

TORTS
PROFESSOR AMY STEIN
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
SYLLABUS - SECTION 1
FALL 2018 – LAW 5700 – 4 Credits

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Office Hours: Tuesdays, 4-5 p.m.; or by appointment.

MEETING TIME AND LOCATION

Room 285C
Mondays: 4:00 pm - 4:50 pm; Tuesdays and Wednesdays: 10:35 am - 11:50 am

REQUIRED TEXTS

FARNSWORTH & GRADY, TORTS: CASES AND QUESTIONS, Second ed. (Aspen 2009)

OPTIONAL RECOMMENDED SUPPLEMENTAL REFERENCE TEXT

GLANNON, THE LAW OF TORTS: EXAMPLES AND EXPLANATIONS (5th edition) or any other recent edition

COURSE OBJECTIVES/LEARNING OUTCOMES

At the end of this course, students should be able to perform the following:

- Recognize and comprehend the terminology and major issues related to of civil liability for harm caused by wrongful acts that violate non-contractual duties imposed by law, and be able to communicate them to others;
- Compare and contrast cases with seemingly similar facts and different outcomes;
- Identify and analyze tort issues in fact patterns and cases;
- Critically evaluate the policies behind tort liability; and
- Craft a legal argument using a discrete tort legal question.

TWEN

Please register as a participant in this course on The West Education Network (TWEN). The course is listed under my name.

CLASS ATTENDANCE POLICY

Students are expected to attend and participate in class. I am assuming that each student that enrolls in this course is committing to attend every class to the best of their abilities, and class attendance is required by both the ABA and the Law School.

- Nevertheless, to allow for exigencies in life, **students are permitted six unexcused absences during the semester** without impacting their final grade. This allowance is designed to accommodate for illness, job interviews, family emergencies, and life. Please budget accordingly so that you are not left at the end of the semester with a needed absence and your budget depleted. As a courtesy, please let me know when you are going to be absent from class.
- For each absence beyond six, a student's final exam grade will be reduced by one-third of a grade (e.g., A- to B+).
- If students miss nine classes, the professor has the discretion to render the student ineligible to receive credit for the course.
- Excused absences, including observance of religious holidays, are consistent with University policies,
<https://catalog.ufl.edu/ugrad/1617/regulations/info/attendance.aspx>, and require appropriate documents and/or notification before or shortly after class about your absence. If you have a religious holiday, exceptional illness, or emergency that causes you to miss class, you must contact me before or soon after class for your absence to be excused.

A seating chart will be available on the first day of class for students to choose a seat. Please sit where you would like to remain for the rest of the semester on that day. I will pass around an attendance sheet at the beginning of each class period. I will consider it a violation of the honor code if you have someone else sign you in and you are not present, and I reserve the right to lower your final grade.

CLASS PARTICIPATION

It is essential to your success in this class that you come to class prepared to discuss the assigned readings for that day. I intend to randomly call on a number of students each class. Everyone is expected to have a high degree of preparation for class and consistently provide high quality (not necessarily high quantity) comments when called upon or on a volunteer basis. Students who are frequently absent or are unprepared when called upon may have their final grade reduced. To be "prepared," you must have read the assignment and have made a good faith effort to think through the materials. You do not have to have perfect answers to my questions, but you must be willing to discuss the assigned reading and work through the questions with the class. The following questions are representative of some of the types of questions I may ask, as well as those in the text helping you with distinguishing and analogizing different cases:

- Who are the parties of the case? What are the facts? Was the case decided correctly?
- What level of court decided the case you've read (state/federal; trial/appellate)?

- What is the procedural posture of the case (that is, at what stage of the civil process was the decision under review that is being challenged made)?
- What is the holding of the case? What is the rationale of the case?
- What are the policy arguments that support the result in the case?
- What are the counterarguments to the holding and its application?
- How is the reasoning of one case the same/different from the other?

PROFESSIONAL COURTESY

Please do not arrive late to class or leave early absent extenuating circumstances. If you do need to leave early, please sit near one of the exits to minimize your disruption to others and notify me. Please turn off our cell phone during class. I reserve the right to deduct points from your final grade if you engage in behavior that significantly disrupts the learning environment for your classmates.

