

Products Liability
Spring, 2016
Mr. Sanders

The only materials in the course are a Casebook (Fischer, et al. 5th ed.) and a set of problems that will be handed out at the beginning of the class.

The 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. You should plan on reading 3 to 5 cases per class depending on their length, difficulty, etc.

Note that there are a number of assigned cases that are not in the casebook. Their name and citation is listed in the syllabus. You will have to go to the library or online to read these cases. Be sure to check for these cases as I will treat them as assigned reading. There are also a number of cases that I want to draw your attention to, but which are not assigned or which I only want you to skim over. By the way, I doubt we will actually cover all that is listed below. I would be very surprised if we get through the entire syllabus. As we go along I may decide to skip some cases if I think we are falling too far behind.

Finally, I will do the problems that are bold faced in the syllabus in class sometime during the week they are listed or early the following week. **I expect everyone to turn in on time written answers to the problems.**

Syllabus

Topic	Page
I. Introduction	1-3
II. Negligence	4-10
III. Misrepresentation	10-17
Also Do Problem # 1 part 1. (We will discuss this when we do problem #1 part 2.)	
IV. Warranty	
A. Introduction	19-21
B. Express Warranty	21-31
C. Merchantability	31-40

D. Fitness for Particular Purpose	40-42
In Class do Problem on page 42.	
E. Persons who are Protected	43-48
F. Disclaimers and Limitations of Remedies	48-68
G. Notice	68
H. Summary	
Read: <i>Chandler v. Gene Messer Ford</i> , 81 S.W.3d 493 (Tex. App. 2002).	
Also Do Problem # 1 part 2.	
V. Emergence of Modern “Strict” Liability in Products	
A. Adoption	69-81
B. Policies Underlying Products Liability	81-103
(I will spend limited class time on this material.)	
Do: Escola Hypo that I will hand out in class.	
C. The Jury and Multiple Theories of Recovery	
Read: <i>Hyundai v. Rodriguez</i> , 995 S.W.2d 661 (Tex. 1999).	
Read: <i>Ford Motor Co. v. Miles</i> , 141 S.W.3d 309 (Tex. App. 2004).	
VI. Defect	
A. Introduction	105-106
B. Manufacturing Defects	106-118
Read: <i>Ford Motor Co. v. Ledesma</i> , 242 S.W.3d 32 (Tex. 2007).	
C. Proof of Non-Specific Defect-	
Circumstantial Evidence and performance standards	118-125
Read: <i>Ford Motor Co. v. Ridgway</i> , 135 S.W.3d 598 (Tex. 2004) and <i>Casey v. Toyota Motor Engineering</i> , 770 F.3d 322 (5th Cir. 2014) (read pages 322-330)	
D. Design Defects	
1. Introduction	125-126
2. Consumer Expectations	126-147
Do: Problem # 2	

3. Risk Utility	147-167
Read: <i>Turner v. General Motors</i> , 584 S.W.2d 844 (Tex. 1979).	
4. Mixed tests	168-175
Obviousness and design defects in Texas	
Read: <i>Uniroyal Goodrich Tire Co. v. Martinez</i> , 977 S.W.2d 328 (Tex. 1998).	
Read: <i>Timpfe Industries, Inc. v. Gish</i> , 286 S.W.3d 306 (Tex. 2009).	
5. Special Issues Related to Design Defects	
a. Foresight/Hindsight	175-178
b. Misuse	179-187
c. Changes in Technology–Alternative Design	187-220
Read: <i>Genie Industries v. Matak</i> , 462 S.W.3d 1 (Tex. 2015) (read majority opinion but glance over the dissent)	
Do Problem # 3 on page 207 of casebook	
d. Delegating the Design Process	220-240
Read: <i>Ranger Conveying and Supply, Co. v. Davis</i> , 254 S.W.3d 471 (Tex. App. 2007).	
e. Medical Devices and Pharmaceuticals	240-261
E. Warning Defects	
1. Duty to Warn	261-284
2. Adequacy of Warning	284-318
3. Obvious or Known Dangers	319-329
Read: <i>Caterpillar v. Shears</i> , 911 S.W.2d 379 (Tex. 1995); <i>Brocken v. Entergy Gulfstates Inc.</i> , 197 S.W.3d 429 (Tex. App. 2006).	
Do: Problem # 4	
4. Who to Warn	
a. Users, Consumers and Bystanders	330-346

b. Learned Intermediaries	346-362
Read: <i>Centocor, Inc. v. Hamilton</i> , 372 S.W.3d 140 (Tex. 2012).	
See but do not read : <i>Ackerman v. Wyeth Pharmaceuticals</i> , 526 F.3d 203 (5th Cir. 2008).	
c. Allergies and Idiosyncratic Reactions	362-368
d. The Continuing Duty to Warn	368-379
Read: <i>Rodriguez v. Riddell Sports Inc.</i> , 242 F.3d 567 (5th Cir. 2001).	

VII. Causation in Fact

A. Tests for Determining Causation	381-383
B. Proof of Causation	
1. Reliance on Warnings	383-399
Read: <i>Gillespe v. Century Products Co.</i> , 936 S.W.2d 50 (Tex. App. 1996).	
2. Enhanced Injuries	399-410
3. Linking the Defendant to the Product	410-447
Read: <i>Borg-Warner Corp. v. Flores</i> , 232 S.W.3d 765 (Tex. 2007).	

