

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY

Urban Planning & Policy Development Program

Legal Aspects of Environmental Planning
34:970:523

Andrew R. Davis
Spring 2008

Tuesday Evenings, 6:10 P.M. to 8:40 P.M.
Civic Square Building, Room 113

This course will provide an introduction to the major legal principles involved in protecting the environment, including air, water and other pollution. Subjects covered will include: legal theories and procedures of environmental law; constraints on land use; property rights; takings claims; and wetlands issues. Key constitutional issues and statutes that impose environmental strictures on the planning and development of land will also be examined.

SYLLABUS

Day 1 – Jan 22 OVERVIEW OF THE AMERICAN LEGAL SYSTEM

[no assigned reading]	Constitutions, statutes and regulations
Supplement	Executive, legislative and judicial branches
	Common law, statutory law and administrative law
Supplement	Chronology of a typical case
Supplement	State and federal judicial process/Federal Circuits
Supplement	How to outline a judicial decision

Day 2 – Jan 29 BASIC THEMES & PHILOSOPHIES IN ENV. LAW

1-14	Ecological and Ethical Bases of Environmental Law
27-35	The Problem of the Commons
Supplement	Crichton, “Environmentalism as Religion”

Day 3 – Feb 5 CROSS-CUTTING THEMES IN ENV. LAW

42-65	Allied/Kepone Pesticide case study
65-75	Tracking Decades of Env. Law Development (through Note 7 only on p. 75)

Day 4 – Feb 12 COMMON LAW NUISANCE AND TOXIC TORTS

	<i>Nuisance case studies:</i>
103-115	The <u>Boomer Case</u> *
125-128	<u>NY v. Schenectady Chemical Co.</u> (case)
146-152	<u>NY v. Schenectady Chemical Co.</u> (defenses)
200-215	<i>Toxic tort case study:</i> The <u>Woburn Case</u> /A Civil Action
265-271	Relationship between Toxic Tort and Public Law, and Woburn timeline
Supplement videotape	Toms River, NJ articles Schlichtmann interview and NJ toxic tort report

Day 5 – Feb 19 THE PUBLIC TRUST DOCTRINE

1063-1074	Introduction to the Doctrine; Sax Articles
Supplement	<u>Marks v. Whitney</u>
1077-1080	Parklands: The <u>Paepke Case</u>
Supplement	New Jersey Meadowlands: <u>Sports Authority v. McCrane</u>
Supplement	New Jersey Tidelands Council/Riparian License
Supplement	Beach Access: <u>Raleigh Ave. Beach Ass'n v. Atlantic Beach Club</u> *
Supplement	NJDEP Public Access Rule

Day 6 – Feb 26 MID-TERM EXAMINATION-*NO CLASS SESSION*

Day 7 – Mar 4 PROPERTY RIGHTS & ENVIRONMENTAL LAW

	General concepts and background
1112-1122	Eminent Domain/Condemnation
	New Jersey Cases-Valuation of Contaminated Land
Supplement	<u>Housing Authority of New Brunswick v. Suydam</u> *
Supplement	<u>NJ Transit v. Cat in the Hat, LLC</u> *

Day 8 – Mar 11 PROPERTY RIGHTS & ENVIRONMENTAL LAW – ct'd

	“Takings”/Inverse Condemnation
1122	Introduction
1127-1135	Wetlands and regulatory takings: <u>Maine v. Johnson</u> ; <u>K & K Construction v. D.N.R., Michigan</u>
1135-1142	<u>Pennsylvania Coal v. Mahon</u>
1142-1163	Supreme Court Decisions summary and Notes (do not read Notes 10 & 11)
1165-1172	Public Trust and Takings; Remedies; and Exactions

Note: No class March 18 – Spring Break

Day 9 – Mar 25 NJ TAKINGS ISSUES & KEY ENVIRONMENTAL LAWS

Supplement	Wetlands and regulatory “takings” in New Jersey: <u>Loveladies I</u> ;* <u>Loveladies II</u> *
Supplement	Key New Jersey Statutes Tidal Wetlands Act Freshwater Wetlands Act Waterfront Development Act CAFRA Pinelands Protection Act Hackensack Meadowlands Act Highlands Act

Day 10 – Apr 1 LAND USE BASED ENV. PROTECTION STATUTES

1216-1218	Introduction Coastal Regulation
1219-1224	The Federal Coastal Zone Management Act Wetlands Regulation/404 Program
1233-1244	Section 404 of the Clean Water Act: <u>Bersani</u> Jurisdictional Issues
362-368	<i>The Migratory Bird Rule:</i> <u>Solid Waste Agency of Northern Cook County v. USACE</u> (do not read Note 8)
Supplement	<i>Navigable Waters:</i> <u>Rapanos and Carabell</u>

Day 11 – Apr 8 NATIONAL ENVIRONMENTAL POLICY ACT

471-478	NEPA legislative history and overview
479-507	The Chicod Creek Case: <u>NRDC v. Grant</u>
507-513	Environmental Impact Statements (EIS’s) generally
Supplement	New Jersey’s Executive Order 215

