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Course Learning Objectives

The learning objectives for Torts I include both mastery of skills and doctrinal knowledge. Below you will find a list of key skills that will be practiced and developed, and an outline of the areas of doctrinal coverage. Basic mastery of these skills and a complete understanding of these doctrinal areas is necessary to earn a grade consistent with good standing.

Skills:

- **Issue Spotting:** You will be able to identify the appropriate legal question arising out of a fact pattern.
- **Rule Statement:** You will be able to state an accurate paraphrase of applicable rules, including appropriate legal terms of art.
- **Holdings:** You will be able to develop broad and narrow holdings for all cases.
- **Rule Interpretation and Application:** You will be able to interpret and apply a rule to a hypothetical set of facts, recognizing the different approaches required by different types of rules.
- **Case Synthesis and Application:** You will be able to apply and distinguish cases in relation to a hypothetical set of facts, with appropriate explanation of significance—i.e., the relevance of the similarities and differences to the outcome of the dispute.
- **Making Policy-Based Arguments.** You will be able to identify the public policies of a precedent case or rule, to explain the policy implications of a legal controversy, and to use those policies in support of arguments for particular outcomes of the legal controversies.

Doctrinal Coverage:

A. Intentional Torts

1. Battery
 - a. Intent: the meaning of intent in the context of battery
 - b. Contact: the meaning and outer limits of harmful and offensive contacts.
2. Other Intentional Torts:
 - a. Assault
 - b. Intentional Infliction of Emotional Distress
 - c. False Imprisonment
 - d. Trespass
 - e. Trespass to Chattels
 - f. Conversion
3. Privileges
 - a. Consent
 - b. Self-Defense
 - c. Necessity

B. Negligence

1. Basic Standard
 - a. Historical Development of Negligence
 - b. Learned Hand Formula
 - c. Elements: duty, breach, causation, damages
2. "Shortcuts" for determining breach:
 - a. The role of custom in determining duty/breach
 - b. Negligence Per Se: the role of statutes in determining duty/breach
 - c. Res Ipsa Loquitur
3. Limitations on duty
 - a. Landowners toward invitees, licensees, trespassers.
 - b. No duty to rescue (w/exceptions)
 - c. Responsibility for third persons
4. Actual Causation
 - a. "But for" causation
 - b. Substantial factor
 - c. Complications with multiple parties
5. Proximate Cause
 - a. "Foreseeable Plaintiff" approach (Cardozo in *Palsgraf*)
 - b. Direct consequences/policy based limitations (Andrews, e.g.)
 - c. Alternative approaches
6. Liability limitations based on damages
 - a. Pure economic loss
 - b. Mental distress

Reading Assignments

On the following two pages, you will find the reading assignments for the Spring Semester.

The required text for the course is **Vetri, Levine, Vogel and Gassama, Tort Law and Practice (5th ed. 2016)**. All page references are to the Vetri text. Assignments labeled **Handout** will be distributed ahead of time in class and will also be available on the course website.

Case Handout 1, which contains a case assigned for the second week, is included at the end of this document.

Please prepare all pages listed in the assignment. Principle cases with starting page numbers in parentheses are noted for useful reference. These page numbers will refer to the Vetri text unless noted as part of the assigned handout. Assume any Problems that fall within the assigned pages are to be studied for discussion purposes, unless instructed otherwise.

Proper preparation for class includes reading the material carefully (which means re-reading when necessary and looking up unfamiliar terms or phrases), fully briefing all principle cases, and reviewing the material shortly before class so that it is fresh in your mind. In the first class, we will review the important elements of a brief for this course.

In addition to the assigned reading, there will be regular homework assignments designed to help you master the skills and knowledge goals for the course; there will also be occasional quizzes (please see Course Requirements at p. 6 of this syllabus for more information about these course components).

*Between the reading assignments and other homework, you should expect on average to spend two hours or more preparing **for each hour of class.***

