

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2018

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(August 2018)

**CORPORATE SOCIAL RESPONSIBILITY
BUSLW 597B - 201
Larry Catá Backer
COURSE INFORMATION AND SYLLABUS**

MEETING ROOM:	232 Katz
MEETING TIME:	Mondays and Wednesdays 09:45 P.M. - 11:00 A.M.
OFFICE:	239 Katz Building
TELEPHONE:	814.863.3640 (direct)
E-MAIL	lcb11@psu.edu
WEBSITE	https://backerinlaw.com
BLOG	https://lcbackerblog.blogspot.com
CONFERENCE	
HOURS:	Mondays and Wednesdays 4:00 P.M. TO 6:00 P.M., AND BY APPOINTMENT
	e-mail anytime; e-conferencing encouraged
QUESTIONS:	CLASS RELATED QUESTIONS VIA EMAIL
FINAL GRADE:	PRESENTATIONS PLUS FINAL PAPER

COURSE SHORT DESCRIPTION:

This course provides an introduction to the law and policy of corporate social responsibility (CSR). The focus is on CSR (1) as a subject of legal regulation within states, (2) as a matter of international law and compliance beyond the state, and (3) as a tool and methodology for privatizing regulation through the enterprise itself operating in global production chains. The emphasis is on the study of the legal and regulatory frameworks. These frameworks include those existing and emerging within states, in international institutions, and within production chains and the apex corporations that manage them. The course begins with issues of definitions and of variations in approaches to legal and other governance mechanisms in the U.S. and among major commercial jurisdictions. It then turns to the existing law of CSR, focusing specifically on charitable giving and disclosure regimes. It then considers the rise of CSR regulatory regimes as privatized law making that uses the mechanisms of contract to regulate conduct throughout a production chain. It then considers the emergence of international standards as they inform regulatory efforts in states and enterprises and as normative standards in their own right. It ends with a consideration of key trends and developments going forward.

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STATEMENT OF LEARNING OUTCOMES AND ASSESSMENT

Learning Outcomes:

The “Course Concept Statement” is included below at the beginning of the Syllabus. Students are expected to acquire a working knowledge of the following.

1. Identify the legal framework within which the regulation of corporate social responsibility is framed within the United States, within international organizations, and among corporate actors.
2. Examine the relationship between corporate law in states and corporate social responsibilities, understanding their overlap and distinguishing scope.
3. Demonstrate familiarity with the legal regulation of CSR in the United States and selected other states, with a focus on the law of charitable giving and the emerging disclosure and reporting laws
4. Demonstrate familiarity with third party certification frameworks.
5. Identify the structures, legal and regulatory effects of corporate CSR self-regulation systems.
6. Demonstrate familiarity with the substantive content and application of a selection of international normative standards such as the 2011 United Nations Guiding Principles for Business and Human Rights, and OECD Guidelines for Multinational Enterprises, among others.
7. Develop a working familiarity with the U.S. Alien Tort Claims Act and its relevance to CSR related litigation.
8. Identify the relationship between CSR regimes and the regulation of corruption, enterprise liability and environmental sustainability objectives.
9. Consider the role of fiduciary duty and monitoring and due diligence obligations of enterprises in light of changing jurisprudence.

Learning Outcomes Assessment:

Student achievement in all learning outcomes will be measured in a final examination that may be undertaken in one of two ways. Students may choose to (1) take a 24 hour take home final examination, or (2) submit a paper. Learning Outcomes will be monitored through student participation in the weekly discussion of problems that build on readings.

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COURSE MATERIALS

The course consists of cases, primary source materials and secondary sources of relevance to the subject of instruction for each class session. These will be provided through CANVAS. Additional materials will be made available on occasion as appropriate. Please bring assigned reading to class.

COURSE INFORMATION AND RULES

Course meetings time are set out above. I am generally available to talk with you during office hours on Mondays and Wednesdays, or, otherwise, by appointment. I am also available via e-conferencing (e.g., Skype and Zoom).

ATTENDANCE, SEATING, AND CLASS PARTICIPATION

Administrative practice requires me to notify students of my attendance policy. **Class attendance is required.** I take attendance seriously. The Law School also has in place an Honor System. I will take advantage of the Honor System for purposes of recording attendance. **All students will be assumed to be present unless they send me an email indicating that they are absent. Students are honor bound to report all absences, and failure to report absences will be treated as an honor code violation.**

You are responsible for marking your attendance.

THERE WILL BE SEVERAL GROUP PROJECTS. EACH OF YOU WILL BE ASSIGNED TO A GROUP AND EACH GROUP WILL BE REQUIRED TO MAKE A CLASS PRESENTATION (WITH POWERPOINT). THE GROUP PROJECT WILL NOT BE GRADED BUT FAILURE TO PARTICIPATE IN THE GROUP PROJECT WILL REDUCE YOUR GRADE IN CLASS BY ONE LETTER GRADE.

Class participation is required. All students are expected to be prepared for each class session (that is, to have carefully read the material assigned). All of you will find yourselves participating in at least some of the discussion. At the end of each class I may designate one or more students as class participation leaders for the next class. I reserve the right to call on students at random. Outstanding participation may result in an increase in your grade, again at my discretion.

Seating is assigned. You will be asked to fill out a seating chart during the second day of class.

My approach to class: The principal object of the class is to develop knowledge through discussion in class. That discussion will be framed by the problems and informed by the readings. There is no

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expectation that one has the correct answer. The expectation is that students will contribute to a discussion that I will guide as necessary to achieve our learning outcome objectives. That means that sometimes you will have an opinion or produce an insight with respect to which there may be objection or disagreement. Disagreement is not disrespect. I expect that through lively discourse the class will be able to learn better. Please let me know if you have questions.

CLASS NOTES AND RECORDING OF CLASS

Class Notes and Recording of Class. Take notes as you like. Please feel free to get together with your classmates for studying and sharing notes. Please remember that the purpose of the course is NOT to provide experience in stenographic techniques. Participation rather than the taking of dictation is encouraged. To that end, *all of my classes are recorded and you are encouraged to review those recordings at your convenience.*

No personal recording of class.

[Policy Regarding Creation of, and Access to, Recordings by the Law School of Class Sessions](#)

All law school courses occur in classrooms equipped with audiovisual telecommunications equipment that is capable of making an audiovisual recording of each class session as it occurs. In order to provide the potential educational benefits of recorded classes to our students, the law school has decided to automatically record, and to archive for a limited period of time, all class sessions occurring in law school classrooms. The purpose of the recordings is to permit students enrolled in each recorded course to access the recordings outside of the regularly scheduled class period, according to rules established by the professor.

Access to recorded classes will be controlled via a secure course management platform, such as CANVAS, and will be restricted to students enrolled in the recorded course, the professor, and those University IIT personnel necessary to maintain the system. All recordings will be deleted following the conclusion of the semester in which the recorded course occurs (unless all identifying student images are edited out of the recording, in which case the professor and law school jointly may decide to retain the edited recording for other purposes).

By registering for or attending law school courses, a student consents to the law school's making and display of class recordings within the scope of this policy.

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The office of the Associate Dean for Academic Affairs has provided you with this statement; please familiarize yourself with all of its terms. In case of doubt about meaning, please contact the Office of the Associate Dean:

A. Student Access to Class Recordings; Open Access:

All Class/Open Access. All class recordings will be posted on the course ANGEL site for access by any student enrolled in this course. Access will end the last day of the final exam period. Your Professor may not consent to or authorize access to or distribution of class recordings beyond the students enrolled in that course.

B. Student Use of Recordings and Materials:

A student may not record any part of a class by any means without prior express authorization of the faculty member. If a student receives faculty authorization to record a class, the student may not copy or download such recording to a computer or other device, distribute it to any other person, or use the recording for any purpose other than personal education and study except with the prior express authorization of the faculty member. Unauthorized recording, distribution, or use of a class recording is a violation of the Honor Code.

A student may not use course materials such as slides or other documents posted on ANGEL for any purpose other than personal education and study and may not disseminate, publish, or alter course materials without prior express authorization of the faculty member. Unauthorized use of course materials is a violation of the Honor Code.

