

Revised, October 28, 2017

LECTURE SYLLABUS

ENV 201
Environmental Law¹
Fall 2017

Tracy Winsor, J.D. tlwinsor@ucdavis.edu



Classroom: 2124 Wickson

We will also use room 2120J Wickson occasionally for separated group discussions.

Lecture: M-W, 6:10-7:30 pm

COURSE ADMINISTRATION

A. GRADING

- | | | |
|----|--------------------|------------|
| 1. | Participation | 100 points |
| 2. | Assignments | 100 points |
| 3. | Negotiations | 100 points |
| 4. | Final presentation | 100 points |
| 5. | Extra credit | 10 points |

B. TEXTS

1. Fishery & Ury, *Getting to Yes, Negotiating Agreement Without Giving In* (Penguin Books, 1983) (Getting to Yes)
2. Ury, *Getting Past No: Negotiating Your Way from Confrontation to Cooperation* (Bantam Books, 1993) (Getting Past No)
3. Salzman & Thompson, *Environmental Law & Policy* (Leg., Inc. d.b.a. West Academic, 4th Ed. 2014) (Environmental Law & Policy)

¹ All syllabus reading assignments are subject to change via announcements.

C. ADMINISTRATIVE ANNOUNCEMENTS

1. It's important to buy *correct edition* of the Environmental Law & Policy text (4th Edition). Do not buy a different edition, because the pages won't line up with the reading assignments.
2. All assignments listed below should be read or completed *before the date of the lecture or discussion*. As an example, the first reading assignment listed below should be completed on or before September 27, 2017, in advance of the first day of class/first lecture.
3. For each lecture and negotiation, there are pages with the name of the lecture or negotiation on it on Canvas. Any reading materials you are asked to read or view on Canvas for that lecture or negotiation will be linked to the relevant page.
4. There may be links to PowerPoint slides on Canvas. Lecture PowerPoints may be updated just prior to class, so if you plan to take notes on the margin during lecture, it's best to wait to download them until the day of that lecture.

Revised, October 28, 2017

Week of 9/25

9/27 INTRODUCTION TO ENVIRONMENTAL LAW; SOURCES OF THE LAW

Read or watch, as appropriate, *prior to lecture*

- In Environmental Law & Policy, pp. 17-31, 51-61 (top).
- On Canvas:
 - A Brief Overview of the Supreme Court
 - Inside the California Supreme Court
 - What is the common law?
 - Jury instructions for negligence, nuisance, trespass, strict liability
 - *Leslie Salt Co. v. San Francisco Bay Conservation and Development Comm.* (1984) 153 Cal. App. 3d 605

Class: Lecture & Q&A.

Week of 10/2

10/2 THE LITIGATION PROCESS; ALTERNATIVE DISPUTE RESOLUTION

Read:

- Getting to Yes, pp. 3-57

10/4 ENVIRONMENTAL REGULATION, ENVIRONMENTAL ENFORCEMENT

Read:

- Environmental Law & Policy, pp. 65-74, 87-106
- On Canvas:
 - *Gwaltney of Smithfield Ltd v. Chesapeake Bay Foundation* (1987) 484 U.S. 49
 - *People v. Roscoe* (2008) 169 Cal.App.4th 829

Class: Lecture & Q&A.

Week of 10/9

Lecture 10/9 AIR QUALITY; WILDLAND FIRE LAWS (BEGIN)

Read:

- In Environmental Law & Policy, read: pp 111-131 (skip exercise) and 132-137
- On Canvas:
 - Health & Safety Code Sections 13007-13010
 - Skim, on Canvas (only so much as interests you):
 - Climate Change, Wildland Fires, Forest Management – Articles, Research Papers
 - You may wish to visit the air quality closed library to get a feel for the materials that are in it at this time.

Revised, October 28, 2017

Class: Lecture & Q&A.

Week of 10/16

Lecture 10/16 WILDLAND FIRE LAWS (WRAP-UP)

On Canvas, read:

- Health & Safety Code sections 13007-13010
- *Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442
- *Gould v. Madonna* (1970) 5 Cal.App.3d 404
- *United States of America v. CB&I Constructors, Inc.* (9th Cir. 2012) 685 F.3d 827
- *State of California v. Southern Pacific* (1982) 133 Cal.App.3d 862

Class: Lecture & Q&A.

10/18 AIR QUALITY CASE STUDY: IDENTIFYING THE PROBLEM AND SOLUTION

Read:

- Getting to Yes, pp. 58-83
- On Canvas, Air Quality Negotiation Page, read or review:
 - Materials in closed library;
 - Mutual Fact Pattern.

