

TORTS (21728 - 5418) SECTION C
COURSE OUTLINE AND SYLLABUS
FALL 2018
UNIVERSITY OF HOUSTON LAW CENTER
Class Meeting Times: M, W, Th 2:30 – 4:00 pm

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appointment; e-mail me to set a time**

Note: This outline and topics to be covered may be adjusted as the course progresses.
Adjustments or revisions will be announced in class.

Required Materials: **F&R** = Franklin, Rabin, Green, & Geistfeld Tort Law & Alternatives, 10th
ed. (2016)

Supplements and Problem Sets which will be distributed via e-mail to class distribution list.

OVERVIEW/OUTLINE

(Specific readings follow, starting on page 3)

- I. INTRODUCTORY ISSUES (Week 1)**
 - A. Class Policies
 - B. Context: Overview of Types of Torts
 - C. When Should Unintended Injury Result in Liability?
 - D. The Concept of Elements of a Tort: What should the plaintiff have to prove?
 - E. The Tort Litigation Process
 - F. Brief Preview of the Concept of Duty in Tort
 - G. The Parties to Tort Suits: Vicarious Liability

- II. THE NEGLIGENCE PRINCIPLE**
 - A. Breach: Historical Development of Fault-based Liability
 - B. Breach: The Standard of Care/Calculus of Risk
 - C. Breach: The Reasonable Person
 - D. Breach: Custom & Statutes
 - E. Breach: Proof Issues and Res Ipsa Loquitor
 - F. Breach: Medical Malpractice – Special Issues Re: Standard of Care & Proof
 - G. Breach: Medical Malpractice – Informed Consent

- III. THE DUTY REQUIREMENT – PHYSICAL INJURIES**
 - A. Duty: Obligation to Others and Nonfeasance
 - B. Duty: Obligation to Protect 3rd Party

- C. Duty: 3rd Parties and Premises/Landowner Liability
 - D. Duty: Governmental Immunities
 - E. Duty: Federal Torts Claims Act
- IV. THE DUTY REQUIREMENT – NONPHYSICAL HARM**
- A. Duty: Emotional Harm – Direct
 - B. Duty: Emotional Harm – Bystanders
 - C. Duty: Loss of Consortium, Interference With Procreation and End-of-Life Decisions
- V. CAUSATION**
- A. Causation: Cause-In-Fact, Proof, Partial Recovery
 - B. Causation: Joint and Several Liability; Multiple Defendants
 - C. Causation: Toxic Harms
 - D. Causation: Proximate Cause – Unexpected Extent & Unexpected Type of Harm
 - E. Causation: Proximate Cause – Unexpected Manner of Harm & Unexpected Victim
- VI. DEFENSES**
- A. Plaintiff's Fault – Contributory & Comparative Negligence
 - B. Avoidable Consequences
 - C. Express Assumption of Risk
 - D. Implied Assumption of Risk
 - E. Preemption
- VII. STRICT LIABILITY**
- A. Historical Origins
 - B. Abnormally Dangerous Activities
 - C. Theoretical Perspectives
- VIII. PRODUCTS LIABILITY**
- A. Historical Origins
 - B. Approaches in Restatements of Torts
 - C. Manufacturing Defects
 - D. Design Defects
 - E. Failure to Warn
 - F. Defenses to Products Liability
 - G. Work-Related Injuries
 - H. Beyond Products
- IX. INTENTIONAL TORTS**
- A. Intent
 - B. Assault, Battery, False Imprisonment, Infliction of Emotional Distress
 - C. Defenses to Intentional Torts

X. **DEFAMATION & PRIVACY-RELATED TORTS**

- A. Basic concepts, causes of action, elements, and defenses
- B. Tension with First Amendment Protections

XI. **INTENTIONAL ECONOMIC HARM**

- A. Basic concepts, causes of action, elements, and defenses

READING LIST

There is not a one-to-one correspondence between the reading units listed below and class meetings. There are 35 reading units, which we will cover in the order shown below. Sometimes we will whisk through more than one reading unit in a single class meeting. Other times, we will tarry over a single reading unit for more than one class. Based on our progress through the material, I will announce at the end of each class where you should focus your attention for the next session. **I also distribute supplements and course announcements via e-mail so you should regularly check your UH e-mail box.** All such announcements will have the word “TORTS” in the title line if you need to do a search. If you find you have spare time on your hands (which I acknowledge is a rare event in law school) and wish to read ahead, the reading list below is a dependable guide to the order in which we will be progressing through the materials.

