

As of January 1, 2024

SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF LAW

## Torts II

Spring 2024

Professor Jennifer E. Spreng

Contact:

jennifer.spreng@siu.edu

Lesar Law Building Room 212

Class Logistics:

Mondays and Wednesdays from 11:00–12:15 p.m.

Room 202

Office hours:

For now, Mondays and Wednesdays from 2:30-3:30 p.m. and

I am also happy to see students by appointment at other times.

**NOTE: This class will meet on Thursday, January 18 at 3:00 p.m. and Thursday, January 25 at 3:00 p.m to make up missed Monday classes.**

### What You Will Do in This Course:

Torts II focuses on advanced uses of intentional, negligence, and for the first time to help determine when plaintiffs may recover compensation for injuries. This class explores a range of professional negligence and other health-care related problems, including pharmaceutical product liability; it will also address land-use injuries, business-related torts, and privacy and publicity problems. You will see learn what tort lawyers really do to help clients: the culture of their practice, the evidence they collect, the pleadings they write, and the new law they create to solve complex, real-life, client problems and the culture of their professional lives. Welcome back to this exciting area of law! It all awaits in Torts II!

**Treat this syllabus like a court's scheduling order.  
You are responsible for knowing and complying with this syllabus,  
especially assignment deadlines!**

## CLASS INFORMATION AND POLICIES

1. Course Objectives. You will have the opportunity to learn to:
  - Identify legal issues related to the various tort claims and defenses covered in this course.
  - Understand legal principles covered in the course that help lawyers and judges resolve tort problems.
  - Apply these legal principles to facts to solve tort problems.
  - Express those solutions to tort problems effectively, orally and in writing.
  - Explore the professional activities and identity of elite personal injury attorneys.
2. Books and materials. We will use the following books in this class:
  - Required: Vincent R. Johnson & Chenglin Liu, *Studies in American Tort Law* (7th ed. 2022).
  - Required: Jennifer E. Spreng, *Taylor v. McDaniel* (2024) (supplementary case file available on D2L).
  - Required: Other supplementary cases and materials (available on D2L)
  - Recommended: Vincent R. Johnson, *Mastering Torts* (7th ed. 2022).
3. Attendance. Do not miss class. Doing so will adversely affect your grade, both directly and indirectly, as well as your learning, for which you are paying much money and devoting much time and effort. All school policies related to attendance and tardiness are in effect. Missing announcements, assignments, or in-class activities due to absence or tardiness may result in a loss of points.

Because of other school-wide scheduling exigencies, we must make up three classes this term. Therefore, please plan on meeting at these dates and times:

- 3:00 p.m. on Thursday, January 18 – Room 202
- 3:00 p.m. on Thursday, January 25 – location TBA
- 3:00 p.m. on Tuesday, April 9 – Room 202

4. Grades. You will receive a letter grade in Torts II. There are one hundred (100) points available in the class.

The allocation of points is as follows, with an explanation below of each category:

ACTIVITY	POINTS
Class Preparation Quizzes	10
Admit Slips	10
Feedback Assignments	5
Bar Examination Assignment	5
Mid-term Examination	10
Final Examination	60
<b>TOTAL</b>	<b>100</b>

For more details, including specific assignment dates, see the quizzes, admit slips, feedback assignments, and other assignments and materials posted on our Desire2Learn course management site as well as the information below

a. Composition and conduct of examinations (mid-term - 10 points; final - 60 points). The examinations in this class will occur on the dates and times and in the rooms posted with the Semester Information on the school's website. You will have ninety (90) minutes to complete the mid-term examination and three (3) hours to complete the final examination. Both examinations will be entirely closed book, timed, and anonymously graded. I will give you more information about the content and form of each examination closer to the date but assume both will include primarily or even wholly essay questions.

b. Class Preparation Quizzes ("prepare") (10 points). Class Preparation Quizzes are a series of multiple choice and other questions based on or applying readings for each class **due before each class**. You will find them posted on D2L with readings for each class.

Consider Class Preparation Quizzes to be part of your complete “preparation” for class, which also includes:

- Reading assignments posted on D2L carefully;
- Briefing every case, including “note cases”;
- Consulting outside sources as indicated or needed to understand our readings; and
- Other activities needed to help you explore deeper analysis and apply the law in hypotheticals and other activities in class.

