer with the sample answer, (e) compose a self-assessment based on that comparison, (e) complete a re-write of those portions of your exam needing improvement based on the above comparison and self assessment and (f) meet with the learning assistant or I for at least two practice exams, one before and after the practice midterm exam is administered. You must bring the original answer, your re-write and self-assessment to the learning assistant or I.

Early Monitoring and Prevention: The purpose of the Early Monitoring and Prevention Policy is to monitor students' progress in their first-year classes, and to intervene and assist any student who appears to be struggling with the material in a first-year class, at the earliest possible opportunity. The school's policy requires students who earn midterm grades in the bottom 20% range, in a first-year doctrinal course (e.g., Civil Procedure I), to do the following:

1. Attend a mandatory meeting with the professor promptly after receiving notice of the midterm scores to discuss the midterm and debrief on study habits;
2. Re-write any midterm essay for which the student's score ranked in the bottom 20% of the class and submit that re-write to the professor;
3. Attend a weekly session with the course's learning assistant; and
4. Attend all ASP programming, including grammar workshops, for the rest of the semester.

If a student's midterm grade falls in the bottom 20% range, and that student does not meet requirements 1 and 2 above, that student will have his or her final grade in the course reduced by 0.3 grade points.

Course Grade: Your course grade will be based on (1) your compliance with the Early Monitoring and Prevention Policy, (2) your final examination grade and course credit for adequate class preparation re: the practice exams, and practice midterm exam. The final

examination will consist of no more than (a) forty (40) multiple choice questions and (b) a fact pattern essay. Your final examination will last the duration of three (3) hours.

Class Attendance/Preparation: The ABA requires regular and punctual class attendance. To satisfy this requirement, Thomas Jefferson School of Law (the School) faculty as a whole has adopted the following policy:

1. Students are expected to attend and be prepared for classes in order to receive credit for a course. Professors cannot excuse absences. A student will be considered absent if: **(a)**. The student is absent for all or a substantial part of a scheduled class session, including scheduled conferences and other class activities; or **(b)**. The student is determined by the instructor to be unprepared for the class. A student who is unprepared and notifies the instructor prior to the beginning of class will be considered absent after the first incident. However, a student who is unprepared and does not notify the instructor prior to the beginning of class will be considered absent and may also have his/her course grade lowered. Students are responsible for understanding their instructors' unpreparedness notification policy, (which generally requires written notification by note left at the podium in conspicuous fashion as well as verbal notification before the start of class). Each time a student who did not so notify the instructor prior to the beginning of class is determined by the instructor to be unprepared for class; the student's course grade may be lowered by 0.1, in addition to the student receiving an absence. On the third such occurrence the student is subject to being withdrawn from the class.

Use of laptops for unrelated curricular purposes to Torts including but not limited to facebooking, emailing, internet surfing is a distraction to others, a disservice to yourself and disrespectful of the learning process and thus may result in loss of all computer privileges in the classroom if used in this manner during class time and may also adversely impact your class preparation credit and lower your grade if it impacts your ability to be prepared when called upon.

(a)(1) How to be prepared for class discussion: Try to read (and re-read where necessary) the cases and restatement provisions for comprehension, not merely passively read to get through to the next page. Be sure to **take notes and re-process the information in your own words** in the margins of your text. Be sure to make note of the questions you have in the margins to ask later as well since you will undoubtedly have them as this material is new to you. Be sure to think about the "why" questions as understanding the rationale of what you are reading is important. Class discussion will be based upon the assumption you have done careful reading and lack of preparation may impact your overall grade. Accordingly, be prepared to respond. Typical questions will revolve around case briefing **including randomly asking you to: (a) argue either the plaintiff's or defendant's position; (b) critique a majority, concurring or dissenting opinion rationale; (c) provide factual case citations or critical reflections of the readings; (d) represent or explain the significance of a public policy interest at stake in a given case; (e) prepare an answer to a hypothetical / practice exam questions for class discussion.**

Students are expected to be respectful to each other and to the professor. The learning process demands no less. All of us are learning which depends upon the respect, patience and understanding which are essential to create a classroom conducive to effective learning.

Case Briefing / Outside Class Practice: Before class meets, read and case brief each case reading assignment. Use the case briefing format you were shown during orientation. In addition to that format, I ask you to also include a plaintiff and defendant argument summary noting the facts that are used in each. We will complete approximately two cases per class although this may vary based on my instructions. You may be randomly called on multiple times to discuss a case at any time, making thorough preparation essential. Do not assume that cases will be discussed in the order in which they are assigned. Indeed, cases may be discussed out of order than they may appear in the casebook for pedagogical reasons. Read and practice, practice, practice the assignments in the Glannon book (optional but strongly encouraged) and review the Understanding Torts treatise before attempting to read the assigned cases in Prosser's casebook. You should also practice multiple choice questions and essays from BarBri / Kaplan bar courses outside of class time.

Required Reading: Please note assignments are subject to change. Do not assume we will uniformly and evenly proceed through the reading or topical material. Some topics will require more coverage and in class practice and discussion than others based on the frequency of bar-tested topics as they appear on the MBE and California Bar Exam or as overall class learning needs require. Practice exam exercises are available on TWEN.