WEEK	TOPICS	ASSIGNMENT	CASES
1 1/22	Introduction to Tort Law Introduction to Intent	7-46 685-688, 695 (bottom)-706	<i>White v. Muniz</i> (695) <i>Villa v. Derouen</i> (697) <i>Doe v. Johnson</i> (704)
2 1/29	Battery and Assault Applying and Distinguishing Cases	Case Handout 1 707-715	<i>McCracken v. Sloan</i> (handout) <i>Leichtman v. WLW Jacor</i> (707)
3 2/5	Intentional Infliction of Emotional Distress False Imprisonment	715-748	<i>Brandon v. Cty of Richardson</i> (716) <i>Alcorn v. Ambro</i> (727) <i>Swenson v. Northern Crop Ins.</i> (729) <i>Graham v. Guilderland Cent. Sch. Dist.</i> (731) <i>Wal-Mart Stores v. Cockrell</i> (741)
4 2/12	Other Intentional Torts: ▪ Trespass, ▪ Trespass to Chattels, ▪ Conversion Privileges: ▪ Consent	Restatement 2d Handout, 798-802 (top), 749-757 Consent Handout 757-767	<i>Creel v. Crim</i> (798) <i>U.S. v. Arora</i> (749) <i>Hogan v. Tavzel</i> (757) <i>Hellriegel v. Tholl</i> (759) <i>Reavis v. Slominski</i> (761)
5 2/19	Privileges: ▪ Self-defense ▪ Necessity Pre-Midterm Review	768-777 (top) 781-784, 787 n.7	<i>Bradley v. Hunter</i> (768) <i>Juarez-Martinez v. Deans</i> (770) <i>Rossi v. Del Luca</i> (781) <i>Vincent v. Lake Erie</i> (782)
6 2/26	Midterm		
7 3/4	Introduction to Negligence Reasonable Care	11-13, 832 (bottom)-833: "Historical Perspective" 47-72, 77-82, 89-95, 102 (note 9)-106 (top)	<i>Rudolph v. Arizona B.A.S.S. Fed'n.</i> (53) <i>Edwards v. Johnson</i> (70) <i>Bashi v. Wodarz</i> (77) <i>U.S. v. Carroll Towing</i> (89)

WEEK	TOPICS	ASSIGNMENT	CASES
8 3/11	Reasonable Care: <ul style="list-style-type: none"> ▪ Custom ▪ Statute 	106-116, 121-137	<i>Trimarco v. Klein</i> (107) <i>The T.J. Hooper</i> (113) <i>Ferrell v. Baxter</i> (122) <i>Wright v. Brown</i> (129)
9 3/25	Res Ipsa Loquitur Post-Midterm Review	142-143 (top), 147-161	<i>Eaton v. Eaton</i> (149) <i>Ybarra v. Spangard</i> (155)
10 4/1	Limitations on Duty <ul style="list-style-type: none"> ▪ Policy ▪ Landowner liability ▪ No duty to rescue ▪ Resp. for 3rd persons 	189-199, 205-229 (top), 238-239 (notes 5-7) 243-249, 253-260	<i>MacPherson v. Buick Motor Co.</i> (192) <i>Am. Indus. Life Ins. Co. v. Ruvalcaba</i> (205) <i>Rowland v. Christian</i> (216) <i>Tarasoff v. Regents of Univ. of Calif.</i> (243) <i>Dunkle v. Food Service East</i> (253)
11 4/8	Actual Causation	359-363, 374-377 (top) 391 (note [3] at top), 428-445	<i>New York Cent. R.R. Co. v. Grimstad</i> (361) <i>Corey v. Havener</i> (363) <i>Zuchowicz v. U.S.</i> (374) <i>Summers v. Tice</i> (428) <i>Hymowitz v. Eli Lilly & Co.</i> (431) <i>Brenner v. Am. Cyanamid Co.</i> (440)
12 4/15	Proximate Cause	448-474	<i>Palsgraf v. Long Island R.R. Co.</i> (452) <i>Juisti v. Hyatt Hotel Corp.</i> (459) <i>McClenahan v. Cooley</i> (469) <i>Price v. Blaine Kern Artista, Inc.</i> (473)
13 4/22	Proximate Cause, cont'd Claims for pure Economic Loss	490-509 Case Handout 2 336 (bottom-note [4])- 351	<i>Pace v. Ohio Dept. of Transp.</i> (490) <i>In re Kinsman I-1964</i> (handout) <i>In re Kinsman II-1968</i> (handout)
14 4/29	Claims for mental distress Final Exam Review	283-287 (top), 299-309	<i>Burgess v. Superior Court</i> (301) <i>Huggins v. Longs Drug Stores</i> (305)

Course Requirements and Other Details

1. Attendance is mandatory. If you exceed more than six hours' worth of absences, you will be dropped from the course. ***You are responsible for keeping track of the number of absences you accumulate. Please keep records.*** Promptness is also mandatory.
2. Class participation and preparation are required. If you are unprepared in class, **your final grade will be adjusted down by one tenth for each occasion.**
3. During the course of the semester, there will be a number of exercises and homework assignments that are both individual and group assignments. You will be assigned to a standing small group. All exercises and components of group work must be completed in good faith and on time. **Failure to do so on more than one occasion will result in the same penalty as set out in #2 above.** The "free bite" (the one missed or late exercise for which no penalty is assessed) is designed to cover emergencies. This penalty applies equally to required components of group exercises and to individual assignments. Because of the ease of electronic submission, absence from class does not affect due dates or excuse completion of homework.
4. Occasional short on-line quizzes will be announced. Successful completion of these quizzes will count for 5% of your grade.
5. The Midterm will be administered in the 6th Week of the semester (February 26), and will count 15% of your grade.
6. The final examination will be 80% of your final grade.
7. Instructions regarding the course website will be provided at the first class meeting. Students will be required to enroll in the course website and ensure that an accurate email address is recorded there. You will be held responsible for the content of any email messages sent through the website.
8. Use of cell phones or laptops during class for any purpose other than taking notes, consulting course materials, or accessing internet resources at the direction of the professor is prohibited. Violations will result in exclusion from the class and a recorded absence.
9. My office is in the first floor Faculty Suite, Room 121H. I will maintain Office Hours by appointment (**days/times tba**). You may sign up for these appointments using the sign-up sheet posted outside my door. If you wish to make an appointment at a different time, or if you wish to cancel an appointment, please contact me by email at skeller@wsulaw.edu.

