

TORTS II (Spring, 2011)
Professor Thomas Hagel

Tues. & Th. at 10:30 a.m.
Room 103
Office Hours: 12:00-1:00 p.m.

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SYLLABUS

INTRODUCTION:

What follows is a general discussion of issues pertinent to the course, as well as a list of reading assignments. I would strongly suggest that you keep it. It will be the only document that will keep you on schedule in terms of your reading assignments.

During your law school career you will have the opportunity to be exposed to various teaching styles. All of them have their strengths and weaknesses. However, I have always believed that, to be effective, a teacher should explicitly address his or her educational philosophy. It has been my experience that students who understand what you are trying to accomplish are more likely to have a positive classroom experience. Therefore, I would like to share with you a few of my thoughts on how I plan to address the subject of Torts.

I have never felt comfortable with a formal, traditional approach to teaching, either as a student or a teacher. I have always believed this approach hampers, instead of enhances, communication in the classroom. Consequently, my Ateaching style@ incorporates everything from lecture, to the Socratic method, to free-wheeling class discussion. It has been my experience that this has a tendency to create a more relaxed, open atmosphere in the classroom. However, please do not mistake this informality for lack of purpose or direction. My expectations concerning your responsibilities are as high as those of my colleagues who approach their subject areas in a more traditional fashion.

Unlike other educational programs you may have experienced, legal education is premised on the idea that the student has the primary responsibility for learning the material. I will do everything I can to facilitate your achieving this goal, short of Aspoon feeding@ you. Many of you may find this frustrating. I fully appreciate your frustration. However, the goals I am attempting to achieve in this course cannot be realized unless you commit yourselves to taking responsibility for your learning experience.

I have four primary goals for this course. The first is to assist you in developing a firm understanding of the basic concepts of tort law. My second goal is to assist you in developing analytical skills for applying those principles. Another goal is to attempt to introduce you to the civil justice system and the role played by lawyers in it. My final goal is to assist you in

developing a sense of professional responsibility. The role of the lawyer in our society is like no other. You will be called upon to apply your technical skills, as well as your creative energies, in protecting the lives and property of your clients. I hope to instill in you a strong appreciation for the serious nature of this endeavor, as well as the beauty and fulfillment that accompanies the many roles played by lawyers in our society.

A common complaint of students about legal education is that it does not correspond with the Areal world@. With some teachers, and in some courses, this criticism may be valid. It will not be in this class. The opinions you will read concern real people, with real problems and were litigated by real attorneys. In addition, I will attempt to share with you, when appropriate, my experiences as a practicing attorney and judge. At times I will discuss cases that have been long since resolved, as well as cases that I am currently litigating. I do not do this in an attempt to impress you with my admittedly humble skills as a litigator and judge. My reason for sharing these experiences is to, hopefully, add a human perspective to our ongoing dialogue.

I believe I have a Acontract@ with each and every one of you. My contractual duties are to assist you in every way possible, with every resource at my disposal, to learn this area of law. I believe your contractual obligations include coming to class prepared, participating in class discussion and investing yourselves in the examination of the dynamic field of tort law.

ASSIGNED READINGS:

The reading assignments listed below will come from two sources. The first is the casebook. The casebook we will be using is by Dobbs and Hayden, the same text you used last semester. A (T), followed by page numbers, will indicate that the particular reading assignments is from this text.

The other source of your required reading assignments is a supplement I have developed. It primarily contains sections from the Restatement of Torts, 2nd Edition. When you see (S), followed by page numbers, this indicates the reading assignment is from the supplement. More often than not, you will have reading assignments from both the text and the supplement for each class. I would like to emphasize that the supplement is as important as the text. I believe that, after a few weeks, you will find that this supplement is a Agold mine@ of information and elucidation.

Finally, I have assigned Understanding Torts (4th ed.) by Diamond, et al. This is a very good, one volume Amini-treatise@ on tort law. It is an excellent secondary source. You will find it very helpful. No specific assignments are listed. I leave it to you to use it to your benefit.

