Environmental Law: ENV 422H/ 1701H

Fall Term 2018
Tuesday 6:30-9:30
MP 134
McLennan Physical Laboratories
255 Huron Street

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NOTE that Rachel should be considered your key contact point in this course. Please contact Rachel with administrative questions, personal emergencies, etc. Include ENV422/ENV1701 in subject heading.

Course Description

Law is a key instrument in environmental management. What is the general 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 the following:


You are also responsible for all of 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:


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%, in L4 and L8. 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 and participation in class and student presentations.

Work that is late without an acceptable excuse will be subject to a penalty of 3% of the value of the assignment per day late.

Student assignments

The assignments are based on “typical” environmental law problems. Specifically, students will have choice of working on one of two issues: an oil pipeline proposal, or a waste disposal proposal. Further details are provided in the Appendix. Students will be arranged in teams, each of which will present a case either for or against the project. Mock hearings will be held for these two projects in L10 and 11.

Students will prepare as a group for the hearing; however, preliminary steps leading to the presentation will be marked individually. Specifically, each student will be responsible for

• Issue statement and bibliography worth 5% due L4
• Briefing note worth 15% due L7
• Summary of individual participation in the assignment worth 5% due L11.

The presentation itself is worth 15% 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.
**Typical Class structure**

- 6:30 administrative, current issues, questions
- 6:45 lecture (emphasis on theory)
- 8:00 break
- 8:15 exercise (emphasis on practical)

This schedule is subject to the requirements of in-class tests, student presentations, etc

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**Class Outline**

**Class 1 - September 11 (PM and GR)**

- Basic concepts
- Environmental ethics
- Exercise - The Tragedy of the Commons game
- Discussion of student assignments
- Read text ch. 1-4, Hardin paper

**Class 2 - September 18 (PM and GR)**

- Overview of the Canadian legal system
- Challenges for environmental law
- Exercise - What is jurisdiction and who’s got it?
- Assignment update
- Read text ch. 1-4, DeMarco paper

**Class 3 - September 25 (PM)**

- Regulatory regimes (command and control)
- The “command” toolbox
- Exercise – Legal Research overview
- Review for quiz/assignment update
- Read text ch. 7-9

**Class 4 – October 2 (GR)**

- The “control” toolbox
- Sectoral regimes
- Read text ch. 7-9
- **ASSIGNMENT PART I DUE TODAY (5%)**
- **IN-CLASS QUIZ (15%)**
Class 5 - October 9 (PM)

- Environmental rights
- Ontario’s Environmental Bill of Rights
- Exercise – using the environmental registry
- Quiz review/assignment update
- Read text ch. 15

Class 6 - October 16 (GR)

- Environmental assessment
- Planning law
- Harnessing market forces
- Review for quiz/assignment update
- Read text ch. 10-12

Class 7 – October 23 (PM)

- Indigenous issues
- International law
- Assignment update
- Read text ch 5-6
- ASSIGNMENT PART II DUE TODAY (15%)

Class 8 – October 30 (GR)

- Civil suits
- Administrative actions
- Quiz review
- Read text ch. 13-14
- IN-CLASS QUIZ (15%)

NO CLASS ON NOV 6!!

Class 9 - November 13 (PM and GR)

- Brownfields
- Greenhouse Gases and Climate Change
- Species at risk
- Exercise - Presenting scientific/expert evidence
- Review text ch 9
Class 10 – November 20 (PM and GR)

- **STUDENT PRESENTATIONS (15%). SUMMARIES OF PRESENTATIONS MUST BE PROVIDED TO THE CLASS BY END OF NOV 14**
- Catch-up, as required

Class 11 – November 27 (GR and PM)

- **STUDENT PRESENTATIONS (15%). SUMMARIES OF PRESENTATIONS MUST BE PROVIDED TO THE CLASS BY END OF NOV 21**
- **ASSIGNMENT PART III DUE TODAY (5%)**
- Catch-up, as required

Class 12 – December 3 (PM and GR)

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

**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

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: www.artsci.utoronto.ca/osai/students

Familiarize yourself with the University of Toronto’s Code of Behaviour on Academic Matters (http://www.governingcouncil.utoronto.ca/policies/behaveac.htm). 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
  o working in groups on assignments that are supposed to be individual work,
  o 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.

To remind you of these expectations, and help you avoid accidental offences, Rachel will conduct “integrity checks” on all student work.
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.

Appendix – Environmental Law Student Assignment UTSG 2018

Problem 1

Titan Oil wishes to construct a second pipeline to double the capacity of its existing Minder Korgan Pipeline (MKP). The new project will be contained within the existing MKP right of way, which passes through lands over which various indigenous groups have interests. Titan is preparing for a hearing before the National Energy Board (NEB) to get approval for the MKP project.

Possible issues to be raised before the NEB include:

- Alternatives to the proposal
- Indigenous issues
- Construction impacts and nuisance effects
- Spill response
- Integrity management

Problem 2

The City of Pleasantville is running out of capacity at its controversial Happy Acres Landfill Site. The City engineers are proposing a new state of the art waste incinerator to replace Happy Acres. The City is preparing for a hearing before Ontario’s Environmental Appeals Tribunal to get approval for the project.

Possible issues to be raised before the ERT include:

- Alternatives to the proposal
- Indigenous issues
- Social impacts
- Environmental impacts

How it will work

Parts I (issue summary/bibliography) and II (briefing note/Q and A) of the assignment are intended to give students a foundation on which to prepare for the final presentation. While these preliminary steps are to be submitted individually, students are encouraged to liaise within and between groups to better understand the problem. The hearing summary and the actual
hearing will be group efforts and will be assigned group marks. The Part III (post hearing summary) is intended to demonstrate the individual student’s participation in the team effort.

Three School days prior to the hearing date, each team will provide one and all with a written summary of their presentation. NO SURPRISES!

On hearing day, the two sides of the problem will make their case to the adjudicators (Muldoon and Rempe). Proponents will go first. For each issue raised, the proponent team 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 will define the issues 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.