

Antonin Scalia Law School at George Mason University

TORTS (110-002)

Fall 2022

Mondays & Wednesdays, 9:50 to 11:50 AM 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:

[Omitted]

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:

[Omitted]

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 harms, and optimally deterring others from committing harmful acts; 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 (6th ed. 2022).

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.

Importantly, at times, you will be asked to review sections of the **Restatement of Torts** (Rest.). You can find the Restatement of Torts (all versions of it) in Westlaw under Secondary Sources → Restatements & Principles of the Law. Save the Restatement (Second) and (Third) to your favorites for easy access throughout the semester.

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 mentioned 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 (20 questions) **midterm exam** will be held on **Wednesday, October 19, at 11:00 AM ET.**
- The **final exam** will be held on **Monday, December 5, 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 20% of your grade;
- The **final exam** will count for 70% 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. The submission should be related to the reading.

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 reading question or comment 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 L
Panel B	On call during even-numbered class sessions: Class 2, Class 4, etc.	M to Z

- I anticipate getting 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 is posted on Blackboard:
 - A prior multiple-choice midterm exam
 - Essay questions from a prior final exam
 - Links to other practice material

* 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.

Feedback:

I encourage constructive feedback at any time.

Additional School Policies and Resources:

- I expect every student to adhere to the **Student Honor Code**.
 - Please be aware of the **Academic Regulations**.
 - 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
- **Rest.** = Restatement of Torts (2d or 3d)
- **OM** = optional but recommended material

Part 1. Intentional Torts

1. Monday, August 22

Introduction, battery

CB: pp. 1-8; 19-29 n.6 (skipping n.5, pp.27-28)

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. Wednesday, August 24

Effect of consent, mental disability

CB: pp. 81-87; 29-31 (n.7) (#MeToo); 24-28 (reread n.4 & read n.5) (consent, capacity)

3. Monday, August 29

Trespass to land, trespass to chattels v. conversion

CB: pp. 36-39 (trespass); 39-48 (trespass to chattels)

Rest. (2d) § 222A (What Constitutes Conversion) & § 223 (Ways of Committing Conversion)

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

4. Wednesday, August 31

Defenses

CB: pp. 69-74 (self-defense); 74-78 (defense of property); 87-92 n.1 (necessity)

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

OM: The Case of the Shotgun Booby Trap,
<https://www.youtube.com/watch?v=bV9ppvY8Nx4>

LABOR DAY – Monday, September 5, University Closed

5. Wednesday, September 7

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

CB: pp. 48-69

Part 2. Negligence

A. Duty/Breach

6. Monday, September 12

Reasonable person

CB: pp. 137-162

7. Wednesday, September 14

Hand Formula

CB: pp. 162-177; 185-187

8. Monday, September 19

Custom, role in medical malpractice

CB: pp. 200-220

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. Wednesday, September 21

Statutes and regulations

CB: pp. 220-235

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

10. Monday, September 26

Judge v. jury, res ipsa loquitur

CB: pp. 189-200; 235-247 (skipping n.2, p.244)

11. Wednesday, September 28

No duty rules & affirmative duties (I)

CB: pp. 384-408

12. Monday, October 3

Affirmative duties (II)

CB: pp. 424-449 (skipping notes); n.4 p.450

B. Causation

13. Wednesday, October 5

Cause in fact

CB: pp. 298-316

FALL BREAK – Monday, October 10, University Closed

OBSERVE MONDAY SCHEDULE – Tuesday, October 11

14. Tuesday, October 11

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

CB: pp. 316-335

End of material covered in midterm.

Submit any questions on material covered on the midterm by Wednesday, October 12.

15. Wednesday, October 12

Proximate cause (I)

CB: pp. 339-356; n.2 p.362; 363-365

Midterm questions due today.

16. Monday, October 17

Proximate cause (II)

CB: pp. 366-382

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

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

C. Plaintiff's Conduct & Defenses

17. Wednesday, October 19 – Class & Midterm

Class, 9:50 – 10:50 AM

MIDTERM, 11:00 – 11:50 AM

Contributory negligence & comparative negligence, 9:50 – 10:50 AM

CB: pp. 258-264; 264-272

MIDTERM

Format: 20 multiple-choice questions

Covers material through class 14 (cause in fact)

18. Monday, October 24

Assumption of risk

CB: pp. 273-276; 278-286; n.2 pp.288-290; n.1 p.297

Apportionment

Rest. (3d): Apportionment Liab.

§ 8 (Factors for Assigning Shares of Responsibility)

§ 10 (Effect of Joint and Several Liability)

§ 11 (Effect of Several Liability)

§ 17 (Joint and Several or Several Liability for Independent Tortfeasors) & the associated “Comment” (focus on tracks A, B, and D)

Part 3. Strict Liability

19. Wednesday, October 26

Strict liability v. negligence, abnormally dangerous activities

CB: pp. 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).

20. Monday, October 31 (Halloween Class)

Vicarious liability

CB: pp. 493-498

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).

RR: Gilbert v. Sycamore Mun. Hosp., 622 N.E.2d 788 (1993) (excerpt) (Blackboard)

RR: Elinor Wilking, *Independent Contractors in Law and in Fact: Evidence from US Tax Returns*, 117 NW. UNIV. L. REV. (forthcoming 2022) (Blackboard fig.10 & fig.15).

21. Wednesday, November 2

Nuisance

CB: pp. 513-532 (private nuisance)

Part 4. Products Liability

22. Monday, November 7

Doctrinal development, defects

CB: pp. 547; 554-562; 562-573; n.1 & n. 2 pp.577-578

23. Wednesday, November 9

Warnings, plaintiff's conduct

CB: pp. 578-599

Part 5. Damages

24. Monday, November 14

Compensatory damages: pecuniary/nonpecuniary, relational

CB: pp. 626-630; 634-641; 647-653; 461-464

OM: Martha Chamallas, *The Architecture of Bias: Deep Structures in Tort Law*, 146 U. PENN. L. REV. 463 (1998) (Blackboard).

25. Wednesday, November 16

Reflections on compensatory damages, punitive damages

CB: pp. 687-708

26. Monday, November 21 – **ASYNCHRONOUS VIDEO SESSION**

Defamation

You can view the pre-recorded video for this class at any time. Material on defamation will be covered on the final.

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>

Happy Thanksgiving!

Submit any questions you might have from the course by noon on Thursday, December 1. I will identify themes of confusion and either host an in-person or video review session or post a document with guidance on Friday, December 2.

FINAL EXAM – Monday, December 5, at 12 PM ET.