

1. COURSE NAME AND NUMBER: *Legal Values: Tort Law and Health (3593U.03)*

2. COURSE INSTRUCTOR

Name: Anthony Sangiuliano

Email: ar.sangiuliano@gmail.com

Availability for Appointments: Please email me to arrange for a meeting in person or by Zoom

3. COURSE INFORMATION

a. Class Times: Tuesdays, 2:30 pm – 4:20 pm, IKB 2010

b. Course Description

This perspective option explores the intersection between tort law and health. Of course, because tort law is all about remedying harm to people’s wellbeing caused by private wrongdoing, it is fundamentally inseparable from human health. But this seminar will address the specific overlap between torts and the legal governance of the health sector, encompassing the administration of medical treatment, the regulation of health professionals, and public health policy. It thereby enables students to both extend their existing knowledge of torts into one important realm of its operation while building a bridge towards further study of health law and related fields.

Topics will include: the tort of medical battery and the law of consent; negligence law in the context of medical malpractice and the professional ethics of “defensive medicine”; wrongful birth and wrongful life torts; damages for psychiatric harm and mental health; the use of tort litigation to promote public health policy; and the implications for tort liability of using artificial intelligence in healthcare.

We will take care to highlight connections between these topics and pressing social justice concerns such as women’s reproductive freedom, sexual and racial harassment, intimate partner violence, disability discrimination, and environmental protection.

c. Learning Outcomes:

By the end of this seminar, students will be able to:

- Identify links between tort law principles covered in the first-year curriculum and some basic principles of health law covered in the upper-year curriculum;

Osgoode Hall Law School – W25

- Become familiar with the legal research methodology of reading secondary sources in tort law and health as a starting point for gathering knowledge of primary sources such as legislation and caselaw;
- Become aware of critical and academic perspectives on tort law and health, particularly as they relate to social justice objectives and equality for marginalized groups;
- Engage in independent reflection on legal principles in this area, as well as their ethical and social context;
- Summarize and communicate an academic author's scholarly thesis and raise questions about it for peer discussion;
- Conduct independent research and writing on a topic on tort law and health and develop an original argument that contributes to scholarly discussions or law reform.

d. Evaluation:

- 1) 75% - research paper (5,000 words, excluding footnotes and bibliography) on a topic of your choice related to the course material (approved in advance). Papers are due by 3:30 pm on **Friday April 4, 2025** to the Student Services on-line Drop Box. Please note that Osgoode's policy is that late papers receive an F grade and students must deal with Assistant Dean, Students Mya Rimon on the matter.
- 2) 15% - presentation. For each class (except the first class), students will prepare a presentation that summarizes the reading material and prepare questions for class discussion.
- 3) 10% - participation in in-class discussion

d. Feedback During and After the Course

For students wishing to receive feedback on their understanding of the course materials, you are welcome to contact me during my term by scheduling a meeting with me during my office hours. You may also email me brief questions during the term. In your message, please explain the background or context for your question and what you have done to try and find the answer prior to emailing me.

Following the release of grades after the end of term, please contact me by email if you wish to discuss your assessment. By the Academic Rules, a student has three weeks after grades are released to make this request. Unless otherwise arranged, we would schedule the meeting to take place over Zoom.

e. Class Climate:

This course embraces civility, diversity, inclusion, and respect. All students are expected to engage in class discussions and activities in ways that are civil, professional, informed, and

that promote an inclusive and positive learning environment for all students. Some of the materials that we will engage with may involve issues that are conceptually and emotionally challenging. Reading and discussing some materials may be difficult especially if we, or others close to us, have personally experienced a similar form of injustice or discrimination to those in the materials. We can and should assume that many in the class will have personal and potentially painful connections to some of the issues discussed in class. Those connections and experiences will be varied, and there is much we can learn from each other. To do so requires that, in our discussions, we remain mindful of this reality, and that we treat each other with respect and kindness. All points of view are welcome so long as they are expressed respectfully and do not abuse the right to speak freely. Students are welcome to disagree with each other and with the instructor. We will make sure to respond to one another’s contributions with respect, try to understand where others are coming from and the diversity of responses to the materials we read, and try to learn from one another while collectively engaging in a sincere project of understanding our subject matter.

