

Environmental Law II

Winter Term 2019

Environmental Law II / Law 2133.03

Monday 9:30am-11:20am

Classroom: 308 - Weldon Law Bldg.

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Objective:

This course takes an in depth interdisciplinary look at our greatest global environmental challenge, climate change. Climate change is used as a case study to explore the role of law in addressing global environmental challenges. Current law and policy approaches to climate change are considered at the global, national, and provincial levels. Within this context, students will consider the role of science and economics among other disciplines in identifying the role of law. Students will be exposed to the complexities of these issues by focusing on loss and damage in the context of climate change as well as the role of non-state actors.

Evaluation:

Evaluation will be:

- 70% major paper; and
- 30% assignment - submission of recommendations to the Philippines Human Rights Commission (class project).

Submission of Major Papers:

Major papers are to be submitted electronically on Brightspace by 4:00pm on the due date. Papers are due on the last day of classes. They should be submitted in Word format. Submission by email or hard copy at reception is acceptable as a backup if Brightspace is not functioning at the time the paper is due, however, you still need to post the paper on Brightspace as soon as it is back online. The topic for the major paper will be discussed and posted during the semester.

Submission of Assignment:

- As a class you will draft and submit recommendations to the Philippines Human Rights Commission – this is an international Carbon Major Inquiry student competition.
- The competition asks students to draft recommendations to assist the Commission with its work.
- The submission is limited to 1,000 words, so must be concise.
- The submission question is: “What recommendations should the Philippine Human Rights Commission give as a result of the Carbon Majors inquiry?”
- The due date for the final submission is **Friday 1st March 2019** via email to: cc.inquiry.competition@gmail.com.
- Details of the competition can be found here: <http://essc.org.ph/content/nicc/>.

- We will cover loss and damage and the role of non-state actors at the beginning of the course to help your preparations for the submission, but students are responsible for further research regarding the class submission as well as viewing the past Commission's hearings.
- A useful blog post with additional links on the hearings can be found here: <http://www.lse.ac.uk/GranthamInstitute/news/the-carbon-majors-inquiry-comes-to-london/>
- A useful debate on the hearings can be found here: <http://www.lse.ac.uk/lse-player?category=public+lectures+and+events>.
- Issues that students should consider, although they may not all be included in the actual submission, include:
 - What is the role of non-state actors in climate change and in particular in the context of loss and damage?
 - What legal and non-legal levers are available to vulnerable states in the context of loss and damage?
 - What other recommendations besides legal action could the Commission consider?
 - How responsible are vulnerable states for the protection of their own populations against loss and damage due to climate change?
 - In the face of mounting loss and damage and a lack of available climate finance, what actions are available to climate-vulnerable countries?
 - How useful will these be recommendations be to vulnerable groups within these countries?

Reading Material:

All required reading material will be distributed on Brightspace. Readings lists for particular weeks may also be posted on Brightspace.

The following are particularly useful additional resources, the first on the UN Climate Regime, the second on climate law in Canada:

- Klein, Daniel, et al, (eds.), *The Paris Climate Agreement: Analysis and Commentary* (Oxford: Oxford University Press, 2017).
- Mahoney (ed.), *The Law of Climate Change in Canada* (Toronto: Canada Law Book, Loseleaf)

Selected Internet Resources:

- The IPCC: www.ipcc.ch
- The UNFCCC: www.unfccc.org
- Environment Canada: <http://www.ec.gc.ca/cc>
- Earth Negotiation Bulletin: <http://www.iisd.ca/enbvol/enb-background.htm>
- Other relevant IISD info services: <http://www.iisd.ca/email/subscribe.htm>
- Loss and damage: <https://germanwatch.org/en/loss-damage>

Other Selected Resources

- Dan Bodansky, et al, *International Climate Law* (Oxford: Oxford University Press, 2017)
- Daniel A Farber and Marjan Peeters (eds.), *Climate Change Law* (Mass, US: Edward Elgar, 2016)
- Erkki Hollo, et al (eds.), *Climate Change and the Law* (Berlin: Springer, 2012)
- Antes et al, *Emissions Trading: Institutional Design, Decision Making and Corporate Strategies*, (New York: Springer, 2008)
- Bernstein et al (eds.), *A Globally Integrated Climate Policy for Canada* (Toronto: University of Toronto Press, 2007)

Students with Special Needs/Requests for Accommodation

Requests for special accommodation for reasons such as illness, injury or personal circumstances will require an application to the Law School Studies Committee. Such requests must be made to Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes as soon as possible, **before** a scheduled exam or a deadline for an assignment. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests. Students wishing to discuss arrangements for classroom assistance, such as note-taking, should see Professor Jennifer Llewellyn, the law faculty advisor to students with disabilities.

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require academic accommodation for either classroom participation or the writing of tests and exams should make their request to the Advising and Access Services Center (AASC) prior to or at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at 494-2836, or they may contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information.

