

Atlanta's John Marshall Law School

121 Torts II

Syllabus & Course Outline

Summer Semester 2015

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121 Torts II

First Assignment

Summer Semester 2015

Associate Professor Michael Mears

Class One

Class Subject: Cause in Fact

Reading Assignment Pages 307- 350;
Read - Reed, et al v. Carolina Casualty Insurance
Company, et al., 327 Ga. App. 130 (2014).

121 Torts II

(3 Hours)

Examination of civil liability for interference with a broad array of legally protected interests, focusing on such topics as intentional wrongdoing, negligence, strict liability, causation, damages, wrongful death, and the law governing joint wrongdoers. Alternatives to the existing tort system may be discussed.

Summer 2015

Michael Mears, Associate Professor

Required Text:

Textbook: Farnsworth & Grady, *Torts: Cases and Questions* Second Edition, ISBN 978-0-7355-8294-1 (Aspen Publishers 2004). You will also be assigned Georgia cases, scholarly articles and other relevant material. All of the Georgia cases are available on-line.

Please check the TWEN site and your email regularly and frequently, as you will be responsible for all announcements, assignments, or materials posted there; other reading material will be provided through the TWEN site or will be handed out in class. Each student is responsible for all assigned reading material posted on TWEN or handed out in class.

In order to receive all class materials and to receive class assignments and notices, students must make use of the TWEN program. TWEN has many benefits, such as email and downloading additional information which I will be periodically posting there for your class. I also encourage each student to use emails to communicate with me between classes unless they have an office appointment or there is an emergency situation. I am a frequent “checker” of my emails and I assure each student that all emails will be promptly answered.

Office Hours

I will be available Tuesday from 4:00 – 6:00 and Thursday from 4:00 – 6:00. I will also make myself available to answer quick questions before and after each class. You may also set up an individual meeting time at a mutually agreeable time. I will do my best to accommodate your work schedules since I realize that many of you will be working during the summer. Please do not hesitate to contact me by email to address a specific time to meet to discuss any matters relevant to our course. My email address is mmears@johnmarshall.edu and my office telephone number is 404.872.3593, ext. 272. Please do not hesitate to stop by my office during office hours or to email me at any time you have any questions or problems.

Taping and Electronic Devices & Classroom Laptop Computer Policy

Student laptops are not allowed in class.

Classroom/Attendance and Seating Chart

The course meets on Wednesday and Friday from 10:00 a.m. until 1:15 p.m. It is a standard of our profession that lawyers who do not show up on time for court appearances and other appointments cannot serve their clients. Therefore, punctual and regular attendance is a requirement of this course. Attendance is mandated by Atlanta's John Marshall's Academic Code. See Article Six, Section 601, Atlanta's John Marshall Law School Academic Code which states that a student who is counted absent for more than twenty percent (20%) of the class hours in any course will automatically receive "W/F" as a grade for the course.

I will use a seating chart in order to facilitate meaningful classroom participation. At the beginning of the first class session I will ask you to print your name legibly on the seating chart for this class and to stay in that seat for the remainder of the semester. I feel that regular class attendance is an important attribute for any successful student. **Your absence from this class is not expected and therefore those students who are absent from class without a medical excuse will have one point deducted from their final exam grade for each absence. Regular attendance is a part of your training as an attorney and classroom participation is a part of your successful completion of the academic requirements of this course.**

Class Participation and Course Philosophy

I will teach this course using a combination of the case study method, lecture, problem solving and the Socratic Method.* As you will note there is a substantial quantity of reading material which will be required and you will be expected to be prepared to discuss all assigned reading material during each class. Tort law is a basic subject which lawyers and judges must be able to apply during the heat of courtroom battles. Therefore, a good Torts Law Course should teach students the concepts, history and application of the Tort Law used in the State and U.S. Court System(s).

This course is intended reach certain goals and objectives for each individual students. The final examination in this course will be an opportunity for the student and the instructor to evaluate the completion of those goals and objectives. The student centered **goals** for this course are what the student should be able to achieve if he or she successfully completes this course. The student centered **objectives** for this course are those measurable steps which will allow the student and the instructor to evaluate whether both the goals and the objectives have been achieved.

GOALS AND OBJECTIVES

Tort Law II (or Torts 121) is the second part of a total of six hours of Tort Law study. The Course is designed to achieve designated goals for each student. As a general goal of Torts II, students should become literate and conversant in tort law and theory. Students should become able to intelligently critique tort law and theory. Students should be able to thoroughly analyze tort problems and apply tort law to specific factual situations. Through tort law, a person who has suffered a wrong caused by another person can use civil litigation to exact legal remedies – most notably, compensation from that wrong doer. In Torts I you focused on intentional torts and defenses to them; breach elements of negligence; and principles of causation. There are four elements to negligence: duty, breach, causation, and harm. In Torts I you covered the first two elements, i.e. duty and breach. In Torts II you will be given an opportunity to cover causation and damages (or harm). This semester in Torts II, in addition to a study of causation (cause in fact and proximate cause) and the calculation of damages, you will turn to a study of particular types of torts: Products Liability, Defamation; and Invasion of Privacy. Together with Torts I, Torts II should prepare you to analyze a wide variety of tort law issues at a general level. Dealing with particular types of tort, such as medical malpractice, may require additional specialized study. This class in Torts II should also help to polish your legal reasoning skills and introduce you to some of the practical and ethical concerns of a working attorney.

