

TORTS (§ 3) - Syllabus

Professor Lars Noah

This class will meet Mondays, Wednesdays, and Fridays @ 1:15-2:30 p.m. in Room 360. As I got saddled with two full sections of Torts this semester, I won't hang around at all after class. My office hours will take place on Tuesdays & Thursdays @ 9:30-10:30 a.m. and 1:00-2:00 p.m. in Rm. 335. Please resist the temptation to call (352-273-0923) or email me (noah@law.ufl.edu), or have anyone do so on your behalf (e.g., staff in Student Affairs or over at DRC), with excuses.

We will be using Franklin et al., Tort Law and Alternatives (11th ed. 2021), along with a "Supplement" that I've posted on our Canvas site (designated as "Supp. p." herein). Slides used in class should appear in the late afternoon. This document indicates the dates on which you should be prepared to discuss the assigned readings, unless I later have to announce a modification.

In addition, I've included bracketed endnotes referencing some of my relevant publications (note, however, that these articles often deal with multiple different issues in torts, as I've tried to indicate parenthetically, or connect such issues to subjects unrelated to torts); if interested in reading more about my often peculiar take on this field, you can most easily access these via HeinOnline, accessible through <https://www.law.ufl.edu/library/library-information/find-an-article>.

Note that regular (and punctual!) attendance plus occasional participation are expected of everyone. If I detect a problem (esp. if on-time attendance slips below 80%), then I'll email you to provide notice of the potential consequences. (Patterns of leaving mid class also arouse my ire.) Otherwise, apart from minor adjustments necessitated by the mandatory curve used at this place, your grades will depend entirely on final exam performance (format noted on the bottom of p.3).

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found (on Canvas) at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>. All else of any importance should become readily apparent as the semester progresses.

Negligence

Aug. 19 (Mon): *Introduction/Vicarious Liability*: 1-29 (skim 9-20), 34-35

Aug. 21 (Wed): *Defining the Standard of Care*: 37-55, Supp. p.1

Aug. 23 (Fri): *Standard of Care (cont'd)*: 55-73 [¹]

Aug. 26 (Mon): *Role of Custom & Statutes*: 74-89 [²]

Aug. 28 (Wed): *Inferring Negligence*: 89-109, Supp. p.2

Aug. 30 (Fri): *Medical Malpractice*: 29-34, 109-28 [³]

Special Duty Rules

- Sept. 4 (Wed): *Duties to Others*: 129-52 [⁴]
Sept. 6 (Fri): *Duties to Others (cont'd)*: Supp. p.3, 152-69
Sept. 9 (Mon): *Duties to Others (cont'd)*: 169-89
Sept. 11 (Wed): *Landowner Duties*: 190-212
Sept. 13 (Fri): *Family Members/Wrongful Birth*: 218-27, 329-39 [⁵]
Sept. 16 (Mon): *Back to Breach/Municipalities*: 212-18, Supp. 4, 227-43
Sept. 18 (Wed): *State & Federal Entities*: 244-60
Sept. 20 (Fri): *Emotional Distress*: 261-81
Sept. 23 (Mon): *Emotional Distress (cont'd)*: 281-98, Supp. p.5

Causation

- Sept. 25 (Wed): *Cause in Fact*: 341-48, 353-65, Supp. 6
Sept. 27 (Fri): *Lost Chance/Jt. & Sev./Med. Mon.*: 365-77, Supp. pp.7-9, 348-53 [⁶]
9:15-10:30 a.m. [joint w/ § 1]
(Rm. 285C)
Sept. 30 (Mon): *Multiple Tortfeasors/Statutes of Limitations*: 377-93, 516-18
Oct. 2 (Wed): *Proximate Cause*: 405-25
Oct. 4 (Fri): *Prox. Cause (cont'd)*: 426-41, Supp. 10

Defenses

- Oct. 7 (Mon): *Contributory & Comparative Negl.*: 443-64
Oct. 9 (Wed): *Comp. Negl. (cont'd)/Mitigation/Waivers*: 466-86, Supp. p.11
Oct. 11 (Fri): *Implied Assumption of Risk*: 486-98; Supp. pp.12-14

Strict Liability & Land Torts

- Oct. 14 (Mon): *Historical Development*: 519-33, 545-50, 562-67
Oct. 16 (Wed): *Abnorm. Dangerous Activities/Public Nuisance*: 533-44, Supp. p.15, 704-15
Oct. 17 (Thu): discuss Practice Exam Question #1 (focused on negligence), which I'll
1:00-2:00 p.m. post for you to try the previous afternoon (followed by my model answer) [⁷]
(Rm. 285B)

Oct. 21 (Mon): *Trespass & Private Nuisance*: 941-48, 687-703

Products Liability

Oct. 23 (Wed): *Historical Development*: 569-87

Oct. 25 (Fri): *Mfg. & Design Defect Claims*: 587-605
9:15-10:30 a.m. [joint w/ § 1]
(Rm. 285C)

Oct. 28 (Mon): *Design (cont'd)/Warnings*: Supp. p.16, 606-26 [⁸]

Oct. 30 (Wed): *Warnings (cont'd)*: Supp. pp.17-20, 627-42 [⁹]

Nov. 1 (Fri): *Hybrid Transactions/Occupational Injuries*: 671-75, 652-66

Nov. 4 (Mon): *Defenses/Federal Preemption*: 642-52, Supp. p.21, 498-514 [¹⁰]

