

EESD13H3F - Environmental Law, Policy and Ethics

Course Syllabus – Fall 2019

University of Toronto at Scarborough - Physical and Environmental Sciences

Fall Term, 2019 (Thursday 7:00-9:00), Classroom IC 212

Instructor

Graham Rempe, BSc, LLB

Contact information

UTSC email address = graham.rempe@utoronto.ca. My office area is EV340 in the Environmental Science and Chemistry Building at 1065 Military Trail. I can be available for office hours ahead of class time if you make a prior appointment by email. My office phone number is (416) 287 7224

Your primary contact for assignment work should be Serra Buchanan, our course TA serrawillow.buchanan@mail.utoronto.ca

Course description

Law, policy and ethics are key in understanding how we use, manage and respect our environment. This course will introduce students to basic principles of environmental regulation. What is it? How did it evolve? Does it deal fairly with resource preservation, use and allocation? Can it deal with complex emerging problems such as climate change, species at risk, accumulation of toxics, urban sprawl and so on?

We will review the state of the law, with an emphasis on topical issues in Toronto, Ontario and Canada. Throughout the course, students will be asked to consider the ethical foundations for environmental law, and their capability of addressing today's challenges.

Students will be required to research, and prepare a presentation on a current issue in environmental law. This work will be done individually, and as a group..

Marking Scheme

There will be a thirty minute, 15% test in class on each of L5 (October 3), and L9 (November 7). These tests will be based on cumulative knowledge but will stress recent material.

The final exam will be worth 30%.

All test and exam questions will be multiple choice, true/false, short answers, essay, or any combination of these.

Students will complete an assignment worth 35% of their final mark on a current environmental law issue. The assignment will be prepared individually and in groups, using topics such as those set out below. The assignment is marked as follows:

1. Part 1 due L4 (Sep 26). Worth 5%. Each student will individually briefly outline topic/issue (2p. max) and research/bibliography.
2. Part 2 due L8 (Oct 31). Worth 15%. Each student will individually provide a summary of their subject/issues. The summary may be in the form of a briefing note. Each student will also briefly outline their own participation in the group effort (5 p. max)
3. Part 3 due L10 or L11 (Nov 14 or 21, date to be confirmed with me by L7 - Oct 24). Worth 15%. Group presentation of issue to class with chance for questions. Each group will post a written outline of their presentation at least three school days in advance of their presentation).

Participation is worth 5% of your final grade, and is at my discretion based on attendance, participation in classroom activities, 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.

Assignment Topics

You will be assigned to one of the following exercises (or others I may think of before the semester starts). These projects are to be undertaken in groups, as indicated.

1. Milton super rail terminal (hearing)
2. Trans-Mountain Twinning project (hearing)
3. Portlands Incinerator Proposal (hearing)
4. Ontario Line EA approval (hearing)

Half of the group will propose the project, and half will oppose. Participants will have to agree in advance and get approval as to the scope of issues covered. The presentation will be a mini hearing before a Tribunal (me). Time will be allotted to “the public” to ask questions.

We will discuss the approach to preparation and presentation of these issues further in class.

I am prepared to consider other topics, but they must be done as a group, and they must be approved by me in writing in advance. It is possible that we will have to modify the assignment depending on class size. The basic format will be as outlined above, though.

Readings

You are responsible in its entirety 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 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:

Benidickson – Essentials of Canadian Law – Environmental Law (3d. ed.) Irwin Law Inc. Toronto, 2009 – available at the library <http://go.utlib.ca/cat/6664646> (print) - <http://go.utlib.ca/cat/8283066> (online)

Boyd, Unnatural Law. Rethinking Canadian Environmental Law and Policy. Vancouver: UBC Press, 2003 - <http://go.utlib.ca/cat/4999129> (print), <http://go.utlib.ca/cat/9091509> (ebook)

Estrin et al, Environment on Trial (3d ed.). Toronto: Emond Montgomery, 1993- available at the library <http://go.utlib.ca/cat/3414114>

COURSE OUTLINE

PART 1 – THE INSTITUTIONS OF THE LAW: IS THERE A PLACE FOR THE ENVIRONMENT?

Lecture 1 – Sep 5, 2019

Ways to think about trees

- Course outline
- Tragedy of the Commons
- The ethical foundations for environmental law

Required reading:

- Muldoon et al, pp 3 – 37
- *Building a Strong Foundation for Action: A Review of Twelve Fundamental Principles of Environmental and Resource Management Legislation*. DeMarco, Jerry V. *Journal of Environmental Law and Practice* 19.1 (Oct 2008): 59-69 (on reserve).

