

## REQ7150 TORTS

Fall 2023, Oakes Hall 012

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### Office Hours

I will hold drop-in office hours on Tuesdays during the semester from 3:35 to 4:50 p.m. I am also available to meet by appointment, either in person or on Teams. Please email me to set up an appointment.

### Required Materials

The casebook for the class is GOLDBERG, SEBOK & ZIPURSKY, TORT LAW: RESPONSIBILITIES AND REDRESS (5th ed. 2021). I may sometimes hand out additional materials in class, or post them on the course website. I will also post on the course website the slides that I use during class.

### Evaluation

#### Class Participation (1% per week, or 10% total)

I will not use the Socratic method in class. Instead, I will use Canvas posting and class attendance to evaluate class participation. You will post thoughts on the reading in a short, 3-5 sentence posting on the course site for one class in each of **ten** weeks of the course (meaning you can choose a number of weeks “off”). I will use these postings to gauge what interests you and organize class discussions. Only those who make postings will be called.

Your posting is due by 8 a.m. on the day of class. You will only earn the point if you are in class on the day for which you make your posting or have emailed me about your absence in advance. You should feel free to engage with each other’s postings. The first **fifteen** students who make a posting and come to class automatically get the credit. Remember, you are always welcome to engage in discussions on the Canvas course page, but only the first fifteen get participation credit.

If you would like to opt out of posting for a particular week, but still earn the point, you must email me to volunteer to be called that week by 8 a.m. Monday.

#### Mid Term (20%)

This term is to check your understanding of the course halfway through the semester. It will be a one-hour in-class exam, with a mix of multiple choice questions and one short essay. I will assign unscored practice questions throughout the semester to help you prepare for the midterm.

### **Final Exam (70%)**

This exam offers an opportunity for you to showcase the skills you have developed in this course and that you will use as an attorney. It will have a mix of short answer questions, essays or document-based questions, and policy questions or news reflections. We will devote much of our time in the classroom to practicing the types of questions you will see on the final.

### **Classroom Norms**

**Attendance.** Class attendance is required. The attendance policy is explained in more detail in the Vermont Law School Student Handbook §II(A). Failure to attend class will have a detrimental effect on your understanding of the material and your grade. It could also result in a grade of F. Read the attendance policy posted in the Handbook before the beginning of the term.

**Use of devices.** Use of a computer, tablet, e-reader, or other comparable device is ONLY allowed for the purposes of notetaking or accessing the textbook if you have purchased the digital version. There are many good reasons to take notes by hand. Messaging, emailing, web browsing, and other uses are prohibited. Your responsible use of devices is a skill you should practice.

**Be prepared to be uncomfortable at times.** The subject matter in our course can be difficult, morally contested, politically treacherous, and full of ambiguity, uncertainty, and ambivalence. Please try not to be afraid to be wrong, unsure, or to misstep. At various points, each of us will be wrong, misstep, or articulate an idea in a way that is not quite as eloquent as we might like. That is an inevitable part of engaging with difficult material. Be kind, charitable, generous, and respectful of yourself and others.

**Be engaged, but patient.** Each student will have many opportunities to be called on during the semester. Please do your part to help keep the distribution equal. Unless I ask for volunteers, please let your fellow students answer questions asked without raising your hand. I may not call on students when hands are raised for reasons of class flow, progression, and pacing. It is not an indication that I do not see a raised hand or that I am uninterested in your thought or question. If I misspeak or something is truly unclear, it is entirely fine to ask for clarification.

**Positions, not people.** In class, I may ask students to articulate a particular argument or viewpoint. Very often, that perspective is not what the student believes. Indeed, I will almost never ask for your personal viewpoint in class, and I ask that you try not to reveal it as you answer questions. In the classroom environment, my goal is to split off arguments and ideas from the person articulating them so that we may have a full and robust discussion—exploring, criticizing, and rejecting views without criticizing or rejecting each other.

**Recording and accommodation.** All materials (written and recorded) in this course, including those on the course website, are copyrighted. This also includes any recording of the class by the professor, any student, or any other person. These materials are only for the use of the individual student enrolled in this course and may not be reproduced or distributed without the express written consent of the professor.

If you would like to request accommodation, please review our Disability Policy at Vermont Law and Graduate School at: <https://www.vermontlaw.edu/community/students/academic-success/accommodations>. If you have questions, please make an appointment with the Vice Dean for Diversity, Equity, and Inclusion.

## Syllabus & Assignments

A tentative syllabus follows. We may proceed more quickly or slowly through the course materials. I may amend or change this syllabus and the assignment schedule at any time as needed throughout the semester.