DISABILITY 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 Second Floor Students Services Suite. 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.

Case Handout #1

WILLIAM T. McCracken v. O. B. Sloan

No. 7826SC303

COURT OF APPEALS OF NORTH CAROLINA

40 N.C. App. 214; 252 S.E.2d 250; 1979 N.C. App. LEXIS 2601

**January 16, 1979, Heard in the Court of Appeals
March 6, 1979, Filed**

SYLLABUS

This is a lawsuit in which the plaintiff alleges the defendant twice committed an assault and battery upon him by smoking cigars in his presence. At the 16 January 1978 civil term of Superior Court in Mecklenburg County and during a pretrial conference it was stipulated what the evidence most favorable to the plaintiff would be. The record shows this evidence to be as follows: The plaintiff had been a postal employee in the City of Charlotte and the defendant is the postmaster in that city. The plaintiff had a history of being allergic to tobacco smoke. Dr. Herbert O. Seiker, who is in charge of the Division of Pulmonary and Allergic Disease in the Department of Medicine of Duke University, testified by deposition that plaintiff is allergic to tobacco smoke with an allergy of "3 plus on a scale of one to four." Dr. D. V. Chamblee would have testified in regard to plaintiff that "This gentleman has severe respiratory problems when around cigarette smoke." The plaintiff had made complaints and distributed literature within the post office building in regard to the dangers of smoking. He had requested and been denied sick leave for his allergic condition. On 3 April 1975 and 13 May 1975 the plaintiff attended meetings in the office of the defendant at which the plaintiff's application for sick leave was discussed. At both of these meetings, defendant smoked a cigar. One witness would testify that he heard the defendant say at the 13 May 1975 meeting: "Bill, I know you claim to have an allergy to tobacco smoke and you have presented statements from your doctor stating this, but there is no law against smoking, so I'm going to smoke."

JUDGES: Webb, Judge. Judges Parker and Arnold concur.

OPINION BY: WEBB

OPINION

* * * The parties stipulated and made a part of the record what the plaintiff's evidence would tend to show. It is from this stipulation as to what the evidence would be that we must determine whether there is enough evidence to be submitted to the jury to support a claim for assault and battery.

We have found no case with a factual situation which controls this case.

* * *

The interest in freedom from intentional and unpermitted contacts with the plaintiff's person is protected by the action for battery. It is not necessary that the contact be brought about by a direct application of force. It is enough that the defendant set a force in motion which ultimately produces the result. The gist of the action for battery is not the hostile intent of the defendant, but rather the absence of consent to the contact on the part of the plaintiff. At the same time, in a crowded world, a certain amount of personal contact is inevitable and must be accepted. Consent is assumed to all those ordinary contacts which are customary and reasonably necessary to the common intercourse of life. Smelling smoke from a cigar being smoked by a person in his own office would ordinarily be considered such an innocuous and generally permitted contact. In this case there is the added factor that the defendant was on notice that the smelling of cigar smoke was personally offensive to the plaintiff who considered it injurious to his health. In examining the plaintiff's claim, we observe that it has been said "it may be questioned whether any individual can be permitted, by his own fiat, to erect a glass cage around himself, and to announce that all physical contact with his person is at the expense of liability." *See Prosser on Torts, supra*, at 37.

From a reading of what the plaintiff's evidence would tend to show, we can find no evidence that the plaintiff suffered any physical illness from inhaling the cigar smoke. Each of the doctor's statements says the plaintiff is allergic to tobacco smoke, but neither says that the smoking of the cigars by defendant on 3 April 1975 or 13 May 1975 could have caused a physical illness to plaintiff. There is nothing in the record to show what the plaintiff's own testimony would have been. The statements of the other witnesses do not go to the question of any physical illness to the plaintiff resulting from inhaling cigar smoke. There being no competent evidence that the plaintiff suffered a physical illness from smelling the cigar smoke, we are left with evidence that defendant smoked cigars in his own office when he knew it was obnoxious to a person in the room for him to do so. That person did experience some mental distress as a result of inhaling the cigar smoke. We hold this is not enough evidence to support a claim for assault or battery.

We express no opinion as to what the result would be if there were evidence of some physical injury, but on the facts of this case we cannot hold it is an assault or battery for a person to be subjected either to the apprehension of smelling cigar smoke or the actual inhaling of the smoke. This is an apprehension of a touching and a touching which must be endured in a crowded world.

Affirmed.