d. Instructor’s policy on AI

Use of AI is prohibited in this course except for purposes of correction of grammar, idiom, punctuation, spelling and sentence mechanics (and nothing beyond), consistent with Senate Academic Conduct Policy and Procedures.

e. Content:

Meeting 1 (January 7)	Introduction & Seminar Overview *No readings
Meeting 2 (January 14)	Damages for Physical Injury 1. Lord, “Popping the Cap” 2. Gilboa, “The Colour of Pain: Racial Bias in Pain and Suffering Damages”
Meeting 3 (January 21)	Damages for Psychiatric Injury 2 1. Keating, “When is Emotional Distress Harm?” 2. Fanning “Psychiatric Injury and the United Nations Convention on the Rights of Persons with Disabilities”
Meeting 4 (January 28)	Damages for Psychiatric Injury I 1. Levesque & Malhotra, “The Dawning of the Social Model? Applying a Disability Lens to Recent Developments in the Law of Negligence” 2. Sowter & Koshan, “‘Weaponizing’ The Tort of Family Violence? Myths, Stereotypes, Lawyers’ Ethics and Access to Justice”
Meeting 5 (February 4)	Medical Battery 1. McGivern & Ivolgina, “Legal Liability in Informed Consent Cases: What Are the Rules of the Game?”

Osgoode Hall Law School – W25

	2. Collins & McLeod-Kilmurray, “Toxic Battery: A Tort for Our Time?”
Meeting 6 (February 11)	<p>Medical Negligence</p> <p>1. Flood & Thomas, “Canadian Medical Malpractice Law in 2011: Missing the Mark on Patient Safety”</p> <p>2. Lee et al, “Canada’s System of Liability Coverage in the Event of Medical Harm: Is It Time for No-Fault Reform?”</p> <p>3. Nelson, “Some Questions about No-Fault Reform of the Medical Liability System”</p>
Meeting 7 (February 25)	<p>Prenatal Torts</p> <p>1. Nelson, “Law, Medicine, and Pregnancy: Provider Liability for Pre-natal Torts”</p> <p>2. Hensel, “The Disabling Impact of Wrongful Birth and Wrongful Life Actions”</p>
Meeting 8 (March 4)	<p>Sexual Exploitation</p> <p>1. Allen, “Civil Liability for Sexual Exploitation in Professional Relationships”</p> <p>Duties to Non-Patients</p> <p>2. Ferris et al, “Defining the Physician’s Duty to Warn: Consensus Statement of Ontario’s Medical Expert Panel on Duty to Inform”</p> <p>3. Gold, “To Warn or Not Warn? Genetic Information, Families, and Physician Liability”</p>
Meeting 9 (March 11)	<p>Artificial Intelligence</p> <p>1. Price, Gerke & Glenn Cohen, “Liability for Use of Artificial Intelligence in Medicine”</p> <p>2. Chan, “Applying a Common Enterprise Theory of Liability to Clinical AI Systems”</p>
Meeting 10 (March 18)	<p>Defensive Medicine</p> <p>1. Dickens, “The Effects of Legal Liability on Physicians’ Services”</p> <p>2. Raposo, “Defensive Medicine and the Imposition of a More Demanding Standard of Care”</p> <p>3. Bester, “Defensive Practice is Indefensible: How Defensive Medicine Runs Counter to the Ethical and Professional Obligations of Clinicians”</p>
Meeting 11 (March 25)	<p>Torts and Public Health</p> <p>1. Hardcastle, “Government Tort liability for Negligence in the health Sector: A Critique of the Canadian Jurisprudence”</p> <p>2. Koury, Couture-Ménard & Redko, “The Role of Private Law in the Control of Risks Associated with Tobacco Smoking: The Canadian Experience”</p>
Meeting 12	*No readings

