

Environmental Law- Tuesday and Thursday 11:00- 12:15 (Menard Building)

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“Humans think that they are smarter than dolphins because we build cars and buildings, and start wars, etc., and all that dolphins do is swim in the water, eat fish, and play around. Dolphins believe that they are smarter for exactly the same reasons.” Douglas Adams, *The Hitchhiker’s Guide to the Galaxy*. (1981)



The environment is under pressure and many of the current threats to the environment are the product of human decisions to build, produce, and materially prosper. In our quest for human development, we have left a large footprint. In the United States, the social mechanism of law has responded to environmental concerns by reducing conventional air and water pollution and by conserving scarce ecological resources. This class is focused primarily on federal environmental law and will cover the common law, constitutional, and statutory frameworks that are applied in the U.S. to address environmental pollution, liability, and conservation.

We will explore over the coming three months, how law has responded to environmental pressures and consider how law may still needs to respond to new and emerging environmental challenges. Some of the questions that I hope we can discuss include: Can law think about the environment as a system? Can we handle problems at the appropriate local, national, or regional level at which they arise? Do we have a right to be free of environmental harms? Can we create an economic market without environmental externalities and is there a role for environmental markets?

Grades

- 1) 60% of your grade will be a case note.
- 2) 30% of your class will be the three memos
- 3) 10% will be participation

Classes: 75-85 minute classes (longer classes to make up 2 classes that need to be rescheduled during this semester)

Attendance: You may have two excused absences. Based on my discretion, I may grant additional excused absences. If you have one or more unexcused absences, your final grade will be reduced by one grade slot (e.g. A to A-, B+ to B). Please inform me if you cannot attend class.

My Expectations of You

- 1) I expect you to be “present” for the entire class. What this means is no open laptops during class unless you are sharing your news story or working on a group project.
- 2) I expect you to read the assigned cases and be ready to participate.
- 3) I expect you to respect each other. On some matters that we will discuss in class, you may have a strong personal opinion. I ask each of you to focus your class comments on the legal opinions before us and not your personal opinions.
- 4) I expect you to succeed.

Office Hours

I will be available every Tuesday and Thursday to meet with you. If you want to meet me for office, please either let me know before or after class so that we schedule an appointment that will work with both of our schedules. You can also email me to set up an appointment.

Academic Code of Conduct

Every member of the law school community is bound by the honor code obligations. In particular, I take plagiarism very seriously. If you use a source and do not provide proper citations, you will have plagiarized. You will receive an F in this class. I check papers using an external plagiarism detection software.

External Resources for succeeding

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Please notify Dean Dodge, during the first week of class, of any accommodation(s) needed for the course. All accommodations must be approved by Dean Dodge in conjunction with University Disability Support Services located in the Idaho Commons Building, Room 306. Contact DSS

- by phone at 885-6307
- email at <dss@uidaho.edu>
- website at www.access.uidaho.edu

IT IS THE STUDENT’S RESPONSIBILITY TO SEEK A DISABILITY ACCOMMODATION, AND UNTIL AN ACCOMMODATION IS APPROVED THROUGH DEAN DODGE’S OFFICE, NO STUDENT WILL BE ENTITLED TO RECEIVE ANY ACCOMMODATION.

Reading Assignments from: Environmental Law and Policy: Nature, Law, and Society Zygmunt Plater, Robert Abrams, Robert Graham, Lisa Heinzerling, David Wirth, and Noah Hall (4th Ed. 2010)

Class One- August 27- OVERVIEW OF ENVIRONMENTAL LAW

- 1) What is environmental governance?
- 2) What is environmental law?
- 3) Why do we have environmental law?
- 4) What do environmental lawyers do?
- 5) What are the sources of environmental law?
- 6) What are some of the challenges inherent in environmental law?

Assignments:

- 1) Please bring to class one recent newsworthy story from a reputable journalism source (e.g. New York Times, Wall Street Journal ABA article, The Economist, major paper, trade journal, The Atlantic, Time, Newsweek—no blog pages please) that describes either a dispute over a U.S. environmental law or the creation or amendment of a U.S. law.
- 2) Please bring a source of U.S. environmental law to class.
- 3) Please read pp. 3-7 (Plater)
- 4) Please bring 2-3 paragraphs commenting on an environmental issue of interest to you in light of the following commentary by environmental law Professor Jaye Ellis from McGill University
“Many of the greatest difficulties encountered in attempts to craft environmental law and policy spring from the fact that the environment is everywhere. It cannot be confined to a narrow category and delegated to authorities or scientists holding a certain type of expertise. Environmental protection requires coordination and integration among different types of actors, different political authorities and various bodies of knowledge and expertise. Environmental policies must span great distance in time and space, and must be developed and implemented under conditions of uncertainty. Environmental degradation brings to light vast and complex networks of cause and effect, responsibility and obligation. Reining in environmental degradation requires us to mobilize all of our social institutions, and depends on the capacity of these systems to work together. Yet coordination among social systems is an immensely difficult task.”
- 5) Please read A. Dan Tarlock, “Is There a ‘There’ There in Environmental Law?” J. Land Use & Envtl. Law 213-242 (2004). Write a couple sentences on what Professor Tarlock means in the following statement and whether you agree or disagree him: “[A]s a substantive matter, environmentalism is such a radical break with the western philosophical and legal tradition.”

Class Two August 29- MULTIDISCIPLINARY ASPECTS OF ENVIRONMENTAL LAW

- 1) What is basic foundational science that might influence development of environmental law?
- 2) What is the role of ethics in environmental law?
- 3) What is the role for the economy in environmental law?
- 4) What is the role for politics in environmental law?
- 5) How do these concerns play out in the Allied Chemical and Kepone case?

Assignments:

- 1) Please read Miller, pp. 14-16,
- 2) Please read pp. 21-24
- 3) Please read pp. 18-20 and 31-34
- 4) Please read pp. Page, 11-13
- 5) Please read pp. 37-46 and note 8 pp.51-52 plus skim pp. 52-56
- 6) Take three of the themes from pp. 59-65 and in one paragraph each explain how they apply in the Kepone case.

Class Three September 3- COMMON LAW AND THE ENVIRONMENT

- 1) How has the field of torts informed environmental law?
- 2) What role has the theory of trespass played in environmental law?
- 3) What role has nuisance played in environmental law?
- 4) What is a SLAPP suit?
- 5) What theories of causation apply in a common law environmental case?

Assignments

- 1) Please read pp. 69-90
- 2) Draft the causes of action for a 1-page legal complaint based on the following fact pattern: Your client is a fisherman who owns a fishing boat and a coastal fish processing plant. On September 1, 2013, a Liberian flagged oil tanker ran aground on a reef. The tanker was a single-hulled tanker. In 2013, transporting oil in a single-hulled tanker is considered to involve a high degree of risk. Oil leached into the water killing fish and has begun to come ashore onto your client's property such that your client is unable to land his boat. Your client does not expect to be able to fish or process fish from the waters for at least one year due to the oil pollution. PLEASE FOLLOW A STANDARD COMPLAINT FORMAT FOR ANY FEDERAL DISTRICT COURT.
- 3) Please read pp. 101-102 and pp. 106-108 and pp. 168-177

Class Four September 5- COMMON LAW LIABILITY AND REMEDIES

Questions

- 1) What liability standards apply in environmental cases?
- 2) What remedies are available under the common law in an environmental case?

Assignments

- 1) Please read pp. 97-101 and pp. 102-106
- 2) Please read pp. 109-137 and pp. 160-168
- 3) Adding on to the cause of actions , please draft 1 page of appropriate remedies requested by the injured fisherman.

Class Five September 10- HISTORY OF ENVIRONMENTAL REGULATORY LAW

Questions

- 1) What is the recent history of environmental law shifting the focus from common law to statutory/regulatory law?
- 2) What are the different regulatory approaches?
- 3) What is the relationship between regulated entities and regulations?
- 4) Why did the federal government become involved in environmental matters?

Assignments

- 1) Please read pp. 187- 192
- 2) Take a specific real environmental issue that is important to you. Assume that there is no pre-existing regulatory framework already governing this issue. Write one paragraph about what types of regulatory approaches legislators or regulators might want to consider in creating a regulatory framework to intervene on the environmental issue that you have chosen?
- 3) Please read pp. 202-206

Class Six September 12- CITIZEN ENFORCEMENT

Questions

- 1) In what kinds of environmental cases can a plaintiff challenge the government?
- 2) What is citizen enforcement?
- 3) Why is citizen enforcement important?
- 4) What is the relationship between principles of standing and citizen enforcement?

Assignments

- 1) Please read pp. 222-238
- 2) Please read pp. 238-253
- 3) Please locate a recent case (last 5 years) in the Westlaw database that involves citizen enforcement. Be ready to share the facts in class and explain either why the citizen was recognized as having standing or was not recognized as having standing.
- 4) Please read pp. 254-261.

Class Seven- September 17 – CONSTITUTION AND ENVIRONMENTAL LAW

Questions

- 1) How does federalism influence domestic environmental law?
- 2) How does the issue of pre-emption play out in environmental law?
- 3) How can the dormant commerce clause be used in environmental cases?
- 4) What is concurrent authority and cooperative federalism? What are some of the issues that arise in implementation?

Assignments

- 1) Please bring one case to class where there has been a conflict between state and federal interests involving an environmental matters. Write one paragraph describing the conflict.
- 2) Please read pp. 267-287

Class Eight –September 19- NATIONAL ENVIRONMENTAL POLICY ACT

Questions

- 1) What is the National Environmental Policy Act?
- 2) When must an EIS be prepared?
- 3) What is the relationship between NEPA and ultimate project implementation?
- 4) How can one determine whether an EIS is adequate?

Assignments

- 1) Please read pp. 319-346
- 2) Please read 40 C.F.R. Section 1508.18 and 1508.27
- 3) Please share your initial research on the NEPA questions raised by the Arctic research group in the NEPA memo assignment.

Class Nine – September 24 Clean Air Act and Harm Based- Standards

Questions

- 1) What is the development of the Clean Air Act?
- 2) What pollutants are regulated under the Clean Air Act as criteria air pollutants?
- 3) What is a harm-based standard?
- 4) What is the National Ambient Air Quality Standard?
- 5) What are the tensions within the EPA in setting standards?

Assignments

- 1) Read Section 109 Clean Air Act
- 2) Should Carbon Dioxide be considered a criteria pollutant?

Class Ten- September 26- Clean Air Act and Attainment vs. Non-Attainment

Questions

- 1) What is a state implementation plan?
- 2) What does it mean to be in nonattainment?
- 3) What is the “prevention of significant deterioration” program under the Clean Air Act?

Assignments

- 1) Read Section 110 Clean Air Act
- 2) Please read pp. 487- 498

Class Eleven-October 1- Clean Air Act and Technology Based Standards

Questions

- 1) What is the difference in regimes for mobile sources versus stationary sources?
- 2) What is the regime for “hazardous air pollutants”?
- 3) Why do we allow for different “available control technology” standards for new major stationary sources versus existing major stationary sources?
- 4) What are the advantages of using a technology approach over a harms based approach?

Assignments

- 1) Please read pp. 498-521

Class Twelve- October 3- Clean Air Act, Greenhouse Gases and the Market

Questions

- 1) Does the Clean Air Act regulate for greenhouse gases?
- 2) What is a cap and trade program?
- 3) What is the role for taxes in managing environmental challenges?

Assignments

- 1) Please read 607-635

Class Thirteen-October 15 – Clean Water Act Overview

Questions

- 1) What is the history of the Clean Water Act?
- 2) What is a pollutant?
- 3) What is a navigable water?
- 4) What is a point source? What is a non-point source?
- 5) What is a discharge?

