

**Torts Syllabus  
Summer AJD Class**

**Summer, 2018**

**Professor Vogel**

**Course text: Dominick Vetri, Lawrence Levine, Joan Vogel & Ibrahim Gassama,  
*Tort Law and Practice*, 5th ed. (2016)**

**Course Requirements:**

Class Discussions: All students are expected to be prepared and participate in classroom discussions. Class discussions are also critical to your learning process. Please spend your time taking notes and taking part in the discussions. Class attendance is mandatory. Students are not to leave the classroom, read e-mails, or surf the internet during class.

Grading: The grade for this course will be based on the final examination and on class participation for students who provide significant, thoughtful contribution to class discussions. Raising grades for class participation is solely within the discretion of the professor. Repeated failures to participate or lack of preparation may also result in a lowering of the grade. Class Attendance is mandatory. Failure to attend class regularly will result in a grade of F-WD (Failure-Withdrawn).

Practice Midterm and Final Examination: The final examination will be an open-book in-class examination. To prepare for this exam, I will give a practice midterm after we cover intentional torts. I may use a question from a previous exam or other questions that cover intentional torts. I will also provide written feedback on the practice exam and I will go over the exam questions in class. At the end of the term, I conduct a review session for the final exam which will go over the previous year's exam.

**Course Goals:** My primary goals for students this course:

- To become literate and conversant with the principal doctrines of tort law.
- To thoroughly analyze torts problems and apply tort law to facts.
- To gain an understanding of how tort law works in practice.
- To learn how arguments, strategies, and values affect the law and the outcomes of cases.
- To gain an appreciation of the theories and public policy arguments behind the common law of torts.
- To learn something of the historical and jurisdictional context of present-day tort law.

- To develop critical reasoning and problem-solving skills.

**Office Hours:**

In the summer by appointment. Please come and see me if you are having problems or if you have any questions about the course. You may also send me an e-mail if you have a question about what was covered in class. My e-mail address is [jvogel@vermontlaw.edu](mailto:jvogel@vermontlaw.edu). My office is in 317 Debevoise Hall. Phone number: 802-831-1296.

**Class Assignments**

(This syllabus is a preliminary outline of what we will be covering this summer. I may make changes to the syllabus during the summer)

**Class No.1: Introduction to Torts**

Introduction and Bookguide pp. v-vii, ix-xii (background reading)  
Text, pp. 1- 46

**Class No. 2: Introduction to Intentional Torts & the Meaning of Intent**

- A. Overview of Intentional Torts: Assault, Battery and Intentional Infliction of Emotional Distress.  
Text, pp. 685-695
- B. The Meaning of Intent  
Text, pp.695-706, Do problems in note 3, p.702, *Doe v. Johnson*.

**Class No. 3: Assault and Battery Continued**

- B. The Meaning of Intent & Assault (continued)  
Text, pp 707-711
- C. Assault and Battery Problems  
Text, pp 711-715 (also Assault & Battery charts, pp. 713 & 715)

**Class No. 4: Intentional Infliction of Emotional Distress**

- D. Intentional Infliction of Emotional Distress in Discrimination Cases  
Text, pp 715-737, The Destroyed Wedding Cake Problem, p. 740 & IIED chart, p. 738

## **Class No. 5: Intentional Torts (Defenses)**

### E. Privileges and Defenses

1. Consent  
Text, pp. 757-766  
Consent problems, pp. 766-767  
Consent Chart, p. 767
2. Self-Defense and Defense of Others  
Text, pp. 768-775  
Self-Defense problems, pp. 775-776  
Self-Defense & Defense of Others Charts, p.777

## **Class No. 6: Defenses Continued:**

3. Defense of Property  
Text, pp. 777-780  
*Katko v. Briney* Poem p. 781
4. Necessity  
Text, pp. 781-788  
Defenses to Intentional Torts Chart, p. 788

## **Class No. 7: Review of Intentional Torts and Taking Exam, Introduction to Negligence**

5. Summary of Intentional Torts  
University Mascot Problem, pp. 789-791

### **Intentional Tort Practice Exam Problem (Handout)**

## III Negligence

- A. Overview of Negligence Law  
Text, pp. 47-65

## **Class No. 8: Negligence Cont. (Breach of Duty)**

- B. General Duty of Care (Chapter 3)  
Text, pp. 190-200
- C. Breach of Duty
  1. The Reasonable Person Standard and Its Alternatives  
Text, pp. 65-88

