Law and Environment: Syllabus
Legal Studies/Environmental Studies 430, Spring 2016

9:30 – 10:45 am, Tues.-Thur., Soc Sci 4308 Prof. Richard Keyser, rkeyser@wisc.edu
Office Hours: 11:30 am -12:30 pm, Tues.-Thur., Social Sciences 7131, and by appointment.

Description: This class explores environmental studies through a focus on law and legal history. Although its main concentration is on U.S. environmental law, the course will begin and end with broader historical and global perspectives. The first of three units of the class survey the English, European, and early American legal approaches to land use, natural resources, and pollution through World War II. A second unit examines the development and practice of contemporary U.S. environmental law. The final unit considers the recent emergence of international environmental law.

Grades: will be calculated on the standard UW scale: A=93-100%, AB=88-92%, B=83-87%, BC=78-82%, C=70-77%, D=60-69%, F=0-59%. Grades will be determined as follows:

Attendance and participation:	10%
Short Essay (1-2 pages):	5%
Quizzes	10%
Midterm Essay (5-7 pages):	20%
Short Research Paper (about 10 pages):	35%
Final exam:	20%

Attendance & Participation Assessment: Success in this class, as in most, is greatly favored by regular attendance and participation, and therefore I will keep track of them. But I do not assess attendance and participation quantitatively by assigning points. Instead, I assess these factors qualitatively and subjectively at my discretion (i.e., A-level, B-level, etc.) at the end of the semester. This is partly because I find that most students' attendance and participation correlates rather well with their performance on written work, and therefore worrying over a precise point system is not worth it. However, I do use my qualitative assessment of attendance and participation to adjust students' final grades in borderline cases, especially when a student contributes to class at a level above their performance on written work.

Attendance Guidelines: 1) you do not earn credit just for attending class, which is expected; 2) any more than THREE unexcused absences is excessive, because missing this much class usually leads to misunderstanding of course materials and assignments; 3) missing more than SIX classes without valid excuses may be grounds for failing the class; and 4) valid excuses are limited to: university-recognized religious observances and athletic participation (but in both of these cases you must inform me of your planned absences by the end of the second week of classes); and for well-documented major illnesses or emergencies in the immediate family.

Participation Guidelines: You should try to speak up often, and I will also try to call on students. (*Please let me know as soon as possible if you would prefer that I not call upon you!) But quality of contribution counts more than quantity. Quality contributions reflect your familiarity with the readings and your effort to ask good critical questions about them, such as: What are the main questions the author tries to answer? What is the author's main argument? What specific arguments, assumptions, or evidence are used in support? What is left out? Good participation also means that you listen to others and try to engage seriously but respectfully with what others say.

Computers, Electronic Devices, & Distracted Behavior: Due to the potential for distraction, no computers or electronic devices of any kind may be used in class, except when you have received my

approval in cases of documented medical need. Engaging in any unauthorized screen time or in any other distracted or distracting behavior, such as reading unassigned materials, noisy eating or drinking, sleeping, conversation with classmates or on the phone, etc., may negatively impact your grade.

Quizzes: There will be occasional quizzes, approximately every two weeks or so. I will often let you know about an upcoming quiz a week in advance, but there may also be 'pop' or unannounced quizzes. The format may include a combination of multiple choice, fill-in the blank, short answer, and paragraph-length responses to questions about the reading.

Essays: The first two essays will ask you to respond to the assigned readings on sustainability in the context of traditional approaches to resource conservation. The research paper will be based on a topic of your choosing (with some guidance). Specific prompts will be given in class. All three essays will be turned in both as paper copies in class, and as electronic copies to an anti-plagiarism website. Late papers will be marked down one grade per class day late.

Essay Drafts: for the Midterm and Research papers you are required to turn in a draft two weeks before the final paper is due. You will turn the drafts in to me, but then work with an undergraduate Writing Fellow on revising them; see http://www.writing.wisc.edu/writingfellows/index.html .

