ADVANCED TORTS

The first-year Torts course provides a basic introduction to the three major areas of tort liability: intentional torts, negligence and strict liability. It also focuses on the tensions between the major goals of tort liability, deterrence and compensation.

The curriculum cluster on advanced torts builds upon this foundation by offering students an opportunity to delve in depth into some of the more controversial and important issues now facing the tort system. It also permits students to explore aspects of tort liability not covered in first-year Torts courses.

Professor Heidi Li Feldman teaches a three-credit course in Advanced Torts: Theory and Practice. The course includes an intensive survey of recent torts scholarship and examines the major theoretical issues raised by the literature. It looks at histories of modern tort law; efficiency analysis of tort problems; and tort liability, insurance, and tort reform. The course delves into three substantive areas of tort law — mass toxic torts, workers accidents, and libel and defamation — and considers these areas in a comparative context.

The institution of insurance is essential to the functioning of the tort system, and the course in Insurance Law provides students with a comprehensive understanding of not only liability insurance but also property, casualty, life and health insurance. It also takes up the tort liability of agents and brokers, and the liability of insurers for failing to settle tort claims.

The Class Action Law and Practice Seminar explores the emerging issues surrounding the class action device in a variety of contexts, including mass torts cases. The seminar covers all phases of a class action suit.

Search Advanced Torts Courses (http://curriculum.law.georgetown.edu/course-search/?cluster=cluster_3)

LAW 1632 v00 Aggregate Litigation: A Global Perspective (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201632%20v00)
J.D. Seminar (cross-listed) | 1 credit hour
In a world of mass production, mass harm often follows. A defective product might injure numerous consumers; a false report might mislead multiple investors; and a discriminatory practice might impact a large number of employees. In such cases, litigation by each individual plaintiff might prove ineffective, and often impractical. To resolve this problem, legal systems have devised various forms of aggregate litigation and collective redress procedures. This introductory course discusses the key characteristics of these procedures, using a comparative framework. Class actions and alternative collective redress regimes in the U.S., Canada, Australia, Israel and Europe will be studied, and the potential for multi-national aggregate litigation, in a single or in multiple forums, will be explored.

Note: This course will meet on Mondays and Wednesdays, 11:10 a.m. - 1:10 p.m. on the following dates: 9/5, 9/10, 9/12, 9/17, 9/19, 9/24, and 9/26.

LAW 088 v00 Class Action Law and Practice (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%20088%20v00)
J.D. Course | 2 credit hours
Class actions in such diverse areas as securities and corporate governance, employment discrimination, toxic torts, mass accidents, and consumer fraud have challenged the capacity and creativity of federal and state courts throughout the Nation. New forms of class suits continue to pose challenging questions for the judiciary. This seminar will focus on the class action device as an attempt to resolve disputes on an aggregate basis. The principal focus will be on emerging procedural and constitutional issues raised in recent and pending class action suits, and the treatment of those issues in the Supreme Court and federal courts of appeals. The seminar will explore these issues by evaluating class actions in a variety of settings, focusing on appellate decisions that have resolved (or failed to resolve) significant issues in class action law and practice as well as case-studies of pending or recently decided class actions. The seminar will cover all phases of a class action, including pleading and other pre-certification issues, the certification decision, appeals from class certification decisions, class notice, settlement issues, trial, and the legal doctrines governing simultaneous overlapping federal and state-court litigation.

Prerequisite: Civil Procedure (or the equivalent Legal Process and Society).

