

REQ7150 TORTS

Fall 2024

Wednesday 6:00 pm – 9:00 pm, on Microsoft Teams

Instructor: Professor Guanchi Zhang

Email: gzhang@vermontlaw.edu

Teaching Assistants:

Camile King camilleking@vermontlaw.edu

Phoebe Cykosky phoebecykosky@vermontlaw.edu

Office Hours

I will hold drop-in office hours on **Thursdays** from **2:00 to 3:00 p.m.** on Teams. These sessions are designed for collective learning, where students can benefit not only from my guidance but also from each other's questions and insights. I highly encourage attending office hours even if you don't have specific questions. I am also available to meet by appointment, either in person or on Teams. Please email me to set up an appointment.

TA Office Hours are TBD once class starts, and will be announced.

Required Materials

The casebook for the class is GOLDBERG, SEBOK & ZIPURSKY, TORT LAW: RESPONSIBILITIES AND REDRESS (5th ed. 2021). Additional materials are posted on Canvas. I will also post on the course website the slides that I use during class.

Evaluation

Assignments (10%)

10% of your grade will be based on timely and accurate submissions of assignments, to be completed asynchronously, posted within the course. There are in total **three** assignments over the course of the semester. Timely submission of this reflection ensures full credit. Failure to submit an assignment in a timely fashion will lead to a grade reduction. You will lose **one** point out of the total potential points for each day that an assignment is late. I will not accept an assignment more than **three** days after its due date.

Mid Term (20%)

This closed book mid-term is to check your understanding of the course halfway through the semester. It will be a one-hour exam, with a mix of multiple choices questions and one short essay.

Final Exam (70%)

This closed book exam offers an opportunity for you to showcase the skills you have developed in this course and that you will use as an attorney. It will have a mix of multiple choices questions, short answer questions, essays or document-based questions, or policy questions or news reflections.

The final course grade may be adjusted up for outstanding class preparation and participation that demonstrates a level of engagement above and beyond that which is expected at the professional graduate school level. The final course grade may also be adjusted down for lack of professionalism, violations of VLGS policies and procedures, multiple unexcused class absences, and otherwise in the discretion of the professor, if a deduction is merited due to disruptive, disrespectful, or offensive conduct in class. Classroom norms are explained below.

Classroom Norms

Attendance. Class attendance is required. The attendance policy is explained in more detail in the Vermont Law and Graduate School Student Handbook §II(A). Failure to attend class will have a detrimental effect on your understanding of the material and your grade. It could also result in a grade of F-Wd. Read the attendance policy posted in the Handbook before the beginning of the term. The Academic Regulations permit individual professors to set a higher requirement (but not a lower requirement) and for this class you will receive a grade of F-Wd if you are absent from more than two regularly scheduled classes. You are required to monitor your own compliance with this policy.

Participation. As noted under the Grading section, you are expected to be prepared for class and to participate regularly. This course employs the Socratic method, meaning you should be prepared for random cold calls during each session. You will be expected to answer questions about the assigned readings or related topics. Additionally, you can participate by posting a brief 3-5 sentence reflection on the week's reading on our Canvas course site. While these posts may inform my cold calling, please note that all students, regardless of whether they have posted that week, may be called upon in class.

Use of device. As a principle, students are required to keep their cameras on during the entire class session. This policy promotes engagement, facilitates interaction, and helps create a more connected learning environment. Messaging, emailing, web browsing, and other uses are prohibited. Your responsible use of devices is a skill you should practice. Keep your microphone muted when not speaking to minimize background noise. Please do not use the chat function on Teams to communicate during class unless I ask you to. Instead, please use the “raise hand” function if you would like to say something or ask a question.

Be prepared to be uncomfortable at times. The subject matter in our course can be difficult, morally contested, politically treacherous, and full of ambiguity, uncertainty, and ambivalence. Please try not to be afraid to be wrong, unsure, or to misstep. At various points, each of us will be wrong, misstep, or articulate an idea in a way that is not quite as eloquent as we might like. That is an inevitable part of engaging with difficult material. Be kind, charitable, generous, and respectful of yourself and others.

Be engaged, but patient. Each student will have many opportunities to be called on during the semester. Please do your part to help keep the distribution equal. Unless I ask for volunteers, please let your fellow students answer questions asked without interruption. I may not call on students when hands are raised for reasons of class flow, progression, and pacing. It is not an indication that I do not see a raised hand or that I

am uninterested in your thoughts or questions. If I misspeak or something is truly unclear, it is entirely fine to ask for clarification.

Positions, not people. In class, I may ask students to articulate a particular argument or viewpoint. Very often, that perspective is not what the student believes. Indeed, I will almost never ask for your personal viewpoint in class, and I ask that you try not to reveal it as you answer questions. In the classroom environment, my goal is to split off arguments and ideas from the person articulating them so that we may have a full and robust discussion—exploring, criticizing, and rejecting views without criticizing or rejecting each other.

