

LGST 101 LAW AND SOCIAL VALUE, SPRING 2019
PROVISIONAL SYLLABUS

Instructor: Assistant Professor Julian Jonker
Legal Studies and Business Ethics
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Section 001: MW 9am—10.30am (SHDH 1203)

Section 002: MW 10.30am-12pm (SHDH 1203)

Office hours: W 2.30pm—3.30pm or by appointment, JMHH669

This course is an introduction to law and ethical debate about law. It places emphasis on understanding how lawyers reason, and the values to which their arguments appeal.

We will explore three important areas of the law: (a) tort law, (b) contract law, and (c) anti-discrimination law. These areas provide good case studies of how the law must mediate between our native moral judgments and the pressures of a complex economy and technological change. We will take special interest in how these areas of the law regulate the market, in particular in cases concerning product liability and anticompetitive behavior.

ASSESSMENT

The pedagogical aim of the course is to train your ability to understand and make arguments about the law. For that reason the main form of assessment is repeated written assignments. There will be no exams. There are many assignments, but they are all short.

The response papers will be a mix of genres: some will ask you to summarize cases; some will ask you to solve hypothetical legal problems; some will ask you to summarize and discuss philosophical arguments about the law. Altogether you will write at most 20 pages for the class, but they will be tightly focused and well rehearsed pages.

Students' grades will be based on competence, rather than on performance relative to the class. In past experience my students' grades tend toward a normal distribution around a B+, but the future is not always like the past.

CLASS PARTICIPATION

Attendance is a minimum requirement for a passing (C-) class participation grade. But illness and other things do happen. You may miss three classes for any reason, and without needing to excuse yourself. After that every absence, regardless of whether you have an excuse or not, will have an impact on your participation grade and make it more likely that you do not receive a passing grade.

More importantly, your participation grade will be based on your participation in class discussion. I will cold call students, and the participation grade will be based on whether students can show that they have read and thought about the material. If you are unwilling to be called on during a particular class you may let me know in advance. This will count as an absence, and

once your three absences have been exhausted it will affect your participation grade as if you were unable to answer questions.

<u>Grade composition (subject to change):</u>	
Class participation	20%
Response paper 1 (1 page case summary, due 02/01)	12%
Response paper 2 (3-4 page tort memo, due 02/22)	14%
Response paper 3 (3-4 page contract memo, due 03/22)	16%
Response paper 4 (6-8 page memo, due 04/19)	22%
Response paper 5 (2-3 page argument analysis, due 05/03)	16%

MATERIALS

Prepare each reading before the class for which it is scheduled. It may be helpful to return to the reading after class to consolidate your understanding. Readings will be posted on the Canvas course site by Library Course Reserves. Let me know if you require some other way of accessing them.

Lecture slides will be posted on Canvas after the lecture. In addition, reading notes will sometimes be posted on Canvas in advance of the lecture—these will tell you what to focus on and provide context where necessary. So please make sure you receive Canvas notifications.

CONSULTATION

I will hold office hours every Wednesday, 2.30-3.30pm. You should also feel free to make an appointment outside this time by sending me an email with three times at which you are available.

I'll be participating in the Student-Faculty Meals program. Coming to lunch (or not) will have no effect on your grade, and I will have no agenda other than getting to know people. There is a sign up sheet on Canvas: please sign up! You may sign up as many times as you like; we'll go lunch once three students sign up. A maximum of seven students may sign up for any one lunch.

Note: The reading list is very likely to change during the course of the semester. Make sure that you are receiving Canvas notifications in order to keep up with changes.

* indicates that a reading is optional.

INTRODUCTION

Class 1 (Wednesday 16 January) Overview

No reading

Class 2 (Wednesday 23 January) The common law

Richard A. Mann and Barry S. Roberts, *Smith and Roberson's Business Law*, pp. 2—10.

*Von Mehren and Murray, *Law in the United States*, 2nd ed., pp. 40—70.

A. TORTS

Class 3 (Monday 28 January) Kinds of Torts

Mann and Roberts, *Smith and Roberson's Business Law*, pp. 126–136 and 147–160.

*Goldberg and Zipursky, *Torts*, Chapters 3 & 4.

*Jay Feinman, *Law 101* 4th ed., Chapter 5.

