



CLIMATE CHANGE LAW & POLICY

EPC 390, Sec. 22

Winter 2020 ■ TTH: 2:00-3:20

Tech L168

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Office hours & location: To Be Announced

Course Overview

Climate change is the keystone environmental issue of this generation, and most likely for many generations to come. It now appears inevitable that temperatures will increase this century by more than 2°C, and perhaps by substantially more than 3°C, with the inertia of the system ensuring that temperatures will continue to increase for centuries thereafter even under scenarios of total decarbonization. This will have serious ramifications for both human institutions and natural ecosystems.

This course examines the potential role of the law in confronting climate change from an institutional and policy perspective, examining the role of treaties, national legislation, sub-national responses and judicial and quasi-judicial fora. It will also seek to help students develop critical skills of analysis, public speaking and writing.

Learning Objectives

After taking this course you should be able to:

- Identify the primary causes of anthropogenically-driven climate change and likely impacts;



- Identify and assess the operation and effectiveness of key elements of international climate treaty regimes;
- Understand the role of national and subnational legislation and regulations in addressing climate change in the United States;
- Develop the ability to brief judicial decisions, with an emphasis on identifying the courts' key holdings and rationale, as well as learning to assess the merits of the courts' reasoning;
- Assess the potential risks and benefits of climate geoengineering approaches, and potential avenues for governance of research and/or potential deployment of such options.

s Contract

I am pretty “old-school” when it comes to how I view higher education. I do not consider students to be atomistic “customers” purchasing a “product,” and I am not simply here to be a vendor of a “product.” Rather, by enrolling in this course, you and I are entering into a social contract with each other, and with all the other students in the class, to foster an environment of learning and collaboration. Under the “terms” of this contract, it is my responsibility to always be well-prepared for class, responsive to communications outside of class, and to treat every student with fairness and respect. Consistent with this, I will always try to be accessible and try my best to return graded materials after no more than a week. In turn, by enrolling in the class students agree to: (1) attend classes regularly and punctually; (2) participate by asking questions and joining in class discussions; (3) read the assigned material and complete assignments on time; (4) Regularly consult the course Canvas site for updates and materials intended to facilitate class discussion, including current events pertinent to the topics we will discuss in class; (5) comply with class policies established in this syllabus, and (6) uphold Northwestern University’s commitment to academic integrity: <https://www.northwestern.edu/provost/policies/academic-integrity/>

se Readings

The readings for the course will be derived from the following sources, designated in the class schedule with the icons listed below:

-  **Electronic readings**, which are available on the course Canvas site for this course. Click on the “Files” link and look for the “Readings” folder.
-  **Online Hyperlinks**, which must be accessed via the online version of the Syllabus on the course Canvas site.

Assessment/Assignment Schedule

Mid-Term Examination	February 11/12	30%
Final Paper	March 17	50%
Class Participation	Ongoing	20%

of Description of Assignments

Paper [50% of grade]

Each student will prepare a 15-page paper on a climate law/policy topic of their choosing (I will also provide a list of suggestions). Guidelines for preparation of the paper, including scaffolding of the assignment (which will include submitting your topic and an outline for review) can be found in the "Assignment Guidelines" subfolder denominated "Term Paper."

Term Examination [30% of grade]

The mid-term examination will be a 36-hour take-home, comprised of essay questions, with a page limit for each question. More details about the structure of the exam will be provided in class.

Participation [20% of grade]

Class participation assessment will be comprised of your participation during lectures, including responses to treaty-interpretation questions.

GRADING:


All grades will ultimately be scaled to a 100-point system: A (94-100); A- (90-93); B+ (87-89); B (83-86); B- (80-82); C+ (77-79); C (73-76); C- (70-72); D (60-69); F (<60).

PLAGIARISM:

Please refer to Northwestern’s resources on academic integrity for guidance on how to properly use and credit research in your work: <http://www.northwestern.edu/provost/policies/academic-integrity/>. Suspected violations of academic integrity will be reported to the Dean's Office. For more information on Northwestern’s academic integrity policies, see: <http://www.weinberg.northwestern.edu/handbook/integrity/index.html>.

ACCOMODATION:

Any student requesting accommodations related to a disability or other condition is required to register with AccessibleNU (accessiblenu@northwestern.edu; 847-467-5530) and provide professors with an accommodation notification from AccessibleNU, preferably within the first two weeks of class (**by January 22**). All information will remain confidential.

