

TORTS: COURSE 5418; SECTION 25914 (B)

FALL 2017

PROFESSOR VICTOR B. FLATT

4 CREDIT HOURS

M, W, TH. 2:30 – 4:00 (3:50)– ROOM BLB 240

EXCEPTION – NO CLASSES ON THURSDAY, SEPT. 28, THURSDAY, OCT. 26 OR THURSDAY, NOV. 9 (PROFESSOR SPEAKING AT CONFERENCES) TIME MADE UP BY LONGER CLASS MEETINGS

COURSE OVERVIEW

Torts involves the compensation for harms that one party may do to another (auto accident, medical malpractice, libel, etc....) In our torts studies, we will (by necessity) also pay attention to the structure of the American court system, the hierarchy of trial and appellate courts, precedent, and the relationship between statutes and court decisions. Though much of this is also covered in civil procedure, it is very important to understand the procedural posture of a case (how did it get to where it is now). As a 4 hour course, we cannot cover all of tort law. We will focus on common intentional torts, negligence, and strict liability (as differing tort duties), defenses to these possible duty breaches, and causation (which can apply to all). By the end of the semester, you should know about the elements of a tort, different duties, causation, defenses, and the historic background of tort liability without fault as well as the emergence of what constitutes fault in the concept of negligence.

From UH Central: Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus.
http://www.uh.edu/caps/outreach/lets_talk.html

OFFICE HOURS

- I will hold office hours each week on Mondays and Tuesdays (except Tuesday, Sept. 5) from 1:00-2:00 P.M. and by appointment.
- My office is located at TUII 122. My e-mail address is vflatt@central.uh.edu. My office phone number is 713-922-0392.

COURSE MATERIALS

- **Casebook.** The casebook for this course is CASES AND MATERIALS ON TORTS (FOURTH EDITION) by Robertson, Powers, Anderson and Wellborn. It may be purchased through the student bookstore or through various online retailers. I prefer that you not use the electronic version.

- **Handouts.** There will occasionally be handouts for the course that will supplement the readings in the casebook. These handouts will be available for download from the course blackboard website.

COURSE PREREQUISITES

None

COURSE REQUIREMENTS AND GRADING

You all should have mastered basic torts by the end of the semester. Your grade in this class will be based primarily upon your performance on the final 4 hour exam, which will be open book. The exam is designed to assess whether you have been able to learn topics that we have taught in class. Topics will be on the final in relative proportion to time spent discussing and studying them. In exceptional circumstances, class attendance and class participation may also impact your grade, as discussed below.

THERE WILL BE A PRACTICE EXAM QUESTION IN OCTOBER, which I will evaluate and provide feedback to you to help you prepare for the final.

All first year courses are graded on a mandatory mean (2.9-3.1) and distribution. While in some ways this seems unfair, it is necessary to ensure that the random luck of professor assigned to your section does not alter the class standings and grades because one or another professor is more generous with grades etc... While it would also seem to pit you against each other, I assure you that this should not be your goal. We are all trying to master a complex subject in one semester. You will be learning in a way you have not learned before. Almost all of you were "A" students in college and understanding came easy. At first, law school may not seem as intuitive. Discussing assignment and class discussions and helping each other is the best way for all of you to master this course. Even if your grade is not to your liking, the better your course mastery the more likely this will be to help you get higher grades in future classes. Ultimately, you want to learn to be a good attorney, and helping you do that is my job. I have the utmost confidence in your success.

ATTENDANCE AND PARTICIPATION

- Class attendance and preparation will be counted in computing the final grade for this course. Poor attendance can affect your grade negatively. Preparation, as evidenced by class participation, may affect your grade positively (or in extreme cases have a negative effect).
- **Each day I will come to class a few minutes early with copies of the class list, dated for that day of class. If you are present, you should put a check next to your name upon arriving to class. Anyone whose name is checked will be counted as “present” for that day of class, whether or not I call on you.**
- I will keep a tally of attendance. The ABA only allows missing 6 classes. If you miss more classes your grade may be docked and you are in danger of having to repeat the course. If you are signed up as present and you are not in class, in addition to the honor code implications, I will contact you and reserve the right to lower your final grade by a gradation point for each occurrence.
- I will call on students randomly using shuffled playing cards. If you have done the reading, you should be able to discuss the cases (you don't have to give perfect answers). **If for some reason you have not been able to do the reading but still are able to come to class, please put a check minus(-) by your name when you sign up.** I will not call on someone that day who has so indicated, but you are only allowed 3 of these per semester. More than that or failure to have done the reading when you have claimed to do so will cause a grade dock of at least one gradation.
- **Note on use of computers in class** – I understand that most of you are now used to taking notes on a computer for all of your classes. However, I want to tell you that in addition to providing more opportunity to distract yourself and others, computer note taking may impede the kind of learning that we do in law school. Studies show that first year law students perform better on exams if they take notes on paper by hand. This is because it requires you to process some of the information as you are writing, whereas with a computer, some people can type so fast that they just dictate without processing. Texting, emailing, and web surfing are strictly prohibited. While you may not be affected by this, it is a GREAT distraction to other students and the professor. (Hard to believe but it is usually easy to tell if someone is doing this from the front of the room – which is why it is distracting). If you cannot stay off of media connection for the 1 hour and twenty minutes of class, you should not be in law school. Violation of this rule may also result in grade docking.
- Each of you is enrolled in Blackboard for this course. You can get access to this site through the law school's web page. I will make class announcement through this site, and class handouts and other materials may be made available here as well. While I will try to make sure that all announcements are also emailed, it is a good idea to check on the site as well.

