

Torts I
Syllabus Fall 2023 Version v. 1.0
Prof. H. Tomás Gómez-Arostegui

Section:	Time:	Room:
Green Pod	Tuesdays & Thursdays 5:30 - 7:25 pm	4

Contact Info and Office Hours: My office is on the middle floor of the Legal Research Center, at the very end of the hall. My phone number is 503-768-6816, and my e-mail is tomas @ lclark.edu. I have in-person office hours, but because most of you are at work during the day, I understand that they are less convenient. Therefore, I am also generally available to meet with students on Zoom for office hours. I have an electronic whiteboard that I can use, which works really well on Zoom.

In person: Tuesdays: 4:00 pm - 5:20 pm Thursdays after class if desired	Online via Zoom: I'm generally available on Fridays and most weekends too. Just reach out to set up a time to Zoom with me.
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Required Materials: (1) **Casebook:** DOBBS, HAYDEN & BUBLICK, TORTS AND COMPENSATION: PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY (9th ed. 2022). Note: Make sure to purchase the standard edition; do **not** purchase the “Concise Edition” as they are not interchangeable. (2) **Supplementary material:** One supplemental reading for Class 3 is posted on my class website: https://law.lclark.edu/faculty/h_tomas_gomez_arostegui/torts_i/ [WEB]. (3) **Class handouts:** I post handouts to the WEB before the pertinent class in both PDF and .docx formats. All documents posted on the WEB will remain available for download throughout the semester. I generally assume that students will bring their laptops to class and will download the handouts, but if you want me to bring a hardcopy to class, please let me know. I will take a hardcopy count on the first day.

Reading Assignments: The syllabus may be revised as we progress throughout the course, depending on our progress, but I like to stick to it. You are responsible for all the assigned materials, whether discussed or not, but I consider the material we discuss in class to be the most important (see below).

Outlines from Former Students: In preparing for the exam, students will sometimes use outlines written by my former students. I urge you **not** to use them. These outlines often misstate the law, may cover material that we did not cover, omit material that we did cover, or rely on older handouts that I have since updated in a material way. Besides, it is important for you to do your own work. In my experience, students who crib in whole or in part from prior outlines tend to do poorly on the exam.

Other Materials: You do not need to consult other materials to do well in this class. Nevertheless, students often ask for my thoughts on additional materials. For one, do not use Quimbee. And I would not buy any commercial outlines of Torts. The following are **not** required, and you should feel comfortable to come see me first with questions, but they are useful as alternative sources should you want to review information on *material we are covering in class* on your own. These books are all in the library. I have found that in the first half of the semester it is a better use of your time to re-read an assignment rather than going to a secondary source for help. **You can still “crush” my exam without**

picking up a single one of the secondary materials listed below.

Mini-Hornbook:

JOHN L. DIAMOND, LAWRENCE C. LEVINE & ANITA BERNSTEIN, UNDERSTANDING TORTS (7th ed. 2023 or 6th ed. 2018)

Hornbook:

DAN B. DOBBS, PAUL T. HAYDEN & ELLEN M. BUBLICK, THE LAW OF TORTS (2d ed. 2016) [this is also available online for free through our law library]

Study Guide with Questions and Answers:

JOSEPH W. GLANNON, EXAMPLES & EXPLANATIONS: THE LAW OF TORTS (6th ed. 2020 or 5th ed. 2015)

Scope and Purpose of Course: In a nutshell, Tort law covers the substantive claims and defenses governing injuries to people and property. It is a foundational course in part because many other types of injuries and claims—be they injuries to intellectual property, the environment, or civil rights—draw their default principles from tort law. This is why this course is so valuable, even if you never plan to practice personal-injury law. We will cover intentional torts, like battery, assault, and trespass to land, but the law of negligence takes up most of the semester.

Attendance: To take attendance, I will be using the smartphone app EZCheck.me, which is described in a separate document. I will not impose any penalties for poor attendance, but the school might, and a student who misses a lot of class will typically perform poorly on the exam. In truth, no one should be missing even a single class of Torts or any other first-year course if one can help it. If you are late or plan to leave early, you should not mark yourself as present unless you have consulted with me first. Marking yourself as present is a representation that you plan to attend the entire session, and that representation is subject to the Honor Code.

