

Syllabus for Torts

Law 110 (001)

Fall 2021

4 Credits

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I. COURSE MATERIALS

Frank J. Vandall, Ellen Wertheimer, and Mark C. Rahdert, *Torts: Cases and Problems* (Carolina 4th ed. 2018).

Supplemental cases and articles have been uploaded onto Blackboard.

II. LEARNING OUTCOMES

By the end of the course, students should have an understanding of the principles of tort law and the structure of the American legal system. Students should also have an understanding of the moral and economic policy considerations underlying tort law. Additionally, students should learn general skills on how to read and analyze cases and other legal materials, to identify and respond to legal problems, to make legal arguments, and to apply legal rules to facts.

III. OFFICE HOURS

Office hours are Tuesdays from 4-6pm. You do not need to make an appointment to see me at those times, though you are welcome to send an email ahead of time to let me know to expect you. I am also happy to meet at other times—we can arrange appointments by email. Generally, email is a more reliable way to reach me than phone.

Based on current conditions, I plan to hold in-person office hours, with face masks for everyone including vaccinated students and myself. If you prefer to meet remotely, that can be arranged. If you have an exemption from the vaccination requirement, you must both wear a mask and additionally maintain social distance.

Especially in your first year, you should be proactive in coming to office hours with any questions you might have. Law school is not designed to teach everything solely in the classroom, and you are not expected to understand everything just through paying attention in class (though paying attention in class is still necessary). Coming to office hours is not “extra” work but rather part of the educational experience.

IV. GRADES

Your grade will be based on an open book final exam, which is graded blindly. Additional details regarding the exam will be determined later in the semester

based on conditions at the time. The current plan is for in-person exams and for grades to be awarded on the standard law school curve.

V. COVID-19 PRECAUTIONS

The current plan is for the class to be taught in-person. Consistent with university policy, face masks are required for all students, even if you are fully vaccinated. You must wear your mask so that it fully covers your nose and mouth, and you should keep your mask on at all times indoors, even when you are speaking in class. If you have an exemption from the vaccination requirement, you must comply with the masking requirement and additionally maintain distance from others.

If you are experiencing symptoms of Covid-19 or any other respiratory illness, please do *not* come to class until you fully recover. Even if you are vaccinated. Even if you test negative for Covid-19. Not only is there the possibility of a breakthrough infection or a false negative test, there is the possibility of some other illness such as influenza or the common cold that you should not want to transmit to your classmates.

VI. READING ASSIGNMENTS

Generally, we will cover one segment per class. These assignments are subject to change depending on our progress in class. If we fall behind the schedule (which is likely, and a class is left open for this), we will carry the material over to the next class. I expect you to remember material read for the prior class.

The assigned pages include both the excerpted cases and the casebook authors' notes about them. I recommend reading the notes, but we will focus mainly on the cases in class. Where the notes are particularly important, I have noted this fact.

Please ensure that you read the supplemental materials on Blackboard for class. These are as important as the casebook materials.

1. Nature of Tort

Blackboard

The Case of the Thorns, YB 6 Edw. IV, 7a pl 18 (1466)

Casebook 3-8

Brown v. Kendall, 60 Mass. 292 (1850)

Please read note 3 on page 4.

2. Assault and Battery I

Casebook 17-21, 25-28, 32-33

Garratt v. Dailey, 279 P.2d 1091 (Wash. 1955)

Vosburg v. Putney, 50 N.W. 403 (Wis. 1891)

Fisher v. Carrousel Motor Hotel, Inc., 424 S.W.2d 627 (Tex. 1967)

3. Assault and Battery II; Trespass

Casebook 34-39

Lambertson v. United States, 528 F.2d 441 (2d Cir. 1976)

Conley v. Doe, 14 Mass L. Rptr. No. 3, 29 (2001)

Bouton v. Allstate Ins. Co., 491 So. 2d 56 (La. App. 1986)

Blackboard

Tex.-N.M. Pipeline Co. v. Allstate Const., Inc., 369 P.2d 401 (N.M. 1962)

4. Defenses I: Consent; Self-Defense

Casebook 83-86, 90-94, 101-102

Mohr v. Williams, 104 N.W. 12 (Minn. 1905)

Marchetti v. Kalish, 559 N.E.2d 699 (Ohio 1990)

Teolis v. Moscatelli, 119 A. 161 (R.I. 1923)

Blackboard

Haworth v. Elliott, 153 P.2d 804 (Cal. App. 1944)

Townsend v. Briggs, 34 P. 116 (Cal. 1893)

5. Defenses II: Necessity

Casebook 121-128

Vincent v. Lake Erie Transp. Co., 124 N.W. 221 (Minn. 1910)

Wegner v. Milwaukee Mutual Ins. Co., 479 N.W.2d (Minn. 1991)

Blackboard

Surocco v. Geary, 3 Cal. 69 (1853)

London Borough of Southwark v. Williams, [1971] Ch 734

6. Negligence: The Duty of Care

Blackboard

Donoghue v. Stevenson [1932] AC 562 (U.K.)

