

# Torts (110-002), Autumn 2021

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**Sketch of the course and learning outcomes:** In this course, you will not learn everything you need to know about torts. You will learn (or at least have a reasonable opportunity to learn) enough to get started and then continue to learn more through higher-level coursework, independent study, and practical application. That is the purpose of the course – to get you rolling toward expertise in:

- (1) the roots of tort law (by spending a lot of time on some cases and other authorities, and a little bit of time on many others);
- (2) current tort doctrine (by, again, spending a lot of time on a few cases and authorities, and a little bit of time on a lot of others);
- (3) spotting and dealing with issues involving torts (by spending a lot of time issue-spotting); and
- (4) generally thinking and acting like a lawyer – critically, constructively, creatively, civilly, ethically, and articulately.

In the classroom, you will engage mostly in two activities: occasionally speaking during discussions of the assigned reading, and often giving other speakers your undivided attention while working, in your own mind, on the same challenges they are working on out loud. Those in-class activities should inspire you to engage in some outside activities, including reading, outlining, thinking about, and discussing the assigned reading, creating and taking your own practice questions in anticipation of the final exam, and so on. We should, by the way, have some fun as well.

**Class sessions and calendars:** We will meet on Mondays and Wednesdays from 1:50 p.m. to 4:00 p.m. Our law school's website says class runs to 3:50 p.m., but we will go to 4:00 p.m. because there is always a chance we will have to cancel a class session or two during the semester due to foul weather, instructor unavailability, or whatever. Indeed, we will miss one session (Sept. 27) because I will be unavailable. Experience teaches that it is good to avoid early-morning, late-night, and weekend make-up sessions, and by banking a few minutes at the end of each class session we can avoid inconvenient make-up sessions. We will balance our calendar near the end of the semester, with any accumulated but unused make-up time subtracted from the remaining schedule. So, if we miss just one the scheduled class (Sept. 27), the Nov. 22 session will be cancelled, and if in addition it turns out that I am able to teach on Sept. 27, the Nov. 17 session will be cancelled as well. That is, obviously, why the schedule below has "TBD" for Nov. 22.

**Regular office hours:** They will be in the classroom right after each Wednesday class session. Attendance will be really, truly optional. I will simply stay in the classroom after the class session formally ends and chat with anyone who hangs around. That means office hours will be on Wednesdays from 4:00 p.m. until whenever we run out of topics or I run out of time. I will not take attendance and will not reward people for attending. It is merely a time for you to have access to me, if you want it. You won't hurt my feelings by not coming. Nor will I be offended if you wander in and out, or show up for a few minutes and leave, or come late, or don't show up in August, September, and October, but do show up in November. It's all good. Also, the agenda is loose. We can talk about torts, and we can talk about other topics – life, the universe, and everything else appropriate – if you like. Good nutrition is an important part of a good education, so, you are free to dine during office hours (if COVID-related rules permit), so long as you are quiet about it and clean up after yourself. In fact, you are also free to eat during class, on the same terms. There are several reasons for conducting office hours this way. Here are a few of the more important ones. First, it preserves a level playing field. No one gets special access to the instructor. Second, it improves the quality of answers to questions, because it is not at all uncommon for students to come up with first-rate answers to office hours questions. Yes, office hours are conversations, not just student-instructor Q&A ping-pong matches. Third, it enables people who are reluctant to speak up (at least at the start) to be a part of office hours. It's also perfectly fine to attend office hours and simply listen. Remember: The most useful function of office hours is the challenge of formulating good questions. You don't even need to ask them if you decide not to. Second most useful is participating in developing good answers. Of course, if you need to talk with me about something that is not appropriate for office hours (a personal issue or an ethical concern, or the like), feel free to make an appointment. Finally and very importantly, if you have a concern that you are not comfortable raising with me, you should raise it with Christine Malone (cmalone4@gmu.edu), the impressively knowledgeable, wise, kind, and resourceful Assistant Dean of Student Academic Affairs at our law school. I have worked with Dean Malone for many years and have the highest respect for and trust in her.

**Disability accommodations:** Disability Services at George Mason University is committed to upholding the letter and spirit of the laws that ensure equal treatment of people with disabilities. Under the administration of University Life, Disability Services implements and coordinates reasonable accommodations and disability-related services that afford equal access to university programs and activities. Students can begin the registration process with Disability Services at any time during their enrollment at George Mason University. If you are seeking accommodations, please visit <http://ds.gmu.edu/> for detailed information about the Disability Services registration process. Disability Services is located in Student Union Building I (SUB I), Suite 2500. Email: [ods@gmu.edu](mailto:ods@gmu.edu) | Phone: (703) 993-2474.

