

Torts Assignments
Professor Thomas D. Russell
Visiting Professor, University of Florida Levin College of Law
HouseofRussell.com
t.trussell@ufl.edu
352-273-0687
Fall 2022 (1.3)

The Casebook is Robertson, Powers, Andersen, and Wellborn, *Cases and Materials on Torts*, 5th ed. (West Academic, 2017). The required supplemental book is Diamond, Levine, and Bernstein, *Understanding Torts*, 6th ed., (Carolina Academic Press, 2018).

During the semester, we will complete approximately three assignments each week. In the list below, there are 42 separate assignments. There are a few flex days in the list to accommodate changes. The lettered headings are units of study. An Arabic numeral identifies each separate assignment.

I will let you know when this syllabus changes during the semester.

Course Objectives & Student Learning Outcomes

The objectives of this course are for you

1. Pass the bar and become attorneys.
2. Learn the substantive law of Torts. The principal focus is on negligence, with some attention to intentional torts.
3. Think like a lawyer, not like a law professor.
4. Understand better the work of trial lawyers, including Frederic G. Levin.
5. Boring Organization Get All the Points! Learn to write organized essays not just in Torts but in all subjects.
5. Live more risk-aware lives. Be aware of risk in the world and try to reduce your exposure to needless harm.
6. Have fun!

After completing this course, students should be able to:

1. Analyze and discuss negligent and intentional torts;
2. Apply case law and statutory authority concerning personal injury law;
3. Write simply and clearly about the application of personal injury law to factual scenarios;
4. Understand that most of what the media reports about personal injury law is nonsense; and
5. Do well on a Torts question on the bar exam.

Reading Assignments

I expect you to read and be prepared to volunteer to discuss all the assigned reading for each class, including all the notes in the casebook. I encourage you to investigate material or sources external to the assigned reading. Would you please add to the class discussion by bringing up things you know about the course material from outside the reading? Standard 310 of the American Bar Association's (ABA) standards for law schools anticipates that students will devote two hours of out-of-class preparation for every one credit hour of in-class instruction.

A. Introduction

Ensure that you are on the class listserv. (Wait for instructions.)

Receive initial assignments via listserv and respond in time.

1. I'm Lovin' It!

Discussion of *Liebeck v. McDonald's*.

Read Casebook, iii-iv, 1-7.

B. Damages

2. Show Me the Money!

Casebook, 297-310.

Understanding Torts, §§ 14.01-03.

Read this [handout](#) about a recent piece of California legislation and think about applying this new law to *Rodriguez*.

Skim the 23-page [life care plan](#) for a plaintiff with a spinal cord injury.

Come to class prepared to discuss the material, particularly the principal case.

Here are some suggestions for your reading:

- A. Identify the purpose of damages in torts cases.
- B. What difficulties do the cases suggest about achieving the goals of tort damages?
- C. What is a sprinkler fitter?
- D. What are the "rules of law" that the California Court of Appeal articulates in *Rodriguez*? What is the most important, overarching rule?
- E. What's all this stuff about present value?
- F. Be prepared to hazard a guess as to why we are starting with damages when you barely even know what a tort is.
- G. Define general damages.
- H. Be prepared to explain why subjective losses merit compensation.

3. Hedonic Loss and Collateral Sources.

Casebook, 310-321.

Understanding Torts, § 14.06.

- A. Understand per diem arguments. Who favors making such arguments, and why?
- B. Define hedonic loss.
- C. Distinguish hedonic loss from pain and suffering.
- D. In what circumstances might there be hedonic loss but not pain and suffering?
- E. Does the award of damages for hedonic loss make any sense at all?
- F. Watch this [video](#) about the collateral source rule.
- G. Define the collateral source rule.
- H. Be sure that you understand what the collateral source rule is. Think of how it might be relevant in *Rodriguez* or the *McDonald's* case.

4. Wrongful Death, Loss of Consortium, Survival

Casebook, 321-27.

Understanding Torts, § 10.03.

