

Oil & Gas Law

University of North Dakota School of Law
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SYLLABUS

1. GOALS AND LEARNING OUTCOMES: This course broadly covers the law and policy of oil and gas in the United States. On one level, the goal of the course is to provide a solid, broad-based foundation in oil and gas law for those wishing to pursue specialist careers in the area and a comprehensive view of the subject for those expecting to encounter oil and gas issues collateral to a general practice. More generally, the goal is to prepare students to be leaders in a region of the country where oil and gas has colossal importance. In other words, I want this course to prepare you to be not just potential practitioners of oil and gas law, but to be potential decision-makers about it.

Given these goals, my aim is not just for you to understand the law itself, but to understand the scientific and societal context for the law. Thus, a significant part of the course will concern the science, technology, economics, and business of oil and gas. No technical background is presumed, but you will need to come at it with a roll-up-your-sleeves esprit. We will also explore the politics and social effects of oil and gas development.

The following is a non-exclusive list of particular learning outcomes:

1. Broadly know and be able to apply the principal legal doctrines studied.
2. Have a basic level of literacy with the doctrine such that you could productively and immediately step into a role supporting the general counsel of an organization in the oil-and-gas industry or contributing to a law firm doing oil-and-gas work.
3. Understand enough about the scientific and societal context for oil-and-gas law such that you could immediately and productively step into a role supporting lobbying work, activism, or impact litigation regarding oil and gas law, both on behalf of those supporting current and enhanced levels of exploration and development of oil-and-gas resources and on behalf of those opposing such efforts.
4. Understand enough about the scientific and societal context for oil-and-gas law such that you could provide impartial analysis and critical evaluation of policy proposals and arguments.

2. MODE OF INSTRUCTION:

I anticipate that this will be particularly demanding course. And if you have taken another class from me in the past, you should know that class will not fit that mold. Our class this semester will be heavily discussion-oriented, and considerably greater burden will fall on students' shoulders in this course than in other courses. Each student will be responsible for doing the reading each day and will have to play an active part in class discussion – including, for instance, responding to cold-call questions. In other words, the entire class will be “on panel” every day and will be held to that in terms of grading. It will be intense, active learning that should serve you very well as a student and future lawyer.

3. **CLASS WEBSITE:** The central repository for class materials and information is the class website. It is not password protected. Go to ericejohnson.com and find the link on the upper left. The direct URL is:
http://www.ericejohnson.com/courses/oil_gas_18/

4. MATERIALS:

4-1. Materials for Assignments:

We will be using a special advance manuscript of Chapters 1-5 of *Cases and Materials on Oil and Gas Law, 7th Edition* by Lowe, Anderson, Smith, Pierce, Kulander & Ehrman. Arrangements are being made for printed copies that you will purchase.

West Publishing has generously made this manuscript available to UND Law students on a special basis thanks to arrangements made by casebook author Professor Owen L. Anderson, an alumnus of UND Law, long-time friend to our school, and currently Professor and Distinguished Oil and Gas Scholar at the University of Texas. Understand that the casebook is copyrighted and proprietary material, and redistribution is not allowed. Please do not embarrass UND Law by posting or re-distributing it.

Other required materials will include materials that can be accessed online, including videos, posted articles, and portions of open-access textbooks. Links to these materials will be made via the class webpage. Still other required materials may be handed out in class or placed on reserve in the library.

4-2. Polling/ Technology Expectation:

We may make use of interactive polling in class. Thus, please bring an internet-connected/web-browsing-capable laptop, tablet, phone, or other portable general computing device to class for use in interactive polling. It is my hope is that all students will be able to do so without incurring any additional expense; if you don't already have such device you can bring to class, please let me know so we can discuss how I can otherwise accommodate your polling participation in class. (Note that a TurningPoint clicker device will not work for this course, as the class will not have a TurningPoint receiver device in operation.)

4-3. **Study Aids and Unassigned, Additional Reading:** Beyond the required materials, you are encouraged to use any other materials you find helpful or interesting. The more you learn about oil and gas law, the better. I have found that commercial outlines, treatises, and other study aids are a great way of gaining a basic understanding

of the blackletter law in a subject. That being said, I think the best time to read such an unassigned secondary source is right at the beginning of the semester. That way, you may give yourself a better foundation of knowledge for learning the material presented in the cases and in class. On the other hand, reading a treatise *as exam preparation* for this class could be a waste of your time and mental energy. But it's up to you, of course, to judge for yourself.

If you do use study aids or other resources, I would be interested in hearing about your experience with them – whether good or bad. I'm always keen to know what is contributing to people's learning.