Assignment: Review materials on Air Quality Negotiation page. This is your “closed library” for this negotiation. Locate one or more additional resource(s) that are relevant to the issues presented by the negotiation fact pattern. Upload a copy of or link to your proposed additional resource with a paragraph summary of why you believe it is relevant and useful to the negotiations to Canvas **at or before 6:10 p.m. on 10/18**. Bring a copy of your resource to class (electronic or paper). Be prepared to discuss why this additional resource should be added to the library of materials for reference in the negotiation.

Class: Students will explain what the materials they want to add to the negotiation library are and how they are relevant to the negotiations. Instructor will decide what materials will be added. We will then use any remaining time for each group to (1) identify; and (2) present to the class, the legal issues they believe are presented by the problem.

Revised, October 28, 2017

Week of 10/23

10/23 AIR QUALITY NEGOTIATION: ROUND 1

Read:

- Getting to Yes, pp. 101-149
- Confidential round 1 facts for your group (these will be emailed to each group by instructor).
- On Canvas, Air Quality Page, review materials in closed library.

Assignment:

Meet with your group to

- (1) Prepare your strategy for the negotiation round 1. Select three individuals from your group to advocate for your group's position in class. Each team member should upload to Canvas, **at or before 6:10 p.m. on 10/23**, an outline of a proposed negotiation strategy.²
- (2) Assign people from your group to prepare any exhibits for your negotiations (exhibits are permissible only to demonstrate matters identified by the fact pattern or the closed library). Select two individuals from your group to advocate for your group's position in class.

Class: In class, there will be one hour of negotiation by the two individuals nominated by each team to represent their group and advocate for its position, then the remaining class time will be used for discussion and feedback on the negotiation.

10/25 AIR QUALITY NEGOTIATION: ROUND 2

Read:

- Round 2 confidential facts for your group (these will be emailed to each group by instructor).
- On Canvas, Air Quality Page, review materials in closed library

Assignment: meet with your group to prepare your strategy for the negotiation round 2. Select three *different* individuals from your group to advocate for your group's position in class. Assign individuals to prepare any exhibits for the negotiation round 2 (exhibits are permissible only to demonstrate matters identified by the fact pattern or the closed library). Each team member should upload to Canvas **at or before 6:10 p.m. on 10/25** an outline of a proposed negotiation strategy.

² For each assignment where a negotiation strategy must be uploaded, the negotiation strategy uploaded by each team member should include the strategy selected by the team and may also include additional information if there was disagreement on the approach. If additional information is included, explain why you would have approached the negotiation that way, rather than what the team selected.

Revised, October 28, 2017

Class: In class, there will be one hour of negotiation by two individuals nominated by each team to represent their group and advocate for its position, then the remaining class time will be used for discussion and feedback on the negotiation.

Week of 10/30

10/30 WILDLAND FIRE NEGOTIATION: IDENTIFYING THE PROBLEM AND SOLUTION

On Canvas, Wildland Fire Negotiation Page, read or review:

- Materials in closed library.
- Confidential facts (emailed to each team)
- Mutual Fact Pattern.

Assignment: Review materials on Wildland Fire Negotiation page. This is your “closed library” for this negotiation. Also review confidential facts emailed to you. Locate one or more additional resource(s) that are relevant to the issues presented by the negotiation fact pattern. Upload a copy of or link to your proposed additional resource with a paragraph summary of why you believe it is relevant and useful to the negotiations to canvas **at or before 6:10 p.m. on 10/30**. Bring a copy of your resource to class (electronic or paper). Be prepared to discuss with your group why this additional resource should be added to the library of materials for reference in the negotiation.

Class: Finish up wildland fire lecture material. We will then break into groups with your teams. Teams will discuss, with instructor, negotiation library and materials added to library as well as why the materials are relevant to the facts and legal issues. We will then use any remaining time for each group to begin to develop its proposed strategy for negotiation of this problem. Instructor will take questions regarding the materials in the closed library, the teams’ proposed strategies, and the law governing wildland fire liability.

11/1 WILDLAND FIRE NEGOTIATION: IDENTIFYING THE PROBLEM AND SOLUTION

Read:

- Getting Past No, pp. 3-14, 17-28, 159-171
- Confidential facts for Wildland Fire Negotiation (emailed to each group by instructor)
- On Canvas,
 - Wildland Fire Negotiation Page, review material in closed library and mutual facts.

Assignment:

Meet with your group to:

- (1) further prepare your strategy for the negotiation rounds 1 & 2. Select three individuals from your group to advocate for your group’s position in class as to each round.

