

SYLLABUS

1. **Course schedule.** Class meets in room 120 on Monday and Wednesday from 6:00pm to 7:50pm with a 10-minute break in the middle. The first class is Monday August 24. There is no class on: Monday September 7, Monday October 12, and Wednesday November 25. A “make-up” class will be held on Tuesday October 13, same room and time. The last class is Wednesday December 2. The final exam is Wednesday December 9 at 6:00pm.

2. **Required course materials.** Ward Farnsworth and Mark Grady, *Torts: Cases and Questions, 2nd Ed.* (Aspen 2009). Required supplementary materials are or will be posted on the Required Course Materials page of the Westlaw Virtual Classroom (TWEN). Please ensure that your Westlaw account is active and that you are registered with TWEN. See the Library staff for help with Westlaw and TWEN, as needed.

3. **Secondary materials.** As an optional supplement to aid you in this course, I recommend Kenneth S. Abraham, *The Forms and Functions of Tort Law* 3rd ed. (Foundation Press 2007). I also like Mark A. Geistfeld, *Tort Law: The Essentials* (Aspen 2008). A book that would aid you in all of your classes at George Mason is Ward Farnsworth, *The Legal Analyst: A Toolkit for Thinking about the Law* (Univ. Chicago Press 2007). *The Legal Analyst* would be a good read for the Christmas break or for next summer.

4. **Office hours.** My office hours reserved for meeting with students are **TUESDAYS** 3:00-5:00pm, room 409. You don't need to give me advance notice that you will be stopping by at that time. If you can't stop by at that time because of work or another class, feel free to contact me by email to schedule an appointment. In your email, please give me a list of two or three dates and times when you could meet, and I'll choose one of them.

Office hours should not afford a student with “insider information” or any other unfair advantage. Thus, I cannot review outlines or answers to sample exams or discuss the content and format of the final exam outside class.

5. *Email policy.* My email is svermont@gmu.edu. I prefer that you ask substantive questions in person – in class, immediately after class, or in my office. Email is an inefficient way to converse about substantive issues of tort law. I'll make an exception if it is very difficult for you to get to the law school during regular business hours.

6. *Electronic devices.* I encourage you to take notes on a laptop, but do not use it or any other electronic device for activities unrelated to class (*e.g.*, games, surfing the internet, email, instant messaging). These activities distract other students. Accordingly, I will lower a student's final grade if I catch that student using an electronic device for purposes unrelated to class. If you witness another student playing around on an electronic device, please let me know. Your identity will remain confidential.

Please remember to turn off your cell phone before class.

7. *Recording lectures.* You can record a lecture if you cannot attend the lecture *and* you let me know before the lecture that another student will be recording it for you.

8. *Grades.* This course is worth 4 credit hours. Your grade will be based on the final exam, which is graded blindly. However, superb class participation will boost your final grade by one-third of a letter, *e.g.*, a B+ would become an A-. Poor class participation will pull down your grade by one-third of a letter.

Final exam. The final exam will likely consist of 40-50 multiple choice questions plus one medium-length essay question. I will let you know the format, and post a sample exam, before the semester ends.

The final is partially open book, meaning that you can bring the required casebook, paper copies of the course materials that I post on TWEN, a paper copy of your notes, and a paper copy of an outline that you prepared by yourself or as part of a GMU Law study group. If the exam has an essay component, you can bring your laptop to use in secure mode with the exam software. You cannot bring or access secondary materials or outside materials, such as a legal dictionary, a stand-alone copy of the Restatement of Torts, a commercial outline, material that was copied and pasted from a commercial outline, or the secondary materials recommended in this Syllabus. If English is not your first language, you may bring a general English language dictionary.

The final exam will touch on most topics covered over the semester. You will have 3.0 to 3.5 hours to complete the exam. I'll let you know

the exact time towards the end of the semester. You will fill in your multiple choice answers on a scantron sheet with a #2 pencil. Points will be awarded for correct answers only; no points will be subtracted for wrong answers.

Class participation. I will call on each of you several times over the course of the semester.

Superb class participation has more to do with high quality than with high quantity. It also has more to do with advancing the particular question under discussion than with making points, albeit clever, that distract. Poor class participation includes: being unprepared more than once when I call on you; being absent (without excuse) more than once when I call on you; poor citizenship (*e.g.*, being overtly rude or disruptive); and playing around (even once) on a computer or other electronic device during class.

