Course Instructor: Neil Craik  
Contact Information: neiraik@uwaterloo.ca; 519-888-4567, Ext. 33278  
Office Hours: Mondays, 4 – 6 pm, via Bookings site  
Office: EV3 4217

Course offered online in 2020.

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. In particular students will be able to identify and describe the basic structural features of the Canadian legal system and their relationship to the environment; to differentiate and apply legal causes of action that provide remedies to those impacted from environmental harm caused by others; and to describe and apply the legal basis for regulatory and criminal action against polluters.

A key learning objective in this course is to enable students to develop their analytical skills through an introduction to legal reasoning. By the end of the course students should be able identify and classify legal issues within increasingly complex fact patterns; interpret cases and legislation, with an emphasis on identifying rules and principles; and to apply abstract legal rules/principles to factual situations to generate legal conclusions.

As clear, objective communication is a crucial skill to providing legal and policy advise, students will engage in a number of written exercise oriented towards improving professional written communication skills.

Course Outline

Part 1 – Foundations

- Week 1– 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 – The Nature of Environmental Law
- The Nature of the Problem
- Principles of Environmental law

Week 3 – Reading & Briefing Cases
- Common Law and the nature of precedence
- Reading Cases
- Case Briefs

Part 2 – Private Law and the Environment

Week 4 – The Use of Tort Law to Protect the Environment
- Private nuisance
- Public nuisance
- Negligence
- Trespass
- Rylands v. Fletcher

Week 5 – Shortcomings of Private Law
- Causation
- Remedies
- Class actions

NB. Fall Break

Week 6 – Mid-term assignment

Part 3 – Public Law Liability for Pollution

Week 7 – Regulation of Pollution
- Regulatory Architecture
- Standard Setting
- Compliance
Week 8 – Compliance
- Regulatory Offences
- Due Diligence
- Directors and Officers Liability
- Penalties

Week 9 – Contaminated Lands
- Site Remediation
- Liability for Clean –Up
- Purchase and Sale of Contaminated Lands

Week 10 – Second Legal Memo Due

Part 4 – Environment Assessment and Conservation

Week 11 – Environmental Assessment
- Federal EIA
- Provincial EIA

Week 12 – Protecting Spaces and Species
- Parks and Protected Spaces
- Endangered Species Legislation

Course Materials
- Online material
Course Structure

The course is designed to be taken online. Each week there are assigned readings and prerecorded lectures, as well as a variety of individual and group activities to be undertaken. Students must do the activities in the week that they are assigned.

Each student will be assigned a group of approximately 10 students for the duration of the term. The groups will be required to meet synchronously online using the Microsoft teams platform (or a collaboration platform the team agrees to) in order to undertake assigned activities. Each group will have an assigned TA, who will monitor the group’s activities and be responsible for marking group members individual work.

The group activities typically involve a short exercise that requires the application of legal rules to factual situations. After completing the exercise, the group must prepare and submit a short report to their TA. The group exercise, should take no more than 45 minutes and the report should only take fifteen minutes to prepare. Group participation is mandatory, and group reports should indicate who was in attendance each week. Students will be asked to prepare a peer review of their group members at the end of term.

This course will also use Perusall. Perusall is a reading platform that allows students to collectively annotate readings with a group of students. Students can use Perusall to identify for one another key parts of the readings and to ask each other questions. The groups for Perusall will be the same for the group activities. Instructions for how to access and use Perusall are located on LEARN. Specific instructions for Perusall will be posted on the course Perusall site.

All case and legislation readings will be placed on Perusall. It is recommended that all reading be done in Perusall – but the cases that are bolded (in the Detailed Course Outline, below) must be fully annotated. The instructor will provide direction for annotation for these readings.

There is an individual mark for Group activities that is broken into three components. 1) active engagement in using Perusall; 2) participation in group exercises/reports; 3) and a mark based on the peer assessment by the other group members.

The instructor will hold group office hours/review sessions each week at a time identified at the start of term. These sessions will be held synchronously using the Microsoft teams platform. Students are not required to attend these sessions, but it is strongly recommended that each group choose one or two members to attend these sessions and report back to other group members. Groups should identify questions or clarifications to be posed in advance of the instructor led sessions.

There will individual assessment items required throughout the term. These must be done individually, and students should not collaborate in their preparation of these assessment items.
Course Evaluation

<table>
<thead>
<tr>
<th>Item</th>
<th>Date Assigned</th>
<th>Due date</th>
<th>% contribution to final mark</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Brief</td>
<td>Week 3</td>
<td>Week 4</td>
<td>5%</td>
</tr>
<tr>
<td>Legal Memo 1</td>
<td>Week 5</td>
<td>Week 6</td>
<td>15%</td>
</tr>
<tr>
<td>Legal Memo 2</td>
<td>Week 8</td>
<td>Week 9</td>
<td>25%</td>
</tr>
<tr>
<td>Quizzes</td>
<td>Weeks 3, 5, 8, 9, 11</td>
<td></td>
<td>10% (top 4 marks count)</td>
</tr>
<tr>
<td>Final Essays</td>
<td>First day of exam period</td>
<td></td>
<td>30%</td>
</tr>
<tr>
<td>Group Work</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Perusall</td>
<td></td>
<td></td>
<td>15%</td>
</tr>
<tr>
<td>Group Reports</td>
<td></td>
<td></td>
<td>25% (of 15%)</td>
</tr>
<tr>
<td>Peer Evaluation</td>
<td></td>
<td></td>
<td>50% (of 15%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>25% (of 15%)</td>
</tr>
</tbody>
</table>

Course Communication

Students who wish to discuss any substantive aspect of the course, should turn first to their Group members for peer support, and then to their TA. Queries about grading should be directed to the TA, and if unresolved to the course instructor. Students wishing to meet with the course instructor will need to set up a meeting using the instructor’s meeting software.

