

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

Legal Studies & Business Ethics 6130 – Sections 1 & 3 – January 16 to February 27

Instructor: Prof. Eric Orts
Classroom: Huntsman Hall, F50 (section 1) and F60 (section 3)
Classes: T/Th 10:15 to 11:45 am (section 1) and 1:45 to 3:15 pm (section 3)
Office hours: W 11 am to noon, and any time after class and by appointment
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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. Business is by definition “for profit,” but a perennial question that resurfaces in different forms concerns what responsibilities business firms and those who own and manage them may owe to others in society while seeking profits. In earlier decades this question has been posed in terms of corporate social responsibility (CSR). Then different versions of “stakeholder theory” were ascendant. More recently, a movement favoring strategies and measures of environmental, social, and governance (ESG) has become popular. An unresolved issue for all these approaches – from CSR to stakeholder theory to ESG – is how they relate to the profit motive, which is the sine qua non of business.

The profit-maximizing view of the business objective is the one most frequently modeled in business school classes. This course presents students with the opportunity to explore and engage with an alternative perspective: that business may have a social and environmental responsibility that includes but goes beyond profits. If business firms are conceived as social institutions that can themselves affect the “basic rules of the game” rather than simply taking them as given, then the question becomes when and how a business 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 (while recognizing that their end-users are part of the problem too). 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 but not limited to challenges involving democratic values, antisemitism and other forms of bigotry, racial and gender diversity, human rights of various kinds, poverty reduction, 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 encourages students to develop their own independent views based on 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. The course also aims to meet the general objective of a flex-core MBA course in law and ethics, introducing students to basic moral frameworks relevant to business in a nondogmatic fashion and providing some perspective on some important legal principles critical to business success.

Note for BEES students: This course is recommended for MBA students majoring or thinking about majoring in [Business, Energy, and Environmental Sustainability](#).

Special notice re academic freedom, implicit biases, and violations of university rules against bigotry: 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. In addition, and as importantly, productive learning and class discussion requires mutual respect. No instance of personal disrespect and especially no expressions of hatred – including especially, in the current global context, any expressions of antisemitism or Islamophobic views – will be tolerated. 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. See also Academic Freedom Statement in Appendix I.

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.

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 if you miss a class.

II. Attendance, Class Materials, and Class Preparation

Class format, attendance, and participation: Classes will combine lectures, 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.

Automatic check-in. The Wharton electronic check-in system will be used. Please remember to check in for each class on time.

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

For group presentations, a pre-approved list of possible topics is included in Appendix II below. Groups may select one of these topics on a first come, first served basis. Groups are also free to choose their own topic generally relevant to the course with the permission of the instructor in advance. Pre-selected topics need only to be cleared as available. Examples of optional topics may include the following:

- any topic focusing on business climate solutions;
- any topic relating to issues of antisemitism or other religious/ethnic bigotry, implicit bias, or diversity and inclusion in business;
- any topic related to social and environmental responsibility relating to a particular business sector, such as accounting, general management, consulting, investment advising, venture capital, private equity, investment banking, new product development, real estate, or marketing;
- a case study of a specific company that may provide lessons relevant to the general topic of social and environmental responsibility – including either a new business venture or an established firm dealing with changing expectations.

Important note: Groups must confirm the selection of pre-approved or self-fashioned topics with the instructor in advance to avoid risk of overlap. Discussion in advance with the instructor about the general approach to the selected topic is also encouraged.

Required readings: Required reading materials will be provided via Canvas or internet links. In addition, there are two required books and some optional books relevant to topics discussed in class and possible presentation topics.

Required books:

Harry G. Frankfurt, *On Bullshit* (Princeton University Press 2005).

Simon Blackburn, *Ethics: A Very Short Introduction* (Oxford University Press 2001).

Recommended but optional books:

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

Paul Hawken, *Regeneration: Ending the Climate Crisis in One Generation* (Penguin 2021).

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

Kim Stanley Robinson, *The Ministry for the Future: A Novel* (Orbit/Hatchett 2021).

Michael P. Vandenbergh, Sarah E. Light, and James Salzman *Private Environmental Governance* (Foundation Press 2023).

Bruce Usher, *Investing in the Era of Climate Change* (Columbia University Press 2022).

Lucy Zheng, *DEI Deconstructed: Your No-Nonsense Guide to Doing the Work and Doing It Right* (Penguin Random House 2023).

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>, reprinted in Appendix I.

Penn's Code of Academic Integrity: We will also follow the University's Code of Academic Integrity. See <https://catalog.upenn.edu/pennbook/code-of-academic-integrity/>, also reprinted in Appendix I. Given that a central topic of this course is ethics, ***any violation will be prosecuted and strictly enforced by the instructor.*** Please reference any and all materials consulted or used in written work or class presentations—and ask the instructor in advance if you have any doubts.

Important note re generative artificial intelligence: We will discuss on the first day of class the rules that we will follow regarding the use of generative AI (e.g. Chat GPT) for class assignments. Guidelines decided following discussion will be shared and posted.

Whistleblower option: We will also discuss in class whether we should have a whistleblowing policy or not – with an analogy drawn to whistleblowing practices in the business world.

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 daily and the cumulated at the conclusion of the course. 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 (with a possible accommodation 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.

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 (except for the missed class itself).

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 without excuse: automatic fail: Students who miss three classes without justifiable excuse will receive a failing grade for the course.

Note on not-free-really-free lunches: Lunch opportunities in connection with guest speakers will be available, and self-organized Dean-sponsored lunches with the instructor will be available as well on request (minimum three students, maximum seven). Note that no extra or make-up credit for class attendance or participation is available via lunches to be fair to all students, though the opportunity to get to know you better will be welcome!

Note on MBA ski trip: As a nod toward the networking opportunity of the MBA ski trip, an absence for one class for this trip may be offset partially and will not count against the three class maximum if students otherwise fulfill the requirements for the class. An opportunity will be given to students also to participate remotely for this class only.

