

LAW 387.001/587D.001: ENVIRONMENTAL LAW*

Spring 2021

Th 2-5PM

[Via Zoom](#) - Virtual Allard Hall

(I will meet you from) x^mməθk^wəyəm (Musqueam) Traditional Territory

Course Instructor	Contact Details	Office Hours
Professor Jocelyn Stacey (she/her/hers)	Email: * stacey@allard.ubc.ca *See part G about contacting me with substantive questions	Zoom drop-in time: Wed 1230-130PM Meeting ID: 681 4098 9953 Passcode: 362935 I am also available by appointment.

A. Why Take This Course?

This course covers the basic architecture of Canadian environmental law. For those interested in environmental law and who intend to pursue further topic specific courses, this course provides an essential introduction to environmental problems and the legal issues that they engage. For everyone, this course provides an excellent opportunity to develop your understanding of core doctrinal areas of law and how they are applied, stretched, challenged, torqued, rendered inadequate by pressing environmental issues.

This course covers a variety of environmental issues—e.g. pollution, climate change mitigation, endangered species protection—and many of you will find these topics inherently interesting. We can also think of these issues as a subset of societal problems that we seek to address through law. We will explore the various ways Canadian law governs our relationship with the environment and will question the adequacy of existing legal responses to environmental issues. We will practice some of the legal skills needed to be agents of legal change.

B. Course Objectives

By the end of this course, you should have a solid grasp of the current legal frameworks that exist in Canadian environmental law, and the environmental issues that these laws address (and fail to address). In small groups, we will work through a series of environmental law problems throughout this course. As a result of this practice, by the end of the course you should be able to:

* I would like to express my sincere gratitude to all those who have contributed to the current version of this course and to my thinking about teaching environmental law, including: the late Roderick A. Macdonald, Kate Berger, Karin Mickelson, Ben Richardson, the community of Environmental Law scholars and teachers across the country, the many students with whom I have shared the classroom and those who have helped me improve the course as research assistants.

1. Understand how the law changes over time through common law reasoning, statutory interpretation, legislated reform, and law enforcement strategies;
2. Understand and critique the role of law in giving effect to environmental policy and addressing environmental problems;
3. Appreciate the social, political, economic and ecological context of Canadian environmental law and policy;
4. Appreciate the role of Indigenous legal relationships to the environment in Canada and identify the impacts on environmental governance of encounters between Indigenous and Canadian legal orders;
5. Interrogate how complex environmental issues challenge core legal doctrine, e.g. in constitutional, administrative and tort law;
6. Define and evaluate the strengths and weaknesses of different legal tools for mediating environmental problems;
7. Collaborate with your colleagues to produce sound and creative legal solutions to environmental problems; and
8. Pose concise questions and articulate sound legal arguments about the relationship between law and environmental problems.

C. Required Course Materials

Required materials for this course are listed in the reading guide for each class and are downloadable on the course's [Canvas](#) site.

You may wish to consult additional materials to support your learning in this course. The following materials are at the law library and are available using the [library's pick-up service](#).

- William A. Tilleman et al, eds, *Environmental Law and Policy*, 4th ed (Toronto: Emond Montgomery, 2020): [on order at the library](#)
- Meinhard Doelle and Chris Tollefson, *Environmental Law: Cases and Materials*, 3rd ed (Toronto: Carswell, 2019): [KE3619 .D63 2019](#)
- Jamie Benidickson, *Environmental Law*, 5th ed (Toronto: Irwin Law, 2019): [KE3619 .B46 2019](#)

I am happy to suggest additional resources for who are looking for additional support or to extend their engagement with the topics in this course.

D. Teaching and Learning in a Pandemic

This is not an ideal time to be teaching or learning environmental law. Most of us are not used to teaching and learning in an exclusively online setting. Many of us are experiencing extraordinary constraints. All of us are experiencing new stresses and inconveniences. We will strive to be generous as members of the law school community and respectful and kind in all our interactions in this course.

