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The Law Teacher, 2016
Vol. 00, No. 00, 1–24, http://dx.doi.org/10.1080/03069400.2016.1262988

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Prospects for integrating an environmental sustainability perspective within the university law curriculum in England

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This paper postulates an integrative method for acquiring a foundational environmental law knowledge base, composed of the relevant environmental principles and techniques, within the "core"/compulsory modules of the standard university law curriculum in England. The proposal is to introduce an environmental sustainability agenda within the teaching of the university law degree. This would entail the incorporation of no more than two or three lecture contact hours within each of the "core"/compulsory subjects to induce an appreciation of the ways in which environmental protection issues are being integrated into every major field/area of law. It involves the introduction of selected environmental law case studies within the standard lecturing/teaching schedule for each of the "core" modules within the university law school curriculum, following a foundational introduction to the main principles and techniques of environmental law. These case studies are expressly chosen to align with significant elements of the teaching of individual "core" law subjects. In this way, the entire cohort of undergraduate LLB students will be appraised of environmental law developments within the specific contexts of the "core" subjects of the law curriculum, rather than environmental law being taught to a much smaller group of students who choose it as a "stand alone", specialised, niche, but thereby arguably also marginalised, optional module within the undergraduate law curriculum. It is hoped that this approach will transcend the specialist but arguably marginal way in which environmental law is currently being taught within English universities generally.

I. Introduction

This article is designed to act as a think piece or concept paper exploring the ways in which a practical orientation towards "environmental sustainability" can be introduced within the university law curriculum in England. Within this context, this endeavour acknowledges but does not delve too deeply into the current academic debate on the methodological underpinnings and scholarly merits of "environmental law" research,[1] eschewing this debate in favour of a more practical approach directed towards the

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inculcation of environmental sustainability throughout the university legal syllabus. The term "environmental sustainability" is used here to denote a distinction between the traditional emphasis of environmental law, i.e., the legal means to achieve "environmental protection" and the growing awareness of the fact that this goal is never the sole aim of government policy on environmental matters, such that "social sustainability" and even "economic sustainability" are inevitably also part of the overall formula for achieving "environmental protection" using environmental law.[2] Thus, "environmental sustainability" is utilised here to convey the inherently compromised nature of environmental policy and indeed, also of environmental law. It denotes legal attempts to secure environmental protection in the face of competing socio-economic interests, at least some of which may be inimical to the perceived goal of environmental law. Hence, the use of the term "environmental sustainability", rather than "environmental protection", as the descriptive phrase for the aim of this exercise.

The principal mode utilised to introduce the "environmental sustainability" perspective is through the systematic integration of substantive and procedural developments in environmental law within the traditional or core subjects of the standard law curriculum taught at universities in England, rather than its variations in Wales, Northern Ireland and Scotland. The approach proposed here is to integrate knowledge of both substantive and procedural developments of environmental law directly into the teaching of all the core legal subjects taught at English universities. This approach presents both *opportunities* as well as *challenges* from a pedagogical perspective. It is an *opportunity* to inculcate an awareness of the underlying principles of environmental law, as well as the techniques and instrumentalities utilised by this particular legal sub-discipline, to achieve its contextual objective of "environmental sustainability", rather than "environmental protection". Moreover, it enables knowledge of how environmental sustainability is being incorporated into mainstream legal subjects to be transmitted to the entire undergraduate cohort of law students. In doing so, this approach hopes to transcend the specialist but arguably marginalised way in which environmental law is currently being taught within English universities.

More generally, "embedding" environmental sustainability is one of several *challenges* currently facing university education in general and university legal education in particular,[3] as well as the legal profession itself. As Lowther and Sellick observe,

[1]A recent contribution to the growing academic literature on this topic is G. Little, "Developing Environmental Law Scholarship: Going beyond the Legal Space" (2016) 36(1) *Legal Studies* 48–74.
[2]See, for example, the title of one of the principal pieces of environmental legislation in the UK: the Environmental Protection Act 1990.
[3]See, for example, the "Embedding Sustainable Development within the Curriculum" initiative by the Environmental Association of the University and Colleges (EAUC), available at: http://www.eauc.org.uk/embedding_sustainable_development_in_the_curric (accessed 1 September 2016).

AQ2

> sustainable development is an increasingly important facet of the Higher Education Agenda in the UK. The UK's Higher Education Academy is actively seeking to embed concepts of sustainability within all academic disciplines in order that learners are exposed to the concept and may begin to think about their subject in a way that is inclusive of the conceptual framework. Legal education is no exception.[4]

These UK higher education policy developments are in line with growing international recognition of Education for Sustainable Development (ESD) as an integral element of education quality and a key enabler for sustainable development in general. In 2005, the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted a UN Decade of Education for Sustainable Development for implementation by 2014 (UN-DESD, 2005–2014). The goal of the Decade was to promote and improve the integration of "Education for Sustainable Development" into curricula at all levels and sectors of education worldwide.[5] The end of that decade was marked, *inter alia*, by the Nagoya Declaration on Higher Education for Sustainable Development.[6] It reaffirms the responsibility of higher education institutions for pursuing sustainable development and commits their support to further advancing sustainable development through education for sustainable development, *inter alia*, by

> recognizing the crucial role and responsibility of higher education institutions to develop students and all types of learners into critical and creative thinkers and professionals to acquire relevant competences and capabilities for future-oriented innovation in order to find solutions to complex, transdisciplinary and transboundary issues, and to foster understanding and practice of collective values and principles that guide attitudes and transformations, respecting the environmental limits of our planet, through education, training, research and outreach activities.[7]

Both the 2014 Muscat Agreement adopted at the Global Education for All Meeting (GEM),[8] and the 2015 Sustainable Development Goals (SDGs) include ESD in their proposed targets for the post-2015 agenda. Sustainable Development Goal 4 reads "(e)nsure inclusive and equitable quality education and promote life-long learning opportunities for all", and includes a set of associated targets, among which, paragraph 4.7 provides that by 2030, all learners acquire the knowledge and skills needed to promote sustainable

[4] J. Lowther and J. Sellick, "Embedding Sustainable Development into Legal Education" (2009) 7(6) *International Journal of the Humanities* 11–22.

[5] UN Decade of Education for Sustainable Development: Overview: http://www.unesco.org/education/tlsf/TLSF/decade/uncomESD_FS.htm (accessed 1 September 2016).

[6] Adopted by the participants of the International Conference on Higher Education for Sustainable Development in Nagoya, Japan on 9 November 2014.

[7] Nagoya Declaration on Higher Education for Sustainable Development, at para. 2.3.

