



Common Law Review

Short description of student topics with references suggesting starting point literature and case law - Environmental Law Issue -

CLR, 3 March 2008

The following table includes more detail description of 35 student topics for the Environmental Law issue of the CLR which will be published in the winter semester 2008-2009. The authors are welcomed to choose any other topic within this area of law. Although the description refers to Czech law, authors could choose any other law in the Centre and Eastern Europe (such as, for example, Slovakian or Polish law) or elsewhere. Similarly, authors could compare the law from these region not only with US or English common law but they could do so with common law in Australia, New Zealand, Hong Kong or elsewhere.

No.	Title of the Topic	Area	Reason why the topic is interesting and relevant for today	Starting Point of the Literature ¹
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¹ In the second step, the authors are welcomed to research Internet and databases such as Westlaw, Kluwer, Oxford Journals (which are all accessible from the library at the Law Faculty in Prague) and books and other literature on environmental law at the library at the Law Faculty in Prague.

1.	Class Action in Environmental Law: Utopia or Creeping-in Reality	Civil Procedure	<p>Financial Times (FT) recently reported about one of the largest environmental law cases brought before the English courts. The case was brought by an English law firm on behalf of 12,500 Ivorians who claim that they were poisoned by 500 tonnes of toxic chemicals dumped by a ship chartered by Trafigura, the international oil trading business, in a lagoon close to Abidjan, capital of Ivory Coast, in 2006. The Ivory Coast government claims that it killed 10 people and 100,000 had to seek medical advise. The claim submitted by the claimants suggest that Trafigura knew or should have known that the waste was potential harmful and that the waste disposal contractor was incompetent. The FT report indicates that as a result of the recent legislative changes in the UK and a landmark judgment of the European Court of Justice, the law firms expect potential opportunities in this area.</p> <p>An article choosing this topic may do, for example, one or more of the following: (i) critically analyze the recent legislation changes/case law in the UK and the relevant ECJ case law, and what could or should be changed under Czech procedural law; (ii) the article may also compare the procedural changes in the UK/EU and compare it with the US.</p>	<p>US law part: You will get help on this from CLR once you choose this topic.</p> <p>English law part: Peel, Michael. Lawyers in a hunt for big game. <i>Financial Times</i> 31 January, 2008 and Peel, Michael. European Lawyers in hunt for big game. <i>Financial Times</i>. 30 January, 2008. Available at: www.ft.com ;</p> <p>Czech law part: brief passage about class action under Czech procedural law in Winterova, Alena and others. <i>Civilní právo procesní</i>. 4th ed. Linde: Prague, 2006, pg. 236-237.</p>
2.	Aarhus Convention and the administrative proceedings: Useful sword or shield	Administrative Procedure	<p>Aarhus convention has been very efficiently used by the NGOs and other participants when defending their rights in administrative proceedings. For example, Aarhus convention was successfully used when the Czech Supreme Administrative Court quashed the approved change of the area plan (uzemni plan) relating to a new runway of the Prague Airport (decision 1 Ao 1/2006-74 of 18 July 2006). This is currently a major issue for the Czech government since it may affect the future privatization price for the Prague airport. There seems to be English case law relating to the Aarhus convention as well.</p> <p>There has been no article which would compare common law with Czech law written on the subject yet. From the Czech law perspective, one of the most interesting issues under the Aarhus convention is the right of the public to participate in the decision-making of the public authorities. Thus, an article choosing this topic may: (i) analyze some or all the cases of the Czech Supreme Administrative court which have dealt with right to participate under the Aarhus Convention; (ii) analyze the relevant English/US case law for the same issue; (iii) and suggest the implications for the (Czech) public authorities and the participants of the administrative proceedings (including the zoning proceedings under new Czech Building Act).</p>	<p>US law part: You will get help on this from CLR once you choose this topic.</p> <p>English law part: recent English case law is available at: http://www.bailii.org/ (into the search formular, insert: Aarhus); large part of the English case law before 2000 is available at Westlaw database, accessible from the Library of the Law Faculty in Prague.</p> <p>Czech law part: cases of the Czech Supreme Administrative Court at http://www.nssoud.cz/anonymous.php (into the search formular, insert: Aarhus)</p> <p>- materials at the web page of EPS (at http://www.eps.cz/php/index.php); materials at the webpage of REC (available at http://www.reccr.cz/).</p> <p>- Damohorský and others. <i>Právo životního prostředí</i>. 2nd ed. CH Beck: Praha, 2007, pg.</p>

				<p>227-241.</p> <p>- Kusak, Martin. Věčné snahy o omezení účasti veřejnosti na rozhodování v záležitostech životního prostředí v kontextu Aarhuské úmluvy. <i>České právo životního prostředí</i>, 1/2006, str. 6-27. Available at: http://www.cspzp.com/dokumenty/casopis/cislo17.pdf; materials at http://via.iuris.pilaw.cz/index.php?p=show&ar=t=zivotni_prostredi</p>
3.	Hunters and Birds: Who Should Prevail	Birds	<p>Under relatively recent EU legislation, some of the birds species are highly protected. Yet, the same species have been a traditional target of the hunters. There has been relatively rich case law of the European Court of Justice, as well as national case law in the UK. There has been no article which would compare common law with Czech law written on the subject yet. Thus, an article choosing this topic may: (i) analyse the EU law; (including case law of ECJ) (ii) compare the national law (such as English law) ; and (iii) suggest the implication for the Czech law (including the question whether the Czech law is compliant with the relevant EU legislation).</p>	<p>US and English law part: You will get help on this from CLR once you choose this topic.</p> <p>EU law part: Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds; ECJ case law: Case C-65/05, <i>WWF Italia and Others</i>; and <i>subsequent case law</i></p>
4.	It Is All about Money: Economic Instruments of Environmental Protection	Law and economics/R egulation	<p>Taxes, charges, subsidies and other kinds of economic instruments are legal institutes that, in the name of environmental protection, focus rather on personal economic motivation than on (legal) person's sense of legal obligation towards the environment. The article may evaluate practical legal aspects and impact of certain economic instruments with respect to environmental protection of water, air, soil in common law countries in comparison with Czech regulation(s).</p>	<p>US law part: Richard B. Stewart. A NEW GENERATION OF ENVIRONMENTAL REGULATION? <i>Capital University Law Review</i> <i>Capital University Law Review</i>, 2001, 29 Cap. U.L. Rev. 21 (<u>available at the Westlaw database, accessible from the library of the Law Faculty in Prague</u>).</p> <p>English law part: Bell, S.: <i>Environmental Law - The Law and Policy Relating to the Protection of the Environment</i>. 4th ed. London: Blackstone Press Ltd., 1997</p> <p>Czech law part: Dienstbier, F.: Ekonomické zajištění odpovědnosti při ochraně životního prostředí. In: <i>Daně</i>, r. XII., č. 10-11/2004 (132-133), s. 20-25</p> <p>- Dienstbier, F.: Efektivita práva a ekonomické nástroje ochrany životního prostředí. In: <i>České</i></p>

				právo životního prostředí, č. 4/2004 (14), s. 49-52
5.	Environmental Protection and Public Interest: Expropriation In the Name of Tomorrow		Even though the institute of expropriation is present in common law countries as well as in continental ones, conditions and public interest threshold for expropriation differs. The article may deal with the nature and conditions of the legal institute of expropriation in decisions of the highest courts in common law countries in comparison with conditions stemming from the Czech regulation and case law with respect to public interest requirement.	<p>US law part: You will get help on this from CLR once you choose this topic.</p> <p>Czech law part: relevant case law (including case relating to forge accross Labe river (<i>jezy na Labi</i>) of the Czech Constitutional Court)</p> <p>- Černý P., Dohnal V. (eds.) Přístup k soudům při ochraně životního prostředí. Praha : nakladatelství ASPI Publishing, s.r.o., 2004, s. 179.</p> <p>- Dohnal,V.: Vyvlastnění a ochrana vlastnického práva, Ekologický právní servis, 2002</p> <p>- Průchová I. – Chyba, J.: Omezení vlastnického práva k pozemku z důvodu obecného zájmu, Masarykova univerzita v Brně, 1998</p>
6.	Science and environmental law- a non-functioning marriage?	Regulation	The relationship between science and environmental law has not been clear cut. In certain cases, the law could be viewed as a brake to the scientific research, in other cases, it could promote the research. Another issue may be to which extent the efficiency of the legal regulation could be affected by the uncertainty in the science. An author choosing this topic may analyze any of the ideas suggested above (or any other which would fit into the topic), drawing attention to the examples from the common law and continent, including the Czech law.	US law part: Kolitch Sh.,Environmental and Public Health Impacts of U.S. Patent Law: Making the Case for Incorporating a Precautionary Principle. 36 Envlt. L. (2006) [available at HeinOnline]
7.	Emission Trading: Where do we go?	Air	As a result of the Kyoto protocol, EU as well as several US states introduced the emission trading schemes. Some of the states introduced trading schemes for other common resources even outside of the Kyoto protocol regime, such as certain US states for water trading. The article may critically evaluate how effective these legal tools are, and suggest if there are any other legal or other ways how to protect climate and other common resources.	

8.	Please, no appeal to limitation of powers: suing public bodies for inaction.	Procedural law and Administrative law	<p>Authorities are those, who are responsible for implementing protection measures. Their failure to introduce such measures may give rise to damage. Suing public bodies for their inaction may be a progressive step in the environmental protection policy. It has been an important topic in the US and EU law, and starts to be the one under English law. One of the problems is locus standi of the harmed parties. An author choosing this topic may describe possibilities of suing public authorities for inaction in the environmental protection area, comparing common law and EU law cases and legislation, with suggestions on how the issue would be treated under Czech law.</p>	<p>English law part: <i>R (J) v London Borough of Enfield and the Secretary of State for Health</i> [2002] EWHC 432, (on limitation of power); Cirel, Cooper: <i>Wellbeing, for better or not</i>. 7 November 2007. Available at: http://www.localgov.co.uk/index.cfm?method=news.detail&id=60544; s.2 Local Government Act 2000 (UK), see comments to s.2 at http://opsi.gov.uk/acts/acts2000/en/ukpgaen_2000022_en_1, see also s.8 LGA 2000 in comparison with s 137 LGA 1972.</p> <p>US law part: <i>Massachusetts v. Environmental Protection Agency</i>, 127 S. Ct.1438 (2007); (analysed in European Energy and Environmental law review, Feb. 2008 which is available at the Kluwer Law International database, accessible from the library at the Law Faculty in Prague);</p> <p>EU law part: relevant case law of the ECJ; Craig, Paul and De Burca, Grainne. EU Law: Text, Cases and Materials. 4th ed. Oxford Press: 2007.</p> <p>Czech law part: Commentaries to Czech administrative law on the problem of inaction of the public authorities.</p>
9.	The precautionary principle: better safe than sorry?		<p>It may be better to prevent harm than to deal with its consequences. Facing rapid development of science and deteriorating environment, the precautionary principle may be a convenient instrument for solving the problems of the kind,. An author of this topic may analyze whether there is merit for the principle and compare how is it applied under international law (including WTO law), and national law, such as US, English, EU and/or Czech law.</p>	<p>US law part: Kolitch Sh., <i>Environmental and Public Health Impacts of U.S. Patent Law: Making the Case for Incorporating a Precautionary Principle</i>. 36 <i>Envit. L.</i> (2006) [available at HeinOnline]</p> <p>English law part: You will get help on this from CLR once you choose this topic.</p> <p>WTO law: Rouwborst, Arie. <i>Evolution and status of the precautionary principle in international law.</i></p>

