

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

1) **Office Hours:** My office is in room 235. Half an hour before and after each class. Also, available by appointment. Email: 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.

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. Failure to provide an answer to a class question that shows that you are familiar with the assigned reading and are making an effort to answer the question may 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 or use the rule of law they learned from having read that case *during the class session*.

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.

First Day's Assignment: Pages - 375-389 which are part of the assignment on Cause in Fact AND Question 1 & 2 of the attached hypothetical

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
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 - 551 - 569
Gratuitous Undertakings - 529 - 551
Special Relations - 567 - 591

Emotional Distress -- 495 - 508; 68 - 77

Strict Liability (Ultra - Hazardous -- 103 - 114; 626 - 637

Products Liability – 711 - 821

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

TORTS HYPOTHETICALS

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. Young athletic tribe members were of great value. They felt that Charlie's death was a loss to the entire community. They decided to put a taboo on the ledge from which Charlie jumped to prevent a recurrence. The taboo would force the exile of anyone who jumped from that ledge. Exile was a fierce deterrent since nobody could survive long alone.

Edna, the eldest person in the tribe, was concerned that this proposed taboo was a bad idea. She had a feeling that it would not solve the problem. The kids would still be hurt and the tribe would suffer without their assistance. But, nobody listened to her.

A year later, on a hot August day, Robbie jumped from a ledge higher (17') than "Charlie's" ledge. He broke his leg.

ASSIGNMENT FOR CLASS:

1 - Did Robbie violate the taboo? Does your answer tell you that Edna was right? Why?

2 - Can you construct a taboo that would prohibit Robbie from jumping off that would solve Edna's concerns.