Penn State Law Honor Code, Violation 2.1(1) covers unauthorized recording and unauthorized use of class recordings or course materials. It prohibits "Taking, using . . . or otherwise abusing the property of another, including, without limitation, books, briefs, class notes, outlines, or any other academic items, without authorization."

C. Questions, Special Requests. You should direct any questions, concerns or requests regarding classroom recordings or any classroom technology to the AV Team at av@law.psu.edu.

GRADING

Students will submit a paper that shall be no less than thirty (30) pages, double spaced 11 point Times Roman Font, excluding footnotes. There is no maximum page length for papers. Each paper will consist of a detailed analysis of the CSR, human rights and sustainability practices of a selected company, with reference to the materials covered in class. It is expected that each paper will provide a detailed study and analysis of the CSR

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practices of the selected enterprise for a period of no less than five (5) years. The student may select from a list of companies to made available to the class from the first week of instruction. It is expected that in addition to the materials considered in class, the student will access written primary and secondary sources primarily on line or through our library. Papers must adhere to the [Regulations Governing Papers Submitted for Course Credit](#). **The paper must be delivered no later than 3 P.M. December 20, 2018.**

The awarding of grades is based on the curve system adopted by the faculty of the Law School and is subject to the limitations of those curve rules. The Grading Norms may be accessed [HERE](#). I will adhere to this system. Students interested in discussing the curve system itself, its wisdom, or making proposals with respect to the system, are advised to consult their academic dean.

ACADEMIC HONESTY AND INTEGRITY

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Both Penn State Law (PSL) and the School of International Affairs (SIA) safeguard and promote the ideals of honor and integrity by prohibiting lying, cheating, stealing, and other dishonorable conduct. Accordingly, all students should act with personal integrity, respect other students' dignity, rights and property, and help create and maintain an environment in which all can succeed through the fruits of their efforts.

Dishonesty of any kind will not be tolerated in this course. Dishonesty includes, but is not limited to, cheating, plagiarizing, fabricating information or citations, facilitating acts of academic dishonesty by others, having unauthorized possession of examinations, submitting work of another person or work previously used without informing the instructor, or tampering with the academic work of other students. Students who are found to be dishonest will receive academic sanctions and will be reported to the relevant authorities for possible further disciplinary sanction. For further details on Academic Integrity please visit: <http://studentaffairs.psu.edu/conduct/AcademicIntegrity.shtml>

All acts of academic dishonesty will be dealt with and punished in accordance with applicable Penn State University, SIA and Graduate School policies.

See <http://istudy.psu.edu/FirstYearModule/CopyrightPlagiarism/StudentGuide.html> also <http://its.psu.edu/turnitin/TurnitinHandout.rtf> and

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All acts of academic dishonesty will be dealt with and punished in accordance with applicable Penn State University, Penn State Law, SIA and Graduate School policies, as applicable.

CONFERENCES

I try to maintain an open door policy. I encourage you to see if me should you have any questions or concerns. While face time is important, students should not consider it necessarily the best or exclusive means for communicating with me. There is little excuse for the complaint – ‘he is not available’ – when communication is possible by telephonic and electronic means.

Technology has made it easy to communicate.
please take advantage of it.

You are encouraged to contact me by e-mail. I will respond promptly.

<lb911@me.com>

CANVAS

This year I will be relying on PSU’s CANVAS system for communication with you. Please bear with me as we work through the inevitable glitches that are the price we pay for the convenience of technology. I will post questions to the CANVAS class site and send e-mails via that site. Please check in regularly for information about the course. It will be your responsibility to keep apprised of the information posted there.

Additional University Policies and Statements

UNIVERSITY DISABILITIES POLICY STATEMENT

To comply with University policy regarding persons with disabilities, this statement is included in this course syllabus:

Penn State welcomes students with disabilities into the University’s educational programs. Every Penn State campus has an office for students with disabilities. The Student Disability Resources Web site provides [contact information for every Penn State campus](http://equity.psu.edu/sdr/disability-coordinator): <http://equity.psu.edu/sdr/disability-coordinator>. For further information, please

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visit the [Student Disability Resources Web site](http://equity.psu.edu/sdr): <http://equity.psu.edu/sdr>.

In order to receive consideration for reasonable accommodations, you must contact the appropriate disability services office at the campus where you are officially enrolled, [participate in an intake interview, and provide documentation: http://equity.psu.edu/sdr/applying-for-services](http://equity.psu.edu/sdr/applying-for-services). If the documentation supports your request for reasonable accommodations, your [campus's disability services office](#) will provide you with an accommodation letter. Please share this letter with your instructors and discuss the accommodations with them as early in your courses as possible. You must follow this process for every semester that you request accommodations.

COUNSELING & PSYCHOLOGICAL SERVICES (CAPS)

<http://studentaffairs.psu.edu/counseling/>

CAPS staff work with thousands of Penn State students per year in group therapy, individual counseling, crisis intervention, and psychiatric services as well as providing prevention, outreach, and consultation services for the University community. Services at CAPS are designed to enhance students' ability to fully benefit from the University environment and academic experience.

As specialists in working with undergraduate and graduate students, staff at CAPS can help you address your concerns in a caring and supportive environment. CAPS can help students resolve personal concerns that may interfere with their academic progress, social development, and satisfaction at Penn State. Some of the more common concerns include anxiety, depression, difficulties in relationships (friends, roommates, or family); sexual identity; lack of motivation or difficulty relaxing, concentrating or studying; eating disorders; sexual assault and sexual abuse recovery; and uncertainties about personal values and beliefs.

PROTOCOL FOR RESPONDING TO BIAS MOTIVATED INCIDENTS

Penn State University has adopted a "Protocol for Responding to Bias Motivated Incidents." It may be accessed [HERE](#). It is grounded in the policy that the "University is committed to creating an educational environment which is free from intolerance directed toward individuals or groups and strives to create and maintain an environment that fosters respect for others." That policy is embedded within an institution traditionally committed to academic freedom (the policy may be accessed [here](#)) and free and open discussion. Bias motivated incidents include conduct that is defined in University Policy AD 91 (accessed [here](#)). Students who experience a possible bias motivated incident, as well as

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students, faculty or staff who are witnesses of the same, are urged to report the incident immediately by doing one of the following:

* Contact your County Emergency Dispatch by dialing 911 in cases where physical injury has occurred or is imminent;

* File a report on the Report Bias website: <http://equity.psu.edu/reportbias/statement>;

* Contact one of the following offices:

University Police Services, University Park	814-863-1111
MRC Counselor/Diversity Advocate for Students	814-865-1773
Office of the Vice Provost for Educational Equity	814-865-5906
Office of the Vice President for Student Affairs	814-865-0909
Affirmative Action Office	814-863-0471

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SYLLABUS

This Syllabus consists of a (1) *Course Concept Statement*, (2) *Statement of Course Content and Structure*, (3) *Summary Syllabus (With Weekly Discussion Themes)*, and (4) *Detailed Syllabus With Problems and Assigned Readings*.

Course Concept Statement:

I am delighted to be teaching a course on Corporate Social Responsibility (CSR). Like the subject itself, the course is a hybrid. CSR is inherently hybrid in its nature, character, and as manifested as both law and policy. Its *governance* trajectories touch on the essence of law and the lawyer's craft in a changing world in which the authority and character of law is itself changing. Its *normative* trajectories speak to politics, ethics and morals, as well as to the fundamental organization of cultures of human interactions in the economic sphere in a changing world in which the desire to institutionalize social and moral systems across borders is growing.

