Antonin Scalia Law School at George Mason University

TORTS (110-003)

Fall 2019
Mondays & Wednesdays, 9:50-11:50 AM
4 credits

Professor Caroline Cecot
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Room 450C
Office hours: Wednesdays, 3:00-4:00 PM

Course Overview: What’s the purpose of tort law? Why, when, and to what extent should one person ever be liable to another? Why tort law and not contract law, criminal law, insurance law, or regulatory law?

This course explores the law of torts, considering these and other important questions through a study of doctrines and legal rules. Torts—or, compensable wrongs done by one legal entity to another—fall into three general categories: (1) intentional torts (e.g., intentionally hitting a person); (2) negligent torts (e.g., causing an accident by failing to take reasonable safety measures); and (3) strict liability torts (e.g., liability for making and selling defective products, regardless of intention or degree of care). The legal rules defining liability within these categories span Parts 1 through 4 of the course. Part 5 focuses on tort damages. Finally, Part 6 introduces students to one specialized topic, defamation.

Students will be expected to analyze legal rules against the possible aims of tort law, such as providing relief to injured parties for harms caused by others, imposing liability on parties responsible for the harm, and optimally deterring others from committing harmful acts. Students will be expected to critically examine legal reasoning and understand the evolution of legal rules. Importantly, students will learn about different intellectual approaches applied to the law of torts over the years. Finally, students will consider tort law in relation to other disciplines.

Course Objectives: At the conclusion of the course, students are expected to know and apply legal doctrines; articulate the difference and appreciate the relationship between tort law and contract law, criminal law, regulatory law, and insurance law; and think critically about the strengths and weaknesses of the tort regime in achieving various aims in different contexts.

Casebook and Readings: The casebook for this course is

EPSTEIN & SHARKEY, CASES AND MATERIALS ON TORTS (11th ed. 2016).
All readings are contained in this casebook, unless otherwise noted. All other required or optional readings will be posted on Blackboard.

Exams:
- The **midterm exam** will be held on **Tuesday, October 8, from 8:45 AM to 9:45 AM**. The exam will be open-book but closed laptop and Internet.
- The **final exam** will be held on **Thursday, December 12, at 12:00 PM**. The exam will be open-book but closed laptop and Internet.

Laptops: Laptops are allowed for the purpose of taking notes. By bringing a laptop to class, you agree not to use the computer for any other purpose (e.g., social media, chat/email, games, news). If you fear temptation, just take notes by hand.

Attendance: At the start of each class, I will distribute an attendance sheet. This sheet will constitute the record of attendance in this course. **You are responsible for ensuring that it accurately reflects your attendance.**

This course adheres to the Law School’s attendance policy. If a student is absent for any reason for more than 20% of the course (or, more than 5 classes), then the student is not eligible for credit. A student who misses more than 25% of a class (more than 21 minutes) will be counted as absent from that class.

Assessment and Grades: The midterm exam will count for 25% of your grade, and the final exam will count for 75% of your grade. I retain discretion to adjust your final grade by one-half letter to reflect exceptional class participation (as measured by responses to my questions) or a persistent lack of preparation. Questions are welcome—neither counting toward participation nor suggesting lack of preparation—but I may defer some questions to outside class hours in the interest of time and focus.

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<tr>
<td>Monday, November 25</td>
<td>Pre-Recorded Video, available after</td>
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<td>November 6</td>
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Assigned Reading

*Please note that assigned readings are subject to change based on class pacing or other considerations. I will try to give at least a week’s notice in the event of any changes.*

**Part 1. Intentional Torts**

1. **Monday, August 26**

   Introduction, battery
   pp. 3-11 (N.1-5)


2. **Wednesday, August 28**

   Effect of consent & mental disability
   pp. 14-21 (N.1-4), 28-31

**LABOR DAY** – Monday, September 2, NO CLASS

3. **Wednesday, September 4**

   Trespass to land, property defenses, & self defense
   pp. 12-14 (N.1, 2); 36-41 (N.1,3); 41-47 (N.1); 32-36 (N.1-4)

4. **Monday, September 9**

   Emotional harm (assault, offensive battery, false imprisonment, IIED)
   pp. 52-70

**Part 2. Negligence**

**A. Duty/Breach**

5. **Wednesday, September 11**

   Reasonable person
   pp. 137-39; 144-51 (N.1,2), 153-57 (N.1-3), 159-60
6. **Monday, September 16**

Hand Formula  
pp. 162-64 (N), 170-76 (N.1-5), 179-81 (N)

