



# STETSON LAW

## Damages

Professor Jared Hatcliffe



<p>Course Damages   Law 6112 Fall 2022 2 credits</p>	<p>Contact Information: Prof. Jared Hatcliffe <a href="mailto:Jhatclif@law.nyc.gov">Jhatclif@law.nyc.gov</a> 516 395 6083</p>	<p>E-mail me or text me to schedule an appointment. I will always make time to speak with you!</p>
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### Class Description: What to expect?

This course is designed to develop each student's understanding of the concept of Damages. The course will thus provide students with the opportunity to develop the core lawyering competencies of both:

- ✓ Economic Damages
- ✓ Non-Economic Damages

### Objectives: What you *will* learn!

Our class will afford all of you with an interest in litigation work the opportunity to enhance and develop the skills necessary to fully evaluate a Damages claim, no matter which side you are representing - plaintiff or defendant. Our goal will be for you to learn how to evaluate the damages of a case so that you can explore the most effective means of recovery and develop the advocacy skills best employed when seeking to maximize or mitigate damages. Specific topics will include compensatory damages including economic damages such as past and future lost earnings, non-economic damages such as pain and suffering, the concept of attorney's fees and when punitive damages are available.



## Teaching methodology – How will you learn this topic?

This is an experiential learning class. This mean *you learn by doing*. There will of-course be lectures to provide you a solid base for understanding the subject. These will take the form of a number of modules I will upload these to Canvas for you to review.



But you must take an active role in your education. This will help you better learn and retain the information taught in this class and develop the thought process of developing a civil case from inception, with any eye towards maximizing or minimizing the damages arising from the lawsuit. You must immediately begin to build the case with an eye towards possible settlement and/or trying the damages portion of the case at trial.

Through the course we will consider:

1. What are damages and the difference between economic, non-economic and punitive damages;
2. Dissect the different types of economic damages;
3. Evaluate a potential case as plaintiff's counsel;
4. Evaluate the exposure as defense counsel;
5. Consider the discovery necessary to prove or defend your case;
6. Damages experts;
7. Settlement conferences;
8. Finding the right damages juror in voir dire.
9. Demonstrative evidence for proving Damages

### **Class Meetings**

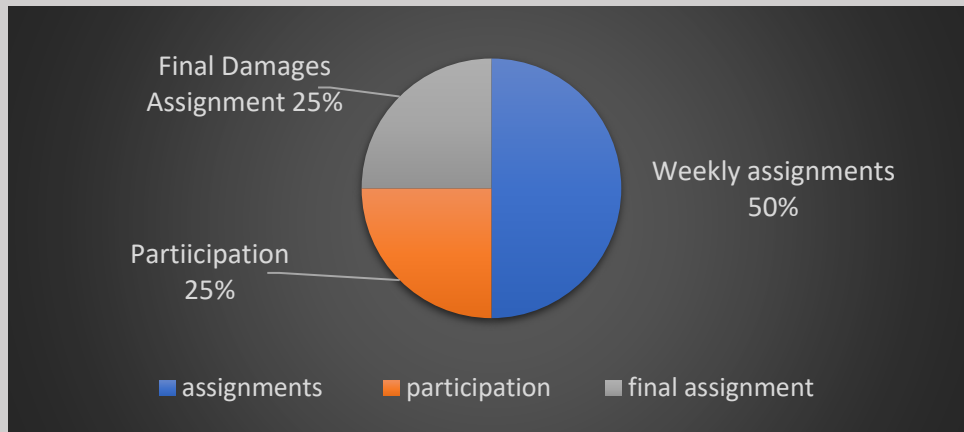
The LLM program does not account for live class meetings. Instead, the class will be conducted through the use of video lectures, electronic forums – including assignments on Canvas and email as well as written feedback from both myself and classmates.

