

Environmental and Climate Litigation: China, U.S., the World (Law 713)

Spring 2020

Instructor Information

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Office Hours: Flexible, by arrangement

If you don't know where you're going, when you get there you'll be lost. Yogi Berra

Course Information

Meetings: Tuesday and Thursday 3:00 – 4:40 p.m., January 21- February 13, 2020
Location: Middle Classroom
Credit Hours: One (1) credit hour

Textbook/Course Materials

No textbook. I will provide materials to you either as live links in the Syllabus (below), in hard copy where there are not links, and/or on Blackboard.

COURSE OVERVIEW

In this course, you will get to think out of the usual legal boxes, as lawyers and future lawyers have a great opportunity to create new caselaw and remedies for one of the major issues facing the world. Our modern civilization increasingly is dependent upon energy, yet over 80% of the energy consumed in the U.S. and world is from fossil fuels—which account for the lion's share of greenhouse gas emissions that are the primary cause of climate change. Climate change has become the subject of major economic, political and scientific concern and debate, with direct impact upon energy law and policy—as well as growing economic, health and social impacts in Maine, the U.S., and globally. Which is creating growing opportunities for work for attorneys and those trained in the law and litigation. This course will provide you with a practical understanding of issues that will fundamentally shape their personal and professional futures regardless of their ultimate fields of pursuit, in Maine or wherever they may live and work.

In this short course, you will be introduced to what some other countries—especially major players like China and Russia-- are doing with respect to climate and energy issues, in comparison with our own. The materials and issues are very current. Additionally, you will have two special opportunities: a) in one class, we will do a video call with a Shanghai environmental attorney who has also studied at Vermont Law School; and b) those students who are interested may be able to connect via email with some of Prof. Thaler's Fall 2019 students at Duke Kunshan University in China, to ask questions about policies or other topics there.

LEARNING GOALS

After completion of this course, you should be better able to:

1. Analyze and think critically about statutes, regulations, and case law relevant to climate and environmental policy and challenges
2. Be a stronger writer and oral advocate
3. Better understand and be involved with ongoing planning and legal efforts to respond to climate changes in Maine and elsewhere.

COURSE POLICIES AND REQUIREMENTS

You are at Maine Law to develop yourself as a professional, and therefore you and I will act professionally toward each other, as if we were in a law firm, public sector or in-house legal group, or similar organization. **This means the following are our Class rules:**

Class attendance is mandatory and participation is expected. Being prepared for class counts, as it is important that you learn from the diverse perspectives and views of your classmates, and give the same to them. Also, the American Bar Association standards require that students spend a very significant amount of time in out-of-class academic activities, per credit that is awarded. Maine Law has adopted a policy, consistent with the ABA's policy, that students are required to complete approximately 30 hours 20 minutes of out-of-class work per credit per semester. For a bridge course like this one, this translates into 7 hours, 35 minutes of out of classroom work per week, or 3 hours 48 minutes per class.

Please be **on time** for class. If you must miss a class, notify me beforehand with the reason; assume this is like court, and it must be a strong, unavoidable problem. Multiple missed classes will impact your grade. Per ABA requirements, if you miss more than 2 classes without having provided an acceptable excuse to me BEFORE the class you miss, I reserve the authority to lower your final grade accordingly. Likewise, if you are chronically late for class, I also reserve the right to lower your final grade.

Likewise, **no late assignments;** as a professional, neither your clients nor the court-agency will accept late submissions. Be prepared and meet your deadlines

I want class time to be as interactive as possible. Active participation **by everyone** is critical to developing strong analytic, communication, and listening skills. Therefore:

- a) No cell phone use in class; turn it off.
- b) As much as possible, try no laptop use in class, absent a specific exercise where I tell you beforehand we will be doing a research exercise. Laptops interfere with face-to-face connectivity, and studies demonstrate that taking handwritten notes increases how much your brain is processing information and thus increases how much you are likely to remember later. PLUS you will not be using a laptop while speaking to most boards, judges, clients, or other key people you will be trying to impress or persuade.

