NATIONAL PARALEGAL COLLEGE

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Torts and Personal Injury

PLG-101-1707

Syllabus and Course Guide

The NPC Torts and Personal Injury course meets 15 times over the course of the 8-week term in the NPC Interactive classroom. Each session consists of about 60 minutes of online lecture by the course instructor. After the lecture, students may ask questions and make comments on the material being studied.

Classes for this course occur on Mondays and Wednesdays at 8:00 Eastern time, in accordance with the lecture scheduled on this syllabus. The first class is on Monday, July 10, 2017.

All class sessions are recorded and may be viewed by students at any time.

To successfully complete the course, each student must satisfactorily complete:

- 5 written assignments
- 3 examinations

Unless an extension has been taken pursuant to the NPC Extensions Policy (see the end of this syllabus), all assignments and exams must be submitted by the course deadline which appears later in this syllabus. No extensions may be taken or granted unless the student has submitted one or more assignments or exams in advance of the original deadline. In addition, extensions are subject to grade penalties and are limited to no more than 30 days from the date of the original deadline.

Please note that students are strongly encouraged to do their work as the course progresses rather than waiting for the days or weeks before the deadline to do all of their work. It is also critically important that students realize that:

1. A grade of "Incomplete" is the same as an "F" and is a failing grade.
2. A grade of "Incomplete" will result in a reduction in the student's grade point average.

3. Student may have to pay to re-take or replace a course for which a grade of Incomplete is assigned.
4. Two consecutive Incompletes may subject the student to dismissal from the college under NPC's chronic incomplete policy.
5. Students with a GPA of under 2.0 are not eligible to receive federal financial aid and cannot graduate until their GPA is at or above 2.0.

If a student is having trouble completing the course, the student is strongly encouraged to contact his or her student mentor or teacher as early as possible.

Please note also that:

- A student who receives an incomplete on his or her first course may be dismissed from NPC.
- A student who fails to complete at least one weekly interaction during the first 14 days of the course will automatically be withdrawn from the course per NPC policy. The student may re-join the class by prompt notification to NPC and by prompt completion of an interaction shortly thereafter.

INSTRUCTORS:

The instructors for this course are:

- Lecturer: Eric Martinez (ericm@nationalparalegal.edu)

- Grader: Shannon Southard (shannon@nationalparalegal.edu)

COURSE DESCRIPTION:

Tort law is one of the most important bodies of U.S. law, because it governs basic everyday human interaction. Tort law is one of the most important fields of paralegal employment as well. This course will provide our students with a general understanding of the laws dealing with civil wrongs and the remedies for those wrongs, including intentional torts, negligence, liability of principals for the actions of their agents, strict liability, products liability, nuisance, defamation, invasion of privacy, and various factors that affect the right of a plaintiff to bring suit against a defendant. The course will also focus attention on the nature of personal injury litigation, its documentation and practices, assessing and evaluating claims of damages, losses, and the formalities of adjudication and/or settlement. Because tort law arises from, and is so deeply rooted in, everyday life, it is one of the most interesting, as well as relevant, areas of law that you will study.

COURSE OBJECTIVES:

At the completion of this course, the student will be able to:

- Describe the rules of intentional torts and apply them to specific fact patterns.
- Describe the rules regarding defenses to allegations of such torts and apply them to specific fact patterns.
- Draft a memorandum to a court or supervising attorney applying the elements of a cause of action to a real life scenario.
- Research the elements of any cause of action under state or federal law, using statutory and/or case law.
- Apply the rules regarding special duties owed, including those by land owners, common carriers, innkeepers, etc. to hypothetical fact patterns.
- Apply the rules of strict and product liability, in product liability cases, including failure to warn, mis-design and mis-manufacture.
- Evaluate whether a defamation action can be successfully brought in a hypothetical fact pattern.
- Apply the elements for causes of action in fraud, malicious prosecution, invasion of privacy and interference with commerce, to hypothetical fact patterns.

READING ASSIGNMENTS:

All reading assignments refer to the NPC courseware, including the interactions attached to each subchapter. Cases and/or statutes that are specifically mentioned in the syllabus are required reading. The texts of these cases and/or statutes may be accessed directly from the courseware. In addition to the assigned courseware and cases, students should familiarize themselves with the various legal documents listed for each lecture. These documents can be found on the "Documents and Slides" page on the NPC student website. Some, but not all, of these documents will be discussed in class. Reading assignments for each class should be completed prior to the class.

In addition to the courseware's electronic form, you may also order a book version of the courseware that includes:

1) **The courseware**
2) **All lectures slides**

You may order this book at: www.freewebstore.org/npc-courseware-books/

This is not mandatory, but may be useful for people who like to read from hard copies as it will save you the time and ink/paper necessary to print out the courseware and slides.