5. ASSIGNMENTS:

5-1. Posting: Assignments will be posted to the Chart of Assignments, which may be accessed from the class webpage.

5-2. Out-of-Class Workload Expectation: The vast majority of your law-school education is meant to take place outside of class. For this class, it is expected that you will do out-of-class work that averages at least 6.5 hours per week. This is the ABA's expectation,¹ UND Law's, and mine as your teacher. Note that this is a minimum expectation, and the out-of-class time required may be substantially more. When planning your semester in terms of employment, volunteer obligations, commuting, or other demands on your time, you should keep the minimum expectation in mind. And likewise, during the semester, you should keep the numerical expectation in mind when gauging whether you are devoting at least the minimum time to adequately preparing, studying, and reviewing.

6. GRADING:

6-0. Overall: Your grade will be based on a final-exam component (worth three-quarters) and a class-participation component (worth one-quarter). Using the points from these two components, I will make an initial assignment of grades. This initial assignment of grades will not be done on a curve or to correspond to a pre-determined grade distribution or pre-determined grade point average. This means you are not in competition with your fellow students for a limited pool of grades. Thus, you should favor cooperation and generosity with your classmates. To make the initial assignment of grades, I will look at the total points and use my discretion to draw grade cut-offs based on natural breaks and clumps that occur in the point totals, a developed sense of how a given letter grade corresponds to levels of performance and achievement, and precedent set by grade distributions in various courses in prior semesters. But I treat precedent lightly. If the whole class does well, then the grade point average can skew higher. Of course, the reverse could be true. Bottom line, I aim for grading that is fair, so the grading should neither be harsh nor an easy A. Then, after the initial assignment of grades, I will retain the discretion to adjust grades upward one or two steps, as

¹ See Standard 310 at

https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_standards_chapter3.authcheckdam.pdf. In terms of looking at the standard, note that the math is complicated, but for the UND Law calendar, the ratio works out to be 2 hours 10 minutes per week per credit hour for regular Fall and Spring semester classes.

discussed below. Grades can also be affected by severely or profoundly deficient attendance and by academic dishonesty, as discussed further below.

6-1. Final-Exam Component: The final exam will be three-quarters of the points used for the initial assignment of grades. The exam is discussed later in this syllabus.

6-2. Class-Participation Component:

(a) Class participation will count as one-quarter of the points for the initial assignment of grades.

(b) **Quantum point system:** Based on my evaluation of your class participation, I will assign points on a “quantum” basis at one of four discrete levels: 25 points, 20 points, 13 points, or 0 points. I will not assign any intermediate amounts. (For instance, I will not assign 23 points, 8 points, or 19.593 points.)

(c) For full credit for class participation, it is not necessary that the student give the “right” answers. Wrong answers are part of the learning process, and class participation is about furthering the learning process. The point of asking questions in class is not to test comprehension of the material. Rather, strong class participation is putting forth a genuine, good-faith, energetic effort to work on the material on one’s own, before class, and then engage cooperatively with the instructor and other students during class to achieve a deep understanding of the material. So providing wrong answers in response to posed questions is not a problem unless it is part of a pattern indicating a lack of preparation and vigorous effort. Also importantly, getting 25 points for class participation is not a matter of distinguishing one’s self positively from one’s fellow students. In fact, there is nothing preventing all students in the class from being given all 25 points for class participation – if that ends up being warranted.

(d) Negatives for class participation include exhibiting visible disengagement in the classroom, being unprepared for class, disruptive behavior (including, but not limited to, a pattern of appearing distracted by a computer or phone), conduct contrary to the Classroom Conduct Rules (listed below), conduct contrary to other admonitions communicated in the syllabus or otherwise, and any conduct that detracts from the educational process.

(e) **The role of attendance in the class-participation component:** Attendance will count in terms of class participation. It has to. A precondition of participating is showing up. But obviously things happen in life, and the difference between a perfect attendance record and the accumulation of a couple absences is often a difference in circumstance, not a difference in scholarly zeal. Therefore, although attendance will count in terms of class participation, I will not look askance at attendance in terms of class participation so long as accumulated absences are **three or fewer**. In a situation in which a student has more than three absences, I will consider overlooking attendance in terms of class-participation grading if there are special extenuating circumstances and if those special extenuating circumstances have been communicated to me through an End-of-Semester Attendance Mitigation Statement, which is addressed further below.

