

Torts I
Syllabus Fall 2010 Version 1.6
 Prof. H. Tomás Gómez-Arostegui

Casebook: D.B. Dobbs & P.T. Hayden, TORTS AND COMPENSATION: PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY (Thomson/West: 5th ed. 2005). **Do not** purchase the 6th edition.

Supplement: Some readings will be posted on my class website as PDFs for you to download; they will be posted a week or so before the assigned readings: <http://www.law.lclark.edu/faculty/tomas/torts.html> [hereinafter WEB]. I will also post all class handouts on the website as both .pdf and .doc files, about 20 minutes before class. Hardcopies of the handouts will also be distributed in class for those who prefer paper.

Reading Assignments: Please note that we will not always discuss all the assigned materials in class (in particular some of the notes). I usually (but not always) qualify those assignments by asking you to SKIM certain portions. Also, I will often tell you to SKIP certain notes, thus removing them from the assignment entirely. Though you are responsible for all the assigned materials, whether discussed or not, I consider the material we discuss in class to be the most important.

Meeting Time: We meet every Monday and Thursday, 6:00 p.m. to 7:50 p.m., in Classroom 1.

Contact Info and Office Hours: My office is on the top floor of the Legal Research Center, No. 320 (next to Dean Klonoff's office). My phone number is 503-768-6816, and my e-mail is tomas@lclark.edu. Because we have class until 8 pm, and half the class then has another class immediately after Torts, my office hours will be very flexible. I am available in my office most of the time (except when I am teaching my seminar on Wednesdays from 4:00 pm to 6:00 pm). But if you want to make sure I am available, just e-mail me. I will be available to meet with students at 9:00 pm, after their other evening course, if requested. No worries.

Student Evaluation: Your grade for the course will be based upon a final examination at the end of the semester. Two prior exams are posted on the class website. The most recent of the two also includes student answers that scored well on the exam. The exam will be open book, meaning that you may bring in just about anything that is in printed form, including your casebook, treatises, study guides, any handouts or supplementary materials I provided to you, and any printed notes or outlines with one exception: commercial outlines are not allowed in the exam. Class participation or lack thereof will not affect your grade in the class.

Torts Review Session: *We will have a review session at the end of the semester where we will go over the Spring 2007 torts exam. So I recommend that you not look at that practice exam until the end of the semester in preparation for the review.*

Student Obligations: You are required to attend class (be on time please), read the assignments, and participate in discussions relating to those assignments. Though I will take volunteers in class, I regularly call on students without prior notice. If you are unprepared on a particular day, please let me know before class and I will not call on you. If you feel uncomfortable with public speaking, please come see me.

Class & Day	Topics	[Approx. Total Pages for Class Session]	Notes
[01] Thu 9/09	Introduction A. Principles [2–9] B. How to Read Torts Cases [21–34] I. Intentional Torts A. The Prima-Facie Case	[25pp]	STOP after <i>Note</i> READ § 1.a only

	1. Battery [37–40]	
[02] Mon 9/13	<p>–. Battery (cont.) [40–54; 57–59] [22pp]</p> <p>2. Assault [59–65]</p>	<p>SKIP <i>Polmatier</i> & the notes that follow it</p> <p>SKIM Note: Related Statutory Claims on p 65</p>
[03] Thu 9/16	<p>–. Assault (discussion cont.) [17pp + 2pp to skim]</p> <p>3. False Imprisonment [65–68; WEB: RESTATEMENT (2D) OF TORTS §§ 35 & 36]</p> <p>4. Trespass to Land [68–70]</p> <p>5. Conversion of Chattels [70–73; WEB: <i>Pearson; Kremen</i>; RESTATEMENT (2D) OF TORTS § 222A]</p> <p>6. Trespass to Chattels [73–74; WEB: <i>CompuServe</i>; RESTATEMENT (2D) OF TORTS §§ 217 & 218]</p>	<p>SKIP nn. 5 & 8</p> <p>SKIM § 4.a</p> <p>SKIP n. 6</p>
[—] Mon 9/20	Class Canceled—Academic Conference	
[—] Thu 9/23	Class Canceled—Academic Conference	
[04] Mon 9/27	<p>B. Defenses to Intentional Torts [22pp]</p> <p>1. Self-Defense and the Defense of Others [82–84; WEB: SELF-DEFENSE HANDOUT]</p> <p>2. Defense and Repossession of Property; etc. [86–89]</p> <p>3. Consent [92–99]</p> <p>4. Necessity [101–109]</p>	<p>READ § 1.a-b only</p> <p>START w/<i>Reavis</i>; SKIP: n. 2 on p 92; n. 9 on p 94; nn. 1, 5–6 on pp 95–97; n. 4 on p 99</p> <p>START w/<i>Surocco</i></p>
[05] Thu 9/30	<p>–. Necessity (discussion cont.) [22pp]</p> <p>II. Negligence</p> <p>A. The Prima-Facie Case</p>	