To begin framing CSR, it might be useful to start by considering two questions that dominated a century-long debate about the economic, social, and political role of economic actors operating in corporate form: (1) *Whom must corporations serve? And (2) to what extent should the regulation of corporations be left to the market, to private ordering (contract law) among corporate stakeholders, or to public regulation by the state?* Both of these questions reflect an even more fundamental question, the answer to which remains unresolved: What is the essential nature of the corporation? Is it an autonomous community, like a nation-state? Is it the sum of contractual relations among some of the people with stakes in the joint enterprise? Or is the corporation merely property, a complex commodity? And to these must be added the fundamentally transforming questions necessary in the wake of the establishment and dominance of the structures of globalization on economic, political, and social activities: (1) *do corporations stand at the center of the regulatory structures of economic activity or are there better objects through which regulatory objectives can be met?* (2) *To what extent does law serve effectively to manage the behaviors that in the aggregate comprise organized economic activity, or even that of the market, and if not what role for private ordering?*

The first set of questions remained highly contested through the end of the twentieth century. They formed the kernel around which the conceptualization of CSR, and regulatory initiatives, were developed. With respect to these, and early on, Western states seemed to reach an uneasy stalemate about the contours of the debate regarding corporate social responsibility. That stalemate was famously memorialized in the great academic debates of mid-century and the grudging legalization of a small element of the field. That small legalization then, ironically, dominated and displaced the rest. During that time, it was fashionable (and for academics expected among their peers) to argue, mostly among themselves, about the nature, character, and purpose of the corporation beyond those limits of discourse

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enforced by the practice community. But influence leaders among the academic intelligentsia (within the law schools at least) knew enough not to stray too far if they wanted to retain their academic reputations.

But these accommodations and the premises underlying them, gave way quickly to the second set of questions after 2000. It was about at that time that the realities of globalization, with its effectively free movement of goods, investment and capital, appeared to explode onto the consciousness of influential people inside the academy, government, civil society and enterprises. With globalization (however understood, and there was little consensus on an orthodox understanding of globalization) as the perceived dominant driver of global economic, and then political and societal, forces, the concept of CSR changed as well. The original stalemate, and its accommodation of corporate charity, no longer seemed to serve the interests of powerful regulatory forces. These forces now worried about the inability of any state or group of states to effectively manage economic activity, or the activities of enterprises operating or domiciled in states, in a context in which the scope of the appetite for regulation had grown to include the effects of economic activity on the social, political and environmental spheres. Yet, these expanding ambitions, targeting a regulatory territory that spilled over national borders, created substantial governance gaps that implicated the value of traditional state-based law systems.

But what to use in place of law? And with respect to what were these additional or supplemental regulatory systems to apply? With respect to the first question there was already a number of answers. National movements towards cultures of assessment and accountability suggested the possibility of privatization of governance within enterprises or systems around which economic activity was coordinated. A movement toward internationalization of norms appeared to drive the creation of regulatory standards from states to public international organizations. At the same time, states resisted the creation of international law. Instead, international standards were viewed as a complement to the growing importance of regulatory governance and the reliance on markets to manage behaviors of economic actors. Regulatory governance and the move toward markets as behavior regulators complemented the growing cultures of accountability and self-governance, adding to it cultures of good governance and risk avoidance. These then intertwined with developments in states that saw in enterprise self-governance a means, not just of deputizing the enterprise, but of holding the enterprise to account for violations of rules the responsibility for the enforcement of which had devolved to the enterprise. In corporate law, for example, the interpretation of the duty of care to include a duty of self-monitoring, the conduct of which might be made available to state prosecutors seeking to enforce law. The relationship could as easily be used to manage the economic behaviors of enterprises as it might be used to devolve the enforcement of other statutory provisions. All of these movements occurred as globalization, and the changing demand for regulation, broadened the scope of the expectations for conduct by actors in the course of their economic activities beyond charity. But how far?

These are the questions that are currently the subject of wide ranging debate among law and policy makers, lawyers, civil society and enterprises. The way these questions are being answered are finding their way into national lawmaking and regulatory systems, into the self-regulatory systems of enterprises, and into the efforts of non-governmental organizations to hold others (and ultimately perhaps themselves at least) to account. This is the context within which influential actors have sought to provide a definition

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for CSR. In the dynamic context within which CSR is now considered, efforts at definition have appeared to become much more *prescriptive* (normative) than *descriptive* (in the sense of seeking to explain). It also follows that there is little consensus around definition. Where definition is vested with a political character, and where the political objectives of major actors are quite diverse and contradictory, it is unlikely that any orthodoxy of meaning is possible. Among the definitions with some influence are those that speak to CSR as a commitment to contribute to economic development (World Business Council for Sustainable Development); a comprehensive set of values and principles grounded in legal compliance (International Chamber of Commerce); a framework for protecting enterprise long term profitability (British Standards Institute); a commitment to take into account social, economic and environmental impacts of business operation along with financial implications (Australian Government); management practices that minimize negative impacts and maximize positive impacts of company management practices (Canadian Center for Philanthropy); a process of managing the costs and benefits of business activity to all stakeholder (World Bank); responsibility for impacts of business decisions on society and the environment through transparent and ethical behavior (ISO 26000:2010); the responsibility of enterprises for their impacts on society (European Commission, 2011); and a commitment to international public human rights principles enforceable through law (Amnesty International).

Emerging theorists, like Birgit Spiesshofer (2018) has characterized the contemporary search for infusing the term CSR with meaning amounts to its reconstruction as a set of guiding principles or *leitmotif*, the object of which is to guide thinking rather than to set of specific principles and conduct rules. That leitmotif, though, might perhaps have three distinct strands.

The first and most well-known is that of corporate philanthropy. Much of what passes for CSR is sourced in the concepts of charity. Charity remains a strong driver of CSR related activity in many states, especially in Asia. Indeed, in some places, charity is itself the language of implementation of other CSR related normative objectives, or the means by which CSR breaches might be remediated.

The second are human rights related obligations. The shift toward globalization, and the internationalization of trade produced governance gaps, and the need for accountability. But accountability to what standards? Increasingly the central standards, at the international level, were seen as grounded in the human rights systems and norms that had been developed with increasing sophistication within international institutions. Human rights normative structures increasingly were understood as providing the baseline behavior norms to which enterprises ought to conform, whether they operated. Thus, if human rights provided the norms, philanthropy provided a means.

Lastly are the emerging principles of sustainability and environmental harm. Once understood as largely apart from the business of enterprise conduct, the last decade has seen the growing consensus of the responsibility of enterprises for their actions with environmental effects. More important, as the challenges of global warming and climate change have accelerated, and in the face of the growing privatization of governmental responsibilities, sustainability objectives have come to be seen as important societal objectives of economic activity. By 2018, international institutions began to view the

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right to a clean, and safe, environment, along with sustainability practices for the protection of the planet for the enjoyment of future generations as much a duty of states as a responsibility of economic actors.

From the perspective of its manifestations—CSR, then, appears to be an aggregation of behavior frameworks grounded in enterprise responsibility for philanthropy, for the respect of human rights in their activities, and for sustainability. For states and international organizations, these three clusters of objectives represented both a systematization of behavior norms as well as a framework for structuring compliance. For enterprises, philanthropy, human rights and sustainability could be understood as obligation and methodology. That is, these three strands of CSR take on the characteristics of compliance, of risk management, and of methods of remediation. Accountability, compliance, risk management and objectives based decision making are concepts that enterprises understand. But they are also concepts that, for organizations that viewed conformity to law and human rights especially as inviolable, and sort of approach to CSR that permitted risk management and balancing might pose a challenge to their conception of the nature of the responsibility of enterprises.

Nonetheless, the three strand understanding of CSR, then, serves as its objectives and methodological core. That core can be expressed in law, in social norms, and in the private arrangements of parties disciplined by markets. For our purposes, then, it is important to understand this wide spectrum of meaning, without the necessity of choosing among them. Within very wide parameters of law, social norm and the operational constraints of risk and compliance in business behaviors, the normative character of CSR can be understood within three quite broad conceptual categories. These are the categories through which the three key areas of CSR—charity, human rights, and sustainability—may be expressed:

First, it focuses on *enterprises*—that is on institutions organized for the purpose, principally, of economic activity. In a sense, CSR has outgrown its traditional starting point—the aggregation of capital within Western style corporations which became ubiquitous by the beginning of the First World War in Europe, and the Western Hemisphere. Globalization has to some extent transformed the “corporate” part of CSR, shifting the focus from the corporation to two distinct but related objects. The first is the *enterprise* (in whatever form organized). Enterprises refer both to constituted legal entities and to the networks of enterprises that create coordinated economic activity (usually understood as the transnational or multinational enterprise). The second is the *process of production*, especially production across borders. The process of production can be understood as a chain of connected activity (the production, value, or supply chain, for example), or it can be understood as the system within which production occurs, with respect to which enterprises contribute and. Top some extent (along with the state and other actors) manage. Collectives and collective activities, then, are at the center of the “corporate”’s field. It focuses on the individual within a collective that is not the state. As such, also embedded within it are those organizations and institutions that operate within or in relation to that sphere. At its limit, it touches on all organizations other than the state

Second, CSR focuses on the *societal role* of enterprises—that is on the structures and frameworks within which non-state organizations (and specifically enterprises) order themselves in and of themselves that

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are found outside the formal structures of state and government. That has been one of the greatest points of difficulty for the study of CSR by lawyers (at least). It is hard enough to conceptualize the application of a legal system to aggregations, processes and systems that are themselves not precisely recognized in law. Traditionally that meant that lawyers (and the educational sectors designed to train/socialize them) effectively ignored CSR, except to the extent that law was involved. CSR was relegated to the social sciences and the business schools. To some extent that is still true. In most jurisdictions CSR was of interest to traditional jurists only to the extent of the law's interest in the regulation of corporate charity; in many jurisdiction it still does mean only that. Again, globalization has helped transform the "societal" part of CSR. In this case, an increased focus on societal roles also suggested a legal basis for such conduct. Thus, from early in the 2000s one saw a movement, especially at the international level, to transform the societal sphere into legal obligation—at the national or international level. Yet simultaneously, the drive toward markets based regulation also suggested that the societal be institutionalized and made obligatory, but outside the traditional mechanism of the public sector. That tension in approach is compounded where the structures of regulation are themselves not centered in law either. One speaks here of those direct relations between the enterprise/system and its communities; those relations are sometimes within and sometimes beyond the state and sometimes in a space ceded by the state. But these societal relations can have regulatory effect; and the state may well seek to legalize some to all of those societal relations.

Third, CSR focuses on *responsibility*. Here one speaks to the responsibility of enterprises or of the systems or processes of production within the societal sphere, that is on the autonomous obligation of enterprises to embed itself within the regulatory structures through which it engages in the communities where it operates. Responsibility is to be differentiated from obligation. It touches on an obligation for which one is accountable—accountable to oneself or to others. These are acts which one is expected to do; that expectation arising from others or from oneself, the accountability for which is embedded in the relationships between the parties. These are responsibilities that oblige action and create consequences. These interactions are neither dependent on nor necessarily connected with the impositions of law. That is, these are responsibilities that exist autonomously of law, even if they are incorporated into law. They have a life of their own—in the way that natural law or religious obligation might be understood to exist in relation to law but not as something that proceeds from law. It follows that the societal responsibilities of enterprises are not to be confused with the mandatory obligations to obey the command of law of a government with the authority to subject its object to its authority. And yet the societal responsibilities of enterprises share with law the notion of authority and leadership, of accountability and of autonomy embedded within the strictures of the norms that frame responsibility.

CSR, then, occupies a conceptual space between the social and the legal, and between the moral and legal order. Such a conceptual space is inherently unstable, especially in the context of globalization that at once appears to shift public regulatory power to state collectives (energizing a robust sphere of public international law), even as it also appears to shift regulatory power to the private sphere. This instability thus manifests itself in contests for control of regulatory space—through robust projects of legalization and judicialization of the societal sphere in general, and the obligations of enterprises specifically—or through the privatization of the legal sphere as enterprises themselves are deputized to undertake the

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role once reserved to states. It is at this point that corporate social responsibility becomes interesting to the law—the lawyer, to the legislator, to the administrator and the courts. Yet that convergence also reveals the vibrancy of governance beyond the control of law, and of the state.

It is to these issues that the course is directed. This course provides an introduction to the law and policy issues that touch on the responsibility of enterprises for their business activities. It provides an overview of corporate social responsibility (CSR), as a subject of legal regulation within states, as a matter of international law and compliance beyond the state, and as a tool and methodology of corporate governance and finance with governance effect through contract. It focuses on the contemporary interplay between large corporations and governments, intergovernmental institutions, investors and non-governmental organizations (NGOs).

Over the past several decades, economic actors, and especially those operating as enterprises, have seen the development of efforts to impose on them certain responsibilities for the consequences of their decisions and to change the way that corporations view the scope and character of their obligations to inside and outside stakeholders. These efforts have produced both law at the domestic level and norms and structuring principles at the international level. During its evolution, CSR has progressed from legally tolerated traditional philanthropy and a consignment of the issues to the “social sphere” of moral and ethics, to encompass a much broader palette of actions and objectives. CSR now encompasses not only what companies do with their profits, but also how they make them in virtually every respect of their operations. Through their stakeholder relations and business models, companies can develop policies and practices to respect human rights and help address environmental and social concerns. These developments have occurred at the local and national level through law and the adoption of principles and expectations of conduct, they have also seen a strong growth in international soft law standards touching on corporate responsibilities to respect human rights, for sustainable business practices and for the protection of the environment.

There are many factors that have contributed to increased expectations for corporations to adopt CSR programs as governments have changed the scope and thrust of their regulatory and ownership roles, and as regulatory governance principles that favor of market-based approaches have become more compelling for many states. Companies have been encouraged through law and governance mechanisms to identify opportunities for innovative products, technologies and business models aimed at proactively solving social or environmental challenges. Many enterprises have developed internal governance structures that embed a governance framework for CSR within their international corporate governance.

As global production chains become more important, these internal enterprise governance systems begin to have profound effects throughout the entire production process, affecting workers and other partner enterprises in many states. CSR has also become a tool for investors, to mitigate emerging social, environmental and governance risks and to identify opportunities for aligning financial performance with social, environmental and governance (ESG)

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performance. In addition, CSR has become a lever for civil society organizations to influence corporate practice and public policy.

Advocates have seen CSR as a cluster of premises, which when institutionalized within the governance structures of economic actors can serve as a means of addressing governance gaps where government is weak. In contrast, critics have seen CSR as an intrusion of corporate interests in the public sphere where government is strong. More recently critics have seen in internationalism of CSR a profound and direct attack on state sovereignty in the service of the objectives of autonomous multilateral institutions that do not reflect local wishes. At the same time, the limits of voluntary CSR measures as a transformative agent are also becoming clearer, and are raising questions about the need for a recalibration between the public and private domains.

This course focuses on large multinational enterprises and on global systems of production. The MNE are complex organizations are composed of one or more organizations woven together through ownership or contract and creating a set of business relationships that span production chains—the integration of the process of economic activity overseen usually by a corporate enterprise that serves as the apex of global production chains, but has application to enterprises throughout supply chains. The enterprise, embedded in global production within and outside the state serves, in turn, as the object of regulation, including (but not limited to) conventional systems of law. At its limit, of course, the relationship between the MNE and the production chain can be inverted. That is, production chains are complex organizations of economic activity that aggregate all of the steps necessary to draw together material and technological processes to produce objects for sale in markets that exist at every stage in the production process, the management and operationalization of which requires the organization of capital and labor. The emphasis of this course, then, is on the study of the legal and regulatory frameworks, both existing and emerging within states, in international institutions, and within production chains and the apex corporations that manage them. The course surveys the literature and examines topical examples drawn from today's US and global experiences. The object will be to begin to develop a conceptual and “as applied” basis for approaching key questions in CSR law in context: What has worked, what hasn't, and why? What are CSR's limits? What is the future of CSR?