School Virtual Library

All NPC students are encouraged to take advantage of the NPC virtual library, which can be accessed from the "course materials" page on the student menu or directly through this link: http://nationalparalegal.edu/Students/VirtualLibrary.aspx.

The NPC virtual library gives students access to Lexis Advance, which is one of the premier online legal databases in the world. It is expected that most legal research can and should be done through Lexis Advance. Online tutorials in the use of Lexis Advance are available on the lower right portion of the default login screen for Lexis Advance.

NPC also subscribes to the Library Information Resources Network (LIRN), which allows our students access to scores of databases containing hundreds of thousands of academic articles and publications. For research that is not legal in nature (for example, for business and general education courses), it is anticipated that students will use LIRN to access reliable academic sources for research papers. Online training in the use of LIRN resources is available here: http://www.lirn.net/training/.

NPC students also have access to Computer Assisted Legal Instruction (CALI) lessons. Unless assigned in the course syllabus, these are optional, but can be very helpful.

WRITTEN ASSIGNMENTS:

At the outset of the course, five assignments will be posted on the "assignments and exams" page. The 5 assignments will cumulatively count for 40% of the student's grade for the course.

Please compose your answers to assignments on your own computer, remembering to save your work frequently. Once your assignment is complete, please submit by uploading it pursuant to the directions on the "Assignments and Exams" page within the NPC student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

Each submitted assignment will be graded on the following scale:
4 - Excellent
3 - Good
2 – Satisfactory
1 – Poor
0 – Not acceptable (must resubmit)
(Half-points may also be awarded in assignment grading.)

Please see the "Assignment Grading Rubric" (the next page of this syllabus) for more detailed information as to how assignments are graded and the key elements of assignments that instructors look for when grading assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments, where appropriate.

To the extent possible, it is recommended that students complete the assignments as the course proceeds rather than waiting until after the course ends.

Assignment Grading Rubric

Factor	4 (Excellent)	3(Good)	2(Satisfactory)	1 (Poor)	0 (no credit)
Thoroughness	Answers all questions in the exercise completely and in the appropriate order.	Answers all questions in the exercise but not completely and/or not in the appropriate order.	Answers most of the questions in the exercise but not completely and/or not in the appropriate order.	Does not answer many of the questions in the exercise but does make some reasonable effort to do so.	Makes little or no reasonable effort to answer the questions posed in the assignment.
Demonstrates Understanding of the Assignment and has come to an appropriate conclusion	Response demonstrates a thorough understanding of the exercise and the student has justified and enunciated an appropriate conclusion.	Response demonstrates an understanding of the exercise and comes to a conclusion.	Response demonstrates some understanding of the exercise. The conclusion that the student comes to may not be appropriately justified by the rest of the essay.	Response demonstrates some understanding of the exercise but shows a high level of confusion on the part of the student. The student's conclusion, if any, is not supported by the rest of the essay.	Response demonstrates a very poor understanding of the subject matter presented by the assignment.
Documentation/ Legal research (note: For assignments, sources should be those obtained through legal research; for exam essays, legal principles learned in class or the courseware is sufficient.)	Student has cited at least two excellent sources and has applied them appropriately. Appropriate sources are documented and well cited and well integrated.	Student has cited one excellent source or two or more good sources but has missed at least one excellent source. Sources are integrated well in the assignment.	Student has cited appropriate sources but has missed the best available OR student has cited good sources but has done a poor job of integrating them.	Student has cited poor or inappropriate authorities or has failed to establish the relevance of the sources that he or she has cited.	Student has not cited any legal authorities or has cited authorities that are irrelevant.
Organization	Essay is organized very well; the reader can clearly understand where the essay is going at all points and a cohesive easy-to-follow argument is made in the essay. Separate paragraphs are used for separate ideas.	Essay is well organized. The essay is coherent, though may not flow freely. Different components of the essay are broken up appropriately.	Essay shows some level of organization, but is difficult to follow. The essay is not as focused as it should be. Essay may go back and forth between points without using new paragraphs.	Essay is poorly organized and is very difficult to follow. The student did not appropriately separate thoughts and did not properly organize the essay.	Student's essay is in chaos. There is no reasonable attempt to organize the essay coherently.
Critical Thinking and Analysis	Shows excellent critical thinking and analysis. The student is able to apply the cited law to the facts of the given case in a clear and convincing manner.	Shows good critical thinking and analysis. The student's points are well argued and well supported.	Shows adequate critical thinking and analysis. The student's points are supported by logic, but are not exceptionally convincing.	Shows minimal critical thinking and analysis. The student's arguments are weak and unconvincing.	Shows no effort at critical thinking or analysis. The student's points make no sense.

Credit may also be taken off for poor spelling or grammar.

EXAMINATIONS:
Examinations will be posted on the NPC website when indicated on the syllabus of the course. The examinations consist entirely of "short essay" questions. The 3 examinations will cumulatively count for 60% of the student's course grade.

