

Anticipated schedule as of 4.23.2018

SANTA CLARA UNIVERSITY SCHOOL OF LAW
COMPARATIVE ASPECTS OF SOCIAL JUSTICE: FORCED MIGRATION
AND INTERNATIONAL ENVIRONMENTAL LAW

May-June 2016

Profs. Abriel, Poynder and Dwyer ?

(NOTE: This is the preliminary version; site visits and reading
assignments will be added and syllabus reposted)

SYLLABUS

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Class days and times	Monday – Friday, May 21 – June 7, 2018, at times set out below.
Exam date:	Friday, June 8, 2018, 9:00 a.m. – 12:00 noon.

COURSE DESCRIPTIONS:

Welcome to this course in comparative aspects of social justice, concentrating on forced migration law and international environmental law.

In the Forced Migration portion of the course, we will learn about one of the world's principal human rights issues - the protection of individuals fleeing persecution and other forms of harm. International, Australia, and U.S. law includes measures providing relief to victims, some stemming from international treaties and others from the two countries' foreign policy and humanitarian concerns. We will explore these measures as they relate to victims of persecution (refugees), torture, crime, human trafficking, and natural disasters.

The International Environmental Law portion of the course will consider another of the major issues affecting the world today. We will study the development and fundamental principles and rules of national and international Environmental Law regimes and look at how Australia and the United States have implemented those principles and rules domestically. We will give special consideration to Australia's protection of its unique biodiversity and will also examine the interrelationship of indigenous rights and environmental law and protection. Finally, we will study energy and climate change law and consider issues of environmental justice.

In addition, we will have a number of site visits to Australian courts, legal offices, and legal institutions, plus a training on Australian legal research.

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CAVEAT: FLEXIBLE SCHEDULING!

Because of site visits and guest presentations, our scheduling will have to be a little flexible. The schedule set out below is our best estimate, but we anticipate having to make some changes to accommodate guest presentations and site visits. This could include holding a class in the afternoon, if we have a morning site visit.

READING ABOUT CURRENT EVENTS

Understanding relief for forced migration and issues of environmental law requires not only knowing the international and national laws on the subject, but also understanding something about current events in these areas. For that reason, we ask that as we go through the course, you look actively for information on current issues concerning refugees and other individuals fleeing harm in their countries. You can get current news from print sources and the internet, particularly by checking the website of the United Nations High Commissioner for Refugees, <http://www.unhcr.ch/cgi-bin/texis/vtx/home>.

ASSIGNED TEXTBOOKS AND MATERIALS:

We will prepare materials for this course that you can download from our course portal and bring with you in either digital or hard copy form. These will consist of both reading materials and hypotheticals for use in class discussion and simulations.

We will also post excerpts from relevant international treaties and Australian and U.S. statutes and regulations to our course portal. We will not read all of these, but it is helpful to be able to refer to them.

EVALUATION AND GRADING:

You will have a combined final exam for both the Forced Migration and International Environmental Law portions of the program. 70 per cent of your class grade will be based on a three-hour, open-book final examination, and the remaining 30 per cent will be based on class participation. Part of the class participation will include participating in oral presentations to the class, for which we will assign you a role as legal counsel or judge.

The exam will be given on Friday, June 8, 2018, from 9 a.m. to 12 noon. It will be an open-book, open-notes exam. You will be able to use materials stored on your computer, but will not be able to go on-line during the exam.

The materials in this class lend themselves to vibrant class discussion. Thus, students should be prepared to participate in class. Please read the materials thoroughly and carefully so that you will be prepared for class discussion.

CLASS ATTENDANCE

Regular class attendance is required under the law school regulations. You are permitted to miss ten percent of the class meetings, whether excused or unexcused. Any absences over this ten percent limit will be excused only for compelling emergencies.

LEARNING OUTCOMES

A. Learning outcomes for Forced Migration

By the conclusion of the Forced Migration portion of the course, we expect that each student will be capable of the following:

1. SUBSTANTIVE KNOWLEDGE

Describe and explain the following fundamental concepts of protection law:

- The elements of the international and U.S. definitions of refugee.
- The major forms of protection status under U.S. law for victims of forced migration, including refugee status, asylum, withholding of removal, and relief under the Convention against Torture.
- The immigration and other benefits provided under each form of protection.
- The grounds under which an individual may be excluded from protection or deprived of it, once acquired.
- Other forms of immigration relief under international and U.S. law, including immigration for victims of trafficking in persons, crime, civil strife, and environmental disaster.
- The process for applying for the various forms of protection under U.S. law.
- Comparable forms of relief and application processes under Australian law.