As always, you are responsible for your learning in this course. You are also accountable to your colleagues. You will be placed in a small study group with 4-5 of your colleagues. This will be your support network – your team or firm – for the duration of the semester. Some of your class time will be spent in break-out rooms with your group. As a group you will complete the second part of the midterm assignment, which all participating members of your group will receive the same grade. I expect you to develop your own system for working collaboratively together and to check-in with one another and look out for one another during this semester of remote learning where the potential for social isolation is especially high. If there is someone in your group who appears to be struggling or who is unreachable, please contact me or Tania Astorino, Assistant Dean Students.

E. The Structure of this Course

Environmental Law consists of twelve weekly sessions. Each week, we will cover a new topic. You will be introduced to the weekly topic through a Reading Guide, which also sets out the required readings for the topic and the preparation needed for the class exercise. I suggest checking in with your group members prior to our class time (e.g. through text/email/discussion board) to ensure everyone understands the class activity and to consider assigning roles for class time.

If you would like to meet virtually as a study group outside of class time, you can meet for up to 40 minutes at a time using a free Zoom account. If you would prefer to meet using Collaborate Ultra, just let me know and I will gladly open a dedicated room for your group.

Class time is especially privileged time. You are expected to attend class having read and reflected on the required readings and watched and digested any pre-recorded mini-lectures. Class time will function like a workshop, where we work on the class exercise and addressing questions that arise from the materials and exercise. This is not that different from an in-person class experience in one of my courses. That is, we spend our class time together practicing close reading, critical reflection, analytical thinking, and application. These are the skills I will be looking for on the assignments and, more importantly, they are what the legal skills you will need to thrive in your careers after law school. We will *not* spend three hours on Zoom together each week. Rather the active online class time will be dictated by the requirements of the exercise. For instance, one week we may meet as an entire group for 2 hours, while another I may assign half of the class to half of the scheduled class time. Note that the first and tenth classes are asynchronous, which means we will not meet online during our set class time. The reading guide for each week will set out the structure for our online class time. **Consult the reading guide and make a note in your calendar of when during our assigned class time you will be meeting on Zoom.**

F. Technology Requirements & Privacy

This course will rely on Canvas and Zoom as the primary mechanisms for teaching and learning. All course materials, exercises and assignments will be available through Canvas. You will have a group discussion thread, where you can discuss the course with your study group and pose questions to me (when necessary). Your study group may decide to use other modes of communication (e.g. Slack or text message), but it is essential that these are inclusive of everyone in your group. As a group you can collaboratively draft documents through

Canvas pages (which I can enable for you, if requested) or use Google Docs. Some of the work in this course will also require you to do some independent research using CanLII and government websites.

I will communicate with you regularly about aspects of the course using the “Announcements” feature in Canvas. Please check your settings in Canvas to ensure that you are alerted to these messages in the way that makes the most sense for you.

We will use Zoom for our class time. For teaching and collegial discussion, it is great if folks have their cameras on. It allows me, as a teacher, to respond and adapt to your non-verbal feedback. But I also recognize that there may be classes or specific times when it not possible or comfortable for you to have your camera on. I will ask that everyone upload a profile picture to Zoom, so that we can at least see your face if your camera is off.

G. Contacting Me

I will hold weekly office hours on Zoom from 1230-130 on Wednesdays. There is no appointment necessary. Please feel free to ‘drop-in’ (you will be placed in the waiting room and I’ll let you in as soon as I’m free). I’d welcome meeting with your study group to address questions that have come up in your work (or with a representative from your group who can report back). I’m also happy to meet one-on-one to discuss the course or even just to have a casual check-in about law school life. I will include the link to my office hours on Canvas.

You can of course email me at any time. I will do my best to respond in a timely way (though please recognize that there are more challenges for me this year than usual in responding to your emails). It is helpful for me if you include “Environmental Law 387” in the subject line. If it is possible to respond to your email in writing, I will do so. I will also copy and paste your question (anonymously) as well as my answer to the Q&A Page in Canvas. Please note I will generally not answer questions framed as, “What proposition does para X of Case A stand for?” I will however respond to a question framed as, “Am I correct in understanding that para X of Case A stands for this...” If you are not at a point where you can ask the latter type of question, then we should make an appointment to discuss the course in more detail than email can allow.

