



TEXAS SOUTHERN UNIVERSITY  
THURGOOD MARSHALL SCHOOL *of* LAW

# **TORTS II**

**LAW 509 – SECTION IV**  
**SPRING SEMESTER, 2022**

**PROFESSOR CONSTANCE FAIN**  
**COURSE SYLLABUS**



TEXAS SOUTHERN UNIVERSITY  
THURGOOD MARSHALL SCHOOL *of* LAW

## TABLE OF CONTENTS

THE PROFESSOR, CLASS TIME, AND OFFICE HOURS INFORMATION .....	3
COURSE BOOKS & OTHER MATERIALS .....	3
COURSE DESCRIPTION & OBJECTIVES .....	4
STUDENT LEARNING OUTCOMES .....	5
GRADING .....	6
ACCOMMODATIONS .....	6
CLASS FORMAT, PARTICIPATION, ATTENDANCE, PROFESSIONALISM, ETC. ....	7
ACADEMIC CALENDAR .....	8
POLICIES & PROCEDURES .....	9
TORTS II: TOPICS AND READING ASSIGNMENTS (SPRING, 2022) .....	10



TEXAS SOUTHERN UNIVERSITY  
THURGOOD MARSHALL SCHOOL of LAW

## THE PROFESSOR, CLASS TIME, AND OFFICE HOURS INFORMATION

**NAME: CONSTANCE FRISBY FAIN**

**TELEPHONE: 713-313-7393 (LAW SCHOOL)**

**EMAIL: [constance.fain@tmslaw.tsu.edu](mailto:constance.fain@tmslaw.tsu.edu)**

**LOCATION: ROOM 221-F**

**CLASS TIME: MONDAY, WEDNESDAY AND FRIDAY 1:00<sup>PM</sup> TO 1:50<sup>PM</sup>**

**OFFICE HOURS:**

- TUESDAY AND THURSDAY
- 12:00 NOON TO 3:00<sup>PM</sup> (TELEPHONE CONFERENCES)  
(PLEASE PROVIDE A TELEPHONE NUMBER IF YOU WOULD LIKE ME TO CALL YOU DURING THESE HOURS)
- OTHER TIMES BY APPOINTMENT
- TIMES MAY CHANGE IF NECESSARY

## COURSE BOOKS & OTHER MATERIALS

### Required Text

1. Schwartz, Kelly & Partlett, Prosser, Wade and Schwartz's Torts, Foundation Press (14<sup>th</sup> ed. 2020).

### Reference Texts

1. D. Dobbs, P. Hayden & E. Bublick, Hornbook on Torts, West Academic Pub. (2<sup>nd</sup> ed. 2016).
2. W. Keeton, D. Dobbs, R. Keeton and D. Owen, Prosser and Keeton on Torts, West Publishing Co., 1984 (This is a hornbook on tort law.)
3. Restatement of Torts, Latest Editions (These restatement provisions are in a series of books containing the law of torts, commentary, and illustrations.)

- ❖ **IMPORTANT NOTE:** Please include a telephone number in your emails. I prefer to answer most questions by phone. If you are not able to answer your phone when I respond to your email, I will leave a detailed voicemail which will include an answer(s) to your question(s). Please be sure to listen to my voicemail responses.



TEXAS SOUTHERN UNIVERSITY  
THURGOOD MARSHALL SCHOOL *of* LAW

**COURSE DESCRIPTION & OBJECTIVES**

Students will be introduced to basic theories of liability in Torts. Students will examine in depth the following topics: (1) damages; (2) wrongful death and survival; (3) defenses; (4) vicarious liability; (5) strict liability; (6) products liability; (7) defamation; (8) invasion of privacy; and (9) nuisance. These tort actions, defenses, and concepts involve civil wrongs committed by one person against another and/or property of another. Since the Uniform Comprehensive Exam will only test topics 1 to 9 above, only an overview of “misrepresentation” and “misuse of legal procedure” will be provided if time permits. Additionally, an attempt will be made to examine the public policy considerations involved in the establishment and development of all of the torts, defenses, and concepts covered in the course. The overall objective is for the student to master and demonstrate competency of the topics listed above.



