

Syllabus**Business, Social Responsibility, and the Environment**

Legal Studies & Business Ethics 6130 – Sections 1 & 3

Instructor: Eric Orts
Classroom: Huntsman Hall, F-55 (Sections 1 & 3)
Classes: T/Th 10:15 to 11:45 am (section 1) and 1:45 to 3:15 pm (section 3)
Office hours: After class and anytime by appointment (or just e-mail or stop by)
Office: Huntsman Hall 648
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I. Course Description and Logistics

Course description: This course focuses on the social and environmental responsibilities of business that may extend beyond profit maximization. In 2019, the Business Roundtable composed of leading chief executive officers of U.S.-based companies released a statement that resurrected and reinforced interest in this view. (See reading link for Class 2 below under Course Outline.) This view contrasts with a traditional approach famously expressed by the economist Milton Friedman that “the social responsibility of business is to increase its profits.” Although Friedman acknowledged normative side constraints to the profit motive—namely, a need to conform to the “basic rules of the society, both those embodied in law and those embodied in ethical custom”—he did not see business itself as playing a central role in the creation and sustenance of these “basic rules.” (See Friedman reading for Class 2 below.) As this course will explore, Friedman’s view has been challenged by various competing views of business purpose, such as in normative stakeholder theory (see the Donaldson & Preston reading for Class 2 below) and the related idea of “shared value” (see Michael E. Porter and Michael R. Kramer, “Creating Shared Value,” Harvard Business Review (Jan.-Feb. 2011), <https://hbr.org/2011/01/the-big-idea-creating-shared-value>).

The profit-maximizing view of business purpose is the one most frequently modeled in business school classes. This course presents students with the opportunity to explore an alternative perspective: that business owes a “social responsibility” that includes, but goes beyond, profits. If business firms are conceived as social institutions that can themselves affect the “basic rules of society” rather than simply taking them as given, then the question becomes how business can or should do so. Take, for example, the global challenge of climate disruption treated in this course. Business operations are “part of the problem” in the sense of being the source of the production and release of large quantities of greenhouse gases every year. But should business become “part of the solution”? If so, how and within what limits? What role does or should business play in lobbying for or against laws regulating environmental harm? Do business firms have an ethical, if not a legal responsibility to minimize their own carbon footprints or other externally harmful

actions? Should business firms partner with other firms or nonprofit organizations to advance their preferred environmental agendas in the political realm? When social or environmental priorities such as these collide directly with the profit motive, how should these two mandates be reconciled? Similar questions may be asked about other social challenges in the world today, including challenges involving, e.g., democratic values, racial and gender diversity, human rights of various kinds, poverty reduction, fresh water availability, and global health issues affecting those less able to pay for life-saving drugs and medical services.

In exploring emerging views and examples of social and environmental responsibility in business, this course relies on students to bring examples from their own experiences and previous practice. It also encourages students to do research in teams on relevant topics of their own choosing to share with their colleagues.

The overall objective of the course is to develop a deeper understanding of the complexity of the relationship between business and social/environmental issues through engagement with relevant academic literature, sharing personal experiences, and presenting new findings and research. We will also include outside lecturers from different fields of expertise and experience.

The course is meant also to encourage students to reflect independently, and in conversations with their peers, on their own values and experiences – with an aim to improve and hone their own moral and ethical views about business, social responsibility, and the environment in order to increase the probabilities of personal success in their careers.

Special notice re academic freedom and implicit biases: This class includes students from a number of different countries, and students who represent different political, religious, and cultural perspectives. A cardinal principle of academic freedom is to welcome and respect a diverse range of all opinions and perspectives. The instructor will make every effort to combat any biases (including implicit ones and including his own) in class discussions and otherwise. Please don't hesitate to raise any concern about potential bias in the course with the instructor directly – either in the moment in class or outside of class.

Important note re class recordings: Recordings of classes will be conducted as recommended by Wharton administration and with unanimous consent of class members. Anyone may request stopping or avoiding recording during a discussion of sensitive issues, especially if they implicate the safety of students who may be participating from foreign jurisdictions where any such free discussion may place them at personal risk.

In addition, note that class recordings are made for pedagogical reasons only with this context of this course. Any outside personal use or distribution of recordings is strictly prohibited.

Note for BEES students: This course is especially recommended but not required for MBA students majoring or thinking about majoring in [Business, Energy, and Environmental Sustainability](#). Again, all MBA students are welcome without regard to their overall economic, political, religious, social, and cultural views. All perspectives are welcome in discussions.