**You should anticipate the following with respect to our class structure:**

1. Video modules will be posted periodically. They will generally be no longer than 20 minutes for you to absorb the material as effectively as possible. This may mean that some topics are broken down into more than one module.
2. **Assignments will be posted after each subject is completed.**
3. The assignments will be discussed, briefly in the videos and further discussed, as needed, on Canvas – as well as periodically by email. Note I like to email and will send you relevant articles from time to time on this subject.
4. Completed assignments should be posted on Canvas and it will be necessary for each student to review others and comment on a minimum of two classmates' assignments.
5. Questions may be emailed to our group email (preferably) or posted on Canvas. All class members are invited to respond to any questions

**“REMEMBER WE ARE ALL IN THIS TOGETHER!”**

## Grading



The grading scale for this class is similar to your other LLM classes. That being: High Honors, Honors, Pass, Credit and Fail. Grades are based your assignments, your participation by contributions to others on Canvas and your final damages assignment, which will be assigned as we near the end of the session.

### *Class Materials*

**There is no required text!**

- ✓ **You will receive modules/explanatory videos** with brief lectures on each topic delivered periodically.
- ✓ **Self-assessment quizzes** after each module with links to the correct answers;
- ✓ **Assignments** to help you learn and retain the material.

### Attendance Policy

It will be important that you respond to assignments – *including commenting on your classmates’ offerings*—recognizing that certain flexibility with respect to individual schedules is expected. Canvas will help us certify that the videos have been reviewed and assignments completed the sum of which will confirm your participation in accordance with Stetson’s attendance policies.



### Assignments

We will be dividing this class into 10 sections and 17 modules. Each assignment should be completed by the end of that week. For example, week one you will have 2 modules. After viewing both modules you should begin your assignment and submit it on Canvas by the end of the week.

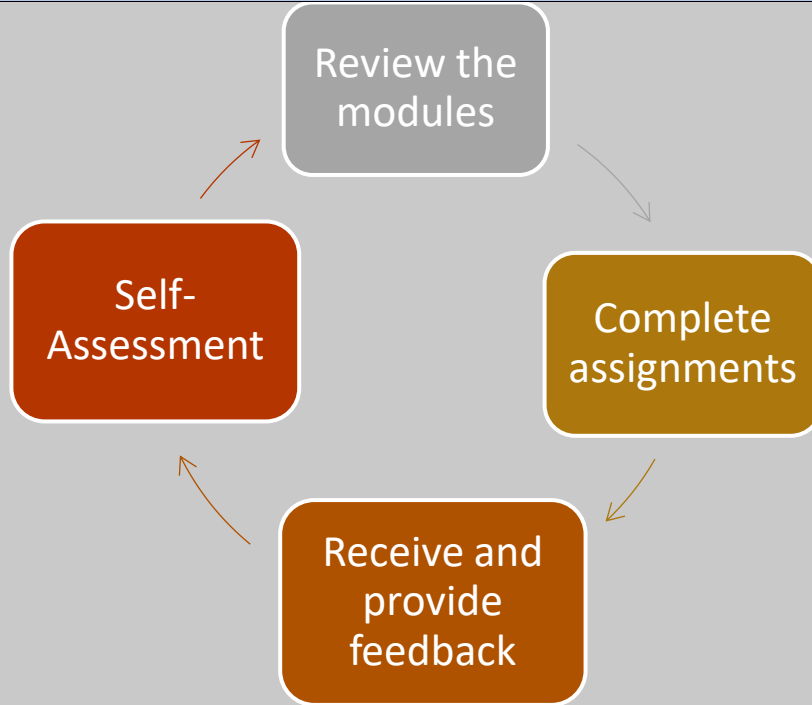
Section	Module	Topic	Assignment
1	1	What are damages and the difference between economic, non-economic and punitive damages.	
	2.	Dissect the different types of non-economic damages.	Give us a bio including any experience you have had with respect to Damages as an element of a civil trial.
2	3.	Examining the various categories of non-economic damages.	
	4.	Punitive Damages.	Cite and discuss the law in your jurisdiction as it relates to proving and arguing damages. Is there a cap on Damages? Are there any limitations on claims for intangible injuries like pain and suffering? Identify those.

