Syllabus.

Torts (Fall semester 2016)
Mr. Polsby’s section


Assigned reading: Chapters 1–7 in that order. In Chapter 2, please read Sections A, B and C for background, and class discussion of this chapter will begin with Section D. We will do a whirlwind tour of Chapter 8 if there’s time at the end of the semester, but doubtful there will be.

First class assignment: The first class meets on Thursday, August 18, 10:00 AM. The assignment is Chapter 1. Read the whole thing in order to get oriented, but of course we won’t cover all of this chapter in a day.

Daily assignment: Too many variables affect the pace of progress to allow exact prediction of how many pages will be covered in a given class through the semester. On average, expect to cover thirty pages per class, more or less, 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. Just because we don’t discuss it doesn’t mean you’re not responsible for reading it if it’s assigned.

Because we’ll move consecutively through the casebook. There should accordingly 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’s 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 are expected to acquire basic knowledge of the vocabulary, underlying assumptions and contents of legal doctrines, (some of) the factors that influence them or that dispose them to stability or instability, and an idea of the problems of practical and professional ethics that the practice of law encounters. You will begin to acquire a sense of the distinctive fiduciary perspective of lawyers on the problems they are called upon to help solve. (This is sometimes called “thinking like a lawyer.”)

We will study 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 to be 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. Lots of important material (damages, civil rights actions, injuries to competition, the institutions of insurance, defamation) has to be left out, to be studied another day and in another course, or several 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. Life is unfair: I may call on you two days in a row, so be prepared. 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. **Computers mustn’t be used in class for Web surfing, Facebooking, text messaging, Tweeting, and so on.** Computers must especially not be used – neither computers nor any other devices - 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. The prospect of having what one says Tweeted to the world casts a pall over spontaneity. 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. Although there is no rule against taking notes on your computer, you should be aware that it may not be a good idea. It is becoming fairly clear to professional students of learning – in fact it is now almost conventional wisdom – that taking notes longhand, and later transcribing them to computer, is the way to go.

**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 want to meet in a more private setting, I haven’t reserved any specific hours for it, just come and see me. My office is on the 4th floor in Room 433R, directly across from the LRWA (Legal Writing) offices. I am at school all day most days and happy to talk. If this free-form kind of office hours starts to be unsatisfactory for some reason, we’ll set up a specific block of time. You can also email me to set up an appointment at a 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, three hours.** The exam this year will be administered noon till 3PM on December 12th. 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 exhibitions 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.