	<p>1. The Standard of Care a. Reasonable Care [111–133]</p>	<p>SKIP n. 6 on p 121; second ¶ of n. 6 on p 124</p>
[06] Mon 10/4	<p>[15pp]</p> <p>b. Negligence Per Se [133–147; WEB: RESTATEMENT (3D) ON TORTS § 14; CAL. EVID. CODE § 669]</p>	<p>SKIP n. 3 on p 136; n. 5 on p 140; second ¶ of n. 2 on p 146. Be prepared to discuss the Problem on pp 146–147</p>
[07] Thu 10/7	<p>[21pp]</p> <p>2. Breach of the Standard of Care a. Unreasonable Risk [148–165] i. Multiple Tortfeasors [165-168]</p>	<p>SKIP n. 7 on p 163. Be prepared to discuss the Problem on pp 148–149</p>
[08] Mon 10/11	<p>[15pp]</p> <p>b. Proving the Underlying Conduct [169–176] i. Burdens and Standards of Proof ii. Evidence (a). Direct Evidence (b). Circumstantial Evidence</p> <p>c. Evaluating the Underlying Conduct to Determine if it Constitutes an Unreasonable Risk [178; 181–187] i. Common Knowledge ii. ∂’s Own Rules of Conduct iii. Industry Custom</p>	<p>START w/note 2 on p 178; SKIP <i>Thoma</i> and its notes and go straight to <i>Wal-Mart</i> on p 181</p>
[09] Thu 10/14	<p>[19pp]</p> <p>d. Res Ipsa Loquitur [187–207]</p>	<p>SKIP nn. 7–8 on p 206; be prepared to discuss the Problem on p 207</p>
[10] Mon 10/18	<p>[23pp]</p> <p>3. Legally Cognizable Harm [208–211] 4. Cause in Fact [211–233]</p>	<p>SKIP: nn. 3–4 on pp 217–18; Problem on pp 220–21; <i>Dillon v. Twin State</i> and its notes; n. 5 on p 224; <i>Doe v. Baxter</i> and its notes</p>

		on p 224–225; & n. 3 on p 228
[11] Thu 10/21	<p>_. Cause in Fact (discussion cont.) [19pp]</p> <p>5. Proximate Cause [234–252]</p>	
[12] Mon 10/25	<p>_. Proximate Cause (cont.) [252–259; 261–270] [16pp]</p> <p>6. Review of the Negligence Prima-Facie Case</p>	SKIP <i>Sheehan</i> and the notes that follow it; & the Problem on page 269
[13] Thu 10/28	<p>B. Affirmative Defenses [271] [26pp]</p> <p>1. Contributory Negligence [272–273]</p> <p>2. Comparative Negligence [274–289; 292–302]</p> <p>NOTE the typo in n. 5 on p 277. Change assignment of percentages to A 10%; B 40%; and C 45%.</p>	SKIP: n. 2 on p 281; n. 6 on p 282; nn. 1–2 on p 292; nn. 6–8 on p 298–99; n. 10 on p 302
[14] Mon 11/1	<p>_. Comparative Negligence (discussion cont.) [17pp]</p> <p>3. Assumption of the Risk [303–319]</p> <p>a. Contractual [Express] Assumption</p> <p>b. Implied Assumption</p>	SKIP: <i>Sunday v. Stratton</i> on p 313; n. 2 on p 314
[15] Thu 11/4	<p>4. Statutes of Limitation [320–343] [19pp + 3pp to skim]</p>	SKIP: n. 2 on p 322; n. 4 on p 323; nn. 4–7 on p 333–34; <i>Dasha</i> on pp 335–36; SKIM: pp 340–43
[16] Mon 11/8	<p>C. Special Duties of Care [345] [18pp + 4pp to skim]</p> <p>1. Landowners [347–363; 368–372]</p>	SKIM: § 1 on pp 347–49; SKIP: nn. 10–11 on p 354–55; ¶ beginning “What about injuries” on p 355; notes on p 368; SKIM <i>Scurti</i> on p 372; SKIP n. 2 on p 372