TEXAS SOUTHERN UNIVERSITY  
THURGOOD MARSHALL SCHOOL *of* LAW

## STUDENT LEARNING OUTCOMES

The following are the analytical skills you are expected to develop and master in order to achieve the course objectives or student learning outcomes for Torts II. Students learn these skills in their study and application of various concepts in Torts I and II, and students will continue to sharpen their skills in their second and third years as they prepare to take the bar exam.

### I. Critical Reading, Case Analysis, And Thinking Skills

Upon completion of Torts II, these skills will help you to be able to:

- Read, comprehend, analyze, synthesize, and assess court opinions by:
  1. dissecting them into components by identifying such elements as:
    - (a) litigation status of the parties in the trial and appellate court(s); (b) cause(s) of action; (c) defense(s); (d) elements of the cause(s) of action; (e) procedural history of the case; (f) facts; (g) issue(s); (h) holding(s); (i) plaintiff's arguments; (j) defendant's arguments; (k) rule(s) of law; (l) policy rationale; (m) disposition; and (n) add your own commentary;
  2. learning and understanding the meaning of the elements of each tort cause of action; and
  3. breaking rules of law or legal principles into parts in order to understand what the rules mean and how to apply them.

### II. Problem Analysis And Oral Advocacy Skills

Upon completion of Torts II, these skills will help you to be able to:

- Read, comprehend, analyze and argue (orally and in writing) tort problems by:
  1. identifying the relevant tort cause(s) of action;
  2. identifying the relevant issues;
  3. identifying the elements of the relevant cause(s) of action;
  4. identifying the relevant rule(s) of law;
  5. applying the rule(s) of law to the relevant facts completely;
  6. identifying pro-arguments, counter arguments and rebuttal arguments;
  7. identifying relevant policy arguments; and
  8. articulating legal arguments clearly, efficiently, completely, and professionally.

**\*\*NOTE: "STUDENT LEARNING OUTCOMES": TO BE MORE FULLY DEVELOPED AND ENHANCED.**



# TEXAS SOUTHERN UNIVERSITY THURGOOD MARSHALL SCHOOL *of* LAW

## GRADING

There will be a total of approximately three (3) cumulative real interim examinations during the Spring semester. The midterm will be Exam 1 or 2. One of the three exams will be a timed Essay, and the others will be multiple choice exams since Torts is tested mostly as a multi-state subject on the Bar Examination. The Essay will be administered in the latter part of the semester. Practice exams are cumulative and will be administered throughout the semester to aid you in preparing for the interim exams, the final exam, and ultimately the Bar Examination. Practice Exams will be announced. Since I require that the Tutor create and administer a minimum number of quizzes, the points you receive on those assessments will be counted as part of the professor's 50% component of your final grade. Therefore, all interim real exams and quizzes are mandatory. Failure to take those exams will result in a lower final 50% score. Excess absences and unpreparedness will also result in your final score being lowered. If you cannot be prepared for class, inform me in writing the day before class, and you will be excused from participating on the day of class.

Extra credit opportunities may be available, which could enhance your grade in the course. Extra credit projects, if any, will be announced at the appropriate times.

\*\*\*NOTE: The law school has a uniform examination policy for all first-year substantive law courses. Therefore, the final examination in all sections of Torts II will be the same. The final exam will be cumulative and may be referred to as the Uniform Exam or Uniform Comprehensive Exam.

## ACCOMMODATIONS

Students that require or feel that they need accommodations must contact the Dean's office as soon as possible to fill out the necessary forms. Your prompt attention to this matter will allow for timely accommodations to be provided by the Law School once you have submitted your application and medical documentation. Your application and other documentation will remain confidential.



TEXAS SOUTHERN UNIVERSITY  
THURGOOD MARSHALL SCHOOL *of* LAW

**CLASS FORMAT, PARTICIPATION, ATTENDANCE, PROFESSIONALISM,  
ETC.**

Class meets on Monday, Wednesday and Friday from 1:00pm to 1:50pm. However, I will inform you whenever I plan to end class later. Blackboard may be used for the following course information: (1) Announcements; (2) Content; (3) Exams; (4) Syllabus; (5) etc.

