

Environmental Law, Policy, and Decision-making

Syllabus Spring 2020 (EESC BC3040)



The ceiling tondo *Justice* by Raffaello Sanzio in the Stanza della Segnatura in the Vatican Palace. Iustitia, the Roman goddess of justice, is seated with her symbols of the law, the scales of justice that weigh the evidence pro and con, and the sword of righteous enforcement. She wears no blindfold in this depiction. The Stanza della Segnatura (or room of the tribunal) takes its name from the highest court of the Holy See that met in this room in the mid-16th century after the frescoes were painted in 1508-1511. (photo P. Bower)

#1-Jan. 21

Introduction to the Course; The Importance of Studying Law for the Undergraduate; Historical Origins and Nature of the U.S. Legal System.Bower/Neacsu: pp 1-53

⇒ *Introduction to U.S. Law, Policy and Research – An Environmental Perspective* -
“Introduction”, “Chapter 1 - Historical Origins and Nature of the U.S. Legal System” -
“Chapter 2 - The Structure and Function of the U.S. Legal System and Its Lawmaking
Institutions”

#2-Jan 23

Law as Multifaceted Normativity. The Structure and Function of the U.S. Legal System and Its Lawmaking InstitutionsBower/Neacsu: pp 53-82

Chapter 3 – Thinking about Law as an Object of Research – Basic Principles of Legal Research”
“Chapter 4 – Applying the Principles of Legal Research - Using Secondary Sources”

In-class exercise: Law as Multifaceted Normativity, pages 82-83

#3-Jan. 28

Basic Principles of Legal ResearchBower/Neacsu: pp 54-96

“Chapter 3 – Thinking about Law as an Object of Research – Basic Principles of Legal Research”
“Chapter 4 – Applying the Principles of Legal Research - Using Secondary Sources”
“Chapter 5 – Using Primary Sources”

In-class exercise: Law as Multifaceted Normativity, pages 96-100

#4-Jan. 30

In-class Quiz #1: The Structure and Function of the U.S. Legal System and Its Lawmaking Institutions

#5-Feb 4

Applying the Principles of Legal Research to Environmental Law ResearchBower/Neacsu: pp 134-142

⇒ *Introduction to U.S. Law, Policy and Research – An Environmental Perspective* -
“Chapter 7 – Learning to Write a Brief: Whalen v. The Union Bag and Paper Co.”
A. Facts, Issues, Rule, Application to the Facts

#6-Feb. 6

Briefing a Case: Whalen v. The Union Bag and Paper Co

Bower/Neacsu: pp 101-133

⇒ *Introduction to U.S. Law, Policy and Research – An Environmental Perspective -*
“Chapter 6: Learning to Read a Case: Environmental Torts and the *Boomer* Decision”

#7-Feb. 11

Briefing a Case: Boomer v. Atlantic Cement Co.

⇒ Exercise #1 = writing a brief – due February 18

Boomer v. Atlantic Cement Co.

A. Procedure and the Litigation Process

B. Remedies: Equity, Injunctions, and Damages in *Boomer*

C. Private Nuisance and Intentional Tort

D. Facts, Issues, Rule, Application to the Facts

#8-Feb. 13

***Boomer v. Atlantic Cement Co.* (continued)**

#9-Feb. 18

The making of Environmental law: *Wilsonville v. SCA Services*, 86 Ill.2d 1, 426 N.E.2d, 824 Ill. (1981)

⇒ Bower/Neacsu: pp 143-182

A. Facts, Issues, Rule, Application to the Facts

⇒ Exercise #1 = writing a brief – due today

#10-Feb. 20

The making of Environmental law: Environmental cases - *Spur Industries, Inc. v. Del Webb Development Co.*, 108 Ariz. 178, 494 P.2d 700 (1972)

