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UKELA NEWS – ALL CHANGE

Daniel Lawrence, UKELA Chairman

I am pleased to announce that Lord Justice Carnwath is to succeed Lord Slynn as UKELA's President. Lord Slynn will officially hand over at the Garner Lecture on December 13th. I hope as many UKELA members as possible will be there to welcome Lord Justice Carnwath to the role and to thank Lord Slynn.

Lord Slynn has been UKELA's President since 1992, the year in which he returned from being a judge at the European Court of Justice in Luxembourg to become a Lord of Appeal in Ordinary in the UK House of Lords. He has chaired the annual Garner lecture and spoken at numerous other UKELA events and also judged the UKELA student mooted competitions over the years. UKELA is enormously grateful for his help, support and particularly encouragement to students, trainees and pupils. He will continue his links with the Association in an honorary role.

Sir Robert Carnwath has been a Lord Justice of Appeal since September 2001, having been a Judge of the High Court, Chancery Division, from 1994. At the same time he became a Privy Counsellor.

He has written extensively on administrative and environmental law. In 1989 he was the author of a report for the Department of the Environment on the Enforcement of Planning Control, the main recommendations of which were enacted in the Planning and Compensation Act 1991. He is a member of the Editorial Board of the Journal of Environmental Law.

Internationally, in 2004 he was a founding member, and first Secretary-General, of the European Union Forum of Judges for the Environment (EUFJE). He has been joint-chairman of the judicial advisory committee for the UNEP handbook on environmental law; and a member of the UNECE taskforce on the Aarhus Convention.

Previously he was in practice as a barrister in the Chambers of the Right Hon. Geoffrey Rippon QC, MP (now Landmark Chambers). His main areas of practice were Local Government, Planning and Environmental Law, and Administrative Law. Between 1980 and 1985 he was Junior Counsel to the Inland Revenue. He took silk in 1985. He served a period as Chairman of the Administrative Law Bar Association. Between 1988 and 1994 he was Attorney-General to HRH the Prince of Wales (following which he was made a Companion of the Victorian Order). He was Chairman of the Law Commission for England and Wales from February 1999 until July 2002.

We look forward to working with Sir Robert in realising UKELA's objectives of heightening awareness and understanding of environmental law and delivering our aim of making the law work for a better environment. If you have still to book your place at the Garner Lecture, please do visit www.ukela.org for a registration form.

If you're a student there is also still time to book your place on our student social and careers advice session in London at 6pm on the 12th December. Booking enquiries should go to our Member Support Officer, Alison Boyd, alisonboyd.ukela@ntlbusiness.com.

Now is the time to renew your membership for 2007 and you will soon receive your renewal form. Please do send it back as quickly as you can to save us having to send reminders. With it, we are also sending out early booking forms for the 2007 conference on June 22nd – 24th in the beautiful city of Bath. 2007 is our twentieth anniversary and we'll be celebrating that, and reflecting on twenty years of UKELA's involvement in the field of environmental law, at the conference.

May I also take this opportunity to wish you well for the festive season.

THE SECOND UKELA WILD LAW CONFERENCE 10 NOVEMBER 2006.

Report by Simon Boyle of Argyll Environmental and Council Member; Begonia Filgueira of Gaia Law and Vicki Elcoate, Executive Director UKELA.

Background

UKELA held the first Wild Law conference in November 2005. Many of those who attended asked if a second conference could be held, preferably with Cormac Cullinan (author of the book Wild Law) present, so that the ideas could be more fully discussed and developed.

After an initial meeting it was decided to run this conference jointly with colleagues from the Environmental Law Foundation. Support was also provided by the Gaia Foundation.

To provide a framework for the conference it was decided to take the six questions presented by Michael Meacher who chaired the first Wild Law conference:

1. Can Cormac's legal framework be made to work?
2. Can Cormac's alternative thinking actually resolve the underlying problems?
3. How will it fit with the current free market economies and the dominance of global corporations?
4. How do we achieve the political will to enable the ideas to take root?
5. How can you get the ideas onto the public agenda?
6. How are the principles in Wild Law compatible with the almost universal aspiration across the world for economic prosperity?

Once again the conference was aimed principally at students and e mails were addressed to law faculties of over 20 Universities. The University of Brighton again kindly agreed to host the conference.

This conference was chaired by John Elkington of SustainAbility and the speakers were Cormac Cullinan, Norman Baker MP and Satish Kumar with Begonia Filgueira providing a summary at the end.

The papers presented at the conference will be posted on the UKELA Website under [<http://www.ukela.org/events.shtml>].

John Elkington (Chairman)

John Elkington is the Founder, Director and Chief Entrepreneur of SustainAbility, a strategy consultancy and independent think tank specialising in the business risks and market opportunities of corporate responsibility and sustainable development.

We are just starting to feel the affects of a kick back from the environment that has resulted from many decades of unchecked global capitalism.

The financial markets still seem to be impervious to the external environment changing around them and it was interesting that the markets didn't react at all to the publication of the Stern report.

Many of the components needed to change the system to one that is inherently sustainable are already in place but something is needed to really shift the system. Unfortunately human nature being as it is, it will probably take a crisis, possibly associated with Climate Change to do this.

Meanwhile it is largely up to NGOs such as UKELA, ELF and Gaia to drive the change forward and lead the way.

Cormac Cullinan

Attorney of the High Courts of South Africa and Namibia and is the author of "Wild Law: A Manifesto for Earth Justice" (first published in 2002 in South Africa and subsequently in 2003 in the UK by Green Books).

Questions 5 and 6

As many of the people present may not have been familiar with the concepts of Wild Law, Cormac first discussed some of the central concepts of Wild Law and then looked at the questions posed by Michael Meacher.

Before man starts to write laws he first needs to consider his place in the Universe from which certain 'universal' laws or patterns can be discerned.

The first is the characteristic to diversify; matter left to itself will differentiate into complex forms.

The second is to create order through which these complex forms can self regulate and then collectively function to create an even more complex form.

For example a liver cell has the ability to function and self regulate but also forms part of and contributes to the functioning of the liver, which in turn, can function and self regulate whilst contributing to the functioning of the body. Although in an analytical sense the cell, and liver can be dissected and considered separately, in reality they are interconnected and form part of the whole. In the body all cells and organs are both interconnected and interdependent. A body whose brain tried to 'exploit' the liver because it was 'clever' would not long remain healthy.

This leads onto the third universal law, that of the relationship between the parts, and that the communication between the parts is essential to the functioning of the whole whether that be human body, ecosystem or planet.

To understand these functions and communications in nature, it is important to realise that they do not operate mechanically like a clock but with a pulse and rhythm which is more like a dance.

Mankind's relationship with the natural world is currently fundamentally flawed because it fails to appreciate that we are a part of nature and entirely dependent on it. Instead we have deluded ourselves into thinking that we are cleverer and better than nature which is there for our purpose only. Thus we have assumed that we can plunder the natural world as we wish without consideration for the rest of the Earth Community. Indeed the very language we use betrays our real attitude; we refer to natural 'resources' (to be used for the exclusive benefit of our species) and to 'property' inferring that we own the land.

Our current legal system has extended and attempted to legitimise this conceit. Only humans and a totally artificial entity termed 'companies,' have legal status. All other species are treated as mere objects.

In our human history we are in a phase of 'radical anthropocentrism' where all of nature is subject to human 'needs' and welfare irrespective of how short sighted and bizarre these might be.