Exercise:

The Tragedy of the Commons game

Discuss student assignments

Lecture 2 _ Sep 12, 2019**Sources of Law: From Hamurabi to Judge Judy**

- The Constitution
- Legislation
- The Courts (and Tribunals)

Reading:

- Muldoon et al, pp 33 – 83
- *Building a Strong Foundation for Action: A Review of Twelve Fundamental Principles of Environmental and Resource Management Legislation.* DeMarco, Jerry V. *Journal of Environmental Law and Practice* 19.1 (Oct 2008): 59-69 (on reserve).

Exercise:

Research tools

Ontario Legislation (elaw)

<http://www.elaws.gov.on.ca/navigation?file=browseStatutes&reset=yes&menu=browse&lang=en>

Canadian Legislation

<http://laws-lois.justice.gc.ca/eng/acts/>

Case Law

<https://www.canlii.org/en/>

Environmental Registry

https://www.ebr.gov.on.ca/ERS-WEB-External/content/about.jsp?f0=aboutTheRegistry.info&menuIndex=0_1

Discuss student assignments

Lecture 3 – Sep 19, 2019**Rights or Laws? What's the difference?**

A Quick Survey of Canadian Environmental Law

- Key federal legislation
- Key Ontario legislation
- Key municipal legislation

Environmental rights

Reading:

G. Rempe UTS EESD13H3F Fall 2019 Syllabus

- Muldoon et al, pp 87 – 99, pp. 339 – 383

Exercise:

Sorting out jurisdiction. Who has the power? The Constitution game: challenges to jurisdiction and the outcome in the courts

Discuss student assignments

Lecture 4 – Sep 26, 2019

Courts and Tribunals – Who are these people?

- What are they?
- What do they do?
- How do they work?

Reading:

- Muldoon et al, review pp. 1 – 99

Exercise:

Writing reports and giving evidence. The do's and don't's

Who wants to be a witness?

Review for midterm next week

Student Assignment Part 1 (5%) must be submitted in class and posted on Quercus

PART 2 – REGULATING BEHAVIOUR

Lecture 5 – Oct 3, 2019

Environmental protection regimes. What do we want?

- Private vs public law
- Command and control Part 1 - Command
- Approaches to approvals and standards

Reading:

- Muldoon et al, pp. 129 – 173

Mid – term test worth 15% in class (30 mins)

Lecture 6 – Oct 10, 2019

Implementing environmental protection regimes. How do we get what we want?

- Command and control Part 2 - Control
- Approvals, Orders and Prosecutions

Reading:

- Review pp. 129 – 173
- Review of pp 175 – 219 is not compulsory, but is recommended

Exercise:

Using the Environmental Registry and the Environmental Bill of Rights.

Review midterm

Discuss student assignments

Note that there is no October 17 class

Lecture 7 – Oct 24, 2019

Some special cases of environmental regulation

Indigenous people

- Treaties and title
- Consultation and accommodation
- UNDRIP, FPIC, vetoes and consents

Regulation by municipalities (and others)

Introduction to international law

Reading:

- Muldoon et al, pp. 101 – 116
- <https://www.ontario.ca/page/environmental-assessments-consulting-indigenous-communities> (optional)

Exercise:

Consulting with the public. How do you keep everyone happy? How do you deal with the NIMBYs? Consulting indigenous groups.

Discuss student assignments

Lecture 8 – Oct 31, 2019

Getting your day in court - Using the civil courts and administrative tribunals

- Standing- the ability to sue
- Torts (or causes of action) – the basis of lawsuits
- Proof
- Remedies

Reading:

Muldoon et al, pp. 317 – 338

Exercise:

Presentation of technical evidence revisited

Review for midterm next week

Discuss student assignments

Student Assignment Part 2 (15%) must be submitted in class and posted on Quercus

PART 3 – IMPLEMENTING THE LAW

Lecture 9 – Nov 7, 2019

Pro-active regulation – An ounce of prevention?

- Environmental Assessment
- Planning Act
- Brownfield management

Reading:

- Muldoon et al, pp. 223 – 295

Mid – term test worth 15% in class (30 mins)

Lecture 10 – Nov 14, 2019

Are there global solutions to these global problems?

