

Torts II – Section 2

Spring 2016

Professor Mayo

SYLLABUS 1.01

5-Aug-16

This semester is the second half of your year-long study of the law of torts. Our focus this semester will be strict liability, products liability, intentional torts, and (probably) damages and insurance. This Syllabus will be updated from time to time to reflect our actual progress through the materials.

A. Required & Supplemental Texts

1. **Required.** MARC A. FRANKLIN, ROBERT L. RABIN & MICHAEL D. GREEN, TORT LAW & ALTERNATIVES (9th ed. 2011). This is the same book we used in the fall.

2. **Supplements.** For those times when you're looking for another statement (or restatement) of something in the casebook, the law library has subscribed to a suite of study aids from Westlaw (<http://tinyurl.com/hvobf9q> - may be accessible only via school computers or off-campus VPN).

B. Syllabus & Handouts

There may be handouts at various times during the semester. Along with the Syllabus, they will be posted to The West Education Network ("TWEN"), and when handouts are available the class will be notified via TWEN e-mail.

C. TWEN

As the preceding paragraph suggests, we will make heavy use of TWEN this semester. Among other things, you will need to be registered to access and to complete the required quizzes (see below). Because the Torts II TWEN site doesn't bring forward the student registrations for Torts I, you will have to re-register.

D. Attendance

Conscientious class attendance is an ABA accreditation standard and my personal expectation. If there is one single factor that correlates most directly to exam performance, it is class attendance.

You may miss four classes (i.e., two weeks' worth) for any reason or no reason at all. (There are no "tardies." For the convenience of, and out of respect for, the rest of the class, if you arrive

after I've finished taking roll, assume you have been counted as "absent." You have it within your power to undo this absence, as described below.¹)

Once you've reached your limit of absences, an absence will be deemed excused only for a reason that would excuse you from an examination (death of a close family member or your own serious illness).

Religiously observant students wishing to be absent on holidays that require missing class should notify their professors in writing at the beginning of the semester, and should discuss with them, in advance, acceptable ways of making up any work missed because of the absence. (See University Policy No. 1.9.).

E. Participation & the No-Hassle Pass

Full participation is the norm. That includes active listening while others are discussing a case or a concept. Subject to the procedure described in the next paragraph, all students should be prepared to discuss the assigned materials every day.

We will observe a type of exception known as the "no-hassle pass." The idea behind it is simple. Some days you may not be feeling your best, or you may have other obligations that have impeded your ability to be 100% ready for class discussion. In such circumstances, a wee bit of humanity would seem to be in order. Up to *two times during the semester*, you may attend class while at the same time opting out of the risk of being called on to discuss the reading for that day. To take advantage of this, you *must* leave a note at the podium before the start of class. The note should say something like "I pass today," and it should include **the date** and **your printed name**. If I don't have a note from you, you are implicitly telling me you have done the reading and are prepared to be called on to discuss it.

F. Quizzes

There are four *optional* quizzes, one at the end of each completed chapter (beginning with Chapter 7), as noted on the Syllabus. Each quiz will be written in the style of the questions I plan to use on the final exam (i.e., machine-graded multiple-choice).

The quizzes will be posted on TWEN. They are designed to be answered in 3-5 minutes (same as on the final exam) and are not intended to be a major burden on your schedules. After the deadline for submitting your answers, I will send to all students who submitted an answer my answer with some general commentary about the question.

¹ An absence based upon late arrival can be undone if you [1] arrive late to class, [2] participate in class discussion in some meaningful way, and [3] bring your presence and participation to my attention before we leave the classroom that day.

G. Final Exam & Grading Policy

The final examination will be a two-hour, open-book affair at 1:30 p.m. on May 6. You may bring in your casebook, handouts, your own course outline (including any outline prepared by you and your study group), your quizzes, my grading comments, and your own class notes.

Final grades for the course will be based upon the final exam grades, with possible adjustments for attendance and class participation.

H. Disability Accommodations

Students needing academic accommodations for a disability must first register with Disability Accommodations & Success Strategies (DASS). Students can call 214-768-1470 or visit <http://www.smu.edu/Provost/ALEC/DASS> to begin the process. Once registered, students should then provide the letter of accommodation to Assistant Dean Steve Yeager to put accommodations in place in the law school.

I. Cell Phones

Please turn these off all noise-making devices during class out of respect for your classmates.

J. Office Hours

My official office hours are MW 3-4pm and F 10am – 12pm, subject to faculty meetings, committee meetings, etc. I am generally around school most of the time, so it's not hard to arrange to meet at a mutually convenient time. You can drop in (303 Storey Hall), sign up on the sheet on my door (preferred), call (214.768.3767) for an appointment, or e-mail me (tmayo@smu.edu).

K. Learning Objectives

My goals for this class are to enable you to:

- a. know and understand the elements of and defenses to tort causes of action as they arise in multiple fact scenarios
- b. analyze factual situations in light of what type of tort claim or claims the situation might present, and to evaluate the strength of that claim. This, in turn, requires:
 - knowledge and understanding of tort doctrines
 - an understanding of tort law's policy objectives
 - ability to use multiple techniques of legal argument
 - basics about the procedure and practice of a tort claim

- c. understand the policy arguments (including justice-based, political, and economic) relating to tort doctrines and the tort system, and be able to incorporate these policy arguments in the context of tort cases and in your role as a lawyer and citizen generally
- d. address several important topics relating to law and legal analysis in general (such as whether and how law influences behavior, techniques by which judges reach decisions, what we know about how juries operate, and ethical questions that lawyers face)

L. Reading Assignments

All page numbers are to FRANKLIN et al. (9th ed., Aspen 2011). Average assignment length is 25-30 pages per week – roughly 12.5-15 pages per day. There will almost certainly be adjustments to the Syllabus, which will be announced in class and posted on TWEN.

On our TWEN site, I've provided a link to CALI exercises of potential benefit. A few are generic (advice to a 1L, statutory interpretation, how to write a better exam), though most are aimed at the big substantive torts topics of the semester. These are clearly identifiable by title; I will leave it to you to figure out which reading assignments they apply to. I encourage their use as a good test of your understanding of the materials discussed in class.

The casebook's problems are an important part of your class preparation. They resemble, and in many cases are, exam questions, which in turn resemble, and in many cases are derived from, actual litigated cases. Thus, for exam preparation, preparation for real-life practice, *and* preparation for class discussion, they are without parallel.

Class	Materials Covered	Pages
I. Defenses (Ch. 6), cont'd		
1.	• Preemption	488-501
2.	• Implied Preemption	501-16
II. Strict Liability (Ch. 7)		
	• Doctrinal development	
3.	• Doctrinal development (cont'd)	516-30
End of Chapter 7; quiz posted to TWEN		
III. Liability for Defective Products (Ch. 8)		
4.	• Introduction	551-62 n.4
5.	• Introduction (cont'd) • Manufacturing defects	562 n.5 - 571
6.	• Design defects	571-85
7.	• Design defects (cont'd)	585-99
8.	• Safety instructions and warnings	599-610

Class	Materials Covered	Pages
9.	<ul style="list-style-type: none"> • Safety instructions and warnings (cont'd) 	610-28
10.	<ul style="list-style-type: none"> • Defenses • Work-related injuries 	628-41 n.5
11.	<ul style="list-style-type: none"> • Work-related injuries (cont'd) • Beyond products? 	641 n.6-660
End of Chapter 8; quiz posted to TWEN		
IV. Damages and Insurance (Ch. 10)		
12.	<ul style="list-style-type: none"> • Damages <ul style="list-style-type: none"> ○ Compensatory damages 	710-24 n.7
13.	<ul style="list-style-type: none"> ○ Compensatory damages (cont'd) 	724 n.8 - 736
14.	<ul style="list-style-type: none"> ○ Compensatory damages (cont'd) 	736-750
15.	<ul style="list-style-type: none"> ○ Punitive damages 	750-60
16.	<ul style="list-style-type: none"> ○ Punitive damages (cont'd) 	760-76
17.	<ul style="list-style-type: none"> • Introduction to insurance <ul style="list-style-type: none"> ○ Loss insurance, collateral sources, and subrogation 	776-89
18.	<ul style="list-style-type: none"> ○ Loss insurance, collateral sources, and subrogation (cont'd) ○ Liability insurance 	789-803
19.	<ul style="list-style-type: none"> ○ The impact of insurance on tort litigation 	803-19
End of Chapter 10; quiz posted to TWEN		
V. Intentional Harm (Ch. 12)		
20.	<ul style="list-style-type: none"> • Basic doctrine <ul style="list-style-type: none"> ○ Intent ○ Assault and battery 	898-911
21.	<ul style="list-style-type: none"> ○ Intentional infliction of emotional distress 	918-32
22.	<ul style="list-style-type: none"> ○ Intentional infliction of emotional distress (cont'd) 	932-38
23.	<ul style="list-style-type: none"> • Conversion and trespass to chattels • Defenses and privileges 	938-52
24.	<ul style="list-style-type: none"> • Defenses and privileges (cont'd) 	952-63
25.	<ul style="list-style-type: none"> • Government liability <ul style="list-style-type: none"> ○ The federal civil rights action ○ Immunities ○ Liability of federal officials 	968-84
End of Chapter 12; quiz posted to TWEN		
VI. Intentional Economic Harm (Ch. 15)		
26.	<ul style="list-style-type: none"> • Misrepresentation 	1233-55
27.	<ul style="list-style-type: none"> • Interference with contract 	1255-62
28.	<ul style="list-style-type: none"> • Interference with prospective economic 	1262-78

Class	Materials Covered	Pages
	advantage	
End of Chapter 15; quiz posted to TWEN		