General Information

**Coverage:** This class is a continuation of first-year Torts I. That course was primarily about negligence. This class will introduce you to products liability, traditional strict liability, defamation, and a sampling of business torts.

**Goals/Learning Outcomes:** In this class you will continue to learn the black letter law, and consider the broader policies and practices that surround the law and legal institutions. You will further your general abilities in legal analysis and reasoning, and grow in oral and written communication skills and problem solving. These will be honed and tested in class discussion, out-of-class assignments, and on the final exam. In particular, this course will continue your understanding of the law and policy of torts, in the contexts of both litigation and business planning. We will have some guest speakers to bring the law into practical context. You can expect a lot of class discussion.

**Grading:** The final examination will be CLOSED book, to better prepare you for the bar exam. The final will be administered within the published finals schedule; see the dean’s office for special requests. Computers approved by the administration will be allowed. Sample final exams are available on e-reserve. Some writing, group meetings, and other out-of-class work will be required in addition to the standard reading assignments. You are expected to attend and participate in class on a regular and continuous basis. Otherwise, your grade in the class may be adversely affected. This policy is intended to deal with those who do not read the assignment or do not try to contribute to class discussion. Do not worry about saying the “wrong” thing in class. The airing, modification and occasional jettisoning of untested theories are the essence of lively and fruitful discussion. You should make every effort to keep up with class work, but on the rare occasions that you are unprepared, (1) do come to class anyway and (2) do tell me just before class not to call on you.

**Class discussions:** Be aware that the facts of torts cases are sometimes disturbing. Our class discussions will be free-wheeling as we make analogies, invent hypotheticals, and address public policy. We are training you to be lawyers, and lawyers generally believe that virtually any problem is helped by being brought to light and discussed. We generally believe that the cure for bad speech is more speech, to paraphrase Louis Brandeis. That said, professionalism and common courtesy dictate that speech be appropriate to the time, place and audience. Along these same lines, lawyers strive to be impeccable in their choice of words; sometimes we all need to receive feedback about the effect of our words on others. We are all students of the law and of the legal profession, and will be working together on this. All student voices are welcome and respected in my classroom. I grant every student a presumption of good faith, and expect you to do the same for your classmates.

**Class rules:** You may not record class without my express permission or as a formal disability accommodation. No weapons may be displayed in class; please call 911 if you see one. For the University’s firearms policy Q & A, please see: [http://www.uidaho.edu/public-safety-and-security/Weapons-on-Campus](http://www.uidaho.edu/public-safety-and-security/Weapons-on-Campus).
Support of students: If you have a problem of any kind on the day of the final exam, contact Dean Dodge’s office, not me, as we wish to protect the anonymous grading process.

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Ideally, students in Moscow and Boise should meet with CDAR by the end of the first week of class to assess if any accommodations are needed for courses and/or examinations. All accommodation requests are then submitted by CDAR to Dean Dodge for final approval. CDAR serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate or grant disability accommodations without CDAR first submitting a recommendation. You may contact CDAR by:

- Calling 208-885-6307
- Emailing cdar@uidaho.edu

It is ultimately the student’s responsibility to seek a disability accommodation, and until an accommodation is approved by CDAR and Dean Dodge, no student will be entitled to receive any accommodations. To learn more about CDAR, visit its website at http://www.uidaho.edu/current-students/cdar. Moscow students may also visit CDAR in suite 127 of the Pitman Center. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

Additional resources for expression of concern (about anything) or requesting support include: me, your professor (see paragraph on contact with me, below); the College of Law Associate Dean of Students; the University Dean of Students office and staff (885-6757); the UI Counseling & Testing Center’s confidential services (885-6716); or the UI Office of Human Rights, Access, & Inclusion (885-4285).

Contact with professor: I welcome your comments and questions. My office phone is 885 7022. My e-mail is “lillard@uidaho.edu.” My office is 205. Feel free to come up and speak to me after class, or at any time (except the hour right before class).

Reading: The text is Franklin, Rabin & Green, 9th edition OR 10th edition. Attached you will find the latest (Summer, 2018) edition of Prof. Goble’s book on Idaho Negligence cases. As a perk of signing up for this class, you are authorized (by Prof. Goble and me) to make hard copies of that book, or portions thereof, if you wish. In accordance with ABA Standard 310, the College of Law awards one credit hour for experiences that are reasonably designed to involve 50 minutes of classroom or direct faculty instruction and two hours of out-of-class student work per week. The Course requirements outlined in this and future syllabi, with respect to materials and assignments, in my professional judgement, are complex enough in nature that it is expected that the amount of out-of-class time it will take students to complete the assignments will meet the rule. I will provide hard copies of this syllabus in class.
Syllabus #1- Intro, Causation, and Products Liability

I. Introductory Assignment – please prepare for the first day of class


Or, if you have the 10th edition, those page numbers are: 40, 150, 166, 421, and 564.

You read these cases in your first year. Read them again. Just read and appreciate them as they stand; do not get into the notes, etc.

Come to class prepared to explain:

What is a tort?
What are the goals, constraints, and recurring issues in the law of torts?
What is negligence?
What is the prima facie case for negligence?
How do the elements of the prima facie case fit together?