2. Weekly One Pager (60 points). Six One Pagers (maximum two sides, double-spaced in 12 point font normal margins) will be due each week reflecting on readings, class discussions, or other aspects of topics raised for consideration. Answer prompts as provided for each assignment and submit on Canvas: open each Thursday (after class) and deadline each Monday.

3. Short Individual Essays and Presentations (60 points). A short essay is required reflecting on a personal 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. You may also use an anonymous third-party reporting format to preserve confidentiality with respect to personal experiences.

Individual essays must be submitted on Canvas. They will be assessed in terms of genuineness, relevance to the course subject matter and to classmates, substantive merit, and adherence to professional standards of good writing and coherent, original expression.

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

4. Group Presentation (60 points). Students will be randomly 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. See Appendix II for pre-approved topics. Groups are also encouraged to select their own topic in which case they should clear it with the instructor in advance. Approvals are almost always given for topics.

A group spokesperson should be selected, and the groups themselves are responsible for allocating tasks to members. Grades for the presentation will be equally share by all groups members, so all should participate in some fashion. Division of labor is also fine and even assumed. Not all group members need to take speaking roles, though they may if they wish. Grading will be done based on the instructors' assessment of accuracy, relevant for the group members as well as other class members, coherence, demonstration of relevant knowledge, overall quality of presentation, and time management. References for materials and technologies used (unless obvious) are required.

Group presentations will be scheduled in the last three classes. Groups should plan on a maximum of 25 minutes of presentation time (which may include interactive discussion with the class), reserving a maximum of 5 minutes for questions at the end. To ensure fairness to all groups, the time limit will be strictly enforced.

Bonus: Extra credit (**5 points**) will be given to student groups who both organize early to select topic and submit any powerpoint or other visual aid for the final presentation by the deadline prior to the presentation.

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

Total available points (including possible bonuses): **260**. The standard MBA curve applies.

No final. 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 students accurate interim assessments of how well they are doing as the course progresses, but please check in with the instructor 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, Social Responsibility, and the Environment [Jan. 16]

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.

An introductory topic: the use of generative artificial intelligence and its effect on higher education – including in this course!

We will discuss the use of generative AI for class assignments, as well as the question of whether a “whistleblowing” system of compliance should be used or not. Final decision about the rules will be announced and formalized in a revised version of the syllabus.

Optional Readings:

Trey Popp, “Alien Minds, Immaculate Bullshit, Outstanding Questions,” *Penn Gazette*, Apr. 26, 2023, <https://thepenngazette.com/alien-minds-immaculate-bullshit-outstanding-questions/>.

Molly Roberts, AI is forcing teachers to confront an existential question, *Washington Post*, Dec. 12, 2023, <https://www.washingtonpost.com/opinions/2023/12/12/ai-chatgpt-universities-learning/>.

Michael M. Grynbaum and Ryan Mac, “The Times Sues OpenAI and Microsoft Over A.I. Use of Copyrighted Work,” *N.Y. Times*, Dec. 27, 2023, <https://www.nytimes.com/2023/12/27/business/media/new-york-times-open-ai-microsoft-lawsuit.html>.

Class 2 Moral Foundations: Ethical Reasoning and Social Responsibility [Jan. 18]

Description: This class examines foundational ethical perspectives for business decision-making and determinations of business purpose and objectives. It includes an overview of ethical, moral, and legal frameworks related to business responsibility. We begin with an exercise from Plato called “The Ring of Gyges.” We will also touch on applications to business, including the role of internal compliance systems.

Special guest co-teacher: Robert Mass, former managing director of compliance at Goldman Sachs, lecturer in economics and ethics at Hunter College, and doctoral candidate in philosophy at the New School.

Bio: <https://www.aretewealth.com/member/rob-mass/>.

Readings:

The Ring of Gyges Exercise (adapted from Plato’s Republic) [Reading 2A].

Blackburn, *Ethics: A Very Short Introduction*, pp. 1-7 (intro), 17-38 (egoism, relativism, and evolutionary theories), 70-80 (utilitarianism), 93-116 (deontology, social contract theory, discourse ethics).

Optional further readings:

Plato, original Ring of Gyges version [Reading 2B]

Blackburn, *Ethics* [entire book or other sections according to interest].

Robert Mass, “A Bankers Code of Ethics,” 33 *Oxford Review of Economic Policy* 257 (2017) [Reading 2C].

James Lenman, “Making Sense of Ethics: An Introduction to Metaethics,” Open Press, (July 7, 2023), <https://openpresstiu.pubpub.org/pub/making-sense-of-ethics/release/2>.

Stavros Gadinis and Amelia Miazad, “The Hidden Power of Compliance,” 103 *Minnesota Law Review* 2135 (2019), https://www.minnesotalawreview.org/wp-content/uploads/2019/04/GadinisMiazad_FINAL.pdf.

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, <https://www.nytimes.com/2016/01/24/opinion/a-colleague-drank-my-breast-milk-and-other-wall-street-tales.html>.

Class 3 Theories of Business Purposes: Profit Maximization and Its Alternatives [Jan. 23]

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 of corporate social responsibility (CSR) and various interpretations of the concept, including a more recent emphasis on “Environment, Social, and Governance” (ESG) criteria.

Readings:

Milton Friedman, “The Social Responsibility of Business is to Increase its Profits,” *N.Y. Times Magazine*, Sept. 13, 1970, <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html> [also Reading 3A]

“A Free Market Manifesto That Changed the World, Reconsidered,” *N.Y. Times*, Sept. 11, 2020, <https://www.nytimes.com/2020/09/11/business/dealbook/milton-friedman-doctrine-social-responsibility-of-business.html>.

American Law Institute, Principles of Corporate Governance: Analysis and Recommendations, § 2.01 (1994) [Reading 3B]

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>.

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/>.

Optional further readings:

Thomas Donaldson & Lee E. Preston, “The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications, 20 *Academy of Management Review* 65 (1995) [Reading 3C].

Oliver Hart and Luigi Zingales, “Companies Should Maximize Shareholder Welfare Not Market Value,” 2 *Journal of Law, Finance, and Accounting* 247 (2017) [Reading 3D].