Plagiarism:

All students in this course must read the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the following website: <http://academicintegrity.dal.ca/>, and the Law School policy on plagiarism, as set out in the law school regulations, available online at the following website: http://law.dal.ca/Current_Students/Course_Selection_Materials/Regulations_Handbook/index.php

Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Course Outline:

Jan 7: Introduction

Before class on 7th January, please view Naomi Oreskes, 'Climate Change Denial: where do we go from here?' Spring 2016, The Wall Exchange, available at:

<https://www.merchantsofdoubt.org/home/video-resources>.

Please be prepared to discuss the discussion points listed below in class on the 7th.

- Course Overview
 - Phase I: explore the climate change challenge and the UN climate regime
 - Phase II: the role of non-state actors in climate change and climate litigation
 - Phase III: application of current issues in Canada
- The Negotiations
 - Issues
 - Parties
- The Major Paper
 - How the paper fits with the course
 - Topic approved by the end of January
 - Outline due after the study break
- The Emotions of Climate Change
- CBC's Fifth Estate: The Denial Machine
 - Sets the stage on the science
- Discussion points:
 - Why does Oreskes refer to climate change as a market failure?
 - What is a negative externality?
 - What is the political motivation behind the denial argument as originally founded?

Jan 14: The Science of Climate Change

- Discussion points:
 - What is the state of the science on climate change?
 - What level of action does the science justify?
 - Is the IPCC the answer to the science-policy interface?
 - Source of science?
 - Source of economic and social implications of policy choices?
 - Source of ethical implications of policy choices?

Jan 21: The UNFCCC & The Kyoto Protocol – the lead up to the Paris Agreement

- General Overview of the UNFCCC Regime
- 10 years of negotiations

- From Montreal to Paris
- Discussion points:
 - Identify and discuss some of the major hurdles in the process and issues on international climate consensus.

Jan 28: The Paris Agreement

- The outcome in Paris
 - Breakthroughs
 - Risks and Shortcomings
 - Focus on loss and damage
- Next steps
 - The rulebook outcomes
 - Implementation of NDCs
 - Review Cycles: role of loss and damage
- Discussion points:
 - How effective is the NDC approach in the Paris Agreement?
 - What are the mechanisms for compliance and ambition under the Paris Agreement?
 - What is loss and damage and what are the major obstacles at the international level of addressing loss and damage;
 - What are the positions of various groups on loss and damage?

Feb 8: Non-state actors and climate change

- Richard Heede’s Carbon Major Study
- Climate attribution science
- NAZCA and the Paris Agreement
- Human rights and climate change
- Task Force on Climate Related Disclosures
- The Enterprise Obligations
- Discussion points:
 - What is the role of non-state actors within the Paris Agreement?
 - How effective are international strategies discussed?
 - What is the role of non-state actors in climate change: the ‘carbon majors’ study?
 - What actions are currently being undertaken by selected carbon majors (choose a sector or a company with considerable emissions to discuss)?

Feb 11: Climate litigation with a focus on carbon majors

- Phase 1 of climate litigation:
 - *Massachusetts v EPA*
 - *American Electric Power v Connecticut*

- *Kivalina v ExxonMobil*
- Phase 2 of climate litigation:
 - *Urgenda v Netherlands*
 - *Lliuya v RWE*
 - *City of New York v BP plc*
 - *City of Oakland v BP plc*
 - *Mayor and City Council of Baltimore v BP plc*
 - *Ashgari v Pakistan*
 - *Philippines Human Rights Commission*
- Discussion points:
 - What are some of the negative and positive aspects of climate litigation?
 - What regulatory role can climate litigation play?
 - Is tort the appropriate legal mechanism to use in climate litigation?
 - What is the role and connection with the Global South and carbon major corporations?

Feb 18: Winter Break

Feb 25: Review Commission recommendations and major paper topics

Mar 4: Regulatory Approaches: Who can do what in Canada?

- What are the tools available to deal with climate change in Canada
 - A jurisdictional refresher, powers of federal, provincial and municipal governments
 - Indigenous rights and climate change
 - Cap and Trade
 - Carbon Tax
 - Standards and Approvals
 - Environmental Assessments
 - Liability
- Discussion points:
 - How effective are these regulatory tools on climate change?
 - What is the relationship between indigenous rights, human rights and climate change?

Mar 11: Continued: Regulatory Approaches and the State of Play in Canada

- What are the tools available to deal with climate change in Canada
 - Labelling
 - CSR, regulating corporations – international and federal
 - Divestment & disclosure – international and federal
- The state of federal efforts

- Discussion points:
 - What obligations does Canada have/should it have on climate change?

Mar 18: Provincial actions: the state of key actors

- Update from key provinces
- Discussion points:
 - Presentation from each student on a particular province;
 - What are the commonalities and differences between these plans?

Mar 22: Connecting Canada to the World: selected 'hot topic' issues

- Canadian NDC
- The Tar Sands
- Trans Mountain Oil Pipeline
- The US context
- Connection to loss and damage
- Discussion points:
 - What is the state of play on loss and damage and 1.5°C temperature limit?

April 1: Discussion of major papers