Logistics: Classes follow a twice a week standard in-person format. Please attend all of the sessions. Sessions will be recorded, at least in part, with the consent of class members. If for any reason a particular class or part of a class is not recorded, please make alternative arrangements to discuss content with the instructor or with another student.

II. Attendance, Class Materials, and Class Preparation

Attendance requirements: A Wharton electronic check-in system may be used. Students are expected to attend all classes.

In addition to class discussion of assigned readings, students will have the opportunity to reflect on and share their own individual experiences or areas of special interest. Students will also be assigned to teams that will prepare group presentations to deliver in classes at the end of the semester on an issue relevant to social or environmental responsibility in business.

Groups are free to choose their own topic generally relevant to the course. Examples of topics may include, without limitation:

- any topic focusing on business climate solutions
- any topic relating to diversity in business
- any topic relating to how or when business should be involved in politics (e.g. recent controversy involving Facebook and/or Twitter)
- any topic relating to climate solutions, diversity challenges, or political boundaries from the perspective of a particular business sector, such as finance, accounting, general management, consulting, investment advising, energy production or distribution, new product development, marketing, or central banking
- a case study of a company that embraces a larger-than-usual social/environmental purpose or objective (e.g., Patagonia – what does it really mean to say that “The Earth is our only shareholder”?)
- a case study of a challenge of social or environmental responsibility faced by a particular, more traditional company (e.g., Volkswagen and its diesel emissions testing scandal)
- a case study of the development and sale of new technologies designed to solve particular social or environmental problems (e.g., electric cars, solar/wind power, carbon capture and use, or reusable packaging alternatives)
- a general development in the law involving social or environmental responsibility and business (e.g., the advent of benefit corporations in the U.S. or similar legal frameworks elsewhere in the world or the recent proposal by the U.S. Federal Trade Commission to ban covenants not to compete in employment contracts)
- an examination of investment or private equity funds that screen or select for social or environmental criteria as well as expected financial returns
- a focus on whether ESG metrics (and perhaps sometimes hype?) withstand scrutiny – or what is needed to make ESG work?

- related to ESG: a review the evolution of particular standards or metrics by which non-financial social or environmental performance are measured (e.g., developments in environmental accounting and third-party verification, or metrics used to assess climate performance)
- the use and reliability of environmental marketing logos or certifications
- examples of “greenwashing,” i.e., false claims about social or environmental performance (including recent legal challenges and even perhaps emerging prosecutions for false ESG claims)
- legal or consumer proposals to counter greenwashing
- examples of partnerships between business firms and nonprofit organization that advance a social or environmental objective
- ethical and legal issues involving political lobbying or campaign contributions by business (e.g. climate legislation)
- business challenges in dealing with or supporting authoritarian political regimes or movements (e.g. recent boycotts of Russia after its invasion of Ukraine).

Important note: Groups should confirm topics with the instructor in advance – partly to get general guidance and also to avoid significant overlaps in presentations.

Required readings: Required reading materials will be provided via Canvas or internet links. In addition, there are two required books and some other optional books. If you choose to read one or more of the optional books, you may mention them in your weekly learning journals (see below).

Required books: Students should plan to acquire (or borrow) and read one (or both) of the following:

- **Rebecca Henderson, *Reimagining Capitalism in a World on Fire*** (Penguin Random House 2021) [paperback and also available on Kindle and audiobook].
- **Kim Stanley Robinson, *The Ministry for the Future: A Novel*** (Orbit/Hatchett 2021) [paperback and also available on Kindle and audiobook].

Class format and student participation: Classes will combine lecture, group discussion, and group presentations. Students will be expected to have read material assigned for class in advance. Attendance and participation are expected, including for all student presentations.

III. MBA Learning Agreement and Ethics Standards

MBA Learning Agreement: Classes will be conducted according to student and instruction standards in Wharton’s MBA Learning Agreement. See <https://inside.wharton.upenn.edu/wp-content/uploads/2020/04/Wharton-Learning-Agreement-2020.pdf>. This includes:

Classroom Conduct:

- Arrive on time, ready to begin, and minimize disruptions throughout the session.
- Display a name tent if appropriate or requested.
- Turn off and put away your phone. If you must keep a phone on by reason of a personal emergency, you should inform the instructor before class begins.
- Do not use your laptop or tablet unless for educational purposes directly relevant to class.
- Maintain classroom cleanliness.

Preparation and Interaction:

- Be prepared to engage fully in each session through the completion of required work before the session, and your focused attention and active involvement during the session.
- Respect the classroom as an inclusive learning environment where diverse points of view and experiences can be shared to facilitate everyone's learning.
- Maintain the privacy and intellectual property of everyone in the class by, for example, not sharing recorded images or audio of student or instructor interactions, or course content.