There are numerous study aids available for this course. One of the best is the Ahornbook@: Prosser & Keeton, Torts (5th Edition). You do not need to buy this expensive text. There are numerous copies of it available, on reserve, in the library. The quality of other study aids is spotty. Some, like ACanned Briefs@, are not only poor study aids, they are dangerously misleading. Over-reliance on even good study aids may have devastating effects when it comes to the final examination. Most of them simply reinforce the idea that if you can simply memorize

enough of the Ablack letter@ rules of law you will excel on examinations. Time and again this has proven tragically incorrect. Therefore, whatever study aid you may use, your primary sources of learning the material must still be the text and the supplement

Finally, there is no way (that I know of) to accurately foresee the amount of class time it will take to cover a particular topic. It varies from year to year according to each classes= group dynamics. For example, one class session is allocated for our discussion of negligent infliction of emotional distress. We might complete it in one; it might require 22. I will attempt to inform you at the end of each class what we will be covering in the next class, regardless of how we stand in the chronology of assignments.

CLASS PREPARATION:

To avoid any misunderstandings, I feel a few comments about my expectations concerning class preparation are appropriate. The best way to prepare for this class is to brief the cases, make whatever notes are appropriate, read the assignment and the supplement and then review your briefs prior to class. Quickly doing an overview of the materials the night before class is not sufficient. Failing to draft complete briefs of the assigned cases is not sufficient. Relying on study aids to get you through an assignment is not sufficient. Even though taking short cuts may not have any immediate effect for any particular class, you will find that the price you will pay at the end of the semester will be, most likely, heavy. There is no other way to prepare for class other than putting your time, talents and energy into the often tedious task of reading, briefing and analyzing the material. If I call on one of you during class to discuss a case and you are obviously unprepared, I will consider that an unexcused absence. As will be noted below, after a certain number of unexcused absences, you will be dropped from the class.

CLASS PARTICIPATION:

All of you enrolled in this institution to become attorneys. One characteristic that is almost never found in a practicing attorney is passivity. If you cannot intelligently and articulately express yourself in a legal situation you cannot function as an attorney. One of the goals of this course is to assist in the development of your skills in this area. As with any new enterprise, you will, at times, not perform very well. This is expected. This is acceptable. What is not acceptable is not trying at all. Therefore, I expect each and every one of you to volunteer your understanding and insights during class. Whether you are right or wrong on any given point is irrelevant. That can be corrected. But never learning how to express yourself in a legal context may never be remedied. The tragic aspect of this failure to engage yourself in this enterprise is that your future clients will pay the price.

ABSENCES:

Each student in this course is allowed two (2) unexcused absences. I keep track of these every day on my seating chart. An unexcused@ absence is your absence from class for whatever reason you deem appropriate. An excused absence@ is granted for emergency situations such as illness, car problems and family problems. However, to receive an excused

absence, you must, if possible, contact my office and leave a message for me prior to the beginning of class. If I am not in the office, leave a message with one of the secretaries, either in person or by calling my telephone number which is listed at the top of this syllabus and leaving a message on my answering machine. After you have taken two unexcused absences, I will send you a memo acknowledging your absences and informing you that you have one left. Any unexcused absences after you have used your three will result in you being dropped from the class. If you have any questions about this policy, please feel free to contact me at your convenience.

RESCHEDULED CLASSES

From time to time, I will be required to reschedule a class. On such occasions I will attempt to give you as much advance notice as possible. I will also attempt to schedule Amake-up@ classes at a time convenient to all.

PARTICIPATION IN TRIAL PRACTICE CLASS

Civil and Criminal Trial Practice are third-year courses. To help expand your understanding of the trial process, you may be called upon to participate in Amock trials@ as witnesses and jurors. I will attempt to give you adequate prior notice so that you can adjust your schedule accordingly.