

LAW WISE



KANSAS BAR ASSOCIATION

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Greetings from the Kansas Supreme Court and the Kansas Bar Association (KBA). Welcome to this edition of *Law Wise* and the fifth edition of the 2009-2010 school year. The theme of March's edition is "Environmental Law" for educators.

IN THIS ISSUE

Welcome	1
Calendar of Events	1
The Short Story of Sam Snead's Search at School.....	1
Going Green	1
Short Summaries of Federal Environmental Laws	2
April Law Wise Preview	2
Lesson Plan: Environmental Law	3
Debut of KBA 4th Amendment Video ..	5
8 Ways to Celebrate Earth Day at School.....	6
New Kansas Courts Video Available.....	6
Technology for Teachers	7
Take a Field Trip	7
Resources for Law-Related Education	7

WELCOME

By Sarah Shipman, *Law Wise* editor

According to the Environmental Protection Agency's Web site, 12 million people celebrated the first Earth Day in 1970. It was estimated that globally a billion people would celebrate Earth Day in 2009. This year marks the 40th anniversary of Earth Day and this issue of *Law Wise* offers ways to celebrate. Additionally, you will find brief summaries of federal environmental laws and a lesson plan based on those laws. See the Terrific Technology section for more Earth Day information. Finally, there is a preview of our next issue.

The Short Story of Sam Snead's Search at School: a 4th Amendment Adventure (by Kathryn Gardner) is the latest KBA law related education committee's DVD.

A student witnesses the theft of a teacher's laptop. The saga centers on the accused student thief Sam Snead and his search and seizure rights.

Order your free DVD & accompanying teaching materials by calling Meg Wickham, KBA manager of public services at 785-234-5696 or email mwickham@ksbar.org. Reserve your copy today to receive in time for Law Day May 1, 2010. See page 5 for full story.

GOING GREEN



The April 2010 Law Wise will be the last issue printed for distribution. We will instead e-mail the publication. We will make exceptions to those who are unable to access a computer. Please e-mail to mwickham@ksbar.org the e-mail address where you would like to receive your copy of Law Wise. Thank you.

Law Wise is a tool for educators statewide to find new avenues of presenting civics lessons and ideas. The KBA also feels a responsibility to educate through example by "going green." We will continue to offer the printed mailed version for the 2009-2010 school year, but would like to present the choice of going paperless by providing the publication through e-mail. Please e-mail Meg Wickham, KBA manager of public services to receive your "green" issue of *Law Wise* and be taken off the paper mailing list. You can always access past *Law Wise* issues on our Web site at http://www.ksbar.org/public/public_resources/lawwise. Thank you for helping us "go green!"

CALENDAR OF EVENTS

March 27, 2010	Kansas Bar Association YLS Mock Trial Competition (State) Presented by Shook, Hardy & Bacon LLP
May 1, 2010	Debut of the KBA 4th Amendment Interactive Video
May 1, 2010	Law Day
May 6-8, 2010	National Mock Trial Competition

SHORT SUMMARIES OF FEDERAL ENVIRONMENTAL LAWS

Source: www.law.washington.edu/Clinics/Streetlaw/lessons/EnvironmentalLaw.doc

CLEAN AIR ACT (CAA)

The Clean Air Act (CAA) protects the nation's air quality. The CAA sets standards for the amount of certain pollutants that are allowable in the air, according to region. Furthermore, the CAA authorizes regulation of mobile and stationary sources, by requiring that certain pollution-reducing technologies are utilized.

CLEAN WATER ACT

The Clean Water Act (CWA) protects our nation's water. The CWA requires permits for any point-source discharge of pollutants into waterways. These permits are issued under the National Pollution Discharge Elimination System (NPDES) and are therefore called NPDES permits. The CWA requires states to set standards for the level of pollutants that may be found in any given body of water. The state must ensure that these levels are not exceeded.

