

**DEPARTMENT OF LEGAL STUDIES AND BUSINESS ETHICS
THE WHARTON SCHOOL, UNIVERSITY OF PENNSYLVANIA**

**LGST 215/815
ENVIRONMENTAL MANAGEMENT, LAW AND POLICY**

**PROFESSOR SARAH E. LIGHT
SPRING 2018**

I. INSTRUCTOR

Professor Sarah E. Light
Email: lightsa@wharton.upenn.edu (best method of contact)
Office Phone: 215-573-0575
Office: 661 Huntsman Hall
Office Hours: Thursdays 1:30-2:30pm and by appointment

II. CLASS MEETING TIMES AND LOCATION

Tuesdays and Thursdays 10:30am-12:00pm
Location: JMHH (TBD)

III. COURSE OBJECTIVES

The law and public policy shape how business managers must think about their firms' interactions with the environment. The primary goal of this course is to learn to think critically about:

- (1) the relationship between business and the natural environment,
- (2) the existing legal and policy framework of environmental protection and its effects on what business managers are charged to do, and
- (3) the potential to effect change in that legal and policy environment.

The first part of the course will introduce you to concepts of sustainability, and will provide a grounding in the foundational concepts of environmental law. As we address different topics in environmental law and policy, we will examine a series of case studies in which law, policy and business intersect. Examples include how the law of municipal and hazardous waste management informs business practices about e-waste; how informational regulation affects business strategy; and how the dominance of state rather than federal rules governing hydraulic fracturing affects both business decisions and the economic and environmental implications of that practice. We will also examine the emerging concepts of private environmental governance, in which private contracting, third-party certification, and insurance can impose environmental obligations and create incentives in the absence of government action. We will then focus on different approaches of incorporating

sustainability into business practices, including through lifecycle analysis and environmental management systems. The final part of the course will consist of student group presentations on current topics in environmental management, law, and policy.

Students are not expected to have any previous experience with environmental law or policy.

IV. TEXT AND READINGS

The assigned texts for this course are:

- James Salzman and Barton H. Thompson, Jr., *Environmental Law and Policy* (4th ed., Foundation Press 2013) (“S&T”).
- Coursepack (available from Wharton Reprographics through Study.net).

V. ASSIGNMENTS AND GRADING

Students will be required to participate in class, prepare two individual papers and a final group project. There is no final exam in this course.

The final grade for the course will be determined as follows:

- Class participation: 20%, which is based on:
 - Participation in class discussions and in-class exercise(s)
- Individual Paper # 1: 15% due **Monday, February 5th**, by 5:00pm via Canvas
- Individual Paper # 2: 35% due **Tuesday, March 20th**, by 10:30am (start of class) via Canvas
- Final Group Project: 30% to be presented on several dates in class

Class Participation: Students are expected to be punctual, attend each class, prepare for classes conscientiously, and contribute to the class discussion. This means providing thoughtful commentary (not just many comments), engaging in analysis, and/or posing relevant questions. It also means being prepared to discuss the readings, including legal cases and other materials.

Attendance: Each student is permitted **two “free” absences** during the term **for any reason** without a penalty if you provide me with advance notice (an email before class is fine).¹ Beyond those two absences, I mark absences either as excused or unexcused. **Reasons for excused absences** include: family or personal medical emergencies and religious holidays. Job interviews are *not* excused absences. A significant number of unexcused absences will have a negative impact on your grade.

General Guidelines for Written Assignments. I have intentionally given you plenty of time to complete each assignment, so all written assignments must be handed in on time. If a paper is late for any unexcused reason, it is penalized one grade level for each 24-hour period or portion thereof it is late (*i.e.*, A would become A-; an A- would become B+ etc.). Excused reasons would include

¹ You may not use these excused absences for the final class or on the day of your Group Presentation.

death in the family, serious illness or family emergency. If advance notification is possible, please let me know in advance.

Please note: *All papers must be submitted via Canvas in .word (not .pdf) format.*

Individual Paper #1: Due on Monday, February 5th, by 5:00pm. Individual Paper # 1 will be on an assigned topic. The paper must be no more than 1,000 words. *I have set the deadline **one day prior** to class so that I can review your papers before class, and we can discuss your responses in Class #8.* If you miss the deadline, but still turn your paper in before the start of class, the standard 24-hour penalty policy will apply. However, failure to submit Individual Paper #1 by the start of class on February 6th, when we will discuss student responses to the assignment, will result in **zero** credit on that assignment.

Individual Paper #2: Due Tuesday, March 20th, by 10:30am (by the start of class) via Canvas. Individual Paper # 2 will be on a relevant topic in environmental policy, law, or management related to material assigned in the course. The paper must be no more than 1,500 words. I will provide further details in class.