Cold calling: I will call on people without prior notice of any kind. If you feel uncomfortable with public speaking, please reach out to me and we can chat about ways to ease you into this necessary exercise. If someone else has been called on and is answering a question, please keep your hands down.

Recording the Class: The law school records all our classes. Recording of classes by students is prohibited. If you would like to view a recording of a session, please email me and I will send you the link. I will release up to four class-session recordings to a student—which the student cannot share with classmates. If I discover you have shared a recording with another student, both students will receive an F in the course. **This is my one hard rule.** Anything beyond four recordings will require an accommodation from the Office of Student Accessibility of our parent institution (access@clark.edu). The main reason I am stingy with recordings is because I have found over the years that relying on them is a poor substitute for being in class. And even if a student has gone to the class, if recordings are freely available afterward, students may find themselves tuning out during class, knowing that they can simply review it later online. Recordings then tend to pile up toward the end of the semester, and from what students have told me, and what I have seen on the system, they don't have time to review

them. Ultimately, that could result in students not paying much attention during class, with a view to catching up with the recordings, but then never actually catching up—a bad recipe. This happens even with the limited number of recordings I make available.

Class participation or lack thereof does not affect your grade. We all have good days and bad days. Note that you have the right to have all your questions answered, but not always during our class sessions. Sometimes time constraints or questions from other students (particularly those I may not have heard from as much) may take precedence.

Internet Use: Unless you obtain permission from me beforehand, use of the Internet on any device during class (including web surfing, email, Facebook, Slack, Twitter, texting, or otherwise PM'ing each other) is prohibited. You are permitted to use the Internet to access and save class notes on the cloud, to use EZCheck.me, to access our Torts webpage (see above), and to access Westlaw/Lexis to look up opinions or terms in legal dictionaries that relate to what we are discussing during class. I and your classmates demand your undivided attention.

Seating: Sit wherever you like on the first day of class. I will circulate a seating chart after everyone has taken their seats. You will then have to sit in the same seat for the remainder of the semester. I'll take an image of the seating chart and email it to everyone so you can refer to it as needed.

Class Breaks: I ordinarily take a 5-10 minute break in the middle of class.

Student Privacy: Because our classes are recorded, conversations you have with me (and sometimes your classmates) just before classes start, during breaks, or just after class ends, are likely to be picked up and recorded. So it is best to discuss matters of a personal nature outside of those time periods.

Final Exam: Your grade for the course will be based on a 3-hour examination at the end of the semester. The exam will be closed book—no materials whatsoever. The subjects I will test you on include only: (1) material that I assigned for reading *that we discussed in class*, and (2) material that I raise in class that was not part of the assigned reading but *that I have stated in class is fair game on the exam*.

Review Session: We will have a review session at the end of the semester where I will answer any questions you may have about the materials or the exam.

Accommodations—Disability and Religious Practices: Students who have a disability, as defined by the Americans with Disabilities Act, may seek an accommodation through the Office of Student Accessibility (access@lclark.edu), which is located on the undergraduate campus. Students whose religious practices may impact their academic schedule, may seek accommodation through Associate Dean for Student Affairs Libby Davis (eadavis@lclark.edu). For questions regarding any type of accommodation, please contact Associate Dean Libby Davis.

