

Toxic Torts

Fall 2014– preliminary (note there may be minor changes as I add recent cases)
Mr. Sanders

The casebook (Craig, et al.) is the only material in the course. The following outline does not have specific dates attached to specific assignments. Each Thursday I will give an estimate of where we should get the following week. Plan on reading 3 to 5 cases per class depending on their length, difficulty, etc.

Note that there is one assigned cases not in the casebook. It is listed in the syllabus. You will have to go to the library or on line to read these cases.

There are two problems assigned in the course. They are bold faced in the syllabus. We will discuss them in class. I expect everyone to turn in written answers to the problems.

There will be a final, probably comprised of one fact pattern and one general question concerning a topic we have covered in the course.

Syllabus

Topic	Pages
I. Introduction	1-16
II. Theories of Liability	
A. Negligence	17-22
B. Products liability	23-60
	<p>READ: Texas Products Liability Statute: Chapter 82 of the Civil Practice and Remedy Code. You may also want to read David Owen, Design Defects, 74 Mo. L. Rev. 291 (2008) for an overview of design defect law today. NOTE: this is not an assigned reading.</p>
C. Theories relating to activities on land	61-68
1. Trespass to land	69-100
2. Private Nuisance	101-132
3. Public Nuisance	133-144
	<p>READ: <i>American Elec. Power Co., Inc. v. Connecticut</i>, 131 S.Ct. 2527 (2011)</p>

D.	Abnormally Dangerous Activities	145-158
E.	Successor liability	159-164
III.	Causation	
A.	Introduction	165-176
B.	<i>Sine qua non</i> and Substantial Factor Tests for Causation READ: <i>Transcontinental Ins. Co. v. Crump</i> , 330 S.W.3d 211 (Tex. 2010) (focus on the producing cause discussion.)	177-218 219-227
C.	General and Specific Causation	228-229
D.	Genetics, Genomics and the Definition of Injury	
E.	Latency	230-260
IV.	Causation in the Multi-Party Context	261-280
A.	Causal Apportionment Among Defendants	281-290
B.	Defendant Indeterminacy	
C.	Causal Apportionment between Plaintiff and Defendant(s) Do Problem on Page 289	291-300
V.	Admissibility of Evidence	301-318
A.	The <i>Daubert</i> Standard	319-342
B.	The <i>Daubert</i> trilogy	342-351
C.	The Silicone Breast Implant Litigation	
D.	State variations on admissibility READ: <i>City of San Antonio v. Pollock</i> , 284 S.W.3d 809 (Tex. 2009); <i>Merck & Co., Inc. v. Garza</i> , 347 S.W.3d 256 (Tex.2011).	352-370 371-382
VI.	Scope of Liability (Proximate Cause)	
A.	Duty, Forseeability and Remoteness	
B.	Substantial Factor READ: <i>Georgia-Pacific Corp. v. Bostic</i> , 320 S.W.3d 588 (Tex. App. 2010).	383 384-406
VII.	Toxic Exposure in the Workplace	

A.	Introduction	406-431
B.	Workers' Compensation	432
D.	OSHA (Note: we are skipping Section C)	433-454
VIII.	Federal Law Regulating Hazardous Waste	
A.	Introduction (note, we are only doing parts of this chapter)	463-483
B.	Resource Conservation and Recovery Act (RCRA)	
C.	Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	499-500
		501-506
IX.	Federal Regulation of Potentially Toxic Products	
A.	Introduction (note, we are only doing parts of this chapter)	513-515
B.	Federal Insecticide, Fungicide and Rotenticide Act (FIFRA)	541-577
C.	Toxic Substances Control Act (TSCA)	578-604
D.	Federal Food, Drug and Cosmetic Act (FDCA)	
X.	Defenses	
A.	Federal Preemption	
	READ: <i>PLIVA, Inc. v. Mensing</i> , 131 S.Ct. 2567 (2011). Note but do not read <i>Altria Group, Inc. v. Good</i> , 129 S.Ct. 538 (2008) ("light" cigarettes); <i>Bruesewitz v. Wyeth LLC</i> , 131 S.Ct. 1068 (2011) (childhood vaccine act).	642-649
	(Skip the remainder of the chapter)	649-666
XI.	Apportionment Among Multiple Parties	
A.	Plaintiff Conduct	667
B.	Apportionment Among Defendants Do Problem Page 654	668-706
XII.	Damages	721-742
A.	Introduction	
B.	Personal Injury	743-748
E.	Punitive Damages	
	READ: Texas Exemplary Damages	748-761

Statute: Chapter 41 of the Civil Practice and
Remedies Code

761-782

XIII. Insurance

A. Introduction

783-795

B. Insurance Triggers

795-801

C. Exclusions

801-819

XIV. Procedural Issues

819-826

A. Issue Preclusion/ Collateral Estoppel

827-834

B. Multidistrict Litigation

C. Class Actions

D. Bankruptcy

E. Other Procedural Devices to Provide Closure