Environmental Law
Environ 475
Instructor: Kim Smith (ksmith@umich.edu)
GSI: Jacqueline Lin (jyclin@umich.edu)
Lecture meets: MW 11:30-1:00
1040 Dana

Office hours: M 9:30-11:00, in Dana 4036, or by appointment (email me at ksmith@umich.edu)

Environmental Law introduces you to the history and current structure of American environmental law. It addresses the constitutional foundations of environmental law, some major federal environmental regulatory statutes, and current debates over governmental management of the environment. Topics include: federal authority over public land and water, tribal authority over natural resources, how to ensure environmental justice, and whether and how federal or state government can address climate change. There will be no exams; grades will be based on written work and a group presentation.

Required texts:

Smith, The Conservation Constitution (available online through library)
Lazarus, The Making of Environmental Law, 1st ed (available online through library)
Additional readings posted on Canvas

Skills and knowledge you’ll work on:

● History and structure of US environmental law
● Legal writing
● Legal research
● Legal analysis
● Collaboration
● Oral presentation under pressure

We are using Gradecraft in this course. You can navigate to Gradecraft through Canvas.

● You’ll find the assignments and your grades on Gradecraft.
● The syllabus, readings, quizzes, and discussion boards are on Canvas.

Grades: Your grade will be based on a 100-point scale. You start with 0 points. You can earn points by completing these tasks:

Individual tasks:

You must post at least once on the discussion forum, take the four legal research quizzes, and complete a case summary. Everything else is optional. You choose how you’re going to earn your points:

● Present a case in class: 5 pts
● Post on discussion forum: 5 pts each; you can post up to 3 times
● Complete legal research quizzes: 1 pt each. You have to do all 4 to unlock:
● Case summary: 10 pts
• Explainer: 15 pts
• Judicial opinion: 10 pts
• Book review: 15 pts

Group tasks:

All group tasks are required, but you can choose your group and your group can choose whether it will do a presentation or a moot court:

• Annotated bibliography: 20 pts
• Lead a class: 25 pts
  OR
• Moot court: 30 pts

A few more details:

All assignments are pass/fail. If you pass, you earn all the points. But written assignments are hard to pass on the first try! You will probably have to revise them. All written assignments may be revised until you pass (up to the deadline in the syllabus).

All written assignments should be printed out and turned in during class. Please double-space!

Course Outline

Week 1: Introduction

Wed: Intro to the class; Intro to environmental governance
Smith, Ch. 1

Week 2: Public Trust and Wildlife

Mon: state wildlife authority
Smith Ch. 2
Corfield v Coryell
Geer v Connecticut
Barrett v New York

Wed: federal wildlife authority
Smith Ch. 3
Missouri v Holland

Discussion sections: sign up for a group

Week 3: Public lands

Mon: MLK Jr Day: No class
Wed: Federal Property power
Smith Ch. 5
Light v US
US v Grimaud
*Groups are announced*

**Week 4: Environmental federalism**

Mon: State authority
Smith Ch. 7
Hunt v US

Wed: Tribal authority
Ward v Race Horse

**Week 5: Pollution**

Mon: Nuisance
Smith Ch. 8
Slaughterhouse Cases

Wed: Interstate nuisance
Smith Ch. 9
Georgia v Tennessee Copper Co

**Week 6: Planning & Property Rights**

Mon: Euclid v Ambler Realty

Wed: Pennsylvania Coal v Mahon

*Annotated bibliographies due Wed. Feb. 8 in class*

**Week 7: The modern era**

Mon: Statutes and agencies
Lazarus Ch. 4 & 5
The APA
The NEPA

Wed: Presentations begin

Standing: Sierra Club v Morton
Agency rulemaking: Chevron v NRDC

**Week 8: Modern wildlife governance**

Mon:
Lazarus ch 6, 7
Hughes v Oklahoma
TVA v Hill

Wed:
Rancho Viejo v Norton
Weyerhaeuser v USFW

**Week 9: BREAK**

**Week 10: Public lands and waters**

Mon: Public lands
Kleppe v New Mexico

Wed: Public waters and public trust
Robinson Twp v Commonwealth of Pennsylvania

**Week 11: Treaty rights**

Mon:

Wed:
Minnesota v Mille Lacs
Herrera v Wyoming, 139 S.Ct 1686 (2019)

*Final case summaries due Wednesday March 15*

**Week 12: Private and States' Rights**

Mon: Regulatory Takings
Lazarus Ch. 8
S. Carolina v Lucas
Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency

Wed: Environmental Federalism
United Haulers Assn., Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth., 550 U.S. 330 (2007)
North Dakota v Heydinger 8th Cir 2011

**Week 13: Environmental Justice**

Mon: Sheila Foster
Foster, Justice from the Ground Up

Wed: Clifford Villa
Villa, No Box to be Checked: EJ in Modern Legal Practice

**Week 14: Climate change**

Mon: State and Federal authority
Lazarus Ch. 9
Massachusetts v EPA
Rocky Mountain Farmers Union v Corey

Wed: Environmental Rights?
Kivalina v ExxonMobile
Juliana V United States

*Final explainers due Wednesday April 5*

**Week 15: International law**

Mon: Edith Brown Weiss
A Resource Management Approach to Carbon Dioxide
The Planetary Trust

Wed: Edith Brown Weiss
Climate Change, International Equity, and International Law
Intergenerational Equity in a Kaleidoscopic World

**Week 16: Future of Environmental Law**

Mon: Conclusion/course evaluation
Lazarus, Conclusion

*Final annotated bibliographies, judicial opinions and book reviews due April 17*
More information about each assignment

Individual tasks:

Present a case in class: Sign up to present the case (the judicial opinion) we are discussing in lecture. You will explain the facts, the legal issue, and the judge’s reasoning. Several students may sign up to present on the same day, but you can only sign up once. Opportunities to do case presentations are available during weeks 1-6.

