

TORTS: COURSE 5418

SPRING 2020

PROFESSOR VICTOR B. FLATT

4 CREDIT HOURS

MONDAY, 6-7:20; TUESDAY, 6-8:20

(TUESDAY IS ESSENTIALLY A DOUBLE CLASS WITH BREAK IN BETWEEN, SO THE SYLLABUS WILL SPECIFY READINGS FOR EACH TIME- THERE IS A BIT OF EXTRA TIME BUILT IN)

COURSE OVERVIEW

Torts involves the compensation for harms that one party may do to another (auto accident, medical malpractice, libel, etc....) In our torts studies, we will (by necessity) also pay attention to the structure of the American court system, the hierarchy of trial and appellate courts, precedent, and the relationship between statutes and court decisions. Though much of this is also covered in civil procedure, it is very important to understand the procedural posture of a case (how did it get to where it is now). As a 4 hour course, we cannot cover all of tort law. We will focus on common intentional torts, negligence, and some strict liability (as differing tort duties), defenses to these possible duty breaches, and causation (which can apply to all). By the end of the semester, you should know about the elements of a tort, different duties, causation, defenses, and the historic background of tort liability without fault as well as the emergence of what constitutes fault in the concept of negligence.

OFFICE HOURS

- I will hold office hours each week on Tuesdays from 4:30 to 5:30 and from 2:30-3:30 on Wednesdays, and I am happy to meet by appointment including the evenings if that works best for you.
- My office is located at TUII 122. My e-mail address is vflatt@central.uh.edu. My office phone number is 713-743-6437.

COURSE MATERIALS

- **Casebook.** The casebook for this course is CASES AND MATERIALS ON TORTS (FIFTH EDITION) by Robertson, Powers, Anderson and Wellborn. It may be purchased through the student bookstore or through various online retailers. I prefer that you not use the electronic version.
- **Handouts.** There will occasionally be handouts for the course that will supplement the readings in the casebook. These handouts will be available for download from the course blackboard website.

COURSE PREREQUISITES

None

COURSE REQUIREMENTS AND GRADING

You all should have mastered basic torts by the end of the semester. Our coverage is designed to cover all materials tested regarding common law torts in the Uniform Bar Exam, which is now used by Texas.

Your grade in this class will be based primarily upon your performance on the final 4 hour exam, which will be **open book (THOUGH THE EXAM IS OPEN BOOK, do not be fooled into studying less. OPEN BOOK IS FOR AVOIDING PANIL ONLY....YOU MUST KNOW THE MATERIAL WELL IN ORDER TO GET THROUGH ALL OF THE ISSUES IN THE EXAM).**

The exam is designed to assess whether you have been able to learn topics that we have taught in class. Topics will be on the final in relative proportion to time spent discussing and studying them. In exceptional circumstances, class attendance and class participation may also impact your grade, as discussed below.

THERE WILL BE A PRACTICE EXAM QUESTION IN MARCH, which I will evaluate and provide feedback to you to help you prepare for the final.

All first year courses are graded on a mandatory mean (2.9-3.1) and distribution. While in some ways this seems unfair, it is necessary to ensure that the random luck of professor assigned to your section does not alter the class standings and grades because one or another professor is more generous with grades etc...While it would also seem to pit you against each other, I assure you that this should not be your goal. We are all trying to master a complex subject in one semester. You will be learning in a way you have not learned before. Almost all of you were "A" students in college and understanding came easy. During the first year, law school may not seem as intuitive. Discussing assignment and class discussions and helping each other is the best way for all of you to master this course. Even if your grade is not to your liking, the better your course mastery the more likely this will be to help you get higher grades in future classes. Ultimately, you want to learn to be a good attorney, and helping you do that is my job. I have the utmost confidence in your success.

ATTENDANCE AND PARTICIPATION

- Class attendance and preparation will be counted in computing the final grade for this course. Poor attendance can affect your grade negatively. Preparation, as evidenced by class participation, may affect your grade positively (or in extreme cases have a negative effect). I generally refer to you by your surname and your chosen title (Mr., Ms. Dr. Rev. Mx.) If you have a particular way you would like to be addressed that best reflects your identity, please let me know.
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- **Each day I will come to class a few minutes early with copies of the class list, dated for that day of class. If you are present and prepared, you should put a check next to your name upon arriving to class. Anyone whose name is checked will be counted as “present” for that day of class, whether or not I call on you. IF you are PRESENT BUT NOT PREPARED please put an X by your name**
- **YOU SHOULD PREPARE YOUR READING ASSIGNMENTS for both blocks of classes on Tuesdays.**
- I will keep a tally of attendance. The ABA only allows missing 6 class blocks of 1 hr, and 15 minutes. If you miss more class time your grade may be docked and you are in danger of having to repeat the course. If you are signed up as present and you are not in class, in addition to the honor code implications, I will contact you and reserve the right to lower your final grade by a graduation point for each occurrence.
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- I will call on students randomly using shuffled playing cards. If you have done the reading, you should be able to discuss the cases (you don’t have to give perfect answers). **If for some reason you have not been able to do the reading but still are able to come to class, please put an “X” by your name when you sign up.** I will not call on someone that day who has so indicated, but you are only allowed **3** of these per semester. More than that or failure to have done the reading when you have claimed to do so may cause a grade dock of at least one graduation.
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- **Note on use of computers in class** – I understand that most of you are now used to taking notes on a computer for all of your classes. However, I want to tell you that in addition to providing more opportunity to distract yourself and others, computer note taking may impede the kind of learning that we do in law school. Studies show that, on average, first year law students perform better on exams if they take notes on paper by hand. This is because it requires you to process some of the information as you are writing, whereas with a computer, some people can type so fast that they just dictate without processing. Of course everyone’s learning style is different. **Texting, emailing, and web surfing are strictly prohibited. While you may not be affected by this, it is a GREAT distraction to other students and the professor. (Hard to believe but it is usually easy to tell if someone is doing this from the front of the room – which is why it is distracting).** If you cannot stay off of media connection for the class time, you should not be in law school. Violation of this rule may also result in grade docking.
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- Each of you is enrolled in Blackboard for this course. You can get access to this site through the law school’s web page. I will make class announcements through this site, and class handouts and other materials may be made available here as well. While I will try to make sure that all announcements are also emailed, it is a good idea to check on the site as well.

