

1. August 21. Introduction and Damages. (Complete by August 20 at 11:59 p.m.)

[Video Recording of class.](#) (See handouts/podcasts directory for audio)

We will first talk about coffee. During the second part of the morning, we will turn to the textbook and its trusty companion, *Understanding Torts*, and begin to learn about damages in personal injury cases. For the last half hour, Lauren Varner, Esq. will join us to talk about life care plans, practicing personal injury law, forming one's own firm, and doing some good within the universe as a lawyer.

A. Before you do any reading, listen once or twice to this [Introduction to Damages podcast](#). (18:44). This podcast is safe for all ages, so you can listen in the car or at home with your partners and kids if you've got them.

B. You should then read and prepare to volunteer to answer questions concerning:

Understanding Torts, §§ 14.01-03.

Casebook, 297-315 [19 pages]

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

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

Here are some suggestions for your reading:

- Identify the purpose of damages in torts cases.
- What difficulties do the cases suggest about achieving the goals of tort damages?
- What is a sprinkler fitter?
- What are the "rules of law" that the California Court of Appeal articulates in *Rodriguez*? What is the most important, overarching rule
- What's all this stuff about present value?
- Be prepared to hazard a guess as to why we are starting with damages when you barely even know what a tort is.
- Define general damages.
- Be prepared to explain why subjective losses merit compensation.
- Understand per diem arguments. Who favors making such arguments and why?
- Define hedonic loss.
- Distinguish hedonic loss from pain and suffering.
- In what circumstances might there be hedonic loss but not pain and suffering?
- Does the award of damages for hedonic loss make any sense at all?

2. August 28. Damages. (Complete by August 27 at 11:59 p.m.)

[Video recording of class.](#) (See handouts/podcasts directory for audio)

In order to welcome a guest speaker at 11:00 a.m., this class meeting will first have two long than usual blocks of class from 8:30 to 9:35 and then from 9:45 until 10:50, resuming at 11:00 a.m. sharp. After the guest speaker concludes, we will take another break and then Professor Russell will determine whether to insert a break during the last class segment.

A. Collateral Source Rule

Understanding Torts, § 14.06.

Casebook, 315-321. [7 pages]

- Define the collateral source rule.
- Be sure that you understand what the collateral source rule is. How might it be relevant in *Rodriguez* or in the *McDonald's* case.

B. Wrongful Death, Loss of Consortium, Survival

Understanding Torts, § 10.03.

Casebook, 321-27. [7 pages]

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

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

Think about how the following situations differ. First, what damages are available if someone is instantly killed through the negligence of another person? Second, what damages are available if someone is injured and then suffers and later dies due to the negligence of the person who caused their injury? 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.

C. Practical: wrongful death, civil rights, and torts.

Guest: Siddhartha Rathod, Esq. of Rathod Mohamedbhai, LLC

Spend 10-15 minutes looking at their website: <https://rmlawyers.com/> Focus on the cases they have won or settled. Think about what you would like to see in a firm for which you might work. Note that apart from Messrs. Rathod and Mohamedbhai, two of the firms ten lawyers are House of Russell alumni including one who was a Torts AAP.

At the request of Mr. Rathod, please watch the following videos, which are NOT appropriate viewing for children. The videos include violence. He will discuss them during class.

- Lasnik: <https://www.youtube.com/watch?v=76ejv4-8Po> (4:12)

- Black: <https://www.nbcnews.com/news/us-news/video-colorado-officer-shooting-vietnam-veteran-released-prosecutors-decline-charges-n943396> (1:37)
- McClain: <https://www.youtube.com/watch?v=lfzJzAm-OV0&t=1s> (3:27)
- Vinson: <https://www.youtube.com/watch?v=4mOjXGjJ5Yc&t=601s> (start at 15:10) (approx.. 23:00)

D. Damages Grab Bag Including Punitive Damages.

Damages Grab Bag [Podcast](#) (20:14) and Secretary of State Griswold's [Damages Cap Certificate](#).

Understanding Torts, §§ 14.04-05

Casebook, 327-36. [10 pages]

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

- Define punitive damages and understand the goal that punitive damages are supposed to serve.
- How often are punitive damages awarded?
- What are the criteria for awarding punitive damages?
- What is the difficulty with multiple punitive damage awards?

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

3. September 11. Insurance. (Complete by September 10 at 11:59 p.m.)

I. Punitive Damages.

Carried over from last class, we will discuss punitive damages and bed bugs.

Understanding Torts, § 14.05. Focus on what the standard is for a plaintiff winning punitive damages. Hint: it's a bad, bad thing not merely a bad thing.

Casebook, 330-36. [7 pages] Enjoy this excellent opinion from Judge Posner. Note his arguments in favor of punitive damages.

II. Insurance

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. This is much like having an elephant in the room and not commenting on it.

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 upon 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.

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

A. Liability Insurance

Christie, Meeks, Pryor, and Sanders, Cases and Materials on the Law of Torts (1997) ([handout](#)), 871-83. [13 pages]

- 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 in order 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 the ways that you, as lawyers, will shape arguments in order to pursue the goal of gaining an award of damages that your client can collect. You should think about whether you find this distasteful.

B. The Insurer's Duty to Settle

Christie, Meeks, Pryor, and Sanders, Cases and Materials on the Law of Torts (1997) ([handout](#)), 883-92. [10 pages]

- 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.