Class Preparation Quizzes will help you test your knowledge and make you aware of things you have not yet seen in the reading. You must complete each Class Preparation Quiz by the time class begins. You will receive percentage scores on individual Class Preparation Quizzes as indicated in the chart below:

Percent of points earned	Percent score you will receive
More than 60 percent	100 percent
40-60 percent	50 percent
Fewer than 40 percent	0

At the end of the term, I will average your percentage scores as indicated in the chart on each Quiz and convert that average to a score out of ten (10).

c. Admit Slips and Feedback assignments (“improve”) (15 points). You will hone your capacities to synthesize and state law and to apply the law to facts to solve problems with Admit Slips and Feedback assignments.

Admit slips are brief problems or writing assignments that will allow you to practice applying the law you are learning to solve legal problems and communicate the solutions in writing from the very beginning of the course. The first admit slip is your self-assessment of one of your answers on the Torts I final examination. The others are related to a thematic problem we will use this term, *Taylor v. McDaniel*, a professional malpractice and product liability case. You will find the *Taylor v. McDaniel* materials in a module on D2L.

Giving feedback to others is the **gold standard technique** for improving evaluative judgment, among the most important of all professional skills and vital

to improving problem solving and expressing their solutions in writing. When you are in practice you will have to make judgments about whether yours and others' work is high quality and how you can improve your own work to make it top of the charts. Just like the best way to learn to solve problems is to solve them, the best way to learn how to evaluate work and figure out how to improve it is to do just that. When you complete Feedback assignments, you will be giving feedback to your colleagues, but you will learn far more of what is most important yourself.

Consider Admit Slips and Feedback assignments to be part of your "improvement" efforts and further learning. They will assist you:

- To improve your understanding and synthesis of the law and how to state the applicable law correctly and succinctly;
- To apply the law to solve different legal problems than just those we cover in class;
- To hone your capacity to express solutions to legal problems in writing;
- To outline the law with an eye to its future use; and
- To study for examinations, if you rewrite them and discuss them after you turn them in with other students.

You may expect approximately ten (10) Admit Slips during the semester. **With possibly rare exceptions, Admit Slips are due at 11:59 p.m. on Mondays in weeks they are due.** You will receive one (1) point for each slip you turn in on time that demonstrates **a good, conscientious effort to solve the problem and express the solution in writing.**

You may expect approximately five (5) Feedback assignments during the semester. **With possibly rare exceptions, Feedback assignments will be available on Tuesdays and due at 11:59 p.m. on Fridays in the weeks they are due.** You will receive one (1) point for each slip you turn in on time that demonstrates **a good conscientious effort to evaluate the answer and give valuable feedback to your colleague.**

You will receive feedback and other indications of progress from time to time on Admit Slips and Feedback assignments from my teaching assistants and

through sample answers. You are welcome to discuss any concepts or analytical moves with any of us.

d. Bar Examination Assignment (5 points). The bar examination assignment will provide an indication of your progress toward sufficient bar examination performance. The bar examination assignment will occur as scheduled. Consider this assignment to be among your efforts:

- To learn to solve tort problems;
- To learn to express your solutions in a bar-examination format; and
- To enhance your awareness of the standards you must meet to enter the legal profession.

Bar examination assignments may be multiple choice or essay questions on which you will receive individualized feedback. Pursuant to the School of Law rules, **to pass the course, students who do not meet a “minimum proficiency level” of performance (equal to a score of three (3) points) must redo or rewrite their bar examination assignments until they meet that proficiency level.** Students who receive three (3) points or more may redo or rewrite based on feedback to earn more points. The assignment sheet will explain the precise terms of grading.

e. Professionalism. Professionalism, including professional participation in class, constitutes a portion of your final grade for the fall semester. Professionalism’s roots are the lawyer’s understanding that this profession holds itself to the highest ethical and professional standards. For this grade category, “professionalism” is “student professionalism,” defined as follows:

Conduct whereby lawyers, in the ethical service of others, take personal responsibility to: (1) ensure they are competent in their understanding of the law; (2) pay close attention to detail in their work product and use of language; (3) simultaneously handle multiple tasks when necessary in a timely manner so as to meet obligations; (4) dress and groom in a manner consistent with their workplace culture; (5) treat others with respect, even in disagreement; (6) put the interests of clients before their own; and (7) protect the rule of law.

To maximize this portion of your final grade, do the following: actively read and prepare for each class session as indicated above; arrive to every class on time and ready to participate; be respectful and courteous to everyone in the classroom; do not talk, text, or use cell phones or other electronic devices during lecture except as such use may be directly related to the class; make every effort to improve your understanding of the law and legal reasoning capacities; and thoughtfully engage in discussion if called upon in the class. **Remember that professionalism goes beyond in-class activities and communication with professors and is also necessary in your interactions with peers and Teaching Assistants.**

Because I assume all law students arrive at law school with a sense of professionalism, all students will begin each semester with the full portion of their grade devoted to professionalism. I will then deduct points appropriately, solely and entirely in my discretion.