Examinations are non-cumulative; they cover only the material that has been covered since the previous examination. The instructor will provide specific information regarding the content of each examination as the examination time approaches.

All examinations are timed. A student may begin the examination any time after it is posted to the NPC website. Once begun, the examination must be completed within 4 hours.

Examinations will be graded on a conventional 0-100 scale. The number of points each question is worth is equal to 100 divided by the number of questions on the examination.

For each examination question, full credit will be awarded if the student:

1) Correctly identifies the legal issue(s) presented by the question
2) Applies the correct law to the legal issue(s) presented (note: full credit may also be awarded if the student's answer comes to an "incorrect" conclusion if the student bases his or her analysis on correct law and supports his or her position in a convincing manner)
3) Presents his or her answer in a clear and understandable manner

The amount of partial credit to be awarded, if any, for an answer that is not complete and correct is at the discretion of the instructor. Instructors are instructed to award partial credit that is proportional to the level of knowledge and legal skill displayed by the student in answering the question.

Please note that, even if not directly stated in the question, you must give reasons for your answers to open ended questions. One word answers such as "yes" or "no" or answers that merely restate the question without explaining the answer given will not be credited.

The following factors are generally NOT taken into account in grading examinations:

Legal research; Although research is a key component of assignments, examinations are graded on the student's knowledge of the legal concepts taught and do not require independent research.

Grammar and spelling (unless they impact the ability of the graded to understand the student's answer); Although these are essential skills for a paralegal, examinations test legal knowledge and ability to apply the skills learned, not necessarily the ability to write professional legal memoranda (assignments test this skill). In addition, because exams are taken under time constraints, we would rather

see the students spend their time spotting legal issues and applying applicable law than on proofreading answers for typos and grammar mistakes.

For more information on assignments and examinations, please see the *NPC Student Handbook*.

To the extent possible, it is recommended that students complete the exams as the course proceeds rather than waiting until after the course ends.

Early Assignment Submission Incentive Policy

NPC encourages students to submit their assignments as early as possible. In order to facilitate early submissions, students are advised that in exchange for submitting assignments in the first six weeks of the course, they will be awarded the opportunity to re-do or fix up an assignment after it is graded in order to increase the grade.

The following limitations apply:

1. When resubmitting an assignment, a student will only be able to increase their grade to a maximum of 3 or by one full point, whichever is greater. For example, if a student submits an assignment within the first six weeks of the course and receives a 1.5 or a 2.0, the student may make corrections suggested by the instructor and can potentially raise the grade to a maximum of 3. A student who initially receives a grade of 2.5 may raise the grade as high as 3.5 with a resubmission.

2. A student may exercise this option up to two (2) times per course.

3. Students are not guaranteed the maximum increase if their corrections do not merit such a change. A grader has the discretion to award a smaller or no increase if the student does not follow the graders' feedback.

To resubmit an assignment under this policy, please contact the course grader.

NPC PLAGIARISM POLICY

All work done by NPC students on assignments, examinations and research projects is expected to be their own work. Quoting other sources as part of analyzing a subject is desirable and necessary in many cases. However, when other sources are quoted or used, they must be properly attributed to the original sources. This applies to direct quotes of sources and to paraphrasing other sources or using ideas obtained from other sources even if the exact text it not used.

Plagiarism means using the materials of others without appropriately citing the source and is an academic offence.

Under the NPC plagiarism policy, a student may not, as part of any assignment or exam submission:

1) Quote any text from any other source without:

    a) putting quotation marks around the quotes material;
    AND
    b) appropriately citing the source of the quote.

2) Pass off the work of another as his or her own, even if the student does not directly quote from the other source.

Please note that the NPC plagiarism policy does not mean that you cannot quote language from the courseware, textbook or slides as part of an answer to a question on an exam. These are resources that are meant to be used on an exam when applied in an appropriate manner. However, quoting any sources ***without attribution*** is plagiarism.

For more information regarding the NPC Plagiarism Policy, penalties and due process rights where plagiarism is alleged, please see the NPC Plagiarism Policy at:

http://nationalparalegal.edu/pages/PlagiarismPolicy.pdf

NPC STUDENT MENTOR

Each NPC student is assigned a student mentor upon enrollment. Your student mentor is a resource that can and should be drawn on if you need academic assistance. This includes advice on studying, help with assignments, general academic questions, etc. You should have received an email from your student mentor upon enrollment. If you have not received such an email or do not know who your student mentor is, please contact Connie Erpelding at connie@nationalparalegal.edu or 800-371-6105 x 115.

WEEKLY INTERACTION REQUIREMENT

To ensure that all students are involved and participating in the course as the course moves forward, each student enrolled in this course must, at least once during each week, either:

1) Attend a live lecture and take and pass a short quiz given during class (where applicable)
OR
2) Submit at least one assignment
OR
3) Take at least one examination
OR
4) Answer a weekly "interaction" question or questions that will be posted on the "Assignments and Exams" page.