[17] Thu 11/11	<p style="text-align: right;">[20pp + 3pp to skim]</p> <p>2. Lessors [376–379] a. <i>Christie v. Embry Corp.</i> [380] 3. Nonfeasance [483–502]</p>	<p>SKIP: n. 1 on p 490; n. 1 on p 491; n. 7 on p 492; SKIM notes on pp 499–502</p>
[18] Mon 11/15	<p style="text-align: right;">[15pp]</p> <p>_. Nonfeasance (discussion cont.) 4. Contractual Duties [503–517]</p>	<p>SKIP n. 6 on p 512; n. 5 on p 514</p>
[19] Tue 11/16 4 to 6 p.m. Room 3	<p style="text-align: right;">[19pp]</p> <p>_. Contractual Duties [517–520] a. <i>Salmon v. Ungar</i> [523] 5. Controlling Third Persons [524; 540–56]</p>	<p>READ first ¶ on p 524 but <u>not</u> § 1 SKIP: n. 1 on p 541; n. 1 on p 542; n. 3 (the first one) on p 543; & n. 4 on p 556</p>
[20] Thu 11/18	<p style="text-align: right;">[21pp + 2pp to skim]</p> <p>D. Special Types of Harms [560] 1. Emotional Harm a. Intentional Infliction [561–62; 563–565 notes 1–7; 567–68, i.e., <i>Homer v. Long</i>] b. Negligent Infliction [569–591] i. Emotional Distress ii. Loss of Consortium</p>	<p>SKIP <i>Taylor</i> SKIM <i>Mitchell v. Rochester</i>; <i>Miley v. Landry</i>. SKIP nn. 2–3 on pp 579–80; n. 1–2 on pp 586–87; n. 3 on p 591</p>
[21] Mon 11/22	<p style="text-align: right;">[22pp]</p> <p>3. Pre-Natal/Conception Torts [599–610] 4. Wrongful Death [611–621]</p>	<p>SKIP nn. 5 & 6 on p 621</p>
[—] Thu 11/25	Thanksgiving Holiday	
[22] Mon 11/29	<p style="text-align: right;">[19pp+ 5pp to skim]</p> <p>III. Vicarious Liability A. Employers [624–638] B. Employers not Masters [641–648; 657 nn. 1, 3, & 4]</p>	<p>SKIM 644–648</p>

[23] Thu 12/2	<p style="text-align: right;">[18pp + 9pp to skim]</p> <p>IV. Strict Liability</p> <p>A. Historic Foundations [661–667; 669–70; 676–81; 682 n.8; 682 (<i>Thomalen</i>); 683–87]</p> <p>B. Contemporary Doctrine [687–694]</p>	<p>SKIM 663–664; SKIP Notes on p 681</p> <p>SKIM 687–93</p>
[24] Mon 12/6	<p style="text-align: right;">[22pp]</p> <p>V. Damages</p> <p>A. Compensatory Damages Generally [855–77]</p>	<p>SKIP <i>Constitutional torts</i> ¶ on p 855</p>
[25] Tue 12/7	<p style="text-align: right;">[8pp to skim]</p> <p>B. Punitive Damages [883–90]</p> <p>REVIEW SESSION: Please e-mail your questions to me 24 hours before class (to better enable me to answer them) if you are able, otherwise feel free to ask them during this session.</p>	<p>SKIM this assignment; and SKIP n. 8 on p 882</p>