## 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  
Email: rinfelise@law.berkeley.edu  
Location: 115 Boalt  
Time: M, Tues, W 2:05-3:10

**Texts:**  
(R) Class Reader  

### Syllabus

<table>
<thead>
<tr>
<th>Class 1 – August 22</th>
<th>Claims Based on Common and State Law:</th>
</tr>
</thead>
</table>
| 1. Class Reader     | R: 1-27  
Actions Against Owners and Operators:  
California Civil Code sections 3479, 3480-3483  
*Mangini v. Aerojet-General Corp.*  
*Capogeannis v. Superior Court*  

<table>
<thead>
<tr>
<th>Class 2 – August 29</th>
<th>Claims Based on Common and State Law:</th>
</tr>
</thead>
</table>
| 1. Class Reader     | R: 28-47  
Actions Against Owners and Operators:  
*Newhall Land & Farming Co. v. Superior Court*  
Review of nuisance, trespass and negligence cases |
| 2. Class Reader     | R: 48-54  
Liability of Landlords for Acts of Tenants:  
*Resolution Trust Corporation v. Rossmoor Corp.*  

<table>
<thead>
<tr>
<th>Class 3 – September 12</th>
<th>Claims Based on Common and State Law:</th>
</tr>
</thead>
</table>
| 1. Class Reader        | R: 55-74  
Liability as Between Landlords and Tenants:  
| 2. Class Reader        | R: 75-109  
Fear of Cancer:  
*Potter v. Firestone Tire & Rubber Co.*  
6 Cal.4th 965 (1993) |
Class 4 – September 19

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
   - Sec. A - Introduction
   - Sec. B - Overview of RCRA and CERCLA

Class 5 – September 26

Claims Based on Federal Law:
1. Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
2. Ch. V, Remediation of Hazardous Substances
   - Sec. A – Historical Background
     - 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)
   - 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
   - Commerce Clause Issues
     - 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

Class 6 – October 10

Claims Based on Federal Law:
1. Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*
2. Ch. V, Remediation of Hazardous Substances
   - 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
   - Commerce Clause Issues
     - 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)
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
   - 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.*

Sec. D – Liability
- Nature of Liability – Standard of Liability
    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
   - 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
       107 F.3d 1506 (11th Cir. 1997)
     - *U.S. v. Monsanto Co.*
       858 F.2d 160 (4th Cir. 1989)

   Liable 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
   - 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 – 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*  
   Miller & Johnston *The Law of Hazardous Waste Disposal and Remediation*  
   *Edward Hines Lumber Co. v. Vulcan Materials Co.*  
   861 F.2d 155 (7th Cir. 1988)  
R: 155-165  
M: 620-634

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  
   Lender Liability  
   *Kelley v. EPA*  
   15 F.3d 1100 (D.C. Cir. 1994)  
   *Kelley v Tiscornia*  
   Arranger Liability  
   *U.S. v. Wade*  
   *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)  
M: 634-663

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  
   Derivative Liability  
   *In re Acushnet River & New Bedford Harbor Proceedings re Alleged PCB Pollution*  
M: 663-668
3. Class Reader  
   *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)  
R: 166-176
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*
      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)

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)