USE OF LAPTOPS AND WIRELESS DEVICES IN CLASS

For the time we are together, you owe yourself, your classmates, and me your focused attention. Studies have demonstrated that you will have a better educational experience if you can focus on grasping key concepts instead of transcribing the classes.¹ For this reason, and to minimize distractions for your classmates, electronic devices are not allowed in class. Except for those with a documented disability for which a laptop is necessary, you may not use a computer, iPad, smart phone, or similar device during class, unless you take the following steps: (1) come to my office and present a valid justification for exempting you from this policy (i.e., a documented disability for which a laptop is necessary); (2) sign a contract with me stating that you will NEVER access the Internet; and (3) sit only in the back row of the classroom. Of course, you are strongly encouraged to take handwritten notes.

EVAULATION

The four credit course grade is based primarily on a closed book, four-hour final examination. The exam will consist of short-answer and essay questions. Exams are graded anonymously. However, preparation for class and participation in class is an expectation for all students. Participation that is of exceptionally low quality over the course of the semester may be factored in and may affect your grade by as much as 1/3 of a letter grade. This is independent from the 1/3 reduction for each class that is missed beyond six.

¹ See, e.g., A Learning Secret: Don't Take Notes with a Laptop, <http://www.scientificamerican.com/article/a-learning-secret-don-t-take-notes-with-a-laptop/>; Princeton University study shows students more likely to learn by taking handwritten notes, http://www.nj.com/mercer/index.ssf/2014/06/princeton_university_study_finds_students_more_likely_to_learn_by_taking_handwritten_notes.html.

POLICY RELATED TO MAKE-UP EXAMS

The law school policy on delay in taking exams can be found at:

<http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form>

STUDENT COURSE EVALUATIONS

Students are expected to provide feedback on the quality of instruction in this course based on 10 criteria. These evaluations are conducted online at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu>.

INFORMATION ON UF LAW GRADING POLICIES

<u>Grade</u>	<u>Points</u>	<u>Grade</u>	<u>Points</u>	<u>Grade</u>	<u>Points</u>
A (Excellent)	4.0	C+	2.33	D-	0.67
A-	3.67	C (Satisfactory)	2.00	E (Failure)	0.0
B+	3.33	C-	1.67		
B (Good)	3.00	D+	1.33		
B-	2.67	D (Poor)	1.00		

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>

STATEMENT RELATED TO ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

To receive accommodations, students should contact the [Disability Resource Center](#), located in 0020 Reid Hall. You may reach Disability Resources at 392-8565 or accessufl@dso.ufl.edu. Once the appropriate documentation is evaluated by Disability Resources, a recommendation is then made and forwarded to the College of Law Dean of Students (Dean Rachel Inman). The Dean of Students Office will provide documentation to the student who must then provide this documentation to the instructor when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations.

UNIVERSITY POLICY ON ACADEMIC MISCONDUCT

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS (TENTATIVE)

The sections below generally represent what I will attempt to cover during a class period, but they are only estimates. We may move faster or slower depending on how the classes progress. You can anticipate what the next class period's reading assignment will be from the below chart if you wish to start early or read ahead. I may also add a few supplemental readings along the way, depending on our pace and coverage. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. Torts has four "classroom hours" of in-class instruction each week, requiring at least eight hours of preparation outside of class. Also note that while we may not be able to cover the last two or three reading assignments, we will definitely go over some practice questions on the last day of class.

