

Torts I
Syllabus Fall 2025 Version v. 1.2
Prof. H. Tomás Gómez-Arostegui

Section:	Time:	Room:
RO	Mondays & Wednesdays 10:05 am - 12:00 pm	2

Contact Info and Office Hours: My office is on the middle floor of the Legal Research Center (same floor as the Cafeteria), at the very end of the hall. My phone number is 503-768-6816, and my e-mail is tomas @ lclark.edu. I have separate in-person office hours for Torts and am also available to meet with students on Zoom for office hours. I have an electronic whiteboard that I can use, which works really well on Zoom. I am also open, of course, to setting up other times for in-person meetings.

Torts	Mondays: 12:00 - 1:20 pm	Online via Zoom: I'm generally available
In-Person:	Wednesdays: 12:00 - 1:20 pm	on Fridays and most weekends too. Just reach out to set up a time to Zoom with me.

Required Materials: (1) **Casebook:** DOBBS, HAYDEN & BUBLICK, TORTS AND COMPENSATION: PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY (9th ed. 2022). Note: Make sure to purchase the standard edition; do **not** purchase the “Concise Edition” or a prior edition as they are not interchangeable. (2) **Supplements:** One supplemental reading for Class 3 is posted on my class website: https://law.lclark.edu/faculty/h_tomas_gomez_arostegui/torts_i/ [WEB]. (3) **Class handouts:** I have already posted all the handouts to the WEB (bookmark it). All will remain available for download throughout the semester. I generally assume students will bring laptops to class and will download the WEB materials ahead of time, but I also will project them on the screen in the classroom.

Scope and Purpose of Course: Unlike your course on Civil Procedure, which focuses on rules of court procedure that apply across many different types of claims that one can file in court, our focus in this course is on substantive law and on one class of claims in particular: tort. A tort is not the name of a single claim, but the label we use for a whole class of claims. In short, a tort is a type of civil wrong that someone (a defendant) can commit against a person (a plaintiff) or that person's property. You will have already heard of some torts, and might be wondering: What does it take to prove a claim of battery against someone? Or what do I have to prove to succeed on a claim of negligence? We will explore three standards of conduct: intentional wrongs, negligence, and strict liability (no fault). Some types of claims require intent, some only require negligence, and some require no showing of fault at all. The bulk of the course will be spent on negligence because it forms the basis for most personal-injury claims. Thus, it would be only a bit underinclusive to state that our course covers the “Law of Accidents.” We will also examine other issues associated with civil liability, such as common affirmative defenses (the statute of limitations, for example) and remedies. By the end of this course, you will be able to assess the likelihood of succeeding on the various claims and defenses we will study.

This is a foundational course in part because many other types of injuries and claims—be they injuries to intellectual property, the environment, or civil rights—draw their default principles from tort law. So this course remains very valuable, even if you never plan to practice personal-injury law.

Uniform Learning Outcomes Across Torts Sections:

After taking this course, students should be able to do the following:

Distinguish intentional, reckless, and negligent conduct and the different consequences of each;

Articulate and apply the elements of common intentional, negligence, and strict-liability torts;

Articulate and apply rules for when a party may be liable for torts committed by others;

Articulate and apply common affirmative defenses to tort claims;

Articulate and apply common remedies available for tortious injuries;

Identify when a tort claim, defense, or remedy is a clear winner, reasonably debatable, or a clear loser;

Analyze judicial opinions to identify the plaintiff's claim, the central facts of the case, the legal issues involved, the legal rules articulated, and the court's analysis and resolution of the issues;

Distinguish common law and statutory law and articulate the manner in which statutory and judge-made law interact;

Recognize the importance of facts to legal analysis, identify and analyze facts necessary to the analysis and resolution of legal issues, identify legal issues raised by relevant facts, and reason by analogy on issues of fact;

Distinguish questions of law and fact, and appreciate the respective roles played by the judge and the jury in the litigation process.