Wetlands: The CWA also provides for federal wetlands regulation. Wetlands are ecologically important and therefore the CWA requires that a developer obtain a "Section 404" permit prior to filling in a wetland. The Army Corps of Engineers issues these permits. Usually, a permit will be issued only if the developer can show that the loss of the wetland will be "mitigated." This generally means that the developer will have to recreate the wetlands elsewhere.

ENDANGERED SPECIES ACT

The purpose of the Endangered Species Act is to conserve "the ecosystems upon which endangered and threatened species depend" and to conserve and recover listed species. Under the law, species may be listed as either "endangered" or "threatened." Endangered means a species is in danger of extinction throughout all or a significant portion of its range.

Threatened means a species is likely to become endangered within the foreseeable future. All species of plants and animals, except pest insects, are eligible for listing as endangered or threatened.

No Take: It is unlawful under the ESA to "take" a species listed as threatened or endangered. Take means to kill, harass, or otherwise harm a species.

Consultation: The law requires federal agencies to consult with the Fish and Wildlife Service to ensure that the actions they authorize, fund, or carry out will not jeopardize listed species.

<http://endangered.fws.gov/pubs/esa%20basics.pdf>

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA), 42 U.S.C. 4321-4347

NEPA requires that federal actions (or actions that receive federal funding) be made with full consideration of the impact on the environment. Project proponents must disclose significant impacts to the public in the form of an "Environmental Assessment" or an "Environmental Impact Statement," depending on the level of environmental impact. The environmental review process must include an evaluation of the potential impacts as well as alternatives to the project, including a "no action" alternative. NEPA imposes procedural requirements only. This means, for example, that the proponent need not choose the most environmentally-friendly activity – rather, they must only show that they considered it.

SUPERFUND

The Superfund law sets up a process for the clean-up of hazardous waste sites. Under Superfund, the EPA establishes a National Priorities List that identifies the nation's most toxic waste sites. Superfund imposes liability for clean-up costs on the parties responsible for the pollution. Responsible parties include past owners of the site, present owners of the site, anyone who contributed to the pollution, or anyone who transported hazardous materials to or from the site. Again, a present owner may be liable for the clean-up costs even if the pollution was there before he/she owned the land.

PREVIEW OF THE NEXT ISSUE OF LAW WISE

LAW DAY 2010

LAW IN THE 21ST CENTURY: ENDURING TRADITIONS, EMERGING CHALLENGES

As we begin the second decade of the 21st century, the law is changing dramatically as it seeks to shape and adapt to new conditions. Economic markets are becoming global, transactions require cultural adaptation and understanding, populations are more mobile, and communication technologies such as the Internet bridge distances and time zones to form new communities around the world. In such a world, all of us must renew our commitment to the enduring principles of law, become knowledgeable about other legal systems, recognize the need to adapt our practices, and acquire new cultural understandings. In a global era, matters such as human rights, criminal justice, intellectual property, business transactions, dispute resolution, human migration, and environmental regulation become not just international issues — between nations — but shared concerns. Law Day 2010 provides us with an opportunity to understand and appreciate the emerging challenges and enduring traditions of law in the 21st century.

<http://www.abanet.org/publiced/lawday/home.shtml>

ENVIRONMENTAL LAW

Lesson #1

Source: www.law.washington.edu/Clinics/Streetlaw/lessons/EnvironmentalLaw.doc

Sources Referenced: *Environmental Law, 2nd Edition*, by Nancy K. Kubasek,

Time: 55 minutes

I. GOALS: Studying environmental law helps students:

- Appreciate the breadth of “environmental law” and what it means to practice environmental law.
- Understand that many environmental laws and concerns are implicated in seemingly routine actions.
- Gain awareness of environmental issues through a discussion of the laws and hypothetical scenarios.

II. OBJECTIVES

Knowledge Objectives: As a result of this class, students will know:

- The basic principles of several environmental and land use laws.
- Who is responsible for enforcing these laws.
- That “environmental law” is not an easily defined area of law, but generally encompasses actions affecting the environment in some shape or form.

