

Torts

University of Oklahoma College of Law
Fall 2021

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Professor of Law

Section 1 (course/section 5144-600):
Section 4 (course/section 5144-603):
http://ericejohnson.com/courses/torts_21/

SYLLABUS ADDENDUM NO. 1

I understand that many students have desired some assurance that if they follow guidance to stay away from class in order to avoid imposing an infectivity risk to others, then they won't be disadvantaged by doing so in terms of grading, etc. This syllabus addendum is meant to provide that assurance in writing.

This addendum is hereby made part of the syllabus for Torts with Prof. Eric E. Johnson in Fall 2021 and amends and modifies it as provided. Where the terms of the original syllabus and this addendum conflict, this addendum controls.

X0. LOCATION OF CLASS:

The information at the top of the original syllabus regarding the classroom locations is out of date. See the Chart of Assignments for current information.

X1. ATTENDANCE EXCUSED FOR SEPTEMBER 9 AND 10, 2021:

All absences and partial absences for September 9 and 10, 2021 are excused. In an e-mail sent September 9, 2021, I said I would excuse any absence for any student who requests it. But no request is necessary. In fact, attendance was not taken on those days.

X2. MODIFICATION OF ATTENDANCE POLICY TO ENCOURAGE SAFE BEHAVIOR RELATED TO COVID:

(a) Overall Statement:

I strongly wish to encourage students to err on the side of caution and stay away from class whenever they perceive a risk to members of the law school community by coming to class.

This modification of the attendance policy only makes the attendance policy more accommodating – i.e., less strict. Keep in mind that under the

attendance policy of the original syllabus, I had already worked to make the attendance policy more accommodating and less strict than in an ordinary semester. The modifications here make the policy even more accommodating and even less strict.

(b) **Some Important Things to Keep in Mind:**

You pretty much don't have to worry about the attendance policy unless you're going to miss 12 classes or more. Exceptions would be: (1) a slight chance that missing class would deprive you of the opportunity to earn a grade bump-up through class participation (but I've tried to ameliorate that; see §X2(f), below), and (2) a circumstance in which you've accumulated tardies or other partial absences sufficient to put you over the 12-class threshold (see Syllabus §9-3(a) & (b)).

Nothing in this modified attendance policy applies to the final exam. That's its own thing.

Nothing herein excuses absences caused by a person's choice to decline to come to class based on their objection to wearing a mask, if required.

MOST IMPORTANT: For any absence to be excused, I must know about it. So do that with an End-of-Semester Attendance Mitigation Statement. See §X2(f), below, and §9-6 in the original syllabus.

(c) **Excused Absences for Covid:**

(1) **What an "Excused" Absence Is: If an absence is "excused," that means it does not count as an absence under the attendance policy.** That in turn means it doesn't count as an absence for purposes of the automatic grade reductions for severely deficient attendance (Syllabus §9-3(d)) or involuntary withdrawal or failing grade for profoundly deficient attendance (Syllabus §9-3(e)). So, for example, if someone has 20 excused absences and 11 other absences, then that person has not hit the 12-absence threshold for an automatic grade reduction as described in Syllabus §9-3(d).

(2) **Three Independent Ways in Which Absences Can Be Excused on Account of Covid Symptoms, Exposure, Infectivity Risk, Etc.:** I want to encourage students to err on the side of caution and stay away from class whenever there's a genuine concern about posing a risk to members of the law school community by coming to class. So you will be excused based on your decision to follow any of three sources of guidance for covid – OU, government agencies, or a note from your healthcare provider – as follows:

(i) **Absences Consistent with Guidance from OU, Including the Healthy Together App, Etc:** If guidance from the University of Oklahoma indicates that you should not go into a classroom (e.g., you've gotten a directive to self-isolate or to not be on campus) because of covid illness, symptoms, positive test result, close contact, or other concern

revolving around potential covid infectivity, then **any absence resulting from compliance with that guidance will be excused**. This includes guidance from the “Healthy Together” phone app and guidance posted on the web (such as the “Norman Campus COVID-19 Phase IV Return Plan”). I appreciate that there has been a significant lack of organization at OU in terms of where to find current guidance, but so long as you are endeavoring in good faith to adhere to what you understand to be current guidance, your absence will be excused.

(ii) **Absences Consistent with Applicable Government**

Guidance: If guidance from a government agency with jurisdiction over Norman, Oklahoma – e.g., county, state, or federal level – indicates that you should isolate and thus not physically attend class because of covid illness, symptoms, positive test result, close contact, or other concern revolving around potential covid infectivity, then **any absence resulting from compliance with that guidance will be excused**. That includes guidance from the Cleveland County Health Department, Oklahoma State Department of Health, U.S. Department of Health & Human Services, U.S. Centers for Disease Control and Prevention (better known as the “CDC”). For the sake of clarity, **an absence may be excused based on government agency guidance even when OU guidance (such as the Healthy Together app) suggests you are clear to come to school!**

(iii) **Medical Note Absences:** If you receive a documented directive from a licensed physician, nurse, or physician’s assistant that you should self-isolate or not go to work or school because of covid illness, infectivity, suspected illness or infectivity, or exposure or suspected exposure (such documentation a “medical note”), then **any resulting absence will be excused**. For clarity, **an absence can be excused with a medical note even when OU guidance (such as the Healthy Together app) suggests you are clear to come to school!** If the medical note has a start date but no end date, it will be construed as being good for 10 days.

