TORT LAW

Professor J. Shahar Dillbary
Course Information and Syllabus, Fall 2018

Class Sessions: Monday, Tuesday & Wednesday 10:45am–12:00pm, in room 273
Office Hours: Monday & Wednesday 3:30 – 4:30 pm or by appointment; Office 332
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A. COURSE INFORMATION

I. Course Materials

FRANKLIN & RABIN, TORT LAW AND ALTERNATIVES: CASES AND MATERIALS (10th Ed. 2016) (available in the book store); and Torts Supplemental Packet (“Packet”). Please see my assistant for a copy of the Packet (free of charge).

During the term, I will use TWEN [The Westlaw Educational Network] site to post slides and supplemental materials. Make a habit of logging into TWEN site before each class session. Read carefully and print the relevant materials available for each class and bring them with you. To access the site, go to lawschool.westlaw.com. The passwords for TWEN and the course’s website will be provided to you (together with a tutorial) during orientation. See the Computer Services Librarian for help as needed.

II. Course Objectives

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.

III. Class Requirements

Class attendance and punctuality are required. You must come to class prepared. Keep up with the readings and come to class each day prepared to participate in the discussion and answer questions. Volunteering is encouraged. If you are not prepared for a class, you should notify me at least 15 minutes before the start of that class, by email or by stopping by my office. Failure to prepare for class is tantamount to an absence from class.

Class preparation, participation and attendance 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. Any lowered grades will be based failure to attend, prepare for class or offer meaningful contributions or a violation of this syllabus’ policies. Except as previously noted, your grade for the course will be based on the final examination. I may also assign a number of assignments, some of which may count toward your final grade. Please observe the law school’s rules regarding eating and drinking in the classroom.
IV. Attendance

You are expected to attend every class. If you miss more than 4 classes during the course of the semester, please speak to me about it. If you miss more than 5 classes, you must speak to The Associate Dean for Academic Affairs. Students who exceed 8 absences receive no credit for the course. I take attendance by circulating an attendance sheet at the beginning of each class. If you arrive late do not sign the attendance sheet. Similarly, if you unexpectedly leave before the end of the class make sure to delete your name from the attendance sheet in the first possible opportunity. If you are late more than 2 minutes or plan to leave early you cannot enter the class. Hats are not allowed in class. Please observe the law school’s rules regarding eating and drinking in the classroom.

V. Outlines & Exam

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. It will most likely consist of one or more essay questions. Exams will be taken on a computer using the law school’s software (“ExamSoft”). If you have any questions regarding the software please contact the IT Department in a timely manner.

The exam is limited open-book. During the exam, you may consult your casebook; hard copies of materials provided in class (e.g., the Packet) or posted on TWEN if they are printed; and any class notes, case briefs, or outline that you prepared yourself. In preparing your outline you may also consult with books and commercial study aids (although I strongly discourage you from using commercial study aids) and you may incorporate these outside sources into your outline only by typing relevant information (no photocopying). All other sources are strictly prohibited including for the preparation of your outline and during the examination.

I strongly encourage you to share your class notes (i.e., notes you took while in class) and to discuss them with your colleagues. You are also encouraged to work with your classmates in groups to discuss your ideas and outline, if you chose to prepare one, in order 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 or share class notes from previous years. The use or sharing of someone else’s outline or class notes from students not currently in your class (or any portion thereof) or any other unauthorized materials 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.

VI. Use of Computers, Recording Devices & Internet Postings

In accordance with the University of Alabama School of Law Policy, you may use a computer for note-taking only. The use of a computer or any other devices to record a class or any part thereof is strictly prohibited. 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. Cell phones and other noise-making apparatuses should be turned off. Violation of this section is an honor code violation and may result in serious sanctions.

VII. Special Accommodations

The Law School provides appropriate accommodations to students with physical, learning and other disabilities. Students with disabilities are encouraged to contact the Associate Dean for Academic Affairs so that your needs can be evaluated in a timely manner.
VIII. Readings for the First Class

The readings for our first class are posted on TWEN. Make sure to log into TWEN, read the assigned materials carefully and come prepared to discuss.

IX. 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?” (from Avinash Dixit, Susan Skeath & David Reiley, Games of Strategy, pp. 10-11 (3rd Ed, 2009).

Many professors have inflexible rules not to give makeup exams and never to accept late submission of problem sets or term papers. 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

This syllabus is subject to change, depending on the pace at which we proceed. I will provide the reading assignment for each class at the conclusion of the previous class. If I forget to do that, please remind me. You should expect to read at least 2-3 new decisions for each class session.

Page numbers below refer to the Franklin & Rabin textbook. Topic headings are to give you an overview of the subject matter to be covered in the class. They do not necessarily correspond to individual class sessions.

Materials marked with by an asterisk (*) are voluntary reading materials. You may but do not have to read them. Materials that will be circulated in class or will require a special announcement are marked by two asterisks (**). If no announcement is made, please ask me to make one.

