

Antonin Scalia Law School at George Mason University

TORTS (110-004)

Fall 2021

Tuesdays & Thursdays, 1:50 to 3:50 PM ET
4 credits

This course meets in person (with Zoom as a backup).

Read this syllabus carefully! It is your roadmap for all course assignments.

Professor Caroline Cecot

ccecot@gmu.edu

Office hours:

Open office hours: Fridays, 12:30 to 1:30 PM ET.

Office: Hazel Hall 450C (in Law & Economics/GAI suite on the 4th floor)

Virtual office hours: E-mail me to schedule a virtual meeting.

Format Expectations:

This course meets in person. It might become necessary, however, for us to meet remotely at some point during the semester. For those class sessions, we will meet in the Zoom classroom noted below. *I will try to give you as much advance notice as possible if a class session will meet remotely instead of in person.*

Virtual Classroom:

Zoom: <https://gmu.zoom.us/j/98790120458> (meeting ID 987 9012 0458).

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 legal rules. Torts—or, the common law of civil wrongs not arising out of contract—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. Students will also learn the free-standing tort of defamation through a pre-recorded video that can be viewed at any time.

Learning Outcomes: This course incorporates the general learning outcomes listed at <https://www.law.gmu.edu/academics/degrees/jd/>. More specifically, at the conclusion of the course, students are expected to know and apply legal doctrines of tort law; examine the legal reasoning behind legal rules; understand the evolution of legal rules; 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 act; and think critically about the application of tort law to new and emerging contexts.

Casebook and Readings: The casebook (CB) for this course is

JOHN FABIAN WITT & KAREN TANI, CASES, PRINCIPLES, AND INSTITUTIONS (5th ed. 2020).

Download the CB here (free): <https://www.cali.org/books/torts-cases-principles-and-institutions>. The website also provides a link for purchasing a low-cost paperback print version, if you prefer that format (I do, at least!).

All readings are contained in the CB, unless otherwise noted in the syllabus. All other required reading (RR) or optional material (OM) will be posted on Blackboard.

Sometimes I'll include additional material on Blackboard that is not indicated in the syllabus; that material is *always* optional.

You can download a Blackboard app to access course material from your mobile device. Information on this option is here: <https://its.gmu.edu/service/blackboard-mobile-student-app/>

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 class sessions), then the student is not eligible for credit. I appreciate advance notice of any absences.

Assessments:

- **Reading questions** must be posted before the associated class session.
- The multiple-choice (25 questions) **midterm exam** will be held on **Thursday, October 21, time TBD**.
- The **final exam** will be held on **Thursday, December 9 at 12:00 PM ET**. The final exam will consist of a multiple-choice portion (30%) and an essay portion (70%).

Assessment for this course is as follows:

- **Reading questions** will count for 10% of your grade;
- The **midterm exam** will count for 25% of your grade;
- The **final exam** will count for 65% of your grade.

Reading Questions: You are required to post a brief question or comment on the reading for at least 10 class sessions out of 26 total class sessions. Your submission need not be longer than a few sentences. The submission should be a question or comment about the reading or related issues.

I will accept written questions or comments up until the start of a class session. To submit a question or comment, please go to the “Discussion Board” tab in Blackboard. Find the appropriate forum for that class session. Submit a question or comment by *creating a new thread* with an **informative title** or by *replying to any thread* that has already been posted for that class session by another student. (Interaction is encouraged!)

Timely submission of a question for 10 class sessions will count for 10% of your grade. Credit for this portion of your grade will be based on *submission* and not on content. That is, if you timely submit questions or comments for at least 10 class sessions, you will obtain full credit for this portion of your grade. But if, for example, you submit a question or comment for 8 class sessions, then you will receive credit for 8% out of the available 10%.

For the first class session, the “reading question” should be a short introduction. Ideally, it will include:

- **Your preferred name:** I address students by the first name indicated in the official record. If you prefer for me to call you by a different name, please let me know.
- **Where are you from?**
- **Your choice:** Why law school?, What are you excited about learning in law school?, OR, any comment or question about the reading.

Class Sessions:

- During portions of class sessions, I will “cold call” on students from one of two panels defined below.

Panel A	On call during odd-numbered class sessions: Class 1, Class 3, etc.	A to H
Panel B	On call during even-numbered class sessions: Class 2, Class 4, etc.	J to Z

- I expect to get through at least half of a panel during each class session.

