

TORTS I -- Duncan Kennedy

First Syllabus

INTENTIONAL TORTS

Assignments 1-20

First Assignment Sheet

Outline

Supplemental Materials

(The text for this course is Epstein, Cases and Materials on Torts, 7th edition, Aspen, 2000)

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TORTS I -- Duncan Kennedy

First Assignment Sheet

I. INTENTIONAL TORTS

A. TRESPASS TO LAND, CONVERSION AND ASSAULT AND BATTERY

Wednesday, September 4

1. No Duty to Act vs. Strict Liability for Injury to the Interest in Bodily Security

Rest. 2nd s. 314, 314A, 321, Supplementary Materials, 1
Hurley v. Eddingfield & Notes, Supplementary Materials, 2-3
Vosburg v. Putney & Notes 1 & 3, p. 3-8 of casebook
Rest. 2nd s. 13, 16, Supp. 4
Note 4, p. 8-9 of casebook
Jhering, The Formal Realizability of Law, Supp. 5-9

Thursday, September 5

2: Property Interests: Trespass to Land and Conversion

Rest. 2nd s. 158, 162, 164, Supp. 10
Note 6, p. 9-10
State v. Shack and Joseph Singer Notes, Supp. 11-19
Dobbs, Tort and Compensation [conversion], Supp. 20-23
(Rest. 2nd s. 222A) [Rest. Sections in parenthesis are in the casebook or readings]
Rest. 2nd s. 217, 218, 229, Supp. 23A
Note 8, p. 11-12
Kennedy, Form & Substance, Supp. 24-26

Friday, September 6

3: Extent of Liability for Unintended Consequences

Rest. 2nd s. 435B, Supp. 27
Note 5, p. 9
Note 7, p. 10-11
McGuire v. Almy & Note, p. 30-34
Cauverien v. DeMetz, Supp. 28-31

B. THE (LIMITED) EXPANSION OF LEGAL PROTECTION OF RIGHTS OF PERSONAL SECURITY

Wednesday, September 11

4: Assault and Intentional Infliction of Emotional Harm

Cases & notes, p. 61-67

(Rest. 2nd s. 21, 18)

Massachusetts Anti-Stalking Law, Supp. 32A

Cases & notes, p. 76-84 (but omit note "e" on p. 82-83)

(Rest. 2nd s. 46)

Rest. 2nd s. 312, Supp. 32

Dawson v. Zayre, Supp. 33-35

Matsuda, Public Response to Racist Speech: Considering the Victim's Story, Supp. 36-39

Outline of class of 9/19/77, Supp. 40-41

Thursday, September 12

5: Privacy vs. Spouse's Sexuality

Rest. 2nd s. 652A, 685, Supp. 42

Cases & notes, p. 1155-70

(Rest. 2nd s. 652B)

Fadgen v. Lenkner, Supp. 43-50

Olivia Goldsmith, "Vindication, Not Vengeance," NYT 8/14/97, Supp. 51

Friday, September 13

6: Sexual Harassment in the Workplace

Bundy v. Jackson, Supp. 52-62

(Title VII language)

Civil Rights Act of 1991, Supp. 76-77

Meritor Savings Bank v. Vinson, Supp. 63-70

Note 5, p. 419-20

Harris v. Forklift Systems, Supp. 71-75

Note "e", p. 82-83

Wednesday, September 18

7: Tort Remedies for Domestic Violence

Prosser & Keeton on Torts [husband & wife], Supp. 79-82

Note 2, p. 1332-33

Rest. 2nd s. 936, Supp. 83

Mass. Act of Abuse Prevention, Supp. 84-89

Mass. Gender Bias Study, Supp. 90-96

Giovine v. Giovine, Supp. 99-104

Note on the dissent in Giovine, Supp. 104A

C. JUDICIAL DEFINITION OF LEGALLY PROTECTED INTERESTS AS SOCIAL ENGINEERING

1. LPI's and Economic Power

Thursday, September 19

8: The Tort of Fraud

Rest. 2nd s. 525, p. 1224

Pasley v. Freeman & Notes, p. 1223-32

Cases & notes, p. 1236-42 (but omit note 2 on p. 1240-41)

(Rest. 2nd s. 551)