Skim the 30-page [Breonna Taylor wrongful death amended complaint](#).

This material deals with wrongful death and survival actions. Make sure that you can distinguish between a wrongful death case and a survival action.

Think about how the following situations differ. First, what damages are available if someone dies instantly because of another person's negligence? Second, what damages are available if someone is injured and then suffers and later dies due to another person's negligence? Third, what damages exist when someone experiences a period of terror just before their instant death?

Look back to *Rodriguez* and analyze the wife's consortium claim.

5. Damages Grab Bag Including Punitive Damages.

Casebook, 327-36.

Understanding Torts, §§ 14.04-05

- A. Define punitive damages and understand the goal that punitive damages are supposed to serve.
- B. How often are punitive damages awarded?
- C. What are the criteria for awarding punitive damages?
- D. What is the difficulty with multiple punitive damage awards?
- E. What do you know about Richard Posner?

Afterword: [Preview of the entire course](#). (20:45) (Approved for any listener.)

C. Insurance

Print the following document: <http://www.houseofrussell.com/torts/handouts/insurance.pdf>

Now that we are all experts on damages, we must look more closely at insurance. Insurance concerns are present in almost every torts case that you will read this year. However, you will notice that the opinions we read rarely mention insurance issues. Not mentioning insurance is much like not commenting on the elephant in the room.

Learning about insurance during your first year of law school will set you above nearly every other law student in the country.

Specifically, we will focus on liability insurance. We have already talked about some of the ways that insurance affects tort law and tort litigation. This chapter will allow us to dig into more of the specific detail.

6. Liability Insurance

Before reading, listen to this 22-minute [podcast about insurance](#) with your family and friends.

Christie, Meeks, Pryor, and Sanders, Cases and Materials on the Law of Torts (1997) ([handout](#)), 871-83.

The first case in the insurance unit deals with the duty to defend and also the duty to indemnify. Be sure to understand and be able to distinguish these duties.

The notes that follow define some of the basic concepts that we need to understand insurance. Reading those notes before reading the case will be helpful.

Notice, as you read the notes that follow the case, that the authors of this casebook emphasize different or additional goals of tort law. You should keep track of these goals. Make a list.

You'll also find and that the notes cover some material that we may have already discussed, including, for example, the exclusion of intentional injuries from insurance coverage.

As you read this material, think about how you, as lawyers, will shape arguments to pursue the goal of gaining an award of damages that your client can collect. You should think about whether you find this distasteful.

7. The Insurer's Duty to Settle

Christie, Meeks, Pryor, and Sanders, Cases and Materials on the Law of Torts (1997) ([handout](#)),

883-92.

The second part of the insurance assignment deals with the duty to settle. Here, we face the issue of what happens when an insurance company rejects a settlement offer within the policy limits, and then the injured person wins a lawsuit against the insured defendant for more than the policy limits, thereby reaching the defendant's personal wealth.

For example, if I offer to settle a case for a client for \$80,000 with a policy limit of \$100,000, what if the insurance company rejects that settlement offer, and then I sue and win \$200,000. Does the defendant have a legitimate beef with the insurance company?

Following this case, you will find extensive case notes that elaborate on some basic and not-so-basic concepts. Among these notes, you will find another discussion of the strategic opportunities that arise for litigants in a context that involves insurance and torts.

8. Insurance Makes the World Go Around.

Christie, Meeks, Pryor, and Sanders, *Cases and Materials on the Law of Torts* (1997) ([handout](#)), 892-903.

In this assignment, you will find a selection from a *Texas Law Review* article by Kent Syverud, who later became the dean at Vanderbilt Law School and is now Chancellor and President at Syracuse University. You should skim this article.

After the *TLR* article, you will find a discussion of subrogation. Become an expert on subrogation. However, if you have any questions or are confused, be sure to ask in class.

Finally, this chapter has a selection from Ross, *Settled Out of Court* (1980). This very nice little book offers another look at the Law in Action, which will give you a better idea of just how the settlement process works.