**Assume that you will lose professionalism points if you are not prepared when called upon in class.**

f. Other. I retain the discretion to add or deduct points related to professionalism, participation, preparedness, attendance, quizzes, extra credit and activities not otherwise indicated on this syllabus.

5. Class Preparation. **Every few weeks, I will post upcoming reading assignments, Class Preparation Quizzes, Admit Slips, Feedback assignments and other messages and materials on our course management system, Desire2Learn (D2L).** You will find a module for each class period in the content section that contains a list of all readings and links to the Class Preparation Quiz, Supplemental materials, the Admit Slip, and the Feedback assignment, as applicable. Posting periodically will allow us to take a little more or a little less time on appropriate topics without changing the syllabus or D2L site. I will try to keep up with a sufficiently timely schedule so that you can stay approximately a class period ahead in your reading in case we are especially efficient in covering some materials, which is wise to make sure you are always fully prepared for class. Just make sure that you review the materials for each class you are attending ahead of time and take note of indications on D2L that we may spend a little more or a little less than one class period on any given set of class materials.

**Assume that topics from Torts I will be “covered” and “fair game” in this course,** and though they will not receive the level of direct, in-class emphasis they did in Torts I often we will actually review them directly. The topics this course will include but not be limited to the following, in approximately, but not precisely, this order:

- Professional malpractice
  - Duties
  - Informed consent
  - Standard of care
- Limited duties
  - General no-duty rule
  - Special relationships
  - Duties to protect from crime and enhanced risk
  - Voluntarily assumed duties
  - Superior knowledge
- Premises liability – duties and standards of care
- Miscellaneous intentional and negligence tort theories
  - Trespass to land, nuisance, and necessity
  - Negligent infliction of emotional distress
  - Tort liability for alcohol-related injuries
  - Wrongful conception, pregnancy, and birth
- Strict liability
  - Abnormally dangerous activities and related theories
  - Products liability
    - Manufacturing defects
    - Design defects
    - Warning defects
    - Special problems related to prescription drugs
    - “Defenses” (state of the art and product misuse)
- Damages
  - Types of damages and immunities
  - Plaintiff fault and its impact on damage awards
  - Joint and several liability
  - Contribution and indemnity
- Introduction to misrepresentation
- Introduction to privacy torts



You will learn additional topics in the context of these throughout the term.

6. Statement on the Socratic method. I will use many teaching methods in this course, but the primary teaching method will be a “modified” Socratic method. I will ask you questions, and you will respond. Sometimes we will discuss material more informally.

The Socratic method is different from other forms of teaching/learning. Individual learning can be self-study and independent reading. Sometimes classes are solely one-on-one teacher-student interaction. A Socratic course is different, because the student teaches him- or herself by studying; the professor teaches the student through various interactions, such as Socratic questioning; and each student teaches others because all learn from other students’ interactions with the professor. Full participation and appropriate humility are necessary to take advantage of the richness of this methodology. I will take appropriate steps if some students take advantage of the system without giving back in return.

**I RESERVE FULL RIGHTS TO TAKE STEPS TO MAXIMIZE  
THE POTENTIAL OF THE SOCRATIC METHOD PROCESS IN THIS CLASS.**

7. Assignment deadlines. See the appropriate assignment or quiz in D2L and the Assignments Chart for assignment due dates. Each of the assignment sheets also lists the items you must post in the D2L assignment drobox by the deadline to receive full credit.

a. Late submission. Do not turn in admit slips, quizzes, the bar examination assignment or any others late. You will receive no credit for assignments turned in after the due date. The only exceptions to this policy require that you file a Motion for Extension of Time as explained in subsections (b) and (c) below.

b. Motions for Extension of Time. In rare circumstances, I might extend your time to turn in a response to an in-class activity or out-of-class assignment/quiz or to attend a class or meeting with or without a penalty but only if you file a Motion for Extension of Time with grounds showing good cause for the exception with a proposed Order, both clearly stating relief requested.