(April 1)	
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4. OSGOODE AND YORK ACADEMIC POLICIES

This section is required by Osgoode Hall Law School to be in every course outline. Students are expected to have read the whole section. Section (a) is unusually detailed for 2024-25 due to the fact of a new policy adopted by Senate on June 27, 2024, and the need for students and instructors alike to be made aware of the policy and its implications; this section provides a common mean for achieving that awareness.

a. Academic Honesty and Integrity:

Osgoode students are required to maintain high standards of academic integrity and are subject to the **York Senate Academic Conduct Policy and Procedures** (adopted in summer 2024 and replacing the previous York Senate Policy on Academic Honesty) and the relevant [Osgoode Academic Rules](#). Further information is available on the [York Academic Integrity](#) site.

The Senate Policy and Osgoode Academic Rules are also available via the *JD Students* part of the MyOsgoode website, proceeding through the “Student Handbooks” button, then “JD Academic Handbook”, and the finally the “Academic Rules” link.

Special attention is drawn to the following three matters related to reliance on external persons, works, and/or technologies:

1) *Unauthorized use of collaborative study materials*

The provisions of the York Senate Policy on Academic Honesty on unauthorized collaboration have been supplemented by Osgoode’s “[Guidelines on use of Collaborative Study Materials in Examinations](#)”, found [HERE](#). Students are strongly advised to read the Guidelines closely; knowledge of them will be assumed. Note a key bottom-line is that use of collaborative study materials in the ways and contexts set out in the Guidelines is prohibited unless explicitly permission by the instructor and, then, only to the extent of that authorization.

2) *Assistance from content-generating artificial intelligence (GenAI) and/or AI prohibited by the instructor*

The 2024 York Senate Academic Conduct Policy and Procedures contains new rules on use of content-generating artificial intelligence (GenAI) and AI more generally. Some key provisions are reproduced below to ensure no student is unaware of them:

Section 5.2.a.i. & ii.:

Cheating – the attempt to gain an unfair advantage in an academic evaluation.

Forms of cheating include but are not limited to:

- i. Using an undocumented or unreferenced content generator, including the use of text-, image-, code-, or video-generating artificial intelligence (AI);
 - ii. Obtaining assistance by means of documentary, artificial intelligence technology, electronic or other aids that are restricted by the instructor (see Section 6.2.c);
- ...

Section 5.2.a.x.:

Cheating – the attempt to gain an unfair advantage in an academic evaluation.

Forms of cheating include but are not limited to:

...

- x. Submitting work prepared in collaboration with a third party when collaborative work on an assessment has not been authorized by the instructor/supervisor, and goes beyond correction of grammar, idiom, punctuation, spelling and sentence mechanics;

Although the interaction of the above passage with the earlier AI examples is not explicit in the policy, for the sake of caution “third party” here should be read to include use of tools like Word’s spelling and grammar feature, Grammarly, and so on. Such tools are fine to use but they cannot “go beyond correction” any more than a human third party’s assistance could. Because this provision is structured as prohibited-unless-authorized, students may not use such tools to essentially re-write drafts (if and when some tools develop such capacities) unless the instructor has enunciated a general course policy allowing such use.

Section 4:

Undocumented/Unreferenced: refers to undocumented and/or unreferenced quotes, passages, sources, and other missing or improper citation of work submitted for evaluation.

Section 6.2. & 3:

It is the responsibility of **students** to:

...

c. follow their instructors' expectations for using text-, image-, code-, or video-generating artificial intelligence (AI); referencing sources; group work and collaboration, and be proactive in pursuit of clarification and resources to support these expectations;

...

It is the responsibility of **course directors and graduate supervisors** to:

b. communicate with and support students in following instructors' expectations for *using text-, image-, code-, or video-generating AI*; referencing sources; conducting group work and collaboration;

3) *Plagiarism, including unattributed paraphrasing and including connections to improper use of AI*

The 2024 York Senate Academic Conduct Policy and Procedures has updated the section on plagiarism, to now read (section 5.2.b.):

Plagiarism – the appropriation of the work of another whether published, unpublished or posted electronically, attributed or anonymous, without proper acknowledgement.

