Torts

University of Oklahoma College of Law
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Course no. LAW 5144-603

SYLLABUS

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0. ABOUT THIS DOCUMENT

Concerning whether this syllabus is tedious, inelegant, and too long – and the TLDR issue

This syllabus is voluminous. I am going to get ahead of the allegations. Is this syllabus fairly described as tedious? I answer that as follows: Yes it is. It is also awkwardly organized and, to a great extent, inelegantly written. For all this, I apologize. (Some context and explanation coming up – after these next two paragraphs.)

Is this syllabus too lengthy and burdensome for students to read? Put differently, may a student fairly claim "TLDR" (Too Long Didn't Read). Here's my answer: No. Unqualifiedly no. If you have an aversion to long, tedious documents so strong that you can't make it through this syllabus, then, sorry to say, a career in law is probably not for you.

If the size of this syllabus makes you want to crumple both emotionally and physically, I have two things to say: (1) Think how much worse it was for me to

have to write it. And then read what I'd written. (2) Why not try to read it as a lawyer would? And no, I don't mean read it looking for ways to sue me. I mean you should regard it as a functional document, not a novel. So reading it once from beginning to end might not be the best strategy. You might start by flipping around through it or skimming it. You could read it out of order. You could energetically destroy a pencil or highlighter when you are approaching a breaking point (I totally did that in practice). I only regret that you can't bill a client for your time.

Much of the detail in this syllabus is in anticipation of unfortunate contingencies

A lot of what is in this syllabus is detail to head off problems – for you and for me.

As your teacher, I have to give you a grade for this class. As a student in the class, you have to do certain things. Whether and how well you do those things (attendance, exam, etc.) affects your grade. I want both of us to have clarity about that. So, for instance, if I'm giving someone a failing grade for not complying with exam instructions or for insufficient attendance, then I don't want to wing it. I want to apply clear and precise requirements.

Much of the detail in this syllabus is to give you practical, concrete guidance on how to succeed in this class

I want to get all students on the same page about how to do well in this class. In addition to tedious rules, you will find that this syllabus contains a lot of me trying to talk to you in a plain-spoken and practical way about how to make the most out of your time and effort.

Much of the content of this syllabus is driven by myriad directives communicated to faculty

Within our university and college, the course syllabus has become the focal point of a variety of policies, directives, and guidance springing from varied components of the institution. Many aspects of the content of a syllabus are designated as "required" or "essential." Other aspects are strongly encouraged. Different offices within the university/college hierarchy provide different sets of instructions or guidance. And the policies, directives, and guidance change year-to-year. Or even more frequently. All of the policies, guidance, and so forth seem to me to be well-meaning and thoughtfully drafted. But as a whole, it has gotten messy.

In seeking to to follow the myriad requirements and directives I have received about creating this syllabus, I have frequently subordinated my own ideas about what to say, how to say it, and what to leave out.

1. GOALS AND GENERAL REMARKS

My primary goals for the Torts course are for you to become literate and conversant in the principal doctrines of tort law and to be able to thoroughly analyze torts problems, applying tort law to given facts. In addition, you should gain an appreciation of how tort law works in practice and how rhetoric, strategy, and values affect the law and the outcomes of cases. And you should end the

semester being able to think constructively and critically about tort law within a historical, political, economic, and social context.

2. LEARNING OUTCOMES

The following is a non-exclusive list of particular learning outcomes:

(1) Broadly know and be able to apply the principal doctrines of tort law, including, specifically, those listed in the course outline at the end of this syllabus.

(2) Have a basic level of literacy with tort law such that, with regard to tort law issues, you could productively and immediately step into a role as the general counsel of a small organization or as an attorney supporting the general counsel of an organization of any size.

(3) Have the requisite level of knowledge such that you could immediately play the role of a productive and knowledgeable junior associate to an experienced outside counsel who practices primarily in tort cases.

In making reference to "tort law," the above learning objectives are meant to refer to the subject matter of the Torts course, which includes a few things that are not strictly speaking tort doctrine, but are tort-law relevant knowledge and that are addressed in the course – examples might include basic things to know about indemnification, insurance, or the statutes of limitation.

3. CLASS WEBSITE

The central repository for class materials and information is the class website. It is not password protected. You can go to ericejohnson.com and find the link on the upper left. The direct URL is:
http://www.ericejohnson.com/courses/torts_25/.

On the class website there is or will be a link to the Chart of Assignments. This is the direct link:
http://ericejohnson.com/courses/torts_25/Torts_Chart_of_Assignments.html

I may use Canvas if I need to post things that implicate student privacy—such as posting a recording of class. If I do that, I'll let you know. And to the extent I use Canvas for anything that is required reading, I'll let you know by instruction on the Chart of Assignments.

4. MATERIALS

4-1. Books

There are three required books. One is a traditional printed book published by a traditional publisher. The other two are free, open-source books, for which students will have choices about how and when to obtain a copy.

The one traditional get-it-from-a-bookseller physical book that is required is Four Trials by John Edwards, with John Auchard (Simon & Schuster 2004) ISBN-13: 978-0743272049. The earliest a reading will be assigned out of it is the third week of classes.

The other two books are the main textbook (aka "casebook") for the class, which is broken into two volumes. It's called Torts: Cases & Context (aka "TC&C"). I wrote it. It's free/open-source/OER. The webpage for distributing TC&C is here: https://ericejohnson.com/projects/tcc/. The version we are using is 2.1. We will go through Volume One first. We will probably get to Volume Two around the eighth week of classes. As of the beginning of the semester, Version 2.1 of Volume Two isn't out yet, but it will be soon.

You can buy a paperback copy of TC&C, or you can download and print it, or you can read it on a screen. You've got choices. We will talk about it, and why you might want to do one thing or the other.

If the campus bookstore or some other source told you that you have to buy something other than the John Edwards book, please let me know.

Keep this in mind: Assuming we have the kind of exam I plan to, then one portion, the essay portion, will be open-book/open-notes essay portion. Accordingly, then you will probably want to have a printed copy of your books by the end of the semester to use on the exam. You could start the semester with a printed copy that you markup and highlight as you go along. Or you might prefer to read books on your computer or tablet and then print things out at the end of the semester (at which point perhaps you will have marked up the book electronically over the semester). It's up to you.

4-2. Other Materials

In addition, students may be required to access certain other online open-access materials, which they may choose to download and print.

4-3. Technology Expectation

Please bring an internet-connected/web-browsing-capable laptop, tablet, phone, or other portable general computing device to class for use in interactive polling. It is my hope that all students will be able to do so without incurring any additional expense or buying anything new; if you don't already have such a device you can bring to class, please let me know and we can discuss it.

4-4. Study Aids and Unassigned, Additional Reading:

Beyond the required materials, you are encouraged to use any other materials you find helpful or interesting. There are lots for sale. And the OU Law Library may be able to point you to many resources in the library's collection, or for which the library has subscription access for students.

I am aware that some professors discourage the use of commercial outlines or various study aids. I don't. The more you learn about the law, I figure, the better. But a word of caution is in order.

In my experience, I have found that commercial outlines and other study aids are a great way of gaining a basic understanding of the blackletter law in a subject. But I think the best time to read such an unassigned secondary source is right at the beginning of the semester. That way, you may give yourself a better foundation of knowledge for learning the material presented in the cases and in class. Reading such a book along the way might be helpful as well, as it may explain the material in a different voice.

On the other hand, I recommend extreme caution in reading an unassigned treatise or commercial outline as exam preparation for this class. I suspect it may be a waste of your time and mental energy, because all such study aids will go into much more detail than we will about some things and will gloss over other things we will dig into deeply. But it's up to you, of course, to judge for yourself.

If you do use outside study aids or other resources, I would be interested in hearing about your experience with them—whether good or bad. I'm always keen to know what is contributing to people's learning.

5. ASSIGNMENTS

5-1. Posting

Readings will be posted to the Chart of Assignments, online. You'll find a link to the Chart of Assignments on the class webpage. Keep in mind that you may need to hit refresh or reload the page to see the most recent updates. **Ordinarily, readings for any given week will be posted by the day after the last class of the preceding week.**

5-2. Minimum Out-of-Class Workload Expectation

The vast majority of your law-school education is meant to take place outside of class. For this course, you should at least be doing out-of-class work that averages roughly twice the amount of scheduled in-class time. This is in line with standards that have been issued in relation to the accrediting for American law schools. I put together the assignments with this minimum expectation in mind. Note that this out-of-class workload expectation is an average across the semester. Some weeks might require less time than the average, others more.

5-3. How You Should Approach the Reading

(a) ***Where I'm coming from, what I hope for:*** My aim is to avoid making the raw amount of reading unduly burdensome. Given this, I ask that you do the reading conscientiously. What does that mean? You could, of course, brief the cases, use a highlighter, make margin notes, or do any of a number of other things. And, of course, you should do what works for you. But the most important thing is to read the material with interest. "With interest" means you should be having thoughts going through your head such as, "Mmmm, interesting!" "Ah ha! That makes sense!" or "What is wrong with this judge?!?"

