

WESTERN STATE COLLEGE OF LAW
TORTS I, Sections 131B & 131C
Fall 2013
Syllabus & Policies
Professor Philip L. Merkel

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Office hours: I will announce my office hours in the first class.
To reserve an appointment time, sign up in the appointment book located at the receptionist's desk on the third floor.
Web course: I will be posting information on the Lexis Blackboard site.
I will give you the password during our first class meeting.

Required Books

The Torts Process (8th ed.), by Henderson, Pearson, and Kysar.
Understanding Torts (4th ed.), by Diamond, et al.

Students must bring *The Torts Process* to all classes. Be sure to purchase a current edition of the casebook.

Course Coverage

A tort is a civil wrong, other than a breach of contract, for which the law provides a remedy for injuries caused by a wrongdoer. Torts I is a three-unit course that introduces the student to two types of tort claims. The first is the suit for intentionally caused harm. The intentional torts we will cover are battery and assault. The second type of tort claim is for injuries caused by negligence. Lawsuits for injuries arising from auto accidents and medical malpractice are common examples of negligence claims. In addition to examining intentional torts and negligence, we will determine whether the defendant has any privileges or defenses that might absolve her from responsibility or limit her liability.

Course Objectives

The Torts I course has a number of objectives. First, it will introduce you to the substantive legal rules that courts and legislatures have developed over time in attempting to assess responsibility for losses suffered by individuals in various contexts. Second, the course will encourage you to critically examine these legal rules and help you to understand the economic, social, and political considerations behind them. Third, the course will sharpen your analytical skills, especially those of case reading and applying legal rules to actual controversies. Fourth, Torts I will assist you in mastering legal writing, especially test-taking skills.

Torts I also give you the opportunity to apply some of the basic lawyering skills you will learn in the Legal Writing and Research course. These skills include legal analysis, problem solving, and confronting ethical dilemmas.

Examinations and Grading

Torts I is a graded course. Your grade will be determined by your performance on a number of examinations. Early in the semester, I may assign exercises designed to assess your ability to read and understand cases, statutes, and legal terms. These exercises will be graded on a pass-fail basis. You must earn a grade of pass on each exercise to receive credit for the course. I also may give graded quizzes.

Your numeric grade will mainly be based on a midterm examination and a final examination. The midterm examination is an essay test. You will take it during the sixth week. The final examination consists of essay and multiple choice questions.

The midterm will comprise 20% of the course grade and the final will count for 80%. In the event that I give graded quizzes, I may change these percentages.

Attendance and Participation – READ CAREFULLY

Attendance and participation are required for all classes. If you are not prepared for class, this counts as an absence. If you do not have a written brief when you are called on to recite, this will establish that you are unprepared for that class. **A student in the day section may not be absent for more than two classes. A student in the night section may not be absent for more than one class. A STUDENT WITH ABSENCES EXCEEDING THE LIMIT WILL BE DROPPED FROM THE COURSE AND RECEIVE A FAILING GRADE.** I monitor attendance through the course sign-in sheets. It is **your responsibility** to sign the attendance sheet in each class and keep a record of your absences.

We will use the case method of instruction in Torts I. To prepare for class you must carefully read the assigned materials and brief all cases. **Because I will ask you to stand to recite, it will be more convenient for you if you have a printed or written brief.**

The casebook also contains hypothetical problems that the authors have created. During the course of the semester I may select some of these problems for in-class discussion. The syllabus identifies the pages containing problems we may discuss.

Promptness

Classes will begin promptly at the scheduled time. Please be in your seat for the start of class. Students who arrive late disrupt the learning process for others. If you are unavoidably late, please enter quietly and take the nearest open seat.

Commercial Outlines and Case Briefs

Students may not recite from commercial outlines and case briefs. Please do not bring these materials to class. You will benefit most from your law school experience if you read the materials and brief the cases yourself.

Seating Chart

I will send around a seating chart early in the semester. Please print your name legibly in the seat of your choosing. This will be your permanent seat.

I encourage you to choose a seat near the front of the classroom. Educational studies show that students sitting near the front benefit most from the classroom experience. Because I randomly select students to recite, your seat choice will not enhance or reduce the likelihood of your being chosen to recite.

Cell Phones, Pagers, and Computers

Please disable and store cell phones and pagers when in class. You may bring a computer to class for taking notes but you may not be on the Internet, play games, exchange emails, etc. Text messaging during class is also prohibited. **Students who violate this policy will forfeit the privilege of using a computer.**

Food

Please do not eat during class. You may have water or soft drinks.

Appointments

If you reserve a time to meet with me during my office hours, please keep the appointment or cancel it in a timely fashion. **A student who fails to keep an appointment will not be able to reserve appointment times for the rest of the semester.**

Topics and Assignments

I have listed the reading topics and assignments for each week. **Please read the entire assignment before the first class for each week.** Pages listed are in *The Torts Process* (TP). You should also read sections in *Understanding Torts* that correspond to the week's topics.

<u>Week</u>	<u>Topics and Assignments</u>
1	Introduction to torts; elements of a tort; battery; the meaning of intent, TP 1-12, 15-25. Submit typed issue statement(s) for <i>Garratt v. Dailey</i> .
2	Battery (cont.), TP 29-34. Submit typed issue statement(s) for <i>Fisher v. Carrousel Motor Hotel</i> ; assault, TP 730-733.
3	Privileges – consent, TP 40-42, 53-69; privileges – self-defense, TP 75-80.
4	Privileges – defense of others and defense of property, TP 88-95; essay exam writing workshop.
5	Privileges – necessity, TP 97-102; vicarious liability, TP 148-154.
6	Midterm examination; introduction to negligence; the reasonable person standard, TP 159-163, 167-173.
7	Special rules governing the duty of care, negligence per se and custom, TP 188-198, 200-204.
8	Modification of the general standard of care in special cases, TP 230-235, 242-251.
9	Cause in fact, TP 109-124, 127-135, 143-147.
10	Res ipsa loquitur, TP 216-224; proximate cause, TP 273-281.
11	Proximate cause (cont), TP 281-290, notes on 292-308.
12	Proximate cause (cont.), TP 316-333.
13	Defenses to negligence, TP 377-392.
14	Defenses to negligence (cont.), TP 392-403 (omit problem 26); course wrap-up and review.
15	Reading week
16	Final examination