

**ASSIGNMENTS FOR TORTS -- PROFESSOR KESSLER**  
**CASES AND MATERIALS ON TORTS, EPSTEIN, 10TH EDITION**

**First Week's Assignment:**

**Pages - 375-389, which are part of the assignment for the first week on Cause in Fact AND the Attached Hypothetical - "Charlie".**

- In this assignment, pay special attention to: Grimstad - 378;  
Kirincich - 379; and,  
Reynolds - 380)

Zuchowicz - 382

Then,

Kingston - 402  
Summers - 497  
Sindell - 410  
Notes - 418 - 419  
Skipworth - 419

Then

Herskovitz - 422  
Haft - 387

Cases that are noted for special attention are those that will certainly be discussed in class and, as a result, every student should know them in detail - facts, issue holding procedural setting, etc.

- 1) **Office Hours:** My office is in room 235. Office hours are from 1:30 to 3:30 M -Th, by appointment. Email: [speak2kess@yahoo.com](mailto:speak2kess@yahoo.com)
- 2) **Class Participation:** Students are expected to be prepared for class. Class participation is critical to learning. Hypotheticals will be used extensively to give students an opportunity to assess their knowledge of the materials. Students who do not try to answer hypotheticals will deprive themselves of critical feedback. Teaching with hypotheticals consumes time and is only worthwhile if students chose to use the resource to advance their learning. If you are not called on, think of what your own answer would be and compare it to the students who are responding. To ease the burden of preparation for class participation, students will have advance notice when they will or may be called on.

This hypothetical method is a continuous feedback mechanism through which students can evaluate their understanding of the materials. Each hypothetical is an informal examination. Each class is designed to provide a measure of how well you are mastering the material. If you are not prepared, you are wasting your time and the time of the other students. Each student must answer at least one question during the semester in a manner that shows that they are familiar with the assigned materials and are trying to answer the question. Failure to provide even one such answer will lead to a reduction in your final grade.

- 3) **Attendance:** Good and regular attendance is mandatory. Attendance will be taken and an excessive number of absences may lead to involuntary withdrawal from the class.
- 4) **Final Examination:** Closed book.
- 5) **Assignments:**
  - 1) Students will be expected to have carefully read the assigned cases prior to class and to be able to explain the holding of each major case or to use the rule of law they learned from having read that case.
  - 2) The assignment for the next class is always the reading of at least 30 pages from the last case discussed in the prior class.
- 6) **Teaching Goals:** This class will focus on two different areas of knowledge necessary to be an attorney.

The first includes: Understanding the nature of a rule of law; Extracting a rule from a case; Memorizing rules of law (Which Means Knowing It Cold; Integrating that rule with other rules - distinguishing/applying - melding individual rules into a system of regulated conduct.

The second includes: gaining the ability to use the law that you have memorized and analyzed to counsel clients and effect outcomes in disputes through the ability to use facts.

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## ASSIGNMENTS

Cause in Fact -- 375 - 389; 402 - 430

Negligence – Calculus of Risk: 98 - 102; 169 - 194  
Reasonable Person: 147 - 169  
Custom: 194 - 234  
Statutes: 234 - 257 \_Dram Shops  
Judge & Jury: 257 - 271

Res Ipsa -- 271 - 300

Plaintiff's Conduct Defenses  
Contributory Negligence: 301 - 325; 327  
Assumption of Risk: 333 - 365

Comparative Negligence - 355 - 371

Proximate Cause -- 445 - 495

Affirmative Duties  
Duty to Rescue - 509 - 529  
Duties of Owners &  
Occupiers of Land - 529 - 551  
Gratuitous Undertakings - 551 - 569  
Special Relations - 567 - 591

Emotional Distress -- 495 - 508; 68 - 77

Strict Liability (Ultra - Hazardous -- 103 - 114; 626 - 648

Products Liability – 711 - 821

Damages -- 901 - 907; 843 - 872; 881 - 901

## TORTS HYPOTHETICAL

**CHARLIE:** Charlie was a caveman. He lived about 9000 years ago. One cold winter day, his tribe was sheltered in a small valley, in a large cave on the East side of the valley. The valley was quite narrow at this point. The distance across the valley was no more than 100'. On the other side was a cliff. The cliff was climbable because of a series of easily reachable ledges. This emergency exit was of great value and was one of the reasons that the tribe returned to this valley every winter. Its value was that the tribe could use the series of ledges to climb out of the valley to escape predators or invasion by a more powerful tribe might escape. On this cold day in December, Charlie had climbed to a ledge that was 15' off the stone floor of this part of the valley. Sitting in front of the fire was his friend, Joe. Charlie called to Joe, "Watch me jump." Joe watched. Charlie jumped and badly twisted his ankle on the landing. The ankle was so badly sprained, that it was still limiting his movement two months later. As a result, he was eaten by a Sabre Tooth Tiger.

The tribal elders, the source of all authority in this tribe, were concerned about what happened to Charlie. They proclaimed that Charlie's death was a loss to the entire community because young athletic tribe members were of great value. And, announced that "This shall never happen again." creating a taboo. The punishment for violating a taboo is exile.