When we take a detached planet wide view on our human activities we realise the futility for most of our energies and industry, taking raw materials turning them into products all of which, sooner or later become waste. We become obsessed about increasing productivity and making profits that further fuels the system.

The raison d'être of all companies is to make profit for their shareholders and they are therefore inevitably part of the resource hungry system that is rapidly destroying the natural world. Most international companies now say that they take their environmental responsibilities seriously and have a policy for Corporate Social Responsibility, but this is akin to a meat eater still being a carnivore albeit with good table manners.

If we are prepared to look outside from our safe, insular, self-satisfied corporate world and look at what is actually happening to the planet we will see that we are now entering the 6th period of mass species extinction. (The last happened 65 million years ago.)

Climate change, a direct consequence of mankind's economic activity and disregard for the natural world is now well underway and is taking us to uncharted waters where precedent will not assist.

If we are going to survive and indeed deserve to survive then humankind has to rise to its greatest challenge by fundamentally changing our relationship with the natural world and the Earth Community.

We have to reconnect with nature, to respect nature and work as part of it rather than in the face of it.

So we have to stop thinking about artificial human centred values such as material wealth, economic growth, GDP and productivity. From a planetary point of view these in fact mean biosphere destruction, species extinction, climate change, and poverty.

Our response must be to start a renaissance, where we are brave enough to break free from the shackles of 'economic reality' and through communicating and networking building a new set of values and laws that recognise our true place in the natural world. For those of us who are lawyers we must start to build a new earth jurisprudence taking our inspiration from the forests and the hills and the rivers but leaving the board room behind.

Norman Baker MP

Following the 2005 General Election Norman Baker , MP for Lewes, was promoted to Lib Dem Shadow Secretary of State for Environment and Rural Affairs. He also remained the party spokesperson on animal welfare, a post which he held between 1997 and 2006. Following the 2006 Lib Dem leadership election Norman took the opportunity to stand down from his portfolio brief to spend time on other projects. He is still Chair of the All Party Parliamentary Environment Group.

Question 4

Cormac had quite rightly identified the fact that the planet now appears to be entering the 6th period of mass extinction and in fact it has been calculated that one species is becoming extinct every 45 minutes. We are not living in a sustainable way and so we need to start redressing the imbalance.

We are now starting to appreciate how global ecological processes are inextricably linked and that by destroying these links there will be unforeseen consequences. Ultimately we are putting our own species' survival at great risk.

Climate change scientists are telling us that we probably only have 10-15 years to bring about these changes before we bring about tipping points leading to irreversible change. We are also learning that positive feedback mechanisms (an unfortunate phrase as 'negative feedback' would perhaps be better understood by the public) are starting to operate that will accelerate global warming faster than the predictions of just a few years ago.

Clearly we cannot carry on as we are and it is certainly not too late to do anything about it. Not taking acting is not a viable option.

It has largely been the capitalist system that has got us where we are. This system sees progress only in terms of increased production and it has totally ignored the damage caused to the planet. Now we are realising that more can actually mean worse.

Economists have traditionally viewed the environment as an externality and simply assumed that the environment could absorb the pollution and wastes produced by society forever. They simply never factored in the real cost to the environment, and even now for example the Department of Transport focuses on the narrow economic costs but does not attempt to account for the cost to the environment.

In the same way the government in looking at future energy supplies seems to have decided that nuclear power is the most cost effective option (and generally preferable to renewables) but without taking into account the massive costs of radioactive waste disposal and decommissioning of reactors.

So we need to move away from the traditional narrow view of thinking in terms of GDP to one which properly considers the environmental costs. The Index of Sustainable Economic Welfare, developed by the RSPB and other charities is a good example.

Natural resources will continue to be exploited to feed the capitalist machine and as they become scarcer (for example oil) the price will rise accordingly until such time as they can only be bought by the very wealthy.

Norman Baker said he shared Cormac's views but as a politician he had to be pragmatic on how we were going to achieve his aims.

As a liberal he was also concerned to protect civil rights as far as possible. Taking air travel as an example, he wouldn't want to simply ban this, but instead to somehow ration flying in a way that was fair. How then would we go about achieving this?

Firstly we need to set an overall planetary limit for CO₂ and other pollutants that is the maximum amount that the planet can properly absorb. These figures should then be divided up in a way that is equitable across all countries. Each country should then provide a further breakdown until individual carbon allowances have been calculated.

Market innovation would then lead to a much more energy efficient economy. Individuals would also have a strong economic incentive to reduce their carbon emissions as those who had spare carbon from their annual allowance could sell this on the market to those who wanted more.

It is crucial to realise that all of this trading would be within a planetary sustainable level agreed internationally. However within this framework there would be an equitable division that allowed people to make choices.

The beginning of such a process was already underway in Europe through the Emissions Trading Scheme which applies to some industry sectors although it should certainly be extended to apply to transport and especially aviation. Many people are unaware of the enormous damage that flying causes and having such absurdly cheap flights does nothing to educate people about this crucial issue.

Norman said that he agreed with Cormac that we can't rely on new technology to get us out of the problem, but this didn't mean that technology didn't have an important part to play. For example new technologies can play a very important part in further developing renewable energy.

We need to engage with businesses to make them realise the importance of protecting the planet. The Stern report is to be welcomed because it speaks the language of economics that business will listen to.

Hopefully with the publication of this report the Treasury will start to consider environmental costs properly.

There is also a need to radically overhaul the international institutions that again just don't look at environmental matters. These institutions are principally the International Monetary Fund, the Bank of International Settlement and the World Trade Organisation (WTO). Their principal objective now is to further economic development in a way that is unsustainable.

The United Nations should be called upon to champion the needs of the environment. Yes at present we do have the United Nations Environment Programme (UNEP) but this has a tiny budget and no teeth to act. To counterbalance the WTO a World Environment Organisation should be set up with strong economic and legal powers.

There is plenty of money around that could be productively used. The US government now spends trillions of dollars per year on defence and it would only take a fraction of this, say 5%, to build the institutions that could bring about the necessary changes.

The good news is that for the first time we have in the UK cross party support that environmental issues need to be urgently tackled. By working together politicians should be able to bring about real change.

In summary we need to get the economics right and we need to get the law right so that both can provide us with a sustainable future

Satish Kumar

When he was only nine years old, Satish Kumar renounced the world and joined the wandering brotherhood of Jain monks. Dissuaded from his path by an inner voice at the age of eighteen, he left the monastic order and became a campaigner for land reform, working to turn Gandhi's vision of renewed India and a peaceful world into reality. Fired by the example of Bertrand Russell, he undertook an 8,000 mile peace pilgrimage, walking from India to America without any money, through deserts, mountains, storms and snow. Satish is currently the Editor of Resurgence magazine and Director of Programmes for the Schumacher Institute.

Question 2.

Lawyers talk about the 'spirit of the law' but it seems strange that they are able to recognise this but completely fail to recognise that the trees and animals have a spirit.

Man thinks of himself as the superior species on the planet, he is master and he owns land and nature.

At one time it was thought man could own women, and then later he could own his fellow man and measure wealth by the number of slaves he owned. Now we have the conceit of thinking we can own nature and land. But seriously how can we own nature? What does it really mean to say we own this tree or this river? Who will next claim to own the wind and make us pay a carbon tax on the air we breathe?

