

TORTS

Professor Nancy Ehrenreich
Spring, 2008

Course website: www.law.du.edu/nehrenreich/torts

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(or by appointment)

Required Materials: Best & Barnes, *Basic Tort Law* (“Text”) – available at DU bookstore
Photocopied Supplementary Materials (“Supp”) – to be handed out in class

Recommended Materials:

Prosser & Keaton on Torts (a torts hornbook) – on reserve in the library
Emanuel’s on Torts (a legal outline) – available at most law school bookstores

Grading:

Two in-class quizzes:

Quiz #1 – objective questions; 50 points

Quiz #2 – objective & possibly short essay questions; 50 points

Final exam: primarily longer essay questions; possibly some objective &/or short essay questions as well; 150 points

Class participation – review problem answer and on-call performance; 10 points

On-Call System:

Class participation is voluntary. However, in order to ensure productive discussions, students will be “on call” in alphabetical order. (See the Workgroups List, posted on the course website (www.law.du.edu/nehrenreich/torts), for an alphabetical list of students in the course.) On-call performance will count as part of class participation. I will rely on students who are on call to be particularly well-prepared, and will call on them to answer questions about the assigned material. I expect to get through 3 or 4 students per class, but classes will vary. If your name is coming up, please continue to be prepared until I get to you. (If we don’t finish the assigned material for a particular day, that means re-reading that material so that you’ll be fresh on it for the next day.)

Workgroups & Review Problems:

The class list posted on the course website is divided into numbered workgroups, of four or five students. Once during the semester, each workgroup will be asked to work together to compose an answer to a review problem & submit it a day or so before class. This work is not separately graded, but will be considered as part of each student’s class participation. Writing the answer through this group process will take a bit of time, so please plan ahead. Of course, I expect all members of each workgroup to participate, and all group work to be of high quality. Occasionally, I might e-mail one or more of the

answers to the class &/or discuss them during classtime. I will also send a copy of each group's answer, with my written comments on it, to the entire class.

Note on review problems: All students are encouraged to write answers to *all* the review problems, regardless of whether you are in one of the workgroups that is assigned to the problem. You should see these problems as practice exams; doing them will help prepare you for the essay-based final exam. Workgroups submitting review problem answers should aim at writing 2-4 double-spaced pages, depending on the complexity of the problem. ***No workgroup answer should exceed 4 double-spaced pages (and many can be successfully done in fewer..*** (However, you can provide a (short!) list of other topics you would have covered if you'd had more space.)

Note on group work: The purpose behind assigning review problems in groups is twofold: 1) It reduces the # of problems submitted, thereby making it possible for me to read and write comments on each one; 2) Working in a group increases knowledge, by promoting discussion among group members. Because of this second reason, you are *strongly discouraged* from simply dividing the problem up into pieces & assigning those pieces to the different members of the workgroup. If you actually *work together* to determine the substance of your answer (& then perhaps divide up the writing, followed by mutual editing), your answer will be superior and you will learn more in the process.

Exam-Writing Exercise:

At the end of the semester, we will do an in-class exam-writing exercise. I will distribute an "issue-spotter" exam question and will ask everyone to spend one hour writing an answer to the test. After you do, we'll spend a day discussing the problem. On the next day, I'll hand out a grading key, and ask each of you to grade one of your colleagues' answers. Then we'll discuss the grading process and the how that affects exam-taking strategies.

Progress through the Syllabus:

The syllabus is organized in an outline form, which will be useful both in conveying the overarching structure of the course & in helping you devise your own study outlines. For simplicity & clarity, different topics are listed for different days. But please be aware that we will not necessarily stick strictly to those dates. We will simply go as far as our discussion warrants each day. Some days I might introduce a topic not covered by that day's readings, others (more likely) we'll fall a bit behind. If we're out of sync with the syllabus, I'll try to predict for you what we're likely to cover the next day, but the best thing to do is just to be sure that you *stay at least 25 pp ahead* of where we stopped the last class.

NB: When you encounter "problems" in the text, please take a bit of time to think about how you'd analyze them before coming to class – unless the syllabus tells you to skip that problem.

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<u>Day</u>	<u>Topic</u>	<u>Assignment</u>
1/15	I. Introduction 1. Overview of Course Mechanics 2. Review re Civil Litigation: relationship b/t judge & jury; procedural posture 3. Introduction to Tort Law (a) corrective justice & utilitarian approaches (b) types of tort claims	No readings
1/16	(cont'd) II. Intentional Torts A. Battery	
	1. Contact requirement	No readings
	2. Intent requirement (a) In general	Text, 15-23
1/17	(b) Intending contact that is harmful or offensive (c) Nominal damages	Text, 23-36
	B. Assault	No readings No readings
1/22	C. Transferred Intent D. False Imprisonment (if time)– a brief intro E. Defenses to Intentional Torts	Text, 46-49 No readings
	1. Consent	Text, 49-59
1/23	2. Defense of self & others 3. Defense of property Review of assault, battery, & defenses	Text, 59-66 No readings Text, 70-71 (prob.3)
1/24	F. Intentional Infliction of Emotional Distress (IIED)	Text, 72-85
1/28	Workgroups' Answers to Intentional Torts Review Problem (Supp, pp 1-3) Due (via E-mail) by 5pm (Workgroups 1-6)	
1/29	(cont'd) G. Trespass & necessity (a brief introduction) Q&A re intentional torts	Text, 742-51
1/30	Intentional Torts Review Problem	Supp., 1-3

