TORTS
Fall, 2008

Syllabus

Course Overview: This one-quarter course offers an introduction to Tort law, the private law governing injuries and harms. It is divided roughly into three sections. The first section examines negligence law. The second section addresses intentional torts – e.g., battery, assault, and intentional infliction of emotional distress – along with defenses and privileges related to those torts. The third and final section introduces the subject of strict liability.

THIS SYLLABUS IS DETAILED AND SPECIFIC, AND IT CONTAINS IMPORTANT INFORMATION. YOU ARE RESPONSIBLE FOR ALL OF THE INFORMATION IT DESCRIBES.

Learning Outcomes / Course Objectives: There are essentially twelve learning goals for this course that can be divided into substantive objectives and skills objectives.

Substantive Objectives: (1) learn the “black-letter law” governing negligence, intentional torts, and strict liability; (2) correctly apply and synthesize rules of law to facts in analyzing fact patterns; (3) understand both the policies and the policy choices that support the “black-letter law”; (4) understand the development of tort law; (5) learn the basic procedures by which courts address torts issues; and (6) consider the role of tort law in society.

Skills Objectives: (1) analyze judicial opinions; (2) read critically; (3) write and speak effectively to communicate your views and knowledge; (4) understand how to recognize relevant facts and determine what facts you need to know in order to resolve legal questions; (5) use technology to analyze and share information; and (6) work effectively and efficiently in groups.

Assessment Objectives: The Final Exam and the multiple writing projects are all specifically designed to assess the learning outcomes of this course. Each assessment tool utilized during the quarter will test students on the substantive and skills objectives described above. For example, they will all evaluate your ability to read critically, write effectively, as well as to synthesize and think insightfully, practically, and creatively. You will be expected to be able to accommodate for the fact that there is uncertainty in legal reasoning, and that legal analysis only begins, and does not end, with an ability to identify the applicable rule of law. Generally, the Final Exam will assess your core knowledge and understanding of basic Tort law, and your ability to apply those rules to new sets of facts in order to evaluate legal issues and problem solve. The Practicum writing assignments will give students the opportunity to demonstrate their ability to issue-spot,
evaluate facts, determine the need for additional facts, and cope with the ambiguous nature of facts in legal problem solving. In your Wiki postings commenting on your colleagues contributions, I will be considering your ability to comprehend and respond to another’s legal analysis, in addition to your own ability to improve from having your work critiqued. The Wiki writing assignments will be assessing your ability at legal research and analysis, in addition to your ability to work cooperatively and effectively with others as part of a team.

**Casebook:** The required textbook for this course is Prosser, Wade & Schwartz’s *Cases and Materials on Torts* by Schwartz, Kelly and Partlett (Eleventh Edition) (The Foundation Press 2005) (“Prosser”). *No other materials are required for the course.* For a further explanation of particular subjects, you might choose to consult a “hornbook” on the subject, such as Dobbs, *The Law of Torts* (West Group 2000) or Prosser & Keeton, *Torts* (5th Ed.) (West Group 1984), which tracks the casebook. You might also consult Glannon, *The Law of Torts: Examples & Explanations* (3rd Ed.) (Aspen Law & Business 2005), particularly to practice your analysis of fact patterns. Another good background resource on tort law is Rabin and Sugarman, *Tort Stories* (Foundation Press 2003). These books are on reserve at the Gallagher Law Library.

**Class Meetings:** The class meets on Mondays, Tuesdays, Wednesdays, and Thursdays from 9:30 – 11:20 a.m. each week. Throughout the quarter, there will be some exceptions to this general class meeting schedule due to holidays, and other reasons. If for any reason the class schedule set out in this syllabus changes, I will make an announcement in advance in class and post the changes on the class Wiki.

I expect students to arrive on time for class, as late-comers and stragglers can be very disruptive. Please turn off all cell phones and pagers before the start of class. I urge you to share notes, outlines, and insights with your classmates, either on the class Wiki, in a study group or informally. Throughout the course, there may be guest lecturers in the class. You will be responsible for the material covered by these lecturers, and you should treat these classes just as you would any other class.

I will be creating a seating chart for this class on the second day of class, so I will ask you to choose your permanent seat then.

