

Syllabus**Theories of Business Enterprise**LGST 941
LGST 241/641

Instructor: Eric Orts
Classroom: TBA
Classes: Thursdays, 3:00 p.m.

Office hours: TBA and by appointment
Office: Legal Studies and Business Ethics Department, Huntsman Hall 648
Office phone: (215) 898-3018
Office e-mail: ortse@wharton.upenn.edu [preferred mode of communication]

Course description: This seminar-style course is designed for upper level undergraduate students as well as MBA, professional, and doctoral students at Wharton and other schools at Penn. The only prerequisite is that students should have had previous training in academic writing sufficient to prepare them to write a final term paper which will count for the majority of the final grade.

The course provides an interdisciplinary approach to understanding the nature of the business enterprise. Readings are drawn from various disciplines, including economics, history, law, philosophy, politics, and sociology.

The overall objective of the course is to explore the business enterprise as an institution from different points of view. The emergence of various legal types of business enterprises is examined, as well as competing economic theories of the firm that have become influential. The relationship between business and politics is considered, as well as the general question concerning whether business enterprises, such as corporations, can correctly be said to have ethical obligations and political responsibilities.

Economic theories of the firm offer an important source for strategic advantages and insights in different settings. Law and politics are also practically important, and the course discusses these dimensions of business life as well. The course may also appeal to students who are contemplating the “purpose” of pursuing various business careers (e.g., as entrepreneurs, managers, investors, consultants, etc.). And it may appeal to students who may wish to follow careers that involve business firms as a subject of further study (e.g., government, law, and various academic disciplines such as business ethics, economics, history, philosophy, and political theory). Students considering paths in nonprofit organizations or “hybrid social enterprises” (e.g., benefit corporations) that combine profit and nonprofit objectives may also find the course of interest.

Specifically, students who take this course will gain insight into the following questions:

- What is a business firm?
- How did various forms of business, including the corporation, arise historically?
- How do contemporary economic and financial theories explain how business firms evolve, grow, and die?
- What are the legal underpinnings of the forms of business enterprise, ranging from sole proprietorships to partnerships to family-owned enterprises to multinational corporate groups?
- How do business firms relate to and influence politics and government?
- Do business firms have ethical or political responsibility as organizational entities? What kind of ethical or political responsibilities do business participants within firms have?
- What is the relationship between business and the natural environment?

Class format, reaction papers, and student participation: Classes will be conducted in seminar style, and students will be expected to come to each class having done the reading in advance and prepared to discuss it. One-page reaction papers will be required twenty-four hours in advance of each class session in order to help structure discussion. Attendance and preparation for class will be expected and included as a component of the final grade for the course.

Grading: Final grades will be determined as follows. The primary requirement is the development of a final paper of between 12 and 15 pages (double-spaced, double-sided, and stapled with twelve-point font for text). If a bibliography is used, then it may exceed the 15-page limit for text. Outlines or rough drafts may be shared with the instructor in advance to get general feedback. A final copy should be sent by e-mail in readable electronic form as well as delivered in hard copy to the instructor's mailbox in the Legal Studies and Business Ethics Department on the sixth floor of Huntsman Hall.

Class participation: 25%

Weekly reaction papers: 25%

Final paper: 50%

Reaction papers: One-page reaction papers on readings will be used to guide discussions in each class.

Final paper: A final research paper is the primary formal class requirement on which the final grade will be based. The topic and its general methodology must be discussed with the professor in advance.

Required texts: The following books are required. It is recommended that students procure either hard copies from the Penn Book Store (which will have copies ordered) or elsewhere. Electronic copies of many of the books are also available, and copies will be placed on library reserve. In addition, some required reading will be made available via Canvas. Please let the instructor know

if cost is an issue for an particular texts, and we will try to find a low-cost or free access arrangement.

The Economic Nature of the Firm: A Reader (Louis Putterman and Randall S. Kroszner eds.) (Cambridge University Press, 3d ed., 2009) (available in paperback and as e-text; also available for rent on Kindle or low-cost used texts).

Axel Honneth, *Freedom's Right: The Social Foundations of Democratic Life* (trans. Joseph Ganahl) (Columbia University Press 2014) (German original ed. 2011) (available in paperback; also available on Kindle).

Bill McKibben, *Falter: Has the Human Game Begun to Play Itself Out?* (2019) (paperback).

Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press 2019) (paperback; also available on Kindle).

Eric W. Orts, *Business Persons: A Legal Theory of the Firm* (Oxford University Press 2013) (paperback edition 2015).*

Katarina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton University Press 2019) (hardcover; also available on Kindle).

Zephyr Teachout, *Corruption in America: From Benjamin Franklin's Snuff Box to Citizens United* (Harvard University Press 2016) (paperback; also available on Kindle).

The Moral Responsibility of Firms (Eric W. Orts and N. Craig Smith eds.) (Oxford University Press 2020) (paperback edition forthcoming).*

Adam Winkler, *We the Corporations: How American Business Won Their Civil Rights* (W.W. Norton 2019) (paperback edition forthcoming; also available in hardcover and Kindle).

* Because the instructor will receive a small royalty for purchases of these two texts, a vote will be held among students to select a charitable cause to whom proceeds will be donated.

Quality feedback/informal lunches/dinners: Optional lunches or dinners will be held to get feedback from students about the course as well as to encourage general informal interactions among students and professor. No credit (or penalty) will be given for participation in informal lunches or dinners.

Syllabus revisions. This version of the course is subject to significant possible revision in accordance with students' interests as well as unexpected special events, time pressures of coverage, or substitutions of other relevant course materials. Given possible changes, please do not buy all the books prior to the beginning of the course and a survey of student interests.

Course outline

Specific assignments will in general follow the outline provided below. Any changes will be announced in class. Any revised versions of the syllabus will also reflect any changes.

Week 1 – Introduction [Jan. 16]

In-class exercise, lecture, and discussion: What is a business firm? What disciplines are relevant for the study of business and why? Arguments are presented for philosophy, history, economics, law, political theory, religion, and sociology. Review of course requirements and mutual expectations.

Week 2 – An Opening View: Are Business Firms “Persons”? [Jan. 23]

Required reading:

Roger Scruton and John Finnis, “Corporate Persons,” 63 *Proceedings of the Aristotelian Society, Supplementary Volumes* 239 (1989) [Reading 2A].

John Dewey, “The Historic Background of Corporate Legal Personality, 35 *Yale Law Journal* 655 (1928) [Reading 2B].

Orts, *Business Persons*, prefaces, introduction, and chapter 1.

Week 3 – Special Class: Human Rights and Business Firms [Jan. 30]

Required reading:

Moyn, *Not Enough* [entire book].

This class will take advantage of Samuel Moyn’s visit to campus. In lieu of class, we will meet at Moyn’s seminar beginning at 4:30 pm at the Andrea Center for the Study of Democracy, Room 250 (Forum), Perelman Center for Political Science and Economics.

Week 4 – Business History: The Rise of the Corporation [Feb. 6]

Required reading:

Ulrike Malmendier, “Law and Finance ‘at the Origin,’” 47 *Journal of Economic Literature* 1076 (2009) (Reading 3A]

Alfred D. Chandler, Jr. "Organizational Capabilities and the Economic History of the Industrial Enterprise," 6 *Journal of Economic Perspectives* 79 (1992) [Reading 3B]

Winkler, *We the Corporations*, chapters 1 to 4.

Week 5 – The Legal Structure and Forms of Business Enterprise [Feb. 13]

Required reading:

Orts, *Business Persons*, chapters 2, 4, 5, and 6.

Also: class discussion of ideas of possible paper topics.

Week 6 – The Moral Responsibility of Firms (or Not) [Feb. 20]

Required reading:

Milton Friedman, "The Social Responsibility of Business Is To Increase Its Profits," *N.Y. Times Magazine* (Sept. 13, 1970 [Reading 5A]).

The Moral Responsibility of Firms, introduction, chapters 1 to 4 [arguments "for"], chapters 5 to 8 [arguments "against"].

Optional: *The Moral Responsibility of Firms*, chapters 9 and 10 ["new directions"] and conclusion.

Week 7 – Economic Theories I: Divisions of Labor and the Scope of the Firm [Feb. 27]

Required reading:

The Economic Nature of the Firm, chapters 1 to 5, 7, 13 (Smith, Marx, Knight, Berle and Means, Hayek, Coase, Alchian and Demsetz).

Week 8 – Economic Theories II: Finance and the Firm [Mar. 5]

Required reading:

The Economic Nature of the Firm, Part I, chapter 6 (Zingales); Part IV, chapters 19 to 23, 25 and 26 (Manne, Fama, Jensen and Meckling, Fama and Jensen, Hart, and Putterman).

Jean Tirole, "Corporate Governance," 61 *Econometrica* 1 (2001) [Reading 8A].

Oliver Hart and Luigi Zingales, "Companies Should Maximize Shareholder Welfare Not Market Value," 2 *Journal of Law, Finance, and Accounting* 247

(2017) [Reading 8B].

Week 9 – Economic Theories III: The Code of Capital and Economic Inequality [Mar. 19]

Required reading:

Pistor, *The Code of Capital* [entire book].

