

WESTERN STATE COLLEGE OF LAW

TORTS I

Fall 2021

Day: T/Th 2:30-4 (Sec. A)

Eve: T 6:40-9:50 (Sec. C)

SYLLABUS

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Office Hours: Tues 12-2, 4-6; Thurs 12-2

REQUIRED COURSE MATERIALS

- Henderson, Kysar & Pearson, *The Torts Process* (9th ed., Wolters Kluwer)
- Enrollment in Course Website on the Lexis Web Course Page, titled, “Tort I – Fall 2021 – PARK.” You are responsible for all handouts and posted materials.

RECOMMENDED TEXT and STUDY AID

We will not refer to this text specifically in class, but you may find this helpful as a supplemental resource: Diamond, Levine, & Bernstein, *Understanding Torts* (6th ed., Carolina Academic Press)

Also, students who purchase a new copy of *The Torts Process* or rent one from the publisher will have access to *Casebook Connect*, an on-line educational service provided by Wolter Kluwer. The study aids include outlining suggestions and practice questions, such as multiple choice, flash card, and issue-spotting problems, that will allow you to self-test in the topics we cover.

COURSE DESCRIPTION

A tort is a civil wrong 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. In Unit One, we will discuss intentionally caused harm, which include 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.

In Unit Two, we will discuss the second type of tort claim: injuries caused by negligence. Lawsuits for injuries arising from auto accidents, “slip and fall” injuries, and medical malpractice are common examples of negligence claims. Negligence is the tort you are most likely to encounter in practice. Negligence is also the most heavily tested tort on the California Bar Examination and bar exams in other states.

ATTENDANCE

Class attendance is mandatory. In Standard 308(a), the American Bar Association states that law schools must require regular and punctual class attendance. ***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 subject to administrative dismissal from the course per the WSCL Attendance Policy (reprinted in the Student Handbook). *You are responsible for keeping track of the number of absences you accumulate.*

COURSE REQUIREMENTS

Students earn a numeric grade for the course. The final course grade will be based on the midterm (15%), the final exam (80%), and Participation & Professionalism (5%).

Participation and Professionalism

Success in law school requires an active and professional learning environment. For volunteer participation, quality is valued over quantity, and all views are welcome. 5% of your final course grade will be based on the quality and quantity of your contributions to class discussions; completion and timely submission of assignments; attendance and punctuality; and respect for others and general conduct during class.

You may not record this class without my prior approval. Students in violation of these policies may be referred to the Associate Dean for Academic Affairs.

OUTSIDE PREPARATION

Torts is a bar-tested topic and a graduation requirement. You should anticipate that, on average, preparing your weekly case reading and brief writing will take you a minimum of two hours for every one hour of class time. Since Torts I is a three-unit class, you should estimate your preparation for class to require six (6) or more hours outside of class to complete.

LEARNING GOALS

After completion of this course, students should be able to:

- ◆ Understand, and be able to apply, the substantive legal rules courts and legislatures have developed over time in attempting to assess responsibility for losses suffered by individuals in various contexts.
- ◆ Understand, and think critically about, the legal rules and the economic and social policy considerations behind them.
- ◆ Apply and distinguish cases, with the ability to identify the salient features of an appropriate precedent case and to identify and explain legally significant similarities and differences between the precedent case and a fact pattern.
- ◆ Apply rules to facts, with the ability to articulate a rule implicated by the issue, to identify legally significant facts in a fact pattern, and to explain why the facts are significant by connecting the facts to the requirement(s) of the rule.
- ◆ Evaluate legal arguments by identifying the strengths and weaknesses of the argument.
- ◆ Identify issues that attorneys encounter in everyday tort law practice.

WEEKLY SCHEDULE

This syllabus is subject to change as topics, readings and assignments may be adapted as needed to fit the pace of our class. Supplemental readings or assignments may be posted on the web page. You are responsible for all handouts and materials.

