

**ENSP 330: Introduction to Environmental Law
Spring 2021**

T/Th 12:30 to 1:45 p.m.
ONLINE, SYNCHRONOUS

Syllabus

Instructor:

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Office Hours: By appointment

Course overview and objectives:

This course is designed to provide students with an overview of environmental law – from its common law roots to its current role in the modern regulatory regime. The course will begin with a brief overview of the U.S. legal system generally in order to provide a framework for understanding the case law and statutory law presented throughout the course. The course will then examine the roots of environmental law - from its beginnings in the common law to the dawn of the environmental movement in the 1970s.

The environmental regulatory structure will then be placed in context through a discussion of the role of agencies, Congress, and the courts. Once these background principles have been established, the course will provide an introduction to case law interpreting the major federal environmental statutes that seek to control pollution and protect natural resources including the Clean Air Act, Clean Water Act, Endangered Species Act, and National Environmental Policy Act. The course will also explore the civil and criminal enforcement of these laws, and the important role that citizens play in the enforcement process.

While the course focuses on U.S. environmental law, it will also introduce international environmental law, with particular emphasis on China's role in combatting global climate change. Throughout the course, students will consider how interpretation of environmental law by the courts furthers or hinders environmental sustainability.

The course will culminate with student debates on current issues in environmental law. Students will prepare for these debates by completing a writing assignment on their debate topic.

Goals/learning outcomes:

By the end of this course, students will be able to:

- Identify, describe, and analyze legal opinions by completing written “briefs” of environmental law cases
- Recognize the traits needed to succeed in law school and types of environmental law careers by attending a law school/law career panel and/or writing a reflection and evaluation paper

- Identify and understand the major environmental laws and major cases that interpret those laws by successfully completing a mid-term and final exam
- Analyze major environmental laws and case law applicable to a current environmental issue by writing a legal memorandum or brief
- Defend a position on a current environmental issue by participating in an oral debate

Required Course Materials:

PERCIVAL, SCHROEDER, MILLER & LEAPE, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY (Wolters Kluwer, 8th ed. 2018). (ISBN 978-1-8211-4)

All other materials will be available through the ELMS Canvas System, <http://elms.umd.edu> or on Web links provided on the list of reading assignments below. To access book excerpts in ELMS, go to the Course Reserves tab in ELMS. Articles can be found at the Files tab in ELMS. These materials will be designated with “ELMS” in the list of assignments below. Web links should be self-explanatory.

In addition, our class has access to the Environmental Law Reporter News & Analysis as well as weekly case updates. These materials will be made available to you throughout the semester.

Class preparation:

The course is organized in a seminar format, with lectures supplemented by discussion of assigned readings and problem exercises. **This format will continue during online classes and students will be expected to participate virtually as they would in person. The readings will be a primary topic of discussion during class, so students should come prepared to discuss the assigned readings. To ensure reading is completed in advance of class, students will be required to complete case briefs in advance of class.** More details about these briefs will be provided. This course will require an average of 6-9 hours of out-of-class reading, research and/or writing each week. As you read, take your time, and read twice if necessary. Focus your attention on the cases and introductory material. Students will occasionally be assigned Problem Exercises in class. Student groups will discuss the Exercises and will be responsible for reporting their findings and conclusions to the rest of class. The assigned readings will help students to be prepared for these exercises.

E-mail List/ELMS:

An e-mail list will be set up for this class through the ELMS/Canvas System. E-mail addresses are pulled from the University Directory listing. Please be sure that your preferred and current e-mail address is listed in the Directory. You can check and update this information by going to Testudo (www.testudo.umd.edu/apps/saddr/). I will be posting course documents and information on the ELMS/Canvas system, so it is important that you use this system and that you are checking your e-mail for any announcements or assignments. **Please note that I will communicate with the class through e-mail and ELMS regarding any class cancellations, changes in meeting times, or room changes.**

Course Requirements and Grading:

You will have the opportunity to earn up to 1000 points based on the following:

<u>Assignment</u>	<u>Points</u>	<u>Due Date</u>
Case briefs	70	All semester (See "CB")
Exam practice assignment	50	Tu Feb 23
Memo Topic	20	Tu Mar 2
Mid-term exam	225	Tu Mar 9
Library Research assignment	30	Th Mar 25
Memo rough draft	20	Tu April 13
Memo assignment	250	Tu April 27
Debate assignment	50	Tu April 27 – Th May 6
Debate reflection	30	Tu May 11
Final exam	225	Tu May 18
Student participation	30	All semester
Total Points	<u>1,000</u>	

Your total grade is out of 1000 points. Grades will be awarded by converting the points earned into a percentage. 100-98% = A+, 97-92 = A, 91-90 = A-; 89-88 = B+, 87-82 = B, 81-80 = B-; 79-78 = C+, 77-72 = C, 71-70 = C-; 69-68 = D+, 67-62 = D, 61-60 = D-; ≤ 59 = F. You are advised to keep all graded work throughout the semester in case you have a question about your final course grade. Also, keep a personal record of your accumulated points as the semester progresses by visiting ELMS. All grades will be posted on ELMS and you can make an appointment to view exams after they are graded.

You may calculate your percentage grade at any time during the semester by dividing the number of points earned by the number of points possible at that point in the semester. Please see me if you have any questions.

Papers and homework assignments must be submitted **through ELMS** and unless you see me in advance of the due date and obtain an approved excuse, 5 percent of the total possible points will be deducted from your score for every day the homework or paper is late, including weekend days. (So, for example, on a 100-point scale, a student who would have earned a 94 on a timely paper will earn 89 if the same paper is turned in one date late, 84 if turned in 2 days late, etc.). **If you are having trouble meeting a deadline, please see me in advance of the due date to discuss the issue and any accommodations that may be necessary.**

If you would like to **appeal any grade** that you have received in this course, you may file an appeal within one week of the return of the assignment. Please submit the entire exam, homework, or paper and attach a typed explanation of the reason why you think your grade should be changed.

Memo and Debate:

This assignment will involve each student in an analysis and discussion of a current issue in environmental law. Students will have the opportunity to choose from a list of topics related to an issue of current environmental significance. There will be 4 students assigned to each of the topics. Each student will work individually on researching and writing on the topic. Each group of 4 students will then be divided into 2 teams of 2 for purposes of conducting a debate/oral argument on the topic. 2 students will take the position of each side of the debate. Further details about this assignment will be provided in class.

Homework:

There will be one ongoing assignment and three additional homework assignments this semester. Students will complete case “briefs” “CBs” throughout the semester, an exam practice assignment, a library research exercise, and a reflection/evaluation exercise related to the debate assignment. More details about each of these assignments will be forthcoming.

Tips for Success in an Online Course:

1. **Participate.** Discussions and group work are a critical part of the course. You can learn a great deal from discussing ideas and perspectives with your peers and professor. Participation can also help you articulate your thoughts and develop critical thinking skills.
2. **Manage your time.** Make time for your online learning and participation in discussions each week. Give yourself plenty of time to complete assignments including extra time to handle any technology related problems.
3. **Login regularly.** Log in to ELMS-Canvas several times a week to view announcements, discussion posts and replies to your posts. You may need to log in multiple times a day when group submissions are due.
4. **Do not fall behind.** This class moves at a quick pace and each week builds on the previous. It will be hard to keep up with the course content if you fall behind in the pre-work or post-work.
5. **Use ELMS-Canvas notification settings.** Canvas ELMS-Canvas can ensure you receive timely notifications in your email or via text. Be sure to enable announcements to be sent instantly or daily.
6. **Ask for help if needed.** If you need help with ELMS-Canvas or other technology, IT Support. If you are struggling with a course concept, reach out to me, and your classmates, for support.

Course Related Policies:

Information on university-wide course policies can be found at:

<http://www.ugst.umd.edu/courserelatedpolicies.html>. Please let me know if you have questions about these policies.