Eric W. Orts & Alan Strudler, “Putting a Stake in Stakeholder Theory,” 88 *Journal of Business Ethics* 605 (2009) [Reading 3E].

Eric W. Orts and Alan Strudler, “The Ethical and Environmental Limits of Stakeholder Theory,” 12 *Business Ethics Quarterly* 215 (2002) [Reading 3F].

Class 4 Business and Politics [Jan. 25]

Description: It is often assumed that business and politics should be kept strictly separate, and it’s true that modern society has experienced what sociologists call a “differentiation” of different institutional systems, namely, (a) business and the economic system, and (b) government and the political system. How, though, do these two systems fit together and interact?

In our class discussion, we will focus on the following topics:

- the ways in which changes in governments and institutions affect firm operations (e.g. in sales and revenue v. regulatory barriers)
- the role of political connections and policy (industrial policy, public-private partnerships, lobbying)
- political risk management and due diligence (understanding context), and
- recent advances in methodology, findings, and theories in the field that can help business practitioners.

Guest co-teacher: We will be joined in this class by Anastasia Grachavia, a doctoral student in Wharton’s Management Department and a teaching assistant for this course. As indicated by some reading selections, her research focuses on issues of business and politics. Bio: <https://mgmt.wharton.upenn.edu/profile/gracheva/>.

Readings:

Thomas Lyon, et al, “CSR Needs CPR: Corporate Sustainability and Politics,” *California Management Review* (2018) [Reading 4A].

Center for Political Accountability & Wharton Zicklin Center, CPA-Zicklin Model Code of Conduct for Corporate Political Spending (October 13, 2020), <https://www.politicalaccountability.net/wp-content/uploads/2022/06/CPA-Zicklin-Model-Code-of-Conduct-for-Corporate-Political-Spending.pdf>.

Optional further readings:

Amanda Shanor, Mary-Hunter McDonnell and Timothy Werner, “Corporate Political Power: The Politics of Reputation and Traceability,” 71 *Emory Law Journal* 153, 156-69, 173-75, 193-99 (2021), <https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1442&context=elj> [also Reading 4B].

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 5 Lessons from Practice I: Big Law and Pro Bono [Jan. 30]

Description: This class will examine how some big law firms balance “pro bono” representations with the overall goal of profit-making. Does this provide a good analogy to other business contexts? Why or why not? We will also discuss the general question with the benefit of recent examples of pro bono cases.

This class will also present a general opportunity to consider and raise questions about when and how to hire lawyers in different business situations. This relates to one subsidiary goal for this course in terms of your future career: stay out of jail and stay away from any temptations that may put you in serious legal jeopardy. Knowing when to hire a good lawyer and some tips about how to manage them (and allowing them sometimes to manage you) is one practical takeaway aimed for in this this class.

Special guests: Aidan Synnott, litigation partner at Paul Weiss; Steven Banks, special counsel and pro bono manager at Paul Weiss.

Bios: <https://www.paulweiss.com/professionals/partners-and-counsel/aidan-synnott>
<https://www.paulweiss.com/professionals/partners-and-counsel/steven-banks>

Readings:

Paul Weiss, Pro Bono: Our Practice, <https://www.paulweiss.com/practices/pro-bono/practice-overview/our-practice>.

Farhad Manjoo, “Alec Baldwin Didn’t Have to Talk to the Police. Neither Do You,” *N.Y. Times*, Jan. 25, 2023,
<https://www.nytimes.com/2023/01/25/opinion/alec-baldwin-rust-5th-amendment.html>.

Class 6 Lessons from Practice II: ESG and DEI (Feb. 1)

Description: This class will discuss current best practices – as well as some critical perspective on them – concerning Environmental, Social and Governance (ESG) strategies and reporting, as well as Diversity, Equity and Inclusion (DEI) practices within firms. Two special guests will join the class to provide real-world perspective and share their views of likely future developments.

Special guests: Madhuri Pavamani, Sustainability & ESG Advisory Practice Director at Paul Weiss and lecturer in law at Columbia Law School; and Elizabeth Seeger, full-time board member, full-time member of the International Sustainability Standards Board and former managing director for sustainability investing at KKR (and a Wharton MBA graduate!) [Also invited: Krystal Studavent Ramsey, Director of Diversity and Inclusion, Blank Rome.]

Bios: <https://www.law.columbia.edu/faculty/madhuri-pavamani>
<https://www.ifrs.org/groups/international-sustainability-standards-board/profiles/elizabeth-seeger/>
<https://www.blankrome.com/people/krystal-studavent-ramsey>

Readings:

“Introduction to ESG,” Paul Weiss memo (July 9, 2020),
<https://www.paulweiss.com/insights/esg-thought-leadership/publications/introduction-to-esg?id=37479>.

“ESG Lexicon,” Paul Weiss memo (undated),

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

Witold Henisz, Tim Koller, & Robin Nuttall, “Five Ways That ESG Creates Value,” McKinsey Quarterly (Nov. 2019),

<http://dln.jaipuria.ac.in:8080/jspui/bitstream/123456789/2319/1/Five-ways-that-ESG-creates-value.pdf>.

David F. Larcker et al., “ESG Ratings: A Compass without Direction,” Stanford Closer Look Series, Aug. 2, 2022,

https://www.gsb.stanford.edu/sites/default/files/publication/pdfs/cgri-closer-look-97-esg-ratings_0.pdf.

IFRS, General Sustainability Standard, General Requirements for Disclosure of Sustainability-related Financial Information (June 2023) [Reading 6A] [skim if pressed for time]

IFRS, Effects Analysis for IFRS Sustainability Disclosure Standards (June 2023) [Reading 6B] [skim if pressed for time].

Edward Chang & Bonnie Levine, “To Drive Diversity Efforts, Don’t Tiptoe Around Your Legal Risk” *Harvard Business Review* (July-Aug. 2022),

<https://hbr.org/2022/07/to-drive-diversity-efforts-dont-tiptoe-around-your-legal-risk>.