2. SKILLS OF ANALYSIS

- Identify and synthesize the legal rules or principles under the statutes, regulations, and judicial and administrative decisions relating to forced migration, including the protection of refugees and other vulnerable populations;
- Identify and prioritize the forced migration issues raised by a given fact pattern.
- Evaluate the probable outcome of a particular factual scenario by applying the applicable rules and principles.

3. SKILLS OF EXPRESSION

- Provide clear and well-organized oral explanation of the student's analysis, applying appropriate rules and policies to a given fact situation involving forced migration.
- Provide a clear and well-organized analysis in writing of the application of appropriate rules to a given fact situation involving forced migration.

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- Create and support arguments for resolving individual situations of forced migration, making accurate, thoughtful, and creative use of existing rules, policy, and suggestions for change.

4. AWARENESS

Acquire:

- An enhanced understanding of the causes of forced migration.
- An understanding of the role of public policy in developing responses and rules for forced migration situations.
- An awareness of how the legal concepts and remedies studied in this class can be applied to ameliorate suffering caused by forced migration.
- Increased skills in working collaboratively with colleagues to analyze and resolve particular fact situations relating to forced migration.

B. Learning outcomes for International Environmental Law

By the conclusion of the International Environmental Law portion of the course, we expect that each student will be capable of the following:

1. SUBSTANTIVE KNOWLEDGE

Acquire an integrated understanding of international environmental law in complex and varied legal contexts. Be able to demonstrate an understanding of:

- The key environmental principles underpinning International Environmental Law, the regimes that intersect with environment law and recognize the stakeholders who are relevant to the formulation and implementation of environmental law.
- The introductory elements of environmental law-making power in Australia
- including the key provisions in the overarching federal legislation, the Environment Protection and Biodiversity Conservation Act 1999 (Cth).
- The underpinnings of Climate Change regulation.
- The background to and modern concept of Environmental Justice in the USA and its uptake in Australia including the rise of the concept of ‘social licence’.

2. SKILLS OF ANALYSIS

- Identify and apply the international rules or principles of International Environmental Law.
- Analyze and synthesize information about the drivers of environmental degradation at both a domestic and international level, and reflect on the impact of these in the light of environmental justice principles.
- Critically reflect on the evolution of international environmental law, the key problems and why they are important.

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- Identify, evaluate and apply established theories to hypothetical and real-world situations and reconcile environmental, economic and human interests in the context of the discourse on international environmental law

3. SKILLS OF EXPRESSION

- Provide clear and well-organized oral explanation of the student's analysis, applying appropriate rules and policies to a given fact situation.
- Provide a clear and well-organized analysis in writing of the application of appropriate rules to a given environmental fact situation.
- Create and support arguments for resolving environmental issues in the face of competing interests and notions of justice and fairness.

4. AWARENESS

Acquire:

- An understanding of the key components of International Environmental Law
- An understanding of Indigenous rights and obligations in the face of environmental change along with the rise of Environmental Justice
- An awareness of the intrinsic nature of environmental degradation, the regulatory response and the impact on the international community as well as individuals.
- Increased skills in working collaboratively with colleagues to analyze and resolve particular fact situations relating to our changing environment.

CLASS SCHEDULE AND ASSIGNMENTS:

PLEASE NOTE: As explained above, this is our best estimate of coverage; we will need to adjust the dates depending on progress and to accommodate guest presentations and visits to legal institutions.

Sunday, May 20, 2018, 4 p.m.

Orientation and group dinner. Meet at UTS Law Faculty. We will walk to Darling Harbour and take the ferry to Circular Quay to have dinner on the Rocks.

Class 1: Monday, May 21.

9-11:00: Introduction to course: course requirements, overview of international refugee law; the international definitions of refugee. Current issues in refugee processing in the United States.

11 – 12: Overview of the Australian Legal System (Prof. Poynder)

12:30 Welcome lunch with UTS faculty and students.

1:15 Tour of UTS; distribution of wifi passwords.

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Reading assignment: Units 1, 2, and 3 Refugee Law Materials (I know this looks long, but there are a lot of charts and white space – only one case! The other reading assignments will not be this long!)

Class 2: Tuesday, May 22

9:00 – 10:30 Overview of U.S. protection system; U.S. overseas refugee programs; U.S. on-shore refugee programs (asylum and withholding); the concept of persecution. (Prof. Abriel)

10:30 – noon Overview of the Australian protection system; Australian overseas refugee processing (Prof. Poynder)

Reading assignment: Units 4 and 5, Refugee Law Materials.

Class 3: Wednesday, May 23

9 – noon Standards and burden of proof in establishing the refugee claim; nexus; discretion. (Prof. Abriel)

Reading materials: Units 6 and 7, Refugee Law Materials.

WEDNESDAY EVENING: possible group dinner.

Class 4: Thursday, May 24

9:00 – noon Protected grounds of religion, race, nationality, and political opinion. (Prof. Abriel)

Reading materials: Units 8 and 9, Refugee Law Materials.