LAW 1602 v00 Advanced Topics in Torts: Products Liability, Guns, and Drugs (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201602%20v00)
J.D. Course (cross-listed) | 3 credit hours
This upper level course will cover the law of products liability generally and take a close look at the state of products liability litigation and liability in relation to guns and to opioids. The goal is to combine a survey of the complicated field of products liability law with a sophisticated deep dive into two areas of cutting edge products liability litigation. The first part of the course will familiarize students with major topics applicable to all products manufacturers including: a product distributor’s liability for defect-caused harm, allocating responsibility inside and outside the commercial chain of distribution, causation, affirmative defenses, approaches to design defect litigation, and federal preemption of products liability claims. Later in the course, we will examine gun manufacturer liability, currently and prior to the passage of the Protection of Lawful Commerce in Arms Act, which reshaped the landscape of gun litigation. Finally, we will end with a consideration of the growing litigation related to the opioids, litigation inflected by doctrines peculiar to prescription drug manufacturer liability. The final examination will be a self-scheduled 48 hour take home exam. Attendance and participation are crucial to the course, and significant credit will be given to those students who contribute thoughtfully and constructively to class discussion of cases and issues.
LAW 1101 v00 Consumer Advocacy: Public Health Regulation of Tobacco and Personal-Care Products (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201101%20v00) (Fieldwork Practicum)

J.D. Practicum | 4 credit hours

In fieldwork practicum courses, students participate in weekly seminars and conduct related fieldwork at outside organizations. This fieldwork practicum course will focus on federal regulation of tobacco and personal-care products by the Food and Drug Administration (FDA) under the Food, Drug, and Cosmetic Act and how public interest groups advocate greater protections for consumers. Students will participate in a two-hour/week seminar and carry out either 10 or 15 hours/week of fieldwork as interns with one of two national consumer and environmental health organizations: the Campaign for Tobacco-Free Kids or the Environmental Working Group. (Two pass/fail credits will be awarded for 10 hours/week of fieldwork, and three pass/fail credits will be awarded for 15 hours/week of fieldwork.)

SEMINAR: In the two-credit, graded, seminar portion of the practicum, students will utilize legislative and administrative materials as well as case law to become familiar with the processes by which the federal government regulates tobacco and personal-care products, and to critique both the statutory framework and FDA’s performance in protecting consumers. The 2009 Tobacco Act created a new regulatory regime very different from the FDA’s existing authority to regulate other products within its jurisdiction. Examination of the agency’s initial steps to carry out this responsibility provides a chance for students to understand how a federal agency responds to a legislative mandate requiring innovative action to address a major public health problem. On the other hand, FDA has minimal authority to regulate personal-care products, raising real concerns for consumer protection. The course will also touch on related topics such as the role of the Federal Trade Commission in the regulation of trade practices, the Freedom of Information Act, the legislative process and the interaction of federal and state regulation.

FIELDWORK: In the two- or three-credit, mandatory pass-fail, fieldwork portion of the practicum, students will work as interns with the Campaign for Tobacco-Free Kids or the Environmental Working Group on projects aimed at strengthening the legislative or administrative processes, or on matters in litigation, under the supervision of attorneys connected with these organizations. (Students who have completed this course will have priority consideration if they opt to apply for the year-long Toni Stabile Graduate Fellowship at the Environmental Working Group after graduation.)

Prerequisite: J.D. students must complete the required first-year program prior to enrolling in this course (part-time and interdivisional transfer students may enroll prior to completing Criminal Justice, Property, or their first-year elective).

Recommended: Administrative Law; Food and Drug Law-related courses.

Mutually Excluded Courses: Students may not concurrently enroll in an externship or a clinic or another practicum course.

Note: LL.M. students must seek professor permission to apply.

Evening students who work during the day are encouraged to reach out to the professors to determine whether this practicum course would be compatible with their schedules. This is either a four or a five credit course, depending on the number of fieldwork hours/week. Two credits will be awarded for the two-hour weekly seminar and either two credits (for 10 hours/week) or three credits (for 15 hours/week) for the fieldwork. The fieldwork will be conducted over a minimum of 11 weeks, to be arranged with the faculty members. Students will have the ability to choose the credit option that best fits their schedules. However, the fieldwork must be completed during normal business hours. All students will initially be registered for a total of four credits.

