



# Course program and reading list

Semester 1 Year 2024

**School:** School of Sustainability Founded by Israel Corp. ICL

## Selected Issues in Environmental Law

### Lecturer:

Adv. Chaviva Shefer [chaviva.shefer@post.runi.ac.il](mailto:chaviva.shefer@post.runi.ac.il)

### Teaching Assistant:

Adv. Elon Brachfeld [elon.brachfeld@post.runi.ac.il](mailto:elon.brachfeld@post.runi.ac.il)

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Course No.:	Course Type :	Weekly Hours :	Credit:
5920	Lecture	2	2

Course Requirements :	Group Code :	Language:
Final Paper	241592000	English

### Prerequisites

**Students who took one of the courses listed below will not be allowed to register to the course Selected Issues in Environmental Law (5920):**

5218 - Selected Issues in Environmental Law

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### Course Description

Course description:

What place does law have in addressing the unprecedented environmental challenges humanity faces today?

We will look at the values and principles that guide environmental law, and their assimilation into legal frameworks.

We'll discuss, looking at international law, national legislation, case-law and case-studies, the way sustainability and environmental issues are being dealt with by specific legal instruments, and will question whether these provide effective mechanisms for addressing the challenges we face.

Among the topics we will study:

Aspects of private and public environmental law

The effectiveness of International Environmental Agreements

The enforcement of environmental law

Environmental assessment

Climate Change litigation

תיאור הקורס:

איזה תפקיד ממלא המשפט בהתמודדות עם האתגרים הסביבתיים חסרי התקדים מולם אנו עומדים כמו שינוי האקלים, שימור מגוון ביולוגי וניצול משאבים?

כיצד מתורגמים ערכי החברה וצרכיה למסגרת משפטית ומוטמעים בפועל? אילו עקרונות-על מנחים את המשפט הסביבתי ומהם מקורותיו?

הקורס יעסוק בכלים השונים שהמשפט הסביבתי מספק לשם כך, ברמות השונות, מהבינלאומי ועד המקומי. נדון בסוגיות במגוון דרכים, ביניהן דיון בפסקי דין שמהווים אבני דרך בהתפתחות המשפט הסביבתי, ונבחן את האפקטיביות של כלים שונים להשגת היעדים שנקבעו.

בין הנושאים שנעסוק בהם:

משפט פרטי ומשפט ציבורי

אכיפה וסנקציות

אפקטיביות המשפט הסביבתי הבינלאומי

תסקירי השפעה על איכות הסביבה

ליטיגציית שינוי האקלים



## Course Goals

Acquisition of the **overarching concepts and principles** in Environmental law and knowledge of its main sources

Understanding of **the function of the law in addressing environmental issues**, and of the use of the various **legal tools** available for addressing specific environmental problems

Awareness of the developing body of case law regarding significant current issues such as

## climate change, renewable energy etc

Understanding the influence of Environmental law on policy and decision-making processes "across the board".

Acquisition of basic analytical skills in regard to environmental issues and dilemmas.

יעדים:

הקניית ידע אודות עקרונות-העל ומושגי היסוד של המשפט הסביבתי ומקורותיו העיקריים  
הבנת תפקיד החוק בהתייחס לנושאים סביבתיים ושל הכלים השונים שהוא מספק לשם התמודדות עם  
בעיות סביבתיות ספציפיות

היכרות עם פסקי דין שהם אבני דרך בהתפתחות המשפט הסביבתי, הנוגעים לסוגיות מרכזיות כגון  
שינוי אקלים

יכולת בסיסית להבין ולהעריך את יתרונותיהם וחסרונותיהם של כלים משפטיים שונים ביחס למטרות  
שונות

הקניית הבנה ראשונית באשר לאופן בו המשפט סביבתי מיושם בתהליכי גיבוש מדיניות וקבלת  
החלטות במגוון תחומים

הקניית כישורים אנליטיים בסיסיים בנוגע לסוגיות ודילמות סביבתיות

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### Grading

Preparatory exercises and mid-semester assignment – 20%

Active participation in class and/or forum –5%

Final assignment (instead of exam) -- 75%

Bonus points may be given for optional assignments

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### Learning Outcomes

Students will acquire the overarching concepts and principles of Environmental law and knowledge of its main sources.

They will gain understanding of the function of the law in addressing environmental issues, and basic ability to apply its various tools to specific environmental problems.