Statement of Course Content and Structure

This course will examine these and related developments with a view to informing students, who may become lawyers or policy makers or who may work at enterprises (public and private), of their responsibilities to their clients and employers (or to their enterprises) in relation to CSR duties, obligations and responsibilities in ways that matter to clients and to institutions with authority to affect business behavior. For lawyers, policymakers, and advocates that means examining CSR for its potential mechanisms for business accountability respecting important substantive norms. For future government lawyers that means studying CSR for its relationship with and to legal regulatory tools. For future leaders of public and private enterprises that means understanding the impact of CSR in the cultures of their enterprises and in the role of CSR in

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economic decision-making. The course provides case studies, conceptual frameworks and tools to help students understand and assess different components of corporate social responsibility and different models of interaction between corporations, governments, intergovernmental organizations, investors and non-governmental organizations. It combines lectures, case studies, class discussions and practical assignments.

The course will be taught in a modified seminar style. **Each week's discussion will be built around a group of materials that suggest the central themes to be discussed. That discussion, in turn, is built around problems.** Each of the problems serves to center discussion of the materials assigned. Students will spend the bulk of the class discussing approaches to the issues suggested by the problems for which the readings may offer insight. Each student will be assigned an enterprise (For the most part an apex corporation heading up a global production chain). The student will learn CSR through its application by the assigned enterprise. The object is to teach “law and policy in action” at the operational level, and to avoid, to the extent possible, too great an emphasis on abstract concepts detached from the real world in which they are being applied, and through this application, changed.

The course is divided in five Parts. Part I serves as introduction. Students will consider a core hypothetical around which most of the issues encountered in CSR can be applied. That will set the tone for the course, one in which the student will be asked to apply abstract knowledge to the concrete problems of enterprises. To that end, students will be broken up into small groups. Each will be assigned an enterprise. This enterprise will serve as the focus of the CSR work for the semester. During the term, students will produce four reports in which the issues studied will be applied. Students will be asked to compare the way in which these different enterprises respond to the challenges of CSR. Lastly, the introductory materials will deal with issues of definition.

Part II unpacks the corporate in corporate social responsibility. It introduces the student to the baseline concepts in law and economics of the corporation, the enterprise, and systems of production. It also considers the policies, including regulatory principles and policies under which these are regulated. Also considered will be the range of enterprises and systems of production that are covered by CSR regimes—either as legal or societal matters. Part II ends with student presentations discussing the organization of the enterprises which they have been assigned. This provides the baseline knowledge necessary for deeper CSR study.

Part III considers the “societal” in CSR. These materials serve as the conceptual heart of the course. Philanthropy and the legal regulation of social responsibility is first considered. Students will consider the legal framework in the U.S. and other states focusing on philanthropy and the notions of corporate waste. Next, students will examine CSR and human rights regimes. Special attention will be drawn to the development of human rights based normative systems for the regulation or management of economic activity. Lastly, students will consider the evolving systems of sustainability based CSR responsibilities. Students will cap this study with a presentation in which they will map CSR within their enterprise and its production chains.

Part IV draws students to a study of the nature of responsibility in CSR. This part focuses examination on regulatory structures in national, international and private governance systems. Students will be introduced first to responsibility as transparency. These include emerging national law based disclosure regimes. But it

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also includes the use of markets driven management of behavior, the use of transparency and compliance systems by government to monitor and hold enterprises accountable. Students next consider enterprise self-regulation and third party certification, along with its legal effects. The trend toward data driven compliance systems is also introduced. Students will then make their third presentation—an examination of how enterprises incorporate CSR into their management and decision making.

Part V ends our examination of principal trends in CSR. It examines remedy. Students are first introduced to international and soft law approaches—with a focus on the mechanisms in the OECD Guidelines for Multinational Enterprises and its NCP system, Students then consider the legal effects of CSR Codes. Lastly students consider the issues of home state remedies and extraterritorial application of law. The course ends with a last student presentation, examining enterprise grievance mechanisms, anti-corruption efforts and assessments of reporting. The presentations will then be used as the basis for student final papers.

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Summary Syllabus (With Weekly Discussion Themes)

NOTE: THESE MAY BE SUBJECT TO CHANGE DUE TO CONSTANTLY EVOLVING NATURE OF THE FIELD and STUDENTS ARE ADVISED TO CHECK THE ASSIGNMENTS PAGE EACH WEEK

Summary Syllabus:

Part I Course Introduction

Week 1: *Course Introduction—Concepts, Law and Policy Baselines:* Introduction to the course; CSR definitions and approaches, and the evolution of the field.

Part II Unpacking the Corporate in Social Responsibility

Week 2: *The Corporate in CSR;* corporations, enterprises, and systems; baseline concepts in law and policy.

Week 3: *Entities and Relationships:* What sort of Entities, systems or relationships are covered under CSR provisions; and *Group Presentation 1 (The Organization of the Responsible Enterprise).*

Part III: The Societal in Corporate Social Responsibility

Week 4: *Philanthropy and the legal regulation of social responsibility:* Considering the legal framework in the U.S. and other states focusing on philanthropy and the notions of corporate waste.

Week 5: *CSR and Human Rights:* the development of human rights based normative systems for the regulation of corporate economic activity.

Week 6: *CSR and Sustainability:* the broadening of corporate responsibility from philanthropy and human rights to sustainability, understood both as respect for environment and resource management for the long term.

Week 7: *Group Presentation 2:* Mapping CSR in the Enterprise and its Production Chains.

Part IV: The Nature of Responsibility in CSR—Focusing on Regulatory Structures: National, International and Private

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Week 8: *Responsibility as Transparency:* disclosure regimes in national law and the use of market driven management of behavior; the use of transparency and compliance systems by the government to monitor and hold enterprises accountable for violations of law.

Week 9: *Self-Regulation; Third Party Certification, and its Legal Effects:* Corporate Social Responsibility Codes; what are they and how do they operate; third party certification, legal and social effects; CSR and social credit.

Week 10: *Group Presentation 3:* From Conception to Operation; How Enterprises Enforce CSR

Part V: Remedy

Week 11: *International Soft Law Approaches:* the U.N. Guiding Principles for Business and Human Rights; OECD Guidelines for Multinational Enterprises.

Week 12: *Legal Effects of CSR Codes:* Recent litigation and future strategies with a focus on veil piercing, mutuality of contract, and 3rd party beneficiary defenses.

Week 13: *Home state remedies:* Remedy from the international perspective; Extraterritoriality and Corruption.

Week 14: Group Presentation 4: Grievance mechanisms, anti-corruption efforts and assessment of reporting

Detailed Syllabus With Problems and Assigned Readings:

Part I Course Introduction

Week 1

Course Introduction—Concepts, Law and Policy Baselines: Introduction to the course; CSR definitions and approaches, and the evolution of the field.

Readings:

Problem 1 (Megamart)

(1) Background: Sheehy, "Defining CSR: Problems and Solutions," *Journal of Business Ethics*,

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131 (2015): 625-648. READ 625-636.

(2) Public Sector Definitions:

--Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions: [*A renewed EU strategy 2011-14 for Corporate Social Responsibility*](#) (Brussels, 25.10.2011 COM(2011) 681 final)

-- China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters, "Guidelines for Social Responsibility in Outbound Mining Investments," available at [http://www.srz.com/files/upload/Conflict Minerals Resource Center/CCCMC Guidelines for Social Responsibility in Outbound Mining Operations English Version.pdf](http://www.srz.com/files/upload/Conflict%20Minerals%20Resource%20Center/CCCMC%20Guidelines%20for%20Social%20Responsibility%20in%20Outbound%20Mining%20Operations%20English%20Version.pdf).

-- Embassy of Sweden, "A Study on Corporate Social Responsibility Development and Trends in China" (2015), <http://www.csr-asia.com/report/CSR-development-and-trends-in-China-FINAL-hires.pdf>

(3) Towards definition in the private sector:

Fasken Martineau: <http://www.fasken.com/en/corporate-social-responsibility-law/>

Foley Hoag: <http://www.csr.and.the.law.com/>

Baker & McKenzie: <http://www.bakermckenzie.com/globalcsr/>

Corporate Watch: <http://www.corporatewatch.org.uk/?lid=2670>

Amnesty International: <http://www.amnesty.org/en/business-and-human-rights>

International Corporate Accountability Roundtable: <http://accountabilityroundtable.org/>

Klippensteins: <http://www.klippensteins.ca/our-practice-areas>

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Part II: Unpacking the Corporate in Social Responsibility

Week 2:

The Corporate in CSR: Corporations, enterprises, and systems; baseline concepts in law and policy.