(f) **A rough guide / rubric for assigning point values:** In addition to the guidance disclosed above and further below, I will use the following as a general guide in making class-participation point assignments:

25 points	The student participated in class with alacrity, showing consistent preparedness and willingness to engage. It is evident that the student made a genuine effort to do all or very nearly all the assignments at a high level. The student read deeply and critically. The student wrestled with problems until satisfied of having obtained a good answer or satisfied of having exhausted all reasonable attempts to do so. The student never or almost never seemed disengaged from class or discussion, such as being absorbed in a phone, working on e-mail, etc. The student's attendance record is strong.
20 points	The student participated consistently and was generally well-prepared and engaged with the class in good faith, but the student came up short of the level of participation described as appropriate for 25 points. As judged against the bulk of the other students, it would seem inappropriate, perhaps even unfair, to give this student full credit for class participation. Perhaps, for instance, there were multiple classes in which the student appeared not fully prepared, perhaps the student sometimes seemed visibly disengaged, or perhaps attendance was deficient.
13 points	The student's participation and engagement was notably lacking. The student was, however, prepared more often than not, and is thus deserving of more than half the points for the class-participation component.
0 points	The student's participation was substantially lacking, and the student does not, in my discretion, seem deserving of more than half the points for the class-participation component. Note that this level of zero points is the appropriate level of points for any student who comes up short of the 13-point level. So if, under a "non-quantum" system, one student would appropriately be awarded 12 points, and another student would appropriately be awarded one point, both those students would appropriately be awarded zero points under this "quantum" system.

6-3. Discretionary Step-Up Adjustments:

(a) Subsequent to the initial assignment of grades by the means discussed above, I may, on the basis of class participation (including attendance), add to one or more students' grades on a non-anonymous, discretionary basis, with the result forming the grade for the course. Such adjustments, if made, will ordinarily be no more than one step, such as from a B to a B+. In extraordinary cases, which I anticipate to be rare, I may make an adjustment of two steps. For instance, if a student was one of the strongest in class but did by comparison very poorly on the exam, I might consider a two-steps-up adjustment from the initial assignment of grades, such as from a D to a C-.

(b) Substantively, the rationale for a step-up adjustment would involve the quality of the student's responses. In contradistinction to the class-participation component, described above, which is more about effort than it is about getting the "right" answers, discretionary step-up adjustments *are* a matter of distinguishing one's self positively from one's fellow students, and it *would not* be appropriate to give all students in the class a discretionary step-up. Thus, for a discretionary step-up, I would be looking at both effort and quality – insight and perspicacity along side habitual, diligent engagement. Also potentially important is my perception of a striking difference between the student's class participation and the student's initially assigned grade. (As an example, suppose two students were both equally strong participators, and both received 25 points for the class-participation component, yet suppose that after exam scores were combined with the 25 class-participation points to form the initial assignment of grades that one student received a D+ while the other student received a B+. I might in such a situation choose to use the discretionary step-up adjustment to upwardly adjust the grade of the former student to a C- while leaving the grade of the later student unchanged at B+.) Also potentially significant is where a student's score falls within a grade band. For instance, I would be more likely to upwardly adjust an extraordinary class participator to an A- if that person already has the highest score among the B+ grades.

(c) I cannot say in advance how many grades I might adjust in this way, but in a class of about 25 people, I would not be surprised to give upward adjustments to two or so. But I also might not adjust any.

(d) See §9-3(c), *infra*, regarding the separate matter of an automatic downward adjustment in a grade based on severely deficient attendance.

6-4. Academic Honesty: Cheating or serious academic misconduct of any kind in this class will presumptively result in a failing grade (e.g., a letter grade of F) for the semester. To be clear, failing to follow final exam instructions in a way that might give a student an advantage, even if done without intent to gain such an advantage, constitutes, in my judgment, serious academic misconduct, and will presumptively result in a failing grade. It is your responsibility to treat exam instructions with diligence and care. In any instance of misconduct, I reserve the right in my discretion to request administrative withdrawal or award a lower grade other than a failing grade if I find there to be extraordinary mitigating circumstances. Despite my reservation of rights in this regard, however, do not expect leniency. Please note that the awarding of a lower grade or a failing grade for misconduct is not to the exclusion of other sanctions, and I intend, in virtually all instances, to refer cheating or serious academic misconduct to the Honor Board and/or the administration of the University and/or School of Law.

7. COMMUNICATIONS AND OFFICE HOURS:

7-1. My e-mail address is eric.e.johnson@law.und.edu. Please note that I do not answer or discuss substantive questions through e-mail. Moreover, perhaps unlike many students, I do not read e-mail on an hour-by-hour basis. I may not respond at all to certain e-mailed questions, including those which ask for information that is clearly answered in this syllabus. If you miss class, please ask other students for information you may have missed, such as reading assignments. Any e-mail communications you do

have with me should be prepared in a professional manner, including the use of a meaningful subject line.

