

Environmental Law Research

Syllabus Wintersession 2018

Professor

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Course Information

Dates: Tuesday, January 2, 2018—Friday, January 5, 2018

Location: Online

Credits: 1

Course Description

This course will introduce students to the sources and skills necessary to researching environmental law issues. Environmental law is largely occupied by the federal government, so this course will focus on federal regulatory research (CFR & Federal Register), the Administrative Procedures Act and administrative hearings, and federal statutes and legislative history research. The course will also introduce students to state, tribal, and international environmental law sources. The course will not cover the substantive provisions of environmental law.

This course is an asynchronous online course. Students will participate daily by completing assigned readings, viewing an instructional powerpoint, participating in an online discussion, and completing a research exercise. Students will compile and submit a regulatory history as a final project for the course.

GOALS. Upon completion of this course students should:

1. Be aware of the important resources for environmental law research.
2. Have some practice with basic and advanced research techniques.

METHODS.

1. Online Lecture/Demonstration.
2. Readings.
3. Online Discussion.
4. Research Exercises.

Required Texts & Readings

There are no required textbooks for this course. The course materials and discussion forum will be available on the course moodle page. Lexis, Westlaw and other online research tools will be required to access some course materials and complete assignments.

The readings, powerpoints, and lessons provided for each day are designed to allow you customize your learning experience. They are a combination of basic and advanced materials, and material selected to provide both theory and skills perspectives. Much of the course content is contained in the powerpoints, which are “annotated” to provide additional detail.

Discussion Forums

Students will be required to participate in an online discussion daily. These discussions will take place through discussion forums set up on the course moodle page. In addition, there will be an open discussion forum on the moodle page available throughout the week for students to ask questions. Students are encouraged to monitor both discussion forums throughout the class.

Attendance

Students do not need to be online at any specific times during the course, but will be required to participate in online class discussions and turn in assignments by daily deadlines.

Disability Services

The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors, and Disability Services for Students (DSS). If you think you may have a disability adversely affecting your academic performance, and you have not already registered with DSS, please contact Dean of Students, Hillary Wandler (Law 110, 243-6788), and [DSS](#) (Lommasson 154, 243-2243). Dean Wandler and DSS will work with you to provide an appropriate accommodation.

Academic Honesty

All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University. All students need to be familiar with the [University of Montana Student Conduct Code](#), and the Law School Honor Code, which is available on the UM Law Student Information Moodle page.

Assignments & Grading

Research Exercises (25%)

This portion of the grade will be based on completion of daily research exercises. Exercises will not be graded but must be completed and submitted by 5:00pm the day they are assigned to receive credit. Exercises must be substantially completed to receive credit.

Letter grades for research exercises portion of the final grade will be based on the following scale:

Completed Exercises	Grade
4	A
3	B
2	C
1	D
0	F

Discussion (25%)

Each student will be required to participate in an online discussion each day based on the assigned reading and instructional material. Each day's discussion forum will be open from 9:00am-5:00pm. Students must participate at least once each day by posting an answer to that day's discussion question that is at least 250 words long (including citations). Discussion posts will not be graded but must be posted by 5:00pm the day they are assigned to receive credit.

Letter grades for the discussion portion of the final grade will be based on the same grading scale as the Research Exercises.

Regulatory History (50%)

Each student will compile the regulatory history of an assigned environmental regulation. **You must work alone on this assignment**, except that you may ask Prof. Gordon questions. This assignment will be available on the first day of class and is **due Sunday, January 7 at 5:00pm.** Completed assignments should be submitted via Moodle.

The Regulatory History assignment will be graded using a rubric to assign letter grades based on the following scale:

Grade	Percentage Scale
A+	> 100%
A	93-100%
A-	90-92%
B+	87-89%
B	83-86%
B-	80-82%
C+	77-79%
C	73-76%
C-	70-72%
D	60-69%
F	< 60%

Final Grades

Final grades will be calculated using the grading scale in the Student Handbook.

Grade	Grade Points
A+, A	4.0
A-	3.70
B+	3.30
B	3.00
B-	2.70
C+	2.30
C	2.00
C-	1.70
D	1.00
F	0

Course Schedule

First Assignment

View the *Introduction to This Course* powerpoint before you begin the course.

Tuesday, January 2

Researching administrative law, researching environmental impact statements

Readings:

1. 3 Jacob A. Stein et al., *Administrative Law* ch. 13 (2014) (available on Lexis Advance).
2. OPTIONAL: Students who have not taken Intro. to Environmental Law may want to scan Daniel A. Farber, *Environmental Law in a Nutshell* (9th ed. 2014) (on the [West Academic](#)).

Lessons:

1. [Administrative Law Research Tutorial](#), Georgetown L. Lib., http://guides.ll.georgetown.edu/admin_tutorial (last visited Nov. 22, 2017).