HONOR CODE

The Honor Code is in effect in this class and in all others at the University. I am committed to treating Honor Code violations seriously and urge all students to become familiar with its terms set out at <http://www.law.uh.edu/student/HONOR-CODE-AND-PROCEDURES.pdf>?

If you have questions, it is your responsibility to ask me about the Code's application. All exams, written work, and other projects must be submitted with a statement that you have complied with the requirements of the Honor Code in all aspects of the submitted work.

MODIFICATIONS TO THE SYLLABUS

The instructor reserves the right to make modifications to this syllabus as necessary over the course of the semester.

TORTS ASSIGNMENTS

			Textbook		Other Readings
INTRO AND INTENTIONAL TORTS					
1	8/21	Intro to torts, legal systems sources of law	1-7		
2	8/23	Intro to intentional torts - battery	8-20		
3	8/24	Assault; false imprisonment; trespass to chattels	20-28; 41-45		
4	8/28	Defenses to intentional torts; consent	45-51; 479-484		
5	8/30	Self-defense, defense of others, defense of property; necessity	51-65		
6	8/31	Discussion of escalation; stand your ground			Stand your ground statute handout
	9/4	LABOR DAY – no class or office hours			
NEGLIGENCE					
7	9/6	The nature of negligence and the reasonable person std.	66-74		
8 and 9	9/7; 9/11	The Learned Hand formula	74-79		UDR Texas Properties Concurrence (on blackboard)
10	9/13	Custom	77-79; 471-479		
11	9/14	Reasonable person objective stan./ special cases	79-89		
12	9/18	Statutory Violation	89-104		
13	9/20	Res Ipsa	104-108		
CAUSATION					
14	9/21	Cause in fact; but for causation	109-117		
15	9/25	Other ways to satisfy “cause in fact”	117-127		
16	9/27	Other alternatives; joint and several liability	127-130; 134-146		
Proximate Cause					
	9/28	NO CLASS PROFESSOR AT CONFERENCE			
17 and 18	Oct. 2 and 4	Proximate cause	158-172		Case handout
19	10/5	Cont.	180-193		
DUTY AND SPECIAL RELATIONSHIPS					
20	10/9	General principles	194-195; 200-207; 210-214		
21	10/11	Cont.	214-217; 223-232		
22	10/12	Duty of Owners and Occupiers of Land (Practice exam question handed out)	265-282		UDR Texas Properties
23	10/16	Review practice exam question			
DAMAGES AND CALCULATION					

24/25	10/18 10/19	DAMAGES	284-307		
VICARIOUS LIABILITY					
26	10/23	Vicarious Liability	330-342		
AFFIRMATIVE DEFENSES					
27	10/25	Contributory/comparative negligence	343-353		
	10/26	NO CLASS PROFESSOR AT CONFERENCE			
28	10/30	Comp. neg. continued	353-362; 388-391		
29	11/1	Assumption of the risk	394-406		
30	11/2	Allocation of comparative negligence and multiple defendants	362-377		
31	11/6	Indemnity, contribution, and settlements	377-388		
32	11/8	Failure to mitigate damages	406-412		
	11/9	NO CLASS PROFESSOR AT CONFERENCE			
SOVEREIGN IMMUNITY					
33	11/13	State and local government	438-448		TX. Dept. of Transportation v. Jackson (blackb)
34	11/15	Federal government	449-459		
RE-EMERGENCE OF STRICT LIABILITY					
35	11/16	Animals and abnormally dangerous activities	485-495		
36	11/20	Other liabilities (enterprise/product)	500-508		Flatt article (edit) blackboard
NUISANCE					
37	11/27	Nuisance	525-534		
REVIEW					