LAW 223 v02 Insurance Law: Litigation and Regulation (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%20223%20v02)

J.D. Course (cross-listed) | 2 credit hours

This course focuses on the law of insurance, the insurance of business, and the business of insurance. Questions concerning property and casualty insurance, including insurance for mass torts, product liability, directors’ and officers’ liability, and natural disasters are examined. The obligations of insurance companies to conduct their business according to state and, to some extent, federal regulation and the law of insurance bad faith are explored. Particular types of coverages that will be studied include homeowners insurance, comprehensive general liability (CGL) insurance, excess and umbrella insurance, D&O insurance, and property insurance (including business-interruption/lost-profits insurance). Students will develop sophisticated skills in analyzing the applicability of insurance to complex loss situations, the duties of insureds and insurance companies, and the ethical questions faced by lawyers sometimes caught in between.

Note: The course does not address life, disability, or health insurance, or ERISA.

Learning Objectives:

In this course, you will learn:

1. Business context and objectives for insurance transactions.
2. How to parse and interpret insurance-policy language.
3. How property-casualty insurance responds to “real world” situations, involving losses to property including from natural disasters, mass tort claims, shareholder claims, and other situations.
4. How courts and law makers create incentives for insurance companies to act in positive ways. This includes questions of insurance company "bad faith” or good faith, the obligation of an insurer to accept a reasonable settlement offer from a plaintiff, obligations of insurers to provide lawyers to defend the insured and the ethical limits on the role of the lawyer, including when the lawyer is selected by the insured rather than the insurance company.
5. Through reviewing excerpts from briefs, students will gain a better appreciation of how to articulate insurance-law points and make appropriate argument.
6. The reading material introduces the wide variety of relevant sources that may assist lawyers, such as cases, articles/treatises, attorneys-general opinions, bar-association ethics opinions, and actual insurance policies.

Prerequisite: Torts (or Government Processes), Civil Procedure (or Legal Process and Society), and Contracts (or Bargain, Exchange, and Liability).

Recommended: Corporations.
LAW 611 v11 Internet Defamation Simulation: Alternative Dispute Resolution in a Transnational Dispute (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%20611%20v11)
J.D. Seminar | 1 credit hour
This Week One simulation course is designed to introduce you to some of the issues that arise in transnational disputes and the skills employed by lawyers in representing clients in the context of an international dispute resolution proceeding. The course uses a single problem involving an article on a California news website alleging that a French plaintiff used his wine export business to launder money for organized crime figures in Russia and Italy. The French plaintiff has alleged that he was defamed by the article, and the parties, which also include a U.S.-based web hosting service, have agreed to resolve the dispute through an international arbitration proceeding.

Students will be assigned roles and will work in teams, representing one of the three parties to the dispute. They will begin the week by conducting client interviews to ascertain the facts from their client’s perspective. After debriefing on the client interview process, students will prepare for a simulated international arbitration hearing in which each student will argue whether French or United States (or some other) law should govern the dispute. Upperclass teaching fellows, in the role of arbitrators for the dispute, will render a decision on the choice of law issue, and students will then prepare for and represent their clients in a mediation session to try to settle the case on the merits.

The assigned readings and classroom sessions during the week are designed to prepare students to engage in the simulated client interview, arbitration hearing, and mediation session. The materials and classes will introduce the theory and doctrine governing components of defamation law in several jurisdictions, limitations on liability for Internet Service Providers under U.S. and French law, choice of law theory and methodology, and techniques for preparing for arguments, interviewing clients, and conducting mediation sessions.

Note: FIRST-YEAR WEEK ONE COURSE: This course will meet on the following days: Monday, January 6, 2020, through Thursday, January 9, 2020. This course is mandatory pass/fail, and does NOT count against the 7-credit pass/fail limit for J.D. students.

This optional, elective course is for first-year J.D. students only, who are enrolled through a lottery process. ATTENDANCE AT ALL CLASS SESSIONS IS MANDATORY. All enrolled and waitlisted students must be in attendance at the start of the first class session in order to be eligible for a seat in the class and must attend each class session in its entirety. For more information, see the Week One website (https://www.law.georgetown.edu/experiential-learning/simulations/first-year-week-one-simulations). Due to the intensive nature of the course, the small-group, team, and individual work that is involved, and the preparation that is necessary to ensure a positive student experience, students who wish to drop the course after they have accepted a seat must drop by Monday, December 2, at 3:00 p.m. After that point, permission to drop from the course professor and Assistant Dean for Experiential Learning is required. Students who are enrolled but do not attend the first class session will be withdrawn from the course.