Recording. Class sessions may be recorded for later review. By participating in the class, you consent to being recorded. Recordings will be posted under the Panopto Video tab on Canvas.

Copyright and accommodation. All materials (written and recorded) in this course, including those on the course website, are copyrighted. This also includes any recording of the class by the professor, any student, or any other person. These materials are only for the use of the individual student enrolled in this course and may not be reproduced or distributed without the express written consent of the professor.

If you would like to request accommodation, please review our Disability Policy at Vermont Law and Graduate School at: <https://www.vermontlaw.edu/accommodations>. If you have questions, please contact Associate Dean of Diversity, Equity, and Inclusion, Lisa Ryan.

Syllabus & Assignments

A tentative syllabus follows. We may proceed more quickly or slowly through the course materials. I may amend or change this syllabus and the assignment schedule at any time as needed throughout the semester.

You are required to complete reading assignments in time to be prepared for class discussion. Completing all assigned cases and notes is one of the best ways to prepare yourself and succeed in class.

Theme	Agenda	Question	Date	Readings & Assignments
Introduction & Negligence: Duty	Example of A Tort Suit General Duty of Care	What is tort law all about? What duty do I owe to the world?	8/28	Walter v. Wal-Mart Stores, Inc. (5-11) Common Law and Statute (11-16) Proceeding Through Court 1-6 (22-26) Elements of the Prima Facie Tort Case (49-53) The preceding cases of MacPherson: <ul style="list-style-type: none"> • Heaven v. Pender (55-57) • Winterbottom v. Wright: The Privity (58-59) • Thomas v. Winchester (59-60) MacPherson v. Buick Motor Co. (62-66) <ul style="list-style-type: none"> • Notes 1-8 (66-69)
Negligence: Duty (Continued)	Qualified Duties	Does great power come with great responsibility? Am I responsible for a trespasser's safety? Do I need to look out for others' economic well-being?	9/4	Osterlind v. Hill (79-80) Baker v. Fenneman & Brown Properties, LLC (80-85) <ul style="list-style-type: none"> • Note 1-3, 6-7 (85-86, 88-89) Tarasoff v. Regents (94-103) <ul style="list-style-type: none"> • Note 1-2, 5-6, 9, 12 (104-105, 105-108, 109-110) Leffler v. Sharp (110-115) Demag v. Better Power Equip (115-122) <ul style="list-style-type: none"> • Note 1-6 (122-126) Rowland v. Christian (on Canvas) Aikens v. Debow (129-137) <ul style="list-style-type: none"> • Note 1-9 (137-143)
Negligence: Breach	Due Care The Person of Ordinary Prudence Custom	How difficult is it to take "due care"? Is doing my best to be careful enough? Is compliance with industry customs enough?	9/11	The Meanings of Negligence (149-150) Myers v. Heritage Enters., Inc (155-160) Jones v. Port Authority of Allegheny County (160-161) Adams v. Bullock (162-163) <ul style="list-style-type: none"> • Note 1-10 (164-170) Vaughan v. Menlove (171-173)

				<p>Dakter v. Cavallino (173-184)</p> <ul style="list-style-type: none"> • Note 1-14 (187-193) <p>The T.J. Hooper (195-198)</p> <p>Johnson v. Riverdale Anesthesia Associates (198-201)</p> <p>Condra v. Atlanta Orthopaedic Group (201-205)</p> <ul style="list-style-type: none"> • Note 1-9 (212-214)
Negligence: Breach (Continued) and Causation	<p>Cost-Benefit Analysis</p> <p><i>Res Ipsa Loquitur</i></p> <p>Actual Causation</p>	<p>Can we calculate reasonable care?</p> <p>Can I still recover without knowing who hurt me?</p> <p>“But for” want of a nail, would the kingdom be lost?</p>	9/18	<p>United States v. Carroll Towing Co. (217-221)</p> <p>Rhode Island Hosp. Trust Nat'l Bank v. Zapata Coop (222-225)</p> <ul style="list-style-type: none"> • Note 1-10 (225-231) <p>Byrne v. Boadle (231-233)</p> <p>Kambat v. St. Francis Hosp. 234-237)</p> <ul style="list-style-type: none"> • Note 1-11 (238-242) <p>Ybarra v. Spangard (on Canvas)</p> <p>Meanings of “Cause” (245-250)</p> <p>Muckler v. Buchl (250-253)</p> <p>Butts v. Weisz (254-258)</p> <p>Assignment #1 due by Wednesday, 9/18 at 11:59 PM, ET</p>
Negligence: Causation (Continued)	Actual Causation (continued)	<p>How can we prove the “unknown and mysterious etiology”?</p> <p>If two lightnings strike at once, which one is to blame?</p> <p>When does “guilty until proved innocence” happen?</p>	9/25	<p>Cooper v. Takeda Pharmaceuticals America, Inc. (259-271, before the epidemiological studies)</p> <ul style="list-style-type: none"> • Note 1-9 (273-283) <p>McDonald v. Robinson (292- 293)</p> <ul style="list-style-type: none"> • Note 1-6 (293-295) <p>Ford Motor Co. v. Boomer (295-304)</p> <ul style="list-style-type: none"> • Note 1-3 (304-307) <p>Summers v. Tice (314-317)</p> <ul style="list-style-type: none"> • Note 1-6 (317-318) <p>Sindell v. Abbott Labs. (319-327)</p> <ul style="list-style-type: none"> • Note 1-6 (327-331)
Negligence Causation (Continued)	Proximate Causation	<p>How far do we need to peek into the future?</p> <p>What if an intervening action gets in between cause and effect?</p> <p>How big is the “scope of the risk”?</p>	10/2	<p>Union Pump Co. v. Allbritton (337-341)</p> <ul style="list-style-type: none"> • Note 1-4 (341-345) <p>Jolley v. Sutton London Borough Council (346-352)</p> <ul style="list-style-type: none"> • Note 1-2 (352-353) <p>Intervening wrongdoing (357-359)</p> <ul style="list-style-type: none"> • Note 1-4 (359-361) <p>Port Authority of New York & New Jersey v. Arcadian Corp. (362-372)</p>