Class	TOPIC	READING
INTENTIONAL TORTS		
1 8/13	Introduction to Torts; Battery: Intent	Introduction (pp. xxxv-xlviii) pp. 1-9 (through note 7)
2 8/14	Battery: Minimum Requirements and Consent	pp. 9-15
3 8/15	Battery: Offensive Contact, Consent	pp. 16-24 (through note 6)
4 8/20	Battery (cont.)	Review pp. 16-24 (through note 6)
5 8/21	Trespass	pp. 29-40
6 8/22	Conversion	pp. 40-52 (through note 10)
7 8/27	False Imprisonment	pp. 55-64

8 8/28	Assault, Outrage (aka Intentional Infliction of Emotional Distress)	pp. 64-78 (through note 5)
9 8/29	Privileges – Defense of Person and Property, Private Necessity	pp. 85-94 (through note 8), 97-102 (through note 1)
9/3	NO CLASS – LABOR DAY	
10 9/4	Privileges – Private and Public Necessity	pp. 102 (start at note 2) – 104 (through note 3), 106-111 (stop at discipline)
NEGLIGENCE		
11 9/5	Introduction to Negligence; The Reasonable Person	pp. 121-133
12 9/10	Physical Infirmities, Risks, & Precautions	pp. 133-148 (through note 4)
13 9/11	Hand Formula Continued	pp. 148 (start at note 5) – 152 (through note 7); pp. 155 (start at note 9) - 158
14 9/12	Medical Malpractice	pp. 158-160, 162 (start with note 3) – 166 (through note 5), 168 (start at note 7) -170
15 9/17	Negligence Per Se	pp. 170-184
16 9/18	<i>Res Ipsa Loquitur</i>	pp. 192-198 (through note 7); pp. 200 (start with § 17 Restatement - 212 (though end of the case))
17 9/19	Duties and Limitations	pp. 217-229
18 9/24 UNTIL 5pm	Duties Arising from Undertakings	pp. 229-247 (through note 3)
19 9/25	Duties from Special Relationships	pp. 247-263 (through note 3)

20 9/26	Duties from Occupation of Land and the Privity Limitation	pp. 263-280 Turn in practice answer to Morning Train via email
21 10/1 UNTIL 5pm	Discuss Answer to Morning Train and Finish Landowner Duty	
22 10/2	Pure Economic Losses	pp. 280-290
23 10/3	Negligent Infliction of Emotional Distress	pp. 290-305
24 10/8 UNTIL 5pm	Causation – But For	pp. 307-317
25 10/9	Causation – But For (continued)	pp. 317-324 (through note 1) note 8
26 10/10	Causation – Alternative Liability	pp. 332-342; 345
27 10/15 UNTIL 5pm	Proximate Causation – Remoteness and Foreseeability	pp. 351-368
28 10/16	Proximate Causation: Intervening Causes	pp. 368-378
29 10/17	Proximate Cause: Limitation of Duty and <i>Palsgraf</i>	pp. 378-389 (through note 3)
30 10/22 UNTIL 5pm	Compensatory Damages – Property and Lost Earnings	pp. 517-530

31 10/23	Compensatory Damages – Lost Earnings and Pain and Suffering; Punitive Damage	pp. 530-537; pp. 537-546 (through note 11); 552-558
32 10/24	Punitive Damages	pp. 558-569
33 10/29	Defenses – Contributory and Comparative Negligence	pp. 569-583 (through note 2)
34 10/30	Defense – Express Assumption of Risk	pp. 583-596
35 10/31	Defenses – Primary and Secondary Assumption of Risk	pp. 596-611
STRICT LIABILITY		
11/2 Due at 5pm	PRACTICE PROBLEM DUE via email	
36 11/5	Discuss Practice Problem	
37 11/6	Strict Liability – Animals and <i>Rylands</i>	pp. 395-400 (through note 1); pp. 406-416
38 11/7	Abnormally Dangerous Activities and <i>Respondeat Superior</i>	pp. 416-428; §20 Restatement pp. 433-440 (through note 2); note 7, note 10

PRODUCTS LIABILITY		
39 11/12	Products Liability- Foundation	pp. 449-465
40 11/13	Products Liability- Manufacturing Defects and Design Defects	pp. 465-470 (through note 1) notes 6, 7, 10 pp. 479-489
41 11/14 LAST CLASS	Products Liability – Failure to Warn	pp. 494-502 (through note 3); 509 (start with McMahon) - 515
42 11/19	NO CLASS (in lieu of 10 extra minutes for 5 classes)	
11/23	Last day for email questions	
11/30 8:30 am	FINAL EXAM	