**Torts and New Technology**

**Reading Group**

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**Fall 2018**

**SYLLABUS**

**Description**

“Every new problem can be solved with existing tort law.”

-          Woodrow Hartzog, WeRobot 2017 (paraphrased)

“When there are new harms that don’t fit into traditional tort law, you need new law.”

-          Woodrow Hartzog, WeRobot 2017 (paraphrased)

This reading group will consider the complicated, iterative relationship between the domestic law of torts and new technologies. We will focus on some of the most fraught tort law concepts—reasonableness, foreseeability, causation, crashworthiness—and consider how their inherent difficulty is further complicated by new technologies that permit new kinds of human activities and, by extension, new kinds of harm.

To explore these issues, we will consider a host of new and once-new technologies, including GPS, robots, computers, scraping spiders, medical implants, early automobiles, hackable cars, autonomous vehicles, cameras, smartphones, facial recognition software, domestic drones, autonomous weapon systems, 3D printers, and the Internet of Things. We will also discuss issues relating to technology-enabled practices, such as industrial manufacturing, targeted advertising, augmented reality games, social media platforms, linking apps, DDOS attacks, ransomware, and destructive cyberoperations.

This reading group will be offered for one unit of credit (C/F). According to YLS guidelines, members must attend 750 minutes (12.5 hours) to obtain the credit. The reading group will meet for eight two-hour sessions to allow each member to miss one meeting if needed.

First session will be held on Wednesday 9/5 between 3pm-5pm in room 124.

**Class 1: Introduction / Intentional Torts**

Readings (~75 pages)

* Kyle Graham, *Of Frightened Horses and Autonomous Vehicles: Tort Law and Its Assimilation of Innovations*, 52 Santa Clara L. Rev. 1241 (2012).
* Mary L. Lyndon, *Tort Law and Technology*, 12 Yale J. on Reg. 136 (1995).
* Sara Randazzo, *‘Pokemon Go’ Suit Makes Case for Virtual Trespassing*, Wall St. J., Apl. 4, 2017,<https://www.wsj.com/articles/pokemon-go-suit-makes-case-for-virtual-trespassing-1491310800>.

**Class 2: New Duties - Negligence**

Readings (~75 pages)

* Donald G. Gifford, *Technological Triggers to Tort Revolutions: Steam Locomotives, Autonomous Vehicles, and Accident Compensation* 11 J. Tort Law at 1, 16-38, 57-64, 72-77 (forthcoming 2018)
* Jane Chong, *Bad Code: Should Software Makers Pay? (Part 1)*, New Republic (October 3, 2013), https://newrepublic.com/article/114973/bad-code-should-software-makers-pay-part-1
* *Review:* MacPherson v. Buick Motor Company, 111 N.E. 1050 (N.Y. 1916) [excerpted]
* *Review:* United States v. Carroll Towing Co., 159 F.2d 169 (2d Cir. 1947) [excerpted]
* Huggins v. Stryker Corp., 932 F. Supp. 2d 972 (D. Minn. 2013) [excerpted]
* *Recommended:* Michael L. Rustad and Thomas H. Koenig, *The Tort of Negligent Enablement of Cybercrime*, 20 Berkeley Tech. L.J. 1553 (2005).

**Class 3: Foreseeability and Causation**

Readings (~76 pages)

* *Review:* Ryan v. New York Central R.R., 35 N.Y. 210, 215 (1866) [excerpted]
* *Review:* Palsgraf v. Long Island R. Co., 248 N.Y. 339 (N.Y. 1928) [excerpted]
* Nelson v. American Airlines, Inc., 70 Cal. Rptr. 33 (Cal. Ct. App. 1968) [excerpted]
* David C. Vladeck, *Machines Without Principals: Liability Rules and Artificial Intelligence*, 89 Wash. L. Rev. 117 (2014)
* Curtis E. A. Karnow, *The Application of Traditional Tort Theory to Embodied Machine Intelligence*, *in* Robot Law 51 (2013)

**Class 4: Privacy and Other New Harms**

Readings (~80 pages)

* Nancy Levit, *Ethereal Torts*, 61 Geo. Wash. L. Rev. 136 (1992) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1124989>.
* Alex Pasternack, *The Vast, Secretive Face Database That Could Instantly ID You in a Crowd,* Fast Company (Mar. 29, 2017),<https://www.fastcompany.com/3069264/congress-fbi-face-recognition-real-time-street-lineup>.
* Jonathan Stempel, *Bose Headphones Spy on Listeners—Lawsuit*, Yahoo Tech (Apl. 19, 2017),<https://www.yahoo.com/tech/bose-headphones-spy-listeners-lawsuit-174749975--finance.html>
* Dave Lee, *Facebook Shares Brain-Control Ambitions*, BBC News (Apl. 19, 2017),<http://www.bbc.com/news/technology-39648788>
* Nicky Woolf, *DDoS Attack that Disrupted Internet Was Largest of Its Kind in History, Experts Say*, The Guardian (Oct. 26, 2016),<https://www.theguardian.com/technology/2016/oct/26/ddos-attack-dyn-mirai-botnet>
* Jesse Lempel, *Combatting Deep Fakes through the Right of Publicity*, LAWFARE<https://www.lawfareblog.com/combatting-deep-fakes-through-right-publicity>.

