

ENVIRONMENTAL LAW AND POLICY - FOR 496/796

Syllabus – Fall 2004

Dr. Robert Malmshemer

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CLASS TIMES: 2:30 – 3:50 Tuesdays and Thursdays
139 Baker Hall

OFFICE HOURS: 10:00 – 11:30 Tuesdays and Thursdays, and by appointment

COURSE GOAL: The goal of this course is to provide students with: 1) evaluative skills to analyze environmental law cases, 2) evaluative skills to understand environmental law standards and statutory approaches, and 3) a solid understanding of environmental common law and federal environmental statutes. The course uses selected examples of how common law and statutory approaches can address environmental problems without regard for the specific type of pollution involved.

COURSE OBJECTIVES: By the end of the course, students will understand: 1) understand the structure of legal opinions and how opinions can be analyzed to find legal principles, 2) various statutory approaches that can be used to address environmental problems and the advantages and disadvantages of using these approaches, and 3) major common law environmental causes of action and environmental law statutes.

PREREQUISITES: Junior standing. An introductory law course and an environmental economics course would be helpful. If students have questions about their ability to complete the course goals and objectives successfully, they should see me.

COURSE STRUCTURE: The course takes its organization from the elements of the legal system itself, building upon a base of common law, constitutional law, and administrative law, and continuing on to statutory law: (the course schedule on page 5)

1. *Traditional Legal Structures and Remedies:* Explores the traditional legal structures and remedies (common law) upon which environmental law doctrines originally developed and continue to flourish.
2. *Administrative Agencies, Federalism, and Regulation of the Environment:* Surveys the development of statutory and regulatory law in the administrative state as an overlay on the common law.
3. *Regulatory Approaches:* Examines a variety of approaches that can be used by legislatures and administrative agencies to define regulatory standards.

E-MAIL REQUIREMENT: It is a course requirement that *all* students have an E-mail account. Furthermore, I expect that students will check their E-mail *regularly* for class announcements.

TEXTBOOKS AND CLASS NOTES: The required textbook, *Environmental Law and Policy: Nature, Law, and Society* (3rd Edition) by Plater, Abrams, Goldfarb, Graham, Hienzerling, and Wirth (Aspen Publishers, 2004), is available at the Orange Bookstore in Marshall Square Mall. I will handout copies of the PowerPoint slides I use in class.

ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES: If you have an identified disability and need accommodations, you must first contact Mr. Slocum in the Office of Student Life in 110 Bray Hall. He will discuss ESF's Disability Policy with you and provide you with access to supportive services.

- If you have a learning disability and need special accommodations, you will need to provide ESF

with supportive documentation. ESF can assist you with this documentation, and then will provide you with an approved accommodation form for all of your professors.

- I can not provide special accommodations for any student until they have provided me with the ESF accommodation form **and** I meet with them student to discuss its applicability to this course. I can not provide accommodations retroactively.
- If you have any questions about disabilities, please contact me and/or Mr. Slocum as soon as possible. All conversations will be confidential.

GRADES: Grades are based upon student performance on four quizzes, four take-home examinations, attendance, and class participation. Graduate students’ grades will also be based on a class paper.

Undergraduate Students	
Quizzes (Four worth 34 points each)	136 points
Take-Home Examinations (Four worth 66 points each)	264 points
Class Participation	30 points
Attendance	<u>20 points</u>
TOTAL	450 points

Graduate Students	
Quizzes (Four worth 34 points each)	136 points
Take-Home Examinations (Four worth 66 points each)	264 points
Class Participation	30 points
Attendance	20 points
Class Paper	<u>100 points</u>
TOTAL	550 points

I will calculate grades on the percentage of the total number of points accumulated:

A = 100% to 93%	B = 86% to 83%	C = 76% to 73%	
A- = 92% to 90%	B- = 82% to 80%	C- = 72% to 70%	
B+ = 89% to 87%	C+ = 79% to 77%	D = 69% to 66%	F = Less than 65%

NOTES ON GRADING:

Quizzes: Four quizzes are scheduled during the semester. These quizzes are designed to test students’ knowledge of the law. All quizzes must be taken during the time scheduled, unless a student is ill or has a job interview. If a student is absent from class on the day of a quiz for any other reason, they may not “make-up” the quiz. I do **not** make exceptions to this policy.

Take-home Examinations: Take-home examinations test students’ ability to apply the law to a factual scenario. Take-home examinations are due a week after they are distributed – see my Late Work Policy below. These are examinations. May work with **one** other classmate on group examinations. Students must complete the examinations without any assistance from classmates (other than their partner if they have one). In other words, students are strictly prohibited from discussing the examination with classmates. Any students found to be interacting with classmates on examination will automatically receive an “F” for the final course grade and be reported to ESF student affairs.

Class Participation:

Purpose: Students need to demonstrate a familiarity with the assigned reading material. I cannot, nor do I want to, test students on all of the class material. Students can display their knowledge of the material by contributing to class discussions.

Scheduling: Students should be prepared to have an involved (5 to 20 minute) “Socratic discussions” of legal cases in the textbook. I will randomly call on students for these Socratic discussions.