- Please note, however, that **I expect *everyone* to be prepared for each class session**. We will have group discussion components that will require all students to be prepared. And, more generally, keeping up with the reading is essential for success in law school.

In-Person Class Session Rules:

- Recorder: Each class session will have a recorder (as well as a backup recorder) from the Panel that is not on call. The recorder will take notes and e-mail them to me so that I can post them to Blackboard before the next class session.*
 - If you cannot take notes during your scheduled class session, you must contact the backup recorder.
- We will take at least one break during each class session.
- I expect everyone to contribute to a respectful and welcoming learning environment.

Additional Remote Class-Session Rules:

For class sessions that occur over Zoom, please adhere to the following rules:

- Please mute your microphones when you are not speaking to avoid unnecessary background noise.
- I prefer for all students in the on-call Panel (A or B) to have their videos turned on, to the extent possible. (Please use your good judgment.) All other students may have their videos turned off, except when participating with other students in a breakout session.
- If you would like to ask a question, please use the “raise hand” feature in our virtual classroom. All students are encouraged to ask questions, although I may defer some questions to office hours in the interest of time or focus.

Additional Study Material:

- The following material will be posted on Blackboard:
 - A prior multiple-choice midterm exam
 - Essay questions from a prior final exam
 - Links to other practice material

Feedback:

I encourage constructive feedback at any time. Please provide such feedback either by emailing me or (if you prefer to be anonymous) by using the “Anonymous Feedback” option on Blackboard.

Additional School Policies and Resources:

- I expect every student to adhere to the **Student Honor Code**.
- Please be aware of the **Academic Regulations**.

* Some of you will prefer to take handwritten notes during the semester. In that case, please e-mail me a photo/scan of your notes when you are the recorder.

- University Life provides student support resources such as:
 - **Counseling and Psychological Services (<https://caps.gmu.edu/>)**
 - **Student Health Services (<https://shs.gmu.edu/>)**
 - **Student Support and Advocacy Center (<https://ssac.gmu.edu/>).**
 For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>.

Assigned Reading

Please note that assigned readings are subject to change based on class pacing or other considerations.

Key:

- **CB** = required casebook reading
- **RR** = required reading outside of casebook
- **OM** = optional but recommended material

Part 1. Intentional Torts

1. Tuesday, August 24

Introduction, battery

CB: pp. 1-8; 19-29 n.6 (skipping n.4 & n.5, pp.24-28)

RR: Richard A. Posner, *The Concept of Corrective Justice in Recent Theories of Tort Law*, 10 J. LEGAL STUD. 187, **187-91** (1981) (Blackboard).

OM: Orin S. Kerr, *How to Read a Legal Opinion: A Guide for New Law Students*, 11 THE GREEN BAG 2d 51 (2007) (Blackboard).

As discussed earlier in the syllabus, the “reading question” for this class session is a short introduction.

2. Thursday, August 26

Effect of consent, mental disability, and self-defense/defense of others

CB: 78-84; 29-30 (n.7) (#MeToo); 24-28 (n.4 & n.5) (capacity); 66-70 (self-defense)

OM: Cynthia Kwei Yung Lee, *Race and Self-Defense: Toward a Normative Conception of Reasonableness*, 81 MINN. L. REV. 367 (1996) (Blackboard).

3. Tuesday, August 31

Trespass to land, trespass to chattels v. conversion, property defenses

CB: pp. 35-38 (trespass); 38-47 (trespass to chattels v. conversion) 71-74; 84-93

OM: Maureen E. Brady, *Property and Projection*, 133 HARV. L. REV. 1143 (2020).
(Blackboard).

OM: The Case of the Shotgun Booby Trap,

<https://www.youtube.com/watch?v=bV9ppvY8Nx4>

4. Thursday, September 2

Emotional harm (assault, offensive battery, false imprisonment, IIED)

CB: pp. 47-65

LABOR DAY – Monday, September 6, University Closed

5. Tuesday, September 7

Finish emotional harm (assault, offensive battery, false imprisonment, IIED)

This is a planned day for catchup and review of intentional torts.

Part 2. Negligence

A. Duty/Breach

6. Thursday, September 9

Reasonable person

CB: pp. 133-158

7. Tuesday, September 14

Hand Formula

CB: pp. 158-185

8. Thursday, September 16

Custom, role in medical malpractice

CB: 196-216

OM: David A. Hyman & Charles Silver, *The Poor State of Health Care Quality in the U.S.: Is Malpractice Liability Part of the Problem or Part of the Solution?*, 90 CORNELL L. REV. 893 (2005) (Blackboard).

9. Tuesday, September 21

Statutes and regulations

CB: 216-231

RR: Kenneth S. Abraham, *The Trouble with Negligence*, 54 VAND. L. REV. 1187, 1188-95, 1199-1209 (2001) (Blackboard).

10. Thursday, September 23

Judge v. jury, res ipsa loquitur

CB: 185-195; 231-243 (skipping n.2, p.240)

11. Tuesday, September 28

No duty rules & affirmative duties (I)

CB: 379-400

12. Thursday, October 30

Affirmative duties (II)

CB: 416-436

End of material covered in midterm.

B. Causation

13. Tuesday, October 5

Cause in fact

CB: 294-311

14. Thursday, October 7

Multiple causes, alternative liability, market-share liability, loss of chance

CB: 311-330

FALL BREAK – Monday, October 11, University Closed

OBSERVE MONDAY SCHEDULE – Tuesday, October 12

Submit any questions on material covered on the midterm by tonight (Tuesday, October 12) (via email to me or via the Anonymous Feedback feature on Blackboard).

15. Thursday, October 13

Proximate cause (I)

CB: 334-350

I will reserve some time to answer questions submitted for the midterm.

16. Tuesday, October 19

Proximate cause (II)

CB: 356 (n.2)-366; 368-377; 400-410

OM: *Palsgraf*, <https://www.youtube.com/watch?v=G-9cIaMhtUE&t=5s>

17. Thursday, October 21 – **MIDTERM (time TBD)**

MIDTERM – *covering material through class 12 (affirmative duties)*

The remainder of the class session covers the free-standing tort of defamation. You can view the pre-recorded video for this class at any time. Material on defamation will be covered on the final and not on the midterm.

Defamation – video can be viewed anytime

RR: *Biro I* – pp. 9 (Part I.A.) (read); 16 (Part II.B) to 43 (skim, paying most attention to law and less attention to specific facts).

Biro II – pp. 5-8 (Part I.A) (skim); 15-22 (Part IV) (skim); 22-26 (Part V) (read)

WA: *Defamation* (Blackboard)

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

OM: *The New Yorker* Article (optional, skim) (*appendix in Biro I, pp. 44-71*), or watch this summary: <https://www.youtube.com/watch?v=I5IUFrWLSK0>

C. Plaintiff's Conduct & Defenses

18. Tuesday, October 26

Contributory negligence & comparative negligence

CB: 253-259; 259-268

19. Thursday, October 28 (Halloween class)

Assumption of risk

CB: 268-293

Part 3. Strict Liability

20. Tuesday, November 2

Strict liability v. negligence, abnormally dangerous activities

CB: 486-500

OM: Steven Shavell, *The Mistaken Restriction of Strict Liability to Uncommon Activities*, 10 J. LEGAL ANALYSIS 1, **1-4, 20-26** (2018) (Blackboard).

21. Thursday, November 4

Vicarious liability

CB: 480-485

RR: Alan O. Sykes, *The Boundaries of Vicarious Liability: An Economic Analysis of the Scope of Employment Rule and Related Legal Doctrines*, 101 HARV. L. REV. 563, **581-590** (1988) (Blackboard).

22. Tuesday, November 9

Nuisance

CB: 500-519 (private nuisance)

Part 4. Products Liability

23. Thursday, November 11

Doctrinal development, defects

CB: 534-566

24. Tuesday, November 16

**Warnings & regulatory compliance,
CB: 566-588**

Part 5. Damages

25. Thursday, November 18

**Compensatory damages: pecuniary/nonpecuniary, economic loss,
relational
CB: 609-636; 639-641; 442-455**

26. Tuesday, November 23

**Reflections on compensatory damages, punitive damages
CB: 663-682**

OM: Martha Chamallas, *The Architecture of Bias: Deep Structures in Tort Law*,
146 U. PENN. L. REV. 463, 463-66, 470-89, 491-93, 495-98, 499-502, 510, 512-
15, 521-30 (1998) (Blackboard).

Happy Thanksgiving!

*Submit any questions you might have from the course until Friday, December 3.
I will identify themes of confusion and either host a video review session or post a
document with guidance on Monday, December 6 or Tuesday, December 7.*

FINAL EXAM – Thursday, December 9, at 12pm