

**Law 273.4**  
*The Law of Hazardous Waste: CERCLA,  
RCRA, & Common Law Claims*  
(Fall 2006)

Units: 3  
CCN (2Ls/3Ls): 49694

Instructor: Robert D. Infelise  
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Location: 115 Boalt  
Time: M, Tues, W 2:05-3:10

*Texts:*

(R) Class Reader  
(M) Jeffrey G. Miller & Craig N. Johnston, *The Law of Hazardous Waste Disposal and Remediation* (2d ed. 2005)

Syllabus

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<b>Class 1 – August 22</b>	<b>Claims Based on Common and State Law:</b> <ol style="list-style-type: none"><li>1. Class Reader R: 1-27 Actions Against Owners and Operators: California Civil Code sections 3479, 3480-3483 <i>Mangini v. Aerojet-General Corp.</i> 230 Cal.App.3d 1125 (1991) <i>Capogeannis v. Superior Court</i> 12 Cal.App.4th 668 (1993)</li></ol>
<b>Class 2 – August 29</b>	<b>Claims Based on Common and State Law:</b> <ol style="list-style-type: none"><li>1. Class Reader R: 28-47 Actions Against Owners and Operators: <i>Newhall Land &amp; Farming Co. v. Superior Court</i> 19 Cal.App.4th 334 (1993) <i>Mangini v. Aerojet-General Corp.</i> 12 Cal.4th 1087 (1996) Review of nuisance, trespass and negligence cases</li><li>2. Class Reader R: 48-54 Liability of Landlords for Acts of Tenants: <i>Resolution Trust Corporation v. Rossmoor Corp.</i> 34 Cal.App.4th 93 (1995)</li></ol>
<b>Class 3 – September 12</b>	<b>Claims Based on Common and State Law:</b> <ol style="list-style-type: none"><li>1. Class Reader R: 55-74 Liability as Between Landlords and Tenants: <i>Brown v. Green</i> 8 Cal.4th 812 (1994) <i>Hadian v. Schwartz</i> 8 Cal.4th 836 (1994)</li><li>2. Class Reader R: 75-109 Fear of Cancer: <i>Potter v. Firestone Tire &amp; Rubber Co.</i> 6 Cal.4th 965 (1993)</li></ol>

