

Law 110, Section 005**Torts**

Hybrid

T: 6:15–8:15 PM, R: 6:05-8:05PM

Fall Semester:

August 23 through November 23

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Exam: Thurs., Dec. 9 at 6:00 PM

A “tort, crooked or wrong, signifieth injurie.” – Edward Coke

Overview:

Torts is that branch of law concerning the redress of private wrongs. These wrongs may violate the private rights of individuals, such as a person’s right to bodily integrity. Or they may breach the rights of the whole community but cause special damage to particular individuals. Torts, however, is generally not concerned with the breach of private duties voluntarily undertaken, which is left to contract law.

This class is an introduction to the basic principles of tort law. During our first week, we will begin with a brief overview of tort law. Why do we have tort law? Is tort law primarily apportioning the cost of accidents? Or is tort law about redressing wrongdoing? Relatedly, what is the role of fault in torts? (We will ask these questions throughout the semester.) We will also briefly examine historical common law tort procedure (the forms of action). Although these forms are no longer used today, a basic understanding of them will help us understand the role that fault plays in intentional torts and negligence.

After this introduction, we will study tort doctrine, beginning with intentional torts. Intentional torts are perhaps the most serious kinds of wrongdoing, and many intentional torts are also crimes. Among other causes of action, we will study battery, assault, and false imprisonment. We will also examine justifications and defenses, including necessity and self-defense.

Next, we will study the law of negligence, which arguably dominates tort law today. We will examine the basic elements of a negligence action: duty, breach, actual causation (cause-in-fact), proximate causation (limitation of liability), and damage. We will also study how damages are calculated, especially when the plaintiff may be partially at fault for the harm he has suffered.

Finally, we will study circumstances in which tort law does not require proof of fault. Primarily, we will look at vicarious liability, strict liability, and products liability. These branches of tort law authorize a plaintiff to recover even if the defendant did not culpably breach a legal duty. We will end by studying workman’s compensation law and no-fault motor vehicle accident insurance law, which are statutory schemes that have partially supplanted tort law.

Learning Outcomes:

By the end of this course, you should be proficient in tort law, both doctrinally and as an academic subject. You should also develop your legal reasoning skills.

Doctrinal Knowledge. You are expected to know tort doctrine as it relates to the elements and defenses of the causes of action we study in class. You are also expected to have some knowledge of legal history, as it relates to tort law.

Legal Reasoning. You are expected to develop your legal reasoning skills. In response to difficult hypotheticals with novel fact patterns, you must be able to reason from analogy and apply the general principles of tort law.

Academic Knowledge and Reasoning. You are expected to learn the philosophical, policy, and economic justifications for and against specific torts rules and for tort law generally. You must be able to critically analyze these justifications and offer your own scholarly thoughts.

Requirements:

1. A midterm examination (multiple choice) (25%)
2. A final examination (part multiple choice, part essay) (75%)
3. Class participation (discretionary 1/3 grade)

Books for Class:

1. Farnsworth & Grady, Torts (3d ed. 2019)
2. Other readings be posted on Blackboard.

Online Classroom:

Unless otherwise noted, all online class sessions will meet on Blackboard Collaborate Ultra. Sign into Blackboard and click the “Virtual Classroom” tab.

Office Hours:

Office hours will be Tuesdays, from 9:00 PM until 10:00 PM. I am also liberally available by appointment. To schedule appointments, please e-mail me. Office hours will be held on **Zoom**. I will set up a meeting room and a waiting room. For student privacy, please wait in the waiting room until I bring you over to the meeting room. I will monitor the waiting room every few minutes. You are encouraged to e-mail me when you arrive to let me know that you are there.

Zoom office hours information

Meeting ID: 986 9314 9703

Pass code: 727060

Link: <https://gmu.zoom.us/j/98693149703?pwd=NTZoQVpzc1FQbEp1UIM2enZnckJldz09>

Attendance:

Attendance is mandatory. The ABA prohibits students who miss more than 20% of classes from taking the exam.

Please do **not** attend class if you have any cold or flu-like symptoms. Given current circumstances, we want to keep our community as healthy as possible and limit the spread of any illnesses. For those who experience any symptoms of illness during the semester, I will liberally

authorize the use of online/hybrid classes, even for those days that we meet in person. I am also trusting that you will act responsibly in both directions—staying home if you may be sick, but not abusing the privilege of taking classes online simply because you do not want to attend in person that day.

For online classes, I will take attendance using the attendance report for each class. If your name will not be on the attendance report (e.g., you had to phone in), please e-mail me that you attended and include how you will appear on the attendance report (e.g., the phone number you used).

I encourage, but do not require, that individuals have their cameras on during class. In an online environment, we must all work to build a classroom community. That is easier when you can see your classmates' faces. But please feel free to turn off your camera if you have a reason (e.g., children running around in the background). Please mute your microphone when you are not speaking.

Electronics Policy:

When class is in person, I prohibit the use of computers or other electronic devices. Studies have shown that students who use computers during class do not learn as well.