You are required to complete reading assignments in time to be prepared for class discussion. Although I will not call on students who do not post on Canvas on the class day, I will sometimes ask for volunteers. Completing all assigned cases and notes is one of the best ways to prepare yourself and succeed in class.

Theme	Topic	Question	Date	Readings & Assignments	
Introduction	Example of A Tort Suit	What is tort law all about?	8/29	Walter v. Wal-Mart Stores, Inc. (5-11) Common Law and Statute (11-16) Proceeding Through Court 1-6 (22-26)	
Negligence: Duty	General Duty	What duty do I owe to the world?	8/31	Elements of the Prima Facie Tort Case (49-53) The preceding cases of MacPherson: <ul style="list-style-type: none"> <li>• Heaven v. Pender (55-57)</li> <li>• Winterbottom v. Wright: The Privity (58-59)</li> <li>• Thomas v. Winchester (59-60)</li> </ul> MacPherson v. Buick Motor Co. (62-66) <ul style="list-style-type: none"> <li>• Notes 1-8 (66-69)</li> </ul>	Weekly reading response?
	Qualified Duties	Does great power come with great responsibility?	9/1	Osterlind v. Hill (79-80) Baker v. Fenneman & Brown Properties, LLC (80-85) <ul style="list-style-type: none"> <li>• Note 1-3, 6-7 (85-86, 88-89)</li> </ul> Tarasoff v. Regents (94-103) <ul style="list-style-type: none"> <li>• Note 1-2, 5-6, 9, 12 (104-105, 105-108, 109-110)</li> </ul>	Weekly reading response?
		Is the host responsible for the guest's slipping and falling?	9/5	Leffler v. Sharp (110-115) Demag v. Better Power Equip (115-122) <ul style="list-style-type: none"> <li>• Note 1-6 (122-126)</li> </ul>	Weekly reading response?
		Do I need to look out for others' economic well-being?	9/7	Aikens v. Debow (129-137) <ul style="list-style-type: none"> <li>• Note 1-9 (137-143)</li> </ul>	Weekly reading response?

Negligence: Breach	Due Care	How difficult is it to take “due care”?	9/8	The Meanings of Negligence (149-150) Myers v. Heritage Enters., Inc (155-160) Adams v. Bullock (162-163) • Note 1-10 (164-170)	Weekly reading response?
	The Person of Ordinary Prudence	Will good faith help in negligence?	9/12	Vaughan v. Menlove (171-173) Darker v. Cavallino (173-184) • Note 1-14 (187-193)	Weekly reading response?
	Custom	Isn't compliance with industry customs enough?	9/14	The T.J. Hooper (195-198) Johnson v. Riverdale Anesthesia Associates (198-201) Condra v. Atlanta Orthopaedic Group (201-205) • Note 1-9 (212-214)	Weekly reading response?
	Cost-Benefit Analysis	Can we calculate reasonable care?	9/15	United States v. Carroll Towing Co. (217-221) Rhode Island Hosp. Trust Nat'l Bank v. Zapata Coop (222-225) • Note 1-10 (225-231)	Weekly reading response?
	<i>Res Ipsa Loquitur</i>	Can I still recover without knowing whose carelessness hurt me?	9/19	Byrne v. Boadle (231-233) Kambat v. St. Francis Hosp. 234-237) • Note 1-11 (238-242)	Weekly reading response?
Negligence: Causation	Actual Causation	“But for” want of a nail, would the kingdom be lost?	9/21	Meanings of “Cause” (245-250) Muckler v. Buchl (250-253) Butts v. Weisz (254-258)	Weekly reading response?
		How can we prove the “unknown and mysterious etiology”?	9/22	Cooper v. Takeda Pharmaceuticals America, Inc. (259-271, before the epidemiological studies) • Note 1-9 (273-283)	Weekly reading response?
		If two lightnings strike at once, which one is to blame?	9/26	McDonald v. Robinson (292-293) • Note 1-6 (293-295) Ford Motor Co. v. Boomer (205-304) • Note 1-3 (204-307)	Weekly reading response?