Class & Day	Topics	[Approx. Total Pages for Class Session]	Notes
[01] 8/29 Tues	Introduction A. Tort Law and Goals [3–7] B. Reading Tort Cases [19–33] C. <i>Van Camp v. McAfoos</i> [8–11]	[23pp]	SKIP: NOTE on p 7
[02] 8/31 Thurs	I. Intentional Torts A. The Prima-Facie Case 1. Battery [37–58] 2. Assault [58–63]	[25pp]	SKIP: ¶ beginning “Not all countries” on p 46; SKIM: n. 5 on p 50; SKIP: n. 6 on p 50; n. 7 on p 54; n. 6 on p 58; NOTE on p 63
[03] 9/5 Tues	_. Assault (discussion cont.) 3. False Imprisonment [63–66; WEB: RESTATEMENT (2D) OF TORTS §§ 35 & 36] 4. Trespass to Land [67–72] 5. Trespass to Chattels [76–77; WEB: RESTATEMENT (2D) OF TORTS §§ 217 & 218]	[10pp]	SKIP: nn. 5 & 7 on pp 66; n. 12 on p 71
[04] 9/7 Thurs	B. Defenses to Intentional Torts 1. Self-Defense and the Defense of Others [91–97] 2. Defense and Repossession of Property; etc. [97–100] 3. Discipline and Observing Privileges [SKIM 106–107] 4. Consent [108–119]	[20pp + 2pp to skim]	SKIP: nn. 2 & 3 on p 100; nn. 3–4 on p 116; n. 6 on p 119
[05] 9/12 Tues	II. Negligence A. The Prima-Facie Case	[22pp]	SKIP: nn. 3–4 on pp 151–152

	<p>1. The Standard of Care</p> <p>a. Reasonable Care [131–152]</p>	
<p>[06] 9/14 Thurs</p>	<p>_. Reasonable Care (discussion cont.) [15pp]</p> <p>b. Negligence Per Se [152–164; 167–170]</p>	<p>SKIP: n. 9 on pp 162–163</p> <p>Be prepared to discuss the <i>Lind v. Margaret</i> problem on p 170</p>
<p>[07] 9/19 Tues</p>	<p>[22pp + 3pp to skim]</p> <p>2. Breach of the Standard of Care</p> <p>a. Unreasonable Risk [171–192]</p> <p>i. Multiple Tortfeasors [SKIM 197–200]</p>	<p>SKIP: nn. 3 & 4 on p 173; n. 1 on p 185; n. 9 on p 200</p> <p>Be prepared to discuss the <i>Brown v. Stiel</i> problem on pp 172–173</p>
<p>[08] 9/21 Thurs</p>	<p>[15pp]</p> <p>b. Proving the Underlying Conduct [201–212]</p> <p>i. Burdens and Standards of Proof</p> <p>ii. Evidence</p> <p>(a). Direct Evidence</p> <p>(b). Circumstantial Evidence</p> <p>c. Evaluating the Underlying Conduct to Determine if it Constitutes an Unreasonable Risk [215–218; notes 2–3 on p 220; § 5 on pp 221–222]</p>	<p>SKIP: Problem on pp 210–211</p>
<p>[09] 9/26 Tues</p>	<p>[17pp]</p> <p>d. Res Ipsa Loquitur [222–235]</p> <p>3. Legally Cognizable Harm [237–241]</p>	<p>SKIP: n. 7 on pp 234; n. 2 on p 235; n.2 on pp 239–240</p>
<p>[10] 9/28 Thurs</p>	<p>[26pp]</p> <p>4. Cause in Fact [241–256; 258–270]</p>	<p>SKIP: nn. 4–5 on p 251; the ¶ about <i>Dillon</i> on p 258; nn. 3 & 5 on pp 260–261; n. 4 on p</p>