Seating: Sit wherever you like on the first day of class. I will circulate a seating chart after everyone has taken their seats. You will then have to sit in the same seat for the remainder of the semester. After the first class, I'll take an image of the seating chart and email it to everyone so you can refer to it as needed.

Reading Assignments: You are responsible for all the assigned materials, whether discussed or not, but I consider the material we discuss in class to be the most important (see below).

Other Materials: You do not need to consult other materials to do well in this class. Nevertheless, students often ask for my thoughts on additional materials. For one, do not use Quimbee. And I would not buy any commercial outlines of Torts. The following are **not** required, and you should feel comfortable to come see me first with questions, but they are useful as alternative sources should you

want to review information on your own on *material we are covering in class*. First, included with your casebook (if purchased new) are study guides and many review problems. These guides are available as an online, password-protected resource. And, second, there are other study aids available in or through the library both in print and online. **You can still “crush” my exam without picking up any secondary materials.** I have found that in the first half of the semester it is a better use of your time to re-read an assignment rather than going to a secondary source for help. But if you must, I recommend these:

Mini-Hornbook:

JOHN L. DIAMOND, LAWRENCE C. LEVINE & ANITA BERNSTEIN, UNDERSTANDING TORTS (7th ed. 2023 or 6th ed. 2018)

Hornbook:

DAN B. DOBBS, PAUL T. HAYDEN & ELLEN M. BUBLICK, THE LAW OF TORTS (2d ed. 2016) [Written by our casebook authors, this is available online for free through our law library.]

Study Guide with Questions and Answers:

JOSEPH W. GLANNON, EXAMPLES & EXPLANATIONS: THE LAW OF TORTS (6th ed. 2020 or 5th ed. 2015) [This *might* be available online for free through our law library, I am not sure, so check before buying. And a copy should be on reserve as well in the library.]

Outlines from Former Students: In preparing for the exam, students will sometimes use outlines written by my former students. I urge you **not** to use them. These outlines often misstate the law, may cover material that we did not cover, omit material that we did cover, or rely on older handouts that I have since updated in a material way. Besides, it is important for you to do your own work. In my experience, students who crib in whole or in part from prior outlines tend to do poorly on the exam. A few weeks into the semester, I will hold a special bonus Zoom session on how to outline a course.

Attendance: Under the American Bar Association accreditation standards, law schools must require regular and punctual class attendance. At Lewis & Clark, regular attendance is crucial for academic success and for your full engagement in the learning process. Compliance with this standard not only upholds our law school's commitment to academic excellence but also emphasizes the importance of discipline and accountability as you develop the habits necessary for success in the legal profession.

You may miss up to two (2) classes per semester without any academic penalty. Exceptions to the two-absence limit will be granted only in extenuating circumstances such as medical issues (e.g., a migraine headache, stomach illness, or contracting a contagious illness such as the flu or COVID), family emergencies (e.g., childcare issues or the illness of a family member), or other unexpected occurrences (e.g., car trouble, an unavoidable work conflict, or a job interview that cannot be scheduled at a different time). Absences due to extenuating circumstances will count as excused absences. Excused absences do not count against your two (2) permitted absences. For each additional unexcused absence beyond the two (2) permitted, the Registrar will reduce your grade by one grade step (e.g., from a B to a B-). If you accumulate more than five (5) unexcused absences, you will be subject to administrative removal from the course.

Associate Dean of Students Libby Davis (eadavis@lclark.edu) will determine if an absence is excused. If you are going to miss class beyond the two-absence limit (or within the two-absence limit if you want the absence to be excused), please submit an excuse request form to Dean Davis in advance of the absence or as soon as possible after class, and include the reasons for your absence. The form may be found here: <https://law.lclark.edu/live/forms/1833-excused-absence-request-form>. You are responsible for obtaining any missed lecture notes or assignments.

To take attendance, all 1L professors will be using the smartphone app EZCheck.me, which is described in a separate document. If you encounter technical issues with EZCheck, please contact Dean Davis.

If you are late or plan to leave early, you should not mark yourself as present unless you have consulted with me first. Marking yourself as present is a representation that you plan to attend the entire session, and that representation is subject to the Honor Code. Arrive on time; coming late is disruptive.

