Torts
Fall 2014
Professor Zoë Robinson

The Basics

Class Meetings: Tuesdays and Thursdays, 10-11:40am, in Room 903
My Office Hours: 1-3pm Thursdays, or by appointment
My Office: Room 738
My Phone Number: 312-362-8541
My Email Address: zrobins2@depaul.edu

Course Overview

This course provides an introduction to the basic principles governing private lawsuits for injuries to person and property. Major topics covered include negligence, strict liability, products liability, intentional wrongs, damages, and related issues.

As with all first-year courses, especially those based in common law, you are expected to learn how to read and discuss a case. This means, most basically, separating and understanding the facts, procedural posture, holding, legal rule(s), and rationales supporting the rules. You should also be able to discuss, both verbally and in writing, the specific tort law doctrines the class covers, i.e. the elements of various torts and defenses to tort claims. You should learn to apply these doctrines to new fact patterns, using the styles and forms of legal argument. We will also investigate how tort rules evolved and the policies behind them.

Course Requirements

You are required to:
(a) do all of the required reading carefully and on time;
(b) show up to class on time, prepared, and participate in class discussion;
(c) complete all assessment tasks.

Casebook and Readings

The casebook for this course is Franklin, Rabin & Green, Tort Law and Alternatives (Foundation Press, 9th Edition, 2011). “CB” refers to pages in our casebook.

In addition, other required readings will be posted on the D2L site for the course by me; these will be made available on the course website one week before the class. These additional readings are marked “H.”

Note on reading assignments: the reading assignments will average 20 pages per class (or 40 pages per week). Sometimes there will be a little less, and sometimes a little more. The readings themselves are challenging, so leave yourself sufficient time to complete them. In addition, each class builds on the previous classes so you should not let yourself get behind – it will be difficult to catch up.
You should be aware that I call on students in class, by name, at random, and without warning. If you are unprepared for any class you must notify me before class by writing your name on the sign-on sheet available at the front of the room before class. You may avail yourself of the sign-on sheet two times. If you sign-on more than two times your grade will be reduced. Similarly, in the event that you fail to sign on for a free pass and are unprepared when called on, your grade will be reduced. Note that an unexcused absence from class will count as one of the free passes. This is a strict policy that will be enforced.

The only exception to this policy is those weeks when a LARC assignment is due. For those weeks the only students on-call will be those assigned to the panel for that class. Note that if the material assignment to your panel runs over to the next class, the original panel will continue to be on call until the completion of that material. Panel assignments are available on the course D2L site under the Course Content: Syllabi and Administration tab. Panel slots are not interchangeable (i.e. you may not swap with another student), so please do not ask. Each student will be on a panel twice during the course of the semester. Students who are unprepared (or absent) when on panel will have their grade automatically reduced. Similarly, students who are not on panel and absent without cause will have their grade reduced.

Note on class decorum: (1) Please arrive on time for class. Late arriving students are distracting for everyone. Similar to being unprepared, it is a bad idea to be late. (2) Please do not talk during class, either verbally or via IM. (3) Please do not use your laptop computer during class for things other than taking notes, use of the internet is distracting for everyone. In the event that internet usage becomes a problem, I will ban laptops from the classroom.

Taping: No student is permitted to tape or record this class without my prior consent. This includes taping via laptop and smartpens. Any student found recording the class without consent will be reported for an Honor Code violation.

Outside Reading: Some students find it helpful to consult treatises or hornbooks. You should be very cautious about using outside sources (not all are good, or even accurate). Following is a list of some outside sources that can be used to provide additional background and explanation for the materials in the casebook:

- Ghosh, Acing Tort Law (very good)
- Dobbs, The Law of Torts
- Marshall Shapo, Principles of Tort Law
- Prosser & Keeton, Torts
- The Restatement (2d) and Restatement (3d) of Torts.