Final Exam: This comprehensive exam (covering everything studied in the course) will include both factual material and the broader ideas and themes of the course. The format will include some identification, short-answer essays, as well as one or two longer essays.

Academic Honesty: Your written work must reflect your own ideas, and where you draw on others' words or ideas you need to indicate this clearly with proper quotations and citations. Academic dishonesty will not be tolerated, and all appropriate penalties, including failing the course, will be strictly enforced. As state law for the UW System explains, academic misconduct includes, but is not limited to "claim[ing] credit for the work or efforts of another without authorization or citation" (https://www.students.wisc.edu/doso/docs/uws_chapter_14.pdf). For plain-language guidance, see: https://www.students.wisc.edu/doso/students/. Specifically on the proper ways to give credit to sources, consult the Writing Center (http://www.writing.wisc.edu/) and download their handout 'Acknowledging, Paraphrasing, and Quoting Sources:' http://writing.wisc.edu/Handbook/Acknowledging_Sources.pdf .

Accommodations: If you need accommodations due to any disability, please let me know within the first two weeks of class, i.e. by Jan. 28. In order to maintain confidentiality, you may do so by coming to my office hours or by emailing me to arrange a meeting. You will need to provide documentation from the McBurney Disability Resource Center, 702 West Johnson St., Suite 2104, tel. 608-263-2741, email: mcburney@studentlife.wisc.edu.

Reading Assignments and Note-Taking: Ideally all reading assignments for each week should be completed by Tuesday's class so that you can make connections among the readings. If this is not possible, you may read the assignments in the order they appear on the syllabus. In terms of the types of readings, it is usually best to start with the secondary sources (Jacoby, Layzer, or Speth & Haas), before going on to the primary sources (laws, judicial decisions, etc.), which are often the most important and challenging readings. For best results, read each assignment carefully, take notes, and prepare a short summary of, response to, and critical questions provoked by it as a basis for class discussion (1-2 pages for each week's readings).

Required Course Pack (1) and Books (3): You need to acquire the course pack and the four books listed below, and bring them to class on the days when they are assigned. The Course Pack may be purchased at the Social Sciences Copy Center (http://copy.ls.wisc.edu/), and the books at the University Bookstore

(http://text.uwbookstore.com/home.aspx). For the books, please note that you need the editions listed below, and that in many cases EBOOKS ARE NOT ACCEPTABLE, because they often leave out the page numbers or have other formatting problems. All four items are also on reserve at College Library. They are listed here in the order in which they will be assigned:

Keyser, Richard. *Course Pack for LS/ES 430, Law and the Environment*. Spring 2016.
Jacoby, Karl. *Crimes Against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation*. Rev. Ed. with new afterword. Berkeley: University of California Press, 2014.
Layzer, Judith. *The Environmental Case: Translating Values into Policy*. 4th ed. Washington, D.C.: Sage/CQ Press, 2016.
Speth, James G., and Peter M. Haas. *Global Environmental Governance*. Washington, D.C.: Island Press, 2006.

SCHEDULE

Note: as indicated below, for weeks 8-11 there will some additional (fairly short) primary sources readings to be announced (TBA). For other weeks as well, there may be occasional short readings assigned that relate to presentations by various visitors to the class.

I. Theory & History: Property, Commons, & Conservation in Europe & Early America

Week 1, Jan. 19-21. Introduction: Landed Property & the Commons.
- Course Pack: Elinor Ostrom, *Governing the Commons*, ch. 1, pp. 1-8; and ch. 3, pp. 58-102.
- Course Pack Primary Sources: Property Rights, Early Common Law, & Manorial Law (8 pp.).

Week 2, Jan. 26-28. Commons Governance in Traditional Agro-Ecosystems.
- Course Pack: de Moor et al., *Common Land in Northwest Europe*, 15-22, 59-81.
- Course Pack Primary Sources: Early Legal Texts on Forests & Commons (7 pp.).

