

# **Tort Law and Damage Compensation 2010-2011**

**Professor Michael R. Hadskis**

Office #330     [michael.hadskis@dal.ca](mailto:michael.hadskis@dal.ca)     494-2534

My office hours for the first term will be Tuesdays, from 12:00 p.m. to 1:30 p.m., but feel free to drop by my office anytime or to make an appointment. I will advise you of my second term office hours at a later date.

---

## **1) Class Time and Location**

### First Term

Mondays, 12:30 p.m. – 2:00 p.m. (Room L406)

Thursdays, 1:00 p.m. – 2:30 p.m. (Room L406)

### Second Term

Tuesdays, 10:30 a.m. – 12:00 p.m. (Room L406)

Thursdays, 10:30 a.m. – 12:00 p.m. (Room 308)

## **2) Course Materials and Information Conveyed During Class**

The following constitute required reading for this course:

Course Text: Ernest J. Weinrib, *Tort Law: Cases and Materials*, 3<sup>rd</sup> ed. (Toronto: Emond Montgomery, 2009)

Handouts: You will receive handouts, free of charge, at various points throughout the course.

Students are also responsible for all information related to the topics covered in this course which arises during class time, regardless of whether this information is addressed in the required reading. Students who are absent from a class should ensure that they obtain adequate information regarding the content of the lecture from a classmate.

## **3) Evaluation**

The final grade that you will receive for this course at the end of the school year will be determined as follows: examination (60%); advocacy exercise (30%); and class participation (10%). Each component is described below.

### Examination (60%)

There are two examinations for this course: a mid-term examination to be held on Friday, December 10<sup>th</sup>, from 2:00 p.m. to 3:30 p.m.; and a final examination to be held on Monday, April 11<sup>th</sup>, from 2:00 p.m. to 5:00 p.m.

The mid-term examination is commonly referred to as a “failsafe” or “practice” exam. This means that if you do better on your final exam, then the mid-term does not count. However, if you do better on the mid-term, then your grade for the examination portion of the course is made up of 30% of your mid-term mark and 70% of your mark on the final.

Students will be permitted to bring the following material into the **mid-term** examination:

1. the course text: Ernest J. Weinrib, *Tort Law: Cases and Materials*, 3<sup>rd</sup> ed. (Toronto: Emond Montgomery, 2009);
2. any handouts that Professor Hadskis expressly identifies, in writing, as being permitted in the examination (those handouts will be identified on or before the last day of class in the term); and
3. a maximum of three single-sided letter size (i.e., 8.5 inches by 11 inches) pages of notes that have been prepared **in your own handwriting**.

Students are **not** permitted to bring any other material into the examination. As well, computers are **not** permitted in the examination room unless a student has obtained specific permission to do so from the Studies Committee.

Students may annotate the pages of their course text and handouts. As well, the course text can be tabbed, **provided** that the tabs are only being used to mark the location of information in the text.

All of the preceding rules regarding the material that can be brought into the mid-term examination apply to the **final** examination, with the following exception: the maximum number of single-sided letter size pages of notes (see item “3.” above) permitted into the examination is increased to **six**.

Professor Hadskis reserves the right to review any material that you bring into the mid-term and final examinations to ensure that the above requirements have been observed.

#### Advocacy Exercise (30%)

The advocacy exercise will take place in the second term. This exercise has two elements: a written argument you will prepare (15%); and an oral argument you will deliver (15%). More information on the advocacy exercise will be given to you in the second term.

#### Class Participation (10%)

You will be evaluated on the basis of your contributions to class discussions throughout the year.

#### 4) Intellectual Honesty and Discipline

All students in this course **must** read:

- the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the “[plagiarism.dal.ca](http://plagiarism.dal.ca)” website; and
- the Law School policy on plagiarism, as set out in the Law School regulations (available in hard copy from the Associate Dean's office and online at [http://law.dal.ca/Current\\_Students/Course\\_Selection\\_Materials/Regulations\\_Handbook/index.php](http://law.dal.ca/Current_Students/Course_Selection_Materials/Regulations_Handbook/index.php))

Any paper or assignment submitted by a student at Dalhousie Law School may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the Law School, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

#### 5) Accommodation

Students seeking special accommodation with regard to course evaluation, such as exam deferral and extensions to deadlines, should consult with Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes as soon as possible, and before an exam is scheduled to be written or an assignment is due. Requests for special accommodation for reasons such as illness or personal circumstances will require an application to the Law School Studies Committee. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes if they require more information about the Studies Committee process. Students wishing to discuss arrangements for classroom assistance should see Professor Wildeman, the law faculty advisor to students with disabilities.

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require academic accommodation for the writing of tests, quizzes and exams should make their request to the Office of Student Accessibility & Accommodation (OSAA) prior to or at the outset of each academic term (with the exception of X/Y courses). Please see [www.studentaccessibility.dal.ca](http://www.studentaccessibility.dal.ca) for more information and to obtain Form A – Request for Accommodation. Students may also contact the Office of Student Accessibility & Accommodation directly at 494-2836, and they may contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information.

