

TORT LAW

Professor J. Shahar Dillbary Course Information and Syllabus, Fall 2024

Class Sessions: Monday & Wednesday, 9:50– 11:50am
Office Hours: TBA in class; Office #440D
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Assistant: Ms. Poppy-Anna Bailey, Office #407, Email: pbailey7@gmu.edu

A. COURSE INFORMATION

I. Course Materials

Casebook & Packet: FRANKLIN & RABIN, TORT LAW AND ALTERNATIVES: CASES AND MATERIALS (11th Ed. 2021); and Torts Supplemental Packet (“Packet”) (to be provided free of charge).

The Westlaw Educational Network [TWEN]: I will use TWEN to post the readings, assignments, handouts and supplemental materials. *Make a habit of logging onto the TWEN site before each class session.* See library for help as needed. The passwords for TWEN and the course’s website will be provided to you (together with a tutorial) during orientation. See Ms. Bailey or the Library for help. Please note that some readings are assigned from the Social Science Research Network (SSRN). You can download articles from SSRN easily when you are at school. When downloading from a remote site you may need to open an account (free of charge). For remote access please consult with the library.

Suggested readings: Recommended is the Torts chapter in J. Shahar Dillbary & William Landes, LAW AND ECONOMICS: THEORY, CASES AND OTHER MATERIALS (Aspen, 2021). For those interested in a review of different approaches to tort law see John Goldberg & Benjamin Zipursky, RECOGNIZING WRONGS (2020); Catherine M. Sharkey, *Modern Tort Law: Preventing Harms, Not Recognizing Wrongs*, 134 HARV. L. REV. 1423 (2021) (Reviewing Goldberg & Zipursky); John Goldberg And Benjamin Zipursky, *Replies To Commentators*, 41 LAW & PHILOSOPHY 127 (2022); Guido Calabresi & Spencer Smith, *On Tort Law’s Dualisms*, 135 HARV. L. REV. FORM 184 (2022).

II. Course Objectives & Learning Outcomes

Objective: The objectives of the course are (1) to learn the basic principles of the common law of torts; (2) to consider and debate the policies underlying those principles; and (3) by discussing the assigned decisions and materials, to develop skills in critical reasoning and advocacy.

Learning Outcome: By the end of the course, students will be able to understand the main liability regimes, analyze legal issues and causes of action available under different theories, and understand the impact of other areas of the law (*e.g.*, contract, property) and the mechanic of litigation (*e.g.*, civil procedure, evidence law), and their interaction with tort law.

III. Class Requirements

Readings & Class Preparation: Keep up with the readings and the assignments and come to class each day prepared. Class participation is encouraged. If you are not prepared for a class (*e.g.*, you have not read the materials or submitted your assignment) you should notify me at least 15 minutes *before* the start of that class, by email only. Failure to adequately prepare for class will count as an absence from class.

Class notes & Outlines: I strongly encourage you to share and discuss your class notes with your classmates. You may also work with your classmates in groups and discuss your outlines to enhance your understanding of the materials. However, you may *not* use, copy or incorporate any part of another person's outline into your outline. *The use or sharing of unauthorized materials, such as someone else's outline or class notes from students other than your classmates, is an honor code violation and may result in serious sanctions.* If you have any question, you should always feel free to ask them in class or speak with me.

Grade: Your grade is based on the final exam. Participation, attendance, and class preparation (including assignments) may be a factor in your grade, potentially raising or lowering your grade. Any raised grades will be based on extraordinary contributions to classroom discussions, accounting for both quantity and quality. Assignments may also count toward your final grade.

Final Exam: Except as previously noted, your grade for the course will be based on the final examination. The final exam will require knowledge and understanding of the doctrinal and theoretical issues that will be covered in class and assigned in your readings. The final exam will be taken on a computer using the law school's software and will be limited open book. During the exam, you may consult your casebook,

hardcopies of materials provided in class (*e.g.*, the Packet) or posted on TWEN; and any class notes, case briefs, or outline that you prepared yourself. All materials must be printed. All other sources are strictly prohibited. While you are allowed to use an electronic copy for the casebook, you may only use it in the exam if it is loaded on a dedicated secondary device that does not contain any materials related to the class (such as outline, class notes etc.)

IV. Attendance

You are expected to attend every class. Hats are not allowed in class. Eating in the classroom is strictly prohibited. If you have more than six absences during the course of the semester, you will have to withdraw from the class. There will be no exceptions. If the class is taught remotely or if you have an accommodation to watch the class in-real time (synchronously) from a remote location, you must “attend” the class by logging in to the class session on time.

The American Bar Association (ABA) require taking attendance, and we may do so electronically or using an attendance sheet. If you arrive late do not sign the attendance form. Similarly, if you unexpectedly leave before the end of the class email my assistant and notify her of your early departure. You must do so at the first possible opportunity.

If you are late more than 2 minutes or plan to leave early, you *cannot* enter the class (if you are connecting remotely that means you cannot log in to the class).

V. Remote & Synchronous Attendance

If the class is taught remotely, or if you have an appropriate excuse to attend remotely, you must participate online in real time (*i.e.*, synchronously). In case of remote learning, I will likely use Zoom. The attendance policy is the *same* for those attending in person. You must use live feed with your camera on. You cannot turn off your camera. If your camera is turned off you will be removed from the class session and marked as absent.

VI. Intellectual Property

I own all course content that I create (*e.g.*, slides, handouts), regardless of form (electronic, print, audio, video etc.), including recordings, class sessions, office hours, and other meetings. You are forbidden to use them with, or distribute them to, anyone other than your classmates in this course. Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording

device such as an audio recording device or camera. Accordingly, it is strictly prohibited to stream, record, take photos or screen shots of class sessions, or portion thereof or share them with others.

You may not directly or indirectly post on the Internet, copy or circulate (a) materials distributed in class or any compilation thereof; and (b) any summaries of class sessions, notes and/or outlines. Any exceptions to this policy must be expressly permitted in writing by me.

You may use a laptop for note-taking only. The use of a computer or any other devices to record a class or any part thereof is strictly prohibited. Cell phones and other noise-making apparatuses should be turned off.

Violations of this Section (Section VI) is an honor code violation and may result in disciplinary proceeding and severe sanctions.

VII. Academic Integrity

It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The use of Automated Writing Tools, including the use of generative AI tools (such as ChatGPT) is strictly prohibited even when properly attributed. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

VIII. Why the Policies in the Syllabus?

For an interesting game-theoretical explanation as to why professors include in their syllabi what seems to be harsh policies read the excerpt below titled “Why Are Professors So Mean?” [They are not!] from Avinash Dixit, Susan Skeath & David Reiley, *Games of Strategy*, pp. 10-11 (3rd Ed, 2009):

Many professors have inflexible rules... Students think the professors must be really hardhearted to behave in this way. The true strategic reason is often exactly the opposite. Most professors are kindhearted and would like to give their students every reasonable break and accept any reasonable excuse. The trouble lies in judging what is reasonable. It is hard to distinguish between similar excuses and almost impossible to verify their truth. The professor knows that on each occasion he will end up by giving the student the benefit of the doubt. But the professor also knows that this is a slippery slope. As the students come to know that the professor is a soft touch, they will procrastinate more and produce ever-flimsier excuses. Deadlines will cease to mean

anything, and examinations will become a chaotic mix of postponements and makeup tests.

Often the only way to avoid this slippery slope is to refuse to take even the first step down it. Refusal to accept any excuses at all is the only realistic alternative to accepting them all. By making an advance commitment to the “no excuses” strategy, the professor avoids the temptation to give in to all.

But how can a softhearted professor maintain such a hardhearted commitment? He must find some way to make a refusal firm and credible. The simplest way is to hide behind an administrative procedure or university-wide policy. “I wish I could accept your excuse, but the university won’t let me” not only puts the professor in a nicer light, but removes the temptation by genuinely leaving him no choice in the matter. Of course, the rules may be made by the same collectivity of professors as hides behind them but, once they are made, no individual professor can unmake the rules in any particular instance.

If the university does not provide such a general shield, then the professor can try to make up commitment devices of his own. For example, he can make a clear and firm announcement of the policy at the beginning of the course. Any time an individual student asks for an exception, he can invoke a fairness principle, saying, “If I do this for you, I would have to do it for everyone.” Or the professor can acquire a reputation for toughness by acting tough a few times. This may be an unpleasant thing for him to do and it may run against his true inclination, but it helps in the long run over his whole career. If a professor is believed to be tough, few students will try excuses on him, so he will actually suffer less pain in denying them.

B. SYLLABUS

Please pick up the complete syllabus from my assistant. You will need it for your first-class assignment.