It is our failure to understand our proper relationship with nature that has caused so many of the problems we now face. It is fashionable now to talk of global warming. It is in all the papers and all the politicians are talking about it. And of course Sir Nicholas Stern has written a 600 page report.

However global warming is just another symptom of the problem and the Stern report is responding in the way that western civilisation always responds by treating the symptoms but not the cause.

But it is an illusion to think that the Stern report is going to solve global warming. It is still based on the arrogance that we humans are the masters and that we can do what we want with nature or that we can manage it as a resource.

Our concern now with climate change is fear driven just like our fear of the nuclear holocaust in the 1960s. But we will not get anywhere if we are motivated only by fear as the opposite side of the coin to greed that has got us where we are.

Our western society and the others that are based on capitalism are dominated by economics. Economic growth is like a mantra that is endlessly repeated by the politicians, they do not know of any other way, but now they have found Climate Change they have brought in Dr Stern to treat the symptom.

We should remember the words of Mahatma Gandhi:

'The Earth has enough for everyone's need, but not enough for everyone's greed.'

Money over a certain limit always brings unhappiness and the creation of wealth will by definition cause poverty.

We are not masters of the planet but guests and we should learn to love nature and all that it gives us. We should also remember the Buddha who renounced all material possessions so that he could sit under the tree which was sacred to him. We need to go out into nature and find our own tree and learn to love nature.

Once we have learnt this then all else will follow. We will treat nature as our friend and respect. We will not wish to harm nature which gives us all we have.

However if we cannot do this and we continue to believe we own nature and are still imprisoned by the concept of materialism and economic growth then the problem of global warming will remain with us.

Begonia Filgueira

Begonia Filgueira is a European lawyer who has worked in the field of environmental law for the past 7 years. Having worked in two of the top five law firms in the city of London, Begonia founded Gaia Law in 2004, the first UK legal and policy environmental consultancy enshrined in principles of sustainability.

Cormac Cullinan challenges us to change the way we think about the earth, to transform ourselves from anthropocentric to altruistic beings. Humans are driven by desire and thus in order to put this plan into action we must want to change; we must yearn to fulfil a new role in the world order. We need to become subjective and reject a priori analytical relationships with the Earth. If change is to occur there is a need for humans to be emotionally attached to the Earth. When we engage the mind and all of our senses then we act as complete human beings.

Change can only be galvanised from within. It is now accepted by most of the environmental law community that only a change of tack by the individual will make a difference to the environmental crises we face. But our new relationship with the Earth has to be made attractive, cool, fun, a better trendier way of being. Using consumerisms' own tools to enable change. In order to spread change we have an enormous amount of personal networks available to us. Let's use those.

But how do we bypass consumerism, the entrenched way of being which negates wild law principles such as respect for the Earth and the resources it provides us with? Cormac suggests that we need to attack consumerism. That we must assume that individuals are not happy today even if they have the latest model of whatever they yearn for. That humans are alienated from each other and the Earth and that only a reunion with what sustains us will allow us to fulfil our destinies as human beings. Perhaps we should test this theory. Is wellbeing an environmental variable? Would humans be more happy if they communed with nature? This is an avenue of thought worth pursuing as emotional variables such as happiness/unhappiness will trigger change in humans. And if that change occurs there is an

important question to ponder is: what would changing our consumer behaviour do to our economy? Then again what would be the effect on the economy of London and much of eastern England being under the sea as a result of climate change?

Norman Baker was the pragmatic practical thinker and advocated sustainable development as the way forward. However to others sustainable development begs the question of whether any further development is possible given the death and destruction that climate change will bring upon us.

The blue sky thinking on the day came from Satish Kumar. Free from legal and political bonds he exposed a philosophy of change, a spiritual revolution. Satish argues that there is no separation between matter and spirit. That is the natural way of being. By detaching ourselves from emotion and giving priority exclusively to analytical thought we have created a schism, a breach, a conflict. This conflict has created an imbalance, the Earth is no longer something to cherish because we both use its resources and are thankful for these. It is an object to exploit, to abuse. Communities and families take less precedence to corporations because the former are too emotionally charged.

In order to solve the conflict, mend the breach, Satish advocates greater use of gratitude, trust and participation. Let's stop complaining about what we have and be thankful. Let's be thankful for our skill set, our abilities and not compare ourselves to the few role models put out by consumerist society. If we are more accepting we will see that many of the beliefs imposed on us are imposed by the outside consumerist world.

Materialism is rooted and fuelled by fear. We fear not being good enough, not having a good enough house, not having enough of the right friends. Lets cultivate trust and believe that when we change our consumerist ways we are doing the right thing. Don't listen to those adverts for once, ask yourself what you really want and what makes you happy, and then trust your instincts.

Finally participation is key. Last year I ended on the same note. If we want to change, as Satish said, let's take action. Do things you would not normally do, bake your own bread, enjoy time with you family, take time over a meal and then listen to how those actions make you feel.

I could not agree more with one of Satish's statements "Environmental crisis are crises of desire". We will never have enough if we do not listen to our instincts; if we are driven by outside forces which brain wash us to think we are not all that we should be. That thinking has lead and will continue to lead to the abuse of the Earth and unless we want to change we may not have much time left on the planet to argue about it all.

Weekend Workshop

After the conference 21 of those who had participated went onto a weekend workshop on Wild Law based at Arundel Youth Hostel in the South Downs. This was kindly facilitated by Elizabeth Rivers and Cormac Cullinan. Much of the time was spent outdoors and thanks go to Nigel James, of the South Downs Joint Committee, and Owen Plunkett, of the Ramblers Association, for guiding the walks and outdoor activities. Three participants joined from the first US Centre for Earth Jurisprudence and have contributed some information to e-law about it (see below).

There was very positive feedback from those who joined in and here are some of their comments:

- "I was sceptical that lawyers could change - but now I think they might"
- "Before I came I didn't think Wild Law was possible, now I think it just might be"
- "Inspiring variety of people..so many people from different backgrounds"
- "If you plant seeds of ideas which aren't that easy to grasp straight off you need time. If you are talking about spreading things by inspiration, you are quite lucky if you could do it by one inspirational

speech from a platform. This workshop is about preparing the ground, having structure but movement. If you want people to be carriers of an idea you can't talk down to them from a platform".

There was some discussion about what UKELA could contribute next to the discussion and if readers of e-law have thoughts on this we would very much welcome them. Please email simon.boyle@argyllenviro.com.

“DO YOU WANT A MORE DIVERSE UKELA?”

Stephen Sykes

Convenor, Membership Development Working Group

“UKELA is the network for those interested in environmental law: lawyers; environmental consultants; regulators; scientists; policy makers; students; academics; environmental businesses; those in the insurance business; campaigners; NGOs”(page 2, new UKELA membership leaflet).

Sometimes, UKELA is described erroneously as the UK Environmental Lawyers Association. It is perhaps an understandable mistake to make. Lawyers certainly abound. Since our inception in 1986, every UKELA Chair has been a lawyer. The vast majority of UKELA's 900 members are lawyers, generally solicitors in private practice. Almost all of the Convenors of our 9 Regional Groups and 12 Working Parties are lawyers.

But for UKELA to make an effective contribution to the goal of “making the law work for a better environment”, a diverse membership, drawing across a range of different disciplines and experiences, is critically important. Diversity allows us to achieve a deeper understanding of the often complex environmental problems we face - and it gives us a much better understanding as to the extent to which the law can make a difference.