Each student is required to read the assigned materials and brief all cases before they are discussed in class. Some of the cases will be assigned to individuals in advance. Additionally, students are expected to read relevant sections of the Restatement (Second) and (Third) of Torts, as well as **all** of the Notes following the cases and other textual information in the textbook. Supplementary materials listed under “Reference Texts” on page 3 of this syllabus should be helpful in clarifying tort concepts. From time to time other reading materials will be assigned.

Students are expected to attend class on a regular basis. You are expected to be ready to participate when the class starts. The grade of any person who has been absent from regular class sessions more than five (5) times may be lowered one (1), two (2) or three (3) grades, depending on the number of excess absences, by the Professor or Law School Administration. Points will be deducted from the grades of persons who are unprepared for class when called on to respond. You are expected to conduct yourself in a professional manner at all times, which includes respecting your classmates and the professors. Refrain from side conversations or other distracting conduct during class. Once class begins, you should remain seated and fully engaged in the discussion unless you have a medical condition. Make sure you inform the Dean’s office of your situation.



# TEXAS SOUTHERN UNIVERSITY THURGOOD MARSHALL SCHOOL of LAW

## ACADEMIC CALENDAR



### THURGOOD MARSHALL SCHOOL OF LAW

TEXAS SOUTHERN UNIVERSITY  
ACADEMIC CALENDAR 2021 – 2022

#### SPRING SEMESTER 2022

##### SPRING SEMESTER 2022 (SEVENTY DAYS OF CLASSES)

School Opens	Monday	January 3, 2022
First Day of Class	Monday	January 10, 2022
Last Day to ADD/DROP	Friday	January 14, 2022
<b>M L K Holiday (No Classes)</b>	<b>Monday</b>	<b>January 17, 2022</b>
<i>Purge of all unpaid course selections</i>	Monday	February 7, 2022
Mid Term Examinations	Mon – Fri	March 7 - 11, 2022
Spring Break	Mon – Fri	March 14 - 18, 2022
Last Day to Drop a Class	Monday	April 11, 2022
<b>Good Friday (No Classes)</b>	<b>Friday</b>	<b>April 15, 2022</b>
Last Day of Classes	Wednesday	April 27, 2022
First Year Professors' Grades Due	Wednesday	April 27, 2022
<b>Reading Period (No Classes)</b>	Thur – Sun	April 28 - May 1, 2022
Final Examinations	Mon- Fri	May 2 – May 13, 2022
Hooding Ceremony	Friday	May 13, 2022
Commencement Exercises	Saturday	May 14, 2022

Please note that the calendar events and /or dates are subject to change.





# TEXAS SOUTHERN UNIVERSITY THURGOOD MARSHALL SCHOOL *of* LAW

## **POLICIES & PROCEDURES**

Please reference the Thurgood Marshall School of Law Student Rules and Regulations Handbook concerning policies and procedures.

### **EXAMS AND REVIEWS**

Real exams and reviews will be scheduled at times other than the times that the class meets unless informed otherwise. Attendance at reviews conducted by the professor or posted on Blackboard is **not** mandatory. Tutorial sessions will be scheduled and conducted by the Student Tutor, who will develop and administer several quizzes during the semester as mandated by the professor. Therefore, these quizzes will count as part of the final grade.

### **FIREARMS**

My office is a gun-free zone. Therefore, guns are banned in my office (Room 221-F).

### **COMPUTERS, ETC.**

Laptops, tablets, Apple watches and other electronic devices are prohibited during exams and exam review conferences.

### **TOPIC AND ASSIGNMENT ADJUSTMENTS**

The professor reserves the right to adjust the schedule, classroom topics, and other activities as needed to achieve course objectives or student learning outcomes.