Skills Objectives: As a result of this class, students will be better able to:

- Analyze an “on-the-ground” hypothetical situation to identify environmental laws that may be triggered.
- Form and express opinions as to why environmental laws are necessary.
- Develop persuasive legal arguments.

Attitude Objectives: As a result of this class, student will feel:

- Inspired to think about the environmental consequences of various land use actions.
- Appreciative that there are laws and lawyers working to protect our quality of life and environment.

III. CLASSROOM OBJECTIVES

A. Introduction to Environmental Law (25 minutes)

1. Ask students the following questions in order to generate discussion and determine how much they already know about environmental law. Write student responses on the board. Seek at least five responses to write down per question.

- i. “What does the term “environmental law” mean to you?”

1. After the students have a chance to respond, explain that there is no single agreed upon definition of “environmental law.” The term is a catch-all to describe a very wide range of laws and actions – ranging from regulating polluters, to protecting species and habitat, to applying for a building permit. People who practice “environmental law” work in many different areas and will inevitably define it differently.

2. Black’s Law Dictionary Definition: “The field of law dealing with the maintenance and protection of the environment, including preventive measures such as the requirements of environmental impact statements, as well as measures to assign liability and provide cleanup for incidents that harm the environment. Because most environmental litigation involves disputes with governmental agencies, environmental law is heavily intertwined with administrative law.”

- ii. “Can you think of some examples of environmental laws?”

1. See attached list of environmental laws and short explanations. Use this as a reference sheet.

- iii. “Why do we need environmental laws? What do they accomplish?”

Try to flesh out some of the following points, and in doing so, give examples of laws that seek to accomplish the following goals. (Use the attached list of environmental laws and explanations to briefly describe the examples given below).

1. To regulate activities that are harmful to the environment.

- a. E.g., Clean Air Act and Clean Water Act require permits to emit pollutants. They also set standards for the levels of pollutants in air and water.

2. To require clean-up of pollution at the expense of the polluter.

- a. E.g., Superfund and Model Toxics Control Act require that those responsible for hazardous waste sites clean them up.

3. To protect natural resources and critters.

- a. E.g., Endangered Species Act seeks to protect threatened and endangered species. The Wilderness Act and Wild & Scenic River Act protect natural lands from being developed.

4. To ensure that environmental factors are considered before undertaking an action.

- a. E.g., The National Environmental Policy Act and State Environmental Policy Act require that environmental impact statements be completed before proceeding with a major project.

5. To regulate land use and growth.

- a. Growth Management Act, Shorelines Management Act, and local zoning regulations are designed to ensure orderly growth and that sensitive areas are protected.

- iv. “Who regulates all these activities and enforces environmental laws?”

1. Local Agencies

- a. city planners, county council, zoning boards, etc.

2. State Agencies

(Continued on next page)

- a. Department of Ecology, Growth Management Hearings Board, Department of Natural Resources, Forest Practices Board, Department of Fish and Wildlife, etc.

3. Federal Agencies

- a. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Army Corps of Engineers, National Park Service ...

4. Citizens and Citizen Groups

- a. Many environmental laws contain “Citizen Suit Provisions,” which allow citizens to bring actions in court to enforce environmental laws if the government agency fails to do so. The Citizen Suit Provision may also allow the individual to sue the government agency for failing to carry out its duty. The Citizen Suit is utilized by many environmental groups.
2. Not all environmental law is statute based, meaning written in codes. Individuals and citizen groups can prevent environmentally destructive activities using tort law. Torts are actions brought by private individuals who feel they have been injured by the actions of another. These lawsuits are between private individuals (as opposed to governments enforcing actual environmental laws).

i. Nuisance Claims: An individual who is bothered by the activities of another can bring an action in court seeking an order that the injurious activities must stop. For example, an individual bothered by a smelly waste dump nearby could bring a nuisance claim against the dump operators. The court may find that the individual is suffering injury, and require the dump to stop the smell.

ii. Toxic Torts: Toxic torts are actions brought by individuals who claim they were injured by pollution caused by a corporation or other entity. Often, communities bring these cases when they become sick as a result of chemicals from industrial activities. Famous examples include the Erin Brokovich case, and the Woburn, Massachusetts, case that was made famous in the book/movie, *A Civil Action*.

