

Products Liability  
Mr. Sanders  
Spring 2026

The only materials in the course are a Casebook (Fischer, et al. 6<sup>th</sup> ed.) and a set of problems attached in an e-mail and that will also be available from my secretary.

The outline does not have specific dates attached to specific assignments. Each week 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 a substantial number of assigned cases that are not in the casebook. Their names and citations are listed in the syllabus. You will have to go online to read these cases. Be sure to check for these cases as I will treat them as assigned reading. It is best if you get a copy of these opinions as they are printed in the West reporters so that we can all be on the same page when discussing them. 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 never have! 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 a written answer to the problems. I will discuss what I am looking for at the first class meeting.**

Topic	Page
CHAPTER 1. Introduction	
A. History	1-3
B. Negligence	4-12
C. Misrepresentation	13-20
Also <b>Do Problem # 1 part 1.</b> (We will discuss this when we do problem #1 part 2.)	
CHAPTER 2. Warranty	
A. Introduction	21-23
B. Express Warranty	23-33

C. Merchantability	33-42
D. Fitness for Particular Purpose	42-44
In Class do Problem on page 42.	
E. Persons who are Protected	44-49
F. Disclaimers and Limitations of Remedies	50-69
G. Notice	69-70
Read: <i>Chandler v. Gene Messer Ford</i> , 81 S.W.3d 493 (Tex. App. 2002). Also <b>Do Problem # 1 part 2.</b>	
CHAPTER 3. Emergence of Modern “Strict” Liability in Products	
A. Adoption	71-83
B. Policies Underlying Products Liability	83-113
(I will spend limited class time on this material.) <b>Do: Escola Hypo that I will hand out in class.</b>	
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).	
CHAPTER 4. Defect	
A. Introduction	115-116
B. Manufacturing Defects	116-129
Read: <i>Ford Motor Co. v. Ledesma</i> , 242 S.W.3d 32 (Tex. 2007). Read <i>Norman v. Bodum USA, Inc.</i> , 44 F.4th (5th Cir. 2022)	
C. Proof of Non-Specific Defect-	
Circumstantial Evidence and performance standards	129-137
Read: <i>Ford Motor Co. v. Ridgway</i> , 135 S.W.3d 598 (Tex. 2004). Read: <i>Casey v. Toyota Motor Engineering</i> , 770 F.3d 322 (5th Cir. 2014) (read pages 322-330)	
D. Design Defects	
1. Introduction	137-138

See, **but don't read** *Baksic v. Ethicon Inc.*, 659 F.Supp.3d 763 (W.D. Tex. 2023) (alternative design v. alternative procedure)

2. Consumer Expectations 138-160  
**Do: Problem # 2**

3. Risk Utility 160-180

4. Mixed tests 180-189

The Unreasonably Dangerous requirement in Texas.

Read: *Emerson Electric Co. v Johnson*,  
627 S.W.3d 197 (Tex. 2021).

Obviousness and design defects in Texas

Read: *Uniroyal Goodrich Tire Co. v. Martinez*,  
977 S.W.2d 328 (Tex. 1998).

Read: *Timpte Industries, Inc. v. Gish*,  
286 S.W.3d 306 (Tex. 2009).

5. Special Issues Related to Design Defects

a. Foresight/Hindsight 189-193

b. Misuse 193-206

c. Changes in Technology–Alternative Design 206-227

Read: *Genie Industries v. Matak*,  
462 S.W.3d 1 (Tex. 2015)

(read majority opinion but glance over the dissent)

**Do Problem # 3 on page 215 in the casebook**

d. Who is Responsible for the Product's Design 227-249

Read: *Ranger Conveying and Supply, Co. v. Davis*,  
254 S.W.3d 471 (Tex. App. 2007).

Read: *Air & Liquid Systems Corp. v. DeVries*,  
139 S.Ct. 986 (2019).

e. Medical Devices and Pharmaceuticals 249-270

E. Warning Defects

1. Duty to Warn 270-283

2. Adequacy of Warning 283-313

3. Obvious or Known Dangers	313-324
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). <b>Do: Problem # 4</b>	
4. Who to Warn	
a. Users, Consumers and Bystanders	324-337
b. Learned Intermediaries	337-358
<b>Note: do not read the Karl case in the Casebook.</b> But look at the notes after the Case and W.Va. Code § 55-7-30 (undoing <i>Karl</i> ), Read: <i>Centocor, Inc. v. Hamilton</i> , 372 S.W.3d 140 (Tex. 2012). See <b>but do not read:</b> <i>Ackerman v. Wyeth Pharmaceuticals</i> , 526 F.3d 203 (5th Cir. 2008).	
c. The Continuing Duty to Warn	358-369
Read: <i>Rodriguez v. Riddell Sports Inc.</i> , 242 F.3d 567 (5th Cir. 2001).	