Grading Policy

Your grade in this class will be determined by three (3) assessment items:

1. A final examination at the end of the semester (70%/100%);
2. An in-class mid-semester exam (30%/0%); and
3. Class participation (see below).
Final Examination: Your grade will be determined largely on the basis of the final exam. The exam will be an in-class, three hour exam open notes exam. The exam will cover all assigned reading as well as anything we discuss in class. I will hold an exam review session at the end of the semester and will answer questions about the exam in detail at that point.

Mid-Semester Examination: A mid-semester examination will be held in class on October 16. The exam is redeemable. This means that if the combined score of your mid-semester examination and your final examination is less than your final examination score alone, your mid-semester score will not count for your final grade. The exam will likely cover all assigned reading and class discussions up to and including class on October 9. These dates and the exam coverage are subject to change depending on the pace of our class. We will discuss the mid-semester examination closer to the date.

Participation: Class participation is mandatory – the issues we will study are fascinating, but also challenging and active participation is essential to your learning and understanding. Your grade may be reduced or increased based on classroom participation. Classroom participation will be measured by the quality and not the quantity of your contributions. Participation, then, is an unquantifiable, but extremely important part of your final grade.
# Torts Syllabus

**Fall 2014**  
**Professor Zoë Robinson**

## I. Introduction

A. Introduction to Torts

1. Briefing a Case, H1
2. Introductory Concepts, CB 1-9
3. Thinking About Unintended Liability, H2
4. The Litigation Process, CB 9-17

## II. Negligence

A. Introduction to Negligence

1. Reading Torts Cases, H3
2. Overview of the Elements of a Negligence Case H4

B. Duty of Care—Physical Harm

1. Foundational Duty Standard
   a. A Variable Duty Standard?, H5
   b. General Duty Standard—Strong Default Rule
      i. Restatement (Third) of Torts, H6
      ii. *Thompson v. Kaczinski* and related notes, H7
   c. General Duty Standard—Conditioned on Foreseeable Harm/Risk
      i. *Brown v. Kerr* and related notes, H8
   d. General Duty Standard—Conditioned on Foreseeable Plaintiff
      i. *Palsgraf v. Long Island Railroad* and related notes, H9
2. Special Duty Issue—Affirmative Obligation to Act

b. *Farewell v. Keaton*, CB 136-142

c. *Tarasoff v. Regents of the U of California*, CB 151-161

3. Special Duty Issue—No Duty to Act


b. *Reynolds v. Hicks*, CB 176-182

c. *Vince v. Wilson*, CB 182-188

4. Special Duty Issue—Duties of Landowners and Occupiers


b. *Heins v. Webster County*, CB 194-204

c. *Posecai v. Wal-Mart Stores, Inc.*, CB 204-211

C. Duty of Care—Emotional Harm


2. *Metro-North Comuter Railroad Co. v. Buckley* and notes, CB 268-276

3. *Dillon v. Legg*, H10

D. Breach of Duty

1. The Standard of Care: The Reasonable Person

a. Generally

   i. *Bethel v. New York City Transit Authority*, CB 49-51

b. Special Categories of Reasonable People

   i. Notes 3-12, CB 52-60

2. Assessing Reasonableness

a. Generally

ii. Note 5, CB 42-43

b. Assessing Reasonableness: Costs and Benefits
   i. *United States v. Carroll Towing* and Notes 1, 3, and 4, CB 43-47

c. Assessing Reasonableness: The Role of Custom
      iii. Notes 2-6, CB 71-73

d. Assessing Reasonableness: The Role of Statutes and Negligence Per Se
   i. *Martin v. Herzog*, CB 74-76
      ii. Notes 4 & 5, CB 76-77
      iii. *Telda v. Ellman* and Note 6, CB 77-79, 81

e. Assessing Reasonableness: Inferences and *Res Ipsa Loquiter*
   i. *Negri v. Stop and Shop, Inc.*, CB 86
      ii. *Gordon v. American Museum of Natural History*, CB 86-87
      iii. *Byrne v. Boadle* and Note 3, CB 90-91
      iv. *McDougald v. Perry*, CB 92-95
      v. Notes 2 and 7, CB 96 & 97

