

TORTS I

Course Syllabus Professor Dyson

Office Hours: I am available immediately after class at the podium for short questions. Office hours will be held by appointment every week 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 to accommodate students for the midterm practice exam later in the semester. These will be in addition to extended time allotted by the course learning assistant.

Email: mdyson@tjssl.edu

Learning Assistant(s): The learning assistant, Jessica Dance (dancejc@tjssl.edu), 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. Written or Oral Legal Argumentation.** Legal analysis requires critical thinking that goes well beyond memorizing and restating the rules. Using the IRAC format, you should be able to make and convey an effective legal argument, in writing or orally, that: (1) identifies legal issues; (2) identifies and explains the applicable legal rules; (3) applies the applicable legal rules to the relevant facts; and (4) provides the appropriate conclusion or outcome. We will develop this skill through classroom discussion and practice with cases, hypotheticals, and problems, and through the practice exams, midterm examination, a post-midterm review, and the final examination.
- 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.** You should be able to discuss controversial issues with a professional demeanor and to view and articulate competing sides to controversial concepts. 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) official midterm exam (10% of your grade). (The practice exams will count as attendance/class preparation credit and if not submitted, will count as an absence as will any practice exam non-submission). I will distribute these practice exams based on our coverage and the timing of that coverage. 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 your re-write (showing edits from your original answer) 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 to undertake certain responsibilities, including mandatory attendance to ASP programming and must work with the TA and myself regularly in office hours and complete a midterm re-write for either one of us to review. Please consult the school policy.*

Course Grade: Your course grade will be based on (1) your compliance with the Early Monitoring and Prevention Policy, (2) your midterm and final examination grade and course credit for adequate class preparation re: the mandatory practice exams. The final examination will consist of no less than twenty (20) but 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: 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.

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

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.

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

Supplement (Supp): Supplement for Torts I (on TWEN).

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

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

Very Useful: 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.

***You should also make an effort every week of the semester to independently study multiple choice questions as class time is already rather limited. Remember success comes from the work you do early, and often outside of the classroom. Do not rely solely on class lectures if you want to do well. You must put the time and effort in to produce work in the way highlighted in sample answers.

INTENTIONAL TORTS

Initial First Day Class Assignment: Posted on First Day Assignment Board.

The assignment combines the ideal mixture of reading cases, practicing exercises and studying doctrinal concepts. I encourage you to focus on each of these three for each assignment throughout the entire semester, including those optionally recommended, in order to do and be your best.

Please Read Cases: Prosser, Wade & Schwartz casebook:

Battery-- (1) Wallace v. Rosen case; Fisher v. Carrousel Motors

Assault-- (1) I de s et ux v. W de S (2) Western Union v. Telegraph Co v. Hill

Please practice exercises: Glannon on Torts (Optional, But Recommended): Read chapters on Battery & Assault & then complete all practice exercises on Battery & Assault.

Please read intent doctrine: Diamond et al., Understanding Torts, p. 3-4 Please view: (Optional, But Recommended).

We will generally proceed with discussing **two (2) cases per class** under each week's unit unless I state otherwise in class when the pace gradually begins to pick up. I do not post slides for attendance, copyright and web posting issues in the past. But please do not copy every hypothetical on class slides. Nor try to copy word for word each hypo. There will not be time for that and you will fall behind and get lost. Instead, just try to understand the gist of the hypos, and instead take specific notes of the rules, explanations and answers and try to fit this into the big picture of the elemental outlines noted on the Supp. electronic handout on TWEN. You can read about these rules again and their explanations at home when you read the UT book which will contain more than enough information.

