

LAWENVIR 732 2019

Special Topic: Selected Issues in Environmental and Natural Resources Law



Lecturer Bio

David Grinlinton lectures in Land Law, Resource Management Law, Mining and Energy Law, Natural Resources Law and Housing Law and Policy in the Faculty of Law at the University of Auckland. He has published both nationally and internationally in these fields. The second edition of Salmon & Grinlinton, *Environmental Law in New Zealand* (1165 pp) was published in 2018, with recent articles including “The use of biodiversity offsets in mining and energy development: A view from ‘down under’” (2018) 19(4) *Environmental Law Review*, 244, and “The Continuing Relevance of Common Law Property Rights and Remedies in Addressing Environmental Challenges” (2017) 62(3) *McGill Law Journal* 633. Recent research includes a collaborative project on the use of conservation covenants and access easements to achieve better protection of green spaces in New Zealand and the UK.

From 2013-19 David Grinlinton has been a Visiting Professor at Western Law School in Ontario, Canada, teaching Sustainability and Natural Resources Law and Comparative Mining and Natural Resources Law. He has also been a visiting scholar at a number of Universities, including George Washington University in Washington D.C., Kansai University in Japan and Newcastle University in the UK.

David Grinlinton is the Co-Editor of the *New Zealand Journal of Environmental Law*, and is on the Academic Review Board of the *Public Interest Law Journal of New Zealand*. Current PhD supervisions include an investigation into legal and policy mechanisms to improve the performance of New Zealand’s dairy industry to address climate change, and a joint Engineering and Law thesis on applying sustainability principles to geothermal energy development.

Prior to becoming an academic David Grinlinton worked in practice in a large, commercial firm focusing on property and energy.

Course Outline

Environmental law is a rapidly evolving subject, both internationally and domestically. Some international developments affect domestic law, and vice versa. Developments in other comparable jurisdictions influence domestic policy, regulation and decision-making. There is a constant need to examine and analyse new developments and principles, particularly in the context of the use and management of land, water and air, and in the development of natural resources such as fisheries, forestry, minerals and energy resources.

The course will examine a number of selected topics in the field of environmental and natural resources law. Significant international and transnational legal developments will be discussed, along with domestic regulatory and case-law developments. The seminars will take a comparative approach, focusing primarily

on the law of New Zealand, but also incorporating international developments and approaches in other relevant jurisdictions.

Syllabus

Selected issues in environmental law will include:

- The nature, sources and boundaries of modern environmental law;
- Sustainability as a normative principle of modern environmental law and policy;
- The role of the common law in addressing environmental challenges;
- The role and utility of property rights and remedies in environmental law;
- Environmental enforcement and litigation;
- Environmental law and indigenous perspectives, including comparisons with Canada, Australia, and New Zealand;
- Corporate responsibility and human rights in the extractive industries;
- The use of new technology in environmental monitoring and enforcement;
- Climate change and the use of law and policy to improve energy efficiency and the greater uptake of renewable energy; and
- The concept of creating legal personality in natural objects and features.

Accordingly the course deals with private law concepts including property law and the law of torts, public law concepts including constitutional, administrative and human rights issues, and international law.

Objectives

The chief objective of the course is to provide students with an understanding of the sources, role and boundaries of environmental law, and a more detailed examination of contemporary environmental and natural resource management legal and policy issues.

While the course focuses primarily on New Zealand, it also includes examination and discussion of international and domestic legal and policy developments in other jurisdictions. New Zealand's system of environmental and natural resource law and policy has undergone significant and ongoing reform, and includes a number of interesting innovations and initiatives. A further major objective is to provide students with a useful comparative frame of reference when considering international and domestic legal and policy developments and possible future reforms in other jurisdictions.

Learning Outcomes

On completion of this course students should be able to:

- Appreciate the origins and current relevance of environmental law, both internationally and domestically;
- Recognise the importance of international normative principles such as sustainability in the development of domestic law and policy;
- Understand the relevance and interplay of both environmental regulation and the common law;
- Understand the key legal principles governing the use, protection and management of land, air and water, and key natural resources such as minerals, fisheries, forestry and energy;
- Recognise and understand the relevance of indigenous rights and approaches to environmental and natural resources issues;

- Recognise the importance of human rights issues in environmental and resource management; and
- Have the capacity to comment critically on the law and policy relevant to specific and current environmental and natural resource issues.