Day 12 – Apr 15 CLEAN WATER ACT

620-622	Overview of the Act
622-627	Water quality issues [<i>skim</i>]
627-635	TBELS: <u>EPA v. California</u>
Supplement	Water Quality Based Permitting, TMDLs, and Management of Nonpoint Source Pollution

Day 13 – Apr 22 “ROADBLOCK STRATEGIES” STARK PROHIBITIONS

773-815 “Roadblock Strategies” – Endangered Species Act
Supplement **NJDEP Regulations**
Article: “Land Use Increasingly Shaped by DEP”

Day 14 – Apr 29 CLEAN AIR ACT

551-561 History and Structure
Supplement Massachusetts v. EPA

Day 15 – May 6 FINAL EXAMINATION

REQUIRED READING:

Casebook -- Plater, Abrams, Goldfarb, Graham, Heinzerling and Wirth, Environmental Law And Policy: Nature, Law, And Society, Third Edition, Aspen Publishers (2004), ISBN: 0-7355-4143-4.

Supplements - Supplemental reading material, including cases and articles, will be posted on the Sakai@Rutgers Course Website, <https://sakai.rutgers.edu/portal>. Supplemental Supplements may be distributed in class or posted to the site during the semester.

COURSE REQUIREMENTS and OTHER ADVICE:

1. **20%** of the grade will be based on class participation. Therefore, attendance is very important.
2. Participation means *meaningful input*, not the mere recitation of personal opinions, and not simply discussion of information or knowledge you acquired elsewhere.
3. You are expected to have read all of the assigned reading material *prior to class*, and be prepared to discuss issues meaningfully *during class*.
4. You are required to write a **Legal Brief** on every assigned court opinion identified with an asterisk (*). These briefs will be posted in the Assignments Section of the Sakai Course Website, and will correspond to the “Day” #. You are strongly encouraged to read each opinion twice. You most likely will not adequately comprehend the significance of the cases after only one reading.
5. **20%** of the grade will be based on the progress in the quality of your Legal Briefs. Legal Briefs are to be prepared in Microsoft Word and must be uploaded into the appropriate boxes on Sakai Course Website by 6:00 P.M. on the night before the class for which they are assigned. You should also bring the briefs with you to class. I will provide electronic comments on your briefs where necessary, which will be “returned” to you electronically on the website. Each brief will not

- be “graded” per se. This portion of your grade will reflect the *progress in the quality* of your legal briefs over the course of the semester.
6. **30%** of the grade will be based on a “take-home” mid-term exam/paper.
 7. **30%** of the grade will be based on an “in-class” final exam.
 8. You cannot get a decent grade if you do not read the materials *before* class, or if you do not attend and participate in class discussions.
 9. Cell phones must be turned off before you come into class.
 10. If you do the work and follow these pointers you will enjoy the course, and most importantly, learn a lot of information you will use throughout your career.

COMMUNICATING WITH ME:

To schedule a meeting or communicate generally, contact me at adavis@psands.com, as I am on that account regularly. I also have a Rutgers e-mail account, which is: ardavis@rci.rutgers.edu. However, I do not check the Rutgers account regularly, and thus cannot guarantee that I will respond promptly to messages sent there.

APPENDIX: ACADEMIC INTEGRITY STATEMENT

Academic Misconduct: A Bloustein School Perspective

Academic misconduct includes cheating, plagiarism, failure to cite sources, fabrication and falsification, stealing ideas, and deliberate slanting of research designs to achieve a pre-conceived result. We talk about misconduct and ethical behavior in classes and expectations are set forth in student handbooks and catalogues. For example, it is presented on pages 545-547 in the New Brunswick Undergraduate Catalogue for the years 2003 through 2005 and on pages 16-18 of the Edward J. Bloustein catalogue for the years 2003 through 2005. We are not repeating that material here. Note, however, that penalties for misconduct can range from failing an assignment/exam or dismissal from the university.

The Bloustein School is appending this memorandum to your course syllabus because we recently have detected obvious cases of plagiarism. We have found far fewer cases of other forms of academic misconduct, but we find several every year. It is imperative that you understand that unethical academic conduct is intolerable, and it is completely preventable.

Academic misconduct almost always happens for two reasons. One is ignorance of academic rules and practices. For example, in virtually every recent plagiarism case in the School, material has been taken from an Internet site and placed in text without appropriate note or attribution. You must learn the proper rules for attribution. If you are not sure, ask your instructor! If you do not know the rules that govern the use of data sets, attribution, analysis and reporting of these sets, the faculty will help you. There is no such thing as a stupid question regarding this subject. Pressure is the second common reason for academic misconduct. Students, faculty, every one of us is subject to deadline, financial, self-worth, peer, and other pressures. If you are potentially allowing pressure to drive you to misconduct, please step back and resist that urge. You can cope with pressure in a positive way by reaching out to friends, counselors, and faculty members. Within the Bloustein School community, you will find understanding people and positive direction.

The Bloustein School plays an important role in the planning and public policy agenda. Our work and our students must be above reproach.