

PubH 6116
Environmental Law
Spring/2017

Credits:	1
Meeting Days:	Wednesday
Meeting Time:	4:40-5:35 p.m.
Meeting Place:	Mayo A110
Instructor:	Michael Austin
Office Address:	Thompson Center for Environmental Management, 501 SE 23rd Av.
Office Phone:	612-626- 6436
E-mail:	maustin@umn.edu
Office Hours:	By appointment

I. Course Description

We will study fundamental legal principles that protect us from pollution. Difficult legal questions arise when pollution protection law conflicts with law that encourages use of natural resources. Legal conflict also arises when the government restricts the use of property without compensating its owner. We will consider the increasing authority of government agencies to audit businesses to assure compliance with law.

II. Course Prerequisites

None

III. Course Goals and Objectives

Consider how the interests of stakeholders are balanced in legal decision making.

Identify contradictions in the law between protecting the environment, and protecting individual property rights.

Discuss the evolving authority of government to protect the environment.

Introduce techniques of persuasive legal research, writing and oral presentation.

IV. Methods of Instruction and Work Expectations

Students are encouraged to introduce issues of current interest from the media or from their workplace for discussion. These issues will be incorporated into the curriculum when appropriate.

Through lecture and discussion, we will focus on legal principles underlying law that protects our natural environment from pollution. Especially important will be a review of the increasing authority of government agencies to audit businesses to assure compliance with law.

Underlying pollution protection law is contradictory law related to encouraging resource utilization, Constitutional protection against the uncompensated public taking of private property and traditional tort rights.

Each student will conduct legal research and write five pages on the legal aspects of an environmental or public health problem. A rough draft must be submitted for review with me before a final draft is submitted. The paper must advocate a public policy that might solve the problem.

Use the format of the persuasive speech handout as the basis for your paper if you are not an expert writer. Propose a legal solution to an environmental or public health problem and support your proposal. Write five pages on the legal aspects of the issue. Prepare a rough draft for discussion with me several weeks before writing your final draft. I will make suggestions about improving the content and style of your draft. Be concise. Minimally describe the legal problem and refer to primary legal materials and other necessary information while analyzing alternative solutions to the problem. At least 10 primary references will be required. In conclusion, advocate a public policy which might solve the problem.

Each student will prepare and present a 6-8 minute persuasive speech in class based on the legal research and writing project. Students will critique each other.

V. Course Text and Readings

Burnham, William *Introduction to the Law and Legal System of the United States*, West Group, Saint Paul, MN Book – softbound, ISBN-13: 9780314158987

Other reading assignments are provided.

VI. Course Outline/Weekly Schedule

1/17	Environmental Torts, <u>Aldred's Case</u> , The reports of Sir Edward Coke, Michaelmas 8 Jacobi Regis (November Term 1609)
1/24	<u>Boomer v. Atlantic Cement Co.</u> , Court of Appeals of New York 26 N.Y.2d 219; 257 N.E.2d 870 <u>Spur vs. Dell Webb</u> , 108 Ariz. 178, 494 P.2d 700, 494 P.2d 700 (1972)
1/31	<u>Exxon Shipping Co. v. Baker</u> , 554 U.S. 471 (2008) <u>Snyder General Corp. v. Continental Ins. Corp.</u> , 133 F.3d 373 (1998)
2/7	Burnham Chapter XI: Torts Nature of property- rights and responsibilities, Chapter XII: Property Law <u>Board of Regents v Roth</u> , 408 U.S. 564, 92 S. Ct. 2701, 33 L.Ed.2d. 548 (1972), due process, right v privilege, property interest in a government benefit <u>Village of Euclid v. Ambler Realty Co.</u> 272 U.S. 365 (1926), property rights, zoning power of state
2/14	<u>Keighley's Case</u> , Michaelmas Term in Common Bench, 7 Jacobi I Regis, 9 The Reports of Sir Edward Coke 501 (1608) - government taking
2/21	<u>Pennsylvania Coal Co. v. Mahon</u> , 260 U.S. 393 (1972) government taking <u>Penn Central Transportation Co. v. New York City</u> 438 U.S. 104; 98 S. Ct. 2646, 1978
2/28	<u>Dolan v. City of Tigard</u> , 512 U.S. 374, 114 S. Ct. 2886 (1994) - government taking <u>Kelo v. City of New London</u> 2005 U.S.5331 (2005)
3/7	<u>Bennet v. Spear</u> , 520 U.S. 154 (1997) - administrative law issues, <u>Massachusetts v. EPA</u> , 127 S. Ct. 1438 (2007) Burnham Chapter VI: Administrative Law