Assignments

- 1) Please read pp. 523-539
- 2) Please read CWA Section 502(6), 502(12) and 502(14)

Class Fourteen-October 17- Clean Water Act National Pollutant Discharge Elimination System

Questions

- 1) What is the NPDES? How has it evolved over time?
- 2) What are technology based-effluent limitations?
- 3) Who sets water quality standards?
- 4) What is the relationship between water quality standards and NPDES permits?

Assignments

- 1) Please read pp. 539-556

Class Fifteen-October 22- Clean Water Act , Non Point Sources and Other Topics

Questions

- 1) What is a best management practice?
- 2) What is the total maximum discharge loads? What is the relationship between a TMDL and a non point source?
- 3) What are toxic effluent standards?
- 4) What is a section 401 certificate?
- 5) What is a Section 404 dredge and fill permit?

Assignment

- 1) Please read pp. 556-569
- 2) Please read Clean Water Action Section 303(d) and 401(a)
- 3) Please read Borden Ranch Partnership v. US. Army Corps of Engineers 261 F. 3d 810 (9th Cir. 2001)

Class Sixteen-October 24- EPA Practitioner's Perspective on Environmental Law

Questions

- 1) What is the role of the EPA?

Assignment

- 1) Turn in Clean Water Act Memo
- 2) Create a chart with the following two columns (New Major Stationary Sources and Existing Majority Stationary Sources). Then for each of the columns explain what is required under the Clean Air Act for a 1) Non attainment area and 2) PSD Program and 3) Hazardous Air Pollutants.
- 3) What regulated industries are subject under the CWA to the following standards: Best Practicable control technology, best conventional pollutant control technology, best available technology economically achievable, and best available demonstrated control technology.
- 4) Skim Title V of the Clean Air Act

Class Seventeen- October 29- Clean Water Act- Hypothetical Negotiation

Question – How do the various part of the Clean Water Act fit together?

Assignment- Based on your assignment of a role from last class, write a short one page memo indicating which sections of the clean water act govern your activities and what the CWA would require of your party. Be prepared to discuss as a group what the CWA requires. Based on limited outside research, what other non-legal options are there for the parties to clean up the river and protect the riparian system values (payments for ecosystem services, new storage technologies, new wastewater technologies).

Class Eighteen- October 31- Comprehensive Environmental Response Compensation and Liability

Questions

- 1) What is a potentially responsible person?
- 2) How does retroactive liability work?
- 3) What is arranger liability?
- 4) What is transporter liability?
- 5) What issues arise with the apportionment of liability in a CERCLA case?

Assignment

- 1) Read pp. 681-693

Class Nineteen-November 5 – CERCLA Liability

Questions

- 1) What is the individual liability of managerial officers for CERCLA violations?
- 2) What are corporate liabilities under CERCLA?

Assignment

- 1) Read pp. 694-714

Class Twenty-November 7- CERCLA- EPA Remediation and Private Recovery

Questions

- 1) What are private rights under CERCLA?
- 2) What is the National Contingency Plan?
- 3) What is an EPA abatement action?
- 4) What is the administrative system for environmental remediation?
- 5) What are the critiques of the system?

Assignment

- 1) Turn in CERCLA Memorandum
- 2) Read pp. 714-720
- 3) Read pp. 720-733

Class Twenty-one – November 12- Resource Conservation and Recovery Act

Questions

- 1) What is solid waste?
- 2) What is hazardous solid waste?
- 3) Who does RCRA regulate?
- 4) How does RCRA regulate?
- 5) What is a treatment storage and disposal facility

Assignment

- 1) Read RCRA Section 1004(5), 1004(6) and 1004 (27)
- 2) Read pp. 743-761

Class Twenty-two- November 14- Resource Conservation and Recovery Act

Questions

- 1) Why is RCRA considered to be a lifecycle regulatory strategy?
- 2) What are some of the limitations of RCRA?
- 3) What does Subtitle D of RCRA govern?

