



# LAW 339: CLIMATE CHANGE: LEGAL INSTITUTIONAL RESPONSES

<b>Spring 2008</b> TTh 9:00-10:15am	<b>Dr. Wil Burns</b>
Office Hours: TTh, 10.30-11.30am, or by appt. (Loyola 101)	<b>Bannan 137</b>
Phone: x6139 or 650.281.9126 (mobile)	<b>wburns@scu.edu</b>

## Overview

---

Climate change is the keystone environmental issue of this generation, as well as many generations to come. It now appears inevitable that temperatures will increase this century by 2-3°C, though even this projection may prove too optimistic if burgeoning levels of greenhouse gas emissions continue apace. This course examines the potential role of the legal community in confronting climate change from an institutional perspective, examining the role of treaties, national legislation, sub-national responses and judicial and quasi-judicial fora. The course also seeks to assess the role of students not only as attorneys in addressing climate change, but also as responsible citizens in one of the primary historical and contemporaneous producers of the greenhouse gases the precipitate climate change.

## Readings

---

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

- **T** MICHAEL B. GERRARD, GLOBAL CLIMATE CHANGE AND U.S. LAW (2007)
- **E** Electronic documents on the ClaraNet course site
- **O** Online Hyperlinks (must be accessed via the online version of the Syllabus)

on ClaraNet)

## GRADING

---

### Final Examination [90% of grade]

- The final examination will be a 24-hour take home examination, with the date(s) to be set after consultation with the class.

### Class Participation [10% of grade]

- I am a firm believer in the value of classroom discussion as a means of clarifying and expanding upon assigned readings and drawing upon the collective insights of class members. Thus, members of the class are expected to come to class prepared to discuss assigned reading materials and to be active participants in class discussions.

## Class Schedule

January 8

### Overview of Course

- Class introductions
- Review of Syllabus

### SECTION 1

### The Science of Climate Change

January 10

### Overview of Climate Change Science

- Readings
  - Intergovernmental Panel on Climate Change: [\*Climate Change 2007: Synthesis Report\*](#), Summary for Policymakers (2007)

### SECTION 2

### International and Regional Institutional Responses to Climate Change

January 15

NO CLASS

January 17

## The United Nations Framework Convention on Climate Change

- Readings
  - T Ch.2, pp. 31-36 (up to Sec. 3)
  - O [United Nations Framework Convention on Climate Change](#) (1992)

January 22

## The Kyoto Protocol, Part 1

- Readings
  - T Ch.2, *International Legal Regime*, pp. 36-52 (up to Sec. IV)
  - O [Text of the Kyoto Protocol](#) (1995)
  - E Desai & Schipper, *The Marrakech Accords to the Kyoto Protocol: Analysis and Future Prospects*, 13 GLOBAL ENVIRONMENTAL CHANGE 149-153 (2003)

January 24

## The Kyoto Protocol, Part 2

- Readings
  - E Halvorssen & Hovi, *The Nature, Origin and Impact of Legally Binding Consequences: The Case of the Climate Regime*, 6 INTERNATIONAL ENVIRONMENTAL AGREEMENTS 157-171 (2006)
  - T Ch.2, *International Legal Regime*, pp. 52-56
  - T Ch. 4, *The Impact of the Kyoto Protocol on U.S. Business*, pp. 101-127
  - T Müller, *Bali 2007: On the Road Again* 1-7 (2008)

January 29

## The European Trading System (ETS)

- Readings
  - E TBA
  - E Egenhofer, *The Making of the EU Emissions Trading Scheme: Status, Prospects and Implications for Business*, EUROPEAN MANAGEMENT JOURNAL 1-11 (2007)

Section 3

## National and Sub-National Responses to Climate Change

January 31

## U.S. Climate Change Policy: Executive Branch Initiatives

- Readings
  - T Ch. 3, *U.S. Policy*, pp. 361-82 (up to Part IV)
  - O [Text of President Bush's Clear Skies & Global Climate Change Initiatives](#) (2002)
  - O [Fact Sheet on the Clear Skies & Global Climate Change Initiatives](#) (2002)
  - E van Vuuren, et al., *An Evaluation of the Level of Ambition and Implications of the Bush Climate Change*

February 5

### Congressional Initiatives

- Readings
  - T Ch. 3, *U.S. Policy*, pp. 85-90
  - O Pew Center on Global Climate Change, [Legislation in the 110th Congress Related to Global Climate Change \(2007\)](#)
  - E Flatt, *Taking the Legislative Temperature : Which Federal Climate Change Legislative Proposal is Best ?* 102 N.W. U. L. REV. COLLOQUY 123-135 (2007)

February 7

### Regional Initiatives

- Readings
  - T Ch. 9, pp. 315-337
  - E Point Carbon, *Emissions Trading in the US: Is RGGI Over-Allocated?* 1-11 (2007)
  - E Sergienko, *Regional Responses to Regional Climate Change*, Northwest Reports (2007)

