

COURSE SYLLABUS – 2153.03A

Course: Business and Environmental Law

Fall Term 2010
Wednesday: 4:30-6:30 p.m.
Room L-406

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Course Objective:

This course provides an opportunity to consider current legal issues involving the broad area of Business and Environmental Law. The class looks at the interrelationship between environmental issues and business issues and how these issues continue to evolve in the civil and regulatory context. Emphasis is placed on how environmental issues impact on, and affect, business transactions and operations. This interrelationship is analyzed beginning with the role of the various levels of government and then the interplay between government and the private sector. Issues covered include: legislative framework and policy, transactional issues in buying, selling and financing real property and business assets, due diligence and business operations, the role of environmental consultants, environmental actions and damages, stigma, regulatory issues, and emerging and developing issues (such as climate change and cross-border liability).

Students are not limited to these topic areas for their papers and class presentations and are encouraged to investigate a wide range of issues relating to Business and Environmental Law. (A list of past and suggested paper and presentation topics will be made available).

Reading Materials:

I will provide all handouts and materials for the course readings. Readings will be available on BLS by the end of the next day after each class in time for review the following week, and are a mix of case law and relevant articles/materials to guide our review and discussion in class.

Teaching Method

This course is a small group seminar with major paper and will be based primarily on group discussion and interaction (with minimal lecturing). Students are expected to come to class having read the materials and must be prepared to engage actively in class discussions and exercises. There may be guest speakers during the term, subject to availability and scheduling considerations.

As this is a major paper course, part of one session will be devoted to discussing how to research, organize and write a major paper, and a written Guide to Writing a Major Paper will be given in advance for review.

The last few classes will be student presentations. Presentations are to be a maximum of 30 minutes in length. Students may choose to organize in-class exercises, or circulate readings or materials in advance of their presentation, and can see me to coordinate the details.

Evaluation:

Marks:

15%	Class participation (including attendance/review of materials in advance of class, discussion and participation during class and student presentations)
15%	Presentation (max 30 min in length) on topic <u>other than</u> major paper topic
70%	Major Paper

Class participation will be evaluated taking into account thoughtful and meaningful contribution to class discussions, ability to build on the ideas of others and overall degree of preparedness with the weekly readings, as well as attendance. (Simple attendance alone will not result in more than a bare pass in the class participation portion of the grade).

Major Papers:

All paper topics to be approved by instructor. All paper topics must be finalized on or before **WEDNESDAY OCTOBER 27, 2010**, by which date students must provide me with a brief written outline of the proposed paper topic (1-2 pages), and a list of sources consulted to date.

The deadline for submission of papers is **4:00 p.m. on FRIDAY DECEMBER 10, 2010**. Law school regulations require that major papers be submitted in hard copy. Students should hand papers in to Gwen Verge and ensure they are date and time stamped. I also require an electronic copy of each paper to be emailed to me at sean.foreman@dal.ca.

All papers should be standard 12-point font, double-spaced, minimum of 25 pages without contents and authorities (the general expectation is 25-40 pages in length). Please ensure you are familiar with the Major Paper Guidelines and the faculty regulations on late penalties.

Presentations:

All presentations to be allocated and topics confirmed on or before **WEDNESDAY OCTOBER 27, 2010**.

Paper/Presentation Deadline Extensions:

ALL student requests for extensions to paper or assignment deadlines and all requests for other accommodations **must** be directed to the Studies Committee. Professors do **not** have the authority to grant individual extensions or accommodation.

A **FULL** copy of the Major Paper Guidelines are attached to this syllabus as Appendix "A".

Students with Special Needs/Requests for Accommodation

Students seeking special accommodation with regard to course evaluation, such as exam deferral and extensions to deadlines, should consult with Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes as soon as possible, and before an exam is scheduled to be written or an assignment is due. Requests for special accommodation for reasons such as illness or personal circumstances will require an application to the Law School Studies Committee. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes if they require more information about the Studies Committee process. Students wishing to discuss arrangements for classroom assistance should see Professor Wildeman, the law faculty advisor to students with disabilities.

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require academic accommodation for the writing of tests, quizzes and exams should make their request to the Office of Student Accessibility & Accommodation (OSAA) prior to or at the outset of each academic term (with the exception of X/Y courses). Please see www.studentaccessibility.dal.ca for more information and to obtain Form A – Request for Accommodation. Students may also contact the Office of Student Accessibility & Accommodation directly at 494-2836, and they may contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information.