Readings:

(1) U.S.

(A) *Dodge v. Ford Motor Co.*, 204 Mich. 459, 170 N.W. 668 (1919);

(B) Friedman, "The Social Responsibility of Business Is to Increase Its Profits," *New York Times Sunday Magazine*, September 13, 1970;

(C) Robé, "Being Done with Milton Friedman," *Accounting, Economics, and Law*, 2 (No. 2, 2012);

(2) U.K.:

(A) *Salomon V. Salomon & Co* [U.K. 1897] available

<http://corporations.ca/assets/Salomon%20v%20Salomon.pdf>.

(B) *Daimler Co Ltd v Continental Tyre and Rubber Co (Great Britain) Ltd* [1916] 2 AC 307 available <http://unisetca.ipower.com/other/cs2/19162AC307.html>.

(3) Peter Muchlinski, *Multinational Enterprises and the Law* (2nd Ed.; Oxford: Oxford University Press, 2007). PP. 3-8; 33-43.

(4) Backer, Larry Catá, *Regulating the Multinational Enterprise as Entity, as a Network of Links and as a Process of Production* (February 20, 2018). Available at SSRN: <https://ssrn.com/abstract=3126866> or <http://dx.doi.org/10.2139/ssrn.3126866>

(5) *U.S. v. Best Foods*, 524 U.S. 51 (1998); or [here](#)

(6) *Daimler AG v. Bauman*, 571 U.S. ____ (2014).

Week 3

Entities and Relationships: What sort of Entities, systems or relationships are covered under CSR provisions; and *Group Presentation 1 (The Organization of the Responsible Enterprise)*.

Readings:

(1) OECD *Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition; available [here](#). (Optional; OECD *Guidelines for SOEs in Southern Africa* (Nov. 2014).

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(2) [Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, “State Owned Enterprises must lead by Example,” A/HRC/32/45](#) (4 May 2016).

(A) Larry Catá Backer, [Between State, Company, and Market: A Preliminary Engagement with the 2016 Report of the Working Group on Business and Human Rights and the Issue of State Owned Enterprises \(SOEs\)](#) (November 2016.)

(3) [OECD Guidelines for Multinational Enterprises](#) (2011 Edition)

(4) Backer, Larry Catá, The Corporate Social Responsibilities of Financial Institutions for the Conduct of Their Borrowers: The View from International Law and Standards (April 16, 2017). *Lewis & Clark Law Review*, Vol. 21, 2017; Penn State Law Research Paper No. 8-2017. Available at SSRN: <https://ssrn.com/abstract=2953738>

(5) Sarah Labowitz and Dorothee Baumann-Pauly, [Business as Usual is Not an Option](#) (NYU Stern Center, 2014).

(6) U.N. Global Compact; <https://www.unglobalcompact.org/>.

GROUP PRESENTATION 1: A discussion of the organization and business of assigned MNEs (legal and economic organization, products and services, location of operation, description of network of enterprises through which business is organized).

Part III: The Societal in Corporate Social Responsibility

Week 4

Philanthropy and the legal regulation of social responsibility: Considering the legal framework in the U.S. and other states focusing on philanthropy and notions of corporate waste and corporate compliance.

Readings:

(1) AP Smith Mfg. Co. v. Barlow, 26 N.J. Super. 106, 97 A.2d 186 (1953)

(2) Theodora Holdings Corp v. Henderson, 257 A.2d 398 (Del.Ch. 1969)

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(3) Kahn v. Sullivan , 594 A.2d 48 (Del 1991)

(4) Group Assigned Readings: Each group will be assigned one of the readings below; each is to prepare a 2 page executive summary and then be prepared to discuss in class.

(A) The Benefit Corporation: Hiller, J.S., “The Benefit Corporation and Corporate Social Responsibility,” *J Bus Ethics* 118: 287-301 (2013).

(B) Conference Board, Corporate Philanthropy in China (2012)

<https://www.avpn.asia/wp-content/uploads/2013/01/Corporate-Philanthropy-in-China.pdf>

(B) Jenny Hasrow, “Contested Perspectives on Corporate Philanthropy,” in *Corporate Social Responsibility: A Research Handbook* 234-254 (Kathryn Hayne, Alan Murray s and Jesse Dillard, Routledge 2013).

(D) H. Wells, “The Life (and Death?) of Corporate Waste,” *Washing and Lee Law Review* 74 (2017). Available https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2878091

(E) Richard Welford, “Corporate Social Responsibility in Europe, North America and Asia: 2004 Survey Results,” *The Journal of Corporate Citizenship* 17: 33-52 (2005), available

<http://search.proquest.com/openview/2ce2cf3adcff4e7341c482facb64333f/1?pq-origsite=gscholar&cbl=43079>.

(F) Amaeshi, Kenneth M. and Adi, A.B. C. and Ogbechie, Chris and Amao, Olufemi O., *Corporate Social Responsibility in Nigeria: Western Mimicry Or Indigenous Influences?* (2006). Available at SSRN: <https://ssrn.com/abstract=896500> or

<http://dx.doi.org/10.2139/ssrn.896500>

(G) Jingchen Zhao, “The Harmonious Society, Corporate Social Responsibility and Legal Responses to Ethical Norms in Chinese Company Law,” *Journal of Corporate Law Studies* 12(1):163-200 (2012)

Week 5

CSR and Human Rights: the development of human rights based normative systems for the regulation of corporate economic activity.

Readings:

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(1) U.N., The U.N. Guiding Principles on Business and Human Rights, An Introduction (2011) available

http://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf.

(2) UNOHCHR, The Corporate Responsibility to Respect Human Rights, An Interpretive Guide (HR/PUB/12/02; 2012) available

<http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf> pp. 1-25.

(3) [Protect, Respect and Remedy: a Framework for Business and Human Rights](#): Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; A/HRC/8/5 (7 April 2008).

(4) *Surya Deva, [Regulating Corporate Human Rights Violations: Humanizing Business](#)* (London/New York: Routledge, 2012)

(5) Florian Wettstein, “CSR and the Debate on Business and Human Rights: Bridging the Great Divide,” *Business Ethics Quarterly* 24(4):730-770 (2012).

(6) Government of Canada: CSR: An Implementation Guide for Canadian Business (2014)

available [https://www.ic.gc.ca/eic/site/csr-rse.nsf/vwapj/CSRImplementationGuide.pdf/\\$file/CSRImplementationGuide.pdf](https://www.ic.gc.ca/eic/site/csr-rse.nsf/vwapj/CSRImplementationGuide.pdf/$file/CSRImplementationGuide.pdf).

(7) European Union: EU Commission, “A Renewed EU Strategy 2011-2014 for Corporate Social Responsibility,” Brussels 25.10.2011 COM(2011) 681 final <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0681&from=EN>

Week 6

CSR and Sustainability: the broadening of corporate responsibility from philanthropy and human rights to sustainability, understood both as respect for environment and resource management for the long term.

Readings: :

(1) U.N. General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development A/RES/70/1 (21 Oct. 2015) available http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E; U.N. Sustainability Development Goals (<https://sustainabledevelopment.un.org/?menu=1300>)

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(2) (A) U.N. Development Programme Press Release: Global CEOs sign on to new UN Goals at United Nations Private Sector Forum (26 Sept. 2015) available <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2015/09/26/-global-ceos-sign-on-to-new-un-goals-at-united-nations-private-sector-forum.html>; (B) Impact 2030, Global Goals, available <http://impact2030.com/global-goals/>.

(3) Seck, S., “Home State Regulation of Environmental Human Rights Harms as Transnational Private Regulatory Governance”, (2012) 13 German Law Journal 1363-1385: <https://www.germanlawjournal.com/index.php?pageID=11&artID=1492>.

(4) John Knox, [Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#) A/HRC/37/59 (24 Jan. 2018).