A. Externalities: An Economic Analysis of the Commons

B. Cost-Benefit Analysis, Uncertainty, and Risk

C. Facts, Issues, Rule, Application to the Facts

#11-Feb. 25

Exercise #2: Briefing a precedential case and its subsequent application

Due March 3

#12-Feb. 27

The making of Environmental law: *Borland v. Sanders Lead Co.*, 369 So.2d 523 (1979)

Bower/Neacsu: pp 197-215

⇒ see the Companion Website

⇒ Read the relevant section in *Introduction to U.S. Law, Policy and Research – An Environmental Perspective* - “Chapter 8 – Case Studies in Common Law Environmental Torts”

A. Facts, Issues, Rule, Application to the Facts

#13-March 3

The making of Environmental law: Branch v. Western Petroleum, Inc., 657 P.2d 267 (1982)

Borland v. Sanders Lead Co.

⇒ Exercise #2 due

Bower/Neacsu: pp 216-238

⇒ Read the relevant section in *Introduction to U.S. Law, Policy and Research – An Environmental Perspective* - “Chapter 8 – Case Studies in Common Law Environmental Torts”

A. Facts, Issues, Rule, Application to the Facts

#14-March 5

The Making of Environmental law: Federal law unifying state common law

#15-March 10

Exercise 2 discussion

#16-March 12

Mid-term: Wilsonville, Spur, Borland, and Branch

March 14-22

Spring Break: No Classes

→ March 24 is first day back from break and I will begin a discussion of Civil Action and Ex. #4. Please read *A Civil Action* by Jonathan Harr. The questions, especially those concerning the law and the sequence of events, found in The Guide to the Reading of A Civil Action (posted on the Companion Website.) will help focus your reading.

#17-March 24
& #18-March 26

Litigating Toxic Torts: A Civil Action: The Lessons of Woburn

A. *Civil Action*: Lessons of Woburn

B. Proof of Complex Causation

Bower/Neacsu: pp. 239-243; 354-361

⇒ Jonathan Harr – *A Civil Action*

⇒ *Anderson v. W.R. Grace & Co., Beatrice Foods Co., et al.* 628 F.Supp. 1219 (1986) – (to be handed out)

⇒ *Introduction to U.S. Law, Policy and Research – An Environmental Perspective* - “Chapter 11: Environmental Statutes and the Modern Environmental Movement”

A. Facts, Issues, Rule, Application to the Facts

#19-March 31

Introducing Endangered Species Act – A Congressional Success Story

Bower/Neacsu: pp. 244-251

⇒ *Introduction to U.S. Law, Policy and Research – An Environmental Perspective* - “Chapter 10: The Endangered Species Act of 1973”

⇒ The Endangered Species Act of 1973 ⇒ pages 244-245

⇒ First Section: Declaration of Purposes and Policy (§ 1531) ⇒ 246-247

⇒ Second Section: Definitions (§ 1532) ⇒ 247

⇒ Sixth Section: Far Reaching Mandate (§ 1536) ⇒ 248

⇒ Ninth Section: Powerful Prohibitions (§ 1538) ⇒ 249-251

⇒ Third and Eleventh Sections: CITIZENS STANDING AND PARTICIPATION (§ 1533-1540) ⇒ 251-252

(You must turn in your chosen statute and case for the Final Research Paper on or before April 9)

#20-April 2

Early Supreme Court Jurisprudence Regarding Environmental Law – *Overton Park v. Volpe*, 401 U.S. 402, 91 S.Ct. 814 (1971) and *Tennessee Valley Authority v. Hiram Hill*, 437 U.S. 153, 98 S. Ct. 2279 (1978)

Bower/Neacsu: pp. 252-263

⇒ Read the relevant sections of *Introduction to U.S. Law, Policy and Research – An Environmental Perspective* - “Chapter 10: The Endangered Species Act of 1973”

A. Facts, Issues, Rule, Application to the Facts

⇒ 16 USCA § 1531; P.L. 93-205 (1973)