3/14	Spring Break
3/21	National Environmental Policy Act (NEPA) <u>Lujan v. National Wildlife Federation</u> , <u>Calvert Cliffs' Coordinating Committee Inc. v. U.S. Atomic Energy Commission</u> , 449 F.2d. 1109 (D.C. Circ. 1971) - NEPA and EIS The Toxic Substances Control Act
3/28	The Resource and Conservation Recovery Act, Solid Waste Tracking and Treatment <u>USA v. Ortiz</u> ; 2007 U.S. App. LEXIS 3476 (1 st Circ. 2007) Burnham Chapter XV: Business Law; sections A, F <u>NRDC v. Mallincredit</u> , 471 F.3d 277 (1 st Circ., 2006) - RCRA
4/4	The Comprehensive Environmental Response and Recovery Act (CERCLA) <u>Fleet Factors Corp. v. U.S.</u> , 901 F.2d. 1550 (11th Circ., 1990) - lender liability <u>Philadelphia v. Steppan Chemical</u> , 1544 F. Supp. 1135
4/11	The Clean Air Act (CAA): A Technology - Forcing and Market Incentive Approach <u>Alabama Power v. Costle</u> ; <u>American Trucking Assn. v. USEPA</u> , <u>Arkansas v. Oklahoma</u> , <u>Chemical Manufacturers Assoc. v. NRDC</u>
4/18	CO2 as a pollutant and greenhouse gas: <u>Utility Air Regulatory Group v. Environmental Protection Agency Et Al.</u> , U.S. Sp. Ct case 12-1146, (2014)
4/25	The Clean Water Act (CWA): A Technology Driven Model: <u>Arkansas Oklahoma</u> , 503 U.S. 91, <u>Chemical Manufacturers Assn. v. NRDC</u> , 470 U.S. 116, <u>US v Riverside Bayview Homes</u> 474 US 121 (1985)
5/4	Persuasive presentation
5/12	Final paper is due

VII. Evaluation and Grading

The final grade will be based on the term paper and persuasive presentation. Participation in class discussion is expected and will be considered in grading.

The University utilizes plus and minus grading on a 4.000 cumulative grade point scale in accordance with the following:

- A 4.000 - Represents achievement that is outstanding relative to the level necessary to meet course requirements
- A- 3.667
- B+ 3.333
- B 3.000 - Represents achievement that is significantly above the level necessary to meet course requirements
- B- 2.667
- C+ 2.333

- C 2.000 - Represents achievement that meets the course requirements in every respect
- C- 1.667
- D+ 1.333
- D 1.000 - Represents achievement that is worthy of credit even though it fails to meet fully the course requirements
- S Represents achievement that is satisfactory, which is equivalent to a C- or better.

For additional information, please refer to:

<http://policy.umn.edu/Policies/Education/Education/GRADINGTRANSCRIPTS.html>.

Course Evaluation

The SPH will collect student course evaluations electronically using a software system called CourseEval: www.sph.umn.edu/courseeval. The system will send email notifications to students when they can access and complete their course evaluations. Students who complete their course evaluations promptly will be able to access their final grades just as soon as the faculty member renders the grade in SPHGrades: www.sph.umn.edu/grades. All students will have access to their final grades through OneStop two weeks after the last day of the semester regardless of whether they completed their course evaluation or not. Student feedback on course content and faculty teaching skills are an important means for improving our work. Please take the time to complete a course evaluation for each of the courses for which you are registered.

Incomplete Contracts

A grade of incomplete "I" shall be assigned at the discretion of the instructor when, due to extraordinary circumstances (e.g., documented illness or hospitalization, death in family, etc.), the student was prevented from completing the work of the course on time. The assignment of an "I" requires that a contract be initiated and completed by the student before the last official day of class, and signed by both the student and instructor. If an incomplete is deemed appropriate by the instructor, the student in consultation with the instructor, will specify the time and manner in which the student will complete course requirements. Extension for completion of the work will not exceed one year (or earlier if designated by the student's college). For more information and to initiate an incomplete contract, students should go to SPHGrades at: www.sph.umn.edu/grades.

