

University of Washington School of Law
Law E 518
Torts II (Spring 2019; 3 credits)
Prof. Steve Calandrillo

Class Times: Tu Th 10:30 - 12:20
Office Hours (Room 419): by appointment; email stevecal@uw.edu

Course Description & Objectives:

The main objective of this course is to go beyond your first-year torts course in both coverage and perspectives on tort law. We will briefly review the basic principles of tort law and examine them from both traditional and economic perspectives. Whereas first-year torts primarily treats the law's response to *physical* harms to the person (negligence, strict liability, products liability and intentional torts to the person), this class will delve into the practical and theoretical dimensions of tort law's response to *non-physical* harms, including misrepresentation, fraud, defamation, invasion of privacy, tortious interference with contract and prospective advantage, and injurious falsehood. We will also critically analyze special damages situations and applications, including the eggshell plaintiff rule, punitive damages, and medical malpractice.

Required Texts:

- Course Reader available online at the UW course website (to be used for classes 1-5, and 14)
- ADVANCED TORT LAW, A PROBLEM APPROACH, 2nd ed. (Vincent Johnson), available at UW Bookstore, or online, or anywhere fine books are sold (to be used for classes 6-13. As the title makes clear, it explores advanced topics in tort law using a problem-based approach quite different than most law school casebooks take.)

Grading:

Exam: There will be a three hour, closed-book final exam at the conclusion of the course.

Class Participation: Please do attend and participate in class – it's the best way to learn, do well, and enjoy your law school experience. While your final grade in this course will generally be determined by your final exam, your participation in class can affect your course grade if it is on the borderline between two grades. (I should add that participation *quality counts far more than quantity* – please don't feel pressure to raise your hand out of fear that I am simply counting the number of times you speak; I assure you that is not the case).

Access and Accommodation

If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to the instructor at your earliest convenience so we can discuss your needs.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental

health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 011 Mary Gates Hall or 206-543-8924 or uwdrs@uw.edu or disability@uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions. Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

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With that, I welcome you to Torts II! I hope you will enjoy taking this course as much as I will love teaching it.

I. Classes 1 & 2. Traditional Tort Law Review
(see Reader posted on Canvas course website)

Class 1 (4/2). Intentional Torts; Negligence

I. Intentional Torts	1
A. Battery	1
<i>Fisher v. Carrousel Motor Hotel</i>	1
B. Assault	4
<i>I de S et ux. v. W de S</i>	4
C. False Imprisonment	5
<i>Whittaker v. Sandford</i>	5
D. Intentional Inflection of Emotional Distress	7
<i>State Rubbish Collectors Ass’n v. Siliznoff</i>	7
E. Trespass to Land.....	12
<i>Herrin v. Sutherland</i>	12
II. Negligence	14
Elements: 1) duty, 2) breach duty, 3) causation, 4) damages	
<i>Vaughan v. Menlove</i>	14
<i>U.S. v. Carroll Towing Co.</i>	16
<i>Palsgraf v. Long Island R.R.</i>	18
<i>Blyth v. Birmingham Waterworks Co.</i>	27

Class 2 (4/4). Strict Liability, Products Liability, Defenses

II. Negligence (continued from Day 1)

III. Strict Liability	29
<i>Fletcher v. Rylands</i>	29
<i>Foster v. Preston Mill</i>	34
<i>American Cyanamid</i>	37
IV. Products Liability	45
<i>O’Brien v. Muskin Corp.</i>	45

II. Classes 3-5: An Alternative Economic Approach to Tort law

(see Reader posted on UW course website; our class discussion will focus on the problems after each of the Shavell chapters in the reading)

Class 3 (4/9). Negligence vs. Strict Liability: which rule maximizes social welfare?
(see online Reader – read Shavell Preface, Ch. 1, Ch. 8 and the Problems for Ch. 8)

I. Unilateral vs. Bilateral Accidents: An Economic Analysis

Revisit *Carroll Towing*
Helling v. Carey

II. Cheapest Cost Avoider Rule (Calabresi)

III. Advice of the Restatement of Torts

Negligence = RST Sec. 291-293

Strict Liability = RST Sec. 519, 520

IV. Ultrahazardous Activities

Should it matter if activity is “common usage” or “essential to community”?

Class 4 (4/11). Extensions of the Economic Theory of Torts

(see online Reader, Shavell Chapters 9-10)

I. Liability of Firms (Product Liability) (Shavell Ch. 9 and Problems for Ch. 9)

a. How does imposing liability affect prices?

b. Who is injured: customers vs. strangers?

Siegler v. Kuhlman

II. Judgment Proof Problem (Shavell Ch. 10)

Care will be less than optimal

III. Vicarious liability as a solution? (Shavell Ch. 10)

IV. Contingent Valuation: how measure “difficult to quantify” harms? (Ch. 10 Problems)

Class 5 (4/16). Special Damages Situations: Traditional v. Economic Approach

I. Eggshell Plaintiff Rule	1
<i>Vosburg v. Putney</i>	1
<i>Spivey v. Battaglia</i>	6
Steve Calandrillo, “Eggshell Economics: A Revolutionary Approach to the Eggshell Plaintiff Rule,” OHIO ST. L.J. (2013)	
II. Punitive Damages	9
<i>BMW v. Gore</i>	9
<i>State Farm v. Campbell</i>	19
<i>Exxon v. Baker</i>	28
Steve Calandrillo, “Penalizing Punitive Damages: Why the Supreme Court Needs a Lesson on Law & Economics,” GEORGE WASHINGTON L. REV. (2010)	

III. Advanced Torts Against Non-Physical Interests: A Problem-based Approach
 (read Johnson textbook for Classes 6-13; class discussion will focus on the Problems)

Classes 6 (4/18) & 7 (4/23). Misrepresentation/Fraud	13
Class 6: read pp. 13-34, 46-52, 65-73	
Class 7: read pp. 73-85, 108-115, 128-142, 147-53	
Focus on Problems 2-1, 2-2, 2-4, 2-7, 2-8, 2-9, 2-12, 2-14, 2-15	
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Class 9: read pp. 219-45, 266-80, 309-18	
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