Casebook 146-148

H.R. Moch Co. v. Rensselaer Water Co., 159 N.E. 896 (N.Y. 1928)

7. Exceptions to Duty: Duty to Rescue and Duty to Control Others

Blackboard

Hurley v. Eddingfield, 59 N.E. 1058 (Ind. 1901)

Casebook 145-146, 152-159

Yania v. Bigan, 155 A.2d 343 (Penn. 1959)

Tarasoff v. Regents of the University of California, 551 P.2d 334 (Cal. 1976)

Vince v. Wilson, 561 A.2d 103 (Vt. 1989)

8. Negligence: Defining the Reasonable Person

Casebook 202-213, 217-221

Vaughan v. Menlove, 132 Eng. Rep. 490 (Common Pleas 1837)

Berberian v. Lynn, 845 A.2d 122 (N.J. 2004)

Roberts v. La., 396 So. 2d 566 (La. App. 1981)

Robinson v. Lindsay, 598 P.2d 392 (Wash. 1979)

Heath v. Swift Wings, Inc., 252 S.E.2d 526 (N.C. App. 1979)

Blackboard

Fredericks v. Castora, 360 A.2d 696 (Penn. 1976)

9. Negligence: Assessing the Reasonableness of Conduct

Casebook 233-241, 247-251

The T.J. Hooper, 53 F.2d 107 (S.D.N.Y. 1931), *aff'd* 60 F.2d 737 (2d Cir. 1932)

Baltimore & Ohio R.R. Co. v. Goodman, 275 U.S. 66 (1927)

Pokora v. Wabash R.R. Co., 292 U.S. 98 (1934)

Tedla v. Ellman, 19 N.E.2d 987 (N.Y. 1939)

Please read the notes on pages 248-251, especially notes 1 and 6.

10. The Hand Formula

Casebook 194-196

United States v. Carroll Towing Co., 159 F.2d 169 (2d Cir. 1947)

Blackboard

McCarty v. Pheasant Run, Inc., 826 F.2d 1554 (7th Cir. 1987)

Grimshaw v. Ford Motor Co., 174 Cal. Rptr. 348 (Cal. App. 4th Dist. 1981)

11. Causation I: Cause-in-Fact

Casebook 281-285, 290-307

Calhoun v. Honda Motor Co., 738 F.2d 126 (6th Cir. 1984)

Anderson v. Minneapolis, St. Paul & Saulte Ste Marie R'y Co., 179 N.W. 45 (Minn. 1920)

Summers v. Tice, 199 P.2d 1 (1948)

Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069 (N.Y. 1989)

Falcon v. Memorial Hospital, 462 N.W.2d 44 (Mich. 1990)

12. Causation II: Proximate Cause

Casebook 317-325, 328-336

In re Arbitration Between Polemis & Furness, Withy & Co., 3 K.B. 560 (1921)

The Wagon Mound No. 1, [1961] A.C. 388 (U.K.)

Palsgraf v. Long Island R.R. Co., 162 N.E. 99 (N.Y. 1928)

Petitions of the Kinsman Transit Co., 338 F.2d 708 (2d Cir. 1964)

Please read note 8 on pp. 324 regarding *The Wagon Mound No 2*, [1967] 1 AC 617.

Blackboard

Smith v Leech Brain & Co., [1962] 2 QB 405.

Petitions of the Kinsman Transit Co., 388 F.2d 821 (2d Cir. 1968)

13. Causation III Proximate Cause (cont.)

Casebook 339-345, 349-354

Weirum v. RKO Gen., Inc., 539 P.2d 36 (Cal. 1975)

Watson v. Kentucky & Indiana Bridge & R.R. Co., 126 S.W. 146 (1910)

Kelly v. Gwinnell, 476 A.2d 1219 (N.J. 1984)

14. Contributory Negligence

Casebook 653-664

Li v. Yellow Cab Co., 532 P.2d 1226 (Cal. 1975)

Davies v. Mann, 152 Eng. Rep. 588 (Ex. 1842)

Blackboard

Davis v. Consolidated Rail Corp., 788 F.2d 1260 (7th Cir. 1986)

R.H. Coase, *The Problem of Social Cost*, 3 J.L. & Econ. 1 (1960)

15. Strict Liability for Dangerous Activities

Casebook 525-537, 721-726

Fletcher v. Rylands, 4 H. & C. 263 (Ex. 1866), *aff'd*, [1868] UKHL 1
Turner v. Big Lake Oil Co., 96 S.W.2d 221 (Tex. 1936)
Yukon Equip., Inc. v. Fireman's Fund Ins. Co., 585 P.2d 1206 (Alaska 1978)
Marshall v. Ranne, 511 S.W.2d 255 (Tex. 1974)