## **“Hot Coffee” Video on Tort Reform**

### **Class No. 9: Negligence Cont. (Breach of Duty)**

2. Developing the Reasonable Care Standard: Risk Utility Analysis  
Text, pp. 89-106  
Missing Rearview Mirror problem, p. 103-104  
Dangerous Bus Stop Problem, pp. 104-106
3. The Relevance of Custom  
Text, pp. 106-115

### **Class No. 10: Negligence Cont. (Breach of Duty)**

4. Safety Statutes and Regulations as Standards  
Text, pp. 121-142  
Headlights Problem, p. 136  
Keys in Ignition Problem, p.142

#### **Review of Practice Exam**

5. Proof of Negligence
  - a. Circumstantial Proof  
Text, pp. 142-147
  - b. Res Ipsa Loquitur  
Text, pp. 147-161  
Rolling Car Problem, p. 161 & charts, p. 154 & 161
6. Standard of Care in Professional Malpractice  
Text, pp. 161-184
7. Summary of Breach of Duty  
Charts, p.184

### **Class No. 11: Negligence Cont. (Causation)**

#### **C. Actual Causation**

1. Introduction to Causation  
Text, pp. 359-360
2. But-For and Substantial Factor Tests  
Text, pp. 360-366

### 3. Proving What Caused the Harm

#### a. Proof of Causation

##### i. Cumulating Proof to Identify the Cause

Text, pp. 366-373

##### ii. Untaken Precautions: Proving the Counterfactual

Text, pp. 374-390

##### iii. Multiple Parties: Apportionment of Damages or Joint Liability

Text, pp. 391-398

### **Class No. 12: Negligence Cont. (Causation)**

#### b. Using Scientific and Technical Evidence to Prove Causation

Text, pp. 411-427

### 4. Proving Who Caused the Harm

#### a. Alternative Liability

Text, pp. 428-431

#### b. Market Share Liability

Text, pp. 431-443 & chart on causation, p. 443

### **Class No. 13: Negligence Cont. (Scope of Liability)**

#### D. Scope of Liability

##### 1. The Conceptual Basis of Scope of Liability

Text, pp 447-452

##### 2. Applications of the Foresight Rule

###### a. Unforeseeable Plaintiffs

###### b. Unforeseeable Consequences

Text, pp. 459-468

###### c. Intervening Forces

- i. Criminal Conduct of a Third Person  
Text, pp. 469-474

**Class No. 14: Negligence Cont.: (Scope of Liability)**

- c. Intervening Forces (Cont.):
  - ii. Shifting Responsibility  
Text, pp. 574-485
- 3. Exceptions to the Foresight Rule
  - a. Medical Malpractice Complications Rule  
Text, p. 489, note 1
  - b. The Eggshell or Thin-Skulled Plaintiff Rule  
Text, pp. 493, note 1
  - c. Rescuer Rule  
Text, pp. 494-501
- 4. Framework for Analyzing Scope of Liability  
Text, pp. 499-501
- 5. Putting Scope of Liability Together  
Cat in the Hat Disaster Problem, p. 507-508

**Class No. 15: Negligence Cont.: (Limited Duty Rules)**

E. Limited Duty Rules

- 1. General and Limited Duty Rules  
Text, pp. 190-191, 200-204
- 2. Duty to Act or Rescue  
Text, pp. 227-243
- 3. Controlling the Conduct of Others  
Text, pp. 243-260

**Class No. 16: Negligence Cont: (Limited Duty Rules) & (Damages)**

- 4. Emotional Harm without Physical Injury  
Text, pp. 283-314

F. Damages

1. Overview of Damages  
Text, pp.512-542
2. Racial, Gender & Class Fairness in Tort Damages  
Text, pp. 551-588

**Class No. 17: Negligence Cont: (Defenses) & Strict Liability**

G. Defenses

1. Comparative Fault  
Text, pp. 607-623, 646-649, Problems pp.649-651,  
Read text pp.650-652.

**Class No. 18: Strict Liability & Exam Review**

IV. Strict Liability

- A. Abnormally Dangerous Activities  
Text, pp. 832-848 & chart, p. 847