Nov. 5 (Tue): discuss Practice Exam Question #2 (focused on prods. liability), which I'll
1:00-2:00 p.m. post for you to try the previous afternoon (followed by my model answer) [¹¹]
(Rm. 285C)

Damages

Nov. 6 (Wed): *Compensatory Damages*: 717-34 [¹²]

Nov. 8 (Fri): *Comp. Damages (cont'd)*: 734-49, 777-85

Nov. 13 (Wed): *Punitive Damages*: 749-75

Nov. 15 (Fri): Course evaluations (first 15 mins.)
Workers' Compensation: 831-56

Intentional Torts

Nov. 18 (Mon): *Traditional Categories/IIED*: 901-17, 924-30

Nov. 19 (Tue): *IIED (cont'd)/Defenses*: 934-39, 957-74 [¹³]

Nov. 20 (Wed): *Defamation (intro)*: 1003-30
Wrap up (preview of exam format)

Dec. 8 (Sun): Review session [joint w/ § 1] {optional}
1:00-4:00 p.m.
(Rm. 180)

Dec. 9 (Mon): **Final Exam**: In person, closed book, three essay-style questions (one hour
[time/rms. TBA] each, with strict word limits).

Additional reading (relevant items that I've published):

1. *Civil Jury Nullification*, 86 IOWA L. REV. 1601 (2001) (focusing on the division of labor between judges and juries but also discussing the comparative negligence defense and causation).
2. *Rewarding Regulatory Compliance: The Pursuit of Symmetry in Products Liability*, 88 GEO. L.J. 2147 (2000).
3. *Medicine's Epistemology: Mapping the Haphazard Diffusion of Knowledge in the Biomedical Community*, 44 ARIZ. L. REV. 373, 450-65 (2002) (also discussing products liability claims); *Informed Consent and the Elusive Dichotomy Between Standard and Experimental Therapy*, 28 AM. J.L. & MED. 361, 364-79 (2002).
4. *Giving Personal Injury Attorneys Who Run Misleading Drug Ads a Dose of Their Own Medicine*, 2019 U. ILL. L. REV. 701, 717-28 (focusing on negligent misrepresentation claims but also discussing product disparagement).
5. "Go Sue Yourself!" *Imagining Intrapersonal Liability for Negligently Self-Inflicted Harms*, 70 FLA. L. REV. 649 (2018) (also discussing negligent entrustment and dram shop claims, landowner duties to trespassers, and defenses of comparative negligence and express assumption of risk—in short, this may be the one most worth reading, though perhaps not until later in the semester; call it my somewhat warped effort to connect several of the dots).
6. *An Inventory of Mathematical Blunders in Applying the Loss-of-a-Chance Doctrine*, 24 REV. LITIG. 369 (2005).
7. TBA.
8. *The Imperative to Warn: Disentangling the "Right to Know" from the "Need to Know" About Consumer Product Hazards*, 11 YALE J. ON REG. 293, 343-50, 375-91 (1994).
9. *This Is Your Products Liability Restatement on Drugs*, 74 BROOK. L. REV. 839 (2009) (focusing on special rules governing design and informational defect claims involving prescription products); *Doctors on the Take: Aligning Tort Law to Address Drug Company Payments to Prescribers*, 66 BUFF. L. REV. 855, 878-906 (2018) (also discussing informed consent claims).
10. *State Affronts to Federal Primacy in the Licensure of Pharmaceutical Prods.*, 2016 MICH. ST. L. REV. 1, 27-35.
11. TBA.
12. *Comfortably Numb: Medicalizing (and Mitigating) Pain-and-Suffering Damages*, 42 U. MICH. J.L. REFORM 431 (2009) (focusing on noneconomic damages but also discussing NIED claims and comparative negligence defense).
13. *Does the U.S. Constitution Constrain State Products Liability Doctrine?*, 92 TEMP. L. REV. 189 (2019) (discussing the role of free speech among other rights in limiting defamation and other torts); *Must Courts Recalibrate Tort Law Governing Firearms in Light of the Second Amendment?*, 92 U. CIN. L. REV. 412 (2023).

In order to comply with UF Law Policy, the following information has been added.

COURSE DESCRIPTION FROM UF LAW WEBSITE

The central question in Torts is how society should respond to the problem of high dollar typically accidental physical harm, when injury is unfortunate, but unintended. Our course will focus mostly on the problem of unintentional harm, as applied to bodily and emotional harms. Theories covered will include negligence, strict liability, products liability and intentional torts as well as all their affirmative defenses. As there are seldom clear answers with legal questions spanning so many perspectives, and amorphous factual inquiries (including the role of the judge and jury, circumstantial evidence and fundamental problems), Torts trains students to answer timeless amorphous questions, thereby developing keen policy and argumentation skills, applicable to a wide variety of legal areas.

STUDENT LEARNING OUTCOMES:

.By the end of this course, you will be able to:

1. Identify all of the major legal issues and some of the minor legal issues that would affect tort liability when given a set of facts;
2. Know and communicate the legal rules and principles that are described in the case opinions and readings for this course;
3. Apply legal rules to new sets of facts by (a) explaining how the relatively easy issues would be resolved by a court, and (b) identifying good arguments and good counter-arguments that use analogical reasoning, critical thinking, and policy analysis to justify the outcomes of harder, more ambiguous legal issues;

ABA OUT-OF-CLASS HOURS REQUIREMENTS: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction.