Water Law & Policy

Fall 2021

Professor Blake Hudson

M/W 10:30 am-11:55 pm

MLAC 106

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Best way to contact me: **email**

Office Hours: M/W 1:00-2:00 (otherwise available by appointment)

Overview and Goals of the Course

Water is the natural resource most essential to life. As human populations increase, water resources are evermore stressed. This stress has both quantitative and qualitative components—the volume of important water resources in many locations is becoming strained and water in other locations is polluted through industrial, agricultural, and other human development activities. In this course we will explore legal regimes for managing both water quantity and quality. We will discuss the common law origins of water law; modern state legislative provisions aimed at modifying common law regimes; federal water interests; water quality regulation (state and federal); the intersection of water management and the management of other natural resources, like endangered species; and constitutional issues related to water regulation.

We will study water law and policy by reviewing scholarly articles, case law, and water management statutes and regulations. While we will focus on the most significant laws and cases, this course will also emphasize the scientific, political and economic issues driving water use and management conflicts. Furthermore, we will discuss the cross-section of water law and policy with many other areas of law, including natural resources, administrative, property and land use, constitutional, and international law.

**Required Text**

Adler, Craig, and Hall, *Modern Water Law* (Foundation Press, 2nd Ed. 2018)

I may assign PDFs or other supplemental readings from time to time. These may be found under “supplemental reading materials” on Canvas. If you have trouble accessing Canvas for any reason, please let me know.

**Laptop and Technology Policy – *\*PLEASE NOTE\****

I do not allow laptop, smartphone, or other technology use in the classroom. While I appreciate that this is an inconvenience to those who prefer typing their notes during class, after having taught both ways I have found that a classroom without the distractions created by personal computing devices results in a much better learning environment. This is especially true in a smaller course like water law.

**Attendance and Participation**

This is a vigorous course and attendance is mandatory. Students missing **6 or more** classes may be penalized up to one full grade point. Sick days, etc. ***must*** be utilized out of ***this*** allotment. In accord with ABA and UF rules, students missing **7 or more** classes may not be permitted to complete the course. Moreover, quality of attendance―including class participation―will be evaluated and students should be prepared to meet this requirement. To adequately meet these requirements, students should miss as few classes as possible, if any at all.

Class participation and preparation are required. All students are encouraged to volunteer comments and questions. I expect you to complete the assigned readings and that you are prepared to participate. ***I will be calling on students to summarize cases and other aspects of the reading***. Participation and preparation are not based upon *quantity* of comments, but rather *quality*. General level of interest demonstrated outside the classroom can count toward your participation score.

**Grading and Assessment**

The grade in the course will be based on participation and a final exam. As noted, participation includes attendance at out of class presentations, workshops, or field trips that may be assigned later in the semester (with exceptions granted for approved schedule conflicts, such as class or work conflicts). More details regarding the final exam will be forthcoming later in the semester. The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester.

This course follows the Levin College of Law’s grading policies found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies). The below chart describes the specific letter grade/grade point equivalent in place:

|  |  |
| --- | --- |
| Letter Grade | Point Equivalent |
| A | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D | 1.0 |
| D- | 0.67 |
| E (Failure) |  |

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](https://gatorevals.aa.ufl.edu/students/) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via [ufl.bluera.com/ufl/](file:///C:\Users\nance\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\70WP0DTB\ufl.bluera.com\ufl\). Summaries of course evaluation results are available to students [here](https://gatorevals.aa.ufl.edu/public-results/).

Academic honesty and integrity are fundamental values of the University community. Students should understand the UF Student Honor Code located [here](https://sccr.dso.ufl.edu/process/student-conduct-code/).

**Class Rescheduling**

I may need to cancel classes from time to time for personal or professional reasons. I will let you know of any cancellations as we proceed through the semester. In the event of a cancellation it is possible that we will have a class or two on Zoom. If any classes require make-up classes to cover the affected dates, we will schedule those accordingly. I will do my best to ensure that make-up classes do not conflict with any of your other classes. For anyone unable to attend a make-up class and with an unusual situation preventing attendance, please let me know and we will address it.

**Required Readings**

Rather than attempt to plan the day-to-day discussions months in advance, I will post assignment sheets on Canvas in two-week intervals to maintain flexibility in our approach (under “assignment sheets” on Canvas). You should receive each new assignment sheet by the Thursday or Friday prior to that assignment. This will allow you plenty of time to read and process the Monday assignment before class on that day.

Over the course of this semester, we will endeavor to read Adler, Craig, and Hall chapters 1-5, 7-8, 11-12 and 14, although potentially skipping portions of certain chapters or jumping outside of those chapters for some material. We will try to cover between 15 and 25 pages of text in each class. Students might generally expect to spend at least two hours outside of class reading and preparing for every hour of class. The chart below represents what we plan to cover, but this is only meant as a general guideline for what we will attempt to accomplish this semester. We may not cover every topic listed below, and I may change the assignments or even dispense with entire topics if necessary. Also, I may add reading materials, although you will be given plenty of time to read these in advance.

**Heath and Wellness Resources**

Law school can be a stressful time. Do not be afraid to get help when needed. We all go through difficulties, and here are some resources that can help:

* *U Matter, We Care*: If you or someone you know is in distress, please contact [umatter@ufl.edu,](mailto:umatter@ufl.edu,%20) 352-392-1575, or visit [U Matter, We Care website](https://umatter.ufl.edu/) to refer or report a concern and a team member will reach out to the student in distress.
* *Counseling and Wellness Center*: [Visit the Counseling and Wellness Center website](https://counseling.ufl.edu/) or call 352-392-1575 for information on crisis services as well as non-crisis services.
* *Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](https://shcc.ufl.edu/).
* *University Police Department*: [Visit UF Police Department website](https://police.ufl.edu/) or call 352-392-1111 (or 9-1-1 for emergencies).
* *UF Health Shands Emergency Room / Trauma Center:* For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website](https://ufhealth.org/emergency-room-trauma-center).

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| **Chapter 1: Introduction**  The Aquatic Cycle  Water use in the U.S. and Globally  Water Quality, Ecosystem Health, and Climate Change  The Emerging Human Right to Water |
| **Chapter 2: Riparian Law**  What is Riparian Property and What are Riparian Rights  Consumptive Riparian Uses and Beyond |
| **Chapter 3: History and Principles of Prior Appropriation**  Origins and Variations of Prior Appropriation  Elements and Attributes of Appropriative Rights |
| **Chapter 4: Groundwater**  Basic Groundwater Hydrology  Common-Law Groundwater Doctrines  Groundwater-Surface Water Interactions |
| **Chapter 7: Public Rights in Water: The Public Trust Doctrine**  Origins of the Public Trust Doctrine  State Versions of the Public Trust Doctrine |
| **Chapter 8: Federal Water Interests**  Federal Reserved Water Rights  Federal Water Projects |
| **Chapter 11: The Intersection of Water Quality and Water Quantity**  Water Quality Protection Under the Common Law  The Federal Clean Water Act |
| **Chapter 12: The Federal Endangered Species Act, Water Management, and Water Rights**  Species Listing; Critical Habitat Designation  Section 7 and the Federal Government  Section 9 and Private Actors |
| **Chapter 14: Public Interests, Private Rights in Water, and Constitutional Takings Claims**  Overview of Takings Law  Defining the Property Interest  Physical Versus Regulatory Takings of Water Rights  Calculating Takings Compensation |