More to the point, don't waste the case merely looking for a rule to put in your outline or to commit to memory. If a rule were the only thing to get out of a case, I would just assign the rule. The point of reading cases and other assigned materials is to help you develop a lawyerly intuition about the law. The ideal is to be able to speak in sentences like, "I'm not aware of a case exactly on point, but my sense is that in a situation like this, a court would … " or "A case that tackled this sort of issue is _____, and it decided _____, which suggests that in this situation … "

(b) *[reserved]*

(c) ***Some other ways of thinking about the reading:*** One way to approach the reading, suggested by Professor Scott Brewer, is to be aware of "the literary drama

of the law," that is, to "be alert to the narratives of the hopes, aims, fears, aspirations and frustrations of the litigants … " Behind every case there is a real story. The more you allow yourself to be absorbed into that story, the more you will get out of the case and the more you'll remember it.

Also, you should attempt to put yourself in the position of the judge. Force yourself to confront the challenge of trying to interpret the law in a way that is fair, reasonable, unbiased, in accord with accepted policy aims, and true to precedent and statute. Using this kind of viewpoint, you are bound to get something extra out of every case you read.

(d) ***Questions to be prepared to answer:*** I recommend that in the aims of getting the most out of the reading, you prepare an answer to these questions. And to the extent you opt in to cold calling, expect to be asked these:

- What is something interesting/compelling/instructive about this case?
    - Put differently, what is one thing you would point to as to why the case was worth reading, was worth assigning, or is worth remembering?
- What is your best argument against or critique of the court's opinion?
    - (. . . or, if not a judicial opinion, then of the author's writing, argument, or presentation)
- When you picture yourself as a litigator arguing the law to a court, or as an attorney writing a demand letter or responding to one, how could this case be useful to the future you?

And here are some additional questions I think it is profitable to consider:

- What is a strength in the analysis or presentation?
- What is a potential weak point in the analysis or presentation?
- What is a question you are left with from the reading?
    - (You might, for instance, decide you are left with a question you want to ask me in class!)
- Did you perceive that the court (or author) glossed over any difficult or complex issues? (Put differently, did the court avoid troubling itself with something it should have engaged with head on?)

Consider using these questions as a checklist to make sure you are reading deeply. For what it's worth, I think these sorts of questions are potentially much more useful to you than the sorts of things traditionally picked out for a case brief.

6. GRADING

6-1. Overview

I care a great deal about fairness in grading, and I believe you will see the product of that thinking throughout the course. Here are the basics: Your grade for the course will be based on your exam performance. From that, a few things

could work to lower your grade, including class conduct, attendance, and academic misconduct/dishonesty.

6-2. [reserved]

6-3. [reserved]

6-4. Class Participation, Calling on Students, Student Conduct in the Classroom, and the Relation of these to Grading

Class participation will not count for grading:

Class participation, as such, will not count in grading. That is, things said aloud by students in class (whether volunteering or responding to being called on) will not be evaluated with that evaluation affecting the final course grade. But class conduct (which could include using one's voice in a disruptive way, for example) may have a negative effect on the course grade.

Here's my explanation for why class participation won't count for grading purposes:

I used to keep notes on class participation and used that as the basis for potentially stepping up the final grade. But I no longer do that. The reason I changed is because of policies or practices regarding the issuance of accommodations to students to make audio recordings. To me, this raised concerns about student privacy and how to provide for an environment that is reasonably comfortable for and conducive to students being called on and asked to provide analysis, opinion, or other thought. I decided I wasn't comfortable with compelling a student to speak in class, including through dint of grading. Thus, I decided to leave class participation entirely ungraded. Policies regarding recordings of class have evolved. They may change in the future. Regardless, to keep things simple and avoid potential issues, I have made the decision to leave class participation ungraded.

Cold calling and use of student names:

For the same reasons, discussed above, that I will not grade class participation, I also plan to not cold call on students—unless the particular student opts in to being cold-called. And, again for the same reasons, I plan to not use student names in class unless the student opts in to their name being used. I have in mind a system for students to opt in to their name being used and to opt in to being cold-called. I will discuss this in class.

Class conduct (as opposed to class participation) may negatively affect grading:

While class participation won't be graded, I may lower the class grade of a student for class conduct, including a pattern of repeated and substantial visible disengagement while in class (including being noticeably distracted by a phone or device), conduct contrary to the In-Class Conduct Rules (listed below, see §8-1, *infra*), conduct contrary to other admonitions communicated in this syllabus or otherwise, conduct that I regard as potentially dangerous (see §8-1B, *infra;* this includes, for example, driving during class if class were to be conducted on Zoom—and yes, students actually did that, back when class participation was graded and I did cold calling), or any conduct that detracts from the educational process.

6-5. Attendance and Grading

Attendance issues—including tardiness and absences—if substantial, can affect your grade. If attendance issues are severe enough, they can even result in a failing grade or involuntary withdrawal. See §9 on attendance, *infra*.

6-6. Academic Misconduct/Dishonesty and Grading

Cheating, dishonesty, and serious academic misconduct of any kind in this class will presumptively result in a failing grade (e.g., a letter grade of F) for the semester. To be clear, failing to follow final exam instructions in a way that compromises exam security or might give a student an advantage—even if done without intent to gain such an advantage and even if inadvertent—constitutes, in my judgment, serious academic misconduct, and it will presumptively result in a failing grade and a referral for discipline. It is your responsibility to treat exam instructions with diligence and care.

In any instance of misconduct, I reserve the right in my discretion to request involuntary withdrawal or award a lower grade other than a failing grade if I find there to be extraordinary mitigating circumstances. Despite my reservation of rights in this regard, however, do not expect leniency.

Please note that the awarding of a lower grade or a failing grade for misconduct is not to the exclusion of other sanctions, and I intend, in virtually all instances, to refer cheating and other serious academic misconduct to the College of Law and/or the administration of the University of Oklahoma for being dealt with under applicable policies, including the Code of Academic Responsibility.

6A. CERTAIN SPECIFIC ISSUES REGARDING ACADEMIC MISCONDUCT

Intellectual Property and Infringement or Misappropriation to Obtain Academic Advantage

It is cheating and academic misconduct to engage in copyright infringement, misappropriation of trade secrets, or other conduct violative of any intellectual property rights where such conduct is reasonably likely to result in or is done in furtherance of obtaining academic advantage with respect to this class. Intellectual property law is often unclear or unsettled – that is to say "fuzzy" or "in a gray area." Thus, for the foregoing, conduct shall be considered violative, infringing, misappropriating, etc., if there is a reasonable basis for believing the conduct would be likely to be determined as such in a court.

Sound reason requires such a policy. Where one student gains advantage through unlawful or rights-violating conduct, students staying on the correct side of the law are thereby disadvantaged. Fairness does not tolerate the rewarding of misconduct.

Other Rights-Violative or Unlawful Conduct to Obtain Academic Advantage

The above described policy regarding intellectual property law and rights also applies to other law and other rights. Thus, for example, trespass to tangible property to obtain academic advantage is academic misconduct.

Generative AI Policy

There is no general restriction in this class on the use of generative artificial intelligence.

There is no blanket safe harbor for use of generative AI for this class.

If the use of generative AI would conflict with some other instruction or policy (e.g., the exam) or constraint (e.g., copyright covering class materials), then it is prohibited.

So, to be clear, as a matter of class policy, there is no prohibition, as such, on using generative AI to study. But that does not mean that a particular use of generative AI to study is permissible.

For instance: Would it be academic misconduct to feed assigned readings into an AI interface and ask it to summarize them? It would be academic misconduct if doing so were, for example, violative of copyright. (See the accompanying policy, *supra*, concerning IP, infringement/misappropriation, and obtaining academic advantage.) And answering that strikes me as a complicated, fact-dependent question which could depend, among other things, on the copyright status of the readings in question, any blanket licenses (e.g., Creative Commons licenses) covering the readings, and various doctrines of copyright law.

Do not ask me to okay particular applications of generative AI in relation to this class or class materials. I will not undertake the burden of doing the required factual analysis or legal analysis. As I said, it strikes me as complicated.

7. COMMUNICATIONS AND OFFICE HOURS

7-1. Invitation to Chat

At least once during the semester, I hope you will take advantage of office hours, an appointment, or some other opportunity to chat—even if you have no questions or nothing specific to discuss. That's not a requirement, just a request. Ideally, I would like to spend some informal time with everyone.

7-2. Questions About the Exam

If you have any questions about the exam, please ask them in open class. In the aims of fairness, I do not discuss the exam on an *ex parte* basis.

7-3. Office and Office Hours

My office is on the third floor, room number 3034. My phone is 405-325-2273. I post open office hours on my website, direct URL: http://ericejohnson.com/office_hours.html. Please check that webpage for up-to-date information about office hours. But as of the start of the Fall 2025 semester, my plan is the following: Open office hours Mondays and Tuesdays 3:00 to 3:30 p.m. And generally I will be able to stay past 3:30 p.m. – for instance, if a student wants to keep talking or if any students are waiting. If office hours are not convenient, please do not hesitate to e-mail me to make an appointment to talk, and when you do, it helps if you include some suggested times that work for you. Also, I am happy to meet with students after the completion of the course, either by appointment or during open office hours, including for reviewing exam results.

7-4. E-mail

My e-mail address is eric.e.johnson@ou.edu. Please note that I do not answer or discuss substantive questions through e-mail. Why not? The answer to a substantive question is almost always, "It depends … ", and thus it becomes very difficult to draft satisfying written responses to substantive questions. Answering those questions live and in-person is much easier, because I can ask clarifying questions and we can go back and forth until there's an answer you find satisfactory. So please bring substantive questions to class or to office hours.

Please do not ask questions for which the answers are clearly found in this syllabus. And if you miss class, please ask other students what you may have missed.

Any e-mail communications you do have with me should be prepared in a professional manner, including the use of a meaningful subject line. Also please note that, perhaps unlike many students, I do not read e-mail on a constant basis. So please be patient for a reply.

7-5. Lack of Confidentiality; Faculty Reporting Obligations; No Legal Advice

(a)**Tell me nothing that is confidential.** It is important for students to understand that faculty are subject to various mandatory reporting obligations stemming from federal law, state law, and university policies. Information a student shares with me that I may be obligated to report may include, but is not necessarily limited to, that which relates to sexual harassment; gender-based discrimination; sexual-orientation discrimination; other forms of discrimination; sexual assault; stalking, dating or domestic violence; child abuse or neglect; and various crimes. This might include third-hand accounts of claims or allegations of these things. Mandatory reporting obligations can cover things that happened in the past, on or off campus, involving university-affiliated persons or not. The requirements can be complex. Moreover, I do not wish to take on any confidences from students, even to the extent I might be able to do so. Bottom line: **Assume that nothing you tell me will be kept in confidence.**

(b) Please do not ask me for legal advice. I am not licensed to practice law in Oklahoma, and I cannot be your attorney. It is my job to prepare you eventually to give legal advice to others, and I am obviously happy to talk through hypotheticals with you, as that is a key way of exploring and learning the law. But giving legal advice upon which someone should be able to rely generally takes working up an in-depth understanding of the facts and taking a careful appraisal of the client's interests—all of which calls for working in the context of a confidential relationship. It also often requires doing legal research. I'm not in a position to do any of that for you.

7-6. Letters of Recommendation; Serving as a Reference

It's important to me to do a good job as a reference for my students. If you might wish for me to serve as a reference for you or write a letter of recommendation for you in the future, it would be helpful if you let me know that on the last day of class with an e-mail that attaches your résumé. You might take a moment to put this on your calendar now. Such an e-mail will allow me to file

away some notes about my recollections of you, and then I can use those notes in the future as a basis for writing a letter for you or taking a telephone call on your behalf. I also refer you to a memo I've written about references and recommendations: http://ericejohnson.com/docs/Memo_to_Students_re_References.pdf. If you review that memo, you can help me to do the best possible job in helping you.

8. IN CLASS

8-0. Visitors, Parents, Friends, Children & Babies in Class ☺

Often in the past I've gotten emails before class from a student asking if they could bring someone to class, like a parent, friend, child. Often these questions have come up at the last minute before class, at a time when I'm not checking email. So I thought I'd address it here in advance.

Visitors to class are welcome!

If you want to bring a parent, sibling, out-of-town friend, friend who's potentially interested in law school, prospective student, or the like, you are welcome to do so! You don't have to get advance permission to do this – at least if not on a recurrent basis.

I'd appreciate it if you introduced them to me before class begins.

Babies and children are welcome!

If you have a sudden childcare emergency, please feel free to just bring your kid to class. Or if your kid wants to see law school (great idea), or if you want to show off your baby (also a great idea), feel free to bring them.

If you've got a little kid, you probably have some contingency for pacifying them (tablet with headphones, actual pacifier). If so, that's great, but nothing's failsafe and that's okay. With a baby who's fussy, feel free to feed, nurse, stand up and rock & sway, what have you. In the event they get really disruptive, you can just sneak out with them. It's not a big deal.

Bringing your kid or another visitor to class regularly would be a different issue. But in a pinch, or as a one-off thing, just haul them in.

8-1. In-Class Conduct Rules

In general:

(a) Avoid behavior that might disrupt class or distract your fellow students.

Some specifics:

(b) Do not eat in class. Do not chew gum audibly or with your mouth open.

(c) Refrain from any use of a digital device where such use could reasonably disrupt class or distract fellow students. All digital devices must be operated without audio volume. Screens must not display any distracting content, including, but not limited to, moving images (video, TikTok), animation, flashing graphics (including GIFs and display ads with movement that are common on sites like Facebook, the New York Times, etc.), distracting images, or indecent content. If you are being distracted by a classmate's digital device usage, please let me know! If you are being distracted, it is almost certain that multiple people are

being distracted at the same time. Once I know about this, I can then communicate with that student about the issue—which I will seek to do tactfully, in the nature of a friendly reminder/request, without causing anyone any embarrassment.

(d) You may use digital devices (including, without limitation, computers, phones, and tablets) in class; however, from the time of class's scheduled beginning until class ends, **you may not communicate with others in class using your device. So you can text someone outside of class, but do not communicate electronically with anyone in our class.**

The reason for this is that I have had some experiences where a group of students relieved their anxiety (or boredom) through a group-chat type of thing and it led to some palpably bad classroom dynamics. How bad? Really bad, actually. Bad enough for me to write up this admittedly lengthy and strict policy.

Thus, specifically: (1) You may not engage in any digitally enabled network communications with anyone else in class, including, but not limited to, e-mail, text messaging, IM'ing, etc. (2) No posting to social media. You may not engage in any digitally enabled network communications that effect a publication, uploading to, or updating of any public or group-delimited platforms or channels, including, but not limited to, Instagram, Discord (private or public channels), Facebook (including, but not limited to, Facebook groups), Reddit, the web, and so forth. The prohibitions of this subparagraph (d) are not limited by context and apply without regard to whether the activity in question can be characterized as disruptive or distracting. Any violation of the policy in this subparagraph (d) will presumptively result in a grading penalty and may also be referred for disciplinary action. The prohibitions of this subparagraph (d) do not apply if and when you are absent from class and not on campus, nor do they apply to communications with OU information-technology staff for technical-support purposes. **Bottom line: Keep the discussion in class, where it is productive and beneficial for all.**

8-1A. Zoom/Remote Contingency Rules: General

If we end up conducting part of class via Zoom or a similar online arrangement—which I hope we won't—then please mind the following:

Keep your video on.

Avoid distractions on video. If you eat, eat discretely. Dress appropriately.

Remember to stay muted when you're not talking.

You can use artificial backgrounds, but avoid distracting content.

More guidance and rules may be forthcoming if it comes to that.

8-1B. Hazardous Attention-Critical Activity During Class Time

During the pandemic, when class was being done remotely through Zoom, I found out that some students attempted to drive a car and attend a class on Zoom at the same time. (Can you imagine if I called on a student and that caused the student to lose their focus on the road, in turn causing a collision?) Thus, whenever attending, observing, 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.

It is also true that while physically present in class you may not undertake any Hazardous Attention-Critical Activity. I'm not sure what that would be (remotely operating a drone?), but don't do it.

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 more elsewhere in this syllabus, including §§ 6-1, 6-6 in this regard.) In addition, expect that I will report known hazardous behavior to law enforcement.

8-2. In-Class Participation

(a) ***Appropriate levels of voluntary participation:*** Your participation and in-class discussion should be meaningful and appropriate. Please feel free to raise your hand to have a say in discussion when you have a comment that will contribute to the experience of the class as a whole, or when you have a question, the clarification of which will benefit the entire class. On occasion there are students who raise their hand too often and take up too much of the class's time. Please aim to avoid that.

(b) ***Getting called on:*** I plan to not cold call on students except to the extent a student opts in. But to the extent you opt in, please see §5-3(d) and §6-4, *supra*.

8-3. [reserved]

8-4. Audio Recordings and Video

No one (other than me) is permitted to make an audio or video recording of class, nor make any transmission (e.g., livestream) of class, or any reproduction of any class recordings.

Any exception—which I do not anticipate making—would require my express, written permission or a valid, duly issued accommodation or order from some person or office with valid power to do so.

I generally do record all class sessions myself. These recordings are for my own use. I have often found them helpful in improving my teaching. (For example, if I feel I've done something particularly well, I can go back and listen to it the following year to try to replicate it. Indeed, I've done this many times.) Also, recording class serves the purpose of perfecting copyright in the expressive content of the lecture.

But please don't ask me for a copy of a recording. I don't give them to students. My distribution of recordings that contain students voices would, I believe, significantly hamper students' sense of classroom discussion as being a safe space; plus, there are legal issues with distributing such recordings. And, at

any rate, focusing on the verbatim of what was said in class is almost certainly the wrong study strategy. So providing a way for students to watch or listen to class after it happens isn't part of what I do. (I guess it is possible that something really bad could happen—natural disaster, new pandemic, really bad turn of old pandemic, etc.—that would be cause for me to change the way I do things and start putting audio/video recordings on Canvas or something like that. But it's unlikely.)

The OU College of Law has provided the following language for inclusion in syllabi, which is applicable to this course:

> "A student may not record class in any form; to do so is a violation of the Student Code of Conduct as outlined in the Academic Handbook. This class may be recorded by the instructor or by the school for various reasons including those to comply with verified accommodation requirements. If you have an approved accommodation from ADRC you may record the class after I have receive a signed Audio Recording Service Agreement."

In the above, the words "Audio Recording Service Agreement" are linked to: https://www.ou.edu/adrc/services/academic-accommodations.