Currently, UKELA has:

- 100 members (just under 10% of the total membership) who describe themselves as environmental consultants. There are 400 environmental consultancies in the UK, employing more than 10,000 consultants;
- 40 members from academia – mainly lecturers, together with a handful of students. There are 100 environmental law lecturers. At least 1,500 students study environmental law in the UK every year (ref: recent UK Centre for Legal Education report into teaching and learning issues relating to environmental law, www.ukcle.ac/research/projects/environmental.pdf).

A key part of UKELA's strategic plan over the next three years is to increase membership diversity. These two sectors of our membership – environmental consultancy and academia – are our top priorities. Our aim is to double the number of members from these sectors and to encourage non-lawyer members to be more active participants in our association.

To this end, a number of measures have been identified by the recently established Membership Development Working Group to achieve our goals, including:

- For Environmental Consultants:

- Establishing a new Working Party for members interested in Corporate / Environmental Due Diligence. Half of the attendees at the inaugural meeting of the working party are environmental consultants. The joint-convenors are environmental consultants.
- Proactive approaches to several large international environmental consultancies who are not currently members – extolling the appeal of UKELA to increase know-how as to environmental law and to provide a professional network.
- For Academics:
 - The UKCLE Report referred to above which concluded that UKELA “has generally shown little desire to engage with teaching and learning issues” relating to environmental law (see at section 1.7 of the Report). This perception has to be changed.
 - The Report also concluded that environmental law academics would be most interested in an e-network which helps them to:
 - keep up-to-date with this complex, multi-disciplinary and rapidly changing discipline; and
 - participate in a forum for the exchange of information and teaching ideas.
 - The Membership Development Working Party is considering the extent to which UKELA might assist with development of this network. The matter will then be addressed by UKELA’s Council in the New Year.
 - Students will have the chance to meet environmental law and other environmental professionals at a “careers” event to be hosted by Ashursts in London in December ‘06.

The Membership Development Working Party comprises 2 environmental consultants, 3 non-practicing lawyers (1 working in commerce, 1 in academia and 1 in environmental consultancy) and UKELA’s Executive Director and Membership Support Officer.

Even though we have a diversity of professional backgrounds, we are very much aware that we do not have a monopoly on great ideas and initiatives needed to achieve UKELA’s diversity goal.

If anyone reading this article would like to contribute suggestions as to how we can attract more environmental consultants, academics and students, we would be delighted to hear from you. Please call me on 07899 843248.

CENTER FOR EARTH JURISPRUDENCE

A collaborative initiative of Barry and St. Thomas Universities

Patricia Siemen, op, jd, Director, St. Thomas University School of Law

Three members of the newly created Center for Earth Jurisprudence, Miami, Florida attended the recent UKELA conference on *Wild Law*, held at the University of Brighton, and the extended weekend workshop in Arundel, Sussex County. Participating were Herman Greene and Margaret Galiardi, consultants with the Center, and Director, Patricia Siemen. The Center for Earth Jurisprudence was hosted by the Gaia Foundation, London.

The Center for Earth Jurisprudence (CEJ) is jointly sponsored by Barry and St. Thomas Universities' Law Schools. The Center is the first of its type in the United States. Its mission is to re-envision law and governance in ways that support and protect the health and well being of the Earth community. It promotes a philosophy and practice of law that respects and recognizes the rights of the natural world, and humans as integral members of the Earth Community. The new Center begins this Fall with initial funding from a Marie V Gendron grant of the Adrian Dominican Sisters. Both Barry and St. Thomas Universities share a rich Catholic tradition that honors the sacredness of creation.

CEJ takes an interdisciplinary approach in creating new ways of responding to the ecological challenges of the 21st century. It works with lawyers, scholars, artists, ecologists, poets, scientists, philosophers, theologians, activists and indigenous peoples to help define a new field of law that moves beyond environmental regulation towards creating human, legal responses that protect the existence and right to habitat and participation of all beings within the Earth community. It is rooted in an intimate relationship with the natural world that prepares lawyers for the unprecedented impact of global ecologically-related legal challenges and enables them to they think differently about possible solutions.

The Center for Earth Jurisprudence will be teaching an Earth Jurisprudence Seminar at the Barry University School of Law during the Spring 2007 term. A conference on exploring the principles of Earth Jurisprudence is being planned for April, 2007 as well as an interdisciplinary conference on water for the Fall. More information can be obtained at www.earthjuris.org.

THE UK STRATEGY FOR SUSTAINABLE DEVELOPMENT

Sara Parkin

The UK Strategy for sustainable development calls on professionals to become 'sustainability literate' - that is, understand enough about the importance of a healthy environment to a flourishing society in order to practice any profession accordingly. Some professional bodies have included sustainability literacy in their registration standards already. Lawyers should do the same – urgently.

Members of the UKELA will be well aware of the importance of good law making in protecting the environment. It is also well understood how pollution and other forms of environmental degradation can impact on human health, with cases brought and won under the UN Human Rights legislation already.

But how far is this legislation or the way it is enacted sufficient to deal with the anticipated massive impact of climate change on human health and the way we run our societies – in the UK and worldwide? Last month the US state of California announced it was suing the six largest car manufacturers in the US for allegedly contributing to global warming. The companies are accused of “creating a public nuisance” that is costing the state millions of dollars, in a process that is similar to the suing of tobacco companies for (knowingly) causing lung cancer - “Global warming has already injured California, its environment, its economy, and the health and well-being of its citizens”. Are the companies liable for continuing to produce polluting cars when the health impacts and global warming consequences of doing so have been well know for a long time?

The Automobile Alliance has argued that “using nuisance suits to address global warming would involve the courts in deciding political questions beyond their jurisdiction.” But is this true? Who is responsible for what? Where is the boundary between individual responsibility and political responsibility? And, presumably, there is added complexity if those holding political responsibility have been elected by the individuals being affected. The state of California is suing on behalf of its citizens (their health, environmental quality and their budget).

Richard Macrory has pointed out that all this harks back to the 1970s green movement campaigning (where we both cut our teeth) when questions were asked, for example, about the responsibility of a person accused of causing a 'noise nuisance' in a council housing estate. Should not the responsibility be at least shared with the architect who had designed a building with very poor sound insulation? I certainly remember Friends of the Earth's iconic campaign of dumping a mountain of empty tonic bottles on the steps of Cadbury Schweppes headquarters. Shocking tactics at the time, but now taking back packaging, used white goods, etc. and the idea of producer responsibility is part of everyday business for companies, organizations and – environmental - lawyers.

But how well prepared is the legal profession in general? How soon before energy profligacy by a neighbour is interpreted as an infringement of my rights to a healthy environment? Or for a drought plagued local council to be considered negligent for failing to improve the porosity of road surfaces and allowing precious rain to drain into sewers rather than soak into aquifers?

Other professions ranging from marketing to architecture are at varying stages of integrating sustainability literacy – or competencies – into their professional standards in order to future proof their members for the difficult times ahead. The UK engineers did it in 2003, with consequent influence on universities and quality assurance bodies, professional development courses, and employer training programmes. Lawyers need to do the same, because frankly, the rest of us will struggle if the legal profession – all of it, not just the environmental lawyers – is not up to speed.