(5) John Knox, [Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Compilation of good practices](#), A/HRC/28/61 (3 Feb. 2015).

(6) John Knox, [Framework Principles on Human Rights and the Environment](#) (2018).

Week 7

Group Presentation 2: Mapping CSR in the Enterprise and its Production Chains. Each Group will make a detailed presentation on the forms and character of the CSR activities of their assigned enterprises, including CSR related activities at every level of the production chain controlled by or through the apex entity.

Part IV: The Nature of Responsibility in CSR—Focusing on Regulatory Structures: National, International and Private

Week 8

Responsibility as Transparency: disclosure regimes in national law and the use of market driven management of behavior; the use of transparency and compliance systems by the government to monitor and hold enterprises accountable for violations of law.

Readings:

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- (1) California Transparency in Supply Chains Act of 2010 California Civil Code § 1714.43
- (3) Barber v. Nestlé USA, Inc. No. SACV 15-01364-CJC(AGRx) 9 Dec. 2015
<http://www.csrandthelaw.com/wp-content/uploads/sites/2/2016/01/Nestle-dismissal.pdf>
- (2) [Dodd Franck §11502](#) Conflict Minerals (2010)
 (A) National Ass’n of Mfrs. v. SE.C., 800 F.3d 518, 530 (D.C. Cir. 2014) en banc court of appeals determined that requiring a company to make a statement in an SEC filing posted to its website that its products were “not found to be ‘DRC conflict-free.’”
- (3) UK [Modern Slavery Act](#) (2015) U.K. 2015 c. 30
- (4) [France](#): Supply Chain Due Diligence Law (2017) [24 March 2017: [Constitutional Council](#) removed the €10 to €30 million civil penalty attached, liability continues to apply when companies default on their duty of vigilance obligations, including failing to publish a vigilance plan or faults in its implementation.]
- (5) Proposal for a Regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas–Outcome of the European Parliament’s first reading (Strasbourg, 13 to 16 March 2017);
<http://data.consilium.europa.eu/doc/document/ST-7239-2017-INIT/en/pdf>; Press release
<http://www.consilium.europa.eu/en/press/press-releases/2017/04/03-conflict-minerals/>
- (6) Corporate Compliance: Fraud Section of the Criminal Division, U.S. Department of Justice, updated guidelines for the “Evaluation of Corporate Compliance Programs,” in February, 2017 available <https://www.justice.gov/criminal-fraud/page/file/937501/download>.
- (7) Group Assigned Readings: Each group will be assigned one of the readings below; each is to prepare a 2 page executive summary and then be prepared to discuss in class.
- (A) Shift, “Mapping the Provisions of the Modern Slavery Act Against the Expectations of the UN Guiding Principles on Business and Human Rights,” available at http://shiftproject.org/sites/default/files/Shift_Mapping%20Modern%20Slavery%20Act%20Against%20UNGPs%20Note_July2015.pdf;
- (B) Howitt, “The EU law on non-financial reporting-how we got here,” available at http://www.theguardian.com/sustainable-business/eu-non-financial-reporting-how-richard-howitt?CMP=tw_t_gu;
- (C) Ghuliani, “India Companies Act 2013: Five Key Points about India’s ‘CSR

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Mandate’,” available at <http://www.bsr.org/en/our-insights/blog-view/india-companies-act-2013-five-key-points-about-indias-csr-mandate/>

(D) L. Backer, “From Moral Obligation to International Law: Disclosure Systems, Markets and the Regulation of Multinational Corporations” *Georgetown Journal of International Law*, Vol. 39, 2008; L. Backer, “Transparency and Business in International Law: Governance Beyond Norm and Technique,” in *Transparency in International Law* 477-501 (Andrea Bianchi and Anne Peters, eds., Cambridge U. Press, 2013).

Week 9

Self-Regulation; Third Party Certification, and its Legal Effects: Corporate Social Responsibility Codes; what are they and how do they operate; third party certification, legal and social effects; CSR and social credit.

Readings:

(1) Backer, Economic Globalization and the Rise of Efficient Systems of Global Private Law Making: Wal-Mart as Global Legislator, *University of Connecticut Law Review* (Vol. 39(4), 2007): 1739-1784.

(2) Supplier Codes of Conduct. Each group will be assigned one of the readings below; each is to prepare a 2 page executive summary and then be prepared to discuss in class:

--Apple, Inc. http://images.apple.com/jp/supplier-responsibility/pdf/supplier_code_of_conduct.pdf

--Gap, Inc. http://www.gapinc.com/content/dam/gapincsite/documents/CodeofVendorConduct_FINAL.pdf

--Walmart <http://cdn.corporate.walmart.com/d1/7c/ee6f5c8942f69ad4183bc0683771/standards-for-suppliers-manual.pdf>

--Nike, https://help-en-us.nike.com/app/answer/article/supply-chain/a_id/20878/country/us

--Carrefour http://www.carrefour.com/sites/default/files/CHARTESOCIALE_ENv2.pdf

--Toyota, Supplier CSR Guidelines https://www.toyota-global.com/sustainability/society/partners/supplier_csr_en.pdf

(3) Each group will be assigned one of the readings below; each is to prepare a 2 page executive

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summary and then be prepared to discuss in class

(A) Etilé, Fabrice and Teyssier, Sabrina, Signaling Corporate Social Responsibility: Third-Party Certification Versus Brands (July 2016). *The Scandinavian Journal of Economics*, Vol. 118, Issue 3, pp. 397-432, 2016. Available at SSRN: <https://ssrn.com/abstract=2801361> or <http://dx.doi.org/10.1111/sjoe.12150>

(B) Errol Meidinger, “[Forest Certification as a Global Civil Society Regulatory Institution](#),” and “[Forest Certification as Environmental Law Making by Global Civil Society](#).”

(C) Fair Labor Association, <http://www.fairlabor.org/>

(D) Backer, L. C. “Transnational Corporations’ Outward Expression of Inward Self-Constitution: The Enforcement of Human Rights by Apple, Inc.” *Indiana Journal of Global Legal Studies*, vol. 20 no. 2, 2013, pp. 805-879. Project MUSE, muse.jhu.edu/article/538447.

(E) Fair Trade, <http://fairtradeamerica.org/en-us/for-business/ways-of-working-with-fairtrade?gclid=CMycwMvOi9MCFdSIswodlNkEuQ>.

(F) Teubner, G., [Self-Constitutionalizing TNCs? On the Linkage of “Private” and “Public” Corporate Codes of Conduct](#)

(4) Backer, Larry Catá, Next Generation Law: Data Driven Governance and Accountability Based Regulatory Systems in the West, and Social Credit Regimes in China (July 7, 2018). Available at SSRN: <https://ssrn.com/abstract=3209997> or <http://dx.doi.org/10.2139/ssrn.3209997>

Week 10

Group Presentation 3: From Conception to Operation; How Enterprises Enforce CSR. Each Group will make a presentation analyzing in detail the enforcement of CSR, looking especially toward the use and effectiveness of supplier codes of conduct, third party certification, Human Rights Due Diligence; programs for internal grievance and mitigation, for transparency and stakeholder consultation.

Part V Remedy

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Week 11

International Soft Law Approaches: the U.N. Guiding Principles for Business and Human Rights; OECD Guidelines for Multinational Enterprises.

Readings:

(1) [OECD Guidelines for Multinational Enterprises](#) (2011 Edition); procedural guidance.

(2) Cases:

(A) Araya v. Nevsun Resources Ltd., Supreme Court of British Columbia 2016 BCSC 1856; <https://drive.google.com/file/d/0B5JyyTlmKnOfcVhiMjhFbF1UGc/view>.

(B) Angelica Choc v. Hudbay Minerals Inc., HMI Nickel Inc. and Compañía Guatemalteca de Níquel S.A. <<http://www.chocversushudbay.com/wp-content/uploads/2010/10/Judgment-permitting-lawsuits-to-proceed-t...>> (22 July 2013)

(3) Group Assigned Readings: Each group will be assigned one of the readings below; each is to prepare a 2 page executive summary and then be prepared to discuss in class.

