Seminar on Oil and Gas Law  
Law 483-001  
GMU 18596  

Prof. Claeys  
Spring 2015  

Current as of March 9, 2015  

Meeting Times: Mon. 10:00 – 11:50 a.m.  

Office hours and contact information  

My phone number is (703) 993-8247. My email address is eclaeys@gmu.edu. The course also has a TWEN site, and I am reachable on the discussion board of that site.  

This semester, I will hold office hours Mon. afternoons, 1:30 – 2:30 p.m. These are “walk-by” hours, meaning that I do not have any other appointments during them and you are free to come in to my office without appointment. However, I am happy to schedule appointments if you have a conflict during office hours or if you prefer for other reasons.  

Cancellations and make-up classes  

I do not expect now to cancel any other classes, but I may get sick or need to cancel a class for a personal emergency. If I need to cancel class on some ground attributable to my personal circumstances, I will have my secretary post notices in the elevators, the atrium, and on the doors of the classroom, and I will send an email to the class. I will then do my best to reschedule the class on a Friday morning or during the reading days at the end of the semester.  

Class reading  

For the first class, the assigned reading runs 120 pages. For each of the next 13 weeks, reading will run 50 to 60 pages. In some seminars, the instructor assigns reading for 9-10 weeks and leaves the last sessions open for oral presentations. This is not one of those seminars. There will be 50-60 pages reading per class session until the end of class.  

To help you read ahead, this syllabus forecasts the reading I anticipate covering for the entirety of the course. I also update reading in a reading schedule on TWEN. The schedules in this syllabus and in the TWEN schedule are identical.  

However, these forecasts are not promises but projections. I reserve the right to change the projected reading schedule depending on how fast or slow we are going. If you read more than a class ahead, you assume the risk of reading material I decide to leave on the cutting room floor.
Class expectations

I expect you to be prepared for class. Because this class is a seminar, it is imperative that everyone come prepared to discuss the materials assigned for reading.

I expect you to attend class on a regular basis, and the ABA makes it a general condition of accreditation that students not miss more than 2 weeks of class. I keep attendance by having you sign in each day. If you miss more than 4 class hours (the equivalent of 2 classes), I will give you a “forced withdraw” grade for the course.

With two exceptions, this is a “strict liability” policy: I do not waive this requirement because you are sick, have a job interview, personal emergency, &c. I also don’t waive the requirement if the University or law school cancels classes and schedules make-up days for the days cancelled. Except as specified below, you do not need to let me know in advance that you will be absent (and I prefer not to be notified), but by the same token I will not excuse absences in general.

Exception 1: I do not enforce the attendance policy when I need to reschedule class because I am canceling class due to non-GMU commitments.

Exception 2: I also do not enforce the attendance policy if the GMU Provost’s office designates the day a day of observance for a religion and you certify to me that you are a member of that religion. Consistent with the GMU Provost’s Guidelines: “It is the obligation of students to provide faculty, within the first two weeks of the semester, with the dates of major religious holidays on which they will be absent, and the dates for which they are requesting an excused absence for participation in any university-sponsored activity scheduled prior to the start of the semester, and as soon as possible otherwise.”

(\text{http://catalog.gmu.edu/content.php?catoid=5&navoid=104#Registration_attendance.}\)

Otherwise, I expect you to self-regulate interviews, personal emergencies, illnesses, religious observances and other such commitments, so that you do not miss more than 2 classes or 4 hours of class time.

During class, I expect you to be generally respectful to me and your classmates. Imagine the standards of comportment you would use if you were a lawyer, sitting in front of a judge, watching as the judge engages another lawyer in the proceeding. Please treat me and any of your colleagues with whom I am conversing with the same professional courtesy.

Grading

The grade for this class will be based primarily on a written essay you will write. Essays must be 7,500 to 12,000 words in length. An essay must address a specific topic within the topics we’re covering in the course, and the topic of the essay must be approved by me in advance.
I reserve the right to award students an additional one-third grade, or to deduct a one-third grade, in proportion to students’ class participation. I hope not to use this incentive; I especially don’t want to incentivize students to volunteer in class significantly more than other classmates.

Schedule for essay

To give you structure for your research and writing, I am setting the following schedule. I expect you to make written progress toward several benchmarks throughout the semester. If your submission for a benchmark seems on-target for it, I’ll either email you saying as much or email you a few minor suggestions. If I think your submission raises broader issues, I’ll ask to meet you in person. (If you prefer an in-person meeting over corresponding by email, I’m happy to meet you in person. Same goes if you have questions or problems before a submission deadline.)

The schedule for these benchmarks is as follows:

**Monday, January 26** Wednesday, January 28: Email to me a proposal. This proposal should identify the specific law or policy argument on which your essay will focus. It should also identify the 3-5 sources most germane to your research—i.e., the sources on which you expect to build, or the sources with which you most vehemently disagree. Your proposal should describe the general sort of argument you expect to make and the contribution you hope to make over and above the most relevant sources.

**Monday, February 17** Monday, March 2: Email to me an outline. The outline should make more focused your object of study, your thesis, your argument, and your intended contribution. The outline should also develop the specific steps in your argument, each in proportion to the length you anticipate that section taking in the final paper.

Monday, March 31: Email to me a first draft. This draft should be at least half the length of the final paper. The closer it is to a final draft, the better the comments you’ll get from me.

Last day of exam period: Final papers are due by email to me by 5 p.m. on May 11.