PLAGIARISM:

All students in this course must read:

- the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the plagiarism.dal.ca website, and
- the Law School policy on plagiarism, as set out in:
 - the law school regulations (available in hard copy from the Associate Dean’s office and online at http://law.dal.ca/Current_Students) and,
 - the First Year Handbook (provided to all first year students and available from Assistant Dean’s Office).

Any paper or assignment submitted by a student at Dalhousie Law School may be checked for originality to confirm that the student has not plagiarized from other sources.

Plagiarism is considered a serious academic offence that may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived.

Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

APPENDIX “A” - MAJOR PAPER GUIDELINES

A “major paper” is a writing requirement worth not less than 60% of the final mark awarded in a class (i.e between 60% and 100%).

Faculty Council designates which courses are to be taught as paper courses.

Guidelines for Major Paper Classes

- a. Normally the paper will not be shorter than 25 pages.
- b. At the beginning of the course, the professor should give the class an indication of the expectations regarding length. The professor might say “the minimum page length is 25 pages; while there is no maximum length, my expectation is that most papers will between 25 and 40 pages long.”
- c. Normally a paper of a general descriptive nature will not meet the standards.
- d. Normally the topic undertaken will be suitable for in-depth research with legal emphasis in a limited field of inquiry.
- e. Normally the supervisor should approve the topic and the outline or draft of the paper.
- f. Faculty members should make themselves available to meet with students to discuss the graded papers.
- g. At each stage of the supervision of major papers, both the supervising faculty member and the student should pay explicit attention to each of the criteria relevant to the evaluation of the paper.
- h. Copies of the major paper guidelines should be made available to students.

1. Objective of Major Paper Requirement

The major paper requirement is intended to assist in the improvement of the legal research and writing skills the student already has. It is to be, in effect, an extension of the first year legal writing program. The topics upon which the written assignments are undertaken should be of a type suitable for in-depth research in a limited field of inquiry and substantial Faculty input is essential.

2. Performance Expectation

The aim should be writing of publishable quality. It is to be expected that most students will not achieve such a high level of quality, just as most students will be unable to achieve an A standing in other classes. Papers should exhibit at least some level of legal analysis and not consist of a more recitation of decisions and facts. Supervision should be sufficient to make the writing requirement a real learning experience. This necessarily involves feedback to the student during the preparation of the paper and after its completion.

3. Curve Does Not Apply

The curve does not apply as a guideline in the marking of major papers, although a median grade range of 73-75 is enforced.

4. Criteria

The criteria of (a) Research; (b) Organization: Logic/Coherence; (c) Analysis-Insight-Synthesis; (d) Literary Style and (e) Originality are adopted explicitly as the ones relevant to evaluation of major papers. The definition of these criteria and the alphabetical grade equivalents and weights assigned to them as set out in the following table are adopted.

Please see Major Paper Guidelines Table in the calendar (Appendix “B”).

- a. **Research** involves the ability to find, select and use effectively all primary materials (case, statutes, regulations) and secondary sources (books or articles) relevant to the topic. In many classes, a comparative analysis of material from other jurisdictions (e.g. Britain and the United States) is appropriate or even essential. Students should not rely exclusively on secondary sources, but should read the original text of major cases and statutes referred to in the literature. Research materials should include, where appropriate, non-legal sources. Empirical research by students ought to be encouraged.

The table adopts the following descriptors for research (horizontal axis):

- i) Outstanding - as defined above
- ii) Thorough- no important area of research has been missed but there are a few loose ends or other sources that ought to have been explored.
- iii) Not quite thorough - an important area of research has been missed or there are both loose ends and other sources to be explored.
- iv) Serious but Unsuccessful canvass of sources contains the failings of (iii) only more so.
- v) Mere attempt to consider sources - distinguishable from (iv) as being cursory rather than serious in considering main sources or there are clear errors in research, e.g. student fails to check for appeals of relevant decisions, and bases much of the analysis on a court of appeal case that has been reversed by the Supreme Court of Canada.
- vi) No serious research effort - self explanatory

- b. **Organization: Logic/Coherence** relates to the logical and coherent presentation of the subject matter, so that it is readily intelligible to the reader.

The introduction should assist the reader by providing both a clear statement of the problem that the student has chosen to analyze, the goal she/he seeks to achieve and a brief overview of the subjects she/he intends to discuss. The conclusion should play a similar role at the end of the paper, except that it should also summarize the student's conclusions. Topics should appear in a logical sequence. Legal and factual material that provides the foundation for discussion of a particular issue should be set out before that issue is reached. The student should use headings to structure the paper and indicate when she/he is moving to a new topic or subtopic. There should also be transitional text to justify the shift to a new topic, explain its connection to issues previously discussed, and the like.