3. The Roles of Judge and Jury
   b. *Pokara v. Wabash Railway Co.*, CB 62-64
   c. *Akins v. Glens Falls City School District*, CB 64-65 (Note 2)

4. Medical Malpractice
   a. *Sheeley v. Memorial Hospital*, CB 107-112
E. Cause-In-Fact

1. Introductory Note on Cause-In-Fact, H12

2. Simple Causation (But-For Test)
   b. *Sowles v. Moore*, H14
   d. *Lyons v. Midnight Sun Transportation*, H16

3. Complex Causation: Joint Causes (Substantial Factor Test)
   a. *Hill v. Edmonds*, H17
   b. *Anderson v. Minneapolis*, H18
   c. *June v. Union Carbide Corporation*, H19

4. Indeterminate Cause

5. Proof and Factual Causation
   a. *Stubbs. v. City of Rochester*, CB 334-338
   b. Proving Causation Note, H20
   c. *Gentry v. Douglas Hereford Ranch, Inc.*, H21

F. Proximate Cause

1. Introduction to Scope of Liability, H22

2. Direct Consequences Test, *In re Polemis*, CB 399-401

3. Foreseeability Test
a. Basic Doctrine
   i. Wagon Mound No. 1, CB 402-405
   ii. Wagon Mound No. 2, H23
   iii. Palsgraf Redux, CB 418-426 (focus on Andrews’ dissent)

b. Unforeseeable Extent of Harm
   i. Benn v. Thomas, CB 394-396
   ii. Notes 3, 4, and 6, CB 396-398

c. Unforeseeable Manner of Harm Note, H24

4. Intervening Causes
   a. Derdiarian v. Felix Contracting Corp., H25
   b. Force of Nature Note, H26
   d. Fuller v. Preis, H28
   e. McCoy v. American Suzuki Motor Corp., H29

5. Public Policy Limits
   a. Enright v. Eli Lilly & Co., H30

G. Multiple Defendants

1. Vicarious Liability
   a. Respondeat Superior
      i. Christensen v. Swenson, CB 18-21
      ii. Notes 4 & 7, CB22-24
   b. Independent Contractors
      i. Roesseler v. Novak, CB 24-28
      ii. Notes 1, 3-6, CB 28-29
2. Joint and Several Liability
   a. *Bierczynski v. Rogers*, H31
   c. *Bartlett v. New Mexico Welding Supply, Inc.*, H33

F. Damages

1. Special Mechanisms for Recovery
   a. Survival Actions
      i. Note 7, CB 736-739
   b. Wrongful Death Actions
      i. Note 7, CB 739-742

2. Types of Recoverable Damages
   a. Compensatory Damages
      ii. Introduction to Compensatory Damages, CB 710-711
      iii. *Seffert v. Los Angeles Transit Lines*, CB 711-718
      iv. Notes 1, 2, 3, 5, 11, 13 & 14, CB 718-728
      v. *McDouglad v. Garber*, CB 728-734
   b. Punitive Damages
      i. *Taylor v. Superior Court*, CB 750-760

G. Defenses

1. Contributory Negligence, CB 433-438
2. Comparative Fault, CB 438-443
3. Avoidable Consequences, CB 455-458
4. Assumption of Risk
   a. Express Agreements
i. *Hanks v. Powder Ridge Restaurant Corp.*, CB 459-467

b. Implied Agreements

   i. *Murphy v. Steeplechase Amusement Co.*, CB 470-472

   ii. Notes 5 & 6, CB 472-475

   ii. *Davenport v. Cotton Hope*, CB 475-480

   iii. *Levandoski v. Cone*, CB 483-488

   iv. Note 7, CB 489

5. Preemption


   b. Note on Implied Preemption, CB 501-503

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I. Intentional Torts

A. Introduction to Liability for Intentional Conduct


B. Assault and Battery


C. False Imprisonment

   1. *Lopez v. Winchell’s Donut House*, CB 911-914

D. Intentional Infliction of Emotional Distress

   1. Introduction, CB 918-919


E. Defenses to Intentional Torts


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