				<ul style="list-style-type: none"> • Note 1-3 (372-374) <p>Palsgraf & Kinsman (382-390)</p> <ul style="list-style-type: none"> • Note 1-5 (390-391) <p>Petitions of the Kinsman Transit C. (396-405)</p>
Negligence: Statutes, Defenses	Negligence Per Se Comparative fault	Is speeding equal to fault? What if the victim is also at fault?	10/9	<p>Dalal v. City of New York (424-425)</p> <p>Bayne v. Todd Shipyards Corp. (425-428)</p> <p>Victor v. Hedges (428-433)</p> <ul style="list-style-type: none"> • Note 1-9 (433-439) <p>Contributory Negligence and Comparative Responsibility (494-498)</p> <p>United States v. Reliable Transfer Co. (499-501)</p> <p>Hunt v. Ohio Dept. of Rehabilitation & Correction (501-503)</p> <ul style="list-style-type: none"> • Note 1-6 (503-507) <p>Assignment #2 due by Wednesday, 10/9 at 11:59 PM, ET</p>
Negligence: Defenses (Continued)	Assumption of risk Immunities Mid-Term Review	Should I stop signing waivers? Why could anyone be immune from liability?	10/16	<p>Smollett v. Skyating Dev. Corp (511-513)</p> <ul style="list-style-type: none"> • Note 1-4 (513-515) <p>Jones v. Dressel (521-526)</p> <p>Dalury v. S-K-I, Ltd. (526-529)</p> <ul style="list-style-type: none"> • Note 1-10 (529-534) <p>Riley v. United States (547-550)</p> <ul style="list-style-type: none"> • Note 1-8 (550-554) <p>Riss v. City of New York (554-561)</p> <ul style="list-style-type: none"> • Note 1-2 (562-564)
Mid-Term			TBD	
Negligence: Damages	Compensatory damages Punitive damages Apportionment Vicarious Liability	What is the right measurement of monetary damages? What could punitive damages ever accomplish? Can torts liability be divided or channeled elsewhere?	10/23	<p>Smith v. Leech Brain & Co. Ltd (575-578)</p> <ul style="list-style-type: none"> • Note 1-8 (578-583) <p>Kenton v. Hyatt Hotels Corp. (583-588)</p> <ul style="list-style-type: none"> • Note 1-5, 11-12 (588-593, 595-596) <p>National By-Products, Inc. v. Searcy House Moving Co. (600-604)</p> <p>Mathias v. Accor Economy Lodging, Inc. (604-607)</p> <ul style="list-style-type: none"> • Note 1-7, 12 (607-612, 614-615) <p>Ravo v. Rogatnick (631-635)</p> <ul style="list-style-type: none"> • Note 1-7 (635-637)