#### 6) Course Readings

The course readings are set out below. Please note that the rate at which the assigned readings are covered will be calibrated according to a variety of factors (e.g., topic/case

difficulty; student engagement with a particular topic/case). At the end of each class, Professor Hadskis will orally inform the students of the readings that will likely be covered in the next class. If a student is absent from class, it is that student's responsibility to determine what readings were assigned for the next class by asking another student or contacting Professor Hadskis.

## I. Nuisance

1.	“The Doctrines of Precedent and Stare Decisis”	Handout
2.	Introduction	1
<u>The Grounds of Liability</u>		
3.	<i>Appleby v. Erie Tobacco Co.</i> and Questions	2-4
4.	<i>Rogers v. Elliot</i> and Questions	4-6
5.	<i>Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, Inc.</i>	7-9
6.	Notes and Questions 1, 2, 3, 4, 5, and 6 (omit 7)	9-12
7.	<i>Shuttleworth v. Vancouver General Hospital</i> and Questions	12-15
<u>Legal Process and Public Policy</u>		
8.	Holmes, “Privilege, Malice and Intent” and Questions	15-16
9.	<i>Bamford v. Turnley</i>	16-18
10.	<i>Sturges v. Bridgman</i>	26-27
11.	<i>Miller v. Jackson</i>	18-25
12.	Notes and Questions 1 and 2	25-26
13.	Notes and Questions 1, 2, and 3	27-28
<u>Remedies</u>		
14.	<i>Shelfer v. City of London Electrical Lighting Co.</i>	37-38
15.	Notes 1, 2, 3, 4, and 5	38-42
16.	<i>Nova Scotia Farm Practices Act</i>	Handout
17.	<i>Spur Industries v. Del E. Webb Development Co.</i>	42-43
18.	Questions 1, 3, 4, 5	44-45

## II. Intentional Torts

1.	Introduction	497
2.	<i>Bettel v. Yim</i>	Handout
3.	<i>Malette v. Shulman</i> and Note	498-505
4.	<i>Non-Marine Underwriters, Lloyd's of London v. Scalera</i>	505-515
5.	<i>Norberg v. Wynrib</i>	515-525
6.	Note (read only that part of the note that deals with <i>Hegarty v. Shine</i> and <i>R. v. Cuerrier</i> )	525-526
7.	<i>Re Eve</i>	526-531
8.	<i>In Re B.</i>	531-536
9.	<i>Airedale National Health Service Trust</i>	536-543

**NOTE:** Do not read pages 544-569 as this material will be covered later in the course.

### III. Negligence

#### A. Duty

1.	Wright, <i>Cases on the Law of Torts</i>	113-114
2.	<i>Winterbottom v. Wright</i>	114-116
3.	<i>M'Alister (or Donoghue) v. Stevenson</i>	117-124
4.	Notes 1, 2, and 3	124-127
5.	<i>Palsgraf v. Long Island Railroad Co.</i>	127-134
6.	Notes 1 and 4	134-144
7.	<i>Haynes v. Harwood</i>	144-147
8.	Notes and Questions 1, 2, and 3	147-148
9.	<i>Dobson v. Dobson</i>	148-160
10.	Notes 1, 2, 4, 5, 6, 7	160-167
11.	<i>Cooper v. Hobart</i>	167-173
12.	<i>Hill v. Hamilton-Wentworth Regional Police Services Board (Re: Duty of Care)</i>	Handout

#### B. Standard of Care

1.	Introduction	47
2.	<i>Vaughan v. Menlove</i> and Notes	48-51
3.	Holmes, The Common Law	51-56
4.	<i>McHale v. Watson</i>	56-61
5.	Notes 1 and 3	62-67
6.	Fleming, The Law of Torts	67-71
7.	Posner, The Learned Hand Formula	71-72
8.	Notes 1 to 4	72-78
9.	<i>Bolton v. Stone</i> and Note 1	78-81
10.	Notes 3 and 4	83-84
11.	<i>Trimarco v. Klein</i> and notes	85-88
12.	<i>ter Neuzen v. Korn</i>	88-93
13.	<i>Hill v. Hamilton-Wentworth Regional Police Services Board (Re: Standard of Care)</i>	Handout

#### C. Causation

##### The Nature of Factual Causation

1.	Introduction	223-224
2.	<i>Barnett v. Chelsea</i>	224-225
3.	<i>Lambton v. Mellish</i>	226-227
4.	Notes 1, 2, 3, and 4	227-229
5.	Notes 1 and 2	234-236
6.	<i>Athey v. Leonati</i>	236-241

##### Factual Uncertainty

7.	<i>Blackstock v. Foster</i>	241-242
8.	<i>Cook v. Lewis</i>	243-246
9.	Note 1	247
10.	<i>Sindell v. Abbott Labs</i>	247-252

11.	Notes 2 and 3	253-254
12.	<i>McGhee v. National Coal Board</i>	255-259
13.	Notes 1, 2, 3, and 4	259-268
14.	<i>Farrell v. Snell</i>	268-273
15.	Notes 1 and 2	273-276
16.	<i>Gregg v. Scott</i>	276-280
17.	Notes 1 and 2	280-281