7-2. If you have any questions about the exam, please ask them in open class. In the aims of fairness, I do not discuss the exam on an *ex parte* basis.

7-3. My office is 220D in the East Wing. I post open office hours on my website at ericejohnson.com. If office hours are not convenient, please do not hesitate to e-mail me to make an appointment to talk (and when you do, it helps if you include some suggested times that work for you).

7-4. At least once during the year, I hope you will take advantage office hours, an appointment, or some other opportunity to chat – even if you have no questions or nothing specific to discuss. That’s not a requirement, just a request. I would like to spend some informal time with everyone.

8. IN THE CLASSROOM:

8-1. Classroom Conduct Rules:

In general:

(a) Avoid behavior that might disrupt class or distract your fellow students.

Some specifics:

- (b) Do not eat in class. Do not chew gum audibly or with your mouth open.
- (c) Refrain from any use of a digital device where such use could reasonably disrupt class or distract fellow students. All digital devices must be operated without audio volume. Screens must not display any distracting content, including, but not limited to, distracting images, indecent content, moving images (video), and animation or flashing graphics.
- (d) You may use digital devices (including, without limitation, computers, phones, and tablets) in class; however, from the time of class’s scheduled beginning until class ends: (1) You may not engage in any digitally enabled network communications with any other student in class, including, but not limited to, e-mail, text messaging, and IM’ing. (2) You may not engage in any web publication or any live-updating/realtime digitally enabled network communications with anyone at all, including, but not limited to, live chat, Facebook (including, but not limited to, Facebook groups), Twitter, Snapchat, Instagram, Google+, and the like. The prohibitions of this subparagraph (d) are not limited by context and apply without regard to whether the activity in question can be characterized as disruptive or distracting. Any violation of the policy in this subparagraph (d) will presumptively result in a lowered course grade and may also be referred for disciplinary action. The prohibitions of this subparagraph (d) do not apply if and when you are absent from class and not on campus, nor do they apply to communications with University information-technology staff for technical-support purposes, nor do they apply to e-mail sent to me. Bottom line: Keep the discussion in class, where it is productive and beneficial for all.

8-2. Classroom Participation: Class participation is discussed in §§6-2 & 6-3.

8-3. Audio Recordings and Video:

No one is permitted to make an audio or video recording or transmission (e.g., livestream) of class without my express, written permission.

Be aware that I plan to make an audio recording of each class meeting. As a general matter, these recordings are for my own use. (They help me in myriad ways to improve my teaching from week to week and year to year.) Accordingly, I do not release recordings to students.

Notwithstanding my general rule of not releasing recordings, this semester, as an experiment, I may try posting online one or more audio recordings from class. To this end, I may structure one or more segments of class where I explain things in a lecture-only format – that is, without comments or questions, because I don't want to sweep up students' voices into a recording that is posted online. If such a segment turns out good, I may post it so that you and future students can use it. At any rate, understand that such segments of class, if any, will be the exception, not the norm. As a general matter, I want to keep class reasonably loose and freewheeling.

On occasion, I may endeavor to have a recording made of class so that students can view it in case they missed class. For example, if I do a make-up session that is scheduled outside of the regular make-up slot, I may seek to have it videotaped and for the resulting video to be put on reserve in the library. But be aware: If I endeavor to make such arrangements, there are no guarantees. Notwithstanding my effort to make arrangements, it may turn out that no such recording is in fact made and no such recording will thus be available to students. The only way to ensure that you receive the information delivered in class is to be in class, including make-up sessions.

9. ATTENDANCE:

9-1. In General: My view is that punctual, regular attendance in class is an essential component of the educational experience. Sufficient or even superior performance on an examination is not enough if you haven't shown up. Moreover, the General Rules of the School of Law's Academic Program say, "Regular and punctual class attendance is required."² ABA standards put an emphasis on attendance as well.

I expect that students may have occasional, isolated absences. I do not view this as a problem. An infrequent late arrival is forgivable as well. But how does one draw the distinction between the well-meaning student who doesn't make it on time to every class and the student who allows attendance to become a serious problem? It's not easy. Thus, I am providing this detailed attendance policy. I regret that it is so long. Nonetheless, seriously deficient attendance must incur serious consequences; therefore, it seems prudent to err on the side of particularity.

Throughout this discussion, "absences" and the subject of "attendance" includes partial absences, such as late arrivals and early departures.

² See http://law.und.edu/_files/docs/policy-manual/section-l-b/l-b-1-class-attendance-reformatted.pdf.

9-2 Communications About Attendance: There is generally no need for you to e-mail me if you are or anticipate being absent. Moreover, there is generally no need for you to explain to me why you have been absent.