Obviously, prohibiting electronics is not possible when class is online. But I encourage you to simulate a no-computer environment the best you can by taking handwritten notes in a notebook and avoiding online distractions. You will likely learn more through taking handwritten notes and then consolidating those notes into a computer outline. Torts is also a major bar subject. It is much better to learn torts now during class than to cram for it the summer after you graduate. And if you take notes on a computer, you will not have access to those notes when we meet in person unless you print them out.

Recording Policy:

I strictly forbid anyone to record (video or audio) any of the lectures. This is both to protect intellectual property and the privacy of class discussion.

My general policy is not to record class lectures, even when students face an occasional absence. I also recognize, however, that students may face special circumstances at this time, which may result in longer term absences or distractions. Given this, I will record a lecture where there is a reasonable necessity for doing so, if arrangements are made with me in advance. I will make that lecture available for a limited time. Lectures will be deleted after the affected student has a reasonable opportunity to view it. Recording, copying, or disseminating the lecture in any way is prohibited.

Academic Integrity:

An important part of practicing law is having honor and integrity. Scalia Law School has adopted an honor code, which is available on the Honor Committee's website (<https://sls.gmu.edu/honor/>). Students are prohibited from lying, cheating, or stealing, being an accomplice or accessory to someone else who is cheating, bringing a prohibited material or

device to an exam, or failing to report an honor code violation if the person has reasonable cause to believe that a violation has occurred.

All exams in this class will be **closed book**. You may not bring your textbook, access the Internet, bring notes, or have another aid of any kind. The only things that you should bring to your exam is your word processor or pen and paper.

Cheating often occurs as an act of desperation by those who do not understand the material or have competing pressures preventing studying. The best way to prevent the temptation to cheat is to stay up to date on your assignments. If you have personal circumstances putting you under undue pressure, you should speak to me about your situation as soon as possible before the exam.

You are also strongly encouraged to ask me (or a member of the Honor Committee) if any questions arise.

Disability Accommodations:

George Mason University's Office of Disability Services provides for the reasonable accommodation of students with disabilities. If you need an accommodation (including modification of any course policy), please coordinate with that office. Please also do so as early as possible; accommodations can take time to process. Please note that I am not authorized to grant accommodations.

Unexpected Server Problems:

If Blackboard Collaborate Ultra becomes unavailable during class, we will use Zoom. Please make sure you have all your accounts set up and download any necessary plugins. Should we need to use Zoom, I will e-mail instructions for a classroom and password.

For online classes, I teach either from my home or my office. Should I experience a power or internet service interruption, I will move to the other location. That takes about ten minutes.

In emergency circumstances, I will send updates by e-mail to your GMU account, so please monitor your e-mail. And if you run into problems, it is helpful to me if you e-mail me right away. If you have significant trouble logging on, there is a good chance other students are, too. The earlier I know of problems, the faster I can correct them with minimal class disruption.

When scheduling activities on our online day, please try to leave yourself some buffer after class. If we run into unexpected problems, I would much rather hold class a little later (e.g., until 8:30 PM) than reschedule entirely.

Modifications of the Syllabus:

The schedule below is tentative. (Or to state it in contract law principles, this syllabus is a plan of action, not a promissory contract.) I may make modifications as the semester progresses. Among other things, I may narrow the readings or add new cases and interesting news stories that arise during the semester. I will also add relevant laws to discuss during lectures.

I also reserve the right to modify the syllabus (including adding exams or quizzes) if I believe it is necessary to facilitate learning. The ultimate goal of this class is for you to learn the basic principles of tort law, and I will be flexible in my approach.

Unexpected Cancellations:

If the law school has an unexpected closure, **class will still be held on the regular schedule** using the Blackboard virtual classroom. We will hold class online on an extended basis if the university discontinues in-person classes for any reason, including because of the pandemic.

Foundations of Tort Law

8/24 Role of Fault in Torts

Goldberg & Zipursky, *Torts as Wrongs*, 917–953 (Blackboard)

Keating, *Is There Really No Liability Without Fault?*, 24–38 (Blackboard)

Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 499–507, 528–534 (Blackboard)

Rylands v. Fletcher, Farnsworth & Grady, 353–355

8/26 Course Introduction and Trespass versus Trespass on the Case

Farnsworth & Grady, Introduction, xxvii–xxxix

Koffler & Reppy, Common Law Pleading, 8–12 (introduction), 151–72 (trespass), 173–205 (trespass on the case) (Note: sections marked with an “X” do not need to be read) (Blackboard)

Squib Case (Blackboard)

Intentional Torts

8/31 Assault and Battery

Farnsworth & Grady, 1–14, 59–64

I de S. (Blackboard)

9/2 Consent; False Imprisonment, Malicious Prosecution, and Abuse of Process; Justification and the Law of Arrest

Farnsworth & Grady, 14–26, 50–59

Maniaci v. Marquette University, 184 N.W.2d 168 (Wis. 1971) (Blackboard or Westlaw)

Note: you do not need to read (1) the fact section past “she was cooperative and displayed no tendencies toward violence” or (2) the legal analysis on employer liability (past “... as it relates to false imprisonment is dismissed”).

