

## **Water Law**

Professor Zachary Bray  
University of Houston Law Center  
Tuesday/Thursday, 1:00-2:30 p.m.  
Course Number 6341  
Spring 2014

### **Texts**

The required text is Robert W. Adler, Robin K. Craig, and Noah D. Hall, James Rasband, James Salzman, and Mark Squillace, *MODERN WATER LAW: PRIVATE PROPERTY, PUBLIC RIGHTS, AND ENVIRONMENTAL PROTECTIONS* (Foundation Press, 2013) [hereinafter “Casebook”].

There may also be a few short additional assigned readings available on the course website. You should check the course website regularly for updates. Depending on our progress over the semester, this syllabus is subject to change at my discretion. You will be given ample notice of any changes.

### **Guidelines and Requirements**

#### **A. Overview**

This course combines a general survey of U.S. water law and policy with an examination of water law doctrines, institutions, and policy issues of particular significance to Texas. One goal of this class, therefore, is to give students a basic introduction to the laws and institutions that have shaped the use, development, and preservation of water throughout the United States. Thus, we will examine the legal principles and doctrines that have shaped the use of surface water and groundwater in different jurisdictions across the United States, as well as the evolution of public and private rights in these resources. In addition, this class is intended to examine how water law doctrines and water law institutions have evolved in Texas. The final goal of this class is to examine the evolution of water law as it influences the use, development, and preservation of other important resources. The general objectives of this course are to teach the substantive law of the subject matter in a comprehensive manner, to consider ethical and professional questions related to the subject matter, and to integrate the subject matter with the analytical and practical skills necessary to the practice of law. Each class will be a combination of lecture and interactive discussion.

#### **B. Grading and Examination**

Your grade for this class will be based on a scheduled “open-book” examination at the end of the semester. By “open-book,” I mean that you may use any printed or written materials assigned for this class, as well as any printed or written materials that you have personally prepared (either individually or with others in this class). The use of any electronic materials (including on computer, disk, or CD) will be prohibited during the examination itself, as will any unassigned written materials that you did not help to prepare.

You may not consult with any other person during the examination itself, though you are encouraged to study with others, if you wish, leading up to the exam. Successful performance on the exam will require knowledge of the case law, statutes, and underlying policies and theories discussed in both the assigned readings *and* our class discussions.

In addition, your in-class participation may modify your grade by one step (e.g., from B to B+, from A to A-), as discussed below.

I consider good in-class participation to be anything that both helps your classmates learn and indicates your effort to read and understand the assigned material. When I consider whether to make a positive grade modification, I will consider the overall quality, and not the quantity, of a student’s in-class participation. You will not be penalized for wrong answers unless they evince a lack of preparation. Repeated absences without prior notification or subsequent explanation may be taken as evidence of lack of preparation.

#### **C. Class Participation and Structure**

Please arrive promptly with your casebook and any other assigned reading materials.

In general, we will try to cover one assignment per class session, though occasionally an assignment may be spread over two days. Because it is difficult to predict how far we will get in every class discussion, I have included only the assigned readings for the first few classes in this syllabus. (Additional assigned readings will be circulated in class and/or posted to the class website with a revised syllabus later in the semester.) In addition to cases and article excerpts, the materials assigned from the casebook will typically include notes, questions, and problems, all of which you should read closely.

All students are encouraged to volunteer comments and questions on the readings. In addition, I may call on students randomly to discuss the assigned materials, beginning with the first class session. The frequency and nature of random call will depend in part on the variety and quality of volunteer participation.

#### **D. Class Attendance**

I will pass around a seating chart during our first class. Please write your name on the part of the seating chart that identifies where you are sitting. Thereafter, or until further notice, you should remain in this seat. During each subsequent class, I will take roll by silently passing around a sheet with a list of names, which you should sign or initial. You will not be permitted to sign the roll sheet for a class on a previous day. Falsifying attendance violates the Law Center's Honor Code.

Pursuant to the Law Center's policy, you must attend at least 80% of the classes, although you should of course strive to attend every class. If you miss more than 20% of the scheduled classes, I reserve the right to take appropriate disciplinary action, consistent with the Law Center's policies. If a class must be cancelled, a make-up class will be scheduled, consistent with the Law Center's policies.

#### **E. Contact Information and Office Hours**

E-Mail: [zabray@central.uh.edu](mailto:zabray@central.uh.edu)

Phone: 713-743-2217

Secretary: Charlette Jefferson

Office: BLB

Office Hours: Wednesdays from 1:00 p.m. – 2:00 p.m. I realize that many of you have outside commitments, and as a result any fixed office hours that I set will be inconvenient for some students. So you should feel free to schedule a time for us to meet or speak over the phone beyond these regular office hours. If you wish to do so, please send me an advance e-mail so that we can set a mutually convenient time.

### **Syllabus**

Below is an outline of the material we will cover in the first few class meetings. You will be given ample notice of additional assigned readings.

#### **Introduction to Water Law**

1. Casebook 1-13; Website Reading # 1
2. Website Reading # 2.

#### **Riparianism**

3. Casebook 26-53.
4. Casebook 53-85.

#### **Prior Appropriation**

5. Casebook 87-121.
6. Casebook 121-161.