

Philosophy 191: Philosophy of Tort Law

Fall Semester 2010
H+ TR (T Th 1:30-2:45pm)

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Tort law addresses disputes between private parties concerning harms and losses. Tort law has its roots in English Common Law, dating back to the late Middle Ages, which has given it a tradition quite separate from Criminal Law. One striking feature of cases in which defendants are held responsible is that their actions are rarely criminal, that is, they generally do not violate laws enacted by legislative bodies. Another is that tort law has different standards of evidence and different procedures from Criminal Law. One philosophic question all this raises concerns what purpose and function tort law serves beyond what criminal law accomplishes.

Verdicts in tort cases usually decide whether one party is due compensation from another party for a loss suffered. Liability typically depends on whether the defendant caused a harm suffered by the plaintiff and, if so, whether the defendant's action violated a legal standard of due care. In other cases, plaintiffs pursue injunctive protection in order to prevent defendants from performing actions that would cause plaintiffs to suffer harm. Either way, one issue central to virtually every tort case is whether some action has or will cause harm, and another concerns the relevant standards of due care. Often violations of these standards involve no moral wrong.

This course will be centrally concerned with notions of causation and responsibility deployed in tort litigation. Unlike in many criminal cases, liability in tort cases is typically not a matter of intentional wrongdoing, much less malicious wrongdoing. We will examine carefully the notion of negligence that is so central to many tort cases, and we will explore its relationship to conceptions of compensatory and corrective justice. How are questions of justice in tort law to be resolved, and where is it appropriate for legislatures to intervene and limit the scope of tort law, as some members of our Congress are currently proposing to do in the case of medical malpractice?

Questions of causation are notoriously complicated because so many causal factors are necessary for an event to occur, and singling out any one of them as *the cause* of some harm always threatens to be capricious. The philosophic issue is how courts resolve the question of what *the cause* of harm was or would be. We will take up this issue and evaluate the moral importance of causal judgments in tort law.

Readings

Hart, H. L. A. and Honoré, Tony. *Causation in the Law*. 2nd Edition. Oxford: Oxford Univ. Press, 2002.

Postema, Gerald. *Philosophy and the Law of Torts*. Cambridge: Cambridge Univ. Press, 2001.

Blackboard website <http://blackboard.tufts.edu> (readings located under "assignments") (B)

History and Concept of a Tort

- 9/9 Keeton, Sargentich, and Keating, *Tort and Accident Law*, selections (B)
- 9/14 *A Civil Action*, film and supporting documents (B)
- 9/16 *A Civil Action*, film and supporting documents (B)

A 19th Century View

- 9/21 Holmes, *The Common Law*, Lecture 1 (B)
- 9/23 Holmes, *The Common Law*, Lecture 3 (pp. 71-103); Lecture 4 (pp. 146-7) (B)
recommened: Lecture 4 (entire)

Corrective Justice

- 9/28 Coleman, “The Practice of Corrective Justice” (B)
- 9/30 Coleman, “Tort Law and Tort Theory: Preliminary Reflections” in Postema
- 10/5 Postema, Review of Coleman’s *Risks and Wrongs* (B)

An Economic Analysis of Torts

- 10/ 7 Posner, “Wealth Maximization and Tort Law: A Philosophical Inquiry” (B)

Causation in Tort Law

- 10/12 Thomson, “The Decline of Cause” (B)
recommended: Thomson, “Remarks on Causation and Liability”(B)
- 10/14 Hart and Honoré, *Causation in the Law*; Preface xxxiii-xxxvii, xlii-li; Introduction; Ch. 1 (1-15); Ch. 2 (26-32)
- 10/19 Hart and Honoré, *Causation in the Law*; Ch. 2 (pp. 32-62)
- 10/21 Hart and Honoré, *Causation in the Law*; Ch. III (pp. 62-84); Ch IV (pp. 84-95)
- 10/26 Hart and Honoré, *Causation in the Law*; Ch. IV (pp. 95-109); Ch. V (pp. 109-130)

Normative Frameworks

- 10/28 Gordly, “Tort Law in the Aristotelian Tradition” (B)
Midterm paper due (8-10 pages)
- 11/2 Stone, “The Significance of Doing and Suffering” in Postema

- 11/4 Stone, “The Significance of Doing and Suffering” in Postema
- 11/9 Postema paper, TBA
- 11/11 no class, Veteran’s Day
- 11/16 Wright, “Right, Justice, and Tort Law” (B)
- 11/18 Perry, “Responsibility for Outcomes, Risk, and the Law of Torts” in Postema
- 11/23 Perry, “Responsibility for Outcomes, Risk, and the Law of Torts” in Postema
- 11/25 no class, Thanksgiving holiday
- 11/30 Coleman and Ripstein, “Mischief and Misfortune” (B)
- 12/2 Coleman and Ripstein, “Mischief and Misfortune” (B)
- 12/7 Ripstein and Zipursky, “Corrective Justice in an Age of Mass Torts” in Postema
- 12/9 Concluding discussion
- 12/20 **Final paper due (9-10 pages)**

Course Requirements

Midterm paper (8-10 pages)	40%
Final paper (10-12 pages)	60%

You will have the opportunity to rewrite your midterm paper. Rewrites of the midterm paper will be due **Wednesday, December 15**.

Learning Objectives

Students completing this course will have learned:

1. How to think abstractly and concretely not only about matters that preoccupy philosophers but also about fundamental issues in other disciplines and practices.
2. How to produce a cogent argument and how to express it with maximum perspicuity, both in writing and orally.
3. How to identify the substance and structure of an argument and evaluate it for soundness and validity.
4. How to anticipate and even welcome objections to one’s views, how to apply the principle of charity to others’ opinions, and how to address objections and competing views effectively and respectfully in one’s writing.
5. How to read, analyze, and articulate arguments and viewpoints in primary philosophical texts, both historical and contemporary.
6. How to develop and defend one’s own position with respect to problems that have occupied both historical and contemporary philosophers.