

**George Mason University**  
**George Mason University School of Law**  
**Products Liability**  
**Spring 2009**  
**Professor Krauss**

**Syllabus**

Overview

Products Liability is, with the *possible* exception of Constitutional Law, the most controversial area of American law. Products Liability has acquired a life of its own in America – thus this separate course instead of one rushed week in an already crowded Torts syllabus. The exploration of Products Liability problems is stimulating (though at times frustrating...). So this is a topical course, and it is a difficult one, too. Why is it difficult? Because, together, we’re going to get to the bottom of the “crisis” that allegedly plagues Products Liability.

Compulsory Texts, Organization of Classes, etc.

An estimated time allocation for class sessions follows. Page numbers refer to the casebook (Owen, Montgomery & Keeton, *Products Liability & Safety*, 5<sup>th</sup> ed., 2004, as modified by the 2008 case and statutory supplement).<sup>1</sup> Both these should be purchased. What follows is an approximation of the readings for each WEEK (i.e., for each grouping of two sessions, M/W unless otherwise indicated) with a week’s buffer to allow us to build in extra time as needed:

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<sup>1</sup> NB: *You are responsible for always adding the relevant pages from the 2008 supplement to the Owen casebook. Check the supplement BEFORE doing the assigned reading -- often the supplement REPLACES pages in the casebook!*

<b>Week #, Title</b>	<b>Pages in Casebook to be read before class</b>
1 Introduction; Liability for Negligence [W/M]	1-75
2 Liability for Misrepresentation and Warranty [W/W]	76-138
3. Liability for Warranty (ctd); The Development of Strict Liability and the Concept of Defectiveness; "Strict Liability" Manufacturing Defects, and Proof	138-214
4 "Strict Liability" for Design Defect	226-299
5. "Strict Liability" for Informational Defect; Agency Regulation and Liability	300-340; 350-396
6. "Strict Liability" as affected by Obviousness, User Misuse, and the Passage of Time	398-436; 450-491
7. Causation Issues in Products Liability	515-579
8. Defenses based on Plaintiff's Behavior	436-450; 579-616
9. Damages in Products Cases	617-682
10. Special Types of Defendants	683-745
11. Special Types of Products I	757-829
12. Special Types of Products II; Toxic and Mass Tort Litigation I	830-905
13. Toxic and Mass Tort Litigation II; Government as Product Liability Plaintiff	905-959
14. Product Liability, Public Choice, and Choice of Law	Krauss, "Product Liability and Game Theory: One More Trip to the Choice-of-Law Well." 2002 <i>B. Y.U. L. Rev.</i> 759

## Evaluation

The final exam will be three hours long, open-book. More details to come.

Class attendance is a must. You must attend 80% of classes to avoid “capital punishment” (or at least, its grading equivalent...). And you must be prepared for class (i.e., compulsory readings must be done beforehand). You each may use one “pass”, at your discretion, by coming to see me *before* class begins and asking not to be called on. If I call on you and you are not prepared for class, and have not taken a pass that day, you have in my view committed a serious breach of trust. This will result in a minus one-notch penalty. On the other hand, if your comments are frequently very helpful to our discussion, you will receive a one-notch bonus on your final grade.