Teamwork:

- Contribute your fair share.
- Hold teammates and yourself accountable to team goals and assignments.
- Support and encourage your teammates.
- Appreciate the diversity of knowledge, skills, and abilities within the team.
- Be honest and transparent in your evaluation of teammates.

Ethics:

- Adhere to the highest standards of honesty and academic integrity.

MBA Ethics Code: The MBA Ethics Code and all of its rules and standards regarding student integrity, anti-plagiarism, and prohibition of any form of cheating in individual or group work applies in this course, as in any course at Wharton or Penn. ***Any violation will be prosecuted and strictly enforced by the instructor.*** Please reference all materials consulted or used in written work or class presentations—and ask the instructor in advance if you have any doubts.

The University of Pennsylvania's Code of Ethics also applies in terms of standards. For details, see <https://catalog.upenn.edu/pennbook/code-of-academic-integrity/>. Prohibitions include (quoting from this Code's definitions):

- A. **Cheating**: using or attempting to use unauthorized assistance, material, or study aids in examinations or other academic work or preventing, or attempting to prevent, another from using authorized assistance, material, or study aids. . . .

- B. **Plagiarism:** using the ideas, data, or language of another without specific or proper acknowledgment. . . .
- C. **Fabrication:** submitting contrived or altered information in any academic exercise. . . .
- D. **Multiple submission:** submitting, without prior permission, any work submitted to fulfill another academic requirement.
- E. **Misrepresentation of academic records:** misrepresenting or tampering with or attempting to tamper with any portion of a student's transcripts or academic record, either before or after coming to the University of Pennsylvania. . . .
- F. **Facilitating academic dishonesty:** knowingly helping or attempting to help another violate any provision of the Code. . . .
- G. **Unfair advantage:** attempting to gain unauthorized advantage over fellow students in an academic exercise. . . .

IV. Formal Requirements and Grading

Grading: Final grades for the course will be assessed as follows. Note that given time pressures in a short course, feedback on some grades may be given only after the end of the course.

1. Class Attendance and Participation (60 points). Attendance is expected for all classes, including student presentations. Coming to class late or leaving class early will count as an absence. Attendance and quality of individual participation will be noted on a daily basis and the cumulated at the conclusion. Adjustments are possible with respect to overall impression of either engagement or disengagement.

Bonus: Extra credit will be given (**5 points**) for attendance of all twelve classes (or eleven if a student adds into the class late).

Excused absences: Illness, serious injury, family or personal medical emergencies, and religious holidays may count as excused absences if reported to the instructor in a timely fashion. Job interviews and extracurricular activities are not excused absences. (If you miss class because of a Red Pass, please provide a screenshot of the Red Pass. A Red Pass for non-compliance with testing requirements is not a basis for an excused absence.)

Missing class or part of class: Students may miss one class or part of a class for a non-excusable reason (e.g. an employment interview) without a penalty (though no bonus).

Missing two classes or parts of class: Students who miss two classes or parts of class will have their final grades reduced by one half step (e.g. B+ to B) in addition to losing attendance and participation credit for the classes missed.

Missing three classes or parts of class: Students who miss three classes will be asked to withdraw from the course if possible or will receive a failing grade for the course.

2. **Discussion Threads (20 points).** Discussion threads on Canvas will be opened and closed periodically, and students are encouraged to contribute to them (but not during class sessions). They will close after a certain period of time has elapsed. Please use these to consider issues to raise in class, or to record thoughts and reactions after class, or in response to readings. The contributions both in class and online should be thoughtful, respectful, and use proper grammar and spelling. In other words, they should be professional. You are also encouraged to suggest discussion thread topics and provide references of interest.

3. **Short Individual Essays (25 points).** A short essay is required reflecting on an experience or specific research project involving business responsibility with respect to a social or environmental issue. It may involve an issue that you have personally faced, witnessed, or otherwise have close knowledge about in practice. In the alternative, you may choose an issue or topic that you have a particular interest in examining. Include possible learning lessons, take-away principles, or issues for discussion to recommend to classmates.

The essay should comprise two to three double-spaced singled-sided pages with 12 point font and formatting. Include any references if needed (and any bibliography does not count toward the page limit). It is also permissible to use an anonymous third-party reporting format in order to preserve confidentiality with respect to personal experiences.

Individual essays should be written and submitted on Canvas. They will be assessed on a 20 point scale for writing quality, relevance, and substantive merit. Submit the essays on Canvas as indicated by the deadline on the Course Outline below.

Bonus: Extra credit (**5 points**) will be given to students who present their reflections in class.

4. **Short book review papers (30 points).** Please read either Rebecca Henderson's *Reimagining Capitalism in a World on Fire* or Kim Stanley Robinson, *The Ministry for the Future: A Novel* and compose a review expressing your own individual reactions and views. You may focus on one or two particular aspects of either book.

The paper should be from three to six double-spaced pages with 12 point font and formatting. Papers should be submitted on Canvas. Submit the reviews on Canvas as indicated by the deadline on the Course Outline below.

5. Group Project and Presentation (50 points). Students will be assigned into presentation groups. Groups will research a topic related to the general topic of the course: some issue, problem, or case study regarding business responsibility (or irresponsibility) for society or the environment.

Presentations may focus on a particular firm, a particular issue or problem, a particular regulation addressing a business-relevant social or environmental issue, a business group's policy position, a developing relevant technology (such as the use of carbon as an input for making products), or any other relevant issue. Other possible topics are listed above as suggestive.

Presentations will be scheduled in the last three classes. Depending on the number of groups, they will be limited to approximately 15 minutes each with five minutes of class discussion.

Important requirement: Topics for group presentations must be cleared with the professor in advance either in person (i.e. virtually) after an online class or online office hours or via e-mail.

6. Overall possible bonus for outstanding performance in all categories **(5 points)**.

Total points (including possible bonuses): **200**.

There will be no final exam.

Note on finality of final grades: No appeals to a final grade will be heard (unless an arithmetical error has been made) because doing so would not be fair to all students. A breakdown of the final grade will be made available at the request of any student after final grades have been submitted. Given the short time period of the course, it will be difficult to give student interim assessments of how well they are doing as the course progresses, but please check in to ask if you have a question or a concern.

V. Course Outline

Specific assignments will in general follow the outline provided below. This syllabus is subject to revision in accordance with students' interests as well as time pressures of coverage or substitutions of course materials given current events. Any change will be announced in class. Revised versions of the syllabus will also reflect changes. Except for books, readings will be made available via Canvas or online links.

Class 1 Introduction: Business and Social Responsibility [Jan. 17]

Description: This class reviews the course's coverage, requirements, and mutual expectations. The class will also include mutual introductions to identify the different backgrounds, experiences, and future career orientations represented in the class.

Class 2 Theories of Business Responsibility for Society and the Environment [Jan. 19]

Description: This class focuses on the question of business purposes and different answers to questions about the social and environmental responsibility of business (or not). It includes discussion of a central debate in corporate governance concerning shareholder primacy and stakeholder theories. It reviews the history of the idea "corporate social responsibility" and various interpretations of the concept, including a more recent emphasis on "Environment, Social, and Governance" (ESG) criteria.

Readings:

Business Roundtable, "Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans'", Aug. 19, 2019, <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>.

Milton Friedman, "The Social Responsibility of Business is to Increase its Profits," N.Y. Times Magazine, Sept. 13, 1970 [Reading 2A]

American Law Institute, Principles of Corporate Governance: Analysis and Recommendations, § 2.01 (1994) [Reading 2B]

Eric W. Orts, "The ALI's Restatement of the Corporate Objective Is Flawed," CLS Blue Sky Blog, June 2, 2022, <https://clsbluesky.law.columbia.edu/2022/06/06/the-alis-restatement-of-the-corporate-objective-is-seriously-flawed/>.

See also two comments on this post by Stephen Bainbridge at his blog: <https://www.professorbainbridge.com/professorbainbridgecom/2022/06/another-comment-on-eric-orts-comment-on-the-alis-restatement-of-corporate-purpose-.html> and <https://www.professorbainbridge.com/professorbainbridgecom/2022/06/another-comment-on-eric-orts-comment-on-the-alis-restatement-of-corporate-purpose-do-constituency-st.html>.

Andrew A. King and Kenneth P. Pucker, "ESG and Alpha: Sales or Substance?" *Institutional Investor*, Feb. 25, 2022, <https://www.institutionalinvestor.com/article/blwxqznltqnyzi/ESG-and-Alpha-Sales-or-Substance>.

Brian Tayan, “ESG Ratings: A Compass Without Direction,” Harvard Law School Forum on Corporate Governance, Aug. 24, 2022, <https://corpgov.law.harvard.edu/2022/08/24/esg-ratings-a-compass-without-direction/>.

Optional further reading:

Thomas Donaldson & Lee E. Preston, “The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications, 20 *Academy of Management Review* 65 (1995) [Reading 2C].

Oliver Hart and Luigi Zingales, “Companies Should Maximize Shareholder Welfare Not Market Value,” 2 *Journal of Law, Finance, and Accounting* 247 (2017) [Reading 2D].

Eric W. Orts & Alan Strudler, “Putting a Stake in Stakeholder Theory,” 88 *Journal of Business Ethics* 605 (2009) [Reading 2E].

Eric W. Orts and Alan Strudler, “The Ethical and Environmental Limits of Stakeholder Theory,” 12 *Business Ethics Quarterly* 215 (2002) [Reading 2F].

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

The Moral Responsibility of Firms (Eric W. Orts & N. Craig Smith eds., Oxford University Press, hardcover, 2017).

Alex Edmans, *Grow the Pie: How Great Companies Deliver Both Purpose and Profit* (Cambridge University Press 2020).

David Gelles and David Yaffe-Bellany, “Shareholder Value Is No Longer Everything, Top C.E.O.s Say,” *N.Y. Times*, Aug. 19, 2019, <https://www.nytimes.com/2019/08/19/business/business-roundtable-ceos-corporations.html>.

David Gelles, “C.E.O.’s Are Not Here To Save Us,” *N.Y. Times*, Sept. 29, 2019, available at <https://www.nytimes.com/2019/09/28/business/wework-juul-ebay-ceo.html>.

Colin Mayer, *Prosperity: Better Business Makes the Greater Good* (Oxford University Press, hardcover, 2018).

Mark Miller, “Bit By Bit, Socially Conscious Investors Are Influencing 401(k)’s,” *N.Y. Times*, Sept. 29, 2019, available at <https://www.nytimes.com/2019/09/27/business/esg-401k-investing-retirement.html>.

Judy Samuelson, *The Six New Rules of Business: Creating Real Value in a Changing World* (Berrett-Koehler 2021).

Tim Wu, “The Virtuous Corporation Is Not an Oxymoron,” *N.Y. Times*, Sept. 23, 2019, <https://www.nytimes.com/2019/09/23/opinion/stakeholder-capitalism.html>.

Class 3 Ethical Reasoning and Social Responsibility [Jan. 24]

Description: This class examines foundational ethical perspectives for business decision-making and determinations of business purpose and objectives, including background philosophical principles as well as behavioral aspects including self-regard bias and racial and sexual biases. It includes an overview of ethical and legal frameworks related to business responsibility. We begin with an exercise from Plato called “The Ring of Gyges.”

Readings:

The Ring of Gyges Exercise (adapted from Plato’s Republic) [Reading 3A].

Thomas Donaldson and Patricia Werhane, “Introduction to Ethical Reasoning,” excerpt from *Ethical Issues in Business: A Philosophical Approach* (8th ed. 2007) [Reading 3B].

Nitin Nohria, “You Are Not as Virtuous as You Think,” *Washington Post* (Oct. 15, 2015), https://www.washingtonpost.com/opinions/youre-not-as-virtuous-as-you-think/2015/10/15/fec227c4-66b4-11e5-9ef3-fde182507eac_story.html.

Maureen Sherry, “A Colleague Drank My Breast Milk and Other Wall Street Tales,” *N.Y. Times*, Jan. 23, 2016, available at <https://www.nytimes.com/2016/01/24/opinion/a-colleague-drank-my-breast-milk-and-other-wall-street-tales.html>.

Catharine A. MacKinnon, “#MeToo Has Done What the Law Could Not,” *N.Y. Times*, Feb. 5, 2018, <https://www.nytimes.com/2018/02/04/opinion/metoo-law-legal-system.html>.

Optional further reading (some including the topic of “corporate political responsibility”)

Plato, original Ring of Gyges version [Reading 3C]

Tom C.W. Lin, *The Capitalist and the Activist: Corporate Social Activism and the New Business of Change* (Barrett- Koehler 2022).

Thomas Lyon, et al, “CSR Needs CPR: Corporate Sustainability and Politics,” *California Management Review* (2018) [Reading 3D].

Peter Coy, “C.E.O.s Are Going Out of Their Way to Punish Russia,” *N.Y. Times*, Mar. 11, 2022, <https://www.nytimes.com/2022/03/09/opinion/russia-sanctions-corporations.html>.

Jonathan Tannenwald and Caryn Shaffer, “Beyond sanctions: Companies, organizations and brands cutting ties with Russia,” *Philadelphia Inquirer*, updated Mar. 3, 2022, <https://www.inquirer.com/news/russia-ukraine-boycott-companies-brands-20220302.html>.

