

**TORTS: SECTION C, FALL 2021
COURSE POLICIES AND SYLLABUS**

University of Miami School of Law
Mon, Tues, Thurs 2:05 PM-3:20 PM
Room: F309

Instructor: Professor Gabriel Scheffler
Office: G467
Office hours: Mondays 9:00 AM-11 AM via Zoom (Meeting ID: 966 6082 8047, Passcode: 258063)
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I. COURSE OBJECTIVES

The primary aims of this course are to enable you to:

- Learn the basic principles and doctrines in tort law, and understand how they have developed over time.
- Hone your legal reasoning and critical thinking skills, and learn how to apply legal rules to new situations.
- Understand the tensions within tort law, and critically evaluate and assess the features of tort law from multiple different perspectives.

II. COURSE POLICIES

Required Materials:

1. Marc. A Franklin, Robert L. Rabin, Michael D. Green, Mark A. Geistfeld, and Nora Freeman Engstrom, *Tort Law and Alternatives: Cases and Materials* (11th Edition 2021)
2. Kenneth S. Abraham, *The Forms and Functions of Tort Law* (5th Edition 2017).

The Franklin et al. Casebook (CB) and Abraham treatise (A) are available at the UM bookstore Book Horizons, and online. I have also placed a copy of the casebook and reader on Course Reserve in the library. *You can also access a free electronic copy of the Abraham treatise through the West Academic Study Aids platform*, which is accessible through the law library website (go to <https://www.law.miami.edu/iml/library/> and look under “Quick Links”).

The CB is expensive. You may choose to purchase the 10th edition (2016), for which it will likely be easier to find a cheaper used edition, *but you are still responsible for all of the assigned readings*. I will set up a discussion thread on the course website on Blackboard for you to work with your classmates to ensure you are reading the correct pages. (You may also use the book on

Course Reserve to ensure you are reading the right material and have access to the updated material in the new edition.)

Class Schedule and Make-Up Classes: We will meet regularly on Mondays, Tuesdays and Thursdays in F309, from 2:05 PM to 3:20 PM. *There will be no class on Thursday, Sept. 16. We will hold a make-up class on Friday, Sept. 24 at our usual class time, in our usual classroom.*

Office Hours: I will have virtual office hours via Zoom on Thursdays from 10:00 AM-12 PM (Meeting ID: 966 6082 8047, Passcode: 258063). You can also email me directly with questions.

Grades and Exams: Your grade will be based on the final exam (open book, open notes) and classroom participation (see below). There will also be an ungraded practice midterm which is designed to test your knowledge and help you prepare for the final exam.

Attendance and Classroom Participation: Attendance in class is required, and excessive absences may result in the lowering of your grade. If you need to be excused from class due to illness or other reasons, please let me know.

Classroom participation will also be factored into your overall grade. Participation will be conducted through a mix of voluntary participation and a modified system of “cold-calling.”

For “cold-calling,” I employ a system that enables you to decide which days you may be called on, while at the same time providing you with an incentive to participate more. Starting with the 4th Class (August 30), before each class, you will be able to sign up on Blackboard to indicate if you are OK with my calling on you. If you sign up, then I will assume that you have read the assigned material for that day, *as well as any material not covered from the prior class*, and that you are ready to participate in the discussion if I call on you. If you do not add your name, then I will not call on you.

- If you sign up for *2/3 or more of our class sessions* (there are 33 sessions for which you will be able to add your name, so this means adding your name for **at least 22 classes**), your final grade will *increase* one increment (e.g., from B+ to A-) above your exam grade, as the curve allows.
- If you sign up *between 1/3 and 2/3 of the classes (between 12 and 21 classes)*, then your grade will *not change* from your final exam grade.
- If you sign up for *1/3 or fewer of the classes (11 or fewer classes)*, then your final grade will *decrease* one increment.

If you ask me how many times you have added your name, then I will let you know, but I won't send you regular updates otherwise. In some cases, I may also raise your grade based on the quality (not quantity) of class participation (which may include voluntary participation), but not beyond the one increment described here.

