Philosophy of Law -- Negligence Law & Accidents

Administrative Details
Meetings: Tuesdays and Thursdays, 1-3:05 pm, Bunche 3164
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Course Summary and a Note to Students
Summary.
This course will survey the American law of negligence in an effort to determine its justification. Roughly, speaking, the law of negligence is a system of doctrines and case law that is designed to ensure that persons conduct their various activities with the right kind of concern for the interests of others. The investigation into its justification will take us into a variety of theories, including economic theories, theories about restorative justice, and others. As the course progresses, we will be continually refining our idea of what, if anything, morality requires with regard to harmonizing the pursuit of our own goals with the potential for our activities to cause setbacks to others. Put more succinctly: persons have important interests in taking part in various activities, but these activities may get in the way of others if not carried out properly, or, with “due care.” Ultimately, this course will try to develop the an argument that negligence is a moral wrong and that negligence law is aimed at addressing this wrong. To do this, we have to expand our understanding of what a wrong is and also modify our understanding of how law addresses moral wrongs.

An important point of emphasis is that this not a course in law. Negligence is complicated and the legal terrain is vast and tangled. We are going to be looking just at some very basic parts of it in order to raise some philosophical questions about how just/fair this system of law is. In other words, we are not going to be learning the law to become lawyers or understand court documents. Instead, we are going to be learning the law just enough to think about whether it is justified, fair, or worth having. We will be thinking as informed citizens rather than legal experts.

Note to Students.
This class is designed to be accessible and welcoming to those who have little or no legal or philosophical background. Specifically, the course assumes no prior knowledge of American negligence law. I will introduce the relevant concepts in ways that I think are simple and yet illustrative of the important philosophical issues. Second, the readings have been chosen for their clarity and (relative!) brevity; moreover, I have scheduled some days with very light reading so that students can catch up and ask questions about difficult concepts. Third, the course assignments are designed to encourage participation and discussion that will, I think, contribute to easier and more enjoyable learning. The course will be challenging, but I have tried to take care to make it manageable for those who are interested, whatever their background.
Course Goals and Corresponding Grading Structure

I have several goals for this course.

1. **Basic knowledge of negligence law.** Students will learn some basic aspects of negligence law in the United States -- only enough to prompt some philosophical questions about its purpose and justification.

2. **Participating in a conversation.** Students will become conversant with the relevant concepts and theories regarding negligence law and the possible justifications for it. This entails being able to explain issues, voice opinions, and to have and formulate questions. I especially hope the course will bring out the value of asking questions and of talking to and with others about a hard topic.

3. **Writing quality and analysis.** Students will become sensitive to the distinct challenges of conveying their ideas to others in writing as well as how to explain and then critically assess an idea.

4. **Writing process.** Students will generate writing as a part of a process that will require sustained effort over time in an effort to build to a final product that is more complex than would otherwise be possible.

5. **Excitement.** Students will experience the excitement of exploring an unresolved yet crucially important area of moral thinking.

In effort to assess how well the course goals are being met, grading and course assignments will be as follows.

- To help me promote and assess goals #1 and #2 above, **participation in class will be worth 20% of a student's final grade.** This grade will be based on the student's attendance of section and overall participation in the course. Participation can take a number of forms, including asking or answering questions in lecture or section and talking with me or the TA during office hours. I hope that all students will feel welcome to speak in class and section, but for those who would rather not talk in these settings, speaking with me or a TA during office hours, is also an acceptable way to participate.

- To help me promote and assess goals #1, #2, #3, #4, **students will turn in required short writing assignments. These assignments will be worth 20% of a student’s final grade.**

- To help me promote and assess goals #1, #2, #3, and #4, **students will turn in progressive, longer writing assignments on the themes of the course that will culminate in a final paper. This ongoing writing will receive a grade halfway through the class and at the end. Each of these two grades will be worth 30% of a student’s final grade, with some adjustment to this formula if a student shows improvement over the quarter.**

**Short Writing Assignments**

Over the course of this class, students must turn in 8 worked out questions or comments. To receive credit, the assignment must be turned in by 5pm the day BEFORE the meeting for which the question/comment is relevant. I will use these questions to organize my thinking and
lecturing as well as examples of good writing or engagement by students. Consequently, students should indicate on each writing assignment if they do not want me to share the question with the class (anonymously and without naming the student). These assignments are graded either as excellent (A, 95), satisfactory (B, 85), or needs improvement (C, 75). Assignments not turned in will receive a 0. An excellent response will usually be about a full page double spaced.

**Academic Integrity**

Students are expected to know and comply with University regulations regarding academic integrity. Please see me if you have questions about where to find these resources.

**Academic Accommodation**

Students needing academic accommodations based on a disability should contact the Center for Accessible Education (CAE) at (310)825-1501 or in person at Murphy Hall A255. When possible, students should contact the CAE within the first two weeks of the term as reasonable notice is needed to coordinate accommodations. For more information visit www.cae.ucla.edu.

**Readings and Tentative Schedule**

**Meeting #1, August 6**: Introduction, Tiers of Mens Rea, Kinds of Torts, Legal Negligence

- §2.02 of the Model Penal Code
- §3 of the 3rd Restatement of Torts “Negligence”
- §6 of the 3rd Restatement of Torts “Liability for Negligence Causing Physical Harm”

**Meeting #2, August 8**: Introduction Continued, Overview of Issues and Some Important Cases


**Meeting #3, August 13**: The Negligence Standard

Meeting #4, August 15: Law and Economics as Applied to Tort Law
-Steven Shavell, Foundations of Economic Analysis of Law, 2004 (Ch. 8)
-(optional) Daniel Friedman, Law’s Order, 2000 (Ch. 14)

Meeting #5, August 20: Criticisms of Law and Economics
-Arthur Ripstein, Philosophy of Tort Law (selections)

Meeting #6, August 22: Writing Day / Catch Up Day, Law and Economics Continued
-Class discussion about the first long(ish) writing assignment.

Meeting #7, August 27: Corrective Justice

Meeting #8, August 29: Skepticism about Negligence
-Mackey v. Allen, 396 S.W.2d 55, 57 (Ky. 1965)
-Matt King, The Trouble With Negligence, 35 Social Theory and Practice 577 (2009)

Meeting #9, September 3: Anti-Skepticism about Negligence
-Joseph Raz, Being in the World (2010)

Meeting #10 September 5: The Objective Standard
-Vaughan v. Menlove
meeting #11 september 10: writing day/catch up day, moral luck, morality and law
-class discussion about the second long(ish) writing assignment.
-john c.p. goldberg and benjamin zipursky, tort law and moral luck, 92 cornell law review 1123 (2007) (selections)
-other possible readings include: seana shiffrin, the divergence of contract and promise (selections); sir patrick devlin, the enforcement of morals.

meeting #12 september 12: the seriousness of negligence
-seana shiffrin, the moral neglect of negligence, in oxford studies in political philosophy.
-pea soup discussion.