**Students’ Responsibility:** By enrolling in this class, you have agreed to conduct yourself in a consistently responsible manner throughout the quarter. Your professional responsibilities for this course include:

1. **Attending every class session.** Attendance should be viewed as a minimum requirement for successful completion of this course. Reading the casebook alone, without attending class, will not prepare you for the exam nor teach you torts.
(2) *Participating in class.* Every student should be prepared to participate fully in each class session. Students may be excused from participating in class once during the quarter, and only when good cause is shown prior to the beginning of a class session. Of course, all class discussions will be governed by civility and mutual respect.

You should arrive at class prepared and ready to express your best understanding of the rules that you have synthesized from the cases and other readings. You should be prepared to answer questions about why the cases came out as they did, and understand each side’s arguments, whether the parties could have made different or better arguments, and the rationale for the court’s conclusion. You should arrive to class armed with views you are prepared to articulate, and not simply with questions and an open mind. Expect class time to provoke thought, rather than resolving ambiguity with pat answers. Developing arguments and discerning differing perspectives are the intellectual exercises that all lawyers must master and utilize on a daily basis. Rare are the instances where lawyers are able to find or offer pat, simplistic answers to legal questions.

Be actively engaged in class, whether or not you are speaking. For some students, taking notes throughout the class is both a way to maintain a high level of attention and a way to develop an accurate record of how class time was spent. You will likely rely on your notes to prepare for the Final Exam. However, keep in mind that law school exams will not be testing your ability to recite rules and doctrines. Rather, the exam will test your ability to apply the law to new and ambiguous fact situations. The Thursday Practicums, described below, will give you practice and experience with this skill. Class notes that allow you to recollect how class time was spent and which points were emphasized might be particularly useful. Writing down the questions posed in class will help you figure out what was particularly significant about a case. It is important to remember that your classmates will make valuable points during class, so be prepared to listen and take notes while they speak. Do not expect me to repeat or emphasize every valid or important point made by a colleague. The bottom line is that listening and note-taking are essential skills for all lawyers, and many lawyers make great strides in developing that skill in a way that works best for them during law school.

(3) *Reading all assigned materials in a timely manner.* Preparation for class requires reading all materials assigned on the syllabus. Read the assignments carefully. Spend the appropriate amount of time with the material to understand it. You should not only comprehend the facts of a case, but begin to understand the various layers of issues, rules, and policy.
A good rule of thumb is to read each assigned case or other reading twice. The first time, read for content. Then reread, asking yourself why you have been assigned this reading, what its significance is, and what it teaches you beyond its text. Ask yourself how each reading relates to the readings that preceded it. Attempt to anticipate the discussion questions that will be raised in class, and think about the Weekly Lecture Theme Questions that are contained in this syllabus and also posted on the class Wiki.

Take study notes as you are reading the materials, and review them before class. To be prepared for class, you should review the material so it is fresh in your mind. You would be well served to develop a system for preparing for class that allows you to easily and quickly refresh your memory a short time prior to class.

(4) Participate in Class Practicum Discussions and Complete All Writing Assignments.

(5) Participate in the Class Wiki. I have created for this course a class “Wiki,” which is a collaborative website to supplement our class discussions and provide you with an opportunity to raise questions and issues, “think out loud,” and engage with your classmates and me. The Wiki can be found here: http://uwortswikimiller.wetpaint.com/. Participation in the Wiki is a required part of this class. I have organized the Wiki as a way of thinking through issues and problems. The best part of your education in law school will occur from interacting with your colleagues, rather than writing down what a professor says. The Wiki is a tool to facilitate that part of your education. Each student will be assigned a name to register on the Wiki. Their “Wiki Name” will not reveal their individual identity, thereby students can post questions and comments anonymously. Only Professor Miller and Kim Mechalais will know the identity of the Wiki Names.

(6) Check your email and the Wiki. All members of the class should check their email and the Wiki regularly. I anticipate using email and the Wiki as a way of providing information to you and answering questions posed by members of the class.

Exams and Grading: Your course grade will be based upon three components: (1) a Final Exam – 65%; (2) In-Class Practicum Writing Assignments and Student Comments Posted on the Wiki – 10%; (3) Wiki Writing Assignments – 25%.