The weekly "interaction" question(s) will be straightforward and will cover material covered in class each week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

The student's response (which is necessary only if the student does not attend a live lecture or take an exam or submit an assignment in the given week) will be graded on a pass/fail basis. The interaction questions will be posted no later than Monday of each week and must be answered on or before the following Sunday.

Any student who does not fulfill this requirement during a given week will receive a reduction in his or her over-all grade of 2 percentage points (10 raw points).

Please also note that a student who does not fulfill an interaction during the first two weeks of a course will be automatically withdrawn from that course, as it will be assumed that the student who does not interact during the first two weeks has no intention of attending the course. The student may re-join the class by prompt notification to NPC and by prompt completion of an interaction shortly thereafter.

If an emergency prevents attendance in this period, please email Susan Israel (susan@nationalparalegal.edu) or Stephen Haas (shaas@nationalparalegal.edu) as soon as possible.

Fulfilling the weekly interaction requirement is particularly important for students receiving financial aid. Federal regulations require the school to withdraw students from financial aid who go 14 consecutive days without fulfilling an interaction requirement and to return any outstanding financial aid money to the government unless the student interacts with the school prior to the time that the withdrawal is completed. If you are unable to fulfill a weekly interaction requirement, it is critical that you stay in contact with the school so that other arrangements can be made.

COURSE GRADES

The following formula will be used to calculate final grades

Cumulative exam scores + (assignment points x 10) = raw score

Because exams are worth up to 100 points and assignments up to 4 points each, the maximum raw score is 500. 10 raw points (2% of the raw point total) are deducted for each missed weekly interaction. Extra credit may be available for certain in class activities as may be announced by the instructor.

The following conversion chart is then applied based on the total raw points you have earned:

>474	=	A+
445-474	=	A
420-444	=	A-
395-419	=	B+
365-394	=	B
340-364	=	B-
315-339	=	C+
285-314	=	C
260-284	=	C-
230-259	=	D
<230	=	F

OPTIONAL STUDY SESSIONS

In addition to the 15 classes listed below, instructors and/or graders may run 1 or 2 additional study sessions to discuss assignments and/or the course materials. Attendance and participation in at these sessions is optional and they will be recorded for those who cannot make it to the live sessions.

Please keep an eye on the course message boards to details as to when these will be held.

All examinations and assignments are due no later than Sunday, October 1, 2017 at 11:59 PM EASTERN TIME; that's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.

Please see the end of this syllabus for a note on NPC course extensions policy!

Lecture and reading assignments schedule

Class 1 **Monday, July 10, 2017**

In this class, we will open our torts discussion with the intentional torts against the person; the various causes of action that case arise when one person undertakes a voluntary action that causes harm to another person. We will discuss the various intentional torts against a person that exist under the common law, such as assault, battery and false imprisonment. We will go through the various elements involved in these torts and use some hypothetical examples to illustrate their application.

Courseware Reading:

Torts 1 Chapter 1: Torts against Person:
- Battery
- Assault
- False Imprisonment
- Intentional Infliction

Cases:

Garratt v. Daily
This interesting case, with an odd fact pattern, illustrates the important difference between "intent" and "motive." Just because one did not want to hurt a person, does not mean that one did not intentionally do so. In addition, the court did indicate that even very young children were capable of forming the intent to commit an intentional tort. In all, this case is a great starting point in our discussion of intent.

Martin v. Houck
This case deals with the tricky issue of when a police officer can be sued for false imprisonment for making a baseless arrest. Although the court recognized the important interest of maintaining efficient and effective law enforcement, the court could not allow a bad-faith arrest to be protected from a charge of false imprisonment. We will discuss the policy considerations on both sides of this case as part of our false imprisonment discussion.

Documents:

None

Assignment 1 can be completed at this point.

Class 2 **Wednesday, July 12, 2017**

In class 2, we will move on to intentional torts against property; i.e., trespass to land, trespass to chattel and conversion. We will also discuss the doctrine of transferred intent and how it applies to all intentional torts. We will also discuss some of the pre-trial motion practice that occurs in civil cases and take a look at a pre-trial brief and discuss some of the tactics that are important to keep in mind during motion practice, which is often a key stage in tort litigation. We will also spend some time in this class discussing how to draft some of the more important documents involved in commencing a civil lawsuit, including a summons and complaint.

Courseware Reading:

Torts 1 Chapter 2: Torts against Property:
- Trespass to Land
- Trespass to Chattels
- Transferred intent

Cases:

Russel-Vaughn Ford v. Rouse
Is stealing the keys to a car the same as stealing the car itself? What about depriving the owner of access to the car by not returning his keys to him? Is that conversion? What if it was only done as a joke and not with intent to permanently keep the car? These are the questions the court had to deal with in this case that involved a failed car purchase transaction and one very expensive practical joke.

