

TORTS

Syllabus
Fall Semester 2008
Section B and C

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REQUIRED CASEBOOK:

Epstein, **CASES AND MATERIALS ON TORTS** (Aspen Publishers, 9th ed. 2008)

REFERENCES (NOT REQUIRED):

Abraham, **THE FORMS AND FUNCTIONS OF TORT LAW** (Foundation Press, 3rd ed. 2007)

Diamond, Levine and Madden, **UNDERSTANDING TORTS** (LexisNexis, 3d ed. 2007)

Dobbs, **THE LAW OF TORTS** (West Publishing Co., 2000)

Epstein, **TORTS** (Aspen, 1999)

Faigman, **LEGAL ALCHEMY: THE USE AND MISUSE OF SCIENCE IN THE LAW** (Freeman 2000)

Glannon, **THE LAW OF TORTS** (Aspen, 3rd ed. 2005)

Johnson, **MASTERING TORTS** (Carolina Academic Press, 3rd ed. 2005)

Kiely & Ottley, **UNDERSTANDING PRODUCTS LIABILITY LAW** (LexisNexis, 2006)

Levmore, **FOUNDATIONS OF TORT LAW** (Oxford University Press, 1994)

Ottley, Lasso, & Polelle, **ILLINOIS TORT LAW** (LexisNexis, 3rd ed. 2000 + Annual Supplements)

Rabin, **PERSPECTIVES ON TORT LAW** (Aspen, 4th ed. 1995)

Simon, **THE ANATOMY OF A LAWSUIT** (Michie, 2d ed. 1998)

White, **TORT LAW IN AMERICA: AN INTELLECTUAL HISTORY** (Oxford University Press, 1985) (excellent historical overview of tort law)

For an in depth examination of two tort lawsuits, the parties involved, their attorneys, and the “human interest” involved in the cases, see:

Harr, **A CIVIL ACTION** (Vintage Paperback, 1995)

Werth, **DAMAGES** (Berkley Books, 1999)

For a description of how the tort system works and serious proposals for “tort reform,” see:

Bell and O'Connell, **ACCIDENTAL JUSTICE: The Dilemmas of Tort Law** (Yale University Press, 1997)

MATERIAL TO BE COVERED DURING THE SEMESTER:

The following topics will be covered during the semester. All chapter and page numbers refer to the Epstein casebook. Students are expected to **read and to be prepared to discuss** these materials. Students are also responsible for issues raised and discussed in class and for any materials distributed in class.

1. INTRODUCTION

* Introduction (pp. xxxv - xlii)

2. INTENTIONALLY INFLICTED HARM: THE PRIMA FACIE CASE AND DEFENSES

* Chapter 1 (pp. 3-22; 35-50 (skip *Canterbury v. Spence*, p. 43); 79-100)

3. THE NEGLIGENCE ISSUE

* Chapter 3 (pp. 169-192; 206-215; 217-221; 224-280; 285-307; 316-326)

4. CAUSATION

* Chapter 6 (pp. 449-562)

5. AFFIRMATIVE DUTIES

* Chapter 7 (pp. 563-606; 609-615; 623-624; 634-644)

6. PLAINTIFF'S CONDUCT

* Chapter 4 (pp. 327-329; 333-342; 360-374; 397-401)

7. STRICT LIABILITY:

- * Chapter 2 (pp. 122-123; 127-143)
- * Chapter 8 (pp. 660-675)
- * Chapter 5 (pp. 429-448)

8. JOINT AND SEVERAL LIABILITY

- * Chapter 5 (pp 404-428)

9. PRODUCTS LIABILITY

- * Chapter 9 (pp. 723-728; 739-755; 764-777; 779-824; 837-852)

METHOD OF EVALUATION:

The final grade for the course will be based upon an examination to be given during the scheduled examination period in December 2008. The examination will consist of a number of fact situations. Previous examinations are on reserve in the law library and students are encouraged to look at them. The criteria for grading the final examination will be:

- familiarity with the assigned material;
- analysis of the legal and factual issues presented;
- synthesis and organization of thought;
- accurate and appropriate use of legal terminology;
- clarity of style and persuasiveness of expression.

The examination will be **CLOSED BOOK**. You may **NOT** bring any book or materials into the examination room. However, you may bring into the examination one 8 ½ by 11 inch sheet of paper with your notes on both sides.

EXPECTATIONS FOR CLASS

I have **three expectations** for **ALL** students for **EVERY** class:

- (1) You must have **READ** the assigned material in the casebook. Students who chronically are unprepared for class discussion will have their grade lowered by one letter grade.
- (2) You must have **THOUGHT** about the assigned material. What do the cases mean? How do they relate to material we previously have discussed?
- (3) You must be **PREPARED, ABLE AND WILLING** to discuss the material. **Torts** is

not a lecture course. We use the Socratic method in class. I will call on students and ask questions and more questions. However, do not be afraid to ask me questions as well about the material. If you do not understand something in the cases or the class discussion, the chances are very good that other class members also are having difficulty with it. In addition, I expect students to volunteer to participate. Class discussion is not meant to embarrass or humiliate anyone. It is part of the training that you will need, as attorneys, to deal with clients, other attorneys and judges.

Two other important matters applicable to **Torts** classes:

(1) **Laptop computers.** Most of you use laptop computers to take notes during class. While you may do so, **I STRONGLY ENCOURAGE YOU NOT TO USE THEM.** Why? Law school classes are NOT exercises in dictation in which you write down every word your professor says, memorize it, and give it back on the final examination. Law school classes are meant to be Socratic exercises that help you to develop your analytical and reasoning abilities, not your typing skills. Take your class notes in long hand and type them into your computer **after class.** There are two benefits to this:

- it will force you to review what we discussed in class; and
- it will leave you free to participate in – and get MUCH more out of – the class discussions.

If you do bring a laptop computer to class, it is to be used **EXCLUSIVELY** for taking notes. Students found to be using their laptops in class to surf the internet, to check sports scores, to order movie tickets, to send or to receive emails, or for other non-class related purposes will be required to leave the class and will not be permitted to return for the remainder of the class period.

(2) **Cell Phones.** Turn off your pagers and cell phones before class. An attorney in DuPage County recently was held in contempt of court and jailed for 24 hours when his cell phone rang in court. Unfortunately, I do not have the power to jail you if your cell phone rings during class. However, cell phones are **VERY** distracting to me and to the other students. If you cannot be away from your cell phone, do not come to class. If your cell-phone rings during class, you must leave class and may not return that day.