Blackboard

Filburn v. People's Palace and Aquarium Co., (1890) L.R. 25 Q.B.D. 258

16. Res Ipsa Loquitur; Strict Products Liability

Casebook 266-275, 262-264, 564-580

Ybarra v. Spangard, 154 P.2d 687 (Cal. 1944)
Anderson v. Somborg, 338 A.2d 1 (N.J. 1975)
Escola v. Coca-Cola Bottling Co., 150 P.2d 436 (Cal. 1944)
Greenman v. Yuba Power Prods., Inc., 377 P.2d 897 (Cal. 1963)
Phillips v. Kimwood Mach. Co., 525 P.2d 1033 (Or. 1974)

17. Strict Products Liability (cont.); Defenses to Strict Liability

Casebook 581-592, 632-640, 726-730, 735-746

Barker v. Lull Eng'g Co., 573 P.2d 443 (Cal. 1978)
Powers v. Taser Int'l, Inc., 174 P.3d 777 (Ariz. App. 2007)
McCown v. Int'l Harvester Co., 342 A.2d 381 (Penn. 1975)
Daly v. Gen. Motors Corp., 575 P.2d 1162 (Cal. 1978)

18. Assumption of Risk

Casebook 665-675, 703-706, 718-721

Goepfert v. Filler, 563 N.W.2d 140 (S.D. 1997)
Ray v. Downes, 576 N.W.2d 896 (S.D. 1998)
Blackburn v. Dorta, 348 So. 2d 287 (Fla. 1977)
Vinikoor v. Pedal Pennsylvania, Inc., 974 A.2d. 1233 (Penn. App. 2009)

19. Vicarious Liability; Joint Liability

Blackboard

Estes v. Comstock Homebuilding Cos., Inc., 673 S.E.2d 399 (N.C. App. 2009)
Schlotfeldt v. Charter Hospital of Las Vegas, 910 P.2d 271 (Nev. 1996)

Casebook 396-402

Walt Disney World v. Wood, 515 So. 2d 198 (Fla. 1987)

Please read note 1 on page 398.

20. Economic Loss Rule; Damages

Blackboard

Louisiana ex rel. Guste v. M/V Testbank, 752 F.2d 1019 (5th Cir. 1985)

Casebook 366-371, 483-492, 506-524

People Express Airlines v. Consol. Rail Corp., 495 A.2d 107 (N.J. 1985)

BMW of N. Am., Inc. v. Gore, 116 S. Ct. 1589 (1996)

Seffert v. Los Angeles Transit Lines, 364 P.2d 337 (Cal. 1961)

21. Occupier's Liability

Casebook 421-437, 444-450

Rowland v. Christian, 443 P.2d 561 (Cal. 1968)

Gerchberg v. Loney, 576 P.2d 593 (Kan. 1978)

Wrinkle v. Norman, 301 P.3d 312 (Kan. 2010)

Crawford v. Pac. W. Mobile Estates, Inc., 548 S.W.2d 216 (Mo. App. 1977)

22. Defamation

Casebook 767-772, 780-783, 794-803, 787-790

Romaine v. Kellinger, 537 A.2d 284 (N.J. 1988)

Pring v. Penthouse Int'l, 695 F.2d 438 (10th Cir. 1983)

N.Y. Times v. Sullivan, 376 U.S. 254 (1964)

Liberman v. Gelstein, 605 N.E.2d 344 (N.Y. 1992)

23. Infliction of Emotional Distress

Casebook 47-57, 159-167, 171-175

Harris v. Jones, 380 A.2d 611 (Md. 1977)

Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988)

Quill v. Trans World Airlines, 361 N.W.2d 438 (Minn. 1985)

Potter v. Firestone Tire & Rubber Co., 863 P.2d 795 (Cal. 1993)

Boyles v. Kerr, 855 S.W.2d 593 (Tex. 1993)

Please read note 6 on pages 171-172.

24. Invasion of Privacy; Misrepresentation

Casebook 881-890, 896-902, 910-913,

Shulman v. Group W Productions, Inc., 955 P.2d 469 (Cal. 1998)

Haynes v. Alfred A. Knopf, Inc., 8 F.3d 1222 (7th Cir. 1993)

Lake v. Wal-Mart Stores, Inc., 582 N.W.2d 231 (Minn. 1998)

Blackboard

Bortz v. Noon, 729 A.2d 555 (Penn. 1999)

25. Misrepresentation (cont.); Tortious Interference with Contract

Blackboard

C.A.M. v R.A.W., 568 A.2d 556 (N.J. App. 1990)

Tarleton v. M'Gawley, 173 Eng. Rep. 153 (K.B. 1794)

Pennzoil Co. v. Texaco, Inc., 729 S.W.2d 768 (Tex. App. 1987)

Della Penna v. Toyota Motor Sales, U.S.A., Inc., 902 P.2d 740 (Cal. 1995)

26. Catch-up and Revision

No new reading