

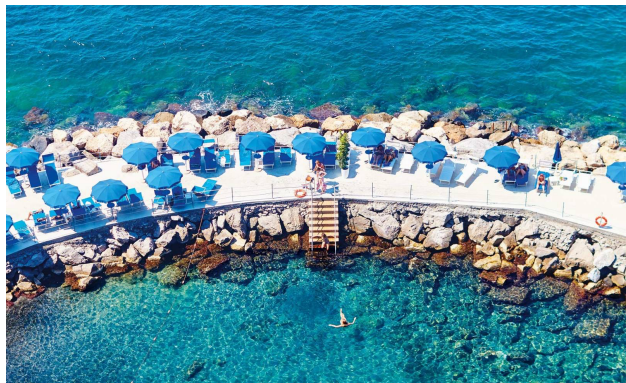
SMEA 515: U.S. Ocean and Coastal Law

Winter 2023

Tuesday / Thursday 10:30am -- 11:50am

Smith Hall 404

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Office Hours by appointment
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Required Text

Baur, Eichenberg, Snusz, and Sutton, Ocean and Coastal Law and Policy (2nd ed.)
(Note: Second Edition!)

Helpful Websites

<http://dictionary.law.com>

(easy-to-use online law dictionary)

<https://guides.lib.uw.edu/research/law>

(links to a wide variety of free online legal resources, courtesy of UW Law School library)

Course Introduction

This course focuses on the role and application of legal concepts to ocean and coastal resource management. The class structure will be a hybrid of law-school-style lecture and grad-school-style discussion, intended to maximize both exposure to legal concepts and active class participation. You will be asked to lead (or co-lead) one class discussion focusing on one of the assigned readings.

The Legal System: We will briefly review the American legal system, which will provide a foundation for understanding the materials that follow. You will also learn how to summarize judicial cases in a page or two, a skill known as ``briefing."

Substantive Legal Concepts: We will study significant ocean and coastal statutes and doctrines, with emphasis on their role in policy and management.

Course Goals

- Provide overview of major statutes and doctrines relevant to ocean and coastal law
- Illustrate the legal aspects of significant ocean and coastal policy issues
- Practice reading and interpreting legal materials
- Improve students' ability to facilitate communication among managers, lawyers, and scientists
- Equip students to identify pathways for change

Above all, I intend this course to be a sandbox for thinking about coastal law and policy. My goal is to provide some of the best and most valuable parts of law school without requiring a separate 3-year course of study. By the end of the quarter, you should develop a sense of competence and familiarity with legal materials that will allow you to tackle real-world problems and to responsibly recognize your limits in doing so.

Note, too, that this course is about what is rather than what should be. I will continue to remind you that if you wish to change societal power structures, it is first essential to understand how those structures work.

Assignments

1. Readings. All students should come to class well-prepared to discuss the readings that have been assigned for that day. The class model depends upon a lively and informed discussion that is impossible unless everyone is up to speed.
2. Case Brief. You will brief at least one judicial opinion for grading.
3. Assessment of Courtroom Experience. You will write 1-2 pages detailing your experience visiting -- in person -- a civil procedure of your choosing in a Washington courtroom. I will give further details in class. Due before March 9.
4. Final Exam: The final exam is written in a format commonly used in law school. I will create one or more fictional (yet reality-based) scenarios, with obvious legal ramifications. Your task will be to spot the legal issues, state the laws that apply, and give a brief analysis for each issue. Do not worry, we will practice. The exam will be subject to time limits and other constraints to be provided as the quarter comes to a close. You will be able to use your notes and all course materials to help craft your exam responses.

5. Participation: Please come to class prepared to ask or answer questions about the readings. Regular attendance is also important; multiple unexcused absences may result in your being asked to drop the course. If you anticipate being absent from class for more than one day, please discuss it with me in advance. I am encouraging a class that is full of discussion and the exchange of thoughts.
6. On-Call Group. You will be assigned to an on-call group, which will (jointly) be responsible for materials on one particular day of the term. Each group will:
 - (a) Post an outline/synthesis of assigned reading materials on Canvas 24 hours prior to class.
 - (b) Co-lead (with me) a discussion in class on the day assigned to the on-call group.
 - (c) Revise the outline on Canvas post-class, in light of our in-class discussion. (Taken together, these will become the class-wide study materials for the final exam.)

