ENVS 201 – Introduction to Environmental Law
Fall Term 2018

COURSE DESCRIPTION

Course Instructor: Prof Marie-Claire Cordonier Segger
Contact Information: mcordoni@uwaterloo.ca
Office Hours: 9:00 – 11:00 Wednesday, or email for appointment
Office Location: EV3-4328
Phone: 519-888-4567 / 613 868 6980 (but email

Class times Tue, 6.30 to 9.20 p.m.
Location RCH 101

Seminars (w TAs): SEM 101: 10:00 – 11:20 a.m. on Fridays in EV1 350
SEMs 102: 11:30 – 12:50 p.m. on Fridays in EV1 350
SEMs 103: 6:30 – 7:50 p.m. on Wednesdays in EV3 4408
SEMs 104: 1:00 – 2:20 p.m. on Wednesdays in EV3 4412
SEMs 105: 8:30 – 9:50 a.m. on Wednesdays in EV1 350

Course Prerequisite: none

Course Objectives:
This course is designed to provide an introduction to the basic legal framework that regulates the natural and built environments in Canada. The course is designed to provide students with an understanding of the foundational legal institutions in Canada and their respective roles in environmental regulation, as well as the different approaches to environmental regulation.

Course Outline

Part 1 – Foundations

❖ Week 1 (Tues, Sept 11) – Introduction to the Course and to Canadian Legal Institutions

❖ Introduction to the Course
❖ Branches of Government and their Roles in the Legal System
❖ The Sources and Nature of Legal Rules
❖ Division of Powers
Week 2 (Tues, Sept 18) – The Nature of Environmental Law
  - The Nature of the Problem
  - Principles of Environmental law

Week 3 (Tues, Sept 25) – Reading & Briefing Cases
  - Common Law and the nature of precedence
  - Reading Cases
  - Case Briefs

Part 2 – Private Law and the Environment

Week 4 (Tues, Oct 2) – The Use of Tort Law to Protect the Environment
  - Private nuisance
  - Public nuisance
  - Negligence
  - Trespass
  - Rylands v. Fletcher

NB. Thanksgiving / Fall Break Oct. 8-10 – no classes or seminars

Week 5 (Thurs, Oct 11) – Shortcomings of Private Law
  - Causation
  - Remedies
  - Class actions

Week 6 (Tues, Oct 16) – Mid-term Test

Part 3 – Public Law Liability for Pollution

Week 7 (Tues, Oct 23) – Regulation of Pollution
  - Regulatory Architecture
  - Standard Setting
  - Compliance

Week 8 (Tues, Oct 30) – Enforcement
  - Regulatory Offences
  - Due Diligence
 Directors and Officers Liability
 Penalties

 Week 9 (Tues, Nov 06) – Contaminated Lands

 Site Remediation
 Liability for Clean –Up
 Purchase and Sale of Contaminated Lands

Part 4 –Environment Assessment and Conservation

 Week 10 (Tues, Nov 13) – Environmental Assessment

 Federal EIA
 Provincial EIA

 Week 11 (Tues, Nov 20) – Protecting Spaces and Species

 Parks and Protected Species
 Endangered Species Legislation

 Week 12 (Tues, Dec 27) –Exam Review

Course Materials

- N. Craik, Casebook Supplement, 2017

Course Evaluation

Seminar Participation 15%
This mark has 3 components – class and seminar attendance; performance during seminar discussions; and active participation.