Class Schedule Day: Thurs/Tues 2:30-4 p.m. (Sec. A) Eve: Tues 6:40- 9:50 p.m. (Sec. C)	Topic	Readings Complete the reading assignments in advance of the class session, in the order listed below. All reading assignments are to <i>The Torts Process</i> , Henderson, Kysar, Pearson, 9th edition, unless otherwise specified. Reading assignments do not include any exercises that may be interspersed or at the end of chapters, unless specifically assigned.	Cases
Unit 1: Intentional Torts Weeks 1-7			
Week 1 Thurs Aug 19 & Tues Aug 24	Introduction to Torts; Elements of a Tort Battery (Meaning of Intent)	Read Syllabus. pp. 1-12 pp. 17-22 (up to and including block quote); 25 (from second paragraph to end of page)	<i>Garratt v. Dailey</i>

<p>Week 2</p> <p>Thurs Aug 26 & Tues Aug 31</p>	<p>Battery, continued (Meaning of Contact)</p> <p>Assault</p>	<p>pp. 30-34</p> <p>pp. 761-763 (skip Postscript); pp. 763-766</p>	<p><i>Fisher v. Carrousel Motor Hotel</i> <i>Leichtman v. WLW Jacor Communications, Inc.</i></p> <p><i>Read v. Coker</i> <i>Beach v. Hancock</i></p>
<p>Week 3</p> <p>Thurs Sept 2 & Tues Sept 7</p>	<p>Other Intentional Torts: Property</p> <p>False imprisonment</p> <p>Intentional Infliction of Emotional Distress</p>	<p>pp. 439-41; and materials posted on web course page</p> <p>pp. 766-69</p> <p>pp. 774-785</p>	<p><i>CompuServe Inc. v. Cyber Promotions, Inc.</i></p> <p><i>Whittaker v. Sanford</i> <i>Rougeau v. Firestone Tire & Rubber Co.</i></p> <p><i>State Rubbish Collectors Assn v. Siliznoff</i></p>
<p>Week 4</p> <p>Thurs Sept 9 & Tues Sept 14</p>	<p>Privileges: Consent, Self-Defense</p>	<p>Consent: pp. 42-43; 55-60; 63-66; 70-73</p> <p>Self-defense: pp. 79-82; 85-87</p>	<p><i>O'Brien v. Cunard Steamship Co.</i> <i>Bang v. Charles T. Miller Hospital</i> <i>Kennedy v. Parrott</i></p> <p><i>Courvoisier v. Raymond</i></p>
<p>Week 5</p> <p>Thurs Sept 16 & Tues Sept 21</p>	<p>Privileges, continued: Defense of Others, Defense of Property</p>	<p>Defense of others: p. 93</p> <p>Defense of property: pp. 93-100</p> <p>Practice exam assignment. Details on web course page</p>	<p><i>Katko v. Briney</i></p>
<p>Week 6</p> <p>Thurs Sept 23 & Tues Sept 28</p>	<p>Privileges, continued: Necessity; Pre-Midterm Review</p>	<p>Necessity: pp. 102-107</p> <p>Practice exam assignment due</p>	<p><i>Ploof v. Putnam</i> <i>Vincent v. Lake Erie Transportation Co.</i></p>