I am most likely to grant your motion if you anticipate a life event that will interfere with your complying with a due date or activity and file the Motion for Extension of Time prior to the assignment due date or in-class activity. Otherwise, assume I will only rarely grant Motions for Extension of Time and probably never if the proposed due date is on or after the next assignment due date unless COVID-19 has interfered with your ability to meet the deadline. I will almost never extend time to take a Class Preparation Quiz, because the Quizzes lack meaning after the class period they cover is over.

c. Process for moving for an extension of time. Forms for making a Motion for Extension of Time and the additional required proposed Order are available on D2L in the Syllabus and Supporting Materials Module. To move for an extension of time, you must file both documents by emailing them to me. **You must state grounds that show good cause to extend time and/or for any other relief you request.** The forms apply primarily to late submission of written work, but you may modify them to make related requests. You have the responsibility of bringing your motion to my attention and including in the proposed order the provisions you wish me to sign. I am not responsible for responding to motions I overlooked, did not receive, or inadvertently lost.

8. Course Management System. Our course materials, class reading and other assignments, sign-up sheets, and assignment submission dropboxes will appear on our Desire2Learn course management site (D2L). **I will not accept submissions via email except in unusual situations.**

9. Teaching Assistants. Teaching Assistants are upper-class students who assist professors with a range of teaching preparation, learning activities, and student assistance that enrich first-year courses. Our teaching assistants for Torts II are:

- Allison Cozart (allison.cozart@siu.edu)
- Michael Hall (michael.a.hall@siu.edu)
- Haley Spiewak (haley.spiewak@siu.edu)
- Caitlin Tippy (caitlin.tippy@siu.edu)
- Jessica Visage (jessica.visage@siu.edu)

Please feel free to reach out to them for assistance, and they will provide information about office hours and other matters to you soon after the semester begins.

10. American Bar Association (ABA) Standard 310. Under the ABA Standards for accrediting law schools, a credit hour is, “an amount of work that reasonably approximates not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.”

For a three (3) credit course such as Torts II, the Standard means a student must attend at least **one hundred fifty (150) minutes** of class each week (one classroom hour = fifty (50) minutes). The ABA also requires that students in a three (3) credit course spend **at least six hours** on out-of-class work. Note that these are minimum requirements. They do not take into account additional time for examination preparation, which for most students begins within a week or so of the beginning of the semester.

11. Law School Honor Code, University Code of Conduct and assistance from other persons or artificial intelligence tools on class assignments. Both the Honor Code and the Code of Conduct apply and are in effect in this class. Read both documents carefully and make sure you comply with both at all times.

**Submitting plagiarized work or any other form of work not your own, including work produced in whole or in part with artificial intelligence, regardless of a student’s purpose or intent, is potentially subject to serious sanctions as are other academic, honor code, and conduct code offenses.** Do not consult others or obtain written materials from any other person on any work product you turn in, including other lawyers, other students, or any artificial intelligence tool such as ChatGPT, unless I give you permission. **This policy applies to Class Preparation Quizzes and Admit Slips, until you turn in the slip. It always applies to Bar**

**Examination Assignments.** You may always consult our course teaching assistants or me for help on assignments.

If you violate the policy stated above, you will receive a failing grade on that assignment. You also may be found in violation of the Honor Code, which can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners for any state where you apply for membership, even if you are cleared of any violation, **which may put your eventual bar membership in jeopardy.**

If you have any questions about the Honor Code, Code of Conduct or either's application to any of your activities in this class or anything related to this policy, consult me.

**THIS SYLLABUS IS A LIVING DOCUMENT AND IS  
SUBJECT TO CHANGE AT MY  
SOLE DISCRETION**

**SYLLABUS ATTACHMENT**  
**SIU SCHOOL OF LAW – Spring 2024**

**EMERGENCY PROCEDURES:** We ask that you become familiar with **Emergency Preparedness @ SIU**. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts, visit <http://emergency.siu.edu/>.

**DISABILITY POLICY.** SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval, please contact DSS immediately at 618-453-5738 or [disabilityservices.siu.edu](http://disabilityservices.siu.edu). You may request accommodations at any time, but timely requests help to ensure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Please send approved accommodations to your faculty through the DSS online portal.

**SALUKI CARES and COUNSELING & PSYCHOLOGICAL SERVICES (CAPS).** The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students, and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-2461, or [siucares@siu.edu](mailto:siucares@siu.edu), <https://salukicare.siu.edu/>. Associate Dean Angela Upchurch ([aupchurch@siu.edu](mailto:aupchurch@siu.edu) or (618) 536-8314) is available at the School of Law to help students access university resources. Additionally, counseling services are available through CAPS ([\*Counseling and Psychological Services \(CAPS\) | Student Health Services | SIU\*](#)). A counselor is at the law school every Wednesday from noon until 4:30pm in Room 268 for drop-in appointments.

**SAFETY AWARENESS FACTS AND EDUCATION** Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. If you or someone you know has been harassed or assaulted, you can find the appropriate resources here: <http://safe.siu.edu>