

Introduction to Private Law

POLS 4324 (Spring 2022)

Instructor: William Weaver, J.D., Ph.D

MW 9:00am - 10:20am

Business Admin 304

OFFICE HOURS: 11am - 1pm MW

108 Miners' Hall (Also Available via Zoom by Appointment)

All texts and readings for this class are available without cost:

Introduction

Most of our constitutional and political system is built on and around the development of private law as found in the law of contracts, property, and torts. Though the substrate of our constitution is found in private law, few departments of political science offer courses providing an understanding of private law and the role it plays in our political systems. In this course we study aspects of private law with an eye to understanding how it informs our system of government and our public creed and beliefs. In the end, I aim to have students grasp the important but neglected critical feature of private law in understanding our political way of life and how it affects the operation of our society.

Course Requirements

Grading: 100 possible points

90-100 points = A

75-89 points = B

65-74 points = C

55-64 points = D

<55 points = F

1. Class Case Participation (20%):

You will be called upon at random to relate the facts, issues, and rulings in cases or to discuss other readings. The best score you may receive for participation is 30.

2. Two Case Analyses (10% each/20% total)

Analysis of cases posted on the course BlackBoard website. Two pages of writing for each analysis. We will cover these requirements in more detail during class. Each case

analysis comprises 10% of your final grade. If exceptional, I may add extra points to an analysis.

3. Quizzes (Six quizzes at 5% each/30% total)

4. Final Examination (30%).

FINAL EXAM: Wednesday, May 11, 2022 10:00am-12:45pm

The final examination will be taken in class and will consist of three case problems. One each for torts, contracts, and property law. The form and nature of the exam will be made clear as we approach the end of the course.

NOTE: Student meetings will take place in Miners' Hall room 108 (conference room.

Things to Consider for Class

- Make sure you have done the reading.
- A college education is in great part aimed at expanding horizons and increasing abilities to consider the world from critical and informed positions. You will not be demeaned or penalized in any way for holding unpopular opinions.
- Be on time.
- Argument and confrontation are OK, but personal insult, cutting people off as they speak, and rudeness will not be tolerated.

Special Situations

Americans with Disabilities Act

The University and its employees are required under the ADA to make reasonable accommodation for many types of disabilities. I am thoroughly committed to the ADA and the reasoning that brought it into law. If you believe you have a disability – or if you already have a documented disability – you must 1) Contact me in a timely manner and explain what your disability is and what sorts of accommodation you will need, 2) Notify and consult with the Center for Accommodations and Support Services as soon as possible (747-5148; Union East, Room 106).

Other Civil Rights Matters

I will maintain a class environment that conforms to all requirements found in the various applicable state and federal civil rights and criminal statutes and in the UTEP Handbook of Operating Procedures. Specifically, we will maintain an environment free from sexual harassment, undue intimidation, discrimination based on protected characteristics, and threats of violence or crime. This does not mean that you cannot hold and express, even vehemently, controversial or unpopular opinions. Indeed, the First Amendment protects us in the unpopular opinions we hold, otherwise it would be a useless gesture. But all members of the class should feel equally safe and able to express their opinions.

Academic Dishonesty

Examinations and Cheating

Unless I indicate otherwise, you may not use any notes or aids during examinations or quizzes, nor may you discuss exams during an exam period with other students. You

may not copy off another student's exam or otherwise submit writing or answers that are not original to you. **I am required to report to the Dean of Students instances where I reasonably believe a student has cheated on an examination or otherwise engaged in scholastic dishonesty.**

All material is available in Blackboard (BB) or through Hyperlinks

Colors:

RED - Denotes Main Texts Readings

TURQUOISE - Denotes Discussion and Hypotheticals

GREEN - Denotes Exercises and Quizzes

YELLOW - Mini Lectures

NO COLOR - Denotes Cases, Articles and Other Information

COURSE SCHEDULE:

PART ONE - CONTRACTS

Week One:

January 19 COURSE INTRODUCTION

THE BASICS OF CONTRACTS

THE CRUCIAL NATURE OF CONTRACTS TO THE U.S. POLITICAL SYSTEM

Readings:

Earliest Insurance Contract (BB)

Elements of Contract (BB)

Val Ricks, *The Story of Contract Law* (pp. xiv-xix)

BUILDING BLOCKS OF A CONTRACT

OFFER

<https://lawshelf.com/shortvideoscontentview/contract-law-the-building-blocks-of-a-binding-agreement-offers?TimeIndex=8>

ACCEPTANCE

<https://lawshelf.com/shortvideoscontentview/contract-law-acceptance-of-an-offer>

Types of Acceptance:

<https://www.upcounsel.com/kinds-of-acceptance>

CONSIDERATION

<https://lawshelf.com/videos/entry/contract-law-the-element-of-consideration-in-contract-enforceability>

Discussion:

Give Examples of Contracts That Would Be Unenforceable?

Week Two:

January 24 **CONTRACTS (cont.)**

Readings:

Tweddle v. Atkinson (BB)

Val Ricks, *The Story of Contract Law* (Formation) pp. xix-13 and pp. 38-43 (Webb v. McGowin)

Landmark Cases in Contract, Coggs v. Barnard (BB)

Hawkins v. McGee (BB)

VIEW Hawkins v. McGee analysis:

<https://www.youtube.com/watch?v=LKIDe30pGnA>

Hamer v. Sidway (BB)

VIEW Hamer v. Sidway analysis:

<https://www.youtube.com/watch?v=Tg0ijmAGAdQ>

Brief Discussion:

Can you sell your arm?

HYPOTHETICAL:

Contracts Hypothetical One (BB)

In Class Exercise: MBE practice questions

January 26 **CONTRACTS (cont.)**

Val Ricks, *The Story of Contract Law* pp. 313-315

Carlill v. Carbolic Smokeball (BB)

Carbolic Smokeball Advertisement (BB)

Carbolic Case/Unilateral contracts explanatory video by
Ian Ayres (Yale Law School):

https://www.youtube.com/watch?v=l-p7Fl8_DZg

Day v. Caton (BB)/Explanatory video

<https://www.youtube.com/watch?v=GRvqpW5gacc>

Hadley v. Baxendale (BB) Discussion/Explanatory Video by Ian
Ayres (Yale Law School)

https://www.youtube.com/watch?v=rFe2SYS_T8A

Wood v. Duff-Gordon (BB) Discussion/Explanatory Video by Ian
Ayres (Yale Law School)

<https://www.youtube.com/watch?v=wPniV1FY5zs>

Brief Discussion:

**Should companies be liable in contract for
exaggerated claims?**

In Class Exercise: MBE practice questions

HYPOTHETICAL:

Contracts Hypothetical Two (BB)

**CONTRACTS QUIZ ONE -
MUST BE COMPLETED BY January 30
Available on midnight January 24 and closes
midnight January 30**

CONTRACTS DISCUSSION EXERCISE ONE (BB)

Week Three:

January 31 **CONTRACTS (cont.)**

Val Ricks, *The Story of Contract Law* pp. 244-256

Lucy v. Zehmer (BB) Discussion/Explanatory Video by Ian Ayres

(Yale Law School)

<https://www.youtube.com/watch?v=pa6vEi3JgyY>

Feinberg v. Pfeiffer Co. (BB)

ADHESIONS - Fisher v. Moneygram (BB)

ARTICLE - Kesler "Contracts of Adhesion" (BB)

ARTICLE - Schwartz "Consumer Contract Exchanges and the Problem of Adhesion" – **Pages 314-334 Only** (BB)

Mini Lecture - The employment contract

IN CLASS DISCUSSION OF CONTRACTS QUIZ ONE

Questions to consider:

How often do you encounter adhesion contracts?

Are adhesion contracts even contracts?