Grading

The course will be graded on a standard 4.0 scale.

- Practice Case Brief, due Jan 19: (0 points)
- Peer Review on Practice Case Brief, due Jan 26: 100 points
- Case Brief, due February 2: 150 points
- Courtroom Summary, due before March 9: 150 points
- Final Exam, March 10: 400 points
- Participation and On-Call Contribution: 200 points

Late Assignments

Please complete your assignments on time. Given the brevity of the ten-week quarter, late work is generally not accepted, and any exceptions to this rule will be subject to instructor approval prior to the original due date.

Computers, Phones, Tablets, etc

I ask that students do not have computers in class unless it is essential for some documented purpose. This class is substantially dependent upon your full participation. This generally requires eye contact and conversation, things greatly hindered by distractions online and elsewhere. Please respect our course time by remaining focused on the course.

Academic Integrity:

Cite all sources, quoting where appropriate. Follow standard rules of citation (e.g., MLA, Chicago Manual of Style, BlueBook, etc.). You are responsible for understanding the College of the Environment's rules on academic misconduct. See <http://coenv.washington.edu/intranet/academics/academic-policies/academic-misconduct/>.

Religious Accommodations:

Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. The UW's policy, including more information about how to request an accommodation, is available at Religious Accommodations Policy (<https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/>). Accommodations must be requested within the first two weeks of this course using the Religious Accommodations Request form (<https://registrar.washington.edu/students/religious-accommodations-request/>).

Course Schedule

Tuesday, Jan 3

Topics: Course Introduction; Overview Of Legal System; How to Read and Brief a Case

Readings: Orin Kerr, How to Read a Legal Opinion (on canvas)

Purpose: We'll bring everyone up to speed fast---particularly those who have had no legal studies at all in the past---by learning how to read a case, and sketching the outline of the US legal system and its workings. We will also try to get to the relationships among the three branches of the US government, and perhaps the limits of Executive authority (given recent interest in this topic).

Assignment: Case Brief No. 1 (ungraded): Taylor United v. Department of Revenue (2002) DUE Thursday, JAN 19, before class.

Note: I assign this case because it gives a good example on which to practice briefing facts and law, and because it's a Washington State case that deals with marine resources (here, clams). This is an ungraded assignment that will receive a peer review from a classmate, as well as guidance and discussion in class.

Thursday, Jan 5

Topics: Common law overview: contracts, torts, property; liability and remedies.

Purpose: An overview of legal concepts that will prove useful in the weeks ahead. These are core categories of law in the U.S. that we inherited from England in the revolution,

and to a great degree, they continue to animate legal analysis and problem-solving today. Note that first-year law students take entire classes on contracts, torts, and property (respectively), and so dedicating a single class period to all three is a bit ridiculous. Nevertheless, we will do it, and it will be valuable.

Readings: None

Tuesday, Jan 10

Topics: Discussion of Rule of Possession; What Does Ownership Mean? Who Owns What, and Why?

Readings: Pierson v. Post; Ghen v. Rich (on canvas). Focus on Pierson v. Post; it's endlessly entertaining and can easily take all of one class to talk about.

Purpose: Oh, wow, am I excited for this class. These two (old, cool) cases set the stage for a discussion of who owns what, and how a person might come to "own" something at all.

Note that the ocean has traditionally been "public" in some sense, while most land has been claimed as "private." We'll talk in the next few classes about what these terms might mean, and whether there's a grey zone where the ocean meets the land.

Thursday, Jan 12

Topics: Property, Ownership, and The Lack Thereof; Takings

Readings: Selection from Merrill and Smith's Property casebook; selection from McCay's Oyster Wars and the Public Trust (on canvas)

Purpose: The casebook readings give a modern view of property, nicely synthesizing a few different ideas about what ownership means. McCay's book recounts a dispute that a) goes to the heart of the question of public- vs. private rights in shoreline resources, and b) lands us squarely in ocean and coastal law.