Optional further readings:

Paul Weiss, other selected memos on ESG Thought Leadership, including ““A Guide to the SEC’s Proposed Climate Disclosure Requirements,” and “ESG Intersects with PE: Practical ESG Considerations for Private Equity,”

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

Elizabeth Pollman, “The Making and Meaning of ESG,” forthcoming in *Harvard Business Law Review* (2024),

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4219857.

David M. Larcker, Brian Tayan, & Edward M. Watts, “Seven Myths of ESG,” Stanford Closer Look Series, Stanford Graduate School of Business, November 4, 2021,

https://www.gsb.stanford.edu/sites/default/files/publication/pdfs/cgri-closer-look-94-seven-myths-esg_1.pdf.

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>.

Frank Dobbin & Alexandra Kalev, “Why Diversity Programs Fail,” *Harvard Business Review* (July-Aug. 2016), <https://hbr.org/2016/07/why-diversity-programs-fail>'.

Sarah Kaplan, “Why the ‘Business Case’ for Diversity Isn’t Working,” *Harvard Business Review* (Feb. 12, 2020), <https://www.fastcompany.com/90462867/why-the-business-case-for-diversity-isnt-working>.

Robin J. Ely & David A. Thomas, “Getting Serious about Diversity: Enough Already with the Business Case,” *Harvard Business Review* (Nov.- Dec. 2020), <https://hbr.org/2020/11/getting-serious-about-diversity-enough-already-with-the-business-case>.

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,” working paper, rev. Jan. 2, 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4298626.

Jesse Singal, “What If Diversity Training Does More Harm Than Good?” *N.Y. Times*, Jan. 22, 2023, <https://www.nytimes.com/2023/01/17/opinion/dei-trainings-effective.html>. [Optional: some letters to the editor in response: <https://www.nytimes.com/2023/01/26/opinion/letters/diversity-training.html>.]

Optional further viewing/listening:

Stephanie Creary and Ken Shropshire, “Diversity at Work: How Diversity in Leadership Improves Boards,” Knowledge at Wharton, June 20, 2023 podcast, <https://knowledge.wharton.upenn.edu/podcast/ripple-effect/diversity-at-work-how-diversity-in-leadership-improves-boards-stephanie-creary>.

Stephanie Creary with Kenji Yoshino and Joanne Stephane, “Why ‘Covering’ Can Harm Diversity in the Workplace,” Knowledge at Wharton, Dec. 11, 2023, podcast, <https://knowledge.wharton.upenn.edu/podcast/knowledge-at-wharton-podcast/why-covering-can-harm-diversity-in-the-workplace/>.

Columbia Law School, Conference on Racial Equity in Corporate Governance: Fireside Chat (conversation between Lisa Fairfax and Joe Bae), <https://www.youtube.com/watch?v=sDJ-pF24qbY>.

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

Class 7 Individual Essays and Presentations [Feb. 6]

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 deriving from their areas of knowledge. Students should come to class prepared to discuss their reflections. 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 a legally or ethically 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 a topic relevant to the course.

Class 8 Individual Essays and Presentations (continued) [Feb. 8]

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

Class 9 Global Environmental Responsibility: Climate Change (or Emergency?) [Feb. 13]

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.

Readings:

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/>.

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>.

Also please select one or more readings from the recommended list below.

Recommended further readings:

Doerr, *Speed & Scale: An Action Plan for Solving our Climate Crisis Now* (2021).

Hawken, *Regeneration: Ending the Climate Crisis in One Generation* (2021).

Robinson, *The Ministry for the Future: A Novel* (2021).

Vandenbergh, Light and James Salzman *Private Environmental Governance* (2023).

Usher, *Investing in the Era of Climate Change* (2022).

Susan S. Kuo and Benjamin Means, “Climate Change Compliance,” 107 *Iowa Law Review* 2135 (2022), <https://ilr.law.uiowa.edu/print/volume-107-issue-5/climate-change-compliance>.

Susan S. Kuo and Benjamin Means, “Forcing Climate Change Compliance,” *Harvard Environmental Law Review* [forthcoming 2024], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4585872.

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

Ana Swanson, “Climate Change May Usher in a New Era of Trade Wars,” Jan. 25, 2023, <https://www.nytimes.com/2023/01/25/business/economy/climate-change-global-trade.html>.

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).

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 9A].

Class 10 Student Presentations [Feb. 15]

Description: The last three classes will consist of final student presentations. See above for descriptions of format and requirements. See also Appendix II for pre-approved topics.

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. 20]

See above.

Class 12 Student Presentations [Feb. 22]

See above.

This is no final exam.

Appendix I: Academic Freedom Statement, Learning Agreement, and Ethics Code

Academic Freedom Statement

The policies of the University of Pennsylvania protect academic freedom, as defined in the [AAUP's 1940 Statement of Principles](#). This statement has been endorsed by over 250 scholarly and educational organizations in the United States, and its principles are written into faculty handbooks nationwide, including [Penn's](#). The principles of academic freedom were established to protect the integrity of research and teaching from interference by donors, trustees, politicians, and others who might seek to make universities serve private and political interests. They are founded on the idea that a university's purpose is to generate new knowledge that can serve the common good in a democratic society, and that generating new knowledge requires free and open inquiry. To safeguard the university's public mission, academic freedom entails the following rights for all faculty members – whether tenure-track or non-tenure track, and including graduate research and teaching assistants – and for students:

- The right of faculty members to full freedom in research, teaching, extramural speech (public speech on issues of general concern) and intramural speech (speech about the university itself, including criticism of it).
- The right of students to freedom in learning, which includes freedom of association and expression and freedom of inquiry in the classroom.

Academic freedom is only as strong as the institutions, procedures, and professional norms that faculty members established over the last century to protect it: institutions of faculty governance such as Faculty Senates; the institution of tenure; and due process procedures that protect both tenure-track and non-tenure-track faculty against unjust discipline or dismissal. For further information about academic freedom and a more complete statement, see the [AAUP-Penn website](#).

Wharton Learning Agreement

Preamble: The Learning Agreement serves as a set of ideal standards for both students and faculty to create a world-class educational experience. Our collective goal is to create and enjoy an engaging classroom environment with diverse views and centered on knowledge applicable to our students' future careers. It is our shared responsibility to help each other in the learning process, and we are expected to hold each other accountable to the standards set forth in this Learning Agreement.

