

Torts Syllabus
Professor Jonathan Zittrain
Spring 2018

This course explores the American law of torts -- the circumstances and theories under which people owe others money for wrongs they commit -- principally as a vehicle for understanding how the law operates and how lawyers help to argue and shape it.

Class information:

Class dates and times: Mondays and Tuesdays from 1-3pm.

All class meetings will be held in WCC 1010.

Laptop Policy:

Laptops and digital devices are **not** permitted in class.

Required Texts:

The casebook for this class is available for purchase on [Amazon](#) for \$30. A free PDF of the casebook is available [here](#) (note that the file is quite large and may take some time to download). You can also view the casebook online as a playlist on h2o at the following link: <https://alpha.opencasebook.org/casebooks/29980-zittrain-torts-playlist-spring-2018>

Students will also be expected to read supplemental “This Week in Torts” articles each week. You can view the website here: <https://www.thisweekintorts.com/jz-torts-2018/>.

Responsibilities:

Over the course of the semester, two students each class will be in charge of taking notes for the class. This responsibility will rotate each class session. View Canvas for note-taking assignments. There will not be a note-taking assignment for the first week of class.

- Note-taking in class
 - Students responsible for note-taking will take notes in a communal Google doc.
 - Students responsible for taking notes will be allowed to have their laptops open during class on their assigned note-taking day.
 - A set of sample notes will be sent out after the second day of class.
 - The communal Google Doc can be accessed at <https://brk.mn/tortsnotes2018>.
- Revising in-class notes
 - Please make sure the notes are as clear and readable as possible.
 - Please revise the notes within 48 hours of class.

Contact Samantha Bates at sbates@law.harvard.edu with any questions about class notes.

Office Hours:

Office hours are available by appointment. Please email Annabel Kupke at a2jz@law.harvard.edu to schedule a meeting time.

Readings and Topics:

Session 1: Monday, January 22nd, 2018

No class

Rescheduled for Friday, February 9th, 3:15-5:15 pm.

Session 2: Tuesday, January 23rd, 2018

No class

Rescheduled class TBD

Session 3: Monday, January 29th, 2018

Chapter I: Assault and Battery: Reconciling Harm with Culpability (part 1)

Righting (or Punishing) the Wrong

- Vosburg v. Putney: "The Schoolboy Kicker"
- Alcorn v. Mitchell: "The Angry Spitter"
- Picard v. Barry Pontiac-Buick, Inc.: "The Camera Toucher"

Intentional, Negligent, or Something in Between?

- Garratt v. Dailey: "The Chair-Pulling Five Year Old"

The Restatement Approach to Assault and Battery

- Restatement for Assault
- Restatement for Battery

Session 4: Tuesday, January 30th, 2018

Chapter II: Assault and Battery: Intent and Autonomy

Latent Sensitivities and Reservations

- Wishnatsky v. Huey: "The Overly-Sensitive Intruder"
 - Wishnatsky's (Plaintiff's) Amended Complaint
 - Wishnatsky's (Plaintiff's) Affidavit
 - Letters between Litigants
 - Crary's Affidavit
- O'Brien v. Cunard: "The Silent Vaccine Objector"

The Spectrum Between Subjective and Objective

- Leichtman v. WLW Jacor Communications, Inc.: "The Smoke in the Face Case"
- Werth v. Taylor: "The Blood-Transfusion-Refusing Jehovah's Witness"

Beyond Physical Contact Or The Threat Thereof

- Womack v. Eldridge: "The Distressing Accusation of Molestation"

Session 5: Monday, February 5th, 2018

Chapter III: False Imprisonment: Taking Charge of Others

The Clashing of Wills

- Lopez v. Winchell's Donut House: "The Accused Employee Who Freely Left"
- Parvi v. City of Kingston: "The Dropped Off Drunk"

Defining 'Confinement'

- Shen v. Leo A. Daly Co.: “The Confined-to-Taiwan Case”
 - Peterson v. Sorlien: “The Unsuccessfully Deprogrammed Daughter”
- “Good” Imprisonments – Exceptions to False Imprisonment Liability
- Eilers v. Coy: “The Falsely Consenting Cultist”

Session 6: Tuesday, February 6th, 2018

Chapter IV: Defenses: Overriding the Choices of Others

Consent

- Hart v. Geysel: “The Fatal Prize Fight”
- Hackbart v. Cincinnati Bengals: “The No-Foul-But-Severe-Harm Case”

Preservation of Bodily Integrity

- Courvoisier v. Raymond: “The Mistaken Self-Defender”

Preservation of Property

- Ploof v. Putnam: “The Private Island in the Storm Case”
- Vincent v. Lake Erie Transp. Co.: “The Boat-Slamming-Against-the-Dock Case”

Beyond the Common Law – Statutory Exceptions and Constitutional Protections

- Barbara A. v. John G.: “The Lying, Impregnating Attorney”

Session 7: Friday, February 9th, 2018 (RESCHEDULED CLASS 3:15-5:15pm)

Chapter V: Trespass to Chattels: The Limits of Self-Help

- Glidden v. Szybiak: “The Dog Ear Puller”
- Katko v. Briney: “The Spring-Gun Case”
- CompuServe v. CyberPromotions: “The Damaging Spam Case”
- Intel v. Hamidi: “The Critical Emails Case”

Session 8: Monday, February 12th, 2018

Chapter VI: Negligence: The Standard of Reasonable Care

The Murky Line Between Intentional Torts and Negligence

- Topps v. Ferraro: “The Unintentional Punch in the Face”

Understanding the Standard

- Chicago, B. & Q. v. Kraysenbuhl: “The Foot-Severing Turntable”
- United States v. Carroll Towing: “The Learned Hand Formula Case”
- Adams v. Bullock: “The Swinging Wire Case”

Judge or Jury – Who Should Decide?

- Pokora v. Wabash Railway Co.: “The Driver Who Failed to Step Out and Look Around”
- Andrews v. United Airlines, Inc.: “The Baggage May Have Shifted During Flight Case”
- Akins v. Glen Falls: “The Blinding Foul Ball”

The Restatement Approach to Reasonable Care

- Negligence Restatement

Session 9: Tuesday, February 13th, 2018

Chapter VII: Negligence: Adjusting the Standard?

Challenges in Conveying the Standard

- Vaughan v. Menlove: “The Unreasonable Hay Stacker”
- Wood v. Groh: “The Gun from the Cabinet Case”
- Ellis v. D’Angelo: “The 4-Year-Old Bone Breaker”

The Effect of Defendant’s Infirmities and Limitations on the Standard

- McCarty v. Pheasant Run: “The Chained, But Unlocked Sliding Door Case”
- Bashi v. Wodarz: “The Driver Who Wiggled Out”
- Miller v. Reilly: “The Defective Brakes Case”

Session 10: Monday, February 19th, 2018

Chapter VIII: Res Ipsa Loquitur

"The Thing Speaks for Itself" - The Basic Rule of Res Ipsa Loquitur

- Byrne v. Boadle: “The Falling Flour Barrel”

Questions about Control - "The Exclusive Control" Requirement

- Larson v. St. Francis Hotel: “The Falling Armchair”
- Connolly v. Nicollet Hotel: “The Chaotic Convention”

The Problem of Multiple Defendants

- Ybarra v. Spangard: “The Unconscious, but Injured Patient”
- Fireman’s Fund American Insurance Cos. v. Knobbe: “The One-of-Four Smokers Case”

Session 11: Tuesday, February 20th, 2018

Chapter IX: Negligence Per Se

The Basic Doctrine

- Martin v. Herzog: “The Buggy Without Lights”

The Objective of the Statute

- Platz v. City of Cohoes: “The Sunday Carriage Accident”
- Brown v. Shyne: “The Unlicensed, Paralyzing Chiropractor”
- Rushink v. Gerstheimer: “The Key in the Ignition”
- Robinson v. District of Columbia: “Jaywalking: A Custom?”
- Tedla v. Ellman: “Walking on the Other Side of the Highway”

Session 12: Monday, February 26th, 2018

Chapter X: Duty: Action vs. Inaction; Special Relationships

Action Versus Inaction

- Moch Co. v. Rensselaer Water Co.: “The Failure to Supply Water During a Fire”
- Strauss v. Belle Realty Co.: “The Man who Tripped Down the Stairs”
- Union Pacific Railway v. Cappier: “The Railroad that Ran Over a Man and Let Him Bleed to Death”

Special Relationships and Other Exceptions

- Harper v. Herman: “The Boat Owner Who Failed to Warn”
- Farwell v. Keaton: “The Fatal Pickup Attempt”
- Randi W. v. Muroc Joint Unified School District: “The Alleged Sexual Predator’s Recommenders”

Session 13: Tuesday, February 27th, 2018

Chapter XI: Duty to Control Others

Duty Arising from and Limited by Special Relationships

- Tarasoff v. Regents of University of California: "The Psychiatrist's Failure to Warn the Murder Victim"
- Broadbent v. Broadbent: "The Elimination of Parental Immunity Case"
- Hawkins v. Pizarro: "The Failure to Correctly Report Hepatitis C Test Results"
- Einhorn v. Seeley: "The Locksmith's Failure to Properly Install a Lock"
- Boyd v. Racine Currency Exchange: "The Non-Compliant Bank Teller and the Murdered Hostage"

Controlling the Intoxicated

- Kelly v. Gwinnell: "The Don't Let Friends Drink and Drive Case"
- Charles v. Seigfried: "The Tragic Fate of the Minor Guest"

Session 14: Monday, March 5th, 2018

Chapter XII: Government Liability

- Riss v. City of New York: "The Lye in the Face"
- Schuster v. City of New York: "The Death of the Police Informant"
- Weiner v. Metro. Transit Authority: "The Unmanned Train Station"
- Garcia v. Superior Court of Santa Clara County: "The Fatally Wrong Parole Officer"
- Florence v. Goldberg: "The Police-Manned Crosswalk"

Session 15: Tuesday, March 6th, 2018

Chapter XIII: Emotional and Economic Harm

Emotional Harm

- Falzone v. Busch: "The Almost Automobile Accident"
- Portee v. Jaffee: "The Child Dying in the Elevator"
- Pizarro v. 421 Port Associates: "The Decapitating Elevator"
- Gammon v. Osteopathic Hospital of Maine, Inc.: "The Severed Leg in the Bodybag"

Economic Harm

- People Express Airlines, Inc. v. Consolidated Rail Corp.: "The Evacuated Airport"
- Koch v. Consolidated Edison Co.: "The New York Blackout"

Spring Break March 10th - 18th

No Class

Session 16: Monday, March 19th, 2018

Chapter XIV: Causation

Theories of Causation

- Howard v. Wal-Mart: "The 'More-Likely-Than-Not' Standard for Causation"
- Stubbs v. City of Rochester: "The Sewage in the Drinking Water"

- Anderson v. Minneapolis, St. P. & S. St. M. R.R. Co.: “The Multiple Fires Case”
- Brown v. Wal-Mart: “The Phantom Tortfeasor”

Joint and Several Liability

- Summers v. Tice: “The Simultaneously Negligent Shooters”
- Garcia v. Joseph Vince Co.: “Two Manufacturers, One Sabre”
- Ravo v. Rogatnick: “The Indivisible Brain Damage”

Session 17: Tuesday, March 20th, 2018

Chapter XV: Proximate Cause

- In re Polemis: “The Plank that Exploded a Ship”
- Wagner v. International Railway Co.: “The Injured, Would-Be-Rescuer”
- Palsgraf v. Long Island Railroad Co.: “The Fireworks on the Train Platform”
- Benn v. Thomas: “The Time-Delayed Heart Attack”
- Steinhauer v. Hertz Corp.: “The Sudden Schizophrenia Case”
- Gibson v. Garcia: “The Rotten Telephone Pole and the Car”
- Darby v. National Trust: “The Rat Urine as Proximate Cause Case”
- Wagon Mound (No. 1): “The Oil in the Wharf Case”

Session 18: Monday, March 26th, 2018

Chapter XVI: Vicarious Liability

Fundamentals of Vicarious Liability

- Miller v. Reiman Wuerth Co.: “The Bank Errand Case”
- Christensen v. Swenson: “The Lunch Break Case”

Possible Exceptions to Vicarious Liability

- Bussard v. Minimed, Inc.: “The Noxious Office Fumes Case”
- Kuehn v. Inter-city Freight: “The Road Rage Case”
- Sage Club v. Hunt: “The Violent Bartender”
- Roessler v. Novak: “The ‘Independent’ Radiology Department”

Session 19: Tuesday, March 27th, 2018

Chapter XVII: Strict Liability

- Guille v. Swan: “The Wandering Aeronaut”
- Sullivan v. Dunham: “The Exploding Tree”
- Hammontree v. Jenner: “Strict Liability while Driving?”
- Crosby v. Cox Aircraft Co.: “The Airplane that Ran Out of Fuel”
- Torchia v. Fisher: “The Stolen Airplane”
- Franken v. City of Sioux Center: “The ‘Pet’ Tiger Case”

Session 20: Monday, April 2nd, 2018

Chapter XIX: Contributory/Comparative Fault

- Davies v. Mann: “The Last Clear Chance and the Donkey”
- Derheim v. N. Fiorito, Inc.: “The Non-Seat-Belt-Wearing Plaintiff”
- Fritts v. McKinne: “The Doctor who Cried Drunk Driver”

- Veazey v. Elmwood Plantation Associates, Inc.: “The Totally-At-Fault Apartment Complex Manager”
- Washington Metro. Area Authority v. Johnson: “The Suicide in the Subway Station”

Session 21: Tuesday, April 3rd, 2018

Chapter XIX: Assumption of Risk

- Knight v. Jewett: “The Not-So-Friendly Touch Football Game”
- Murphy v. Steeplechase: “The Dangerous Carnival Ride”
- Cohen v. McIntyre: “The Thrice Bitten Veterinarian”
- Lowe v. California League of Professional Baseball: “The Tremor’s Tail”
- Shorter v. Drury: “The Jehovah’s Witness and the Blood Transfusion Waiver”

Session 22: Monday, April 9th, 2018

Chapter XX: Products Liability: Manufacturing Defects

Introduction to Products Liability

- MacPherson v. Buick Motor Co.: “The Broken Wooden Wheel”
- Ryan v. Progressive Grocery Stores, Inc.: “The Pin in the Bread”
- Escola v. Coca Cola Bottling Co. of Fresno: “The Exploding Coke Bottle”

Manufacturing Defects

- Keen v. Dominick’s Finer Foods, Inc.: “The Defective Shopping Cart”

Manufacturing Defects Versus Design Defects

- Rix v. General Motors Corp.: “The Truck that Couldn’t Brake”

Manufacturing Defects Versus Failures to Warn

- Emery v. Federated Foods, Inc.: “The Toddlers Shouldn’t Eat Marshmallows Case”

The Restatement Approach to Products Liability

- Restatement (Second) of Torts §402(a)

Restatement (Third) of Torts: Prod. Liab. §1 - §4

Session 23: Tuesday, April 10th, 2018

Chapter XXI: Products Liability: Design Defect and Warning

Design Defect and Warning

- Soule v. General Motors Corp.: “The Crumpling Toe Plate”
- Camacho v. Honda Motor Co.: “The Motorcycle without Crash Bars”
- Linegar v. Armour of America, Inc.: “The Incomplete Bulletproof Vest”
- Hood v. Ryobi America Corp.: “The Saw with Removed Blade Guards”
- Medina v. Louisville Ladder, Inc.: “The Monolingual Installation Instructions”

Affirmative Defenses to Product Liability

Restatement Approach to Products Liability

Session 24: Monday April 16th, 2018

Chapter XXII: Damages

- Massachusetts General Laws - Part III, Title II - Chapter 228, Section 1: Enumeration [of actions which might survive]

- Massachusetts General Laws - Part III, Title II - Chapter 229, Section 2: Wrongful death; damages

The Restatement Approach to Damages

- Restatement (second) of Torts § 925
- Restatement (second) of Torts § 926

Cases

- McDougald v. Garber: “The Comatose Sufferer”
- Seffert v. Los Angeles Transit Lines: “The Calculating Pain and Suffering Case”
- Greyhound Lines, Inc. v. Sutton: “The Worth of a Child Case”

Session 25: *Tuesday, April 17th, 2018*

Chapter XXIII: Conclusion

- United States v. Angelos: “The Draconian Sentencing Statute”
- Ortiz v. Sessions: “The Gov’t’s Insistence on Expelling a Good Man”