

**Torts Syllabus (1.0)**  
**Professor Thomas D. Russell**  
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**(Spring 2018)**

The books for the class are available at the bookstore. The Casebook is Robertson, Powers, Andersen, and Wellborn, Cases and Materials on Torts, 5th ed. (West, 2017). The required supplemental book is Diamond, Levine, and Madden, Understanding Torts, 5th ed., (LexisNexis, 2013).

During the semester, we will complete two assignments each week. At the beginning of the semester, the schedule tends to be a little variable. There are 28 separate assignments. The lettered headings are units of study.

**A. Introduction**

1. I'm Lovin' It! & Après Ski.

Ensure that you are on the class listserv.  
Receive initial assignments via listserv and respond in time.

2. Preview of the Course

Read Casebook, iii-iv, 1-7.

**B. Damages**

3. Show Me the Money!

Casebook, 297-321.  
Understanding Torts, §§ 14.01-03; 14.06  
Come to class prepared to discuss the material, particularly the principal cases.

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? When was the last time anyone at all used a present value chart?
- F. Be prepared to hazard a guess as to why we are starting with damages when you don't even know what a tort is.
- G. Define general damages.
- H. Be prepared to explain why subjective losses merit compensation.
- I. Understand per diem arguments. Who is in favor of making such arguments and why?

- J. Define hedonic loss.
- K. Distinguish hedonic loss from pain and suffering.
- L. In what circumstances might there be hedonic loss but not pain and suffering?
- M. Does the award of damages for hedonic loss make any sense at all?
- N. Define the collateral source rule. Be sure that you understand what the collateral source rule is. Think of how it might be relevant in Rodriguez or in the McDonald's case.

#### 4. Wrongful Death, Loss of Consortium, Survival

Casebook, 321-27.  
Understanding Torts, § 10.03.

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 another person? Third, what damages exist when someone experiences a period of terror just before their instant death?

#### 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?

### **C. Insurance**

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

Now that we are all experts on damages, we will 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 insurance issues are rarely mentioned in the opinions that we consider. Why? 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.

## 6. Liability Insurance & The Insurer's Duty to Settle

Christie, Meeks, Pryor, and Sander, Cases and Materials on the Law of Torts (1997) ([handout](#)), 871-892

The first insurance assignment 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.

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 have already discussed, including, for example, the exclusion of intentional injuries from insurance coverage.

As you read this material, I want you to 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.

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.

## 7. Insurance Makes the World Go Around.

Christie, Meeks, Pryor, and Sander, 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. 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. Negligence**

8. Coffee, Tug-Boat Radios, and the Man Who Mows the Lawn in his Shirtsleeves: Be Reasonable!

Casebook, 73-97.

Understanding Torts, §§ 3.01-06, 4.01-04.

Here are pattern jury instructions for Colorado that are akin to the Texas instruction on p. 84 of the Casebook.

#### **Colorado Jury Instructions, 4th - Civil Current through the June 2017 Update, Colorado Supreme Court Committee On Civil Jury Instructions**

##### **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.

9. Breach of Statutory Duty & Facts that Speak

Casebook, 97-106, 109-13, Skip 106-08.  
Understanding Torts, §§ 6.01-07; §§ 5.01-04.

**E. Malpractice**

10. Do Professionals Have to be Reasonable? Do Patients have to Consent? And Real World Torts

Casebook, 511-24.  
Understanding Torts, §§ 7.01-04.  
Download: [Galanter, Real World Torts](http://houseofrussell.com/torts/handouts/realworldtorts.pdf)  
(<http://houseofrussell.com/torts/handouts/realworldtorts.pdf>)

**F. Cause In Fact**

11. Texas Rowdies: The Gold Standard of Causation

Casebook, 115-28, 132-34.  
Understanding Torts, §§ 11.01-04.

12. Pigs and Quail Hunting

Casebook, 135-50.

**G. Proximate Cause**

13. Law Professors Trying to Look Smart

Casebook, 167-84.  
See: "Honda Cog" and "Rube Goldberg" for proximate cause illustrations.  
"Rat Flambé" Understanding Torts, §§ 12.01-02.  
Proximate Cause: A Story in Pictures

14. Palsgraf: A Worn Classic that Everyone Remembers But No One Understands

Casebook, 184-93, 199-206. Skip Edwards but read the notes starting on 199.  
Understanding Torts, §§ 12.03, 12.04

**H. Duty**

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

Casebook, 207-33.

Understanding Torts, § 8.01-8.05.

16. Fright and Shock

Casebook, 233-52.

Understanding Torts, § 10.01-02.

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

Casebook, 252-69.

Understanding Torts, § 10.04.

18. The Old Land Rules

Casebook, 269-85.

“Entrants Upon Land” Chart

Colorado Premises Liability Act, *Wycoff v. Grace Church*.

Understanding Torts, §§ 9.01-05. §§ 12.01-04.

19. Trampoline Injuries at KFC

Casebook, 285-96.

**I. Vicarious Liability**

20. What do you do with a Drunken Sailor?

Casebook 337-49.

Understanding Torts § 13.02[C].

**J. Defenses**

21. Spreading the Blame

Casebook 351-82.

Understanding Torts §§ 15.01-03.

22. Assumption of the Risk

Casebook 439-59.

Understanding Torts § 15.04.

23. Releases & Time's Up!

Wycoff v. Grace Church  
Casebook 461-75.

**K. The Immunity Community**

24. Suing the Government, Your Spouse, and Your Mother

Casebook 477-509.  
Understanding Torts § 15.05.  
Colorado Governmental Immunity Act.

**L. Intentional Torts**

25. Assault, Battery, False Imprisonment, Trespass to Chattel, and Emotional Distress

Casebook 9-15. Ghassemieh v. Schafer  
Understanding Torts §§ 1.01-05, § 18.01-02.

26. Defenses to Intentional Torts

Understanding Torts §§ 2.01-05.  
Casebook, 433-39.

**M. Lagniappe**

27. A Magical Evening of Products Liability and Mass Torts

Reading TBA

28. **Overview of the Course**