

TORTS SYLLABUS

PURPOSE OF THE SYLLABUS

The purpose of this syllabus is to give you some information about the course and my approach. Because no syllabus can answer all the questions that might arise, you are encouraged to take advantage of office hours, email, and informal contacts with me to ask questions about the content of the course, teaching style, learning methods, etc. that will arise during the semester.

REQUIRED TEXT

Schwartz, Kelly and Partlett, PROSSER, WADE & SCHWARTZ'S TORTS (Foundation Press 11th ed. 2005).

RECOMMENDED TEXT

Glannon, THE LAW OF TORTS: EXAMPLES AND EXPLANATIONS (Aspen 3d ed. 2005).

OFFICE HOURS

My office hours are by appointment. Please contact me by calling or e-mailing me to arrange a mutually convenient time.

MY BACKGROUND

If you would like to read some about my background, specialty areas, and other classes, see http://law.cua.edu/fac_staff/lawfaculty.cfm.

LAPTOP USE

Laptops are permitted in class but may be used **only** for notetaking. That means you may have the Word Processing program of your choice open, but only that program. If you are planning to use a laptop during class, please have it plugged in and set up before class starts. Also, you may want to print out your case briefs and reading notes to have ready access to them during the class discussion.

CLASS ATTENDANCE

Class attendance is mandatory. I will maintain a roll sheet to record attendance. If you are not in attendance when the roll sheet is passed, you are absent for that day. I do not entertain questions of “excused” absences. If you are absent, for whatever reason, you are absent. Attendance does not figure into the computation of the final grade, which is based solely on the final examination; however, the law school’s attendance policy, see the Academic Rules, part V.1. in the Announcements, provides that students who miss more than six classes may be excluded from the examination. **Please contact me during the semester if you run into difficulties complying with this standard.**

TAPING OF CLASS

I do not permit my class to be taped on a routine basis. If you know that you will miss class due to illness or other unavoidable reason, you may ask a classmate to tape the class for you; please send an e-mail to me advising me that the class will be taped for you. If you face serious illness or family emergency and need to have more than one class taped, you should contact the Academic Dean’s Office for assistance per the Policy on Recording Classes.

ACCOMMODATIONS

Any student who has a disability requiring accommodation under the Americans with Disability Act should contact Assistant Dean Georgia Niedzielko in the Academic Dean’s Office. Dean Niedzielko will coordinate accommodations with the University Office of Disability Support Services for Students (DSS).

CLASS PREPARATION AND ASSIGNMENTS

Although we will proceed through the assigned materials roughly as indicated in the schedule of daily reading assignments (see Reading Assignments), you soon will see that the pace varies. **You always should be prepared to discuss the material assigned for the date, even if we have not covered all material assigned from the previous class.** Not every case, note, or question in the casebook will be discussed in class; there simply is not enough time. Class time will be devoted to highlight the most important cases and materials, to consider some topics in more detail, and to give you an opportunity to raise questions regarding issues about which you are confused or concerned. It is good practice to review your case briefs and notes on the assigned materials immediately before class since you may have written them several days before.

HINTS ON PREPARING FOR CLASS

In order to profit from the class sessions, you must prepare adequately for class.

1. You should take note of the chapter and section headings and subheadings in the casebook to

orient yourself to the concepts that will be discussed in class. These will tell you the topic to which the assigned cases relate, and where this topic fits in the course overall.

2. Learn a little about the topic before you start reading the assigned cases. This can be done by reading in the Nutshell, the recommended Examples and Explanations book, or a Hornbook, the sections that correspond to the topics covered by the assigned cases. There is no single *best* text or approach that I can recommend. For each topic, you will need to become familiar with the resources available and decide for yourself which best serves your needs. (See additional information at the Course Materials tab under Resources.)

3. Each assigned case in the casebook should be read carefully and briefed. You should be able to recite the facts of the case and its procedural history with, at most, a quick reference to your notes. Reading from the casebook is not appropriate.