Sapna Maheshwari and Vanessa Friedman, “Big Brands Exit Russia in a Hurry,” *N.Y. Times*, Mar. 10, 2022, at B1 (print ed.), <https://www.nytimes.com/2022/03/09/business/russia-ukraine-retail.html>.

Matthew Goldstein et al., “How Western Firms Quietly Enabled Russian Oligarchs,” *N.Y. Times*, Mar. 10, 2022, at 1 (printed ed.), <https://www.nytimes.com/2022/03/09/business/russian-oligarchs-money-concord.html>.

Center for Corporate Accountability & Zicklin Center for Business Ethics Research at Wharton, “2022 CPA-Zicklin Index of Corporate Political Disclosure and Accountability,” Oct. 11, 2022, <https://www.politicalaccountability.net/wp-content/uploads/2022/10/2022-CPA-Zicklin-Index.pdf>,

Katherine M. Gehl & Michael E. Porter, “Why Competition in the Politics Industry Is Failing America,” Harvard Business School, Sept. 2017 <https://www.hbs.edu/competitiveness/Documents/why-competition-in-the-politics-industry-is-failing-america.pdf>.

Sarah Murray, “When Should Businesses Take a Stand?” *Financial Times*, Mar. 8, 2022, <https://www.ft.com/content/5ceffa36-899a-4457-919f-b70902162f64>.

Class 4 Lessons from Practice: Working with Lawyers and a Big Law Perspective on Federal Trade Commission’s new Proposed Rule on Non-compete Agreements [Jan. 26]

Description: This class will address both a perennial question of how business people should be work with lawyers and a current events topic, namely, whether non-compete agreements in employment contracts should be allowed and, if so, when. This class will

examine a recent proposed by the FTC to ban non-compete agreements in employment contracts. We will be joined by leading attorneys from the New York City corporate law firm of Paul Weiss to lead a discussion about this topic. One additional possible topic: can ESG practices risk antitrust violations or other legal problems?

Special guests: Paul Weiss lawyers Aidan Synnott (litigation partner) and Brette Tannenbaum (litigation partner). Bio links:

<https://www.paulweiss.com/professionals/partners-and-counsel/aidan-synnott>
<https://www.paulweiss.com/professionals/partners-and-counsel/brette-tannenbaum>

Required reading:

Paul Weiss memo to clients, “FTC Proposes Rule to Ban Employer-Worker Non-Compete Clauses,” Jan. 8, 2023,

<https://www.paulweiss.com/practices/litigation/antitrust/publications/ftc-proposes-rule-to-ban-employer-worker-non-compete-clauses?id=45728>.

Additional optional reading:

Paul Weiss, memos on “ESG Thought Leadership,”

<https://www.paulweiss.com/insights/esg-thought-leadership>.

Class 5 Lessons from Practice: Anti-Racism and Diversity, Equity and Inclusion in Business
[Jan. 31]

This class will examine anti-racism and DEI issues in business: including “business case” arguments as well as question about whether and when to go beyond the business case. Legal risks as well as business opportunities will be discussed, in addition to ethical and political dimensions. Discussion will be with an outside panel of experts.

Special guests:

For both class sessions: Kyle R. Williams (Chief Empowerment Officer) and Kamal Carter (President) of A Long Talk based in D.C.

Bio link: <https://www.alongtalk.com/team>

For morning class (Section 1): Krystal Studavent Ramsey, Director of Diversity and Inclusion, Blank Rome (via Zoom); Renita Miller, Chief Diversity, Equity, and Inclusion Officer, Wharton. Bio links:

<https://www.blankrome.com/people/krystal-studavent-ramsey>
<https://www.wharton.upenn.edu/senior-administrator-renita-miller/>.

For afternoon class (Section 3): Prof. Lisa Fairfax, Penn Carey Law [invited]; Prof. Ken Shropshire, senior advisor to the Dean on the Coalition for Equity and Opportunity. Bio links:

<https://www.law.upenn.edu/faculty/fairfax/>
<https://lgst.wharton.upenn.edu/profile/shrop/>

Reading (for both classes):

Stephanie Creary, “How To Be a Better Ally to Your Black Colleagues,” *Harvard Business Review* (July 8, 2020), <https://hbr.org/2020/07/how-to-be-a-better-ally-to-your-black-colleagues>

Andrew C. Baker, David F. Larcker, et al., “Diversity Washing,” ECGI Working Paper Series in Finance, January 2023 [Reading 5A].