		Is the defendant responsible for an injury that she didn't cause?	9/28	Summers v. Tice (314-317) <ul style="list-style-type: none"> <li>• Note 1-6 (317-318)</li> </ul> Sindell v. Abbott Labs. (319-327) <ul style="list-style-type: none"> <li>• Note (327-331)</li> </ul>	Weekly reading response?
	Proximate Causation	How far do we need to peek into the future?	9/29	Union Pump Co. v. Allbritton (337-341) <ul style="list-style-type: none"> <li>• Note 1-4 (341-345)</li> </ul> Jolley v. Sutton London Borough Council (346-352) <ul style="list-style-type: none"> <li>• Note 1-2 (352-353)</li> </ul>	Weekly reading response?
		What if an intervening action gets in between cause and effect?	10/3	Intervening wrongdoing (357-359) <ul style="list-style-type: none"> <li>• Note 1-4 (359-361)</li> </ul> Port Authority of New York & New Jersey v. Arcadian Corp. (362-372) <ul style="list-style-type: none"> <li>• Note 1-3 (372-374)</li> </ul>	Weekly reading response?
		How big is the "scope of the risk"?	10/5	Palsgraf & Kinsman (382-390) <ul style="list-style-type: none"> <li>• Note 1-5 (390-391)</li> </ul> Petitions of the Kinsman Transit C. (396-405)	Weekly reading response?
Negligence: Statutes, Defenses, and Damages	Negligence Per Se	Is speeding equal to a fault?	10/6	Dalal v. City of New York (424-425) <ul style="list-style-type: none"> <li>• Note 1-9 (433-439)</li> </ul> Bayne v. Todd Shipyards Corp. (425-428) <ul style="list-style-type: none"> <li>• Note 1-9 (433-439)</li> </ul> Victor v. Hedges (428-433) <ul style="list-style-type: none"> <li>• Note 1-9 (433-439)</li> </ul>	Weekly reading response?
	Wrongful Death	Can someone sue for the loss of loved ones?	10/12	Nelson v. Dolan (470-476) <ul style="list-style-type: none"> <li>• Note 1-9 (476-481)</li> </ul>	Weekly reading response?
	Defenses to Liability: comparative fault, assumption of risk, and immunities	What if the victim is also at fault?	10/13	Contributory Negligence and Comparative Responsibility (494-498) <ul style="list-style-type: none"> <li>• Note 1-6 (503-507)</li> </ul> United States v. Reliable Transfer Co. (499-501) <ul style="list-style-type: none"> <li>• Note 1-6 (503-507)</li> </ul> Hunt v. Ohio Dept. of Rehabilitation & Correction (501-503) <ul style="list-style-type: none"> <li>• Note 1-6 (503-507)</li> </ul>	Weekly reading response?
		Should I stop signing waivers?	10/17	Smollett v. Skayting Dev. Corp (511-513) <ul style="list-style-type: none"> <li>• Note 1-4 (513-515)</li> </ul> Jones v. Dressel (521-526)	Weekly reading response?

				Dalury v. S-K-I, Ltd. (526-529) • Note 1-10 (529-534)	
		Why could anyone be immune from liability?	10/19	Riley v. United States (547-550) • Note 1-8 (550-554) Riss v. City of New York (554-561) • Note 1-2 (562-564)	Weekly reading response?
	Mid-Term		10/20		
	Damages and Apportionment	What is the right measurement of monetary damages?	10/24	Smith v. Leech Brain & Co. Ltd (575-578) • Note 1-8 (578-583) Kenton v. Hyatt Hotels Corp. (583-588) • Note 1-5, 11-12 (588-593, 595-596)	Weekly reading response?
		What might punitive damages ever accomplish?	10/26	National By-Products, Inc. v. Searcy House Moving Co. (600-604) Mathias v. Accor Economy Lodging, Inc. (604-607) • Note 1-7, 12 (607-612, 614-615)	Weekly reading response?
		Is the employer responsible for what a drunken employee did?	10/27	Taber v. Maine (619- 623) Note 1-16 (624-631)	Weekly reading response?
		If two are at fault, who has to pay what amount?	10/31	Ravo v. Rogatnick (631-635) • Note 1-7 (635-637) Bencivegna v. J.J.A.M.M, Inc. (638-642) • Note 1-4 (643-644)	Weekly reading response?
		How does liability insurance change tort law?	11/2	Interinsurance Exch. Of the Automobile Club v. Flores (644-649) • Note 1-17 (650-657)	Weekly reading response?
Intentional Torts	Battery and Assault	Is offensive touching a battery?	11/3	Elements of Assault and Battery (668-670) Cecarelli v. Maher (670-671) Paul v. Holbrook (671-673) • Note 1-6, 9-13 (673-675, 676-679) Intent (679-680) Vosburg v. Putney (680-683)	Weekly reading response?

