

TORTS
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
SYLLABUS - SECTION 1A
FALL 2021 – LAW 5700 – 4 Credits

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Office Hours: Wednesdays, 10:30-11:30am in person; Thursdays, 2:30-3:30pm on Zoom (link on Canvas); or by appointment.

MEETING TIME AND LOCATION

Mondays: 4:30 pm - 5:25 pm; Room HH 270

Tuesdays and Wednesdays: 9:00 am - 10:25 am; Room HH 270

REQUIRED TEXT

FARNSWORTH & GRADY, TORTS: CASES AND QUESTIONS, **3rd ed.** (Aspen 2019)

All class communications and supplemental readings will be posted on Canvas. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

STRONGLY RECOMMENDED OPTIONAL SUPPLEMENTAL TEXT

GLANNON, THE LAW OF TORTS: EXAMPLES AND EXPLANATIONS (6th edition) or any other recent edition

COURSE DESCRIPTION

The objective of this course is for you to develop a greater understanding of civil liability for harm caused by wrongful acts that violate non-contractual duties imposed by law. We will cover intentional torts, negligence, intentional and negligent infliction of emotional distress, defenses, damages, strict liability, and products liability, among other topics.

STUDENT LEARNING OUTCOMES

At the end of this course, students should be able to perform the following:

- Recognize and comprehend the terminology and elements of the major tort rules and be able to communicate them to others;
- Compare and contrast cases with seemingly similar facts and different outcomes;
- Identify and analyze tort issues in fact patterns and cases;
- Critically evaluate the policies behind tort liability; and
- Craft a legal argument using a discrete tort legal question.

UNIVERSITY POLICY ON ACADEMIC MISCONDUCT

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code located [here](#).

CLASS ATTENDANCE POLICY

Students are expected to attend and participate in class and attendance will be taken at every class. I am assuming that each student that enrolls in this course is committing to attend every class to the best of their abilities, and class attendance is required by both the [ABA and the Law School](#).

- Nevertheless, to allow for exigencies in life, **students are permitted six unexcused absences during the semester** without impacting their final grade. This allowance is designed to accommodate for illness, job interviews, family emergencies, and life. Please budget accordingly so that you are not left at the end of the semester with a needed absence and your budget depleted. As a courtesy, please let me know when you are going to be absent from class.
- For each absence beyond six, a student's final exam grade will be reduced by one-third of a grade (e.g., A- to B+).
- If a student misses nine classes, the professor has the discretion to render the student ineligible to receive credit for the course.
- Excused absences, including [observance of religious holidays](#), are consistent with University policies, and require appropriate documents and/or notification before or shortly after class about your absence. If you have a religious holiday, exceptional illness, or emergency that causes you to miss class, you must contact me before or soon after class for your absence to be excused. The law school's policy on attendance can be found [here](#).

A seating chart will be available on the first day of class for students to choose a seat. Please sit where you would like to remain for the rest of the semester on that day. I will pass around an attendance sheet at the beginning of each class period. I will consider it a violation of the honor code if you have someone else sign you in and you are not present, and I reserve the right to lower your final grade accordingly.

CLASS PARTICIPATION

It is essential to your success in this class that you come to class prepared to discuss the assigned readings for that day. I intend to randomly call on a number of students each class. Everyone is expected to have a high degree of preparation for class and consistently provide high quality (not necessarily high quantity) comments when called upon or on a volunteer basis. Students who are frequently absent or are unprepared when called upon may have their final grade reduced. To be "prepared," you must have read the assignment and have made a good faith effort to think through the materials. You do not have to have perfect answers to my questions, but you must be willing to discuss the assigned reading and work through the questions with the class. The following questions are representative of some of the types of questions I may ask, as well as the questions in the text helping you with distinguishing and analogizing different cases:

- Who are the parties of the case? What are the facts? Was the case decided correctly?
- What level of court decided the case you've read (state/federal; trial/appellate)?
- What is the procedural posture of the case (that is, at what stage of the civil process was the decision under review that is being challenged made)?
- What is the holding of the case? What is the rationale of the case?
- What are the policy arguments that support the result in the case?
- What are the counterarguments to the holding and its application?
- How is the reasoning of one case the same/different from the other?

PROFESSIONAL COURTESY

Please do not arrive late to class or leave early absent extenuating circumstances. If you need to do so, please sit near one of the exits to minimize your disruption to others and notify me in advance. Please make sure your cell phone is turned off during class. I reserve the right to deduct points from your final grade if you engage in behavior that significantly disrupts the learning environment for your classmates.