Final Exam. The final examination will be limited open book. If you are using a computer to write your exam, you will be required to use ExamSoft. You will be
permitted to bring the casebook, and notes and outlines that you played a substantial role in preparing. You will be permitted to use the Wiki Class Outline as a resource during the exam. However, the materials you bring in to the exam must be in hard copy; you may not use electronically recorded materials. You will not be permitted to use commercial outlines or other reference materials in the exam.

**In-Class Practicum Writing Assignments and Student Comments Posted on the Wiki.** Your responsibility to hand in the writing assignment for each of the Thursday Practicums is described below. In order to receive the full 10% credit for this portion of your final grade, you will need to complete the Practicum Projects in a timely manner. You will need to put your name on the Thursday Practicum Assignments.

In addition, each individual student is responsible for posting at least three comments on or responses to other students postings or group work. Important lawyering skills include the ability to understand and appropriately comment upon another’s analysis, in addition to the ability to learn and improve from having one’s own work critiqued and commented upon. **At least two of your comments must be posted BEFORE NOVEMBER 14th – Week Nine** of the course in order to prevent comments being added at the very end of the course when they are less useful as a learning tool. Of course, all comments and critiques with be constructive, respectful and supported by your own rationale.

**Wiki Writing Assignments.** There will be three group Wiki research and writing assignments. **Each member of the group will receive the same grade for each assignment based upon the work product that the group turns in regardless of any individual dynamics of the group.** Lawyers need to learn to work collaboratively recognizing a mutual stake in the outcome. Lawyers oftentimes do not get to pick their clients, colleagues, or the counsel on the other side of a deal that they must work with to achieve common goals. For each Wiki assignment, you will receive a different confidential student identification number to be used for each project. Each group will be responsible for posting the completed assignment on the Class Wiki and emailing a copy to Kim Mechaelis for grading.

The first project consists of your assigned group researching, drafting and posting a short analysis (no more than one page) of a couple of state’s informed consent standards, including the state statute and/or case law. This writing project is worth 5% of your final grade. **THIS ASSIGNMENT IS DUE ON OCTOBER 16th by 4:00 p.m. by submission to the Catalyst Collect-It Drop Box at** [https://catalysttools.washington.edu/collectit/dropbox/mechaelk/3188](https://catalysttools.washington.edu/collectit/dropbox/mechaelk/3188)
In the second writing project, that same group will be responsible for drafting a short memo that analyzes the fifty-state (and the District of Columbia) survey of state informed consent standards (no more than 750 words). This writing project is worth 5% of your final grade. **THIS ASSIGNMENT IS DUE ON NOVEMBER 13th by 4:00 p.m. by submission to the Catalyst Collect-It Drop Box at https://catalysttools.washington.edu/collectit/dropbox/mechaelk/3188**

The third writing project will be completed with a different randomly selected student group. Project three consists of the group outlining and posting an assigned portion of an open, class-wide Wiki Torts outline. The class outline will include an analysis of doctrine and case law covered in the readings and class discussion. The result of this assignment will be a collective class outline of the course that students may use to prepare for and use during the Final Exam. **EACH GROUP’S CONTRIBUTION TO THE WIKI TORTS OUTLINE MUST BE COMPLETED AND POSTED NO LATER THAN 12:00 p.m.(midnight?) ON DECEMBER 4th by submission to the Catalyst Collect-It Drop Box at https://catalysttools.washington.edu/collectit/dropbox/mechaelk/3188. In addition, each group will be responsible for briefing and posting the cases that are part of their outline section. **THE CASE BRIEFS MUST BE POSTED ON THE WIKI NO LATER THAN ONE WEEK (SEVEN DAYS) FOLLOWING THE DISCUSSION OF THE MATERIAL IN CLASS.** This writing project is worth 15% of your final grade.

**ASSIGNMENTS HANDED IN LATE WILL BE MARKED DOWN AND APPLIED AGAINST THE ENTIRE GROUP.**

**Thursday Practicums:** On Thursdays, with several exceptions noted in the schedule, class will be conducted in a practicum format. In order to apply the doctrines learned in the lectures on Monday, Tuesday, and Wednesday, I will screen an episode of a television series (generally a 23 minute sitcom, or an edited episode that will be less than 30 minutes in duration) that raises one or more tort issues. Students will work in a randomly assigned “law firm” group of four to issue-spot the torts problem based on the in-class screening, and draft a short paper to be turned in at the end of class. Different groups may be given different characters from the episode to “represent.” During the last portion of class, the “law firms” will present and argue their points on behalf of their client in front of the class. The random “law firm” groups will be posted early in the week, and you will be responsible for knowing which group you are assigned to prior to arriving in class on Thursday. There will be no changes to the law firm groups allowed.

