

Course Syllabus - EESD13H3 - Environmental Law and Ethics

University of Toronto at Scarborough - Physical and Environmental Sciences

Environmental Law and Ethics: EESD13H3F

Fall Term, 2016 (Thursday 7:00-9:00), Classroom MW 140

Instructor

Graham Rempe, BSc, LLB, CS

Contact information

UTSC email address = graham.rempe@utoronto.ca. I have been assigned office EV402 in the Environmental Science and Chemistry Building at 1065 Military Trail. I can be available for office hours ahead of class time. Please make an appointment by email. My office phone number is (416) 287 7224. Make sure to call when you arrive as there is sometimes a problem getting access at that time.

Course description

Law, policy and ethics are key in understanding how we use and manage 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 use and allocation? Can it deal with complex emerging problems such as accumulation of toxics, urban sprawl and climate change?

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

Marking Scheme

There will be a thirty minute, 10% exam in class on each of Sep 29, Oct 27, and Nov 17. These tests will be based on cumulative knowledge but will stress recent material.

The final exam will be worth 30%.

All 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 of interest. The assignment will be prepared in groups, using the list of potential topics,

below. Students may choose a different topic, subject to my written approval in advance. The assignment is marked as follows:

1. Assignment 1 due Sep 22. 5%. Outline topic/issue and research/bibliography
2. Assignment 2 due Oct 20. 10% Briefing note with Q/A
3. Assignment 3 due Nov 10 or 24 (date to be confirmed with instructor by Oct 20). 20% Presentation of issue with chance for questions

Each group participant will complete an evaluation (1-5) of their fellow group members to assist the instructor in assessing participation. Class participation may be a factor of up to 5% of your final grade, and is at my absolute discretion based on attendance, participation in classroom activities, and student evaluations.

Work that is late without an acceptable excuse will be subject to a penalty of 10% of the value of the assignment per day late.

Assignment

You may select from one of the following exercises. These projects are to be undertaken in groups, as indicated.

1. Your group is examining the proposed Energy East pipeline. Half of the group will propose this project, and half will oppose. The presentation will be a mini hearing before the National Energy Board (8 students)
2. Your group is examining the TRCA's Scarborough Waterfront Project. Half of you will want no development and the other half wants maximum access. Your presentation will be a hearing before the Environmental Review Tribunal. (8 students)
3. The Trudeau government has stated that it will review the environmental legislation of Canada in order to ensure robust protection. Your group has been retained to advocate for reforms through this process. You will examine the key federal legislation involved, and make proposals for reform. Your analysis will take into account arguments in opposition to the reforms. Your presentation will be to a parliamentary subcommittee. (4 students)
4. Ontario's Environmental Bill of Rights allows citizens to request a review of Ontario's environmental laws and policies. Lo and behold, someone has requested just such a review of the EBR itself. Your group will examine the arguments for and against changes to the EBR. Your presentation will be to a legislative subcommittee that is considering amendments to the EBR. (4 students)
5. You have been retained by the Green Chamber of Commerce to provide an analysis of the Trans Pacific Partnership (TPP). Your client trades in "green" products, but wants to do the right thing. Your presentation will be one to their Board, outlining the environmental pros and cons of the TPP. (4 students)

6. You are working for BeesRUs, an advocacy group representing beekeepers. Your clients are very concerned about the effect of neonicotinoid insecticides, which are widely used as seed treatments in agriculture. They believe these chemicals are causing massive bee kill. You are responsible for developing a legal strategy to combat this perceived threat. Your presentation will be an outline of your legal strategy to the BeesRUs Board of Directors

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.

Readings

You are responsible for all of the lecture contents, and materials posted on Blackboard as well as any materials prepared by other students in the course

You are also 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

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>

You are also responsible for additional readings as specified below, or assigned in class.

Course Outline

Lecture 1 – Sep 8, 2016

Ways to think about trees

- Course outline
- Tragedy of the Commons and the ethical foundations for environmental law
- Discuss student assignments

Required reading:

- Muldoon et al, pp 3 – 37
- Hardin, G. The Tragedy of the Commons. 1968. Science 162: 1243
http://www.garretthardinsociety.org/articles/art_tragedy_of_the_commons.html
- *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.e->

[laws.gov.on.ca/navigation?file=browseStatutes&reset=yes&menu=browse&lang=en](http://www.e-laws.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/>

Lecture 2 _ Sep 15, 2016

Sources of Law: From the Constitution to Judge Judy

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

Reading:

- Muldoon et al, pp 33 – 83

Exercise:

Presenting information in a legal setting. Writing reports and giving evidence

Lecture 3 – Sep 22, 2016

Survey of Canadian Environmental Law

- Key federal legislation
- Key Ontario legislation
- Key Toronto legislation

Reading:

- Muldoon et al, pp 87 - 99

Exercise:

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

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

Lecture 4 – Sep 29, 2016

Courts and Tribunals

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

Reading:

- Muldoon et al, review pp. 1 – 99

Mid – term test worth 10% in class (30 mins)

Lecture 5 – Oct 6, 2016

Environmental protection regimes

- Private vs public law
- Approaches to approvals
- Command and control toolbox
- Setting standards

Reading:

- Muldoon et al, pp. 129 – 173

Exercise:

What is going on with GHGs? Discussion of different approaches to the control of climate change.

Lecture 6 – Oct 20, 2016 (Note that there is no Oct 13 class)

Implementing environmental protection regimes

- Approvals
- Orders
- Prosecution

Reading:

- Muldoon et al, pp. 339 – 361
- Review pp. 129 – 173
- Review of pp 175 – 219 is not compulsory, but is recommended

Exercise:

How will Canada achieve its commitments to UNFCCC and the Paris Agreement? The changing face of transportation and building standards.

Student Assignment Part 2 (10%) must be submitted in class and posted on Blackboard

Lecture 7 – Oct 27, 2016

Using the civil courts

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

Reading:

Muldoon et al, pp. 317 – 338

Mid – term test worth 10% in class (30 mins)

Lecture 8 – Nov 3, 2016

Indigenous people

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

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?

Lecture 9 – Nov 10, 2016

Pro-active regulation

- Environmental Assessment
- Environmental reform

Reading:

- Muldoon et al, pp. 223 – 248
- Lindgren, *Environmental Assessment in Ontario: Rhetoric vs. Reality*
<http://s.cela.ca/files/766.LindgrenDunnFinal.pdf>

Student presentations (20%) to be scheduled with me in advance

Lecture 10 – Nov 17, 2016

Pro-active regulation

- Planning Act
- Brownfield management
- Municipal regulation

Reading:

- Muldoon et al, pp. 249 - 295

Mid –term test worth 10% (30 mins)

Lecture 11 – Nov 24, 2016

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

Student presentation (20%) to be scheduled with me in advance

Lecture 12 – Dec 1, 2016

Where are we headed?

- Environmental rights
- Modern trends

Reading:

- Muldoon et al, pp. 363 – 383
- Review entire Muldoon text
- Review the Hardin and 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 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 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.

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