B. Environmental Law Hypotheticals (30 minutes)

3. The students will next participate in an exercise to help illustrate the many “layers” of environmental laws that are implicated when undertaking a land use action. They will also get an opportunity to apply the laws.
4. Divide the class into groups of four. Pass out the “New School Hypothetical,” to each student. (See attached.) Ask each student to read the hypothetical, looking for the potential environmental issues that might be present. Have each group of four generate a list of issues.
5. After the students have read the hypotheticals, ask the students what issues they have identified. Write these on the board.
6. Walk through these issues and brainstorm what laws might apply. Use the list of laws attached.

- Clean-up of Tank Farm — Superfund or Model Toxics Control Act.
- Destruction of Condemned Houses — Demolition Permit.
- Filling wetlands — Clean Water Act
- Construction/Increased Impervious Surface near Salmon-bearing stream — Endangered Species Act
- Construction of School, generally — will require building permits, Environmental Impact Assessments under State Environmental Policy Act, Growth Management Act.
- Traffic Issues — Growth Management Act.

7. After the class has identified the issues and the law that applies, the students will be divided into three groups. Each group represents an interest group. These interest groups include:

- i. School District
- ii. Angry Neighbors Against New School (ANANS)
- iii. Save Our Snowy Stream (S.O.S.S)

8. Have each group identify the issues that are most important to them, and also what laws may be most helpful to bolster their position. Reconvene and discuss.

C. Conclusion:

“We hope you enjoyed learning about environmental law today. As you can see, environmental law encompasses a large range of activities and issues. Although we only had an hour, you were able to learn about the fundamentals of several environmental laws, as well as apply them to a hypothetical scenario.”

IV. EVALUATION

1. Participation in brainstorming exercise.
2. Participation in “New School Hypothetical” exercise.

NEW SCHOOL HYPOTHETICAL

Your school district is seriously considering rebuilding your high school. The current building is too small to accommodate the projected increase in students over the next several years. In addition, the building has serious structural problems that would be very costly to repair. The district has considered expanding the current school, or even demolishing the school and rebuilding on the same lot. After looking into the different options, the district’s preferred alternative is to build a new school at an entirely different location. The district has found a potential site for the new high school, and has consulted you (the attorney) to determine what issues it should be aware of when deciding whether to purchase the property.

SITE:

The potential site is an eight-acre parcel two miles from the existing school. The site is bordered on two sides by residential neighborhoods, on one side by light commercial development, and on the fourth side by Snowy Stream. The site is currently vacant and largely undeveloped. There is, however, an abandoned “tank farm” on the southeast corner of the property

(Continued on next page)

bordering the commercial development, and two condemned houses along the southeast edge of the property. The tank farm consists of several old storage tanks that were once used for fuel and other unknown liquids, but now sit empty and rusting. The tank farm covers about one-half acre of the property, and the houses also take up one-half acre. The rest of the site is undeveloped. Snowy Stream is about 12-feet across and is a salmon-bearing stream. The stream is bordered by trees. Finally, there is a small wetland close to the center of the property.

THE NEW SCHOOL:

The “footprint” (or site area) of the new school would cover one acre (?). It would likely cover most of the wetland, and

require cutting some of the trees along the stream bank. In addition to the actual school building, the district plans to build a turf playfield, four tennis courts, and two parking lots. (See plans attached.) The new school will be large enough to accommodate 2000 students (25 percent more than the current enrollment capacity). There will be enough parking for 750 cars. There is also on-street parking throughout the residential districts.