If your attendance is approaching or will approach a significantly deficient level (discussed below), then communicating with me is helpful. But bear in mind that if you want to claim special extenuating circumstances in mitigation of absences, then you must file an End-of-Semester Attendance Mitigation Statement (see §9-6, *infra*), and if you accumulate absences constituting profoundly deficient attendance, then you must file a Self-Disclosure Statement of Accumulated Absences immediately upon such accumulation (see §9-5, *infra*).

9-3. Deficient Attendance:

(a) **Late Arrivals and Early Departures:** As the expression goes, better late than never. But bear in mind that tardiness is disruptive. For purposes of determining the appropriateness of penalties discussed below, a late arrival or early departure will count as half of a whole absence. In my discretion, however, a very late arrival or a very early departure may be counted as a whole absence.

(b) **Comings and Goings; Intraclass Absences:** I understand that you may have an urgent need to leave class for a short time. But please keep in mind that leaving and re-entering class is disruptive, so please do so only when necessary. An intraclass absence may be counted as a partial or full absence in my discretion.

(c) **Automatic Step-Down in Grade for Severely Deficient Attendance:** Aside from and in addition to the effect that attendance may have on your overall course grade in terms of class participation (see §§6-2 & 6-3 in these regards), six or more absences will constitute severely deficient attendance so as to warrant dropping a student's final grade by one step, such as from a B to a B-.

(d) **Administrative Withdrawal or Failing Grade for Profoundly Deficient Attendance:** For a student with a profoundly deficient attendance record, I will presumptively request of the Office of the Dean that the student be administratively withdrawn. Alternatively, I may award a failing grade. For these purposes, I will regard as profoundly deficient attendance eight or more absences. Recall that partial absences (i.e., late arrivals, early departures) will count as half an absence each and may, in my discretion, be construed to constitute a whole absence. It is your responsibility to keep track of your own absences, including with regard to the presumptive administrative withdrawal or failing grade. Thus, do not ask me to calculate your attendance record so that you can weigh whether to miss an additional class. And do not expect to get independent notice that you are approaching the threshold for failing or being administratively withdrawn. This syllabus provision is your notice.

(e) **Special Extenuating Circumstances:** In consultation with the Dean, Associate Dean for Academic Affairs, or the Assistant Dean for Student Life, I may take account of special extenuating circumstances in deciding whether attendance will have an effect pursuant to grading under §§6-2 & 6-3, an automatic step-down in grade under §9-3(c), or the award of a failing grade or the making of a request for administrative withdrawal under §9-3(d). Special extenuating circumstances can include weather emergencies, personal illness, illness of a close family member, bereavement, etc.

Extracurricular activities, job interviews, court appearances, or the like can be considered in this vein as well.

Notwithstanding the foregoing, it is expected that under almost all circumstances students will be able to keep absences within the numerical thresholds identified – including absences caused by illness, floods, job interviews, etc. Giving students special dispensation on the issue of attendance will only be done if appropriate under the totality of the circumstances. As an example, suppose a student was absent from class six times because the student wanted to sleep in; then, at the end of the semester, the student was absent twice because of an out-of-town job interview. A failing grade or administrative withdrawal would be appropriate in such a case. If the student had been generally conscientious about attendance from the beginning, the student would not have created any issue with the two absences for the job interview.

If you wish for me to consider any special extenuating circumstances with regard to your attendance, then you must file an End-of-Semester Attendance Mitigation Statement, as discussed in §9-6.

9-4. Attendance Record: To avoid being distracted in class by constantly noting things like late arrivals and early departures, I frequently or habitually require students to log their own attendance. Thus, it is of paramount importance that you deal with all attendance issues with utmost honesty, integrity, and care. Inaccuracies in marking an attendance log or late slip will presumptively be referred to administration and/or the Honor Board and will presumptively result in a lowered grade or a failing grade. If an inaccuracy is inadvertent, prompt self-disclosure is encouraged and will generally be considered ameliorative.

(a) **Means of Taking Attendance:** Attendance may be taken by means of a log (paper sheet or card) for students to fill out during class, by roll call, by reference to the seating chart, or by some other method.

(b) **Indicating Attendance:** If attendance is taken by means of a paper log, then when the attendance log comes around to you, fill it out as instructed, indicating your attendance for the instant date. (“Instant date” means the current date as you are looking at the log.) Indicating your attendance this way is your responsibility. If the attendance log does not come around to you, then it is your responsibility to make sure you get an opportunity to mark yourself as having attended: Simply come up to me immediately after class and ask to fill it in. If you omit to fill in the log during class or immediately afterward and before I leave the room, you will be counted as absent.