Powerpoint:

1. Administrative Law Research powerpoint.

Engage:

1. Discussion question
2. Research exercise

Wednesday, January 3

Researching federal environmental statutes and interpretation, compiling a federal legislative history

Reading:

1. [John R. Sullivan, *How Our Laws Are Made*, H.R. Doc. 110-49 \(2007\).](#)

Lessons:

Westlaw

1. Statutes on Westlaw
2. Statutes Index on Westlaw
3. Why Westlaw Notes of Decisions

LexisLearn

1. Finding the Right Statutes and Statutory Interpretation
2. Legislative History

Powerpoints:

1. Statutory Law Research Pt. 1: Researching Statutes
2. Statutory Law Research Pt. 2: Researching Legislative Intent

Engage:

1. Discussion question
2. Research exercise

Thursday, January 4

Researching environmental case law, researching secondary sources

Readings:

1. Scan the West key number system [Environmental Law topic](#), paying attention to how issues are organized under this topic.
2. Tami Gierloff, *Law of Environmental Protection, in Specialized Legal Research* ch. 6 (Penny Hazelton, ed. 2016). Read § 6.2, pages 6-6 to 6-18.

Lessons:

Westlaw:

Cases

- Cases on Westlaw
- How to Read and Work with Cases on Westlaw
- Why Westlaw Headnotes

Key Numbers

- Searching for and with Key Numbers
- How to Make Key Numbers Simpler
- Using the Key Number System on Westlaw
- Why Westlaw Key Numbers

KeyCite

- How to Navigate KeyCite
- How to Find and Use Precedent
- Understanding Citing References

Secondary Sources

- Secondary Sources on Westlaw

LexisLearn:

- Finding the Best Case for your Research
- Topical Searches and Using Headnotes
- Making Sure You're Citing Good Law

Powerpoints:

1. Researching Cases powerpoint
2. Environmental Secondary Sources powerpoint

Engage:

1. Discussion question
2. Research exercise

Friday, January 5

Researching state environmental law, international environmental law, indigenous environmental law

Readings:

1. James R. May & William Romanowicz, *Environmental Rights in State Constitutions* in *Principles of Constitutional Environmental Law* ch. 12 (James R. May ed., 2011).
2. Lakshman D. Guruswamy, *International Environmental Law in a Nutshell* ch. 1 (4th ed. 2012) (available on [West Academic](#)).
3. Mary Christina Wood & Zachary Welcker, *Tribes as Trustees Again (Part I): The Emerging Tribal Role in the Conservation Trust Movement*, 32 Harv. Envtl. L. Rev. 373 (2008) **OR** Jeanette Wolfley, *Tribal Environmental Programs: Providing Meaningful Involvement and Fair Treatment*, 29 J. Envtl. L. & Litig. 389 (2014) **OR** 2A *Environmental Law Practice Guide* ch. 15A (Michael B. Gerrard ed., 2015) (focus on §§ 15A.01-15A.02, 15A.09) (available on Lexis Advance).

Powerpoints:

1. Montana Environmental Law Research
2. International Environmental Law Research
3. Tribal Environmental Law Research

Engage:

1. Discussion question
2. Research exercise

Appendix 1: Discussion Questions & Research Exercises

Discussion Questions

Note: These questions were posted each morning and were due at the end of the day in order to foster actual discussion. Although this was an asynchronous course and students weren't working on the course at exactly the same time, this prevented students from completing the course all in one or two days and thereby just posting responses instead of actually discussing them.

Please post a response to the question below. You may respond directly to the question, or to another response. Your response should be around 150 words long, including any necessary citations. Citations should be in correct ALWD format. Your response must be posted by 5:00pm (MST).

1. (Administrative Law Research) Why does the Administrative Procedures Act set out the detailed process it does for promulgation of federal administrative regulations?
2. (Statutory Law Research) Each of the three methods for locating relevant statutes is useful for different kinds of research. For what type of research question would you use each of the following methods and why?
 - Browsing the code using the title and section layout.
 - Keyword search
 - Statutory index
3. (Secondary Source Research) What role do legal news sources and legal blogs play in legal research?
4. (Course Wrap-Up) What was the most interesting thing you learned about legal research this week?

Research Exercises

Note: These exercises were also posted each morning and were due at the end of the day. Students were encouraged to post questions to the Q&A forum on the online course page so all students could benefit from my answers to their questions while they were working on the exercises.

Administrative Law Research

Polar bears were listed as an endangered species in 2008. The listing of polar bears as a threatened species went through several regulatory steps. One of those steps was designation of critical habitat in 2010. In this exercise, you will research the documents in promulgating this rule.

1. Locate the final rule designating critical habitat for the polar bear and provide the citation to where it is published in the Federal Register.
2. Locate the proposed rule and provide the citation to where it is published in the Federal Register.
3. What other documents from this rulemaking process are available? List the documents (you don't have to provide full citations).
4. Look at a few of the submitted public comments. What issues do they raise?

Citations must conform to the ALWD Guide to Legal Citation.

Statutory Law Research

A tribal member is fined under the Bald and Golden Eagles Protection Act for killing a golden eagle off-reservation. The tribe had treaty with a provision allowing tribal members to hunt on the ceded land he was on. Does the Bald and Golden Eagles Protection Act abrogate the treaty provision, at least as it applies to eagles? What if the tribal member took the eagle for religious purposes?

