TORTS

Syllabus & Assignments
§ A, FALL 2016
University of Florida
Fredric G. Levin College of Law
Professor Lyrissa Lidsky

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Class Times and Location: Monday through Thursday, 11-11:50 a.m.; Holland Hall Room 360

Office Hours and Locations:

My established office hours are Tuesdays and Thursdays, 4 p.m. - 5 p.m. I am currently working from two different offices. My established office hours will be held in Holland Hall Office 303. You can reach me at other times in Holland Hall 320, the Graduate Programs Office. The easiest way to reach me quickly is via email: lidsky@law.ufl.edu. If you want to schedule a specific appointment with me outside of office hours, please contact my wonderful assistant Kimberly Bartlett at bartlett@law.ufl.edu or 273-0680, and she will put you on my calendar. Ms. Bartlett is in the Graduate Programs Office, Holland Hall 320. Feel free to drop by Holland Hall 320 or Holland Hall 303, but I may or may not be in a meeting. If I’m not, I’d love to talk to you.

Assignments: The assignments are in the casebook by Robertson, Powers, Anderson & Wellborn titled Cases and Materials on Torts (4th ed. 2011) unless otherwise noted. The assignment list is attached to this syllabus. I also require you to purchase Joseph W. Glannon’s Examples & Explanations: The Law of Torts, though I will refer to it directly in class only occasionally. You can purchase an older edition of Glannon’s E&E to save money. Check TWEN regularly for course information. I will use TWEN throughout the semester to send you information pertinent to the course.

What this Course is About: Torts are civil causes of action brought to recover monetary compensation for harm done by wrongful acts. Most of what is referred to as “personal injury law” is tort law. For the first couple of weeks of the course, we will study three intentional torts—assault, battery, and intentional infliction of emotional distress. Studying the intentional torts gives you a good grounding in understanding the differences between civil and criminal law, the “elements” of torts, the concept of a prima facie case, intent, defenses, and other foundational matters. Most of the course will be spent studying the tort of negligence, which imposes liability on an actor whose conduct falls below standards imposed by law for the protection of others against unreasonable risks of harm. Like the intentional torts, negligence imposes liability based on “fault,” but unlike the intentional torts, negligence covers an immense range of conduct and is the most important tort we will study in the course. In the last few weeks of the course, we will examine instances when tort liability is imposed upon an actor who is not
“at fault,” a concept known as strict liability.

**Class Preparation/Call System:** I expect you to come to every class having read the assignments at least twice. **I will call on students at random every day.** If you are unprepared, I will call on you the next day. If you are unprepared twice in a row, I will ask you to come to my office to discuss the situation. If you have an extreme fear of speaking in public, you should come speak to me at the beginning of class. I will try to help make it possible for you to be called on without causing undue anxiety. Try to remember that your classmates are almost certainly just as anxious as you are.

To prepare yourself for being called on, keep in mind that the following questions are representative of the types I will ask: What are the facts of the case? What level of court decided the case—state or federal, trial or appellate, intermediate appellate or supreme court? What is the procedural posture of the case? (What error was allegedly made in the trial court?) What is the holding of the case? What is the rationale of the case? What policy arguments support the result in the case? What are the counterarguments? Was the case decided correctly? Don’t be surprised if you find that you are not focusing on the right aspects of the cases at first. Learning to read cases is a skill that takes time to learn. Students will commonly say, “I thought I understood the case until I went to class.” The reason that this experience is so common is that lawyers read cases through a prism of procedure, and you will only learn to think like a lawyer once you start reading cases through that prism, too. Be sensitive to the fact that the class is large. I make every effort to encourage participation by every member of the class, within the constraints posed by the size of the class.

**Learning Objectives:** By the end of the course, every student should be able to do the following:

1. demonstrate thorough knowledge of the basic principles of the law of Torts, including the elements of tort causes of action, the rules governing those elements, and the policy arguments commonly used in Torts cases;
2. read a hypothetical set of facts and identify possible Torts that may arise from those facts;
3. read assigned cases and identify the key facts, the legal issues presented, the procedural posture, the holding, and the rationale;
4. articulate the role of state courts and state legislatures with regard to tort law, as contrasted with federal courts;
5. identify whether any given case is binding or persuasive in a particular jurisdiction;
6. describe the process through which common law is made and changed;
7. demonstrate the capacity to analyze, interpret, and argue differing interpretations of common law rules; and
8. demonstrate proficiency in applying rules and policies to facts.