A designated goal is what each student should be prepared to achieve as a result of taking this course and specific objectives as to how each student should achieve those designated goals. In other words, the goals of this course are:

Course Goals

- To provide an opportunity for law students to learn about the institutions, principles, and actors involved in the Tort Law System in state and federal courts.
- To provide the law student with an opportunity to raise relevant and critical questions concerning crime and its control and to become prepared to meaningfully address such issues from the perspectives of the participants in the judicial system.
- To offer an opportunity for the students to demonstrate their comprehension of relevant civil tort theories as well as their ability to practically apply such knowledge to contemporary tort issues.
- To provide the law student with an opportunity to read, understand, analyze, and synthesize relevant information, including qualitative and quantitative data and substantive and procedural legal doctrines relevant to tort law.
- To help insure that all students of the law understand the ethical implications of the work of tort law professionals and to be prepared to act with honesty and integrity as leaders who become agents of positive change in the judicial system.

Course Objectives

The Objectives of Tort Law II (121) are to provide each law student with:

- The ability to demonstrate an understanding of the scope, sources and purpose of tort law;
- The ability to identify and discuss the basic elements of a civil tort;
- The ability to understand key cases, legal terms, clauses, and chronologies in tort law;
- The ability to articulate the acceptable limitations on civic and personal responsibilities and the capacity to seek redress for tort violations;
- The ability to describe certain Tort Law defenses allowed in either State or Federal jurisdictions;
- The ability to discuss the conflict between the need for public order and constitutional rights;
- The ability to trace the development of Tort Law in American society and to apply that development to modern civil codes and statutes; ;
- The ability to debate the issues surrounding civil wrongs and tort law.

Teaching Methodology

In addition to the class presentations, the case study method also requires the use of the Socratic method of instruction. I will call upon students to discuss the various cases outlined in the assigned reading material for each class. You should remember that a lawyer who, without advance notice and a good explanation, fails to show up in court or who shows up unprepared may be fined, disciplined, sued, or even jailed. Such conduct is unacceptable in the profession, and it is unacceptable in this class. Good class discussions are intellectually stimulating and can be a source of learning and enjoyment. Class participation, through the Socratic Method, is strongly encouraged. If you do not understand a point discussed in class, please do not hesitate to ask a question.

*** The Socratic Method is in fact an interchange which takes place between the professor and an individual student in front of the entire class. This interchange is designed to train the student to think on his or her feet - while in front of an audience. Through questions and answers, and further questions and further answers, the (sometimes randomly) chosen student will hopefully develop, and defend positions that may have first been only vague intuitions. The point of using the Socratic Method is to foster active learning in the classroom. Through mistakes, reasoning, and proofs, the student will be pushed to the correct conclusion. The Socratic Method marries very well in the legal profession, when a lawyer must always think on her or his feet while taking everything into account.**

Examination and Grades

There will be one examination, which will count 100% of each student's ultimate course grade, except as further explained below. The examination will be "closed book." Students will not be allowed to rely on outside materials in taking their examinations. My policy, which is consistent with that of Atlanta's John Marshall's Academic Code, is to grade all examinations without knowing the identity of the authors of the examinations. As noted previously in this syllabus, announcements of scheduling or assignment changes will be posted on the West Education Network (TWEN), accessible at www.lawschool.westlaw.com, or sent by e-mail. Please check the TWEN site and your email regularly and frequently, as you will be responsible for all announcements, assignments, or materials posted there.

There are two important forms of classroom participation. The first form is your voluntary participation. Your participation in classroom discussions should be meaningful and appropriate. The second form of classroom participation is non-voluntary, where you will be called upon to think on the spot and form logical, persuasive, and informed responses. During the course, you will be assigned the task of "presenting" a case, that is discussing the facts in the case, the issues in the case and the results of the application of the rules of Tort Law to the facts as handed down by an appellate court. Part of your overall training to become a lawyer is the development of the ability to speak in a manner that inspires confidence in the listeners' minds and presenting cases in this course is part of that training.

