

B531 - TORTS

Course Information

Professor Brown

Fall 2008

Office Room 346

Telephone No. 855-6145

email: brownkd@indiana.edu

Office Hours: Monday and Tuesday from 4:30 pm to 5:30 pm. If these times are not convenient then you can schedule an appointment either after class, by e-mail or by telephone.

Course Materials

Franklin and Rabin, Tort Law and Alternative Cases and Materials
--Eighth Edition (2006)

2008 Cumulative Summer Update Supplement for the Fourth Addition-
Available on E-Reserve

Black's Law Dictionary

Class Preparation

I will expect everyone to be at least 20 pages ahead of where we end the prior day's discussion. Do not count the "read only" pages when determining the 20 pages. Use your judgment to determine whether or not the approximately 20 pages should be more or less than 20 pages. Obviously, if a section will end at 22 pages then I will expect you to read the additional two pages.

None of you would have been admitted to this Law School if you could not perform the work required. You are expected to read the cases and the Notes and Questions that are after each case. ***You are also expected to understand the cases and materials that you read, even if you must reread the materials four, five, six times or even more.*** SINCE I AM ENTITLED TO THREE HOURS OF YOUR TIME OUTSIDE OF CLASS FOR EVERY ONE HOUR OF CLASS TIME, YOU OWE ME 12 HOURS OF STUDY TIME PER WEEK. SO AMPLE TIME EXISTS FOR YOU TO READ AND REREAD CASES YOU ARE HAVING DIFFICULTY UNDERSTANDING.

Reading cases in the first semester of law school is difficult. In addition to understanding the facts, procedural history, the issues, the holding and the court's rationale, you must also understand legal terminology that will be unfamiliar to

you. Thus, a Black's Law Dictionary and an excellent regular dictionary should be constant reference companions when reading cases.

As you read the cases and other materials, always consider the general impact of a court's ruling on American culture and society. When reading cases put yourself in the position of the judges and determine how you would have ruled and why. Also, put yourself in the position of the plaintiff arguing for the claim and the position of the defendant arguing against the claim.

Do not be afraid to ask questions in class. But, at the same time remember that you have a lot of classmates. I can not allow a few students to control the class discussion. It is also important for all students to listen to the questions that are asked and to the answers given in response. Many times I will cover important information when responding to your classmates questions. It may be that this is the only time I will make a particular point, but you are expected to take note of it. I also want to note that I may not answer your questions in class and I may also cut short the question and comment period, because I think that there are other issues which must be addressed. DO NOT FEEL OFFENDED WHEN THIS HAPPENS TO YOU.

Everyone is also expected to recite in class and there will be no exceptions. All of you are learning to become lawyers, the ability to articulate under pressure situations is essential to your development as a lawyer. Reciting in class is an excellent way for you to improve your ability to think quickly in pressure situations. There is also a dynamic at work in this class that you will notice time and time again. What I seek to impart is the ability to think like lawyers, not to think for the praise of me as a professor. As such, good comments or questions during class discussion will most likely be followed by more questions and not by praise.

NO TAPE RECORDERS ARE PERMITTED IN CLASS

Laptop Policy

Law students diverting their attention from class discussion to surf the internet or use other computer programs other than word processing has caused a considerable amount of consternation and reflection by law professors across the country. Many have gone so far as to ban the use of computers in the classroom as the way to combat this problem. I have carefully weighted the pros and cons of a policy regarding the use of computers. My initial reaction was to join those professors who have banned the use of computers altogether. But I decided against such a policy and instead will chart the middle course this year. **Students are**

limited to using laptops only for word processing purposes. Any other use is strictly prohibited. A student violating this policy will be subject to either being dismissed from the course or having their grade reduced. The punishment will be left in my sole discretion. Each of you must sign the attached laptop policy and turn it on during the first day of class.

Grading Policy

Your grade in this course will be based primarily on your final examination. Class participation may be taken into account and I may use class participation to increase a grade, but only in an extreme situation will I use it to lower a grade. The definition of "extreme situation" is solely at my discretion.

The examination will be closed book. You will, however, be allowed to bring one 8" by 11" piece of paper crammed with whatever material you think will be helpful on the examination. Both sides of the paper can be used.

Because much of what you will learn in this course comes from class discussion, class attendance is extremely important. Anyone who misses a high number of classes shall be ineligible to sit for the examination; and thus will not receive credit for the course. If you miss a significant number of classes, then I will lower your class grade by as much as a full letter grade. I will be the sole authority in determining whether a "high number" or a "significant number" of classes have been missed. There will be no advance warning of when a student is close to missing either a high or a significant number of classes. Such a determination will not depend upon whether a like determination was made for a fellow student in this class.

CLASS SCHEDULE

The class meets at 3:25 p.m. on Monday through Wednesday in Room 120 and on Thursdays we meet at 2:20 pm in Room 120. I am scheduling two make up classes, on Thursday, November 13th and 20th at 3:25 pm in Room 120. I will also give you one practice examination question which we will discuss during a special evening session from 4:30 p.m. to 6:30 pm on Monday, November 24th in Room 120, which is the Monday before Thanksgiving break.

ASSIGNMENTS

I. Introduction to Tort Liability

pp. 1 to 9;
pp. 9 to 15 (3. *Collecting on a judgement.*);
pp. 698 to 718 (McDougald v Garber);
pp. 732 to 739 (**read only collateral source rule**); and
pp. 15 to 30

II. The Negligence Principle

pp. 31 to 86

III. The Duty Requirement: Physical Injuries

pp. 132-251.

IV. Causation

pp. 339 to 359;
pp. 369 to 392 (4. The Special Case of Toxic Harm)
pp. 392 to 400 (**read only**)
pp. 401 to 439

V. Defenses,

pp. 440 to 445 (2. COMPARATIVE NEGLIGENCE)
pp. 445 to 463 (3. AVOIDABLE CONSEQUENCES) (**read only**)
pp. 463 to 482
pp. 487 (Note 6.) to 496 (C. **PRE-EMPTION**)

VI. Intentional Torts

pp. 884 to 949 (***I have not covered Intentional Torts in previous classes. We will see how the semester progresses to determine whether time permits us to cover it in this class.***)

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I understand that laptops may be used in this class only for class-related purposes (note-taking and review of materials prepared for class sessions). I therefore agree that if I use a laptop during class, I will use only a word processing application and no other applications (including but not limited to Internet browsing and instant messaging). I also understand that if I violate this policy, my grade in this class may be lowered by as much as a full level (e.g. B+ to C+) or Professor Brown may conclude that I am not eligible to sit for his class and thus must take the course again. I further understand and agree that the punishment for this offense is at Professor Brown's sole discretion.

August __, 2008

Name: _____

Signature: _____

RETURN TO PROFESSOR BROWN THE FIRST DAY OF CLASS