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Climate Change Following the Plan B Case

Climate Change as a 'Hot' Situation

- Changing and uncertain environmental conditions
- Polycentricity
- Scientific Assessment
- Socio-political conflict



The Legally Disruptive Nature of Climate Change

Three ways courts adjudicating on climate change

1. justiciability and jurisdiction
2. evolving of legal doctrine
3. interpreting and applying climate change regimes

Cases - <http://climatecasechart.com>

Inevitability of climate change adjudication

- dispute resolution
- expository justice

Justiciability and Jurisdiction: An Example

Juliana v United States 947 F.3d 1159 (9th Cir, 2020)

- constitutional right to a climate system capable of sustaining human life

Majority

- Recognition of the seriousness of climate change
- Standing and causation for summary judgment established
- BUT injuries not redressable by an Article III Court.



Evolving Doctrine: An Example

Gloucester Resources Limited v. Minister for Planning [2019] NSWLEC 7

- merits review of the assessment of an open cut coal mine (not just climate change) under NSW environmental law

Preston CJ

- Scope 3 emissions
- No offsetting
- Carbon leakage and market substitution
- Carbon budgets under the Paris Agreement

Interpreting Legislative Obligations: An Example

Plan B Earth v Secretary of State for Transport [2020] EWCA Civ 214

- Airport National Policy Statement under the Planning Act 2008
- **Section 5(8)**: ‘The reasons must (in particular) include an explanation of how the policy set out in the statement takes account of **Government policy** relating to the **mitigation of, and adaptation to, climate change**’.
- **Section 10**: (2) The Secretary of State must, in exercising those functions [under, do so with the objective of contributing to the achievement of sustainable development.
- (3) For the purposes of subsection (2) the Secretary of State **must (in particular) have regard to the desirability of**— (a) **mitigating, and adapting to, climate change**.....

Conclusion: Climate Change Following *Plan B Earth*

- A new **legal** business as usual
- Planning Act 2008 – s 5(8) and s 10 as ‘dynamic’ legislative obligations
- The need foster legal expertise in light of climate change

Further Reading

- Elizabeth Fisher, Eloise Scotford and Emily Barritt, 'The Legally Disruptive Nature of Climate Change ' (2017) 80 Modern Law Review 173
- Joanna Bell and Elizabeth Fisher, 'The “Heathrow” Case: Legislation, Polycentricity and the Standard of Review' (2020) 83 Modern Law Review (in press)