Public expectations are increasingly well informed and likely to outstrip the pace of new or re-regulation. Anything less than best practice – even if it is greater than legal compliance – could be seen as unreasonable behaviour whether perpetrated by individuals, government or the private sector. Leading companies are already preparing for a future where environmental and social responsibility is as material to business success as financial performance. They are reading not only the evidence of climate change but political smoke signals. Gordon Brown and David Cameron, one or both of whom are future Prime Ministers, and Tony Blair with an eye on his legacy, are all competing to be seen as green. There are also rumours that George Bush may pop on a green mantle for size sometime soon.

Because things could move fast, lawyers who are not prepared may not only lose out on business, and their professional bodies could be seen as negligent for failing to enable the profession to “serve both the public and consumers better” when it comes to dealing with these massively important and immediate issues of human and environmental well being. There is an opportunity for the anticipated Legal Services Bill to set an enabling framework. How strong is the lobby of lawyers ensuring that it does?

ENVIRONMENTAL LIABILITY

The September issue of *Environmental Liability*, published by Lawtext Publishing Limited, includes an article entitled *Enforcing the Environmental Liability Directive: Duties, Powers and Self-Executing Provisions* by Valerie Fogleman, Consultant at Lovells and Visiting Professor at the University of Ghent.

The article examines the enforcement regime created by the Environmental Liability Directive (ELD). The ELD's provisions create a duty on, or empower, a competent authority to act and impose a direct duty on an operator to act. Among other things, an operator has a duty to prevent or begin remedying threatened or actual environmental damage caused by its activity as soon as the threat or damage occurs; there is no need for a competent authority to take any actions before the duty is triggered. Further, the operator cannot challenge its responsibility for the costs of preventive or remedial measures until it has carried out

the measures. If the threat or damage was caused by a vandal or other third person with insufficient assets to pay preventive or remedial costs, the operator has no means of recovering its costs.

In order to determine the nature and scope of the enforcement regime, the article also examines exceptions to the ELD, the standard and scope of liability imposed by it, mandatory and optional "defences", the right to bring an appeal and sanctions for failing to carry out preventive or remedial measures. The effect of the ELD's provisions is an enforcement regime that imposes far-reaching liability on operators in accordance with its fundamental principle, namely, to induce operators to adopt measures and develop practices to minimise the risks of environmental damage in order to reduce their exposure to financial liabilities.

The article will be available to read on line at www.lawtext.com

ENVIRONMENTAL LIABILITY CONSULTATION

DEFRA has issued the long awaited consultation on the UK implementation of the Environmental Liability Directive. Details of the consultation (which closes on 16 February 2007) and the list of consultees, can be found at:

<http://www.defra.gov.uk/corporate/consult/env-liability/index.htm>

BOOK REVIEWS

ENVIRONMENTAL LIABILITIES AND INSURANCE IN ENGLAND AND THE UNITED STATES

By Valerie Fogleman, Consultant, Lovells; Visiting Professor, University of Ghent

Witherby's; 2005; 2044 pages, hardback, two volumes, ISBN 1 85609 303 4, 2044 pages, £295 .

Companies and organisations that fail to consider environmental liabilities during their operations and as part of their commercial transactions may be ordered to cease operations, risk incurring substantial costs, the loss of reputation or, in some cases, criminal sanctions if they fail to consider environmental liabilities in their operations and commercial transactions.

In *Environmental Liabilities and Insurance in England and the United States*, Valerie Fogleman examines and analyses civil and criminal environmental liabilities in both countries and their implications for companies and organisations, the insurance market and their advisors.

Part A examines environmental liabilities and insurance in the United States. The chapters covering environmental liabilities examine the history of such liabilities, reasons for insurance claims from past pollution incidents, federal environmental liabilities, financial responsibility requirements, the Superfund programme and liability system, other clean-up programmes and their accompanying liability systems, the redevelopment of brownfield sites, voluntary clean-up programmes, claims for bodily injury and property damage, the interaction of environmental law and bankruptcy law and the potential cost of

liabilities from past pollution. The chapters covering insurance examine the history of insurance for environmental liabilities in general liability policies, insurance coverage disputes, proposals to terminate pollution insurance coverage litigation and to repeal retroactive liability for cleaning up contamination and environmental insurance policies for US risks. The concluding chapter in Part A examines seven case studies to analyse the application of environmental liabilities and pollution coverage disputes in practice. The case studies include the infamous Love Canal in New York State, the Rocky Mountain Arsenal in Colorado and the Stringfellow Acid Pits in California.

Part B provides an equivalent examination and analysis of civil and criminal environmental liabilities and insurance and related topics in England. Such liabilities and insurance tend to be less developed in England than in the US, due to their later introduction.

Environmental liabilities and insurance differ, of course, in many respects in England from those in the US. Notable differences in environmental liabilities include: the prevalence of federal environmental law and the concept of co-operative federalism in the US and the prevalence of European Community environmental law in England; the establishment of financial responsibility requirements for operations with environmental risks in the US in the 1980s and their more limited introduction in England; the introduction of Superfund, the programme to clean up contamination from past pollution incidents in the US, in 1980, compared to the introduction of the contaminated land regime, known as Part IIA of the Environmental Protection Act 1990, in England in April 2000.

Notable differences in insurance include: a standardised general liability policy that has been used throughout the US since the late 1930s compared to non-standardised public liability policies in England; the large number of pollution claims against general liability policies in the US since the early 1980s versus the increase in the number of such claims against public liability policies in England since the early 2000s. Accordingly, whereas there have been many estimates of the costs of liabilities from past pollution in the US, such estimates are in a preliminary stage in England.

The last chapter of the book compares and contrasts the many topics described in Parts A and B and analyses the similarities and differences between them. A major purpose of doing so is to examine the liability systems and programmes that work well and those that have been revised due to inherent inadequacies. Another purpose is to highlight issues that have been dealt with in an established environmental law system to show ways of dealing with them in a newer system.

Environmental Liabilities and Insurance in England and the United States is a tour de force of comparative environmental law. Environmental liabilities become ever more numerous and complex. This work will be immensely valuable for the wide range of professional advisors who are called on to alert their clients to environmental liabilities and to enable them to avoid, mitigate or transfer them including (these days) accountants and insurance brokers as well as lawyers, surveyors environmental consultants and engineers.

I for one was fascinated by the comparisons between the liability systems, programmes and policies in the two countries. The legislation may be substantially different but its effects are often the same. Notwithstanding its size the book is very readable and will be of interest to both seasoned environmental professionals and those coming new to the topics.

NEW ENVIRONMENTAL LAW PUBLICATIONS FROM THE UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP).

The Environmental Law Branch of the Division of Policy Development and Law has provided support in the area of capacity building, including the production of publications on environmental law at both national and international levels. The following titles are the latest in the series of such publications.

[Manual on Compliance with and Enforcement of Multilateral Environmental Agreements,](#)

2006, UNEP,
ISBN: 9280727036 ,
736 pages,
USD50.00

This new Manual builds on UNEP's ongoing efforts to strengthen the capacity of governments to implement and enforce MEAs and to comply with environmental law more broadly.

The Manual can serve as a reference tool and guide for a wide audience of stakeholders who have a role in ensuring the effective implementation of MEAs. These include treaty negotiators, decision-makers, legal practitioners, police, customs officers, researchers, and legal drafters in governmental, non-governmental, academic, and professional institutions, to mention but a few.

[Selected Texts of Legal Instruments in International Environmental Law,](#)

UNEP, 2005,
ISBN: 9280725645 ,
734 pages,
US\$65.00

This publication is designed to meet the demand for legal information and material, and serve as a source of reference of basic documents on international environmental law.

