Learning Outcomes:
After completing this unit students will:

1. Be able to describe the sources of legal authority that apply to dispute between a landlord and tenant over a public health nuisance — specifically a bedbug infestation.
2. Identify how provisions in a contract affect a tenant’s options when confronted with a public health nuisance.
3. Differentiate between a statute which gives cities the power to require bed bug abatement and one that requires such abatement.
4. Describe the role of the judicial system in a dispute governed by a contract.

Method of Assessment:
Students will be asked to draft a letter to a client advising her of her legal options (and obligations) in the face of a bed bug infestation in her rental apartment.

Materials:
Primary Source Packet-
- Chicago Bedbug Ordinance
- NYC Bedbug Protocol

Introduction
About Bed Bugs
Bedbugs are tiny, wingless insects\(^1\) which feed on mammal blood and leave behind painful, itchy sores. Although they can live in other settings, they are most commonly found in warm, dark places inhabited by humans, like beds.\(^2\) After being absent in the United States for over 60 years, thanks to powerful pesticides, bed bugs (\textit{Cimex lectularius}), have returned in force and are present in every state and nearly every city.\(^3\) For reasons not entirely understood, bed bugs have developed resistance to traditional pesticides such as Permethrin and are therefore difficult to control.\(^4\) Although commonly believed to be associated with dirty housekeeping and associated with substandard housing, bed bugs are equally likely to be present in five-star hotels\(^5\) as they are in homeless shelters.\(^6\) They have come to infest schools, dorms,\(^7\) court houses,\(^8\)
nursing homes, and mass transportation systems.\textsuperscript{9} Yet because they have been held in check by pesticides, there is very little contemporary research on whether they are qualify as a legally recognized “nuisance” let alone an actual threat to the public’s health.

As the scientific evidence emerges, individuals and institutions faced with bed bug infestations find themselves without the legal protections that are available against legally recognized nuisances and threats to the public’s health, such as rats or mosquitos. As a result, they are a good example of how individuals, institutions and municipalities struggle to use the patchwork of public and private legal remedies that are often inadequate to face an emerging threat. This unit is designed to help students gain an awareness that often no one statute or case can be invoked as a complete solution to a legal problem, as well as the inherent limits of legal solutions in addressing public health problems that stem from poverty and powerlessness.

About Lubbock
This unit considers legal issues in the setting of Lubbock, Texas, a city of approximately 212,365 people, located in West Texas.\textsuperscript{10} Although the region is one of the top cotton growing areas in the country, there are areas in the city where people live in the kind of urban poverty seen in other cities of similar size. As the home of Texas Tech University, Lubbock also has a very transient population with a large number of apartment buildings and rental property.\textsuperscript{11} This unit focuses on the laws of Texas because it is one of the few states that specifically names bed bugs in its nuisance statutes.

Addressing Bed Bug Issues in Apartments
Bed Bug infestations in apartments raises serious legal issues because they often involve situations where the tenant has had no role in causing the infestation. As the Texas A&M Agrilife Extension service explains, “If one apartment is infested, adjoining units (left side, right side, above and below) should be assumed to be infested unless shown otherwise through inspection or monitoring.”\textsuperscript{12}
A. Covenant of Quiet Enjoyment
In Texas, a landlord who rents an apartment is promising that the apartment is habitable and fit for living for the length of the lease.\textsuperscript{16}

B. Torts
A “Nuisance” action can also be brought under Tort theories of Negligence.

C. Public Nuisance
Texas gives individual municipalities authority to address public nuisance issues within their own geographic borders,

“The Texas Department of State Health Services (DSHS) will refer public nuisance complaints to municipalities and counties with local health departments or code enforcement officials. DSHS will respond to public nuisance complaints in areas of the state that do not have a local health department or code enforcement officials.”\textsuperscript{15}

D. Contracts
Another source of legal remedy is found in the contract between the landlord and tenant. In Texas, most apartment leases are modeled on the one created by the Texas Apartment Association. Under the general provisions of Texas property law, a tenant has the right to leave or pay for treatment and sue for reimbursement in small claims court, but very rarely can a tenant withhold rent in Texas.\textsuperscript{16} The Texas Apartment Association (TAA) has recently added an addendum specifically related to bedbugs.\textsuperscript{17}

As Richard Alderman, Associate Dean of the University of Houston Law Center and director of UH’s Center for Consumer Law explains, the addendum is “not tenant friendly” in that it “tries to shift the burden onto the tenant by limiting the amount of time that a tenant has to report bed bug infestation after moving in and then further limiting the landlord’s responsibility to eradicate bed bugs once the tenant has agreed it was not infested at move-in.”\textsuperscript{18}

One of the realities of this situation is that lack of money means lack of choices. So while an individual with the ability to pay for a clean and safe apartment would have a choice about whether to sign a lease with one landlord or another, someone without these resources has to take what he can get.

Powers of the Local Health Department\textsuperscript{19}
Given the limited ability of individual tenants to seek redress if their apartments become infected, the most likely source of help is the local health department. Health Departments play the role of intervening when the ability to control a potential hazard is beyond the ability of an individual and poses a considerable danger to the community.\textsuperscript{20} This is the rationale for vaccination clinics and publically funded treatment for communicable diseases like TB.\textsuperscript{21} The risk posed to all citizens by bed bugs is of a similar nature, if not of life-threatening magnitude. The power of a local health department to require remediation is strongest when victims are either tenants or they are individuals under state protection.

