

**TORTS I**  
Fall 2008  
Professor Hensel

**Office Information:**

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**Office Hours:** Mondays 2:00-3:30 p.m. and by appointment. I am here most days during the week and welcome you to drop by with your questions and concerns.

**Course Description:** This course is the first in a year-long inquiry into the theories and policies underlying civil liability based on intent, negligence and strict liability. This semester, we will begin by focusing on the intentional interference with persons and property before moving on to issues of negligence. Students will be asked to contemplate not only what the “rules” are, to the extent that any exist, but also what they ideally should be in light of the goals underlying tort law.

**Grading:**

Grades will be calculated according to the scores received on the Fall Exam (50%) and the Spring Exam (50%). Scores will be curved each semester with an average between 78-79 in accordance with College of Law policy.

**Attendance:**

Your daily attendance in class is expected and required absent good cause. There is a strong correlation between attendance and performance on examinations. I reserve the right to refuse a seat on the final examination to any student who misses in excess of two classes without good cause.

**Web Site:**

I will maintain a course website throughout the year which lists course announcements, changes in reading assignments, supplemental materials, and other important information for your consideration. You should visit the site before each class and are charged with knowledge of all posted materials.

**Class Participation:**

The practice of law is a collegial one which, at its best, involves the unfettered exchange of ideas between peers. Attorneys are often required to think quickly on their feet and explain and defend complex issues to others. As a result, all students should be prepared at each class to add meaningfully to the day’s discussion. The course will primarily be taught using the “Socratic method” traditionally employed in the first-year curriculum. Students who are unprepared on

more than one occasion when called upon may lose up to 5% off of their final curved grade for the semester at the instructor's discretion.

### **Use of Computers**

Students are permitted to use personal computers for note taking during class. All other **unauthorized use of the computer in any form during class**, including use of the internet, e-mail and/or instant messaging features, **is highly disruptive and expressly prohibited**. Any student disregarding this prohibition will be precluded from bringing a computer to class.

### **Reading Assignments:**

The assigned text for this course is Prosser, Wade and Schwartz's Torts Cases and Materials (11<sup>th</sup> Ed.). In addition, I highly recommend that you purchase The Forms and Functions of Tort Law by Kenneth Abraham. Students uniformly find Abraham's book to be a very helpful and concise additional source on the topics covered in class, particularly as to policy issues.

**The assignment for the first week is: 8/19: 1-16; 8/21: 17-29.** Thereafter, the number of pages assigned for each class will be given at the end of the prior week.

Reading assignments in the Prosser text each week will be dictated by the pace of discussion in class. The following is a list of the materials that we will cover over the semester, **in the order of coverage** (feel free to read ahead if you so desire):

<b><u>Chapter</u></b>	<b><u>Beginning on Page:</u></b>
I. Development of Liability Based Upon Fault	1
II. Intentional Interference with Person or Property	17
1. Intent	
2. Battery	29
3. Assault	37
4. False Imprisonment	40
5. Intentional Infliction of Emotional Distress	50
6. Trespass to Land	66
7. Trespass to Chattels	75
8. Conversion	81
III. Privileges	91
1. Consent	
2. Self-Defense	103
3. Defense of Others	106
4. Defense of Property	107

5.	Recovery of Property	113
6.	Necessity	118
7.	Authority of Law	125
8.	Discipline	127
9.	Justification	128
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1.	History	
2.	Elements of Cause of Action	132
3.	A Negligence Formula	133
4.	The Standard of Care	145
	A. The Reasonable Prudent Person	145
	B. The Professional	168
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6.	Violation of Statute	204
7.	Proof of Negligence	229
V.	Causation in Fact	259
1.	Sine Qua Non	
2.	Proof of Causation	262
3.	Concurrent Causes	282
4.	Problems in Determining Which Party Caused the Harm	285
VI.	Proximate or Legal Cause	294
1.	Unforeseeable Consequences	
2.	Intervening Causes	325
3.	Public Policy	344
4.	Shifting Responsibility	360
VIII.	Duty of Care	
1.	Privity of Contract	404
2.	Failure to Act	417
3.	Pure Economic Loss	438
4.	Mental Disturbance and Resulting Injury	450
5.	Unborn Children	464