

Law 273.4
*The Law of Hazardous Waste: CERCLA,
RCRA, & Common Law Claims*
(Fall 2008)

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:

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

Syllabus

Class 1 – August 19	Claims Based on Common and State Law: <ol style="list-style-type: none">1. Class Reader 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)	R: 1-27
Class 2 – August 26	Claims Based on Common and State Law: <ol style="list-style-type: none">1. Class Reader Actions Against Owners and Operators: <i>Newhall Land & 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 cases2. Class Reader Liability of Landlords for Acts of Tenants: <i>Resolution Trust Corporation v. Rossmoor Corp.</i> 34 Cal.App.4th 93 (1995)	R: 28-47 R: 48-54
Class 3 – September 2	Claims Based on Common and State Law: <ol style="list-style-type: none">1. Class Reader 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)2. Class Reader Fear of Cancer: <i>Potter v. Firestone Tire & Rubber Co.</i> 6 Cal.4th 965 (1993)	R: 55-74 R: 75-109
Class 4 – September 9	Claims Based on Federal Law: <ol style="list-style-type: none">1. Miller & Johnston <i>The Law of Hazardous Waste Disposal and Remediation</i>2. Ch. III, Intro to RCRA, CERCLA, and the Administrative Process Sec. A - Introduction Sec. B – Overview of RCRA and CERCLA	M: 39-41 M: 41-63

Class 5 – September 16

Claims Based on Federal Law:

1. Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
2. Ch. III, Intro to RCRA, CERCLA, and the Administrative Process
M: 498-507
 Sec. A – Historical Background
 U.S. v. Waste Industries, Inc.
 734 F.2d 159 (4th Cir. 1894)
 Meghrig v. KFC Western, Inc.
 516 U.S. 479 (1996)
 Sec. B – CERCLA Jurisdiction
 Elements – Hazardous Substances
 B.F. Goodrich Co. v. Murtha
 958 F.2d 1192 (2d Cir. 1992)
 Elements – Releases and Threatened Releases
 Amoco Oil Co. v. Borden, Inc.
 889 F.2d 664 (5th Cir. 1989)
 Elements – Facility
M: 508-522

Class 6 – September 23

Claims Based on Federal Law:

1. Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
2. Ch. III, Intro to RCRA, CERCLA, and the Administrative Process
M: 522-539
 Sec. B – CERCLA Jurisdiction
 Exclusions and Limitations on Response – The Petroleum Exclusion
 Cose v. Getty Oil Co.
 4 F.3d 700 (9th Cir. 1993)
 Exclusions and Limitations on Response – The Requirement of NPL Listing
 New York v. General Elec. Co.
 592 F.Supp. 291 (N.D.N.Y. 1984)
 Commerce Clause Issues
 U.S. v. Olin Corp.
 107 F.3d 1506 (11th Cir. 1997)
 RCRA/CERCLA Overlap
 Apache Powder Co. v. U.S.
 968 F.2d 66 (D.C. Cir. 1992)
 Sec. C – Cleanup Mechanisms and Cost-Recovery Authorities
 EPA-Lead Cleanup and Cost Recovery
 Judicial Abatement and Administrative Orders
 U.S. v. Conservation Chemical Corp.
 619 F.Supp. 162 (W.D. Mo. 1985)
 Class Reader
 Price v. U.S. Navy
 39 F.3d 1011 (9th Cir. 1994)
 Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
 U.S. v. Reilly Tar & Chemical Corp.
 606 F.Supp. 412 (D. Minn. 1985)
M: 540-549
R: 111-116
M: 549-558

Class 7 – October 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. C – Cleanup Mechanisms and Cost-Recovery Authorities
 - 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
 - Nature of Liability – Standard of Liability
 - New York v. Shore Realty Corp.*
 - 759 F.2d 1032 (2d Cir. 1985)

Class 8 – October 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
 - 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 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
 - Ownership Liability
 - U.S. v. CDMG Realty Co.*
 - 96 F.3d 706 (3d Cir. 1996)
 - Class Reader
 - Carson Harbor Village, Ltd. v. Unocal Corporation*
 - 270 F.3d 863 (9th Cir. 2001)
 - Operator Liability
 - Class Reader
 - U.S. v. Northeastern Pharmaceutical*
 - 810 F.2d 726 (8th Cir. 1986)
 - U.S. v. Carolina Transformer*
 - 978 F.2d 832 (4th Cir. 1992)

Class 10 – October 28	<p>Claims Based on Federal Law:</p> <ol style="list-style-type: none"> 1. Miller & Johnston <i>The Law of Hazardous Waste Disposal and Remediation</i> 2. Ch. V, Remediation of Hazardous Substances <ul style="list-style-type: none"> Sec. D – Liability <ul style="list-style-type: none"> Operator Liability <ul style="list-style-type: none"> Class Reader <i>City of North Miami, Fla. V. Berger</i> R: 155-165 828 F.Supp. 401 (E.D. Va. 1993) Miller & Johnston <i>The Law of Hazardous Waste Disposal and Remediation</i> <i>U.S. v. Bestfoods</i> 524 U.S. 51 (1998) M: 620-634 <i>Edward Hines Lumber Co. v. Vulcan Materials Co.</i> 861 F.2d 155 (7th Cir. 1988)
Class 11 – November 4	<p>Claims Based on Federal Law:</p> <ol style="list-style-type: none"> 1. Miller & Johnston <i>The Law of Hazardous Waste Disposal and Remediation</i> 2. Ch. V, Remediation of Hazardous Substances <ul style="list-style-type: none"> Sec. D – Liability M: 634-663 <ul style="list-style-type: none"> Lender Liability <ul style="list-style-type: none"> <i>Kelley v. EPA</i> 15 F.3d 1100 (D.C. Cir. 1994) <i>Kelley v Tiscornia</i> 810 F.Supp. 901 (W.D. Mich. S.Div. 1993) Arranger Liability <ul style="list-style-type: none"> <i>U.S. v. Wade</i> 577 F.Supp. 1326 (E.D. Pa. 1983) <i>Florida Power & Light Co. v. Allis Chalmers Corp.</i> 893 F.2d 1313 (11th Cir. 1990) <i>U.S. v. Aceto Agricultural Chemicals Corp.</i> 872 F.2d 1373 (8th Cir. 1989)
Class 12 – November 18	<p>Claims Based on Federal Law:</p> <ol style="list-style-type: none"> 1. Miller & Johnston <i>The Law of Hazardous Waste Disposal and Remediation</i> 2. Ch. V, Remediation of Hazardous Substances <ul style="list-style-type: none"> Sec. D – Liability M: 663-668 <ul style="list-style-type: none"> Derivative Liability <ul style="list-style-type: none"> <i>In re Acushnet River & New Bedford Harbor Proceedings re Alleged PCB Pollution</i> 675 F.Supp. 22 (D. Mass. 1987) Class Reader R: 166-176 <i>GNB Battery Technologies v. Gould</i> 65 F.3d 615 (7th Cir. 1995) <i>Atchison, Topeka, et al. v. Brown & Bryant</i> 132 F.3d 1295 (9th Cir. 1997))

Class 13 – November 25

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 2

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