Syllabus

Torts (Fall semester 2012)
Mr. Polsby’s section

This class meets Monday and Wednesday, 10:00 AM-11:50 AM, in room 221.


Assigned reading: Chapters 1-8 in that order. In Chapter 2, please read Sections A, B and C for background, but class discussion of this chapter will begin with Section D.

First class assignment: Monday, August 20, 10:00 AM: Chapter 1. Good advice: read all of it. We will not cover the entire chapter in a single day, but you will be well-served by getting oriented to the subject matter.

Daily assignment: Expect to cover, on average, thirty to forty pages per class. There will necessarily be some variability in our pace. How many pages we cover in a given class will depend on the density and familiarity of the material but even more on the not-always-predictable direction that class discussion may take. For this reason, there can be no day-by-day lesson plan. But because we will be proceeding consecutively through the casebook, there need never be occasion for confusion about what comes next. Good advice: in addition to the day’s assignment, read at least a day – thirty or forty pages – ahead.

General plan: “Torts” are private wrongs, in contradistinction to “crimes” which are public wrongs. The same act may at one and the same time be both a tort and a crime. The easiest-to-see distinctions between them are, who is doing the complaining – is it a private person or a public prosecutor? – and what happens if liability is found? – in the case of torts, the defendant has to pay damages to the person who was injured; in the case of a crime, the defendant has to pay a fine (which goes to the public treasury) and/or go to prison. The purpose of the basic Torts course is to give you general background and familiarity with the subject of liability for private wrongs. We look at the various premises of liability – direct interference with the rights of others (“trespass”), interference with others through unreasonable conduct which leads to harm (“negligence”) and liability without any “fault” being necessarily shown, assigned by the legal system for various reasons of policy (“strict liability,” sometimes also called “absolute liability” or “liability without fault” and shading into “indemnity” and related insurance concepts). We consider the legal ideas of causation, which usually are a predicate for a finding of liability. We look not only at the duties that people owe to others to refrain from causing
them harm, but at the duties of self-protection which often limit actors’ liability, and at duties to act, or, in other words, occasions when liability may arise from failing to do something rather than from doing a wrongful act. All of this will take us on a too-brief tour of accident law, medical malpractice law, products liability law, and a number of other specific subjects. *Ex necessitate*, there are vast domains of important material – as examples, damages, civil rights actions, the institutions of insurance, defamation - that must be left largely uncovered except in passing. (True in all law courses.)

**General expectations:** Attendance is required and will be documented for each class with a sign-up sheet. Come to class prepared and expect to be called on every day. Classes may not be recorded by electronic means. You may, however, bring and use laptop or tablet computers in order to take notes and – when the occasion arises – to ascertain a fact (for example: *who was King of France in 1421?*). **Using electronic devices to surf the Web, to text** (which is just another annoying version of passing notes in class), **to Twitter or Facebook or to read or compose e-mails, et cetera, is not allowed.** A more general point: the classroom is a highly privileged space. It is desirable for students to be spontaneous in their reactions to material, which may often entail misspeaking, making mistakes and so on. It is a serious breach of protocol for any student to publish or to give out-of-class notoriety to what fellow students say in class unless their permission has been given.

**Office hours:** I will stay after class till about 12:30 PM most class days to answer Torts questions or clarify issues which may have arisen in class. I prefer the public forum version of office hours because, not infrequently, the perplexities of one student will be shared by others and might as well be ventilated in their hearing. If you have business of a private nature unsuitable for public conversation, Ms. Spoelman will arrange an appointment, [lspoelma@gmu.edu](mailto:lspoelma@gmu.edu); (703) 993-8087.

**Final examination:** The Torts grade is based on your performance on a single final examination. This exam will be a **closed book** affair of **four** hours duration. That is all that has been decided about it at this point. The exam may comprise longer essays, shorter essays or short-answers; there may be multiple-choice questions or true-false questions; any or all of these formats in any combination, or only one of them, may be adopted. No decision about the final form of the final exam will be finally made till a very few days before it is given. In order to avoid rumors and similar occasions of collective anxiety, I will never, ever, answer questions about the final exam except publicly in class. That way, everybody will hear what everybody else hears, and nobody will hear anything different. I reserve the right, which I may or may not exercise, to modify a final grade by taking a student’s class participation into account.