

Climate Change Law Spring 2019 – Richards

You will email your exam to my administrative assistant, Alanna Clanton <aclant1@lsu.edu>, by 10AM, Friday, May 3. Submit it in a Microsoft Word or PDF file, with only your exam number on the document to identify it. Name the file Law 5414 Exam – [your exam number] (Law 5414 Exam – 4677). She will print the exam and give me the paper copy to allow anonymous grading. She will reply to you when she gets your email. If you do not get the reply, check with her to make sure the exam was received.

Mechanics: 12pt font, single-spaced, a blank line between paragraphs (like this exam).

Exam is open book – any materials we used in class, materials linked to the class blog, and your own notes may be used. What you turn in must be your own work. Do not confer with others. Attribute any published work you use. General Internet research is prohibited. (This is not a research paper.)

On the legal questions, you should tie your answer to the cases and regs and be specific. Do not just discuss policy. You do not need to use Bluebook form, just give your readers enough information to find the reference if they want to look it up. Put the cite info in parenthesis (*Mass v EPA*) in the text, do not use footnotes. You may use graphics and illustrations as necessary.

Review and edit your answers for clarity and brevity. You have more than enough words, if you use them carefully.

Question 1

Your law firm represents a major reinsurance company which is working on a long-term plan for managing climate risks. One part of this plan is determining the probability that US climate litigation will result in significant damage awards or major regulatory policy changes. Climate change litigation faces two legal hurdles in the United States. The first is standing – can you get in court at all? The second is whether there is a substantive law remedy, either through regulation – the Juliana case and its ilk – or through damages, as with the nuisance cases. You are to write an analytical memo – not advocating either side of the dispute – on how the US courts have handled standing in the climate cases, including any relevant dissents. While you cannot predict how the United States Supreme Court will eventually rule on standing in climate litigation, you need to address the issues that the court will be concerned with and give your best analysis of how the court will rule on standing in the different classes of cases. Up to 2500 words.

Question 2

Having reviewed your excellent memo on standing in the climate litigation cases, the firm has asked you to draft a companion memo on the second hurdle in the climate change law cases – whether there is a substantive law remedy that will survive preemption by the federal government’s regulatory power under the Clean Air Act. (Be sure to address the relevant issues in *Mass v. EPA*, *American Electric Power Company*, the Endangerment Finding and the associated social cost of carbon, the automobile emissions standards, and the Clean Power Plan.) You should also discuss whether and how the EPA can eliminate or weaken climate change regulations and the Endangerment Finding without eliminating the CAA preemption of climate change claims. Up to 3500 words.

Question 3

After a lot of angry complaints by clients who were flooded in the 2016 flood, your firm wants its property lawyers to do a better job of counseling clients about flood risk. You have been asked to write a memo explaining what a lawyer should know when counseling a residential client in Baton Rouge or New Orleans about flood risk. You should include an explanation of the insurance issues with flood coverage and how it works with the usual property/casualty homeowner's policies. Be sure to explain the significance of the different flood occurrence zones (1% per year, 0.2% per year, etc.) and whether these are reliable measures of flood risk. Up to 2500 words.