Talmage v. Smith
This is the classic case of "Transferred Intent." When a person intends to commit a tort against one person and commits a tort against another; or when the person tries to commit one intentional tort and instead commits another, liability for the resulting intentional tort will be applied. This case demonstrates such a scenario.

Documents:

- Sample Car Accident Complaint

Assignment 2 can be completed at this point.

Class 3: (Assignment/ Lexis walkthrough) Monday, July 17, 2017

This class will consist of a Lexis tutorial/ assignment walkthrough. The instructor will use a research assignment from a past or current course to demonstrate the manner in which an assignment should be researched and composed.

The instructor will walk the students through the various Lexis databases and explain to students how to most efficiently use the Lexis system to complete research assignments. Various general aspects of navigating Lexis, including Shepardizing, seeking and finding appropriate search databases, getting a document by citation, etc., may be explored.

The Instructor will also discuss how to most effectively plan, outline, organize and draft research assignments. Model answers and/or past student submissions may be used to illustrate what a "4" assignment looks like and how to compose one.

Class 4 **Wednesday, July 19, 2017**

We will spend this class discussing the various defenses that exist to intentional torts, such as consent, self-defense and defense of property. Included in this discussion will be an analysis of when these defenses can be looked at subjectively (i.e., through the eyes of the actual defendant) and when the "reasonable person" test is applied to these defenses.

Courseware Reading:

Torts 1 Chapter 3: Defenses to Torts against Persons/Property:
Consent- Persons
Consent Privileges- Property
Self Defense

Cases:

O'Brien v. U.S.S. Cunard
This case deals with the issue of implied consent. Consent is often a defense to a suit for a non-life threatening battery. What actions imply consent though? Can a person use his or her powerless situation as a reason to negate an action that implied consent? That is what this case is about.

Katco v. Briney
This is the classic "gun trap" case. Annoyed and alarmed by a rash of burglaries of his barn, Mr. Briney decided he'd had enough. He rigged his bard door and a gun so that any intruder would be shot upon entry. Unfortunately for Marvin Katco, that turned out to be him. In the subsequent lawsuit, the court needed to decide if such a gun trap was justified. When reading this case, think about whether the outcome would have been different if the building in question would have been Mr. Briney's home rather than his barn. Thinking of an answer to that question may help crystallize the rules of self-defense and defense of property in your mind.

Documents:

None

Class 5 **Monday, July 24, 2017**

We will begin our discussion of the tort of negligence with a discussion of the first two elements relevant to the negligence tort: The duty of care owed by people to society and when a breach of that duty has occurred. We will discuss the foreseeability prerequisite to liability for negligence and some of the doctrines that have developed to guide courts in deciding negligence cases. We will also touch on the theory behind liability for negligence and how that theory was expressed in the seminal case of Palsgraf v. L.I.R.R.

Courseware Reading:

Torts 1 Chapter 4: Negligence Section 1:
- Introduction to Negligence
- Duty of Care 1
- Duty of Care 2
- Breach of Duty 1
- Breach of Duty 2

Cases:

Palsgraf v. Long Island Railroad
This is the seminal case in the area of negligence. This case, between the majority and dissenting opinions, sets forth and discusses the theory of negligence law and when it should be applied. We will look to this case as the basis for our discussion of negligence law.

United States v. Carroll Towing
How far is one obligated to go in assuring that one does not damage another person? In this case, the great Judge Learned Hand put this question into mathematical form, devising an algebraic formula that would determine whether someone, in fact, breached his duty to another. We will discuss how the facts and ruling in this case present the dilemma that is so often faced by people who own or maintain dangerous instrumentality.

Documents:

- None

Class 6 **Wednesday, July 26, 2017**

We will continue with our discussion of the rules of negligence. We will start the class by going through the causation element of the negligence tort and the doctrines related to causation that have developed to protect various interests throughout the years. We will also discuss the various types of damages that exist in negligence actions, along with the various remedies that are involved to compensate an aggrieved plaintiff in a negligence action. We will close the class by taking a look at a typical complaint for negligence and we will focus on how each of the elements of negligence is and must be alleged in a civil complaint.

Courseware Reading:

Torts 1 Chapter 5: Negligence Section 2:
- Cause and Harm
- Proximate Cause
- Indirect Causation

Cases:

Summers v. Tice
In this interesting case, logic and fairness are pitted against the fundamental proposition in American civil law that the plaintiff must prove its case! If one of two negligent defendants definitely caused the plaintiff harm, but it is impossible to prove which one, should the defendants still be liable? We will look at this case and analyze whether courts should allow fairness considerations to revamp the basic rules of tort litigation. There is hardly a better framework for posing that question than that presented by this case!

Benn v. Thomas
In this case, the court had to look at the distinction between the damages rule, which looks at foreseeability of the extent of the harm as irrelevant (the "eggshell" rule) and the causation rule, which looks at foreseeability as very relevant. This case involves a case that's on the border between the two. Is the court splitting hairs here or is there a fundamental difference between the analysis of causation and damages?

