

ES 669/SC 425--Environmental Law
Spring Session 2001

TIME & PLACE: Grant Hall 313 TTh 10:30-12:50

INSTRUCTOR: Gregory G. Brown

OFFICE: 317 Grant Hall

PHONE: 564-8267

EMAIL: gregb@alaskapacific.edu

OFFICE HOURS: TBA

A. Prerequisite:

Junior standing or consent of instructor for SC 425

Graduate standing for ES 669

B. Course Overview

This course is a basic introduction to Environment Law; it considers the principal legal approaches used to deal with environmental problems, including common-law, statutory, regulatory, and economic-incentive systems.

This course addresses procedural and substantive issues of law and regulation affecting environmental and natural resources—e.g. water, air, forests, and wildlife. Legal issues relative to the resources will be studied through lectures, case briefs, and additional supplementary materials. Current issues such as conflicts with private property rights, i.e. "takings" will be explored.

Ultimately, we desire to ponder the policy implications of actions (or inaction) that impact the environment and to see environmental issues from multiple perspectives, with special emphasis on the legal perspective.

C. Objectives:

1. Understand our governmental structure, the role of the U.S. Constitution, the roles of the three branches and administrative agencies.
2. Understand the U.S. court system and legislative process.
3. Understand the basics of civil procedure--pre-trial, trial and post-trial.
4. Be able to read a judicial opinion with understanding; recognizing the parties, the issue, the holding, and the legal arguments used in the case.
5. Understand basic aspects of actions at law and at equity; e.g. the requirements for suing for damages, the requirements for obtaining an injunction.
6. Appreciate important aspects of administrative law, and judicial review of administrative decisions.

7. Articulate key sections of important laws which affect management of public lands; eg. the EIS requirement of NEPA;
8. Appreciate the attitude of the Supreme Court toward natural resource management and environmental groups.
9. Understand some key legal principles and judicial doctrines which operate in the field of environmental law, federal lands, and natural resources law, e.g.;
 - o Federalism; Separation of Powers
 - o Delegation of Power; Judicial Deference
 - o Judicial Activism/Restraint
 - o Preemption
 - o Standing; Ripeness; Justiciability; Exhaustion
 - o Prior Appropriation; Riparianism
 - o Public Trust Doctrine
 - o Unconstitutional Takings

E. Required Textbooks:

Environmental Law and Policy: Nature, Law, and Society. Plater, Abrams, Goldfarb, and Graham. Second Edition. 1998. West Group.

Selected case studies from Stanford University Law School.
Selected handouts.

F. Grading and Assignments

Grading will based on the following:

Exams	50%
Research Paper	30%
Briefs/Class Presentations	10%
Class Discussion/Participation	10%

G. Papers/Class Presentations

Briefs. Each student will be lead a discussion of one or more court cases in class by preparing and presenting briefs for the class. A brief contains 6 sections:

Facts: the main legal facts which surround the cause of action

Procedural history: is the opinion a trial court or appellate opinion, and what happened

Issue: the legal question presented by the case

Holding: the court's statement of the rule of law that controls the facts of the case

Judgment: the final one or two-word decision of the court, i.e., for the plaintiff, etc

Reasoning: the court's reasons for deciding the way it did

Case Studies. Several case studies will be examined and discussed as part of this course. Students should prepare for the assigned case study by reading the assigned case study, consulting additional reference materials if necessary, and preparing materials for class discussion. What should be presented? As much detailed information as possible to better understand the problem and its context. Consider the following:

Chronology: a list of important events in time-ordered sequence

Players: a list of the key players—individuals, organizations, groups—and their roles in the case study.

Legal/regulatory environment: a description of applicable laws and regulations governing the situation in the case study

Science: an explanation of the natural and physical processes that led to the problem

Social/cultural assessment: the set of social and cultural conditions that set the stage for the action or set of events to occur and the reaction to the events.

Economics: the markets and incentive structures at play in the case study.

Research Paper. Due Apr. 27 (no exceptions). The paper should be an examination of an interesting legal question arising somewhere in the field of environmental law. It should not be a description of a fact situation or policy decision, but rather an analysis of a chosen legal issue; facts and policy discussions necessarily will be included, but only as required initially to set up the legal question (no more than a couple of pages). The legal question chosen should be narrow so that you can make a searching inquiry and presentation within the confines of the space limitation. Your perspective may be that of environmental plaintiffs, or defendants, or neutral observer. In each case, you will have to anticipate all serious opposing arguments on point. Presentation may be in the form of a brief, legal commentary, or other paper format. Citations should be in a consistent format. Topics should be checked with me first.

In the presentation, your analysis and argument must be succinct and to the point. Length should be 6-10 pages. Note: this form of legal research paper typically contains the equivalent substance of a 15-20 page “term paper”.

ES 669/SC 425--Environmental Law

Schedule of Topics

Revised 01/02/01

Class	Topic	Chapters	Pages in NLS Text
Feb. 8	Introduction		
Feb. 13	Analytic Themes and Kepone	1	23-60
Feb. 15	Risk	2	124-156;97-113
Feb. 20	Brief: Wilsonville v. SCA Services, Inc. Common Law	3	158-187
Feb. 22	Brief: Boomer et al. V. Atlantic Cement Company Common Law (incl. Joint & several)	3,4	187-197, 265-271, 197-208
Feb. 27	Brief: Branch v. Western Petroleum, Inc. Toxic Torts	4	208-227; 233-255
Mar. 1	Brief: State of Alaska v. Exxon Corp. Toxic Torts	4	255-269; 271-283; 292-298
Mar. 6,8	Brief: Daubert v. Merrell Dow Pharmaceuticals		
Mar. 13	Spring Break		
Mar. 15	Regulatory Perspective	5	299-322
Mar. 20	Federalism	6	323-335; 345-352; 356-363
Mar. 22	Brief: City of Philadelphia v. New Jersey Administrative Law	7	375-398; 427-432
Mar. 27	Brief: Citizens to Preserve Overton Park, Inc. v. John Volpe Mid-term exam	8	442-477
Mar. 29	Harm-based Ambient Standards (CAA) Brief: NRDC v. Train	1,9	60-89; 501-516
Apr. 3	TBELs (CWA) Brief: EPA v. California	9	516-550
Apr. 5	TBELs Brief: Rybachek v. EPA	13	611-653; 665-670
Apr. 10	Disclosure (NEPA & ECPRKA) Brief: NRDC v. Grant (Chicod Creek)	14	671-709
Apr. 12	Roadblock (ESA) Case Study: The Endangered Delhi Sands Flower-Loving Fly	17	763-798
Apr. 17	Life-cycle (RCRA) Case Study: The Philern Corp.	18	803-838
Apr. 19	Remedial Liability (CERCLA) Case Study: The Lower Fox River	22	985-1023
	Public Trust Doctrine Brief: Brooks v. Wright (Alaska Supreme Court)	23	1074-1100
	Takings (Lucas)		

	Brief: Lucas v. South Carolina Coastal Council		
Apr. 24	No Class Meeting		
	Senior Project Presentations		
Apr. 26	Resources Management	24	1102-1115; 1121-1136
	Brief: Sierra Club v. Clark		
	Land Use		
	Brief: Bersani v. EPA	25	1137-1164
	Optional Case Study: Balcones Canyonlands Conservation Plan		
May 1	Final Exam		