H. Course Evaluation

Engagement – 20 MARKS

The success of this course depends on the engagement and participation of all of us. The evaluation methods for this course reflect the effort and time it takes to be fully engaged in class time. Engagement means more than simply showing up. At a minimum, it requires preparing for class, being attentive to those who are speaking, and sharing responsibility for leadership and facilitation of group exercises. It can also include contributing to class learning through in-class questions or the online discussion board.

I will evaluate your engagement *individually, holistically* and *qualitatively* and, as I explain below, in conjunction with your reflection memos on your engagement. I have evaluation criteria on the course website, which are open to your comment and feedback before I finalize for the semester.

As part of your course engagement grade, you may submit two short reflections describing your engagement with our class. I will use your reflections to inform my additional, independent assessment of your engagement. One of the reasons for having you submit these reflections is that you know yourself best: how you learn and how you can contribute to class time. A second reason for the reflections is that it helps you strategize about how one *does* environmental law. This is an area of law in which the problems are fast-paced, global in scale, existential in nature and for which conventional legal tools often seem poorly suited. Confronting these challenges often elicits a range of personal responses. Your reflections provide an opportunity to grapple with your responses, rather than pushing them aside in service of getting through to the end of the semester. Doing environmental law means feeling environmental law (see Part J below).

Each reflection can be up to **750 words**. Each reflection should address one or more of the following questions:

1. Provide an example of how you helped your colleagues learn or how you productively addressed a challenge as a team.
2. Provide an example of how your life experience informs your perspective on environmental law. That is, how are you situated in relation to the materials in this course? What perspectives do you need to be open to in order to improve your ability to understand environmental challenges and carefully evaluate potential responses?
3. Provide an example where a class exercise raised an issue that you might encounter in legal practice. Describe what you would change about how you handled this situation if you encounter it in practice.

Strong reflections will link concrete examples of your contributions to analysis of the learning objectives of our course. I encourage you to keep notes on engagement throughout the semester so that you can draw on these when drafting your reflection. Reflections can improve your engagement grade in the course.

Reflection 1 Due: Friday, Feb 12 5PM

(note I will not read this until the end of the semester, if there is something about the course you would like to discuss, please send me a note or drop into office hours)

Reflection 2 Due: Friday, April 9 5PM

Mid-term Assignment (Total 20 MARKS)*

Individual component (Part I) – 10 MARKS

Group component (Part II) – 10 MARKS

* A student who receives an approved concession for all or part of the midterm assignment will have the grade allocation redistributed to the final assignment.

The mid-term assignment builds on in-class exercises and provides you with an opportunity for formal, written feedback from me in preparation for the final assignment. Instructions for the mid-term assignment will be provided as soon as they are ready. The assignment has two parts – an individual component and a group component. You are evaluated on both parts.

Part I is due by Monday, March 15th 5PM on Canvas. This individual component is to be uploaded to Canvas for grading by the deadline and circulated to your group between 5PM and midnight on Monday, March 15th to facilitate the group component of your assignment.

Part II is due Thursday, March 18th 5PM on Canvas.

Final Assignment (Total 60 MARKS)

Proposal - 10 MARKS

Final Submission - 50 MARKS

Your final evaluation is an assignment that you will design for yourself, in consultation with me and subject to my approval. The assignment can take many forms. You might want to write a research paper, take an existing judicial decision and write your own set of reasons for judgment, draft a factum based on ongoing or past litigation, draft a submission for a public notice and comment period on new laws or regulations, produce a film or podcast, develop a public education module, undertake a volunteer secondment and reflection/research paper, draft new environmental legislation, and so on. The assignment instructions set out parameters – including estimated lengths – for designing an assignment worth 50% of your grade.

Regardless of form, all assignments will be assessed on the grounds of independent analysis; comprehension of the law; coherence and clarity; and achievement of the goals specific to the individual assignment. You can find more information about these criteria in the assignment instructions on Canvas.

