

ENVIRONMENTAL LAW AND POLICY

LAW 559:A1

Fall 2011

COURSE OUTLINE

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Office Hours: Students are encouraged to make appointments to see me, but may also consult me after class or during my posted office hours.

1. GENERAL DESCRIPTION AND OBJECTIVES

The course is designed to do an introductory survey of the major legal approaches used to limit or prevent environmental degradation in Canada. Emphasis will be placed on aspects of the current law that are in need of reform; possible new directions for environmental law and policy will be discussed. The course will be in lecture and class discussion formats and the main focus of the lectures will be on domestic pollution-control measures. Links to other important areas of law and social policy decision-making will also be explored, including science, politics, the economy and some basic ethical and philosophical concerns.

Individual research papers permit students to explore the legal regimes governing specific topics in greater depth and/or at a more advanced level. Skills you will practice and develop include: library and internet research, critical analysis and legal writing, and oral presentation. You will also practice working with statutory materials.

2. LEARNING RESOURCES

Recommended:

M. Doelle & C. Tollefson, *Environmental Law: Cases and Materials* (Carswell: 2009) - available at U of A Bookstore.

Additional references:

E. Hughes, A. Lucas & W. Tilleman, eds., *Environmental Law and Policy*, 3rd ed., (North York: Emond Montgomery, 2003)

D.R. Boyd, *Unnatural Law* (UBC Press, 2003)

B. Richardson & S. Wood, eds., *Environmental Law for Sustainability* (Oxford & Portland, Ore: Hart Publishing, 2006)

P. Muldoon, A. Lucas, R. Gibson & P. Pickfield, *An Introduction to Environmental Law and Policy in Canada* (North York: Edmond Montgomery, 2008).

B. Mitchell, ed. *Resource and Environmental Management in Canada*, 4th (Oxford: Oxford U. Press, 2010).

D. Van Nijnatten and R. Boardman, *Canadian Environmental Policy and Politics: Prospects for Leadership and Innovation*, 3d (Don Mills: Oxford University Press Canada, 2009).

J. McKenzie, *Environmental Politics in Canada* (Don Mills: Oxford University Press Canada, 2002).

J. Benedickson, *Environmental Law*, 3rd ed. (Concord: Irwin Law, 2008).

A Greenbaum et al., eds, *Canadian Issues in Environmental Law and Policy* (Captus Press, 2009).

M. Howlett & K. Brownsey, *Canada's Resource Economy in Transition* (Toronto: Emond Montgomery, 2008)

Internet resources: You will need online access to federal and provincial legislation. Also, there are hundreds of excellent sites that can help with your research. Start with:

- Environment Canada's Green Lane, <http://www.ec.gc.ca/>
- Canadian Council of Ministers for the Environment (CCME), <http://www.ccme.ca>
- Commission on Environmental Cooperation, <http://www.cec.org>
- Ecojustice, <http://www.ecojustice.ca>
- Canadian Environmental Law Association, <http://www.cela.ca>
- Canadian Institute of Environmental Law & Policy, <http://www.cielap.org>
- West Coast Environmental Law, <http://www.wcel.org>
- Alberta Environment, <http://environment.alberta.ca>
- Commissioner of the Environment and Sustainable Development, <http://www.sustreport.org/policy/commissioner.html>

Additional library resources: In addition to the law library you should consult the Environmental Law Centre, <http://www.elc.ab.ca>. The ELC library is open to the public; they are at #800, 10025 - 106 Street, Edmonton, telephone: (780) 424-5099.