				<p>Hague: Kluwer Law International, 2002 [available in the Library of the Law Faculty in Prague]; Cheyne, I. Gateways to the precautionary principle in WTO law, <i>Journal of Environmental Law</i>, 1-18 (2007) [available at Oxford Journals database, accessible from the Library of the Law Faculty in Prague] EU law part: Macrory R. and others (ed.) Principles of European environmental law: proceedings of the Avosetta Group of European Environmental Lawyers. Groningen : Europa Law Pub., 2004 [available in the Library of the Law Faculty in Prague]</p> <p>Czech law part: Damohorský and others. Právo životního prostředí. 2nd ed. CH Beck: Praha, 2007, pg. 207-221.</p>
10.	<p>You got a ban! Trade and environmental protection measures.</p>		<p>Interconnected with the precautionary principle, the law may have problems with adjusting the right balance between trading and taking environmental protection measures. An author of this topic may analyse the issue under international (WTO) law and EU law, drawing examples of measures from the common law or Czech law area.</p>	<p>International(WTO) law: United States-Import Prohibition of Certain Shrimp and Shrimp products, 1997 WL 304829 (W.T.O.). <i>Brazil – Measures Affecting imports of Retreated Tyres</i> 2007 WL 4245047 (W.T.O.) [available at Westlaw, insert WT/DS332/AB/R into the search field]</p> <p>van Galster G. <i>Faites Vos Jeux</i> - Regulatory Autonomy and the World trade Organisation after <i>Brazil Tyres</i>. <i>Journal of Environmental Law</i> (2008) and Hilson. Information Disclosure and the Regulation of the Traded Product Risks, <i>jel</i> 2005 17 (3) [both at Oxford Journals database, available from the Library at the Law Faculty in Prague]</p> <p>EU law part: relevant case law of the ECJ; Craig, Paul and De Burca, Grainne. EU Law: Text, Cases and Materials. 4th ed. Oxford Press: 2007.</p>

11.	Financial security: fresh breeze with the Environmental Liability Directive		<p>EU Environmental Liability Directive (2004/35/CE) predicts that the Member States should take measures to encourage the use by operators of any appropriate insurance or other forms of financial security and the development of financial security instruments and markets in order to provide effective cover for financial obligations under this Directive. The problem in the EU is that financial security products purely related to environmental damage do not exist yet on a large scale. This is a consequence of the fact that polluters have usually not been required so far to remedy environmental damage. Therefore there has been no demand for insurance policies covering it, to stick with this example of a financial security product. It is to be expected that financial security products will start to emerge. The Directive requires the Commission to report in 2010 on the availability of such products and their costs and conditions.</p>	<p>English law part: Crowhurst, Georgina. The Environmental Liability Directive: A UK Perspective. 15 <i>European Environmental Law Review</i> pg.266-276 (2006) [available at Kluwer Law International database at the Library at the Law Faculty in Prague]; EU law part: Article Tanega: Implications of the environmental liability on the insurance industry. [Oxford Journals database, available from the Library at the Law Faculty in Prague]; materials from the following conference available at http://www.eeb.org/activities/env_liability/Report-EEB-Liability-Seminar-May06.pdf; ; summary on the transposition process in the Member States is available at: http://www.eeb.org/activities/env_liability/table-transposition-MAR.pdf</p> <p>USA part law: Peterson, J., CERCLA Choice-of-Law: Insurers' Attempts to Escape Their Own Quagmires <i>Comment.</i> 36 <i>Envlt. L.</i> (2006) [available at HeinOnline]</p> <p>Czech law part: Kruzikova, Eva. Transposition of the Environmental Liability Directive in Czech Republic. Presentation. Brussels May 2006. Available at: http://www.eeb.org/activities/env_liability/2-EEB-ELD-CZ-EvaKruzikova_290506.pdf; Bernard, Michal. Odpovědnost za škody na životním prostředí – díl II. <i>Via Iuris</i>. Available at: http://via.iuris.pilaw.cz/index.php?p=msg&id=153 Draft Czech Act on Environmental Damage (“<i>Vládní návrh zákona o předcházení ekologické újmě a o její nápravě a o změně některých zákonů</i>”, <i>Parliament Print No. 322</i>). Available at: http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=322&CT1=0</p>
12.	Interim Relief in Environmental Cases: Fight against the	Civil Procedure/A	A difficulty in environmental judicial review proceedings is the obtaining of an interim prohibitory injunction which seeks to prevent a third party	US law part: You will get help on this from CLR once you choose this topic.

	Windmill?	Administrative procedure	<p>from causing further damage until a full hearing takes place. Under English law, the usual requirement is to give a cross-undertaking in damages (ie in the event of losing the case, the applicant undertakes to reimburse a party adversely affected by the decision for any profit lost as a result of halting the activity). Often this can run into millions of pounds. An example is the Lappel Bank case which was referred by the House of Lords to the European Court of Justice (ECJ), or a case heard by the Privy Council (an alliance of Belize NGOs against the Department of the Environment in relation to a decision to grant clearance for a dam without an adequate environmental impact assessment). Under Czech law, the NGO's and harmed parties have also difficulties with obtaining interim relief, both in civil and administrative procedure (although the latter type of the procedure may be more common in Czech area).</p> <p>An author choosing this topic may analyze the problems with obtaining of interim relieves under common law, and Czech/German law. The impact of the EU Environmental Directive should be discussed.</p>	<p>English law part: Lappel Bank and subsequent case law</p> <p>EU law part: Lappel Bank and subsequent case law</p> <p>German law: recent case about "Most Lesního zámečku" (see pressrelease at http://vikend.ihned.cz/c3-22016400-v00000_d-unesco-praha-a-pravo-na-rozvoj)</p> <p>Czech law part: Commentaries to the Czech Civil Procedure; case law about interim relieves; Černý, Pavel. Předběžné opatření ve správním soudnictví jako cesta k účinnější soudní ochraně životního prostředí Via Iuris. http://via.iuris.pilaw.cz/index.php?p=show&ar=t=zivotni_prostredi</p>
13.	Funding of Environmental Case: Peanut or Sisyphus Stone?	Civil Procedure/Administrative	<p>Environmental cases tend to be very expert heavy and lengthy. For example, the personal injury claims brought as test cases against British Nuclear Fuels involved 35 experts with the trial lasting almost a year. The case was brought on the basis that paternal irradiation from Sellafield was the cause of leukaemia in offspring. Environmental cases tend to be costly to investigate and bring it. Interlinked with the problem of funding a case is the problem that when a claimant is unsuccessful then he or she is likely to have to pay the defendant's costs. This is often used as a method of intimidation during the course of the litigation. In the recent "ghost ships" case in the High Court, Friends of the Earth successfully challenged the Environment Agency's decision permitting modifications to a waste management licence allowing the dismantling of toxic waste. Able UK Ltd, an interested party, served a schedule of costs on Friends of the Earth amounting to over £100,000.00 for a one day judicial review hearing on a preliminary issue.</p> <p>An author choosing this article may compare what are the rules on costs of proceedings in the common law area and under Czech law, analyze how this will be changed under English and Czech law as a result of the EU Environmental Directive should be discussed and suggest whether the rules are sufficient.</p>	<p>US law part: You will get help on this from CLR once you choose this topic.</p> <p>English law part: You will get help on this from CLR once you choose this topic.</p> <p>Czech law part: Bernard, Michal. Odpovědnost za škody na životním prostředí – díl II. Via Iuris. Available at: http://via.iuris.pilaw.cz/index.php?p=msg&id=153</p>