They will acquire a basis for reading, understanding and evaluating legal materials relevant to environmental protection, and basic ability to apply them to 'real-life' issues.

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### Lecturer Office Hours

By appointment

ע"פ תיאום מראש

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### Tutor Office Hours

By appointment

בתיאום מראש

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### Teaching Assistant

Eylon Brachfeld, Adv.,

עו"ד אילון ברכפלד

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### Reading List

Selected Issues in Environmental Law **2023-24**

#### **Course 5920: Selected Issues in Environmental Law**

##### **Reading List:**

##### **General: Recommended Textbooks on Environmental Law:**

Susan Wolf and Neil Stanley, Wolf and Stanley on Environmental Law, 5<sup>th</sup> ed, Routledge, London, 2011 (UK and EU law)

Linda A. Malone, Emanuel Law Outline for Environmental Law, 2014, 2<sup>nd</sup> ed, Wolters

&Kluwer Law and Business, NY, 2014 (US Law)

Bell S., McGillivray D., Pederson O.W., Environmental Law, 2017, Oxford University Press (UK and EU law)

## **Session 1: What is Environmental Law?**

All the reading for this class is voluntary, although you may want to refresh your memory as regards "The Tragedy of the Commons".

The article "Easter Island's End" is an example of the tragedy of the commons, and very "readable".

### **Recommended Reading:**

Hardin, Garret, The Tragedy of the Commons, Science, New Series, Vol. 162, No. 3859 (Dec. 13, 1968), pp. 1243-1248

Diamond, Jared, Easter Island's End, Discovery Magazine, 1995, <http://www.hartford-hwp.com/archives/24/042.html>

*Hungary v Czechoslovakia*, a case concerning the Gabčíkovo-Nagymaros project, 1997, I.C.J. 7 (read the facts and then Judge Weermantary's dissenting opinion)

## **Session 2: The Development of Environmental Law and its Basic Principles:**

### **Mandatory:**

Christman, Ben, A brief history of environmental law in the UK, Environmental Scientist 2013, (the first two pages)

**file:///D:/Users/user/Downloads/A\_Brief\_History\_of\_Environmental\_Law\_in.pdf**

Declaration of the United Nations Conference on the Human Environment (Stockholm) 1972, accessible at <https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf>

Rio Declaration on Environment and Development 1992, [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf)

### **Recommended:**

Brown-Weiss, Edith, The Evolution of International Environmental Law, 54 Japanese Y.B. Intl. L. 1-27 (2011), <http://scholarship.law.georgetown.edu/facpub/1669>

About The Alkali Act 1863, UK. (The first Emission Control Act)

<https://www.envchemgroup.com/150th-anniversary-of-the-establishment-of-the-alkali-inspectorate.html>

Cases on the basic principles of Environmental law:

*Alpharma Inc v Council of the European Union*, T-70/99 [2002] ECR 11-3495

*Friends of the Earth Ltd's Application for Judicial Review*, Re [2018] Env. L.R. 7 , article at <https://friendsoftheearth.uk/nature/n-ireland-govt-acted-unlawfully-not-stopping-lough-neagh-dredging>

*Wicklow County Council v Fenton*, (Ireland) [2002] IEHC 102, synopsis on course site

[https://www.ecolex.org/details/court-decision/wicklow-county-council-v-fenton-2f727e15-8120-41ad-9d55-e1ffe63215bb/?q=wicklow+county+council+v+fenton&type=literature&xdate\\_min=](https://www.ecolex.org/details/court-decision/wicklow-county-council-v-fenton-2f727e15-8120-41ad-9d55-e1ffe63215bb/?q=wicklow+county+council+v+fenton&type=literature&xdate_min=)

### **Session 3: International law**

#### **Mandatory:**

Montreal Protocol on Substances that Deplete the Ozone Layer, 1987,

[https://ozone.unep.org/sites/default/files/2019-12/The%20Ozone%20Treaties%20EN%20-%20WEB\\_final.pdf](https://ozone.unep.org/sites/default/files/2019-12/The%20Ozone%20Treaties%20EN%20-%20WEB_final.pdf) (p33)

Bodansky, Daniel M., Introductory Note on the Paris Agreement, 2021, UN Audiovisual Library of International Law, [https://legal.un.org/avl/pdf/ha/pa/pa\\_e.pdf](https://legal.un.org/avl/pdf/ha/pa/pa_e.pdf)