TEXAS SOUTHERN UNIVERSITY  
THURGOOD MARSHALL SCHOOL *of* LAW

**TORTS II: TOPICS AND READING ASSIGNMENTS (SPRING, 2022)**

**WEEK I**

**(Jan. 10-14)**

- Damages (Personal Injuries; Physical Harm to Property; Punitive Damages (Chap. 10) pp. 579-629

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**WEEK II**

**(Jan. 17-21)**

- **Martin Luther King Holiday (Jan. 17<sup>th</sup>)**
- Wrongful Death & Survival (Wrongful Death Action; Survival Action) (Chap. 11) pp. 631-658

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**WEEK III**

**(Jan. 24-28)**

- Defenses (Contributory Negligence; Last Clear Chance; Comparative Negligence; Assumption of Risk; Statutes of Limitation & Repose) (Chap. 12) pp. 659-701

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**WEEK IV**

**(Jan. 31-Feb. 4)**

- Defenses (Immunities: Employer; Families; Charities; State & Local Governments; The United States; Tribal Sovereign Immunity; Public Officers) (Chap. 12) pp. 701-750

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**WEEK V**

**(Feb. 7-11)**

- Vicarious Liability (Respondeat Superior; Independent Contractors; Joint Enterprise; Bailments; Imputed Contributory Negligence) (Chap. 13) pp. 751-782

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**WEEK VI**

**(Feb. 14-18)**

- Strict Liability (Animals; Abnormally Dangerous Activities; Limitations on Strict Liability) (Chap. 14) pp. 783-817



TEXAS SOUTHERN UNIVERSITY  
THURGOOD MARSHALL SCHOOL *of* LAW

**WEEK VII**  
**(Feb. 21-25)**

- Products Liability (Negligence Theory; Warranty Theory; Strict Liability Theory; Misrepresentation Theory; Manufacturing Defect; Design Defect; Warnings Defect) (Chap. 15) pp. 819-866
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**WEEK VIII**  
**(Feb. 28-March 4)**

- Products Liability (Proof; Defenses; Defendants Other than Manufacturers – Other Suppliers of Chattels; Services; Harm Other Than Personal Injury (Chap. 15) pp. 866-909
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**WEEK IX**  
**(March 7-11)**

- Defamation (Nature of a Defamatory Communication- Cases Illustrating Many of the Elements of the Defamation Action; Libel and Slander; Publication) (Chap. 17) pp. 943-985
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**WEEK X**  
**(March 14-18)**

- **SPRING BREAK**
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**WEEK XI**  
**(MARCH 21-25)**

- Defamation (Basis of Liability: Actual Malice; Burdens of Proof & the Press; Private Plaintiffs, Speech of Private Concern; Falsity; Public Figures and Public Officials; Opinion) (Chap. 17) pp. 985-1043
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**WEEK XII**  
**(March 29-April 1)**

- Defamation (Absolute, Conditional and Qualified Privileges; Remedies) (Chap. 17) pp. 1043-1070
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TEXAS SOUTHERN UNIVERSITY  
THURGOOD MARSHALL SCHOOL of LAW

**WEEK XIII**  
**(April 4-8)**

- Privacy (Commercial Appropriation Theory; False Light Theory; Intrusion Into Physical Solitude or Seclusion Theory; Public Disclosure of Private Facts Theory; Defenses) (Chap. 18) pp. 1071-1124
- 

**WEEK XIV**  
**(April 11-15)**

- Nuisance (Private Nuisance; Public Nuisance; Defenses; Remedies) (Chap. 16) pp. 911-942
  - **Good Friday Holiday (April 15<sup>th</sup>)**
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**WEEK XV**  
**(April 18-22)**

- Misrepresentation (Chap. 21)  
(Overview if Time Permits)
  - Misuse of Legal Procedure (Chap. 20)  
(Overview if Time Permits)
- \*\* TENTATIVE DATE: Pre-Final Exam: Approximately 2 hours on April 22<sup>nd</sup> (Friday) or April 25<sup>th</sup> (Monday) (Time: TBA)**
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**WEEK XVI**  
**(April 25-27)**

- \*\*TENTATIVE DATE:**  
**Pre-Final Exam: Approximately 2 hours on April 25<sup>th</sup> (Monday) (Time: TBA)**  
**\*\*Class will meet 2 or more hours on April 27<sup>th</sup> (Wednesday) to review the Pre-Final Exam.**
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**WEEK XVII**  
**(May 2-6)**

- **Final Exam Period**
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TEXAS SOUTHERN UNIVERSITY  
THURGOOD MARSHALL SCHOOL *of* LAW

**WEEK XVIII**  
**(May 9-13)**

- **Final Exam Period**