Week 10 – Political Theories of the Firm [Mar. 26]

Required reading:

Orts, *Business Persons*, chapter 3.

David Ceipley, “Beyond Public and Private: Toward a Political Theory of the Corporation,” 107 *American Political Science Review* 139 (2013) [Reading 9A].

Abraham Singer, “The Political Nature of the Firm and the Cost of Norms,” 80 *Journal of Politics* 831 (2018) [Reading 9B].

Luigi Zingales, “Toward a Political Theory of the Firm,” 31 *Journal of Economic Perspectives* 113 (2017) [Reading 9C].

Week 11 – Business Firms and Democracy I: Efficiency and Legitimacy [Apr. 2].

Required reading:

Hélène Landamore, “Why the Many Are Smarter Than the Few and Why It Matters,” 8 *Journal of Political Deliberation* (article 7) (2012) [Reading 10A]

Honneth, *Freedom’s Right*, introduction, Part I, and, chapter 6.3 (pp. 176-253).

Week 12 – Business Firms and Democracy II: The Problem of Corruption [Apr. 9]

Required reading:

Zephyr Teachout, *Corruption in America: From Benjamin Franklin’s Snuff Box to Citizens United* (Harvard University Press 2014) [entire book].

Week 13 – Business Firms and Democracy III: Campaign Finance and Corporate Political Responsibility [Apr. 16]

Required reading:

Citizens United v. Federal Election Commission, U.S. Supreme Court (2010) (skip syllabus) [Reading 12A].

Eric W. Orts & Amy Sepinwall, “Collective Rights and the Court: A Theory of Constitutional Commodification,” *Washington University Law Review* (2020) [Reading 12B].

Thomas P. Lyon, et al., “CSR Needs CPR: Corporate Sustainability and Politics,” 69 *California Management Review* 5 (2018) (Reading 12C).

Week 14 – Business, Markets, and the Natural Environment [Apr. 20]

Required reading:

David Wallace-Wells, “The Uninhabitable Earth,” *New York Magazine*, July 10, 2017, <http://nymag.com/intelligencer/2017/07/climate-change-earth-too-hot-for-humans-annotated.html>.

McKibben, *Falter* [entire book; omit Part III if pressed for time].

Week 14 – Student Drafts and Presentations [Apr. 23]

In this class, students will present drafts or at least overviews of their ideas for final papers to the rest of the class to solicit constructive feedback. Outlines or rough drafts may be shared with the professor in advance.

Final Papers are due on [TBA].

Submit paper via Canvas. Also deliver hard copy, double-sided and stapled, to sixth floor, Legal Studies and Business Ethics Department. Outlines or rough drafts may be shared in advance with the instructor to get feedback prior to final submission.

Bio of Instructor

Eric Orts is the Guardsmark Professor at the Wharton School of the University of Pennsylvania where he has taught since 1991. He is a tenured professor in the Legal Studies and Business Ethics Department with a secondary appointment in the Management Department. He also serves at the faculty director of the Initiative for Global Environmental Leadership.

His primary research and teaching interests are in corporate governance, securities regulation, environmental law and management, business theory, and professional ethics. Examples of his research including his book on *Business Persons: A Legal Theory of the Firm* (Oxford University Press, paperback ed. 2015), a co-edited book on *The Moral Responsibility of Firms* (co-edited with Craig Smith) (Oxford University Press, paperback ed. 2020), and an article on “Senate Democracy: Our Lockean Paradox” in the *American University Law Review* (2019).

Prior to joining Wharton's faculty, Prof. Orts practiced law as a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison in New York City and was a Chemical Bank fellow in corporate

social responsibility at Columbia Law School. He has also taught and visited at a number of other leading business and law schools, including INSEAD, the University of Pennsylvania Law School, NYU School of Law, Sydney Law School, Tsinghua University School of Economics and Management, the University of Michigan Law School, and UCLA School of Law. He has been a visiting Fulbright professor in the law department of the University of Leuven, the Eugene P. Beard Faculty Fellow at Harvard University's Center for Ethics and the Professions, and a faculty fellow in the Center for Business and Government at the Kennedy School at Harvard.

Eric Orts is a graduate of Oberlin College (BA), the New School for Social Research (MA), the University of Michigan (JD), and Columbia University (JSD). He is a member of the bar (currently inactive) in New York and the District of Columbia, as well as an elected member of the American Law Institute, and belongs to several other professional and academic associations. He is a founding board member of the Alliance for Research on Corporate Sustainability and serves on the editorial board of *Business Ethics Quarterly*.

In work over the course of his career, he has advised and interacted with a wide range of companies in different sectors and in different countries, mostly in academic, consulting, and executive education contexts.