<b>Class 4 – September 19</b>	<p><b>Claims Based on Federal Law:</b></p> <ol style="list-style-type: none"> <li>1. Miller &amp; Johnston <i>The Law of Hazardous Waste Disposal and Remediation</i></li> <li>2. Ch. III, Intro to RCRA, CERCLA, and the Administrative Process <ul style="list-style-type: none"> <li>Sec. A - Introduction M: 39-41</li> <li>Sec. B – Overview of RCRA and CERCLA M: 41-63</li> </ul> </li> </ol>
<b>Class 5 – September 26</b>	<p><b>Claims Based on Federal Law:</b></p> <ol style="list-style-type: none"> <li>1. Miller &amp; Johnston <i>The Law of Hazardous Waste Disposal and Remediation</i></li> <li>2. Ch. V, Remediation of Hazardous Substances <ul style="list-style-type: none"> <li>Sec. A – Historical Background M: 498-507 <ul style="list-style-type: none"> <li><i>U.S. v. Waste Industries, Inc.</i></li> <li>734 F.2d 159 (4th Cir. 1894)</li> <li><i>Meghrig v. KFC Western, Inc.</i></li> <li>516 U.S. 479 (1996)</li> </ul> </li> <li>Sec. B – CERCLA Jurisdiction M: 508-522 <ul style="list-style-type: none"> <li>Elements – Hazardous Substances <ul style="list-style-type: none"> <li><i>B.F. Goodrich Co. v. Murtha</i></li> <li>958 F.2d 1192 (2d Cir. 1992)</li> </ul> </li> <li>Elements – Releases and Threatened Releases <ul style="list-style-type: none"> <li><i>Amoco Oil Co. v. Borden, Inc.</i></li> <li>889 F.2d 664 (5th Cir. 1989)</li> </ul> </li> <li>Elements – Facility</li> </ul> </li> </ul> </li> </ol>
<b>Class 6 – October 10</b>	<p><b>Claims Based on Federal Law:</b></p> <ol style="list-style-type: none"> <li>1. Miller &amp; Johnston <i>The Law of Hazardous Waste Disposal and Remediation</i></li> <li>2. Ch. V, Remediation of Hazardous Substances <ul style="list-style-type: none"> <li>Sec. B – CERCLA Jurisdiction M: 522-539 <ul style="list-style-type: none"> <li>Exclusions and Limitations on Response – The Petroleum Exclusion <ul style="list-style-type: none"> <li><i>Cose v. Getty Oil Co.</i></li> <li>4 F.3d 700 (9th Cir. 1993)</li> </ul> </li> <li>Exclusions and Limitations on Response – The Requirement of NPL Listing <ul style="list-style-type: none"> <li><i>New York v. General Elec. Co.</i></li> <li>592 F.Supp. 291 (N.D.N.Y. 1984)</li> </ul> </li> <li>Commerce Clause Issues <ul style="list-style-type: none"> <li><i>U.S. v. Olin Corp.</i></li> <li>107 F.3d 1506 (11th Cir. 1997)</li> </ul> </li> <li>RCRA/CERCLA Overlap <ul style="list-style-type: none"> <li><i>Apache Powder Co. v. U.S.</i></li> <li>968 F.2d 66 (D.C. Cir. 1992)</li> </ul> </li> </ul> </li> <li>Sec. C – Cleanup Mechanisms and Cost-Recovery Authorities M: 540-549 <ul style="list-style-type: none"> <li>EPA-Lead Cleanup and Cost Recovery</li> <li>Judicial Abatement and Administrative Orders <ul style="list-style-type: none"> <li><i>U.S. v. Conservation Chemical Corp.</i></li> <li>619 F.Supp. 162 (W.D. Mo. 1985)</li> </ul> </li> <li>Class Reader <ul style="list-style-type: none"> <li><i>Price v. U.S. Navy</i> R: 111-116</li> <li>39 F.3d 1011 (9th Cir. 1994)</li> </ul> </li> <li>Miller &amp; Johnston <i>The Law of Hazardous Waste Disposal and Remediation</i></li> <li><i>U.S. v. Reilly Tar &amp; Chemical Corp.</i> M: 549-558</li> <li>606 F.Supp. 412 (D. Minn. 1985)</li> </ul> </li> </ul> </li> </ol>

**Class 7 – October 17**

**Claims Based on Federal Law:**

1. Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
2. Ch. V, Remediation of Hazardous Substances
  - Sec. C – Cleanup Mechanisms and Cost-Recovery Authorities
    - M: 558-580
    - Settlement
    - Corrective Action Under RCRA
    - Private-Party Cost Recovery and Contribution
      - Bedford Affiliates v. Sills*
      - 156 F.3d 416 (2d Cir. 1998)
      - Cooper Industries, Inc. v. Aviall Services, Inc.*
      - \_ U.S. \_, 125 S.Ct. 577 (2004)
  - Sec. D – Liability
    - M: 580-584
    - Nature of Liability – Standard of Liability
      - New York v. Shore Realty Corp.*
      - 759 F.2d 1032 (2d Cir. 1985)

**Class 8 – October 24**

**Claims Based on Federal Law:**

1. Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
2. Ch. V, Remediation of Hazardous Substances
  - Sec. D – Liability
    - M: 584-613
    - Nature of Liability – Scope of Liability
      - U.S. v. Chem-Dyne Corp.*
      - 572 F.Supp. 802 (S.D. Ohio 1983)
      - O’Neil v. Picillo*
      - 883 F.2d 176 (1st Cir. 1989)
      - U.S. v. Alcan Aluminum Corp.*
      - 964 F.2d 252 (3d Cir. 1992)
      - In The Matter of Bell Petroleum Services, Inc.*
      - 3 F.3d 889 (5th Cir. 1993)
    - Nature of Liability – Retroactivity
      - U.S. v. Olin Corp.*
      - 107 F.3d 1506 (11th Cir. 1997)
      - U.S. v. Monsanto Co.*
      - 858 F.2d 160 (4th Cir. 1989)
    - Liabile Parties – Owner/Operator Liability