Mid-term Examination (Week 6 - likely Oct 16, 2018) 25%
Legal Memo / Case Response (due Week 10 – Nov 13, 2018) 25%
Final Exam (Week 13 - Dec, 2018) 35%

Course Communication

All communication by the instructor to students will be sent to students ‘uwaterloo’ email or through LEARN. Students are responsible for ensuring prompt retrieval of course messages.
University and Faculty Requirements and Notices

♦ **Academic Integrity:** In order to maintain a culture of academic integrity, members of the University of Waterloo community are expected to promote honesty, trust, fairness, respect and responsibility.  [www.uwaterloo.ca/academicintegrity/](http://www.uwaterloo.ca/academicintegrity/)

♦ Students who are unsure what constitutes an academic offence are requested to visit the online tutorial at [http://www.lib.uwaterloo.ca/ait/](http://www.lib.uwaterloo.ca/ait/)

♦ **Grievance:** A student who believes that a decision affecting some aspect of his/her university life has been unfair or unreasonable may have grounds for initiating a grievance. Read Policy 70 - Student Petitions and Grievances, Section 4, [www.adm.uwaterloo.ca/infosec/Policies/policy70.htm](http://www.adm.uwaterloo.ca/infosec/Policies/policy70.htm). When in doubt please contact your Undergraduate Advisor for details.

♦ **Discipline:** A student is expected to know what constitutes academic integrity, to avoid committing academic offence, and to take responsibility for his/her actions. A student who is unsure whether an action constitutes an offense, or who needs help in learning how to avoid offenses (e.g., plagiarism, cheating) or about “rules” for group work/collaboration should seek guidance from the course professor, academic advisor, or the Undergraduate Associate Dean. For information on categories of offences and types of penalties, students should refer to Policy 71, Student Discipline, [www.adm.uwaterloo.ca/infosec/Policies/policy71.htm](http://www.adm.uwaterloo.ca/infosec/Policies/policy71.htm). For typical penalties check Guidelines for Assessment of Penalties, [www.adm.uwaterloo.ca/infosec/guidelines/penaltyguidelines.htm](http://www.adm.uwaterloo.ca/infosec/guidelines/penaltyguidelines.htm)

♦ **Appeals:** A decision made or penalty imposed under Policy 70 - Student Petitions and Grievances (other than a petition) or Policy 71 – (Student Discipline) may be appealed if there is a ground. A student who believes he/she has a ground for an appeal should refer to Policy 72 (Student Appeals) [www.adm.uwaterloo.ca/infosec/Policies/policy72.htm](http://www.adm.uwaterloo.ca/infosec/Policies/policy72.htm)

♦ **Research Ethics:** Please also note that the University of Waterloo requires all research conducted by its students, staff, and faculty which involves humans as participants to undergo prior ethics review and clearance through the Director, Office of Human Research and Animal Care (Office). The ethics review and clearance processes are intended to ensure that projects comply with the Office’s Guidelines for Research with Human Participants (Guidelines) as well as those of provincial and federal agencies, and that the safety, rights and welfare of participants are adequately protected. The Guidelines inform researchers about ethical issues and procedures which are of concern when conducting research with humans (e.g. confidentiality, risks and benefits, informed consent process, etc.). If the development of your research proposal consists of research that involves humans as participants, the please contact the course instructor for guidance and see [www.research.uwaterloo.ca/ethics/human/](http://www.research.uwaterloo.ca/ethics/human/)

♦ **Note for students with disabilities:** The AccessAbility Office located in Needles Hall, Room 1132, collaborates with all academic departments to arrange appropriate accommodations for students with disabilities without compromising the academic integrity of the curriculum. If you require academic accommodations to lessen the impact of your disability, please register with the AccessAbility Office at the beginning of each academic term.

♦ **Religious Observances:** Please inform the instructor at the beginning of term if special accommodation needs to be made for religious observances that are not otherwise accounted for in the scheduling of classes and assignments.

♦ Unclaimed assignments will be retained for one term following the completion of this course. After that time, they will be destroyed in compliance with UW’s [confidential shredding procedures](http://www.uwaterloo.ca/).
Reading Assignments

All readings are found in Muldoon et al., Environmental Law and Policy in Canada (referred to below as “Muldoon et al.”) or in the Casebook Supplement.