The selected texts contained in this publication are intended to be a handy reference book of up - to-date information on environmental law. It provides a source of quick and easy reference for all those engaged in the field of environmental law and policy in Governments, parliaments, judiciaries, private and public sectors, national and regional institutions, civil society organizations, and the public needing to use basic environmental law texts in the course of their daily work. It brings together key policy documents, texts of major legal instruments in the field of environmental law and sustainable development as well as basic texts in the field of international law, indispensable for carrying out work in environmental law.

[Judicial Handbook on Environmental Law,](#)

2005, UNEP,
ISBN: 9280725556,
Paperback, 131 pages,
USD10.00

This Handbook is intended to enable national judges in all types of tribunals in both civil law and common law jurisdictions to identify environmental issues coming before them and to be aware of the range of options available to them in interpreting and applying the law.

The publication appears in the context of a global realization that the protection of the environment has rapidly risen in importance to become one of the foremost concerns of the world community. Environmental deterioration through human activity is proceeding at an unprecedented rate, and unless this process is held in check the damage caused will be grave and irreversible, hurting not only ourselves but future generations, and not only the nation where it occurs but the global population in general.

This is the background against which the United Nations Environment Programme decided to undertake the production of a handbook for the judges of the world, and to make easily available to them a

compendium of relevant information which would be of ready assistance to them in this comparatively unfamiliar judicial territory.

[Compendium of Summaries of Judicial Decisions in Environment-Related Cases](#) ,

UNEP, 2005,
ISBN: 9280725572,
Paperback, 249 pages,
USD25.00.

The compendium of judicial decisions in environment-related cases consolidates earlier compendia published by UNEP in 1997 and 2002 and contains summaries of several additional cases.

Further details from : <http://www.earthprint.com>

THE EIC LAND REMEDIATION YEARBOOK 2007

Continuing changes in regulations and growing demand have created a period of unprecedented change for the land remediation sector and the services it offers. To support this, in January 2007 The Environmental Industries Commission (EIC) will again produce The Land Remediation Yearbook. This high quality publication provides an authoritative reference guide to the sector - and its future prospects.

The Land Remediation Yearbook 2007 reaches an exclusive audience of 3000 buyers of contaminated land services and technology, including:

- Major Land Owners, Developers, Construction Companies and House Builders
- Lawyers, Consultants, Chartered Surveyors, Planners
- RDAs and relevant membership organisations
- All EIC Member companies

UKELA members are entitled to a 10% discount on any advertising placed in the Land Remediation Yearbook 2007. Please call us on 020 7486 9566 or email eicmarketing@eic-uk.co.uk to book your advert. (offer may not be used in conjunction with any other Land Remediation Yearbook 2007 discount offers)

We will be sending a free copy of The Land Remediation Yearbook 2007 to all UKELA corporate members.

If you do not wish to receive a copy, please contact vicki.elcoate@ntlworld.com by 30 November 2006.

CLIMATE CHANGE LITIGATION

Analysing the law, scientific evidence and impacts on the environment, health & property

Dr Joseph Smith & Professor David Shearman

ISBN: 0-9757254-4-0

In the absence of mandatory requirements on companies and governments to reduce greenhouse gas emissions, advocacy groups, public authorities and individuals are turning their attention to legal mechanisms as part of their efforts to compel corporations and governments to address global warming issues.

Aimed at lawyers, scientists, policy makers, environmentalists and others with an interest in law and sustainability issues, this book provides a detailed overview and analysis of the legal and scientific issues at the core of climate change litigation.

The text reviews the legal basis of claims and defences available to litigants, discusses obstacles that will stand in their way and summarises the first wave of ground-breaking cases from around the world that have sought to pave the way for future litigation.

Within this legal framework, the text adopts an interdisciplinary examination and critical analysis of the existing body of scientific evidence representing consensus on global warming. The authors map out the scope of global warming's likely direct and indirect impacts on the environment, public health and property and critique the scientific arguments propounded by global warming sceptics. A key focus is on the extent to which current scientific evidence meets legal thresholds required to establish causation between greenhouse gas emitting activities of defendants and harms suffered by plaintiffs.

The book also considers some of the wider risk, governance and policy issues that the threat of litigation poses for companies as well as examples of how these issues are being addressed by organisations around the world.

Even though written from an Australian perspective this is a timely, well researched resource that will be of great value to anyone with an interest in the topic.

It offers an excellent introduction to the topic and is a substantial contribution in a field of growing importance.

For details on how to order go to : <http://www.presidian.com.au/product-climate-change-litigation.html>

REGIONAL GROUPS

The East Anglian regional group is holding a seminar on the subject "waste law an update" on Wednesday the 24th of January 2007 at the Angel Hotel in Bury St Edmunds Suffolk. at 4.30 to 6 30 (with light refreshments to follow). The guest speaker will be Dr Anne-Lise McDonald, a solicitor with the Environment Agency based in Peterborough. The event will be sponsored by Bates Wells and Braithwaite. Further details will be published on the website and circulated to members.

COMPETITIONS

UKELA MOOTING COMPETITION RULES 2007

1. There are two mooting competitions:
 - a. The Lord Slynn of Hadley Mooting Trophy Competition is open to all those who as of 15th October 2006 are in pupillage, a trainee solicitor, on the bar vocational course or legal practice course, or who are on taking the CPE. In essence this competition is for those on vocational courses
 - b. The UKELA Student Prize Moot is open to those who as of 15th October 2006 do not qualify for the Lord Slynn Trophy Competition but who are studying for a degree (including graduate degrees, e.g. LLM's or non law degrees). In essence this competition is for those who are students not yet on vocational courses.
2. Teams consist of two members. An institution may enter more than one team. Subject to obtaining the permission of the Master of the Moot, teams may comprise of competitors from different institutions.
3. Each team should submit two skeleton arguments, one on behalf of the Appellant and one on behalf of the Respondent. No more than five authorities may be cited in each skeleton (in addition to any referred to in the Moot problem). Each skeleton argument should be no more than six pages of A4 paper. The font should be Times New Roman, size 12, with 1.5 line spacing. Paragraphs and pages should be numbered. The skeleton arguments should be accompanied by a contact name, address and day and evening telephone number. A copy of the skeleton argument should be forwarded electronically by email to mg@no5.com. If an electronic copy is submitted this should be accompanied by a paper submission ("hard copy").
4. Electronic and hard copies of the skeleton arguments should be submitted to **Martha Grekos, No5 Chambers, 4th Floor, 199 Strand, WC2R 1DR, no later than 17:30hrs on Monday 19th January 2007.**
5. The finalists will be selected on the basis of the written skeleton arguments. All competitors will be notified of the outcome. The finals will be held at a venue and at a date to be announced in March 2007.
6. The winners of both competitions will receive a cash prize from No5 Chambers. The winners of the Senior competition will receive the Lord Slynn of Hadley Mooting Trophy. All finalists will receive book prizes from Sweet & Maxwell.
7. The Master of the Moot reserves the right to change the rules of the competition without notice as she thinks fit.