In addition, on Thursday, each student will be responsible for submitting to the Catalyst Collect-It Drop Box a short writing analysis of the practicum project https://catalysttools.washington.edu/collectit/dropbox/mechaelk/3188. These writing assignments
will be graded Pass / Fail. If a student misses a practicum class, the student must view the episode privately and hand in the assignment no later than Monday by 4:00 p.m., unless other arrangements are made.

The writing assignment will be organized in the following manner containing these components [IFRAC]: Statement of the Tort Issue(s) raised by the episode; Statement of Relevant Facts and Statement of Any Unknown Facts – what additional facts do you want to have and what facts are you intuiting?; Rule of Law; Analysis and Case Support from the casebook and supplemental readings; and Legal Conclusion. I will be explaining in class in greater detail the practicum expectations and writing assignments.

Practice Exercises and Problems: Throughout the quarter, I may pass out additional practice exercises and problems for you to take.

Office Hours: My office hours are on Thursdays from 2:00 to 4:00 p.m. (except when there is a conflict, and I will make other arrangements).

My assistant is Kim Mechaelis. Her office is Gates Hall 422, her phone number is 616-5964, and her email is mechaelk@u.washington.edu. If you have a conflict with these office hours, please feel free to contact Kim to schedule an appointment.

Emails: You should feel free to send me emails. However, do not expect me to draft “essay answers” to long, complex questions. I prefer to meet with you in person to discuss complex problems and questions you may have. I encourage you to use the class Wiki to raise questions and gather insights from me and your classmates.

Disability-Related Needs: To request academic accommodations due to a disability, please contact Disabled Resources for Students, 448 Schmitz, (206) 543-8924 (V/TTY).

Understanding this Syllabus: The reading assignments may change depending upon our ability to complete the assigned topics during class. All changes will be announced in class and on the Wiki. We will endeavor to keep up with the schedule in the syllabus. Since it is possible that we will move quickly at times, you should always read one class ahead. Our class discussions will not necessarily cover all of the material you read; however, you are responsible for all assigned material

Reading Assignments:

WEEK ONE
Readings:
Introduction to Torts and the Historical Origins of Tort Law; Negligence: The Elements of
Negligence and Fault Theory
Prosser, pp. 1-16; 131-45

Weekly Thematic Questions:
- Why does / should the law intervene in disputes between private individuals?
- When does / should the law compel an individual to take responsibility for another person’s claim?
- Conversely, when does/should the law not compel an individual to take responsibility?

Lecture Topics:
Monday, September 22, 2008
Topic: Introduction to Torts

Tuesday, September 23, 2008
Topic: Introduction to Torts

Wednesday, September 24, 2008
Topic: The Elements of Negligence and Fault Theory

Thursday, September 25, 2008
Topic: The Elements of Negligence and Fault Theory

WEEK TWO
Readings:
Negligence: Standards of Care / The Reasonable Prudent Person
Prosser, pp. 145-68

Weekly Thematic Questions:
- How would you describe the reasonable person standard to someone who has never studied the law?
- Who is the reasonable person? Does it matter whether the reasonable person is a man or woman? How should we understand the reasonable person in the context of our diverse society?
- Does a reasonable person ever take risks? When are risks acceptable?
- When does an actor / defendant owe a duty to an injured victim / plaintiff?