VIII. Proof of Defect and Causation

A. Industry Standard and Custom	449-463
B. Post-Accident Remedial Measures	463-469
C. Expert Witnesses	469-543
Read: <i>Cooper Tire & Rubber Co. V. Mendez</i> , 204 S.W.3d 797 (Tex. 2006); <i>Merck & Co., Inc. v. Garza</i> , 347 S.W.3d 256 (Tex. 2011).	

Do Problem # 5

IX. Proximate Cause

A. Introduction	545-549
B. Duty Forseeability and Remoteness	550-557
Texas “Producing Cause” (Discussing <i>Lear Siegler, Inc. v. Perez</i> , 819 S.W.2d 470, 472 (Tex.1991) and <i>Union Pump Co. v. Allbritton</i> , 898 S.W.2d 773, 775 (Tex.1995).	
Note: These cases are <u>not</u> assigned reading.	
C. Product Alteration	557-578
D. Comparative Fault – Superceding Cause	579-588
X. Effect of Statutes and Regulations	
A. Introduction	589-590
B. Non-compliance and Compliance with Safety Statutes	591-600
Read: <i>Wright v. Ford Motor Co.</i> , 508 F.3d 263 (5th Cir. 2007). See but don’t read : <i>Hamid v. Lexus</i> , 369 S.W.3d 291 (Tex.App. 2011)	
C. Regulation	600-616
d. Preemption	617-637
Read: <i>Bic Pen Corp. v. Carter</i> , 251 S.W.3d 500 (Tex. 2008). Skim (i.e. get a flavor for) ; <i>Wyeth v. Levine</i> , 129 S.Ct. 1187 (2009); <i>PLIVA, Inc. v. Mensing</i> , 131 S.Ct. 2567 (2011); <i>Mutual Pharmaceutical Co., Inc. v. Bartlett</i> , 133 S.Ct. 2466 (2013); <i>Bruesewitz v. Wyeth LLC</i> , 131 S.Ct. 1068 (2011) (childhood vaccine act); <i>MCI Sales and Service, Inc. v. Hinton</i> , 329 S.W.3d 475 (Tex. 2010) (bus seatbelts); <i>Lofton v. McNeil Consumer & Specialty Pharmaceuticals</i> , 672 F.3d 372 (2012) (concerning Civ Pract. & Rem. Code § 82.007(b)(1)).	
XI. Damages	
A. In General	639-642
B. Pecuniary Loss and Harm to Property	642-654
Read: <i>Wiltz v. Bayer Cropscience, LP</i> ,	

645 F.3d 690 (5th Cir. 2011)

C. Mental Distress 654-670
Note **but do not read:** *Lowe v. Philip Morris USA, Inc.*,
183 P.3d 181 (Ore. 2008). (no to medical monitoring)

D. Punitive Damages 670-696
Texas Exemplary Damages Statute:
Chapter 41 of the Civil Practice and Remedies Code

XII. Apportionment of Liability

A. Consumer Conduct Defenses 697-698

1. Plaintiff Behavior Under Section 402A 698-702
Do: Problem # 6

2. The Movement to Comparative Responsibility 702-716
Read: *General Motors v. Sanchez*,
997 S.W.2d 584 (Tex. 1999).
We will also discuss the
Texas Proportionate Responsibility Statute:
Chapter 33 of the Civil Practice and Remedy Code.

3. Assumption of the Risk 716-724

4. Misuse 724-736

B. Apportionment of Liability Among Defendants 736-739

1. Indemnity 739-752
Who should indemnify whom in Texas
if the plaintiff sues both the product manufacturer
and the manufacturer of a component part
of the final product?
See (but don't read) *Petroleum Solutions Inc. v. Head*,
4542 S.W.3d 482 (Tex. 2014).

2. Contribution 752-756

3. Partial Settlements 756-760

4. Employers 760-768

XIII. Parties and Transactions

A. Parties Who Can Be Sued

- | | |
|--|---------|
| 1. Retailers, Wholesalers and Distributors | 800-808 |
| 2. Government Contractors | 809-819 |
| 3. Successor Corporations | 819-829 |

B. Transactions Covered

- | | |
|------------------|---------|
| 1. Leases | 830-840 |
| 2. Franchises | 840-846 |
| 3. Publications | 846-852 |
| 4. Used Products | 852-859 |
| 5. Services | 865-882 |

XIV. Statutes of Limitations and Repose

Read: *Burlington Northern and Santa Fe Railway Co. v. Gunderson, Inc.*,
235 S.W.3d 287 (Tex. App. 2007).

Read: *Galbraith Engineering Consultants, Inc. v. Pochucha*,
290 S.W.3d 863 (Tex. 2009).

XV. Other issues

Forum Non Conveniens: Read: *In re Pirelli Tire L.L.C.*, 247 S.W.3d 670 (Tex. 2007).
Bar Room Brawl weapons! *Gann v. Anheuser-Busch, Inc.*, 394 S.W.3d 83 (Tex. App. 2012).