Structure: All students are expected to *regularly* participate in class discussions. Class participation is worth 30 points of the total course grade. I will (at my discretion) assign this grade based on the

quality (not quantity) of students' participation. I will also randomly call on students to assist me with cases and materials in the assigned reading. Students who are unprepared for these discussions will lose 15 points of their class participation grade each time they are unprepared. The maximum course grade for any student unprepared three or more times is a "D".

Attendance:

Purpose: My philosophy on teaching the law focuses on applying legal principles to factual scenarios. The lectures and assigned cases in the textbook provide students with the law. Class discussions focus on its application to fact sequences. Since I cannot possibly (nor would I want to) test on all the material discussed in class, it is imperative that students attend every class.

Scheduling: Page 4 contains the course schedule. As much as possible, we will follow this schedule.

Structure: Students who must miss class (due to illness, interviews, etc.) **must** e-mail me with this information as soon as possible. I insist this policy be followed, since it allows me to keep track of each student's absences. *Each* absence from class will result in a reduction of **five** points from the class attendance grade. The maximum course grade for any student missing more than **seven** classes is a "D".

Graduate Student Paper:

Purpose: The paper provides graduate students with an opportunity to examine a legal question in their area of research.

Paper Topics:

- The paper should be a description of a fact situation or policy decision and an analysis of a chosen legal issue.
- Facts and policy discussions should set up the legal question. The question should be narrow so that you can make a searching inquiry and presentation within the confines of the space requirements.
- The paper should: 1) develop a legal analysis of the issue, 2) its legal and policy implications and correlatives, 3) identify trends that are helpful to the analysis, and 4) provide a working conclusion.
- Since the papers are intended to develop your knowledge of the area, the question chosen must be one that is now or potentially subject to legal controversy where the law needs the benefit of your thinking and expertise (i.e., not a pushover question that has a ready answer).

Structure: The class paper consists of three parts:

Part I – Topic Selection

- The paper topics must be mutually agreed upon with the instructor. This means we must meet individually and agree upon a topic *before* the due date.
- Students must submit a one-paragraph summary of their legal question by the due date. Note: Students who fail to satisfy this requirement will have 50 points deducted from their grade on the first paper.

Part II – The Paper

- Students must submit a paper, no longer than 12 pages (including footnotes or literature cited) by the due date. Note: I will not read more than 12 pages.
- The paper **must** be written in the active voice and include headings and subheadings.
- The paper must be double-spaced, 12 point Times New Roman type, with one inch margins and page numbers. Headings and sub-headings are required.
- Grades will be based on the following equally weighed criteria: 1) clarity, 2) concision, 3) critical analysis and 4) use of the literature.

Late Submissions:

- All assignments must be turned in on time. Late take-home examinations and papers will be penalized 25 points per day, commencing at the end of class. Note: I do *not* make exceptions to this policy.
- Late take-home examinations must be delivered to me personally or placed in my mailbox in 320 Bray Hall.

COURSE SCHEDULE

Class	Topic	Readings – All Readings in Plater’s <i>Environmental Law and Policy</i>
1	Introduction	
TRADITIONAL LEGAL STRUCTURES AND REMEDIES		
2	Introduction to the Book, Cases, and Common Law	103-114 (including note 6)
3	The Legal System	Handout in Class Notes
4	Common Law: Causes of Action	103-107, 114-115 (up to <i>Wilsonville</i> case), 124 (after note 6) - 137, 141-146
5	Common Law: Defenses and Remedies	146-194 (skim pages 175-194 – Do not read cases)
6	Toxic Torts	200-207, 227-228, 238-260, 265-271
7	QUIZ I, TAKE-HOME EXAMINATION I DUE, & Impromptu Speaking I	
ADMINISTRATIVE AGENCIES, FEDERALISM, AND REGULATION OF THE ENVIRONMENT		
8	Federalism	323-329 (up to <i>IAM</i> case), 340-349, 351-358 (up to <i>Lopez</i> case)
9	Limits to Agency Action – Regulatory Takings	1112-1122, 1127-1128, 1142-1165
10	An Overview of Administrative Law	376-402, 417-434 Graduate Paper Topic DUE
11	International Agreements as Domestic Law	435-467
12	QUIZ II, TAKE-HOME EXAMINATION II DUE, & Impromptu Speaking II	
REGULATORY APPROACHES		
13	Federal Agency Disclosure	469-479, 488-498, 507-523
14	Corporate Disclosure	528-541
15	Harm-based Ambient Standards I	551-577
16	Harm-based Ambient Standards II	577-619
17	Technology-Based Standard Setting I	620-644
18	Technology-Based Standard Setting II	655-673
19	Standard-Setting via Cost-Benefit Procedures	676-700
20	QUIZ III, TAKE-HOME EXAMINATION III DUE, & Impromptu Speaking III	
21	Market-Enlisting Strategies	712-742
22	Technology-Forcing Standards	743-771
23	Roadblock Strategies	772-788, 798-815
24	Product Regulation and Market-Access Strategies	816-844 Graduate Paper DUE
25	Life-Cycle Waste Control Strategies	845-881
26	Remedial Liability Strategies	886-898, 910-916, 923-945
27	International and Comparative Environmental Law	1256-1270, 1275-1305
28	QUIZ IV, TAKE-HOME EXAMINATION IV DUE, & Course Evaluations	