Syllabus

Torts (Fall semester 2015)
Mr. Polsby’s section

Torts class meets Tuesday and Thursday, 10:00 AM-11:50 AM. Note: on Tuesday, October 13, the law school will follow a Monday schedule. Tuesday classes will not meet.


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 begins with Section D.

First class assignment: The first class meets on Thursday, August 20, 10:00 AM. The assignment is Chapter 1. Read the whole thing. There is zero probability that we will cover the entire chapter in a single day, but getting oriented to the subject matter will be helpful.

Daily assignment: There are too many variables in play for me to be able to predict exactly what material we’ll be covering on what class day for the next fourteen weeks. On average, we’ll cover thirty to forty pages per class, depending on the density and accessibility of the material (which varies), and the direction that class discussion may take (which varies quite a lot). Though you will have read every case in the day’s assignment, we will not necessarily separately discuss every case that’s been assigned.

Because we will move consecutively through the casebook, there should never be 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. They are to be contradistinguished from “crimes,” which are public wrongs. The same act may at one and the same time be both a tort and a crime. There are two simple ways to keep torts and crimes straight in one’s mind. First, look at who is doing the complaining. Second, consider what happens if there’s a finding of liability. In torts, the complaining party is (usually) a private person – an individual, a business corporation or partnership, an insurance company, and so on. If the defendant is held liable, then it will have to pay damages to the person it legally injured. In criminal law, the complaining party is a public prosecutor – called the Commonwealth’s Attorney or District Attorney or State’s Attorney or United States Attorney depending on the jurisdiction. A finding of liability leads to punishment – prison or a money fine (which, as a rule, goes to the public treasury, not to the person who was
injured). Torts and Crimes address an overlapping (but not nearly identical) set of behaviors, but they vindicate entirely distinct interests.

The objective of the basic Torts course is to furnish a general overview of the subject of liability for private wrongs. You should acquire basic knowledge of the vocabulary and assumptions of legal discourse, the contents of legal doctrines, and some of the factors that influence them, disposing them to stability or to change.

- We will study look at the various grounds 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” having necessarily been shown (“strict liability”). “Strict liability” is sometimes also called “absolute liability” or “liability without fault”; it shades into “indemnity” and related insurance concepts.
- We consider legal ideas of causation - “causing” a harm is generally a predicate for being liable for it. Included here: cause-in-fact, proximate cause, causation that arises by presumption; and multiple sufficient causation.
- We look at the duties that people owe to others to refrain from causing them harm or creating situations in which they can cause themselves harm, and also to the duties of self-protection which limit a plaintiff’s right to complain about damages occasioned by the actions of others. Related and included: assumption of risk.
- We will consider duties to act, situations in which liability may arise from failing to do something rather than from doing something.

We will be studying these issues in the context of accident law, medical malpractice law, products liability law, and a number of other specific subjects. Of necessity, there are vast domains of important material – as examples, damages, civil rights actions, injuries to competition, the institutions of insurance, defamation - that will mostly be left alone. That doesn’t mean they aren’t important – it’s just that the subject is too big for one course to cover the whole of it.

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. I allow the use of 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?) (Not many people know right offhand that it was Charles the Mad). Computers present temptations, however, which must be resisted. They mustn’t be used in class for Web surfing, Facebooking, text messaging, Tweeting, and so on. They especially must not be used to make an audio or stenographic record of what people say in classes. The classroom is a highly privileged space. Students should feel free to react to material spontaneously, and to play devil’s
advocate on occasion for positions they may not actually subscribe to or feel all that sure about one way or the other. People are bound to be inhibited by the prospect of Tweets worse, YouTube videos (and so on) making the rounds, showing them in a displeasing or, embarrassing light. It’s a serious breach of protocol for any student to publish or to give out-of-class notoriety to what fellow students say in class without getting their permission.

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 a public forum for this kind of interchange because it often happens that things one student finds perplexing will perplex other people also, so we might as well go for the scale economies.

If you have things you want to discuss in a more private setting, my office is on the 4th floor in Room 433R, directly across from the LRWA (Legal Writing) offices. I am there all day most days and happy to talk if not tied up with previous business. If it turns out that I get too much traffic to allow other work to get done, we’ll have to set up a specific block of office hours. You can also set up an appointment at a mutually convenient time certain. Please don’t drop by before class, however - I’ll be preparing then.

Final examination: The Torts grade is based on your performance on a single final examination closed book, four hours. The exam this year will be administered on December 7th. It may comprise long essays, short 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. I am not going to lock down anything about the format of the final exam or its exact contents till the week before it’s given. In order to avoid rumors and similar occasions of collective anxiety, I won’t answer questions about or otherwise discuss 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.