I. Student Standards

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.

II. Instruction Standards

Classroom Conduct:

- Select course content that motivates student interest, develops subject mastery, and highlights relevant business applications.
- Engage students to promote the analysis, synthesis, and evaluation of class materials.
- Lead the class to foster an inclusive learning environment that respects the diversity of knowledge, experience and culture among the students.
- Begin and end class on time.

Syllabus:

- State the learning objectives for the course.
- Be clear about who students may collaborate with and what materials they may use.
- Delineate how each component of a student's grade is evaluated.
- Indicate when deliverables are due and when assessments will occur.

- Identify course materials and the degree to which they are required.
- List your office hours or how you can be contacted outside of the classroom.
- Make the current syllabus available prior to the beginning of the course.

Student Support:

- Commit to timely grading and submitting of final grades.
- Respond to student requests and inquiries in a timely and respectful manner.
- Provide students with feedback on their work, as well as an indication of their standing in the course.
- Communicate how students can improve if learning objectives are not met.
- Make course materials available in advance to foster course preparation.
- Support your students' wellness through openness to their concerns and awareness of helpful university resources.

University of Pennsylvania's Code of Academic Integrity

Since the University is an academic community, its fundamental purpose is the pursuit of knowledge. Essential to the success of this educational mission is a commitment to the principles of academic integrity. Every member of the University community is responsible for upholding the highest standards of honesty at all times. Students, as members of the community, are also responsible for adhering to the principles and spirit of the following Code of Academic Integrity.

Academic Dishonesty Definitions:

Activities that have the effect or intention of interfering with education, pursuit of knowledge, or fair evaluation of a student's performance are prohibited. Examples of such activities include but are not limited to the following 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. . . .

If a student is unsure whether his action(s) constitute a violation of the Code of Academic Integrity, then it is that student's responsibility to consult with the instructor to clarify any ambiguities.

Appendix II – Pre-Approved Class Presentation Topic Suggestions

1. Business solutions to the global climate challenge. There is arguably no greater existential threat to humanity and life itself than climate change. Topics listed here will focus presentations on possible business solutions. General background resources include the following: John Doerr, *Speed & Scale: An Action Plan for Solving Our Climate Crisis Now* (Portfolio/Penguin. 2021); Bill Gates, *How To Avoid a Climate Disaster: The Solutions We Have and the Breakthroughs We Need* (Knopf. 2021); Paul Hawken, *Regeneration: Ending the Climate Crisis in One Generation* (2021); Wake Smith, *Pandora’s Toolbox: The Hopes and Hazards of Climate Intervention* (Cambridge University Press 2022); Bruce Usher, *Investing in the Era of Climate Change* (Columbia University Press 2022). One might find inspiration also from Kim Stanley Robinson, *The Ministry for the Future: A Novel* (Orbit/Hatchett 2021).
 - a. Climate disclosure laws. Are new laws requiring more expansive climate-related disclosures involving both business policy and greenhouse gas emissions (including the U.S. EPA, California, and the European Union) likely to have a beneficial effect? What is the best way forward? Possible starting sources: John Armour, Luca Enriques and Thom Wetzer, “Mandatory Corporate Climate Disclosures: Now, But How?” 2021 *Columbia Business Law Review* 1085 (2022), <https://journals.library.columbia.edu/index.php/CBLR/article/view/9106>; Magali Delmas, Michael Gerrard and Eric Orts, “In California and Europe, a New Dawn for Corporate Climate Disclosure,” *The Hill* (Oct. 5, 2023), <https://thehill.com/opinion/energy-environment/4238182-in-california-and-europe-a-new-dawn-for-corporate-climate-disclosure/>.
 - b. Role of central banks. Should central banks, including the Federal Reserve and its counterparts, take a more assertive role in addressing the global challenge? If so, how? Task Force on Climate-Related Financial Disclosure (TCFD) standards have been adopted and passed along to the International Sustainable Standards Board (ISSB) for administration and future development. See TCFD, <https://www.fsb-tcfd.org/>. What’s next or should be next?
 - c. Green quantitative easing. One radical idea popularized in Robinson’s *The Ministry for the Future* is for global central banks acting in concert to issue “carbon coins” to finance the purchase of fossil fuel reserve from state-owned and private fossil fuel companies to “keep it in the ground.” See also Global Climate Reward, <https://globalcarbonreward.org/>; Kim Stanley Robinson, “Paying Ourselves to Decarbonize,” *Noēma*, Feb. 21, 2023, <https://www.noemamag.com/paying-ourselves-to-decarbonize/>. Is this idea feasible? Do other alternatives that make more sense?
 - d. Global carbon tariffs. One problem facing carbon pricing regulation at the national level is that firms and others can elude them by relocating operations to other jurisdictions. One solution may be to establish a carbon tariff which the European Union is moving forward with. What are the prospects for the EU tariff? Does this development have the potential to be adopted by the U.S. too and perhaps go global? See Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules that Run the World* (Oxford University Press 2016); Kristoffer Tighe, “Europe Just Launched the World’s First Carbon Tariff. Will the United States Follow Suit?” *Inside Climate News*, Oct. 3, 2023,

<https://insideclimatenews.org/news/03102023/todays-climate-european-union-worlds-first-carbon-tariff-united-states/>.

e. Electric vehicles. One part of the solution to the global climate solution is to “electrify everything.” See, e.g., Doerr at 1-61; Smith at 86-88. The so-called Inflation Reduction Act has provided large subsidies directed toward this effort. What are the prospects for a fast transition from gas- and diesel-fueled vehicles to electric and other sustainable options? How can some of the roadblocks (e.g., scarcity of charging infrastructure in the U.S. and elsewhere) be overcome?

f. Energy transition. What are the prospects that large state-owned and private fossil fuel firms will seriously commit to making a transition to renewable energy and leave currently discovered fossil fuel assets “in the ground”? Is it possible to imagine a future of “good” and “bad” fossil fuel companies and countries with respect to climate policy, and would this make any difference? See also Smith, ch. 6.