*Hungary v Czechoslovakia*, a case concerning the Gabčíkovo–Nagymaros project, 1997 I.C.J. 7 (see above)

UN Convention on International Trade in Endangered Species (CITES) 1973

<https://www.cites.org/eng/disc/what.php>

Recent International Conventions and Declarations as posted on course site

#### **Recommended:**

UN Convention on Biological Diversity, 1992, (CBD) <https://www.cbd.int/convention/text/default.shtml>

Payne, Cymie R., *Australia v Japan: ICJ Halts Antarctic Whaling*, ASIL 9 vol 18, 2014, <https://www.asil.org/insights/volume/18/issue/9/australia-v-japan-icj-halts-antarctic-whaling>

Brown Weiss, E., *The Evolution of International Environmental Law*, Georgetown University Law Faculty Publications, 2011, <https://scholarship.law.georgetown.edu/facpub/1669/>, or lecture at [https://legal.un.org/avl/ls/Weiss\\_EL.html#](https://legal.un.org/avl/ls/Weiss_EL.html#)

Prosper-Haniel Colliery, Germany, Commission opinion, 2003 [http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/prosper\\_haniel\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/prosper_haniel_en.pdf)

### **Session 4: Common-law, Private law and the Environment:**

#### **Mandatory:**

*Milne v Stuartfield Windpower Ltd*, [2019] SC ABE 25 (synopsis on course site)

*Corby Group Litigation Claimants v Corby BC*, [2008] EWCA Civ 463 (synopses on course

site)

*Uri Richter v Ploni*, Magistrate's Court, Petah Tikva, TA 33477-04-20 (translated synopsis on course site)

**Recommended:**

Commercial Movies: "A Civil Action" (1998), "Dark Waters" (2019), "Erin Brockovich" (2000)

"IN RE FLINT WATER CASES": Update on the cases: <https://mphdegree.usc.edu/blog/the-flint-water-struggle-a-2019-update/>, and articles on The Guardian website: <https://www.theguardian.com/us-news/flint-water-crisis>

**Session 4-5: Corporate Responsibility and Enforcement**

**Mandatory:**

UK cases:

*Alphacell Ltd v Woodward*, [1972] 2 All ER 475

*Wicklow County Council v. Fenton*, [2002] IEHC 102, (Ireland) (synopsis on course site)

Bragman, Walker, *Polluters Are Trying to Ensure They're Never Held Responsible for Climate Change*, <https://www.jacobinmag.com/2021/09/polluters-fossil-fuel-climate-change-lawsuits-courts> (2021)

**Recommended:**

*National Rivers Authority v Alfred McAlpine Homes East Ltd*, [1994] 4 All ER 286

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT: Self-Regulation of Environmental Management Guidelines set by world industry associations for their members' firms: An update 1996–2003 (Executive Summary and pp 3-10. Warning: Read this critically!)

Environmental Liability Directive ("ELD") 2004/35/CE, (summary on course site)

"Crude"- producer Joe Berlinger, 2009 (Youtube), documentary film on Chevron-Texaco oil pollution in Ecuador. And updates: <https://www.opendemocracy.net/en/democraciaabierta/chevron-vs-ecuador-international-arbitration-and-corporate-impunity/>

<https://insideclimatenews.org/news/18122022/steven-donziger-chevron-ecuador-oil-pollution>

The Sentencing Council, Environmental Offences: Definitive Guideline, UK Gov, Feb 2014, <https://www.sentencingcouncil.org.uk/wp-content/uploads/Environmental-offences-definitive-guideline-Web.pdf>

The Evrona oil spill: Ministry of Environmental Protection bulletins (various items):

<https://www.gov.il/en/search?Officeld=7807091f-2385-4915-b1cb-fd4db6d2c1cc&query=Evrona&btnSearchPageSearch=>

Details of agreement: [https://www.gov.il/en/departments/news/fine\\_eapc\\_100million\\_nis](https://www.gov.il/en/departments/news/fine_eapc_100million_nis)

EAPC Nachal Zin pollution- criminal sentences 2022: [https://www.gov.il/en/Departments/news/sentence\\_in\\_the\\_nahal\\_tzin\\_pollution\\_case](https://www.gov.il/en/Departments/news/sentence_in_the_nahal_tzin_pollution_case)