Martha Grekos, Barrister, No5 Chambers, Master of the Moots

UKELA are very grateful to our sponsors: No.5 Chambers and Thomson/Sweet&Maxwell

THE MOOT PROBLEM AND GROUNDS OF APPEAL WERE KINDLY WRITTEN BY GORDON WIGNALL, BARRISTER, NO5 CHAMBERS

Rosa Alionomine v. Ambrosial Landfill Limited

Mr Justice Cerebral has been removed from his daily fare of charterparties and run-off reinsurance contracts to travel on circuit to one of England's northern cities which has a previous history (now largely gone by) of heavy industry, poverty and grime.

Despairing of the local diet of murder and other serious criminal offences, the learned judge made it known to the court administrators that if he could not enjoy a little respite with whatever the locals might describe as “civil” work he will climb into his state-of-the-art Bentley and get straight back to the Commercial Court. Anyway, there is a contemporary art sale at Christie’s shortly, and he is anxious to see whether he can pick up something suitable to liven up his gloomy room in the Royal Courts.

As a result, the judge found himself spending ten days hearing evidence from 20 residents who commenced a common law nuisance claim covered by a Group Litigation Order. He also heard four witnesses from the defendant landfill site operator.

Cerebral J. has decided to give judgment on the primary facts so that the parties can address him as to the relevant legal principles and on any conclusions of fact still to be reached. Cerebral J. was confronted at the commencement of the action by two radically opposed outline skeleton arguments and he is not at all sure which way he should jump.

The Claimants invite him to take an uncompromisingly Victorian approach. He has done a bit of private research, and it seems from the old cases and from the authorities on which the claimants expressly rely that Victorian judges were not at all nervous about issuing injunctions to close the odd power station or manufactory if their emissions had upset the local residents. Moreover the Claimants demand an injunction “in general form” prohibiting the Defendant “from operating its site in such a way as to cause a nuisance”.

The Defendant on the other hand reminds the Court that this is the 21st century and there are now huge swathes of regulations designed to protect the population. England and Wales are vastly overcrowded and, notwithstanding that some inconvenience may be caused to the few, we certainly cannot do without landfill sites, which, for many reasons, are much better placed nearer the populations they serve. Moreover, the nature of the “general injunction” claimed by the Claimants has greatly disturbed the Defendant: how on earth will it know where it stands in future if such an injunction is granted? If there is to be an injunction, then it should be prescriptive, telling the Defendant exactly what it can and cannot do and when in operating the site.

Further, the Defendant contends that the nature and character of the area is industrial against the Claimants’ submission, made from behind the impenetrable thick-framed spectacles of young Jo Tyro and the solicitor advocate who sits with him, that the nature and character of the area is predominantly residential.

The following are extracts from the judge’s initial (uncorrected) conclusions as to the primary facts which have been sent by e-mail to counsel. Large tracts appear to have been cut and paste from the written submissions put in by the persuasive and – to the judge at least – frankly dashing Fran Greenwash QC for the Defendant. These were helpfully forwarded to him electronically, as were a series of “additional supplementary submissions” sent on after the first part of the hearing had concluded. The hearing will recommence on the following Monday morning.

“This is a claim by 431 Claimants who commenced proceedings under a GLO sanctioned by the Lord Chief Justice. They originally claimed in respect of various nuisances emanating from the operation of a landfill site by the Defendant, namely odour, litter, scavenging birds, other pests and a mysterious red dust which occasionally explodes from the site on to some of their homes causing a little unsightly damage to paintwork. The claim in respect of the scavenging birds, litter and pests has now been abandoned. They claim from the dates on which they moved into their homes.

The site, known as the “Ambrosia Landfill Site”, covers some 22 acres leased from the local authority. Under the terms of the lease dated 16th May 1995, which is for a term of 25 years, the Defendant agreed

“Not to do or permit anything to be done in or upon the land or any part thereof which may be or become a nuisance, save that the uses authorised in clause 4 shall not be held to be a nuisance”. Clause 4 in its turn allowed the demised land to be used in accordance with any permit or licence which authorised the operation of a landfill site on the land.

The land (and therefore the landfill site) itself occupies a bowl-shaped depression, save that the border of the land is lower to the west and south, dipping to its lowest point at the south-west. The Claimants all live in the “Paradise Estate” to the North East. A plan is attached which shows both the landfill site in the middle (Areas A to D) and also the Paradise Estate (marked with a heavy outline). The Defendant is working the site from Area A through Area B Cells 1, 2, 3 to Area C and Area D. It covers each cell appropriately and effectively as it works the site. Area B Cell 1 was completed between mid-2002 and late summer 2006 and the remaining cells will take equal periods of time to fill until the whole site is full in May 2020.

There has been a landfill site of some sort at the site since 1905. To the North West of the site is a factory producing liquorice sweets. Until 1995 there was a power station between the factory and the site. There is a silver factory to the west of the site and a strip of industrial and works units along the western boundary. There is an operational steelworks and a gas works to the south west of the site. The gas works is used now for the storage of gas. Just to the north of the site there is a council dump off a road which used to be known locally as “scrap alley” because of the number of scrap merchants to be found there. There is a brewery about a mile to the south of the site, and indeed there is a toxic dump just to the south of the brewery. The direction of the wind is from the south-west.

The Paradise Estate and areas to the north and east of the Estate are residential and urban. The Estate was built in about 2001 after a planning inquiry undertaken by a planning inspector which resulted in a change to the land use permitted by the unitary development plan. The UDP formerly allowed only leisure development but this was altered after the inquiry to permit residential use. The Claimants all commenced occupation in late 2001 and knew that they would have to put up with some malodours from the landfill. The Estate houses about 15 workers employed by the Defendant.

Of the various works and factories to which I have referred, there are general background odours which emanate from them and which the Claimants can be expected to tolerate, but the odours about which they predominantly claim are characteristic of landfill sites and emanate to a substantial degree from the Ambrosia Landfill Site itself. The strengths of the odours are such as to interfere with the Claimants’ use and enjoyment of their properties. The characteristically landfill aromas of rotting and putrid material are fairly continuous and are so strong as to induce complaints of nausea by some on several occasions every year.

This is very much a case of the common man seeking justice from the powerful, and this has characterised the way in which the Claimants have brought their action. Their statements of case show that they argue that the way in which the site is operated is neither here nor there. They are prepared (for the purposes of this action only) to agree that the Defendant is doing its reasonable best to operate the site according to the most modern methods, and this concession has meant, unusually, that no experts have had to be called by either side.

The Claimants’ concession is consistent with the evidence of the staff of the Environment Agency who have carried out regular inspections at the site. The site has had the benefit of a PPC permit since April 2005 and it is agreed by all that the Defendant is using best available techniques as defined by reg.3, The Pollution Prevention and Control (England and Wales) Regulations 2000, based ultimately on Council Directive 96/61/EC. The Defendant has never breached the terms of its permit.

It has been agreed that (1) the damages which are appropriate on an annual basis in respect of the nuisance are to be assessed at a modest £1,250 per household and (2) the diminution in capital value of the properties if the nuisance remains is £7,500.”

Cerebral J. wishes to give judgment on liability and to determine whether or not an injunction should be granted if the Defendant is liable. Issues of damages and the details of any Order (if an injunction in general form is not appropriate) can be determined by a Master. Cerebral J. has discovered that the Commercial Court list back in London shows that there are a lot of ships which apparently need arresting.

The judge has indicated that there are a substantial number of issues on which he will need particular help, but he does not intend to bind counsel in the submissions which they wish to advance. Now is time for counsel to persuade him why his or her team should win.

As to the specific issues on which Cerebral J. has indicated that he is likely to need assistance, they are as follows (summarising his own words as much as possible).