14.	EIA: A Mere Formality?	Administrative Procedure	EU Directive on the Assessment of the Effects of Certain Public and Private Projects on the Environment (EIA Directive) has been partly based on the EIA system in the US. It requires the public authorities of the Member States to consider the EIA assessment. The question is to which extent the state authorities have to follow the result of the EIA. The judgment of the ECJ in Kraaijeveld (C-72/95) deals with this question. An article choosing this topic may start with how the concept of EIA has been developed in the US and later, in the EU, and review the relevant Czech and English case law dealing with the question of the discretion of the state authorities when interpreting the result of the EIA assessment, i.e. whether the EIA is binding on substance or whether it is just a procedural formality. The article may choose any other issue relating to common law and Czech experience with the EIA and evaluate whether the EIA regulation under US, English or Czech law is sufficient.	<p>Background to EIA: Sands, Philippe. Principles of International Environmental Law. 2nd ed. Cambridge University Press: Cambridge, 2003, pg. 799-825. [at the library of the Law Faculty in Prague.]</p> <p>US/English law part: You will get help on this from CLR once you choose this topic.</p> <p>Czech law part: relevant case law of the Supreme Administrative Court; Damohorský and others. Právo životního prostředí. 2nd ed. CH Beck: Praha, 2007, pg. 207-221.</p>
15.	EU Environmental Liability Directive: Step in the Right Direction?	Civil Liability (Tort)	EU Environmental Liability Directive (2004/35/EC) was adopted in April 2004, later amended. Vast majority of the Member States have not transposed it on time. Currently, draft new Czech Act on Environmental Liability has been pending in the Czech Parliament. An author choosing this topic may discuss the common law and the Czech law prior to the EU Directive and what the directive brings new, evaluating pros and cons of the directive.	<p>US law part: You will get help on this from CLR once you choose this topic.</p> <p>English law part: Georgina Crowhurst, The Environmental Liability Directive: A UK Perspective 15 <i>European Environmental Law Review</i> pp. 266-276 (2006) [available at Kluwer Law International database at the Library at the Law Faculty in Prague]</p> <p>EU law part: CMS Cameron McKenna. <i>Study of Civil Liability Systems for Remedying Environmental Damage</i>, McKenna, London 1996. Available at: http://www.europa.nl/environment/liability/pdf/civil_liability_finalreport.pdf</p> <p>White Paper of 9 February 2000 on environmental liability [COM(2000) 66 and submitted comments of the parties to the draft directive; summary on the transposition process in the Member States is available at: http://www.eeb.org/activities/env_liability/table-transposition-MAR.pdf</p> <p>Czech law part: analysis of the</p>

				<p>implementation of the directive into Czech law in European Network of Environmental Law Organisations. <i>Environmental Liability Directive. Legal Analysis</i>. 2007, pg. 41-46. Available at http://www.justiceandenvironment.org/wp-content/uploads/2008/01/eld-legal-analysis.pdf</p> <p>and European Network of Environmental Law Organisations. <i>Position Paper</i>. Available at: http://www.justiceandenvironment.org/wp-content/uploads/2008/01/eld-position-paper.pdf</p> <p>Kruzikova, Eva. Transposition of the Environmental Liability Directive in Czech Republic. Presentation. Brussels May 2006. Available at: http://www.eeb.org/activities/env_liability/2-EEB-ELD-CZ-EvaKruzikova_290506.pdf; Draft Czech Act on Environmental Damage (“Vládní návrh zákona o předcházení ekologické újmě a o její nápravě a o změně některých zákonů”, Parliament Print No. 322). Available at: http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=322&CT1=0</p>
16.	Playing ping-pong with liability: when neither parent nor subsidiary want to bear responsibility	Civil Liability (Tort)	There has been some common law and continental case law dealing with the piercing of the corporate veil in the environmental cases. An author choosing this article may analyze these cases, comparing the common law with one other jurisdiction. To be innovative, the author may speculate on how this issue would be dealt with under Czech Commercial Code.	<p>US law part: <i>United States v. Bestfoods</i>, 118 S.Ct. 1876 (1998);</p> <ul style="list-style-type: none"> - <i>Piper Aircraft Co. v. Reyno</i>, 454 U.S. 235 (1981) - <i>Bano v. Union Carbide Corp.</i>, 273 F.3d 120 (2d Cir. 2001) - Johnson, William B. Liability of individual shareholder, or director of corporation that owned contaminating facility in action pursuant to Comprehensive Environmental Response, Compensation, and Liability Act American Law