This is very important: You may only fill out the attendance log on behalf of yourself and for the instant date. You may not mark the log on behalf of another person, even if that person is in attendance, and you may not permit another person to mark the log on your behalf. You may not make any mark indicating your attendance for any other date other than the instant date, even if you were or will be in attendance on that date.

(c) **Self-Reporting Partial Attendance:** If an attendance log is used, and if you will need to depart class early and not return, then you must make an appropriate notation of that on the attendance log. Alternatively, if you have a change of plans requiring you to leave early despite not having indicated that in advance on the

attendance log, then you must inform me by e-mail as soon as reasonably possible afterward to correct the record.

(d) **Filling Out of Late Arrival Slips:** If you arrive late to class, you must legibly and completely fill out a late arrival slip before you sit down. If a blank late arrival slip is not available for you, then before you take your seat you must leave on the podium a letter-size sheet of paper providing your name, the name of the class, the full date, the day of the week, and the time of your arrival.

(e) **Unrecorded Absences:** At my discretion, I may announce that for a particular class meeting I will not record attendance and that absences from such a class meeting will not count for purposes of the attendance policy. Situations in which I might deem this appropriate are: (1) if it is necessary to hold a make-up class outside of the School of Law's designated make-up slot or (2) if there is the occurrence of a disaster that implicates issues of safety or public necessity. Such an unusual situation aside, the recordation of an absence is a distinct issue from the existence of an absence. And for the purposes of self-disclosures of profoundly deficient attendance under §9-5, *infra*, a student's self-disclosure obligation is not relieved by the fact that one or more absences (including partial absences) may be unrecorded. Toward the end of encouraging candor, however, I may in my discretion choose not to count one or more unrecorded-but-disclosed absences for purposes of grade penalties and administrative withdrawal. Thus, err on the side of disclosure.

9-5. Mandatory Immediate Self-Disclosure Statement of Accumulated Absences in Cases of Profoundly Deficient Attendance: Upon a student's accumulation of a record of profoundly deficient attendance (that is, a total of **eight** absences, including accounting for partial absences under §9-3(a), *supra*), that student is required to disclose such accumulation immediately in writing to me. The disclosure must be made to me by e-mail (eric.e.johnson@law.und.edu) with a paper copy handed to me in person, or, if in-person delivery is not practicable, to the faculty administrative assistant with an explicit explanation of the nature and urgency of the communication. The subject line of the disclosure e-mail must be "Self-Disclosure Statement of Accumulated Absences."

If the student hopes to avoid administrative withdrawal or the awarding of a failing grade for the course, then the statement must explain the reasons for the student's absences and must provide a rationale for why the student should be allowed to continue in the course notwithstanding the accumulated absences. Any supporting backup documentation that is to be considered must be provided with the statement. To this end, the student is referred to §9-3(e), *supra*, regarding special extenuating circumstances.

If a student has already submitted a disclosure under this section and then subsequently accumulates another absence (including a partial absence in the form of a late arrival or early departure), the student must submit a supplemental disclosure, like the original disclosure in form and substance.

For counting absences to determine the necessity of submitting a disclosure under this section, where there are any interpretive questions, a student is instructed to err on the side of inclusiveness. That is, a student who is unsure of whether a given instance will count as an absence or partial absence should err on the side inclusion of

that absence or partial absence in the quantification of deficient attendance. A student is advised to note such interpretive questions and the student's erring on the side of inclusiveness in the statement. Further to this regard, refer to §9-4(e), *supra*.

9-6. End-of-Semester Attendance Mitigation Statement: Some students may wish to seek mitigation of any effect their absences might have on their grade by claiming that there are extenuating circumstances. To the extent to which a student wishes to make a claim of extenuating circumstances, the student must file an End-of-Semester Attendance Mitigation Statement not earlier than the last day of class, nor later than the day after the scheduled day of the exam for this course.

If you file an End-of-Semester Attendance Mitigation Statement, it must consist of a single PDF document containing all pertinent information and any supporting backup documentation you wish to be considered. If you want me to consider any previously sent e-mails in a claim for special extenuating circumstances, then you must include copies of those e-mails within the PDF document constituting with the attendance mitigation statement. The statement must be sent to me by e-mail (eric.e.johnson@law.und.edu) with the subject line, "End-of-Semester Attendance Mitigation Statement."

File just one statement – that is, just one e-mail with just one attached PDF document. Do not send multiple e-mails or multiple files. There is no prescribed format for the statement, but it should be prepared in a professional manner, along the lines of how you would prepare attorney work product for a client. Regarding the substance of what might qualify as extenuating circumstances, see §9-3(e), *supra*.

