

Torts

Fall 2005

Mon, Tues, Wed 1:15-2:30 – Carlson Hall

Professor Daniel Greenwood

585-5201 - Rm 204

Office Hours: by appointment

Webpage: <http://www.law.utah.edu/greenwood>

Secretary: Cynthia Lane 581-5050 - Room 211

Casebook: DOBBS & HAYDEN, TORTS AND COMPENSATION 5TH EDITION(West Pub. 2005)

Recommended Supplemental Texts:

STRUNK & WHITE, THE ELEMENTS OF STYLE. The best and smallest guide to good writing, which is, after all, most of what you came to law school to learn.

Ronald Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960) The article that underpins most discussion of torts today. Some people view it as explaining everything; others view it as wrong, helpful once you lift its simplifying assumptions or even incoherent. But nearly everyone responds to it in some way: you must understand it enough to use it or explain why not.

GUIDO CALABRESI, THE COST OF ACCIDENTS (1970). Attempts to apply the Coase Theorem to all of tort law.

GRANT GILMORE, DEATH OF CONTRACT. A brilliant, brief, discussion of the distinctions and overlap between torts and contract, an issue that often falls between the two courses.

Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089 (1972). Theoretical account, not entirely satisfactory but immensely influential and thought provoking, of the difference between tort and property.

Participation: Participation is required. I reserve the right to take participation (quality and/or quantity) and attendance into consideration in the final grade. Participation is also recommended: you (and your colleagues) will learn more if you actively engage the material.

Web Discussion Participation: Each student is required to post a comment and/or question in the TWEN discussion forum at once per fortnight. More is recommended.

Computers in Class: I am currently allowing laptops in class. This permission extends to use for classroom purposes only. Checking your email, playing games, IM, shopping and reading novels are not only a waste of your class time but distracting to your fellow students. I

reserve the right to ban specific students or the entire class from using computers if I receive complaints about misuse of computers in class or if I conclude that their presence is detracting from the educational process.

Study groups: Study groups are highly recommended. Anyone who wishes to be in a study group and is unable to arrange one should contact me early in the semester.

Reading Assignments: We will proceed through the casebook more or less in order. Specific assignments are posted under “Syllabus.” You must keep ahead of the class discussion in order to participate in class discussion intelligently or to benefit from it.

Midterm Exam: There will be an one hour midterm exam covering Intentional Torts. This exam will not be graded and will not count towards your final grade.

Exam: There will be one **eight hour take home exam** which will determine the bulk of your grade.

You will be permitted to bring to the exam a copy of the text book and a hard copy of any notes or outlines you have prepared, but no commercial outlines or other printed or electronic materials. Although the exam is partially open book, the book and your outline will be of little or no use during the exam if you are not fully prepared before the exam; their function in the exam is to serve as a security blanket and/or to refresh your memory should you blank on a name. I strongly advise you to study as if this were a fully closed book exam.

The exam will attempt to test both your knowledge and understanding of the substantive materials covered and your ability to evaluate and manipulate what you have learned. Quality of analysis, rather than mere listing of issues, will be most rewarded.

Cheating: All suspected cheating, including unattributed use of another's work (or your own prior work), will be referred to the College of Law Disciplinary Committee for investigation and disciplinary action, which may include expulsion or reports to the Bar. In addition, cheaters will receive a failing grade.

In all academic courses, if you quote from someone else, put quotation marks around the quoted material and cite to its author. If you paraphrase or use someone else's ideas, make clear your source. If you rely on an outline that is not entirely your own work product, please remember, first, that the outline may be wrong, and second, that you must attribute to it. Violations of these attribution rules in any context, including drafts and exams, are academic dishonesty and cheating.

In writings submitted to a court (or a court-like context in law school), it is a violation of professional standards to fail to cite to opposing authority (i.e., binding court opinions that are contrary to your position). In any argumentative context, such failures nearly always weaken both your argument and your credibility.

Questions and difficulties: Please feel free to ask questions for clarification, comments or discussion at any time in class. Students having particular difficulties may also wish to consult with me individually.

Hornbooks: We are using this text largely because it is the clearest exposition of the material I have been able to find. However, if you find the text impenetrable or facile, do not despair: come speak to me. More is always available and it is often helpful to consider the same concept from different perspectives.

Various hornbooks and study aids are available in the library and from your peers. Hornbooks and commercial outlines can be a significant help in mastering the basic material, so long as you keep in mind their basic shortcoming: any issue that has a clear answer susceptible to easy outlining or flash cards, is one which lawyers will rarely be paid to know. Lawyers are paid for (and law students receive high grades for) exercising judgment, not for regurgitating clear doctrine. That said, it is difficult to exercise judgment without a firm grasp on the clear basic elements of the legal landscape. Hornbooks are extremely useful in the first, background, stage of learning to be a lawyer: they can bring you from utter confusion to the point where you can begin to think clearly. But they are no substitute for grappling with the more detailed materials (cases) and conflicting values, theories, principles and doctrines.

Bibliography: The materials covered in this course have been discussed extensively in the law journals. If you are interested in further development of a particular concept, or if you want further explanation of a troubling problem, there is probably a relatively accessible article available to help you. The case book cites some of the classic ones, but misses some of the clearest. Please come to me for guidance.

Core Beliefs Accommodation Statement:

The purpose of a University education is to question core beliefs. As Socrates said, the unexamined life is not worth living. (Plato, Apology, 38). By questioning, we test our knowledge and beliefs, leading us to discard some as unjustifiable prejudices or superstition, strengthening others as they are sustained by reasoned thought and evidence, and most often modifying them in light of new knowledge and more sophisticated thinking.

Legal issues often contain moral components about which consensus is unlikely. As a result, confronting the varieties of our moral thought is an essential part of any legal education. Moreover, legal conclusions often depend on the underlying empirical reality. Since scientific inquiry advances our knowledge of reality by posing and attempting to refute falsifiable hypotheses, it often leads to understandings which do not fit with our preconceived notions.

Hopefully, some of the writings, lectures, films, or presentations in this course may include material that conflicts with core beliefs of some students. Please review the syllabus carefully to see if the course is one that you are committed to taking. If you have a concern, please discuss it with me at your earliest convenience.

Accommodation and Equal Access Disclosure:

The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean of Student Affairs, and to the Center for Disability Services (CDS) to make arrangements for accommodations. CDS is located at 200 S Central Campus Drive, (Union Building), Rm 162 or you can call 801-581-5020.

All written information in this course can be made available in alternative format with prior notification.