Lecture Topics:
Monday, September 29, 2008
Torts – Fall, 2008  
Professor Paul Steven Miller  
Page 9 of 15

**Topic:** Standards of Care – The Reasonable Prudent Person

Sunday, September 28, 2008 – CLASS CANCELLED [ROSH HASHANAH]

Monday, September 29, 2008  
**Topic:** Standards of Care – The Reasonable Prudent Person

Tuesday, September 30, 2008 – CLASS CANCELLED [ROSH HASHANAH]

Wednesday, October 1, 2008  
**Topic:** Standards of Care – The Reasonable Prudent Person

Thursday, October 2, 2008  
**Practicum:** Charlie’s Angel: *To Kill an Angel*

**WEEK THREE**

**Readings:**

Negligence: Standards of Care / Professional Negligence; Negligence: Standards of Care / Rules of Law and Violations of Statutes

Prosser, pp. 168-200; 200-15; 222-29

**Weekly Thematic Questions:**

- How does one determine the nature of the duty that one person owes to another?
- What must a person do in order to *not* be negligent?
- When does the law hold individuals to a lower standard of care? to a higher standard of care?
- Why does tort law impose a special standard of care on professionals, and how should we determine who is held to such a special standard?
- When does / should the law forgive carelessness? accidents? errors in judgment? inability to act? lack of knowledge?

**Lecture Topics:**

Monday, October 6, 2008
**Topic:** Standards of Care – Professional Negligence

Tuesday, October 7, 2008  
**Topic:** Standards of Care – Professional Negligence

Wednesday, October 8, 2008  
**Topic:** Standards of Care – Rules of Law and Violations of Statutes (*Negligence Per Se*)

Thursday, October 9, 2008 – **WRITING DAY / NO CLASS** [YOM KIPPUR]  
**Topic:** GROUP WRITING ASSIGNMENT – state survey of *informed consent standards.*

**WEEK FOUR**
Readings:
Negligence: Proof of Negligence / Res Ipsa Loquitur
Prosser, pp. 229-58

Weekly Thematic Questions:
- When does / should a reasonable person break the law?
- How would you describe the preponderance of the evidence standard to a jury?
- When has a plaintiff not satisfied the burden of production?
- What problem does res ipsa loquitur attempt to resolve?

Lecture Topics:
Monday, October 13, 2008
Topic: Standards of Care – Rules of Law and Violations of Statutes (Negligence Per Se)

Tuesday, October 14, 2008
Topic: Proof of Negligence / Res Ipsa Loquitur

Wednesday, October 15, 2008
Topic: Proof of Negligence / Res Ipsa Loquitur

Thursday, October 16, 2008
Practicum: The Honeymooners: Lawsuit

WEEK FIVE
Readings:
Negligence: Causation in Fact; Concurrent Causes / Alternative Causation / Proximate (“Legal”) Cause
Prosser, pp. 259-70; 282-92; 293-319

Weekly Thematic Questions:
- What is the distinction between cause in fact and legal / proximate cause?
- What examples would you provide to describe concurrent causes and alternate causes to a non-lawyer?
- What different policies does the causal element of negligence advance?

Lecture Topics:
Monday, October 20, 2008
Topic: Negligence – Causation in Fact
Tuesday, October 21, 2008
**Topic:** Concurrent Causes / Alternative Causation / Proximate (“Legal”) Cause

Wednesday, October 22, 2008
**Topic:** Concurrent Causes / Alternative Causation / Proximate (“Legal”) Cause

Thursday, October 23, 2008
**Practicum:** The Partridge Family: *The Sound of Money*

**WEEK SIX**

**Readings:**
Negligence: Intervening Causes / Limiting Liability *via* Public Policy; Negligence: Limited Duty for Failure to Act
Prosser, pp. 325-60; 417-432

**Weekly Thematic Questions:**
- How does / should the law determine when a defendant’s conduct is too remote to have legally caused a plaintiff’s injury?
- Why does *Palsgraf* remain one of the most famous and influential cases in tort law?
- How would the judge of *Weaver v. Ward* have decided *Palsgraf*? the *Wagon Mound* cases? *Polemis*? Why?

**Lecture Topics:**
Monday, October 27, 2008
**Topic:** Proximate (“Legal”) Cause

Tuesday, October 28, 2008
**Topic:** Proximate (“Legal”) Cause

Wednesday, October 29, 2008
**Topic:** Intervening Causes / Limiting Liability *via* Public Policy

Thursday, October 30, 2008
**Practicum:** Seinfeld: *The Fire*

**WEEK SEVEN**

**Readings:**
Negligence: Limited Duty for Failure to Act (*Tarasoff*); Defenses – Contributory Negligence, Comparative Negligence, Assumption of Risk
Weekly Thematic Questions:
- How would you describe the difference between comparative negligence and assumption of risk?
- Can you think of any cases in which comparative negligence would not be a defense, but assumption of risk would be?
- Is there a common thread that unites the different types of special relationships where failure to act constitutes a breach of duty? If this list were to be expanded, what other types of relationships might be included?

