

Torts

Fall 2005 – M, Tu, W 1:15-2:30

Room: Carlson Hall

Approximate Syllabus

All assignments are subject to change.

Recommended reading:

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) or *TRAGIC CHOICES* (1978). 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.

Additional supplemental and review materials: The standard hornbooks and study aids are useful for reviewing the elements of the various torts and black-letter doctrine, so long as you remember that this is only background material, not the core of the course. The Questions and Answers series often has useful exam-like questions with answers. Even more useful may be gathering together some classmates and working through the notes in our textbook. If you are utterly stumped, the citations at the end normally will give you at least one judge's view of the issue.

Additionally, the library (talk to Suzanne Darais) also has available various CALI (COMPUTER AIDED LAW INSTRUCTION) study aids – I've never used these and have no information on whether they are useful. If you use any of these, please report to me on whether you find them useful.

All assignments are from DOBBS & HAYDEN, TORTS & COMPENSATION, 5th Ed. unless otherwise noted

Class 1 Aug 23. Ch 1 Purpose of Torts. Supplemental materials: 1. What is a Tort? 2. Introductory Outline. 3. Introductory Chart. Please also complete the Student Introduction and return to me.

Class 2 Aug 24: Ch. 2 Procedure. Supplemental: Stages of a lawsuit.

Class 3 Aug 29: Ch 3 § 1 Intentional Torts

Class 4 Aug 30: Ch 3 §§ 1, 2

Class 5 Aug 31: Ch 3 §§ 3, 4, 5

Labor Day Holiday, Monday Sept 5, 2005

Class 6 Sept 6: Ch 4 Defenses to Intentional Torts

Class 7 Sept 7: Ch 4 Defenses to Intentional Torts

Class 8 Sept 12: Review of Intentional Torts

Class 9: Sept 13: Ch 5 §§ 1, 2, 3 Negligence - Fault, Duty of Care

Class 10: Sept 14: Ch 5 § 3, 4

MIDTERM EXAM

Class 11: Sept 19: Ch 6 § 1 Breach of Duty

Class 12: Sept 20: Ch 6 § 2 Assessing Responsibility

Class 13: Sept 21: Ch 6 § 3 Proving Conduct

Class 14: Sept 26: Ch 6 § 4 Res Ipsa Loquitur

Class 15: Sept 27: Ch 7 Causation in Fact

Class 16: Sept 28: Ch 8 § 1 Proximate Cause

Fall Break, Oct 3-7, 2005

Class 17: Oct 10: Ch 8 §§ 2, 3 Proximate Cause continued

Class 18: Oct 11: Ronald Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960). Copy available under "supplemental materials".

Class 19: Oct 12 (*Kol Nidre*): Ch 9 Contributory Negligence

Class 20: Oct 17: Ch 10 Assumption of the Risk

Class 21: Oct 18 (*Sukkot*): Ch 11 Statute of Limitations

Class 22: Oct 19 (*Sukkot*): Ch 13 Medical Malpractice

Class 23: Oct 24 (*Hoshana Rabba*): Ch 14 Family Members ***{OMIT!!}***

Class 24: Oct 25 (*Shmini Atzeret*): Ch 16 Nonfeasance

Class 25: Oct 26 (*Simchat Torah*): Ch 16 continued

Class 26: Oct 31: Ch 18 Duty to Protect

Class 27: Nov 1: Ch 19 Emotional Harms

Class 28: Nov 2: Ch 22 Vicarious Liability

Class 29: Nov 7: Ch 22, continued

Class 30: Nov 8: Ch 23 Strict Liability

Class 31: Nov 9: Ch 24A Defective Products

Class 32: Nov 14: Ch 24B Defective Products

Class 33: Nov 15: Ch 24C Defenses to Product Liability. Also read: *Ileto v Glock Inc.*, 349 F.3d 1191 (9th Cir 2003) (Permitting negligent marketing and nuisance claims to proceed against California gun makers, despite statutory bar on products liability); 370 F.3d 860 (9th Cir. 2004) (denial of rehearing en banc, with lengthy dissent).

Class 34: Nov 16: Ch 25A, 25B Insurance & Multiple Defendants

Class 35: Nov 21: Ch 25B Multiple Defendants

Class 36: Nov 22: TBA {{Ch 12 Family Members ??}}

Thanksgiving Holiday, Nov 23-25, 2004

Class 37: Dec 28: TBA

Class 38: Dec 29: TBA

Class 39: Dec 30: Conclusion: Evaluating Tort Ch 27