7. **Wednesday, September 18**

Custom  
pp. 181-203

8. **Monday, September 23**

Informed consent & medical malpractice reform  
pp. 203 (N.2) to 215 (N.1-4)


9. **Wednesday, September 25**

Statutes and regulations  
pp. 218-20 (N.1), 221-25 (N.1-3), 227-30 (N.1), 232-35 (N.1)


10. **Monday, September 30**

Judge v. jury, res ipsa loquitur  
pp. 238-40 (Holmes), 244-48 (N.3-5), 248-59 (N.1), 263-73

11. **Wednesday, October 2**

No duty rules & affirmative duties  
pp. 467-81 (N.1,3,4), 484-85 (N.2), 486-94 (N.1,4,5), 494-501 (N.1), 518 (RST §315), 528-36 (N.1)
B. Plaintiff's Conduct & Defenses

12. Monday, October 7

Contributory negligence & assumption of risk
pp. 275-76, 152-53 (N.4), 276-86 (N.1,2), 289-92 (N), 296-301, 303-14 (N.1,2,4,5)

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MIDTERM CLASS – Tuesday, October 8, covering material through class 11
8:45 AM until 9:45 AM, Room 120

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13. Wednesday, October 9

Comparative negligence
pp. 322-36 (N.1,2[a.b],4,5), 336-40 (N.2,3)

COLUMBUS DAY – Monday, October 14, NO CLASS
Class will be held on Tuesday, October 15 instead

C. Causation

14. Tuesday, October 15

Cause in fact, joint and several liability
pp. 341-47 (N.2,3), 348-53, 353-63 (N.1,2)

15. Wednesday, October 16

Multiple causes, alternative liability, market-share liability, loss of chance
pp. 367-72 (N.2,3), 372-86 (N.1-3), 387-92 (N.1,2)

16. Monday, October 21

Proximate cause (I)
pp. 341-43 (reread), 403-07 (N.1,2), 414-17 (N.2,3), 419-44 (N.1-3)

17. Wednesday, October 23

Proximate cause (II)
pp. 451-62 (N.1-3)
Part 3. Strict Liability

18. **Monday, October 28**

   Strict liability v. negligence, abnormally dangerous activities
   pp. 135-36 (N.2), 130-32 (N.4), 176-77 (N.6,7), 575-82 (N.1,3,4), 582-90

19. **Wednesday, October 30**

   Conversion & trespass to chattels
   pp. 13-14 (N.2,3), 540-52 (N.1), 553-61 (N.1)

20. **Monday, November 4**

   Private nuisance
   pp. 593 (N.1) to 599 (N.1,3), 600-04 (N.1,2), 604-12 (N.1,3), 612-20 (N.1-3,5-6)

21. **Wednesday, November 6**

   Vicarious liability
   pp. 624-31 (N.1-4), 632-38 (N.1)

Part 4. Products Liability

22. **Monday, November 11** (Happy Veteran’s Day; yes, we have class)

   Doctrinal development, defects
   pp. 641-45, 656-62 (N.1), 666-71 (N), 682-86, 687-88, 697-701 (N.1), 704-07 (N.1-2)

23. **Wednesday, November 13**

   Warnings, regulatory compliance, preemption
   pp. 708-19 (N.1,2,4), 725-31 (N.2-4), 740-47 (N. 3), 747-53
Part 5. Damages

24. Monday, November 18

Compensatory damages
pp. 759-68, 771-73 (N.1-2), 782-89


25. Wednesday, November 20

Punitive damages
pp. 790-805

Part 6. Special Topic: Defamation

CANCELLED CLASS – Monday, November 25
A pre-recorded video class session will be available for students to watch at their convenience after Wednesday, November 6

26. Pre-Recorded Video Class Session

The New Yorker Article (skim) (appendix in Biro I, pp. 44-71)
Biro I – pp. 9 (Part I.A.) (read); 16 (Part II.B) to 43 (read, paying most attention to law and less attention to specific facts).
Biro II – pp. 5-8 (Part I.A) (skim); 15-22 (Part IV) (read); 22-26 (Part V) (read)
(Note that page numbers in Biro I and II refer to pdf pages)

Optional: Documentary, “Who the #$&% is Jackson Pollock?”
Preview here: https://www.youtube.com/watch?v=ygufyC4v2XE

Happy Thanksgiving!

Submit any questions you might have from the course until Monday, December 2, at 5 PM. I will identify themes of confusion and post a document with guidance on Wednesday, December 4.