CONTRACTS DISCUSSION EXERCISE TWO (BB)

February 2 **CONTRACTS (cont.)**

Bolin Farms v. American Cotton Shippers (Discussed in video below)

Williams v. Walker-Thomas Furniture (BB)

UNCONSCIONABILITY/Discussion/Explanatory Video by Ian Ayres (Yale Law School)

<https://www.youtube.com/watch?v=73-ll0UunQo>

Bolin Farms Discussion/Explanatory Video by Ian Ayres (Yale Law School)

<https://www.youtube.com/watch?v=tnlOiRjxWro>

ARTICLE - Wertheimer "Unconscionability and Contracts"

Brief Discussion:

How are the poor victimized by business?

HYPOTHETICAL:

Contracts Hypothetical Three (BB)

In Class Exercise: MBE practice questions

Mini Lecture - Capitalism and Racism

Week Four:

February 7 **CONTRACTS (cont.)**

Interpretation:

Frigalment v. International Sales (BB)

ARTICLE - Harris "Common Mistake in Contract" (BB)

ARTICLE - Eisenberg "Mistake in Contract Law" – **Pages 1576-1579 and 1584-1609 only** (BB)

Mutual and Unilateral Mistake:

Val Ricks, *The Story of Contract Law* pp. 155-173

Brief Discussion:

Who should bear the burden of mistake when parties have disproportionate wealth?

HYPOTHETICAL:

Contracts Hypothetical Four (BB)

**CONTRACTS QUIZ TWO -
MUST BE COMPLETED BY MIDNIGHT FEBRUARY 13
Available on midnight February 7 and closes
midnight February 13**

February 9 **CONTRACTS (cont.)**

IN CLASS DISCUSSION OF QUIZ TWO

REFLECTIONS ON CONTRACT LAW

In Class Exercise: MBE practice questions

Week Five:

February 14 and 16 **WEALTH vs. THE WORKER**

Lochner v. New York (BB)

Lochner explanatory video:

<https://www.youtube.com/watch?v=tWJIoAGW2cw>

Detour - Hammer v. Dagenhart (BB)

<https://abaforlawstudents.com/2018/05/04/quimbee-hammer-v-dagenhart/>

ARTICLE - Cass R. Sunstein "The Lochner Legacy" (BB)

ARTICLE - Victoria F. Nourse "A Tale of Two Lochners" (BB)

ARTICLE - David A. Strauss "Why Was Lochner Wrong?" (BB)

Discussion:

What were the unfair results that arose from Lochner?

Do you see any residual effects of Lochner?

IN CLASS DISCUSSION OF CONTRACTS QUIZ TWO

PART TWO: TORTS

Week Six:

February 21 BASICS OF TORT LAW

TORT TERMS

<https://barprephero.com/legal-terms/torts/>

STRICT LIABILITY AND THE BIRTH OF NEGLIGENCE (LECTURE)

Brown v. Kendall Chart (BB)

NEGLIGENCE AND THE CONCEPT OF FAULT (LECTURE)

Standards of Care

Crucial Nature of Torts to the U.S. Political System

SIX PILLARS OF INSULATION FROM LIABILITY (BB)

SOME TYPES OF TORTS

Assault
Battery
Negligently Caused Injury
False Imprisonment
Conversion
Emotional Distress
Trespass
Trespass to Chattels
Invasion of Privacy
Nuisance
Emotional Distress
Defamation
Tortious Interference
Wrongful Death
Alienation of Affection

In Class Exercise: MBE practice questions

Brief Discussion:

Why do you think the law provides so many ways to escape liability?

February 23 TORTS CONTINUED - DUTY

ARTICLE - Peter Cane "Justice and Justifications for Tort Liability" (BB)

Yania v. Bigan (BB)

Wood v. Pennsylvania (BB)

What rules shall we have for injuries to people who go upon railroad tracks?

Weirum v. RKO (BB)

Mini Lecture - Duty and Relationship

TORTS DISCUSSION - LONG HYPOTHETICAL ONE (BB)

In Class Exercise: MBE practice questions

Week Seven:

February 28 TORTS CONTINUED - FORESEEABILITY

Vosburg v. Putney (Witt and Tani pp. 4-18)

Video/Audio

<https://www.youtube.com/watch?v=CWXYk1mcKLM>

Negligence Standard And Foreseeability Witt and Tani 163-177

United States v. Carroll Towing Witt and Tani

"Distributive Justice"

"Administrability"

"A Precautionary Alternative?"