Restatement (Second) of Torts §§ 653, 674, 682

Supplemental news article: Andrea Salcedo, *Decades After Her Insemination, She Says Tests Revealed the Doctor Was the Father: “It’s a Severe Violation”* (Blackboard link)

9/7 Intentional Infliction of Emotional Distress

Farnsworth & Grady, 64–77

Class will be held from 8:10 PM until 10:10 PM.

- 9/9 Trespass to Land, Trespass to Chattels, Conversion, Nuisance
 Farnsworth & Grady, 26–50
 Farnsworth & Grady, 749–765 (Blackboard; these pages are not in your book)
Intel v. Hamidi, 71 P.3d 296 (Cal. 2003) (Blackboard or Westlaw)
- 9/14 Finish 9/9 lecture (first half of class).
Intentional Torts Defenses (e.g., self-defense, necessity)
 Farnsworth & Grady, 79–110
- 9/16 Finish defenses from 9/14 lecture. If caught up, read pp. 195–205 (see 9/21).
Class time will be rescheduled.

Negligence

- 9/21 Duty
 Farnsworth & Grady, 195–228
 Supplemental news article: “*I Can’t Do That, Boss*”: *Texas FedEx Driver Refuses to Help Fallen 89-Year-Old* (Blackboard)
- 9/23 The Standard of Care: Age, Mental, and Physical Ability
 Farnsworth & Grady 111–128
- 9/28 Risks, Precautions, and Economic Definitions of the Standard of Care; the Hand Formula
 Farnsworth & Grady, 128–146
 Supplemental News Article: John Tierney, *Can A Playground Be Too Safe?*
 (Blackboard)
- 9/30 Special Standards of Care: Custom, Medical Malpractice, Negligence Per Se, Judge/Jury
 Farnsworth & Grady, 146–173
 Supplemental news article: Bianca Padro Ocasio, *Florida Woman Pretending To Be Plastic Surgeon Arrested After Bad Nose Surgery, Police Say*
- 10/5 Res Ipsa Loquitur
 Farnsworth & Grady, 174–194
- 10/7 Economic Loss Rule; Negligent Infliction of Emotional Distress; Land Liability
Class will be held online (tentative and subject to change).
 Farnsworth & Grady, 250–270; 228–243 (land liability).
 For land liability (228–43), please read the following closely: 230–31 nn.5–6,
 Restatement § 339 (pp. 232–33) Restatement §§ 330, 341, 342 (p. 235), Restatement
 §§ 332, 341A, 343 (p. 238 n.3), and *Rowland v. Christian* (p. 239 n.5). Please **skim** the
 rest of pp. 228–43.
- 10/12 **No Class. Designated Monday.**

- 10/14 Cause-in-Fact and Alternative Liability
Farnsworth & Grady, 271–273; 276–77 nn.4–5; 278–300
- 10/19 Proximate Causation
Farnsworth & Grady, 305–18, 328–341
- 10/21 **Midterm exam. Regular class will not be held. You are responsible for all material up to and including that scheduled for the October 7 lecture. You are not responsible for causation.**
- 10/26 Intervening Causes
Farnsworth & Grady, 318–328
This is a planned catch-up day. We will complete any discussion of proximate causation from 10/19.
If we are caught up (or mostly caught up), please begin the 10/28 reading (pp. 493–507).
- 10/28 Contributory and Comparative Negligence; Joint and Several Liability
Farnsworth & Grady, 493–507; 300–304
- 11/2 Assumption of Risk
Farnsworth & Grady, 508–529

Strict Liability

- 11/4 Abnormally Dangerous Activities
Farnsworth & Grady, 343 (overview); 361–372; 344–353 (liability for animals)
- 11/9 Vicarious Liability
Farnsworth & Grady, 372–383
Supplemental reading on children’s liability (Blackboard)
- 11/11 Products Liability: Introduction and Manufacturing Defects
Farnsworth & Grady, 385–412
- 11/16 Products Liability: Design Defects and Failure to Warn
Farnsworth & Grady, 412–442
- 11/18 Damages
Farnsworth & Grady, 443–454 n.2; 457–462; 462–475; 475–483 n.3; 487–489 nn.9-10
(statutory and constitutional limits on punitive damages)
Supplemental news article: Contessa Brewer & Katie Young, *Rise in “Nuclear Verdicts” in Lawsuits Threatens Trucking Industry* (Blackboard)

11/23 Statutory Replacements: Workman's Compensation and No-Fault Insurance
Selected readings (Blackboard).

In this class, we will cover: (1) remaining damages issues from 11/18 class; (2) statutory replacements for tort law; and (3) any questions you have for the final, if we have any time remaining.

12/9 **FINAL EXAM, 6:00 PM**