Introduction:

- 1. **F&R 1-18** (stop at Section D)
Case: Hammontree v. Jenner
Also read: **F&R** read pages 127 through 139 (through note 5)
Cases: Harper v. Herman
Farwell v. Keeton

Vicarious Liability:

- 2. **F&R 19-33**
Cases: Christenson v. Swenson
Roessler v. Novak
Supplement on Vicarious Liability (to be provided in class after discussing cases)

Breach: Historical development of fault-based liability; the standard of care/calculus of risk; the reasonable person; the role of customs and statutes.

- 3. **F&R 35 – 47** (stop before US v. Carroll Towing)
Cases: Brown v. Kendall
Adams v. Bullock

4. **F&R 47 – 62** (stop at Section C)
Cases: US v. Carroll Towing
Bethel v. NYC Transit Authority

5. **F&R 68** (starting at Andrews case) – 87
Cases: Andrews v. United Airlines
Trimarco v. Klein
Martin v. Herzog
Tedla v. Ellman
The notes after Tedla v. Ellman discuss some very important cases.

Breach: Proof issues and res ipsa loquitur; medical malpractice—special issues re. standard of care and proof; medical malpractice—informed consent.

6. **F&R 87—108** (from Section D to to start of Section E)
Cases: Negri v. Stop and Shop
Gordon v. American Museum
Byrne v. Boadle
McDougald v. Perry
Ybarra v. Spangard

Supplement: Problem Set A (short-answer problems from past bar exams for discussion in class during the next several weeks)

7. **F&R 108-12r**
Cases: Sheely v. Memorial Hospital
Matthies v. Mastromonico
Supplement: Informed Consent (distributed via e-mail)

Duty: Obligations to others and nonfeasance; obligations to protect third parties

8. **F&R 127-155** (reviewing the Harper and Farwell cases from Reading Unit #1; read new cases:
Randi W v. Muroc Joint Unified School District
Tarasoff v. Regents of U. California
9. **F&R 155** (start at the notes after Tarasoff) – 165 (to start of Section C)
Cases: Important cases are mentioned in the notes after Tarasoff
Uhr v. East Greenbush Central School District

Duty: Policy rationales for deciding there is no duty; the “gatekeeping” function of the duty element

10. **F&R** 166 - 181
Cases: Strauss v. Belle Realty
Reynolds v. Hicks
11. **F&R** 181 – 186 (to start of Section D)
Cases: Vince v. Wilson
Important cases are discussed in the notes after Vince v. Wilson

Duty: Premises and Landowner Liability

12. **F&R** 186 -202
Cases: Carter v. Kinney
Heins v. Webster County
Important cases are discussed in the notes after Heins
13. **F&R** 202 – 216 (stop before Section F)
Cases: Posecai v. Wal-Mart
A.W. Lancaster County School District
Think about: How do these cases in Reading Units 12 and 13 relate to the Negri and Gordon cases in Reading Unit #6?