If you have already filed a mandatory disclosure for profoundly deficient attendance under §9-5, *supra*, then you should additionally file an end-of-semester attendance mitigation statement, which should include copies of any previously filed disclosures made pursuant to §9-5.

10. EXAMINATION:

10-1. Communications and Anonymity:

(a) **Ex Parte Communications:** I will not discuss the exam on an *ex parte* basis. (See §7-2, *supra*.)

(b) **Anonymity:** Each exam will be "blind graded," so that I will not know the identity of the student as I am grading her or his exam. You may not waive anonymity. Do not include your name in your exam response, and do not write your name on any exam materials, including on a scantron answer sheet, if one is used. Self-identification on the exam or otherwise compromising anonymity will presumptively result in a deduction from your exam grade and a referral for disciplinary action.

10-2. Some Parameters for the Exam: The examination will seek to test your comprehension and mastery of the course material along the lines of the goals identified at the beginning of this syllabus. As this is the first time I have taught this course, it is hard for me to project what kind of examination will best accomplish the task of fairly evaluating your comprehension and mastery. Thus, I am retaining flexibility in how to structure the exam. For instance, the exam may or may not involve multiple-choice questions, and it may or may not involve short answer questions. At this point I can make the following specifications:

(a) The exam will not be less than three hours in total duration, nor will it be more than four hours in total duration.

(b) At least half the exam in terms of point values will administered on an open-book basis, meaning that you may bring with you and access any paper-based notes and books you like. But no electronic or interactive resources (such as a tablet computer, smart phone, etc.) may be used or referenced.

(c) At least part of the exam will involve at least one essay question. For at least this part of the exam, you will be able to use a laptop to compose a written response. Laptop usage must be in accordance with applicable policies. But in no event will you be permitted to reference files stored thereon during the examination session. You will be permitted to compose a response on paper (e.g., in a “bluebook”) in lieu of using a laptop.

(d) At least part of the exam will test your understanding of law by requiring you to provide legal analysis involving the application of law to facts.

(e) At least part of the exam will test your understanding of non-legal material that we cover, such as science we have studied.

(f) **The Correspondence Principle:** The emphasis on the exam will track the emphasis in class and in the readings. For example, if we glossed over something in class and there was little or no reading on it, it would not be more than a trifling part of the exam, if even that.

(g) **Comprehensiveness:** In keeping with the Correspondence Principle, I will strive to be very comprehensive in terms of the coverage of topics on the exam. I will use this syllabus and the Chart of Assignments as a checklist. I expect to include, in some way, every topic that was substantially explored in class.

10-3. Some Possibilities for the Exam:

(a) For an essay portion, allowable time might be structured such that you have a separate period for reading/outlining, during which you will not be allowed to begin composing your response, and a separate period for exam-writing, during which you will be allowed to write a response upon which you will be graded.

(b) A calculator might be allowed for part or all of the exam. There may be limitations on what kind of calculator is allowed.

10-4. I will have more to say about the exam later in the semester. And at some point I will release an exam prospectus that provides additional information about the exam.

11. SAFE AND WELCOMING EDUCATIONAL ENVIRONMENT; ISSUES OF DISCRIMINATION, ACCOMMODATION, AND ACCESS: As members of the School of Law community, each of us has the obligation to work toward an environment where all students are given the fullest possible opportunity to flourish. You should know that UND has a number of policies and programs that are part of its commitment to providing a safe and welcoming educational environment for all. These include provisions regarding discrimination, access, and accommodation.

11-1. The office of the Provost has encouraged the inclusion of the following in course syllabi with regard to UND's commitment to provide a safe and welcoming educational environment for all:³

Notice of Nondiscrimination

It is the policy of the University of North Dakota that no person shall be discriminated against because of race, religion, age, color, gender, disability, national origin, creed, sexual orientation, gender identity, genetic information, marital status, veteran's status, or political belief or affiliation and the equal opportunity and access to facilities shall be available to all. Concerns regarding Title IX, Title VI, Title VII, ADA, and Section 504 may be addressed to Donna Smith, Director of Equal Employment Opportunity/Affirmative Action and Title IX Coordinator, 401 Twamley Hall, 701.777.4171, und.affirmativeactionoffice@UND.edu or the Office for Civil Rights, U.S. Dept. of Education, 500 West Madison, Suite 1475, Chicago, IL 60611 or any other federal agency.

Reporting Sexual Violence

If you or a friend has experienced sexual violence, such as sexual assault, domestic violence, dating violence or stalking, or sex-based harassment, please contact UND's Title IX Coordinator, Donna Smith, for assistance: 701.777.4171; donna.smith@UND.edu or go to UND.edu/affirmative-action/title-ix.