International law

- Convention vs custom
- Environmental treaties
- UNFCCC and Paris

Corporations and markets

- Does voluntarism work?
- Can we make it work?
- Corporate social responsibility and social license

Reading:

- Muldoon et al, pp. 117 – 125, and 297 - 314

Exercise:

Review midterm

Discuss student assignments

Student presentation (15%) to be scheduled in advance

Lecture 11 – Nov 21, 2019

Student presentation (15%) to be scheduled in advance. If time is available, we will use this slot for “catching up”.

Lecture 12 – Nov 28, 2019

Where are we headed?

- Modern trends
- Can we avoid the Tragedy of the Commons?

Reading:

- Review entire Muldoon text
- Review the DeMarco items from lecture 1

Exercise:

Course **review** and questions

THE FINE PRINT

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, an official UTSC medical note must be completed by a doctor who examined you while you were ill/injured (i.e. not after the fact). The medical note can be downloaded at: http://www.utsc.utoronto.ca/~registrar/resources/pdf_general/UTSCmedicalcertificate.pdf. 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, an official UTSC medical note

must be completed by a doctor who examined you while you were ill/injured (i.e. not after the fact). The medical note can be downloaded at: http://www.utsc.utoronto.ca/~registrar/resources/pdf_general/UTSCmedicalcertificate.pdf. Note that conditions ranked as mild or negligible will not be considered a valid excuse.

Academic Misconduct and Academic Dishonesty will not be tolerated. Students engaging in misconduct or dishonest practices on exams, quizzes, or other assignments will be dealt with according to the guidelines established by the university.

Plagiarism: Please consult the University Calendar for a discussion and outline of the policy on plagiarism and academic integrity (also see proceeding section below). The sanctions can be severe. If, after reviewing the University policy, you are uncertain about what constitutes plagiarism, talk to your course instructor.

Academic Integrity: Academic integrity is essential to the pursuit of learning and scholarship in university, and to ensuring that a degree from the University of Toronto is a strong signal of each student's individual academic achievement. As a result, the University treats cases of cheating and plagiarism very seriously. The University of Toronto's Code of Behaviour on Academic Matters (<http://www.governingcouncil.utoronto.ca/policies/behaveac.htm>) outlines the behaviours that constitute academic dishonesty and the processes for addressing academic offences. Potential offences include, but are not limited to:

In papers and assignments:

- Using someone else's ideas or words without appropriate acknowledgement.
- Submitting your own work in more than one course without the permission of the instructor.
- Making up sources or facts.
- Obtaining or providing unauthorized assistance on any assignment.

On tests and exams:

- Using or possessing unauthorized aids.
- Looking at someone else's answers during an exam or test.
- Misrepresenting your identity.

In academic work:

- Falsifying institutional documents or grades.
- Falsifying or altering any documentation required by the University, including (but not limited to) doctor's notes.

All suspected cases of academic dishonesty will be investigated following procedures outlined in the Code of Behaviour on Academic Matters. If you have questions or concerns about what constitutes appropriate academic behaviour or appropriate research and citation methods, you are expected to seek out additional information on academic integrity from your instructor or from other institutional resources (see <http://www.utoronto.ca/academicintegrity/>).

Please consult the University Calendar for information about grade distribution and academic conduct.

Accessibility: Students with diverse learning styles and needs are welcome in this course. In particular, if you have a disability/health consideration that may require accommodation, please feel free to approach me and/or the AccessAbility Services Office as soon as possible. I will work with you and AccessAbility Services to ensure you can achieve your learning goals in this course. Enquiries are confidential. The UTSC AccessAbility Services staff (located in S302) are available by appointment to assess specific needs, provide referrals and arrange appropriate accommodations (416) 287-7560 or ability@utsc.utoronto.ca.

Writing Support

If you are having difficulties writing, you should contact The Writing Centre (link below) which offers a range of services to help.

<http://www.utsc.utoronto.ca/twc/>

Academic English is nobody's mother-tongue. Yet, all students are expected to have a high level of Academic English to cope with the demands of their courses. The English Language Development Centre supports all students in developing better Academic English and critical thinking skills needed in academic and professional communication. Make use of the personalized support in academic writing skills development and Communication Café sessions to enhance your ability to do better in the various components of this course. Details and sign-up information: <http://www.utsc.utoronto.ca/eld/>

Students are encouraged to review the Calendar for information regarding all services available on campus.