Part 1 – Foundations

❖ Week 1 – Introduction to the Course and to Canadian Legal Institutions

➢ Muldoon et al:
   ♦ Chapter 2, “The Canadian Legal Framework”
   ♦ Chapter 4 – “Courts, Tribunals, and Dispute Settlement”

➢ Course pack:
   ♦ Midwest Properties v. Thordarson, 2015 ONCA 819 (skim)
   ♦ Constitution Act, 1867 – ss. 91 & 92

❖ Week 2 – The Nature of Environmental Law

➢ Muldoon et al:
   ♦ Chapter 1, “Environmental Law: Its Evolution in Canada”


➢ Course pack:
   ♦ The Rio Declaration on Environment and Development, United Nations (August 1992)
   ♦ Garrett Hardin, The Tragedy of the Commons
   ♦ Note re: Polluter Pays Principle
   ♦ 114957 Canada Ltee (Spraytech) v. Town of Hudson, 2001 SCC 40
   ♦ Thordarson, para. 68

❖ Week 3 – The common law and reading cases

➢ Course Pack
   ♦ McCallum et al., Synthesis, chp. 3
   ♦ St. Helen’s Smelting [1865] UKHL J81
   ♦ Rylands v. Fletcher [1868] UKHL 1
   ♦ Antrim Truck Centre Ltd v. Ontario (Transportation), 2013 SCC 13
Part 2 – Private Law and the Environment

- **Week 4 – The Use of Tort Law to Protect the Environment**
  - Muldoon et al.,
    - Chapter 13, “Using the Courts to Protect the Environment”, pp. 317-329
  - Course Pack
    - Smith v. Inco Limited [2010] ONSC 3790
    - Smith v. Inco [2011] OCA
    - Thordarson

- **Week 5 – Shortcomings of Private Law**
  - Muldoon et al.,
    - Chapter 13, “Using the Courts to Protect the Environment”, pp. 330-338
  - Course Pack
    - B.C. v. Canadian Forests Ltd. 2004 SCC 38
    - Tridan Developments Ltd. v. Shell (2002), 57 O.R. 503
    - Thordarson
    - L. Klar, *Tort Law, 4th*, p. 742-744

- **Week 6 – Mid-term Exam**

Part 3 – Public Law Liability for Pollution

- **Week 7 – Regulation of Pollution**
  - Muldoon et al:
    - Chapter 7, “The Basic Structure of Environmental Protection Regimes”
    - Chapter 8, “Environmental Protection Regimes: Command and Control”, pp.145-156
  - Course Pack
    - *Environmental Protection Act*, excerpts
    - Castonguay Blasting Ltd. v. Ontario, 2013 SCC 52
    - Note on City of Kawartha Lakes v. Director, [2012] O.N.S.C 2708 (Div. Ct.)
Week 8 – Enforcement

- Muldoon et al:
  - Chapter 8, “Environmental Protection Regimes: Command and Control”, pp. 156-171
  - Chapter 12, “Corporations and Harnessing Market Forces”, pp. 297-301
- Course Pack
  - R. v. Syncrude Canada Ltd., 2010 ABPC 229
  - Thordarson

Week 9 – Contaminated Lands

- Muldoon et al:
  - Chapter 11, “Planning and Management Regimes”, pp. 276-278
- Course Pack
  - Antorisa Investments v. 172965 Canada Ltd. 82 O.R. (3d) 437

Part 4 – Land Use Controls: Planning, Environment Assessment and Conservation

Week 10 – Environmental Assessment

- Muldoon et al:
  - Chapter 10, “Environmental Assessment”
- Course Pack
  - Canadian Environmental Assessment Act, 2012, excerpts
  - Pembina Institute v. Canada, 2008 FC 302

Week 11 – Protecting Spaces and Species

- Muldoon et al:
  - Chapter 11, pp. 256-263
- Course Pack
  - C. Stone, “Should Trees Have Standing? Toward Legal Rights for Natural Objects” (1972) 45 S. Cal L. R. 450
  - Species at Risk Act, S.C. 2002, c.29, excerpts
  - Ontario Endangered Species Act, S.O. 2007, c.6, excerpts

Week 12 – Exam Review (no readings)