

# TORTS 1735

Professor Barbara A. Lukeman

Fall 2017

Tuesdays (10:10am-12pm) & Friday (10:10am-12pm)

Room 308

## Contact Information

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**Student meetings:** Students are always welcome to e-mail me to schedule an appointment or telephone conference. They may also come by my office after class on Tuesdays and Fridays.

## Course Overview

This course provides an introduction to the basic principles of liability for harm caused to the person or property of others. Among the topics that the course will cover are the plaintiff's primary theories of liability (intentional tort, negligence, and strict liability), the relevant privileges and defenses that can be raised by the defendant, and the underlying principles or policies justifying and limiting liability. In particular, the course will focus on the concept of negligence and the refinements of negligence law.

## Course Goals

This course seeks to aid students in developing *inter alia* the following competencies, which have been identified as Learning Outcomes for Graduating Law Students:

- learn core rules and principles of tort law, including many tested on the bar examination [1(a), 2];
- understand the roles and differing characteristics of sources of law: the common law, legislation, administrative regulations, and judicial interpretation of legislation, regulations, and constitutions [3(a)];
- understand the processes through which law is made and changed and how those processes differ from one source of law to another [3(b)];
- extract rules and policy from cases, statutes, and administrative regulations and analyzing, interpreting and arguing differing interpretations of rules and statutes [5(a)];
- identify legal issues in facts and applying rules and policy to facts [5(c)];
- construct arguments and identify flaws in an argument [5(e)]; and
- present oral communications in a professional manner [7(a)].

## Materials

- The required casebook is Dan B. Dobbs, Paul T. Hayden, & Ellen M. Bublick, *Torts and Compensation Personal Accountability and Social Responsibility for Injury* (Concise Edition) (7<sup>th</sup> Ed. 2013) [hereafter *Dobbs*].
- Supplemental loose leaf materials will also be distributed.

## Class Attendance and Participation

- I will call on students regularly during class and will consider class attendance, preparation, and participation when writing student recommendations and with regard to grading, as described below.
- If for any reason you are unprepared or otherwise do not wish to be called on, please see me at the podium before class and request a “pass” for the day. Each student may employ two (2) passes.
- I may adjust by one-half grade (B to B+ or B+ to B, etc.) the course grade of (1) any student whose contributions to class discussion are notable and exceptional (upward adjustment) or (2) any student who is unprepared when called upon or otherwise declines to participate in class discussion (downward adjustment). In-class use of the Internet is prohibited and may warrant a downward adjustment.
- A sign-in sheet will be available for each class. The sign-in sheet will be used to record and track attendance; falsification will be deemed a violation of the Code of Academic Conduct. Any student who misses 20% or more of scheduled classes (more than five days) based on the sign-in sheet records is presumptively not in good and regular attendance and may be required to withdraw from the course or receive a failing grade, upon referral to and determination by the Office of Student Affairs. *If you are unable to attend class due to illness, please send me an email, and your absence will be excused. I do not excuse absences for any reason other than student illness, although the Office of Student Affairs may do so if you are referred for excessive absences. I thus encourage you to retain documentation of any non-illness absence that you believe may ultimately be excusable (such as job interview, family emergency, or the like).*
- I maintain a course TWEN site (available through [www.lawschool.westlaw.com](http://www.lawschool.westlaw.com), assistance available at [west.twensupport@thomson.com](mailto:west.twensupport@thomson.com) or 1-800-486-4876) and request that students consider posting questions to the Discussion Forum on TWEN instead of e-mailing me directly. This allows all students to benefit from any needed clarification.
- Please note the following schedule adjustments:
  - Class will not be held on **Friday, October 6, 2017**. A make-up class will be announced.

### **Examinations and Grading**

- Course grades will be based upon a closed book final examination with class participation factored in as described above.
- Grade distribution will conform to the grading curve in effect at the Hofstra Law School.