The table adopts the following descriptors for Organization (vertical axis):

- Excellent Organization
- Well organized: A few minor flaws, but generally good logical flow

- Moderate Disorganization throughout, but paper is generally intelligible
- Substantial Disorganization: paper hard to follow
- Incoherent: Disorganization is so great that paper is unintelligible

- c. **Analysis-Insight-Synthesis:** These criteria relate to the evaluation of the student's ability to understand and utilize effectively the materials that she/he has found through research. They require an understanding of the subject matter that goes beyond the ability to merely recite the rationales of cases, the conclusions reached by other authorities or bare statistics.

Analysis relates to the student's detailed use of cases, statutes, and secondary sources within the paper to explore particular issues that she/he has identified. Good analysis will assist the reader to achieve a sophisticated understanding of the issues and relevant legal authorities without the need to read all the various sources that the student had identified through research. The student should provide a factual background adequate to permit the reader to understand the context in which legal problems arise. She/he should describe relevant legal material (cases/statutes) and important policy analysis (for example, Law Reform Commission materials) in sufficient detail to provide the reader with a clear view of any legal controversies that exist and reasoning that has been put forward to support the various positions. There are a wide variety of analytical weaknesses that may be displayed by students. Examples include missing a relevant issue or legal argument, identifying legal problems but not exploring available legal principles that may have a bearing on their solution, or stating the conclusions of cases significant to analysis of an issue without setting out the reasoning that the court used to justify its conclusions.

“Insight” involves an in-depth understanding of the fundamental issues. Good “Synthesis”, which usually demonstrates this understanding, reflects the ability of the student to integrate the diverse material that she/he has found into a conceptual framework that is clearly explained to the reader. Insight and synthesis would probably show up in a strong statement of thematic material at the outset, its use as an organizing device in the paper, and a serious attempt in the conclusion either to determine whether the initial hypothesis had been proven or to assess the conceptual apparatus for its explanatory power. Weak insight and synthesis may be demonstrated by a student's failure to integrate relevant authorities for some or all of the paper.

A better paper will draw inferences from the digested material as to the present state and future development of the law in the area researched, as well as formulating recommendations for legal changes that might improve the situation and serve appropriate policy goals. Good analysis without much insight or synthesis may be average depending on the complexity or the novelty of the topic or research method. For instance, good analysis of an original topic (see Originality *infra*) may be as much as can be expected and should be rewarded highly. The same quality of analysis of a topic on which there is already a body of published critical writing that provides a framework or platform for the student's paper would have to show its own insight and synthesis to rate equally highly. A paper that sets out numerous cases or articles or otherwise merely describes the results of the student's research efforts, however extensive, without attempting to extract common principles or create an analytical basis is likely to be judged as poor.

The table adopts the following descriptors for analysis-insight-synthesis (vertically within each box in the table):

- Excellent
- Very Good
- Average
- Weak
- Poor

- d. **Literary Style:** This criterion relates to the linguistic style in which the paper is written. Most Dalhousie law students do a competent job with grammar and spelling and many have excellent literary style. The stylistic problems present in papers are of two sorts. Legal writing should be formal but clear and straightforward. Some students tend to be too colloquial, using slang or contractions such as “won’t”. Other students try too hard to be formal, producing convoluted sentences, making excessive use of the passive voice, and the like.

Because most students are competent in terms of literary style, this criterion is used to make adjustments in the grades produced by the table set out above only in extreme cases. The professor may increase or reduce the alphabetic grade result produced by the table set out above by one grade level for exceptionally strong or exceptionally weak literary style as described below:

Descriptors for literary style:

Excellent: Literary style is significantly above the norm for Dalhousie Law students.
Raise table mark by one alphabetic grade level, e.g. B to B+

Average: Literary style is consistent with that demonstrated by the majority of Dalhousie law students, i.e. some stylistic weaknesses but basically competent
No change in table grade level as determined above

Weak: Student's literary style falls significantly below the norm for Dalhousie Law Students and demonstrates serious, persistent weaknesses in grammar, spelling, or style
Reduce table mark by one alphabetic grade level, e.g. B to C+

- e. **Originality:** A highly prized, all-too-rare quality that cannot be easily defined, is used in the Table to raise the alphabetic grade that would have been assigned otherwise by a maximum of two grade levels. A paper may demonstrate good “analysis-synthesis” but still be lacking in originality. There are two different kinds of originality: topic originality and substantive originality.

