

WESTERN STATE COLLEGE OF LAW

TORTS II - SPRING 2018
Section 132A

Syllabus & Policies

Professor Philip L. Merkel

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Office Hours: To be announced.
Blackboard website: Password will be given in first class.

Course Materials

We will use the same materials as in Torts I.

Required:

The Torts Process (9th ed.), by Henderson, Pearson, Kysar.
Understanding Torts (5th ed.), by Diamond, Levine, Bernstein.

Recommended:

CasebookConnect

Course Coverage

Torts II is a two-credit course that builds on materials covered in Torts I. The course begins with the torts of trespass to land and nuisance. We will then discuss instances in which the law holds the defendant strictly liable for damages. The remainder of the course will be devoted to the topics of products liability, defamation, and invasion of privacy. We will explore the social, economic, and political considerations that bear on the development of legal principles in these areas.

Course Objectives

The Torts II course has a number of major objectives. First, it will introduce you to 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 reasons behind them. Third, the course will sharpen your analytical skills, especially those of case reading and applying legal

rules to actual controversies. Fourth, Torts II will assist you in mastering legal writing, especially test-taking skills.

Examinations and Grading

Torts II is a graded course. Your grade will be based mainly on your performance on a midterm examination and a final examination. I may also give short quizzes or other written assignments. Your scores on these exercises will be taken into account when I compute your final grade.

Attendance and Participation

PLEASE READ CAREFULLY

Students must attend class regularly, prepare written case briefs, and participate in discussions. There is no “free pass” policy for this course.

A student can be absent no more than **three** class sessions. If you are unprepared, this counts as an absence. **A student with absences in excess of the limit will receive a failing grade for the course.** You are responsible for keeping an accurate count of your absences.

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 empty seat. Once class begins, please do not leave the room unless there is an emergency or for medical reasons.

Cell Phones

Please disable phones and **store them** before class begins.

Computers

You may use a personal computer **for note taking only**. You may not be on the Internet, check email, etc. I may prohibit the use of personal computers if I determine computer use is interfering with the education process.

If you intend to recite from a case brief on your computer, have the document open when discussion of the case begins so as not to waste time in calling it up.

Food

It is against school policy to bring food into classrooms. You may have drinks in closed containers.

Commercial Study Aids

You may not recite from commercial outlines and case briefs or other commercial study aids. If you bring these materials to class, they must be closed at all times.

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. Because I randomly select students to recite, your seat choice will not enhance or reduce the likelihood of your being chosen.

Appointments

To reserve an appointment, sign up in the appointments book near the entry to the first floor faculty suite. Do not contact me for an appointment. 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.**

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 four 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.

Reading Assignments

The following assignments are from the casebook. **Read the entire assignment before the first class for each week.** You are responsible for the notes as well as the cases. **You must brief the cases in writing.** Do not prepare the problems unless I ask you to do so. Read the sections of *Understanding Torts* corresponding to the topics covered in the casebook assignments.

| <u>Week</u> | <u>Topics and Assignments</u> |
|--------------------|---|
| 1 | Trespass to land and nuisance; 439-476. |
| 2 | Strict liability; 481-502, 507-512. |
| 3 | Products liability; 515-528. |
| 4 | Products liability (continued); 528-545. |
| 5 | Products liability (continued); 545-561. |
| 6 | Products liability (continued); 561-580. |
| 7 | Products liability (continued); 582-598. (Omit problem 34.) |
| 8 | Products liability (continued); 599-607, 608-616. |
| 9 | Midterm examination. |
| 10 | Defamation; 801-833. |
| 11 | Defamation (continued); 833-855. |
| 12 | Invasion of privacy; 859-874. |
| 13 | Invasion of privacy (continued); 874-892. |

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| 14 | Invasion of privacy (continued); 898-907; course wrap-up. |
| 15 | Reading week |
| 16 | Final Examination |

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 Students Services Suite 119. Dean Espinoza’s phone number and email address are: (714) 459-1117; 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 accommodation. 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; or please notify Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law’s “Policy against Discrimination and Harassment.”

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