Introduction to Tort Liability
- Pages 1-19 (Hammontree, The Litigation Process)

Vicarious Liability
- Pages 19-33 (Christensen, Roessler)
- Packet p. 1 (A note following Roessler)
- Reading Assignment: Spectrum of Liability (1 page) (TWEN)
- Practice Assignment: The Bowling Ball Accident (TWEN)

Negligence and the Reasonable Person
- Robertson et al, Cases and Materials on Torts (3rd Ed.) pp. 73-76 (TWEN)
- Reading Assignment: Introduction to Negligence (1 page) (TWEN)
- Pages 44-62 (Adams v. Bullock, Carroll Towing, Bethel)
- Packet pp. 1-3 (Notes following Adams, Carroll Towing and Bethel)
- Page 71 footnote 5 (Woods v. Groh)
- Practice Assignment: Man Sues Hilton (TWEN)
- Read the following web articles (TWEN):
  A. Bullying Behavior: Blame It On Bad Genes? Science Daily 3/10/1999

The Roles of Judge and Jury
- Pages 62-71 (B&O RR, Pokora, Andrews)

The Roles of Custom and Statutes
- Pages 71-87 (Trimarco, Martin v. Herzog, Tedla v. Ellman)
- Packet p. 3 (Notes following Martin)
- Read the web article on Vioxx (after reading Martin)(TWEN)
Proof of Negligence

- Pages 87-100 (Negri, Gordon, Byrne v. Boadle, McDougald)
- Packet p. 4 (Notes following Gordon and McDougald)
- Pages 101-108 (Ybarra v. Spangard)
- *Pages 108-112 and notes 3 and 5 on pages 114-116 (Sheeley)*

Duty Toward Potential Victims

- Pages 127-141 (Harper, Farwell)
- Packet p. 4 (A note following Farwell)
- Pages 173-175 (The Moch Case)
- Pages 141-149 (Randi v. Muroc Joint Unified School District)
- Read briefly: Angel Torres Hit-and-Run Accident (TWEN)
- Pages 150-159 (Tarasoff)
- Packet pp. 4-5 (A note following Tarasoff)
- Read briefly Wikipedia on the Virginia Tech Massacre (TWEN)
- Pages 166-186 (Strauss, Reynolds, Vince, Two news articles* (TWEN))
- Packet p. 5 (A note following Vince)

Duties of Land Owners and Occupiers

- Pages 187-209 (Carter, Heins, Posecai)

Intra-family Duties

- Pages 216-226 (Broadbent)
- Packet p. 6 (Notes following Broadbent)

Duty to Avoid Emotional Harm

- Pages 261-276 (Falzone, Metro-North)
- Pages 276-285 (Gammon, Johnson);
- Packet p. 6 (A note following Gammon)
- Pages 285-299 (Portee)

Duty to Avoid Economic Harm

- Pages 319-326 (532 Madison)
- Packet pp. 6-8 (Note following 532 Madison)

Cause in Fact

- Pages 337-357 (Stubbs, Zuchowicz)
- *Pages 360-370 (Matsuyama, notes 1-4 and 6)*
- Packet pp. 8-14 (Alberts v. Schultz, Notes following Alberts)
- Pages 370-386 (Joint and Several Liability, Summers v. Tice, Hymowitz)
- Packet pp. 14-16 (Notes following Summers and Hymowitz)
- J. Shahar Dillbary, Causation Actually, 51 GA. LAW REV. 1 (2016) (my webpage)
Proximate Cause

- Pages 395-409 (Benn, Polemis, The Wagon Mound)
- Pages 409-434 (Doe, Palsgraf)
- Assignment: Practice Exam (TWEN)**

Plaintiff’s Fault

- Read the “Contributory Negligence Foundation” website (TWEN)
- Pages 435-458 (Contributory/Comparative Negligence & Apportionment)
- Pages 458-464 (Frits, Avoidable Consequences)

Assumption of the Risk

- Packet pp. 16-21 (Dalury, Notes following Dalury)
- Pages 464-480 (Hanks*, Murphy)
- Packet pp. 21-22 (Notes following Murphy)
- Pages 480-487 (Davenport)

Strict Liability

- Pages 509-534 (Fletcher v. Rylands (both cases), Sullivan, Indiana Harbor)

Products Liability

- Pages 557-577 (Introduction: MacPherson, Escola)
- Pages 577-608 (Manufacturing and Design Defects: Soule, Camacho)
- Pages 608-617 (Warnings: Hood)
- Packet pp. 22-23 (Notes following Hood)
- Packet pp. 23-26 (Edwards, Notes following Edwards)
- Pages 629-635 (Warnings: Vassalo)
- Pages 636-662 (Defenses & Work Related Injuries GM, Jones, Liriano)

Final Class


If we complete these materials and there is additional time other readings may be assigned.