**Common Courtesy:** Please turn off your cell phone during class. Please do not work the crossword, read the paper, or engage in other distracting behaviors during class. Please do not be late to class or leave class early absent extenuating circumstances. As a courtesy, I appreciate it if let me know if you need to leave early or arrive late. I will ask you to consult with me in my
proofice or refer you to Student Affairs for consultation if you engage in behavior that disrupts the learning environment for your classmates. Other consequences may follow.

**Laptop Policy**: You are required to use your laptops *only for course purposes*. I will have each of you sign a promise to use your laptop only in this way. You should seriously consider whether you will pay more attention and learn more if you do not use your laptop: [http://www.wsj.com/articles/im-banning-laptops-from-my-classroom-1468184264](http://www.wsj.com/articles/im-banning-laptops-from-my-classroom-1468184264)

**Attendance**: You may not miss more than six classes or I will drop you from the class and you will not be allowed to take the exam. You do not need to justify your absences to me.

**Quizzes**: I will post a quiz once a week on TWEN until I reach a total of ten quizzes. The quiz may be multiple choice or short answer. The quiz will usually post by 5 pm on Friday, and it will cover the prior week’s material; you must take the quiz before class the following Monday. If you take every quiz and make a good-faith effort to answer the questions, I will add 10 points to your final exam score. In other words, the quizzes are essentially pass/fail.

**Exam**: The exam will be closed-book. The exam will consist of three essay questions whose answers may be up to 2,500 words in length. Exams must be typed using ExamSoft software. Exams are graded anonymously. After the anonymous grades are handed in to Student Affairs and Student Affairs provides me identifying information, I will add ten points to the raw score of everyone who made a good-faith effort to complete the ten quizzes. I am assuming that every single member of the class will make a good-faith effort to complete all ten quizzes, but if this is not so, I will adjust the final grades accordingly.

Although class participation will not count in your final grade, you should keep in mind that you may want to ask me for recommendation letters in the future, and it is very hard for me to write a strong letter for you if you never said a word in class.

**Make-up Classes/Schedule Alterations**: I will be cancelling Torts class on October 12 for Yom Kippur. I will also have to cancel class on October 27 to attend a professional conference. I will make up these cancellations in advance when possible. I may be able to make up some classes through video lectures.

Additional information regarding UF grade policies is available at [http://www.registrar.ufl.edu/catalog/policies/regulationgrades.html](http://www.registrar.ufl.edu/catalog/policies/regulationgrades.html)

Additional information regarding your professor is available at [http://www.law.ufl.edu/_pdf/resumes/lidsky_l_resume.pdf](http://www.law.ufl.edu/_pdf/resumes/lidsky_l_resume.pdf)
This list sets out the order of the assignments. CB stands for Casebook (Cases & Materials on Torts by Robertson et. al.). E&E stands for Examples & Explanations: The Law of Torts (by Joseph W. Glannon).

We may fall slightly behind this schedule at times, which is fine and to be expected. I want to make sure we allocate as much time as needed for you to learn essential analytical skills that you will use throughout your legal career. I’ve highlighted some of the major topics we’ll focus on for the first couple of weeks. After that, you should be able to discern major topics from our class discussions and the readings.