Student Assistance:

Students who require accommodations in this course due to a disability affecting mobility, vision, hearing, learning or mental or physical health are advised to discuss their needs with Specialized Support and Disability Services, 2-800 SUB, 492-3381 (phone) or 492-7269(TTY), <http://www.ualberta.ca/ssds>

Information about the University grading system is available at <http://www.grades.ualberta.ca>

3. COURSE EVALUATION

There are three components to your evaluation

- (a) participation
 - worth 15% of the final grade
 - two areas on which participation will be evaluated:
 - (1) oral seminar presentation
 - (2) classroom participation and background work

- (b) paper proposal
 - worth 10% of final grade
- (c) research and writing
 - paper - worth 75% of final grade

(a) Participation

Worth 15% of the final grade. There are two components to the participation grade upon which you will be evaluated:

- (1) an oral seminar presentation – (15%)
- (2) classroom participation (P/F)

Details of these criteria are as follows:

(1) Student Seminars

Worth 15% of the final grade. Each student will be required to facilitate a seminar on a specific environmental law topic. Student facilitators may choose to lead a seminar either on the same topic they will be exploring in their research papers (see below), or on any other topic approved in advance by the instructor. Each formal presentation will be approximately 20 minutes in length, followed by a question and answer period. Students who are not leading the seminar should be prepared to discuss issues raised by the relevant casebook readings, if any, assigned by the seminar facilitator.

Seminar dates will be assigned on a first come, first served basis. A sign up sheet for dates and times will be posted outside Room 445 in mid-September, 2011.

Seminar facilitation will be evaluated on: clarity; organization; pace; encouragement of class participation and discussion; usefulness of handouts and illustrations; current and accurate content; identification of key issues; strength of critique or analysis; informative nature of presentation; ability to answer questions effectively; originality; depth; and, consideration of alternatives and counter arguments to your central proposition(s).

The specific topic for your seminar should be approved by the instructor in principle no later than **October 6, 2011**.

(2) Classroom Participation and Background Work

Marked on a Pass/Fail basis. Any student who does not obtain a grade of “pass” will be required to complete a written assignment and receive a passing grade on that assignment in order to receive a passing grade in the course. Students are expected to contribute regularly to classroom discussions and to participate in in-class exercises. Effective, thoughtful and constructive participation is grounded in regular attendance, preparation by completion of background readings, self-motivation and respect for fellow participants. Class participation is an opportunity to share insights and information with each other, and to further mutual learning and thinking. Remember to focus on the course content and the educational purposes of discussions and activities.

To assist the instructor in the evaluation of your participation, you are entitled to submit a short record of your participation. In it you could highlight activities such as the extent of background preparation for each class that you completed (including assigned readings), or any other activities in which you have engaged that contribute to an improved classroom learning environment, or made up for missed attendance. The idea is to inform the instructor of preparation and participation about which she might otherwise be unaware. (Include only activities other than your work on your research paper). If you choose to submit a participation record, it is due by 4:00 p.m. on December 6, 2011.

(b) Paper Proposal

Students are required to submit a research **paper proposal**, which will be worth 10% of the final grade.

You should begin your research early in the term and see the instructor promptly if you have difficulty selecting a topic. The proposal for your research paper must contain:

- (a) a one or two sentence statement of your **thesis**;
- (b) a breakdown of the structure of your paper, using headings and subheadings (approximately 2-3 pages) and including the major primary law sources (cases, statutes) to be addressed, and
- (c) a **bibliography** containing a **list** of monographs and periodical literature read to date (one or more pages).

Proposals must be typewritten and double-spaced. Use footnotes as appropriate. Proposals must be submitted by 4:00 p.m. on **November 8, 2011**.

Proposals will be evaluated on (and you will be given feedback about): the depth and currency of your research; your writing and citations; the clarity and development of your thesis; the structure, organization, length and coverage of the paper; and the topic's originality.

(c) Research and Writing

Each student is required to submit a research paper, which will be worth 75% of the final grade. It is expected that the paper will be 6000-6250 words in length and in any event *may not exceed* 7000 words maximum length. Research papers must be typewritten and double-spaced. A bibliography must be attached. Footnotes or endnotes are *included in the word limit*; the Bibliography is in addition. Gender neutral or gender inclusive language is preferred. Papers which exceed the maximum length will have marks deducted. Your research paper must be on the topic set out in your paper proposal, unless written approval for an alternative topic is received from the instructor.

Research papers will be evaluated on: the depth and currency of your research; your demonstrated, accurate understanding of the subject area; organization, clarity and writing skills (including proper English usage); consideration of alternatives and counter arguments; and, the originality and depth of your critical analysis. Students are expected to state a proposition or thesis and develop that thesis in the paper. Papers which are purely descriptive are discouraged and will be penalized.