The grading system to be used in this course will apply the following criteria:

Grade	Percentage Grade Value	Grade Point Value	Definition	Meaning of Applied Grade
A	94-100	4.00	Excellent	Considerable evidence of original thinking; demonstrated outstanding capacity to analyze and synthesize; outstanding grasp of subject matter; evidence of extensive knowledge base.
A -	93-90	3.67		
B+	89-85	3.33	Good	Evidence of grasp of subject matter, some evidence of critical capacity and analytical ability; reasonable understanding of relevant issues; evidence of familiarity with the course material and cases.
B	84-81	3.0		
B-	80-78	2.67		
C+	77-75	2.33	Satisfactory	Evidence of some understanding of the course material and case law; ability to develop solutions to analysis issues;
C	74-70	2.0		
C-	64-69	1.67		
D	68-50	1.33	Marginal Pass	Evidence of minimally acceptable familiarity with subject matter and case law, critical and analytical skills. Ability to read, analysis and synthesize issues is minimal
F	49 and below	0.0	No credit for course participation	

Course Outline and Class Assignments

The following is a general outline of the course, Tort Law II (121). You will be provided with individualized class outlines prior to each scheduled class. As you will note, with each daily assignment there one or more assigned Georgia case(s) relative to that class's over all topic. You should read these cases, as assigned, and be prepared to discuss the facts and holdings in each case during the scheduled class period. These outlines will be an expanded version of this outline and will be provided on a class-by-class basis. The outline will be placed on the course TWEN site before each class. Each student is expected and required to download these outlines and use them as a study guide. These class outlines do not replace the need for each student to prepare and maintain their own outlines for the course. I will attempt, where appropriate, to update this outline to reflect recent cases and events which relate to our course of study.

This course will require a significant dedication of your time to reading the assignment material and cases. For any law school course, reading the assigned material completely and comprehensive is an absolute must. You cannot become a lawyer without dedicating your time and efforts to reading, reading, and more reading. Professor Scott Brewer of Harvard Law School has suggested that one way to approach the reading material in law school courses is to be aware of the "literary drama of the law," that is, "be alert to the narratives of the hopes, aims, fears, aspirations and frustrations of the litigants. . . ." Remember behind every case there is a real story! The more you permit yourself and discipline yourself to become absorbed into those stories, the more you will learn and the more you will get out of the case reading material.

Class One

Class Subject: Cause in Fact

Reading Assignment Pages 307- 350; Read - Reed, et al v. Carolina Casualty Insurance Company, et al., 327 Ga. App. 130 (2014).

Class Two

Class Subject: Proximate Causation

Reading Assignment Pages 351-368 (Stop at Section B); Read - Reeves et al. v. Mahathre et al, 328 Ga. App. 546 (2014).

Class Three

Class Subject: Intervening Causes

Reading Assignment Pages 368 (Begin at Section B) -378 (Stop at Section C); Read - Tucker v. Pearce et al, 2015 WL 1432304 (March, 2015).

Class Four

Class Subject: Limitation of Duty: An Alternative Approach

Reading Assignment Pages 378 (Beginning at Section C) – 393; Read - Stallings v. Cuttino 205 Ga. App. 581 (1992)

Class Five

Class Subject: Damages

Compensatory Damages

Reading Assignment Pages 517-552; Read - Barking Hound Village, LLC, et al. v. Monyak, et al, 2015 WL 142749 (March 2015).

Class Six

Class Subject: Damages

Punitive Damages

Reading Assignment Pages 552 (Begin at Section B) – 569;
Read - Georgia Clinic, P.C. et al. v. Stout, et al., 323 Ga. App. 487 (2013).

Class Seven

Class Subject: Defenses

Contributory and Comparative Negligence

Reading Assignment Pages 571- 611; Read - Turner v. Sumter Self Storage Company et al. 215 Ga. App. 92 (1994); Garrett v. Nationsbank, N.A., 228 Ga. App. 114 (1997); Bowen et al v. Cochran et al., 252 Ga. App. 457 (2001).

Class Eight

Class Subject: Products Liability

Historical Development and Manufacturing Defects

Reading Assignment Pages 449 – 479 (Stop at Section C);

Read - Ga. Code Ann., § 51-1-11; Bowen et al v. Cochran et al., 252 Ga. App. 457 (2001).

Class Nine

Class Subject: Products Liability

Design Defects and Failure to Warn

Reading Assignment Pages 479 (Begin at Section C) – 515;

Read (again); Bowen et al v. Cochran et al., 252 Ga. App. 457 (2001).

Class Ten

Class Subject: Defamation

Introduction and Publication

Reading Assignment Pages 613 – 639 (Stop at Section D);

Read Lewis v. Meredith Corporation et al., 293 Ga. App. 747 (2008).

Class Eleven

Class Subject: Defamation

Defenses and Constitutional Developments

Reading Assignment Pages 639 (Begin at Section D) -692;

Read Fuqua Television, Inc. v. Fleming, 134 Ga. App. 731 (1975).

Class Twelve

Class Subject: Invasion of Privacy

Intrusion upon Seclusion

Reading Assignment Pages 693 -722; Read - Williams v. Coffee County Bank, et al. 168 Ga. App. 149 (1983); Pavesich v. New England Life Ins. Co., 122 Ga. 190, 50 S.E. 68 (1905); Johnson v. Allen, et al. 272 Ga. App. 861 (2005).

Class Thirteen

Class Subject: Invasion of Privacy

Appropriation of Name or Likeness and False Light

Reading Assignment Pages 723 – 748; Read C.B. Cabaniss et al. v. Hipsley, 114 Ga. App. 367 (1966).

Class Fourteen

Class Subject: Final Exam Review