Whether or not a tenant has agreed to assume the cost of bed bug eradication does not affect the City’s ability to issue citations. The two areas of law are unrelated. Given reasonable suspicion of infestation and the risk that if one apartment is infested, others will be as well, a tenant cannot prevent the city from inspecting the premises any more than a landlord can.\textsuperscript{22}

While legally it is possible for the city to respond to a health hazard in a private home, for the most part this only happens when the inhabitants are under special protection, such as children (and even more so foster children), or when the health hazard extends beyond the boundaries of the property to cause a risk to others. For example, if a private home owner did not fix a broken pipe on her property and allowed sewage to run into her neighbors’ homes, the City could intervene.\textsuperscript{23}

Texas Law Specifically Identifies Bed Bugs as a Nuisance
Provides that “the presence of ectoparasites, including bedbugs, lice, and mites, suspected to be disease carriers in a place in which sleeping accommodations are offered to the public” is a “public health nuisance.”\textsuperscript{24}

Chicago Bed Bug Statute
4- 4-332 Bed Bugs
a. It is the responsibility of every licensee under this title 4 to provide pest control services when bed bugs are found on any licensed premises. The pest control services shall be conducted by a pest management professional as many times as necessary to totally eliminate the reported bed bug problem. Every licensee shall maintain a written record of the pest control measures performed by the pest management professional on the licensed premises and receipts and reports prepared by the pest management professional relating to those measures taken. The record shall be open to inspection by the departments of health, buildings, and business affairs and licensing.\textsuperscript{25}

A Plaintiff alleging a claim of constructive eviction must prove that:
1. the landlord intended that the tenant no longer be able to enjoy the premises, 
2. the landlord acts in a manner that substantially interferes with the tenant’s right to enjoy and use the premises, 
3. the landlord’s act permanently deprives the tenant of the use and enjoyment of the property, and 
4. the tenant abandons the premises within a reasonable time after the act occurs.

Working with Other Regulatory Agencies
Another source of redress for those whose living quarters are infested with bed bugs comes when the premises are regulated by state or federal housing authorities.

State Housing
Section 8

HUD Less Supportive of Eradication
HUD recently changed these rules in a way it perceives as shifting more of the burden to tenants. This perception is supported by the fact that the changes were brought by the “direct urging” of the National Multi Housing Council, a trade organization of property owners. The NMHC claimed that “it created confusion about best management practices, hamstrung the efforts of owners and property managers to prevent infestations and failed to meaningfully address the financial issues to the owner and resident related to recurrent infestations.”

State-Regulated Facilities
Michigan has been a leader in developing laws to protect individuals in state-regulated housing from bed bugs. Texas, like Michigan, has specific jurisdiction over residences and facilities that accept Medicare and Medicaid funding. This includes “nursing homes, hospice residences, hospitals, adult foster care, homes for the aged, child foster care, and child residential centers. Additionally, Michigan regulates agricultural labor camps, campgrounds, child care facilities.” All of these facilities require a state license which could be contingent on control of nuisance conditions like bed bugs.

Looking at the Box from All Angles — Solving Bed Bug Problems by Using Social Media to Bring Pressure on Landlords, Hotels, and Motels to Eradicate Bed Bugs
The law is not always the best instrument for solving nuisance conditions. Social media and the Internet already play an important role in alerting the public of motels and apartments which have experienced bed bug infestation. In addition to internet social media, the TV, radio, and print media might be interested in reporting inspection results for bed bugs as they now do for restaurant inspections. This would create economic pressure on business which rely on the public making a choice to frequent their establishment or not. A good example of this in Lubbock is the Thursday, “Food for Thought” segment on local TV and in the newspaper.

Conclusion
Bed Bug infestation has become a common issue at all levels of housing in the United States. Although Bed Bugs have not yet been categorized as a direct threat to human health, this is likely due to their recent re-emergence as they become resistant to the pesticides that used to control them. As a result, there is a dearth of scientific research on their ability to transmit blood-borne disease. At best, however, they are a serious nuisance and inflict painful and itchy bites. Yet unlike the laws that protect tenants and consumers from other nuisance conditions, the laws protecting the rights of landlords and tenants is often unhelpful because it was not drafted to address this specific hazard. This teaching unit has considered common scenarios where tenants and landlords would seek legal advice. It highlighted categories of legal redress that may be available, depending on the specifics of state law. It also considered strategies when the law has not yet evolved to provide a remedy.

Acknowledgement
With special thanks to Professor Fran Miller — once a St. Hilda’s girl, always a St. Hilda’s girl.

Support for the Scholars in Residence fellowship program was provided by the Robert Wood Johnson Foundation.

References

3.  Id. (Doggett et al.), at 164-165.


5.  See J. Caan, “Wil-Kil Pest Control Advises Travelers to Take Precautions Against Bed Bugs this Spring Travel Season,” Mequon Now, March 27, 2015, available at <http://www.mequnnow.com/userstoriessubmitted/297817017.html> (last visited June 1, 2015) (“Because these pests are not associated with uncleanliness or poor hygiene, they are just as likely to show up at a five-star resort as they are a roadside motel, which means all travelers need to be diligent in taking precautions to avoid bringing home bed bugs.”).


19.  See, e.g., Tex. Health & Safety Code § 341.012 (West 2013). The Texas statute for Abatement of a Nuisance provides that:

(a) A person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists.

(b) A local health authority who receives information and proof that a public health nuisance exists in the local health authority’s jurisdiction shall issue a written notice ordering the abatement of the nuisance to any person responsible for the nuisance. The local health authority shall at the same time send a copy of the notice to the local municipal, county, or district attorney. Id.


22.  See, e.g., N.H. Rev. Stat. § 540-A:3. In New Hampshire, the statute dictates that a tenant cannot refuse the landlord access to the premises if the landlord is required to evaluate whether bed bugs are present. Id.


26.  Id.

27.  Id.


Jennifer S. Bard

TEACHING PUBLIC HEALTH LAW • SUMMER 2015 11