Documents:

- None

EXAMINATION #1 will be posted at this point.

NOTE: THERE WILL BE NO CLASS ON MONDAY, JULY 31

Class 7 **Wednesday, August 2, 2017**

In this class, we will begin a discussion of special duties that can attach to various members of society by operation of law or because a person has impliedly undertaken a special duty. Included in this discussion will be the rules of when a person has a responsibility to act on behalf of a third party. We will also discuss the scenarios under which one can be responsible for the negligent actions of another person.

Courseware Reading:

Torts 1 Chapter 6: Special Duties Section 1:
- Statutory Duties
- Aid in Emergency
- Contractual Agreements/ Common Carriers
- Actions of Third Persons 1
- Actions of Third Persons 2

Cases:

Christensen v. Swenson
When analyzing a *respondeat superior* claim, it is critical that one be able to determine what actions are and are not within the scope of one's employment. What about driving to a café during an unscheduled coffee break? Is that within the scope of one's employment? Reading how the Utah Supreme Court attacked this question can give one insight into the way in which courts analyze tort law and the deference that must be given the triers of fact in civil cases.

Perry v. S.N.
This case applies the concept of negligence *per se* to a failure to report case. In this case, a daycare center was sued for the actions of its employee and the failure to report that action. Since failure to report child abuse in a daycare center is a crime, the plaintiff argued that negligence *per se* should apply, settling the issue of liability. However, was the failure to report what actually cause the injury in this case? That is one of the interesting questions the court had to grapple with in determining whether to apply *negligence per se.*

Documents:

None

Class 8 **Monday, August 7, 2017**

In this class we will start by continuing our discussion of situations in which people are assigned special duties of care, failure to live up to which can lead to liability for negligence. We will discuss special responsibilities imposed on land occupiers to protect their guests (and even trespassers in some cases) from harm. We will also discuss the controversial tort of negligent infliction of emotional distress. We will also look at a form that some jurisdictions have to allow a plaintiff to fill out a simplified complaint for an injury suffered by a guest. These simplified forms are sometimes used when litigation is streamlined in cases that may be relatively low complexity, straight forward cases.

Courseware Reading:

Torts 1 Chapter 7: Special Duties Section 2:
Land Occupiers
Lessors
Emotional Distress

Cases:

Smith v. Green
In this case, the Massachusetts Supreme Court set forth the landlord's duty to either warn tenants of dangerous conditions or to fix those conditions. This can be applied as long as the landlord should have known of the defect. We will discuss how this rule has immense practical ramifications in landlord-tenant law.

Reilly v. United States
This case deals with the modern view of the elements for torts involving infliction of emotional distress. Here the court had to grapple with the question of whether medical malpractice causing damage to a child could allow the *parents* a cause of action for negligent infliction of emotional distress.

Document:

None

Class 9 **Wednesday, August 9, 2017**

In this class, we will discuss the various doctrines that can limit the liability of a party who was negligent and whose negligence caused injury. We will also note that some of these defenses are only partial defenses, while others are complete bars to recovery.

Courseware Reading:

Torts 1 Chapter 8: Defenses to Negligence:
Contributory Negligence
Comparative Negligence
Assumption of Risk

Cases:

Li v. Yellow Cab
This case illustrates an example of the application of the pure comparative negligence theory that is the rule that is followed by most of the country today.

Barnes v. N.H. Karting Association
The interesting and very important question in this case was whether signing a form waiver of liability before engaging in a dangerous activity (in this case, practice race car driving) constitutes an assumption of risk that will release all liability on the part of the activity's organizer. The concept of waivers of liability in participating in dangerous activities is common, from ski resorts to skydiving companies. Does this inherently release liability based on assumption of risk or should the organizer be forced to rely on some sort of contract defense to limit liability.

Documents:

Sample Diet Drug Litigation forms

Assignments 3 and 4 can be completed at this point.

Class 10 **Monday, August 14, 2017**

In this class, we will focus on the doctrine of strict liability. This is the controversial concept of liability without any fault on the part of the defendant. We will discuss the limited circumstances in which strict liability is applicable. We will also begin our discussion on one of the largest areas of tort law today: product liability. We will discuss briefly the theory or product liability and how it ties in with the concept of strict liability.

Courseware Reading:

Torts 2 Chapter 1: Strict Liability:
Introduction to Strict Liability
Injuries Inflicted by Animals
Abnormally Dangerous Activities

Cases:

Rylands v. Fletcher
This is the seminal case in the area of strict liability. In the case, a canal flooded a neighbor's mine through no fault of the canal owner. Nevertheless, the court held the canal owner liable because operating a canal is an "ultra-hazardous activity." Therefore, the operator of the activity should be held strictly liable for the injuries caused by it. When reading this case, think about the rationale behind strict liability and whether it makes sense. Why does it ever make sense to hold someone liable for something that was not his or her fault? That is one important question that we will discuss.