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/
- Students who are unsure what constitutes an academic offence are requested to visit the on-line tutorial at 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. 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. For typical penalties check Guidelines for Assessment of Penalties, 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

♦ **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/

♦ **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.
Reading Assignments and Screencasts

All readings are found in Muldoon et al., *Environmental Law and Policy in Canada, 3d* (referred to below as “Muldoon et al.”) or on LEARN in the Content section arranged by week.

The cases and legislation are also posted in Perusall.

Part 1 – Foundations

- **Week 1 – Introduction to the Course and to Canadian Legal Institutions**
  
  - Muldoon et al:
    - Chapter 2, “The Canadian Legal Framework”
  - Course pack:
    - Constitution Act, 1867 – ss. 91 & 92
  - Lectures
    - The Nature of Environmental Law

- **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)
    - Note re: Polluter Pays Principle
    - *114957 Canada Ltee (Spraytech) v. Town of Hudson*, 2001 SCC 40
  - Lectures
    - Challenges to Environmental Regulation
    - Principles of Environmental Law
  - Other Activities
Week 3 – The common law and reading cases

- Course Pack
  - McCallum et al., Synthesis, chp. 3
  - *St. Helen’s Smelting v. Tipping* [1865] UKHL J81
  - *Rylands v. Fletcher* [1868] UKHL 1

- Lectures
  - Reading and Briefing Cases
  - Common Law and Legal Reasoning

- Other Activities
  - Group Activity
  - Quiz 1
  - Case Brief Assigned

Part 2 – Private Law and the Environment

Week 4 – The Use of Tort Law to Protect the Environment

- Muldoon et al.,
  - Chapter 5, p. 91-92
  - Chapter 10, “Using the Courts to Protect the Environment”, pp. 235-245

- Course Pack
  - *Berendsen v. Ontario, 2009 ONCA 845 PERUSALL*
  - *Smith v. Inco* [2011] OCA

- Lectures
  - Introduction to Torts
  - Environmental Torts: Causes of Action

- Other Activities
  - Group Activity
  - Case Brief Due
Week 5 – Shortcomings of Private Law

Muldoon et al.,
- Chapter 13, “Using the Courts to Protect the Environment”, pp. 245-250

Course Pack
- *B.C. v. Canadian Forests Ltd.* 2004 SCC 38
- L. Klar, *Tort Law, 4th*, p. 742-744

Lectures
- Shortcomings of Private Law
- Torts and Climate Change

Other Activities
- Quiz 2
- Group Activity
- Legal Memo 1 Assigned

Week 6 – Legal Memo 1 due

Part 3 – Public Law Liability for Pollution

Week 7 – Regulation of Pollution

Muldoon et al:
- Chapter 5, pp.92-109

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.)

Lectures
- The Architecture of Environmental Regulation
- Compliance

Other Activities
- Group Activity
- Legal Memo 2 Assigned

Week 8 – Enforcement

Muldoon et al:
- Chapter 5, p.109-115
- Chapter 9, pp. 218-221

Course Pack
• **R. v. Syncrude Canada Ltd., 2010 ABPC 229 - PERUSALL**

- Lectures
  - Environmental Offences
  - Due Diligence
- Other Activities
  - Quiz 3
  - Group Activity

- Week 9 – Contaminated Lands

- Muldoon et al:
  - Chapter 8, pp. 188-202
- **Course Pack**
  - **Antorisa Investments v. 172965 Canada Ltd.** 82 O.R. (3d) 437

- Lectures
  - Contaminated Lands
- Other Activities
  - Quiz 4
  - Group Activity
  - Legal Memo 2 Assigned

- Week 10 – Legal Memo 2 Due
Part 4 – Land Use Controls: Environment Assessment and Conservation

❖ Week 11 – Environmental Assessment

➢ Muldoon et al:
   ♦ Chapter 7, pp.155-175.
➢ Course Pack
   ♦ Impact Assessment Act, excerpts
   ♦ Pembina Institute v. Canada, 2008 FC 302 PERUSALL
➢ Lectures
   ♦ Environmental Assessment Law
➢ Other Activities
   ♦ Quiz 5
   ♦ Group Activity

❖ Week 12 – Protecting Spaces and Species

➢ Muldoon et al:
   ♦ Chapter 8, pp.183-188
➢ Course Pack
   ♦ Species at Risk Act, S.C. 2002, c.29, excerpts
   ♦ Ontario Endangered Species Act, S.O. 2007, c.6, excerpts
➢ Lectures
   ♦ Spaces and Species Protection

❖ Exam Period – Final Essays Due on December 9, 2020 at 12.00 pm.