Class 4 (Wednesday 30 January) Defenses

O'Brien v Cunard S.S. Co., Ltd. 28 N.E. 266 (1891)

Hackbart v Cincinnati Bengals, Inc. 435 F.Supp 352 (1977)

Hackbart v Cincinnati Bengals, Inc. 601 F.2d 516 (1979)

Koffman v Garnett, 574 S.E.2d 258 (2003)

*Kenneth W. Simons, 'Assumption of risk and consent in the law of torts' 67 *B. U. Law Review* 213 (1987) [read only introduction and sections I, II.A, and V]

RESPONSE PAPER 1 DUE: FRIDAY 1 FEBRUARY, 5PM

Class 5 (Monday 4 February) Duty of Care

Heaven v Pender, 11 QBD 503 (1883)

Winterbottom v Wright, 152 ER 402 (1842)

Thomas v Winchester, 6 N.Y. 397 (1852)
MacPherson v Buick Motor Co., 111 NE 1050 (N.Y. 1916)

Class 6 (Wednesday 6 February) The Reasonable Person

Vaughan v Menlove, 132. E.R. 490 (1837)
The TJ Hooper, 53 F.2d 107 (S.D.N.Y. 1931)
Appelhans v MacFall, 757 N.E.2d 987 (Ill. App. 2001)

Byrne v Boadle , 159 E.R. 299 (1863)

Martin v Herzog, 126 N.E. 814 (N.Y. 1920)

Class 7 (Monday 11 February) Reasonableness and Efficiency

Adams v Bullock, 125 N.E. 93 (N.Y. 1919)
United States v Carroll Towing Co., 159 F.2d 169 (2d Cir. 1947)

Richard Posner, *Economic Analysis of Law*, Chapter 6 (ss. 6.5-6.8 and 6.14 required; the rest is optional).

Sturges v Bridgman (1879) LR 11 Ch D 852

*Steven Shavell, *Foundations of Economic Analysis of Law*, Chapter 8.

Class 8 (Wednesday 13 February) Palsgraf

Palsgraf v Long Island R. Co., 248 N.Y. 339, 162 N.E. 99 (1928)

*Ernest Weinrib, *The Idea of Private Law*, Chapter 3.

*Richard Posner, 'The concept of corrective justice in recent theories of tort law,' in Levmore and Sharkey *Foundations of Tort Law*, 2nd ed., pp. 28–35.

Class 9 (Monday 18 February) Actual and Proximate Causation

Re Polemis & Furness, Withy & Co Ltd [1921] 3 KB 560
Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd (Wagon Mound No. 1) [1961] 1 All ER 404
Hughes v Lord Advocate [1963] 1 All ER 705
Allbritton v Union Pump Company, 888 S.W.2d 833 (Tex.App. 1994)

Sindell v Abbott Laboratories, 26 Cal.3d 588 (Cal. 1980)

Class 10 (Wednesday 20 February) Damages

Vosburg v Putney, 56 N.W. 480 (1893)
Smith v Leech Brain & Co. [1962] 2 QB 405
Mustapha v Culligan of Canada Ltd., 2008 SCC 27 (Canada)

Matthias v Accor Economy Lodging, Inc. , 347 F.3d 672 (7th Cir., 2003)

Philip Morris USA v Williams, 549 U.S. 346 (2007)

RESPONSE PAPER 2 DUE: FRIDAY 22 FEBRUARY, 5PM

Class 11 (Monday 25 February) Liability without Fault

Fiocco v Carver, 243 N.Y. 219 (1922)
Taber v Maine, 67 F.3d 1029 (2d. Cir., 1995)

Rylands v Fletcher [1868] All E.R. 1
Klein v Pyrodyne Corp., 810 P.2d 917 (Wash. 1991)

Class 12 (Wednesday 27 February) Products Liability

Escola v Coca Cola Bottling Co. of Fresno, 150 P.2d 437 (Cal. 1944)
Greenman v Yuba Products, Inc., 377 P.2d 897 (Cal. 1963)

Anderson v Owens-Corning Fiberglas Corp., 810 P.2d 549 (Cal. 1991)

Spring Break 3–11 March

B. CONTRACTS

Class 13 (Monday 11 March) Formation I

Lucy v Zehmer, 84 S.E.2d 516 (Va. 1954)
Leonard v Pepsico, 88 F.Supp.2d 116 (S.D.N.Y. 1999)
Specht v Netscape Communications, 306 F.3d 17 (2d. Cir. 2002)

Owen v Tunison, 158 A. 926 (Me. 1932)

Fairmount Glass Works v Crunden-Martin Woodenware Co., 51 S.W. 196 (Ky. 1899)

Class 14 (Wednesday 13 March)

Formation II

Mesaros v United States, 845 F.2d 1576 (Fed. Cir. 1988)

Yaros v Trustees of University of Pennsylvania, 742 A.2d 1118 (Pa. 1999)

Loring v City of Boston, 48 Mass. 409 (1844)

Akers v J.D. Sedberry, Inc., 286 S.W.2d 617 (Tenn.App. 1955)

Newman v Schiff, 778 F.2d 460 (8th Cir. 1985)

Class 15 (Monday 18 March)

Formation III

Dickinson v Dodds (1876) LR 2 Ch D 463

Hamer v Sidway, 27 N.E. 256 (N.Y. 1891)

*Lon Fuller, 'Consideration and form' 41 *Columbia Law Review* 799 (1941).