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<tr>
<th>Class</th>
<th>Reading Assignment</th>
<th>Topic</th>
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<tbody>
<tr>
<td>1.</td>
<td>CB 1 - 7</td>
<td>Introduction</td>
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<td>Topics include: Procedure in Torts Cases, Torts versus Crimes, Limits of Studying Appellate Cases, Nature of Common Law, Fact versus Law, Limits of the Fact-Finding Process</td>
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<td>2.</td>
<td>CB 8 – 22; E&amp;E Ch. 1</td>
<td>Intentional Harms: Battery</td>
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<td>Topics include: Elements of Battery, Prima Facie Case, Intent, Intent to Cause Contact versus Intent to Cause Offense or to Injure/Harm, Intent as Purpose versus Intent as Knowledge with Substantial Certainty, Offensiveness, Subjective versus Objective, Statutes of Limitation, Importance of Insurance, First-Party Insurance versus Third-Party Insurance, Purposes of Tort Law, Alternatives to Tort Law, Importance of Jury Instructions, Children and Intentional Torts, Intent versus Strict Liability, Transferred Intent</td>
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<td>3.</td>
<td>CB 8-22: E&amp;E Ch. 2, Ch. 23 (509-517) Battery, Assault (continued)</td>
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<td>Topics Include: Vicarious Liability/Respondeat Superior, Interest Protected by the Torts of Battery and Assault, Elements of Assault, Apprehension Must be Reasonable, Apprehension is Not Fear, How Imminent is Imminent Enough, Nature of Precedent, Judicial Recognition of New Torts</td>
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<td>4.</td>
<td>CB 28-33</td>
<td>IIED (Omit Trespass)</td>
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<td>Topics Include: Elements of IIED, Recklessness, Outrageousness, Severity of Distress</td>
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<td>5.</td>
<td>CB 45-51; E&amp;E Ch. 6</td>
<td>Defenses: Consent</td>
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<td>Topics Include: How Defenses Work, Defenses versus Negating Elements of Plaintiff’s</td>
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Prima Facie Case, Actual Consent versus Apparent Consent, Scope of Consent, Consent Vitiated by Fraud or Misrepresentation, Implied Consent

6. CB 45-51  Defenses: Consent (continued)
7. CB 66-77  Negligence: Substandard Care
8. CB 77-85; E&E Ch. 7  Negligence: Breach (Reasonable Person)
9. CB 85-95  Negligence: Breach (Children/Statutory Standards)
10. CB 95-104; E&E Ch. 8  Breach (Statutory Standards)
11. CB 104-108; E&E Ch. 9  Breach (Res Ipsa)
12. CB 109-117; E&E Ch. 10  Causation (“but-for”)
13. CB 117-127; E&E Ch. 11  CIF (ltd purpose substitutes for but-for)
14. CB 127-138  CIF
15. CB 138-147  CIF
16. CB 147-157  CIF
17. CB 158-172; E&E Ch. 12  Proximate Cause
18. CB 172-180  PC
19. CB 180-193  PC
20. CB 194-207; E&E Ch. 13  DUTY
21. CB 208-217  DUTY
22. CB 217-226 (SKIP McCarthy, CB 227-232)  DUTY
23. CB 233-251  DUTY
24. CB 233-251; E&E Ch. 14  DUTY (FINISH NIED CASES)
25. CB 251-265  DUTY (ECON LOSS)
26. CB 265-282  DUTY (LANDOWNERS)
27. Finish Duty
28. CB 283-300; E&E Ch. 18  DAMAGES
29. CB 300-307  DAMAGES
30. Present Value  Guest Lecturer Prof. S. Willis
31. CB 307-317; E&E Ch. 19  DAMAGES (Wrongful Death & Survival)
32. E&E Ch. 20  REVIEW SESSION
33. CB 343-353; E&E Ch. 25  Affirmative Defenses- Contributory to Comparative Negligence
34. CB 353-363  Affirmative Defenses
35. CB 362-377; E&E Ch. 21  Multiple Tortfeasors
36. CB 377-388; E&E Ch. 22  Multiple Tortfeasors
37. Finish multiple tortfeasors materials.
38. CB 394-406; E&E Ch. 24  Assumption of the Risk
39. CB 406-418  Failure to Avoid Consequences or Mitigate
40. CB 412-422; E&E Ch. 26  Proportionate Liability: Unanticipated Consequences
41. CB 485-495; E&E Ch. 15  Strict Liability
42. CB 496-504; E&E Ch. 16  Intro to Products Liability
43. CB 504-514  Defects
44. CB 514-524; E&E Ch. 17  Defects and Defenses
45. Finish Products Liability
46. E&E Ch. 27-29  REVIEW SESSION
47. CB 362-377; E&E Ch. 21  Multiple Tortfeasors
48. CB 377-388; E&E Ch. 22  Multiple Tortfeasors