[8] Adopted at GEM, UNESCO, Muscat, Oman, 12–14 May 2014. See http://www.uis.unesco.org/Education/Documents/muscat-agreement-2014.pdf (accessed 1 September 2016).

development, *inter alia*, through ESD and sustainable lifestyles, as well as an appreciation of cultural diversity and its contribution to sustainable development. ESD is thus closely tied into international deliberations on sustainable development.[9]

A separate but related development in the run-up to the 2012 United Nations Conference on Sustainable Development, Rio+20, was the creation of the Higher Education Sustainability Initiative (HESI) as a partnership of several sponsor UN entities (UNESCO, UN-DESA, the United Nations Environment Programme (UNEP), Global Compact and the United Nations University (UNU)) aiming at galvanising commitments from higher education institutions to teach and encourage research on sustainable development, greening campuses and support local sustainability efforts. With a membership of almost 300 universities worldwide, HESI accounts for more than one-third of all the voluntary commitments that came out of the Rio+20 Conference, providing higher education institutions with a unique interface between policy-making and academia. In 2015, the HESI partnership officially became a member of the UNESCO Global Action Programme (GAP) Partner Network, Priority, for which Priority Action Area 1 on "Advancing policy" seeks to "mainstream ESD into both education and sustainable development policies, to create an enabling environment for ESD and to bring about systemic change"; whereas Priority Action Area 2 on "Transforming learning and training environments", seeks to "integrate sustainability principles into education and training settings".[10]

Several academic,[11] professional, and institutional,[12] initiatives have striven to meet this goal, with varying degrees of success. For example, the work of three technical universities with relatively high ambitions for the integration of sustainable development into their educational programmes is compared in Holmberg *et al.*[13] Methods used to achieve embedding of sustainability in curricula through individual interaction with teachers and other actors illustrate important generalised success factors. At an individual institutional level, Pesonen reports on a study to identify barriers to including sustainability-related content throughout Lund University (Sweden) curricula, with a view to developing solutions to eliminate/overcome these barriers.[14] This study

[9]UN Sustainable Development Knowledge Platform website at: https://sustainabledevelopment.un.org/topics/education (accessed 1 September 2016).

AQ5 [10]UNESCO website, at: http://en.unesco.org/gap/priority-action-areas.

[11]A. Lidgren, H. Rodhe and D. Huisingh, "A Systemic Approach to Incorporate Sustainability into University Courses and Curricula" (2006) 14 *Journal of Cleaner Production* 797–809.

[12]W. Filho (ed.), *Transformative Approaches to Sustainable Development at Universities* (Heidelberg, Springer, 2015). See also: M. Barth, G. Michelsen, M. Rieckmann and I. Thomas (eds), *Routledge Handbook of Higher Education for Sustainable Development* (Abingdon, Routledge, 2016).

[13]J. Holmberg, M. Svanström, D.-J. Peet, K. Mulder, D. Ferrer-Balas and J. Segalàs, "Embedding Sustainability in Higher Education through Interaction with Lecturers: Case Studies from Three European Technical Universities" (2008) 33(3) *European Journal of Engineering Education* 271–282.

[14]H.-L. Pesonen, "Challenges of Integrating Environmental Sustainability Issues into Business School Curriculum: A Case Study from the University of Jyväskylä, Finland" (2003) 27(2) *Journal of Management Education* 158–171.

used the seminal work by Meadows on "places to intervene in a system"[15] first as a tool to systematically identify and characterise these barriers; second, as a basis for deriving solutions to eliminate/overcome the barriers; and finally, to increase chances that these barriers are addressed with sufficient leverage. At the academic cum professional training level, Fenner *et al*. address a practical question that arguably has profound implications for the university teaching of professions like law, medicine, and engineering.[16] Within the engineering department of Cambridge University (UK), they have considered where the education balance lies between providing technological knowledge for designing hard solutions, and training engineers to adopt a broader, multiple perspective approach in which problem formulation and context setting play a vital role in reaching consensual solutions.[17]

Despite its undoubted importance, the task of including an explicitly environmental perspective within academic and professional legal training, as well as professional legal practice, suffers from at least two significant constraints. First, environmental sustainability is perceived as an aspirational but also rather abstract objective. Thus, achieving "environmental sustainability" is usually regarded as a longer-term rather than immediate objective, so that it is almost expected that very little can be achieved towards this goal in the short to medium term. Second, many university law schools may feel that the need to introduce environmental values, principles and techniques into the law school curriculum is at least partially fulfilled by the provision of environmental law modules/courses within their undergraduate (LLB) and postgraduate (LLM) degree schemes, as well as their doctoral (PhD) training programmes. However, this implicit assumption on the part of universities suffers from certain detrimental effects, namely, the perceived specialisation of "environmental law" as an optional legal subject to be taught alongside the other, more traditional (and compulsory) legal subjects of the university law curriculum, but not as an intrinsic part of this curriculum. This raises the spectre of the subconscious marginalisation of environmental issues to a designated/specific corner of the law curriculum, rather than its inculcation throughout the traditional legal subjects of this curriculum, which is arguably implicit in the notion of "Education for Sustainable Development". This marginalising effect is arguably also evident from the usually much lower student numbers attending environmental law classes as an optional module in their overall university law degree course. The marginalisation of "environmental law" modules flows from their implicit pigeonholing as a niche, or even exotic,

[15]D. Meadows, "Leverage Points: Places to Intervene in a System" (Hartland, VT, Sustainability Institute, 1999), available at: http://www.donellameadows.org/wp-content/userfiles/Leverage_Points.pdf.

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[16]R. Fenner, C. Ainger, H. Cruickshank and P. Guthrie, "Embedding Sustainable Development at Cambridge University Engineering Department" (2005) 6(3) *International Journal of Sustainability in Higher Education* 229–241.

[17]Ibid.

law subject to read, rather than one which holds genuine prospects of advancement in legal understanding, skills and ultimately, future career prospects in the legal profession. Even the novel opportunity of being incipiently involved in the introduction, implementation and development of a new undergraduate law degree within a business school-based law department at the University of Gloucestershire (UK) has not resulted in the integration of environmental sustainability within the "core" law subject modules. This initiative should have allowed for the integration of sustainable development concepts into law teaching generally, and in a more focused way within relevant subject areas in the law degree. Ultimately, however, it has only resulted in the introduction of the environmental sustainability agenda within two optional modules at Level 3 (final year) of the undergraduate law degree, namely, "Environmental Law" and "World Human Rights", with the latter module incorporating the notion of a sustainable environment as a condition *sine qua non* for human rights protection.[18]

This article postulates an arguably more integrative method for acquiring a foundational environmental law knowledge base, composed of the relevant environmental principles and techniques, within a range of "core", foundational subjects in the standard university law school curriculum in England. In the Academic Stage Handbook jointly produced by the Bar Standards Board and the Solicitors Regulation Authority, the Foundations of Legal Knowledge for the qualifying law degree in England and Wales are first described and then enumerated as follows:

(a) The key elements and general principles of the following areas of legal study:
    (i) Public Law, including Constitutional Law, Administrative Law and Human Rights;
    (ii) Law of the European Union;
    (iii) Criminal Law;
    (iv) Obligations including Contract, Restitution and Tort;
    (v) Property Law; and
    (vi) Equity and the Law of Trusts.[19]

The proposal outlined here is to introduce an environmental sustainability agenda directly within the university law curriculum in England. In practical terms, this would entail the incorporation of no more than two or three lecture contact hours within each of the "core"/compulsory subjects of the standard

[18]See P. Halstead, "Liberty, Equality and Fraternity: Integrating Sustainability into Law Teaching", in C. Roberts and J. Roberts (eds), *Greener Degrees: Exploring Sustainability through HE Curricula* (2010), Chapter A13, pp. 116–126, at p. 117: http://www2.glos.ac.uk/offload/ceal/resources/A13.pdf (accessed 1 April 2016).
[19]Bar Standards Board and Solicitors Regulation Authority, *Academic Stage Handbook*, Version 1.4 (July, 2014), Appendix 1, Schedule Two, at pp. 18–19.