<p>Week 7</p> <p>Thurs Sept 30 (no class) & Tues Oct 5 MIDTERM</p>			
<p>Unit 2: Negligence Weeks 8-15</p>			
<p>Week 8</p> <p>Thurs Oct 7 & Tues Oct 12</p>	<p>Introduction to Negligence; Reasonable Person Standard</p>	<p>Introduction to negligence: pp. 175-179</p> <p>Reasonable person standard: pp. 187-193</p>	<p><i>Brown v. Kendall</i></p> <p><i>United States v. Carroll Towing Co.</i></p>
<p>Week 9</p> <p>Thurs Oct 14 & Tues Oct 19</p>	<p>Special Rules Governing Duty of Care: Negl Per Se, Custom, Res Ipsa Loquitur</p>	<p>Negl Per Se (Statutory): pp. 209-220; p. 222</p> <p>Custom: pp. 222-225; 233-235</p> <p>Res Ipsa Loquitur : pp. 237-241; 243-244</p>	<p><i>Martin v. Herzog</i> <i>Tedla v. Ellman</i> <i>Brown v. Shyne</i></p> <p><i>Trimarco v. Klein</i> <i>The T.J. Hooper</i> <i>Helling v. Carey</i></p> <p><i>{Byrne v. Boadle; Scott v. London & St. Katherine Docks Co.}</i> <i>Boyer v. Iowa High School Athletic Ass'n</i> <i>Shutt v. Kaufman's, Inc.</i></p>
<p>Week 10</p> <p>Thurs Oct 21 & Tues Oct 26</p>	<p>Modification of Standard of Care if Special Relationships Between Parties</p>	<p>Responsibility of Possessors of Land for the Safety of Entrants: pp. 252-258</p> <p>Responsibility of Common Carriers for the Safety of Their Passengers: pp. 264-265</p>	

		<p>Auto Guest Statutes: pp. 265-266</p> <p>Limitations on Liability: Absence of General Duty to Rescue? pp. 266-273; pp. 279-283 (omit Tarasoff concur/dissent)</p>	<p><i>Erie Railroad Co. v. Stewart</i> <i>Tubbs v. Argus</i></p> <p><i>Tarasoff v. Regents of University of California</i></p>
<p>Week 11</p> <p>Thurs Oct 28 & Tues Nov 2</p>	<p>Cause in Fact; Toxic Torts & Causation</p> <p>Alternative Liability</p>	<p>Actual: pp. 115-122 Toxic torts pp. 124-127</p> <p>Joint and Several Liability: pp. 132-139</p> <p>Concurrent and Successive Causation: pp. 152-158</p>	<p><i>Hoyt v. Jeffers</i> <i>Smith v. Rapid Transit Inc.</i></p> <p><i>Summers v. Tice</i> <i>Ybarra v. Spangard</i></p> <p><i>Dillon v. Twin State Gas & Electric Co.</i> <i>Kingston v. Chicago & Northwest Railway</i></p>
<p>Week 12</p> <p>Thurs Nov 4 & Tues Nov 9</p>	<p>Proximate cause: Foreseeability</p>	<p>General: pp. 297-299; 302-303</p> <p>Foreseeable Plaintiff: pp. 313-320 Firefighters pp. 320-321</p> <p>Foreseeable Consequences: pp. 321-336</p>	<p><i>Ford v. Trident Fisheries</i> <i>Palsgraf v. Long Island Railroad</i></p> <p>{<i>Williams v. Cingular Wireless</i>; <i>Kubert v. Best</i>; <i>Solomon v. Shuell</i>}</p> <p><i>Marshall v. Nugent</i> {<i>Lodge v. Arett Sales Corp.</i>}</p> <p><i>Herrera v. Quality Pontiac</i> <i>Stahlecker v. Ford Motor Co.</i> {<i>Lucero v. Holbrook</i>}</p>
<p>Week 13</p> <p>Thurs Nov 11 & Tues Nov 16</p>	<p>Proximate cause: Liability Limitations – Mental Distress; Pure Economic Loss</p>	<p>Mental Distress: pp. 343-359</p>	<p><i>Waube v. Warrington</i> <i>Dillon v. Legg</i> <i>Thing v. La Chusa</i></p>

		Purely Economic Loss: pp. 391-394; 399-403	<i>Barber Lines A/S v. M/V Donau Maru People Express Airlines, Inc. v. Consolidated Rail Corp.</i>
WEEK 14: Thurs Nov 14 & Tues Nov 23	Course Review Workshop: Torts mini- practice exam & review	See Web Course Page	
No class Thanksgiving Day			
WEEK 15: READING WEEK Reading period 10/30-12/2			
FINAL EXAM {Date TBA}			

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 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.