

Course Outline

COURSE:	LAWS 4605-A – Special Topics in International Law: Ocean Challenges and International Law
TERM:	Winter 2020
PREREQUISITES:	LAWS 2601; LAWS 2908 or PAPM 3000; AND fourth-year Honours standing
CLASS:	Day & Time: Mondays 11:30-14:30 Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Tara Ashtakala
CONTACT:	Office: Room B442 Loeb Building (Contract Instructor's Office) Office Hrs: By appointment only Telephone: 613-520-3690 Email: Tara.Ashtakala@carleton.ca

CALENDAR COURSE DESCRIPTION

Topics vary from year to year and are announced in advance. May include transnational environmental issues; the international law of armed conflict, peacekeeping and neutrality; the law of international treaties and transnational agreements; state responsibility under international law.

COURSE DESCRIPTION

The oceans were the last part of this planet that used to tantalize the curiosity of our ancestors with their vast, undiscovered and pristine promise; now, there is not one part of the blue frontier that has not been eyed, explored or exploited by people. International law has attempted to manage the conflicts that arise between humans and their States competing, consuming, commuting and contaminating in this marine space; it is also increasingly trying to save the other living things that cannot survive outside these crowded waters. A rules-based global order is finding it a challenge to achieve these goals – can other types of knowledge complement the law of the sea? This course will take an in-depth look at the human activities that are having the greatest impact on environmental and human rights, trade, crime, property, territory and inter-State relations in the ocean and will encourage students to see the potential in international law to address these issues that tread the waters of other disciplines like science, engineering and economics.

REQUIRED TEXTS

Required readings will be posted on CuLearn; some will have online links. Case study exercises will be distributed in class.

EVALUATION

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

All three (3) components must be completed in order to obtain a passing grade**1. Term Essay - 35% of final grade**

- essay due on **6 April 2020**
- Length: 12-15 pages double-spaced, proper legal citation and bibliography required
- **Canadian spelling only; this is not a joke.** If you are going to use spell-checking applications to review your text, you should first ensure that the language settings on your computer are set to Canadian (English or Multilingual Standard).
- The task for the Term Essay is to write a persuasive factum for the proposed legal case relating to the marine issue selected,

2. Audio-visual Presentation - 20% of final grade

- The task for the 10-15 minute (max) presentation is to explain the non-legal knowledge behind the marine issue (10%) and lay out the proposed legal case to address it, supported by applicable law and relevant case law.
- A sign-up sheet for presentation dates will be circulated at the first class.
- **You must sign up for your presentation date by the 20th of January**
- Presentations will commence on the 10th of February

3. Open book final examination - 45 % of final grade

- **To be scheduled during formal exam period: 13-25 April 2020**
- the goal of the final exam is to apply the course content to 1) solve a legal problem for a fictitious client and to 2) thoroughly discuss a thematic issue confronting the international law of the sea.

SCHEDULE

6 Jan **INTRODUCTION, HISTORY AND SOURCES OF THE INTERNATIONAL RULES OF THE SEA**

Materials:

- “Indigenous Values and the Law of the Sea”. Chang, Williamson BC. Read pps. 427-439
- “Maritime Practice in South-East Asia until 1600 A.D. and the Modern Law of the Sea”. Anand,

- R. P.. Read pps. 440-452
- Review of “Navigating African Maritime History. Research in Maritime History No. 41 by Carina E. Ray and Jeremy Rich”.. Read pp. 386-388
- Mare Liberum (The Free Sea). Grotius, Hugo. Natural Law and Enlightenment Classics. Knud Haakonssen, Ed. Read “Introduction” pps. xi (PDF page 11) to xix (PDF page 19); pps. 1 (PDF page 29) to 9 (PDF page 37)
- “The Negotiating Strategy of UNCLOS III”. Beesley, Alan.
- Ambassador Arvid Pardo on the “Common Heritage of Mankind”.

