**TORTS I Syllabus**

**Spring 2017**

Professor James Cooper Office 210 (350 Cedar Street building)

[jcooper@cwsl.edu](mailto:jcooper@cwsl.edu) Tel: 619-525-1430

**Outline**

Torts are civil wrongs not arising from contract. Tort law serves as the default, or background, way in which people’s actions are regulated in modern America. Before there were well-developed traffic laws and regulations, dangerous drivers still faced common law tort suits. Before there were extensive environmental laws and regulations, polluters could be sued for common law torts. When a person has been injured and no other law applies, a common law tort suit is his or her most likely remedy.

Torts will help you develop your skills as legal thinkers and advocates. As a heavily factual, largely common law subject, this course teaches you how to put together cases reaching different outcomes in different factual situations to identify the general principles of law that apply. Torts has several competing, and sometimes conflicting, policy objectives and demonstrates the manner in which public policy influences the development of doctrine development and the outcome of cases. Since torts rarely lends itself to a single “right” answer, the student will learn to mix legal doctrine, policy arguments, and facts to make the most persuasive argument that advances a client’s strategic interests.

Torts I covers the basics of tort law: tort policy objectives; intentional torts; defenses to intentional torts; the basic negligence case (duty, breach, but-for and proximate causation, and damages); and defenses to negligence. The upper level Torts II class explores other aspects of tort law, including strict liability and products liability.

**Housekeeping**

*Class Meetings*: Tuesdays and Thursdays, 11:10 a.m. – 12:35 p.m., in Room LH2. There may be some class meetings on Fridays (including but not limited to January 13, February 3, March 10, and March 24) from 12:45 p.m. to 2:10 p.m.in LH2.

*Office Hours*: Mondays and Wednesdays 4 p.m. – 5:15 p.m.; Tues. – 1:00 p.m. – 3:30 p.m. or by appointment, Room 210 (350 Cedar Street building).

*Large-Group Tutoring* (with James Carraway - JDCarraway@law.cwsl.edu): Tuesdays, 10:00 a.m. -11:00 a.m. in Room 2B except for January 17, 2017 which will take place at 10:00 a.m. – 11:00 a.m. in AUD (the Auditorium).

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour.  This is a 3-credit class meaning, in addition to attending class each week and taking the final exam, the professor has determined that the assigned readings and your preparation for any exam(s) or other assignments will require you to spend 396 minutes (or 6.60 hours) each week outside of class preparing for class, for exam(s), and for any other assignments.

**Learning Objectives**

The goals for this course are for students to:

1. Comprehend and articulate the basic doctrines (including rules, elements, exceptions, and defenses) of intentional torts and negligence.
2. Comprehend and articulate the different policy objectives of the tort system and their influence on doctrine and case outcomes.
3. Make persuasive arguments that apply the intentional torts and negligence doctrines to new factual situations (and recognize potential counterarguments) in a way that advances a client’s strategic interests.
4. Evaluate the strength of legal arguments related to intentional torts and negligence and predict the likelihood that these arguments will be successful.

**How To Learn Torts**

***General Philosophy.***  My primary objective is to train you to be great and mindful practicing lawyers. In a matter of months, many of you will be working as interns, clerks, and summer associates. I therefore will treat you as professionals and will expect you to act as professionals accordingly.

***Attendance and Timeliness.*** The reading for this course is insufficient to obtain the knowledge and skills necessary for the final exam. Class attendance is crucial, and the school’s general attendance policy applies as does its Honor Code. Attendance includes being on time and staying the entire class period. Practicing lawyers do not skip, or arrive late to, meetings or court appearances.

***Reading.***

* The **required** textbook for this class is Dan B. Dobbs, Paul T. Hayden, and Ellen M. Bublick, Torts and Compensation: Personal Accountability and Social Responsibility for Injury, Concise Edition (West 7th ed.). *I will refer to this as “Dobbs et al.”*
  + ***NOTE***: We are using the “Concise Edition” of the casebook and all page numbers referenced below or during class.
* The occasional reading outside *Dobbs et al.* will be provided.
* “Review and Strategy” classes will be adjusted, based on the needs of the class. Readings and assignments are to be announced (TBA) and will be provided in advance.

***Preparation.*** A good lawyer never goes into a meeting, negotiation, mediation/arbitration, or court hearing unprepared. Students are expected to be prepared for every class. **Students cannot request a “pass” when called upon by the instructor.**

* “Prepared” means carefully reading the entire assignment at least once; being familiar with the facts of each assigned case; making a good faith effort to identify the key legal principles and holding of each case; reviewing every note or other non-case material within the assigned pages; thinking about the questions raised in the notes; thinking about any connections between the assigned material and previous material we have covered; identifying any questions or uncertainties you have; and completing any other assigned tasks.

***Preparation Excuses.*** Life sometimes interferes with a lawyer’s best work intentions. Deadlines and other obligations can be excused or postponed **but only if** the lawyer asks sufficiently in advance of the deadline, hearing, meeting, etc. Each student has up to **two (2) classes** to be excused from being cold called **BUT ONLY IF** you email Honor’s Instructor James Carraway ([jdcarraway@law.cwsl.edu](mailto:jdcarraway@law.cwsl.edu)) at least **3 hours in advance of class** (*i.e*., 8:10 am for a normally scheduled class) to inform us that you are using a preparation excuse for that particular class. No reason need be provided.