Topics include:

- **Academic Integrity** What is cheating? What is plagiarism? What is the Honor Pledge?
- **Code of Student Conduct** What behavior is prohibited?
- **Sexual Misconduct** What to do in case of sexual harassment or sexual assault.
- **Discrimination** Procedures to prohibit discrimination, complaints about discrimination, harassment, and retaliation.
- **Accessibility** Information about disability support accommodations.
- **Attendance, Absences, or Missed Assignments** Read this prior to Schedule Adjustment date. **Anticipating the potential for unanticipated absences during the pandemic, [Self-certified notes](#) will serve as documentation for COVID-19-related absences or missed course expectations.**

- **Student Rights Regarding Undergraduate Courses** What should I find in the course syllabus? Am I allowed to see my exams after they are graded?
- **Official UMD Communication** Use of email, communication with faculty, communication about cancelled class meetings, and weather-related or other urgent notifications.
- **Midterm Grades**
- **Complaints About Course Final Grades**
- **Copyright and Intellectual Property** Who owns the work that I produce in class.
- **Final Exams and Course Evaluations**
- **Campus Resources** ELMS, counseling, learning workshops, tutoring, writing help, etc.

Course Specific Policies:

For this course, some of your assignments will be collected via **Turnitin** on our course ELMS page. I have chosen to use this tool because it can help you improve your scholarly writing and help me verify the integrity of student work. For information about Turnitin, how it works, and the feedback reports you may have access to, visit [Turnitin Originality Checker for Students](#)

I allow the use of **laptops** in class for classwork and note taking only. Laptops should not be used for any other reason during class. I expect you to make the responsible and respectful decision to refrain from using your **cellphone** in class. If you have critical communication to attend to, please excuse yourself and return when you are ready.

Basic Needs Security:

If you have difficulty affording groceries or accessing sufficient food to eat every day, or lack a safe and stable place to live and believe this may affect your performance in this course, please visit <http://go.umd.edu/basic-needs> for information about resources the campus offers you and let me know if I can help in any way.

Get Some Help:

Taking personal responsibility for your own learning means acknowledging when your performance does not match your goals and doing something about it. I hope you will come talk to me so that I can help you find the right approach to success in this course, and I encourage you to visit tutoring.umd.edu to learn more about the wide range of campus resources available to you. In particular, everyone can use some help sharpen their communication skills (and improving their grade) by visiting ter.ps/writing and schedule an appointment with the campus Writing Center. You should also know there are a wide range of resources to support you with whatever you might need (see go.umd.edu/assistance), and if you just need someone to talk to, visit counseling.umd.edu or [one of the many other resources on campus](#).

Names/Pronouns and Self Identifications:

The University of Maryland recognizes the importance of a diverse student body, and we are committed to fostering inclusive and equitable classroom environments. I invite you, if you wish, to tell me how you want to be referred to both in terms of your name and your pronouns (he/him, she/her, they/them, etc.).

The pronouns someone indicates are not necessarily indicative of their gender identity. Visit trans.umd.edu to learn more. Additionally, how you identify in terms of your gender, race, class, sexuality, religion, and dis/ability, among all aspects of your identity, is your choice whether to disclose (e.g., should it come up in classroom conversation about our experiences and perspectives) and should be self-identified, not presumed or imposed. I will do my best to address and refer to all students accordingly, and I ask you to do the same for all of your fellow Terps.

Communication with Instructor:

Email: If you need to reach out and communicate with me, please email me at xxxxxxxxx@umd.edu. Please DO NOT email me with questions that are easily found in the syllabus or on ELMS (i.e. When is this assignment due? How much is it worth? etc.) but please DO reach out about personal, academic, and intellectual concerns/questions.

ELMS: I will send IMPORTANT announcements via ELMS messaging. You must make sure that your email & announcement notifications (including changes in assignments and/or due dates) are enabled in ELMS so you do not miss any messages. You are responsible for checking your email and Canvas/ELMS inbox with regular frequency.