Jividen v. Law
This case involves an application of the "one free bite" rule, where the court refused to apply strict liability in a case where there was no inherent reason to know that a farm animal was dangerous before it committed an assault that gave rise to the lawsuit.

Document:

None

Class 11 **Wednesday, August 16, 2017**

We will turn our attention to the area of products liability. We will touch on the circumstances and theories under which a manufacturer is liable for harms caused by their products after they have been placed in the stream of commerce. We will also discuss the relationship between strict liability and products liability, why this connection is necessary and how it applies. Other issues to be discussed will include the different forms which product liability takes, including breach of warranty, failure to warn, etc. and the liabilities of merchants who handle products at various stages of the stream of commerce. We will also discuss some of the forms relevant to product liability actions.

Courseware Reading:

Torts 2 Chapter 2: Products Liability:
Liability for Intentional Torts, Negligence and Strict Liability
Defects
Liability and Defenses to Products Liability
Breach of Warranty

Cases:

MacPherson v. Buick
This case discusses the issue of whether a merchant late in the chain of commerce should be responsible for the negligence of those earlier in that chain. If a car manufacturer puts defective tires on a car, is that the fault of the car manufacturer or should only the tire manufacturer be held liable? This question was pondered and discussed in this very important case.

Greenman v. Yuba Power Products
Although this is only a California appellate court case (not even the State Supreme Court), it is a very significant case in the annals of American tort law. This case first announced the doctrine, since then picked up around the country as well, of strict products liability. That is, any mis-manufactured product can lead to no-fault liability for the manufacturer. Once again, the key question is… why? We will discuss how economic and mathematical concepts contributed to this rule being enacted and whether those arguments really justify the rule.

Documents:

- Sample Radiation Exposure Compensation Form
- Vioxx– Master Complaint
- Vioxx- Answer

EXAMINATION #2 will be posted at this point.

Assignment 5 can be completed at this point.

Class 12 **Monday, August 21, 2017**

At the outset of this class, we will briefly touch on the tort of nuisance. Then, we will launch into our main discussion, the tort of defamation. We will examine the elements of defamation and discuss the historical backdrop against which the controversial tort has developed. We will discuss the elements of defamation and the circumstances under which they are met. We will also go into various defenses that exist against a charge of defamation.

Courseware Reading:

Torts 2 Chapter 3: Nuisance
Nuisance

Torts 2 Chapter 4: Defamation:
General Principles of Defamation 1
General Principles of Defamation 2
Defenses to Defamation

Cases:

Romain v. Kallinger
The court in this case had to analyze the difficult question as to when a statement (or book, in this case), crosses the line from mere innuendo to defamation. There is no question that putting forth an implication that another person did something wrong can be defamation. However, it must be clear from the statement what the implication is and who the implication is directed against. This case deals with the question of how to walk that tightrope.

Neiman-Marcus v. Lait
This case deals with the difficult concept of group defamation. If you defame a large group of people, have you defamed each member of the group? Obviously, saying that "all men are bad" does not open one up to over 3 billion causes of action for defamation. But, where does one draw the line? This case analyzes this problem and we will discuss the conclusion that it comes to.

Documents:

None

Class 13 **Wednesday, August 23, 2017**

We will focus in this class on the Constitutional implications of the tort of defamation, especially as it relates to the balancing act that must be performed by a court when a media outlet defames a person. We will examine the Supreme Court's formula for balancing the right of a person to avoid having his or her name or reputation defamed against the First Amendment's guarantees of freedom of speech and freedom of the press. Finally, we will discuss the torts that are related to invading the privacy of a person. We will walk through the various forms that invasion of privacy can take.

Courseware Reading:

Torts 2 Chapter 4: Defamation:
Constitutional Privileges

Torts 2 Chapter 5: Invasion of Privacy:
Introduction to Invasion of Privacy
Intrusion upon Seclusion
Public Disclosure of Private Facts
Appropriation of Plaintiff's Name or Likeness
False Light

Cases:

New York Times v. Sullivan
This is one of the most famous Supreme Court cases in all of Torts law. In this case, the Court gave unprecedented protection to the press against defamation lawsuits brought by public officials. The Court did not give the press carte blanche to write anything and be free of liability, but it did give a high measure of protection. We will discuss the case and what the ramifications are for newspapers and other media outlets whose job it is to cover famous people and public events.

Pearson v. Dodd
This case, involving the theft of some documents from a U.S. Senator, illustrates the intersection between invasion of privacy and a tort we covered earlier in the course: conversion. In this case, the question arose whether stealing and photocopying documents is considered invasion of privacy and/or conversion. We will discuss the similarity between the two torts in cases like this.