* Unexcused failures to be prepared will affect the good faith portion of your grade.

***Class.*** This course will include occasional lecture, small group work (law is a collaborative profession!), simulations, and individual problem work (especially as review at the start of class). However, the core technique will be the Socratic method, applied in a constructive, positive, and problem-solving manner. In general, I will cold call. After all, you never know in practice when a client will call! There is no advance notice of what classes for which you will be called, though I may tell you during class that you will be representing a certain side, responsible for a certain issue, etc.

* The Socratic method accurately reflects the practice of law. In many situations – court, negotiations, client meetings, etc. – you will have basic knowledge of the governing law and other material and be required on the fly to explain the law, consider new facts or situations, predict outcomes, identify conflicts or problems in the law, answer questions, etc. For a good summary of the reasons for using the Socratic method, *see* <http://www.greenbag.org/v1n2/v1n2_review_garrett.pdf>

***Computers.*** Practicing lawyers increasingly use computers for everything they do, including meetings, depositions, and even court appearances. You are welcome to use computers for class-related purposes, including taking notes and looking at materials you prepared.

* **ALL** email, social media, and instant messaging is **STRICTLY** **PROHIBITED**, regardless of the reason (*e.g.*, you cannot instant message about what is going on in class).
* **ALL** internet surfing (including visiting sites about sports, entertainment, news, investments, etc.) is also **STRICTLY** **PROHIBITED**.
* Any violations of this policy will affect the good faith portion of your grade.

***Assessment.*** Your final grade will be based on two components: (1) final exam (90%); and (2) good faith requirement (10%). There are “push points” as part of the grading system in this course.

* Each student will begin with full credit for the good faith requirement. Credit will be deducted for failures to engage in the class in good faith, including (but not limited to): lack of preparation, violation of the computer policy, tardiness or early departures, excessive absences, failure to complete (with a good faith effort) ungraded assignments and exercises, failure to participate in good faith in small group assignments and discussions, and failure to treat classmates with professional respect.

***Final Exam.*** The final examination is scheduled for April 22, 2017 (A.M.). There are not prior exams available for this course. The final exam will be a three-hour examination worth a total of 90 points. Tentatively, it will be composed of three parts, with the following tentative allocation of points. This tentative format and weights are subject to change based on the strengths and weaknesses of this course, with any change announced by March 21, 2017.

1. 5-10 multiple choice questions (10 points)
   * Will mimic bar exam questions
2. 3-5 short answer questions (35 points)
   * Will generally require a word/phrase answer and then an explanation of why.
   * *E.g.*, What defense would you raise and why? What fact would you like to know and why? What policy objective best explains this doctrine/outcome and why?
   * You will see the form of each short answer question during the trimester.
3. 1 longer-form essay (45 points)
   * Will require you to apply your knowledge to a hypothetical client’s factual situation to make an argument or arguments that advance your client’s strategic interests and respond to potential counterarguments.

***Review and Strategy Classes.*** The last class of each unit is entitled “Review and Strategy.” It is dedicated to reviewing the material covered in that unit, while also simulating how the material covered arises and is used in practice. There are three primary goals for these classes:

1. *Review and Assessment*: we will have another shot at covering any material that was particularly difficult for the class but looking at it a different way. This will also be my opportunity to get a sense of your comprehension and mastery.
2. *Prepare for the Final Exam*: over the course of these classes, you will see several examples of each type of exam question. Sometimes we will work on these questions as a class, sometimes in small groups, sometimes individually in class, and sometimes individually in advance of class.
3. *Develop Practice Skills*: we will simulate how tort law is actually applied in practice. Over the course of the trimester, primarily in “Review and Strategy” classes, we will return to a hypothetical (but realistic) case, *Quinn v. Jacob*. You will be asked to apply your developing knowledge of tort law to develop arguments on behalf of your client, identify potential counterarguments, and evaluate the strength of both. In doing so, you also will be practicing for the essay portion of the final exam.

**PROVISIONAL COURSE SCHEDULE**

**(\*\*\*Subject to Change\*\*\*)**

1. **OVERVIEW**

***Class 1*: Introduction to Class and Torts (Tuesday, Jan. 10)**

* Reading: 1) *Dobbs et al.*, pp. 3-4 (“What Is Tort Law?”) and pp. 19-26 (“Reading Tort Cases: Trial Procedures”); (2) Review the syllabus, which includes the course policies and tentative schedule (on class pages at <https://www.cwsl.edu/faculty-and-staff/class-pages>; (3) Read the documents titled “Background” and “Complaint” for the Quinn v. Jacob simulation

***Class 2*: Theories of Tort Law (Thursday, Jan. 12)**

* Reading: (1) *Dobbs et al.*, pp. 4-17; (2) Excerpt from Kenneth S. Abraham, The Forms and Functions of Tort Law, pp. 14-20.