Assignment: Peer-review of Practice Case Brief: DUE to peer partner, JAN 26, before class.

Tuesday, Jan 17

Topics: Are Oceans and Other Waterways Somehow Inherently Public?; The Public Trust Doctrine; Discussion of the Oyster Wars

Readings:

1. Textbook, Chapter 2 pp. 43--61
2. Caminiti v. Boyle (on Canvas)

Purpose: At the end of the day, the Public Trust Doctrine isn't that important relative to property rules, contract rules, and statutes. So there's a risk of spending too much time on this material. BUT we cover it because the material gets to a core function of ocean and coastal law (and environmental law generally): reducing conflicts (and settling conflicts) among private and public interests where the ocean meets the land.

Thursday, Jan 19

Topics: Sharing Power; Administrative Rulemaking; State/Federal Interactions

Readings: Margot Sanger-Katz, New York Times: ``For Trump Administration, It Has Been Hard to Follow the Rules on Rules" [link here](#) and others TBD; Textbook, Chapter 3

Purpose: Although we often forget it, we live in a federal system in the United States, in which the individual States supposedly have more power than the federal government does. In ocean and coastal law (and environmental law generally), States play a big role in setting and enforcing limitations on individual actions and carrying out public policy, from pollution controls to development permitting. In this class and the next two, we'll take a look at how this works.

Note, too, the relationship between cities and states is much like the relationship between the state and federal governments.

Assignment: Case Brief No. 2 (GRADED): City of Bainbridge v. Brennan (2005) DUE FEBRUARY 2 before class. This case deals with a bunch of interesting public vs. private-property interests we've talked about. Try to work past the common-law jargon (look up terms when you need to, which will happen), and try to get to the heart of the case rather than dealing with every single issue that arises.

Tuesday, Jan 24

[ASYNCHRONOUS CLASS -- Watch lecture online, contribute to discussion on Canvas]

Topics: Managing Coastal Development; CZMA Coastal Act, SMA, etc. Readings:

1. Textbook, Chapter 5
2. Shoreline Management Act - Overview (<https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Shoreline-Management-Act-SMA>)

Purpose: We'll look at the federal Act that influences (to at least a small degree) coastal management in the U.S., focusing on the Washington State law that is our State's way of implementing the federal Act. This is our first example of federal legislation...the classes that follow will each deal with other such laws.

Thursday, Jan 26

NO CLASS [RPK unavoidable professional conflict]

Tuesday, Jan 31

Topics: Domestic Fisheries Management; Magnuson-Stevens Act

Readings: Textbook, Chapter 9

Purpose: Fish turn out to be big business, and important for marine ecosystems world-wide. Fish move around, can be hard to find, and vary enormously in their population sizes over time. As a result, they are fascinating to economists and modelers. Legislators eventually got into this game, for both protectionist and conservation reasons. We'll look at the resulting major federal law that regulates commercial fishing in the U.S.

Thursday, Feb 2

Topics: Coastal Water Quality: Clean Water Act

Readings: Textbook, Chapter 7

Purpose: The Clean Water Act is one of the big enchiladas of environmental law, with a surprisingly broad geographic reach, a deep dependence on State-federal cooperation, and a different bureaucracy doing implementation in each of 50 states (plus territories). It's also a model of what works in environmental law, and what doesn't. Consequently, we'll spend two days on the Act.

NOTE: Class TBD, pending a meeting in California this day. We can cover the CWA in one lecture if we need to.

Tuesday, Feb 7

Topics: Coastal Water Quality: Clean Water Act (continued), example: Lake Union

Readings: Textbook, Chapter 7

Purpose: We'll finish up the Clean Water Act, and look at a local example of what we do (and don't) know about water quality, even in a state dedicated to environmental issues. ALSO today, we'll practice an issue-spotter question, so that you will have a feel for it well before the final exam.