(You must turn in your chosen statute and case for the Final Research Paper on or before April 9)

#21-April 7

Environmental law in action: *Tennessee Valley Authority v. Hiram Hill*, 437 U.S. 153, 98 S. Ct. 2279 (1978)

Bower/Neacsu: pp. 252-263

⇒ Read the relevant sections of *Introduction to U.S. Law, Policy and Research – An Environmental Perspective* - “Chapter 10: The Endangered Species Act of 1973”

A. Facts, Issues, Rule, Application to the Facts

⇒ 16 USC § 1531; P.L. 93-205 (1973)

(You must turn in your chosen statute and case for the Final Research Paper on or before April 9)

#22-April 9

Environmental law in action:

Bower/Neacsu: pp. everything covered so far.

In class Quiz 2# indicate the best judicial interpretation of a specific statutory provision and support your position in 500 words or less. (Choose from Overton Park, Scenic Hudson, and Tennessee Valley Authority)

(You must turn in your chosen statute and case for the Final Research Paper on or before April 9)

#23-April 14

Environmental law in action: A Rare Bird and Critical Habitat *Palila v. Hawaii*, 649 F.Supp. 1070 (1986) and Grizzly Bears and the Listing Process

Bower/Neacsu: pp. 263-277

A. Facts, Issues, Rule, Application to the Facts

#24-April 16

Regulatory Public Law: The Evolution of Environmental Statutes and Legal Research: Statutes, CFRs, Citators and Final Research Paper: How Case Law Defines a Statute

Final Research Paper: How Case Law Defines Statutory Law

(Review the requirements for the Final Research Paper on the Companion Website.)

Bower/Neacsu: pp. 362-371

Introduction to U.S. Law, Policy and Research – An Environmental Perspective -
“Chapter 12: Environmental Law Research Combines Decisional, Statutory, and Administrative Law Research

#25-April 21

Environmental law in action: The Florida Panther and Enforcement by the Federal Government *U.S. v. Billie*, 667 F.Supp. 1485 (1987)

Bower/Neacsu: pp. 288-296

A. Facts, Issues, Rule, Application to the Facts

#26-April 23

Environmental law in action: *Overton Park v. Volpe*, 401 U.S. 402, 91 S.Ct. 814 (1971)

Bower/Neacsu: pp. 372-386

⇒ *Introduction to U.S. Law, Policy and Research – An Environmental Perspective* -
“Chapter 13: The Role of Administrative Law in Protecting the Environment”
A. Facts, Issues, Rule, Application to the Facts

#27-April 28

The Role of Environmental Law – The Role of Administrative Agencies – Final Lecture

#28-April 30

Wrapping up; Final paper is due.

Course Guide: *Environmental Law, Policy, and Decision-making* (EESC BC 3040x)

Learning Objectives

1. Teach the origins, history, and structure of the U.S. legal system; the ecological and ethical bases of environmental law, its use in environmental policy and decision-making, and its role in cost-benefit analysis and risk management.
2. Develop legal literacy and teach how to read opinions of important cases that elucidate how courts create common law and especially environmental law through the interpretation and application of environmental statutes and regulations.
3. Teach how to use legal research tools to find “good law” by analyzing precedent; teach how citations work; teach how to locate statutes and their associated rules and regulations, and how to find cases that determine the meaning of statutes.
4. Teach how to brief cases.
5. Teach how case law determines the meaning of a statute.