Viewing:

“Who We Are” (with Jeffery Robinson of the ACLU), video link to be provided.
Trailer: <https://www.alongtalk.com/events>.

James Baldwin v. William F. Buckley, Jr. debate at Oxford University (1963), <https://www.youtube.com/watch?v=5Tek9h3a5wQ>.

Optional further viewing:

“I Am Not Your Negro,” Netflix (2016).

Optional further reading:

Danielle Allen, *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality* (W.W. Norton 2014).

Elijah Anderson, *Black in White Space: The Enduring Impact of Color in Everyday Life* (University of Chicago Press 2022).

James Baldwin, *The Fire Next Time* (1963) (Vintage reissue 1992).

Mehrsa Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap* (Harvard University Press 2017).

W.E.B. Du Bois, “World of Color,” *Foreign Affairs* (April 1925), <https://www.foreignaffairs.com/articles/africa/1925-04-01/worlds-color>.

Howard F. French, "Slavery, Empire, Memory," *New York Review of Books* (Apr. 7, 2022), <https://www.nybooks.com/articles/2022/04/07/slavery-empire-memory-britain-howard-french/>.

Toni Morrison, *The Origin of Others* (Harvard University Press 2017).

To Shape a New World: Essays on the Political Philosophy of Martin Luther King, Jr. (Tommie Shelby & Brandon M. Terry eds., Harvard University Press 2018).

Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (Liveright 2017).

Lucy Zheng, *DEI Deconstructed: Your No-Nonsense Guide to Doing the Work and Doing It Right* (Penguin Random House 2022).

DUE DATE: Submit student essays via Canvas by noon on February 1.

Class 6 Business, Social Responsibility, and the Environment: Individual Essays [Feb. 2]

Description: This class will focus on students' own personal experiences and reflections on specific challenges and issues they have faced or witnessed, or on specific research topics or climate book reviews. Come to class prepared to discuss your reflections (unless you would prefer to keep confidential for some reason, which is permissible.) Additional outside research is allowed but not required. Examples may include, without limitation:

- how a "business case" was made to support to a socially or environmentally responsible action, goal, or objective (either successfully or unsuccessfully);
- how an irresponsible decision was made on a social or environmental issue, and whether there were any economic, reputational, or other consequences;
- a situation where the student or a previous business leader or colleague made a socially or environmentally responsible (or irresponsible) decision and why;
- an example of a socially or environmentally responsible (or irresponsible) decision that had a direct effect on the student and the student's anticipated career trajectory;
- an example of a company or organization that the student worked for or otherwise had a personal experience with that exhibited either positive (or negative) social and environmental responsibility;
- any other experience implicating ethical, legal, moral responsibility, or environmental issues in a business context; or
- a short reaction paper from a business perspective on one of the four assigned books on climate change.

Class 7 Business and Social Responsibility: Student Essays (continued) [Feb. 7]

Description: Individual student reflections, essays, and discussion continued. See above.

Class 8 Global Environmental Responsibility: Climate Change [Feb. 9]

Description: This class examines whether business firms have a responsibility to act as “part of the solution” to global environmental problems such as climate disruption – beyond the obligation to follow relevant laws. If so, how?

Students are encouraged to do their own research and reading to supplement their knowledge on various aspects of this large existential problem. See some suggestions below. Starred books have been used in the course previously and recommended.

Options for Reading:

Brian Berkey and Eric W. Orts, “The Climate Imperative for Business,” *California Management Review* (Apr. 30, 2021), <https://cmr.berkeley.edu/2021/04/climate-imperative/>.

Yvonne Chouinard and Vincent Stanley, *The Responsible Company: What We've Learned From Patagonia's First 40 Years* (Patagonia Books 2012).

** John Doerr, *Speed & Scale: An Action Plan for Solving Our Climate Crisis Now* (Portfolio/Penguin. 2021).

Dan C. Esty and Andrew W. Winston, *Green to Gold: How Smart Companies Use Environmental Strategy to Innovate, Create Value, and Build Competitive Advantage* (Yale University Press 2009).

** Bill Gates, *How To Avoid a Climate Disaster: The Solutions We Have and the Breakthroughs We Need* (Knopf. 2021).

David Grinspoon, *Earth in Human Hands: Shaping Our Planet's Future* (Hatchett Book Group 2016).

Andrew J. Hoffman, “Climate Change as Culture War,” *Stanford Social Innovation Review*, fall 2012, https://ssir.org/book_reviews/entry/climate_science_as_culture_war.

Global CO₂ Initiative, University of Michigan, <https://www.globalco2initiative.org/>.