				<p>Reports 122 A.L.R. Fed. 321 (1998) [see Westlaw, a legal database accessible at the library of the Law Faculty in Prague];</p> <p>- Nguyen, Helen. Rochester Gas & Electric v. GPU, Inc. at Derivative liability at issue in environmental liability case. Daily Record, May 6, 2004. Available at: http://findarticles.com/p/articles/mi_qn4180/is_20040506/ai_n10069655/pg_3;</p> <p>- Anderson, M. Transnational Corporations and Environmental Damage: Is Tort law the Answer. 41 <i>Washburn law journal</i> 399 (2002); Holding Corporate Officers Criminally Responsible For Environmental Crimes: Collapsing The Doctrines Of Piercing The Corporate Veil And The Responsible Corporate Officer. 30 <i>New England Journal on Criminal and Civil Confinement</i> 305 (2004)</p> <p>[both available at Westlaw database, available from the Library at the Law Faculty in Prague];</p> <p>- Andrew N. Davis, Stephen J. Humes, & Catherline K. Lin. A Lesson in Corporations, Subsidiaries and Environmental Problem. BUS. L. TODAY, Nov./Dec. 2002 http://www.abanet.org/buslaw/blt/2002-11-12/davis.html;</p> <p>English law part: <i>Salomon v. Salomon</i> [1987] A.C. 22 (Eng.), <i>Lubbe v. Cape Plc. Afrika</i>, [2000] 2 Lloyd's Rep. 383</p> <p>Czech law part: You will get help on this from CLR once you choose this topic.</p>
17.	Fault or Strict Liability: Shift to More Lenient Liability Test in Environmental Law?	Civil Liability (Tort)	Establishing causation (or proximity as its part) for environmental damage by the claimant is difficult. As a result, in some of the states at the Continent (such as the Netherlands or Germany), the judges seem to modify their traditional "but for" test, inventing several new theories, such as adequacy theory and, most recently, reasonable imputation of damage theory. In common law jurisdiction, there seem to be a similar	Continental law part: Van Dunne, Jan M. Environmental Liability, Continental Style. In van Dunne, Jan M. (ed.) <i>Environmental Contracts and Covenants: New Instruments for a Realistic Environmental Policy?</i> Proceedings of the International Conference Vermande Lelystad, pg.

			<p>development, although much more limited. Under Czech law, this important area has been completely unexplored. An author choosing this article may compare current continental approach of the Dutch and German judges with the common law area (UK or US or both of them). To be even more innovative, the author may want to analyze the existing Czech literature on causation, (choose a past or pending Czech environmental case) and suggest what the courts could have done differently/or could do differently in the future to ease the situation of the claimant.</p>	<p><u>[Petr Zakoucky of CLR could provide with a copy]; Wilde, Mark. Civil Liability for Environmental Damage: A Comparative Analysis of Law and Policy in Europe and the United States. Kluwer: Hague, 2002, pg. 233-248 [at the library of the Law Faculty in Prague]; Loser, Peter. Kausalitätsprobleme bei der Haftung für Umweltschäden. Haupt: 1994[at the library of the Law Faculty in Prague]</u></p> <p>US law part: You will get help on this from CLR once you choose this topic.</p> <p>English law part: Wilde, Mark. Civil Liability for Environmental Damage: A Comparative Analysis of Law and Policy in Europe and the United States. Kluwer: Hague, 2002, pg. 56-78, pg. 195-231 [at the library of the Law Faculty in Prague]</p> <p>Czech law part: literature mentioned in the commentary to section 420 of the Czech Civil Code Svestka, J. Občanský zákoník: komentář. 10th ed. CH Beck: Praha, 2006.</p>
18.	<p>More Causes of the Damage and Multiple Tortfeasors: Reducing the Burden of Proof on Causation</p>	Civil Liability (Tort)	<p>In some environmental damage cases, there can be more than one possible cause. The difficult point then for the claimant is to prove to which extent the conduct of the tortfeasor contributed to the loss. There are various ways which the courts of different jurisdictions helped the plaintiff in this. In some jurisdictions, the courts or legislators went even that far that they hold the small contributor severally liable for the damage. Under Czech law, this important area has been completely unexplored. An author choosing this article may compare current continental approach in one or more jurisdiction, with the common law area (UK or US or both of them). Environmental EU law should be addressed also. To be even more innovative, the author may want to analyze the existing Czech literature on the issue, (choose a past or pending Czech environmental case) and suggest what the courts could have done differently/or could do differently in the future to ease the situation of the claimant.</p>	<p>Continental law part: Van Dunne, Jan M. Environmental Liability, Continental Style. In van Dunne, Jan M. (ed.) <i>Environmental Contracts and Covenants: New Instruments for a Realistic Environmental Policy?</i> Proceedings of the International Conference Vermande Lelystad. <u>[Petr Zakoucky of CLR could provide with a copy]; Wilde, Mark. Civil Liability for Environmental Damage: A Comparative Analysis of Law and Policy in Europe and the United States. Kluwer: Hague, 2002, pg. 233-248 [at the library of the Law Faculty in Prague]; Köndgen, Johannes. Multiple Causation and Joint Tortfeasors in Pollution Cases according to German Law. In: van Dunne, Jan M. (ed.) Transboundary Pollution and Liability: The Case of the River Rhine. Rotterdam: Vermande, pg. 99-106 [Petr Zakoucky of CLR could provide with</u></p>

				<p><u>a copy</u>]; Loser, Peter. Kausalitätsprobleme bei der Haftung für Umweltschäden. Haupt: 1994[<u>at the library of the Law Faculty in Prague</u>]</p> <p>US law part: <i>Filartiga v. Pena-Irala</i> 630 F.2d 876 (2d Cir. 1980)</p> <p>English law part: Wilde, Mark. Civil Liability for Environmental Damage: A Comparative Analysis of Law and Policy in Europe and the United States. Kluwer: Hague, 2002, pg. 56-78 [<u>at the library of the Law Faculty in Prague</u>]; Cambridge Water v Easter Counties Leather [1994] 2 WLR 53 and subsequent case law [see <u>Westlaw, a legal database accessible at the library of the Law Faculty in Prague</u>].</p> <p>Czech law part: literature mentioned in the commentaries to the Czech Civil Code, such as Svestka, J. Občanský zákoník: komentář. 10th ed. CH Beck: Praha, 2006.</p>
19.	Scope of Strict Liability: State of Art and other defenses	Civil Liability (Tort) / Administrative Liability	<p>Strict liability is not an absolute liability. Does or should the state of art or other defenses release you from liability under tort law or administrative law? For example, if a dangerous substance on your property leaks to the soil and water and the administrative authorities give you penalty for this, despite the fact that you have done all what has been required (i.e. regular checks of the waste system, regular training for employees, environmental audits, etc), is it in compliance with law and should it be? An author choosing this topic may choose to analyze any defense either under tort law or administrative law, comparing common law with a continental law. To be innovative, the author may suggest what the answer would be under Czech tort law (or administrative law).</p>	<p>Continental law part: Van Dunne, Jan M. Environmental Liability, Continental Style. In van Dunne, Jan M. (ed.) <i>Environmental Contracts and Covenants: New Instruments for a Realistic Environmental Policy?</i> Proceedings of the International Conference Vermande Lelystad, pg. [<u>Petr Zakoucky of CLR could provide with a copy</u>]</p> <p>Czech law part: individual analysis of relevant legislation; Damohorský and others. Právo životního prostředí. 2nd ed. CH Beck: Praha, 2007.</p> <p>US law part: You will get help on this from CLR once you choose this topic.</p> <p>English law part: Wilde, Mark. Civil Liability for Environmental Damage: A Comparative Analysis of Law and Policy in Europe and the United</p>