			What about caps on punitive damages?
3	5.	Causes of action and the corresponding Damages remedy Part I.	
	6.	Causes of action and the corresponding Damages remedy Part II.	Create two fact patterns and corresponding damages the plaintiff should plead. One of the fact patterns should be a catastrophic case including both economic and non-economic damages. Bonus if you can plead punitives too!
4	7.	The Client interview – what damages related questions to discuss when meeting your client.	
	8.	Discovery – What documents will you need to prove your case?	Using your catastrophic case list for us the process and analysis you would go through when evaluating whether or not to take that case as a plaintiff's counsel and list the documents you would exchange in order to prove your damages at trial.
5	9	Experts Part 1 – Examining the different types of Damages Experts for Pain and Suffering.	
	10	Experts Part 2 - Examining the different types of Damages Experts for Non-economic damages.	Using your catastrophic case from above, identify the types of experts you would retain to prove your case.
6	11	Experts Part 3 – Examining FRE 702 and FRCP 26	
	12	No module - Breather	Draft an Expert Exchange.
7	13	Evaluating Damages Part 1 – This week we learn how to research the	

		sustainable values for injures and discuss how different venues effect those values.	
	14	Evaluating Damages Part 2	Using Lexis or Westlaw, find verdicts or settlements similar to your case so you can evaluate its worth.
8	15	Damages and the Voir Dire Process	Create a list of questions you would ask potential jurors about your assigned fact pattern.
9	16	Proving Damages with Demonstratives	Discuss at least one demonstrative that might help you assist the jury in proving your damages.
10	17	Final assignment - Settlement memo and conferences	You will be assigned a case. Draft a settlement memo that discusses the experts needed to prove your damages or defend against them and discuss the number range and suggest a settlement demand or offer and support it with your research.

## Remote learning Loop

Remote learning has a number of benefits. In order to effectively teach you and for you to effectively learn, please follow the suggested learning loop.



### STEP 1 -Review the modules

It goes without saying that not only should you review the class modules, but you should also treat them like you are in a live lecture. That means taking notes, writing out questions you may have and posting them on Canvas or emailing them to us all. These lectures will give you a solid foundation for learning the subject and for completing your assignments.

### STEP 2 - Complete assignments

This is where you will learn, and retain, most of your knowledge in our course. Learning by doing is a school of thought originating in ancient Greece. For things we must learn , we learn by doing – Aristotle.



### STEP 3 -FEEDBACK



**WHY IT MATTERS:** Feedback is a critical component of effective teaching and learning. Feedback is also an essential element of law practice. A law office with multiple lawyers, for instance, will have many opportunities for you to seek, give, and receive feedback. You can learn from your classmates as much as you can on your own. Timely, meaningful, and frequent feedback, along with ample opportunities for responsive and reflective practice, are key components of this course.

## STEP 4 - SELF-ASSESSMENT

### WHAT IT MEANS:



A systemic process of data-driven self-reflection. It occurs when you evaluate your performance critically in order to identify strengths and deficits and develop a plan for improvement.

### WHY IT MATTERS:



Self-assessment promotes reflection, critical thinking, and self-awareness. The ability to self-assess is vital for both law students and lawyers. When students establish goals, identify criteria that will help them achieve those goals, reflect on their learning, and then generate strategies for additional learning, their performance improves.

### WHAT ARE ITS BENEFITS:



Research shows that the ability to successfully self-assess:

- \*enhances learning;
- \*increases motivation;
- \*improves satisfaction from participating in a collaborative learning environment;
- \*provides a range of personal and transferrable skills that will meet the expectations of future employers;
- \*empowers and prepares you for lifelong learning.

### WHAT IT MEANS FOR YOU:



You will have opportunities to engage in trial simulations. These simulations will require you to spot evidentiary issues in a trial-like setting and apply the relevant rule(s). After completing each simulation, you will receive a written transcript. Annotate the transcript by reflecting on *why* some points seemed easy while others were more difficult. Did you miss an objection entirely or misapply a rule? How will you guard against these issues in the future? Are there key words that should cue consideration of an evidentiary rule? Or nuances to the rule that you need to understand better? Reflecting on your work in this way will greatly enhance your learning of and comfort with the rules of evidence.



## **ADA Accommodations**

According to the College of Law policies on ADA Accommodations and ESL Testing Modifications, students with disabilities or foreign students may seek reasonable accommodations and/or ESL testing modifications for this course. Accommodations and/or modifications cannot be made unless written notice is provided from to the ADA Coordinator. To seek accommodations students must communicate with the ADA Coordinator as soon as possible at [ada@law.stetson.edu](mailto:ada@law.stetson.edu) and follow the procedures found on the school's Accessibility Resources website. [Http://www.stetson.edu/law/accessibility/index.php](http://www.stetson.edu/law/accessibility/index.php) .”