THE CHALLENGE OF CLIMATE CHANGE:

13 Jan DEAD LOBSTER: OCEAN ACIDIFICATION

Materials:

- United Nations Sustainable Development Goals
- UNCLOS
- GA Resolution 64/71 2009
- London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter
- Marpol 73/78
- Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS 2010)
- *Center for Biological Diversity v Wilbur Ross and National Marine Fisheries Service*
- *Medaing v Ramu Nico Management*, 22 December 2011
- *Great Barrier Reef versus Australia Federal and State Governments and others*
- *Center for Biological Diversity v EPA*

20 Jan I’M MELTING: THE WARMING OF THE ARCTIC OCEAN

Materials:

- UNCLOS arts. 58,234, 34,36,37, 194,197,237,122,123
- “In the wake of the Polar Sea”: Canadian jurisdiction and the Northwest Passage
- Agreement on the Conservation of Polar Bears, 1973
- Inuit Circumpolar Council Petition to the Inter-American Commission on Human Rights
- *Kivalina v Exxon Mobil*
- *Urgenda Foundation v The State of the Netherlands*
- *Commonwealth of Massachusetts v Exxon Mobil Corporation*

THE CHALLENGE OF POLLUTION:**27 Jan DOWN THE DRAIN: LAND-BASED AND WASTE -WATER POLLUTION****Materials:**

Agenda 21 for human development at Ch. 21

UNGA Resolution A/HRC/RES/18/1

1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses

Fisheries Act, arts. 36(3) to (6)

Wastewater System Effluent Regulations

EU Wastewater Treatment Directive

Commission v United Kingdom [2012] EUECJ C-301/10

Mehta v State of Orissa

Tindall v Far North District Council

Singapore v Malaysia, ITLOS

3 Feb SEA OF PLASTIC**Materials:**

- UNCLOS
- London Convention
- Marpol
- Basel Convention on the Control of Transboundary Hazardous Wastes and their Disposal
- EU Marine Directive
- Canadian Environmental Protection Act
- *Save the Plastic Bag Coalition v City of Manhattan Beach*, Supreme Court of California
- *Vinod Kumar Jain v Union of India*, High Court of Delhi
- *Canadian Plastic Bag Association v Victoria*, BC Court of Appeal
- *Nanoose Conversion Campaign v Canada*

THE CHALLENGE OF JURISDICTION:**10 Feb WHO RULES THE WAVES NOW? DISPUTES OVER MARITIME TERRITORY****Materials:**

- UNCLOS
- UN Commission on Continental Shelf Limits
- “Maritime Disputes across Paradigms” in “Lines at Sea: Why do States Resolve their Maritime Boundary Disputes?”. Osthagen, Andreas, UBC, 2019.
- *Delimitation of Maritime Areas between Canada and France*, 1992
- *UK v Mauritius: Chagos Marine Protected Area dispute* 2015
- *In the Matter of the South China Sea Arbitration*, Philippines v China, PCA 2016
- *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Cote d’Ivoire*, ITLOS 2017

17 Feb Winter Break, no class**THE CHALLENGE OF RESOURCE EXPLOITATION:****24 Feb THE FISH DON’T STAND A CHANCE: ILLEGAL, UNREGULATED AND UNREPORTED (IUU) FISHING****Materials:**

- UNCLOS
- Agreement on Straddling Fish Stocks
- Agreement on Port State Measures
- *Bering Fur Seal arbitration*
- *Fisheries Jurisdiction (UK v Iceland)*
- *The MV Saiga (No. 2) case, St Vincent and the Grenadines v Guinea*
- *Fisheries Jurisdiction case (Spain v Canada)*
- *USA v 144,744 pounds of Blue King Crab*

2 Mar BLUE GOLD RUSH: OFFSHORE OIL EXTRACTION, SAND MAFIAS, DEEP-SEA MINING**Materials:**

- Marpol
- Intervention Convention

- International Convention on Civil Liability for Oil Pollution Damage
- Protocol of 1992
- Fund Convention
- *ITLOS Advisory Opinion on Deep Seabed Mining in the Area*
- *Southern Pacific Properties v Egypt*, ICSID
- International Maritime Committee: Report on the Torrey Canyon Disaster
- *Resident Marine Mammals of the Protected Seascape...vs Secretary of Energy*, Supreme Court of the Philippines
- Convention for the International Council for the Exploration of the Sea
- UNCLOS
- CBD
- Watercourses Convention
- *The Barbuda Council v Antigua Aggregates Ltd and Sandco Ltd*, Barbuda Court of Appeal
- *Gaskell and Yearwood v The Island Dredging Company*, St Kitts and Nevis Court of Appeal