The OU Center for Faculty Excellence has provided this similar language for inclusion in syllabi (obtained August 2025), all of which is also applicable to this course, and which usefully additionally emphasizes privacy rights of students:

> "Sessions of this course may be recorded or live-streamed. These recordings are the intellectual property of the individual faculty member and may not be shared or reproduced without the explicit, written consent of the faculty member. In addition, privacy rights of others such as students, guest lecturers, and providers of copyrighted material displayed in the recording may be of concern. Students may not share any course recordings with individuals not enrolled in the class or upload them to any other online environment."

Let me provide some rationale for not distributing recordings to students: A key part of class is letting students feel free to stumble and attempt to push past their competency. Often that can be with difficult, emotional subject matter. Student recordings of class time would—I think it is reasonable to infer—impede that.

All that having been said, I cannot guarantee that recordings of class sessions will not be provided to persons under an accommodation or because of some other directive.

If ADRC has issued an accommodation to you that conflicts with the admonitions against recording set out above: You should of course avail yourself of that accommodation. But abide by the above admonitions to the extent that the accommodation does not provide otherwise. Additionally and particularly, **you may not do any of the following: play a recording for others, distribute a recording or post any recorded material online, use a recording for non-class purposes, fail to delete a recording following the conclusion of the semester.** The only exception would be if—and only to the extent that—your accommodation contains specific language approving such conduct, and then

only to the extent that such conduct does not violate any retained legal rights of others not validly preempted, including intellectual property rights and privacy rights.

9. ATTENDANCE

9-0. Overall Comments

I have to require attendance. That derives ultimately from law-school accreditation standards and college policy.

Given that I need to require students' attendance, I need an attendance policy. If there's going to be a policy, I believe it should be enforced. (I believe in enforcement because of the obvious sort of justice rationale: It's unjust for most people to suffer a detriment because of anticipated repercussions while a few do what they want and face no consequences.)

The only meaningful way to enforce the attendance policy is with grading/course-withdrawal/credit-denial consequences. And if an attendance policy is going to be enforced with these things, then I believe the policy should be clear and laid out in advance—not made up on the fly.

So, here comes my attendance policy. It's long. It's detailed.

But note that **I have endeavored to make this attendance policy generous in terms of how many absences are allowed** without grading/credit consequences.

And to the extent this attendance policy has a level of detail that would make regulation drafters at the Federal Aviation Administration whistle and shake their head as they are overwhelmed by feelings of astonishment, admiration, or deep kinship, then, yeah. Taking away a pilot's license is a big deal, and so is giving someone an F in law school for having too many absences.

Bottom line: I'm going to spell it all out, and then I'm going to stick to it.

9-1. Communications About Attendance

There is generally no need for you to e-mail me if you are or anticipate being absent. Moreover, there is generally no need for you to explain to me why you have been absent. The only reason I imagine that I would need to know why you are absent is if attendance is approaching a severely deficient level (discussed below) and it becomes necessary to discuss extenuating circumstances, or if your absence is excusable under university or college policy and you wish to have it excused (in which case see §§ 9-3(f)-(h), 9-6).

9-2. Keep Track of Your Attendance

You must keep track of your own attendance. Do not ask me how many absences/tardies you have accumulated. I do not add up attendance on a day-by-day, week-by-week, or even month-by-month basis. **I only add up attendance once: after the semester is over, right before I submit grades.** I'm only trying to enforce the outer bounds of a policy that already has generous attendance allowances baked into it. Thus: **It is your responsibility to keep track of your own absences**, including with regard to the presumptive involuntary withdrawal or failing grade. And do not expect to get independent notice that you are

approaching the threshold for grade reduction, failing, or being involuntarily withdrawn. **This syllabus provision is your notice.**

A caveat: If your question is limited to asking me to what extent I've used my discretion under §9-3(b), *infra*, then I admit there's no way you could know that just on your own. If you really want to know that, come up to me after class and ask about the specific day or days about which you are concerned.

9-3. Specifics Concerning Effects of Absences and Tardiness, Including Excused Absences, Extenuating Circumstances, Grade Reductions, Other Consequences, Etc.

(a) Late Arrivals and Early Departures

For purposes of determining the appropriateness of penalties discussed below, a late arrival or early departure will count as half of a whole absence. (For recordation of late arrivals and early departures, see §9-4, *infra*.)

(b) Comings and Goings; Intraclass Absences

I understand that you may have an urgent need to leave class for a short time. But coming and going tends to be disruptive, so please leave class only when necessary. Bear in mind that leaving and re-entering if determined in my discretion to be prolonged or notably disruptive, may be counted as a half absence.

(b *bis*) References to Absences Includes Partial Absences

In this policy, the term "absence" or "absences" includes partial absences. In many places in this document a parenthetical has been included—e.g., "(including partial absences)"—to emphasize this.

(c1) Calculation of Maximum Absence Quantity ("MAQ")

In this policy, "MAQ" refers to Maximum Absence Quantity. The MAQ is calculated as follows: The number of regularly scheduled class sessions for this shall be multiplied by 0.65. The product shall be rounded up to the next nearest whole number. That number shall be subtracted from the number of regularly scheduled class sessions. The resulting number is the MAQ.

(c2) Reason for Use of Maximum Absence Quantity ("MAQ")

In prior years, my attendance policy specified certain numbers as the thresholds at which grade penalties or denial of credit would occur. In the 2024-2025 academic year, the College of Law adopted an attendance policy framed in terms of percentages of regularly scheduled classes. That policy provides: "The faculty deems attendance in less than 65% of the regularly scheduled class sessions for a course to render a student ineligible to earn course credit toward the JD degree." Thus, the class policy in this syllabus has been arranged so that absence thresholds use the quantification articulated by College of Law policy as their basis.

(d) Automatic Reduction in Grade for Severely Deficient Attendance

A student's grade will be automatically reduced as follows (see §9-3(c1) for how to calculate the quantity "MAQ"):

A quantity of absences equal to or greater than MAQ −3 (read as "MAQ minus three") will result in the dropping of a student's final grade by one step (e.g., from a B to a B−).

A quantity of absences equal to or greater than MAQ −2 (read as "MAQ minus two") will result in the dropping of a student's final grade by one additional step (e.g., from a B− at MAQ −3 absences down to a C+).

A quantity of absences equal to or greater than MAQ −1 (read as "MAQ minus one") will result in the dropping of a student's final grade by one additional step (e.g., from a B− at MAQ −3 absences down to a C+).

Note that if a student's grade is reduced from a D−, that results in an F.

(e) Involuntary Withdrawal or Failing Grade for Profoundly Deficient Attendance

For a student with a profoundly deficient attendance record, I will presumptively have the student involuntarily withdrawn from the course without credit and with a grade of F, have the student involuntarily withdrawn from the course without credit and with some other grade that may be appropriate under university or college policy, or award a failing grade at the end of the semester. For these purposes, I will presumptively regard as profoundly deficient attendance **MAQ** or more absences. (See §9-3(c1) for how to calculate the quantity "MAQ.") Recall that partial absences (i.e., late arrivals, early departures) will count as half an absence. **It is your responsibility to keep track of your own absences**, including with regard to the presumptive involuntary withdrawal or failing grade. Thus, do not ask me to calculate your attendance record so that you can weigh whether to miss an additional class. And **do not expect to get independent notice that you are approaching the threshold for failing or being involuntarily withdrawn. This syllabus provision is your notice.**

(f) Special Extenuating Circumstances

I may take account of special extenuating circumstances in deciding whether to drop a grade, award a failing grade, and/or request involuntary withdrawal. Special extenuating circumstances can include weather emergencies, personal illness, illness of a close family member, bereavement, etc. Extracurricular activities, job interviews, court appearances, or the like can be considered in this vein as well. (For absences caused by religious observances, which are excusable, see §9-3(g), *infra*. Also see §9-3(h), *infra.*)

Notwithstanding the foregoing, it is expected that under almost all circumstances students will be able to keep absences within the numerical thresholds identified above—including absences caused by illness, storms, job interviews, etc. Giving students special dispensation on the issue of attendance will only be done if appropriate under the totality of the circumstances. As an example, suppose a student was absent from class a number of times because the student wanted to sleep in; then, at the end of the semester, the student was absent one additional time because of an out-of-town job interview. In such a case, if the job-interview absence takes the student over the threshold for an automatic reduction in grade, then the grade reduction is appropriate. If the student had been generally conscientious about attendance from the beginning,

the student would not have created any issue with missing class for the job interview.

If you wish for me to consider any special extenuating circumstances with regard to your attendance, then you must file an End-of-Semester Attendance Attenuation Statement, as discussed in §9-6. (I suggest you calendar the filing of that statement now, so you'll remember to do it if you need to. See §9-6.)

Note that you should not feel compelled to discuss with me reasons for absences or extenuating circumstances if your attendance is not approaching a severely deficient level.

(g) Absences Resulting from Religious Observances

In accordance with University of Oklahoma policy, I will excuse absences that result from religious observances. That the absence is excused means it doesn't count as an absence for purposes of hitting the "severely" or "profoundly" thresholds for grade reductions, involuntary withdrawal or failing grade under Syllabus §9-3(d) and §9-3(e)). To have an absence excused on the basis of a religious observance, **you must file an End-of-Semester Attendance Attenuation Statement**, as discussed in §9-6. (Calendar the filing of that statement now if you think you might have an excusable absence this semester because of a religious observance or holiday. See §9-6.) You should also separately contact me as appropriate or useful during the course of the semester in regard to such absences.