Communication with Peers:

With a diversity of perspectives and experience, we may find ourselves in disagreement and/or debate with one another. As such, it is important that we agree to conduct ourselves in a professional manner and that we work together to foster and preserve a virtual classroom environment in which we can respectfully discuss and deliberate controversial questions.

I encourage you to confidently exercise your right to free speech—bearing in mind, of course, that you will be expected to craft and defend arguments that support your position. Keep in mind that free speech has its limit and this course is NOT the space for hate speech, harassment, and derogatory language. I will make every reasonable attempt to create an atmosphere in which each student feels comfortable voicing their argument without fear of being personally attacked, mocked, demeaned, or devalued.

Any behavior (including harassment, sexual harassment, and racially and/or culturally derogatory language) that threatens this atmosphere will not be tolerated. Please alert me immediately if you feel threatened, dismissed, or silenced at any point during our semester together and/or if your engagement in discussion has been in some way hindered by the learning environment.

Week #	Date	Topic	Reading (to be completed <i>before</i> today's class)	Activities, Assignments and Guest Lecturers
1	Tues. 1/26	Intro to the Course, Review of the Syllabus, Intro to the U.S. Legal System	Review the syllabus	
	Thurs. 1/28	Intro to Environmental Problems/Intro to the U.S. Legal System	Percival, Environmental Regulation, pp. 1-7, 65-67 Breyer, Making our Democracy Work, Appendix B, pp. 228-232 (ELMS, Course Reserves, p. 37-41 of pdf) The Constitution	Case Briefs Assignment Posted
2	Tues. 2/2	Common Law Roots of Environmental Law	Percival, Environmental Regulation, pp. 67-77, 80-93 (<i>Madison v. Ducktown, Missouri v. Illinois, Georgia v. Tennessee Copper Co.</i>)	CB 1 Due
	Thurs. 2/4	Regulatory Legislation in Historical Perspective	Percival, Environmental Regulation, pp. 93-104 (skim), 110-116 (<i>AEP v. Connecticut</i>)	CB 2 Due
3	Tues. 2/9	Statutory Interpretation Catch up day/review and questions	Breyer, Chapter 8, pp. 88-102 (ELMS, Course Reserves, p. 4-18 of pdf)	
	Thurs. 2/11	Standing to Sue	Percival, Environmental Regulation, pp. 116-127 (<i>Sierra Club v. Morton, Massachusetts v EPA</i> – standing only)	CB 3 Due
4	Tues. 2/16	Standing to Sue	Juliana v. United States, 947 F.3d 1159 (9 th Cir. 2020), pp. 11-15, 18-33, 44-48, and 61-64 of the numbered pages of the opinion	<u>Discussion exercise: Standing</u> CB 4 Due
	Thurs. 2/18	The Commerce Clause	Percival, Environmental Regulation, pp. 1022-1029 (<i>Gibbs v. Babbitt</i>)	CB 5 Due Exam Practice Assn Posted

Week #	Date	Topic	Reading (to be completed <i>before</i> today's class)	Activities, Assignments and Guest Lecturers
5	Tues. 2/23	Judicial Review and the Regulatory Process Introduction to the Memo and Debate Assignment	Percival, Environmental Regulation, pp.174-178, 190-198 (<i>Chevron v. NRDC</i>) Breyer, Chapter 9, pp. 106-120 (ELMS, Course Reserves, p. 22-36 of pdf)	CB 6 Due Memo & Debate Assn Posted and Explained Exam Practice Assignment Due
	Thurs. 2/25	Water Pollution Control: Clean Water Act	Percival, Environmental Regulation, pp. 667-669, 721-729 (<i>US v. Plaza Health</i>) <u>County of Maui, Hawaii v. Hawaii Wildlife Fund, 140 S. Ct. 1462 (2020)</u> pp. 5-25 of the pdf (Justice Breyer's majority opinion and Justice Kavanaugh's concurring opinion)	CB 7 Due
6	Tues. 3/2	Water Pollution Control: Clean Water Act	Percival, Environmental Regulation, pp. 673-696 (<i>US v. Riverside Bayview Homes, SWANCC v. Army Corps of Engineers, Rapanos v. US</i>) Additional reading TBA	CB 8 Due Memo & Debate Topic due <u>Discussion Exercise: Clean Water Act</u>
	Thurs. 3/4	Water Pollution Control: Clean Water Act wrap up Mid-term review	Review your notes	Memo & Debate Topics Assigned
7	Tues. 3/9	MID TERM EXAM		
	Thurs. 3/11	Career Panel		