Please locate and cite:

1. The federal statute(s) that prohibit killing golden eagles and provide exceptions (if any);
2. Relevant case(s) that address the abrogation question;
3. Relevant regulations that implement the statute or any exceptions.

Your citations should be in correct ALWD format.

Case Law Research

You have been assigned to write a case note on *Massachusetts v. EPA*, 549 U.S. 497 (2007). Based on today's course materials draft a research plan for researching this case. You are especially interested in the standing issue summarized in Headnote 4. For the purposes of this exercise, you just need to list the steps in your research, but you will probably have to work through the steps to determine the most effective research path.

State Environmental Law Research

The Montana Constitution contains a right to a “clean and healthful” environment. Your task is to research the following questions regarding Montana’s right to a clean and healthful environment. For each question, provide 1) the answer to the question; and 2) the citation to the source (in as close to ALWD format as you can get). You may find the answers in case law, secondary sources, or in the Constitutional Convention history.

1. What is the scope of the right?
2. Is the right self-executing (i.e., does it require the legislature to pass additional legislation to implement it)?
3. Who can enforce the right? (i.e., did the delegates intend to create a private right to sue under the constitutional provision)? Who may be held accountable? Who has duties under the provision?

Appendix 2:

Environmental Law Research

Regulatory History Assignment

Background

In 2016, Department of Interior, Fish & Wildlife Service published a Final Rule regarding non-subsistence hunting on National Wildlife Refuges in Alaska. Under 5 U.S.C. §§ 801-802, which allows Congress to formally disapprove of any rule passed by a federal agency, Congress disapproved of this rule in 2017, barring it from taking effect. In this assignment, you will research both the history of the regulation, and the legislative intent underlying the Congressional disapproval.

Assignment

For each part, please provide the requested items. You do not have to provide full-text documents, only the citations and summaries as requested. Summaries should only be 1-2 paragraphs long, and must be in your words (except for appropriately cited short quotations) and may be in either prose or outline form. All citations must be in correct ALWD format but may be in-text citations (i.e., you do not have to footnote even though this is not a court document or a memo).

Part I: Regulatory History

Please provide the following:

1. The citation to and short summary of the Final Rule.
2. The citation to the Proposed Rule.
3. A short summary of the background & explanation of the rule.
4. A short summary of the public participation in this rulemaking including:
 - a. a summary of the comment and hearing process for this particular rule;
 - b. a summary of the proponents' comments and testimony;
 - c. a summary of the opponents' comments and testimony;
 - d. a summary of the comments and testimony from Native Alaskans.

You do not have to read and summarize all the comments, just enough to get a flavor of the arguments.

Part II: Legislative History

Please provide the following:

1. A citation to the public law enacting Congressional disapproval of the rule.
2. Citations to both the House and Senate debate on the resolution in Congressional Record.
3. A short summary of the debate on the resolution.

Part III: Analysis

Please provide the citations to and short summaries of two secondary sources analyzing either the 2016 rule published by the Fish & Wildlife Service or the Congressional disapproval of that rule (or both). Your secondary sources can be law review articles or more informal commentary from legal blog or news sources.

Part IV: Self-Assessment

Please briefly answer these two questions:

1. What is one thing you feel like you have mastered or are close to mastering regarding legal research?
2. What is one thing you would do differently next time you research regulatory or legislative history?

Questions

Please submit questions about the assignment through the Q&A Forum on the course moodle page so that I can answer them for everyone. I will answer questions on the weekend the assignment is due, but I will be travelling on Sunday and will have limited access to the internet.

Due

Sunday, January 7, 5:00pm. Please upload your completed assignment on moodle. This assignment will upload anonymously; please do not put your name or any identifying marks on your paper.

Environmental Law Research Regulatory History Assignment Grading Rubric

Part I: Regulatory History (37 pts.)

- _____ Final Rule (10 pts.)
 - _____ *Rule* (3 pts.)
 - _____ *Citation* (2 pts.)
 - _____ *Summary* (5 pts.)
- _____ Proposed Rule Citation (2 pts.)
- _____ Summary of Rule background/explanation (5 pts.)
- _____ Summary of Comments/Testimony (20 pts.)
 - _____ *Summary of Comment/Hearing Process* (5 pts.)
 - _____ *Proponents Comments/Testimony* (5 pts.)
 - _____ *Opponents Comments/Testimony* (5 pts.)
 - _____ *Native Alaskans Comments/Testimony* (5 pts.)

Part II: Legislative History (14 pts.)

- _____ Public Law (5 pts.)
 - _____ *Public Law* (3 pts.)
 - _____ *Citation* (2 pts.)
- _____ Citations to debate in Congressional Record (4 pts.)
 - _____ *House* (2 pts.)
 - _____ *Senate* (2 pts.)
- _____ Summary of debate (5 pts.)

Part III: Analysis (14 pts.)

_____ Secondary Source #1

_____ *Citation (2 pts.)*

_____ *Summary (5 pts.)*

_____ Secondary Source #2

_____ *Citation (2 pts.)*

_____ *Summary (5 pts.)*

Part IV: Self-Assessment (5 pts.)

_____ Self-Assessment

_____ **TOTAL POINTS = _____**