

UNIVERSITY OF MISSOURI
SCHOOL OF LAW
TORTS § 2 - FALL 2021
TUES., WED., THURS., AND FRI. 9:00 AM – 9:50 AM
ROOM 7

PROFESSOR S. DAVID MITCHELL
Office: 326 Hulston Hall
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I. University and Law School Policies

A. Academic Integrity

Academic integrity is fundamental to the activities and principles of the School of Law. All members of the law school community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The law school community regards breaches of the School of Law's Honor Code as extremely serious matters. In the event that you violate our Academic Integrity rules on any portion of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

B. Students with Disabilities

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible.

If a disability related accommodation is necessary (e.g. a note taker, extended time on exams, captioning, COVID-19 accommodation approval, etc.), please visit with the [MU Disability Center](#) (S5 Memorial Union – 573-882-4696) who will assist you along with the Associate Dean for Academic Affairs and the Law School Registrar in implementing reasonable accommodations.

II. Course Policies

A. Attendance

The American Bar Association and the Law School requires class attendance. Class attendance is therefore required and will be noted daily. Beginning on **Wednesday, August 26, 2020**, attendance will be recorded each day. No distinction will be made between excused absences or unexcused absences. If you have a reason for a prolonged absence, please reach out immediately to me and to the Associate Dean for Academic Affairs to discuss the situation. Please be proactive in informing me or the Law School of any issue you may have.

You are permitted **four (4)** absences with no penalty. **With each subsequent absence, one point will be deducted from your final grade** (up to 8 points). After absence **number 12**, which is the equivalent of 3 weeks of classes, you will be administratively dropped from the course.

B. Learning Outcomes

At the conclusion of the course, it is expected that students will

- become familiar with historical and traditional tort law doctrine;
- learn the policy objectives of tort law from a social justice and economic lens;
- learn about the process of instituting and defending a lawsuit that stems from tortious conduct;
- gain useful information necessary to answering torts related questions on the bar exam;
- gain familiarity with tort law

The evaluation for the course is a formative assessment. Specifically, there will be a graded summative final exam. There will be ungraded, self-directed opportunities to take practice exams.

C. Computer Usage

During class, you should not be surfing the internet, instant messaging, e-mailing, or anything other than taking notes. If there is an abuse of the policy, the privilege to use computers will be revoked.

D. Class Discussion

RESPECT. Students and faculty each have a responsibility for maintaining an appropriate learning environment. Students who fail to adhere to behavioral standards may be subject to discipline, i.e. asked to leave and / or referred to the Associate Dean for Academic Affairs. The Faculty has the professional responsibility to treat students with understanding, dignity and respect, to guide classroom discussion and to set reasonable limits on the manner in which students express opinions.

Disagreements and statements of opinion are not only welcomed, but also strongly encouraged. Statements, however, should be made respectfully. As the law has protected classes, this classroom shall also be a safe place regardless of an individual's race, nationality, gender, gender identity, sexual orientation, religious beliefs, political ideology, ability, and any others that I may have forgotten.

The School of Law community welcomes intellectual diversity and respects student rights. Students who have questions concerning related issues in this class may address those concerns with either the Dean of the School of Law School, the Associate Dean for Academic Affairs, or the Office for Civil Rights and Title IX (<https://civilrights.missouri.edu/>). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

The class will operate according to the traditional Socratic Method but I encourage students to volunteer with responses and I will often leave a question open to the floor before calling on someone. You are expected to be an active participant in the discussion which means not only contributing your comments but also being an active listener and paying attention to the comments of others.

E. Canvas

You are required to sign on to CANVAS for this course. If you have any questions regarding the use of the site, please reach out to the university CANVAS Support staff.

F. Misc.

Please arrive on time to class. Please turn off or place on vibrate any device that may be distracting or disrupt the learning environment, such as cell phones, etc.

III. Texts

A. Required

Underwood, James. Tort law Principles in Practice (2nd ed.). (“Underwood”) Wolters Kluwer (Aspen). ISBN-13: 978-1454893868 or ISBN-10: 1454893869

- Connected with eBook Study Center: 9781454899273
- Loose-leaf + Casebook Connect: 9781454894759
- eBook with Study Center and Hard Copy: 9781454893868

You are required to have the course materials available with you every day for class discussion.

IV. Assignments

A. Syllabus

The Syllabus is attached and provides a guide for what will be covered. Cases will be assigned for each class. In the event that cases are not assigned, you are expected to read and prepare the next four (4) cases for class.

B. Reading

For each class, please read the cases and materials on the right side of the syllabus. The numbers in parentheses next to the cases are the pages on which the principal case can be found, e.g. *Garratt* (19) means that the case of *Garratt v. Dailey* is found in the casebook on page 19. Other materials as assigned will be made available on CANVAS.

NOTE: You are expected to read the assigned material for each class which includes the notes following each principal case and to review and prepare the problems. We will take up the material in the order in which the pages are listed in the syllabus.

V. Course Grade

Your course grade will be based on a **four-hour (4) Final Exam** with both multiple choice and essay question(s). Practice questions and exams are available on the Mizzou Law Library site (<https://mulaw.missouri.edu/library/exams/>) and will also be made available on the CANVAS site.

Final Exam	100%	Date TBD
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You will be permitted to have an outline that you have prepared in part or in whole. You will be permitted to bring in the casebook. You will **not** be permitted to bring in commercial outlines, hornbooks, or any other material. I reserve the discretionary right to add or subtract up to but no more than **two (2)** points based upon classroom performance and preparation.

NOTE: All information contained herein is subject to change at the Professor's discretion.

Torts

Intentional Torts			
Module	Topic	Source, Pp.	Cases
1.	Introduction and Battery	Underwood, 1-33	Garrat (19), Waters (23), Fisher (26), Hennly (28), Leichtman (30), Nelson (33), Muniz (39)
2.	Assault	Underwood, 45-58	Cullison (45), Bouton (49), Brower (51), McBryde (56)
3.	False Imprisonment	Underwood, 58-75	William Whirl (59), Comair, Inc. (68), Resendez (72)
4.	Intentional Inflictions of Emotional Distress (“IIED”)	Underwood, 95-118	Dominguez (96), Zalniss (100), Strauss (102), Miller (105), Jones (109), Phelps (114)
5.	Trespass	Underwood, 76-95	Harrah’s Vicksburg, Corp. (76), Shymkiv (81), Koepnick (84), Prince Kumar Arora (88)
Defenses to Intentional Torts			
6.	Consent	Underwood, 121-134	McQuiggan (122), Koffman (127), Hogan (130), McPherson (132)

7.	Self-Defense; Defense of Others	Underwood, 134-143	McDonald (135), Warren (140)
8.	Defense of Property;	Underwood, 143-150	Woodard (143), Katko (146)
9.	Necessity	Underwood, 151-156	Surroco (151), Vincent (152)
Negligence: Breach of Duty of Reasonable Care			
10.	Introduction and Duty of Reasonable Care	Underwood, 157-163	Menlove (158), Wells, Fargo & Co. (160)
11.	Reasonable Person Under Circumstances	Underwood, 164-189	Graves (164), Loftus (168), Rusk (172), Robinson (177), Motts (182), Myhaver (186)
12.	Proving Breach of Duty	Underwood, 189-221	McCarty (190), Herzog (195), Matlock (199), Wenzel (204), The T.J. Hooper (209), Wright (212), Boadle (216), Krebbs (217)
13.	Recklessness as an Alternative Standard	Underwood, 221-228	Ellender (222)

Negligence: Special Duty Rules

14.	Introduction and Duty to Act	Underwood, 305-330	Yania (307), Lawter (309), Lundy (310), Boyette (319), McCoy (322), Moody (325), Snellenberger (328)
15.	Duty to Protect Third Parties from Another's Harm	Underwood, 330-350	Emerich (331), Bradshaw (340), Otis Engineering Corp. (345)
16.	Duty Limited by Nature of the Primary Harm and by Nature of Activity	Underwood, 350-397	Robb (352), Dillon (357), Zahner (363), Boyles (367), Finlandia Center, Inc. (373), Johnson (379), Nelson (384), Murphy (390), Clover (393)
17.	Duty Based Upon Victim's Status	Underwood, 398-439	Ryals (398), Bennett (401), Hale (408), Richardson (413), Gonzalez (416), Shaw (421), Delta Tau Delta (425), Nelson (431)
18.	Duty Based Upon Defendant's Status	Underwood, 439-464	Osborn (439), Hodges (443), Rossell (448), Bradford (453), Barcelo, III (458)

Negligence: Causation

19.	Introduction and Actual Cause	Underwood, 229-269	Cay (231), Lyons (235), Rutledge (236), Kingston (240), Summers (245), Burke (248), Sindel (253), Temple-Inland Products Corp. (261), Lovett (265)
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20.	Proximate Cause	Underwood, 269-304	Palsgraf (270), In re Polemis (280), Laureano (281), Little (283), Crankshaw (288), Brisboy (291), American Truck Leasing, Inc. (294), Price (298), Emmittee (299)
Affirmative Defenses			
21.	Introduction and Contributory Negligence and Comparative Fault	Underwood, 465-488	Butterfield (467), Meadows (467), Ballentine (470), Chevrolet (476), Beaudoin (483)
22.	Assumption of Risk	Underwood, 489-517	Tunkl (489), Alack (495), Riddle (503), Schroyer (506), Davenport (512)
23.	Immunities: (a) Sovereign Immunity; (b) Spousal and Parental Immunity	Underwood, 517-537	Cestonaro (518), Campbell (524), Price (528), Sandoval (532)
Damages			
24.	Actual, Compensatory Damages: (b) General (Non-Econ.) Damages	Underwood, 553-602	Martin (555), Miraglia (563), Beagle (570), Donnellan (578), McDougald (584), Jordan (589), Strickland (596)
25.	Nominal Damages and Punitive Damages	Underwood, 632-653	Zimmerman (632), Shugar (637), Ellender (641), State Farm (644)