Environmental Law: ENV 1701H F

Fall Term 2019
Tuesday 6:30-9:30
BA 2165
Bahen Centre for Information Technology
40 St. George Street

Course Instructors: Paul Muldoon and Graham Rempe
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Your primary contact for assignment work should be Serra Buchanan, our course TA
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Course Description

Law is a key instrument in environmental management. What is the legal framework which governs the Canadian environment? What are the values, assumptions, and guiding principles which underlie this framework? How does the Canadian model compare to other models?

The course will address these questions with the intention of giving students a basic understanding of regulatory policies in Canada governing the environment and natural resource use and allocation.

Required course reading

You are responsible for

- Muldoon et al *An Introduction to Environmental Law and Policy in Canada (Second Edition)*. Toronto: Emond Montgomery, 2015. It is available at the bookstore and at the library- http://go.utlib.ca/cat/6997649 (print) where it is on reserve

You are also responsible for all the lecture contents, and materials posted on Quercus as well as any materials prepared/presented by other students in the course as part of their assignment.

Additional reference texts are:

Toronto, 2009 – available at the library http://go.utlib.ca/cat/6664646 (print) - http://go.utlib.ca/cat/8283066 (online)


Marking Scheme

Student assignments will make up 40% of the mark. Assignment details are set out below.

There will be two in-class quizzes, each worth 15%, at the end of L5 (Oct 8) and L9 (Nov 12). There will be a final exam worth 25%. All tests will be made up of any of the following: true/false, multiple choice, short or medium length essay questions. All tests will draw from materials covered up to the test date.

There will be a 5% mark assigned at the discretion of the instructors, based on attendance, participation in class and student presentations.

Work that is late without an acceptable excuse will be subject to a penalty of 5% of the value of the assignment per day late.

Student assignments

Students will work as a group on a current (and controversial!) environmental law issue. Further details are provided in Appendix 1. GROUPS WILL BE RANDOMLY ASSIGNED.

Students will be arranged into teams, each of which will present a case either for or against the controversial issue. Time will be allotted during class for student presentations, mock hearings, etc as required.

Although this is a group project, the following preliminary steps leading to the presentation will be marked individually. Each individual student will be responsible for

• Issue statement and bibliography worth 5% due L4 (Oct 1)
• Detailed argument outline worth 15% due L8 (Oct 29)

The presentation itself is worth 20% and is a group mark. This mark includes a presentation summary. These summaries must be prepared and exchanged with the other side at least three school days before the presentation.

Graduate students may approach the instructors with an alternative research/presentation proposal related to their own area of interest.

Typical Class structure

• 6:30 administrative, current issues, questions. Students are encouraged to raise current environmental law issues of interest
Course Outline

Part I – The Institutions of the Law

Class 1 - September 10 (PM and GR)

Who speaks for the trifula trees?

- Intro and syllabus
- Basic concepts
- Challenges for environmental law
- Environmental ethics
- Exercise - The Tragedy of the Commons game
- Discussion of student assignments
- Read text ch. 1-4

Class 2 - September 17 (GR)

Sources of law from Hammurabi to Judge Judy

- Assignment update ALL ISSUE GROUPS WILL BE FINALIZED BY END OF L2
- Sources of law- an overview of the Canadian legal system
- What is jurisdiction and who’s got it? A review of the “leading cases”
- The carbon tax case(s)
- Read text ch. 1-4, DeMarco paper

Class 3 - September 24 (PM)

Rights? What rights?

- Assignment update
- Environmental rights
- Ontario’s Environmental Bill of Rights
• Exercise – using the environmental registry
• Read text, ch. 15

Class 4 – October 1 (GR)

What is this thing called administrative law?

• ASSIGNMENT PART I DUE TODAY (5%)
  • Intro to administrative law
  • Regulatory regimes – “command and control” in Ontario
  • Exercise – Legal Research overview
  • Quiz prep
  • Read text ch. 7-9

Part II – The Nuts and Bolts of Environmental Law

Class 5 - October 8 (PM)

Command and control…in a good way!

• Assignment update

• The “command” toolbox
  • The “control” toolbox
  • Sectoral regimes
  • IN-CLASS QUIZ (15%)

Class 6 - October 15 (GR)

Comprehensive planning: a modest proposal?

• Assignment update
  • Environmental assessment
  • Planning law
  • Exercise - Harnessing market forces. How’s that working?
  • Quiz review
  • Read text ch. 10-12
Class 7 – October 22 (PM)

Indigenous Law, International Law

- Assignment update
- Indigenous consultation, accommodation and reconciliation
- International law
- **Read** text ch. 5-6

Part III – Implementing Environmental Law

Class 8 – October 29 (GR)

Getting your day in court

- **ASSIGNMENT PART II DUE TODAY (15%)**
  - Civil suits and torts of all sorts
  - Administrative actions
  - Exercise - Presenting scientific/expert evidence
  - Prep for quiz
  - **Read** text ch. 13-14

**NO CLASS ON NOV 5!!**

Class 9 – November 12 (PM and GR)

Some hot topics

- Assignment update
- Greenhouse Gases and Climate Change
- Species at risk
- Brownfields

- **IN-CLASS QUIZ (15%)**
- **Review** text ch 9
Class 10 – November 19 (PM and GR)

- **STUDENT PRESENTATIONS (20%). SUMMARIES OF PRESENTATIONS MUST BE PROVIDED TO THE CLASS BY END OF NOV 11**
- Catch-up, as required
- Quiz review