Supplement: Problem Set B: Premises Liability discussion problems

Duty: Spousal suits and parent/child suits—brief summary

14. **F&R** 216 (read introduction to Section F on this page only)

Duty: Governmental Immunities and the Federal Tort Claims Act (FTCA)

15. **F&R:** 226 (start of Section G) – 235 n.4;
F&R: 235 – 242 (Lauer case)
F&R: 247 (start Federal Tort Claims Act) – 258 n. 10
Cases: Riss v. City of New York
Important cases are discussed after Riss
Lauer v. City of New York
Cope v. Scott
Read the statutory material before Cope v. Scott very carefully

Supplement: The FTCA (to be provided after case discussion)

Duty: Nonphysical harm

16. **F&R** 261 – 281 (stop before Johnson case)

Cases: Falzone v. Busch
Metro-North Commuter RR v. Buckley
Gammon v. Osteopathic Hospital

17. **F&R** 281 (start at note 7) through 299 (stop at Section B)
Cases: Johnson v. Jamaica Hospital
Portee v. Jaffee

Duty: Economic harm

18. **F&R** 299 - 325
Cases: Nycal v. KPMG
LAN/STB v. Martin K. Eby Construction
532 Madison Ave. Gourmet Foods v. Finlandia Center

Duty: Procreation (Wrongful Birth and Wrongful Life)

19. **F&R** 326 – 336
Cases: Emerson v. Magendantz

Supplement: Review of Duty and Standard of Care

Supplement: Problem Set C: Practice Mini-essay Question (This is a “mini-essay” problem, designed to be a shorter, simplified version of the types of tort essay questions you might encounter during an examination. This exercise, which is not graded, is intended to let you practice writing an essay response. After you have had a chance to work on your response, we will have a session to discuss the mini-essay problem).

Causation: Cause in Fact

20. **F&R** 337 – 368
Cases: Stubbs v. City of Rochester
Zuchowicz v. United States
Matsuyama v. Birnbaum

Supplement: Overview and Introduction to Causation (to be distributed after discussion in class)

Causation: Joint and several liability; multiple defendants, toxic harms

21. **F&R** 371 – 389
Cases: Summers v. Tice
Hymowitz v. Eli Lilly & Co.
Read Rabin excerpt on Environmental Liability

Causation: Proximate cause

22. **F&R** 395 - 430

Cases: Benn v. Thomas

In re an Arbitration between Polemis and Another

Overseas Tankship v. Morts Dock (The Wagon Mound)

Doe v. Manheimer

Palsgraf v. Long Island Railroad

Defenses: Contributory and comparative negligence; avoidable consequences

23. **F&R** 435 - 455 (through note 4). Assignment: **Read the excerpts from the Uniform Comparative Fault Act and Iowa Code on pages 442 – 445 very carefully. Work the problem on page 442, parts a,b,c,d,e. Also work problems on insolvency, partial settlements, and set-offs (to be provided in class).**

Supplement: Texas Civil Practice & Remedies Code, Ch. 33 (Proportionate Liability)

Supplement: **Contributory and Comparative Negligence Hypotheticals** (to be distributed after our in-class discussion of the problems in the casebook)

F&R: 456 (starting at note 5) – 461

Case: Fritts v. McKinne

Defenses: Avoidable consequences; assumption of risk

24. **F&R** 461 – 485 (to end of Davenport case)

Cases: Hanks v. Powder Ridge.

Murphy v. Steeplechase

Davenport v. Cotton Hope Plantation

Defenses: Federal Preemption of State Tort Lawsuits

25. Supplement: **Excerpts from Torline & Teeter, *Federal Preemption in Products Liability Cases*, Journal of the Kansas Bar Association (July/August 2007) Westlaw Citation: 76-AUG JKSB 32 [relevant excerpts will be distributed via e-mail]**

F&R 487 – 505

Case: Riegel v. Medtronic

Supplement: **Geier v. American Honda Motor Company, Inc.**

Supplement: **Wyeth v. Levine** (excerpts to be distributed by e-mail)

Supplement: Avoiding confusion between FTCA and Preemption concepts (to be distributed after class discussion)

Supplement: ERISA Preemption (to be distributed via e-mail)