**For each class session:**

- Read, take notes, and think about the assigned material before class, and be prepared to listen and speak. Stay an assignment or two ahead of schedule, just in case.
- Look up words you do not know. Use a good dictionary or two (including a recent edition of *Black's Law Dictionary*, edited by Bryan Garner). Important, interesting, or odd words are good candidates for exam questions.
- You may use silent electronics in class. But bear in mind a few points: (1) there is some evidence that pointing your face toward a speaker (or at least turning in their direction a bit) improves your comprehension and recollection of what the speaker says; (2) the instructor believes the first point is true, believes that even if it isn't true it is still polite, believes that politeness is part of good lawyering, and knows

beyond a shadow of a doubt that behaving as though you are trying to model good lawyerly behavior factors in the calculation of participation adjustments in grading for this course; (3) and, finally and ironically, there is some evidence of an inverse relationship between a person's belief that they can multitask and their ability to multitask.

- Take notes in your own words. There is some evidence that taking notes that way (rather than merely transcribing what is said in class) improves your comprehension and recollection of what you hear and see (which might come in handy for the exam). Besides, if you are worried about catching every word during class, don't. All class sessions and office hours will be recorded and posted online.
- Note and follow in-class instruction. If you miss a class (or miss something said in a class you do attend) get notes from a classmate. Make arrangements in advance as a precaution against unanticipated absences (and missed somethings). There is a strong tradition in law of sharing notes with colleagues in need. Be a part of it.

### **Texts:**

Required: Kenneth S. Abraham, *The Forms and Functions of Tort Law* (5th ed. 2017) (free on West Academic via our school's website, which you will learn about in orientation; you can buy a hard copy online – cheap compared to most law school textbooks).

Ross E. Davies, *Torts Cases* (2021 ed.) (free pdf from the instructor; on Blackboard).

Suggested: Bryan A. Garner, *Black's Law Dictionary* (11th ed. 2019 as a book, or 10th ed. 2014 as an app) (not cheap, but worth it).

A few words about law school textbooks: They go out of date fast, because the law is a living, constantly changing creature (or creatures), like the society of which it is (or they are) a part. As we will see during the course, even a relatively recent work, such as the Abraham book, which was written by a first-rate scholar and published just a few years ago, can sometimes benefit from updating. So, do not be surprised if we do some tinkering during our course, and be on the watch for changes in law throughout your career.

### **Assignments and class schedule:**

Entries to the right of a date indicate the reading assignments for that date (it will be updated with "Torts Cases" assignments before the semester starts). Assignments are subject to change based on the pace of the course and the whim of the instructor.

Date	Topic(s)	Abraham reading	Torts Cases
Aug. 23	Introduction	ch. 1, pp. 1-23	ch. 1, pt. A-B
Aug. 25	Battery	ch. 2, pt. I, pp. 25-30	ch. 2, pt. A
Aug. 30	Assault, False Imprisonment, IIED	ch. 2, pt. II-III, pp. 30-36	ch. 2, pt. B
Sept. 1	Defenses	ch. 2, pt. IV, pp. 36-41	ch. 2, pt. C
Sept. 8	Trespass	ch. 2, pt. V.A, pp. 41-42	ch. 2, pt. D
Sept. 13	Trespass to Chattels, Conversion	nothing new	ch. 2, pt. E
Sept. 15	Defenses	ch. 2, pt. V.B, pp. 42-50	ch. 2, pt. F
Sept. 20	Nuisance	ch. 2, pt. V.C, pp. 50-59	ch. 2, pt. G
Sept. 22	Negligence	ch. 3, pt. I-II, pp. 61-77	ch. 3 & 4, pt. A
Sept. 27 no class			
Sept. 29	More Negligence	ch. 3, pt. III-IV, pp. 77-89	ch. 3 & 4, pt. B
Oct. 4	Malpractice	ch. 3, pt. V, pp. 89-99	ch. 3 & 4, pt. C
Oct. 6	Negligence Per Se	ch. 3, pt. VI, pp. 99-103	ch. 3 & 4, pt. D
Oct. 12	Burdens of Proof	ch. 4, pp. 109-123	ch. 3 & 4, pt. E
Oct. 13 (Tues.)	Cause-in-Fact – Simplicity	ch. 5, pt. I, pp. 125-131	ch. 5 & 6, pt. A
Oct. 18	Cause-in-Fact – Complexity	ch. 5, pt. II, pp. 131-148	ch. 5 & 6, pt. B
Oct. 20	Proximate Cause	ch. 6, pp. 149-172	ch. 5 & 6, pt. C
Oct. 25	Defenses	ch. 7, pp. 173-195	ch. 7, pt. A
Oct. 27	Strict Liability	ch. 8, pp. 197-214	ch. 8, pt. A
Nov. 1	Products Liability	ch. 9, pt. I-IV.A, pp. 215-226	ch. 9, pt. A
Nov. 3	Products Liability	ch. 9, pt. IV.B-VII, pp. 227-239	ch. 9, pt. B
Nov. 8	Damages: Compensatory	ch. 10, pt. I-II, pp. 241-254	ch. 10, pt. A
Nov. 10	Damages: Extraordinary	ch. 10, pt. III-IV, pp. 254-258	ch. 10, pt. B
Nov. 15	Duties: Relationships	ch. 11, pt. I-III, pp. 259-266	ch. 11, pt. A
Nov. 17	Duties: Premises	ch. 11, pt. IV, pp. 266-269	ch. 11, pt. B
Nov. 22	TBD		
Dec. 9, 12 noon	final exam		