The first sort of originality relates to the topic itself. This kind of originality exists when the student selects a topic where no research has been previously undertaken in Canada (i.e. there are no Canadian secondary sources that deal with the issue that the student has selected). There may or may not be articles or books that have been published on the topic in foreign

jurisdictions (e.g. the United States or Britain), but even when such foreign sources do exist, a significant degree of creativity and extrapolation is required on the part of a student who undertakes to write on a topic where no previous Canadian research is available to help with all or part of the topic. This kind of originality may exist in major papers that display weaknesses in other areas. indeed, some kinds of analytical or organizational problems may be attributable precisely to the fact that the student is working in an area where no guidance is available from previous research carried out by more experienced scholars. The professor may recognize this kind of originality relating to topic by increasing the alphabetic grade produced by the table above by one level (e.g. from a B to a B+).

The second kind of originality may appear in the way the research is approached or in the understanding that the writer has gained of the topic and is able to convey to the reader, or in the form of new and convincing insights that are unique to the student author. This kind of originality, which is the hallmark of a paper of “publishable quality”, is not mere novelty although in other contexts the word may have that meaning: the new position advocated by the student must be credible, as well as novel. A major paper may demonstrate this kind of originality, even though the topic has been previously considered by other researchers in Canada. Originality of this kind will normally be associated with good “insight- synthesis-analysis”. The professor may recognize this kind of substantive originality by increasing the alphabetic grade produced by the table above by either one or two levels depending on the extent of the originality demonstrated by the paper (e.g. from a B+ to an A, or from a B+ to an A+ grade).

The cumulative effect of increases for originality is restricted to a jump of two grade levels. In other words, a professor cannot award a student an originality increase of three grade levels by accumulating an award of one grade level for topic originality, and two grade levels for substantive originality.

LATE PENALTIES

Introduction

These rules apply to LL.B. students.

In order to ensure that all students are treated equally and that no student is allowed to profit from taking extra time to complete an exam, paper or assignment, late penalties will be imposed for work that is not completed on time. The quantum of penalty imposed will vary depending on the amount of time allowed for the student to complete the assignment, the degree of lateness, and the existence of any mitigating circumstances.

1. The date for submission of major papers shall be announced orally and in writing by the instructor before the end of the course change period; the due date shall in no case be later than noon on the last regular day of exams.

2. The date for submission of other papers and assignments shall be announced in class with appropriate notice; the due date shall in no case be later than noon on the last regular day of exams.
3. The above stipulations apply equally in the case of optional course components, with the further proviso that the date for deciding whether to exercise the option shall be a time no later than the start of the final examination for that course. (In the event that the instructor sets an earlier date for deciding to exercise the option, it is within the instructor's discretion to allow a student who has opted to do a non-compulsory component to opt out of that component as long as the decision to opt out is made no later than the start of the final examination for that course.)
4. At any time during the course, it is within the discretion of the instructor to grant a general extension for papers and/or assignments, with appropriate notice to the class, as long as the revised deadline does not extend past noon on the last regular day of exams.
5. Faculty members do not have the authority to grant individual requests for an extension. Any request for an extension or to have a late penalty waived or moderated must be made to the Studies Committee, chaired by the Associate Dean, Academic.
6. Any request for an extension must be made as soon as the circumstances being relied upon arise, and in any event no later than the day on which the paper or assignment is due. Students must contact the Director of Studies or the Associate Dean, Academic, promptly, should they anticipate that they will not be able to meet a deadline and they plan to seek a waiver of penalty.
7. Students should be aware that not all circumstances will be accepted as justifying an extension. Where the Studies Committee is satisfied that an acceptable medical or other justification exists, the Committee will waive the late penalty for the period of time that, in the opinion of the Committee, was reasonably lost due to the factors outlined by the student and supported by documentation. It should be noted that making a request for an extension does not operate as a stay of late penalties.
8. Computer problems are not a justifiable excuse for lateness.
9. The current late penalties are as set out below.

Major Papers:

The standard late penalty for a major paper is **five points out of 100 per day of lateness or part thereof**. Note that the penalty is out of 100. If the paper is worth less than 100 per cent of the grade in the course, the penalty should be adjusted accordingly. Thus, for a paper worth 75% of the final grade, the late penalty would amount to 3.75 marks out of 75 per day of lateness. This calculation can be made either by marking the paper out of 100, subtracting the amount of the penalty and then converting the remaining number into a mark out of 75, or by calculating 75% of the standard late penalty amount and applying it against the mark out of 75.

EXAMPLES:

(Note that these examples apply to major papers)

- a) Paper worth 100% of the course is 2 days late; late penalty of 10 marks for the paper and the course
- b) Paper worth 100% of the course is 5 days late; late penalty of 25 marks for the paper and the course.
- c) Paper worth 60% of the course is 5 days late; late penalty of 25 percent for the paper, which results in a deduction of 15 marks from the final grade in the course
- d) Paper worth 100% of the course is 9 days late; late penalty of 45 marks for the paper and the course.
- e) Paper worth 75% of the course is 9 days late; late penalty of 45 percent for the paper, which results in a deduction of 33.75 marks from the final grade in the course.