8	Sun. 3/14- Sun. 3/21	SPRING BREAK		
	Tues. 3/23	Legal Writing and Research	Review ENSP 330 Library Research Page	Presented by Library Staff Library research assignment posted
8	Thurs. 3/25	International Climate Change Law	Constitutional Democracies in Crisis (M. Graber, S. Levinson & M. Tushnet, eds., Oxford Univ. Press 2018), Chapter 34, Percival, The Climate Crisis and Constitutional Democracies (ELMS, Files, Readings) Sandalow, ASPI Issue Paper: China's Response to Climate Change: A Study in Contrasts and a Policy at a Crossroads (ELMS, Files, Readings)	Guest Lecture, Professor Robert Percival, University of Maryland School of Law Library assignment due

Week #	Date	Topic	Reading (to be completed <i>before</i> today's class)	Activities, Assignments and Guest Lecturers
9	Tues. 3/30	Clean Air Act and Climate Change	Percival, Environmental Regulation, pp. 530-540 (<i>Massachusetts v. EPA</i> – CAA only), 553-556	CB 9 Due
	Thurs. 4/1	Clean Air Act and Climate Change	Reading TBA on updates	
10	Tues. 4/6	Questions on memo assignment and presentations (Break out groups)		
	Thurs. 4/8	Environmental Assessment: The National Environmental Policy Act	Percival, Environmental Regulation, pp. 911-921, 924-927 (<i>Calvert Cliffs Coordinating Committee v. US AEC, Strykers Bay v Karlen</i>), 948-953, 962-971 (<i>Sierra Club v. FERC</i>) Additional TBA	CB 10 Due

11	Tues. 4/13	Finish NEPA Protection of Biodiversity – The Endangered Species Act	Miller-Travis, Vernice, Promise to Keep, The Environmental Forum, Nov./Dec. 2019 (ELMS, Files, Readings) Percival, Environmental Regulation, pp. 1004-1013 (TVA v. Hill), 1036-1038	CB 11 Due <u>Discussion Exercise: NEPA</u> Memo Rough Drafts due
	Thurs. 4/15	Protection of Biodiversity – the Endangered Species Act	Percival, Environmental Regulation, pp. 1061-1073 (<i>Babbitt v Sweet Home</i>), 1077 (Problem exercise)	CB 12 Due <u>Discussion Exercise: ESA</u> Section 9 Take
12	Tues. 4/20	Citizen Suits and Civil Enforcement	Percival, Environmental Regulation, pp. 1085-1086, 1139-1141, 1098-1101, 1107-1112 (<i>Sierra Club v. Cedar Point Oil</i>)	CB 13 Due <u>In-Class Discussion Exercise:</u> Calculating a Civil Penalty
	Thurs. 4/22	Criminal Enforcement	Percival, Environmental Regulation, pp. 1120-1123, 1138-1139 ABA, Environmental Enforcement, Law and Strategy, Chapter 2, Environmental Criminal Enforcement, Barrett, Hamel, and Solow, pp. 45-50 (ELMS, Files, Readings, pp. 3-8 of the pdf)	Guest Lecture, Warren Hamel, Partner, Venable LLP Debate reflection assignment posted
13	Tues. 4/27	Debates		Memos due
	Thurs. 4/29	Debates		
14	Tues. 5/4	Debates		
	Thurs. 5/6	Debates		
15	Tues. 5/11	Wrap up and Final Exam Review	Study	Debate reflection assignment due
16	Tues. 5/18	FINAL EXAM – MAJOR SCHEDULED GRADING EVENT	1:30 – 3:30 p.m.	