English university law curriculum in order to introduce an appreciation of the ways in which environmental protection issues are being integrated into every major field/area of law. As a first step, this concept paper will highlight contributions towards environmental sustainability within each of the "core" legal subjects/fields, in the form of case study summaries of relevant legislation and case law, using the medium of *environmental principles*. The project itself involves introducing these selected case studies into the standard lecturing/teaching schedule for each of the "core" modules within the law school curriculum, following a foundational introduction to the main principles and techniques of environmental law. These case studies are expressly chosen to align with significant elements of the teaching of individual "core" law subjects. In this way, the entire cohort of undergraduate (LLB/BA) students will be apprised of environmental law developments within the specific contexts of the "core" subjects of the university law curriculum, rather than as an optional course/module in "Environmental Law". The latter option usually results in environmental law being taught to a much smaller group of students who choose it as a "stand alone", specialised, niche, and thereby arguably also marginalised optional module within the undergraduate law syllabus. The explicit aim of the proposed exercise is to reach out to as much of the university law student body as possible, but without being *superficial* in its approach, or *superfluous* in its imparted information. The implicit aim of this exercise is to stimulate an academic, professional and ultimately, even personal and individual, interest in the progressive inculcation of environmental sustainability values within every aspect of society.

The closest comparable effort of this kind that the author has been able to unearth is the work currently being undertaken at the University of Plymouth (UK) to introduce sustainability across all levels (one to three years) of the undergraduate law curriculum, and where possible, even to apply it in a postgraduate setting.[20] Lowther and Sellick have devised materials to introduce first-year law students to sustainable development concepts through the teaching of introductory principles of international and European Community/Union legal systems within a core module called Legal Skills and Systems at stage 1 (first year) of the Plymouth law degree to inculcate a sense of wider perspective, reflecting global citizenship and the legal systems targeted towards that goal. These materials provide a springboard for increased and incremental opportunities to gain a more sustainable perspective in modules undertaken at later stages of the undergraduate law degree, as well as bringing coherence to the understanding of this important contemporary driver of law and policy.[21] Likewise, it is hoped that the present project will disseminate

[20]Lowther and Sellick, *supra* n. 4.
[21]Ibid. See also T. Varnava, J. Lowther and S. Payne, "Sustainability – Is It Legal?", in P. Jones, D. Selby and S. Sterling (eds), *Sustainability Education: Perspectives and Practice across Higher Education* (Abingdon, Earthscan, 2010), pp. 133–154, at p. 145.

a basic understanding and knowledge about the growing importance of environmental protection within each of the "core" law subjects/fields, as well as allowing for the further development of student interest in this subject, for example, through students proposing to write their final year dissertation project on an environmental law issue.

On the other hand, certain pedagogic challenges remain over the extent to which a viable legal knowledge and skills base oriented towards environmental sustainability can be introduced through the short-term inclusion of environmental law issues within core law subjects and by dint of only a few hours of class-contact time. In a nutshell, these pedagogic challenges can be summarised in terms of whether the proposed approach is *superficial* or *superfluous*? Thus, is this approach *superficial* in its treatment of environmental law and justice issues at the expense of a more considered, layering of knowledge and legal techniques, regulation and remedies in this field? Does the present proposal simply result in an insufficient overall context for the study of "environmental law", because this can only be achieved by the teaching of a stand-alone environmental law module that takes place over the course of a whole semester/year? Or alternatively, is it simply *superfluous* to teach "environmental law" in this way, because the focus on the environmental applications of "core" legal subjects and techniques is redundant to the overall knowledge base and legal skills requirements of undergraduate law students within each of these core legal fields/subjects?

To surmount these pedagogic challenges, it is further proposed that a case study method is utilised as the most effective means by which both basic legal knowledge and skills can be introduced to the entire student body cohort. As with the Pesonen study (cited above) the case studies proposed here draw upon Meadows' insights on the correct place of intervention within a system, which in this case is represented by the inclusion of relevant case studies within the "core" subjects of the undergraduate law degree course/programme/scheme. Significantly, these case studies will need to be carefully designed and prepared for their seamless introduction at the appropriate points within the teaching schedule of each individual "core" subject module. They will need to be included in such a way as to build upon important themes/topics that are already a staple aspect of the "core" subject module, yet also allow for maximum linkage and development of the environmental sustainability agenda. Their introduction at different points in the teaching timelines of specific "core" subject modules is again both a *challenge* and an *opportunity*. It is a *challenge* because of the recurrent need to connect the specific theme/topic at hand to the environmental sustainability agenda being introduced to that particular "core" subject module at that point in time. On the other hand, it is an *opportunity* to re-engage the same law student cohort at different times during the first two years of their undergraduate degree studies and thus reinforce their nascent knowledge of the relevant

environmental principles as well as explain the different legal techniques used to apply these principles within the specific theme/topic being covered at that stage of the teaching of the "core" module. Addressing the specific environmental sustainability issues that arise in these appropriate but chronologically disparate junctures in the university law curriculum should contribute to the development of an overt consciousness of environmental sustainability issues within the overall student learning experience in their university law degree studies.

The following Part (II) will introduce a set of core environmental principles that arguably underpin the development of environmental law within the international, European and UK legal systems. The dual purpose here is first, to build a sufficient knowledge base for undergraduate law students who will not necessarily have encountered an environmental law perspective in their previous exposure to both public international law (PIL) and European Union (EU) law within their undergraduate law degree course. Second, to allow them to use their incipient knowledge of these principles as a gauge by which to measure how far they have been applied, or indeed compromised, in the case studies summarised in Part III of this article. Following this foundational introduction, the application of these principles within the "core" or compulsory subjects of the standard undergraduate law curriculum in English universities will be briefly showcased in Part III of this article. The environmental sustainability developments within each of these "core" legal subjects/fields, namely, public law (also known as constitutional and administrative law), human rights law (European and UK),[22] tort law, criminal law, land law, trusts law and contract law, will be addressed. These case studies will combine legislative, regulatory and case law developments, where appropriate, with a view to assessing how far different legal remedies are able to hold both public and private entities accountable for their environmental impacts.