This includes but is not limited to:

- i. Presenting all or part of another person's work or ideas as something one has produced where work includes, but is not restricted to, text, code, technical and creative production, paragraph and essay structure and organization, and other forms that constitute intellectual property;
- ii. Paraphrasing another's writing without proper citation;
- iii. Representing another's artistic, technical work or creation as one's own;
- iv. Reproducing without citation the student's own work originally presented elsewhere; and
- v. Failing to attribute sources, or failure to attribute sources properly.

Apart from section 5.2.b.i.'s relevance to use of AI (in terms of how AI can lead to "presenting ...another person's work or ideas as something one has produced"), students are especially urged to understand that paraphrasing without proper citation is plagiarism. There has always been a concern that that some students do not sufficiently understand the need to cite to sources of paraphrases no less than directly quoted work. This problem may be growing. Of late, this is manifesting itself in students using extensive paraphrases, sometimes that go on for pages, but only citing to the source at or near the start or at or near the end – and sometimes sprinkling in a reference or two in between.

Apart from such extensive paraphrasing not being exemplary work, the moment a reader cannot know whether a given idea or thought is connected to a citation (because the citation is so distant from it) is the moment such paraphrasing also constitutes the academic offence of plagiarism for failure to properly attribute. Students are urged to take great care here, especially since there are reasons to worry that even instructor-authorized use of an AI tool can lead students to start producing substantial paraphrases of AI-generated text. Again, however poor such use of AI would be, it also comes with the risk of plagiarism if the student has not properly referenced the AI tool and any question(s) used to prompt the AI tool's answers, and/or has not documented by retaining the text of both the questions (and follow-up prompts) and the answers given by AI. Thus, section 5.2.a.i. cheating by use unreferenced and/or undocumented AI content generation can intersect with section 5.2.b. plagiarism.

b. Religious Observance:

York University is committed to respecting the religious beliefs and practices of all members of the community, and making accommodations for observances of special significance to adherents. Should any of the dates relating to examinations or assignments for this course pose such a conflict for you, please let Assistant Dean, Students, Mya Rimon know within the first three weeks of class.

c. Students with Disabilities and Accommodation Needs:

York University has a range of resources to assist students with physical, mental, and learning disabilities/challenges in achieving their educational objectives. Students with disabilities requiring accommodation in the classroom or in the examination or evaluation process are encouraged to identify themselves to [York's Student Accessibility Services](#) office or Osgoode's Office of Admissions & Student Services as soon as possible.

Students seeking accommodation in experiential education settings are encouraged to read the "Accommodation Information for Clinical & Intensive Program" handout provided to them with their enrolment offer. All requests for accommodation will be kept confidential.

Requests for accommodation for in-term work must be made, in writing, to either the instructor or to the Academic Accommodations Coordinator, Nicole Casey. Such requests must be made as soon as the need for accommodation arises and, barring exceptional circumstances, in advance of the deadline for the work.

Requests for accommodation for final examinations and final papers may only be made to and approved by the Assistant Dean, Students, Mya Rimon and must be made in advance of the examination date or final paper due date.

d. Other York University Policies, including Ethics Review Process:

Further information concerning relevant York University academic policies, such as the Ethics Review Process for research involving human participants is available online via the [University Secretariat](#).

5. POLICIES REGARDING STREAMING AND RECORDING FOR IN-PERSON, REMOTE, AND HYFLEX (DUAL-DELIVERY) TEACHING AND LEARNING

a. Remote and Hyflex classes:

In 2024-25, a handful of courses are being delivered fully remotely (i.e., using Zoom), partly remotely (blending in-person classes for the majority of the class with less frequent online classes or modules) or by Hyflex (dual-delivery) The Hyflex mode of delivery involves some students joining class in real-time from an online connection while the rest of the students are in-person in the physical classroom with the instructor.