You must submit to me a proposal for your assignment by **Friday, February 26th at 5PM**.^{*} A template for the proposal is available on Canvas. This proposal is worth 10% of your overall grade and you will be bound by the proposal that you submit, including the goals and objectives you set for yourself. You may submit to me draft proposals up to February 19th (a week prior to the deadline) and I will provide feedback on your draft(s). I strongly recommend meeting with me during office hours or in a separate appointment to discuss your proposal before you submit it to me for grading and approval. Ensure you consult the final assignment instructions and evaluation rubric prior to completing the proposal.

The assignment is due by **Monday, April 26th, 5PM**. You will submit the assignment through **Canvas**. However, you must include with your assignment a report from [Turnitin](#). Turnitin is an online program that helps detect plagiarism. Turnitin will generate an originality report which will allow you to identify

^{*} A failed proposal means that the project is not approved and I will provide an alternate assignment worth 50% of the grade instead.

any potential issues. You can submit your draft assignment and view the originality report as many times as you like prior to final submission. You will need to create a Turnitin account (instructions [here](#)). Once in your account, enter the Class ID: **27650418**. The Enrolment Key is: **Caribou**. If you are producing an audio or visual final product, please submit the transcript for that product to Turnitin.

The final assignment is an individual exercise. You are welcome to discuss your ideas with others (including me) and include the input of others as you develop your ideas, but the written/audio/visual product must be your work. Do not share drafts of your work with colleagues. Your work is subject to the University's rules on academic misconduct (see below).

I. Grading Rules & Academic Concessions

The Law School's "[Examination and Grading Rules](#)" set out mandatory average grades for courses with different numbers of students. In this course, the final grade distribution must fall within this band; however, there may be variations from this average for each evaluated component. In addition, the Law School's standard "[Late Penalty Policy](#)" policy applies to written assignments that are submitted late. Finally, midterm exam answers and final assignments that exceed the maximum word limit will be penalized.

The Law School recognizes that a student's ability to write examinations, meet assignment deadlines, or to participate in class activities may be seriously affected by illness, family emergency, or other special circumstances. Students must make requests for [academic concessions](#) to the Examinations Committee (through the Assistant Dean, Students), not through their professors.

J. Student Well-Being, Mental Health & the Environmental Law Playlist

You are learning about Canadian environmental law at a time of a global awakening to environmental crisis and [growing awareness](#) of widespread ecological grief and climate change anxiety. While there are incremental successes (carbon pricing), historical highpoints (the Berger Inquiry) and stories of resilience (exercises of Indigenous jurisdiction), throughout the course the failure of Canadian environmental law is an ever-present theme. It is important to confront these failures in order to understand barriers and opportunities for legal change, but it's also important to address the feelings of grief, anxiety, rage, despair and exhaustion that come with studying this area of law.

One mechanism my past students began was posting their favourite songs for fueling their engagement with environmental law. I invite you to continue this tradition. Please feel free to post on the discussion page your favourite environmental law study tunes. I will add these to the living Environmental Law [Spotify playlist](#).

For some brief thoughts on how I grapple with working in environmental law, you may wish to read [this blog post](#). Alongside this course, you may wish to read some of the following:

- Rebecca Solnit, *Hope in the Dark: Untold Histories, Wild Possibilities* (Haymarket Books, 2016)
- The Kino-nda-niimi Collective, *The Winter We Danced: Voices from the Past, the Future and the Idle No More Movement* (ARP Books, 2014)
- Greta Thunberg, *No One is Too Small to Make a Difference* (Penguin Books, 2019)
- David Boyd, *The Optimistic Environmentalist: Progressing toward a Greener Future* (ECW Press, 2015)

I have also started a “Good News” discussion thread on Canvas, where I encourage you to share positive current environmental events in Vancouver, Canada and around the world.