				States. Kluwer: Hague, 2002, pg. 227 [at the library of the Law Faculty in Prague]
20.	Tort law and Environmental Protection: Fight with the Windmills?	Philosophy/ Regulation	Mark Wilde, an English academic, points out that one of the main objections to the use of tort law as a means of environmental protection has been that it is ill-suited for public interest objectives, such as environmental protection. An author choosing this topic may, for example, suggest to which extent it agrees or disagrees with this.	Background: Wilde, Mark. Civil Liability for Environmental Damage: A Comparative Analysis of Law and Policy in Europe and the United States. Kluwer: Hague, 2002, pg. 303 – 305 [at the library of the Law Faculty in Prague]
21.	Transboundary Pollution: Question of Jurisdiction and Governing Law	Civil Liability (Tort)	The Brussels I Regulation (former Brussels Convention) and Rome II Regulation are dealing with the issue of jurisdiction and governing law in the tort cases, including the environmental cases. There has been some case law of the European Court of Justice relating to the Brussels Convention. An author of this article may compare the traditional rules on jurisdiction and governing law in common law and Czech (or any other law) and suggest how this has been changes by Brussels I Regulation and Rome II Regulation. To be innovative, the author may suggest what are the pros and cones of both regulations for the environmental law cases.	ECJ Case law : Case 21/76 <i>Mines de potasse d'Alsace</i> , and subsequent case law, Case C-343/04, <i>CEZ</i> EU Legislation : Brussels I Regulation (an dit predecessor, Brussels Convention), Rome II Regulation, US law part: <i>United States v. Canada</i> , 3.U.N.Rep.Int'l.Arbitration Awards 1907 (1941) (Trail Smelter arbitration)
22.	The Tragedy of the Commons: 40 Years Later	Regulation/Economic Analysis of Law	40 years ago, Garrett Hardin wrote a notable article titled The Tragedy of the Commons which provides a framework for analyzing relations between property rights and environmental protection. He claimed that resource depletion and pollution problems both stem from the incentives created by open access resources: when no one can exclude anyone else from access and use, scarce resources will become polluted and depleted. The only way of avoiding the tragedy is to restrict access and use by privatization of the use or regulation. An author choosing this topic may suggest to which extent the original thoughts seems to be valid, using examples of projects or events in the environmental law area.	Hardin, Garrett. The Tragedy of the Commons 162 <i>Science</i> 1244-1248 (1968) [available at http://www.sciencemag.org/cgi/reprint/162/3859/1243.pdf]; Cole, Daniel H. Clearing the Air: Four Propositions about Property Rights and Environmental Protection. 10 <i>Duke Env'tl. L. & Pol'y F.</i> 103. Available at: http://www.law.duke.edu/journals/delpf/articles/delpf10p103.htm#FA1 Cole, Daniel H. Pollution & Property. Comparing Onwership Institutions for Environmental Protection. Cambridge University Press: Cambridge, 2002 [at the library of the Law Faculty in Prague]
23.	Compensating Nobody or All: Liability for Damage to Natural Resources		In most Member States, environmental damage cannot be compensated in the absence of any personal damage or damage to property. An environmental liability regime at EC level needs to address this issue, thereby remedying some of the gaps in the environmental protection regimes of the Member States. The author of the article may	US law part: You will get help on this from CLR once you choose this topic. Brans, Edward. <i>Liability for Damage to Natural Resources. Background Paper for EU White</i>

			analyze the ways the compensation of damage caused to the natural resources may be done, comparing common law with other law, such as Czech law.	<p><i>Paper on Environmental Liability</i>. 17 September 1997. Available at: http://europa.eu.int/comm/environment/liability/ecodamage.pdf</p> <p>Cullet, Philippe. Liability and Redress for Human-Induced Global Warming: Towards an International Regime. 26A <i>Stanford Environmental Law Journal</i> 99 (2007) [available at Westlaw database, available from the Library at the Law Faculty in Prague]</p>
24.	Past Contamination: Who is going to pay for our history?	Clean-up Costs of Past Contamination	During the 19th and 20th century, large parts of the industrial areas were contaminated. However, many of original companies which caused the contamination do not exist anymore. The issue is who is going to pay for that and how. Governments have been dealing with this issue in different ways. An article choosing this topic may, for example, critically evaluate the Czech experience (entering into ecological agreements (ekologické smlouvy) between purchaser of the state assets and the state during the privatization in the 1990') and critically compare it with the experience in the UK/US, while considering the new EU guidelines for environmental state aid	<p>Czech law part: Nejvyšší kontrolní úřad. <i>Informace z ukončené kontrolní akce "Finanční prostředky poskytnuté z Fondu národního majetku České republiky k odstranění starých ekologických zátěží"</i>- 05/11. 2005 Available at: http://www.nku.cz/informace/informace-05-11.pdf ; Svoboda, Daniel. The Czech Experience in Eliminating Old Environmental Burdens Is Unique. <i>Czech Ecology</i> 1/2005, pg. 10-11; Damohorský and others. <i>Právo životního prostředí</i>. 2nd ed. CH Beck: Praha, 2007, pg. 87-8</p> <p>EU law part: van Calster, Geert. Will The EC Get a Finger in Each Pie? EC Law And Policy Developments in Soil Protection and Brownfields Redevelopment. 16 <i>Journal of Environmental Law</i> 3 (2004) [available at Westlaw database, available from the Library at the Law Faculty in Prague]; Vanheusden, Bernard. Towards a Legal Framework in the EU for Brownfield Redevelopment. <i>European Environmental Law Review</i> June 2003, pg. 178-186. [available at Kluwer Law International database at the Library at the Law Faculty in Prague]</p> <p>English law part: Crowhurst, Georgina and Davidson, Simone. Contaminated Land: The Impact of Two UK Landmark Cases. <i>European</i></p>