Revised, October 28, 2017

- (2) Assign people from your group to prepare any exhibits for your negotiations (exhibits are permissible only to demonstrate matters identified by the fact pattern or the closed library). Select two individuals from your group to advocate for your group's position in class.

Class: Finish up wildland fire lecture material. We will then break into groups with your teams. Teams will discuss, with instructor, negotiation library and materials added to library as well as why the materials are relevant to the facts and legal issues. Instructor will take questions regarding the materials in the closed library, the teams' proposed strategies, and the law governing wildland fire liability. Each group will begin to develop its proposed strategy for negotiation of this problem.

Week of 11/6

11/6 WILDLAND FIRE NEGOTIATION ROUND 1

Read:

- Getting Past No, pp. 76-104
- Review confidential facts for Wildland Fire Negotiation
- On Wildland Fire Negotiation Page, review material in closed library.

Assignment: meet with your group to further refine your strategy for the negotiation rounds 1 & 2. Each team member should upload to Canvas, **at or before 6:10 p.m. on 11/6**, an outline of your negotiation strategy for round 1.

Class: In class, there will be one hour of negotiation by the three individuals nominated by each team to represent their group and advocate for its position, then the remaining class time will be used for discussion and feedback on the negotiation.

11/8 WILDLAND FIRE NEGOTIATION ROUND 2

Read:

- Getting Past No, pp. 129 (middle) -156.
- Round 2 confidential facts for your group (these will be emailed to each group by instructor).
- On Canvas, Wildland Fire Laws Negotiation Page, review materials in closed library.

Assignment: meet with your group if needed to further refine your strategy for the negotiation round 2. Each team member should upload to Canvas, **at or before 6:10 p.m. on 11/8**, an outline of your proposed negotiation strategy for round 2.

Class: In class, there will be one hour of negotiation by the three individuals nominated by each team to represent their group and advocate for its position in round 2, then the remaining class time will be used for discussion and feedback on the negotiation.

Revised, October 28, 2017

Week of 11/13

11/13 WATER QUALITY LAWS (Clean Water Act/Porter Cologne)

Read: In Environmental Law & Policy, pp 173-197 (bottom)

Class: Lecture and Q&A.

11/15 WATER QUALITY NEGOTIATION: IDENTIFYING THE PROBLEM AND SOLUTION

Read or review:

- Confidential facts (emailed to each side)
- On Canvas,
 - Water Quality Negotiation page, materials in closed library.
 - Water Quality Negotiation page, Mutual Fact Pattern.

Assignment: Review materials on Water Quality Negotiation page. This is your “closed library” for this negotiation. Locate one or more additional resource(s) that are relevant to the issues presented by the negotiation fact pattern. Upload a copy of or link to your proposed additional resource with a paragraph summary of why you believe it is relevant and useful to the negotiations to Canvas **at or before 6:10 p.m. on 11/15**.

Class: Finish up lecture material. Then we will break into groups to discuss materials added to the negotiation library. We will then use any remaining time for each group to develop its proposed strategy for negotiation of this problem. Instructor will be available for questions about water quality laws and about proposed strategy.

Week of 11/20

11/20 Crafting an Objective, Sustainable Framework & the Importance of Evidence

Read:

- Getting to Yes, pp. 84-98
- Getting Past No, pp. 15-17
- On Canvas, *Leaf River Forest Products Inc. v. Ferguson* (Miss. 1995) 662 So.2d 648

Assignment: Prepare and upload to Canvas, **at or before 6:10 p.m. on 11/20**, a not more than 1-page summary outline of the current controversy you intend to discuss in your end-of-quarter final presentation, giving a very general description of the subject of and parties to the controversy, legal issues, and identifying one or more individuals you are planning to contact interview and their relevance to the controversy.

Your presentation must identify an environmental controversy and propose a solution. The controversy does not have to involve a pending lawsuit, although it may. It should be a controversy that is (1) in litigation; (2) may lead to litigation in the future; or (3) involves

continuing, unresolved issues. Controversy in this context means that the topic is as-yet-undecided in the courts. If there is a published court opinion on the topic, the topic is not likely to be approved for use in your end-of-quarter presentation, unless further appeal from the decision is likely. The best presentations will discuss a personal interview regarding the controversy as well as ordinary research sources. In preparing your response to this assignment, and in giving your presentation, you should be sure to discuss all elements in the outline below.

I. Introduction

What is the controversy that you are going to analyze? What are the legal issues that need resolution in order to resolve it? Why is it an important, interesting, challenging, or controversial issue? What is at stake?

II. Parties and Issue Description

Parties: Who are the parties on each side? What does each side want?