4. Read and think about the questions posed by the notes after each case. The questions posed by the authors will not only assist in your understanding of the assigned cases but also will serve to elaborate the doctrine and processes under study. Attempting to apply the material you have just read to answer the questions also will assist you in figuring out whether you understand the material you have just read. Many of the fact patterns in the notes are taken from actual cases. The citation to the case is provided in the note so that you can look it up if you would like and read how a particular trial court judge or appellate bench resolved the issue posed. These cases do not necessarily determine the solution that every jurisdiction would choose. Their purpose is to give you an opportunity to practice applying the principles you are learning. The Glannon book is also a good resource for this type of practice.

5. You will be encountering many words and phrases for the first time or of which you have only a vague understanding. **Look up every word you do not know.** It is tedious and slows down your reading, but it is essential to a full understanding of the reading and an important habit to develop. Words are a lawyer's stock in trade. You must know their precise meaning to use them effectively.

RESPONSIBILITY FOR CLASS RECITATION

One of the most important forums for learning in the first year of law school is the classroom discussion of cases and materials. Although each professor conducts class sessions in somewhat different ways, most, if not all, rely heavily on students to make presentations about the cases and materials that have been assigned by the professor and then to respond to questions from the professor that seek to clarify, probe, and elaborate on the cases and materials under study. With one semester under your belt, you already have experience with this form of teaching. If you would like some more insight into it, there is an online tutorial that is designed to give a feel for what a first year law school class is like. Each first year subject is represented by one case (for Torts it's *Big Town Nursing Home v. Newman*, which we will cover early in the semester) and a casebook-style excerpt and sample case brief are provided. After reading the case excerpt and case brief, you can interact with the site in a form of Socratic dialogue that presents multiple choice questions about a case. For "wrong" answers, you are told why the

answer is wrong and guided to the more correct answer. Each question also has balloons that, when clicked, provide hints or insights into why the professor is asking the question and what the student should learn from the questioning. The tutorial was developed by a team of SMU professors to assist the transition from college to law school by making the intricacies of the Socratic dialogue more transparent. The questions, hints, and professor comments were field tested on undergraduates and law students. The site is available to all at this address: <http://www.law.smu.edu/firstday/>.

CLASS PARTICIPATION AND PURPOSE OF CLASS DISCUSSION

Each person enrolled in this section of torts is expected to come to class prepared to participate in the discussion of the assigned cases and materials and of the hypotheticals posed by me. Class sessions benefit you by providing an opportunity for you to articulate your understanding of the concepts under study. Failure to participate fully in class discussion of the materials significantly lessens your opportunity to test your understanding of the doctrine and processes of the law of torts. Everyone's willingness to participate enures to the benefit of all. Your contributions can enhance the learning of your classmates and their participation can help you to comprehend better the materials under study.

Learning in a setting that relies upon discussion as an essential element of the teaching methodology requires that each member of the class demonstrate an appreciation of the strengths and weakness of every other member of the class and also demonstrate an ability to monitor his or her own actions to ensure that the opportunities for all members to learn are maximized. Each person has a unique set of learning style preferences. That is, each person approaches a new learning task in an idiosyncratic manner. Some people prefer to understand as much as possible about a topic through reading about it before they are ready to discuss the topic. Others prefer to get a general sense of the topic and then use a conversation about the topic to further their comprehension. When these two types of learners meet in a classroom, without an appreciation of the diversity of learning styles, conflict is possible. The readers can't understand why the talkers didn't get it from the readings and the talkers can't understand why the readers won't become engaged in the classroom discussion without a great deal of effort. Neither preference is either right or wrong; neither is a "better" or "more efficient" way to learn; they are simply two distinct preferences for approaching a learning task.

It is important that you listen to everyone in the class, even though at times you may feel that someone is monopolizing the conversation, asking questions that have already been asked, taking the discussion on unhelpful tangents, or belaboring the obvious. Occasionally, each of these things happen. You will not encounter the perfect learning environment *for you* each time you come to class. As mentioned above, even if we could customize the class for you, it would not be the perfect environment for others in the class. In addition, despite the fact that most law students are perfect in every act and deed, occasionally one slips by the Admissions Committee who is not so perfect and you should be able to tolerate some imperfection.