				<i>Environmental Law Review</i> . November 2006, pg. 343-349. [available at Kluwer Law International database at the Library at the Law Faculty in Prague]
25.	Administrative Enforcement of the EU environmental law: A Pipe-Dream?	Administrative Law	It has been indicated that one of the reasons why the enforcement of the EU environmental law is deficient is structural information deficit at the EU level. Neither EU Commission nor EEA has powers of investigations (this could be contrasted with the competition law area). The reason for this is that the Member States of the EU do not want this. Yet, the reports from the Member States on environmental compliance are insufficient.	EU law part: Somsen, Hans. Current Issues of Implementation, Compliance and Enforcement of EC Environmental Law. A Critical Analysis. In: <i>Liber Amicorum Gert Winter</i> . Europa Publishing: Groningen, 2003, pg. 416-428. [Petr Zakoucky of CLR could provide with a copy]
26.	Enforcement of Environment Protection through Criminal Law	Criminal Liability	Faure and Heine (pg. 88-93) suggest three big current topics in the criminal environmental law area: trend towards corporate criminal liability; discussion of whether administrative law is better suited to enforce the environmental legislation than criminal; and EU environmental criminal law (with two separate initiatives, one of the EU Commission - proposal for a directive on the protection of the environment through criminal law from February 2007 ; and a failed initiative of the EU Council). An author choosing this topic may address any of the above three issues, such as comparing the common law with the current and new draft Czech Criminal Code, analyzing whether the EU initiative will bring anything new.	US law part: You will get help on this from CLR once you choose this topic. National law of the EU Member States: Faure, M. and Heine, G. (ed) Criminal Enforcement of Environmental Law in the European Union. Kluwer: 2005, pg. 88-93 [at the library of the Law Faculty in Prague] EU law: see draft EU directive on protection of the environment through criminal law : http://ec.europa.eu/environment/crime/index.htm
27.	Waste: Do it and Leave it?	Waste	Using an example of Trafigura case (see topic No. 2) or any other, an article choosing this topic may critically analyze the UK, Czech and EU legislation (EU Waste Framework Directive, 75/442) and case law relating to the waste management and duty of care when disposing the waste with the waste disposal transporters.	Same as topic No. 1 above. Continental law part: Van Dunne, Jan M. Environmental Liability, Continental Style. In van Dunne, Jan M. (ed.) <i>Environmental Contracts and Covenants: New Instruments for a Realistic Environmental Policy?</i> Proceedings of the International Conference Vermande Lelystad [Petr Zakoucky of CLR could provide with a copy] English law part: s. 34 of the 1995 Environmental Protection Act EU law part: case law of the ECJ
28.	Waste: what is it?	Waste	From the perspective of waste regulation, the definition of the waste is crucial. It indicates who is subject of the relatively strict obligations. Yet,	EU law part: Krämer, Ludwig. EC Environmental Law. 4 th ed. Sweet&Maxwell: 2000, pg. 236-262;

			<p>the concept of waste has been relatively tricky, as could be seen by the ECJ and English case law. An article in the area may analyze the relevant English, ECJ and Czech case law/legislation and, depending on the result of the analysis, suggest the legal implications for the Czech legislation/courts.</p>	<p>Pocklington, David. The EU Review of the Definition of Waste. <i>European Environmental Law Review</i>. July 2003, pg. 204-215; EU Waste Framework Directive, 75/442 [at the library of the Law Faculty in Prague]; case law of the ECJ: C-129/96 <i>Inter-Environnement Wallonie</i>, C-9/00 <i>Palin Granit</i>, C-194/05 <i>Commission v Italy</i>, C-418/97 and C-419/97 <i>Arco and Epon</i>, C-457/02 <i>Niselli</i>, and subsequent case law.</p> <p>English law part: case law of the English courts: Mayer Parry Recycling [1999] 1 CMLR 963, <i>Castle Cement v The Environmental Agency</i> [2001] EWHC Admin 224, R (Lowther) v Durham (24 May 2001) and subsequent case law; Ilona Cheyne and Michael Purdue Fitting Definition to Purpose: The Search for a Satisfactory Definition of Waste. <i>Journal of Environmental Law</i>, 1995; 7: 149 - 168. [available at Oxford Journals database at the Library at the Law Faculty in Prague]</p> <p>Czech law part: Damohorský and others. <i>Právo životního prostředí</i>. 2nd ed. CH Beck: Praha, 2007, pg. 399-422.</p>
29.	GMO: Who should be hold liable if it goes wrong?	Biodiversity	Genetically Modified Organisms	<p>US law part: You will get help on this from CLR once you choose this topic.</p> <p>Bergkamp, Lucas, "Allocating Unknown Risk: Liability for Environmental Damages Caused by Deliberately Released Genetically Modified Organisms" . Available at SSRN: http://ssrn.com/abstract=223068 or DOI: 10.2139/ssrn.223068</p>
30.	Enforcement of Biodiversity Legislation	Biodiversity	The EU as well as the Member States have introduced various tools for protecting the biodiversity (including birds, habitats, fauna and flora habitats). One of the basis question is how effective is the enforcement of this legislation. If I build a highway in the protected species area, breaching the relevant law, I am supposed to tear the highway out, trying to save the biodiversity? An author of this article may analyse the relevant EU and national case law dealing with the enforcement of the	<p>US law part: You will get help on this from CLR once you choose this topic.</p> <p>English law part: You will get help on this from CLR once you choose this topic.</p>