Try to think of the legal system in terms of the interaction of a great variety of individuals and also institutions, with the institutions having their own cultures and practices. The story is never the simple one of an individual plaintiff injured by an individual tortfeasor, with both of them represented by separate lawyers. Instead, we deal with issues more like operas—perhaps soap operas—or Russian novels.

D. Negligence

9. Coffee, Tug-Boat Radios, and the 2021 Cadillac Escalade

Casebook, 73-86.

Understanding Torts, §§ 3.01-03, 4.01-04.

Andrew J. Hawkins, [“Driving the 2021 Cadillac Escalade was one of the most stressful](#)

[experiences of my life: High anxiety with the king of oversized SUVs,”](#) The Verge (October 19, 2020).

Woodrow Phoenix, [Crash Course: If You Want to Get Away with Murder Buy a Car \(2020\), 22-23, 32-41, 48-55, 59-60, 118-123, 156-161](#)

Here is the pattern jury instruction for Florida that are akin to the Texas instruction on p. 84 of the casebook.

401.4 NEGLIGENCE

Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

[Sudden Emergency Video](#) [5:22]

10. The Man Who Mows the Lawn in his Shirtsleeves: Be Reasonable!

Casebook, 86-97.

Understanding Torts, §§ 3.04-06.

11. Breach of Statutory Duty

Casebook, 97-106, Skip 106-08.

Understanding Torts, §§ 6.01-07, 5.01-03.

12. Facts that Speak

Casebook, 109-13.

Understanding Torts, § 5.04.

E. Malpractice

13. Do Professionals Have to be Reasonable? Do Patients have to Consent?

Casebook, 511-24.

Understanding Torts, §§ 7.01-04.

14. Real World Torts.

Download prepare to discuss Marc Galanter, Real World Torts: An Antidote to Anecdote, 55 Maryland Law Review 1093 (1996)

<http://digitalcommons.law.umaryland.edu/mlr/vol55/iss4/5>

F. Cause-in-Fact

15. Texas Rowdies: The Gold Standard of Causation

Casebook, 115-28, Notes 4-6 on 132-34.
Understanding Torts, §§ 11.01-02.

16. Pigs and Quail Hunting

Casebook, 135-50, notes 154-55.
Understanding Torts, §§ 11.03-.04, 13.02A, B, & D.

G. Proximate Cause

17. Law Professors Trying to Look Smart

Casebook, 167-84.
Understanding Torts, §§ 12.01-02.
<https://www.rubgoldberg.com/image-gallery-licensing/>

18. Palsgraf: A Worn Classic that Everyone Remembers, but Nobody Understands

Casebook, 184-93, 199-206. Skip Edwards but read Notes 2-4 on p. 199-200.
Understanding Torts, §§ 12.03-.04, 8.04.

H. Duty

19. When Active, Be Careful/ Zazen: Sitting Quietly, Doin' Nothin'

Casebook, 207-11.
Understanding Torts, §§ 8.01-8.02.

20. Duty to Act?

Casebook, 217-33.
Understanding Torts, §§ 8.03-06.

21. Fright and Shock

Casebook, 233-52.
Understanding Torts, §§ 10.01-02.

22. Forrest Gump's Bidness and the Boston Tea Party

Casebook, 252-62.

Understanding Torts, § 10.04.

23. The Old Land Rules

Casebook, 269-85.

Understanding Torts, §§ 9.01-9.04.

[Handout Fabulous Chart Torts Duty of Land Possessor Occupier Owner](#)

24. Florida's variant of the Old Land Rules

25. Trampoline Injuries at KFC

Casebook, 285-96.

I. Vicarious Liability

26. What do you do with a Drunken Sailor?

Casebook, 337-49.

Understanding Torts § 13.02[C].

J. Practical Application

27. Demand Letters.

28. Complaints & Answers.

29. Mass Torts.

K. Defenses

30. Spreading the Blame

Casebook, 360-71, Notes 6-7 380-81.