II. Environmental principles as an organisational framework and pedagogical tool

It is important to emphasise that environmental law has progressed on the basis of the development and progressive application of certain significant environmental principles across the globe, principally through their iteration in successive international legal, policy, and governance instruments. Public international lawyers have concerned themselves with the discipline-specific question as to whether these instruments are a source of legal authority between states but it is notable that the more discerning commentators among them have eschewed the rather arid debates about the so-called "hard" or "soft" nature of the

[22]This law subject or field usually encompasses the study of the European Convention on Human Rights (ECHR) and its implementation within the UK legal system through the Human Rights Act 1998 and related jurisprudence therefrom.

instruments themselves, in favour of an altogether richer discussion on the place of these instruments in the progressive development of the field of environmental protection as an intrinsic and growing area of international law as a whole. Indeed, arguably the best iteration of these environmental principles is to be found in a "soft", technically non-binding international instrument, namely, the Rio (inter-governmental) Declaration on Environment and Development, 1992 adopted at the UN Conference on Environment and Development (UNCED) or "Earth Summit" in Rio de Janeiro, Brazil.[23] Yet few would dispute the undoubted legal authority of this Declaration as between states and their subsequent implementation of these principles within their domestic environmental policies and laws. The overall goal or objective of these environmental principles is the achievement of "sustainable development". The "sustainable development" concept was authoritatively defined as "development that satisfies the needs of present generations without compromising the ability of future generations to meet their own needs", by the World Commission on Environment and Development (WCED).[24]

At this juncture it is useful to engage with these two terms: "sustainable development" and "environmental sustainability", with a view to coming to a meaningful understanding of their relationship with each other. As previously observed, reliance on the term "environmental sustainability" reflects both the complexity and ambiguity inherent in any attempt to translate the arguably wider concept of "sustainable development" into practical legal usage and reliance. Specifically, "environmental sustainability" is utilised here to highlight the principal aim of environmental law, which can be simply described as the utilisation of the international, European and domestic (England and Wales) legal systems to protect the "environment".[25] However, this does not necessarily mean that "environmental sustainability" is to be achieved at the expense of "sustainable development". Indeed, it should be recognised that these two terms were not conceived as incompatible concepts or goals. Rather, the overt use of the term "environmental sustainability" for the purposes of this article and the wider, pedagogic approach advocated here is designed to emphasise an "environmental", rather than "developmental" perspective, at least to begin with. What should soon become clear through the case study method used here is the extent to which such an overt environmental, or even "ecological", approach is quickly subsumed within the wider debate on "social" sustainability, as a goal or an objective that is also encompassed by the conceptualisation of "sustainable development". A further strand of thinking around

[23]The Rio Declaration, as well as other significant international instruments adopted at the 1992 Earth Summit, and in subsequent follow-up inter-governmental conferences such as the Johannesburg (2002) and "Rio+20" (2012) summits.
[24]See WCED, *Our Common Future* (Oxford, Oxford University Press, 1987) at p. 43.
[25]Definitional issues will arise as to the meanings of terms such as the "environment" and "pollution" and these will need to be addressed within the legal contexts where they arise in the case studies.

these concepts expands the notion of "sustainable development" as a whole even further by introducing phrases such as "social sustainability" and "economic sustainability" to the discussion. From here, controversial phrases such as "sustainable growth" have been coined as an overall goal or objective for the economy as a whole. The link between this conceptual debate and the Westminster model of government practised in the UK can be made at an early stage in the public (or constitutional) law "core" subject wherein the traditional separation of government ministerial departments is juxtaposed against the need for joined-up governance on several cross-cutting and longer-term issues such as poverty, the socio-economic causes of crime and "sustainable development". Ross, for example, has noted that this is both a UK as well as a wider governmental issue around the world that was first highlighted by the Brundtland World Commission on Environment and Development (WCED).[26] This would allow the student cohort to develop critical perspectives on a bedrock principle of the UK constitutional system, namely, ministerial accountability for individual government departments.

The inherent complexity of this debate over the exact meanings of these concepts can also be explored within initial EU law "core" subject lectures as it is reflected in the text of the Treaty on European Union (TEU), which attempts to balance environmental protection with socio-economic development in the marketplace, as follows:

> The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.[27]

While commentators have cautioned against the inadvertent subsuming of "environmental sustainability" within overarching paradigmatic concepts such as "sustainable development" or "sustainable growth", it remains true that the real-life situations embodied in the case studies examined here often have to take into account the socio-economic developmental implications of environmental protection measures. These are the crucial balancing issues that the structure adopted for this article hopes to bring out into the open. The aim here is that through the practical pedagogic exercise of selected case studies introduced at the appropriate juncture within the teaching of each individual "core" law degree subject, law students are exposed to this environmental sustainability perspective throughout their undergraduate law degree studies.

The organising framework for these "core" subject case studies uses the medium of "environmental principles". A selection of the most significant

[26]A. Ross, *Sustainable Development Law in the UK: From Rhetoric to Reality*? (Abingdon, Earthscan, 2012) at pp. 141–142.
[27]Article 3(3) of the TEU, as amended by the Lisbon Treaty, 2007.

environmental principles introduced at the global/international and European Union levels of jurisdiction can be summarised as follows: (1) the environmental integration principle,[28] entailing the inclusion of environmental considerations within socio-economic development activities; (2) the preventive and precautionary principles,[29] providing that such activities do not cause serious or irreversible environmental harm or damage; (3) the polluter-pays principle,[30] requiring that the polluter should pay for the environmentally damaging impacts of their activities; (4) the environmental impact assessment (EIA) principle,[31] providing that the environmental impact of proposed significant socio-economic activities is fully accounted for; and (5) the inter-linked principles of access to environmental information, public participation rights and access to justice on environmental issues.[32] The first three principles above have also been incorporated as EU policy by Article 191(2) of the Treaty on the Functioning of the European Union (TFEU), as follows:

> Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

Finally, states are also required to enact effective environmental legislation and develop national law regarding liability and compensation for the victims of pollution and other environmental damage.[33] Case studies of the application of these principles can be located within each of the core subjects of the university law curriculum. The task at hand is to provide a sufficiently well-connected and pedagogically robust yet succinct set of individual case studies explaining the development of the environmental sustainability agenda within the teaching syllabus/schedule of these core law subjects, in such a way as to directly connect with an essential element of each of these core subjects.

[28]Principle 4 of the 1992 Rio Declaration defines this principle as follows: "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."
[29]Principle 15 of the Rio Declaration provides: "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious and irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."
[30]Principle 16 of the Rio Declaration provides: "National authorities should endeavour to promote the internalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution …".
[31]Principle 17 of the Rio Declaration provides: "Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have significant adverse impact on the environment …".
[32]Principle 10 of the Rio Declaration.
[33]Principles 11 and 13 of the Rio Declaration.