1/31	III. Negligence	
	A. Introduction	Text, 89-90
	B. Defining Breach (& duty): the Reasonable Person Standard	
	1. Introduction; traditional reasonable person standard	Text, 90-95 (skip <i>Parrot</i> case) Supp., 4-7
2/5	Quiz # 1: intentional torts (in class)	
2/6	2. Cost/benefit approach to RP std	Text, 95-99
2/7	3. Particular applications of RP std	
	(a) dangerous instrumentalities	No readings
	(b) emergencies	“ “
	(c) actor’s knowledge & skill	“ “
	(d) youth	“ “
	(e) physical & mental disabilities	“ “
2/12	(f) professionals (w/ special attention to medical cases)	
	(i) professional standard	Text, 417-30
	(ii) informed consent	Text, 439-44
2/13	Catchup day	
2/14	Broad & narrow case holdings	Supp, 8
	Interlude on argumentative techniques	Supp., 9-16 (optional: 17-29)
	A brief introduction to vicarious liability & <i>respondeat superior</i>	No readings
2/19	C. Liability based on Recklessness	Text, 128-33
	D. Proving Breach	Text, 135
	1. Violation of a statute (“negligence per se”)	Text, 136-43
2/20	(cont’d)	Text, 143-52
	2. Industry custom	Text, 152-9
2/21	(cont’d)	“
	3. Res ipsa loquitur	Text, 159-71
2/26	(res ipsa loquitur, cont’d)	“
	E. Cause in Fact	Text, 173
	1. But-for test	Text 174-80
2/27	Workgroups’ Answers to Negligence/Breach Review Problem (Supp, pp.30-32) Due (via E-mail) by 5pm (Workgroups 7-12)	

2/27	Cause in Fact (cont'd)	
	2. Alternatives to but-for test	
	(a) Intro	Text, 180-81
	(b) Multiple sufficient causes	Text, 181-88
	(c) Concert of action	Text, 188-93
2/28	Q&A re negligence/breach (including policy arguments)	
	Outlining Practice (if necessary): using all readings, class notes, etc., we have covered re Negligence/Breach	
	Negligence/Breach Review Problem	Supp, 30-32
3/4	Quiz #2: negligence/breach & policy arguments (in class)	
3/5	(e) Market share liability	Text, 200-206 212 (“Perspective” box only)
3/6	(cont'd)	“
	(f) Lost chance/increased risk	Text, 212-19
3/11	F. Limitations on Liability: Proximate Cause & Duty	
	1. Introduction	Text, 221-28
	2. Proximate cause	Text, 242-3
	(a) Directness	Text, 243-47
3/12	(b) Foreseeability	
	(i) Intro to foreseeability	Text, 247-55
	(ii) Foreseeability & the eggshell P	Text, 255-64
3/13	Catchup day	
	[Spring Break: March 17-21]	
3/25	Foreseeability (cont'd)	“
	(c) Substantial factor test	Text, 264-66
3/26	(d) Intervening & superseding forces	
	(i) Superseding force defined	Text, 277-83
	(ii) Negligent treatment of P	Text, 284-5, 289-91
	(ignore mention of <i>Corbett</i> case (not assigned) in notes on 289-91)	
3/27	G. Defenses	
	1. Plaintiff’s contributory fault	Text, 293-308
4/1	2. Assumption of risk	
	(a) Express	No readings
	(b) Implied	Text, 326-35

4/2	H. Particularized Duties & Standards of Care	
	1. Owners & occupiers of land	No readings
	2. Duty to rescue (liability for omissions)	Text, 228-42
	3. Protecting third parties	Text, 518-25
4/3	(cont'd)	Text, 525-28
	4. Negligent infliction of emotional distress	Text, 528-37
4/8	(cont'd)	Text, 537-43
	5. Pure (“mere”) economic harm	Text, 543-52
4/9	6. Wrongful birth & wrongful life	Text, 553-59
4/10	7. Primary assumption of the risk	Text, 559-72
4/14	Workgroups’ Answers to Negligence/Causation & Duty Review Problem (Supp, pp33-4) Due (via E-mail) by 5pm (Workgroups 13-18)	
4/15	Negligence/Causation & Duty Review Problem	Supp, 33-4
4/16	Catchup day	
4/17	IV. Strict Liability (a brief introduction)*	
	A. Introduction	Text, 633
	B. Dangerous Activities	Text, 642-54
4/20	Workgroups’ Answers to Exam Practice Exercise (to be handed out in class) Due (via E-mail) by 5pm (Workgroups 19-24)	
4/22	V. Products Liability (another brief introduction)*	
	A. Introduction	Text, 655
	B. History and Rationale for Strict Products Liability	Text, 659-70
	VI. Damages (a very brief introduction)	
		No readings
4/23	Exam practice exercise (writing the “exam” answer)	To be handed out in class
4/24	Exam practice exercise (grading the “exam” answer)	

NB: After consulting with the class re timing, I’ll schedule a review session (in which we’ll go over an old final exam) sometime during Reading Period.

* We will skip the readings for these days if we run short on time. Other courses are available that cover these topics.