

**TORTS (12454 - 5418) SECTION B
COURSE OUTLINE AND SYLLABUS
FALL 2013
UNIVERSITY OF HOUSTON LAW CENTER**

Class Meeting Times: M,T, Th 10:30 - 11:50 am

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Office Hours: T, Th noon - 1 pm
(or by appointment; e-mail me if
you need to set up 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 Tort Law & Alternatives, 9th ed. (2011)
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
- XII. **THE ROLE OF INSURANCE; TORT ALTERNATIVES AND REFORM**

READING LIST

There is not a one-to-one correspondence between the reading units listed below and class meetings. There are 37 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 1-17** (stop at Section D)
 Case: Hammontree v. Jenner
 Also read: **F&R** read pages 129 through 141 (end of note 5)
 Cases: Harper v. Herman
 Farwell v. Keeton

Vicarious Liability:

- 2. **F&R 17-29**
 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** 30 – 43 (stop before US v. Carroll Towing)
Cases: Brown v. Kendall
Adams v. Bullock
4. **F&R** 43 – 60 (stop at Section C)
Cases: US v. Carroll Towing
Bethel v. NYC Transit Authority
5. **F&R** 65 (starting at Andrews case) – 85
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** 86—106 (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 for discussion in class during the next several weeks)

7. **F&R** 106-119
Cases: Sheely v. Memorial Hospital
Sides v. St. Anthony's Med. Center
8. **F&R** 119-128
Cases: Matthies v. Mastromonico

Supplement: Informed Consent (distributed via e-mail)

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

9. **F&R** 129-156 (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

10. **F&R** 156 (start notes after Tarasoff) – 168 (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

11. **F&R** 168 - 182
Cases: Strauss v. Belle Realty
Reynolds v. Hicks
12. **F&R** 182 – 188 (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

13. **F&R** 195 -204
Cases: Carter v. Kinney
Heins v. Webster County
Important cases are discussed in the notes after Heins
14. **F&R** 204 – 217 (stop before Section F)
Cases: Posecai v. Wal-Mart
A.W. Lancaster County School District
Think about: How do these cases in Reading Units 13 and 14 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

15. **F&R** 217 (read introduction to Section F on this page only)

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

16. **F&R**: 227 (start of Section G) – 235 n.5;

F&R: 237 – 243 (Lauer case)

F&R: 248 (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

17. **F&R** 260 – 280 (stop before Portee case)

Cases: Falzone v. Busch

Metro-North Commuter RR v. Buckley

Gammon v. Osteopathic Hospital

18. **F&R** 280 (start at note 7) through 298 (stop at Section B)

Cases: Portee v. Jaffee

Johnson v. Jamaica Hospital

Duty: Economic harm

19. **F&R** 298 - 319

Cases: Nycal v. KPMG

532 Madison Ave. Gourmet Foods v. Finlandia Center

Duty: Procreation (Wrongful Birth and Wrongful Life)

20. **F&R** 319 – 332

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

21. **F&R** 333 – 362

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

22. **F&R** 364 – 387
Cases: Summers v. Tice
Hymowitz v. Eli Lilly & Co.
Read Rabin excerpt on Environmental Liability

Causation: Proximate cause

23. **F&R** 393 (start at Section B) - 432
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

24. **F&R** 433 - 450 (through note 15). **Assignment:** **Read the excerpts from the Uniform Comparative Fault Act and Iowa Code on pages 440 – 443 very carefully.** Work the problem on page 440, parts a,b,c. Also work problems in notes 9 (set-off), 10 (insolvency), and 12 (partial settlements).

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

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

F&R: 452 – 4454
Case: Fritts v. McKinne

Defenses: Avoidable consequences; assumption of risk

25. **F&R** 455 – 483 (before Levandoski)
Cases: Hanks v. Powder Ridge.

Murphy v. Steeplechase
Davenport v. Cotton Hope Plantation

Defenses: Federal Preemption of State Tort Lawsuits

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

F&R 489 – 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

27. **F&R** 507 - 510 & 512-513, 516-518, 535 – 542 (King article—scan this to understand policy goals of strict liability); 547 - 550 (Posner article); 551 – 555 (McPherson); 557-561 (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

28. **F&R** 561 (notes after Escola) – 599 (to start of Section D)
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)

29. **F&R** 599 (Section D) – 622 (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.

30. **F&R** 622-648 (Section E and Jones v. Ryobi and Liriano cases in Section F, through note 6 after Liriano)
Cases: GM v. Sanchez
Jones v. Ryobi
Liriano v. Hobart

Intentional torts

31. **Supplement: Intentional Tort Supplement - Harm to Persons** (distributed by e-mail)
F&R 897-900 (Intro and Garratt case); 904 – 910 (Picard and Wishnatsky cases); 911-914 (Lopez case); 919 - 922 (Womack case).

32. Intentional Tort Defenses **F&R** 946 -963 (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

33. **Supplement: Defamation and Privacy Torts Supplement** (distributed by e-mail)
F&R 985 – 989 (to end of Romaine v. Kallinger); read notes 1, 3, 4, 5 after the Romaine case. Read Matherson v. Marchello on pages 996-97 but skip the notes afterward. In the “Of and concerning” section on page 999 – 1001 read ONLY the parts on Identification and Group Libel but skip the Corporations material. Read from the start of “Strict Liability” on 1001 to the end of the Liberman case on page 1008. Read from the start of the “qualified privileges discussion in the middle of page 1013 to the end of the Liberman case on page 1015. Read notes 3 and 4 on 1015-16.
34. 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** 1041 and 1065. 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.

35. **F&R** 1136 – 1142 (including Haynes v. Knopf); notes 4 & 5 on 1143-1144.

On false light, read 1164-68 (the Cantrell case); note 3-5 p. 1168 -1169.

On intrusion on seclusion, read Nader v. GM on 1172 – 78 (focus on first two pages— understand the fact pattern of the alleged intrusive behaviors). On p. 1192-1200, 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

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

F&R: On deceit and negligent misrepresentation, read 1240 – 1248 (Ollerman v. O’Roarke), and notes 4, 5, 6, 9, 11 after Ollerman (skip other notes); on tortious interference with contract, read 1255 – 1257 (Imperial Ice v. Rossier) and notes 1, 3, 6, 7, 8 after Imperial Ice.

Role of insurance; alternatives to tort; tort reform

37. **Supplement** (to be distributed via e-mail) **containing:**
- Excerpts from Albert C. Lin, *Beyond Tort: Compensating Victims of Environmental Toxic Injury*, 78 SCALR 1439
 - Excerpts from F. Patrick Hubbard, *The Nature and Impact of the Tort Reform Movement*, 35 HOFLR 437