g. Airline industry. The airline industry accounts for around three percent of global carbon emissions. Jeff Overton, “The Growth in Greenhouse Gas Emissions from Commercial Aviation,” Environmental and Energy Study Institute, June 9, 2022 <https://www.eesi.org/papers/view/fact-sheet-the-growth-in-greenhouse-gas-emissions-from-commercial-aviation>. And this growth is accelerating. What are possible climate solutions in this industry? Is there a path forward to imagine climate-free airships such as imagined at the end of *The Ministry for the Future*? Or what are some more realistic future scenarios and how might they be incentivized?

h. Shipping industry. Another three percent of greenhouse gas emissions are caused by the shipping industry. Yale Climate Connections, “Maritime shipping causes more greenhouse gases than airlines,” Aug. 2, 2021, <https://yaleclimateconnections.org/2021/08/maritime-shipping-causes-more-greenhouse-gases-than-airlines/>. What are some possible climate solutions in this business sector? Are the wind- and solar-powered clipper ships imagined in *The Ministry for the Future* feasible? Any change the prototype yacht used by Greta Thunberg to cross the Atlantic in 1999 could be scaled up to larger use? See Milman, Oliver. 2019. “Let’s do it now’: Greta Thunberg crosses Atlantic and calls for urgent climate action.” *Guardian*. Aug. 28, <https://www.theguardian.com/environment/2019/aug/28/greta-thunberg-arrival-in-new-york-delayed-by-rough-seas>.

i. Venture capital. What is the role of venture capital in financing new business climate solutions? Should and how could new ideas for business climate solutions be incentivized? For a prompt, see Usher at 159-65. Note: the new chair of Penn’s board of trustees runs a venture capital firm focused on climate and sustainability! “Ramanan Raghavendran named chair of Penn Board of Trustees,” *Penn Today*, Jan. 4, 2024, <https://penntoday.upenn.edu/news/ramanan-raghavendran-named-chair-penn-board-trustees>. Perhaps he could be a resource. . . .

j. Private equity. Can private equity play a role in reorganizing business toward climate solutions? If so, how? See Usher at 167-70.

k. Carbon offsets. The idea of “offsetting” greenhouse gas emissions via so-called “carbon offsets” has often been promoted as a business solution, but offsets have also recently come under fire from academics and policy makers. Assess whether carbon offsets make sense and, if so, how they should be used and properly verified. For theoretical background, Christian Barry and Garre Garrett Cullity, “Offsetting and Risk Imposition,” 132 *Ethics* 291 (2022), <https://www.journals.uchicago.edu/doi/epdf/10.1086/716871>.

l. Business opportunities in legal reforms for deep decarbonization. Many approaches have been proposed for legal changes that would promote deep decarbonization in the U.S. and other economies. See *Legal Pathways to Deep Decarbonization in the United States* (Michael B. Gerrard and John C. Dernbach eds., ELI 2019). Which proposed laws present both pro-climate solutions and business opportunities? Any new business ideas?

m. Direct air capture. New technologies for direct air capture (removing carbon dioxide from the atmosphere) have been developed with business prototypes operational. Is this technology likely to be part of the climate solution? If so, how can it be scaled up? What are the best bets for the future of different technologies or businesses? See Elizabeth Kolbert, *Under a White Sky: The Nature of the Future*, 143-86 (Crown trade ed. 2022); Smith, chs. 10-12, 16, 20.

n. Solar radiation management. A prominent and controversial set of technologies are designed to block solar radiation, thus slowing global warming. Assess the risks and benefits of these kinds of proposals. Is some version likely to be developed inevitably as the climate crisis worsens (as imagined in *The Ministry for the Future*). What about the large risk of “termination shock,” even if the technologies succeed? For a less optimistic fictional account, see Neal Stephenson, *Termination Shock: A Novel* (HarperCollins 2021). For a nonfictional assessment by a proponent, see Smith, chs. 13-15, 20-21.

o. Renewable energy: solar, wind, geothermal, and storage/battery technologies. Rapid advances in the energy efficiency of these technologies and rapid reduction in costs of solar, wind, and other renewable energy sources has led many to calculate that the world already has the necessary technology to make a “zero carbon” initiative. See Mark Z. Jacobson, *No Miracles Needed How Today's Technology Can Save Our Climate and Clean Our Air* (Cambridge University Press 2023). Assess this claim with respect to one or more of these technologies. Some have claimed that scarcity of natural resources (e.g. lithium) will put a brake on progress. What is the strength of these concerns and how does it affect your assessment of future business opportunities?

2. Private environmental governance. What techniques of private environmental governance are most promising for business firms to adopt voluntarily to lower their carbon footprint and otherwise contribute to climate solutions? See Vandenberg, Light, and Salzman, *Private Environmental Governance* (2023).

3. Double materiality. A divergence appears to be emerging between the European Union’s tentative embrace of a “double materiality” measure of sustainability, including climate measures, which includes both traditional financial materiality and new measures of sustainability materials,

compared with other approaches such as in the United States that maintains that the traditional “single materiality” measure focused on financial prospects should remain primary. Examine this debate and assess it, including recommendations for the future.

4. Antisemitism and bigotry in business. Are there lessons to be learned for business leaders from the recent controversies on campus regarding antisemitism, particularly right here at the University of Pennsylvania? If so, what are these lessons? Are there business leadership lessons? What are ideas for tackling these kinds of problems at Wharton and Penn going forward? Does business have a responsibility too?