(h) Absences Excused or Treated Differently According to College or University Policy or Applicable Law, Including Accommodations

In the event that applicable law, College of Law policy, or University of Oklahoma policy mandates that one or more absences are excused, will not be counted or will be counted differently with regard to grading, denial of credit, etc.,—including but not limited to for reasons of accommodations—then such law or policy shall control, but **the student must file an End-of-Semester Attendance Attenuation Statement**, as discussed in §9-6. Keep in mind that **the End-of-Semester Attendance Attenuation Statement is meant to protect students**—it ensures I have the necessary information readily available to me when I am entering grades.

Please note: I strongly wish to encourage students feeling sick to err on the side of caution and stay away from class if they feel they may pose a potential risk to members of the law school community by coming to class.

9-4. Attendance Record

(a1) Be careful, be honest

To avoid being distracted in class by constantly noting things like late arrivals and early departures, I generally require students to log their own attendance, including filling out late slips. Thus, it is of paramount importance that you deal with all attendance issues with utmost honesty, integrity, and care. Inaccuracies in marking an attendance log or late slip will presumptively be treated as academic misconduct and will presumptively result in a lowered grade or a failing grade. But people make mistakes, obviously. **If you made a mistake and you realize it, please just come tell me.** Prompt disclosure of an inadvertent

inaccuracy is, of course, entitled to be met with a presumption of good faith and forgiveness.

(a2) Means of Taking Attendance

Attendance may be taken by means of a paper log (paper sheet or card) for students to fill out during class, by roll call, by reference to the seating chart, or by some other method.

(b) Indicating Attendance

If attendance is taken by means of a paper log, then when the attendance log comes around to you, fill it out as instructed, indicating your attendance for the instant date. ("Instant date" means the current date as you are looking at the log.) Indicating your attendance this way is your responsibility: If the attendance log does not come around to you, please come up to me immediately after class and ask to fill it in. If you omit to fill in the log during class or immediately afterward and before I leave the room, you will be counted as absent.

This is very important: You may only fill out the attendance log on behalf of yourself and for the instant date. You may not mark the log on behalf of another person, even if that person is in attendance, and you may not permit another person to mark the log on your behalf. You may not make any mark indicating your attendance for any other date other than the instant date, even if you were or will be in attendance on that other date.

(c) Self-Reporting Partial Attendance

If an attendance log is used, and if you will need to depart class early and not return, then you must make an appropriate notation of that on the attendance log. Alternatively, if you have a change of plans requiring you to leave early despite not having indicated that in advance on the attendance log, then you must inform me by e-mail as soon as reasonably possible afterward to correct the record.

(d) Filling Out of Late Arrival Slips

If you arrive late to class, you must legibly and completely fill out a late arrival slip before you go to your seat. Assuming a clipboard is provided with late slips, you can just fill it out and leave it on the clipboard. If you know ahead of time you will be late, you can fill out a late slip in advance and bring it with you to leave with the clipboard as you enter.

(e) Unrecorded Absences

At my discretion, I may announce that for a particular class meeting I will not record attendance and that absences from such a class meeting will not count for purposes of the attendance policy. It is also possible that I may omit to record attendance for a class.

9-5. Mandatory Immediate Self-Disclosure Statement of Accumulated Absences in Cases of Profoundly Deficient Attendance

I do not add up and calculate accumulated absences on an ongoing basis during the semester. As mentioned previously, it is each student's responsibility to keep track of her or his own absences. In keeping with that: **Upon a student's accumulation of a record of profoundly deficient attendance (see §9-3(e), *supra*), that student is required to disclose such accumulation immediately in**

writing to me. The disclosure must be made to me by e-mail (eric.e.johnson@ou.edu) with a paper copy handed to me in person, or, if in-person delivery is not practicable, to a faculty administrative assistant with an explicit explanation of the nature and urgency of the communication. The subject line of the disclosure e-mail must be "Self-Disclosure Statement of Accumulated Absences."

If the student hopes to avoid involuntary withdrawal or the awarding of a failing grade for the course, then the statement must explain the reasons for the student's absences, or at least a portion of the absences sufficient to avoid the profoundly deficient attendance, and must provide a rationale for why the student should be allowed to continue in the course notwithstanding the accumulated absences. Any supporting backup documentation that is to be considered must be provided with the statement, or, if this is not immediately and reasonably possible, then the student must provide what she or he can with the statement and explain in the statement the nature of the delay and when the remaining documentation will be forthcoming. To this end, the student is referred to §9-3(f), *supra*, regarding special extenuating circumstances.

My rationale for requiring this self-disclosure is that if I find out about the attendance problem during the semester, then I may be able to head off some bad outcome. I'd like to have me more options than just the grading penalty of giving an F. For instance, if there is the possibility to have the student withdrawn instead of given an F, that's usually the better outcome. Or if there's a question that can be resolved immediately as to whether some absences are excusable, then that might help avoid a bad outcome.

So, again, **please err on the side of disclosure**.

If a student has already submitted a disclosure under this section and then subsequently accumulates another absence (including a partial absence in the form of a late arrival or early departure), the student must submit a supplemental disclosure, like the original disclosure in form and substance.

For counting absences to determine the necessity of submitting a disclosure under this section, where there are any interpretive questions, a student is instructed to err on the side of inclusiveness. That is, a student who is unsure of whether a given instance will count as an absence or partial absence should err on the side inclusion of that absence or partial absence in the quantification of deficient attendance. A student is advised to note such interpretive questions and the fact of the student's erring on the side of inclusiveness in the statement.

I don't want to penalize someone for being diligent in reporting a possible problem, so note the following: If a student discloses an absence (including a partial absence) pursuant to this §9-5 disclosure obligation that was otherwise unrecorded (see §9-4, *supra*), then such will not be used against the student in calculating the student's quantity of absences for purposes of grade penalties, administrative withdrawal, denial of credit, etc. Thus, please err on the side of disclosure.

9-6. End-of-Semester Attendance Attenuation Statement

In order for me to consider absence excuses and extenuating circumstances, I must be aware of them. It is crucial that this information is readily accessible to me at the moment I am putting together grades at the end of the semester!

To make sure that I don't miss anything, I require that students provide this information to me in a particular way: **To the extent a student wishes to make a claim of extenuating circumstances for any reason, or claim any excuse (e.g., based on religious observance), or get the benefit of some relevant accommodation or the like, then the student must file an End-of-Semester Attendance Attenuation Statement not earlier than the last day of class, nor later than the day after the last scheduled day of final exams** for the College of Law for the semester. **Take a moment now to calendar this**—so you will remember when the time comes at the end of the semester.

The statement must be sent to me by e-mail (eric.e.johnson@ou.edu) with the subject line, "End-of-Semester Attendance Attenuation Statement."

I also suggest providing a paper copy to a faculty administrative assistant with the request that it be given to me.

File just one statement—that is, just one e-mail with attachments, and if you are handing in a physical copy, just one stapled packet of papers. By your putting everything together, we can avoid any possibility of my overlooking anything relevant. If you want me to consider any previously sent e-mails in a claim for special extenuating circumstances, then please include copies of those e-mails within the one communication.

There is no prescribed format for the statement; substance is what matters. Regarding what might qualify as extenuating circumstances or excuse, see §9-3(f)–(h), *supra*.

If you have already filed a mandatory disclosure for profoundly deficient attendance under §9-5, *supra*, then you should additionally file an End-of-Semester Attendance Attenuation statement, which can include copies of any previously filed disclosures made pursuant to §9-5.

Please note! The End-of-Semester Attendance Attenuation Statement and the requirements above are not intended to be retributive or to deter students from making use of valid excuses or calling my attention to extenuating circumstances. Rather, **the point is to make sure I have the relevant information at the time I count up attendance for grading purposes and so no one is needlessly given a reduced grade!** ☺

9-7. No Waiver

No provision of this attendance policy can be waived by me orally. (See §12, *infra*). If you think I said something that relieved you of an obligation under this attendance policy, then you misunderstood me. Also, I can't imagine a circumstance under which I would grant a written waiver: The policy is already built to be fair and generous and to take into account varied circumstances. It must apply to everyone equally.

10. EXAMINATION

10-0. Transparency and Fairness

(a) **Overall aims:** The most important thing to me in creating exams and grading them is fairness. I think you will see throughout my description of the exam that I have made design choices and adopted practices with fairness utmost in my mind.

(b) **Ex Parte Communications:** I will not discuss the exam on an *ex parte* basis. (See §7-2, *supra*.) Giving some information to some students that I don't give to all students would undermine fairness.

(c) **Anonymity:** Each exam will be "blind graded," so that I will not know the identity of the student as I am grading her or his exam. This, too, is a key part of fairness. This is not just a matter of protecting students that, theoretically, might have impressed me unfavorably in class. It is really mostly a matter of avoiding giving any advantage to students who have impressed me *favorably* in class. Thus: You may not waive anonymity. Do not include your name in your exam response, and do not write your name on any exam materials. Self-identification on the exam or otherwise compromising anonymity will presumptively result in a deduction from your exam grade and a referral for disciplinary action.