THE CHALLENGE OF TRANSPORTATION:

9 Mar CONSUMERISM AND CRUISING: MEGA VESSELS

- UNCLOS
- Marpol
- Resolution of the Marine Environment Protection Committee of the IMO to amend Regulation 14 of Marpol on Sulfur Emissions from Ship fuels 14.3.1
- Convention on the Limitation of Liability for Maritime Claims
- *Kyokuyo Co Ltd v. A.P. Møller-Maersk A/S (Maersk Tangier)* [2018] EWCA Civ 778
- *Carnival Cruise Lines v Neighbours Association of Charleston*
- *Adventurer Owner Ltd v Canada, FCA, 2018.*

16 Mar ROADKILL IN THE OCEAN: MARINE WILDLIFE AND VESSEL STRIKES

Materials:

- UNCLOS Part XII arts. 65,120; 21,22; 58, 211;87
- Convention on the International Maritime Organization read art. 1
- IMO Resolution on Vessel Traffic Measures
- *UK v Mauritius* Chagos Marine Protected Area ICJ
- Marine Mammal Regulations, Canada Gazette, SOR 93-56.
- *The Ship "Cuba" v McMillan*, (1896) 26 SCR 651
- *Strahan v Linnon*, United States Court of Appeals for the First Circuit, 1998 U.S. App. LEXIS 16314 (1st Cir.), 16 July 1998.
- *Conservation Council for Hawa'ii v National Marine Fisheries Service*, US District Court, District of Hawa'ii, 2015

23 Mar ALIEN INVASION: MARINE INVASIVE SPECIES**Materials:**

UNCLOS art. 296
 Convention on Biological Diversity
 Agreement on the Application of Sanitary and Phytosanitary Measures
 International Convention for the Control and Management of Ship's Ballast Water and Sediments
 IMO Biofouling Guidance for recreational vessels
State of Michigan, et al v US Army Corps of Engineers and City of Chicago
NRDC v EPA, 2015
Environmental Defence Society Inc v New Zealand King Salmon Co Ltd

THE CHALLENGE OF HUMAN RIGHTS:**30 Mar WHERE VICES FLOW LIKE WATER: NARCOTICS TRAFFICKING, MIGRANT SMUGGLING AND SLAVE LABOUR ON THE HIGH SEAS****Materials:**

- UNCLOS 33,60(2),80(2),98(1),98(2),110
- UN Convention on Transnational Organized Crime
- 1988 Drugs Convention arts. 17, 4
- *Medvedyev et al v France*, ECHR
- *United States v Bellaizac-Hurtado and others*
- Trafficking in Persons Protocol art 3a
- Smuggling of Migrants Protocol art 3a,8(2)
- Refugee Convention
- *Ruddock v Vadarlis* (2001) 110 FCR 491
- *CPCF v Minister for Immigration & Border Protection*
- *Hirsi Jamaa and Others v. Italy*, European Court of Human Rights, Grand Chamber
- UNCLOS arts. 92,94,110(1)(b),
- SOLAS Regulation 3(a)(vi)/I
- Maritime Labour Convention
- *Sud v Costco, 2018*, US Court of Appeals 9th Circuit
- *Canada (Attorney-General) v China*, Nova Scotia Supreme Court, 1996

6 Apr REVIEW OF COURSE

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website:

<https://carleton.ca/equity/accommodation/academic/students/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: <https://carleton.ca/equity/accommodation/academic/students/>

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable).

<https://carleton.ca/pmc/students/accommodations/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence. ***More information on the University's Academic Integrity Policy can be found at:*** <https://carleton.ca/registrar/academic-integrity/>

Survivors of Sexual Violence As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and

survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/sexual-violence-support/>

Accommodation for Student Activities Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: <https://carleton.ca/equity/accommodation/academic/>

Department Policy The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations. <http://carleton.ca/law/current-students/>