University's attendance policy. A student cannot earn credit for a course if that student misses more than two clock hours for each credit hour assigned to the course. Therefore, for this course you cannot miss more than four classes and still earn credit. Also, it is an honor code violation to sit for the final exam if you have missed more than four classes in this course.

9. *Assignments.* Twenty-four assignments are listed below. We will meet for class twenty-eight times over the semester. Accordingly, there is not an exact one-to-one correspondence between each assignment and each class.

1. Nuts & Bolts; A Touch of Battery

- Orin Kerr, How to Read a Legal Opinion: A Guide for New Law Students (on TWEN)
- Marshall v. Ranne (on TWEN)
- Farnsworth & Grady: Prefaces, Introduction, and pages 1-4
 - For this and later assignments, please read through the last note that ends on the last page of the assignment. For example, for assigned pages 1-4, read through Note 3, which ends on page 4. You needn't read Note 4, which starts on page 4 but ends on page 5.
- Familiarize yourself with the basic meanings of the terms below. Many of the terms are defined in the Kerr article or in the Introduction in the Farnsworth & Grady casebook. Free legal

dictionaries are available at
http://www.lawphil.net/lawtools/dictionary/law_dict.html

common law,
precedent,
stare decisis,
Restatement of the Law of Torts,
statute,
assumption of the risk,
contributory negligence,
strict liability,
respondeat superior,
complaint,
answer,
demurrer,
motion to dismiss,
directed verdict (or judgment as matter of law/judgment notwithstanding verdict),
summary judgment,
appellant/petitioner,
appellee/respondent,
holding,
rationale/reasoning,
dicta/dictum,
remand,
vacate,
majority opinion,
concurring opinion
dissenting opinion,
question of fact,
question of law,
de novo,
prima facie,
preponderance of the evidence

2. Battery

- Farnsworth & Grady: 4-15

3. Battery

- Farnsworth & Grady: 16-29
- Mark Grady, Using Cases without Glosses (on TWEN)

-
4. Assault; Intentional Infliction of Emotional Distress
 - Farnsworth & Grady: 64-84
 5. Trespass; Conversion
 - Farnsworth & Grady: 29-44, 52-54
 6. Defense of Person and Property; Private Necessity
 - Farnsworth & Grady: 85-99
 7. Private Necessity; Public Necessity; Discipline
 - Farnsworth & Grady: 100-120
 8. The Reasonable Person
 - Mark Grady, Introduction to Negligence Analysis (on TWEN)
 - Farnsworth & Grady: 121-40
 9. Risks and Precautions; Custom
 - Farnsworth & Grady: 140-70
 10. Negligence Per Se
 - Farnsworth & Grady: 170-91
 11. Res Ipsa Loquitur
 - Farnsworth & Grady: 192-216
 12. Duties Arising from Affirmative Acts and Undertakings
 - Farnsworth & Grady: 217-36
 13. Duties Arising from Special Relationships
 - Farnsworth & Grady: 236-55
 14. Duties Arising from the Occupation of Land
 - Farnsworth & Grady: 255-72
 15. But-For Causation
 - Farnsworth & Grady: 307-32
 16. Alternative Causation
 - Farnsworth & Grady: 332-50
 17. Foreseeability
 - Farnsworth & Grady: 351-68
 - Table: Polemis v. Overseas Tankship v. Kinsman (on TWEN)

18. Superseding Causes; Palsgraf; Duty v. Proximate Cause

- Farnsworth & Grady: 368-93

19. Strict Liability

- Farnsworth & Grady: 395-416

20. Strict Liability; Respondeat Superior

- Farnsworth & Grady: 416-48

21. Products Liability

- Farnsworth & Grady: 449-70, 477-79

22. Products Liability

- Farnsworth & Grady: 479-515
- In class we will listen to an mp3 of the Oral Argument from *McMahon v. Bunn-O-Matic* (J. Easterbrook et al). The mp3 is not on TWEN.

23. Contributory Negligence; Comparative Negligence

- Farnsworth & Grady: 571-87

24. Assumption of the Risk

- Farnsworth & Grady: 587-611