Final Group Project: Each student must participate in a group project on a topic of the group's choosing. MBA students and non-MBA students must be in separate groups for this assignment. Students should begin to consider a topic that they would like to investigate relatively early in the semester. The topic must be approved by the Professor in advance. Past projects have addressed: Marine Stewardship Council certification, genetically modified foods and climate change, the great Pacific garbage patch, the sustainable design of Seattle's Bullitt Center, and the California drought among others. Toward the end of the semester, each group will present its research to the rest of the class. Depending upon class size, the Professor will inform students about the size of each group (in the past, it has been 3-4 students per group), and all students share responsibility and the grade for the presentation. Grades for the group projects will be based on the quality of the final presentation itself, as well as any supplementary written or other submissions provided indicating sources and research. Your written materials and slides are due to the Professor **by 5pm the day before** your group presents to the class.

Citations, Collaboration and Plagiarism. Submissions must represent only the student's own creative work and effort. **I take plagiarism and cheating very seriously and will deal with such actions according to University policy.** Students may use computer-assisted spelling or grammar programs and may discuss general ideas of paper topics with others. But no writing coaches, relatives, or other personal assistance may be relied upon for the actual writing. The work must be your own.

As with any paper, you must use a consistent citation method for sources. Any source you quote or rely on must be either footnoted, with source and page references, or noted parenthetically, for example (Sax 1980 at p. 7) with the full citation provided in a bibliography (*e.g.*, Joseph L. Sax, *Mountains without Handrails: Reflections on the National Parks* (University of Michigan Press 1980)). Please make reference to *all* sources used. No statement that relies on a source should fail to reference the source.

With respect to grading, I will give credit to well-organized, well-written, and well-reasoned papers. The paper should deal with material critically and thoughtfully.

VI. CLASSROOM EXPECTATIONS

- We will start and end class on time.
- You must display your name tent.
- **You must turn off all phones, laptops and other electronic devices.**
- Drinks in reusable containers are permitted.

VIII. COURSE OUTLINE

Please note: These assignments are subject to revision as the course progresses, depending upon changes in the law and our progress.

Class 1: Thursday, January 11

Introduction to Sustainability, Environmental Management, Law and Policy

Readings for Today:

- Walmart's Sustainability Strategy, 2007 [Coursepack #1]
- Royal Bank of Canada – Financing Oil Sands [Coursepack #2]
- I will hand out readings for the SHARC exercise

Class 2: Tuesday, January 16

A Classic Paradigm from Economics: The Tragedy of the Commons

Readings for Today:

- Garrett Hardin, *The Tragedy of the Commons*, 162 Science 1243 (1968) [Coursepack #3]
- Elinor Ostrom, *Governing the Commons* (1990), Chapter 1 [Coursepack #4]
- Prepare for SHARC in-class exercise (I will hand out readings in Class #1)

Class 3: Thursday, January 18

Introduction to the U.S. Legal System and Anatomy of a Lawsuit

Readings for Today:

- *Edmunds v. Duff*, 280 Pa. 355 (Apr. 28, 1924) [Coursepack #5]
- S&T, Chapters 1 & 2

Class 4: Tuesday, January 23

The Common Law Roots of Environmental Law: Public and Private Nuisance Introduction to the U.S. Legal System and Anatomy of a Lawsuit, cont'd.

Readings for Today:

- *Madison v. Ducktown Sulphur, Copper and Iron Co.* (Tenn. 1904) [Coursepack #6]
- *Missouri v. Illinois* (S. Ct. 1906) [Coursepack #7]
- *Georgia v. Tennessee Copper Co.* (S. Ct. 1907) [Coursepack #8]

Class 5: Thursday, January 25

Does the Common Law Still Matter? Common law in the Climate Change Context

Readings for Today:

- *Kivalina v. ExxonMobil* (9th Circuit) [Coursepack #9]
- Intergovernmental Panel on Climate Change, Summary for Policymakers, Working Group 1 to the Fifth Assessment Report (AR5), available at https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_SPM_FINAL.pdf.
- ***I will hand out the Assignment for Individual Paper #1.***

Class 6: Tuesday, January 30

The Rise of Modern Federal Environmental Law and the Regulatory State; Regulatory Options, and the Regulatory Process

Readings for Today:

- S&T, Chapter 3, Parts I & II
- *Chevron v. Natural Resources Defense Council* (S. Ct. 1984) [Coursepack #10]

Class 7: Thursday, February 1

Pollution Prevention and Hazardous Waste Management: Superfund and RCRA

Readings for Today:

- S&T, Chapter 9
- *Allied-Signal: Managing the Hazardous Waste Liability Risk* [Coursepack #11]
- *Dividing and Conquering the Trash*, NY Times Oct. 25, 2014, available at: <http://www.nytimes.com/2014/10/26/business/dividing-and-conquering-the-trash.html>
- *Big Companies Put Their Money Where the Trash Is*, NY Times, Nov. 29, 2015, available at <http://www.nytimes.com/2015/11/29/business/energy-environment/big-companies-put-their-money-where-the-trash-is.html?smprod=nytcore-iphone&smid=nytcore-iphone-share>

Individual Paper # 1 is due on Monday, February 5th by 5:00pm via Canvas.

Class 8: Tuesday, February 6

Current Issues in Waste Management: E-Waste

Readings for Today:

- Readings to be posted to Canvas

Class 9: Thursday, February 8

Clean Air: Common Law, the Clean Air Act, and Climate Change

Readings for Today:

- S&T, Chapters 5 & 6
- *Massachusetts v. EPA* (S. Ct. 2007) [Coursepack #12]

Class 10: Tuesday, February 13

Clean Air and Climate Change in the Transportation and Electricity Generation Sectors

Readings for Today: (Note: this is a rapidly evolving area of the law; final readings may change)

- Jody Freeman, *The Obama Administration's National Auto Policy: Lessons from the Car Deal*, 35 Harv. Envtl. L. Rev. 343 [Coursepack #13]
- Additional Readings will be posted to Canvas
- ***In class: Discuss Assignment for Individual Paper #2***
- ***Sign-up in class for Group Presentation dates starting today (3 week open sign up period)***

Class 11: Thursday, February 15

Clean Air, Climate Change, and International Law: Montreal and the Paris Agreement

Readings for Today: (Note: this is a rapidly evolving area of the law; final readings may change)

- Paris Agreement on Climate Change, Articles 2, 4, 5, 6, 14, 20, 21 available here: http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf
- Jean Gailbraith, *The Legal Structure of the Paris Agreement*, RegBlog.org (Dec. 21, 2015), available here: <http://www.regblog.org/2015/12/21/galbraith-legal-structure-paris-agreement/>

- We Are Still In: Read the Declaration: <https://www.wearestillin.com/we-are-still-declaration>, as well as what Businesses & Investors, Cities & Counties, States & Tribes, and Colleges and Universities are doing.

Class 12: Tuesday, February 20
Environmental Markets

Readings for Today:

- Ronald Coase, *The Problem of Social Cost* (1960) [Coursepack # 14] -- pp. 1-19
- Sarah E. Light, *The New Insider Trading: Environmental Markets within the Firm*, 34 Stan. Envtl. L.J. 1 (2015), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2591875
- Regional Greenhouse Gas Initiative (RGGI) Fact Sheet: http://rggi.org/docs/Documents/RGGI_Fact_Sheet.pdf

Class 13: Thursday, February 22
Information Disclosure as a Regulatory Tool: The National Environmental Policy Act (NEPA) and the Toxics Release Inventory (TRI)

Readings for Today:

- S&T, Chapter 12
- Sarah E. Light, *NEPA's Footprint*, 87 Tul. L. Rev. 511 (2013), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2127648
- Bradley Karkkainen, *Information as Environmental Regulation: TRI and Performance Benchmarking: Precursor to a New Paradigm?* 89 Geo. L.J. 257 (2001) [Coursepack # 15] -- Parts II and III

Class 14: Tuesday, February 27
Public and Private Informational Governance in the Climate Context

Readings for Today:

- US Securities and Exchange Commission Guidance Regarding Disclosure Related to Climate Change (Feb. 2, 2010), available at: <http://www.sec.gov/rules/interp/2010/33-9106.pdf>
- Skim: CDP Climate Change Report (2016): https://b8f65cb373b1b7b15feb-c70d8ead6ced550b4d987d7c03fcdd1d.ssl.cf3.rackcdn.com/cms/reports/documents/000/001/228/original/CDP_Climate_Change_Report_2016.pdf?1485276095

Class 15: Thursday, March 1
The Convergence of Energy and Environmental Policy: Hydraulic Fracturing and Environmental Federalism

Readings for Today:

- S&T, Chapter 11

- David Spence, *Federalism, Regulatory Lags, and the Political Economy of Energy Production*, 161 U. Pa. L. Rev. 431 (2013) [Coursepack #16]
- U.S. Energy Information Administration, Annual Energy Outlook 2017 (Overview/Key Takeaways section only): [https://www.eia.gov/outlooks/aeo/pdf/0383\(2017\).pdf](https://www.eia.gov/outlooks/aeo/pdf/0383(2017).pdf)