## **Session 5-6: Judicial Review:**

### **Mandatory:**

#### **US Caselaw:**

*Sierra Club v Morton*, 92 S.Ct. 1361, 405 U.S. 727 (1972)

[Massachusetts v. EPA, 549 U.S. 497](#)

*Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402

*Michigan v EPA*, 135 S.Ct. 2699 (2015)

*Lujan v. Defenders of Wildlife*. 112 S.Ct. 2130 (1992)

#### **UK Case:**

*Client Earth (No.2) and Secretary of State for the Environment, Food and Rural Affairs*, [2016]

EWHC 2740 (Admin)

#### **Israeli Case:**

*Ramot for the Environment et al v The National Planning and Construction Council et al*, Bagatz 11745/04, 466/05 (synopsis on course site)

## **Session 7-8: Climate Change Litigation**

### **Mandatory:**

*Juliana v USA*, 339 F. Supp. 3d 1062,

This article in "The Atlantic" explains the judgment: <https://www.theatlantic.com/science/archive/2020/01/read-fiery-dissent-childrens-climate-case/605296/>

*The State of the Netherlands v Urgenda Foundation*, The Hague Court of Appeal, Civil-law Division, Case number : 200.178.245/01

*The State of the Netherlands v Urgenda*, <https://www.ejiltalk.org/a-new-classic-inclimate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case>

*Milieudefensie et al. v. Royal Dutch Shell plc*. <http://climatecasechart.com/climate-change-litigation/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>

*Colombian Citizens v The Colombian President and others*, 2018, Number: 11001-22-03-000-2018-00319-01

*R (on the application of Friends of the Earth Ltd and others) (Respondents) v Heathrow Airport Ltd*, UKSC 2020/0042



*Massachusetts v EPA* 549 U.S. 497 (2007)

The Climate Change Act, 2008 (UK), The Climate Change Act 2008 (2050 Target Amendment) Order 2019, both accessible at: <https://www.legislation.gov.uk/primary+secondary?title=climate%20change%20Act>

*Held v Montana*, OP23-0311 (Montana State Supreme Court)

**Recommended:**

Recommended resources are on the course site

**Session 9-10: Environmental Assessment**

**Mandatory:**

*Ecologistas en Accion-CODA v Ayuntamiento de Madrid* [2009] C-142/07\_ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1564496312470&uri=CELEX:62007CJ0142> (accessible only online-html version). See in particular para 44.

Friends of the Earth Briefing: Environmental Impact Assessment, 2014, <https://friendsoftheearth.uk/sites/default/files/downloads/environmental-impact-assessment-briefing-46299.pdf>

*R (on the application of HS2 Action Alliance Limited) (Appellant) v The Secretary of State for Transport and another*, [2014] UKSC 3 (synopsis)

**Recommended:**

"Risky Business- the New Shell", WWF (UK) report, 2005, accessible at [https://wwf.panda.org/wwf\\_news/?51940/Risky-Business-the-new-Shell](https://wwf.panda.org/wwf_news/?51940/Risky-Business-the-new-Shell) (and on course site)- executive summary (2 pages)

International Panel on Biodiversity and Eco-system Services, (IPBES) Report, May 2019, <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>

**US materials:**

National Environmental Policy Act 1969 (NEPA) [42 USC § 4332] sec 102

*State of South Carolina Campbell v. Leary*, 64 F 3<sup>rd</sup> 892 (4<sup>th</sup> circuit 1995)

*Metcalf et al v Daley et al*, 214 F.3d 1135

Doremus, Holly, 'Through Another's Eyes: Getting the Benefit of Outside Perspectives in Environmental Review', 38 B.C. Env'tl. Aff. L. Rev. 247

**UK case:**

*R v Secretary of State for the Environment (ex parte Greenpeace)* [1994] 4 All ER 352; (re disposal of radioactive waste)

## **Session 10: Environmental Assessment (cont'd), and Public Participation in Environmental Decision-making:**

### **Mandatory:**

National Planning Policy Framework (NPPF), February 2019, UK Gov, (paras 170–177), accessible at <https://www.gov.uk/government/publications/national-planning-policyframework--2>

*Hargreaves v Secretary of State for Communities and Local Government*, [2011] EWHC 1999 (Admin)

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention, 1998), Art **2,4,5, 6(2), 9**  
<https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