Assignments:

The major paper late penalty is calculated based on the assumption that all students were given the whole term in which to write the paper. In this context, lateness of a day or two is less significant. However, where an assignment is given with a shorter time frame for completion (such as, for example, 2 or 3 weeks), then a day or two of lateness is a much more significant extension of the time allowed for the work to be completed. The late penalty will therefore be more severe. As a benchmark, the late penalty for an assignment which students were given 3 weeks to complete, and which was late, would be 10 points out of 100 per day. Thus, an assignment worth 20 points would suffer a penalty of 2 marks per day. The penalties would be more severe for an assignment for which students were given less time to complete. As these penalties are more complex to calculate, it is suggested that faculty members either submit information regarding late assignments to Studies Committee for calculation of penalties, or request in advance a schedule of penalties to impose on the late submission of a particular assignment.

APPENDIX “B” – MAJOR PAPER GUIDELINES TABLE

Major Paper Guidelines Table							
Research:>		Outstanding	Thorough	Not quite thorough	Serious but Unsuccessful canvass of sources	Mere attempt to consider sources	No serious research effort
Organization/ Logical Flow	Analysis Insight- Synthesis-						
	Excellent	A	A-	B+	B	B-	F
Excellent	Very Good	A-	B+	B	B-	C+	F
Organization	Average	B+	B	B-	C+	C	F
	Weak	B	B-	C+	C	D+	F
	Poor	B-	C+	C	D+	D	F
	Excellent	A-	B+	B	B-	C+	F
	Very Good	B+	B	B-	C+	C	F
Well Organized	Average	B	B-	C+	C	D+	F
	Weak	B-	C+	C	D+	D	F
	Poor	C+	C	D+	D	F	F
	Excellent	B+	B	B-	C+	C	F
Moderate	Very Good	B	B-	C+	C	D+	F
Disorganization	Average	B-	C+	C	D+	D	F
	Weak	C+	C	D+	D	F	F
	Poor	C	D+	D	F	F	F
	Excellent	B	B-	C+	C	D+	F
Substantial	Very Good	B-	C+	C	D+	D	F
Organization	Average	C+	C	D+	D	F	F
	Weak	C	D+	D	F	F	F
	Poor	D+	D	F	F	F	F
	Excellent	B-	C+	C	D+	D	F
	Very Good	C+	C	D+	D	F	F
Incoherent	Average	C	D+	D	F	F	F
	Weak	D+	D	F	F	F	F
	Poor	D+	F	F	F	F	F
Literary Style:							
Excellent:	Raise table mark by one alphabetic grade level, e.g. B to B+						
Average:	No change in table grade level as determined above						
Weak:	Reduce table mark by one alphabetic grade level, e.g. B to B-						
Originality:	Raise table mark by one or two alphabetic grade levels e.g. B+ to A-, or A- or B+ to A.						

BUSINESS & ENVIRONMENTAL LAW – PROPOSED SCHEDULE

Note: This is a proposed schedule and is somewhat flexible. Depending on total number of students, developments in the law, the direction taken by class discussions, and the availability of guest speakers, time emphasis and topics may change.

September 8	Class Introduction and Course Overview
September 15	Legislative Framework, Guidelines & Policies Primary federal and provincial law Role of municipal government Aboriginal consultation & issues
September 22	Transactional Issues I Buying, selling, financing business assets/property Lenders/Trustees Representations/Warranties/Indemnities Lawyer and Corporate Due Diligence
September 29	Overview of Guide to Writing a Major Paper Transactional Issues II Contaminated Sites & Brownfield Redevelopment Remediation & Risk Assessment Regulation v. Guidelines
October 6	Operational Issues I Ongoing Due Diligence Issues Environmental Consultants/Duties to Report Confidentiality of Site Assessments/Audits
October 13	Operational Issues II Regulatory Liability & Ministerial Discretion Traditional & Alternative Enforcement Measures Sentencing Issues & Criteria
October 20	Environmental Claims & Damages I Causes of Action & Onus of Proof Commercial Landlord/Tenancy
October 27	Environmental Claims & Damages II Damages Between “Neighbours” and Environmental Stigma
November 3	Emerging & Developing Issues Climate Change, Cross Border Liability, Financial Disclosure, NAFTA
Nov 10 – Dec 1	Student presentations (3 or 4 per session, 30 minutes max)