"Kysar's Constructivist Critique"

Pitre v. Employers Insurance (BB)

Madsen v. East Jordan Irrigation (BB)

Mini Lecture - Ultra Hazardous Activities

ARTICLE - W. Jonathan Cardi "Purging Foreseeability" (BB)

March 2 TORTS CONTINUED - FORESEEABILITY (Cont.)

Rylands v. Fletcher (BB)

Thompson v. Alameda County (BB)

Tarasoff v. Regents (BB)

(Optional) Video: Discussing Tarasoff (American Museum of Tort Law)

<https://www.youtube.com/watch?v=LvER8hk04GM>

Mini Lecture - Duty to Warn

In Class Exercise: MBE practice questions

TORTS QUIZ ONE - (MUST BE COMPLETED BY MIDNIGHT MARCH 8)

Available midnight March 2 and closes midnight March 8

Week Eight:

March 7 TORTS CONTINUED - CAUSATION

Palsgraf v. LIRR (BB)

Video:

<https://www.youtube.com/watch?v=vWTc0uPJVgw>

Wagner v. International Rail Co. (Witt and Tani, pp. 368-370)

Farwell v. Keaton (Witt and Tani 381-382)

Glasgow Realty v. Metcalf (BB)

March v. Stramere

[http://www7.austlii.edu.au/cgi-](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1991/12.html)

[bin/viewdoc/au/cases/cth/HCA/1991/12.html](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1991/12.html)

March 9 TORTS CONTINUED - CAUSATION (Cont.)

In Class Exercise: [https://barprephero.com/torts-mbe-practice-](https://barprephero.com/torts-mbe-practice-test/)

[test/](#)

Breunig v. American Family Ins. (BB)

Byrne v. Boadle (BB)

ARTICLE - "The Doctrine of Res Ipsa Loquitur" (BB)

Negligence Standard Witt 143-160

ARTICLE - G. Greg Webb "The Law of Falling Objects" (BB)

Mini Lecture - Res Ipsa Loquitur

IN CLASS DISCUSSION OF TORTS QUIZ ONE

TORTS DISCUSSION - LONG HYPOTHETICAL THREE (BB)

SPRING BREAK MARCH 14-18

Week Nine: March 21 TORTS CONTINUED - CONCERTED ACTION

ARTICLE - NOTE "Rethinking Actual Causation in Tort Law"

<https://harvardlawreview.org/2017/06/rethinking-actual-causation-in-tort-law/>

Summers v. Tice Witt and Tani p. 321

Sindell v. Abbott Laboratories Witt and Tani pp. 322-327

Ybarra v. Spangard (BB)

DISCUSSION: Who should pay when an innocent victim is injured by an unknown actor who is nevertheless a member of a small and identifiable group of potential tortfeasors?

Mini Lecture - Causation

March 23 TORTS CONTINUED - PROXIMATE CAUSE AND THE UNEXPECTED

Benn v. Thomas Witt and Tani pp. 341-342

EGGSHELL PLAINTIFF RULE - NOTES 1-4 Witt and Tani pp. 342-343

ASIDE - PROXIMATE CAUSE AND THE EXPECTED:

Micallef v. Miehle (BB)

In Class Exercise: MBE practice questions

Week Ten: March 28 TORTS CONTINUED - ATTRACTIVE NUISANCE

United Zinc v. Britt

<https://www.law.cornell.edu/supremecourt/text/258/268>

Union Pacific Realty v. McDonald

<https://www.law.cornell.edu/supremecourt/text/152/262>

Lynch v. Nurdin (BB)

Hughes v. Lord Advocate (BB) Also read:

https://en.wikipedia.org/wiki/Hughes_v_Lord_Advocate

Mini Lecture: Attractive Nuisance Doctrine

March 30 STRICT LIABILITY

Watch/Listen:

Abnormally Dangerous Activities:

<https://lawshelf.com/shortvideoscontentview/strict-liability-in-tort-law>

Restatement on Abnormally Dangerous Activity (BB)

ARTICLE - Gerald Boston "Strict Liability for Abnormally Dangerous Activity" (BB)

Langan v. Valicopters Inc. (BB)

Mini Lecture: Ultra-Hazardous Activities

Mini Lecture: Products Liability

TORTS QUIZ TWO -

(MUST BE COMPLETED BY MIDNIGHT APRIL 4)

Available midnight March 30 and closes midnight April 4

PART THREE: PROPERTY

Week Eleven:

April 4 FINDERS

Turner: PREFACE

Armory v. Delamirie (Turner p. 1)

Bridges v. Hawkesworth (Turner p. 2)

McAvoy v. Medina Turner (Turner p. 4)

Hamaker v. Blanchard (Turner p. 6)

Hannah v. Peel (Turner p. 15)

Property Discussion Hypothetical One (BB)

April 6 TRESPASS

Jacque v. Steenberg Homes, Inc. (Turner p. 43)

Ploof v. Putnam (Turner p. 55)

Hinman v. Pacific Air Transport (Turner p. 59)

Desnick v. American Broadcasting Company (Turner p. 68)

Mini Lecture - Trespass to Chattels

IN CLASS DISCUSSION OF TORTS QUIZ TWO

PROPERTY QUIZ ONE -

(MUST BE COMPLETED BY MIDNIGHT APRIL 11)

Available midnight April 6 and closes midnight April 11

In Class Exercise: MBE practice questions

Week Twelve:

April 11 NUISANCE

Fontainebleau v. Forty-Five Twenty-Five (Turner p. 78)

Doctrine of Laches

"Laches Bars Environmentalists' Challenge" (BB)

"Student Loans - Laches No Defense" (BB)

Adams v. Cleveland-Cliffs Iron Co. (Turner p. 82)

ARTICLE - Ronald Coase, "The Problem of Social Cost" (Turner p. 105-109)

Prah v. Maretti (Turner p. 112)

Boomer v. Atlantic Cement (Turner p. 145)

Mini-Lecture - Ancient Lights

Property Discussion Hypothetical Two (BB)

April 13 NUISANCE (Cont.)/ACQUISITION BY POSSESSION

Spur Industries v. Del Webb Development (Turner p. 158)

ACQUISITION BY POSSESSION

Pierson v. Post (Turner pp. 173-181)

Ghen v. Rich (Turner pp. 181-186)

In Class Exercise: MBE practice questions

IN CLASS DISCUSSION OF QUIZ ONE

Week Thirteen: April 18 SUNKEN SHIPS, BASEBALLS, AND ARTIFACTS

Eads v. Brazleton (Turner pp. 212-226)

Popov v. Hayashi (Turner pp. 226-247)

Charrier v. Bell (Turner pp. 248-258)

April 20 COMMON POOL RESOURCES

McConico v. Singleton (Turner 260-262)

Garrett Hardin, "Tragedy of the Commons" (Turner 262-264)

Young v. Ethyl Corp. (Turner 264-272)

Ellif v. Texon Drilling (Turner 272-283)

"Review Problems" (Turner 283-284)

Property Discussion Hypothetical Three (BB)

Week Fourteen: April 25 ACQUISITION BY CREATION

International News Service v. Associated Press

(Turner pp. 291-327)

Cheney Bros. v. Doris Silk Corp. (Turner pp. 327-331)

NBA v. Motorola (Turner 331-338)

PROPERTY QUIZ TWO -

(MUST BE COMPLETED BY MIDNIGHT MAY 1)

Available midnight April 25 and closes midnight May 1

April 27

REVIEW OF CONTRACTS

Week Fifteen:

MAY 2

REVIEW OF TORTS

MAY 4

REVIEW OF PROPERTY