Proper footnotes are essential. **Quote** all sources of ideas, words, phrases and statistics, including the source of your idea for a thesis, when these are drawn from another person. Re-wording other authors' work is bad

writing, still requires you to use footnotes and still requires quotation of *all* words you did not rephrase or replace. Failure to do so is plagiarism and will result in proceedings being taken against you. For further details about the University plagiarism rules, consult the Code of Student Behaviour. If you are uncertain about how to quote a source, speak to the instructor **before** your assignment is handed in.

Any research involving human participants must be approved **in advance** by the SLREB (University ethics Board). **This includes oral interviews** by telephone or in person, whether of professors or other experts, if their replies will be relied upon as an expert opinion/information source in your paper. (General background consultations are not included). Failure to obtain advance permission will result in the removal of the data from your paper. For more information see the Associate Dean Graduate Studies and Research and the Law Faculty web page.

Paper must be submitted by 4:00 p.m. on **December 6, 2011**. **Papers which are late will be penalized by a grade deduction of 5% per day**, except under those circumstances that would permit a deferral of a final examination in accordance with the Law Faculty Policy.

4. COURSE TOPICS AND ASSIGNED READINGS

- (a) **Introduction** Hughes, Lucas & Tilleman Ch.1

The introduction is designed to review the importance of environmental protection, and set out the complex relationship between the environment and human society. The importance of policy to law will be examined.

- (b) **Jurisdictional Issues** Doelle & Tollefson Ch.3

This section of the course examines the complex jurisdiction over environmental matters that complicates efforts at effective regulation and serves as a constant backdrop to environmental management in Canada. Emphasis will be placed on harmonization initiatives.

- (c) **Civil Litigation & Environmental Rights** Doelle & Tollefson Ch.2

The strengths and weaknesses of common law tort and property actions as a method to protect environmental quality are examined. This also provides an historical backdrop to the development of environmental legislation. Newer ideas on public participation and environmental rights are examined.

- (d) **Regulatory Legislation** Doelle & Tollefson Ch.4

The primary method of controlling environmentally - detrimental conduct in Canada is the regulatory statute. We will examine the basic federal model, and specifically look at the main Alberta legislation. Issues related to standard-setting will be discussed.

- (e) **Environmental Impact Assessment** Doelle & Tollefson Ch.7
EIA is a procedure that has been used to try to prevent or mitigate the potential environmental impacts of large developments in Canada. The basics of the federal and provincial processes will be reviewed.
- (f) **Public Participation and Judicial Review** Doelle & Tollefson Ch.6
Key issues in relation to the ability of the public to seek environmental enforcement or challenge environmental standards - particularly if government regulatory action is lacking - are examined.
- (g) **Enforcement and Compliance** Doelle & Tollefson Ch.5
Failure to obey statutory requirements often results in criminal proceedings, as environmental statutes contain regulatory offence provisions. These will be discussed, with a primary emphasis on strict liability offences, sentencing, and alternative methods to achieve compliance, including voluntary initiatives and citizen enforcement.
- (h) **Economic Approaches** Hughes, Lucas & Tilleman Ch.10
Most environmental law is directed at corporate enterprises, which are particularly influenced by economic forces. Law and economics ideas, including privatization and market mechanisms, are reviewed as potential environmental protection measures.

TIME PERMITTING, ONE OR MORE OF THE FOLLOWING TOPICS WILL ALSO BE INCLUDED:

Parks and Protected Areas (Doelle & Tollefson, Chapter 8), **Species Protection** (Doelle & Tollefson, Chapter 9), **Climate Change** (Doelle & Tollefson, Chapter 10), **International Law** (Doelle & Tollefson, Chapter 1)

5. IMPORTANT DATES AND DEADLINES

September 8	Classes begin
Mid-September	Sign-up for presentation dates
October 6	Deadline for approval of topics
November 8	Deadline for submission of paper proposal
November 10 & 11	Remembrance Day and Fall Term Break
December 6	Deadline for submission of both the research paper and optional participation record; classes end