University of Minnesota Uniform Grading and Transcript Policy

A link to the policy can be found at onestop.umn.edu.

VIII. Other Course Information and Policies

Grade Option Change (if applicable):

For full-semester courses, students may change their grade option, if applicable, through the second week of the semester. Grade option change deadlines for other terms (i.e. summer and half-semester courses) can be found at onestop.umn.edu.

Course Withdrawal:

Students should refer to the Refund and Drop/Add Deadlines for the particular term at onestop.umn.edu for information and deadlines for withdrawing from a course. As a courtesy, students should notify their instructor and, if applicable, advisor of their intent to withdraw.

Students wishing to withdraw from a course after the noted final deadline for a particular term must contact the School of Public Health Office of Admissions and Student Resources at sph-ssc@umn.edu for further information.

Student Conduct Code:

The University seeks an environment that promotes academic achievement and integrity, that is protective of free inquiry, and that serves the educational mission of the University. Similarly, the University seeks a community that is free from violence, threats, and intimidation; that is respectful of the rights, opportunities,

and welfare of students, faculty, staff, and guests of the University; and that does not threaten the physical or mental health or safety of members of the University community.

As a student at the University you are expected adhere to Board of Regents Policy: *Student Conduct Code*. To review the Student Conduct Code, please see:
http://regents.umn.edu/sites/default/files/policies/Student_Conduct_Code.pdf.

Note that the conduct code specifically addresses disruptive classroom conduct, which means "engaging in behavior that substantially or repeatedly interrupts either the instructor's ability to teach or student learning. The classroom extends to any setting where a student is engaged in work toward academic credit or satisfaction of program-based requirements or related activities."

Use of Personal Electronic Devices in the Classroom:

Using personal electronic devices in the classroom setting can hinder instruction and learning, not only for the student using the device but also for other students in the class. To this end, the University establishes the right of each faculty member to determine if and how personal electronic devices are allowed to be used in the classroom. For complete information, please reference:
<http://policy.umn.edu/Policies/Education/Education/STUDENTRESP.html>.

Scholastic Dishonesty:

You are expected to do your own academic work and cite sources as necessary. Failing to do so is scholastic dishonesty. Scholastic dishonesty means plagiarizing; cheating on assignments or examinations; engaging in unauthorized collaboration on academic work; taking, acquiring, or using test materials without faculty permission; submitting false or incomplete records of academic achievement; acting alone or in cooperation with another to falsify records or to obtain dishonestly grades, honors, awards, or professional endorsement; altering, forging, or misusing a University academic record; or fabricating or falsifying data, research procedures, or data analysis. (Student Conduct Code: http://regents.umn.edu/sites/default/files/policies/Student_Conduct_Code.pdf) If it is determined that a student has cheated, he or she may be given an "F" or an "N" for the course, and may face additional sanctions from the University. For additional information, please see:
<http://policy.umn.edu/Policies/Education/Education/INSTRUCTORRESP.html>.

The Office for Student Conduct and Academic Integrity has compiled a useful list of Frequently Asked Questions pertaining to scholastic dishonesty: <http://www1.umn.edu/oscai/integrity/student/index.html>. If you have additional questions, please clarify with your instructor for the course. Your instructor can respond to your specific questions regarding what would constitute scholastic dishonesty in the context of a particular class-e.g., whether collaboration on assignments is permitted, requirements and methods for citing sources, if electronic aids are permitted or prohibited during an exam.

Makeup Work for Legitimate Absences:

Students will not be penalized for absence during the semester due to unavoidable or legitimate circumstances. Such circumstances include verified illness, participation in intercollegiate athletic events, subpoenas, jury duty, military service, bereavement, and religious observances. Such circumstances do not include voting in local, state, or national elections. For complete information, please see:
<http://policy.umn.edu/Policies/Education/Education/MAKEUPWORK.html>.

Appropriate Student Use of Class Notes and Course Materials:

Taking notes is a means of recording information but more importantly of personally absorbing and integrating the educational experience. However, broadly disseminating class notes beyond the classroom community or accepting compensation for taking and distributing classroom notes undermines instructor interests in their intellectual work product while not substantially furthering instructor and student interests in effective learning. Such actions violate shared norms and standards of the academic community. For additional information, please see: <http://policy.umn.edu/Policies/Education/Education/STUDENTRESP.html>.