February 12

### State & Local Initiatives: Excluding California

- Readings
  - T Ch. 10, pp. 315-331 (up to Sec. III)
  - E Pew Center on Global Climate Change, *Learning from State Action on Climate Change*, 8 IN BRIEF, 1-11 (2006)
  - E Kosloff, Trexler & Nelson, *Facing Climate Change: Opportunities and Tools for State*, 14 WIDENER L.J. 173-204 (2004)

February 14

### California Climate Change Initiatives

- Readings
  - O [Text of the California Global Warming Solutions Act of 2006 \(AB 32\)](#)
  - E Goulder, *California's Bold New Climate Policy*, ECONOMISTS' VOICE 4-6 (2007)
  - TBA

February 19

### NO CLASS: Administrative Monday

## SECTION 4

### Corporate Actions

February 21

### Disclosure Issues

- Readings
  - T Ch. 13, pp. 453-483

February 26

### Fiduciary Duties of Officers and Directors

- Readings

➤ T Ch. 14, pp. 497-529

## SECTION 5 Climate Litigation in the United States

### February 28 Regulation of Carbon Dioxide under the Clean Air Act: Part 1

- Readings

- T Ch. 5, pp. 133-168
- TBA

March 4 **NO CLASS: SPRING BREAK**

March 6 **NO CLASS: SPRING BREAK**

### March 11 Regulation of Carbon Dioxide under the Clean Air Act: Part 2, Massachusetts v. EPA

- Readings

- O Massachusetts v. EPA (S. Ct. 2007)
- E Adler, *Warming Up to Climate Change Litigation*, 93 VA. L. REV. IN BRIEF 61-72 (2007)
- E Martel, *Climate Change Law and Litigation in the Aftermath of Massachusetts v. EPA*, BNA DAILY ENVIRONMENT 1-11 (2007)

### March 13 Nuisance-Based Litigation, Part 1

- Readings

- E *Connecticut v. American Electric Power* (S.D.N.Y. 2005)
- E *Murphy v. Comer Oil USA, Inc.* (S.D. Miss. 2007)
- E *Murphy v. Comer Oil USA, Inc.*, Transcript of Motion to Dismiss (2007)

### March 18 Nuisance-Based Litigation, Part 2

- Readings

- E *California v. General Motors Corporation* (N.D. Cal. 2007)
- E Abate, *Automobile Emissions and Climate Change Impacts: Employing Public Nuisance Doctrine as Part of a 'Global Warming Solution' in California*, 40 CONNECTICUT LAW-REVIEW 591-630 (2008)

### March 20 The Endangered Species Act

- Readings

- E *Biodiversity, Global Warming and the United States Endangered Species Act: The Role of Domestic Wildlife Law in Addressing Greenhouse Gas Emissions*, in ADJUDICATING CLIMATE CHANGE: SUB-NATIONAL, NATIONAL, AND SUPRA-NATIONAL APPROACHES (William C.G. Burns &

## SECTION 5 Climate Litigation in International Fora

### March 25 The Inuit Petition to the Inter-American Commission for Human Rights

- Readings
  - [O Petition to the Inter-American Commission on Human Rights Seeking Relief from Global Warming Caused by Acts and Omissions of the United States \(2005\)](#)
  - [O TBA](#)

### March 27 The World Heritage Convention Petitions

- Readings
  - [O Text: World Heritage Convention](#)
  - TBA
  - [E Thorson, \*The World Heritage Convention & Climate Change: The Case for a Climate-Change Mitigation Strategy beyond the Kyoto Protocol in ADJUDICATING CLIMATE CHANGE: SUB-NATIONAL, NATIONAL, AND SUPRA-NATIONAL APPROACHES\* \(William C.G. Burns & Hari Osofsky, eds. 2008, Cambridge University Press, in press\)](#)

April 1 NO CLASS

### April 3 The Straddling Stocks Convention and the Law of the Sea Convention

- Readings
  - [E TBA](#)
  - [E Burns, \*Potential Causes of Action for Climate Change Damages in International Fora: The Law of the Sea Convention\*, 2\(1\) J. SUSTAINABLE DEV. L. & POL'Y 27-51 \(2006\)](#)

### April 8 Potential Actions in the International Court of Justice?

- Readings
  - [E TBA](#)

April 10 NO CLASS

## SECTION 6 Long-Term Solutions to Climate Change

April 15 Carbon Sequestration

- **Readings**

- **T** Ch. 19, pp. 691-720
- **E** Bode & Jung, *On the Integration of Carbon Capture and Storage in the International Climate Regime*, HWWA Discussion Paper No. 303 (2004)
- **E** Montague, *Carbon Sequestration*, 932 *Rachel's Democracy & Health News*, Nov. 8, 2007

**April 17**

**Post-2012 Regimes**

- **Readings**

- **O** 13<sup>th</sup> Meeting of the Parties to the United Nations Framework Convention on Climate Change, *Bali Action Plan* (2007)
- **E** Ott, *Climate Policy Post-2012 – A Roadmap*, Discussion Paper for the Tällberg Forum 1-44 (2007)

**April 22**

**Summary and Review Session for Examination**

**May**

**FINAL EXAMINATION**