III. Case studies of the application of environmental principles within "core" law subjects

Having established an organisational framework based on the international law origins of the basic concepts, definitions and principles of environmental law, and their inclusion within EU law, as well as inculcated an understanding among the students of the continuing significance of these principles in the continuing development of environmental law, the next step in the elaboration of this environmental perspective within the "core" law subjects is to introduce the question of the legal representation of environmental interests, when these are non-human related concerns such as wildlife species, biodiversity, or habitat protection, or common to both humans and non-humans, such as the environmental quality of air, water, and soil. Where these non-human environmental interests are protected under environmental law, the question arises as to how government (or other public authority) actions or omissions can be challenged before a court of law to ensure such protection?

A. *Public (constitutional and administrative) law – legal standing for environmental NGOs in judicial review applications*

This question brings us into the public law sphere and specifically, the legal remedy of judicial review, observed by the UK government's Ministry of Justice to be "a critical check on the power of the state, providing an effective mechanism for challenging the decisions, acts or omissions of public bodies to ensure that they are lawful".[34] Such judicial review provision for challenging environmental decisions clearly applies the access to justice aspect of Principle 10 of the Rio Declaration. However, from an environmental perspective, the availability of this public law remedy is insufficient in itself where non-human environmental interests need to be legally represented before the courts for the judicial review of government/public authority actions or omissions. The above issue entails an examination of the public law on standing, specifically to see whether charities and other special interest non-governmental organisations (NGOs) can fulfil this representative role before the courts to challenge any governmental action/omission through judicial review. Under section 31(3) of the Senior Courts Act 1981, no application for judicial review shall be made unless the High Court considers that the applicant has a "sufficient interest" in the matter to which the application relates.[35] What constitutes a "sufficient interest" is essentially a matter for judicial discretion. The most straightforward situation is where applicants can show that they

[34]Ministry of Justice, *Judicial Review: Proposals for Further Reform*(Cm 8703, 2013), para. 1.

[35]For standing law issues in relation to environmental interests, see P. Cane, "Standing, Representation and the Environment", in I. Loveland (ed.), *A Special Relationship? American Influences on Public Law in the UK* (Oxford, Clarendon Press, 1995); and C. Hilson and I. Cram, "Judicial Review and Environmental Law – Is There a Coherent View of Standing?" (1996) 16 *Legal Studies* 1.

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have been personally adversely affected by the action being challenged. Likewise, problems ought not to arise where the applicant is a group or an organisation which can show that its own interests have been directly adversely affected by official action.

The next question is whether the relevant environmental NGOs have been considered to have a "sufficient interest" on such environmentally related matters. Applicants, whether individual or more usually organisations, may also seek judicial review on behalf of others, a section of the community, or the public in general.[36] Generally speaking, the courts will allow a representative application if those represented would have standing had they litigated themselves. The most difficult cases are those in which the applicant seeks to represent, not individuals or the interests of identifiable groups, but wider public interests. In the past the courts have adopted a restrictive approach in such cases. *R v Secretary of State for the Environment, ex p. Rose Theatre Trust Co Ltd*[37] is an example. In this case, a company formed by objectors to a decision of the Secretary of State applied for judicial review against his refusal to list the remains of the Elizabethan Rose Theatre for protection. Schiemann J decided that the Secretary of State had acted within his powers but that, in any case, the company lacked standing. He accepted that this could mean that unlawful decisions made by the Secretary of State might be unchallengeable.

This narrow approach has not been followed. Two decisions are of particular importance. The first is Otton J's judgment in the *Greenpeace (No. 2)* case.[38] Greenpeace (British) challenged the decision of Her Majesty's Inspectorate of Pollution (HMIP) and the Ministry of Agriculture Fisheries and Food (MAFF) to allow British Nuclear Fuels (BNFL) to test its new thermal oxide reprocessing plant (THORP) at Cumbria, in northwest England. In making the application Greenpeace claimed to represent 2500 of its members who live in the Cumbrian region where THORP is situated and who were concerned about the health risks associated with radioactive pollution. They also sought to represent the wider public interest in preventing such pollution. Otton J rejected the BNFL argument that Greenpeace had failed to establish a sufficient interest and granted leave to seek judicial review. He also had no doubt that the issues raised by the application were serious and worthy of determination and that if he were to deny standing to Greenpeace "those they represent might not have an effective way to bring the issues before the court".[39]

The second, even more far-reaching, case is *R v Secretary of State for Foreign Affairs, ex p. World Development Movement Ltd* (also known as *The*

[36]A third situation is where public bodies are given authority to bring proceedings by statute, e.g., local authorities under s. 222 of the Local Government Act 1972. The Attorney General also has standing to bring legal proceedings in the public interest.
[37][1990] 1 QB 504.
[38]*R v HM Inspectorate of Pollution, ex p. Greenpeace Ltd (No. 2)* [1994] 4 All ER 329.
[39]Ibid., at 350.

Pergau Dam case).[40] The World Development Movement (WDM), a pressure group which campaigns to improve the quality of British aid to the Third World, challenged the Foreign Secretary's decision to help fund the Pergau Dam project in Malaysia. Significantly, unlike Greenpeace, the WDM did not claim to represent members who were directly adversely affected by the decision, but based its application on wider public interests and in particular on the public interest in ensuring that ministers comply with the law. The court nevertheless held both that the Foreign Secretary had exceeded his powers and that the WDM had standing. As in the *Greenpeace (No. 2)* case, Rose LJ acknowledged the reputation, status and expertise of the applicants. He also emphasised the vindication of the rule of law; the importance of the issue raised; the likely absence of any other responsible challenger; the nature of the breach of duty against which relief is sought; and the prominent role of the WDM in giving advice, guidance and assistance with regard to aid issues. All of these factors, he said, pointed to the conclusion that the WDM had a sufficient interest in the matter. Sedley J then reiterated what he called "the clear decision in the *World Development Movement* case, affirming as it does a strong line of modern authority" supporting a liberal approach to standing in *R v Somerset County Council and ARC Southern Ltd, ex p. Dixon*.[41] Although Sedley J dismissed the instant application on its merits, he held that the plaintiff (Dixon) was plainly neither a busybody nor a mere troublemaker and was perfectly entitled as a citizen to draw the attention of the Court to what he argued was an unlawful granting of planning permission that was bound to have an impact on the natural environment.