5. Diversity, equity, and inclusion. There are a wide set of issues regarding this important topic in business. Here are a few ideas.

a. Affirmative action. The U.S. Supreme Court recently restricted the use of racial classifications in admissions in higher education. See *Students for Fair Admissions v. Fellows of Harvard College* (2023) https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf. By its terms, the case does not affect the law with respect to business enterprises, but some believe that change will come in this respect too. Assess what this decision means for business practices.

b. DEI best practices. Going forward, what are the best practices that should be followed for DEI in business? Some say that current events are undermining progress. Others say DEI practices may result in unfair preferences given to some candidates, employees, or prospects for business leadership as compared with others? For one source, see Lucy Zheng, *DEI Deconstructed: Your No-Nonsense Guide to Doing the Work and Doing It Right* (Penguin Random House 2023). See also recommended sources listed for Class 6 above.

c. Role of finance and banking. What role does the finance and banking industry play in racial and other economic inequality? For background, see Mehrsa Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap* (Harvard University Press 2017). What are some possible solutions along this dimension?

d. Reparations in business. Should recent arguments favoring reparations for past injustices, including slavery, apply to business firms too? Consider the South African context as one example. For a philosophical primer, see Olúfemi O. Táíwò, *Reconsidering Reparations* (Oxford University Press 2022).

6. Corporate liability rules. Should the background legal responsibilities for corporate liability for torts and other violations be changed? Are standard rules and justifications for corporate limited liability outmoded? Should corporate executives (or controlling or even noncontrolling shareholders) bear greater risk of liability for social and environmental harms from business operations and actions? See Orts, ch. 4.

7. Executive compensation. Are executive compensation practices and the laws that govern them slanted too much in favor of share price maximization and against social and environmental

responsibility? Why or why not? What should be done, if anything, in terms of business or legal reform? See Orts, ch. 7. Should executive compensation reflect performance metrics for social and/or environmental criteria?

8. Corporate political rights. Under the well-known *Citizens United* case in the United States, business corporations and other entities have constitutional rights to participate in the political process. How should these rights be used? Are there any limitations on whether business should get involved in politics or not? Should business follow a general principle to “stay out of politics”? Why or why not? See Orts, ch. 7.

9. New business forms. In recent years, a number of different business forms have been added to the menu to allow enterprise organizers the ability to more explicit a “public benefit” dimension to business objectives or purposes. See Orts, ch. 5.

a. Public benefit corporations. Assess the success to date of public benefit corporations as a new business form. Are they a harbinger of the future or generally a failure or just a niche business form? Are legal or other changes needed to make them more successful? See also Ofer Eldar, “The Role of Social Enterprise and Hybrid Organizations,” 2017 *Columbia Business Law Review* 92 (2017); Ofer Eldar, “Designing Business Forms to Pursue Social Goals,” 106 *Virginia Law Review* 937 (2020).

b. New capital market structures. Are capital markets as currently structured efficiently with respect to making financing available to public benefit corporations or other alternative models? If not, how might they be improved or enhanced legally or structurally? Are new platforms for investment in companies “doing good” needed?

c. Patagonia. Patagonia has formed a new style of business firm in which the company claims: “The Earth is our only shareholder.” Explain this new business form – called a “sustainable trust” or “noncharitable perpetual purpose trust” and assess its viability for the future. See Brian Trelstad, Nien-hê Hsieh, Michael Norris and Susan Pinckney. “Patagonia: ‘Earth Is Now Our Only Shareholder,’” Harvard Business School Case 323-057 (Mar. 2023, revised Sept. 2023), <https://www.hbs.edu/faculty/Pages/item.aspx?num=63834>; Beck Groff and Susan N. Gary, “Patagonia, Purpose Trusts, and Stewardship Trusts – Business with a Purpose,” 37 *Probate and Property* 36 (Jan./Feb. 2023); Erin McCormick, “Patagonia’s billionaire owner gives away company to fight climate crisis,” *Guardian* (Sept. 14, 2022), <https://www.theguardian.com/us-news/2022/sep/14/patagonias-billionaire-owner-gives-away-company-to-fight-climate-crisis-yvon-chouinard>; Charles Conn, “Patagonia Chair: ‘We are turning capitalism on its head by making the Earth our only shareholder,’” *Fortune* (Sept. 14, 2022), <https://fortune.com/2022/09/14/patagonia-chair-we-are-turning-capitalism-on-its-head-by-making-the-earth-our-only-shareholder-charles-conn/>.

10. For-profit and nonprofit partnerships. One possible solution to address social or environmental problems outside of the normal “for-profit” range of business processes is to partner with nonprofit organizations. Partnering with a nonprofit environmental organization dedicated

to preservation may make sense to signal that an economic development is sensitive to endanger species, for example. Seek for example of this kind of collaboration. Are they true “win-win” relationships? Or do some amount only to greenwashing?

11. Dimensions of production. One argument for better products from a social and environmental point of view is to focus on quality and durability rather than the cheapest materials and wastefulness. What determines whether this approach is viable – or how can it be encouraged? See Yvon Chouinard, “The High Stakes of Low Quality,” *New York Times* (Nov. 23, 2023), <https://www.nytimes.com/2023/11/23/opinion/patagonia-environment-fast-fashion.html/>

12. Dimensions of consumption. One justification that business firms have with respect to the adverse social or environmental consequences of their action is that they are simply providing what consumers demand. Giving this argument weight, how could the consumer side of the equation be improved?

a. Consumer boycotts. What role can and should consumers play to encourage socially and environmentally responsibility in business. Are consumer boycotts legitimate or useful? See Brian Berkey, “Ethical Consumerism, Democratic Values, and Justice,” 49 *Philosophy & Public Affairs* 233 (2021).

b. Consumer groups. Are consumer reporting initiatives or consumer cooperatives possible or viable? See, e.g., see Marta L. Tellado, “From Our President: Greener Choices Ahead,” *Consumer Reports*, June 9, 2022, <https://www.consumerreports.org/environment-sustainability/from-our-president-greener-choices-ahead-a9429970485/>.

c. Luxury goods. To what extent to the production and sale of luxury goods drive or exacerbate social and environmental problems? Are solutions available? For example, are global luxury good taxes or wealth taxes recommended or viable? For a literature review, see Yann Truong, “Personal Aspirations and the Consumption of Luxury Goods,” 52 *International Journal of Market Research* 655 (2010). For the classic in the field, see Thorstein Veblen, *The Theory of the Leisure Class* (1899).

d. Services rather than ownership of goods. Another possible trend is to see “services” (such as renting carpet or a car) rather than ownership of goods as a more environmentally sustainable and perhaps often also more efficient method of consumption. See the example of Interface carpet as an early example.