Understanding Torts §§ 15.01-03.

31. Express Assumption of Risk

Casebook, 439-50.

Understanding Torts § 15.04

Handout: [Wycoff v. Grace Church, pp. 1-10, 44-56.](#)

32. Implied Assumption of Risk & Cool Wind in Your Hair

Casebook, 450-59, 414-19.

33. Time's Up!

Casebook, 461-75.

L. The Immunity Community

34. Suing the Government and your spouse.

Casebook, 477-491.

Understanding Torts § 15.05.

Afterword: [Bankruptcy](#) [Optional—makes you smarter.]

M. Integrating the Defenses

35. Ain't my Fault: Allocating Responsibility to Everyone Else Including Non-Parties.

Casebook, 382-398.

N. Intentional Torts

36. Assault, Battery, and False Imprisonment

Casebook, 9-15. *Ghassemieh v. Schafer*.

Understanding Torts §§ 1.01-04.

37. Trespass to Chattel, Emotional Distress, Nuisance, and Trespass

Understanding Torts §§ 1.05-06, §§ 18.01-02.

38. Defenses to Intentional Torts

Understanding Torts §§ 2.01-05.

39-41. Flex

42. Overview of the Course

Attendance

Attendance is mandatory and an essential part of the course. Per ABA guidance, you are allowed six total absences from the class for any reason (including illness, medical appointments, job interviews, school activities, work tasks, family issues, and the like).

Preparing for and Participating in Class

I expect you to come to every class prepared to volunteer to participate in class, but I never rely on fear as a teaching tool. If you would like to participate but find that you are reluctant to do so, please make an appointment to talk with me to see if we can ease you into participating in class. Some students may realize a need to regulate their class participation. Learning to express legal concepts orally is crucial for every lawyer; my classroom is a place to practice.

Covid-19

I will not wear a mask while teaching but may when meeting with students in my office. I have been vaccinated twice and have received two booster shots.

Accommodations

Students requesting accommodation for disabilities must first register with the [UF Disability Resources Center](#). The Center will provide documentation to the student, who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation. I have no role regarding requests for disability accommodations but am happy to assist however I can.

Office Hours and Appointments

In-person Torts office hours are Mondays from 2:30-4:00 pm and Fridays from 11 am-noon. I am happy to make telephone or in-person appointments outside of these times as well. During the pandemic, the telephone has been excellent for office hours. If video will aid your understanding and Zoom has not caused you fatigue, I am happy to meet using Zoom. You can sign up for appointments at this [link](#).

Title IX

As a "Responsible Employee" under Title IX, I am a mandatory reporter of sexual violence, sexual harassment, sex discrimination, sexual misconduct, stalking based on sex, dating/intimate partner violence, or sexual exploitation.

Academic Honesty

Academic honesty and integrity are fundamental values of the UF Law School community. Students must understand and comply with the [UF Student Honor Code](#) and the Law School's [Honor Code](#).

Recordings of Class Discussions

I will make audio recordings of class lectures available to you. You may not publish these recordings or lectures.

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.” I will refer students failing to follow this rule to the College of Law Honor Code Council and the University's Office of Student Conduct and Conflict Resolution.

Grading Information and Grading Scale

The law school grading policy is available within the [UF Law Student Handbook](#). The following charts describe the specific letter grade/grade point equivalents.

Letter Grade	Grade Points
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

Final Exam/Final Grade

The final exam in the course will count for your entire grade. The final examination will be open-book and take-home. I will provide more information on the exam during the semester.

Rescheduling Exams

The Office of Student Affairs handles exam rescheduling and accommodation. See [Exam Delays & Accommodations](#).

Student course evaluations

Students can provide feedback on the quality of instruction in this course by completing [online evaluations](#). Evaluations are typically open during the last two or three weeks of the semester, and students will receive notice of the specific times when they are open. [Summary results](#) of these assessments are available to students.

Rev. September 17, 2022.