B. *ECHR and UK human rights law – protection from serious environmental interferences*

Examination of relevant 1950 European Convention on Human Rights (ECHR)[42] provisions that have been deemed to have environmental implications and specifically, the European Court of Human Rights (ECtHR) jurisprudence on these provisions, moves the analytical scope of this article from that of challenging actions/omissions by decision-makers using the public law remedy of judicial review, to that of asserting human rights in order to protect environmental interests. The case study utilised for this section relates to the specific interpretation of Article 8 of the ECHR in ECtHR case law,[43] that has significant implications for individual protection from serious environmental interferences to their family and home life. The inclusion of this line of ECtHR case law within the teaching of either or both the public law and human rights

[40][1995] 1 WLR 386.
AQ8 [41][1997] JPL 1030.
[42]Convention for the Protection of Human Rights and Fundamental Freedoms (as amended) (ECHR, 1950).
[43]Established by Section II (Articles 19–51) of the ECHR, 1950.

law modules will represent both the *culmination*, as well as the possible *limitations*, of the utilisation of (human) rights discourse as a means to ensure the legal protection of the environment. It represents the *culmination* of the extent to which general human rights discourse can take into account the "environment" because despite the fact that its text does not mention the "environment" per se, Article 8 of the ECHR has been interpreted by the ECtHR to include the right to be free from serious environmental interferences. Celebrated cases in this context include *Lopez Ostra v Spain*,[44] and *Guerra and Others v Italy*,[45] where the Court showed its appreciation for the fact that Article 8 rights can be breached by serious environmental interferences that are either caused, or allowed, by the State party authorities concerned. More recent ECtHR judgments, such as *Fadeyeva v Russia*,[46] and *Giacomelli v Italy*,[47] appear to confirm this trend.

On the other hand, the decision of the Grand Chamber of the ECtHR in the *Hatton and Others v UK* case(s),[48] and the passage of the *Marcic v Thames Water* case before successive British appellate courts,[49] each of these cases involving the unsuccessful invocation of Article 8 rights against serious environmental interferences in the British context, suggest both the substantive *limitations* of the ECtHR's approach to this type of claim, as well as the inherently procedural standard of legal protection that it provides. Moreover, both the general "margin of appreciation" afforded to ECHR States parties by the Court, and the specific "balance of interests" test, embodied in paragraph 2 of Article 8, have been interpreted by the ECtHR so as to provide States with a set of procedural, rather than substantive, requirements to be fulfilled. Thus, the progressive legal development achieved through the expansion of the scope of Article 8 of the ECHR nevertheless falls short of the establishment of a substantive human right to a healthy, healthful, or clean environment.[50]

C. *Tort law – the potential for nuisance and/or negligence to remedy environmental damage*

As a separate legal tool from public law remedies or regulatory controls, common law remedies based on the torts of negligence and private nuisance

[44]ECtHR Judgment of 6 December 1994 (App. 16798/90) European Court of Human Rights, Series A, No. 303-C, (1995) 20 EHRR 277.
[45]ECtHR Judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, p. 228, (1998) 26 EHRR 357.
AQ9 [46]ECtHR Judgment of 9 June 2005, published on 30 November 2005 (App. No. 55723/00).
AQ10 [47]ECtHR Judgment of 2 November 2006, Case No. 59909/00.
[48]*Hatton and Others v the United Kingdom* [GC], No. 36022/97, ECtHR Grand Chamber Judgment of
AQ11 8 July 2003, ECHR 2003-VIII, overturning the initial Chamber judgment on 2 October 2001.
[49]*Marcic v Thames Water Utilities plc* [2003] UKHL 66 and [2004] Env. LR 25. On appeal from the Court of Appeal, reported in [2002] EWCA Civ 64.
[50]The different ways in which this right is described in the literature is arguably indicative of its underlying conceptual difficulties and consequently, the uncertainty as to the legal effects of its invocation.

have also been canvassed in relation to environmental protection. Tort law-based actions suffer from at least two obstacles. The (then) House of Lords decision in the 1993 *Cambridge Water* case[51] highlights both these tort law deficiencies: first, the requirement in negligence of reasonable foreseeability to establish a duty of care, the breach of which in turn establishes tortious liability; and second, the inherent limitation in both negligence and private nuisance claims to damages for personal injury and/or property loss but not to remedy harm to the "environment". In this case, the spillage of small quantities of chemical solvents contaminated water supplies drawn from a borehole owned by Cambridge Water, which brought actions based on negligence, nuisance and the rule in *Rylands v Fletcher*.[52] It was held that the defendant company was not liable as the damage was too remote. The foreseeability of such damage is a prerequisite of liability in tort claims based on nuisance, negligence and the rule in *Rylands v Fletcher*. Palmer has recently re-examined the role of private nuisance as a basis for asserting common law remedies in relation to environmental protection.[53] He asks whether the *Cambridge Water* decision will continue to stand as good law before the recently established Supreme Court and specifically notes the potential for the injunction as a remedy for private nuisance to ensure restorative environmental justice.[54] In this context, reference can be made to the possible application of the precautionary principle, as provided in Principle 15 of the Rio Declaration (discussed above) as a means to reconfigure the role of foreseeability of serious or irreversible forms of environmental damage in relation to possible imputations of responsibility and liability under the common law of tort.

Other relevant tort law cases can also be highlighted to strike a contrast between the different legal standing tests applied, *inter alia*, for judicial review applications; qualifying as a "victim" for the purposes of claiming an ECHR right; and determining who exactly is able to claim for nuisance in tort law. For example, in *Hunter v Canary Wharf Ltd*,[55] the plaintiffs were all local residents living in the vicinity of the Canary Wharf tower building construction site and claimed actionable nuisances for (1) dust arising from the building works and (2) the fact that the tower interfered with their television reception signal. On the former issue, the (then) House of Lords (HL) held that of those plaintiffs affected by the dust from the construction works at the building site, only those with exclusive possession of property could sue. Thus, only freeholders, tenants in possession, licensees with exclusive possession or – exceptionally – people in possession but without a right to be there, can sue, and not mere licensees.

[51] *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1993] UKHL 12.
[52] [1868] UKHL 1, (1868) LR 3 HL 330.
[53] R. Palmer, "Common Law Environmental Protection: The Future of Private Nuisance, Part I" (2014) 6(1/2) *International Journal of Law in the Built Environment* 21–42.
[54] R. Palmer, "Common Law Environmental Protection: The Future of Private Nuisance, Part II" (2014) 6(1/2) *International Journal of Law in the Built Environment* 106–128.
[55] [1997] AC 655 and [1997] 2 All ER 426.

According to the HL, without this restriction, it would be uncertain what the limits are on who can sue, i.e., the floodgates argument. However, when this case was before the Court of Appeal (CA), the CA had proposed that only plaintiffs with a "substantial link" to the land could sue for nuisance, with the interpretation of what amounts to a "substantial link" to be resolved through litigation.