10-1. Commitments in How I Will Design the Exam and Key Advice to You in Studying

(a) Basic exam structure

My plan for the exam is as follows: The exam will be in two parts, administered separately and sequentially. Neither part will count for more than two-thirds nor less than one-third. The first part will be entirely closed book and will consist of a battery of multiple choice questions. The second part will be characterizable as "open book / open notes" and will consist of one or more essay questions.

There have been occasions when administrative decisions during the semester have necessitated changes to exam formats. That is why I used the wording "[m]y plan for the exam is"; I may have to do something different. If that happens, I will let you know as soon as I reasonably can. I am keenly aware that students look ahead to what they expect on the exam in making decisions about how they study. So I wouldn't deviate from the above plan unless I was required or felt compelled to do so.

(b) My goal and your goal

Your goal in taking the exam is to show your mastery of the material presented in the course and your skills in analyzing legal problems involving the course's subject matter. My goal in designing the exam is to provide you with a full and fair opportunity to do so and to avoid arbitrariness in the results.

(c) The Correspondence Principle

When I write an exam, I work hard to ensure that the emphasis on the exam will track the emphasis in class and in the materials, and the topics covered on the exam will be at least roughly proportional to the time spent on those topics in

the course. I call this the Correspondence Principle, and I will do my best to obey this when putting the exam together.

So, for example, if something received very little attention in the course, you can expect that it will receive very little attention on the exam—if any. Thus, when studying, I advise you to be balanced in your topic approach and to concentrate on understanding the bigger issues rather than memorizing minutiae.

(d) Comprehensiveness

In keeping with the Correspondence Principle, I will strive to be very comprehensive in terms of the coverage of topics on the exam. I will use the Chart of Assignments and what this syllabus says about the course's subject matter as a checklist. I expect to include, in some way, every topic that was substantially explored in class.

(e) Breadth and depth of coverage

Any material presented in class or in the readings is potentially fair game for the exam. But, in keeping with the Correspondence Principle, the emphasis given to topics will correspond to how much attention they received in class and in the readings. So, if some doctrinal point came up only in one smallish note appended to a case, then you can be sure that such a doctrinal point will not loom large on the exam. I wouldn't want that to even loom medium.

(f) Multiple-choice questions

For multiple-choice questions, a general design principle I follow is to try to make them straightforwardly answerable through application of key concepts and major points of doctrine—not memorization of obscure points. (Often I try to provide multiple ways for a student to get to the right answer on the basis of what we studied.)

Now, that being said, note that **"straightforward" does not mean "easy."** The regular type of multiple-choice question I use, where you are expected to apply law to facts, is a kind of puzzle. You solve the puzzle by applying the law you've learned. You have to work through the question to eliminate wrong answers and figure out the right one based on the doctrine taught in the course. I wouldn't represent that task as being easy. And, indeed, if you could tell the answer right away just by glancing over the question, it wouldn't be accurate to describe it as a kind of puzzle.

Here's another way to think about it: I've got a lot I keep in mind when I design multiple-choice questions: fairness, accuracy, straightforwardness, correspondence to coverage in the course. Easiness is just not something I worry about. Statistically speaking, what I care about with an individual question is getting a high point biserial (which can be thought of as an indicator of fairness). I do not concern myself with whether a question garners a high percentage of correct responses (which would be a measure of easiness).

Looking over past statistical results, it is clear that some of my questions end up being easy, and some end up being hard. Frankly, before running the test, I can't tell what will be easy and what will be difficult. Many questions that I thought before would be easy end up being answered correctly by only a small

percentage of test takers. And I've had questions I thought would be decently difficult be answered correctly by 100% of the class.

All in all, what I find in looking over past statistical results is that **my multiple-choice exams often skew toward being fairly hard**. In one recent class for which I looked up statistical information, a student with a median score on the multiple-choice section answered fewer than two-thirds of the multiple choice questions correctly. So that was a hard test. And if I used a grading system, as in high school, where a student had to get 83% correct to get a B, then that would be pretty frightening. But I don't and won't do that.

To the extent that a test is hard, that can be a very good thing for grading fairness. In truth, **you don't want a test that's super easy**. Instead, **you want a test where what you score is correlated to how much you know**—in other words, a fair test. And if you think about it, an exam that is super easy becomes dangerous: Happen to miss a question or two—perhaps because your mind is randomly drawing a blank on something—and then all of a sudden you are at the bottom of the class. **A test that is decently difficult ends up being forgiving of random little mental blocks and minor slip-ups.**

So when you are taking the exam, if you feel like you are missing lots of questions, don't freak out. It doesn't necessarily mean you're doing poorly. You might be doing very well. Just keep moving forward, staying on pace, working through the questions to straightforwardly apply what you have learned in the course.

(g) Essay questions

The exam essay questions will be built to avoid testing you on obscure points. As a matter of strategy on the essay exam, I strongly counsel you to stick to the straightforward aspects and do a good job on those rather than looking for obscure opportunities to make quirky, eccentric points. There should be more than enough straightforward material to engage you. Put differently, when approaching an essay question's hypothetical facts, I would advise you to read carefully but not suspiciously. My experience in reading exams is that when students try to look for hidden opportunities for points they usually end up going off in unproductive directions.

So, the bottom line is, do not obsess about trying to commit to memory all the finer points. Instead, I suggest you prioritize your studying based on what I explain next.

(h) How I design my exams and how you should approach them

When I sit down to write the exam, in order to obey the Correspondence Principle, I will look for areas that were emphasized during our semester. To accomplish that, I will make particular reference to the following: (1) doctrine that was important to the resolution of a case or cases we read or otherwise loomed large in the assigned reading; (2) doctrine emphasized in expository text in assigned readings or in slides or handouts; (3) problems, hypotheticals, examples, etc. that we went over in class.

Indeed, when I draft exam questions and hypotheticals, I frequently look back at readings and class materials to convince myself that what I'm testing is

something that's fair to expect a good student to have learned. In fact, you can expect that I will likely look for inspiration for an exam question's hypothetical facts by looking at cases we read and problems, hypotheticals, and examples we worked through.

But note that I don't re-use those problems or facts. This means that some fictional events appearing in the exam may be loosely similar to, but not the same as, the facts from cases, examples, and problems. To put it another way, cases, problems and examples could give you a good idea of kinds of things you might find on the exam, but they would not represent an opportunity to draft portions of your essay exam answer ahead of time.

The main message is not to worry about small details. Instead, work on having a thorough understanding of the major concepts.

I try to make my exams interesting and engaging. In comparison to other law-school exams, you may find that my essay exams may have more narrative, plot, character, and backstory. A student once asked me, pointing to a sentence in one of my old exams, "I know that every single sentence in a law school exam is put in there for some reason, so why did you put this sentence in the exam? How does it change the analysis?" Well, my exams aren't necessarily like that. There may be various details that don't matter to the analysis. This is the way facts come to your desk in real life: Some are very significant, some are merely useful, others are irrelevant. I find it desirable for my exams to share that characteristic with real case-files in that sense.

(i) Jurisdictional coverage

As a general matter, you will not be tested on the law of any particular circuit or court. Any exception would be something I specifically flag as such. Consider the subject of this course to be general United States law; thus, you will not need jurisdiction-specific answers. Sometimes, to emphasize this, I place exam facts in a fictional state. In the past, I've used Arkassippi, Floribama, Nevizona, and Minnesconsin, to name a few.

10-2. Obeying Exam Requirements and Instructions

(a) Be warned: You must be careful and diligent when it comes to things like complying with exam instructions, correctly using your exam ID number, and turning back in all exam materials. These things are easy to do. But making a mistake with these things can have severe negative consequences.

(b) Failure to follow exam requirements and instructions: A huge part of fairness is that students receive like treatment. The foundation of that is the exam requirements and instructions, which are meant to ensure that everyone labors under the same parameters. Thus: Failure to follow exam requirements or instructions is an academic misconduct issue, and violations will be treated as such, even if inadvertent and/or without intent to gain advantage. Make sure you treat exam instructions with diligence and care. (Syllabus §6-6, *supra*, says a bit more about this.)

(c) Your responsibility with regard to handling and returning exam materials and using your exam identification number: You bear the burden of properly, legibly, and correctly marking exam materials with your exam

identification number. (Your examination identification number, of course, means your examination number for this semester—not one from a prior semester.) You must also obey instructions on the handling and non-mutilation of examination materials. Given the system we have, these things are crucial to exam security and to the accurate assigning of grades, which means they are crucial for basic fairness in grading. If some exam item (question booklet, scantron answer sheet, etc.) is not turned in with your number on it, that, unfortunately, creates a serious problem that may be impossible to fix. So please do not omit to do what you are asked with regard to exam materials. And expect that any omissions, even if inadvertent, will be treated harshly, including resulting in a failing grade and a referral for discipline.