Further Resources:

* Gary E. Marchant & Rachel A. Lindor, *Personalized Medicine and Genetic Malpractice*, 15 Genet Med. 921 (2013),<https://www.researchgate.net/publication/286526594_Will_Liability_Drive_Personalized_Medicine>
* Adam Chandler, *How Ransomware Became a Billion-Dollar Nightmare for Businesses*, The Atlantic, Sep. 3, 2016,<https://www.theatlantic.com/business/archive/2016/09/ransomware-us/498602/>
* Diane L. Zimmerman, *Requiem for a Heavyweight: A Farewell to Warren and Brandeis’s Privacy Tort*, 68 Cornell L. Rev. 291 (1983) http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=4305&context=clr

**Class 5: Products Liability**

Readings (~75 pages)

* Escola v. Coca Cola Bottling Co., 150 P.2d 436 (Cal. 1944) (selections)
* Henderson v. Ford Motor Co., 519 S.W.2d 87 (Tex. 1974) (selections) (design defect case: non-software-based unintended acceleration)
* In re Toyota Motor Corp., 978 F. Supp. 2d 1053 (C.D. Cal. 2013)  (selections) (design defect case: software-based unintended acceleration)
* Bryant Walker Smith, *Automated Driving and Product Liability*, 2017 Mich. St. L. Rev. 1, 27-64, 71 (2017)
* Michael D. Scott, *Tort Liability for Vendors of Insecure Software: Has the Time Finally Come?*, 67 Maryland L. Rev. 425, 457-71 (2008)
* Alan Butler, *Products Liability and the Internet of (Insecure) Things: Should Manufacturers Be Liable for Damage Caused by Hacked Devices?*, 50 U. Mich. J. Law Reform 913 (2017)

**Class 6: Expanding Liabilities**

Readings (~90 pages)

* Danielle Citron, *Reservoirs of Danger: The Evolution of Public and Private Law at the Dawn of the Information Age*, 80 S. Cal. L. Rev. 241, 261-96 (2007)
* Bryant Walker Smith, *Proximity Driven Liability*, 102 Georgetown L.J. 1777, 1779-1812 (2014)
* Rebecca Crootof, *International Cybertorts: Expanding State Accountability in Cyberspace*, 103 Cornell L. Rev. 565, 588-614 (2018).
* Rebecca Crootof, *The Internet of Torts* (manuscript) at 50-66.

**Class 7: Immunity, Insurance, and Incentives**

Readings (~75 pages)

* Ryan Calo, *Open Robotics*, 70 Maryland L. Rev. 101 (2011), <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1706293>.
* Jack Balkin & Jonathan Zittrain, *A Grand Bargain to Make Tech Companies Trustworthy*, The Atlantic (Oct. 3, 2015),<https://www.theatlantic.com/technology/archive/2016/10/information-fiduciary/502346>
* Martin Saint & Aminata Garba, *Mitigating Risk: Insurance for the Internet of Unexpected Things*, pages 14-22,<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2944323>
* Michael N. Schmitt, *In Defense of Due Diligence in Cyberspace*, 125 Yale L.J. Forum 68 (2015),<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2622077>

Further Resources:

* Tom Baker, *Liability Insurance as Tort Regulation: Six Ways that Liability Insurance Shapes Tort Law in Action*, 12 Conn. Insur. L.J. 1 (2005),<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=911565>
* Shauhin A. Talesh, *Data Breach, Privacy, and Cyber Insurance*,<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2974233>
* Jeffrey Vagle, *Cybersecurity and Moral Hazard*,<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3055231>.
* Kenneth S. Abraham& Robert L. Rabin, *Automated Vehicles and Manufacturer Responsibility for Accidents: A New Legal Regime for a New Era*, p. 19-42 (2018)<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3151133>.

**Class 8: The Role of Agencies / Summation**

Readings (~95 pages)

* David K. Beyer, Donna A. Dulo, Gale A. Townsley & Stephen S. Wu, *Risk, Product Liability Trends, Triggers, and Insurance in Commercial Aerial Robots*, (2014) <http://robots.law.miami.edu/2014/wp-content/uploads/2013/06/Beyer-Dulo-Townsley-and-Wu_Unmanned-Systems-Liability-and-Insurance-Trends_WE-ROBOT-2014-Conference.pdf>
* Chao Lin, Debiao He, Neeraj Kumar, Kim-Kwang Raymond Choo, Alexey Vinel, & Xinyi Huang, *Security and Privacy for the Internet of Drones: Challenges and Solutions*, IEEE communications magazine (2018), <https://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=8255739>.
* Jordan M. Cash, [*Droning On and On: A Tort Approach to Regulating Hobbyist Drones*](https://heinonline.org/HOL/Page?handle=hein.journals/umem46&div=22&g_sent=1&casa_token=&collection=journals), 46 U. Mem. L. Rev. 695 (2016).
* Benjamin D. Mathews, [*Potential Tort Liability for Personal Use of Drone Aircraft*](https://heinonline.org/HOL/Page?handle=hein.journals/stmlj46&div=28&g_sent=1&casa_token=&collection=journals), 46 St. Mary’s L. J. 573 (2015).

Further Resources:

* Ryan Calo, [*The Case for a Federal Robotics Commission*](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2529151) (2014).
* Woodrow Hartzog, [*Unfair and Deceptive Robots*](http://www.werobot2015.org/wp-content/uploads/2015/04/Hartzog-Unfair-Deceptive-Robots.pdf) (2015).