

TORTS
(LAW 5418 – Fall 2023)
Prof. Mantel
Syllabus

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<https://uhlc.zoom.us/j/91083747341?pwd=akJQSklsdUJpQW9HdlNYR2FoRUV3dz09>

Course Materials: DAN B. DOBBS, PAUL T. HAYDEN, ELLEN M. BUBLICK, TORTS AND COMPENSATION (Concise Edition, 9th ed. 2022). Supplemental materials available on the course Blackboard site.

Learning Outcomes: Through and as a result of this course, students will: (1) demonstrate an understanding of the basic issues of tort law; (2) understand judicial review of tort litigation; (3) understand the moral and economic values underlying various tort doctrines; and (4) demonstrate an ability to analyze the application of legal principles to different factual scenarios and communicate this analysis both orally and in writing.

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COURSE OUTLINE & READING LIST

A single reading does not necessarily correspond to a single class session. Reading assignments will be announced via Canvas or email the preceding week. Any supplemental materials will be posted on the class web site. Unless otherwise specified, page references are to the casebook. Part I of the syllabus (below) covers intentional torts, basic negligence principles, and damages. Part II of the syllabus covers adding complexity to negligence claims, vicarious liability, strict liability, products liability, and emotional harms.

PART I

I. INTRODUCTION

- A. Goals of Tort Law: 3-8 (skip *Van Camp vs, McAfoos* for now); *Prosser v. Keeton* exercise
- B. Overview of Damage Awards: 14-17
- C. Overview of Procedure: 19-27
- D. The Role of Fault: 8-11 (skip *Anderson v, Zamir*); Kerr, *How to Read a Legal Opinion; How to Brief a Case*

II. INTENTIONAL TORTS

- A. Battery: 31-36, 40-46, *White v. Muniz*, 37-39, 46-49
- B. Other Intentional Torts: 50-64 (skip *Briggs v. Southwest Energy*)
- C. Defenses to Intentional Torts: 65 (skip *Grimes*), *Touchet v. Hampton*, 68-87, *Doe v. Johnson*, 88-94 (skip *Hunt v. Zuffa*), *Surocco v. Geary*, *Ploof v. Putnam*, *Vincent v. Lake Erie Transportation Co.*

III. COMMON LAW ELEMENTS OF NEGLIGENCE

- A. Duty of Care
 - The Reasonable Person: 97-115
 - Negligence Per Se: 115-125 (skip *Smith v. Wells*), 129-131
- B. Breach of Duty
 - Risk-Utility: 133-149(skip *Bernier*), 154-158
 - Multiple Parties: 145-149

- Proving and Evaluating Conduct, Custom, and Compliance with Laws: 163-168, *Thoma v. Cracker Barrel*, 171-178 (skip *Miller v. Warren*, but read notes on p. 178)
 - Res Ipsa Loquitur: 178-186, *Warren v. Jeffries*, 186-188
- C. Actual Harm: 189-192
- D. Factual Cause: *Hale v. Ostrow*, *Salientro v. Nystrom*, 195-203, *Anderson v. Minneapolis*, 206-223
- E. Proximate Cause
- Scope of Risk: 225-245, *Doughty v. Turner Manufacturing*, 245-247
 - Intervening Causes: 247-257 (skip *Torres*), *Ventricelli v. Kinney System*, 258-263

IV. DEFENSES TO NEGLIGENCE

- A. Contributory & Comparative Negligence: 265, 267-271(skip *Pohl*), 278-301
- B. Assumption of Risk: *Boyle v. Revici*, 304-310, *Betts*, 319-321, *Gregory v. Cott*, 314-317
- C. Statute of Limitations: 323-326 (skip *Schmitz*), *Lincoln Electric*, 329-331, 334-340

V. DAMAGES: 731-741 (skip Note: Medical Monitoring Damages), 742-753

PART II

VI. ADDING COMPLEXITY TO NEGLIGENCE CLAIMS

- A. Landowners: 353-360, *O'Sullivan v. Shaw*, 369-371 (notes)
- B. Government Entities: 421-423, 426-437, 447-449 (Note: The Public Duty Doctrine)
- C. Nonfeasance: 463-465, *Yania v. Bigan*, 465-484 (skip *Estate of Ciley v. Lane*), 498-500 (Section 5)
- D. Protection from Third Persons: 501-515(skip *Wright v. PRG*), 516-522, 531-535

VII. OTHER TYPES OF HARMS

A. Emotional Harms

- Intentional Infliction of Emotional Distress: 539-549
- Negligent Information of Emotional Distress: 549-565 (skip *Boyles*), 566-567
(*Camper v. Minor*)

B. Wrongful Death and Survival Actions: 585-599

VIII. VICARIOUS LIABILITY, STRICT LIABILITY AND PRODUCTS LIABILITY

A. Vicarious Liability: 603-605, 607-608, 617-623, *Mavrikidis v. Petullo*, 623-625

B. Strict Liability: 644-649

C. Products Liability: 651-658(skip *Knitz*), 665-674, 679-693

COURSE GUIDELINES, PROTOCOLS, AND OTHER INFORMATION

I. COURSE REQUIREMENTS AND GRADING:

This course has three requirements: (1) preparing for class and actively participating in class discussion; (2) submitting a written analysis of a torts hypo and providing peer feedback; and (3) completing a four-hour exam. Only the final exam will be graded.

- (1) **Class Participation.** Preparation and active participation in class discussion will be expected, whether you attend the class in-person or virtually. For each synchronous class, I will ask questions of the panel of students assigned to be “on-call” that day. At my discretion, a student’s final grade may be adjusted upward or downward by one notch (e.g., from B to B+, or from B- to C+) in recognition of strong classroom contributions or lack thereof. Current Law Center policy requires that you attend at least 80% of all class meetings, and that missing more than 20% of classes could result in a downward reduction of your final grade or result in your being dropped from the course. If you are unable to prepare adequately for class, please let me know in advance. Similarly, if you are unable to attend class you should contact me in advance (barring an emergency that prevents your doing so). **If you are more than 10 minutes late, you will be marked as absent (please do not sign the sign-in sheet).**
- (2) **Analysis of Hypo.** You will submit a written analysis of a torts hypo, and then provide feedback to three of your peers on their analysis. This assignment will be graded on a pass/fail basis. Students who fail to complete the assignment or peer feedback, or who put minimal effort into the assignment or their peer feedback, will receive either a failing grade or partial credit. A failing grade will result in your losing 15 points on your final exam. Partial credit will result in your losing up to 15 points on your final exam.
- (3) **Exam.** You will complete a graded four-hour, in-class exam. This will be a **CLOSED BOOK** exam. However, students will be allowed to consult a 1 page (2-sided) outline. More details regarding the exam format and content will be discussed as the exam date approaches.

Use of AI: Generative artificial intelligence tools, such as ChatGPT, Claude.ai, and other large language models, can generate text in response to prompts and/or input of other text/documents/code/images. AI Generated Text also can include computer code or programs as well as human language content. The output generated by these tools appears to have human-mimicking “intelligence” and is thus potentially usable as a substitute for written or oral work product that you might otherwise generate on your own or in collaboration with your peers.

Your continuing enrollment in this course is deemed to be a pledge by you under the Honor

Code to not prompt, generate, obtain, read, or use any AI Generated Text in any manner not expressly permitted below. This applies to AI Generated Text from yourself or others. Specifically, this pledge includes that any assessment work product for the course submitted by you is without any contribution from AI Generated Text and that AI Generated Text was not used in the development or drafting of any assessment work product, except as expressly permitted below. This pledge extends to the plagiarism policy and unauthorized aid/materials parts of the Honor Code; AI Generated Text will be treated as from another/other in applying the plagiarism policy to this course.

The term “assessment” means any work product generated for this course that is submitted to the instructor or TA, that is presented in a class session, regardless of whether the content is graded or not. This includes the final exam and hypo assignment.

Notwithstanding the foregoing, you may use AI Generated Text for this course as follows:

- For the assignment requiring you to submit a written analysis of a torts hypo, you may use AI for the *sole purpose* of checking your text for misspellings, grammar and punctuation errors, strength and clarity of prose, verbosity, effective transitional language and thesis sentences, word choice, excessive passive voice, and like things.
- You may use AI Generated Text in connection with any course-related activity other than the development or drafting of an assessment, such as to assist you in preparing for class or to enhance your understanding of torts principles. For example, you may use AI Generated Text to create content for an outline that you will use to prepare for the final exam or to create hypotheticals that test your understanding of the course content.

On-Call Panels: Each student will be assigned to an on-call group. The “red” and “green” groups will be on-call on alternating Tuesdays, the “orange” and “blue” groups will be on-call on alternating Wednesdays, and the “yellow” and “purple” groups will be on-call on alternating Thursdays. The on-call groups will be posted on the course web site. You may take a “pass” day twice a semester provided you ask me *before* class not to call on you.

II. COURSE GUIDELINES AND PROTOCOLS:

Seating Assignments: At the second class, I will create a seating chart. Please sit in your assigned seat for the remainder of the semester.

Attendance: Attendance for each class will be done through a sign-in sheet. Signing-in for a class that you did not attend or signing-in for someone else is an honor code violation. For asynchronous video lectures I will take attendance by tracking whether you have accessed the video.

Cell Phones/Pagers: During class, all electronic devices should be set to silent mode.

Office Hours: I will hold office hours via Zoom on Fridays from 11 am – noon and by appointment. Please feel free to meet with me not only about class matters, but also for course selection guidance, career counseling, or any other matter related to your legal education and career.

Canvas: Handouts, PowerPoint slides, the syllabus, supplemental readings, and links to any supplemental materials will be posted on the course Canvas site. Canvas will also contain recorded asynchronous lectures and any recorded class lectures.

Recap Videos: At the end of the week or at the end of a unit, I will post on Canvas a video recording that will recap the central points from that week or unit's classes. These videos are optional but highly recommended, as most students find the class recaps very helpful.

Video Recordings: All asynchronous lectures, recorded class lectures, and class recaps will be available on Canvas. These recordings are for the sole educational purposes of allowing students to review asynchronous lectures and class recaps. Your contributions to class discussion, whether voluntary or while on call, will be included in the recording. Your continued registration in this class indicates your acquiescence to any such recording for the purposes described above.

Course Communications: All communications from me will be either posted on Canvas or sent to your official UH email address. Faculty use the CougarNet email to respond to course-related inquiries such as grade queries or progress reports for reasons related to compliance with FERPA. To access your CougarNet email, login to your Microsoft 365 account with your CougarNet credentials. Visit University Information Technology (UIT) for instructions on how to connect your CougarNet e-mail on a mobile device.

Webcams: Access to a webcam is required for students participating remotely in this course. Webcams must be turned on (state when webcams are required to be on and the academic basis for requiring them to be on). (Example: Webcams must be turned on during exams to ensure the academic integrity of exam administration.)

Syllabus Changes: Please note that the instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible through email and Canvas.

Honor Code: The [UHLC Honor Code](#) applies to all aspects of the class. *You are responsible for knowing all Honor Code provisions and for complying with the Honor Code.* Please ask Professor Mantel if you have any questions regarding how the Honor Code's provisions apply to specific activities or situations related to the course. *It is an Honor Code violation to review the graded or ungraded assignments distributed to, or written by, any of students from prior years.* Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus.

Recording of Class: Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without the advanced written consent of Professor Mantel. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Justin Dart, Jr. Student Accessibility Center](#). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be

recorded by the instructor. Students may use the instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with *anyone* without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

III. OTHER INFORMATION

Chosen Names/Preferred Pronouns: I will gladly honor requests to use alternate names or gender pronouns—including non-binary ones such as they/them/theirs. Please advise me of your preference early in the semester so that I may make appropriate changes to our records.

COVID Policies and Information: If you are experiencing any COVID symptoms that are not clearly related to a pre-existing medical condition, please do not come to class. Please see [Student Protocols](#) for what to do if you experience symptoms and [Potential Exposure to Coronavirus](#) for what to do if you have potentially been exposed to COVID-19. Students are encouraged to visit the University's [COVID-19](#) website for important information including diagnosis and symptom protocols, on-campus testing, and vaccine information. Please check the website throughout the semester for updates. Data suggests that vaccination remains the best intervention for reliable protection against COVID-19. Students are asked to familiarize themselves with pertinent [vaccine information](#) and to consult with their health care provider. Students are encouraged to visit the University's [COVID-19](#) website for important information including diagnosis and symptom protocols, testing, vaccine information, and post-exposure guidance. Please check the website throughout the semester for updates.

Inclusive Learning Space: This is an inclusive learning space. At UHLC, we are committed to ensuring inclusive online and classroom learning spaces, where you'll be treated with respect and dignity, and where everyone is provided the equitable opportunity to participate, to contribute, and to succeed. In this course, all students are welcome regardless of socio-economic status, age, race, ethnicity, disability, religion, national origin, veteran's status, sex, sexual orientation, gender identity, gender expression, political affiliation, marital status and other diverse identities that we each bring to class. Our class is richer for this diversity. Inclusive learning spaces facilitate the innovation and creative thought that enhance student success. This success arises from the participation, support, and understanding of you and your colleagues. I encourage you to speak up and to share your views, but also understand that you are doing so in a learning environment in which we're all expected to engage respectfully and with regard to the dignity of all others. If you feel like your class performance is impacted in any way by your experiences inside or outside of class, please reach out to the instructor. I want to be a resource for you. If you feel more comfortable speaking with someone besides the instructor, Student Services is an excellent resource: 713-743-2182.

Mental Health and Wellness Resources: The University of Houston has a number of resources to support students' mental health and overall wellness, including CoogsCARE and the UH Go

App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit uh.edu/caps, call 713-743-5454, or visit a Let's Talk location in-person or virtually. Let's Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.

The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment. The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

The Texas Lawyers' Assistance Program ("TLAP") also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. TLAP's website includes a page with links to sources about mental health that are of interest to law students: <https://www.tlaphelps.org/law-students>.

Discrimination and Sexual Misconduct: The Law Center and the University are committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>. Please be aware that per the UHS Sexual Misconduct Policy, your instructor is a "responsible employee" for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

Reasonable Academic Adjustments/Auxiliary Aids: The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing jdcenter@Central.UH.EDU.

Accessibility and Accommodations: UHLC is committed to ensuring that all students enjoy equal access and full participation. If you anticipate or experience barriers based on a disability (including any chronic or temporary medical or mental health condition), please feel free to reach out to me so that we may discuss options. If you require any support services, you may contact Ms. Samantha Ary, Academic Records Coordinator. Ms. Ary is located in room 44A TU-II in the Office of Student Services suite, and she can be reached at sary@central.uh.edu or 713-743-7466. Requests for accommodation that involve graded assignments **must be directed to Ms. Ary** and should be made as soon as possible to allow adequate time to document and to process the request. If you observe religious or cultural holidays that will coincide with synchronous class sessions or conferences, please let me know as soon as possible, so that I may make arrangements.

Resources for Online Learning: The University of Houston is committed to student success, and provides information to optimize the online learning experience through our [Power-On](#) website. Please visit this website for a comprehensive set of resources, tools, and tips including: obtaining access to the internet, AccessUH, and Canvas; using your smartphone as a webcam; and downloading Microsoft Office 365 at no cost. For questions or assistance contact UHOnline@uh.edu.

Academic Enrichment Program: The Academic Enrichment Program (AEP) is designed to provide academic support, counseling, and advice to first year students. In order to assist new students with developing the skills necessary for successful completion of law school, AEP offers open tutorial programs in the fall and spring. Second and third year law students with strong academics serve as Academic Enrichment Tutors, for first year fall classes. The tutors meet regularly, with first year students in the open sessions, to assist them with enhancing their law school study skills.

Security Escorts and Cougar Ride: UHPD continually works with the University community to make the campus a safe place to learn, work, and live. The security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety, please call 713-743-3333. Arrangements may be made for special needs.

Parking and Transportation Services also offers a late-night, on-demand shuttle service called “Cougar Ride” that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at <https://uh.edu/af-university-services/parking/cougar-ride/>.

Other Helpful Information:

Coogs Care: <https://uh.edu/dsa/coogscare/>

Student Health Center: <https://www.uh.edu/healthcenter/>
<https://www.uh.edu/healthcenter/>