10-3. Decorum

During the administration of the exam you must refrain from conduct which could reasonably be distracting to the students sharing the room with you, including by generating noise and smells. (Yes, there have been problems in the past.) Here's the thing: Exams are stressful. Yet some of the things some students hope will be useful in lowering their stress can actually intensify the stress of others. One recurrent problem in this regard has been food and beverage use during exams. Thus, you will be allowed to have food and drink with you during the exam only under the following conditions:

- Drinks must be open and drinkable before the exam starts. No popping cans or opening soda bottles during the examination period.
- Food and beverages cannot smell. Nothing creating an odor stronger than a cup of unflavored coffee is permitted. So, to be crystal clear, no sandwiches, condiments, salads, etc.
- Food cannot be noisy. No chips, carrots, or granola. In addition, food in wrappers must be unwrapped before the exam begins. For example, if you bring a package of M&Ms into the examination, the candy should be removed from the wrapper and poured onto a paper towel before the exam starts.
- Chew with your mouth closed.
- Do not allow examination materials to be contaminated with food. (Yes—this has happened. ☹)

In addition:

- Don't wear perfume or cologne.
- No essential oils. No candles, potpourri sachets, or anything that is infused with scents.

Be aware that I may issue further specific instructions in this regard at some point later on.

10-4. [reserved]

10-5. Things You Can Have With You During the Exam

I've gotten lots of questions over the years about what students are allowed to have with them during the exam. Thus, I've created pretty specific instructions on that. Be aware of the following.

Applicable to multiple-choice and essay:

- You must refrain from conduct which could reasonably be distracting to the students sharing the room with you, including by generating noise and smells. See the requirements under §10-3, *supra,* regarding food, drink, and odors.
- You may wear a regular watch with no functions other than timekeeping. A digital watch that has an alarm and stop watch function in addition to providing the time of day and date is permitted—but it may not beep or emit noise.
- Do not have a phone on your person—even if you aren't interacting with it.
- Do not wear a smart watch or anything that looks like a smart watch—even if you aren't interacting with it.
- Also, you cannot use a calculator (you wouldn't need one anyway).
- You may use earplugs.
- No music.
- You may use limited-function sound-isolating headphones. This meaning noise-cancelling, noise-blocking, and/or noise-producing (e.g., white noise) headphones (including they type called earbuds) that deliver their sound-isolating or noise-producing function through some self-contained means or by means of wired connection to some limited-functionality noise-producing device, provided that they have no other electronic capabilities, functions, or features (including but not limited to Bluetooth, wireless signal transmission or reception, playing music, etc.). What matters is the device's capacity to do other things—not whether that capacity is being used. Expect inspection.
- Any touching, using, accessing, viewing, or listening to electronic devices or other materials, except as provided, is prohibited.
- All items and materials are subject to inspection.
- You cannot share items with other students.
- You may not communicate with anyone—necessary communications with administrators/proctors being the exception. You may not communicate with any generative artificial intelligence. You may not view or attempt to view materials other than your own. If necessary, a brief bathroom break is allowable under applicable policies; otherwise, you cannot leave the exam room.

- For the avoidance of doubt: Absolutely no talking or communicating with any other student is permitted before time is called—even if, for instance, you are finished working on the exam and you are out of the exam room visiting the restroom. It makes no difference what you are talking about or whether it has anything to do with the exam—the communication is not permitted.

Applicable to the multiple-choice part:

- Bring no. 2 pencils. You can bring an eraser. No highlighters, pens, or other writing instruments.
- You can have no materials to reference.
- No devices at all, except for the limited allowance regarding watches and limited-function sound-isolating headphones, described above.

Applicable to the essay part:

- You can have your computing device (including a laptop or keyboard-equipped tablet) to write your exam, provided it is running the required exam-taking software and is used pursuant to applicable policies. But you may not reference files stored thereon during the examination session.
- For the avoidance of doubt: No ebooks, no accessing web, internet, etc., no use of or communicating with generative artificial intelligence. It makes no difference what you are reading or accessing or whether it has anything to do with the exam.
- No devices other than your computing device for typing the essay, the limited allowance regarding watches, and limited-function sound-isolating headphones, as described above.
- the watch allowance described further above.

10-6. Some studying advice:

The benefits of a one-sheet menu outline (which some people might call an "attack outline"): For studying for the essay problems, I personally think the most important thing you should work toward is having a single sheet that lists the things you've learned during the semester that you can bring to bear in analyzing the hypothetical facts. One sheet, printed on just one side, is ideal. I tend to call this a "menu outline" because it is a list of things you can choose from. If you are fond of video games, you might think of it as a "weapons inventory." I've seen some people use the term "attack outline" in a way that gets at this idea (although I've seen "attack outlines" that are more involved and complex than what I have in mind.) The point is, it's a list of the doctrines, tests, and whatnot that you can apply to the hypothetical facts of essays. Put differently, it's a quick-reference document that simply reminds you of what you already know.

Once you have such a document, I would recommend using it for practice essays, but in this particular way. Do an old exam essay problem on a closed-book basis. After you are finished, and before you look at any model answer or discuss the problem with classmates, do a revision round as follows: Pull out your one-

sheet menu outline; re-review the hypothetical facts side-by-side with your one-sheet menu outline, and look for what you may have missed; revise accordingly. I believe studying this way will be excellent training for your final.

Exam technique and active studying: The most important thing in studying is to prepare for what you need to do on exam day. That means first of all you should know what you are doing in terms of exam-taking technique. I've made available some resources that you can find in my Exam Archive. For strategies for multiple-choice, see *How to Take a Multiple-Choice Exam in Law School*. And for strategies and techniques for essays, see: *Tip Sheet on How to Write a Law School Essay Exam*. And I strongly recommend that you bring exam-writing technique and substantive knowledge together by working through old exams from the Exam Archive. I particularly recommend trading your responses with classmates: That is an extremely effective way to find your weaknesses and strengths, and reading various student responses can allow you to start to develop something of a graders' perspective.

Doing old exams is also a great way to study because it is *active*. Any form of active studying—where you must use your brain to actively figure something out or produce some kind of answer—is likely to be much more beneficial to you than passive studying—for example reading and re-reading your outline.

10-7. Exam Archive

You should note that I have a very large archive of old exam questions. It is publicly accessible online. Go to http://ericejohnson.com/exam_archive/. The point of the archive is to provide lots of practice opportunity, and to provide it to everyone on the same footing.

11A. ACCOMMODATIONS

Disability Accommodation

Please see the relevant language in within §11B, *infra*.

Accommodation on Basis Other than Disability or Language

Please see the relevant language in within §11B, *infra*.

Language Accommodation

An example of a language accommodation would be if you are not a native English speaker and you feel you might need an English-to-foreign-language dictionary on a closed-book portion of the exam.

What I have been told in the past is that if students desire language accommodations for the exam or otherwise and there is not a disability issue involved, then the accommodation request goes directly to me, not through ADRC. But I couldn't find anything definitive about that in writing. Please feel free to inquire with any university or college office you may feel is relevant.

Insofar as it may or does fall to me to authorize a language accommodation, then the following is my policy: **Any language accommodation must be authorized by me in writing. Please get this taken care of as soon as possible—at least by the seventh week of classes.** I may decline requests that are otherwise reasonable on the basis of being dilatory.

11B. VARIOUS INFORMATION CONCERNING UNIVERSITY POLICIES

About the Following Text

Other than this paragraph and its header, all of the following text, through to the end of §11B, is included based on college/university directives. The text has been copied verbatim.

Mental Health Support Services

Support is available for any student experiencing mental health issues that are impacting their academic success. Students can either been seen at the University Counseling Center (UCC) located on the second floor of Goddard Health Center or receive 24/7/365 crisis support from a licensed mental health provider through TimelyCare. To schedule an appointment or receive more information about mental health resources at OU please call the UCC at 405-325-2911 or visit the University Counseling Center. The UCC is located at 620 Elm Ave., Room 201, Norman, OK 73019.

Title IX Resources and Reporting Requirement

The University of Oklahoma faculty are committed to creating a safe learning environment for all members of our community, free from sex-based discrimination, including sexual harassment, domestic and dating violence, sexual assault, and stalking, in accordance with Title IX. There are resources available to those impacted, including: speaking with someone confidentially about your options, medical attention, counseling, reporting, academic support, and safety plans. If you have (or someone you know has) experienced any form of sex-based discrimination or violence and wish to speak with someone confidentially, please contact OU Advocates (available 24/7 at 405-615-0013) or University Counseling Center (M-F 8 a.m. to 5 p.m. at 405-325-2911).

Because the University of Oklahoma is committed to the safety of you and other students, and because of our Title IX obligations, I, as well as other faculty, Graduate Assistants, and Teaching Assistants, are mandatory reporters. This means that we are obligated to report sex-based violence that has been disclosed to us to the Institutional Equity Office. This means that we are obligated to report sex-based violence that has been disclosed to us to the Institutional Equity Office. This includes disclosures that occur in: class discussion, writing assignments, discussion boards, emails and during Student/Office Hours. You may also choose to report directly to the Institutional Equity Office. After a report is filed, the Title IX Coordinator will reach out to provide resources, support, and information and the reported information will remain private. For more information regarding the University's Title IX Grievance procedures, reporting, or support measures, please visit the Institutional Equity Office at 405-325-3546.

Reasonable Accommodation Policy

The University of Oklahoma (OU) is committed to the goal of achieving equal educational opportunity and full educational participation for students with disabilities. If you have already established reasonable accommodations with the Accessibility and Disability Resource Center (ADRC), please log into iAdvise to request your semester accommodations as soon as possible and contact me

privately, so that we have adequate time to arrange your approved academic accommodations.