## **D. Remoteness**

1.	<i>In Re Polemis and Furness, Withy &amp; Co.</i>	176-177
2.	Notes 1 and 2	177-179
3.	<i>Overseas Tankship (UK) and Note</i>	180-183
4.	<i>Smith v. Leech Brain &amp; Co., Ltd.</i>	184-187
5.	<i>Stephenson v. Waite Tileman Limited and Note</i>	187-190
6.	<i>Hughes v. Lord Advocate</i>	190-193
7.	Questions 1 and 2	193-194
8.	Notes 1 and 2	198-202
9.	<i>Bradford v. Kanellos</i>	202-205
10.	<i>Home Office v. Dorset Yacht Co. Ltd.</i>	205-216
11.	<i>Lamb v. London Borough of Camden</i>	216-221

## **E. Informed Consent**

1.	<i>Reibl v. Hughes</i>	544-551
2.	Notes 1 and 2	551-555
3.	<i>Hollis v. Dow Corning Corp.</i>	559-567
4.	Note	567-569
5.	“Informed Consent 20 Year Later”	Handout

## **F. Defences**

1.	Introduction	283
	<u>Contributory Negligence</u>	
2.	<i>Butterfield v. Forrester</i>	283-284
3.	Notes 1, 2, 3 and 4	284-286
4.	Ontario’s <i>Negligence Act</i>	286
5.	Nova Scotia’s <i>Contributory Negligence Act</i>	Handout
6.	<i>Froom v. Butcher</i>	287-292
7.	Notes 1 and 2	292-294
8.	<i>Automobile Insurance Contract Mandatory Conditions Regulations</i>	Handout
	<u>Voluntary Assumption of Risk</u>	
10.	<i>Lambert v. Lastoplex</i>	296-298
11.	<i>Dube v. Labar</i>	299-301
12.	<i>Priestley v. Gilbert</i>	302-303
13.	Note	303
	<u>Illegality</u>	
14.	<i>Hall v. Hebert</i>	304-313

<b>G. Contribution</b>	
1. Introduction	315
2. <i>Merryweather v. Nixan</i>	315-316
3. Ontario's <i>Negligence Act</i>	316
4. Notes 1 and 2	316-318
5. <i>County of Parkland No. 31 v. Stetar &amp; Question</i>	318-321
6. <i>Fitzgerald v. Lane</i>	321-325
7. "Contribution Among Joint Tortfeasors..."	325-327
8. Note	328-330
<b>H. The Role of Statutes</b>	
1. Introduction	331
2. <i>Littley v. Brooks</i> and Notes 1 and 2	337-338
3. <i>The Queen in the Right of Canada v. Saskatchewan Wheat Pool</i>	338-346
4. <i>Board of Governors of Seneca College of Applied Arts and Technology v. Bhadauria</i>	346-352
5. Notes 1 and 2	352-355
6. <i>Tock v. St. John's Metropolitan Area Board</i>	31-37
<b>I. Negligent Misrepresentation</b>	
1. <i>Candler v. Crane Christmas &amp; Co.</i>	357
2. Notes 1 and 2	362-364
3. <i>Hedley Byrne &amp; Co. Ltd. V. Heller</i>	364-371
4. Notes 1, 2, and 3	371-374
5. <i>Haig v. Bamford</i>	383-386
6. <i>Caparo Industries v. Dickman</i>	387-395
7. Note	395-396
8. <i>Nunes Diamond Ltd. v. Dominion Electric Protection</i>	374-377
9. Note	376-377
10. <i>BG Checo International Ltd. v. British Columbia Hydro and Power Authority</i>	378-383
<b>J. Psychiatric Harm</b>	
1. <i>Alcock v. Chief Constable of the South Yorkshire Police</i>	451-457
2. Notes 1, 2, and 3	457-466
3. <i>Mustapha v. Culligan of Canada Ltd.</i>	466-469
<b>IV. Nonfeasance</b>	
1. Introduction	571
2. <i>Union Pacific v. Cappier</i>	571-573
3. Notes 1, 5, and 6	574-583
4. <i>Childs v. Desormeaux</i>	585-593

5. *Depue v. Flatau et al.* 593-596

## **V. Tort Liability of Government Agencies**

1. *Just v. Queen in the Right of British Columbia* 596-604  
 2. Notes 3, 5, 6, and 7 607-614

## **VI. Vicarious Liability**

1. *Jones v. Hart* 647  
 2. Notes 1 and 3 647-650  
 3. *Ira S. Bushey v. United States* 651-654  
 4. Notes 1, 3, and 4 654-660  
 5. *Bazley v. Curry* 660-671  
 6. Notes 1 and 2 671-675  
 7. *E.B. v. Order of the Oblates of Mary Immaculate* 675-681  
 8. Note 681-682

## **VII. Damages**

1. Introduction 685  
 2. *Andrews v. Grand & Toy Alberta Ltd.* 688-703  
 3. Notes 2, 6, 7, 8, 9, 11 704-717  
 4. *Cunningham v. Wheeler* 727-736  
 5. Note 736-737

**Time permitting, other subjects that may be covered include “Wrongful Life and Wrongful Birth” and “Rylands v. Fletcher”.**