1. **INTENTIONAL TORTS** 
   1. **THE PLAINTIFF’S CLAIM**

***Class 3*: Battery (Friday, Jan. 13)**

* Reading: *Dobbs et al.*, pp. 29-46

**Note: Class is from 12:45 p.m. to 2:10 p.m.**

***Class 4*: Other Intentional Torts (Tuesday, Jan. 17)**

* Reading: *Dobbs et al.*, pp. 46-59; 467-474
  1. **DEFENSES**

***Class 5*: Self-Defense and Related Concepts (Thursday, Jan. 19)**

* Reading: *Dobbs et al.*, pp. 63-76

***Class 6*: Consent (Tuesday, Jan. 24)**

* Reading: *Dobbs et al.*, pp. 76-82

***Class 7*: Necessity (Thursday, Jan. 26)**

* Reading: *Dobbs et al.*, pp. 82-88
  1. **REVIEW AND STRATEGY**

***Class 8*: Review and Strategy of Intentional Torts (Tuesday, Jan. 31)**

* Reading/Assignment: TBA

1. **NEGLIGENCE**
   1. **OVERVIEW**

***Class 9:* The Concept of Negligence (Thursday, Feb. 2)**

* Reading: (1) *Dobbs et al.*, pp. 91-93; (2) Excerpts of Timothy D. Lytton, *Rules and Relationships: The Varieties of Wrongdoing in Tort Law*, 28 Seton Hall L. Rev. 359, 365-370 (1997).
  1. **DUTY**

***Class 10:* Reasonably Prudent Person (Friday, Feb. 3.)**

* Reading: *Dobbs et al.*, pp. 93-107

**Note: Class is from 12:45 p.m. to 2:10 p.m.**

***Class 11*: Specific Duties (Tuesday, Feb. 7)**

* Reading: (1) *Dobbs et al.*, pp. 111-120 [start with note 2 on page 111 and read through the end of the chapter]; (2) *Dobbs et al.*, pp. 331-332 [note 2 ONLY]; (3) *Dobbs et al.*, pp. 334-336 [*Vergara* case and notes 1-3]; (3) *Dobbs et al.*, pp. 338-340 [“Note: Other Professionals”]; (4) *Dobbs et al.*, pp. 342-346
  1. **BREACH**

***Class 12:* What’s Reasonably Prudent? (Thursday, Feb. 9)**

* Reading: *Dobbs et al.*, pp. 121-137

***Class 13:* The *Hand* Formula (Tuesday, Feb. 14)**

* Reading: (1) *Dobbs et al.*, pp. 137-142; (2) Excerpt from Kenneth S. Abraham, The Forms and Functions of Tort Law, pp. 62-68.

***Class 14*: Proving Breach (Thursday, Feb. 16)**

* Reading: *Dobbs et al.*,pp. 146-162

***February 21 – No Class (Presidents’ Day Holiday)***

***Class 15*: Special Situations: Res Ipsa Loquiter and Multiple Defendants (Thursday, Feb. 23)**

* Reading: *Dobbs et al.*,pp. 162-175 and pp. 142-146 (“Assessing Responsibility When More than One Person Is Negligent”)
  1. **HARM AND CAUSATION**

***Class 16*: The Relationship of Harm and Factual Causation (Tuesday, Feb. 28)**

* Reading: *Dobbs et al.*,pp. 177-184 and pp. 194-202

***Class 17*: The Problem of Multiple But-For Causes (Thursday, Mar. 2)**

* Reading: *Dobbs et al.*,pp. 184-194

***Class 18*: Proximate Cause and the Length of the Causal Chain (Tuesday, Mar. 7)**

* Reading: *Dobbs et al.*,pp. 203-222

***Class 19*: Proximate Cause and Intervening Acts that Break the Causal Chain (Thursday, Mar. 9)**

* Reading: *Dobbs et al.*,pp. 222-239

***Class 20*: Review and Strategy of Causation (Friday, Mar. 10)**

* Reading/Assignment: TBA

**Note: Class is from 12:45 p.m. to 2:10 p.m.**

* 1. **THE PRIMA FACIE NEGLIGENCE CASE**

***Class 21*: Review and Strategy of the Prima Facie Negligence Case**

**(Tuesday, Mar. 14)**

* Reading/Assignment: TBA
  1. **DEFENSES TO NEGLIGENCE**

***Class 22:* Contributory and Comparative Negligence (Thursday, Mar. 16)**

* Reading: *Dobbs et al.*,pp. 243-256

***Class 23*:** **Exceptions to Contributory and/or Comparative Negligence (Tuesday, Mar. 21)**

* Reading: *Dobbs et al.*,pp. 256-268

***Class 24:* Assumption of the Risk and Preemption (Thursday, Mar. 23)**

* Reading: *Dobbs et al.*,pp. 269-282 and pp. 292-295

***Class 25*: Review and Strategy of Negligence Defenses (Friday, Mar. 24)**

* Reading/Assignment: TBA

**Note: Class is from 12:45 p.m. to 2:10 p.m.**

1. **CONCLUSION**

***Class 26*: Course Review (Tuesday, Apr. 4)**

* Reading/Assignment: TBA