Instructor’s Name/Phone/ E-Mail: Dana Neacsu / 854-1345/ edn13@columbia.edu

Classroom/Time: 530 Altschul/ Tu & Th 8:40-9:55am

Teaching Assistant: Alissa Lampert / all2202@barnard.edu

Required Textbooks:

1. Bower/Neacsu *Introduction to U.S. Law, Policy, and Research – An Environmental Perspective* (available in the Columbia Univ. bookstore or online from the publisher’s site)
2. *A Civil Action* by Jonathan Harr (there should be a few copies available at the library, available on Amazon as an e-book or paper copy)

Companion Website:

This course has an associated website which has many resources you may find helpful, such as copies and links to cases we will read, additional sources that are helpful to our understanding of the US legal system, and sidebars and comments that are referenced in the textbook for further reading. The website is:

<http://www.environmentallaw-teach.org>

Grading: Grades will be assigned according to performance:

- a. on a midterm exam (20%);
- b. on a final research paper (20%);
- c. on two exercises (20%);
- d. on two quizzes (20%);
- e. on classroom participation (10%), and
- e. classroom attendance (10%),

Exams and Deadlines

No make-up exams or quizzes will be given except for bonafide emergencies or illness. Except in the most unusual circumstances advance notification is required. A letter from your Academic Dean or your doctor is required for

the scheduling of a make-up exam or quiz. Deadlines for assignments will be strictly observed. Grades for late work are subject to a maximum 30% reduction at the instructor's discretion.

Definition of Grades:

All grades will be based on a scale of 100 with A+ = 98.00-100, A = 94.00-97.99, A- = 90.00-93.99, B+ = 88.00-89.99, B = 84.00-87.99, B- = 80.00-83.99, C+ = 78.00-79.99, C = 74.00-77.99, C- = 70.00-73.99, D = 60.00-69.99, and F = 59.99 or less.

A+ = Rare performance. Reserved for exceptional achievement.

A = Excellent work. Outstanding achievement.

A- = Excellent work that exceeds course expectations.

B+ = Very good work. Solid achievement (expected of Barnard/Columbia undergraduates) that meets all course expectations.

B = Good work. Acceptable achievement that meets almost all course expectations.

B- = Satisfactory work. Acceptable achievement that meets major course expectations.

C+ = Fair achievement just above that which is minimally acceptable.

C = Fair achievement but only minimally acceptable.

C- = Barely acceptable achievement.

D = Very low performance. Unsatisfactory work. Lowest achievement to still allow for a passing grade. This grade may not be counted toward the major or minor option.

F = Failure

See <http://barnard.edu/catalogue/policies/grades> or the Barnard or Columbia College Catalogs or the Registrar's Office for other information about grading, including: the definitions of other letter grades, pass/D/fail option, incompletes, and calculation of GPA.

Procedure for Handling Questions and Complaints About the Grading of Tests, Quizzes, and Other Assignments:

If you have a question or complaint concerning the grading of your work, you must detail the question or complaint in writing. Attach this written question or complaint to the test, quiz or other assignment and give it to Prof. Neacsu directly or leave it in her mailbox in the Environmental Science Department. Once your question or complaint has been reviewed, your work will be returned to you with an explanation of the action taken. At this time if there are still questions, the issues may be discussed. Under no circumstances will a discussion about grading take place prior to above-mentioned review, and no review will take place unless the problem or complaint is put in writing.

Remember! Put it in writing!

Exercise #1: Writing a Brief Using the Textbook Format (the case will be delivered in class)

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Exercise #2: Legal Research: Briefing a precedential case and its subsequent application

The exercise requires you to create a word document which should include a cover page with the title, **Exercise #2: Legal Research: Briefing a precedential case and its subsequent application**, your name, date, course, and professor's name. The document will also contain the following section sections:

1. Section 1: Choose a case which we have not discussed in class; copy and paste it in Section 1.

2. Section 2: Brief your case using the format provided to you and discussed in class.
3. Section 3: Verify the status of this case by using KeyCite on Westlaw or Shepard's on Nexis Uni, and copy and paste its negative treatment, if any in Section 3.
4. Section 4: Choose a subsequent case from the KeyCite or Shepards list; copy and paste it in Section 4.
5. Section 5: Brief the case chosen in Section 4, pointing out how it references the case chosen in Section 1.