Casebook: Schwartz, Kelly and Partlett, PROSSER, WADE AND SCHWARTZ'S TORTS, Twelfth Edition, Foundation Press, 2010. **(PR)**

Supplement: Supplement for Torts I **(Supp)**

Treatise: Diamond, Levine and Madden, UNDERSTANDING TORTS, Fourth Edition, Lexis, 2010. **(UT)**

Recommend: Glannon, THE LAW OF TORTS: EXAMPLES AND EXPLANATIONS, Fourth Edition, Aspen, 2010. **(GL)**

BarBri California Conviser Mini Review, Multiple Choice & Essay Bar Materials / Kaplan Multiple Choice & Essay Bar Materials (These will be helpful for outside class study and will be reinforced through lecture and in-class exercises). Limit your outside review materials to these bar materials and DO NOT USE any books from the Lexis-Nexis Q&A series.

INTENTIONAL TORTS

Initial First Day Class Assignment: Battery & Assault

Prosser, Wade & Schwartz, Battery, (beginning with Wallace v. Rosen) p. 31-37, & Assault, p. 37-41 Glannon on Torts (Optional, But Recommended) Read chapters on Battery & Assault & then complete all practice exercises on Battery & Assault Please read: Diamond et al., Understanding Torts, p. 3-4 Please view: (Optional, But Recommended)

<u>Unit</u>	<u>Topic</u>	<u>PR</u>	<u>GL</u>	<u>Supp</u>	<u>UT</u>
2	False Imprisonment	41-47 49-51	77-80 E: all	13	14-18

Prepare to discuss and share written case brief in class on false imprisonment cases.

	Int'l Infl. Em. Dist.	51-68		13	22-24 26-29
	Transferred Intent	28-30	6	14	4-5 (1.01D)
3	Defenses Consent	92-104	96-99 E: 8-16	15	32-35
	Self Defense	104-107	92-94 E: 1-7	16	35-37
	Defense of Others	107-108	95	16	37-38
	Defense of Prop	108-114		17	38-40
	Recovery of Prop	114-120		17	40-41
4	Property Invasions Trespass to Land	70-72 68-70 notes 73-74 (Do not read Rogers)	43-47 E: all	18	
	Trespass to Chattels	74-81	61-63	18	19-21

<u>Unit</u>	<u>Topic</u>	<u>PR</u>	<u>GL</u>	<u>Supp</u>	<u>UT</u>
	Conversion	81-86	63-65	18	21-22

E: all

Defense: Necessity 120-126

41-43

5 Catch up

A formally scheduled, timed practice midterm exam will be administered and proctored. See Midterm Exam Schedule. A post-exam in class review will follow in subsequent class(es). Individual student feedback consultations will continue during extended office hours with the Learning Assistant and Professor Dyson.

NEGLIGENCE

General Concepts 133-135 117 45-46
105-107

6 Element 1: Duty 19 125-127
Foreseeable Plaintiff 319-327

Standards of Care –

Physical & Mental 163-166 122-124 52-55
Disabilities 170-174

7 Duty – Standards of Care cont.

Emergency 159-163 124-126 51-52

Children 166-170 58-59

Custom 155-159 68-69

Malpractice 174-179 93-104

notes 181-183 (Do not read Hodges)

183-187

notes 190-191 (Do not read Morrison)

191-204

8 Duty – Standards of Care cont.

Affirmative Duties 431-433 267-279 20 107-125

notes 435-440 E: 1-9

(Do not read L.S. Ayres)

440-452

669-675

9	Negl Infl Em Dist	464-478	295-302 E: 1-4		144-154
	Landholders	494-512		20	140-142 129-132 134-137
	Landholders cont.	517-522 513-517			138-140 132-134
			E: 1-4		
10	Element 2: Breach				
	Formula Approach	145-150	120-122		61-67
	Breach cont.				
	Violation of Statute	212-214 218-224 232-238	143-151 E: 1-6	25	85-92
	Res Ipsa Loquitur	237-254	165-174 E: 1-3	25	73-83
11	Element 3: Causation				
	Factual Cause	268-271 291-295	189-199 E: 1-9	26	177-186
		295-302	211-217		
12	Proximate Cause	303-304	237-239	27	187-189
	Foreseeability	310-336 307-309	239-254		189-191 195-200 194-195
	Intervening Forces	336-346 350-356			191-193
	Synthesis	368-373	255 E: 1-9		

(Note: The following reading material may be supplanted with class lecture if limited remaining time requires)

13 Element 4: Damages

General Concepts	534-535		211-212
Joint Tortfeasors	379-384	471-473	201-205
Personal Injury	535-539	399-408	213-217
	notes 546-555 (Do not read Richardson)		222-223
	notes 558-561 (Do not read Montg. Ward)		218
	notes 563 (Do not read Ausland)		
Property Damage	563-566		212-213
Punitive Damages	566-567		
	notes 570-572 (Do not read Pohle)		218-222
Defenses			
Plaintiff's Negligence	609-614	559-566	27-29
	616-625		226-233
Assumption of Risk	631-634	535-546	233-240
	notes 638-639	E: 1-4	
	(Do not read Dorta)		

14 Catch up

I will be available in office hours as will the Learning Assistant during the course. After the course concludes, I will be available to answer questions via email during the reading period up to the day of the final exam for your convenience. Good luck!!