LAW 1141 v00 Law Sagas Seminar (http://curriculum.law.georgetown.edu/course-search/?keyword=LAW%201141%20v00)
J.D. Seminar | 3 credit hours
Starting with personal injury litigation in the 1970s, nonfiction books (including books chronicling specific cases and episodes of complex litigation) have increasingly targeted the "trade" audience (as opposed to a primarily academic one). This genre has expanded beyond the boundaries of personal injury litigation, even beyond mass tort actions. Today, all sorts of legal developments become the subject of "law sagas" (detailed narratives covering how a legal situation - a settlement, a legislative package, a constitutional amendment, even a career in law - unfolded in its particular context). This seminar, Law Sagas, addresses the broadened scope of a literature that originally focused on more traditional tort litigation (that narrow literature was covered in Tort Sagas, a seminar previously offered at the Law Center.)

Examples of law sagas include:
- Chasing Gideon: The Elusive Quest for Poor People's Justice
- Madison's Hand: Revising the Constitutional Convention
- What Is Life Worth?: The Inside Story of the 9/11 Fund and Its Effort to Compensate the Victims of September 11th.

Other recently published law sagas focus on a historical legal episode or individual. Examples include:
- Local People: The Struggle for Civil Rights in Mississippi
- The Trial of Susan B. Anthony: An Illegal Vote, a Courthouse Conviction and a Step Towards Women's Suffrage
- John Marshall and the Heroic Age of the Supreme Court

A single event or historical development can spawn multiple law sagas. One example is the effort to legislate and ratify the Nineteenth Amendment. A few law sagas on the subject:
- There is Power in a Union: The Epic Story of Labor in America
- Mother Jones: The Most Dangerous Woman in America

Law sagas about the same event offer different perspectives and varying information, illustrating the significance of how legal narratives are framed.

Some biographies and memoirs qualify as law sagas, including books as otherwise different as Power Concedes Nothing: One Woman's Quest for Social Justice in America, from the Courtroom to the Kill Zones and William Blackstone: Law and Letters in the Eighteenth Century. Finally, some professional work product from lawyers approximates the law saga genre, as does "The Freeh Report", formally entitled Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to Child Sexual Abuse Committed by Gerald A. Sandusky.

Law Sagas will cover most or all of the above referenced works, calling for close reading and student-led discussion of this literature. For paper assignments, students will have the choice of (1) reading and appraising a published law saga (either than those covered in the course) of his or her choosing (subject to professor's approval), setting it in the context of the genre as a whole and giving particular attention to how well or poorly the book conveys legally significant information to its audience or (2) writing a short, original law saga by examining a case or legal development not previously put in broader context and using the techniques demonstrated in the seminar readings to illuminate the case or legal development. Time permitting, students should expect to make presentations to their classmates in which presenters will introduce their classmates to their preliminary ideas (based on paper outlines or drafts) and classmates will provide suggestions for improvement.
This course will focus on the broad array of skills needed by lawyers to manage complex litigation projects, including advising a board of directors, developing a strategic plan, organizing and managing teams, and communicating with the media. Each week, students will learn and put into practice these skills in the context of the actual litigation involving the drug Vioxx. After the drug was removed from the market in 2004, the pharmaceutical company, Merck, faced claims from over 60,000 individuals after the drug was linked to heart attacks, strokes, and other cardiovascular events after long-term use. Merck’s decision to try these cases in federal and state courts, rather than seek an early settlement, further complicated an already complex legal situation. Using this rich fact pattern and drawing from the professor’s experience as Merck’s former general counsel, students will explore significant phases of this litigation, understanding the challenges faced by Merck’s lawyers “in real time.”

Class discussion and exercises will be based on readings that include instruction and background on the relevant skills, public information on the Vioxx litigation, and hypotheticals drawn from the litigation. Students should expect to prepare approximately six short written submissions, such as slide decks with notes, during the semester. Classes will include student presentations based on these exercises. Grades will be based on the interim written submissions, participation in classroom exercises and discussion, and a final written project.