Documents:

None

Class 14 **Monday, August 28, 2017**

Tonight, we will discuss various economic torts; torts that hurt a person financially or hurt a person's business rather than those that hurt the person physically or damage his or her property. These include fraud, interference with contracts and malicious prosecution. In our discussion of fraud, we will compare the tort of fraud to the contract defense of misrepresentation and discuss what actions rise to the more serious level of fraud and why.

Courseware Reading:

Torts 2 Chapter 6: Economic Torts:
Misrepresentation
Injurious Falsehood
Interference with Contracts
Malicious Prosecution

Cases:

Ritter v. Custom Chemicides, Inc
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The elements of intentional misrepresentation are rather straight forward. However, negligent misrepresentation is another matter. Historically, scienter, or intent to defraud, was necessary for a fraud tort to be sustained. However, recently, courts have allowed misrepresentation cases to go forward as long as the person who made the misrepresentation should have known of the falsity of the statement. This recent case from the Tennessee Supreme Court represents an excellent example.

Dutt v. Kremp
This case discussed the elements of "malicious prosecution" and when it can be applied to someone who brings a frivolous civil action. When reading this case, note the requirement of malicious or spiteful intent for this cause of action. This is one of the few times, especially in civil law (as opposed to criminal law), that the law cares about the ultimate motives of a person who commits wrongdoing.

Documents:

None

Class 15 **Wednesday, August 30, 2017**

In our final class, we will tie up various loose ends about tort law. We will discuss the options available to the family of a tort victim, including the survival and wrongful death actions. We will also discuss the immunity that various people and/or organizations can enjoy from a civil lawsuit based on torts committed by them. Finally, we will analyze the problem of multiple tortfeasors; i.e., what happens when two or more people contribute to the commission of a tort. We will discuss how the law sometimes allows plaintiffs to hold individual defendants liable for a complete civil award even though other tortfeasors had a hand in causing the harm to the plaintiff. We will also use our remaining time to discuss some civil forms, including complaints in wrongful death proceedings and civil case information statements.

Courseware Reading:
Torts 2 Chapter 7: Factors Affecting Right to Sue
Survival of Tort Actions
Derivative Suits for Family Members
Tort Immunity
Joint and Several Liability and Indemnity

Cases:
Molitor v. Kaneland Community Unit District No. 302
Unfair though it may seem, governments generally have "sovereign immunity," which means, among other things, that they cannot be sued without their consent. Some state courts, like the Illinois court, in this case, have tried to abolish sovereign immunity for civil suits filed against their states. In discussing this case, we will look at sovereign immunity as it applies to the federal government as well and we will also discuss how torts claims acts have abrogated sovereign immunity to a large extent.

Documents:
- Sample Trial Ready-List
- New Jersey Civil Case Information Statement
- Sample Complaint in Wrongful Death Case – Completed

EXAMINATION #3 will be posted at this point.

All examinations and assignments are due no later than Sunday, October 1, 2017, at 11:59 PM EASTERN TIME; that's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.

NPC EXTENSIONS POLICY

1) Extensions that conform to the rules below may be requested from the "Assignments and Exams" page on the NPC student website.

2) No extensions are possible unless the student has first submitted at least one assignment or examination by the course deadline.

3) The maximum possible extension allowed under the NPC system are as follows:

- **A student who has submitted one assignment or exam may take an extension of up to seven (7) days.**
- **A student who has submitted two assignments or exams (or any combination) may take an extension of up to seven (7) additional days (14 days total).**
- **A student who has submitted three assignments or exams (or any combination) may take an extension of up to seven (7) additional days (21 days total).**
- **A student who has submitted four assignments or exams (or any combination) may take an extension of up to seven (7) additional days (28 days total).**
- **A student who has submitted five assignments or exams (or any combination) may take an extension of up to two (2) additional days (30 days total).**
- **No extensions of more than thirty (30) days beyond the deadline are possible for any reason at all.**

4) Requested extensions are granted automatically. It is not necessary to give any reason for the request. However, for each day of extension you request, you will be penalized 3 raw points (of 500 that determine your final grade). This accounts for 0.6% of your course grade, per day of extension. This is necessary to compensate for the advantage that students who take more time to do their work enjoy over those who complete their work on time. This also means that a short extension (e.g., a day or two) is unlikely to affect your grade, but a long extension (e.g., two weeks) is guaranteed to affect your grade.

5) The penalty referenced in Paragraph 4 may be waived by the dean in extreme cases only. Extreme cases include circumstances beyond the control of the student that caused the student to be unable to complete work for *a significant period of time*. Circumstances such as being busy at work or at home, vacations, family occasions or power or internet outages lasting a few days, are foreseeable life circumstances. Extensions may be taken for these reasons (or, for that matter, for any reason at all), but the grade penalty will not be waived for anything short of a true, unforeseeable emergency. However, please note that the course deadline cannot be extended more than 30 days for any reason at all.