To add your name to the on-call list, click on “On-Call Sign-Up” on the left-hand navigation pane of the Torts class page on Blackboard, then click on the link with the date for that class, answer enter your full name. *The sign-up sheet will open when the previous class ends (at 3:20PM) and close one hour before class (1:05 PM EST). So if you wish to receive credit for adding your name, you must do so before 1:05PM EST the day of class.*

When I call on you, I do not intend to embarrass you or trick you, and it is OK if you make mistakes. However, I do expect that you come to class prepared and having done the reading carefully (please see “tips for reading cases” below). *In the event that you are completely unprepared (or absent) when I call on you, you will not receive credit for adding your name.*

Dean’s Fellow: Lauren O’Neil, an excellent 2L law student who took Torts with me last year, will be serving as the Dean’s Fellow for our class. She will be holding regular review sessions (day and time TBA), where she will go over hypothetical Torts problems. I strongly encourage you to attend at least one session per week. You should also feel free to contact her with questions. You may reach her by email at laurenoneil@law.miami.edu.

Mask and Physical Distancing: According to University and Law School policy, masks are required at all times including in our classroom. Students must maintain adequate physical distancing and comply with all signage in and around the building. Everyone is expected to behave in a manner that is beneficial to the health and safety of all students, faculty, and staff. Appropriate masks cover the entire nose and mouth, fitting snugly over the face. Students without an appropriate face covering will not be permitted in the classroom.

Class Recordings: Students are expressly prohibited from recording any part of this course. Meetings of this course might be recorded by the University. Any recordings will be available to students registered for this class as they are intended to supplement the classroom experience. Students are expected to follow appropriate University policies and maintain the security of passwords used to access recorded lectures. Recordings may not be reproduced, shared with those not enrolled in the class, or uploaded to other online environments. If the instructor or a University of Miami office plans any other uses for the recordings beyond this class, students identifiable in the recordings will be notified to request consent prior to such use.

Disability & Accommodation: If a student has a disability, or suspects that he or she may have a disability, please contact Jessie Howell, Director of Accessibility, for information about available opportunities, resources, and services. Her phone number is 305-284-4551, and her email address is access@law.miami.edu.

Title IX: The University of Miami seeks to maintain a safe learning, living, and working environment free from all types of sexual misconduct including but not limited to: Dating Violence, Domestic Violence, Sex- or Gender-Based Discrimination, Sexual Assault (including Sexual Battery), Sexual Exploitation, Sexual Harassment, and Stalking. For additional information about the University’s efforts to prevent, stop, and address sexual misconduct, including resources and reporting options, please visit www.miami.edu/titleix or contact the University’s Title IX Office at titleixcoordinator@miami.edu.

III. TIPS FOR READING CASES

One of the ways that law school courses differ from undergraduate courses in that they often utilize the “case method”—teaching legal doctrine and analysis through reading judicial opinions. In reading these cases, please do so with an eye to understanding the following:

- (1) *The Facts*— what were the factual events that gave rise to the particular legal dispute at issue in the case?
- (2) *Procedural History*—Who sued whom, what was the legal claim, and what happened at trial or in previous appeals (if any)?
- (3) *Questions*— What were the precise questions of law at issue in the case?
- (4) *Holding/Reasoning*—
 - a. Who “won”? Did the appellate court “affirm” or “reverse” the lower court's ruling? If the latter, did the appellate court “remand” to the lower court for further proceedings (e.g., a new trial), or did it enter judgment for the prevailing party directly?
 - b. What general rule or proposition of law did the court state as the basis for its decision?
 - c. What reasons did the court give for its holding? Did the court claim to derive its ruling by logical deduction from prior precedents? From a more general or analogous proposition of law? From a moral principle? Did the court invoke policy arguments about why its choice of rule would produce good social outcomes?
- (5) *Separate opinions*: The alternative rulings proposed by the concurring or dissenting judges and the rationales, if any, stated for those proposed rulings.

IV. SYLLABUS

Skeletal Outline of Class

I.	INTRODUCTION AND OVERVIEW
II.	THE NEGLIGENCE PRINCIPLE
III.	THE DUTY REQUIREMENT
IV.	CAUSE-IN-FACT
V.	THE SCOPE OF LIABILITY: PROXIMATE CAUSE
VI.	DEFENSES
VII.	DAMAGES AND INSURANCE
VIII.	INTENTIONAL TORTS
IX.	STRICT LIABILITY
X.	PRODUCTS LIABILITY
XI.	ALTERNATIVES TO TORT

Detailed Outline and Schedule of Assigned Readings

Reading Assignments: Readings are listed on the syllabus first from the Franklin et al. casebook (**CB**), and second from the Abraham reader (**A**). There are a handful of supplemental readings, marked as (**Supp**), which will be posted on Blackboard. All reading assignments are required. For notes following cases in the CB, read all notes on the assigned pages, unless otherwise indicated below.