Cold Calling and Class Participation: I will call on people without prior notice of any kind. If you feel uncomfortable with public speaking, please reach out to me and we can chat about ways to ease you into this necessary exercise. If someone else has been called on and is answering a question, please keep your hands down. If you are unprepared on a particular day, please let me know before class starts and I will not call on you. But you get only two cold-calling passes.

Class participation or lack thereof does not affect your grade. We all have good days and bad days. Note that you have the right to have all your questions answered, but not always during our class sessions. Sometimes time constraints or questions from other students (particularly those I may not have heard from as much) may take precedence.

Recording the Class: Recording of classes by students is prohibited. The law school records all our classes for students who have an accommodation from the Office of Student Accessibility necessitating that they access the recordings. I do not freely distribute recordings to students, as they are for students with a disability accommodation. Moreover, making recordings widely available to anyone can stifle conversations in class. But if Dean Davis officially excuses an absence, she will make the video of that session available to you. Students who receive access to a recording are not permitted to share or view that recording with others. Sharing or viewing a recording with another student will result in both students receiving an F in the course and an Honor Code violation. Neither I nor Dean Davis distribute recordings for unexcused absences. You will need to get class notes from a classmate.

Internet Use: Unless you obtain permission from me beforehand, use of the Internet on any device during class (e.g., web surfing, email, Facebook, Slack, Twitter, texting, or otherwise PM'ing each other) is prohibited. It distracts you and your classmates, and we demand your undivided attention. You are permitted during class to use the Internet to access and save class notes on the cloud, use EZCheck.me, access our Torts webpage (see above), and access Westlaw/Lexis to look up opinions or terms in legal dictionaries that relate to what we are discussing during class. Using any source to provide briefs of the cases we are covering is counterproductive and prohibited. Do your own work.

Class Breaks: I ordinarily take a 5-10 minute break in the middle of class.

Student Privacy: Because our classes are recorded, conversations you have with me (and sometimes your classmates) just before classes start, during breaks, or just after class ends, are likely to be picked up and recorded. So it is best to discuss matters of a personal nature outside of those time periods.

Final Exam: Your grade for the course will be based on an examination at the end of the semester. The exam will be closed book—no materials whatsoever. The subjects I will test you on include only: (1) material that I assigned for reading *that we discussed in class*, and (2) material that was not part of the assigned reading but *that I have raised in class and stated in some form is fair game on the exam*.

Accommodations—Disability and Religious Practices: Students who have a disability, as defined by the Americans with Disabilities Act, may seek an accommodation through the Office of Student Accessibility (access@lclark.edu), which is located on the undergraduate campus. Students whose religious practices may impact their academic schedule, may seek accommodation through Associate Dean for Student Affairs Libby Davis (eadavis@lclark.edu). For questions regarding any type of accommodation, please contact Associate Dean Libby Davis.

Class & Day	Topics [Approx. Total Pages for Class Session]	Notes
[01] 8/25 Mon	Introduction A. Tort Law and Goals [3–7] B. Reading Tort Cases [19–33] C. <i>Van Camp v. McAfoos</i> [8–11]	[23pp] SKIP: NOTE on p 7
[02] 8/27 Weds	I. Intentional Torts A. The Prima-Facie Case 1. Battery [37–58] 2. Assault [58–63]	[25pp] SKIP: ¶ beginning “Not all countries” on p 46; SKIM: n. 5 on p 50; SKIP: n. 6 on p 50; n. 3 on p 53; nn. 5–7 on p 54; n. 6 on p 58; NOTE on p 63 BIG TYPO: In the middle of p 42, change: “ <i>Held</i> , affirmed” to “ <i>Held</i> , reversed”