Week	Topic	Casebook (PR): Schwartz, Kelly and Partlett, Prosser, Wade And Schwartz's	Glannon (GL): The Law of Torts: Examples and Explanations	Supplement (Supp): Supplement for Torts I	Treatise (UT): Understanding Torts
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INTENTIONAL TORTS

2	False Imprisonment	Pages: 42-51 Cases: <i>Big Town Nursing Home, Inc. v. Newman</i> ; <i>Parvi v. City of Kingston</i> ; <i>Hardy v. Labelle's Distributing Co.</i> ; <i>Enright v. Groves</i> Pages: 51-52 Cases: <i>Whittaker v. Sandford</i> (Prepare to discuss and share a written case brief in class on the false imprisonment cases.)	Pages: 77-80 Examples: All	Section: 14	Pages: 14-18
3	IIED [Intentional Infliction of Emotional Distress]	Pages: 53-70 Cases: <i>State Rubbish Collectors Ass'n v. Siliznoff</i> ; <i>Slocum v. Food Fair Stores of Florida</i> ; <i>Harris v. Jones</i> ; <i>Taylor v. Vallelunga</i>		Section: 15	Pages: 22-24; 26-29
3	DEFENSES				
3	Defenses: Consent	Pages: 98-107	Pages: 96-99	Section: 15.1	Pages: 32-35

		Cases: <i>Hackbart v. Cinn. Bengals, Inc.</i> ; <i>Mohr v. Williams</i> ; <i>De May v. Roberts</i>	Examples: 8-16		
3	Self-Defense	Pages: 110-113 No cases, read section titled “2. Self-Defense.”	Pages: 92-94 Examples: 1-7	Section: 16	Pages: 35-37
3	Defense of Others	Pages: 113 No cases, read section titled “3. Defense of Others.”	Pages: 95	Section: 17.1	Pages: 37-38
3	Defense of Property	Pages: 114-117 Cases: <i>Katko v. Briney</i>		Section: 17.2	Pages: 38-41
3	Recovery of Property	Pages: 114-124 Cases: <i>Hodgeden v. Hubbard</i> ; <i>Bonkowski v. Arlan’s Dept. Store</i>		Section: 17.3	Pages: 40-41

PROPERTY INVASIONS

4	Trespass to Land	Pages: 72-75 Case: [Do not read <i>Rogers</i>] <i>Dougherty v. Stepp</i> ; <i>Herrin v. Sutherland</i>	Pages: 43-47 Examples: All	Section: 18	
4	Trespass to Chattel	Pages: 79-85 Cases: <i>Glidden v. Szybiak</i> ; <i>CompuServe Inc. v. Cyber Promotions, Inc.</i>	Pages: 61-63	Section: 19	Pages: 19-21
5	Conversion	Pages: 86-88 Cases: <i>Pearson v. Dodd</i>	Pages: 63-65 Examples: All	Section: 19.1	Pages: 21-22
5	Defenses: Necessity	Pages: 126-130 Cases: <i>Surocco v. Geary</i> ; <i>Vincent v. Lake Erie Transp. Co.</i>		Sections: 20 & 21	Pages: 41-43

CATCH UP

A post-midterm exam in class review will follow in subsequent class(es). However, as is the case throughout the semester, individual student feedback consultations must be scheduled during office hours by emailing academics@tjssl.edu with a cc: email to me. You may also meet with the Learning Assistant(s) as well. Use every resource you have to succeed.

NEGLIGENCE

5	ELEMENT 1: DUTY				
6	Foreseeable Plaintiff	Pages: 329-335 Cases: <i>Palsgraff v. Long Island R.R. Co</i>		Section: 22	Pages: 125-127

