

**LGST 101 LAW AND SOCIAL VALUE, SPRING 2020**  
**SYLLABUS**

**Instructor:** Assistant Professor Julian Jonker  
Legal Studies and Business Ethics  
JMHH 699  
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**Section 001:** TuTh 9am–10.30am (JMHH F50)

**Section 002:** TuTh 10.30am–12pm (JMHH F50)

**Office hours:** Tu 2–3pm 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 assignments 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.

<b><u>Grade composition (subject to change):</u></b>	
<b>Class participation</b>	<b>20%</b>
<b>Response paper 1</b> (1 page case summary, due 01/31)	<b>12%</b>
<b>Response paper 2</b> (3-4 page tort memo, due 02/21)	<b>14%</b>
<b>Response paper 3</b> (3-4 page contract memo, due 03/20)	<b>16%</b>
<b>Response paper 4</b> (5-8 page memo, due 04/10)	<b>22%</b>
<b>Response paper 5</b> (2-3 page argument analysis, due 04/29)	<b>16%</b>

### **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 recommended for background.

## INTRODUCTION

### **Class 1 (Thursday 16 January)**

#### **Overview**

No reading

### **Class 2 (Tuesday 21 January)**

#### **The common law (1)**

*Feneff v New York Cent. & H.R.R.* 89 N.E. 436 (1909)

*Lombardo v D.F. Frangioso* 269 N.E.2d 836 (1971)

*Diaz v Eli Lilly & Co.* 302 N.E.2d 555 (1973)

\* 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.

### **Class 3 (Thursday 23 January)**

#### **The common law (2)**

*Nelson v Richwagen* 95 N.E.2d 545

*Ferriter v Daniel O'Connell's Sons, Inc.* 413 N.E.2d (690)

## A. TORTS

### **Class 4 (Tuesday 28 January)**

#### **Causes and Defenses**

*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)

\* 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 5 (Thursday 30 January)**

**The Reasonable Person**

*Vaughan v Menlove*, 132 E.R. 490 (1837)  
*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)

**RESPONSE PAPER 1 DUE: FRIDAY 31 JANUARY, 5PM**

**Class 6 (Tuesday 4 February)**

**Scope of the Duty of Care**

*Winterbottom v Wright*, 152 ER 402 (1842)  
*MacPherson v Buick Motor Co.*, 111 NE 1050 (N.Y. 1916)

\**Heaven v Pender*, 11 QBD 503 (1883)

**Class 7 (Thursday 6 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

**Class 8 (Tuesday 11 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 (Thursday 13 February)**

**Actual and Proximate Causation**

*Allbritton v Union Pump Company*, 888 S.W.2d 833 (Tex.App. 1994)

\**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

**Class 10 (Tuesday 18 February)**

**Damages**

*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)

**Class 11 (Thursday 20 February)**

**Liability without Fault**

*Fiocco v Carver*, 243 N.Y. 219 (1922)

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

*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)

**RESPONSE PAPER 2 DUE: FRIDAY 21 FEBRUARY, 5PM**

**B. CONTRACTS**

**Class 12 (Tuesday 25 February)**

**Formation (1)**

*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 13 (Thursday 27 February)**

**Formation (2)**

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

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

**Class 14 (Tuesday 3 March)**

**Consideration**

*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 15 (Thursday 5 March)**

**Pre-Existing Duty Rule**

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

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

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

***Spring Break 7–15 March***

**Class 16 (Tuesday 17 March)**

**Procedural Fairness**

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

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

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

**Class 17 (Thursday 19 March)**

**Substantive Fairness**

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

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

**RESPONSE PAPER 3 DUE: FRIDAY 20 MARCH, 5PM**

**Class 18 (Tuesday 24 March)**

**Remedies (1)**

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

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

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

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

**Class 19 (Thursday 26 March)**

**Recap**

**C. ANTI-DISCRIMINATION LAW**

**Class 20 (Tuesday 31 March)**

**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 21 (Thursday 2 April)**

**Title VII**

*McDonnell Douglas Corp. v Green*, 411 U.S. 792 (1972)  
*Price Waterhouse v Hopkins*, 490 U.S. 228 (1989)

**Class 22 (Tuesday 7 April)**

**Disparate Impact**

*Griggs v Duke Power Co.*, 401 U.S. 424 (1971)  
*Ward's Cove Packing Co. v Atonio*, 490 U.S. 642 (1989)

**Class 23 (Thursday 9 April)**

**Harassment**

*Meritor Savings Bank v Vinson*, 477 U.S. 57 (1986)  
*Oncale v Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998)  
\**Vance v Ball State University*, 570 U.S. 421 (2013)

**RESPONSE PAPER 4 DUE: FRIDAY 10 APRIL, 5PM**

**Class 24 (Tuesday 14 April)**

**Accommodation**

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

**Class 25 (Thursday 16 April)**

**Affirmative Action**

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

\**Metro Broadcasting, Inc. v FCC*, 497 U.S. 547 (1990)  
\**Adarand Constructors, Inc. v Peña*, 515 U.S. 200 (1995)  
\**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 26 (Tuesday 21 April)**

**Background Checks**

*El v SEPTA*, 479 F.3d 232 (2007)

**Class 27 (Thursday 23 April)**

**Protected Traits**

NB readings subject to change

*EEOC v R.G. & G.R. Harris Funeral Homes* (2018)

\**Zarda v Altitude Express, Inc.* 883 F.3d 100 (2018)

\**Etsitty v Utah Transit Authority* 502 F.3d 1215 (2007)

\**Whitaker v Kenosha Unified School District* 858 F.3d 1034 (2017)

**Class 28 (Tuesday 28 April)**

**Recap**

**RESPONSE PAPER 5 DUE: WEDNESDAY 29 APRIL**

**END**