Law 273.4
(Fall 2008)

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:
1. (R) Class Reader

Syllabus

Class 1 – August 19 Claims Based on Common and State Law:
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

Class 2 – August 26 Claims Based on Common and State Law:
1. Class Reader R: 28-47
   Actions Against Owners and Operators:
   Newhall Land & Farming Co. v. Superior Court
   Mangini v. Aerojet-General Corp.
   12 Cal.4th 1087 (1996)
   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.

Class 3 – September 2 Claims Based on Common and State Law:
1. Class Reader R: 55-74
   Liability as Between Landlords and Tenants:
   Hadian v. Schwartz 8 Cal.4th 836 (1994)
2. Class Reader R: 75-109
   Fear of Cancer:
   Potter v. Firestone Tire & Rubber Co.
   6 Cal.4th 965 (1993)

Class 4 – September 9 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 M: 39-41
   Sec. B – Overview of RCRA and CERCLA 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

   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)

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

   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
   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)
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
   *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
   *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)

Liable 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)
   R: 117-138

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  
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)  

Class 11 – November 4  
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)  

Class 12 – November 18  
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*  
   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)
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
   M: 668-698
   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 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
   M: 698-703
   Defenses – The Brownsfields Amendments
   Exclusions
   Sec. G – Extent of Liability
   M: 771-788
   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)