**Prerequisite:** Corporations.

**Note:** ATTENDANCE IS MANDATORY AT ALL CLASS SESSIONS. All enrolled and waitlisted students must be in attendance at the start of the first class session in order to be eligible for a seat in the class and must attend each class session in its entirety.

**LAW 1426 v00 Medical Malpractice Seminar**

This seminar covers the doctrinal and empirical literature on medical malpractice and tort reform. We will cover physician and institutional liability, health care quality and medical error, the economics of litigating medical malpractice cases, the causes of malpractice crisis, and the effect of the reforms that have resulted (and been proposed).

**LAW 364 v05 Public Health Law and Ethics**

This course is intended to provoke thought and legal and ethical debate over pressing public policy issues surrounding the major health problems facing America and globally—e.g., infectious diseases, smoking, obesity, violence, injuries, and the environment. First, the course will examine the Constitutional and historical foundations of public health law in the United States. This section will discuss the Constitutional and statutory powers and duties of government to assure the conditions for a healthy and safe population, including the implementation of the Affordable Care Act. Second, the course will examine the conflicts between public health and civil liberties. For example, the course will probe conflicts between: (1) injury and disease surveillance and privacy; (2) labeling and advertising restrictions and freedom of expression; (3) personal control measures (e.g., screening, forced medical treatment and quarantine) and liberty; (4) commercial public health regulation and property rights. Finally, the course will examine the future of public health law. This “Future” includes a careful analysis of biosecurity—both naturally occurring (e.g., Ebola, pandemic influenza, Zika Virus) and intentional (e.g., bioterrorism such as smallpox and the anthrax attacks after September 11, 2001). This course should be important for all students considering careers in health law as well as those simply interested in exploring and debating the state of public health in America. It is a particularly unique opportunity for students given the expertise of Georgetown Law’s own O’Neill Institute for National and Global Health Law.

**LAW 364 v06 Public Health Law and Ethics**

This course explores the interwoven dynamics of legal and ethical aspects of public health issues in the United States and abroad, including infectious diseases, tobacco use, obesity, and the environment, among others. This course will be valuable for students interested in global health law, as well as students looking to broaden and deepen their expertise in preparation for a career in health law more generally.

This course will proceed in three movements. First, it will consider the conceptual foundations of public health law in the United States through the lens of governance, ethics, and human rights, affording particular attention to the statutory and regulatory powers and duties of federal and state governmental entities to protect the health and safety of the population. Second, it will examine the sources of tension between the objectives of public health and civil liberties including, among others: labeling and advertising restrictions and free speech; disease surveillance and privacy; and considerations in personal versus population-based conceptions of health. Lastly, this course will conclude by considering emerging public health issues at the intersection of law and ethics, such as biosecurity, vaccine policy, and the role for public health in broader discussions around health care reform in the United States.
For several generations, a battle has raged over the soul of tort law. What is the point of tort law, and what do its doctrinal features tell us about its goals? Is it a system for ensuring efficient outcomes when activities create externalities? Is it a public forum for the recognition and correction of private wrongs? Or is it a safety net whose goal is to spread risks as widely as possible? Is it even fair to describe tort law as having goals? This seminar will explore some of these questions through the history both of tort law itself and of scholarly interpretations of tort law. We will read classic works of tort theory, including articles by Richard Posner, Guido Calabresi, John Goldberg, Ben Zipursky, and others. Our class discussions will focus on developing our understanding of the scholarly dialogue as well as thinking critically about the strengths and weaknesses of the various arguments we’ll encounter.

This seminar satisfies the upperclass legal writing requirement. Students will be graded primarily on the basis of a final paper of at least 6,000 words that explores a tort theory topic of their choosing.

Prerequisite: Torts.

Full-time and Visiting Faculty

Heidi Li Feldman
Jonathan T. Molot
Brishen Rogers
Paul F. Rothstein
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