Faculty Reporting Obligations Regarding Sexual Violence

It is important for students to understand that faculty are required to share with UND's Title IX Coordinator any incidents of sexual violence they become aware of, even if those incidents occurred in the past or are disclosed as part of a class assignment. This does not mean an investigation will occur if the student does not want that, but it does allow UND to provide resources to help the student continue to be successful at UND. If you have been the victim of sexual violence, you can find information about confidential support services at UND.edu/affirmative-action/title-ix.

11-2. Additional Information Regarding Faculty Reporting Obligations: All faculty are subject to the mandatory obligation to report all incidents of sex-based discrimination, harassment, violence, or other misconduct to the University's Title IX Coordinator or a Deputy Coordinator as soon as possible, including the names of the people involved (to the extent known), and the details of incident - including what happened when and where.

11-3. Students with Special Needs and Disabilities: If you have a disability and plan to request a disability accommodation, you should schedule an appointment to discuss the issue with the School of Law's Assistant Dean for Student Life, who may then refer you, as appropriate, to UND's Disability Services for Students office. Disability accommodations are generally kept confidential from instructors. If you have medical information to share with me in advance of and in case of any prospective

³ See <https://und.edu/provost/course-resources.cfm>. Note that a portion of the Provost office's language regarding disability access has been omitted, as it conflicts with School of Law policy.

emergency, or if you need special arrangements in case the building must be evacuated, please e-mail me or make an appointment with me to discuss.

12. REVISIONS TO THIS SYLLABUS: This syllabus may be amended or revised, and if it is, the most recent syllabus will be posted to the class website.

13. COURSE ORGANIZATION AND READING ASSIGNMENTS: As I explained in our first class, as this is the first time I am teaching this class, I am retaining a great deal of flexibility over what we will cover.

I am dividing our subject matter into “L” topics, which more squarely concern law and legal practice, and “S” topics, for “science and society,” which more broadly concern the scientific, technological, economic, cultural, and social context for oil and gas law. The list below is a rough sketch of what we may cover. Numbered topics I am committed to covering. Bulleted topics are prospective. At this point, I believe the list is too long and that we will not be able to cover all of what is here. On the other hand, there may be topics not found below that are inserted into our coverage. In particular, new topics may be inserted depending on the availability of guest speakers. As the course evolves, the Chart of Assignments (available from the class webpage) will serve as an evolving memorialization of what we study.

L. Law

A. Ownership

1. Ad Coelum Doctrine
2. Petroleum Ownership Theories
3. Rule of Capture and Correlative Rights
4. Ownership After Extraction
 - Trespass
 - Slander of Title
 - Loss of Mineral Ownership

B. Oil & Gas Leases

- Purpose and Nature of Leases and Lease Rights
- Granting Clause
- Habendum Clause
- Pooling Clause
- Royalty Payments
- Division Orders
- Remedies for Failure to Pay Royalties
- Miscellaneous Lease and Royalty Problems

C. Titles and Conveyances in Oil & Gas Interests

- Distinction Between Mineral Interests and Royalty Interests
- Shared Ownership of the Mineral Estate
- Terminable Interests

D. Oil & Gas Conservation Law and Regulation

- Introduction

- Conservation Law and Regulatory Practice
- Regulatory Challenges to Oil and Gas Development
- E. Oil & Gas Environmental Regulation and Liability**
 - Land Use Considerations in Obtaining the Lease
 - Liability Considerations in Obtaining the Lease
 - Drilling and Completion Operations
 - Production Activities
- F. Trade Secrets and Oil & Gas**
 - Introduction to Trade Secrets
 - Trade Secrets and Hydraulic Fracturing
- S. Science & Society**
 1. Physics of Energy
 2. Oil & Gas History, Basics
 3. Geology Fundamentals
 4. Petroleum Geology
 5. Exploration and Extraction Technology Basics
 6. Land Descriptions
 - Hydrocarbon Chemistry
 - Hydraulic Fracturing and Horizontal Drilling
 - Supply and Demand Basics
 - Oil & Gas Economics
 - Thermodynamics
 - Oil Refining
 - Dakota Access Pipeline Protests
 - Fracking on Film
 - Anthropogenic Climate Change
 - Sustainability Studies
 - Energy and Economic Welfare

14. FEEDBACK: If you have feedback for me – suggestions, ideas, commendations, or criticisms – please do not hesitate to tell me in person or by e-mail. If sending something to me anonymously would make you feel more comfortable, then I invite you to do just that.

I hope you enjoy the course!

– EEJ

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