Sarah E. Light and Christina P. Skinner, “Banks and Climate Governance,” 121 *Columbia Law Review* 1895 (2021), <https://www.columbialawreview.org/content/banks-and-climate-governance/>.

MacArthur Foundation, “What Is the Circular Economy?”
<https://www.ellenmacarthurfoundation.org/circular-economy/what-is-the-circular-economy>.

William McDonough and Michael Braungart, *Upcycle: Beyond Sustainability—Designing for Abundance* (North Point Press, 2013).

William McDonough and Michael Braungart, *Cradle to Cradle: Remaking the Way We Make Things* (North Point Press 2002).

Bill McKibben, “Money Is the Oxygen on Which the Fire of Global Warming Burns,” *New Yorker*, Sept. 17, 2019, <https://www.newyorker.com/news/daily-comment/money-is-the-oxygen-on-which-the-fire-of-global-warming-burns>.

William Nordhaus, *The Climate Casino: Risk, Uncertainty, and Economics for a Warming World* (Yale University Press 2013).

Naomi Oreskes & Erik M. Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming* (Bloomsbury 2012).

David W. Orr, *Down to the Wire: Confronting Climate Collapse* (Oxford University Press 2009).

Eric W. Orts, “Climate Contracts,” 29 *Virginia Environmental Law Journal* 197 (2011) [Reading 8A].

Richard B. Rood, “Confronting our Invisible Enemies,” *Michigan Today*, Mar. 26, 2020, <https://michigantoday.umich.edu/2020/03/26/confronting-our-invisible-enemies/>.

Peter Singer, *One World Now: The Ethics of Globalization* (Yale University Press, rev. ed. 2016).

Michael P. Vandenberg & Jonathan M. Gilligan, *Beyond Politics: The Private Governance Response to Climate Change* (Cambridge University Press 2017).

DUE DATE: Submit book report via Canvas by noon on February 13.

Class 9 *Reimagining Capitalism and The Ministry of the Future* [Feb. 14]

This class will be devoted to sharing and discussing student perspectives on these two books.

Class 10 Student Presentations [Feb. 16]

Description: The last three classes will consist of final student presentations. See above for a suggested list of topics. Four groups per class: approximately 15 minutes each. Note that research is required, and that topics must be discussed and cleared with the instructor in advance.

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Important note: Presentations should be forwarded to the instructor by e-mail at least 24 hours prior to the class time. Powerpoint or PDF is preferred. Please include any references or sources used either in footnotes, a bibliography, or both. Post final version to Canvas.

Class 11 Student Presentations [Feb. 21]

See above.

Class 12 Student Presentations [Feb. 23]

See above.

There is no final exam.

VI. Bio of Instructor

Eric Orts is the Guardsmark Professor at the Wharton School of the University of Pennsylvania. He is a tenured professor in the Legal Studies and Business Ethics Department with a secondary appointment in the Management Department. He is a founding board member of the Alliance for Corporate Sustainability Research and previously served as the faculty director of the Initiative for Global Environmental Leadership at Wharton. He was also previously an academic co-director of the FINRA at Wharton executive education program for compliance and regulatory professionals. He is on the executive committee of the Mitchell Center for the Study of Democracy at Penn, affiliated faculty with the Center for Ethics and the Rule of Law at Penn, and a member of the advisory board of the Global CO₂ Initiative at the University of Michigan. He is a member of Faculty Senate Executive Committee at Penn representing a Wharton constituency, as well as a founding member of the Faculty Senate's Select Committee on the Institutional Response to the Climate Emergency.

His primary research and teaching interests are in corporate governance, environmental sustainability, professional ethics, and business theory. He has won some teaching awards over the years too.

Prior to joining Wharton's faculty, Professor 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 University School of Law. He has also taught and

visited at a number of other 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 California at Santa Barbara, the University of Michigan Law School, and UCLA School of Law. He was 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.

Orts is a graduate of Oberlin College (BA with honors in political theory and minor in philosophy), the New School for Social Research (MA in political science), the University of Michigan (JD), and Columbia University (JSD). He has been admitted to the bar in New York and the District of Columbia, and is an elected member of the American Law Institute. He belongs to several other professional and academic associations.

He has advised and interacted with a wide range of companies in different sectors and in different countries, mostly in academic, consulting, or executive education contexts.

He lives in West Philadelphia with his wife Julie, their dog Butterbean, and Zen Dude Cat. He has three adult children and enjoys rowing and yoga, as well as reading and politics. In 2021, he was (for several months at least) a declared candidate for the U.S. Senate in Pennsylvania.