First, how is the locality of the relevant area to be characterised given the judge’s primary findings of facts, the fact that the Defendant was there first and the grant of planning permission? If these environmental actions are really about competing uses of land, then what defence can the Defendant validly claim on these related grounds?

Secondly, the Defendant accepts that the PPC permit cannot authorise or licence any interference with the Claimants’ use of their land, but it asserts that the permit is evidence of reasonable user of land. Can this be right and does it help the Defendant if there is “reasonable user”?

Thirdly, if the Defendant cannot raise a defence, then is the judge bound to grant an injunction in general form as the Claimants submit?

Mr Justice Cerebral has difficulty accepting that the older authorities are really appropriate in the modern age. There seem to have been some stabs at accommodating contemporary circumstances (for instance *Blackburn v. ARC Ltd* (1998) Env LR 469 and *Dennis v. MoD* [2003] Env LR 34), but the learned judge is having difficulty accepting that the Victorian authorities represent the full story today. Greenwash QC divines that the judge appears to be looking for some pointers which may help him to develop a radical change in the common law (if necessary) which will be appropriate for modern Britain. There are several vacancies looming up in the Court of Appeal - if the judge can get past the non-legal members of the appointments committee, that is.

In the judge’s usual generous fashion he welcomes any comments from the Bar in the event that his findings of primary fact contain obvious errors or inadequacies. That does seem to be too often the way these days.

ANDREW LEES PRIZE ARTICLE COMPETITION 2007

The United Kingdom Environmental Law Association is pleased to announce its article competition - “the Andrew Lees Prize”. This competition is open to any student, trainee solicitor, pupil or solicitor / barrister with not more than 2 years’ post qualification experience.

Andrew Lees was the Campaigns Director for Friends of the Earth and a leading environmental campaigner on a range of issues from water pollution to illegal waste dumping. He died suddenly in 1994 while on a working holiday in Madagascar campaigning against a large opencast mine.

If you would like to enter, a short article of about 1,000 words should be submitted by close of business on **26th January 2007**.

There will be up to three prizes:

- each winner will receive a free place (including travel expenses) to the 2007 UKELA conference plus Sweet and Maxwell books.

The winner of the first prize will have their article published in UKELA's journal e-law.

The title of the article is:

“To what extent are individual preferences or expert opinions suitable in guiding policy and damage assessment decisions relating to the environment?”

You should complete and attach the enclosed form with your essay.

All essays should be typed in 12pt script and submitted electronically as well as on paper (i.e. on disc as a Word document or by email). Your name should appear on the top right hand corner of each page and the number of words should appear at the end of the essay.

The judges have been appointed by UKELA Council and their decision on all matters relating to the competition is final.

Your essay and form should be sent to Martha Grekos, No5 Chambers, 4th Floor, 199 Strand, London, WC2R 1DR, with a copy of the essay on disc to the same address or by email to mg@no5.com to reach her by close of business on 26th January 2007.

UKELA “Andrew Lees Prize” Essay Competition

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**CONTACT
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The qualification for entering the competition is that you must be either a student, trainee solicitor, pupil barrister or be a solicitor or barrister with less than 2 years post qualification experience.

I confirm that I have read and understood the rules and I meet the criteria set out above.

.....
(Signed)

.....
(Date)

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LEGISLATIVE CHANGES IN BROWNFIELD AND CONTAMINATED LAND

23 and 24 January 2007, London

This highly-popular event will return for the 5th year, providing lawyers, regulators, developers, local authorities, consultants and other professionals in the brownfield industry with all the changes and updates to the laws and regulations that will affect them over the next twelve months.

Key topics include: Environmental Liability Directive; definitions of waste; Environment Agency regulation; radioactive contamination; Soil Protection Directive; Groundwater Directive; planning and pollution control; Part IIA cases, and more.

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The Edinburgh Law School in association with Brodies LLP are pleased to present a 14th series of lectures by distinguished speakers on the subject of environmental law

Dr Maria Gavouneli
(Law Faculty, University of Athens)

Human Rights and the Environment

Wednesday 24 January 2007
Raeburn Room, Old College 6pm

Mr Tim Jewell
(Law and Regulation Directorate-General, DEFRA)

Fashioning UK Environmental Law under Devolution

Wednesday 14 February 2007
Raeburn Room, Old College 6pm

An Edinburgh Law School Tercentenary Lecture

Professor Richard Macrory
(University College London)

Regulation and the Environment: Taking Sanctions Seriously

Thursday 22 March 2007
The Playfair Library, Old College 6pm

All interested are most welcome to attend

For further details please contact the Research Office, 0131 650 2038 or myra.reid@ed.ac.uk

Informa Life Sciences'

Environmental Liability Directive
Regulatory perspectives and legal insights into this new Directive

13th – 14th March 2007, Jolly St Ermin's, London, UK
www.informa-ls.com/environliability

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Are you prepared for the ELD?

The European Commission requires member states to transpose the Environmental Liability Directive (ELD) by 30th April 2007 into national law.

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- **Simon White** from **XL Insurance** – how will you gain protection from the ELD?
- **Will you be held liable?** An impressive legal expert speaker panel will explain to you the technicalities of the Directive.
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JOBS

EVERSHEDS

Solicitor (LIT/BM/1029206)

Job title:	Solicitor (LIT/BM/1029206)
Type of vacancy: permanent/temporary	Permanent

Number of roles:	1
Practice group/Business service team:	Litigation & Dispute Mgmt
Location:	Birmingham
Main purpose of the role:	We are looking for a solicitor to join our Environmental team in Birmingham as part of the continued development of a strong non-contentious environmental practice across the Midlands, to supplement our strong regulatory environmental team and to exploit the opportunities available through our large corporate/property client base.
Key responsibilities:	The candidate will contribute proactively and enthusiastically to the growth of the team via structured BD activity with the internal and external markets. The candidate will also have key management responsibilities in working closely with the regulatory team based across the central region. The successful applicant would also be expected to develop strong/close working relationships with the planning team based in our Real Estate departments nationally.
Skills and experience:	A strong background in providing environmental support on large property and corporate transactions together with niche expertise in relation to environmental and regulatory matters including IPPC, Waste, Climate Change and Contaminated Land. Experience in respect of regulatory environmental matters and/or planning would be advantageous.
Key competencies:	<p>The highly motivated candidate would be expected to have strong inter-personal skills with a background of successful business development activities and the enthusiasm to develop his/her own team in conjunction with others within this growing product area.</p> <p>Excellent organisational, analytical and communication skills are essential. The candidate will relish the challenges of difficult situations, will possess a "solutions" mentality and be committed to delivering client-centred service on time and to budget.</p>
Location of Opportunities	Birmingham
Functions recruited to	Lawyer

Please can interested applicants visit our website www.Eversheds.com direct for further details or to apply.

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HR Adviser

Birmingham
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www.eversheds.com

UK ENVIRONMENTAL LAW ASSOCIATION

Registered Charity number: 299498, Company limited by guarantee: 2133283

For information about working parties and events, including copies of all recent submissions contact.

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E - LAW

The editorial team want articles, news and views from you for the next edition due to go out at end January 2007. All contributions should be dispatched to Catherine Davey as soon as possible by email at: Catherine.Davey@stevens-bolton.co.uk by 13 January 2007
Please use Arial font 11pt. Single space.

Letters to the editor will be published, space permitting

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