**Class 9 – October 31**

**Claims Based on Federal Law**

1. Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
2. Ch. V, Remediation of Hazardous Substances
  - Sec. D – Liability
    - M: 613-619
    - Ownership Liability
      - U.S. v. CDMG Realty Co.*
      - 96 F.3d 706 (3d Cir. 1996)
      - Class Reader
        - Carson Harbor Village, Ltd. v. Unocal Corporation*
        - R:117-138
        - 270 F.3d 863 (9th Cir. 2001)
    - Operator Liability
      - Class Reader
        - U.S. v. Northeastern Pharmaceutical*
        - R: 139-154
        - 810 F.2d 726 (8th Cir. 1986)
        - U.S. v. Carolina Transformer*
        - 978 F.2d 832 (4th Cir. 1992)

**Class 10 – November 7**

**Claims Based on Federal Law:**

1. Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
2. Ch. V, Remediation of Hazardous Substances  
Sec. D – Liability  
Operator Liability  
Class Reader  
*City of North Miami, Fla. v. Berger* R: 155-165  
828 F.Supp. 401 (E.D. Va. 1993)  
Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*  
*U.S. v. Bestfoods* 524 U.S. 51 (1998) M: 620-634  
*Edward Hines Lumber Co. v. Vulcan Materials Co.*  
861 F.2d 155 (7th Cir. 1988)

**Class 11 – November 14**

**Claims Based on Federal Law:**

1. Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
2. Ch. V, Remediation of Hazardous Substances  
Sec. D – Liability M: 634-663  
Lender Liability  
*Kelley v. EPA*  
15 F.3d 1100 (D.C. Cir. 1994)  
*Kelley v. Tiscornia*  
810 F.Supp. 901 (W.D. Mich. S.Div. 1993)  
Arranger Liability  
*U.S. v. Wade*  
577 F.Supp. 1326 (E.D. Pa. 1983)  
*Florida Power & Light Co. v. Allis Chalmers Corp.*  
893 F.2d 1313 (11th Cir. 1990)  
*U.S. v. Aceto Agricultural Chemicals Corp.* 872 F.2d 1373 (8th Cir. 1989)

**Class 12 – November 21**

**Claims Based on Federal Law:**

1. Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
2. Ch. V, Remediation of Hazardous Substances  
Sec. D – Liability M: 663-668  
Derivative Liability  
*In re Acushnet River & New Bedford Harbor Proceedings re Alleged PCB Pollution*  
675 F.Supp. 22 (D. Mass. 1987)
3. Class Reader R: 166-176  
*GNB Battery Technologies v. Gould* 65 F.3d 615 (7th Cir. 1995)  
*Atchison, Topeka, et al. v. Brown & Bryant* 132 F.3d 1295 (9th Cir. 1997)

**Class 13 – November 28**

**Claims Based on Federal Law:**

1. Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
2. Ch. V, Remediation of Hazardous Substances
  - Sec. D – Liability  
Derivative Liability  
*U.S. v. Exide*  
2002 WL 319940 (E.D. Pa. 2002)
  - Defenses – The Traditional § 107(b)(3) Defense  
*New York v. Lashins Arcade Co.*  
91 F.3d 353 (2d Cir. 1996)
  - Defenses – Innocent Landowner Defense  
*XDP, Inc. v. Watumull Properties Corp.*  
2004 WL 1103023 (D.C. Or. 2004)

M: 668-698

**Class 14 – December 5**

**Claims Based on Federal Law:**

1. Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
2. Ch. V, Remediation of Hazardous Substances
  - Sec. D – Liability  
Defenses – The Brownsfields Amendments  
Exclusions
  - Sec. G – Extent of Liability  
Recoverable Costs  
*U.S. v. Bell Petroleum Services, Inc.*  
734 F.Supp. 771 (W.D. Tex. 1990)  
*Atlantic Richfield Co. v. American Airlines, Inc.*  
98 F.3d 564 (10th Cir. 1996)  
*Key Tronic Corp. v. U.S.*  
511 U.S. 809 (1994)

M: 698-703

M: 771-788