

Course Syllabus - EESD13H3 - Environmental Law and Ethics

University of Toronto at Scarborough - Physical and Environmental Sciences

Environmental Law and Ethics: EESD13H3F

Fall Term, 2017 (Thursday 7:00-9:00), Classroom IC 208

Instructor

Graham Rempe, BSc, LLB, CS

Contact information

UTSC email address = graham.rempe@utoronto.ca. My office is EV402 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 the course TA (contact details will be announced)

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 forty minute, 15% test in class on each of October 5, and November 9. 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 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. Part 1 due Sep 21. Worth 5%. Each student will individually outline topic/issue and research/bibliography
2. Part 2 due Oct 19. Worth 10%. Each student will individually provide a briefing note with Frequently Asked Questions
3. Part 3 due Nov 16 or 23 (date to be confirmed with me by Oct 20). 20% Group presentation of issue to class with chance for questions. Each group will submit a written outline of their presentation at least three days in advance.

Class participation is worth 5% of your final grade, and is at my absolute 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 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 Kinder Morgan Trans Mountain Twinning pipeline. Half of the group will propose this 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 the National Energy Board (Up to 16 students). (A similar exercise could be conducted regarding the proposed TransCanada Energy East project.)
2. Your group is examining the proposed Port Lands Development proposal, covering the area immediately east of the Toronto Harbour. Half of you will be the proponent, looking for maximum development potential. Half of you will be various public interests looking for accommodation of those interests. Participants must agree on, and get approval of issues covered. Your presentation will be a hearing before the Environmental Review Tribunal. (Up to 16 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. (Up to 8 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. (Up to 8 students)
5. You have been retained by the Government of Canada to prepare an analysis of the environmental protection measures in the North American Free Trade Agreement (NAFTA) and to develop a strategy to improve environmental protections in upcoming negotiations of NAFTA and to present it to Cabinet or at the negotiating table. (Up to 8 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. (Up to 8 students).

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 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 Blackboard 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>

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

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/>

If you are having difficulties with the English language, services are available through the English Language Development Centre. See the link below.

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

Course Outline

Lecture 1 – Sep 7, 2017

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

[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/>

Environmental Registry

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

Lecture 2 _ Sep 14, 2017

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 technical information in a legal setting. The rules.

Lecture 3 – Sep 21, 2017

Survey of Canadian Environmental Law

- Key federal legislation
- Key Ontario legislation
- Key municipal 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 28, 2017

Courts and Tribunals

- 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.

Lecture 5 – Oct 5, 2017

Environmental protection regimes

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

Reading:

- Muldoon et al, pp. 129 – 173

Mid – term test worth 15% in class (40 mins)**Lecture 6 – Oct 19, 2017 (Note that there is no Oct 12 class)**

Implementing environmental protection regimes

- Approvals
- Orders
- Prosecution

Environmental rights

Reading:

- Muldoon et al, pp. 339 – 383
- 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 26, 2017**

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

Lecture 8 – Nov 2, 2017

Indigenous people

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

Municipal regulation

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 9, 2017

Pro-active regulation

- Environmental Assessment
- Planning Act
- Brownfield management

Reading:

- Muldoon et al, pp. 223 – 295
- Lindgren, *Environmental Assessment in Ontario: Rhetoric vs. Reality*
<http://s.cela.ca/files/766.LindgrenDunnFinal.pdf>

Mid – term test worth 15% in class (40 mins)

Lecture 10 – Nov 16, 2017

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 11 – Nov 23, 2017

Student presentation (20%) to be scheduled with me in advance. If time is available, we will use this slot for “catching up” and exam review.

Lecture 12 – Nov 30, 2017

Where are we headed?

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

Reading:

- 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 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.

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