(3) **Documentation for Excuses:**

Ultimately, I will rely on your representation in writing in an End-of-Semester Attendance Mitigation Statement as to whether your absences resulted from one of the three bases discussed above. Your statement should be specific as to dates and reasons – including what you relied on (such as county guidance, the Healthy Together app, a medical note, or what have you). And whatever you can attach as supporting documentation is appreciated (such as a copy of a medical note). But suppose you are following guidance from Cleveland County or an OU webpage based on your personal experience of symptoms or your personal knowledge of having been exposed to someone with covid: There’s

really no documentation you can give me to adequately support that fact other than your specific representation in writing. And so that is all I require.

(d) Extenuating Circumstances for Unexcused Absences for Covid or Otherwise:

Even if an absence is not out-and-out “excused,” as discussed above, I can nonetheless take account of extenuating circumstances and thereby decline to apply attendance penalties (i.e., those that would begin to kick in at the 12-absence threshold). Such extenuating circumstances could include covid-related child care hardship, covid-related bereavement, or erring on the side of safety because you are suspicious you might be infective with covid but you don’t have a medical note or OU or government guidance backing you up on staying home. Bottom line, if you are at 12 or more absences and you have extenuating circumstances, explain that in an End-of-Semester Attendance Mitigation Statement. Please see Syllabus §9-3(f) regarding extenuating circumstances.

(e) Notice Requirement Using End-of-Semester Attendance Mitigation Statement:

I cannot count an absence as excused if I don’t have the information in front of me when I am doing grades over winter break. So, **to make sure that I take account of excuses and extenuating circumstances, use the End-of-Semester Attendance Mitigation Statement**, which is discussed in Syllabus §9-6.

Consider that **if my only notice from you is a random email sent at some point during the semester, then I may not see it at the crucial moment I need to, which is when I am assigning grades**. And if it’s something you said to me orally, I will most likely not remember it.

As I said in the original syllabus, the End-of-Semester Attendance Mitigation Statement is not meant to be retributive or to deter students from making use of genuine excuses or extenuating circumstances. It’s actually meant to be student-friendly, as it ensures that I have the relevant information at the time I’m doing grading.

(f) Attendance’s Effect on Class-Participation Grading Component:

In the original syllabus, §9-3(c) provided that attendance could have a negative effect on the class-participation grading component. **I now rescind §9-3(c) of the original syllabus and provide the following instead:**

I will not explicitly consider absences as a negative in the class participation grading component – regardless of the reasons for the absences. Since positives in class participation require being in class, I suppose it is possible that a substantial amount of absences could result in a dearth of opportunity to make positive contributions in terms of class participation. That being the case, I cannot guarantee that absences won’t have some effect – at least in terms of missing out on an opportunity to earn a bump-up in grade. But I can endeavor to

take that into account—in a way that is favorable to the student—if I’ve been apprised of valid excuses and extenuating circumstances (see §X2(e), above).

X3. AVAILABILITY OF CLASS BY ZOOM TO ENCOURAGE SAFE BEHAVIOR RELATED TO COVID:

To encourage students to err on the side of caution and stay away from class when there’s a plausible risk to their fellow members of the law school community, I will endeavor to allow students to observe class in real-time by Zoom (remote video) when requested. That way you don’t have to miss out. This Zoom availability will be synchronous/live/real-time only; recordings of class will not be available.

If you want to observe class via Zoom, check the Chart of Assignments. I’ll try to note when I’m already planning to make Zoom observation available for a particular date with a notation that looks like *Zoom observability planned for §§1&4*. If Zoom observability is not already planned for a particular class, you can request it by sending me an e-mail at eric.e.johnson@ou.edu. Please begin the subject line with ZOOM REQUEST in all-caps.

When class is being held in-person, watching or listening by Zoom doesn’t count as attendance for purposes of the attendance policy. (Which is why I’m trying to refer to logging into Zoom to see and hear class as “observing by Zoom” rather than “attending by Zoom.”) But note my very generous treatment of absences, including covid-related excuses and extenuating circumstances, discussed in §X2, above!

I have to note that there’s no guarantee that Zoom will work in any given class session. At the time I’m writing this, it’s worked fine multiple times, so I don’t anticipate a problem. But if I couldn’t get Zoom to work or if it stopped working in class, I would continue with the in-person class.

For logon information, look for an e-mail I sent on August 31 with the subject line “Torts Zoom arrangements (Zoom invitation and information)”. Don’t share that information with people not in the class—it’s for enrolled students only.

There may be some things you miss out on with Zoom—for instance, it may be hard or impossible to hear students answering or asking questions. And it may be hard or impossible to see slides, if I’m using them—but, of course, I will end up posting slides to the website.

You may not record class. That applies whether you are logged into class via Zoom or attending in person.

If you are attending by Zoom, be safe! See §X4 immediately below.

**X4. HAZARDOUS ATTENTION-CRITICAL ACTIVITY
DURING CLASS TIME:**

Last year I learned that some students attempted to drive a car and attend a class on Zoom at the same time. Thus, these rules:

Whenever observing, attending, watching, or listening to class— including, for the avoidance of doubt, whether or not you are counted as absent— **you may not drive a motor vehicle, operate a bicycle or scooter, operate heavy machinery, or undertake any other task where distractions could lead to personal injury, loss of life, damage to property, or other loss. This includes harms to the student and to third persons. Sitting in the driver's seat of a vehicle will be construed as driving.** Such conduct and activity is herein referred to as “Hazardous Attention-Critical Activity.” Engaging in Hazardous Attention-Critical Activity during class is prohibited.

This prohibition, of course, applies when using Zoom, but while physically present in class you may not undertake any Hazardous Attention-Critical Activity then either.

Engaging in any Hazardous Attention-Critical Activity during class will be construed as serious academic misconduct. Consequences may and presumably will include a failing grade and/or involuntary withdrawal, and a disciplinary referral to the administration. (See Syllabus §§ 6-1, 6-6 in this regard.) In addition, expect that I will report known hazardous behavior to law enforcement.

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