

**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 2019**

I. INSTRUCTOR

Professor Sarah E. Light
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Office: 661 Huntsman Hall
Office Hours: Tuesdays 1:30-2:30pm and by appointment

II. CLASS MEETING TIMES AND LOCATION

Tuesdays and Thursdays 10:30am-12:00pm
Location: SHDH 213

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 **February 12, 2019**, by 10:30am (start of class) via Canvas
- Individual Paper # 2: 40% due **April 2, 2019**, by 10:30am (start of class) via Canvas
- Short description of Paper Proposal due on **February 26, 2019 (not graded)**
- Final Group Project: 25% 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 **three “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 These can be used for minor illness, job interviews, sports or other extracurricular activities without penalty. Beyond those three absences, I mark absences either as excused or unexcused. **Reasons for excused absences** include: family or personal medical emergencies and religious holidays. Job interviews and extracurricular activities 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

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

it is late (*i.e.*, A would become A-; an A- would become B+ etc.). Excused reasons would include 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 February 12, 2019, by 10:30am (by the start of class). Individual Paper # 1 will be on an assigned topic. The paper must be no more than 1,000 words. Failure to submit Individual Paper #1 by the start of class on February 12, when we will discuss student responses to the assignment, will result in **zero** credit on that assignment. **There is no progressive late penalty for this paper since we will be discussing responses in class.**

Individual Paper #2: Due on April 2, 2019, 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. 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, Blockchain and the environment, the environmental impact of autonomous vehicles, 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. Please use a citation system consistently like Chicago Manual of Style or the APA citation system.

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 17

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 negotiation exercise

Class 2: Tuesday, January 22

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 24

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]
 - Be prepared to answer the questions listed on “How to Brief a Case” – which I posted to the Files menu of Canvas
- Orin Kerr, *How to Read a Legal Opinion*, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1160925
- S&T, Chapters 1 & 2

Class 4: Tuesday, January 29

The Common Law Roots of Environmental Law: Public and Private Nuisance

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 31

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

Readings for Today:

- *Kivalina v. ExxonMobil* (9th Circuit) [Coursepack #9]
- *City of Oakland v. BP et al.*, http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20180625_docket-317-cv-06011_order-2.pdf
- Intergovernmental Panel on Climate Change, Summary for Policymakers, Global Warming of 1.5 °C, available here: http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf
- ***I will hand out the Assignment for Individual Paper #1.***

Class 6: Tuesday, February 5

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]
 - Before you read Chevron, please read “Chevron Guidance Questions” handout in the Files menu of Canvas

Class 7: Thursday, February 7

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>

Class 8: Tuesday, February 12

Current Issues in Waste Management: E-Waste

For Today:

- *No additional readings beyond what you read for your Papers.*
- ***Individual Paper #1 due by 10:30am before the start of class.***

Class 9: Thursday, February 14

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 19

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. Env'tl. L. Rev. 343 [Coursepack #13]
- Additional Readings will be posted to Canvas
- ***I will hand out and explain the Assignment for Individual Paper #2.***
- ***Sign-up in class for Group Presentations starting today***

Class 11: Thursday, February 21

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>.

Class 12: Tuesday, February 26
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
- ***Submit via Canvas: 1-2 paragraph proposal for your paper topic***

Class 13: Thursday, February 28
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 - Focus on Part III, which explains how NEPA works (skim the rest for context)
- 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

*****No class: Tuesday, March 2-March 10 for Spring Break*****

Class 14: Tuesday, March 12
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>
- Sarah E. Light, *The Law of the Corporation as Environmental Law*, 71 Stanford Law Review, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3228536

Class 15: Thursday, March 14

Energy Systems and Policy

Guest Speaker: Professor Mark Templeton, University of Chicago

Readings for Today:

- S&T, Chapter 11
- *Optional:* David Spence, *Federalism, Regulatory Lags, and the Political Economy of Energy Production*, 161 U. Pa. L. Rev. 431 (2013) [Coursepack #16]
- Other readings to be determined

Class 16: Tuesday, March 19

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 21

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 26

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]

Class 19: Thursday, March 28

Clean Water: From Pollution Prevention to Sustainability Green Marketing Claims

Readings for Today:

- S&T, Chapter 7
- Coca-Cola Water Stewardship Report, 2017 *available at:* <https://www.coca-colacompany.com/stories/2017-water> (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, April 2

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]
- ***Due today by 10:30am via Canvas: Individual Paper #2.***

Class 21: Thursday, April 4

Pulling it all together: 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 22: Tuesday, April 9

Lifecycle Analysis and Assessment: Promises and Limitations

Readings for today:

- *To be announced*

Class 23: Thursday, April 11

Business Innovation: The Sharing Economy, Blockchain, 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.
- Reading on Blockchain to be posted

Optional reading:

- E. Biber, S. Light, J.B. Ruhl, and J. Salzman, *Regulating Business Innovation as Policy Disruption: From the Model T to Airbnb*, 70 VANDERBILT L. REV. 1561 (2017), available at: <https://www.vanderbiltlawreview.org/2017/10/regulating-business-innovation-as-policy-disruption-from-the-model-t-to-airbnb/>

Class 24: Tuesday, April 16

Student Project Presentations

Class 25: Thursday, April 18

Student Project Presentations

Class 26: Tuesday, April 23

Student Project Presentations

Class 27: Thursday, April 25

Student Project Presentations

Class 28: Tuesday, April 30

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. She 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 2017, Professor Light was awarded the Excellence in Teaching Award in the MBA Program at Wharton. In 2016, Professor Light was one of ten faculty nominated by the MBA student body for the Helen Kardon Moss Anvil Award for Outstanding MBA Teaching.