Issue Description: What are the basic facts underlying the controversy? Are they disputed? What is the history of the controversy? How did it come about? Is there a lawsuit? Is there a way to avoid one?

III. Identification of the law that applies to the controversy

Identify the main environmental law(s) that would apply to the controversy. For example, if it involves a construction project, NEPA and/or CEQA may apply. If it involves air pollution, the federal Clean Air Act may be the applicable law. What state or federal agency is likely to be involved? Does the agency have applicable regulations? Are there major cases on the topic?

IV. Your evaluation & proposed solution

Do you think applying the law to the controversy will give a clear resolution of the issue(s)? If so, what do you think is the likely outcome? If the outcome is unclear, what would be the better result from a policy perspective? Why? How do you think it can be resolved?

Class: Lecture, Q&A. Be prepared to present your paragraph summary to the class, explain why you selected this topic, and to receive feedback including whether the topic meets the “current controversy” criteria.

Revised, October 28, 2017

11/22 NO CLASS. Day before Thanksgiving break. Work on your end-of-semester presentation, and meet with your team to prepare for Round 1 negotiation next Monday 11/27.

Assignment:

Meet with your team to

- (1) Prepare your strategy for water quality negotiation round 1. Each team member should upload to Canvas **at or before 6:10 p.m. on 11/27** an outline of a proposed negotiation strategy.
- (2) Prepare any exhibits for your negotiations (exhibits are permissible only to demonstrate matters identified by the fact pattern or the closed library).

Extra credit assignment: watch “A Civil Action” with John Travolta and Robert Duvall (information about where to view it is on Canvas). Former ESP 161 students will be given an alternative movie to view and summarize. After watching the movie, write a *one-page* summary that (1) describes the facts and any legal issue(s) you can identify in the case depicted in the movie; and (2) tells us in what way you found the movie relevant to the material you’ve learned in the class so far. Upload your one-page summary to Canvas at or before 11:59 p.m. on 11/26.

Week of 11/27

11/27 WATER QUALITY NEGOTIATION: ROUND 1

Read:

- Confidential facts for your team (these will be emailed to each team).
- On Canvas, Water Quality Negotiation page, review materials in closed library

Assignment: Teams meet to develop negotiation strategy and discuss any exhibits you may wish to prepare. Each team member should upload to Canvas, **at or before 6:10 p.m. on 11/27**, an outline of your proposed negotiation strategy.

Class: There will be one hour of negotiation in teams of three individuals, then remaining time for feedback. Each team will then be scored based on negotiation criteria.

11/29 WATER QUALITY: ROUND 2

Read:

- Review confidential facts for your team
- Review materials in closed library

Assignment: Teams meet to develop round 2 negotiation strategy and discuss any exhibits you may wish to prepare. Each team member should upload to Canvas, **at or before 6:10 p.m. on 11/29**, an outline of your proposed refined negotiation strategy in light of the experience in the first round.

Revised, October 28, 2017

Class: There will be one hour of negotiation in teams of three individuals, then remaining time for feedback. Each team will then be scored based on negotiation criteria.

Week of 12/4

12/4 BEGIN PRESENTATIONS: CURRENT CONTROVERSY & PROPOSED FRAMEWORK FOR SOLUTION

Assignment: be prepared to present verbally to the class a five-to-ten minute overview of a current environmental controversy and your proposed framework for solution. Prepare and upload to Canvas, **at or before 6:10 p.m. on 12/4**, a PowerPoint presentation for your planned presentation, including the following elements:

I. Introduction

What is the controversy that you are going to analyze? What are the legal issues that need resolution in order to resolve it? Why is it an important, interesting, challenging, or controversial issue? What is at stake?

II. Parties and Issue Description

Parties: Who are the parties on each side? What does each side want?

Issue Description: What are the basic facts underlying the controversy? Are they disputed? What is the history of the controversy? How did it come about? Is there a lawsuit? Is there a way to avoid one?

III. Identification of the law that applies to the controversy

Identify the main environmental law(s) that would apply to the controversy. For example, if it involves a construction project, NEPA and/or CEQA may apply. If it involves air pollution, the federal Clean Air Act may be the applicable law. What state or federal agency is likely to be involved? Does the agency have applicable regulations? Are there major cases on the topic?

IV. Your evaluation & proposed solution

Do you think applying the law to the controversy will give a clear resolution of the issue(s)? If so, what do you think is the likely outcome? If the outcome is unclear, what would be the better result from a policy perspective? Why? How do you think it can be resolved?

12/6 CONCLUDE PRESENTATIONS

Any remaining presentations will be given during the allocated final exam period.