COURSE SCHEDULE	
1.7	Introduction to Course
	<ul style="list-style-type: none"> ▪ Instructor introduction; ▪ Student introductions; ▪ Review of syllabus
SECTION 1	The Science of Climate Change
1.9	Overview of Climate Change Science
	<p>READINGS</p> <ul style="list-style-type: none"> ▪  IPCC, <i>Climate Change 2013: The Physical Science Basis, Summary for Policymakers</i> 1-27 (2013)

📄 Australian Academy of Science, [The Science of Climate Change](#) 1-32 (2015)

SECTION 2

International/Regional Legal Responses to Climate Change

1.14

Introduction to the Law of Treaties

READINGS

- 📄 [Article 38\(1\)\(a\), Statute of the International Court of Justice](#)
- 📖 CARLSON, PALMER & WESTON, INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER 79-109 (2012) (up to the case that begins on p. 109)
- 📄 [Text of the Vienna Convention on the Law of Treaties \(1969\)](#)

1.16

The United Nations Framework Convention on Climate Change (UNFCCC), Part 1

READINGS

- 📄 [Text of the United Nations Framework Convention on Climate Change \(1992\)](#)
- 📖 WOLD, HUNTER & POWERS, CLIMATE CHANGE AND THE LAW, Ch. 4, *The UNFCCC* (2009), at pp. 149-184
- 📺 McGrath, [Climate change: 'Monumental' deal to cut HFCs, fastest growing greenhouse gases](#), BBC, Oct. 15, 2016

STUDENT LEARNING EXERCISE

Please have access during class to the **United Nations Framework Convention on Climate Change Treaty Interpretation Exercise**, which can be found in the “Treaty Interpretation Exercises” folder on the course Canvas site, and the text of the UNFCCC. We will use these materials for our in-class group exercise.

1.21

The United Nations Framework Convention on Climate Change (UNFCCC), Part 2

READINGS





- **No additional readings**

STUDENT LEARNING EXERCISE

Please have access during class to the **United Nations Framework Convention on Climate Change Treaty Interpretation Exercise**, which can be found in the “Treaty Interpretation Exercises” folder on the course Canvas site, and the text of the UNFCCC. We will use these materials for our in-class group exercise.

1.23

READINGS

-  [Text of the Kyoto Protocol](#) (1995)
-  WOLD, HUNTER & POWERS, CLIMATE CHANGE AND THE LAW, Ch. 5, *Introduction to the Kyoto Protocol* (2009), at pp. 205-221 [from Section III]
-  Betsill, *International Climate Change Policy*, Ch. 10, THE GLOBAL ENVIRONMENT (2015), pp. 243-246 (up to “Negotiating the Cancun Agreement”)
-  de Cendra de Larragán, *The Kyoto Protocol, with a special focus on flexible mechanisms*, CLIMATE CHANGE LAW 227-36 (2016)

STUDENT LEARNING EXERCISE

Please have access during class to the **Kyoto Protocol Treaty Interpretation Exercise**, which can be found in the “Treaty Interpretation Exercises” folder on the course Canvas site, and the text of the Protocol. We will use these materials for our in-class group exercise.

1.28

The Kyoto Protocol, Part 2

READINGS

- **No additional readings**





STUDENT LEARNING EXERCISE

Please have access during class to the **Kyoto Protocol Treaty Interpretation Exercise**, which can be found in the “Treaty Interpretation Exercises” folder on the course Canvas site, and the text of the Protocol. We will use these materials for our in-class group exercise.

1/30

The Paris Agreement, Part 1

READINGS





-  [Text of the Paris Agreement](#) (2015)
-  Rajamani, *Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics*, ICLQ 1-25 (2016)
-  Keohane & Oppenheimer, *Paris: Beyond the Climate Dead End through Pledge and Review?*, 4(3) POLICY & GOVERNANCE 142-151 (2016)
-  Rajamani & Werksman, *The legal character and operational relevance of the Paris Agreement’s temperature target*, 376 PHILOSOPHICAL TRANSACTIONS OF THE ROYAL SOCIETY A 1-4 (2018)

STUDENT LEARNING EXERCISE

Please have access during class to the **Paris Agreement Treaty Interpretation Exercise**, which can be

	found in the “Treaty Interpretation Exercises” folder on the course Canvas site, and the text of the Agreement. We will use these materials for our in-class group exercise.
2.4	The Paris Agreement, Part 2
	<p>READINGS</p> <ul style="list-style-type: none"> ▪ No additional readings <p>STUDENT LEARNING EXERCISE</p> <p>Please have access during class to the Paris Agreement Treaty Interpretation Exercise, which can be found in the “Treaty Interpretation Exercises” folder on the course Canvas site, and the text of the Agreement. We will use these materials for our in-class group exercise.</p>
SECTION 3	Domestic Response to Climate Change (United States)
2.6	Federal Responses to Climate Change (United States), Part 1: Executive Authority to Regulate Greenhouse Gases
	<p>READINGS</p> <ul style="list-style-type: none"> ▪ Massachusetts v. EPA (U.S. Supreme Court, 2007) <p>STUDENT LEARNING EXERCISE</p> <p>Please brief the U.S. Supreme decision of <u>Massachusetts v. EPA</u>. Use the “How to Brief a Case” template found in the “Case Briefing Exercises Folder” to brief the case. You will NOT be submitting the briefing; we will just use these as grist for an in-class exercise.</p>
	Mid-Term Examination
2.13	Federal Responses to Climate Change (United States), Part 2: Executive Branch Responses from Obama to Trump






READINGS

-  [Fact Sheet: Overview of the Clean Power Plan](#) (2015)
-  [Presidential Executive Order on Promoting Energy Independence and Economic Growth](#) (2017)
-  Union of Concerned Scientists, [The Clean Power Plan](#) (2018)
-  Bade, [Report: EPA planning 'inside the fence' Clean Power Plan replacement](#), Utility Dive, Aug. 1, 2017