Note, however, that instructors of all in-person courses have the discretion for pedagogical reasons to run some classes in a way that has students attending online, whether everyone is online including the instructor (fully remote on Zoom) or whether some are online with the instructor in the physical classroom with other students (Hyflex). The number of such classes is limited by Osgoode's definition of an in-person course as being a course that is predominantly and essentially in person.

b. Modes of Delivery, Streaming, and Recording:

With respect to lecture classes in "courses" (as opposed to "seminars"), class sessions must be recorded – whatever mode in which they are being taught – in order to be in compliance with Osgoode's recording policy for lecture courses. For regular in-person lecture sessions, that means recording from the computer console at the front of the class of both the instructor's voice and the screen display using a platform called Panopto. If a given lecture class session is done in a synchronous remote mode (Zoom) or a Hyflex mode, it too must be recorded under Osgoode's recording policy.

Then, for any of these modes, it is left to the pedagogical judgment of the instructor as to whether the recording will be posted on eClass for all students in the course to access. Where an instructor decides not to make the recording of their lecture class available to all students in the class (as they are permitted to decide), the recording must nonetheless be made available to any student who has an accommodation that requires access to the recording.

As for seminars, there is no duty to record seminar sessions under Osgoode’s policy but an instructor may record a class session (or indeed the whole course) if they wish. If they decide to, it is further in their discretion as whether to post the recording to the eClass site. As well, the above-mentioned discretion to have some classes that are not fully in-person – e.g., that are fully remote on Zoom or optionally remote for students via Hyflex – also comes with a discretion (but no duty) to record and upload.

c. Consent and Protections:

Whether in lecture classes of a course or in a seminar, activities for any class delivered synchronously online and any class delivered by Hyflex’s dual-delivery method involve live streaming. They may also, and usually do, involve recording. They may further involve storing the recording online in order to make the recording available to the class, after the class has ended, on the eClass platform.

Images, audio, text/chat messaging that have been recorded may be used and/or made available by the University to students enrolled in the course and those supporting the course for the purpose of materials review, for assessment, etc. Recordings will be managed according to the University’s Common Record Schedule and will be securely destroyed when no longer needed by the University. Your personal information is protected in accordance with York’s [Policy on Access of Information and Protection of Privacy](#) and the [Freedom of Information and Protection of Privacy Act](#).

The University will use reasonable means to protect the security and confidentiality of the recorded information, but cannot provide a guarantee of such due to factors beyond the University’s control, such as recordings being forwarded, copied, intercepted, circulated, disclosed, or stored without the University’s knowledge or permission, or the introduction of malware into computer system which could potentially damage or disrupt the computer, networks, and security settings. The University is not responsible for connectivity/technical difficulties or loss of data associated with your hardware, software, or Internet connection.

By engaging in course activities that involve recording, you are consenting to the use of your appearance, image, text/chat messaging, and voice and/or likeness in the manner and under the conditions specified herein.

In the case of a live stream recording during a remote class, if you choose not to have your image or audio recorded, you may disable the audio and video functionality. In the case of a live stream recording in a Hyflex (dual-delivery) class in which some students are in-person with the instructor and some students remote online, if you choose not to have your image or audio recorded, you may opt to attend the Hyflex class from the remote end, at which point you can disable the audio and video functionality.

In each such choice situation, the power to choose should be exercised against a background understanding that disabled audio and video can seriously affect the interactive dynamics of a class environment and the collective benefits of such interaction. Accordingly, if an instructor requests students not to turn off their cameras, students should not understand this as an order but as a considered preference based on serious reflection on pedagogy. You may still exercise your choice but are requested not to do so if turning off video or audio is more a matter of convenience than of principled objection to being seen or heard in a class.

d. Duties:

You are not permitted to disclose the link to/URL of an event or an event session recording to anyone, for any reason. Recordings are available only to authorized individuals who have been directly provided the above instructions/link for their use. Recordings for personal use, required to facilitate your learning and preparation of personal course/lecture notes, should not be made without the permission of the instructor or event coordinator and, further, should not be shared with others without the further permission of the instructor or event coordinator.