Lecture Topics:
Monday, November 3, 2008
Topic: Intervening Causes / Limiting Liability via Public Policy

Tuesday, November 4, 2008
Topic: Limited Duty for Failure to Act

Wednesday, November 5, 2008
Topic: Limited Duty for Failure to Act (Tarasoff); Defenses – Contributory Negligence, Comparative Negligence, Assumption of Risk

Thursday, November 6, 2008
Practicum: The Incredibles: Opening Scene

WEEK EIGHT
Readings:
Damages: Personal Injuries
Prosser, pp. 519-64
Supp. Readings: 9-11 Readings

Weekly Thematic Questions:
- Why are monetary damages the only type of damages available in tort law?
- Can you think of any injuries that tort damages are unequipped to handle? Why?
- How might issues of race, gender, and disability influence the determination of a damage award?
- Is it fair to compensate individuals injured from the same negligent act differently based upon the amount of economic loss they suffer?
- What are the policy arguments for and against punitive damages?
Torts – Fall, 2008
Professor Paul Steven Miller
Page 13 of 15

Lecture Topics:
Monday, November 10, 2008 – WRITING DAY / NO CLASS
Topic: GROUP WRITING ASSIGNMENT – analyze informed consent state standards

Tuesday, November 11, 2008 – HOLIDAY [VETERANS DAY]

Wednesday, November 12, 2008
Topic: Damages: Personal Injuries

Thursday, November 13, 2008
Practicum: The Simpsons: One Fish, Two Fish, Blowfish, Bluefish

WEEK NINE
Readings:
Intent; Battery; Assault
Prosser, pp. 17-40
Intentional Infliction of Emotional Distress; Negligent Infliction of Emotional Distress
Prosser, pp. 40-66; 450-64

Weekly Thematic Questions:
• How would you explain legal “intent” to someone who has never studied the law?
• What policies are advanced by allowing “offensive” contact to support a claim for battery or assault?
• Who should determine whether a contact is offensive or not?
• How does / should the law handle third party recovery for emotional distress? What is to be gained or lost by more expansive recovery?

Lecture Topics:
Monday, November 17, 2008
Topic: Intent; Battery; Assault

Tuesday, November 18, 2008
Topic: Intent; Battery; Assault

Wednesday, November 19, 2008
Topic: Intentional Infliction of Emotional Distress; Negligent Infliction of Emotional Distress

Thursday, November 20, 2008
Practicum: The Office: The Injury
WEEK TEN

Readings:
Consent Privilege; Non-Consensual Privileges to Intentional Torts
Prosser, pp. 91-130
Strict Liability: Animals, Abnormally Dangerous Activities
Prosser, pp. 686-717

Weekly Thematic Questions:
- Under what circumstances does / should the law prevent a person from giving consent to an intentional tort?
- What is it about strict liability tort law that allows it to escape the paradigm of traditional fault liability?
- What policies might be advanced by eliminating strict liability?

Lecture Topics:
Monday, November 24, 2008
Topic: Consent Privilege; Non-Consensual Privileges to Intentional Torts

Tuesday, November 25, 2008
Topic: Consent Privilege; Non-Consensual Privileges to Intentional Torts

Wednesday, November 26, 2008
Topic: Strict Liability: Animals, Abnormally Dangerous Activities

Thursday, November 27, 2008 – HOLIDAY [THANKSGIVING]

WEEK ELEVEN

Readings:
None

Weekly Thematic Questions:
- Reflections -
  - Would society be safer under modern tort law or the law of 1466? What have we gained and lost since then?
  - How would you advise someone, who has never studied law, on how to avoid tort liability in most or all situations?
  - Would you change anything about the law as it is today? What policies would your changes advance?
Lecture Topics:
Monday, December 1, 2008 – WRITING DAY / NO CLASS
Topic: Wiki Class Torts Outline

Tuesday, December 2, 2008 – WRITING DAY / NO CLASS
Topic: Wiki Class Torts Outline

Wednesday, December 3, 2008 – WRITING DAY / NO CLASS
Topic: Wiki Class Torts Outline