Note that I may revise the syllabus as the course progresses. I will give advance notice of any additional, supplemental material and any other changes to the syllabus.

I. INTRODUCTION AND OVERVIEW

Class 1: Introduction to Tort Liability (Aug. 23)

- **Abraham, *The Forms and Functions of Tort Law* (A):** pp. 1-4

Class 2: Hammontree and Functions of Tort Law (Aug. 24)

- **Franklin et al., *Tort Law and Alternatives: Cases and Materials* (CB):** 1-8 (*Hammontree* and notes 1-3)
- **A:** 16-23

Class 3: The Litigation Process and Procedure in a Tort Suit (Aug. 26)

- **CB:** 9-20

II. THE NEGLIGENCE PRINCIPLE

A. Duty/Breach

Class 4: Historical Development and the Standard of Care (Aug. 30)

- **CB:** 37-41 (note 2 on 41), 46-49 (notes 1-3)

Class 5: The Learned Hand Test (Aug. 31)

- **CB:** 50-53 (notes 1-3)
- **A:** 81-84
- **Supp:** Gilles, *US v. Carroll Towing Co: The Hand Formula's Home Port*, Tort Stories 11-33

Class 6: Defining the “Reasonable Person” and Negligence Review (Sept. 2)

- **CB:** 55-64
- **A:** 68-76
- **Supp:** Selected Sections from Restatement (Second) and Restatement (Third) of Torts

[NO CLASS—Labor Day Holiday, Monday September 6]

B. Role of Judge and Jury

Class 7: Overview (Sept. 7)

- **CB:** 64-73 (notes 2-5 on pps. 72-73)
- **A:** 103-108

Class 8: Custom and Statutes (Sept. 9)

- **CB:** 74-87 (note 1 on p. 80; notes 3-4, 6, 9 on pps. 83-87)
- **A:** 85-89, 99-103

C. Proof of Negligence

Class 9: Cases of Circumstantial Evidence and Res Ipsa Loquitur (Sept. 13)

- **CB:** 89-100 (through note 6), 102-109 (notes 1-2, 4-6)
- **A:** 109-123

Class 10: The Special Case of Medical Malpractice: Standard of Care and Questions of Proof in Medical Harms (Sept. 14)

- **CB:** 109-119 (top) (pay special attention to note 8 regarding the *Sides* case)
- **A:** 89-93

[NO CLASS—Thursday, September 16]

D. Vicarious Liability

Class 11: Respondeat Superior and Apparent Agency (Sept. 20)

- **CB:** 21-33 (top) (notes 1-6 on pps. 25-27)
- **A:** 212-214

III. THE DUTY REQUIREMENT

A. Affirmative Duties: Physical Harm

Class 12: Duty to Rescue (Sept. 21)

- **CB:** 129-143
- **Supp:** California and VT Good Samaritan and Rescue Statutes

Class 13: Duty to Warn (Sept. 23)

- **CB:** 143-162 (Notes 1-4 on pps. 150-151)

Class 14 (MAKE-UP CLASS): Landowners and Occupiers (Sept. 24)

- **CB:** 190-204 (just up to *Landlord and Tenant*)
- **A:** 266-269

B. Limited Duties: Emotional Harm

Class 15: Negligently Inflicted Emotional Harm (Sept. 27)

- **CB:** 261-267 (notes 1-4), 276-282 (notes 1,7), 286-298
- **A:** 269-276

C. Limited Duties: Economic Harm

Class 16: Economic Harm (Sept. 28)

- Readings TBA

IV. CAUSE-IN-FACT

A. Basic Doctrine

B. Joint and Several Liability and Multiple Defendants

V. THE SCOPE OF LIABILITY: PROXIMATE CAUSE

VI. DEFENSES

VII. DAMAGES AND INSURANCE

VIII. INTENTIONAL TORTS

IX. STRICT LIABILITY

X. PRODUCTS LIABILITY

XI. ALTERNATIVES TO TORT