YOUR JOB:

Evaluate the School District’s plans and the proposed site. Identify any issues that the School District should explore in greater detail. ■



Photograph by Ryan Purcell, KBA Staff

KBA LRE COMMITTEE DEBUTS “THE SHORT STORY OF SAM SNEAD’S SEARCH AT SCHOOL: A 4TH AMENDMENT ADVENTURE”

The Kansas Bar Association’s Law-Related Education (LRE) committee is thrilled to announce the release date of their latest video project. This Fourth Amendment adventure, will be the fourth law-related education video available on DVD with teaching materials for Kansas middle and high school students.

Available now are the DVDs with accompanying teaching materials for: *New York Times v. Sullivan*, *Miranda v. Arizona*, and *Brown v. Board of Education*. The latest DVD will be available in time for Law Day (May 1).

In “The Short Story of Sam Snead’s Search at School: A 4th Amendment Adventure,” by Kathryn Gardner, KBA LRE committee chairperson, a student witnesses a theft of a teacher’s laptop. The saga centers on the accused student thief, Sam Snead, and his rights when it comes to search and seizure.

The Fourth Amendment to the Constitution says:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

This means the government cannot make unreasonable, warrantless intrusions into areas in which people have le-

gitimate expectations of privacy. Does this right apply to students in school and if so, to what extent?

Bringing the Fourth Amendment to life in a realistic school setting are Topeka students acting out each of the parts including the teachers. Accompanying the video will be a set of teaching aids, including interactive class questions engaging the class in meaningful discussion regarding the Fourth Amendment to the U.S. Constitution.

To reserve your free copy of “The Short Story of Sam Snead’s Search at School: A 4th Amendment Adventure,” contact Meg Wickham, KBA manager of public services at (785) 234-5696 or by e-mail at mwickham@ksbar.org.

Special thanks to the KBA LRE committee, Cair Paravel Latin School, for use of their beautiful facilities; and Drew Roland with Farm Productions for film direction, filming, and production; and our cast:

Cast:

Katelyn Cook (intelligent student)
 Alex Sharp (confused student)
 Kate Cowger (tattling student)
 Madeline Bush (librarian)
 Hannah Gardner (vice principal)
 Nicholas Pohlenz (guard)
 Jackson Swain (stealing student) ■

8 WAYS TO CELEBRATE EARTH DAY AT SCHOOL

Source: www.earthday.net/8ways

Many thousands of schools around the world will participate in Earth Day activities during the month of April. The possibilities are endless! What are YOUR classroom & school doing for Earth Day?

1. Address a local or global environmental problem in class. In small groups, have each group brainstorm and decide on an environmental issue to investigate. Then instruct them to conduct research on the problem. Have each group report their findings to the class, including any possible solutions identified.
2. Do an environmental survey. How much and what kind of energy, paper, and cleaning supplies are used monthly at your school? How much water is consumed? How much waste, and what type of waste, is generated? Identify ways your school can reduce its use of energy and other resources. Report your findings to school administrators.
3. Get creative! Have students write poetry, create art, or develop dramatic presentations on environmental themes.
4. Expose your students to environmental issues. Invite a speaker to come and talk about environmental issues, and assign students projects ahead of time that relate to the subject of the presentation.
5. Adopt a local park, stream or beach, and clean it up. Or organize a clean-up day near your school.
6. Set up an organic garden at your school. Make sure to incorporate a compost pile for biodegradable garbage (no meat!) When it turns to compost, use it in the garden.
7. Develop an environmental policy for your school. This is best as a collaborative effort among students, teachers and other staff. Have the principal officially launch the policy on Earth Day.
8. Create a community green map. Your map should highlight all of the environmental assets in your community (such as parks, recycling centers, farmers' markets, public transit stations, etc).