Thursday, Feb 9

Topics: The Law of the Sea; Does it Matter?

Readings: Textbook, Chapter 11

Purpose: It's a question that would make my predecessors at SMEA tear at their hair: does the UN Convention on the Law of the Sea really matter? We'll look at the Convention, and ask this question from the perspective of the U.S., as well as thinking about it from the point of view of smaller countries around the world. Tentative guest: Dave Fluharty.

Tuesday, Feb 14

Topics: Tribal Treaty Rights and Natural Resources

Readings: US v. Washington (9th Circuit Appeal of Boldt Decision) 520 F2d 676 (1975) (on Canvas)

Purpose: The Boldt Decision is a landmark in relations among Pacific Northwest tribes, the U.S. federal government, and State governments (Washington State most relevantly). We use this case as a very quick intro to what is known as Indian Law, providing a window into a whole set of political, historical, practical, and moral complexities. Here, the federal government sides with the tribes against Washington State, and wins. But 40 years later (spoiler alert), we are still trying to figure out what this means in practice.

Thursday, Feb 16

Topics: Tribal Treaty Rights and Natural Resources (continued)

Readings: US v. Washington (9th Circuit Appeal of 2013 Martinez injunction) 853 F.3d 946 (2017) (on Canvas)

Purpose: The 'culvert' case, part of the same litigation as the Boldt Decision, reifies the idea that the State of Washington has a treaty obligation to the Tribes to maintain salmon habitat -- a case with broad implications for land-use and environmental policy in the coastal zone.

Tuesday, Feb 21

[REMOTE CLASS via Zoom]

Topics: Offshore Energy: Oil, Gas, and Alternative

Readings: Textbook, Chapter 12 and (skim) Chapter 14

Purpose: Like it or not, for the moment we all take part in a fossil-fuel-based economy, and the potential of offshore alternative energy continues to loom...as potential, even as some windfarms come online. We'll go over the rules of engagement for natural resources management in these energies (with emphasis on oil and gas, since these are a big deal, and since these form the basis for dealing with permitting of wind and other alternative-energy sources offshore.)

Thursday, Feb 23

Topics: Endangered Species Act

[REMOTE CLASS via Zoom]

Readings: Textbook Chapter 17

Purpose: The Endangered Species Act is a short piece of legislation that has taken on outsized importance in environmental issues over the past 40+ years. We'll look at the Act and its workings, particularly as applied to ocean and coastal issues, and discuss the use of the ESA as a tool for parties on all sides to fight over larger ideas about the role of government and the distributions of public benefits and private burdens.

Tuesday, Feb 28

Topics: Marine Mammal Protection Act

Readings: Textbook, Chapter 16 (read by focusing on present-day law and skipping the historical bits)

Purpose: The MMPA does not get as much attention as the ESA, largely because it has not led to the property-rights battles that the ESA triggers. However, the MMPA is highly relevant to ocean and coastal issues (e.g., what coastal development doesn't potentially displace harbor seals?) and the Act is an interesting hybrid of resource exploitation and conservation.

Thursday, March 2

Topics: The National Environmental Policy Act (NEPA)

Readings: Textbook, Chapter 6

Purpose: NEPA is the federal law requiring an environmental impact statement for major federal actions. What began as a vague idea in Congress quickly became a set of concrete requirements once the law was passed, and these requirements have been a battleground ever since. We will focus on the nature of NEPA, and look at ways in which all sides of environmental debates use NEPA as a chessboard on which to play out their strategic aims.

Tuesday, March 7

Topics: Climate Change, Ocean Acidification, and the Marine Environment

Readings: Kelly and Caldwell, Ten Ways States Can Combat Ocean Acidification (And Why They Should), 37 Harvard Environmental Law Review 57-103 (2013), and Textbook, Chapter 19

Purpose: The trickiest and most pervasive environmental challenges of today and tomorrow entail large-scale change with diffuse causation. We'll look at the legal and policy tools that might be useful to decide what (if anything) we might do about these challenges. An updated list of climate-related lawsuits is [here](#).

Thursday, March 9

FINAL EXAM