HONOR CODE

The Honor Code is in effect in this class and in all others at the University. I am committed to treating Honor Code violations seriously and urge all students to become familiar with its terms set out at <http://www.law.uh.edu/student/HONOR-CODE-AND-PROCEDURES.pdf?>.

If you have questions, it is your responsibility to ask me about the Code's application. All exams, written work, and other projects must be submitted with a statement that you have complied with the requirements of the Honor Code in all aspects of the submitted work.

MODIFICATIONS TO THE SYLLABUS

The instructor reserves the right to make modifications to this syllabus as necessary over the course of the semester.

TORTS ASSIGNMENTS

			Textbook		Other Readings
INTRO AND INTENTIONAL TORTS					
1	1/13	Intro to torts, legal systems sources of law; INTRO to BATTERY	1-15		
2	1/14 Block 1	Battery continued	15-23		
3	1/14 Block 2	Assault; false imprisonment; trespass to chattels	23-31; 44-48		
	1/20 MLK Holiday				
4	1/21 Block 1	Defenses to intentional torts; consent	48-56		
5	1/21 Block 2	Self-defense, defense of others, defense of property; necessity; limits of "privilege"	56-71		Restatement Second of Torts Privilege – on Blackboard
NEGLIGENCE					
6	1/27	The nature of negligence and the reasonable person std.	73-77; 86-88		
7	1/28 Block 1	The Learned Hand formula	78-84 (through n. 8)		
8	1/28 Block 2	Learned Hand continued			UDR Texas Properties Concurrence (on blackboard)
9	2/3	Reasonable person objective std/special cases	86-97		
10	2/4 Block 1	Custom (medical special case)	84 (starting w n. 9)-86; 511-518		
11	2/4 Block 2	Statutory Violation (exceptions?)	104-106; 97-101; 101-103; 106-108		
12	2/10	Res Ipsa	109-113		Sanders case handed out in class
CAUSATION					
13	2/11 Block 1	Cause in fact; but for causation	115-123		
14	2/11 Block 2	Other ways to satisfy "cause in fact"	127-144		
15	2/17	Causation and multiple defendants/causes	151-166		
Proximate Cause (Scope of Liability)					
16	2/18 Block 1	Proximate cause	167-173		
17	2/18 Block 2	Proximate cause cont...	179 (start w. n. 4)-184; 200-206		
DUTY AND SPECIAL RELATIONSHIPS					
18	2/24	Basic Duty	207-211; 288-290; 217-224		
19	2/25 Block 1	DUTY issues continued	224-233		

20	2/25 Block 2	Duty of Owners and Occupiers of Land	276-285		
21	3/2	Review Practice Exam Question			
VICARIOUS LIABILITY					
22 23	3/3/ Blocks 1 and 2	Vicarious Liability; Non-delegable duties	337-349		
	3/9 and 3/10	Spring Break			
AFFIRMATIVE DEFENSES					
24	3/16	Traditional Contributory Negligence			Jones v. U.S. (blackboard)
25	3/17 Block 1	Comparative negligence	360-371		
26	3/17 Block 2	Assumption of the risk	439-450		
27	3/23	Comparative negligence and other doctrines	450-459		
28	3/24 Block 1	Joint and Several Liability; influence of comparative negligence	427-433; 417(n.2)-419		
29	3/24 Block 2	Review of concepts			
RE-EMERGENCE OF STRICT LIABILITY					
30	3/30	Animals and abnormally dangerous activities	525-535		Animals liability sheet (on blackboard)
31	3/31 Block 1	Products Liability introduction	535-546		
32	3/31 Block 2	Products Liability product defect	546-556		
33	4/6	Products liability cont. and defenses	557-565		
34	4/7 Block 1	Nuisance; remedies	567-575		
35	4/7 Block 2	Nuisance continued			Case handout on day of class for discussion
36	4/13	Defamation and Invasion of Privacy	TBD		
37	4/14 Block 1	Defamation and Invasion of Privacy cont.	TBD		
38	4/14 Block 2	Misrepresentations	TBD		
39	4/20	Intentional Interference with Business Relations	TBD		
40 and 41 (blocks 1 and 2)	4/21	REVIEW			