If you have not yet established services through ADRC, but have a documented disability and require accommodations, please complete ADRC's pre-registration form to begin the registration process. ADRC facilitates the interactive process that establishes reasonable accommodations for students at OU. For more information on ADRC registration procedures, please review their website. You may also contact them at (405)325-3852 or adrc@ou.edu, or visit www.ou.edu/adrc for more information.

Note: disabilities may include, but are not limited to, mental health, chronic health, physical, vision, hearing, learning and attention disabilities, pregnancy-related. ADRC can also support students experiencing temporary medical conditions.

Religious Observance

It is the policy of the University to excuse the absences of students that result from religious observances and to reschedule examinations and additional required classwork that may fall on religious holidays, without penalty.

[See Faculty Handbook 3.15.2]

Adjustments for Pregnancy/Childbirth Related Issues

Should you need modifications or adjustments to your course requirements because of pregnancy or a pregnancy-related condition, please request modifications via the Institutional Equity Office website or call the Institutional Equity Office at 405/325-3546 as soon as possible. Also, see the Institutional Equity Office FAQ on Pregnant and Parenting Students' Rights for answers to commonly asked questions.

Final Exam Preparation Period

Pre-finals week will be defined as the seven calendar days before the first day of finals. Faculty may cover new course material throughout this week. For specific provisions of the policy please refer to OU's Final Exam Preparation Period policy.

Emergency Protocol

During an emergency, there are official university procedures that will maximize your safety.

Severe Weather:

If you receive an OU Alert to seek refuge or hear a tornado siren that signals severe weather.

1. Look for severe weather refuge location maps located inside most OU buildings near the entrances.
2. Seek refuge inside a building. Do not leave one building to seek shelter in another building that you deem safer. If outside, get into the nearest building.
3. Go to the building's severe weather refuge location. If you do not know where that is, go to the lowest level possible and seek refuge in an innermost room. Avoid outside doors and windows.

4. Get in, Get Down, Cover Up
5. Wait for official notice to resume normal activities.

Additional Weather Safety Information is available through the Department of Campus Safety.

The University of Oklahoma Active Threat Guidance

The University of Oklahoma embraces a Run, Hide, Fight strategy for active threats on campus. This strategy is well known, widely accepted, and proven to save lives. To receive emergency campus alerts, be sure to update your contact information and preferences in the account settings section at one.ou.edu.

RUN: Running away from the threat is usually the best option. If it is safe to run, run as far away from the threat as possible. Call 911 when you are in a safe location and let them know from which OU campus you're calling from and location of active threat.

HIDE: If running is not practical, the next best option is to hide. Lock and barricade all doors; turn of all lights; turn down your phone's volume; search for improvised weapons; hide behind solid objects and walls; and hide yourself completely and stay quiet. Remain in place until law enforcement arrives. Be patient and remain hidden.

FIGHT: If you are unable to run or hide, the last best option is to fight. Have one or more improvised weapons with you and be prepared to attack. Attack them when they are least expecting it and hit them where it hurts most: the face (specifically eyes, nose, and ears), the throat, the diaphragm (solar plexus), and the groin.

Please save OUPD's contact information in your phone.

NORMAN campus: *For non-emergencies call (405) 325-1717. For emergencies call (405) 325-1911 or dial 911.*

TULSA campus: *For non-emergencies call (918) 660-3900. For emergencies call (918) 660-3333 or dial 911.*

Fire Alarm/General Emergency

If you receive an OU Alert that there is danger inside or near the building, or the fire alarm inside the building activates:

1. *LEAVE* the building. Do not use the elevators.
2. *KNOW* at least two building exits
3. *ASSIST* those that may need help
4. *PROCEED* to the emergency assembly area
5. *ONCE safely outside, NOTIFY first responders of anyone that may still be inside building due to mobility issues.*
6. *WAIT* for official notice before attempting to re-enter the building.

OU Fire Safety on Campus

11C. ADDITIONAL MISCELLANEOUS INFORMATION INCLUDED BECAUSE OF INSTITUTIONAL POLICY, DIRECTIVES, GUIDANCE, ETC.

About the Following Text

Other than this paragraph and its header, all of the following text, through to the end of §11C, is included based on college/university guidance, advice, requests, recommendations, or directives.

Course Prerequisite

The following information regarding course prerequisites is from the OU General Catalog:

> Prerequisite: admission to the College of Law.

Course Description

The following course description is from the OU General Catalog:

> LAW 5144. Torts. 4 Credit Hours.
>
> Introduction to basic principles of civil liability, with study of selected issues, which may include intentional wrongs, negligence, strict liability, vicarious liability, defenses and immunities, comparative fault, assessment of damages, nuisance, products liability, misrepresentation, injuries to reputation, and alternative compensation systems. (F, Sp)

Course Format/Meeting Time and Location

The format of this course is in-person. The listed meeting time and location for Torts §4 are:

> Days and start/stop times: MTW 01:30 PM to 02:45 PM
>
> Room: ALC

12. REVISIONS TO THIS SYLLABUS, WAIVERS OF STUDENT OBLIGATIONS, MISTAKES

This syllabus may be amended or revised, and if it is, the most recent syllabus and any amendments or addenda thereto will be posted to the class website.

No student obligation under this syllabus can be waived by me orally. If you think I said something that allows you different treatment under this syllabus, you must have misunderstood me. The syllabus needs to apply to everyone equally. (See also §9-7, *supra,* regarding attendance.)

It is possible (and probable) that this syllabus contains technical mistakes, such as typos, misnumbered cross-references, etc. In construing this syllabus, mistakes that are purely technical in nature and that do not create genuine ambiguities or hamper substantive understanding by a reasonably diligent student are to be disregarded.

12A. EFFECT OF SUPERSEDING POLICIES, DIRECTIVES, AUTHORITIES

I have made a very sincere effort to conform this syllabus and its policies to the directives, policies, and and so forth of higher authorities (college, university, and so on). Nevertheless, provisions of this syllabus may be contradicted by or superseded by college/university policy, validly issued accommodations, state/federal law, etc. In so far as that may be the case, the provisions of this syllabus are otherwise to be given effect to the fullest extent permissible.

13. COURSE TOPICS AND ORGANIZATION

The planned organization of the course is below. Note that the list below is just the topics. The reading assignments are on the Chart of Assignments, which is updated on an ongoing basis with the exact assignments for the immediate future. There also may be a long-range (but subject-to-change) projection of reading further out.

Topics marked with an asterisk (*) will probably be covered out of order and will be inserted into a class period where time permits.

Topics marked with a diamond-enclosed dot (⟐) are topics that you should expect may not be covered at all. Whether we get to them depends on how much time we have toward the end of the semester.

PART I: Preliminaries

1. Welcome, Class Parameters
2. The Place of Torts and a Model Tort
3. Blackletter Overview
4. Procedural Context for Torts

PART II: The Prima Facie Case for Negligence

SUBPART A: The Duty Element

5. When and to Whom a Duty of Care is Owed

SUBPART B: The Breach Element

6. Determining Breach, in General
7. The Reasonable Person Standard of Care
8. Negligence Per Se
9. The Role of Custom or Standard Practices
10. Res Ipsa Loquitur
11. Special Rules for Land Conditions and Bailments

SUBPART C: The Actual Causation Element

12. Actual Causation Basics
13. Proving Actual Causation
14. Actual Causation Multiplicity Issues

SUBPART D: The Proximate Causation Element

15. Proximate Causation Basics

16. Various Tests for Proximate Causation

SUBPART E: The Damages Element

17. Existence of an Injury

PART III: Affirmative Defenses to Negligence

18. Plaintiff's Negligence (Contributory and Comparative)

19. Assumption of Risk, Waivers, and Releases

PART IV: Liability Relating to Medical Care

20. Professional Negligence /Medical Malpractice and Medical Battery

21. Informed Consent Actions

PART V: Dealing with Accidents Outside of Negligence

22. Strict Liability

23. Products Liability

PART VI: Intentional Torts

24. Introduction to Intentional Torts

25. Battery and Assault

26. False Imprisonment

27. Intentional Infliction of Emotional Distress (Outrage)

28. Trespass to Land

29. Trespass to Chattels and Conversion

30. Defenses to Intentional Torts

PART VII: Remedies and Issues Concerning Parties

31. General Issues in Remedies

32. Damages

33. Multiple Tortfeasors

34. Enforcing Judgments

35. Immunities and Tort Liability of the Government*

36. Thresholds of Life

PART VIII: Some Practical Pitfalls

37. Insurance*

38. Statutes of Limitation and Repose*

PART IX: Oblique Torts

39. Defamation

40. Privacy Torts◈

41. Right of Publicity◈

42. Transactional Torts◈

PART IX: Theory and Policy

43. Theoretical Perspectives on Torts◈

44. Tort Reform◈

PART X: *Possible additional topics**

It is possible additional topics could be added—and addressed at any point during the semester—depending on current events or my perception of needs or opportunities based on other curricular concerns. Check the Chart of Assignments for any developments along these lines.

14. FEEDBACK

If you have feedback for me—suggestions, ideas, commendations, or criticisms—please do not hesitate to tell me in person or by e-mail. If sending something to me anonymously would make you feel more comfortable, then I invite you to do just that. I hope you enjoy the course!

15. ABOUT THIS SYLLABUS – AUTHORSHIP, COPYRIGHT, DISCLAIMERS, ETC.

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