2.18

Regional Responses to Climate Change in the United States

READINGS

-  [Regional Greenhouse Gas Initiative Memorandum of Understanding](#) (2005)
-  Congressional Research Service, [The Regional Greenhouse Gas Initiative: Background, Impacts, and Selected Issues](#), July 16, 2019
-  Stevenson, [A Review of the Regional Greenhouse Gas Initiative](#), Cato Working Paper No. 45 (2017)
-  [Text of the California Global Warming Solutions Act \(AB32\)](#) (2006)
-  [Text of the 100 Per Cent Clean Energy Act \(SB100\)](#) (2018)

STUDENT LEARNING EXERCISE

Please have access when you come to class of **California Global Warming Solutions Act/100 Per Cent Clean Energy Act Statutory Analysis Exercise**, in the “Statutory Analysis Exercises” folder on the course Canvas site.




SECTION 4

The Potential Role of Climate Litigation to Drive Emissions Reductions

2.20

The Potential Role of Climate Litigation in the United States and other Countries

READINGS

-  Butterfield, *The potential role of climate change litigation in furthering the mitigation objectives of the Paris Agreement*, 21 ASIA-PACIFIC LAW JOURNAL 29-49 (2018)
-  [American Electric Power Company, Inc., et al. v. Connecticut](#) (US Supreme Court. 2011)
-  Kaminski, [Historic Urgenda Climate Ruling Upheld by Dutch Supreme Court](#), Climate Liability News, Dec. 20, 2019

STUDENT LEARNING EXERCISE

- Please brief the **U.S. Supreme Court case of [American Electric Power Company v. Connecticut](#)**, which is available via a hyperlink above. Use the “How to Brief a Case” template found in the same “Case

Briefing Exercises” folder on the course Canvas site to brief the case. You will not turn the brief in.



SECTION 5

“Plan B?”: Climate Geoengineering Approaches

2.25

Overview of Solar Radiation Management Geoengineering




READINGS

-  Irvine, et al., *An Overview of the Earth system science of solar geoengineering*, 7 WIREs CLIMATE CHANGE 815-33 (2016)
-  McLaren, *Mitigation deterrence and the “moral hazard” of solar radiation management*, 4 EARTH’S FUTURE 596-602 (2016)

2.27

Governance of Solar Radiation Management Geoengineering

READINGS

-  Text of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1976) and its Understandings
-  Lin, *Balancing the Risks: Managing Technology and Dangerous Climate Change*, 8(3) *Issues in Legal Scholarship* 1-26 (2009)
-  Burns, *Climate Geoengineering: Solar Radiation Management and its Implications for Intergenerational Equity*, *Stanford Journal of Law, Science & Policy* 38-55 (May 2011)


STUDENT LEARNING EXERCISE

Please have access during class to the **Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) Treaty Interpretation Exercise Treaty Interpretation Exercise**, which can be found in the “Treaty Interpretation Exercises” folder on the course Canvas site, and the text of ENMOD. We will use these materials for our in-class group exercise.

3.3

Overview of Carbon Dioxide Removal Geoengineering

READINGS

-  Haszeldine, et al., *Negative Emissions Technologies and Carbon Capture and Storage to Achieve the Paris Agreement commitments*, 376 *PHIL. TRANSACTIONS OF THE ROYAL SOCIETY, A* 1-23 (2018)

3.5

Governance of Carbon Dioxide Removal Geoengineering

READINGS

- **E** Scott, *Regulating Ocean Fertilization under International Law: The Risks*, 2 CCLR 108-15 (2013)
- **E** Burns, *Human Rights Dimensions of Bioenergy With Carbon Capture and Storage: A Framework for Climate Justice in the Realm of Climate Geoengineering*, CLIMATE JUSTICE: CASE STUDIES IN GLOBAL AND REGIONAL GOVERNANCE CHALLENGES 150-70 (2016)
- **E** Hester, *The paradox of regulating negative emissions technologies under US environmental laws*, 1 GLOBAL SUSTAINABILITY 1-7 (2018)
- **O** London Convention, [Annex 4, Resolution LP.4\(8\) on the Amendment to the London Protocol to Regulate the Placement of Matter for Ocean Fertilization and Other Marine Geoengineering Activities](#) (2013)

STUDENT LEARNING EXERCISE

Please have access during class to the **London Convention, Annex 4, Resolution LP.4(8) Treaty Interpretation Exercise**, which can be found in the “Treaty Interpretation Exercises” folder on the course Canvas site, and the text of the Agreement. We will use these materials for our in-class group exercise.

SECTION 6

Carbon Taxes to Address Climate Change?

3.10

Carbon Taxes to Combat Climate Change?

READINGS

- **O** Ramseur, [Attaching a Price to Greenhouse Gas Emissions with a Carbon Tax or Emissions Fee: Considerations and Potential Impacts](#), Congressional Research Service, March 22, 2019

3.12

Term Paper Review

- **Brief student summary of term papers**
- **Class feedback/questions**