COURT EDUCATION VIDEO AVAILABLE

The Kansas Supreme Court has released a new educational video along with talking points on four court-related topics. The video, called Justice in Kansas, and the talking points may be accessed below.

Justice in Kansas Video: Published by the Kansas Supreme Court, produced in January 2009 and hosted by Chief Justice Robert E. Davis, the video provides information regarding the structure and function of the Kansas Judicial Branch. Copies of the video are available upon request to teachers or anyone interested in law-related education. Contact Ron Keefover, Education and Information Officer of the Office of Judicial Administration, Topeka, (785) 296-4872 to order. Video is approximately seven (7) minutes in length. Window Media Player 9.0 or above is required. [Free Download for WMP.](#)

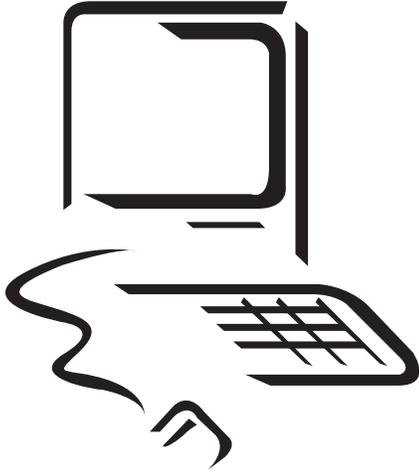
Talking Points:

- Interesting facts regarding the Kansas Judicial System
 - Types of courts
 - Case statistics
 - Jury service in Kansas
 - About Kansas courts
- Ron Keefover
Education-Information Officer
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Photograph by Ryan Purcell, KBA Staff

TERRIFIC TECHNOLOGY FOR TEACHERS



Check out these great websites ...

Environmental Protection Agency Earth Day information
www.epa.gov/earthday/history.htm

Earth Day and environmental lesson plans
www.earthday.net/lessonplans

Links to Earth Day activities
earthday.envirolink.org/

Crafts for Earth Day
www.makingfriends.com/earthday.htm

Kansas, Don't Spoil It
www.kdheks.gov/kdsi

Kansas Department of Health and Environment News
www.kdheks.gov/sbcs/index.html

Take a Field Trip!

Looking for a field trip idea? Interested in an interactive learning experience? Want to give your students a chance to meet with a federal judge? Need materials to help you teach about the courts?

Contact the U.S. District Court for the District of Kansas for help! We offer tours of our three courthouses and fun, timely, fun, interactive, EDUCATIONAL programs

designed for students of all ages.

Check out the program offerings at <http://www.uscourts.gov/outreach/index.html> and contact Neely Fedde, the Court's Public Outreach Specialist, at neely_fedde@ksd.uscourts.gov or (913) 551-6692 for more information or to schedule a session in our Kansas City, Wichita, or Topeka courthouses or at your school.



Resources at the Law-Related Education Inventory

1. Shaping the Environment: Cases & Materials HS book. Teachers may use this text to teach the basic concepts that comprise the field of environmental law. It examines the following: role of courts, common law remedies to environmental damage, the Constitution and the environment 363.7/Y88s

2. Effective Study Strategies: HS DVD. Purpose is to illustrate specific study strategies – note taking, pre-reading, and SZ3R. Included are self-help reviews to aid in retention and check on understanding. Library number 371.3/Ef36.

The Law-Related Education Inventory has many resources to help teach about law-related topics. The Kansas Bar Association and the lawyers in your community sponsor the Law-Related Education Inventory. To order a catalog, call Meg Wickham at the Kansas Bar Association, (785) 234-5696. The clearinghouse will mail free copies of law-related posters, games, mock trials, booklets, lesson plans, and other aids. It is open Monday through Thursday, 8 a.m. to 7 p.m., and Friday, 8 a.m. to 5 p.m. The director of the Teachers College Resource Center, which houses the Law-Related Education Inventory, Janice Romeiser, can be reached at jromeise@emporia.edu.

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