Assessment

80% research essay of 12,500 words and 20% class participation and presentation.

Essay

Each student is required to submit a research essay of no more than 12,500 words including an abstract/synopsis of 500 words. The essay is to be original work, relying on secondary and primary sources. It **MUST** be the work of the enrolled student. Another person, other than the enrolled student, **MUST NOT** write the essay nor do the research on behalf of the enrolled student. Plagiarism is not permitted and in that regard each student should read the University's plagiarism policy and adhere to it. All students will be expected to sign a plagiarism declaration when submitting their essays. Students must also use proper legal citations and include a reading list at the end of their type-written essay. The essay should be comprised of properly crafted English sentences. (Note form is unacceptable.) The use of sub-headings is encouraged and footnotes rather than Harvard style in-text referencing are to be used. Descriptive essays are not encouraged. Instead students are expected to engage with relevant legal issues by: critiquing the law; developing proposals for reform; examining the operation of law and policy in practice; and/or providing a conceptual analysis of the law, for example.

Essays must be submitted to the Faculty of Law, by 12 noon Friday 7th June 2019.

Extensions will not be granted lightly (only on sickness and compassionate grounds) and must be requested formally through the Postgraduate Manager.

Class Participation/Presentation.

Each student will be asked to prepare a 30 minute presentation on the topic of their research essay, or an element thereof. In addition, each student is expected to make individual contributions to seminar discussions throughout the course. Students will be individually assessed on the quality of their contributions.

Criteria & Marking:

Students will be individually assessed on the quality of their contributions with reference to the following criteria:

- the extent to which the student has identified the important and relevant issues;
- the clarity of argument;
- the depth and thoroughness of understanding of the seminar material;
- the strength and clarity of the arguments presented;
- the overall lucidity of the contribution;
- the extent to which issues are placed in their wider context;
- the extent to which the student has displayed a grasp of the doctrinal and normative issues;
- the analysis and synthesis of material and;
- the ability to draw worthwhile conclusions.

Class participation will be assessed over the *whole* course. Quality rather than quantity will be assessed but clearly if a student is not present for all the classes, it will be impossible to achieve the maximum marks possible even if a student's contributions are brilliant when he/she does speak. Students are reminded that the full range of marks is available to the lecturer in assessing class participation. Please be assured that the lecturer is very aware that mistakes are part of learning. Accordingly, 'getting the law right' is not the key focus of the class participation component of assessment. If students knew all the law from the outset, there would be little point in them enrolling in the course. Rather, class participation is included to extend students and to assess students' imaginative understanding of, and engagement with, the materials under discussion. It is not meant to be threatening.

Reading Materials

A comprehensive Syllabus outlining each of the topics to be covered will be made available prior to the commencement of the course. Reading materials will be uploaded to CANVAS in advance of each meeting. Students may also be asked to access additional materials via the internet or in the library.

Teaching Method

The course will be taught over the first semester with meeting each Monday during teaching times, commencing on Monday 4 March at 5-8pm in Room 340, 1-11 Short Street. Classes will be interactive and hopefully, enjoyable. It will, however, be necessary for students to do the pre-reading for the course so that they get the most out of the materials under discussion.

Evaluation of David Grinlinton's similar environmental courses on Sustainability and Natural Resources Law and Comparative Mining and Energy Law at Western University in Ontario, Canada 2013-19:

These course evaluations scored an average of 6 out of a possible 7 on "overall effectiveness" of the teacher. Specific comments included:

- "The instructor is very approachable and has organised the course in a way that allows students to learn from him and each other".
- "This course was exceptionally taught and organised".
- "Great Professor. Made the subject matter interesting by going beyond just black letter law".

Course Details:

Semester	One
Study mode	Seminars once per week
Dates	4 March – 27 May 2019 (inclusive). [Note that Monday 3 June is a public holiday].
Time	5.00pm – 8.00pm
Location	Room 340, 1-11 Short Street
Value	30 Points

Contact Details

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