Assignment

- 1) Read pp. 756-759
- 2) Read Cox v. City of Dallas Texas 256 F. 3d 281 (5th Cir. 2001)

Class Twenty-three- November 19

Question

- 1) Do we need to control the markets before harmful goods are released? What can we learn from the management of pesticides in the U.S.?
- 2) What is environmental justice?
- 3) What is criminal environmental prosecution and what are some of the challenges of pursuing corporations?

Assignment

- 1) Read pp. 647- 660
- 2) Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (Feb. 11, 1994)
- 3) Read pp. 843-853

Class Twenty-four- December 3- CLASS PRESENTATIONS OF NOTES

Class Twenty-five- December 5– CLASS PRESENTATION OF NOTES- Please turn in notes by the end of class.

Short Legal Analysis Memorandum

Memo One: NEPA

We have been asked by Pamela Lesser and Timo Koivurova at the Arctic Centre at the University of Lapland in Finland to provide some research assistance with understanding how the Environmental Impact Assessment process works in the United States with a particular focus on Alaska. This is part of a larger project including research memos from Canada, Finland, Norway, Sweden , and Russia.

Collectively, you will be writing one memorandum that will address the following questions:

- 1) What is the EIA process for a mining/gas/oil/shipping/ocean infrastructure project in Alaska? What types of projects are required to go through EIA process and is the screening process to determine whether a project is required to go through an EIA process explicit? How long on average does it take to complete an EIA? How many EIA are typically prepared? What is the public consultation process? Are there requirements for mitigation measures? Is there a recognition of potential transboundary harm as part of the process?
 - a. NEPA- Examine EIA processes for the past 5 years.
 - i. Bureau of Ocean Energy Management- Department of Interior
<http://www.boem.gov/About-BOEM/BOEM-Regions/Alaska-Region/Environment/Environmental-Analysis/Environmental-Impact-Statements-and--Major-Environmental-Assessments.aspx>
 - ii. National Oceanic and Atmospheric Administration – Department of Commerce
<http://www.nmfs.noaa.gov/pr/permits/eis/arctic.htm>
 - iii. US Fish and Wildlife Service- Department of Interior
<http://alaska.fws.gov/nwr/planning/nepa.htm>
 - b. Alaska Pollutant Discharge Elimination System- What if any environmental review is necessary?
- 2) What is the relationship between the EIA process and permitting process? Are they integrated? Or are they separate? For which permits (particularly for industrial activities) in the Arctic region is an EIA process required?
- 3) Do most companies outsource EIAs to consultants or do they handle the process internally?
- 4) Are there ‘acknowledged’ environmental and socio-economic differences between circumpolar and non-circumpolar regions?
- 5) Are there existing ‘best practice’ documents for conducting EIA, or ‘best practice’ guidelines relating to specific issues within EIA?
- 6) What issues have been raised by the public during previous EIA processes?
- 7) Does the EIA process have the power to actually stop a project from going forward?
- 8) If a project moves forward, is there any information about effective monitoring of mitigation measures during construction and throughout the operation phases?
- 9) Do the requirements of the EIA process fit well with newer industries such as those involved with renewable energy (i.e. wind farms)?

Memo Two: Water Pollution

You are the attorney for the Save the Kawa citizen group.

The Kawa River flows from the mountains of a U.S. State to the coast. There are three dischargers into the river: 1) Municipal sewer authorities who operate with treatment works that discharge treated domestic and industrial wastes into the river 2) Boom and Bust: a larger pulp mill, and 3) Several hundred large-scale farmers who use chemical fertilizers, pesticides, and herbicides.

While Save the Kawa is concerned about the municipal sewer authorities and the farmers, it is primarily focused on the pulp mill which uses conventional bleaching processes to produce pulp and paper products. There are three approaches for bleaching: 1) traditional bleaching with chlorine gas, 2) elemental chlorine free bleaching using chlorine dioxide and 3) total chlorine free bleaching using ozone, hydrogen peroxide, or oxygen.

