

Torts
CRN 77486
Sec. 110-001
Professor Claeys
Fall 2009

(Last updated August 25, 2009)

Welcome to Torts.

Whereabouts

My office is on the fourth floor, in the faculty suite, Room 420. My phone number is (703) 993-8247. My email address is eclaey@gmu.edu.

The course also has a TWEN site, and I am reachable on the discussion board of that site. If you email a question and I think the answer will be of general interest, I will post your question and my answer there. If I do this, I'll post your question as an anonymous question.

I will hold office hours this semester on Tuesdays from 3:30 to 4:30 p.m. I will also conduct one-hour review sessions over lunch on Fridays periodically over the semester. I am also happy to schedule appointments.

TWEN site

I post all class assignments, supplemental reading, announcements, and other class-related information on the class TWEN site. If you haven't already, please enroll on this course's TWEN page now.

Class times, cancellations, and make-up classes

We meet in Room 120 of the Hazel Building, Tuesdays and Thursdays, 10 a.m. to 11:50 a.m. We'll break for 10 minutes as close as we can to the middle of class without disrupting the discussion.

I do not anticipate canceling any classes. If I need to cancel class suddenly due to illness or some emergency, I will have my secretary post notices in the atrium, the elevators, and on the door of 120, and I will send an email to the class.

Reading materials and first day's assignment

We will be using Richard Epstein, *Cases and Materials on Torts* (9th edition, Aspen Publishers, 2008). I will probably circulate a few supplements over the course of the semester. I will post the supplements available on TWEN (under "supplemental materials") unless they get larger and more unwieldy than I expect at present.

For class on Thursday, August 20 (first hour), please read Epstein pp. 3-10. Skip p. 10 n.6.

For the second hour, read Epstein 10-22. Discussion will focus on trespass to land and to chattels pp. 10-14. But we'll at least start the Hamidi case, p. 14.

Subject to my changing my mind in response to how the course is going, we will cover the following materials in approximately the following amount of time:

Intentional torts and basic economic torts. Battery, trespass, conversion, and defenses; interference with contract and unfair competition. 4 weeks.

The negligence-strict liability divide. 1 class.

Traditional strict liability. Animal liability, ultrahazardous activities, and nuisance. 1 week.

Negligence. Various theories for proving breach of duty in negligence. 2-2.5 weeks.

Plaintiff's (mis)conduct. Contributory negligence, assumption of the risk, and variations. 1.5-2 weeks.

Multiple defendants. Joint and several liability, vicarious liability. 1 class.

Causation. Cause in fact, proximate cause. 2.5 weeks.

Affirmative duties. Rescuers, special relationships, bailees, &c. 1 week.

Time permitting, we'll do one 50' session giving a very sketchy overview of strict products liability.

The TWEN site has a projected schedule of class readings. I will update this schedule to document on which date we covered what topic, and to change projections based on our progress through class.

Class reading

I will assign somewhere between 6 and 20 pages of reading per class hour. To help you read ahead, I post large blocs of class reading on the class TWEN page, significantly in advance. However, these postings are not promises, but projections. I reserve the right to change the projected reading schedule depending on how fast or slow we are going. If you read more than a class ahead, you assume the risk of reading material I decide to leave on the cutting room floor. As the course reading schedule indicates, I promise not to change reading assignments later than noon on Friday before a Tuesday class, and no later than 5 p.m. the Tuesday before a Thursday class. But otherwise, reading assignments are subject to revision.

I expect you to be prepared for class. When Epstein excerpts a major case, I expect you to understand the facts, the cause of action involved, the remedy sought, the procedural posture of the case, the element or elements that are the special object of study in that case, and the holding and rationale. We will see obscure actions and remedies, like “trespass q.c.v.” I expect you to make a good-faith effort to look terms like these up in resources like Black’s Law Dictionary. I also expect you to make a good-faith effort to understand why these terms matter in the cases. How do they focus the precise issue of tort law being argued in the case?

When Epstein presents a “squib” case—that is, a case consolidated into one or two paragraphs of discussion in a case note—I expect you to know the facts, the holding, and the rationale.

Epstein has many thoughtful notes and questions after case excerpts. I will try as best I can to prune these to save you time in class prep, and in response I expect you to be familiar with the notes assigned. That said, if I am pressed for time, my lecture notes on case notes are the first thing to get left on the cutting room floor.

Class expectations

I expect you to attend class on a regular basis, and the ABA makes it a general condition of accreditation that students not miss more than 2 weeks of class. I keep attendance by having you sign in each day.

If you miss more than 8 class hours (the equivalent of 4 2-hour classes), I will not seat you for the examination and to give you a “forced withdraw” grade for the course. This is what you will learn to be a “strict liability” policy: I do not waive this requirement because you are sick, have a job interview, personal emergency, religious observances, &c. You are adults. You are what torts specialists called “cheaper cost avoiders” for minimizing absences under your control. By the same token, I will not enforce the attendance policy if I need to cancel and reschedule class due to unexpected personal needs.

I expect you to prepare for class. I call on students during class, to discuss material that a lawyer should have been able to digest from the reading without much assistance. If I call on you and you are unprepared, that counts as an absence for that hour (i.e., 1 but not 2 of your not-to-exceed 8 hours). If you are unprepared and wish to avoid getting called on, please notify me before the beginning of class and I will mark you for a 1/3 absence for the 2-hour class.

During class, I expect you to be generally respectful to me and your classmates. Imagine the standards of comportment you would use if you were a lawyer, sitting in front of a judge, watching as the judge engages another lawyer in the proceeding. Please treat me and any of your colleagues with whom I am conversing with the same professional courtesy.

Because this is a general standard, I cannot predict all the situations in which it will apply—or how I will correct breaches of it. But let me give a few ~~pet~~peevs illustrations.

Please do not walk into class after it has begun; I reserve the right to deny a student who has done so a seat and deem him not to have attended for the hour.

Please do not engage in disturbing side conversations during class; I reserve the right to break up such conversations by calling on the participants and, if they cannot answer, to deem them unprepared for the day.

Please do not use personal computers during class for any form of entertainment besides taking notes and referring to materials directly related to Torts. I reserve the right to deem students using their computers for non-class purposes not in attendance.

Please mute or turn off cell phones and other noise-making devices before class. If a cell phone rings during class, I reserve the right to make the owner stand and answer it in front of the rest of the class. For repeat offenders, I reserve the right to answer the phone myself.

Grading

The grade for this class will be based solely on a 3.5 or 4-hour in-class examination at the end of the semester. When I say “solely,” I mean that I do not and will not adjust grades for in-class participation except as consistent with my attendance policy. The examination will be closed book. 2-3 hours of the exam will consist of essays or short answers; 1-2 hours will consist of multiple-choice questions.