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Final Research Paper: How Case Law Defines Statutory Law

The exercise requires you to create a word document which should include a cover page with the title, **Final Research Paper: How Case Law Defines Statutory Law**, your name, date, course, and professor's name. The document will also contain the following section sections:

1. Section 1: A relevant federal codification, copied and pasted in Section 1 (By way of example, let's say, you find section 42 U.S.C. §7401, through govinfo.gov. You copy and paste the body of that statutory section in the first section of your paper).
2. Section 2. A general discussion of the federal statute (Public Law), whose relevant section you included in Section 1 (500 words maximum, double-spaced, 1" margins all-around). (By way of example, for instance, if you chose 42 U.S.C. §7401, then you summarize the meaning of the *Clean Air Act*).
3. Section 3: Copy and paste a case discussing the chosen statutory provision and federal regulation. (In class, you learn the most efficient method to find such a relevant case)
4. Section 4: Brief the case copied and pasted in Section 3, making sure that the issue discusses a question about the statute identified in Section 1, and the rationale explains the court's reasoning for the holding regarding the issue chosen in your brief.

The Honor Code and Academic Integrity

The Barnard Honor Code (established in 1912) reads:

We, the students of Barnard College, do hereby resolve to uphold the honor of the College by refraining from every form of dishonesty in our academic life. We consider it dishonest to ask for, give, or receive help in examinations, quizzes, or to use in them any papers or books in any manner not authorized by the instructor, or to present oral or written work that is not entirely our own, except in such way as may be approved by the instructor. We pledge to do all that is in our power to create a spirit of honesty and honor for its own sake.

The Honor Code governs all aspects of academic work. If a violation should arise, it will be reported to the Dean of Studies for appropriate action. Honor Board Guidelines on the procedures for implementing the Honor System and acting on charges of dishonesty can be found in the Student Handbook. Remember that Barnard students reaffirm their acceptance of the Honor Code by signing their registration form. Columbia students commit themselves to the Honor Code upon registering for a Barnard course.

Because the Honor Code is not entirely specific and contains qualifications and exceptions, such as "authorized by the instructor" or "approved by the instructor", please read the following summary of "What behaviors

constitute academic dishonesty?”

What behaviors constitute academic dishonesty?

- **Cheating on examinations, quizzes, tests, or other assignments:** the giving of assistance to another or the receiving of assistance from another person, another examination paper, other written material, or any source not explicitly permitted by the instructor, is cheating. Thus, you may not look at another’s paper or answers; you may not show your paper or answers to another or leave your paper or answers around for others to look at; and, you may not verbally read or reveal your answers to another. It is also cheating to have access, without the instructor’s approval, to examination, quiz, or test questions prior to the administration of the examination, quiz, or test.
- **Plagiarism:** the submission or presentation of ideas or work in any form that are not one’s own without appropriate acknowledgement of the source(s). Even *with* the acknowledgement, close paraphrasing can constitute plagiarism. You may quote the work of others if properly attributed. Close paraphrasing also requires attribution; close paraphrasing is, however, a gray area on a slippery slope, and the slope tends to become steeper and more slippery with the length of the paraphrase.
- **Submission of the same work for more than one course** without the explicit permission of the instructors involved.
- **Falsification or misrepresentation of data in any coursework.**
- **Altering, defacing, or concealing library materials.**
- **Participating in the academic dishonesty of another student** by offering assistance or advice that encourages such behavior.
- **Misrepresentation of one’s sate of health or personal situation** to gain deferrals of examinations or extensions of academic deadlines.
- **Forgery of a signature** on any document or form related to a student’s academic life, including the adviser’s signature on a program, drop/withdrawal slip, or petition.

Except for the above I encourage and expect students to share and work together, to ask questions, and to receive help from instructors and other students. Admittedly, there are gray areas but these gray areas will not be an issue if the intent of the foregoing is understood. Of course, it is prudent to ask if you have any questions on any matter related to the foregoing.