Sexual Harassment:

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment in any University activity or program. Such behavior is not acceptable in the

University setting. For additional information, please consult Board of Regents Policy:
<http://regents.umn.edu/sites/default/files/policies/SexHarassment.pdf>

Equity, Diversity, Equal Opportunity, and Affirmative Action:

The University will provide equal access to and opportunity in its programs and facilities, without regard to race, color, creed, religion, national origin, gender, age, marital status, disability, public assistance status, veteran status, sexual orientation, gender identity, or gender expression. For more information, please consult Board of Regents Policy:
http://regents.umn.edu/sites/default/files/policies/Equity_Diversity_EO_AA.pdf.

Disability Accommodations:

The University of Minnesota is committed to providing equitable access to learning opportunities for all students. The Disability Resource Center Student Services is the campus office that collaborates with students who have disabilities to provide and/or arrange reasonable accommodations.

If you have, or think you may have, a disability (e.g., mental health, attentional, learning, chronic health, sensory, or physical), please contact DRC at 612-626-1333 or drc@umn.edu to arrange a confidential discussion regarding equitable access and reasonable accommodations.

If you are registered with DS and have a current letter requesting reasonable accommodations, please contact your instructor as early in the semester as possible to discuss how the accommodations will be applied in the course.

For more information, please see the DS website, <https://diversity.umn.edu/disability/>.

Mental Health and Stress Management:

As a student you may experience a range of issues that can cause barriers to learning, such as strained relationships, increased anxiety, alcohol/drug problems, feeling down, difficulty concentrating and/or lack of motivation. These mental health concerns or stressful events may lead to diminished academic performance and may reduce your ability to participate in daily activities. University of Minnesota services are available to assist you. You can learn more about the broad range of confidential mental health services available on campus via the Student Mental Health Website: <http://www.mentalhealth.umn.edu>.

The Office of Student Affairs at the University of Minnesota:

The Office for Student Affairs provides services, programs, and facilities that advance student success, inspire students to make life-long positive contributions to society, promote an inclusive environment, and enrich the University of Minnesota community.

Units within the Office for Student Affairs include, the Aurora Center for Advocacy & Education, Boynton Health Service, Central Career Initiatives (CCE, CDes, CFANS), Leadership Education and Development – Undergraduate Programs (LEAD-UP), the Office for Fraternity and Sorority Life, the Office for Student Conduct and Academic Integrity, the Office for Student Engagement, the Parent Program, Recreational Sports, Student and Community Relations, the Student Conflict Resolution Center, the Student Parent HELP Center, Student Unions & Activities, University Counseling & Consulting Services, and University Student Legal Service.

For more information, please see the Office of Student Affairs at <http://www.osa.umn.edu/index.html>.

Academic Freedom and Responsibility: *for courses that do not involve students in research:*

Academic freedom is a cornerstone of the University. Within the scope and content of the course as defined by the instructor, it includes the freedom to discuss relevant matters in the classroom. Along with this freedom comes responsibility. Students are encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth. Students are free to take reasoned exception to the views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.*

OR:

Academic Freedom and Responsibility, for courses that involve students in research

Academic freedom is a cornerstone of the University. Within the scope and content of the course as defined by the instructor, it includes the freedom to discuss relevant matters in the classroom and conduct relevant

research. Along with this freedom comes responsibility. Students are encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth. Students are free to take reasoned exception to the views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.* When conducting research, pertinent institutional approvals must be obtained and the research must be consistent with University policies.

Reports of concerns about academic freedom are taken seriously, and there are individuals and offices available for help. Contact the instructor, the Department Chair, your adviser, the associate dean of the college, (Dr Kristin Anderson, SPH Dean of Student Affairs), or the Vice Provost for Faculty and Academic Affairs in the Office of the Provost.

** Language adapted from the American Association of University Professors "Joint Statement on Rights and Freedoms of Students".*

Student Academic Success Services (SASS): <http://www.sass.umn.edu>:

Students who wish to improve their academic performance may find assistance from Student Academic Support Services. While tutoring and advising are not offered, SASS provides resources such as individual consultations, workshops, and self-help materials.

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