Come to class flexible in your vocabulary. Professor B. Cover, Professor Pimentel, Professor Goble, and I may all use different words, as do the authors of the various cases and Restatements. Can you understand the concepts even if the labels are different?

And, **write**: before the first day of class, but only after you have done the above reading assignment, please pick up a hard copy of a questionnaire in the front office – come to class on the first day with the hard copy filled out.

II. Conundrums in Causation

Read Zuchowicz and Matsuyama; skim and review basic causation

- 9th Ed, skim 333-338; read 343-364
- 10th Ed, skim 337-342; read 347-370

*Why do we say that causation is the heart of tort law?*

Note to students: The print in the 10th Ed is larger, hence more pages are in the assignments. Do not feel overburdened! I believe the reading assignments are equal.
III. Products Liability

Background reading on the theories behind STPL, read 9th Ed 535-550, 10th Ed 539-555; we will not discuss this in class until assignment 8, but feel free to come and talk with me if you are curious.


Also read the two “eyeball” cases, emailed separately and attached to the hard copy of the syllabus.

I will not ask you to turn in any writing, but come to class with prepared answers to the following questions. Use the law of today (2018). If you cannot picture the wind wing (aka “front vent window”) on the Valiant, use Google images. Answer the following questions for both cases. The purpose of this exercise is for you to learn what different it makes to proceed in negligence or in STPL (mfr defect). It is important to your understanding of this class.

If you represented plaintiff, and brought suit for negligent manufacture, how would you frame your lawsuit? What further evidence would you want to gather (other than that stated in the facts by the courts)? How would you go about gathering that evidence? (what discovery methods, whom would you contact, etc).

If you represented defendant, and were sued for negligent manufacture, how would you respond on the question of your own negligence? (Do not address plaintiff’s fault here) What further evidence would you want to gather, and how would you do so?

If you represented plaintiff and brought suit for STPL, manufacturing defect, how would you frame your lawsuit? What further evidence would you want to gather?

If you represented defendant and were sued for STPL, manufacturing defect, how would you respond on the question of defect? What further evidence would you want to gather, and how would you do so?

As plaintiff’s lawyer, would you rather proceed in negligence or STPL? What are the advantages of each? As defendant’s lawyer, would you rather be sued in negligence or STPL? What are the advantages of each? Is one better for the lawyer and the other for the client?

How could plaintiff have argued Schneider as a design case (rather than a mfr case)? Think of current car technology.

Why don’t cars have wind wings anymore?
4) Design defect. Read Soule, notes following Soule, and notes following Comacho. We will not read Comacho. Also read the Ortho factors, and put a tab in your books where they appear. 9th Ed: 571-585, 588-89 (Ortho factors), 592 (start note 5)-599. 10th Ed, 579-594, 598-99 (Ortho factors), 601-608. This will take more than one day. Your goal is to be able to explain the two possible design defect tests.

Think about this scenario:

Plaintiff purchased a new pick-up truck to use for hunting and other cross-country purposes as well as for driving upon paved highways. He drove the truck some 7,000 miles without noticing anything unusual about its performance. Prior to the day of the accident the truck had rarely been off the pavement, and plaintiff swore that it had never been subjected to unusual stress of any kind.

On the day of the accident, however, the truck, while moving on a ‘black-top’ highway at normal speed, hit a rock which plaintiff described as about five or six inches in diameter. The truck continued uneventfully for about 35 miles, when it left the road and tipped over.

After the accident, the rim of the wheel was found to be separated from the ‘spider.’ Witnesses described the ‘spider’ as the interior portion of the wheel which is attached to the vehicle by the lug nuts. The twelve rivets connecting the rim to the spider appeared to have been sheared off. The spider, according to one witness, showed signs of having been dragged along the ground. There was also a large dent in the rim and a five-inch cut in the inner tube at a spot within the tire that was adjacent to the dent in the rim. Only three of the rivets which had held the rim on the spider were found after the accident. The plaintiff’s version of the evidence is that the wheel came apart and caused an accident after encountering a five-or-six-inch rock on a hard-surfaced road at highway speed.

Plaintiff sued for design defect in STPL. How will plaintiff use the consumer expectations test? Should plaintiff be allowed to go to the jury? How would you defend against this? What proof, on both sides, is relevant?

What are the pros and cons of each of the design defect tests? Spend some time on note 11, p. 583. What are the pros and cons of the O’Brien approach (which was restricted by the NJ legislature), see 9th Ed p. 583, 10th Ed p. 593.


7) Good Manufacturing practices – guest speaker

Traditional Strict Liability


10) Read the following cases. Based on your last name listed, you will be assigned to “teach” one of the cases. The main discussion should center on Trad S. L. Be prepared to give facts, procedure, issue(s) related to trad s.l., other interesting issues, and some thought to how the case would be decided under the Restatement 3rd. I will have student panels sit at the front of the room. (I reserve the right to call on anyone, regardless of last name, for any of the cases.)

*Koos v. Rother*, 652 P.2d 1255 (Ore. 1982), field burning


*Klein v. Pyrodyne Corp*, 810 P.2d 917 (Wash 1991) - fireworks


Copies of these case will be sent via email AND printed for you.

More to come in the next syllabus . . .