****No class: Tuesday, March 6 or Thursday, March 8 (Spring Break)**

Class 16: Tuesday, March 13

Risk Regulation in the Face of Uncertainty: Toxic Chemicals, the Precautionary Principle and International Compliance

- S&T, Chapter 8
- These two summaries of the 2016 Amendments to the Toxic Substances Control Act: <http://blogs.edf.org/health/files/2016/05/Major-features-of-FRL21-5-23-16.pdf>; and <http://blogs.edf.org/health/files/2016/05/Preemption-under-FRL21-5-23-16-final.pdf>
- Understanding REACH, <https://echa.europa.eu/regulations/reach/understanding-reach>
- REACH for non-US Companies, <https://echa.europa.eu/support/getting-started/enquiry-on-reach-and-clp>

Class 17: Thursday, March 15

Land Use, Zoning, and Takings as a Form of Environmental Control

Readings for Today:

- *Village of Euclid v. Ambler Realty Co.* (S. Ct. 1926) [Coursepack # 17]
- *Penn Central Transp. Co. v. New York*, 438 U.S. 104 (1978) [Coursepack # 18]
- *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992) [Coursepack # 19]

Class 18: Tuesday, March 20

Insurance, Climate Change Adaptation, and Resilience: Flooding and Sea Level Rise

Readings for Today:

- Howard C. Kunreuther & Erwann O. Michel-Kerjan, *Climate Change, Insurance of Large-Scale Disasters, and the Emerging Liability Challenge*, 155 U. Pa. L. Rev. 1795 (2007) [Coursepack # 20]
- ***Due today by 10:30am via Canvas: Individual Paper #2.***

Class 19: Thursday, March 22

**Clean Water: From Pollution Prevention to Sustainability
Green Marketing Claims**

Readings for Today:

- S&T, Chapter 7
- Coca-Cola Water Stewardship Report, 2016 *available at:* <http://www.coca-colacompany.com/stories/2016-water-stewardship> (Note: If a newer report is available before class, this reading will be updated)
- FTC Green Guides, available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>

Class 20: Tuesday, March 27

Product Stewardship: Bottled Water

Readings for today:

- FIJI Water and Corporate Social Responsibility: Green Makeover or Greenwashing? [Coursepack # 21]
- I will provide instructions in class for the group exercise on bottled water.

Class 21: Thursday, March 29

Environmental Protection and the Corporate Social Responsibility Debate

Readings for today:

- Milton Friedman, *The Social Responsibility of Firms is to Increase Profits* [Coursepack #22]
- Michael Porter & Mark R. Kramer, *Creating Shared Value*, Harvard Business Review, Jan.-Feb. (2011) [Coursepack #23]

Class 22: Tuesday, April 3

**Lifecycle Analysis and Assessment: Promises and Limitations
Guest Speaker, Gary Survis, IGEL Senior Fellow**

Readings for today:

- *To be announced*

Class 23: Thursday, April 5

Business Innovation: The Sharing Economy and the Environment

Readings for today:

- Car2Go: Individual Urban Mobility and the Sharing Economy [Coursepack #23]
- Sarah E. Light, *Precautionary Federalism and the Sharing Economy*, 66 EMORY L.J. 333 (2017) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2760985.

Class 24: Tuesday, April 10

Student Project Presentations

Class 25: Thursday, April 12
Student Project Presentations

Class 26: Tuesday, April 17
Student Project Presentations

Class 27: Thursday, April 19
Student Project Presentations

Class 28: Tuesday, April 24
Final Class: Wrap Up

IX. INSTRUCTOR BIO

Sarah E. Light is an Assistant Professor of Legal Studies and Business Ethics at the Wharton School of Business at the University of Pennsylvania, where she teaches Environmental Management, Law and Policy. Light earned her A.B. in Social Studies from Harvard College, where she graduated *magna cum laude*, Phi Beta Kappa, and was awarded the John Harvard Scholarship and Elizabeth Cary Agassiz Scholarship for highest academic achievement. Professor Light subsequently earned an M. Phil in Politics from Oxford University where she was a Rhodes Scholar. Light received her J.D. from Yale Law School.

Prior to joining the Wharton faculty, Professor Light served for ten years as an Assistant United States Attorney for the Southern District of New York, Civil Division, and for four of those years as the Chief of the Office's Environmental Protection Unit. In that capacity, Light represented the United States and its agencies in affirmative, defensive, and bankruptcy litigation and settlement negotiations. Professor Light has previously taught Sustainability Management, Law and Policy at Columbia University.