

Law 611 – Torts

Fall 2021

Instructor Information

Instructor: Anthony Moffa

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Office Hours: immediately after class and by appointment

Course Information

Meetings: M/W 1:20-3:20

Location: Hannaford Hall

Credit Hours: 4.0

Textbook/Course Materials

James A. Henderson, Douglas A. Kysar, Richard N. Pearson, *The Torts Process* (9th ed.) (ISBN-13: 978-1454875697)

Course Management System

The primary modes of communication for this course will be Brightspace and email. You may also be asked to use other online tools for which I will give specific instruction.

Course Description

'The mule don't kick according to no rule' . . . There is no substitute for dealing with the particular facts, and considering all the factors that bear on them, interlocked as they may be.

-- William Prosser, *Palsgraf Revisited*, 52 Mich. L. Rev. 1 (1953)

This course will examine private law remedies for harms arising out of intentional or accidental conduct. While criminal law provides for government suits against individuals and entities that cause harm (with prison sentences and criminal fines available as remedies), tort law allows ordinary, private citizens to bring suit against harm-causing agents (with monetary and other types of relief available). Tort law should also be contrasted with contract law in the sense that torts are typically nonconsensual events, rather than agreed-upon relationships between parties as in a contractual setting. We will be discussing broadly the legal standards that must be met in order to obtain relief for tortious conduct, the theoretical justifications for those standards, and the alternative rules that, for one reason or another, have not been preserved or adopted by courts and legislatures.

Course Goals & Learning Objectives

GOALS	OBJECTIVES	ASSESSMENTS
<p>Upon successful completion of this course, students will know/understand:</p>	<p>Upon successful completion of this course, students will be able to:</p>	<p>How the student will be assessed on these learning objectives:</p>
<p>The traditional torts doctrines and the basic elements of those torts</p>	<p>Analyze a torts problem in terms of traditional doctrinal categories</p>	<p>Final Examination</p>
<p>The process by which the law of torts might have evolved, including the jurisprudential considerations, policy arguments, socioeconomic and cultural changes</p>	<p>Formulate, or analyze, a proposal to change the law of torts</p>	<p>Final Examination</p>
<p>How procedural and substantive rules impact tort settlement and bargaining power</p>	<p>Effectively negotiate a settlement in a tort case</p>	<p>In-class discussion and activities</p>
<p>How the law of torts applies to contemporary issues such as products liability, workplace safety, emerging technologies, and environmental health</p>	<p>Apply basic concepts from the law of torts to other areas of study in law school</p>	<p>Final Examination In-class discussion and activities</p>
<p>The difference, and interplay, between the law of torts and other foundational common law subjects</p>	<p>Distinguish a torts problem from a contracts, criminal, or property law problem</p>	<p>Final Examination In-class discussion and activities</p>

Assignments/Exams/Papers/Projects

There will be a short, online quiz after the completion of the intentional torts unit. It will consist of 10 graded multiple choice questions and 1 ungraded essay question. The quiz must be completed by 11:59 PM on November 1. It can be retaken as many times as you wish prior to that deadline.

This class will have one 3-hour final examination that will consist of two-parts:

- 1) An open-book, open-note essay section.
- 2) A closed-book, closed-note multiple-choice section.

Grading/Evaluation

Grades for the course will be calculated as follows:

- 5% Participation in classroom discussions and activities
- 10% Intentional Torts Third-Term Quiz
- 85% Final examination

Course Expectations & Requirements

“A student must read what a professor assigns ...” *Klaassen v. Trustees of Indiana Univ.*, No. 21-2326, 2021 WL 3281209, at *2 (7th Cir. Aug. 2, 2021).

Class preparation is extremely important. The American Bar Association standards require that students spend a very significant amount of time in out-of-class academic activities, per credit that is awarded. Maine Law has adopted a policy, consistent with the ABA’s policy, that students are required to complete approximately 30 hours 20 minutes of out-of-class work per credit per semester. Therefore, you should spend approximately 2 hours 20 minutes on academic work out of class per credit per week. This is a 4-credit course that has 2 class sessions per week, so plan to prepare, on average, 4-5 hours for each class session. Of course, some topics will require more preparation and some less; this will depend on a number of factors, including your own comfort with the material, the number of pages assigned, and the type of readings assigned. Regardless, it is my strong recommendation that 1 hour of your preparation time each week be spent in the teaching fellows’ session (currently scheduled for Mondays from 3:45-4:45pm).

Students are free to use whatever method they prefer to take notes. That said, many believe, as I do, that handwriting one’s notes improves retention and comprehension, while simultaneously removing the tempting distraction that is the internet. Indeed, empirical research has confirmed that laptop use can negatively affect academic performance. See *generally* Pam A. Mueller & Daniel M. Oppenheimer, *The Pen is Mightier Than the Keyboard: Advantages of Longhand Over Laptop Note Taking*, 25

Psychol. Sci. 1159 (2014). Thus, although I have no rule against laptop use during class nor do I penalize students who take their notes using such a device, I encourage you to at least give handwritten notes a try.

COURSE POLICIES

Academic Integrity Policy

Each student should know the standards of conduct and expectations of academic integrity. Violations of academic integrity include any actions that attempt to promote or enhance the academic standing of any student by dishonest means. Cheating on an examination, plagiarism, making statements known to be false or misleading, falsifying the results of one's research, improperly using library materials or computer files, or altering or forging academic records are examples of violations of this policy. Acts that violate academic integrity disrupt the educational process and are not acceptable.

Evidence of a violation of the academic integrity policy will normally result in disciplinary action, including referral to the UMS Student Conduct Code process. A copy of the complete Academic Integrity Policy is available on the [University of Maine System website](#) or the [MyLaw Portal](#).

Attendance & Participation Policy

Life happens. In the event that you cannot attend a particular class session, please act like a professional and provide the courtesy of notifying me via email. Please consider notifying other members of the class as well if some collaborative work is expected of you on that particular day. In the event that the University cancels classes, such as for severe weather, any readings or assignments scheduled for those missed classes will fall to the next class meeting, and students are expected to complete them.

Attendance: Inclement Weather Policy

For information on campus closings, please call the storm line at 207-780-4800 or sign up for USM text alerts. If the University of Southern Maine closes the campus, this applies to the Law Building. In rare circumstances, the Law School closes before USM. In this situation, an email about closings will be sent to students through the email listserv.

If the Law Building is (1) closed for the day, (2) open late and our class is scheduled to start before the law school opening, or (3) closed early and our class is scheduled to end after the building closes, then classes may be held remotely. If this is the case, a

Zoom link will be sent to all members of the class. If you are unable to attend class due to the inclement weather, you should notify me.

If class is canceled, I will let you know about scheduling a make-up.

Class Recording Policy

As a general rule, the recording of all classes is prohibited without permission. If you will be absent from class and wish to record a missed class session, you must first contact me for permission. If permission is granted, you must arrange for a classmate to facilitate the recording. (Suggested mobile apps for self-directed audio recording can be found in the MyLaw Portal.) All class recordings are for personal use only and may not be uploaded to the internet or otherwise shared, transmitted, or published without the prior consent of the professor. If permission is denied, then you must find an alternative method for making up the missed material.

If you are requesting the recording of classes pursuant to the Americans with Disabilities Act or in the case of exceptional circumstances, such as severe illness or hospitalization, you should contact the Associate Dean for Student Affairs.

MAINE LAW POLICIES AND RESOURCES

Disability Accommodations

The Law School is committed to providing students with disabilities equal access to all programs and services. If you think you have a disability and would like to request accommodations, please contact the Disability Services Center (DSC). Timely notification is essential. The Disability Services Center can be reached by calling 207-780-4706 or by email dsc-usm@maine.edu. If you have already received an accommodation letter from the Disability Services Center and would like to discuss your accommodations for this course, please contact Associate Dean Sherry Abbott Niang who serves as the liaison to the DSC. If you would like to discuss your accommodations with me, you can email me directly.

Wellness Resources for Maine Law Students

Maintaining your physical and mental health is essential to learning the law and succeeding in law school. Law school is a setting where mental health or substance use struggles can be exacerbated. If you ever find yourself struggling, do not hesitate to ask for help. Maine Law is committed to promoting wellness for all students. I encourage all of you to review the [Health & Wellness Resources](#) listed on the MyLaw Portal. The resources include confidential counseling through USM Counseling

Services (207-780-4050) and the Maine Assistance Program for Lawyers and Law Students (207-266-5951). You can also contact the Maine Law [Office of Student Affairs](#). Please let me know if you have any questions.

If you are facing illness, injury, the birth of a child, death in the family, or other extraordinary circumstances that may impact your participation in this course, you should contact me in advance of missing classes or any assignment deadlines. Stressful situations like these may lead to diminished academic performance or may reduce your ability to participate in daily classroom activities. Law School services are available to assist students with handling these stressful events. In an emergency situation and in cases of unforeseen circumstances, you should contact the Associate Dean Sherry Abbott Niang as soon as possible. *For examination conflicts or emergency situations during the examination period, please see the Registrar.*

Statement on Religious Observance for Maine Law Students

Maine Law respects the religious beliefs of all members of the community, affirms their rights to observe significant religious holy days, and will make reasonable accommodations, upon request, for such observances. If your religious observance is in conflict with the academic experience, you should inform me of the class or other functions that will be affected. It is your responsibility to make the necessary arrangements and follow our agreed upon accommodation.

Title IX Statement

The University of Maine School of Law is committed to making our campuses safer places for students. Because of this commitment, and our federal obligations, faculty and other employees are considered mandated reporters when it comes to experiences of interpersonal violence (sexual assault, sexual harassment, dating or domestic violence, and stalking). Disclosures of interpersonal violence must be passed along to members of the University of Maine System's Title IX team who can help provide support and academic remedies for students who have been impacted. More information can be found online at <https://mainelaw.maine.edu/student-life/title-ix/>. You may contact USM's Deputy Title IX Coordinator, Sarah E. Holmes at usm.TitleIX@maine.edu or 207-780-5767 or the UMS Title IX Coordinator, Liz Lavoie at titleix@maine.edu or 207-581-5866. You can also reach out to Maine Law's Office of Student Affairs for support and referrals.

If students want to speak with someone confidentially, the following resources are available on and off campus: University Counseling Services (207-780-4050); 24 Hour Sexual Assault Hotline (1-800-871-7741); 24 Hour Domestic Violence Hotline (1-866-834-4357)

COURSE SCHEDULE

All page numbers refer to the casebook. Any readings not in the casebook will be posted on Brightspace.

Class (with Date)	General Topic	Reading Assignment/Other Assignment
1 Mon., 8/30	Introduction	pp. 1-12 <i>Bartleby, the Scrivener: A Story of Wall Street</i> by Herman Melville (on Brightspace)
2 Wed., 9/1	Intentional Torts – Battery - Intent	pp. 12 - 19
3 Wed., 9/8	Intentional Torts – Battery - Intent	pp. 66-70; 19-30
4 Mon., 9/13	Intentional Torts – Battery - Contact	pp. 30-41; 761-774
5 Wed., 9/15	Intentional Torts – Others	pp. 774-792
6 Mon., 9/20	Privileges – Consent	pp. 42-55; 70-79
7 Wed., 9/22	Privileges – Consent	pp. 55-66 <i>Henriksen v. Cameron</i> , 622 A.2d 1135 (Me. 1993) (on Brightspace)

		<i>Gulf v. Luther</i> , 90 S.W. 44 (1905) (on Brightspace)
8 Mon., 9/27	Privileges – Defense of Self and Property	pp. 79-89; 91-100; 102-107; 112-113 Mock Trial (Closing Arguments) in Class
9 Wed., 9/29	Actual Causation	pp. 115-117; 127-129; 132-145; 152-158
10 Mon., 10/4	Negligence – General Standard of Care	pp. 187-193; 194-204; 206-209
11 Wed., 10/6	Negligence – Alternative Standards of Care	pp. 209-227; 233-235
12 Wed., 10/13	Negligence – Res Ipsa Loquitur and Landowner Liability	pp. 237-241; 243-248; 252-258; 262-265 <i>Poulin v. Colby College</i> , 402 A.2d 846 (Me. 1979) (on Brightspace) <i>Goddard et al, Racial bias in driver yielding behavior at crosswalks</i> (on Brightspace) and NPR story (audio on Brightspace) Statutory problems (on Brightspace)
13 Mon., 10/18	Negligence – Absence of Duty	pp. 266-275; 279-293
14 Wed., 10/20	Proximate Causation	pp. 297-299; 313-321; 310-313 <i>Bullock v. Tamiami Trails Tours</i> , 266 F.2d 326 (5th Cir. 1959)

15 Mon., 10/25	Proximate Causation	pp. 321-336; 339-341 Excerpt from Mari Matsuda, <i>On Causation</i> , 100 Colum. L. Rev. 2195 (2000) (on Brightspace)
16 Wed., 10/27	Proximate Causation	pp. 343-366
17 Mon., 11/1	Q&A with Taylor Asen	pp. 366-375 Last day to take (or re-take) Intentional Torts quiz.
18 Wed., 11/3	Contributory Fault	pp. 406-430 Comparative Fault Statutes and Problems (on Brightspace)
19 Mon., 11/8	Trespass and Nuisance	pp. 439-460; 466-474

20 Wed., 11/10	Conversion and Trespass to Chattels	Restatement of Torts 2d secs. 217, 218, 222A <i>Pneuma Int'l v. Cho</i> (Unpublished Opinion), 249 Cal. Rptr. 3d 93 (2019) <i>Condo Services v. First Owners Association of 4600 Condos</i> , 709 S.E.2d 163 (Supreme Court of Virginia 2011) (all on Brightspace)
21 Mon., 11/15	Damages	pp. 621-633; 636-637; 643-646; 650-656 <i>Helfend v. Southern Cal. Rapid Transit District</i> , 2 Cal. 3d 1 (1970) (on Brightspace)

22 Wed., 11/17	Damages	pp. 675-687 Excerpt from Jennifer Wriggins, <i>Torts, Race, and the Value of Injury</i> , 49 How. L. J. 99 (2005) (on Brightspace)
23 Mon., 11/22	Products Liability	pp. 515-536
24 Mon., 11/29	Products Liability	pp. 561-563; 575-582; 599-612
25 Tues., 11/30	Defamation and Invasion of Privacy	pp. 801-823; 859-863
26 Wed., 12/1	Vicarious Liability, Insurance, and Tort Reform	pp. 691-701; 616-619; 656-657; 167-170 ATRA, 2017 Tort Reform Record, "At-a-Glance" (on Brightspace) <i>How much is a life worth? Maine raised that number to \$750,000</i> , Lewiston Sun Journal, Nov. 15, 2019 (on Brightspace)
	Review Session	None