Post on discussion forum: Each Monday, Dr. Smith will post a hypothetical on the “Discussion” section of Canvas that you will discuss in your discussion section. You may post an answer on the discussion forum by Sunday 5 pm. An adequate answer will be between 250 and 500 words and demonstrate thoughtful engagement with the readings and class discussion. You must then come to the Monday lecture in order to discuss your answer in class in order to receive credit for the post. You may post up to three times. You must post at least once in order to pass the class.

Legal Research Quizzes: There are four of them. You will watch a brief (8-10 min) recorded lecture and then answer a few questions. You earn one point for each completed quiz, and you must complete all four in order to unlock the Case Summary task. So you should plan to do this task early in the term. The goal of the task is to give you a basic introduction to doing legal research and using the legal database NexisUni.

Case summary: A case summary is a concise, clear explanation of the facts, legal question, and judicial reasoning in a case. It should be no more than 1000 words. You may choose from the list of cases below. You may only submit one summary. If you don’t pass on the first attempt, you may revise it (resubmitting at any time) until you pass, up until March 15. You must complete the case summary to pass the class.

Cases:
Geer v Connecticut
Light v US
Hunt v US
Ward v Race Horse
Georgia v Tennessee Copper Co.
Pennsylvania v McMahon

Explainer: An explainer is a concise, clear explanation of a doctrine or legal question, aimed at a general audience. You may choose from the list of topics below. It should be no more than 2000 words. You may have to do additional research (beyond the assigned readings) to write an adequate explainer. You may only submit one explainer. If you don’t pass on the first attempt, you may revise it (resubmitting at any time) until you pass, up until April 5.

Topics:
- What is the interstate nuisance doctrine? Is it still relevant?
- What is public trust doctrine? Is it still relevant?
- Can the President reduce the size of national monuments without Congress’ permission? What is the President’s authority over national monuments?
- What is a regulatory takings? Why is this doctrine important for environmental policy?
- Do states have authority to address climate change without Congress allowing them to do so? Or do we need Congress to regulate in this area?
Why do members of indigenous tribes often have different hunting and fishing rights than other state residents?

Judicial opinion: A judicial opinion is a concise, clear judgment in one of the moot court debates. It should be no more than 1000 words. Debates will take place in class during weeks 10-16. You may only submit one judicial opinion. If you don't pass on the first attempt, you may revise it (resubmitting at any time) until you pass, up until April 17.

Book review: Choose one of the following books to read. Craft a concise, clear review that explains the author’s argument and how it contributes to scholarship on environmental law. You should consult closely with Dr. Smith and/or the GSI to develop a good review. It should be no more than 2000 words. If you don't pass on the first attempt, you may revise it (resubmitting at any time) until you pass, up until April 17.

- Wolf, Michael. The Zoning of America (University Press of Kansas, 2008)

Group tasks:

During week 3, you'll sign up to lead a class during the second half of the term. The group project involves producing an annotated bibliography, a 30-min presentation, and leading discussion. If your group is presenting on a case, you may choose to do a moot court instead of a formal presentation + discussion.

Annotated bibliography: Your group should prepare a bibliography of at least 15 scholarly sources (which may include cases) that you will be drawing on. Your annotation should explain what the source contributes to understanding your topic. You will also turn in peer evaluations of your group mates at this point. Your bibliography is due Wed Feb. 8. If you don't pass, you may revise it until you do, up until April 17.

Lead a class:

Presentation: Your group will have 30 minutes to present the case or work of scholarship assigned. I expect you to use 20 minutes to:
(1) Explain the relevant background to the case or scholarship. Put the case or scholarship in historical context and explain the legal problem being addressed;
(2) Explain the case/author’s response to the legal problem;
(3) Critically evaluate that response.
You should also prepare discussion questions and leave at least 10 minutes for discussion, which your group will lead.

OR

Moot court: If you are presenting a case, you may choose to do a moot court instead, with 2 group members arguing each side of the case. Moot courts proceed as follows:
Plaintiff: 10 minutes
Defendant: 10 minutes
Plaintiff rebuttal: 5 min
Defendant rebuttal: 5 min

You should argue the main substantive legal question presented in the case as though the court had not yet decided the issue. I encourage you to develop novel arguments that weren't offered in the original case. Dr. Smith will serve as the judge. I STRONGLY encourage the whole moot court group (both sides) to work collaboratively with the aim of putting on the best possible debate of the question.

You will also turn in a peer evaluation of your group mates after completing your presentation.

You are expected to meet with Dr. Smith at least 2 weeks before your presentation to discuss your plans or rehearse your moot court. Dr. Smith will set up extended office hours for these meetings. Look for the appointment scheduler on Canvas.