In fact, learning by listening to each other is more than something you need to tolerate. It is something you will come to appreciate, for several reasons. First, each person begins law

school with a unique background that allows him or her to construct new knowledge in a way that is similarly unique. Some people come to law school with a background as a paralegal, so for that person, certain terminology and processes will at first be easier to grasp and they can help classmates with terminology. Others may be in their second career and can help us all understand non-legal terminology or practices that we run across in the materials we study. Second, as a lawyer, you will not have the luxury of choosing to whom you will listen. Clients, witnesses, and opposing parties are as diverse as any population. Begin to practice the skills of active listening that you will need in your legal career by listening closely to the discussions in class to extract from the diverse styles of discourse as much as you can. Third, you will benefit from the opportunity to practice your own developing skills at articulating a position and defending it within the relatively risk-free environment of the classroom. (In other words, nobody will go to jail or lose money if you don't have it quite right.)

Finally, you should monitor your own behavior in the classroom. If you find yourself monopolizing the discussions, refrain from volunteering for a time, or volunteer only once or twice during the session. On the other hand, if you find yourself rarely participating in the discussions, plan to volunteer at least once each session. Your contributions may assist someone else who is struggling with the same questions as you, and you can help yourself to understand the material by articulating your understanding of it.

EXAMINATIONS AND GRADING

There will be one examination at the end of the semester that will determine your grade for this course. This final examination will be three hours in length and will be a combination of essay-answer questions and multiple-choice answer questions. It will be "closed book." The date and time for the final examination will be set by the Dean's office and posted on the Dean's board later in the semester. The final examination period is April 29-May 11.

Near mid-term, I will administer a practice examination. This examination will *not* count as part of your course grade; however, it is mandatory. It is intended to give you some practice in taking a law school examination and to help you review and synthesize the material from the first part of the semester.

HINTS ON STUDY METHODS

There is probably no single best method that can be recommended for studying. Every individual has or will develop techniques that seem to work best for him or her. Nevertheless, it may be useful for me to suggest to you a couple of things that I think you should try, at least until you have developed your own methods. One caveat: Do not assume that the way you studied as an undergraduate will be sufficient for law school. You will soon discover that the volume of reading and the intellectual and physical demands that law school places on you will overwhelm most of the techniques that got you through your undergraduate studies. Law school will demand that you rethink your approach to studying.

While much of undergraduate study is concerned with the acquisition of knowledge that can be recalled, law school demands that you develop not only the skill of recall, but, in addition, be able to analyze and apply the knowledge that is recalled. To learn how to use and apply the cases, rules, and principles studied, you must develop the habit of systematic review throughout the semester. You cannot pull it all together at the end.

There are two types of review, day-to-day review and periodic review. It is essential that you do both types. Day-to-day review is primarily a device for assuring yourself that you understand the material you study as you go along. You want to fix more firmly in your mind the important propositions developed in each course from day to day. In addition, day-to-day review helps you connect each day's work in the course with that of the previous day and eliminate errors, omissions, and confusion in your notes.

Periodic review is used to get a broad mental picture of the main divisions in each course and, ultimately, of the whole course. The details you have learned in each course must be put together and formed into a coherent whole. You need to create for yourself a mental map or chart of the main classifications in the law, the principal subdivisions within them, the further classes and sub-classes, and the interrelations and overlappings so that you can quickly classify problems and thus make your way back to the specific cases and materials that dealt with that type of problem. You are not merely memorizing the material you have studied. The thing you are now looking for is the connection between all the individual problems and rules -- the central theme of the various chapters and the broad general principles, policies, and reasoning on which the specific cases are based. You are, in effect, creating a synthesis of the materials that you have studied.

Periodic review is facilitated by the creation of a good outline that you have prepared for yourself. A written outline not only gives you a tangible picture of the organization of the course, but also compels you to do the reviewing more thoroughly, carefully, and systematically. Commercial outlines, and outlines prepared (and often sold) by upperclass students may have some benefit, but they can never substitute for an outline that you have prepared for yourself. The real value of a written outline lies in combing through your material and organizing it in a systematic way. The process should permit you to see where your knowledge is incomplete or inaccurate so that you have time to fill in the missing pieces before examinations.

Periodic review must be just that--periodic--you cannot leave the review process to the day or even the week before the examination in the course and expect to get much out of it. I suggest that you devote some time at least once each week to periodic review, including the creation and revision of your course outline.