### **Recommended:**

ApaNGO EU Project Final Report: 'Community Engagement in Planning – Exploring the Way Forward,' 2007. Executive Summary, accessible at [https://www.academia.edu/3661065/APaNGO\\_EU\\_Project\\_Final\\_Report\\_-\\_Community\\_Engagement\\_in\\_Planning\\_-\\_Exploring\\_the\\_way\\_forward](https://www.academia.edu/3661065/APaNGO_EU_Project_Final_Report_-_Community_Engagement_in_Planning_-_Exploring_the_way_forward)

APaNGO (Advocacy, Participation and NGOs in Planning), Interim report 1, 2007, **Ch 3, 5**, <http://www.communityplanning.net/apango/APaNGO%20Interim%20Report.pdf>

Flynn, Brenda, 'Planning Cells and Citizen Juries in Environmental Policy: Deliberation and Its Limits,' **PP57-71**, in *Public Participation and Better Environmental Decisions, The Promise and Limits of Participatory Processes for the Quality of Environmentally Related Decision-making*, Frans H.G.M Coenen (editor), Dordrecht ; London : Springer, c2008 (available in library)

## **Session 11: Planning Law**

### **Mandatory:**

Houston's 'Wild West' Growth: How the city's development may have contributed to devastating flooding, Washington Post, 29.8.2017, <https://www.washingtonpost.com/graphics/2017/investigations/harvey-urban-planning>

National Planning Policy Framework (NPPF), February 2019, UK Gov, Ch 14 (paras 147(wind turbines),151–154 (Climate Change), 177 (habitats) and footnote 49), available at <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

(The subject of this year's planning committee simulation is dependent on several legal developments. Relevant background materials will be provided in time to prepare for this session)

### **Recommended:**

Jones, Gregory, *The Impact of Environmental Law on Planning Decision-making*, J.P.L.

2012, 13 Supp (Sustainability, I presume?), OP22-OP72 (accessible on Westlaw)

Holder, Jane and Lee, Maria, Environmental Protection, Law and Policy: Text and Materials, Cambridge University Press 2007 (2<sup>nd</sup> ed), Ch 17: Wind Farm Development and Environmental Conflicts (in library or online)

*Good Energy Generation Ltd v Secretary of State for Communities and Local Government and Another*, [2018] EWHC 1270 (Admin)

Hooper, Michael, "Public Participation: More than an "Orgy of Public Process"", Next American City, (online article) (on course site)

**Recommended:**

Adam, Rachele, [Securing Rights for the Ein Lavan Natural Spring](https://www.earthlawcenter.org/blog-entries/2018/11/securing-rights-for-the-einlavan-natural-spring), Earth law Centre, Nov 2018, (blog): <https://www.earthlawcenter.org/blog-entries/2018/11/securing-rights-for-the-einlavan-natural-spring>, in Earth Law: Emerging Ecocentric Law— A Guide for Practitioners, Zelle, Anthony, Wilson, Grant, Adam, Rachele and Greene, Herman, Wolters-Kluwer, 2021

**Session 12: A brief over-view of Future Trends**

**Recommended:**

"What is Earth Law?" Earth Law Center, <https://www.earthlawcenter.org/what-is-earth-law>

Ecocide Bills in the UK and France: <https://www.stopecocide.earth/press-releases-summary/france-writes-ecocide-into-law-in-two-ways> ; <https://www.stopecocide.earth/press-releases-summary/1st-use-of-new-ecocide-definition-in-a-government-bill>

"The Colombian Amazon has the same rights as a person", El Espectador, 5.4.2018, re Colombian Supreme Court judgment <https://www.elespectador.com/noticias/judicial/la-amazonia-colombiana-tiene-los-mismos-derechos-que-una-personaarticulo-748340>

Ecuador's High Court Affirms Constitutional Protections for the Rights of Nature in a Landmark Decision , <https://insideclimatenews.org/news/03122021/ecuador-rights-of-nature/>

Stone, Christopher D., Should Trees Have Standing? Towards legal Rights for Natural Objects, Southern California Law Review (L.R.) 45 (1972) 450

Stone, Christopher D. Should Trees Have Standing? Law, Morality, and the Environment, Oxford University Press, 2010.

**\*There may be minor changes or additions to this list, in particular if a significant appeal or Supreme Court judgment is handed down.**

\*Some landmark cases and articles appear more than once; we will discuss them from various aspects.