D. *Criminal law – strict (environmental) liability offences: compatibility issues*

Within the context of environmental regulation generally, it is first important to note the sheer variety of modern legal techniques that states use to protect the environment. This is in line with the discretion afforded to states under Principle 13 of the Rio Declaration, which provides that: "States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage." Thus, instruments that provide, *inter alia*, economic incentives for waste reduction or disincentives in relation to polluters; informational devices to improve transparency; voluntary agreements for pollution control and/or nature conservation; and "command and control" regulation are just some of the legal techniques utilised within different national jurisdictions. The last of these techniques – "command and control" regulation, often backed up by criminal sanctions – is present in several significant common law jurisdictions, such the USA, Australia and the UK. However, the criminalisation of environmental offences is perceived as an increasingly obsolete strategy. It is often alleged that environmental offences are not "real" crimes but merely "quasi-criminal" regulatory offences. Watson rejects this view, arguing instead that environmental crime is a serious and growing problem, and also that environmental offenders often have very strong financial incentives to break the law. Thus, he claims that fines are currently too low and that serious consideration should be given to the increased use of civil and administrative penalties.[56] This change of orientation from criminal to civil forms of sanction is ongoing within the UK. For example, the Regulatory Enforcement and Sanctions Act 2008 contains enabling powers to introduce these civil sanctions across a number of different spheres. In the environmental sphere, civil sanctions have been introduced, *inter alia*, by the following statutory instrument, the Environmental Civil Sanctions (England) Order 2010. When enforcing these civil sanctions, however, regulators must apply a criminal standard of proof, i.e., they must be satisfied "beyond reasonable doubt" that an offence has been committed before using them (except for enforcement undertakings and stop notices).[57]

[56]M. Watson, "Environmental Offences: The Reality of Environmental Crime" (2005) 7(3) *Environmental Law Review* 190–200.

[57]See: Department for Environment, Food and Rural Affairs, *Civil Sanctions for Environmental Offences*, Guidance to regulators on civil sanctions for environmental offences (London, DEFRA, 2010) at para. 1.5.

However, the underlying question of how to enforce environmental protection reasonably and effectively using the criminal law is a complex one. Clifford and Ivey have noted that certain basic principles of the common law usually protect a defendant facing criminal prosecution, including: the requirement of intention to commit a crime (*mens rea*); the presumption of innocence until proof of guilt beyond reasonable doubt in a court of law; the requirement that the prosecution carry the burden of proving all of the elements of an alleged offence beyond reasonable doubt; the privilege against self-incrimination and legal professional privilege.[58] Thus, they ask: how far should environmental legislation go in abrogating some or all of these basic principles in order to ensure that those who commit environmental criminal offences do not escape with impunity? What role should prosecutions and penalties play in prevention and deterrence within environmental law?[59] These questions are especially pertinent within England and Wales, where environmental crimes were traditionally denoted as strict liability offences with prosecutions generally undertaken by the Environment Agency in front of local lay magistrates. According to Benson *et al*., "strict liability" refers to those criminal offences where, if the defendant has been shown to have committed the wrongful act, there is no need for any intention, recklessness or negligence to be established to secure a conviction.[60] The (UK government) Department for Environment, Food and Rural Affairs (DEFRA) has noted that strict liability in environmental law has two advantages: it is a reflection of the high level of public interest and ease of regulatory enforcement on environmental crimes. Set against these advantages are a number of disadvantages that obstruct environmental law enforcement such as the blurring of the degrees of culpability required for prosecution/conviction of environmental offences and their trivialisation.[61] Both legal convention and the nature of environmental offences give considerable leeway to defence lawyers to construct mitigation arguments designed to extract sympathy from the courts where guilty pleas are entered. De Prez has argued that while mitigation arguments are an inherent element of the adversarial process, this type of aggressive mitigation resulting in low sentencing practice undermines the efficiency of adjudication by a non-specialised court, and in turn negatively affects the social construction of environmental crimes.[62]

[58]P. Clifford and S. Ivey, "Problems with Defending Crimes against the Environment", in N. Gunningham, J. Norberry and S. McKillop (eds), *Environmental Crime*, Proceedings of a conference held 1–3 September 1993, in Hobart (Canberra, Australian Institute of Criminology, January 1995), at p. 1. Available at: http://www.aic.gov.au/publications/previous%20series/proceedings/1-27/26.html.

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[59]Ibid.

[60]W. Benson, L. Davis, W. Dickson, S. France, E. Glennie and W. Howarth, *The Effectiveness of Enforcement of Environmental Legislation*, Report prepared for DEFRA by WRc plc, Report No. DEFRA 7208 (September, 2006) at p. 37. See http://archive.defra.gov.uk/environment/policy/enforcement/pdf/envleg-enforce-wrcreport.pdf (accessed 1 April 2016).

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[61]Ibid., at p.3.

[62]P. de Prez, "Excuses, Excuses: The Ritual Trivialisation of Environmental Prosecutions" (2000) 12(1) *Journal of Environmental Law* 65–78.

E. Land law – (nature) conservation covenants

Recent developments in land law show just how far the environmental sustainability agenda is finding its way into such traditional fields of law. In relation to covenants pertaining to land that are usually conceived as (very) exceptional restrictions against the freedom of action of the property owner/landowner, the Law Commission has concluded that reform is needed in the form of a new statutory scheme for conservation covenants,[63] to give individual landowners the opportunity, using a private agreement, to contribute to conservation efforts.[64] A conservation covenant is a private and voluntary agreement entered into by a landowner, who promises to do something or not do something to achieve a conservation objective on his or her land. A conservation covenant is usually perpetual; that is, both the current landowner and any future landowners will be bound by the promise.[65] Conservation covenants have been exceptionally introduced used in several other jurisdictions like Scotland, the USA, Canada, Australia and New Zealand but do not currently exist in the law of England and Wales.[66] As the Law Commission notes, "They allow landowners voluntarily to create binding obligations on their own land to meet a conservation objective, such as preserving woodland, cultivating a particular species of plant or animal, or farming land in a certain way."[67] As a result of its successful consultation exercise, the Commission recommended in its final report on the matter, the introduction of a new statutory scheme of conservation covenants.[68] The scheme would, if implemented, allow landowners to ensure the long-term conservation of features such as habitats and historic buildings, arguably in furtherance of both the environmental and cultural sustainability agendas. In its formal response to these Law Commission recommendations, the UK government stated that it broadly agreed that such a scheme could contribute to the protection of England's natural and historic assets. Moreover, in her letter dated 29 January 2016, Elizabeth Truss MP, Secretary of State for the Environment, Food and Rural Affairs, commits to exploring what part conservation covenants could play in her Department's 25-Year Environment Plan.[69]

On the other hand, the instrumental nature of law can also be exposed through this means as when consideration is given to how far landowners should be allowed to grant each other easements to pollute neighbouring

[63]Law Commission, *Conservation Covenants*, Consultation Paper No. 211, Executive Summary (2013) at para. 1.10.
[64]Ibid., at para. 1.9.
[65]Ibid., at para. 1.4.
[66]Ibid., at para. 1.9.
[67]Ibid., at para. 1.2.
[68]Law Commission, *Conservation Covenants*, Final Report, Law Com. No. 349, HC 322 (29 June 2014).
[69]Available from: http://www.lawcom.gov.uk/project/conservation-covenants/ (accessed 1 April 2016).

properties, subject to compensatory payments, as suggested by Epstein.[70] The potentially undermining implications of such a perverse application of legal covenants can serve as a warning to environmental progressives that the double-edged nature of such legal devices as covenants and easements cannot always be relied upon to advance the environmental sustainability agenda.