6	Standard of Care: Physical & Mental Disabilities	Pages: 169-171; 176-178 Cases: <i>Roberts v. State of Louisiana</i> ; <i>Breunig v. American Family Ins. Co</i>	Pages: 122-124	Section: 22	Pages: 52-55
7	Standard of Care: Emergency	Pages: 164-167 Cases: <i>Cordas v. Peerless Transp. Co.</i>	Pages: 124-126	Section: 22	Pages: 51-52
7	Standard of Care: Children	Pages: 172-175 Cases: <i>Robinson v. Lindsay</i>		Section: 22	Pages: 58-59
7	Standard of Care: Custom	Pages: 161-163 Cases: <i>Trimarco v. Klein</i>		Section: 22	Pages: 68-69
7	Standard of Care: Malpractice	Pages: 180-182 Notes: 182-185; 185-189 [Don't read Hodges] Notes: 192-193; 204-210 [Don't read Morrison) Cases: <i>Heath v. Swift Wings, Inc.</i>		Section: 22	Pages: 93-104
8	Standard of Care: Affirmative Duties	Pages: 442-443; 684-688 Notes: 442-445; 445-452 [Don't read L.S. Ayres] Cases: <i>Hegel v. Langsam</i> ; <i>Riss v. New York</i> ; <i>DeLong v. Erie County</i>	Pages: 267-279 Examples: 1-9	Section: 22	Pages: 107-125
9	Standard of Care: Negligent Infliction of Emotional Distress	Pages: 822-826; 477-482 Cases: <i>Daley v. LaCroix</i> ; <i>Thing v. La Chusa</i>	Pages: 295-302 Examples: 1-4	Section: 22	Pages: 144-154
9	Standard of Care: Landholders	Pages: 501-527 Cases: <i>Taylor v. Olsen</i> ; <i>Salevan v. Wilmington Park, Inc.</i> ; <i>Sheehan v. St. Paul & Duluth Ry. Co.</i> ; <i>Barmore v. Elmore</i> ; <i>Campbell v. Weathers</i> ; <i>Whelan v. Van Natta</i> ; <i>Rowland v. Christian</i> Notes: Read sections titled "(D) Persons Outside the Established Categories and "(2) Persons Privileged to Enter Irrespective of Landowner's Consent"		Section: 22	Pages: 140-142 129-132 134-137 138-140 132-134

10	ELEMENT 2: BREACH				
10	Formula Approach	Pages: 151-155 Cases: <i>United States v. Carroll Towing Co.</i> ; Restatement (Second) of Torts (1965)	Pages: 120-122	Section: 22	Pages: 61-67
10	Violation of Statute	Pages: 216-219; 225-228; 238-240 Cases: <i>Osborne v. McMasters</i> ; <i>New York Yellow Cab Co.</i> ; <i>Zeni v. Anderson</i>	Pages: 143-151 Examples: 1-6	Section: 22	Pages: 85-92
10	Res Ipsa Loquitur	Pages: 251-257 Cases: <i>Byrne v. Boadle</i> ; <i>McDougald v. Perry</i>	Pages: 165-174 Examples: 1-3	Section: 22	Pages: 73-83
11	ELEMENT 3: CAUSATION				
11	Factual Cause	Pages: 273-275; 299-308 Cases: <i>Perkins v. Texas and New Orleans R. Co.</i> ; <i>Hill v. Edmonds</i> ; <i>Anderson v. Minneapolis...</i> ; <i>Summers v. Tice</i> ; <i>Sindell v. Abbott Laboratories</i>	Pages: 189-199; 211-217 Examples: 1-9	Section: 22	Pages: 177-186
12	Proximate Cause	Pages: 313-314 Cases: <i>Atlantic Coast Line R. Co. v. Daniels</i>	Pages: 237-239	Section: 22	Pages: 187-189
12	Foreseeability	Pages: 317-319; 329-335; 339-343 Cases: <i>Bartolone v. Jeckovich</i> ; review <i>Palsgraf v. Long Island R.R. Co.</i> ; <i>Yun v. Ford Motor Co.</i>	Pages: 239-254	Section: 22	Pages: 189-191; 195-200; 194-195
12	Intervening Forces	Pages: 344-346; 350-351; 359-362 Cases: <i>Derdarian v. Felix Contracting Corp.</i> ; <i>Watson & Indiana Bridge & R.R. Co.</i> ; <i>McCoy v. American Suzuki Motor Corp.</i>		Section: 22	Pages: 191-193
12	Synthesis	Pages: 379-384 No cases read section titled "By Way of Synthesis" and "4.	Page: 255 Examples: 1-9		

		Shifting Responsibility”			
13	ELEMENT 4: DAMAGES / DEFENSES (Note: Class lecture will take the place of cases for damages and defenses.)				
14	CATCH UP The last week of class will be our class review rather than having one during dead week when you should be studying independently on your own. However, the TAs may hold a separate TA review session apart from our in class review session.				