### **Reading Assignments**

- For the first class, please read *Dobbs* pages 1-11, 19-26; 29-34.
- For our second class, please read *Dobbs* pages 35-50.
- Going forward, you may assume that assignments follow the syllabus unless announced otherwise in class.

*Note: Unless otherwise indicated, all page references are to the required casebook, Dobbs.*

### ***Course Outline***

An outline of major topics to be covered follows. Reading page assignments are listed. Time permitting, additional topics and reading page assignments will be provided as a supplement (Part IV) to the syllabus.

**Part I**  
**Intentional Torts**

<b>Tuesday, Aug. 22:</b> Introduction & Elements of Battery	pp. 1-11, 19-26; 29-34 ( <i>*read for first class</i> )
<b>Friday, Aug. 25:</b> Battery (Intent) & Assault	pp. 35-50 ( <i>*read for second class</i> )
<b>Tuesday, Aug. 29:</b> False Imprisonment, Torts to Property and § 1983	pp. 51-61
<b>Friday, Sept. 1:</b> Defenses to Intentional Tort Causes of Action	pp. 63-76
<b>Tuesday, Sept. 5:</b> Defenses to Intentional Tort Causes of Action (cont.)	pp. 76-88

**Part II**  
**Negligence**

**A. Duty**

<b>Friday, Sept. 8:</b> Reasonable Person Standard	pp. 91-107
<b>Tuesday, Sept. 12:</b> Statutes & Regulations (Negligence Per Se)	pp. 108-120

**B. Breach**

<b>Friday, Sept. 15:</b> Risk/Utility Formula & Multiple Parties	pp. 121-146
<b>Tuesday, Sept. 19:</b> Proving Negligence: Inference & Custom	pp. 146-162
<b>Wednesday, Sept. 20:</b> Res Ipsa Loquitur	pp. 162-175

**C. Causation**

<b>Tuesday, Sept. 26:</b> Compensable Injury & Cause in Fact	pp. 177-191
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**Friday, Sept. 29:** Cause in Fact pp. 191-202  
(cont.)

**Tuesday, Oct. 3:** Proximate Cause pp. 203-222

**Friday, Oct. 6: NO CLASS NO CLASS [MAKE-UP WILL BE ANNOUNCED]**

**Tuesday, Oct. 10:** Proximate Cause pp. 222-239  
(cont.)

### **Part III** **Special Topics**

#### **Defenses**

**Friday, Oct. 13:** pp. 241-268  
Contributory/Comparative Fault

**Tuesday, Oct. 17:** Assumption of pp. 269-282  
the Risk

*\*\*Skip Chapter 11, Defenses Not on the Merits\*\**

#### ***Limiting or Expanding the Duty of Care According to Context or Relationship***

##### **A. Limiting Duties According to Class or Status of the Parties**

**Friday, Oct. 20:** Landowners' pp. 297 -328  
Duties

**Tuesday, Oct. 24:** Medical pp. 329-355  
Malpractice

*\*\*Skip Chapter 14, Family Members & Charities, and Chapter 15, Governmental Entities & Officers\*\**

##### **B. Relationships or Their Absence**

**Friday, Oct. 22:** Nonfeasance (No pp. 399-414  
Duty to Act)

*\*\*Skip Chapter 17, Contract & Duty\*\**

**Tuesday, Oct. 27:** Duty to Protect pp. 435-449

**Friday, Oct. 29:** Duty to Protect pp. 449-464  
(cont.)

##### **C. Limiting Duties to Protect Against Special Types of Harm**

**Tuesday, Nov. 5:** Emotional Harm pp. 465-494

**Friday, Nov. 10:** Prenatal Harms pp. 495-505

*Note: Time permitting, select skipped chapters may be the subject of brief explanatory lecture to identify their significance and describe why they were not covered.*

*\*\*Syllabus supplement Part IV (strict/products liability) will follow.\*\**