COMMUNICATION WITH THE PROFESSOR

My mode of communicating with you will be by email, as it would be with your clients, co-workers, the court or agency personnel, etc. You are responsible for checking your maine.edu email address every day; please try to get used to the “24-hour rule”—if I or a client contact you and request a response, then do respond within 24 hours. If you have questions about course matters you may email me, and you are also welcome to see me by appointment or whenever I am in my office (other than just before class). I have no set office hours, due to my lawyering obligations. However, I am in the office much of the week. You are also welcome to ask me about the Maine bar and lawyers, law and non-law job opportunities, or anything else.

GENERAL GUIDELINES REGARDING WRITTEN ASSIGNMENTS

General Format Requirements. Written assignments should conform to the following:

- (1) Typewritten, double-spaced, in Times New Roman 12-point font.
- (2) One-inch margins for the top, bottom, left and right margins.
- (3) Each page should contain a page number; be sure your name is on page 1.
- (4) Unless otherwise instructed, all written assignments should be emailed to me at jeffrey.thaler@maine.edu. I will generally return graded assignments via email.
- (5) **You are expected to carefully proofread your submissions before sending them to me;** multiple typographic errors are not acceptable to clients or decision makers, and you will be penalized by them—and in this course.

ACCOMODATION POLICY

The Law School provides reasonable accommodations to qualified students with disabilities. Disabilities protected by law include both physical and psychological conditions that substantially impair a major life activity. Students who seek accommodations should contact USM’s Disability Services Center (DSC), at 242 Luther Bonney, in person or by phone at 780-4706. After reviewing relevant documentation, the DSC Director will provide qualifying students with reasonable accommodations. At the Law School the Associate Dean for Student Services, Sherry L. Niang, serves as the liaison to the DSC. Students with questions about accommodations and the provision of related services may contact her directly. The Americans with Disabilities Act requires that confidentiality be maintained regarding all student disability-related information.

Students who have been incapacitated by illness, injury, childbirth, family death, or extraordinary care-giving responsibilities must contact Prof. Thaler in advance of missing classes or assignment deadlines. Stressful situations like these may lead to diminished academic performance or may reduce a student’s ability to participate in daily classroom activities. Law School services are available to assist students with handling these stressful events. For

examination conflicts or emergency situations during the examination period, please see the Registrar, Jane Kennery, and do not speak directly to the Professor.

HEALTH AND WELLNESS RESOURCES FOR MAINE LAW STUDENTS

Maintaining your physical and mental health is essential to learning the law and succeeding in law school. Law school is a context where mental health or substance use struggles can be exacerbated. If you ever find yourself struggling, please do not hesitate to ask for help. Maine Law is committed to promoting wellness for all students. I encourage all of you to review the Health & Wellness Resources listed on the MyLaw Portal. The resources include free, confidential counseling services (207-780-4050) and the Maine Assistance Program for Lawyers and Law Students (207-266-5951). You can also contact the Maine Law Office of Student Services.

CLASS RECORDING POLICY

As a general rule, the recording of all classes is prohibited without permission. If a student will be absent from class and wishes to record a missed class session, you must first contact me for permission. If permission is granted, you must arrange for a classmate to facilitate the recording. All class recordings are for personal use only and may not be uploaded to the internet or otherwise shared, transmitted, or published without my prior consent. If I deny the request, then you must find an alternative method for making up the missed material.

The Law School does not provide recording services for occasional absences. Suggested mobile apps and a listing of devices available to students for self-directed audio recording can be found in the MyLaw Portal. Recording classes without permission will be viewed as a violation of the Student Conduct Code. Students requesting the recording of classes pursuant to the Americans with Disabilities Act or in the case of exceptional circumstances, such as hospitalization, must contact Dean Niang.

INCLEMENT WEATHER POLICY

For information on campus closings, please call the storm line at [207-780-4800](tel:207-780-4800). If the University of Southern Maine closes the campus or cancels classes, this always applies to the Law School. In rare circumstances, the Law School closes before USM. In this situation, an email about closings will be sent to students through the email listserv.