		What is the minimum intent for battery?	11/7	Cole v. Hibberd (683-684) <ul style="list-style-type: none"> <li>• Note 1-4, 8 (685-686, 688)</li> </ul> Wagner v. State (690-68) <ul style="list-style-type: none"> <li>• Note 1-7 (699-701)</li> </ul>	Weekly reading response?
		Can words alone suffice to establish an assault?	11/9	Assault: Prima Facie Case (705-706) Beach v. Hancock (706-707) Brooker v. Silverthorne (707-710) Vetter v. Morgan (710-712) <ul style="list-style-type: none"> <li>• Note 1-3 (712-713)</li> </ul> In re White (read the following notes only) <ul style="list-style-type: none"> <li>• Note 1-2 (717-719)</li> </ul>	Weekly reading response?
		I can defend property as defend people, right?	11/10	Defenses (721-722) Koffman v. Garnett (723-726) <ul style="list-style-type: none"> <li>• Note 1-3, 5 (726-729, 729-730)</li> </ul> Haeussler v. De Loretto (733-734) <ul style="list-style-type: none"> <li>• Note 1 (734-735)</li> </ul> Katko v. Briney (737-741) <ul style="list-style-type: none"> <li>• Note 1-2 (741-742)</li> </ul>	Weekly reading response?
False Imprisonment		Wait, am I trapped here?	11/14	Fojtic v. Charter Med. Corp (744-747) <ul style="list-style-type: none"> <li>• Note 1-5 (747-750)</li> </ul> Grant v. Stop-N-Go Market of Texas, Inc. (753-757) <ul style="list-style-type: none"> <li>• Note 1-2 (757-758)</li> </ul>	Weekly reading response?
		What remedies are available for wrongful detention by police?	11/16	Irvin v. City of Shaker Heights (759-768) <ul style="list-style-type: none"> <li>• Note 1-8 (768-772)</li> </ul>	Weekly reading response?
Infliction of Emotional Distress		What can I do when a move to a new apartment becomes a nightmare?	11/17	The Emergence of IIED (775-778) Dickens (778-782) Littlefield v. McGuffey (785-789) <ul style="list-style-type: none"> <li>• Note 1-3 (792-796)</li> </ul> IIED and Employment Discrimination (804-805) <ul style="list-style-type: none"> <li>• Note 1-5 (804-808)</li> </ul>	Weekly reading response?

Liability without Fault	Introduction	How does non-fault liability emerge?	11/21	Brown v. Kendall (871-874) <ul style="list-style-type: none"> <li>• Note 1-2 (874-876)</li> </ul> N.Y. Central R.R Co. v. White (878-882) <ul style="list-style-type: none"> <li>• Note 1-4 (883-886)</li> </ul>	Weekly reading response?
	Property Torts	Is one's castle absolute?	11/28	Burns Philp Food, Inc. v. Cavalea Cont'l Freight, Inc. (887-889) <ul style="list-style-type: none"> <li>• Note 1-7, 12 (889-894, 897-898)</li> </ul> Necessity (899-901) Vincent v. Lake Erie Transp. Co. (901-903) <ul style="list-style-type: none"> <li>• Note 1,5-8 (903-904, 905-907)</li> </ul>	Weekly reading response?
		What can be done if a smelly business is next door?	11/30	Sturges v. Bridgman (921-923) <ul style="list-style-type: none"> <li>• Note 2-6 (923-925)</li> </ul> Penland v. Redwood Sanitary Sewer Serv. Dist. (930-936) Benetatos v. City of Los Angeles (943-952)	Weekly reading response?
	Abnormally Dangerous Activities	What happens when firework displays go wrong?	12/1	Pignaro v. Rossi (956-957) Rylands v. Fletcher (957-959) Klein v. Pyrodyne Corp. (959-967) <ul style="list-style-type: none"> <li>• Note 1-4, 6-9 (968-969,970-972)</li> </ul>	Weekly reading response?
	Products Liability	What if a coke bottle just explodes?	12/5	Introduction (979-981) Escola v. Coca Cola Bottling Co. of Fresno (981-987) <ul style="list-style-type: none"> <li>• Note 1-8 (987-991)</li> </ul> Basics of a products liability claim (999-1007)	Weekly reading response?
		Can I sue for poor product design?	12/7	Defects (1005-1007) Gower v. Savage Arms, Inc. (1007-1011) <ul style="list-style-type: none"> <li>• Note 1-8 (1011-1015)</li> </ul> Chow v. Reckitt & Colman, Inc. (1016-1019) <ul style="list-style-type: none"> <li>• Note 1-11 (1019-1024)</li> </ul>	Weekly reading response?
	Wrap-Up & Final Review!			12/8	