

SETON HALL UNIVERSITY SCHOOL OF LAW

TORTS I

Fall 2005

Professor Coleman

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Office Hours: Thursdays 4:00-5:30 or by appointment

Course Description and Objectives

This course examines the law governing private recovery for injuries caused by “civil wrongs.” The course is designed to enable you to

- Understand the basic doctrines of negligence, strict liability, and intentional torts, including the policies those doctrines seek to promote
- Develop your ability to analyze judicial opinions, including the ability to identify the critical facts of a case, to isolate the holding of a case, and to consider the likely impact of a case (in terms of both its effect on future judicial opinions and its impact on behavior in the real world)
- Develop your ability to construct persuasive legal arguments in support of a position and to respond to opposing arguments
- Recognize gaps, conflicts, and ambiguities in the law of torts and develop skills in making arguments for legal change

Required Readings

Mark A. Franklin & Robert L. Rabin, *Tort Law and Alternatives* (7th ed. 2001) plus occasional handouts

This syllabus – *please read it!*

Optional Readings

Some students find it helpful to consult additional sources to clarify or supplement the assigned readings and class discussions. For a summary of basic principles and rules, I suggest John L. Diamond, Lawrence C. Levine, and M. Stuart Madden, *Understanding Torts* (Matthew Bender, 1996). For a study guide with practice questions (and the answers), I suggest Joseph W. Glannon, *The Law of Torts* (Aspen, 3d ed. 2005). For interesting theoretical perspectives on tort law, I suggest Saul Levmore, *Foundations of Tort Law* (Foundation Press 1994) and Robert L.

Rabin, *Perspectives on Tort Law* (Aspen, 4th ed. 1995). All of these books are on reserve at the library and available for purchase in the bookstore.

Please do not feel obligated to consult any of these materials. In fact, if you are confused by the readings, it may be a better use of your time to read the assigned materials more than once, rather than consulting additional texts.

If you choose to use a commercial outline, you do so at your own risk. In an effort to make things easier to understand, commercial outlines tend to oversimplify complex issues, often at the expense of accuracy.

Preparing for Class

It is essential that you have completed and thought about the readings prior to each class. During the first class, we will discuss how to “brief” a case. If you would like to go over one of your case briefs with me, please stop by during my office hours or make an appointment to meet at another time.

Questions to Consider

For each set of readings, I will give you a list of “questions to consider.” These questions are designed to focus your attention on important aspects of the readings and to give you a means of testing your own knowledge of what you have read. Some students find it helpful to write out answers to the questions or to discuss the questions in a study group. How you use the questions is entirely up to you.

You do not need to hand in answers to the questions, and we will not necessarily discuss each question in class.

If you are still confused about any of the questions *after* we have discussed the assigned readings in class, please come see me.

Attendance

The school’s general attendance policy applies in this class. Under this policy, if you miss more than 25% of the class sessions you will be administratively withdrawn from the course. If you arrive significantly late or leave early (without prior permission), I will ask the Registrar to mark you absent for the day, even if you have signed the attendance sheet.

If you are absent from class, be sure to ask a classmate for the notes and any handouts distributed.

Class Participation

Speaking in class is an essential part of your educational experience. In order to ensure broad class participation, I will call on students who do not raise their hands. ***If exceptional circumstances make it impossible for you to prepare for a particular class, let me know before class and I will not call on you that day.***

Please remember to bring your casebook to class.

Office Hours and E-mail

It may not always be possible for me to address all questions during class sessions. If you have a question or comment that I was unable to address during class, I encourage you to speak with me after class or in my office or to send me the question by e-mail.

When students e-mail me questions, I sometimes forward the question (without the student's name) and my answer to the entire class, if I think that other students are likely to find it helpful. If you e-mail me a question but do not want me to share it with the rest of the class, please let me know this in your e-mail.

Please feel free to stop by to talk if you have general questions about law school, your career plans, or anything else – or just to say hello. If my office hours are not convenient for you, email me to set up an appointment for a different time, or just stop by when you see my office door open.

I have one limitation on asking me questions: ***I will not discuss the assigned readings with individual students until we have gone over those readings in class.*** One of the main functions of law school classes is to force students to sort through difficult issues on their own, without having been given the “answers” by the professor. Of course, if you are still confused about the material after class, please don't hesitate to contact me.

Grading

Your grade will be based solely on the final examination. ***The final exam will be closed book.*** I do not give “discretion” grades, either positive or negative.

Syllabus

All page references refer to the Franklin & Rabin text. The principal cases in each section are listed below. ***You are responsible for all of the pages assigned, not just the principal cases.***

At the end of each week, I will assign the readings for the following week's classes.

I may modify this syllabus somewhat as the semester progresses. If I do, I will make sure to give you ample advance notice.

I. Introduction (1-28)

Hammontree v. Jenner
Christensen v. Swenson
Baptist Memorial Hospital System v. Sampson

II. The Negligence Principle

- A. Historical Development (29-37)
Brown v. Kendall

- B. The Central Concept (37-58)
Adams v. Bullock
United States v. Carroll Towing Co.
Bethel v. New York City Transit Authority

- C. The Role of Judge and Jury (58-67)
Baltimore & Ohio Railroad Co. v. Goodman
Pokora v. Wabash Railway Co.
Andrews v. United Airlines, Inc.

- D. The Role of Custom (67-73)
Trimarco v. Klein

- E. The Role of Statutes (73-85)
Martin v. Herzog
Tedla v. Ellman

- F. Proof of Negligence: Circumstances (85-91)
Negri v. Stop and Shop, Inc.
Gordon v. American Museum of Natural History

- G. Proof of Negligence: *Res Ipsa Loquitur* (91-109)
Byrne v. Boadle
McDougald v. Perry
Ybarra v. Spangard

- H. The Special Case of Medical Malpractice (109-129)
Sheeley v. Memorial Hospital
Connors v. University Associates in Obstetrics and Gynecology, Inc.
Matthies v. Mastromonaco

III. The Duty Requirement: Physical Injuries

- A. Defendant's Conduct (130-158)
Harper v. Herman
Farwell v. Keaton
Strauss v. Belle Realty Co
Uhr v. East Greenbush Central School District
- B. Obligations to Control the Conduct of Others (158-190)
Tarassoff v. Regents of the University of California
Randi v. Muroc Joint Unified School District
Vince v. Wilson
Reynolds v. Hicks
- C. Landowners and Occupiers (190-214)
Carter v. Kinney
Heins v. Webster County
Posecai v. Wal-Mart Stores, Inc.

IV. The Duty Requirement: Governmental Entities

- A. Municipal and State Liability (225-249)
Riss v. City of New York
Lauer v. City of New York
Friedman v. State of New York
- B. The Federal Tort Claims Act (249-260)
Cope v. Scott

V. The Duty Requirement: Cases Not Involving Physical Harm

- A. Emotional Distress (261-301)
Falzone v. Busch
Metro-North Commuter Railroad Company v. Buckley
Gammon v. Osteopathic Hospital of Maine, Inc.
Portee v. Jaffee
Johnson v. Jamaica Hospital

- B. Economic Harm (301-325 + handouts)
Nycal Coropration v. KPMG Peat Marwick LLP.
People Express Airlines, Inc. v. Consolidated Rail Corp.
532 Madison Avenue Gourmet Foods, Inc. v. Finlandia Center, Inc. (handout)

VI. Causation

- A. Cause in Fact: Basic Doctrine (341-368)
Stubbs v. City of Rochester
Zuchowicz v. United States
Alberts v. Schultz
- B. Cause in Fact: Multiple Defendants (368-399)
Summers v. Tice
Hymowitz v. Eli Lilly & Co.
- C. Proximate Cause (399-434 + handouts)
Benn v. Thomas
Overseas Tankship (U.K.) Ltd. V. Morts Dock (The Wagon Mound)
Price v. Blaine Kern Artista, Inc. (handout)
McClenahan v. Cooley (handout)
McLaughlin v. Mine Safety Appliances Co.
Palsgraf v. Long Island Railroad Co.

VII. Defenses

- A. Contributory and Comparative Negligence (435-457)
Uniform Comparative Fault Act
Fritts v. McKinne
- B. Avoidable Consequences (457-460)
- C. Assumption of Risk (460-489)
Dalury v. S-K-I, Ltd.
Murphy v. Steeplechase Amusement Co.
Davenport v. Cotton Hope Plantation
Roberts v. Vaughn

VIII. Strict Liability

Handouts

IX. Products Liability

- A. Introduction (540-556)
MacPherson v. Buick Motor Co.
Escola v. Coca Cola Bottling Co.
- B. Manufacturing and Design Defects (556-581)
Soule v. General Motors Corp.
Camacho v. Honda Motor Co., Ltd.
- C. Instructions and Warnings (581-605)
Hood v. Ryobi America Corporation
Edwards v. Basel Pharmaceuticals
Vassallo v. Baxter Healthcare Corporation
- D. Defenses (605-614)
General Motors Corporation v. Sanchez
- E. Work-Related Injuries (614-629)
Jones v. Ryobi, Ltd.
Liriano v. Hobart Corp.

X. Intentional Torts

- A. Introduction (864-872)
Garratt v. Dailey
- B. Assault and Battery (872-879)
Picard v. Barry Pontiac-Buick, Inc.
Wishnatsky v. Huey
- C. False Imprisonment (882-888)
Lopez v. Winchell's Donut House
- D. Intentional Infliction of Emotional Distress (888-899)
Womack v. Eldridge
- E. Defenses and Privileges (910-928)
Hart v. Geysel
Courvoisier v. Raymond
Katko v. Briney
Vincent v. Lake Erie Transportation Co.

XI. Damages

- A. Compensatory Damages (679-717)
 - Seffert v. Los Angeles Transit Lines*
 - McDougald v. Garber*
 - Arambula v. Wells*

- B. Punitive Damages (717-726 + handouts)
 - Taylor v. Superior Court*
 - State Farm Mutual Automobile Insurance Co. v. Campbell* (handout)
 - Mathias v. Accor Economy Lodging, Inc.* (handout)