If a final paper is submitted after that deadline, it receives a one-third letter grade penalty, and another one-third grade penalty for every additional 48 hours it’s late.

Course materials

All course materials will be made available by supplement. Photocopies of the supplement are available in the entryway to the faculty suite on the 4th floor, just inside the room sign for room 407. The supplement is on the desk opposite the desk of administrative assistant Susan Birchler.

I will make electronic copies of the materials available on the course TWEN site, in a folder for “Course Materials.” However, these electronic copies will not have pagination corresponding to
the pagination in the hard-copy supplement. To expedite class discussion, please bring your hard-copy supplement to class.

Reading schedule

“Supp.” refers to my supplement.

1. Monday January 5.  Fracking: The Technology, the Business Background, and the Current Legal Climate

Supp. 2-137.

Supp. 2-11. Excerpts from Daniel Yergin, The Quest ch. 16.


Supp. 57-64. Materials from U.S. Dep’t of Energy: “Shale gas and hydraulic fracturing – in depth”; “Natural Gas from Shale: Questions and Answers”; “Map of basins with assessed shale oil and shale gas formations, as of May 2013”; “Hydraulic Fracturing Technology”; “Natural gas production by source.”


Supp. 81-159. U.S. Dep’t of Energy, “An Evaluation of Fracture Growth and Gas/Fluid Migration as Horizontal Marcellus Shale Gas Wells are Hydraulically Fractured in Greene County, Pennsylvania.”

Note: Supp. 81-137 are assigned. Supp. 138-159 include references and appendix material. I provided them in case you want to consult them but they’re not assigned in advance of class.


Greenleaf v. Francis, 35 Mass. 117 (Mass. 1836.).

Hinman v. Pacific Air Transp., 34 F.2d 755 (9th Cir. 1936).


Monday January 19. No class. (MLK Day)

3. Monday January 26: Common law principles of acquisition: stationary minerals, oil and gas
   Supp. 1, pp. 182-220, 233-66
   Del Monte Min. & Mill Co. v. Last Chance Mining & Milling Co., 171 U.S. 55 (1898).
   Hail v. Reed, 54 Ky. 383 (1854).

4. Monday February 2: Common law principles of acquisition: finish oil & gas
   Ohio Oil Corp. v. Indiana, 177 U.S. 190 (1900).

   Coastal Oil & Gas Corp. v. Garza Energy Trust, 268 S.W.3d 1 (Tex. 2008).
6. Monday February 16: Common law principles of trespass and strict liability for risky activities relating to land


Complaint, Boggs v. Landmark 4, LLC (N.D. Ohio, filed 3/12/2012).


Restatement (Third) of Torts, Liability for Personal and Economic Harm §§ 14, 16, 17.

Epstein & Sharkey on Torts, excerpting Restatement (Second) of Torts § 519 & Third Restatement, § 20.

7. Monday February 23: The legal status of mineral rights in Europe


UK Parliament, “Shale Gas in the UK”.


March 2. CLASS CANCELLED BECAUSE OF INCLEMENT WEATHER AND UNIVERSITY CANCELLATION.

March 9. No class because of spring break.


9. March 23. THIS CLASS WILL BE 3 HOURS LONG. We’ll start at 9 and take 2 10-minute breaks at 9:50 and 10:50.

Hour 1: Fracking as an Oil and Gas Problem (Texas)


Texas Natural Resources Code §§ 81.051 to -.053

Texas Natural Resources Code § 85.202

Texas Natural Resources Code § 91.851

Texas Natural Resources Code §§ 102.011 to -.018

Texas Administrative Code §§ 3.11, -.29, -.37, -.38

Hour 2: Fracking as an Oil and Gas Problem (Virginia)


Georgia Comp. R. & Regs. § 391-3-13-.11

Virginia Oil & Gas Act §§ 45.1-361.1, -.2, -.4, -.5, -.8, -.9, -.11, -.12, -.13, -.14, -.17, § 45.1-234.

Hour 3: Fracking as a Health/Environment Problem (New York) (hour 1)

Supp. 3, pp. 663-701
(continue to next page)
New York Environmental Code §§ 3-0301, 8-0101, 8-0113


10. March 30. THIS CLASS WILL BE 3 HOURS LONG. We’ll start at 9 and take 2 10-minute breaks at 9:50 and 10:50.

Hour 1: Fracking as a Health/Environment Problem (New York) (part 2).


Hours 2 & 3: State/Local Regulation of Fracking, Part 1: Pennsylvania


58 P.S.A. § 3303.


Obviously, Robinson Township is extremely long. I’m photocopying the whole opinion because some of you may want to consult portions of the decision that we won’t study. For class discussion, though, you should focus on Supp. 3, pp. 765-68 (background), pp. 782-837 (majority opinion part III), pp. 850-52 (majority opinion parts V and VI; pp. 861-68 (Justices Saylor and Eakin’s dissents). To the extent that Justices Saylor and Eakin respond to part IV of the majority’s opinion, you can skip those responses as well.

In other words, you can skip pp. 753-64 (case caption, keynotes, and list of attorneys); 768-82 (majority disposition of justiciability issues); pp. 837-50 (majority opinion part IV); pp. 852-61 (Justice Baer’s concurrence).


(continued on next page).
Colo. Oil & Gas Ass’n v. City of Longmont (Boulder Cty. Dist. Ct., slip op. July 24, 2014).


Loveland Question 1 (titled “Resolution #R-___-2013”)

“Moratorium: Get the Facts Before We Frack”

“Moratorium is not merited in Loveland”