Strict liability, generally; Products liability

26. **F&R** 509 – 521 (but see below—skip some of the notes after cases), 539 – 546 (King article—scan this to understand the policy goals of strict liability); 550 - 555 (Posner article); 557 – 561 (McPherson); 564- 568 (Escola)
Cases: Rylands v. Fletcher cases (skip notes between them)
Sullivan v. Dunham (skipping notes)
McPherson v. Buick Motor Corp.
Escola v. Coca Cola Bottling Co. of Fresno
27. **F&R** 568 (notes after Escola) – 603 (through note 4)
Cases: Several important cases are mentioned in the notes after Escola
Soule v. GM
Important cases are discussed in notes after Soule
Comacho v. Honda

Supplement: Problem Set D - Product Liability Discussion Problems (to be distributed for discussion in class)

28. **F&R** 608 (Section D) – 636 (to start of Section E)

Supplement: The Learned Intermediary Doctrine in Drug-Injury Lawsuits

Cases: Hood v. Ryobi
State v. Karl
Vasallo v. Baxter Healthcare Corp.

29. **F&R** 636-659 (Section E and Jones v. Ryobi and Liriano cases through note 6 after Liriano)
Cases: GM v. Sanchez
Jones v. Ryobi
Liriano v. Hobart
In class—discuss Royer on p. 666 (no need to read ahead of class)

Intentional torts

30. **Supplement: Intentional Tort Supplement - Harm to Persons** (distributed by e-mail)

F&R 899-903 (Intro and Garratt case); 907 – 913 (Picard and Wishnatsky cases); 915-918 (Lopez case); 922 - 927 (Womack case).

31. Intentional Tort Defenses **F&R** 955 -972 (Hart, Katko, Courvoisier, Vincent cases)

Supplement: Problem Set E: Full-length Practice Examination Essay Questions

This exercise includes several full-length examination-style tort essay questions. We will discuss them in class as an exercise in how to spot issues. Then, the problems will be divided up among class members with each person taking one essay question. Then, we will schedule a session to discuss possible responses to each essay question. This exercise is not graded; it is to provide practice in how to think about a long, complex tort examination essay problem.

Defamation & Privacy-related torts

32. **Supplement: Defamation and Privacy Torts Supplement** (distributed by e-mail)

F&R 999 – 1003 (to end of Romaine v. Kallinger); read notes 1, 3, 4, 5 after the Romaine case. Read Davis v. Boenheim on pages 1011-17 but skip the notes afterward. In the “Of and concerning” section on page 1018-1020 read ONLY the parts on Identification and Group Libel but skip the Corporations material. Read from the start of section 4 on 1021 through page 1026 (to end of Liberman case). Read from the start of the privileges discussion in the middle of page 1022 to the end of the Liberman case on page 1036. Read note 3 on 1036-7

33. You will probably encounter NY Times and Gertz in your Constitutional Law class. If you wish to read these cases now, they are at **F&R** 1062 and 1085. However, these cases are not assigned. For purposes of our discussion of privacy torts, the key aspects of these cases are summarized in your Defamation and Privacy Torts Supplement.

34. **F&R** 1155 – 1164 (including Haynes v. Knopf); notes 4 & 5 on 1165-1166.

On false light, read 1184-89 (the Cantrell case); note 3-5 p. 1189 -1191.

On intrusion on seclusion, read Nader v. GM on 1193 – 99 (focus on first two pages— understand the fact pattern of the alleged intrusive behaviors). On p. 1214-1222, read the fact patterns of the Schulman case and focus on the expectation of privacy discussion.

Supplement: Problem Set F: Privacy and Defamation Discussion Problems

Intentional Economic Harm

35. **Supplement on Harm to Economic Interests** (distributed by e-mail)

F&R: On deceit and negligent misrepresentation, read 1263 – 1270 (Ollerman v. O’Roarke), and notes 4, 5, 6, 9 after Ollerman (skip other notes); on tortious interference with contract, read 1274 – 1276 (Imperial Ice v. Rossier) and notes 1, 3, 6, 7, 8 after Imperial Ice.