

ETHICAL THEORY/PHILOSOPHY OF LAW

PHILOSOPHY 6320

SPRING 2012

Course Description: This course will explore ethical theory through tort law. We will investigate: intentional torts, privileges, negligence, causation in fact, proximate cause, defenses, and damages. In these investigations, our focus will be less on what the law *is*, than *why* it is what it is and whether it *should be* as it is. Furthermore, we shall consider case-based approaches to moral methodology, as opposed to principle-based approaches or alternatives (e.g., reflective equilibrium). To put this another way, torts doctrine is largely constructed from the common law, and we can query the advantages and disadvantages of this method.

Professor: Dr. Fritz Allhoff
Friday 1:30-2:30; 3006 Moore Hall
fritz.allhoff@wmich.edu, 387-4503 (w)

Seminar: Friday 2:30-4:50; Moore 3014

Texts: *Required:* Victor E. Schwartz, Kathryn Kelly, and David F. Partlett, *Prosser, Wade, and Schwartz's Torts: Cases and Materials*, 12th ed. (New York: Foundation Press, 2010).

Optional: Joel Feinberg and Jules Coleman (eds.), *Philosophy of Law*, 8th ed. (Belmont, CA: Wadsworth Publishing, 2007).

Optional: David G. Owen (ed.), *Philosophical Foundations of Tort Law* (Oxford: Oxford University Press, 1997).

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| Grading: | Attendance/Participation | 20% |
| | Case Briefs | 10% |
| | Presentation | 10% |
| | Annotated Research Bibliography | 10% |
| | Research Paper | 50% |

Attendance/Participation: You are required to attend each seminar and to participate. If you miss a seminar, you may turn in a 1000-word reaction to the assigned readings (half exegetical, half evaluative) at the beginning of the following seminar to avoid a zero for the previous week. You may do this, at most, two times.

Case Briefs: You should brief each case that you read, which means providing: a citation; the salient facts; the “procedural posture” (i.e., who the court found for, including at both the trial and, if applicable, appellate levels); the issue (i.e., what’s the question the court was trying to answer?) and the holding (i.e., what the answer was); and the reasoning (i.e., why). Each brief should be done on a separate page, whether written or typed. Note further that any student is responsible for providing any of the above information with regards to any case at any time, so the case briefs—as well as conscientious reading—effectively bear on your participation grade as well.

Presentations: The last three weeks of class will comprise student presentations on their research projects (see below). Each student should plan a presentation of approximately one hour and should also pick reading assignments for the class (up to 50 pages); these may be philosophy essays, law review articles, court decisions, etc. This is a valuable opportunity to generate discussion regarding the central ideas on which you will write, as well as to try out argumentative lines you plan to develop.

Annotated research bibliography: Before writing your research paper, you will compile a research bibliography which will support the research for that project. There should be at least fifteen academic sources in this bibliography, at least half of which should be from after 2000. An additional five sources should be court decisions; the timing of these is unimportant, but you should verify that they have not been overturned. For each of these twenty sources, you should provide full bibliographic information as well as a 100-word précis. Comments will be offered on the bibliography as will be useful for developing the research paper.

Research paper: Students will incorporate the annotated research bibliography into a research paper, which will be in the 6000-9000 word range. My preference would be for something approximately in the middle of this range as I suspect shorter papers will lack some of the depth of longer ones and that longer ones will lack some of the focus of more intermediate ones. Nevertheless, you have some flexibility on this length.

Statement on Academic Honesty: You are responsible for making yourself aware of and understanding the policies and procedures in the Graduate Catalog (pp. 25-27) that pertain to Academic Honesty. These policies include cheating, fabrication, falsification and forgery, multiple submission, plagiarism, complicity and computer misuse. If there is reason to believe you have been involved in academic dishonesty, you will be referred to the Office of Student Conduct. You will be given the opportunity to review the charge(s). If you believe you are not responsible, you will have the opportunity for a hearing. You should consult with me if you are uncertain about an issue of academic honesty prior to the submission of an assignment or test.

Seminar, Reading, and Assignment Schedule

| Week | Date | Topic | Readings |
|-------------|-------------|--|--|
| 1 | 1/13 | Introduction to Torts | Schwartz, Kelly, and Partlett [SKP], Chapter I |
| 2 | 1/20 | Guest Speaker: Prof. Brian Kalt (MSU College of Law) | TBD |
| 3 | 1/27 | Intentional Torts | SKP, Chapter II, §§1-4, 6-7 |
| 4 | 2/3 | Privileges | SKP, Chapter III, §§1-6 |
| 5 | 2/10 | Negligence | SKP, Chapter IV, §§1-4(B) |
| 6 | 2/17 | Causation in Fact | SKP, Chapter V |
| 7 | 2/24 | Proximate Cause Case Briefs Due | SKP, Chapter VI, §§1-2 |
| 8 | 3/2 | No Class (Spirit Day) | N/A |
| 9 | 3/9 | No Class (Spring Break) | N/A |
| 10 | 3/16 | Defenses Annotated Research Bibliography Due | SKP, Chapter XII, §§1-2 |
| 11 | 3/23 | No Class | N/A |
| 12 | 3/30 | Damages | SKP, Chapter X |
| 13 | 4/6 | Student Research Presentations | TBD |
| 14 | 4/13 | Student Research Presentations | TBD |
| 15 | 4/20 | Student Research Presentations | TBD |
| FEW | 4/27 | Research Paper Due | |