## CHAPTER 5. Causation in Fact

A. Tests for Determining Causation	371-386
B. Proof of Causation	
1. Reliance on Warnings	386-401
Read: <i>Gillespe v. Century Products Co.</i> , 936 S.W.2d 50 (Tex. App. 1996).	
2. Enhanced Injuries	401-413
3. Linking the Defendant to the Product	413-443
Read: <i>Borg-Warner Corp. v. Flores</i> , 232 S.W.3d 765 (Tex. 2007).	

## CHAPTER 6. Admissibility of Evidence on Proof of Defect and Causation

A. Industry Standard and Custom	445-464
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B. Post-Accident Remedial Measures 464-470

C. Expert Witnesses 470-549

Read: *Merck & Co., Inc. v. Garza*,  
347 S.W.3d 256 (Tex. 2011); *Helena Chemical Company v. Cox*,  
664 S.W.3d 66 (Tex. 2023)

**Do Problem # 5**

## CHAPTER 7. Proximate Cause (Scope of Liability)

A. Introduction 551-557

B. Duty Forseeability and Remoteness 557-576

Texas “Producing Cause” (Discussing *Lear Siegler, Inc. v. Perez*,  
819 S.W.2d 470, 472 (Tex.1991) and *Union Pump Co. v. Allbritton*,  
898 S.W.2d 773, 775 (Tex.1995).

**Note: These two cases are not assigned reading.**

C. Intervening and Superseding Causes 576-592

D. Product Alteration 592-613

## CHAPTER 8. Effect of Statutes and Regulations

A. Introduction 615-616

B. Non-compliance and Compliance With Safety Statutes 617-626

Read: *Wright v. Ford Motor Co.*,  
508 F.3d 263 (5th Cir. 2007).

See **but don’t read**: *Hamid v. Lexus*,  
369 S.W.3d 291 (Tex.App. 2011).

See **but don’t read**: *American Honda v. Milburn*,  
2021 WL 5504887 (Tex. App. 2021)

C. Regulation 626-643

D. Preemption 643

1. Express Preemption 644-659

2. Implied Preemption 659-672

**You might wish to skim (i.e. get a flavor for);** *Estate of Miranda v.*

*Navistar, Inc.* 23 F.4<sup>th</sup> 500 (5th Cir. 2022) (bus emergency exit);  
*MCI Sales and Service, Inc. v. Hinton*, 329 S.W.3d 475 (Tex. 2010)  
 (bus seatbelts); *Lofton v. McNeil Consumer & Specialty  
 Pharmaceuticals*, 672 F.3d 372 (2012) (concerning Civ Pract.  
 & Rem. Code § 82.007(b)(1)); *Wildman v. Medtronic, Inc.*,  
 874 F.3d 862 (5th Cir. 2017) (express warranty)

## CHAPTER 9. Damages

A. In General	673-677
B. Pecuniary Loss and Harm to Property	677-689
Read: <i>Golden Spread Electric Coop., Inc. v. Emerson          Process Management Power &amp; Water Solutions, Inc.</i> , 954 F.3d 804 (5th Cir. 2020). See <b>but do not read:</b> <i>Wiltz v. Bayer Cropscience, LP</i> , 645 F.3d 690 (5th Cir. 2011).	
C. Emotional Distress	689-705
See <b>but do not read:</b> <i>Lowe v. Philip Morris USA, Inc.</i> , 183 P.3d 181 (Ore. 2008). (no to medical monitoring)	
D. Punitive Damages	705-732
Texas Exemplary Damages Statute: Chapter 41 of the Civil Practice and Remedies Code	

## CHAPTER 10. Apportionment of Liability Among Multiple Parties

A. Consumer Conduct Defenses and Comparative Responsibility	733-735
1. The Movement to Comparative Responsibility	735-750
Read: <i>General Motors v. Sanchez</i> , 997 S.W.2d 584 (Tex. 1999). (skip part IV) We will also discuss the Texas Proportionate Responsibility Statute: Chapter 33 of the Civil Practice and Remedy Code.	
3. Assumption of the Risk	750-759
4. Misuse	759
B. Apportionment of Liability Among Defendants	759-762

