

**LAW 315D**  
**TOPICS IN LEGAL HISTORY: ENVIRONMENTAL LEGAL**  
**HISTORY**

**Contact Details**

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**Course Time and Location**

Tuesdays 2:00-5:00  
Room 180  
Course web page: <http://faculty.law.ubc.ca/harris/legalhistory.htm>

**Course Description 2006**

The objectives of the seminar are to expose students to diverse literatures in legal and environmental history, to ask students to think critically and constructively about the role of law in society, to provide a forum for discussion around assigned readings, and to provide students with an opportunity to develop research and writing skills.

This seminar will provide students with an opportunity to explore the role of law in the formation of human relationships with the natural world. It will focus on the management and regulation of the human use of natural resources in a variety of historical contexts, but particularly in late nineteenth and early twentieth century British Columbia. Through the readings and class discussion students will explore a number of recurring themes, including the transformation from customary rules that governed access to local resources to state enforced laws.

Students will be encouraged to undertake research using primary historical documents.

**Assignments**

Students in this course are evaluated by their written assignments, class presentations, and class participation.

***Written assignments***

A research seminar provides students with the opportunity to write a longer paper on a subject of particular interest to them. It also provides an opportunity to enhance legal research and writing skills, with a particular focus on academic research and writing. All assignments must include proper citations and the research paper must include a bibliography. The assignments will be graded on the substantive content, the organization and structure, and the clarity of the writing.

**Short assignment.** Students are expected to write a short assignment (1250 words or 5 pages). The short assignment may take the form of a case or statutory comment, a book review, or some other focussed piece of writing that explores the regulation of the environment in a historical context. It is worth 20% of your final grade. It may also be connected to or become a part of the longer research paper.

**Research paper.** Students are expected to write a longer research paper (6250 - 7500 words or 25 - 30 pages). The research paper is to have a similar focus on the historical regulation of the natural world. Students are to choose their topics, in consultation with the instructor. They are also strongly encouraged to incorporate primary historical sources. These may include textual, visual, or audio records, including unreported cases, government records, corporate records, private manuscripts, oral histories, popular culture, newspapers, photographs, landscapes, etc. Students wishing to submit a draft of their research paper may do so on or before November 29th. The research paper is worth 60% of your final grade.

Due dates:

**Short Assignment – 4pm, Friday, October 14th**

Research Paper draft – 4pm, Tuesday, November 29th (optional)

**Research Paper – 4pm, Wednesday, December 21st**

### *Class participation and presentation*

**Class participation.** Students are expected to attend class, to have read the assigned material, and to be prepared to talk about that material in class. Readings will be drawn from the package of course material that is available at the Distribution Centre in the Law School.

**Class presentations.** Students are expected to provide a **short introduction** to one of the assigned readings. This introduction is intended to launch the class discussion of that reading. It will be no more than 15 minutes long. Each student will provide the instructor with a page of questions and thoughts about the reading by 12(noon) on the Monday before they introduce the reading, to be posted on the course web page.

Students are also expected to **present their research papers** as works in progress to the class. In the week before they are due to present their papers, each student will provide the other students and the instructor with a short reading (no more than 10 pages or equivalent) from another author that has significantly influenced their approach to the research paper and/or a primary source that they are using in the paper. In addition, each student will provide the instructor with a one page outline of their paper by 12(noon) on the Monday before they present their papers, to be posted on the course web page.

Presentations will be no more than 15 minutes long and will be worth 10% of the final grade. Students will be evaluated on the content, organization, and structure of the presentations.

Class participation and presentation will account for 20% of the final grade.

***Penalties for late assignments***

The standard policy in the Law Faculty for late assignments is as follows:

For late assignments worth 20 marks or more, for each or any part of a day that the assignment is late, including weekends and statutory holidays and other days when the law school is closed, the student will lose 5 per cent of the maximum possible value of the assignment.

For an assignment worth less than 20 possible marks, one point will be deducted for each day or part of a day that the assignment is late.

Students must apply to the Examinations Committee for exemptions from this deduction.

***A note on plagiarism***

Plagiarism is a serious academic offence that the Law School and the University take very seriously. Be scrupulous to avoid presenting the work of others as your own. If you have any doubts about what constitutes plagiarism, please review the University regulations (<http://students.ubc.ca/calendar/index.cfm?tree=3,54,111,0>) and talk with me.

## ENVIRONMENTAL LEGAL HISTORY - Syllabus

### Sept. 6<sup>th</sup>      Introductions

### Sept. 13<sup>th</sup>      Approaches to Legal and Environmental History

#### **Required Reading:**

John McLaren and Hamar Foster, “Hard Choices and Sharp Edges: The Legal History of British Columbia and the Yukon” in Foster and McLaren, editors, *Essays in the History of Canadian Law, Vol. 6, British Columbia and the Yukon* (Toronto: University of Toronto Press, 1995), 3-27.

[Graeme Wynn, ““Shall we linger along ambitionless?” Environmental Perspectives on British Columbia” \(2004\) 142/143 \*BC Studies\* 5-67.](#)

“Fishing Rights of Indians,” “Indians May Fish Reserves,” and “Fishery Laws Govern All Indians,” excerpts from *The Daily Province* (Vancouver), Nov.-Dec. 1925.