**Class sessions:** The basic structure of each class session will be as outlined below. The actual times for each element of a class are likely to vary a bit from day to day, and they are subject to the same "pace of the course" and "whim of the instructor" flexibilities as everything else in the course. The first day of class will definitely be a bit looser.

5 minutes: **Announcements:** Instructor makes announcements and deals with administrative matters.

25 minutes: **Panel discussion:** Instructor interviews a panel of students (usually three or four) about the day's assigned readings and their implications. At the beginning of the semester, I will assign people to panels. Everyone will do it. Once everyone has had one turn on a panel we will switch to a volunteer system, with assignments only if there are not enough volunteers. There will be no assigned panel. I will just ask for volunteers and we will improvise. Very exciting.

5 minutes: Break

20 minutes: More panel discussion: After this, the panelists will be permitted to relax and nap in their seats for the rest of the afternoon.

5 minutes: Break

35 minutes: Instructor-to-student Q&A: Instructor asks questions of many students. This will be short cold-call interactions – partly, of course, to inspire you to do the reading every day and think about it, but also (and more importantly, really) to give you practice expressing your knowledge (and sometimes even your opinions) briefly, coherently, and out loud. Once you get used to this, it will be fun. Our class is big, but even so you should expect to get called every couple of weeks or so. Some of the questions asked during this part of class will be based on questions that will be on the final exam.

5 minutes: Break

25 minutes: Student-to-instructor Q&A: Students with questions raise a hand and the instructor calls on them. Sometimes the answers will be direct, sometimes they will be indirect, and sometime they will be questions themselves. All will, I hope, be helpfully thought provoking.

5 minutes: Wrap-up: Instructor wraps up and class ends.

Wednesdays: Office hours: Optional conversation. This part is explained in great detail above.

**Grades**: Your grade will be based on two things – a final exam and class participation. Final exam: The exam will be 100% of your grade, unless you earn an adjustment up or down for class participation. The exam will cover the assigned reading and the instructor’s remarks in class. It will be a three-hour, 50-question multiple-choice test. It will be open everything (books, notes, internet, etc.), with one exception: You must not interact in any way (in person, in writing, by signing, electronically, telepathically, etc.) with any human being during the exam (except, of course, for the fine people in our law school’s Records Office and IT Department, since you may need their help with administrative and technical aspects of the exam). Class participation: When determining your grade in the course, the instructor may apply a single-increment adjustment to the exam grade, upward or downward (e.g., from B to B+ or from A- to B+), based on class participation (which includes overall good citizenship) in the course. The easiest ways to improve your chances of an upward adjustment are: (1) when the instructor invites you to speak in class, demonstrate that you have done the assigned reading and thought about it and were paying attention to what was going on in the classroom just before the instructor invited you to speak (yes, you can pass on a question, but it won’t help you pass the course); (2) make your replies to the instructor and your comments on contributions of classmates short, on-point, and constructive, and pay attention to others’ answers and comments (yes, politeness can affect your grades in law school as well as your career after it); and (3) attend class (yes, a school regulation says, “[i]f a student is absent for any reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course” and a “student who is not present for at least 75 percent of a session of the course is absent from that session,” but those are merely definitions of the lower bounds of certain minimal performances, and minimal performances merit minimal grades). One more tip about participation: Asking the instructor a question that is answered in this syllabus is evidence that you are either not doing the reading or not paying attention.

**Academic regulations**: They are here: [www.law.gmu.edu/academics/regulations](http://www.law.gmu.edu/academics/regulations). If you have not read them yet, you should!

**Intellectual property**: The instructor owns all course content, regardless of form. You may share copies of that content with classmates during the course, but other than that you must keep all of it in any format to yourself forever. Copyright 2021 Ross E. Davies.