Class 5: Friday, May 25

9:00 – noon Site visit to Downing Centre (Criminal District Court of New South Wales). Please meet at Downing Centre at 9:00 a.m

FRIDAY EVENING: VIVID Sydney begins!

SATURDAY, May 26 – optional trip to the Blue Mountains and the Featherdale Wildlife Park.

Class 6: Monday, May 28

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9:00 – noon Protected ground of membership in a particular social group. (Prof. Abriel)

Reading materials: Unit 10, Refugee Law Materials.

Class 7: Tuesday, May 29

9:00 – noon Grounds of ineligibility for relief. (Prof. Abriel)

Reading materials: Unit 11, Refugee Law Materials.

Tentative: Afternoon: Workshop on Australian legal research with UTS Professor Christopher Croese (you'll need your laptops)

Class 8: Wednesday, May 30

9:00 – 11:00 The Convention against Torture; application processes for asylum, withholding, and Convention against Torture claims; proving the claim. (Prof. Abriel)

11:00 – noon Proving the claim under Australian law. (Prof. Poynder)

Reading materials: Units 12 and 13, Refugee Law Materials

Tentative: evening – dinner and movie with Prof. Abriel.

Class 9: Thursday, May 31

9:00 – noon The development of Environmental Law: National and International Regimes. (Prof. Dwyer) Topic includes a general introduction to international environmental law including the fundamental principles and rules of international environmental law and the legal and institutional framework in which they have developed and are implemented. A case study will be considered in relation to the International Convention for the Regulation of Whaling to highlight the key players and tensions. The International Whaling Convention initially allowed killing tens of thousands of whales, but now only allows several hundred takes and only by aboriginal hunters for subsistence whaling.

Immediately after class: brief meeting with interns.

Class 10: Friday, June 1.

9:00 – noon Environmental Protection in Australia: Federal Governance (Prof. Dwyer).

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Introduction into how environmental law- making power in Australia is divided among the States, Territories and Federal Government. The history of Australia is relevant here. Whilst the Commonwealth Constitution does not contain an express environmental law-making power in favour of the Federal Government, the Federal Government still exerts considerable influence over environmental matters. Key High Court decisions in this fascinating area will be considered. In a more practical sense, the Federal government can influence the States and Territories by supplying funding on terms and conditions. The modern notion of 'co-operative federalism', and the governance processes it establishes, is also considered.

FRIDAY NIGHT: Optional Aussie Rules Football game at the Sydney Cricket Grounds.

SATURDAY NIGHT: Tentatively scheduled – dinner with Prof. Poynder.

SUNDAY: optional group trip – whale watching.

Class 11: Monday, June 4

9:00 – noon Environment Protection and biodiversity in Australia: Environment Protection and Biodiversity Conservation Act 1999 (Cth) (Prof. Dwyer)

Overview of biodiversity, how it is defined, why it is important. The key provisions in the overarching federal legislation, the Environment Protection and Biodiversity Conservation Act 1999 (Cth) , are considered and in particular the protection of biodiversity is highlighted. More specifically the seminar will consider the protection of endangered species, the issue of standing, enforcement of environmental law and key cases. In particular, indigenous peoples and local communities have an important role in the management of biodiversity. The value of Indigenous Knowledge (IK) is an evolving subject of national and international law. Indigenous peoples have repeatedly claimed that they have fundamental rights to IK because it is necessary to their cultural survival. This right is increasingly being recognized in international law. These rights include many non-material and material values bundled into “traditional resource rights”

Class 12: Tuesday, June 5

9:00 – noon Other forms of protection: immigration relief for victims of trafficking in persons, crime, and environmental disaster. (Prof. Abriel)

Reading materials: Unit 14, Refugee Law Materials.

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Class 13: Wednesday, June 6

9:00 – noon Energy and Climate Change (Prof. Dwyer)
Introduction to climate change law and activities from across the globe to reduce carbon emissions.

Class 14: Thursday, June 7

9:00 – noon Environmental Justice (Prof. Dwyer)

Environmental justice is an important part of the struggle to improve and maintain a clean and healthy environment in an inclusive manner. For too long the pursuit of environmental protection or the impact of environmental degradation was at the expense of those least able to speak up for themselves. Many may have traditionally lived, worked and played closest to the sources of the environmental degradation or protection proposals and for this they have paid the greatest price. Indeed, environmental justice has its roots in indigenous rights. This seminar will also consider the concepts of environmental justice in the USA and look at the ramifications for Australia including the rise of the concept of “social licence.”

Afternoon: Optional review session.

Friday, June 8 FINAL EXAMINATION 9 a.m. – 12 noon.

Evening: gala farewell dinner!