		267; n. 7 on pp 268–269; STOP after reading n. 9 on pp 269–270
[11] 10/3 Tues	<p>–. Cause in Fact (discussion cont.) [16pp]</p> <p>5. Proximate Cause [273–281; 289–297]</p>	SKIP: <i>Hammerstein v. Jean Development</i> on pp 295–296; n. 3 on pp 296–297
[12] 10/5 Thurs	<p>–. Proximate Cause (cont.) [297–311; note 4 on p 314] [15pp]</p> <p>6. Review of the Negligence Prima-Facie Case</p>	
[13] 10/10 Tues	<p>B. Affirmative Defenses [319] [18pp]</p> <p>1. Contributory Negligence [321–322]</p> <p>2. Comparative Negligence [323–333; 338–342]</p>	SKIP: nn. 5 & 7 on pp 330–331; n. 2 on p 333; n. 6 on p 341
[14] 10/12 Thurs	<p>–. Comparative Negligence (discussion cont.) [16pp]</p> <p>3. Assumption of the Risk [357–361; 363 n. 1 – 374]</p> <p>a. Contractual [Express] Assumption</p> <p>b. Implied Assumption</p>	SKIP: n. 5 on p 374
[15] 10/17 Tues	<p>4. Statutes of Limitation [377–395] [17pp]</p>	SKIP: nn. 2–3 on pp 379–380; <i>Dasha v. Maine</i> on p 390; nn. 3–4 on pp 391–392; n. 3 on pp 394–395
[16] 10/19 Thurs	<p>C. Special Standards of Care and No-Duty Rules [401] [22pp]</p> <p>1. Carriers and Host Drivers [403–406]</p> <p>2. Land occupiers/possessors [407–423]</p>	SKIP: n. 4 on pp 418–419; n. 4 on p 422

<p>[17] 10/24 Tues</p>	<p>[25pp]</p> <p>3. Lessors [434–437] a. <i>Christie v. Embry Corp.</i> Problem [442]</p> <p>4. Nonfeasance [543–566]</p>	<p>SKIP: n. 4 on p 436; n. 5 on p 557; n. 1 on p 559; n. 4 on p 560</p>
<p>[18] 10/26 Thurs</p>	<p>[22pp]</p> <p>5. Controlling Third Persons [589–596; 614–615; note 1 on 616; 617 (NOTE) – 630]</p>	<p>SKIP: nn. 5–6 on p 596; nn. 4–5 on pp 615–616; n. 6 on p 625; nn. 4, 7 & 9 on pp 629–630</p>
<p>[19] 10/31 Tues</p>	<p>[16pp]</p> <p>D. Special Duties of Medical and other Professionals</p> <p>1. Standard of Care [445–456]</p> <p>2. Res Ipsa Loquitur [Lecture]</p> <p>3. Informed Consent [458–462]</p>	<p>SKIP: n. 6 on p 449; n. 2 on pp 455–456; <i>HIRPA</i> on p 456</p>
<p>[20] 11/2 Thurs</p>	<p>[29pp]</p> <p>E. Special Types of Legally Cognizable Harms [635]</p> <p>1. Emotional Harm</p> <p>a. Intentional Infliction [637–647]</p> <p>b. Negligent Infliction [647–657]</p> <p>c. Independent of Physical Risks [662–668]</p> <p>2. Loss of Consortium [658–662]</p>	<p>SKIP: n. 11 on p 644; nn. 3–4 on p 647; n. 8 on p 657; n. 1 on p 6663; nn. 4–5 on p 664.</p> <p>NB: I’ve deliberately asked you to read the last two sections out of order</p>
<p>[21] 11/7 Tues</p>	<p>[14pp]</p> <p>3. Death [689–699; 703–707]</p>	
<p>[22] 11/9 Thurs</p>	<p>[14pp + 5pp to skim]</p> <p>III. Common Law Strict Liability</p> <p>A. History and Strict Liability Today [753–757; SKIM 757–762 (<i>Rylands</i>); READ 767–775]</p>	<p>SKIP: nn. 5–6 on pp 763–764</p>

[23] 11/14 Tues	IV. Defamation [1045–1068]	[23pp]	
[24] 11/16 Thurs	V. Vicarious Liability A. Respondeat Superior [711–717; 719–727; note 1 on pp 730–731; NOTE on pp 733–735; 735–741; 745 (starting with <i>O’Banner</i>) – 747] B. Other Forms of Vicarious Liability [748–750]	[24pp]	SKIP: n. 6 on p 741; STOP after reading n. 4 on pp 749–750
[25] 11/21 Tues	VI. Damages A. Compensatory Damages [913–934]	[21pp]	SKIP: ¶ <i>Constitutional torts</i> on pp 913–914
[26] 11/28 Tues	B. Punitive Damages [934–957]	[23pp]	SKIP: n. 3 on p 949; n. 4 on p 957
TBD	Review Session—likely to be on Zoom		