				<p>Taber v. Maine (619- 623)</p> <ul style="list-style-type: none"> • Note 1-16 (624-631)
Intentional Torts	Battery Assault	<p>Is offensive touching battery?</p> <p>What is the minimum intent for battery?</p> <p>Can words alone suffice to establish assault?</p>	10/30	<p>Elements of Assault and Battery (668-670)</p> <p>Cecarelli v. Maher (670-671)</p> <p>Paul v. Holbrook (671-673)</p> <ul style="list-style-type: none"> • Note 1-6, 9-13 (673-675, 676-679) <p>Intent (679-680)</p> <p>Vosburg v. Putney (680-683)</p> <p>Cole v. Hibberd (683-684)</p> <ul style="list-style-type: none"> • Note 1-4, 8 (685-686, 688) <p>Wagner v. State (690-68)</p> <ul style="list-style-type: none"> • Note 1-7 (699-701) <p>Assault: Prima Facie Case (705-706)</p> <p>Beach v. Hancock (706-707)</p> <p>Brooker v. Silverthorne (707-710)</p> <p>Vetter v. Morgan (710-712)</p> <ul style="list-style-type: none"> • Note 1-3 (712-713) <p>In re White (read the following notes only)</p> <ul style="list-style-type: none"> • Note 1-4 (717-720)
Intentional Torts (Continued)	Defenses False Imprisonment Infliction of Emotional Distress	<p>I can defend property as defend people, right?</p> <p>What can we do about wrongful detention?</p> <p>What if a move to a new apartment becomes a nightmare?</p>	11/13	<p>Defenses (721-722)</p> <p>Koffman v. Garnett (723-726)</p> <ul style="list-style-type: none"> • Note 1-3, 5 (726-729, 729-730) <p>Haeussler v. De Loretto (733-734)</p> <ul style="list-style-type: none"> • Note 1 (734-735) <p>Katko v. Briney (737-741)</p> <ul style="list-style-type: none"> • Note 1-2 (741-742) <p>Fojtic v. Charter Med. Corp (744-747)</p> <ul style="list-style-type: none"> • Note 1-5 (747-750) <p>Grant v. Stop-N-Go Market of Texas, Inc. (753-757)</p> <ul style="list-style-type: none"> • Note 1-2 (757-758) <p>The Emergence of IIED (775-778)</p> <p>Dickens (778-782)</p> <p>Littlefield v. McGuffey (785-789)</p> <ul style="list-style-type: none"> • Note 1-5 (792-798) <p>Wyman v. Leavitt (811-812)</p> <p>Robb v. Pennsylvania R.R. Co. (812-815)</p> <p>Consolidated Rail Corp. v. Gottshall (815-823)</p> <ul style="list-style-type: none"> • Note 1-6 (824-827)

Liability without Fault	Introduction Property Torts	How does non-fault liability emerge? Is one's castle absolute? Is stealing one's personal data conversion? What can be done if a smelly business is next door?	11/20	Brown v. Kendall (871-874) <ul style="list-style-type: none"> • Note 1-2 (874-876) Burns Philp Food, Inc. v. Cavalea Cont'l Freight, Inc. (887-889) <ul style="list-style-type: none"> • Note 1-7, 12 (889-894, 897-898) Necessity (899-901) Vincent v. Lake Erie Transp. Co. (901-903) <ul style="list-style-type: none"> • Note 1,5-8 (903-904, 905-907) Thyroff v. Nationwide Mut. Ins. Co. (908-913) <ul style="list-style-type: none"> • Note 1-5 (913-916) Copeland v. Hubbard Broadcasting, Inc. <ul style="list-style-type: none"> • Note 1-3 (918-921) Sturges v. Bridgman (921-923) <ul style="list-style-type: none"> • Note 2-6 (923-925) Penland v. Redwood Sanitary Sewer Serv. Dist. (930-936)
Liability without Fault (Continued)	Abnormally Dangerous Activities Product Liability	What happens when firework displays go wrong? What if a coke bottle just explodes?	11/27	Pignaro v. Rossi (956-957) Rylands v. Fletcher (957-959) Klein v. Pyrodyne Corp. (959-967) <ul style="list-style-type: none"> • Note 1-4, 6-9 (968-969,970-972) Escola v. Coca Cola Bottling Co. of Fresno (981-987) <ul style="list-style-type: none"> • Note 1-8 (987-991) Greenman v. Yuba Power Prods., Inc (991-995) <ul style="list-style-type: none"> • Note 1-9 (995-999) Basics of a Products Liability Claim (999-1007) Assignment #3 due by Wednesday, 11/27 at 11:59 PM, ET
Liability without Fault (Continued)	Product Liability (Continued) Final Review	Should I buy that product "off the rack"? Can I sue for poor product design?	12/4	Gower v. Savage Arms, Inc. (1007-1011) <ul style="list-style-type: none"> • Note 1-8 (1011-1015) Chow v. Reckitt & Colman, Inc. (1016-1019) <ul style="list-style-type: none"> • Note 1-11 (1019-1024) The contest between the consumer expectations test and the risk-utility test (1024-1028) Willson Sporting Goods Cov v. Hickox (1028-1034) Anderson v. Owens-Corning Fiberglas Corp. (1071-1076)