[03] 9/3 Weds	[10pp] <ul style="list-style-type: none"> _. Assault (discussion cont.) 3. False Imprisonment [63–66; WEB: RESTATEMENT (2D) OF TORTS §§ 35 & 36] 4. Trespass to Land [67–72] 5. Trespass to Chattels [76–77; WEB: RESTATEMENT (2D) OF TORTS §§ 217 & 218] 	SKIP: nn. 5 & 7 on pp 66; n. 12 on p 71
[04] 9/8 Mon	[19pp + 2pp to skim] <ul style="list-style-type: none"> B. Defenses to Intentional Torts <ul style="list-style-type: none"> 1. Self-Defense and the Defense of Others [91–97] 2. Defense of Property [97–100] 3. Discipline and Observing Privileges [SKIM 106–107] 4. Consent [108–119] 	SKIP: nn. 2 & 3 on p 100; n. 3 on p 111; nn. 8–10 on pp 112–113; nn. 3–4 on p 116; n. 6 on p 119
[05] 9/10 Weds	[22pp] II. Negligence <ul style="list-style-type: none"> A. The Prima-Facie Case <ul style="list-style-type: none"> 1. The Standard of Care <ul style="list-style-type: none"> a. Reasonable Care [131–152] 	SKIP: n. 3 on p 143; nn. 3–4 on pp 151–152
[--] 9/15 Mon	Class canceled	
[06] 9/17 Weds	[15pp] <ul style="list-style-type: none"> _. Reasonable Care (discussion cont.) b. Negligence Per Se [152–164; 167–170] 	SKIP: n. 9 on pp 162–163 Be prepared to discuss the <i>Lind v. Margaret</i> problem on p 170

<p>[07] 9/22 Mon</p>	<p style="text-align: right;">[22pp + 3pp to skim]</p> <p>2. Breach of the Standard of Care a. Unreasonable Risk [171–192] i. Multiple Tortfeasors [SKIM 197–200]</p>	<p>SKIP: nn. 3 & 4 on p 173; n. 1 on p 185; nn. 4–5 on p 186; n. 9 on p 200</p> <p>Be prepared to discuss the <i>Brown v. Stiel</i> problem on pp 172–173</p>
<p>[08] 9/24 Weds</p>	<p style="text-align: right;">[15pp]</p> <p>b. Proving the Underlying Conduct [201–212] i. Burdens and Standards of Proof ii. Evidence (a). Direct Evidence (b). Circumstantial Evidence</p> <p>c. Evaluating the Underlying Conduct to Determine if it Constitutes an Unreasonable Risk [215–218; notes 2–3 on p 220; § 8 on pp 221–222]</p>	<p>SKIP: Problem on pp 210–211</p>
<p>[09] 9/29 Mon</p>	<p style="text-align: right;">[17pp]</p> <p>d. Res Ipsa Loquitur [222–235]</p> <p>3. Legally Cognizable Harm [237–241]</p>	<p>SKIP: n. 7 on pp 234; n. 2 on p 235; n.2 on pp 239–240</p>
<p>[10] 10/1 Weds</p>	<p style="text-align: right;">[26pp]</p> <p>4. Cause in Fact [241–256; 258–270]</p>	<p>SKIP: nn. 4–5 on p 251; the ¶ about <i>Dillon</i> on p 258; nn. 3 & 5 on pp 260–261; n. 4 on p 267; n. 7 on pp 268–269; STOP after reading n. 9 on pp 269–270</p>
<p>[11] 10/6 Mon</p>	<p style="text-align: right;">[16pp]</p> <p>_. Cause in Fact (discussion cont.)</p> <p>5. Proximate Cause [273–281; 289–297]</p>	<p>SKIP: <i>Hammerstein v. Jean Development</i> on pp 295–296; n. 3 on pp 296–297</p>

