

## First Assignment - Torts

Professor Greenwood

For the First Class:

1. Please sign up for the course on TWEN. You will find an introduction to the course and a preliminary syllabus listing daily assignments (subject to change!) on the TWEN site.
2. Please post an **introduction** on TWEN (“Student Introductions”). You may answer the questions posted under “supplemental materials” or you may ignore them. The purpose of this is to help us attach names to faces, to begin to get to know each other, and to alert me if you have any relevant background we might be able to draw on in class. Aim to be memorable rather than impressive.
3. Please read in the textbook: **Ch 1 §§ 2-3 Goals of Tort law, Fault & Damages.**
4. Please read **Evan Osnos, *Chemical Valley*, The New Yorker** (April 7, 2014), available at [http://www.newyorker.com/reporting/2014/04/07/140407fa\\_fact\\_osnos?printable=true&currentPage=all](http://www.newyorker.com/reporting/2014/04/07/140407fa_fact_osnos?printable=true&currentPage=all)  
If the link doesn't work, a pdf is posted on TWEN under “Supplemental Materials.” However, note that TWEN's pdf translation is screwy – you will have better results if you click “download file” rather than attempting to read the version that comes up automatically.
5. Please consider and be prepared to discuss the following questions, which cover several of the main themes of the course. **You should begin the discussion by posting a response to at least one of these questions on the TWEN discussion forum.** Written responses will be particularly useful if you return to them from time to time during the course to see if and how your thinking has changed.

### Questions:

1. ***Should the company that made the leak pay for the damage done? If not, who should?***
2. ***How do you decide among the alternative rules for determining who is responsible – liberty, freedom, fairness, fault, responsibility, incentives, price mechanism, property?***
3. ***Should a court decide in the same way as you would, or does it need to think about different issues? What about a legislature? A jury? A voter?***
4. ***Is the point of the rule to punish past wrongdoing, to force people to keep their promises, to protect the status quo and expectations based on it, to***

*influence future behavior, to compensate victims of past behavior, to force actors to pay for resources they use, or something else? Are those goals complementary or do they conflict?*

5. *What is the likely impact of the different possible rules you, a court or a legislature might pick? How do you expect the company, neighbors, and others to respond? Who, if anyone, will change their behavior and why? What are the key aspects of the rule that affect institutional or human behavior? Will future accidents become more or less likely? Which human beings or institutions end up paying for the accident or its prevention?*
6. *Should the legal rule be forward looking – a set of standards determining how to operate a business like this – or backward looking – a set of standards determining what the consequences are of an accident?*
7. *Should the rule look to the behavior of the various actors – what they did – or their intentions – what they meant to do?*
8. *Should the rule take into account the consequences of the accident? That is, should it matter if dozens of people died or, on the contrary, if only a handful of people were mildly inconvenienced?*
9. *Should the rule take into account the benefits of whatever the company was doing, and if so broadly (the benefits of electricity), medium (the benefits of coal or local jobs) or narrowly (the benefits of this particular method of storing a chemical with this particular use rather than these particular substitutes)? Do those benefits have to be offset by costs of global climate change, pollution, corruption, or reduced employment in Chinese coal mines and/or solar panel factories? If you think benefits or costs ought to be included, how does one compare them? What are the advantages or disadvantages of different possible candidates to make the comparison (corporate producer, consumer, court, jury, legislature); should the decision-maker's analysis be final or subject to further review?*
10. *How flexible should the rule be? Is it more important that it be mechanical and predictable (a "rule") or that it be flexible and substantive (a "standard")? Will it be cause or be able to respond to changes in technology?*
11. *If the rule is violated, should there be sanctions? If so, should they be regulatory (i.e., fines, injunctions or disabilities, imposed by a regulatory agency), market-based (i.e., competition), civil (i.e., victims suing for money) or criminal (i.e., state-imposed fines or imprisonment)?*
12. *In our democratic republican system, who ought to decide which is the right rule – Federal or state legislatures, judges, or regulatory agencies;*

***corporate boards, employees, investors or customers; financial, labor, producer or consumer markets; or individuals acting separately? Is that a separate decision from what the right rule is? Which aspects of those institutions are most important in determining whether they should be the decision-maker – democratic legitimacy, neutrality, expertise, flexibility, ability to change with changes in behavior and technology?***