Class 16 (Wednesday 20 March)

Formation IV

Foakes v Beer [1884] UKHL 1, (1884) LR 9 App Cas 605

Alaska Packers' Association v Domenico, 117 F. 99 (1902)

De Cicco v Schweizer, 117 N.E. 807 (1917)

RESPONSE PAPER 3 DUE: FRIDAY 22 MARCH, 5PM

Class 17 (Monday 25 March)

Unfairness I

Austin Instrument, Inc. v Loral Corp., 272 N.E.2d 533 (N.Y. 1971)

Laidlaw & Co. v Organ, 15 U.S. 178

Swinton v Whitinsville Savings Bank, 42 N.E.2d 808 (Mass. 1942)

Kannavos v Annino, 247 N.E.2d 708 (1969)

Class 18 (Wednesday 27 March)

Unfairness II

Vokes v Arthur Murray, Inc., 212 So.2d 906 (1968)

Williams v Walker-Thomas Furniture Co., 350 F.2d 445 (1965)

Jones v Star Credit Corp., 298 N.Y.S.2d 264 (1969)

Class 19 (Monday 1 April)

Remedies I

Vitex Manufacturing Corp. v Caribtex Corp., 377 F.2d 795 (1967)

Richard Craswell and Alan Schwarz, *Foundations of Contract Law*, pp. 39–65.

*Gregory Klass, ‘Efficient breach,’ Chapter 18 of *Philosophical Foundations of Contract Law* (ed. Klass, Letsas, and Saprai, 2014).

Class 20 (Wednesday 3 April)

Remedies II

Rockingham County v Luten Bridge Co., 35 F.2d 301 (1929)

Parker v Twentieth Century-Fox Films, 474 P.2d 689 (1970)

*George Letsas & Prince Saprai, ‘Mitigation, fairness, and contract law’ in *Philosophical Foundations of Contract Law* (ed. Klass, Letsas, and Saprai, 2014).

C. ANTI-DISCRIMINATION LAW

Class 21 (Monday 8 April)

14th Amendment

Plessy v Ferguson, 163 U.S. 537 (1896)

Brown v Board of Education of Topeka, 347 U.S. 483 (1954)

US v Carolene Products Co., 304 U.S. 144 (1938)

Class 22 (Wednesday 10 April)

Disparate Impact

Griggs v Duke Power Co., 401 U.S. 424 (1971)

Washington v Davis, 426 U.S. 229 (1976)

Ward’s Cove Packing Co. v Atonio, 490 U.S. 642 (1989)

Class 23 (Monday 15 April)

Title VII

Price Waterhouse v Hopkins, 490 U.S. 228 (1989)

Meritor Savings Bank v Vinson, 477 U.S. 57 (1986)

Oncale v Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)

Class 24 (Wednesday 17 April)

Accommodation

EEOC v Abercrombie & Fitch Stores, Inc., 135 S.Ct. 2028 (2015)

RESPONSE PAPER 4 DUE: FRIDAY 19 APRIL, 5PM

Class 25 (Monday 22 April)

Affirmative Action I

Metro Broadcasting, Inc. v FCC, 497 U.S. 547 (1990)
Adarand Constructors, Inc. v Pena, 515 U.S. 200 (1995)

Class 26 (Wednesday 24 April)

Affirmative Action II

Regents of the University of California v Bakke, 438 U.S. 265 (1978)
Grutter v Bollinger, 539 U.S. 306 (2003)
Gratz v Bollinger, 539 U.S. 244 (2003)

Class 27 (Monday 29 April)

Affirmative Action III

United Steelworkers of America v Weber, 443 U.S. 193 (1979)
Johnson v Transportation Agency, Santa Clara County, 480 U.S. 616 (1987)

Class 28 (Wednesday 1 May)

Recap

RESPONSE PAPER 5 DUE: FRIDAY 3 MAY, 5PM

END