Bleaching will produce conventional pollutants (including BOD, Total Suspended Solids, and pH) as well as toxic pollutants (chlorinated hydrocarbons including dioxins). Companies can do different things to reduce pollutants including using hardwoods versus softwoods, using a second-stage digester after the conventional digestion process (reduces BODs and dioxin) and choosing a different bleaching process (elemental chlorine free (ECF) bleaching reduces BOD and organic hydrocarbons like dioxin; total chlorine free (TCF) bleaching eliminates organic hydrocarbons).

95% of U.S. plants use ECF. TCF is not widely used in the US. Boom and Bust uses primarily softwoods and has not second-stage digester. It does not use ECF because ECF requires a second-stage digester. TCF requires massive capital investment. Boom and Bust claims that it is not in a position to make capital upgrades because it is barely profitable.

- 1) What is the CWA regime governing sewer discharges? Industrial discharges? Fertilizer. Herbicide, and pesticide discharges?
- 2) Focusing on the industrial effluent, what authority does the CWA provide to the EPA to establish water pollution control regulations for an existing industrial point source and for a non-point source?
- 3) If the EPA decides to issue a new effluent standard grouping all pulp mills in a single category and setting the effluent limit based on the level of dioxin and BOD discharges measured based on "elemental chlorine free" technology, can the Kawa plant obtain a variance from the standards? What is needed to oppose such a variance?

Memo Three: CERCLA manufacturing

In 1970, JR Ewing, a new and wholly owned subsidiary of Dallas Corporation purchased Gushing Oil Field and began refining oil using a chemically intensive process. Mr. Net, an officer of Dallas Corporation, was president of JR Ewing and Mr. Gross was vice-president and plant manager.

In 1972, Mr. Gross told Mr. Net that the refining plant was having trouble disposing of refining byproducts using conventional methods. Mr. Net told Mr. Gross to “just fix the problem.” Mr. Gross then directed that a concrete lined well be built into which the refining wastes could be placed for safe storage. This was the practice until 1976. In 1979, the refining waste had leaked into the ground through a crack in the concrete. Dallas Corporation saw the land as unproductive and prepared to sell it by capping the well and covering it with a garden. A warehouse that had been used for storing refining chemicals was left on the property.

In 1980, Mr. Investor purchased from JR Ewing the Gushing Oil Field that had been renamed for purposes of the sale Meadowlands. Mr. Investor was without knowledge of the refining oil disposal that had occurred on the land although Mr. Investor was aware that the land had been used for refining. JR Ewing was dissolved shortly after the sale and the money from the sale to Mr. Investor was transferred to Dallas Corporation. Mr. Investor used the warehouse without incident until 1990 when he sold the property to Ms. Birdlife who did not know about JR Ewing’s ownership or that the property had ever been used for oil refining. Refining waste from JR Ewing’s prior operations have leaked into the soil and well water of Ms. Neighbor who has spent thousands of dollars for environmental testing and for trucking in water to replace the contaminated wellwater. Ms. Neighbor has announced the intent to sue Ms. Birdlife

You represent Ms. Birdlife and you need to understand the liabilities in this case.

- 1) Is Dallas Corporation, liable as an “owner or operator” under CERCLA Section 107(a)(2)? Is Dallas Corporation a “successor” to JR Ewing? What other information might you need to answer this question?
- 2) Is either Mr. Net or Mr. Gross liable under 107(a)(2) or 107(a)(3)?
- 3) Is Mr. Investor liable under 107(a)(2) as a person who “at the time of disposal” owned Gushing Oil Field?
- 4) Is Ms. Birdlife liable under 107(a)(1) or is there a defense under 107(b)(3) and 101(35)(A)?
- 5) Will Ms. Neighbor’s recovery rights be limited because of her response to the contamination?