Friday, September 20

9. The Tort of Interference with Contractual Relations

Prosser on Torts [Social Engineering], Supp.105-106

Scalia, A Matter of Interpretation, Supp. 107-117

Rest. 2nd s. 766, Supp. 118

Rest. 2nd s. 767, Supp. 171

Note & Lumley v. Gye & Notes 1, p. 1269-76

Green, et al, "Trade Relations," Supp. 119-121

Singer, "The Legal Rights Debate" [Damnum Absque Injuria], Supp.122-134

Wednesday, September 25

10: The Tort of Monopolization

Gregory & Kalven, "The House of Lords Trilogy," Supp.135-137

Note 2, p. 1301-03

Sherman and Clayton Antitrust Acts, Supp. 138

Hohfeld, Fundamental Jural Relations, Supp.139-144

Singer, "The Legal Rights Debate" [Hohfeld's System], Supp.145-153

Przybla v. Przybla, Supp.154-157

Thursday, September 26

11: The Tort of Unfair Competition

International News Service v. Associated Press & Notes, p. 1304-14

Holmes dissent in INS v. AP, Supp.158-159

Vandeveld, "The New Property of the 19th Century," Supp. 160-163

Chafee, "Unfair Competition," Supp. 164-170

Friday, September 27

12: The Tort of Interference with Prospective Contractual Relations

Rest. 2nd s. 766B, 767, Supp.171

Holmes, "Privilege, Malice and Intent," Supp.172-180

Vegeahn v. Guntner, Supp.181-187

Summers & Wellington note on picketing, Supp.188-189

Gorman on Labor Law [The Right to Picket], Supp.190-192
Nockleby note on Tortious Interference, Supp. 192A,B
Kennedy, "The Stakes of Law, or Hale and Foucault!" [stop at p. 351] Supp.193-231

2. Which Arguments are Liberal, which Conservative?

Wednesday, October 2

13: The Right to Picket an Abortion Clinic

"A Split on Abortion Protests," Boston Globe, Supp.232-234
"Scores Arrested During Brookline Abortion Protests," Boston Globe, Supp.235-236
Operation Rescue flyer, Supp. 237-238
Planned Parenthood League letter, Supp. 239-240
Revolutionary Communist Party flyer, Supp. 241
Bering v. SHARE, Supp. 242-263
Lexis summary of Madsen v. Women's Health Center, Supp. 263A,B

3. No Duty to Act as a General Limit on LPI's

Thursday, October 3

14: No Duty to Act Absent Special Relationship

(Rest. 2nd s. 314, 314A, 321, Supp. 1)
Buch v. Amory Mfg. Co. & Notes, p. 548-57
(Rest. 2nd s. 322)
Montgomery v. National Convoy & Notes 1, 3, 4, 5, p. 559-64
Rest. 2nd s.315, p. 606-07
Tarasoff v. Regents, p. 618-24

Friday, October 4

15: Duty to Act of Police, Civil Servants and Judges

McNamara, "Critics Fault Police Unit in Hub Murder," "No Quick Fix' in Abuse Case, Judge Rules," "Dorchester Judge Stripped of Right to Hear Most Cases," Boston Globe, Supp. 264-272
(S. 1983; 14th Amendment)
Note 6, p. 564-65
DeShaney v. Winnebago County Dept. of Social Services, Supp. 273-283
Jane Doe v. Calumet City, Supp. 284-291

D. DEFENSES IN INTENTIONAL TORTS

Wednesday, October 9

16: The Defense of Official Privilege

Prosser & Keeton on Torts [means used to effect arrest], Supp. 292

(4th Amendment)

Tennessee v. Garner, Supp. 293-309

"City Made \$500,000 Settlement in Shooting," Boston Globe, Supp. 310-311

Miller, Police Brutality, Supp. 312-313

Thursday, October 10

17: Self-Defense in the Domestic Abuse Context

Rest. 2nd s. 63, 65, Supp. 314-315

Schneider, "Equal Rights to Trial for Women," Supp. 316-318

State v. Crigler, Supp. 319-320

State v. Stewart, Supp. 321-330

Schneider, "Describing and Changing," Supp. 331-338

Kennedy, 1990 Torts Exam Question III, Supp. 339-340

Friday, October 11

18: The Defense of Consent

Rest. 2nd s. 892, 892A, B, C, D, Supp. 341-343

Mohr v. Williams & Notes 1-6 & 10, p. 12-21

Hudson v. Craft & Notes 1, 2, p. 22-25

Barbara A. v. John G., Supp. 344-347

Bass, "Disciplining Drops in Sexual Misconduct Cases," Boston Globe, 9/30/91,
Supp. 348-349

Faculty of Harvard Law School, Sexual Harassment Guidelines, Supp. 350-365

Wednesday, October 16

19: The Defense of Mistake

(Rest. 2nd s. 164, Supp. 6) 366

Rest. 2nd s. 166, Supp. 366

Coblyn v. Kennedy's & Notes, p. 71-76

Courvoisier v. Raymond & Notes, p. 34-38

Whittier, "Mistake in the Law of Torts," Supp. 367-371

Harper & James on Torts, "Mistake," Supp. 372

Prosser on Torts, "Mistake," Supp. 373

Harper & James on Torts, "Reasonableness," Supp. 374

Thursday, October 17

20: The Defense of Necessity

Rest. 2nd s. 197, Supp. 375

Ploof v. Putnam & Notes, p. 50-52

Vincent v. Lake Erie & Notes 1, 2, p. 52-57

Keeton, "Conditional Fault in the Law of Torts," Supp. 376-384

Epstein, "A Theory of Strict Liability," Supp. 385-386