[12] 10/8 Weds	[15pp] _ . Proximate Cause (cont.) [297–311; note 4 on p 314] 6. Review of the Negligence Prima-Facie Case	
[13] 10/13 Mon	[18pp] B. Affirmative Defenses [319] 1. Contributory Negligence [321–322] 2. Comparative Negligence [323–333; 338–342]	SKIP: n.2 on pp 329–330; nn. 5 & 7 on pp 330–331; n. 2 on p 333; n. 6 on pp 341–342
[14] 10/15 Weds	[16pp] _ . Comparative Negligence (discussion cont.) 3. Assumption of the Risk [357–361; 363 n. 1 – 374] a. Contractual [Express] Assumption b. Implied Assumption	SKIP: n. 4 on p 371; n. 5 on p 374
[15] 10/20 Mon	[17pp] 4. Statutes of Limitation [377–395]	SKIP: nn. 2–3 on pp 379–380; <i>Dasha v. Maine</i> on p 390; nn. 3–4 on pp 391–392; n. 3 on pp 394–395
[16] 10/22 Weds	[22pp] C. Special Standards of Care and No-Duty Rules [401] 1. Carriers and Host Drivers [403–406] 2. Land occupiers/possessors [407–423]	SKIP: n.6 on p 410; n. 4 on pp 418–419; n. 4 on p 422
[17] 10/27 Mon	[25pp] 3. Lessors [434–437] a. <i>Christie v. Embry Corp.</i> Problem [442] 4. Nonfeasance [543–566]	SKIP: n. 4 on p 436; n. 5 on p 557; n. 1 on p 559; n. 4 on p 560
[18] 10/29 Weds	[22pp] 5. Controlling Third Persons [589–596; 614–615; note 1 on 616; 617 (NOTE) – 630]	SKIP: nn. 5–6 on p 596; nn. 4–5 on pp 615–616; n. 6

		on p 625; nn. 4, 7 & 9 on pp 629–630
[19] 11/3 Mon	[16pp] D. Special Duties of Medical and other Professionals 1. Standard of Care [445–456] 2. Res Ipsa Loquitur [Lecture] 3. Informed Consent [458–462]	SKIP: n. 6 on p 449; n. 2 on pp 455–456; <i>HIRPA</i> on p 456
[20] 11/5 Weds	[29pp] E. Special Types of Legally Cognizable Harms [635] 1. Emotional Harm a. Intentional Infliction [637–647] b. Negligent Infliction [647–657] c. Independent of Physical Risks [662–668] 2. Loss of Consortium [658–662]	SKIP: n. 11 on p 644; nn. 3–4 on p 647; n. 8 on p 657; n. 1 on p 663; nn. 4–5 on p 664 NB: I've deliberately asked you to read the last two sections out of order
[21] 11/10 Mon	[12pp] 3. Death [689–694; 697–699; 703–707]	SKIP: <i>Laney v. Vance</i>
[22] 11/12 Weds	[14pp + 5pp to skim] III. Common Law Strict Liability A. History and Strict Liability Today [753–757; SKIM 757–762 (<i>Rylands</i>); READ 767–775]	SKIP: n. 4 on p 770; n. 6 on p 771
[23] 11/14 Fri on Zoom 10:05 am - 12:00 pm	[23pp] IV. Defamation [1045–1068]	SKIP: nn. 5–6 on p 1058

<p>[24] 11/17 Mon</p>	<p style="text-align: right;">[24pp]</p> <p>V. Vicarious Liability</p> <p>A. Respondeat Superior [711-717; 719-727; note 1 on pp 730-731; NOTE on pp 733-735; 735-741; 745 (starting with <i>O'Banner</i>) - 747]</p> <p>B. Other Forms of Vicarious Liability [748-750]</p>	<p>SKIP: n. 6 on p 741; STOP after reading n. 4 on pp 749-750</p>
<p>[25] 11/19 Weds</p>	<p style="text-align: right;">[21pp]</p> <p>VI. Damages</p> <p>A. Compensatory Damages [913-934]</p>	<p>SKIP: ¶ <i>Constitutional torts</i> on pp 913-914</p>
<p>[26] 11/24 Mon</p>	<p style="text-align: right;">[23pp]</p> <p>B. Punitive Damages [934-957]</p>	<p>SKIP: n. 3 on p 949; n. 4 on p 957</p>
<p>11/25 Tues on Zoom 4:00-6:00 pm</p>	<p style="text-align: center;">REVIEW SESSION AND EXAM TIPS</p>	