			biodiversity legislation and suggest whether it is sufficient or what can be done better.	EU law part: Krämer, Ludwig. EC Environmental Law. 4 th ed. Sweet&Maxwell: 2000, pg. 131-150 [at the library of the Law Faculty in Prague]
31.	Can Human Rights Help to Live Clean?	Noise, Human rights	The central question in this piece is the scope of Article 8 of the European Convention on Human Rights and in particular its extension to the protection of environmental rights. Whilst environmental rights have been recognised as fundamental human rights in international and regional contexts, the extension of the positive obligations of the state in relation to Article 8, which focuses on the private sphere, is problematic where there is an onus on the individual state to balance the inevitable conflicts between the protection of individual rights and national economic interests which include the freedom of individuals and groups to enjoy the benefits of competitive business. The balance has been formed in the Hatton and other cases of ECHR as well as the national case law. An author of this article may focus on whether and how the European Convention of Human Rights could be used for the protection of environment, analyzing the common law case law as well as case law of other Member States. To be innovative, the author may suggest how this issue could be dealt with under Czech law. This issue is particular relevant in relation to the planned runway of the Prague airport. In addition, a press release from February 2008 indicated that one of the Prague quarter sues the state for reducing the noise levels of the Prague ring road.	ECHR law part: Hatton and others v. The United Kingdom. 8 July 2003. Application no. 36022/97 English law part Marcic –v- Thames Water (House of Lords, December 2003); Selina Goulbourne. Airport Noise and the Right to Family Life: A Legitimate Application of Article 8 of the European Convention? 24 <i>Liverpool Law Review</i> (2002); Sands, Philippe. Principles of International Environmental Law. 2 nd ed. Cambridge University Press: Cambridge, 2003. [at the library of the Law Faculty in Prague]
32.	New Guidelines of the EU Commission on Environmental State Aid: Who will Gain and Who will Lose?	Environmental State Aid	In January 2008, the EU Commission has published a revised set of Guidelines on State aid for environmental protection. The author may compare the US approach to the state aid with the EU one, in particular in the environmental law area. In addition, the effectivity and pros and cons of the new guidelines could be assessed. Finally, the author may analyse past state aid case law of the EU Commission and European Court of Justice.	EU law part:: See Guidelines and public replies to the draft guidelines at http://ec.europa.eu/comm/competition/state_aid/reform/reform.cfm EU law part: Bishop, W. From Trade to Tutelage: State Aid and Public Choice in the European Union. Presentation to Conference of ACE, Copenhagen, 2nd December 2005. [Petr Zakoucky of CLR could provide with a copy] EU and US law part: Cacciato, Giuseppe. Subsidies, Competition Laws And Politics: A Comparison of the E.U. and the U.S.A. European Policy Paper Series. 1996.

				<p>Available at: http://www.ucis.pitt.edu/euce/pub/policypapers/1996-Subsidies Competi Politics.pdf</p> <p>Galloway, Jonathan. The Pursuit Of National Champions: The Intersection Of Competition Law And Industrial Policy <i>European Competition Law Review</i> 2007, 28(3), 172-186 [available at Westlaw database, available from the Library at the Law Faculty in Prague]</p>
33.	Challenging the Member State or EU for Infringement of the EU Environmental Law: Does locus standi shuts the door?	State Liability	The measures of the Member States and EU institutions (such as subsidies from Structural or Regional Funds) are reviewable under Article 230 EC Treaty. Most crucial question is who could bring an action in such proceedings. There have been several decisions of the European Court of Justice dealing with this question, such as <i>Greenpeace</i> (T-585/93), <i>Jego Quere</i> (Case T-177/01, <i>Union de Pequenos Agricultores</i> [Case C-50/00]. An author choosing this topic may analyze the question of locus standi under common law and EU law and compare it with any other jurisdiction, such as Czech law.	Rehbinder, Eckard. Locus Standi, Community Law and Case for Harmonisation. In: Somsen, Han (ed.) <i>Protecting the European Environment: Enforcing EC Environmental Law</i> . Blackstone: 1996, pg. 151-166. <u>at the library of the Law Faculty in Prague</u>
34.	Integrated Product Policy: Right Answer for Our Future?	Regulation	Is a plastic cup less or more environment friendly than a regular coffee mug? There has been growing literature suggesting that this is in fact not an easy question to answer. An author of this topic may analyze the literature on the integrated product policy and suggest how this could be addressed by the legal regulation.	<p>Malcolm, Rosalind. Integrated Product Policy – A New Regulatory Paradigm for a Consumer Society. <i>European Environmental Law Review</i> May 2005, pg. 134-144. <u>[available at Kluwer Law International database at the Library at the Law Faculty in Prague]</u></p> <p>Tufet-Opi, Enrique. Life After End of Life: the Replacement of End of Life Product Legislation by an European Integrated Product Policy in the EC <i>Journal of Environmental Law</i>, 2002; 14: 33 – 60 <u>[available at Oxford Journals database at the Library at the Law Faculty in Prague]</u></p>
35.	Eco Labelling and Auditing: Is Customer's Choice Protecting the Environment Better?	Regulation	In today's stores, you can meet with various products using environmental labeling. Some of it is a result of the EU legislation. Isn't it good way to achieve the environmental friendly approach? An author choosing this topic may assess the approach to this issue in common law world with the continent. EU law should play a part in this analysis. The author may analyze whether eco labeling and eco auditing is the	Gertz, Renate. Eco-labelling—a case for deregulation? <i>Law, Probability and Risk</i> (2005) 4, pg. 127–141 <u>[Oxford Journals database, available from the Library at the Law Faculty in Prague]</u>

			right way to address the environmental issues.	<p>Krämer, Ludwig. EC Environmental Law. 4th ed. Sweet&Maxwell: 2000, pg. 172-176. <u>[at the library of the Law Faculty in Prague]</u></p> <p>Sands, Philippe. Principles of International Environmental Law. 2nd ed. Cambridge University Press: Cambridge, 2003, pg. 167, 861-863 <u>[at the library of the Law Faculty in Prague]</u></p>
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