If you are looking for a community of people at UBC who are grappling productively with climate change emotions and who are committed to bold action, check out the [UBC Climate Hub](#). If you are eager to work on public interest environmental litigation, check out [CELL](#) and feel free get in touch with me or CELL staff. If you are interested in connecting with other organizations, please let me know as I’m happy to facilitate.

If you are having difficulties with your studies or difficulties that impact upon your studies, please do not hesitate to speak with me or Anna Kline, Counsellor and Manager of Student Well-being (kline@allard.ubc.ca).

Various resources are available if you or one of your colleagues is in need, in distress or in crisis. Please take a minute to consult them:

<https://facultystaff.students.ubc.ca/assisting-students-distress>

<https://www.justbalance.ca/school/university-british-columbia>

<https://students.ubc.ca/campus-life/diversity-campus/sexual-diversity>

<https://students.ubc.ca/health-wellness/student-health-service>

<https://students.ubc.ca/health-wellness/mental-health-support-counselling-services>

H. Academic Integrity

All students are subject to the University’s [rules](#) on Academic Misconduct. All students are subject to these rules, and are expected to act with academic integrity at all times.

Students should be particularly attuned to the University’s [rules](#) regarding plagiarism. Plagiarism includes: copying or paraphrasing from another author or source without proper attribution; copying work from another student; copying your own work used for another course either during this degree or another degree; or otherwise passing off the ideas of another person as your own. Plagiarism is a serious offence; any student caught plagiarizing will be subject to penalties set out in the UBC calendar.

Academic honesty is an essential requirement in an institution of higher learning. Academic misconduct may have serious implications not only for your education, but also for your future career in law. Students are encouraged to consult the resources [guide](#) on academic integrity.

I. Copyright

All materials of this course (course handouts, lecture slides, assessments, course readings, etc.) are the intellectual property of the Course Instructor or licensed to be used in this course by the copyright owner. Redistribution of these materials by any means without permission of the copyright holder(s) constitutes a breach of copyright and may lead to academic discipline.

Class recordings are not permitted, unless you have an approved accommodation to do so.

J. Deadlines and Class Schedule

	Date (Thurs)	Topic
1	Jan 7	Welcome to Environmental Law* *No live class
2	Jan 14	What is Environmental Law? (Learning from the land, learning interdisciplinarity, learning creativity through the Berger Inquiry)
3	Jan 21	Why Environmental Law? (Environmental principles, environmental justice, environmental critique)
4	Jan 28	Who does Environmental Law? (Part I)* (Indigenous jurisdiction/active listening) *Guest lecture
5	Feb 4	Who does Environmental Law? (Part II) (Climate change mitigation in the Canadian federation: the GGPPA reference/doctrinal reasoning)
6	Feb 11	How Environmental Law? (Part I) (Introduction to environmental regulation, plastics pollution case study/means-end reasoning)
	Feb 12 5PM	Reflection 1 Due

7	Feb 25	How Environmental Law? (Part II) (Protecting species: <i>Species At Risk Act</i> /statutory interpretation)
	<i>Feb 26 5PM</i>	<i>Final Assignment Proposal Due</i>
8	Mar 4	How Environmental Law? (Part III) (Environmental Impact Assessment/advocacy and law reform)
9	Mar 11	Where is Environmental Law? (Part I)* (Individual field trip: law in the boardroom, law in the shops, law in the streets, law on the land/individual reflection) *No live class
	<i>Mar 15 5PM</i>	<i>Midterm Assignment Part I Due</i>
10	Mar 18	No live class – time for assignment
	<i>Mar 18 5PM</i>	<i>Midterm Assignment Part II Due</i>
11	Mar 25	Where is Environmental Law? (Part II) (Environmental Prosecutions/asking good questions)
12	Apr 1	Where is Environmental Law? (Part III) (Citizen enforcement in the courts/ accessible communication)
13	Apr 8	What Next for Environmental Law?* (Climate justice and constitutional law/ advocacy and legal ethics) *Guest lecture
	<i>April 9 5PM</i>	<i>Reflection 2 Due</i>
	<i>April 26 5PM</i>	<i>Final Assignment Due</i>