Class 11 – November 26 (GR and PM)

- **STUDENT PRESENTATIONS (20%). SUMMARIES OF PRESENTATIONS MUST BE PROVIDED TO THE CLASS BY END OF NOV 18**
- Catch-up, as required

Class 12 – December 3 (PM and GR)

**Bringing it all together**

- Fact situations and remedies
- The future of environmental law
- Review for final exam

**Appendix 1 - Environmental Law Student Assignment - UTSG 2019**

**Some potential topics**

1. Trans Mountain Pipeline. Yea or nay?
2. Federal carbon tax. What will the SCC say?
3. Bill C-69 (impact assessment). Good for the environment or bad for business?
4. Protecting species. Do the feds have jurisdiction to regulate the provinces?
5. Bill C-48 BC tanker ban. Too much or not enough?
6. Provincial amendments to Toronto’s midtown plans. Is there a case for subsidiarity?
7. *Yonge tomorrow* class environmental assessment. An acceptable planning process
8. Gardiner expressway. Up or down?
9. Hypothetical proposal to incinerate Toronto’s waste in the Port Lands.
10. Beneficial use of Toronto’s biosolids?

**How it will work**

Parts I (5% issue summary/bibliography) and II (15% argument summary) of the assignment are intended to give students a foundation on which to prepare for a final presentation to the class. While these preliminary steps are to be submitted individually, students are encouraged to liaise
within and between groups to better understand their problem. The presentation summary and the actual presentation will be group efforts and will be assigned group marks (20%).

Three school days prior to the presentation date, each team will provide everybody with a written summary of their presentation. NO SURPRISES!

We will define the issues and process with greater detail once we have a sense of the class size. **We have allotted time in class to discuss progress on the assignments and to provide students with an opportunity to seek input.**

The typical procedure: on presentation day, the “sides” of the problem will make their case to the adjudicators (Muldoon and Rempe). Proponents will go first. They will have 10 minutes to present, then there will be five minutes for questions from the other side, the adjudicators, and members of the “public”. After that, the process will be repeated for the opponent side. We may alter this process depending on factors such as class size.

**Appendix 2- The fine print (important stuff)**

**Absences:**

If you need to miss a term test for any legitimate reason, you must submit an original copy of any appropriate documentation within **three** business days of your absence. If the reason for your absence is medical, you must submit an official U of T Verification of Illness Form [http://www.illnessverification.utoronto.ca/index.php](http://www.illnessverification.utoronto.ca/index.php). Note that conditions ranked as mild or negligible will not be considered a valid excuse.

**Missed term work:**

If a legitimate reason prevents you from submitting a piece of term work by its posted deadline, you must submit an original copy of any appropriate documentation within **three** business days of your absence. If the reason is medical, you must submit an official U of T Verification of Illness Form [http://www.illnessverification.utoronto.ca/index.php](http://www.illnessverification.utoronto.ca/index.php). Note that conditions ranked as mild or negligible will not be considered a valid excuse.

**Accessibility Needs:**

The University of Toronto is committed to accessibility. If you require accommodations for a disability, or have any accessibility concerns about the course, the classroom or course materials, please contact Accessibility Services as soon as possible: [https://www.studentlife.utoronto.ca/as](https://www.studentlife.utoronto.ca/as)

**Academic Integrity:**

Academic integrity is fundamental to learning and scholarship at the University of Toronto. Participating honestly, respectfully, responsibly, and fairly in this academic community ensures that the U of T degree
that you earn will be valued as a true indication of your individual academic achievement, and will continue to receive the respect and recognition it deserves. Please see: https://www.artsci.utoronto.ca/academic-advising-and-support/student-academic-integrity-osai

Familiarize yourself with the University of Toronto’s Code of Behaviour on Academic Matters (http://www.governingcouncil.utoronto.ca/Assets/Governing+Council+Digital+Assets/Policies/PDF/ppjun011995.pdf). The Code is the rulebook for academic behaviour at the U of T, and you are expected to know the rules. Potential offences include, but are not limited to:

In papers and assignments:
- Using someone else’s ideas or words without appropriate acknowledgement.
- Copying material word-for-word from a source (including class and study group notes) and not placing the words within quotation marks.
- Submitting your own work in more than one course without the permission of the instructor.
- Making up sources or facts.
- Including references to sources that you did not use.
- Obtaining or providing unauthorized assistance on any assignment including
  - working in groups on assignments that are supposed to be individual work,
  - having someone rewrite or add material to your work while “editing”.
- Lending your work to a classmate who submits it as his/her own without your permission.

On tests and exams:
- Using or possessing any unauthorized aid, including a cell phone.
- Looking at someone else’s answers
- Letting someone else look at your answers.
- Misrepresenting your identity.
- Submitting an altered test for re-grading.

Misrepresenting/altering documentation:
- Falsifying or altering any documentation required by the University, including doctor’s notes.
- Falsifying institutional documents or grades.

The University of Toronto treats cases of academic misconduct very seriously. All suspected cases of academic dishonesty will be investigated following the procedures outlined in the Code. The consequences for academic misconduct can be severe, including a failure in the course and a permanent notation on your transcript. If you have any questions about what is or is not permitted in this course, please do not hesitate to contact Rachel. If you have questions about appropriate research and citation methods, seek out additional information from me, or from other available campus resources like the U of T Writing Website. If you are experiencing personal challenges that are having an impact on your academic work, please speak to Rachel or seek the advice of your college registrar.