Case Note (adapted from Georgetown University Case Note Comments):

Choose a case. You will need to read not just this case but also cases that are also referred to in your selected case.

A case comment describes, reflects on, and critiques the decision in a particular case. Do not simply rehash the court's opinion point by point or mimic the dissent. The heart of your paper is your own analysis.

You can take any of several approaches:

1. The case was decided incorrectly, and you explain why.

This method is common, but be careful. You do not want to simply mirror a dissent or get into the rut of saying "The court's wrong here" again and again. What you need to do is attack the court's Analysis and explain why, even though the court applied the correct law, it applied it incorrectly when compared with other precedential cases usually referred to in the case.

2. The court is correct, but for the wrong reasons.

While you agree with the court's decision, you believe that the court used the wrong approach to reach it. This approach means that while the decision is correct, the court applied the wrong law.

You will need to identify for the reader what the proper law was, where you identified it in precedent, and why it is more proper for use in a given court.

3. This whole area of law is a mess, and you can do better.

This is the most ambitious approach, but you really must know the material to suggest a whole new type of approach to the area. New approaches to the law should be logical, yield consistent results, and have public policy support. Use the principal case to illustrate how the new method would work and compare it to the prior, flawed outcome.

4. The court missed the point.

Maybe the court missed an important issue that courts facing the issue in the future should consider. You may want to argue that policy or equity considerations override a given law or otherwise influence the outcome in a way that the court itself did not decide.

5. The court is correct.

It is possible that you just might agree wholeheartedly. To go through your comment agreeing with the court is extremely dangerous ; the only way to do it without writing a book report is to write from a defensive posture, anticipating any counterarguments and demonstrating to the reader why they are without merit.

ELEMENTS AND FORMAT OF A CASE COMMENT

A case comment should include the following elements:

1. Facts of the Case (approx. 2 pages or less) Include the relevant facts and the procedural history of the case.
2. Holding (approx. 1 page or less) Your analysis of the court's holding in the principal case.
3. Roadmap (1/2 page) Explain the structure of the comment.

4. Analysis (several pages)
5. Conclusion (approx. 1/2 page)

Generally, the structure of the comment will follow one of two patterns:

1. Introduction

The introductory portion of the comment includes the three elements listed below. The introduction must catch the reader's interest and let the reader know what the comment is about and why it is important. The introduction will introduce and state how you will prove your thesis. Remember that you are writing for someone who, presumably, does not yet know the problem as well as you do, and may in fact have no knowledge of the area of law you are addressing.

Two approaches to the introduction:

- a. Statement of Facts- Starting with the facts is effective when the facts are important to the outcome of a case, provide a good illustration of the problem, or are simply exciting.
- b. Holding
- c. Roadmap- The roadmap is a necessary part of the comment. It is perfectly appropriate to say, "This comment will argue" or "Part one of the comment will analyze." The roadmap never comes first. It explains why the issue is important and describes the discussion and thesis. Its primary purpose is to inform the reader about what is coming so that subsequent material will seem relevant and fall into place.

OR

- a. Holding: You may want to use this structure if the facts are not crucial to the comment, or the general rule of law overshadows the importance of the specific facts.
- b. Statement of Facts
- c. Roadmap

Footnotes:

1. To give a citation

This is the simplest footnote. When you cite an authority in the text, you must include a footnote with the technical citation. You do not need to give the name of the case in the citation if you have given the full name in the text. When appropriate include a pinpoint or jump cite in the citation.

2. When necessary to back up a proposition

When citing a case in the text, you have to italicize the full name of the case. The first time you cite it, you must use the full name. When citing a case in footnotes, you do not italicize the case name if giving the case name in full along with the citation.

Note that to use a short cite of a case already cited, you have to have cited the case in the same general textual discussion or within one of the preceding five footnotes. If you cite a case in footnote #6, do not short cite it thirty footnotes later.

Note that you can only use *id.* if the preceding footnote has only one case in it.