C. Insurance Makes the World Go Around.

Christie, Meeks, Pryor, and Sanders, Cases and Materials on the Law of Torts (1997) ([handout](#)), 892-903. [10 pages]

- 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 is a very nice little book, which offers another look at the Law in Action. This 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 individual lawyers. Instead, the issues that we deal with are more like operas—perhaps soap operas—or Russian novels.

D. Practical: Practicing insurance law.

Guest speaker: Damian Arguello, Esq., Principal Attorney, Colorado Insurance Law Center. www.cilc.law. Mr. Arguello teaches insurance law as an adjunct professor at the law school. He will discuss bad faith, practicing insurance law, and what he does as an insurance expert.

4. September 25. Negligence. (Complete by September 24 at 11:59 p.m.)

[Video Preview: Negligence](#) [29:25]

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

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

Casebook, 73-86. [14 pages]

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* (Oct 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 are pattern jury instructions for Colorado that are akin to the Texas instruction on p. 84 of the casebook.

9:6 Negligence—Defined (Including Assumption of the Risk and Comparative Negligence Cases)

Negligence means a failure to do an act which a reasonably careful person would do, or the doing of an act which a reasonably careful person would not do, under the same or similar circumstances to protect (oneself or) others from (bodily injury) (death) (property damage) (insert any other appropriate description, e.g., “financial loss”).

(Negligence may also mean assumption of risk. A person assumes the risk of injury or damage if the person voluntarily or unreasonably exposes [himself] [herself] to such injury or damage with knowledge or appreciation of the danger and risk involved.)

9:8 Reasonable Care—Defined

Reasonable care is that degree of care which a reasonably careful person would use under the same or similar circumstances.

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

Understanding Torts, §§ 3.04-06.

Casebook, 86-97. [12 pages]

C. Breach of Statutory Duty

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

Casebook, 97-106, Skip 106-08. [10 pages]

D. Facts that Speak

Understanding Torts, § 5.04.

Casebook, 109-13. [5 pages]

E. Guest Speaker to be named later.

[Afterword: Medical negligence in Colorado, the dispute pyramid, and the professional standard of care. This will not be available until after the class meeting.]

Understanding Torts, §§ 7.01-04.]

5. October 9. Causation (Factual and Proximate) (Complete by October 8 at 11:59 p.m.)

[Podcast Preview to Causation.](#) [29:05]

A. Cause-in-Fact

1. Texas Rowdies: The Gold Standard of Causation

Understanding Torts, §§ 11.01-02.

Casebook, 115-28, Notes on 132-34. [17 pages]

2. Pigs and Quail Hunting

Understanding Torts, §§ 11.03-.04, 13.02A, B, & D.

Casebook, 135-44, notes 154-55. [12 pages]

B. Proximate Cause

1. Law Professors Trying to Look Smart

Understanding Torts, §§ 12.01-02.

Casebook, 167-8, 173-84, 168-73. [Read in this order.] [18 pages]

See: “Rube Goldberg” for proximate cause illustrations.

<https://www.rubegoldberg.com>

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

Understanding Torts, §§ 12.03-.04, 8.04.

Casebook, 184-93, 199-206. Skip Edwards but read the notes on p. 199-200. [20 pages]

6. October 23. Duty (Complete by October 22 at 11:59 p.m.)

A. When Active, Be Careful/ Zazen: Sitting Quietly, Doin’ Nothin’

Understanding Torts, §§ 8.01-8.02.

Casebook, 207-11. [5 pages]

B. Duty to Act?

Understanding Torts, §§ 8.03-06.

Casebook, 217-33. [7 pages]

C. Fright and Shock

Understanding Torts, §§ 10.01-02.

Casebook, 233-the first two sentences on 234, then 244-52. [15 pages]

D. Forrest Gump’s Bidness and the Boston Tea Party

Understanding Torts, § 10.04.

Casebook, 252-62. [11 pages]

E. The Old Land Rules

Handout Torts Duty of Land Possessor Occupier Owner.docx

Understanding Torts, §§ 9.01-9.04.

Casebook, 269-85. [17 pages]

Practical: Colorado’s variant of the Old Land Rules

Colorado Premises Liability Act

Handout: *Wycoff v. Grace Church*, Read pp. 1-5, 12-22, 31-46. [32 pages]

Afterward: Creating no-duty rules.

Casebook, 285-96. [12 pages]

7. November 6. Defenses (Complete by November 5 at 11:59 p.m.)

A. Spreading the Blame

Understanding Torts §§ 15.01-03.

Casebook, 360-82. [23 pages]

B. Express Assumption of Risk

Understanding Torts § 15.04

Casebook, 439-50. [12 pages]

pp. 3-10, 44-56. [21 pages]

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

Casebook, 450-59, 414-19. [16 pages]

D. Time's Up!

Casebook, 461-75. [15 pages]

E. The Immunity Community

Understanding Torts § 15.05.

Casebook, 492-92, 497-99. [14 pages]

Practical: Federal Tort Claims Act

7. November 20. Intentional Torts (Complete by November 19 at 11:59 p.m.)

A. Assault, Battery, and False Imprisonment

Understanding Torts §§ 1.01-04.

Casebook, 9-15. *Ghassemieh v. Schafer*. [7 pages]

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

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

C. Defenses to Intentional Torts

Understanding Torts §§ 2.01-05.

Practical: Pleading intentional torts in negligence.

9/11/2021