ACADEMIC INTEGRITY POLICY

The Law School and UMaine System have a Student Conduct Code; I must take it very seriously, and will report to the appropriate Dean any actions that may be infractions.

COURSE MATERIALS

You will be expected to bring the relevant materials to each class (online or hard copy), and to have beforehand read the assigned materials that are designated in the class sessions as “mandatory”. Those materials identified as “resource material” are provided as a benefit for your

possible use in your project, your paper, or in your future work. Most of the materials are short, and non-legal, thus should not take as long as your typical course work.

GRADING AND COURSE EXERCISES

There will be in-class discussions. Each student will prepare and deliver a short power-point presentation to be given in class during the last week of the course; the topic will be chosen in consultation with me. Last, each student will prepare and submit a 7-9 page paper relating to the topic she or he worked on in the power-point presentation. The deadline for submission of the paper is the end of the semester, April 28th, though earlier submittal is preferred! The class is graded Pass-Low Pass-Fail.

SYLLABUS

- 1. Jan. 21** We will briefly go over the syllabus, so have a hard copy with you. I also will give out some reading materials for future classes if links have not been provided separately. **TOPIC:** Where are we going—National and International Climate Change Trends.

Mandatory readings:

- 1) Thaler (2012), “Fiddling as the World Floods and Burns: How Climate Change Urgently Requires a Paradigm Shift in the Permitting of Renewable Energy Projects”, pages 1107-1128 <http://law.lclark.edu/live/files/13156-thalerready-for-websitedpdf>
- 2) TIME Magazine (9/23/19), “2050: The Fight for the Earth” (excerpts, will be on Blackboard and emailed to you with syllabus before class)
- 3) Leiserowitz et al, “Climate Change in the American Mind: November 2019, just Executive Summary, but you can look other parts of the report that interest you (optional) <https://climatecommunication.yale.edu/publications/climate-change-in-the-american-mind-november-2019/2/>
- 4) “Russia unveils plan to ‘use the advantages’ of climate change”, 01/06/2020, <https://www.dw.com/en/russia-unveils-plan-to-use-the-advantages-of-climate-change/a-51894830>
- 5) “How is China managing its greenhouse gas emissions?”, <https://chinapower.csis.org/china-greenhouse-gas-emissions/>
- 6) Sandalow, “Guide to Chinese Climate Policy 2019”, pages 3-7, 146-156 (you can download for free; other parts of it that interest you are optional) <https://energypolicy.columbia.edu/research/report/guide-chinese-climate-policy>
- 7) Hernandez, “It Can Power a Small Nation. But This Wind Farm in China is Mostly Idle”, <https://www.nytimes.com/2017/01/15/world/asia/china-gansu-wind-farm.html>

Resource material:

- 1) Dunning, “Wind Turbines and Birds” (2020), <https://skeptoid.com/episodes/4709>
- 2) USFWS, “Migratory Bird Mortality” (2017), <https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds.php>
- 3) UN Environmental Programme, “Global Environmental Outlook 2019” (Summary for Policymakers is concise; you can look at any other parts if you want, in the right-side margin) <https://www.unenvironment.org/resources/global-environment-outlook-6>

- 2. Jan. 23 TOPIC:** Where are we going—Maine Climate Change and Energy Trends, Laws and Initiatives, including the Maine Climate Change Council

Mandatory Readings:

- 1) Executive Order to Strengthen Maine’s Economy and Achieve Carbon Neutrality by 2045” (9/23/19),
https://www.maine.gov/governor/mills/sites/mainegov.governor.mills/files/inline-files/Executive%20Order%209-23-2019_0.pdf
- 2) Mills, Letter to U.S. House of Representatives Select Committee on the Climate Crisis, (12/18/19), <https://www.maine.gov/future/sites/mainegov.future/files/inline-files/LettertoHouseSelectCommitteeonClimateCrisis.pdf>
- 3) Woodard, “Gov. Mills wants Maine carbon-neutral by 2045. What will that take?” (9/29/2019), <https://www.pressherald.com/2019/09/29/gov-mills-wants-maine-carbon-neutral-by-2045-what-will-that-take/>
- 4) “Goals of the Maine Climate Change Council” (2019),
<https://www.maine.gov/future/initiatives/climate/climate-council>
AND
Energy Working Group page (there are links to materials on the right side of the page;
DO look at the December 13 Meeting Slides of Silkman (Slide 5) and AEE
(Slides 5,10-11, 15, 37, 39)
<https://www.maine.gov/future/initiatives/climate/climate-council/energy>
- 5) Griset, “Transportation, Heating dominate Maine greenhouse gas emissions” (4/29/19)
<http://energypolicyupdate.blogspot.com/2019/04/transportation-heating-dominate-maine-GHG-emissions.html>
- 6) Maine State Exports and Imports (by Country) (2018): Exports,
<https://www.census.gov/foreign-trade/statistics/state/data/me.html> and Imports,
<https://www.census.gov/foreign-trade/statistics/state/data/imports/me.html>

7) Woods, <https://www.cnbc.com/2019/12/13/us-has-only-one-offshore-wind-farm-but-thats-about-to-change.html?fbclid=IwAR3QiZmhDuGSMS0abE0EZMFqxsPdNjHT-wcaFLJYIoodfFi1hQ4yUqFPs>

3. Jan. 28 TOPIC: Climate change litigation concepts and trends in the United States

Mandatory readings:

- 1) Irfan, "Pay attention to the growing wave of climate change lawsuits" (06/04/2019),
<https://www.vox.com/energy-and-environment/2019/2/22/17140166/climate-change-lawsuit-exxon-juliana-liability-kids>
- 2) Chase, "Climate Change in the Courts" (2020)
<http://vjel.vermontlaw.edu/topten/climate-change-in-the-courts/>
- 3) Our Children's Trust, Juliana v United States history and sublinks,
<https://www.ourchildrenstrust.org/juliana-v-us> Look at: a) First Amended Complaint pp. Caption, Table of Contents, and Claims for Relief (pp. 84-94) and skim any other parts of interest
<https://static1.squarespace.com/static/571d109b04426270152febe0/t/57a35ac5ebb d1ac03847eece/1470323398409>YouthAmendedComplaintAgainstUS.pdf> AND b) 2016 Historic Denial by U.S. District Court of Motions to Dismiss (read all)
<https://static1.squarespace.com/static/571d109b04426270152febe0/t/5824e85e6a4 9638292ddd1c9/1478813795912/Order+MTD.Aiken.pdf>
- 4) Climate Change Litigation Databases (skim through some of the categories to see how much is accessible, including pleadings, on both U.S. and non-U.S. cases, and by categories—excellent resource) <http://climatecasechart.com/>
- 5) Yearwood & McKibben, "Want to Do Something About Climate Change? Follow the Money" (01/11/2020), <https://www.nytimes.com/2020/01/11/opinion/climate-change-bank-investment.html>
- 6) Banking on Climate Change: Fossil Fuel Finance Report Card (pp. 1-15)
https://www.ran.org/wp-content/uploads/2019/03/Banking_on_Climate_Change_2019_vFINAL1.pdf

Resource Material:

- 1) Sharp, "Stepping into the Breach: State Constitutions as a Vehicle for Advancing Rights-Based Climate Litigation", 14 Duke J.Const.Law & Policy 40 (2019)
https://scholarship.law.duke.edu/djclpp_sidebar/174/
- 2) Adler, U.S. Climate Change Litigation in the Age of Trump: Year Two (2019),
<http://columbiaclimatelaw.com/files/2019/06/Adler-2019-06-US-Climate-Change-Litigation-in-Age-of-Trump-Year-2-Report.pdf>

4. Jan. 30 **TOPIC:** Climate change litigation concepts and trends in China, Europe and Globally

Mandatory readings:

- 1) UNEP (2017), “The Status of Climate Change Litigation: A Global Review” pages 27-40 <http://columbiaclimatelaw.com/files/2017/05/Burger-Gundlach-2017-05UN-Env-CC-Litigation.pdf>
- 2) “Global Climate Change Litigation” (2020),
<https://www.urgenda.nl/en/themas/climate-case/global-climate-litigation/>
- 3) Setzer, “Global Trends in Climate Change Litigation: 2019 Snapshot” (07/19),
http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2019/07/GRI_Global-trends-in-climate-change-litigation-2019-snapshot-2.pdf
- 4) Li, “Climate Change Litigation: A Promising Pathway to Climate Justice in China?”, 37 Va. Env. L.J. 132 (2019) (Read pp. 133-143)
http://www.velj.org/uploads/1/2/7/0/12706894/final_a.2_li.pdf
- 5) Nollkaemper, “A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the *Urgenda Case*” (01/06/2020) <https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/>
- 6) *State of Netherlands v Urgenda Foundation*, 12/20/2019, Supreme Court of Netherlands, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Hoge-Raad-der-Nederlanden/Nieuws/Paginas/Dutch-State-to-reduce-greenhouse-gas-emissions-by-25-by-the-end-of-2020.aspx> Decision in English is here: <https://www.urgenda.nl/wp-content/uploads/ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf>

Resource readings:

- 1) Maljean-Dubois, “Climate Change Litigation”(2019), <https://halshs.archives-ouvertes.fr/halshs-02281274/document>

5. Feb. 4 **TOPIC:** A comparison of environmental public interest litigation issues arising in China and the United States

Mandatory readings:

- 1) Note (2015), “Causation in Environmental Law”, pages 2256-2259 and 2262-2265
<https://harvardlawreview.org/2015/06/causation-in-environmental-law/>

- 2) Zhao, "Prospects for Climate Change Litigation in China" (5/29/19), pp. 365-373
 (Copy will be on Blackboard)
- 3) Li (see January 30th above, #4) at pp. 144-158 and 167-168)
- 4) Jones Day, "China Begins Enforcing Newly Amended Environmental Protection Law" (Jan. 2016), <https://www.jonesday.com/en/insights/2016/01/china-begins-enforcing-newly-amended-environmental-protection-law>
- 5) EPIL Typical Case: *Taizhou* <http://asia-environment.vermontlaw.edu/2017/03/13/epil-typical-case-1-taizhou-environmental-protection-association-of-jiangsu-province-v-taixing-jinhui-chemical-company-et-al-a-water-pollution-environmental-public-interest-litigation-case/>
- 6) "The Challenge of Litigation Costs and Damage Assessment Fees in EPIL Litigation in China", <http://asia-environment.vermontlaw.edu/2017/05/15/the-challenge-of-litigation-costs-and-damage-assessment-fees-in-environmental-public-interest-litigation-in-china/>
- 7) Chu, "Vindicating Public Environmental Interest: Defining the Role of Environmental Public Interest Litigation in China", 45 Ecology L.Q. 485 (2018) pp. 487-505, 512-522, <https://berkeleylawir.tind.io/record/1129021?ln=en>

Recommended readings:

- 1) Jones, Pendergrass et al (2015), "Tropical Conservation and Liability for Environmental Harm", pages 11032-36
https://www.elj.org/sites/default/files/elr/featuredarticles/45_11032.pdf

6. Feb. 6 **NOTE:** This is the class we will do **8-8:55 am, location in the Moot Courtoom**, in which you will get a chance to ask questions of and talk with Shanghai environmental attorney XiuXiu Zhang. More information on Attorney Zhang can be found in these two links: <https://www.vermontlaw.edu/academics/centers-and-programs/environmental-law-center/people/mission-scholars-china>

http://www.azlf.com.cn/m/eng_shownews.asp?id=236&smallclass=%E6%B4%BB%E5%8A%A8

NOTE: At our usual class time of 3:00, I will be available to meet with anyone about their upcoming presentations; you may also use this time to work on your presentation.

7. Feb. 11 Presentations by half the class, 15 minutes each, with questions added.

8. Feb. 13 Presentations by the other half of the class, 15 minutes each, with questions added.

Final discussion of “what have you learned” and “what more do you now want to investigate”?

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