F. *Trusts law – charitable trusts for environmental protection and the public trust doctrine*

The environmental sustainability agenda has also been advanced by developments in at least two aspects of the law of trusts. First, through the legal provision of government protection of major sites of environmental and/or scientific interest in a manner similar to that of the establishment of a public trust. Second, as a new category of purpose for which charitable trust status can be conferred under the Charities Act 2011. In relation to the first aspect, while the public trust doctrine did not mature in England, its legal spirit can be identified in different instruments. For example, the National Parks and Access to the Countryside Act 1949 was enacted to ensure "the permanent preservation for the benefit of the nation of lands … of beauty or historic interest and … the preservation of their natural aspect, features and animal and plant life". Such lands may only be declared alienable with the authority of Parliament. According to Bento, this is analogous to trustee-like responsibilities under the public trust doctrine.[71]

In relation to the second development, the law of charities in the UK now also provides for a specific category of charitable trusts concerned with "the advancement of environmental protection or improvement", which falls within section 3(1)(i) of the 2011 Act, and according to Hudson, also within the category of "other purposes beneficial to the community" under section 3(1)(m) of this Act.[72] The UK Charity Commission guidance on these categories has noted that "(c)harities concerned with environmental protection or improvement may need to produce independent expert evidence, that is authoritative and objective, to show that the particular species, land or habitat to be conserved is worthy of conservation."[73] Specific interpretation and application issues in relation to the development of this new category of charitable trusts can be found in relevant Charity Commission decisions on these categories of

[70]R. Epstein, "Regulation – and Contract – in Environmental Law" (1991) 93 *West Virginia Law Review* 859–891, at pp. 879–880.
[71]L. Bento, "Searching for Intergenerational Green Solutions: The Relevance of the Public Trust Doctrine to Environmental Preservation" (2010/11) *Common Law Review*: http://www.commonlawreview.cz/searching-for-intergenerational-green-solutions-the-relevance-of-the-public-trust-doctrine-to-environmental-preservation#ref-134 (accessed 1 April 2016).
[72]A. Hudson, *Equity and Trusts* (8th ed., Abingdon, Routledge, 2015) at p. 1151.
[73]See UK Charity Commission, Guidance on Charitable Purposes (16 September 2013).

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charitable trusts, such as the Commission's decisions on *Cylch* (2002), *Recycling in Ottery* (2002), *The Wolf Trust* (2003), and *Environment Foundation* (2003). These decisions form a useful set of case studies in this regard. Of these cases, the most significant is the Charity Commission's decision on the application for charitable status of the Environment Foundation,[74] because it recognised a new charitable purpose of the promotion of sustainable development for the benefit of the public. The Commission concluded that with some changes to its objects, the Foundation would be established for exclusively charitable purposes and could register as a charity.[75] More recently, in the 2014 Decision of the Charity Commission on The People's Dispensary for Sick Animals (PDSA), the PDSA requested a Scheme which would amend the objects of the charity, *inter alia*, to include "public education" as well as general advancement of animal health and welfare issues for public benefit. This was accepted by the Charity Commission after it found *inter alia* that such a change to the object of this charity would not have significant impacts on the private (in other words, for-profit) veterinary services sector.[76]

G. Contract law – incorporation of environmental undertakings within contracts

Last but certainly not least, the integration principle through which environmental undertakings are specifically incorporated into standard contracts for goods and services is now a common feature in the law of contracts and should be highlighted accordingly at the appropriate juncture in the contract law syllabus. For example, the Chartered Institute of Purchasing and Supply has adopted a set of clauses for use as standard, or what is known as "boiler plate", clauses in many forms of commercial contract such as distribution agreements and contracts for the supply of goods and/or services.[77] These are not the substantive clauses in a contract such as A sells a good to B or the warranties and obligations of the parties. Instead, they are the additional provisions that appear at the end of an agreement. Among these "boiler plate"-type clauses, Clause 19 on the "Environment" provides:

> Supplier warrants that prices for alternative products, where such products exist, which are free from harmful toxins, chemicals or gases, or which are manufactured from recycled material, and which are in any case proven to be less detrimental to the environment. Supplier agrees to provide goods/services

[74]Decision made by the Charity Commission on 24 January 2003: https://www.gov.uk/government/publications/environment-foundation (accessed 1 April 2016).
[75]Ibid.
[76]See: Decision of the Charity Commission on The People's Dispensary for Sick Animals, published 17 December 2014: https://www.gov.uk/government/publications/the-peoples-dispensary-for-sick-animals-pdsa (accessed 1 April 2016).
[77]Chartered Institute of Purchasing and Supply, "Terms and Conditions of Contract Boilerplate/Core Clauses" © 1999–2006 (revised by S. Singleton, March 2006).

> which accord with the Purchaser's policy on the environment. The Supplier shall, when working at the Purchaser's premises, perform the Contract in accordance with the Purchaser's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

The accompanying "Comment" to Clause 19 further provides:

> Whilst not legally necessary buyers with a concern for the environment or where required by other contracts to which they are party which affect the agreement or which require them as supplier or purchaser to impose on other parties in the contract chain may wish to impose environmental clauses such as those appearing above.

Looking beyond the use of contracts to bind their parties to ensure positive environmental outcomes, regulation has also been introduced to ensure that contracts cannot be utilised to allow polluting activities between consenting neighbours, or indemnify parties involved in polluting activities from possible joint and several liability in the event of wider environmental harm occurring from these activities. On the other hand, Epstein has raised objections to this type of regulatory/contractual relationship, arguing that in principle, once regulation has ensured complete pollution control, individuals should then be allowed to contract with each other to improve their economic outputs, as long as overall environmental targets are not breached.[78] This would be an appropriate juncture in the contract law module to examine whether and how far the law of contracts must ensure appropriate environmental outcomes for wider society, in addition to positive economic outcomes for the contractual partners.

IV. Conclusions

This article proposes that (1) an adequate foundational base of environmental principles, when combined with (2) the right mix of case studies drawn from relevant legislation and case law in each of the core legal subjects of the university legal curriculum, as well as (3) an overarching narrative that explains the connexions between these environmental principles and case studies (1 and 2) can altogether suffice as an environmental law primer for undergraduate law students within universities in England, so that they are adequately informed on the main environmental sustainability aspects of each of these core legal subjects. Exposure to both environmental principles and their interaction and application in selected case studies during their undergraduate

[78]See Epstein, *supra* n. 70 at pp. 879–882.

law degree studies will hopefully equip these law students with the ability to identify and address environmental issues more easily in their future work within any of the main legal fields, as well as possibly stimulate them to see the field of environmental law itself as a viable pathway in their hopefully successful future legal careers.

Acknowledgements

This paper was first presented at the Environmental Law section of the 2014 SLS Annual Conference, held in Nottingham. The author is indebted to colleagues attending that session for their useful comments and in particular, to the current convenor of the SLS Environmental Law section, Chris Willmore for her invaluable advice. The usual caveats apply.

Disclosure statement

No potential conflict of interest was reported by the author.

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