#### **Supplemental Reading:**

Hamar Foster, “British Columbia: Legal Institutions in the Far West, from Contact to 1871” (1996) 23 *Manitoba Law Journal* 293-340.

Alan MacEachern, “Voices Crying in the Wilderness: Recent Works in Canadian Environmental History,” (2002) 31 *Acadiensis* 215-226.

J.R. McNeill, “Observations on the Nature and Culture of Environmental History” (2003) 42 *History and Theory* 5-43.

Richard White, “Environmental History: The Development of a New Historical Field,” (1985) 54 *Pacific Historical Review* 297-335.

Richard White, “Environmental History: Watching a Field Mature (2001) 70 *Pacific Historical Review* 103-112.

Donald Worster, “Appendix: Doing Environmental History” in Worster, editor, *The Ends of the Earth: Perspectives on Modern Environmental History* (Cambridge: Cambridge University Press, 1988).

### Sept. 20<sup>th</sup>      Environment, Custom, and Tradition

#### **Required Reading:**

Joseph E. Taylor III, *Making Salmon: An Environmental History of the Northwest Fisheries Crisis* (Seattle: Washington University Press, 1999) 13-38.

William Cronin, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill & Wang, 1983) 2-15, 34-81.

“Origin of the Columbia River” and “Introduction of Salmon” from “Okanagan Tales” collected by James Teit, in Franz Boas, editor, *Folk-Tales of Salishan and Sahaptin Tribes* (New York: Kraus Reprint Co., 1969), 65-70.

**Sept. 27<sup>th</sup>      Environment and State**

**Required Reading:**

James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998) 1-52.

Cole Harris, "The Making of the Lower Mainland" in *The Resettlement of British Columbia: Essays on Colonialism and Geographic Change* (Vancouver: UBC Press, 1997) 68-102.

TBA

**Guest speaker:** John Keenlyside

**Oct. 4<sup>th</sup>      Custom, Class, and Conflict**

**Required Reading:**

E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Pantheon Books, 1975), 14-17, 21-24, 27-80, 190-97, 245-269.

Roald Dahl, *Danny the Champion of the World* (New York: A.A. Knopf, 2002), chapter 14.

Douglas C. Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001) 186-216.

**Oct. 11<sup>th</sup>      Custom, Commons, and Common Law**

**Required Reading:**

Sean Cadigan, "The Moral Economy of the Commons: Ecology and Equity in the Newfoundland Cod Fishery, 1815-1855" (1999) 43 *Labour/Le Travail* 9-42.

Jeanette Neeson, "Coastal Commons: Custom and the Use of Seaweed in the British Isles c. 1700-1900," Paper presented at "Wealth of the Sea. Wealth From the Sea. 13<sup>th</sup> to 20<sup>th</sup> Centuries," Prato, April 11-15, 2005.

*Ancient Rights: The Protected Fishing Area of Petty Harbour-Maddox Cove*, Protected Areas Association of Newfoundland and Labrador (Sept. 1996).

**Oct. 18<sup>th</sup>      Land, Law, and the Economy**

**Required reading:**

James Willard Hurst, *Law and the Conditions of Freedom* (Madison: University of Wisconsin Press, 1956), 3-32.

John Weaver, *The Great Land Rush and the Making of the Modern World* (Montreal and Kingston: McGill-Queen's University Press, 2003), 46-87.

British Columbia Land Ordinance

**Oct. 25<sup>th</sup>      The Colonial State and the Fisheries**

**Required reading:**

Arthur R. McEvoy, *The Fisherman's Problem: Ecology and Law in the California Fisheries, 1850-1980* (Cambridge: Cambridge University Press, 1986), 3-16, 93-119.

[J. Michael Thoms, "A Place Called Pennask: Fly-fishing and Colonialism at a British Columbian Lake" \(2002\) \*BC Studies\* 69-98.](#)

Douglas C. Harris, "Indian Reserves, Aboriginal Fisheries, and the Public Right to Fish in British Columbia, 1876-82" in J. McLaren et al., editors, *Despotic Dominion: Property Rights in British Settler Societies* (Vancouver: UBC Press, 2005), 265-293.

**Nov. 1<sup>st</sup>      Common Law, Statutory Regulation, and Water**

**Required Reading:**

Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge, Mass.: Harvard University Press, 1977), 31-53.

Carol Rose, *Property and Persuasion: Essays on History, Theory, and Rhetoric of Ownership* (Boulder: Westview Press, 1994), 163-196.

Maureen Boyd Clark, "Water, Private Rights and the Rise of Regulation: Riparian Rights of Use in British Columbia, 1892-1939 (1990) 48 *The Advocate* 253-64.

**Nov. 8<sup>th</sup>      Student Presentations**

**Nov. 15<sup>th</sup>      Student Presentations**

**Nov. 22<sup>nd</sup>      Student Presentations**

**Nov. 29<sup>th</sup>      Student Presentations**