13. Challenges to the private equity business model. Some recent critiques of the private equity business accuse to be “plundering” with respect to the collective social and environmental good. See Brendan Ballou, *Plunder: Private Equity’s Plan to Pillage America* (PublicAffairs/Hatchette 2023); Gretchen Morgenstern and Joshua Rosner, *These Are the Plunderers: How Private Equity Runs – and Wrecks – America* (Simon & Schuster 2023). For a related critique, see Olufunmilayo B. Arewa, “Investment Funds, Inequality, and Scarcity of Opportunity,” 99 *Boston University Law Review* 1023 (2019). Even defenders of private equity recognize that its structure and

reorganizations contribute to inequality of wealth in society and proposed reforms. See Christina Parajon Skinner, “Private Equity for the People”, 171 *University of Pennsylvania Law Review* 2059 (2023). What is your assessment? Can public equity defend itself from these attacks? Or are reforms needed? If so, what reforms?

14. Elon Musk: Hero or Villain? Elon Musk is one of the most famous living Wharton grads, founder of Tesla and Space X – and one of richest people in the world. A new biography of Musk paints him in generally bright and positive colors. Walter Isaacson, *Elon Musk* (Simon & Schuster 2023). But not everyone feels the same way. See Ben Tarnoff, Ultra Hardcore, New York Review of Books, Jan. 18, 2024, <https://www.nybooks.com/articles/2024/01/18/ultra-hardcore-elon-musk-walter-isaacson/>. What is your group’s assessment of Musk and his accomplishments?

15. Rohit Chopra: Hero or Villain? A less well-known Wharton grad, Rohit Chopra, is the director of the Consumer Financial Protection Bureau. Assess his performance and record to date. What’s a good Wharton graduate like this doing at the head of a government agency?

16. The Future of ESG. What are the current prospects for ESG? Some say it is too “woke.” Others say it amounts mostly to greenwashing. Yet others maintain that for all its flaws, ESG is here to stay and will help to solve problems of social and environmental responsibility.

a. ESG metrics. What are the best metrics and standards being used for ESG? What exactly do they measure? How useful are these measurements to investors and managers? Do they help to solve the underlying environmental, social, and governance problems being measured? How can these metrics, measurements, and standards be improved?

b. ESG verification. How are the current disclosures in ESG monitored and certified? Who are the most reliable third-party verifiers? What is the role of the big accounting firms here? Will ESG reporting become standardized similarly to how financial reporting has been?

17. Social Media. There are several emerging ethical and legal issues in the social media business.

a. Harm to employees and resulting potential legal liability. Psychological harm experienced by “screeners” of posts that are very violent, pornographic (including child porn), or otherwise disturbing.

b. Censorship. Scope of alleged “censorship” of social media posts, partly accomplished by artificial intelligence screens.

c. Harm to children. Psychological harm to children through allegedly “addictive” or otherwise cognitively harmful marketing practices. See, e.g., Lauren Feiner, “Meta sued by 42 attorneys general alleging Facebook, Instagram features are addictive and target kids,” CNBC, Oct. 24, 2023, <https://www.cnbc.com/2023/10/24/bipartisan-group-of-ags-sue-meta-for-addictive-features.html>.

18. Generative Artificial Intelligence. One of the most recent and hottest topics in business ethics and law (discounting global warming, pun intended) is generative AI. Here are some possible topics:

a. New York Times v. AI. What is going on in this case. Is generative AI largely based on stolen data of others?

b. Existential risk. Some of the founders of AI warn that it could become so intelligent as to get loose and destroy humanity. Is this worry well-founded or overblown?

c. Educational risk. Is there a concern that generative AI will have an adverse on effect on education, particularly on the development of critical thinking skills and writing ability. Is there merit in these worries? If so, what are possible solutions?

d. Business AI. There is much touting of new opportunities for growth in companies that promote generative AI. What are the downside risks for business firms? What internal policies would your group recommend?

19. Future Wharton course. What new course would your group like to see taught at Wharton that would enhance coverage, discussion, and the advancement of knowledge concerning social responsibility and environmental sustainability in business? The course could be in any discipline or multi-disciplinary. It could also be a traditional on-campus course or experiential. It could be structured as a Global Modular Course or a Leadership Venture. Note that under our current rules, a Wharton faculty leader for the course would have to be found – but you need not try to recruit one. This is a presentation exercise, not an actual proposal!

20. Your own topic! Remember that groups are not limited to the list of pre-approved topics above. Permission will be liberally granted for any topic related to the overall substance and teaching objectives of the course!

Appendix III – Bio of Instructor

Eric Orts is the Guardsmark Professor at the Wharton School of the University of Pennsylvania. He is tenured in the Legal Studies and Business Ethics Department with a secondary appointment in the Management Department. He was a founding board member of the Alliance for Corporate Sustainability Research and served as the faculty director of the Initiative for Global Environmental Leadership at Wharton. He was also an academic co-director of the FINRA at Wharton executive education program for compliance and regulatory professionals. His primary research and teaching interests are in corporate governance, environmental sustainability, professional ethics, and business theory.

He currently serves as a member of the executive committee of the Mitchell Center for the Study of Democracy at Penn, an affiliated faculty member 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 has been active in faculty governance, currently serving as a member of the University Council, the Faculty Senate Executive Committee representing a Wharton constituency, and a member of Penn's Committee on Open Expression. He was a founding member and continues to serve also on the Faculty Senate's Select Committee on the Institutional Response to the Climate Emergency.

Prior to joining Wharton's faculty, he 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 is a visiting professor of law at Columbia during summers late (2023 and expected 2024) where he teaches a course on "ESG, Social Impact Investing, and Corporate Responsibility" in the executive education for lawyers program.

Previously, he has also taught and visited at number of other business and law schools, including INSEAD, 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 graduated 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 D.C. and is an elected member of the American Law Institute.

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. He has three adult children. In his spare time, he enjoys rowing and yoga, as well as reading and politics. In 2021, he was a candidate for the U.S. Senate in Pennsylvania. He learned that he is a better professor than politician.