

**WESTERN STATE COLLEGE OF LAW**  
**TORTS I Sections 131A & 131C**  
**Fall 2018**  
**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 outside the receptionist's office on the first floor.  
Web course: I will be posting information on the Lexis Classroom site.  
I will give you the password during our first class meeting.

**Required Books:**

*The Torts Process* (9th ed.), by Henderson, Kysar and Pearson. You *must* have the ninth edition. Bring this book to all classes.

*Understanding Torts* (5th ed.), by Diamond, et al. You may use an earlier edition of this book.

**Recommended Study Aid:**

*CasebookConnect*

Students who purchase a new copy of *The Torts Process* or rent one from the publisher will have access to "CasebookConnect," an educational service provided by Wolter Kluwer. The publisher created this feature for users of a number of casebooks, including *The Torts Process*. Students will have access to on-line study aids, outlining suggestions, and practice questions. The practice questions, including multiple choice, flash card, and issue-spotting problems, will allow you to self-test in the topics we cover.

**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 students to two types of tort claims. The first is the suit for intentionally caused harm. The intentional torts we will cover are battery, assault, and intentional infliction of emotional distress. We will also discuss circumstances in which one may escape liability for an intentional tort because the person was privileged to commit the act.

The second type of tort claim is for injuries caused by negligence. Negligence is the tort you are most likely to encounter in practice. Lawsuits for injuries arising from auto accidents and medical malpractice are common examples of negligence claims. Negligence is also the most heavily tested tort on the California Bar Examination and bar exams in other states. For these reasons, we will be spending a substantial amount of time examining the rules of negligence law. We will also discuss defenses to negligence claims, including contributory negligence, comparative negligence, and assumption of the risk.

## **Course Objectives**

The following are the major objectives of Torts I.

- The course will introduce you to the substantive legal rules courts and legislatures have developed over time in attempting to assess responsibility for losses suffered by individuals in various contexts.
- You will learn to critically examine legal rules and understand the economic, social, and political considerations behind them.
- The course will help sharpen your analytical skills so you are able to apply the rules you have learned to new fact situations. This is a basic competency a lawyer must master to be successful in law practice.
- Torts I will assist you in communicating your ideas in writing in a coherent, organized way. This will be accomplished through writing practice examinations and graded examinations.
- The course will help sharpen your oral communication skills. All students are required to recite in class. I will call on students randomly to present cases and respond to questions I and other students may ask. Students will also be required to take positions and engage in debates on selected cases and problems.
- Torts I will introduce you to practical and ethical issues lawyers encounter in everyday tort law practice.

## **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. 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 alter 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 four classes. A student in the night section may not be absent for more than two classes. 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 may be more convenient for you if you have a printed or written brief.**

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

## **Classroom Decorum and Respect for Others**

Over the course of the semester we will be discussing some controversial topics, and students are likely to have different opinions. You are encouraged to freely express your views, as we all learn and benefit from such exchanges, but you must treat one another with respect even where there are major disagreements.

## **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 and Computers**

Please disable and store phones 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, text, etc. **Students who violate this policy will be marked absent for the class session and forfeit the privilege of using a computer in future classes.**

### **Food**

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

To make an appointment, sign up in the appointment book located near the entrance to the first floor faculty suite. Do not call or email me to schedule an appointment, as I do not have the appointment book.

### **Disabilities Services Statement**

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the First Floor Student Services Suite. Dean Espinoza's phone number and email address are: (714) 459-1117; [despinoza@wsulaw.edu](mailto:despinoza@wsulaw.edu). When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodations. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a

concern or complaint in this regard, please notify Dean Espinoza. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

### **Time Requirements for Class Preparation and the Study of Torts**

ABA Standard 310 (b) (1) requires that students spend at least two hours of outside study time for every course credit hour. **This means you must devote at least six hours each week to the study of torts outside the classroom.** Your class preparation should include the following:

- Carefully read the sections of *Understanding Torts* relating to the subject(s) to be covered in a specific class.
- Carefully read every assigned case in the casebook, including assigned materials before and after each case.
- Produce *detailed written briefs* of every assigned case and accumulate the briefs in a brief notebook. I may require you to provide me with a written copy of your brief notebook.
- Produce written answers to every assigned problem in the casebook.
- Read all materials posted on the course website.
- Produce written answers to exercises distributed in class and posted on the course website.
- Visit the CasebookConnect website after we complete a discussion of a specific tort/privilege/defense and answer all multiple choice and flash card questions.
- Complete practice examinations that I will distribute before the midterm and final examinations.
- Take the initiative to delve further into topics by doing outside study, especially on topics that interest you.
- Form study groups with classmates for the purpose of learning from one another.
- Visit the professor during office hours to discuss course materials, identify areas with which you are having difficulty, review practice examinations, etc.

### **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.** You should read sections in *Understanding Torts* that correspond to the week's topics *before* you read the cases. Successful students have told me this has helped provide a context for the readings in the casebook.

Listed below are the pages we will cover each week in *The Torts Process* (TP). For some weeks there are mandatory writing assignments. Please put your name, not your exam number or student number, on these assignments.

| <u>Week</u> | <u>Topics and Assignments</u>  |
|-------------|--|
| 1           | Introduction to torts; elements of a tort; battery; the meaning of intent, TP 1-12 (skip <i>Vosburg</i> ); 17-25. <b>Submit</b> typed brief for <i>Garratt v. Dailey</i> . |
| 2           | Battery (cont.), TP 30-35, 761-763. <b>Submit</b> typed brief for <i>Fisher v. Carrousel Motor Hotel</i> ; assault, TP 763-766.  |
| 3           | Intentional infliction of emotional distress, TP 774-785. Privileges – consent, TP 42-43.  |
| 4           | Consent (cont), TP 55-60, 63-66, 70-73; self-defense, TP 79-84. <b>Prepare</b> Problem 5.  |
| 5           | Defense of others and defense of property, TP 93-100; essay exam writing workshop.   |
| 6           | Necessity, TP 102-107. <b>Prepare</b> Problem 7. Vicarious liability, TP 159-162.  |
| 7           | Midterm examination; introduction to negligence; the reasonable person standard, TP 175-179, 187-193.  |
| 8           | Special rules governing the duty of care, negligence per se and custom, TP 209-220, 222-226, 233-235.  |
| 9           | Modification of the general standard of care in special cases, TP 252-257, 264-273.  |
| 10          | Cause in fact, TP 115-122, 124-129, 132-139, 152-158.  |
| 11          | Res ipsa loquitur, TP 237-246; proximate cause, TP 297-299, 302-309.   |
| 12          | Proximate cause (cont), TP 310-336.  |
| 13          | Proximate cause (cont.), TP 343-359.   |
| 14          | Defenses to negligence, TP 406-430 (omit all problems); course wrap-up.  |
| 15          | Reading week.  |

## Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) **Doctrinal Knowledge**

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) **Practice Skills**

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) **Legal Analysis**

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) **Legal Research**

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

**(5) Communication**

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

**(6) Advocacy of Legal Argument**

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

**(7) Client Sensitivity and Cultural Competency**

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

**(8) Legal Ethics**

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.



## **Argosy University Institutional Learning Outcomes**

### **1. Analytical Reasoning**

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems

### **2. Effective Communication**

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation

### **3. Information Competency**

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action

### **4. Interpersonal Effectiveness**

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals

### **5. Personal and Professional Integrity and Ethical Behavior**

Demonstrate a multi dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

### **6. Professional Competence**

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession