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.

● 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”
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
The Spectrum Between Subjective and Objective
  ● Leichtman v. WLW Jacor Communications, Inc.: “The Smoke in the Face Case”
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’
Session 6: Tuesday, February 6th, 2018
Chapter IV: Defenses: Overriding the Choices of Others

Consent

Preservation of Bodily Integrity
- Courvoisier v. Raymond: “The Mistaken Self-Defender”

Preservation of Property

Beyond the Common Law – Statutory Exceptions and Constitutional Protections

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
- United States v. Carroll Towing: “The Learned Hand Formula 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”
- 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
The Problem of Multiple Defendants

Session 11: Tuesday, February 20th, 2018
Chapter IX: Negligence Per Se
The Basic Doctrine
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”
- 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
**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”
- Garcia v. Superior Court of Santa Clara County: “The Fatally Wrong Parole Officer”

**Session 15: Tuesday, March 6th, 2018**

**Chapter XIII: Emotional and Economic Harm**

**Emotional Harm**

- Falzone v. Busch: “The Almost Automobile Accident”
- 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”

_Spring Break March 10th - 18th_

_No Class_

**Session 16: Monday, March 19th, 2018**

**Chapter XIV: Causation**

**Theories of Causation**

- Stubbs v. City of Rochester: “The Sewage in the Drinking Water”
Session 17: Tuesday, March 20th, 2018
Chapter XV: Proximate Cause
- In re Polemis: “The Plank that Exploded a Ship”
- Palsgraf v. Long Island Railroad Co.: “The Fireworks on the Train Platform”
- Benn v. Thomas: “The Time-Delayed Heart Attack”
- Steinhauser 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”

Session 19: Tuesday, March 27th, 2018
Chapter XVII: Strict Liability
- Sullivan v. Dunham: “The Exploding Tree”
- 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
- Seffert v. Los Angeles Transit Lines: “The Calculating Pain and Suffering Case”

Session 25: Tuesday, April 17th, 2018
Chapter XXIII: Conclusion
- Ortiz v. Sessions: “The Gov’t’s Insistence on Expelling a Good Man”