Week 3, Feb. 2-4. Colonial America: Mercantilism, Enlightenment, & Settlement.
- Course Pack Primary Sources: Colonial America (8 pp.) & Mining Act of 1872 (3 pp.).
- Course Pack: Schorr, *Colorado Doctrine*, ch. 1-2, pp. 1-31; ch. 4, pp. 65-75; ch. 6, pp. 153-64.
- **Short Essay Due, Feb. 2.**

Week 4, Feb. 9-11. The 19th-Century Land Bonanza & Early Conservation.
- Jacoby, *Crimes Against Nature*, intro and ch. 1-2, pp. 1-47.
- Layzer, *The Environmental Case*, ch. 7, pp. 202-32.
- **Draft of Midterm Essay Due, Feb. 11.**

Week 5, Feb. 16-18. Conservation, Public Health, & the Progressive Era.
- Course Pack: James Scott, *Seeing Like a State*, ch. 1, pp. 11-22, 33-37.
- Jacoby, *Crimes Against Nature*, ch. 3, pp. 48-78; and afterword.
- Course Pack: Mineral Leasing Act, 1920; Weeks Act, 1911.

II. Modern Environmental Law in the U.S.

Week 6, Feb. 23-25. From the New Deal to Post-War Environmentalism.
- Layzer, *The Environmental Case*, Ch. 1, pp. 1-6; ch. 2, pp. 31-39.
- Course Pack: Samuel Hays, "From Conservation to Environmentalism," pp. 144-52.
- Course Pack: Administrative Procedure & Freedom of Information Acts (1946-66).
- **Midterm Essay Due, Tues., Feb. 25**.

Week 7, Tues.-Thur., March 1-3. The 'Golden Age' of Environmental Law: The Clean Air & Water Acts
- Layzer, *The Environmental Case*, ch. 2, pp. 39-58.
- Course Pack: The Wilderness Act, 1964; Clean Air Act, 1970.

Week 8, March 8-10. Environmental Governance, Public Fears, & the Challenge of Toxic Torts.
- Layzer, *The Environmental Case*, ch. 1, pp. 6-21; ch. 3, pp. 63-87.
- Course Pack: *Chevron v. NRDC*, 1984 (and possibly other sources TBA)
- **Research Proposals Due: March 10.**

Week 9, March 15-17. 2nd-Generation Environmental Law: Market-Based Solutions to Acid Rain.
- Layzer, *The Environmental Case*, ch. 5, pp. 133-62.
- Primary Source TBA

- **Spring Break: March 21-25.**

Week 10, March 29-31. Courts, Litigation, & Negotiation: The Impact of the Endangered Species Act.
- Layzer, *The Environmental Case*, ch. 8, pp. 239-69.
- Primary Source TBA

Week 11, April 5-7. Executive Rule-Making: Recovery in New England Fisheries?
- Layzer, *The Environmental Case*, ch. 10, pp. 309-35.
- Primary Source TBA

Week 12, April 12-14. The Role of Local & State Governance: Fracking Wars.
- Layzer, *The Environmental Case*, ch. 14, pp. 463-90.
- **First Draft of Research Paper Due, April 14.**

III. International Law

Week 13, April 19-21. The Rise of Global Environmental Governance (Focus: Oceans).
- Speth & Haas, *Global Environmental Governance*, ch. 1-3, pp. 1-20, 44-61.
- Course Pack: Susan Buck, *The Global Commons*, ch. 4, "The Oceans," pp. 75-102.

Week 14, April 26-28. The Framework & Principles of International Environmental Law.
- Speth & Haas, *Global Environmental Governance*, ch. 3, pp. 61-81.
- **Final Draft of Research Paper Due: April 28.**

Week 15, May 3-5. International Environmental Law: Assessment & Prospects.
- Speth & Haas, *Global Environmental Governance*, ch. 4-6, pp. 82-127.

Final Exam: Monday, May 9, 10:05 am – 12:05 pm.