

**Toxic Torts**  
**Spring 2017**  
**Mr. Sanders**  
**TENTATIVE OUTLINE (November 14, 2016)**

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 Wednesday 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 are some assigned cases not in the casebook. They are 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	17-21
B. Products Liability	23-60
READ: 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.	
C. Theories relating to activity on the land	
1. Trespass to land	61-68

2.	Private Nuisance	69-100
3.	Public Nuisance	101-132
	READ: <i>American Elec. Power Co., Inc. v. Connecticut</i> , 131 S.Ct. 2527 (2011).	
D.	Abnormally Dangerous Activities	133-144
E.	Successor liability	145-158
III. Causation		
A.	Introduction	159-166
B.	<i>Sine qua non</i> and Substantial Factor Tests for Causation	166-179
	READ: <i>Transcontinental Ins. Co. v. Crump</i> , 330 S.W.3d 211 (Tex. 2010) (focus on the producing cause discussion.)	
C.	General and Specific Causation	179-218
D.	Genetics, Genomics and the Definition of Injury	219-228
E.	Latency	228-229
IV. Causation in the Multi-Party Context		
A.	Causal Apportionment Among Defendants	230-260
B.	Defendant Indeterminacy	260-281
C.	Causal Apportionment between Plaintiff and Defendant(s) <b>(Do Problem on Page 289)</b>	281-290
V. Admissibility of Evidence		
A.	The <i>Daubert</i> Standard	291-301
B.	The <i>Daubert</i> trilogy	301-319
	READ: <i>Milward v. Acuity Specialty Products Group, Inc.</i> , 639 F.3d 11, 18 n. 7 (1st Cir. 2011).	

(Milward picks up on the idea in Stevens' dissent in *Joiner*).

C.	The Silicone Breast Implant Litigation	319-342
D.	State variations on admissibility	342-351
	READ: <i>City of San Antonio v. Pollock</i> , 284 S.W.3d 809 (Tex. 2009); <i>Merck &amp; Co., Inc. v. Garza</i> , 347 S.W.3d 256 (Tex.2011); <i>Parker v. Mobil Oil Corp.</i> , 857 N.E.2d 1114 (N.Y. 2006) ( <i>Frye plus</i> ).	
VI.	Scope of Liability (Proximate Cause)	
A.	Duty, Forseeability and Remoteness	352-370
B.	Substantial Factor	370-382
	READ: <i>Georgia-Pacific Corp. v. Bostic</i> , 439 S.W.3d 332 (Tex. 2014). You may also want to glance at my take on cases such as <i>Bostic</i> : The 'Every Exposure' Cases and the Beginning of the Asbestos Endgame, 88 Tulane Law Review 1153 (2014). NOTE: this is not an assigned reading.	
VII.	Toxic Exposure in the Workplace	
A.	Introduction	383-384
B.	Workers' Compensation	384-395
C.	Common Law Tort Claims	395-406
D.	OSHA	406-431
VIII.	Federal Law Regulating Hazardous Waste	
A.	Introduction (note, we are only doing parts of this chapter)	432
B.	Resource Conservation and Recovery Act (RCRA)	433-454
C.	Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	463-483
IX.	Federal Regulation of Potentially Toxic Products	
A.	Introduction (note, we are only doing parts of this chapter)	499-500

B.	Federal Insecticide, Fungicide and Rotenticide Act (FIFRA)	501-512
C.	Toxic Substances Control Act (TSCA)	513-530
D.	Federal Food, Drug and Cosmetic Act (FDCA)	541-577
X.	Defenses	
A.	Federal Preemption	578-604
	READ: <i>PLIVA, Inc. v. Mensing</i> , 131 S.Ct. 2567 (2011); <i>CTS Corp. v. Waldburger</i> , 134 S.Ct. 2175 (2014). Note <b>but do not read</b> <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)	
B.	Statutes of limitation and repose. (Skip the remainder of the chapter)	604-619
XI.	Apportionment Among Multiple Parties	624-643
A.	Plaintiff Conduct	643-649
B.	Apportionment Among Defendants <b>(Do Problem Page 654)</b>	649-666
XII.	Damages	
A.	Introduction	667
B.	Personal Injury	668
	1. Medical Monitoring	668-685
	2. Fear of Disease	685-706
	3. Enhanced Risk of Disease	706-711
C.	Property Damage (Skip Damages Under Federal Statutes)	711-716
D.	Punitive Damages	721-742
	READ: Texas Exemplary Damages Statute: Chapter 41 of the Civil Practice and Remedies Code	

XIII. Insurance

- A. Introduction 743-748
  
- B. Insurance Triggers 748-761  
READ: *Boston Gas Co. v. Century Indemnity Co.*,  
708 F.3d 254 (1<sup>st</sup> Cir. 2013).
  
- C. Exclusions 761-782