COVID-19 PRACTICES

Effective immediately, in light of new guidance from the Centers for Disease Control and Prevention, we expect everyone to wear a mask at all times when inside any UF facility, even if you are vaccinated. This includes our students, faculty, staff, vendors and visitors. Recent studies and guidance from the CDC state that both unvaccinated and vaccinated individuals can transmit the current COVID-19 variant to unvaccinated persons.

USE OF LAPTOPS IN CLASS

For the time we are together, you owe yourself, your classmates, and me your focused attention. You will have a better educational experience if you can focus on grasping key concepts instead of transcribing the classes.¹ For this reason, and to minimize distractions for your classmates, electronic typing devices are not allowed in class. Exceptions will be made only if you take the following steps: (1) come to my office and present a valid justification for exempting you from this policy (i.e., a documented disability for which a laptop is necessary); (2) sign a contract with me stating that you will never access the Internet; and (3) sit only in the back row of the classroom. Of course, you are strongly encouraged to take handwritten notes.

PREFERRED NAME AND PRONOUNS

Many of you may have a preferred name that is not the name given to me on the official roll. It is important to the learning environment that you feel welcome and safe in this class. I want you to be comfortable participating in class discussions and communicating with me on any issues related to the class. I would like to refer to you by your preferred pronoun and last name. As such, if your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise before the first day of class.²

DISCOURSE, INCLUSION, AND THE CLASSROOM

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions. As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in

¹ See, e.g., A Learning Secret: Don't Take Notes with a Laptop, <http://www.scientificamerican.com/article/a-learning-secret-don-t-take-notes-with-a-laptop/>; Princeton University study shows students more likely to learn by taking handwritten notes, http://www.nj.com/mercer/index.ssf/2014/06/princeton_university_study_finds_students_more_likely_to_earn_by_taking_handwritten_notes.html.

² You may also change your "Display Name" in Canvas. Canvas uses the "Display Name" as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison." To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select "Directory Profile." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records.

the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

- commit to self-examination of our values and assumptions;
- speak honestly, thoughtfully, and respectfully;
- listen carefully and respectfully;
- reserve the right to change our mind and allow for others to do the same;
- allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers.

EVAULATION

The four credit course grade is based primarily on a closed book, four-hour final examination. The exam will consist of short-answer and essay questions. Exams are graded anonymously. However, preparation for class and participation in class is an expectation for all students. Participation that is of exceptionally low quality over the course of the semester may be factored in and may affect your grade by as much as 1/3 of a letter grade. This is independent from any 1/3 reduction due to excessive absences.

INFORMATION ON UF LAW GRADING POLICIES

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available [here](#).

POLICY RELATED TO MAKE-UP EXAMS

The law school policy on delay in taking exams can be found [here](#).

STATEMENT RELATED TO ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester, as accommodations are not retroactive. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester.

STUDENT COURSE EVALUATIONS

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](#) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students [here](#).

RECORDINGS OF CLASS

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected.

Students are allowed to record video or audio of “class lectures.”³ However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS (TENTATIVE)

The sections below generally represent what I will attempt to cover during a class period, but they are only estimates. We may move faster or slower depending on how the classes progress. You can anticipate what the next class period’s reading assignment will be from the below chart if you wish to start early or read ahead. I may also add a few supplemental readings along the way, depending on our pace and coverage. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Torts has four “classroom hours” of in-class instruction each week, requiring **at least eight hours of preparation outside** of class. Please budget accordingly.

³ A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Class	TOPIC	READING
INTENTIONAL TORTS		
1 8/23	Introduction to Torts; Battery: Intent	Introduction (pp. xxvii-xxxix) pp. 1-11 (stop before Minimum Requirements)
2 8/24	Battery: Minimum Requirements and Consent	pp. 11-16
3 8/25	Battery: Offensive Contact, Consent	pp. 17-22 (through note 7)
4 8/30	Trespass	pp. 26-34 (through note 9)
5 8/31	Conversion	pp. 37-47 (through note 10)
6 9/1	False Imprisonment	pp. 50-59
9/6	NO CLASS – LABOR DAY	
7 9/7	Assault, Outrage (aka Intentional Infliction of Emotional Distress)	pp. 59-72 (through note 5)
8 9/8	Privileges – Defense of Person and Property, Private Necessity Practice #1 Assigned	pp. 79-86 (through note 7), 89-95 (through note 2)
9/10 5pm	PRACTICE PROBLEMS #1 DUE via Canvas by 5pm sharp. Canvas will not accept late submissions and this submission is your “ticket” to participate in the review of the problems.	
9 9/13	Discussion of Practice Problems #1 Privileges – Private and Public Necessity	pp. 95-101 (stop at discipline)
NEGLIGENCE		
10 9/14	Introduction to Negligence; The Reasonable Person	pp. 111-122

11 9/15	Physical Infirmities, Risks, & Precautions, The Hand Formula	pp. 122-136 (through note 4)
12 9/20	Hand Formula Continued; Medical Malpractice	pp. 136 (start at note 5) -140 (through note 7); pp. 142 (start at note 9) – 147 (stop before notes); pp. 149 (start with note 3) – 153 (through note 5); pp. 154 (start at note 7) - 156
13 9/21	Negligence Per Se	pp. 156-168
14 9/22	<i>Res Ipsa Loquitur</i>	pp. 174-180 (though note 7); pp. 182 (start with note 9) - 190 (through note 1)
15 9/27	Duties and Limitations and Undertakings	pp. 195-203 (through note 6); pp. 205-210 (through note 6)
16 9/28	Duties Arising from Special Relationships; the Public Duty Doctrine	pp. 211-222 (through note 4); notes 5 and 6; pp. 225-228
17 9/29	Duties Arising from Occupation of Land Practice #2 Assigned	pp. 228-239 (through note 4); note 8
10/1	PRACTICE PROBLEM #2 DUE via Canvas by 5pm sharp. Canvas will not accept late submissions and this submission is your “ticket” to participate in the review of the problem.	
18 10/4	Discuss Practice Problem #2 Privity and Pure Economic Losses	pp. 243-251 (through note 1); notes 5 and 6
19 10/5	Negligent Infliction of Emotional Distress	pp. 259-270

20 10/6	Causation – But For and Loss of a Chance	pp. 271-278 (stop before Herskovits); Substantial Factor case;
21 10/11	Causation – But For and Loss of a Chance	Gooding (on Canvas); Is it time to revisit Gooding? https://www.floridabar.org/the-florida-bar-journal/it-is-time-for-florida-courts-to-revisit-gooding/ pp. 282-283 (through the second numbered example); p. 289 (note 7)
22 10/12	Causation – Alternative Liability; Market Share Liability	pp. 290-298 (through note 2); pp. 300-302 (stop before section 2)
23 10/13	Proximate Causation – Remoteness and Foreseeability	pp. 306-318 (skip note 13);
24 10/18	Proximate Causation – Intervening Causes	pp. 318-327
25 10/19	Proximate Causation: Intervening Causes (cont.) and Limitation of Duty and <i>Palsgraf</i> ;	pp. 328-337
26 10/20	Compensatory Damages – Property and Lost Earnings	pp. 443-447 (through § 911); note 2
27 10/25	Compensatory Damages – Pain and Suffering	pp. 451-455 (through note 4); note 6; note 8 pp. 462-466 (through note 7); note 11; skim note 15
28 10/26	Punitive Damages	pp. 475-489 (stop before Sunstein excerpt)
29 10/27	Defenses – Contributory and Comparative Negligence Practice #3 Assigned	pp. 493-504 (through note 2); pp. 505 (start at note 6) - 507;

10/29 5pm	PRACTICE PROBLEM #3 DUE via Canvas by 5pm sharp. Canvas will not accept late submissions and this submission is your “ticket” for participation in the review of the problem.	
30 11/1	Discuss Practice Problem #3	
31 11/2	Defenses – Express Assumption of Risk; Primary Assumption of risk	pp. 508-519 (through note 1)
32 11/3	Defenses – Primary and Secondary Assumption of Risk	pp. 519 (start at note 2) - 529
STRICT LIABILITY		
33 11/8	Strict Liability – Animals and <i>Rylands</i>	pp. 343-348 (through note 2); pp. 353-361
34 11/9	Abnormally Dangerous Activities	pp. 361-370 (through note 5); note 9
35 11/10	<i>Respondeat Superior</i>	pp. 372-376 (through note 1); note 6;
36 11/15	Products Liability - Foundation	pp. 385-400
37 11/16	Products Liability - Manufacturing Defects and Design Defects	pp. 400-405 (through note 1); notes 6 and 7

38 11/17	Products Liability - Design Defects	pp. 412-424
39 11/22 ONLINE	Products Liability - Failure to Warn Online Class – Zoom link provided on Canvas	pp. 424-431 (through note 3); 438-442
12/3 8:30 am	FINAL EXAM	