



OFFICE OF THE DEAN
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TO: Torts Students, Section 4
FROM: Douglas Ray, Professor of Law
RE: Preparing for Class and the “Socratic Method”*

In most first-year classes you will be asked to read appellate cases and discuss them in class. This will help you understand our judicial process for interpreting and making law. It is a careful, balanced and public-spirited system and one in which good advocacy is essential to ensure that all relevant issues are considered. You will be asked to think about and argue both sides of the issues presented, a process that will expand your perspective and understanding, and then to help us arrive at just outcomes. These cases will provide examples of how various legal rules apply to specific fact situations. They are the tools we will use to help us give advice and predict outcomes in other situations.

Because the cases selected often present tough issues on the borders of legal rules and policies, you must read carefully. In the early weeks of class, you will be asked detailed questions about each case you have read to insure that you are developing habits of careful reading and analysis. In later weeks, the professor’s questions will help you learn to apply rules and case precedent to practical situations and serve as a catalyst for deeper discussion of strategies, policies, and the evolution of the law.

The question, answer, and discussion format used in law school is often referred to as the Socratic method, although law school instruction includes enough lecture, direction, exercises, and other tools that it is not close to a pure form of Socratic dialogue. The key to preparing is to anticipate the questions that will or could be asked about these cases and prepare in advance your answers and positions on them. This preparation will transform your reading from a passive and ineffective form of learning to an engaged form of active learning. The questions you should anticipate include the following:

1. Who is suing whom?

You should know not only the names of the parties but also their relationship to each other. “X., a customer, is suing Y, the owner of the store, and Z, a clerk at the store.”

2. What relief is sought?

For what are they suing? Money, injunctive relief, etc.?

* For a thorough and thoughtful discussion of the process, see Anthony Kronman, “The Socratic Method and the Development of the Moral Imagination,” 31 *Univ. Toledo L. Rev.* 647-653 (2000) reprinted from Anthony Kronman, *The Lost Lawyer* (1993).

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3. Facts - What happened?
 - a. Who did what to whom? Bear in mind that the case may have been resolved at an early stage before facts have been determined and you might have before you only the allegations of the parties. Are there facts admitted to by the parties, assumed for purposes of a particular motion or found by a jury or trial judge?
 - b. Include the procedural posture of the case... in what court did plaintiff sue?, what result below?, etc.
 4. What general rules of law were applied in the case?
 5. What is the specific question presented? (The narrow issue before the appeals court)
 6. What are the arguments of each side on the issue?
- In some classes, you may be asked to role play the argument of one side or the other and make arguments based on cases studied in earlier sessions of the course.
7. What result – who wins?
 8. Why? What is the reasoning of the court? (This may involve a blend of fact, law, and policy.)
 9. Are there any limits to the court's holding? Do they tell us? How far can this rule go? (Often explored through use of hypotheticals)
 10. What are the policies behind the court's ruling? Do these policies apply equally strongly today or have technological developments or changing social values made it time to reexamine this holding?
 11. Why did the loser lose? Could you have made a better argument? As advocate for the loser or as judge, what additional facts would you like? What facts would have changed the result?
 12. What does the case add to your understanding of the subject under discussion? Where would it fit in an outline? Does it demonstrate a rule? A limit on a rule? An exception to a rule? A limit on an exception? Does it expand, reverse, or limit prior precedent?

Be prepared to give reasons for any position you take. As lawyers, we must persuade. Whether we are persuading judges or clients, the organization and quality of the reasons we provide for our arguments and our legal advice will determine how persuasive and successful we are. The words following "because" are often the most important. Another tip is that small problems are easier to resolve than large ones. In applying a rule, for example, you will often find that the rule can be divided into three or four elements. You can then more easily apply the facts to each of the elements rather than trying to reach a global solution.

I wish you the best in your studies.



Torts 1, Section 4

Douglas Ray, Professor of Law

Text:

Torts, Cases and Materials, Prosser, Wade and Schwartz, 13th Edition, 2015, Foundation Press.

Assignment for first day of class:

Please read the first six cases on the Syllabus for the first class. Bring a notebook because we will not be using laptops during the first part of the semester.

Thank you for your interest in St. Thomas Law. This is a unique law school, with faculty, staff, and students working together to help each other, and our sense of community has made us one of the most highly ranked in the nation for quality of life. Our professors are experienced lawyers, experts in their fields who write highly regarded books and law journal articles, and excellent teachers. They are enthusiastic about getting to know you and helping you develop into an effective and successful professional. Our law school will also give you the opportunity to become part of the vibrant business, social, and legal environment of South Florida. As the gateway to the Americas, Miami offers unrivaled

personal and professional opportunities. Here, your legal education will extend beyond the classroom. Whether serving clients in our law clinics, representing us in interschool competitions on one of our highly successful trial advocacy or moot court teams, writing for one of our law journals, interning with judges, government agencies, and social service agencies, or providing service to underrepresented communities through our Pro Bono Leadership Program, you will have the opportunity to build your skills, be engaged, and make a difference. You will build a strong foundation while you are here. This transforming experience will equip you well for the future whether you choose to practice law or serve in a leadership position in business, government,

or social service. Whatever your career choice, the skills, knowledge, and confidence you gain here will help you make a difference in your community and in the world. Finally, I think you will enjoy being part of our law student community. We have a diverse student body with students from many backgrounds and faiths, all of whom will enhance your perspectives. Because ours is a Catholic university where values matter, we focus on social justice and respect for the person. I hope that you will visit our website, www.stu.edu/law to learn more about us and, most importantly, visit our campus to meet our faculty, students, and staff and sit in on a class. We look forward to welcoming you.