1. Indemnity	762-775
Who should indemnify whom in Texas? See <b>but do not read:</b> <i>Petroleum Solutions Inc. v. Head</i> , 454 S.W.3d 482 (Tex. 2014) ( <i>manufacturer v. component part maker</i> ); <i>Pan v. Sumitomo Rubber Industries, LTD</i> , 2018 WL 3055773 (S.D. Tex. 2018) (effect of indemnity statute on Jurisdiction); <i>In re NCS Multistage, LLC</i> , 650 S.W.3d 182 (Tex. App. 2021) (indemnity and responsible third parties)	
2. Contribution	775-779
3. Partial Settlements	779-783
4. Employers	783-790

## CHAPTER 12. Parties and Transactions

A. Parties Who Can Be Sued	823
1. Retailers, Wholesalers and Distributors	823-831
Read: <i>Olive v. YTL International Inc.</i> , 2023 WL 8482513 (S.D.Tex. 2023).	
3. Successor Corporations	842-852
B. Transactions Covered	852-853
1. Leases and Bailments	853-865
2. Franchises	865-871
3. Facilitators	871-883
4. Publications	883-888
5. Used Products	889-897
6. Real Estate	897-906
7. Services	907-927

CHAPTER 11. Statutes of Limitations and Repose

791-822

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

Read: *Camacho v. Ford Motor Co.*, 993 F.3d 308 (5<sup>th</sup> Cir. 2021).

See **but don't read**: *Stevenson v. Ford Motor Co.*, 608 S.W.3d 109 (Tex.App. 2020)

CHAPTER 13. Complex Litigation

929-1016

(We may do parts of this chapter as time allows).

Attendance: The usual law school attendance rules apply. Students are expected to attend classes in person.

Exam: The examination is open book. If the exam is in a classroom, it will be an essay examination.

Objectives: The objectives of the course are to provide an overview of the law of products liability with an emphasis on Texas law.

I am asked by the University to add the following items:

### **Required Language for All Courses**

#### **1. The Use of Artificial Intelligence Is Prohibited in the Course**

The use of artificial intelligence (AI) is prohibited in this course. Thus, using AI or AI-generated text for formal assessments (such as your midterm or final exams), informal assessments (such as drafting essay answers to hypothetical problems), extra credit assignments, or group or individual exercises and activities is not permitted. This prohibition includes any work product created for this course that is submitted to the instructor, a tutor, or presented in a class session. This prohibition applies whether the material is to be graded or ungraded. This prohibition applies whether the assessment, assignment, exercise, or activity is prepared in or outside of class. Your writings for this course are to be your own work composed without the aid of AI.

#### **2. Title IX/Sexual Misconduct**

Pursuant to the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

#### **3. Reasonable Academic Adjustments/Auxiliary Aids**

The University of Houston is committed to providing an academic environment and educational programs that are accessible to its students. Any student with a disability who is experiencing barriers to learning, assessment, or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website at <https://uh.edu/accessibility/>, by calling (713) 743-5400, or by emailing [jdcenter@Central.UH.EDU](mailto:jdcenter@Central.UH.EDU).

#### **4. Mental Health and Wellness Resources**

The University of Houston has several resources to support students’ mental health and overall wellness, including CoogsCARE and the UH Go App:

- UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment, and sadness. CAPS provides individual and couples counseling, group therapy, workshops, and connections to other support services on and off campus. For assistance, visit [uh.edu/caps](http://uh.edu/caps), call 713-743-5454, or visit a Let’s Talk location in person or virtually. Let’s Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.
- The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment.
- The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.
- If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or for the National Suicide and Crisis Lifeline, you call or 5 Torts Syllabus (Prof. Duncan – Fall 2023) text 988 or go to [988lifeline.org](http://988lifeline.org).

#### **5. Recording of Classes Not Permitted**

Students may not record all or part of class, livestream all or part of class, or make or distribute screen captures without the advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student,

whether in this course or not, or with any other person or on any other platform. The instructor may record classes. Students may use the instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

#### **6. Security Escorts and Cougar Ride**

UHPD continually works with the University community to make the campus a safe place to learn, work, and live. The security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety, please call 713-743-3333. Arrangements may be made for special needs.

Parking and Transportation Services also offers a late-night, on-demand shuttle service called "Cougar Ride" that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at <https://uh.edu/af-university-services/parking/cougar-ride/>.