(A) Backer, L., Case Note: *Rights And Accountability In Development (Raid) V Das Air (21 July 2008) And Global Witness V Afrimex (28 August 2008); Small Steps Toward an Autonomous Transnational Legal System for the Regulation of Multinational Corporations*, 10(1) Melbourne Journal of International Law 258-307 (2009).

(B) Specific Instance between USW; Sindicato Nacional de Trabajadores Mineros, Metalurgicos, Siderurgicos y Similares de la Republica Mexicana (Mineros); and Grupo Mexico and its U.S. subsidiary, ASARCO, LLC for conduct in the United States; <https://www.state.gov/documents/organization/261119.pdf>.

(C) Specific Instance between the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and Starwood Hotels & Resorts Worldwide for conduct in the Maldives and Ethiopia (2016); <https://www.state.gov/documents/organization/257322.pdf>.

(D) USNCP Final Statement on the Specific Instance Between the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and PepsiCo, Inc. in India (2016); <https://www.state.gov/documents/organization/256049.pdf>.

(E) Santner, A., "A Soft Law Mechanism for Corporate Responsibility: How the Updated OECD Guidelines for Multinational Enterprises Promote Business for the Future", 43 *Geo. Wash. Int'l L. Rev.* 375 (2011).

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Week 12

Legal Effects of CSR Codes: Recent litigation and future strategies with a focus on veil piercing, mutuality of contract, and 3rd party beneficiary defenses.

Readings

(1) Gibson, Dunn, “Corporate Social Responsibility Statements: Recent Litigation and Avoiding Pitfalls” (2017).

(2) *Bondali v. Yum! Brands, Inc.*, 620 Fed. Appx. 483, 489 (6th Cir. 2015).

(3) *Sud v. Costco Wholesale Corporation*, No. 4:15-cv-03783, 2017 WL 345994, at *5 (N.D. Cal. Jan. 24, 2017).

(4) *Hodson v. Mars, Inc./Mars Chocolate North America, LLC*, No. 15-cv-04450, 2016 WL 627383, at *6 (N.D. Cal. Feb. 17, 2016)

(5) *Jane Doe I et al. v. Wal-Mart Stores Inc.*, No. 08-55706 (9th Cir., 2009)
<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1214&context=globaldocs>.

Optional Background: Katherine E. Kenny, Code or Conduct: Whether Wal-Mart’s Code of Conduct Creates a Contractual Obligation between Wal-Mart and the Employees of Its Foreign Suppliers, 27 *Nw. J. Int’l L. & Bus.* 453 (2006-2007)

<http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1652&context=njilb>.

U.S: Chamber of Commerce brief on appeal—
[http://www.chamberlitigation.com/sites/default/files/cases/files/2006/Doe%2C%20et%20al.%20v.%20Wal-](http://www.chamberlitigation.com/sites/default/files/cases/files/2006/Doe%2C%20et%20al.%20v.%20Wal-Mart%20Stores%2C%20Inc.%20%28NCLC%20Brief%29.pdf)

[Mart%20Stores%2C%20Inc.%20%28NCLC%20Brief%29.pdf](http://www.chamberlitigation.com/sites/default/files/cases/files/2006/Doe%2C%20et%20al.%20v.%20Wal-Mart%20Stores%2C%20Inc.%20%28NCLC%20Brief%29.pdf).

(6) U.K.:

(A) *Chandler v Cape PLC* [2012] EWCA Civ 525

(B) *Lubbe and Others and Cape Plc. and Related Appeals* [2000] UKHL 41 (20th July, 2000) available <http://www.bailii.org/uk/cases/UKHL/2000/41.html>;

(C))

(7) Anna Beckers, *Enforcing Corporate Social Responsibility Codes: On Global Self-Regulation and National Private Law* (Hart, 2015).

(8) Backer, L., “[A Lex Mercatoria for Corporate Social Responsibility Codes Without the State?: A Critique of Legalization Within the State Under the Premises of Globalization](#),” *Indiana Journal of Global Legal Studies* 24(1):115-146 (2017)

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Week 13

Home state remedies: Remedy from the international perspective; Extraterritoriality and Corruption

Readings:

(1) [Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, All Roads Lead to Remedy](#), A/72/162 (18 July 2017)

(A) Larry Catá Backer, "[All roads to remedy](#)": Reflections on 2017 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (A/72/162) (Links to an external site.)Links to an external site.

(2) Extraterritoriality; *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013)

(2) [Jesner v. Arab Bank](#), No. 16-499 (2018),

(A) Larry Catá Backer, [Brief Thoughts on Jesner v. Arab Bank, PLC, 584 U.S. – \(2018\): The State of Judicial Remedies for Corporate Liability for Human Rights Violations](#), CPE Working Paper 4/3 (April 2018). Download HERE: [Brief Thoughts on Jesner v](#)

(3) Extraterritoriality Group Assigned Readings: Each group will be assigned one of the readings below; each is to prepare a 2 page executive summary and then be prepared to discuss in class.

(A) Extraterritoriality and the constraints of national jurisdiction: Surya Deva, "Corporate Human Rights Violations: A Case for Extraterritorial Regulation" in Christoph Luetge (Editor-in-Chief), *Handbook of the Philosophical Foundations of Business Ethics* (Springer, 2012), pp. 1077-1090.

(B) Sara L. Seck, "Conceptualizing the Home State Duty to Protect Human Rights", in *Corporate Social And Human Rights Responsibilities: Global Legal And Management Perspectives* (Karin Buhmann, Lynn Roseberry, Mette Morsing, eds., Macmillan, 2010), available https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1729930.

(C) Larry Catá Backer, "Extraterritoriality and Corporate Social Responsibility: Governing Corporations, Governing Developing States." *Law at the End of the Day*. (Thursday, March 27, 2008) Available at <http://lbackerblog.blogspot.com/2008/03/extraterritoriality-and-corporate.html>.

(D) Daniel Augenstein and David Kinley, "Beyond the 100 Acre Wood: In which international human rights law finds new ways to tame global corporate power," [International Journal of Human Rights](#) 19(6):828-848 (2015).

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(4) Corruption; Group Assigned Readings: Each group will be assigned one of the readings below; each is to prepare a 2 page executive summary and then be prepared to discuss in class.

(A) Foreign Corrupt Practices Act 15 U.S.C. § 78dd-1, et seq.

(B) SEC v. Eli Lilly No. 12-2045 (D.D.C. 2012)
<https://www.sec.gov/litigation/complaints/2012/comp-pr2012-273.pdf>

(C) Joel M. Cohen & Daniel P. Harris, Gibson, Dunn & Crutcher LLP, “Coerced Corporate Social Responsibility and the FCPA,” *The International Comparative Legal Guide to Business Crime 2016: A practical cross-border insight into business crime* (6th Edition 2016) <http://www.gibsondunn.com/publications/Documents/Cohen-Harris-Coerced-Corporate-Social-Responsibility-and-the-FCPA-GLG-Oct-2015.pdf>.

(D) Amol Mehra and Ajoke Agbool, “*The Corporate Responsibility to Prevent Corruption.*” [Forbes.com](http://www.forbes.com/sites/csr/2011/07/01/the-corporate-responsibility-to-prevent-corruption/#41bb9e2dae0c) (July 1, 2011). <https://www.forbes.com/sites/csr/2011/07/01/the-corporate-responsibility-to-prevent-corruption/#41bb9e2dae0c>.

(E) Joel M. Cohen & Daniel P. Harris, Gibson, Dunn & Crutcher LLP, “Coerced Corporate Social Responsibility and the FCPA,” –

(F) Backer, Larry Catá, [The Evolving Relationship between TNCs and Political Actors and Governments](#) Research Handbook on Transnational Corporations, Alice de Jong and Roman Tomasic, eds., Edward Elgar Publishing Limited, 2015

(G) Brodie, D., *Enterprise Liability and the Common Law* (Cambridge U. Press 2010).

(H) Seck, S., “Conceptualizing the Home State Duty to Protect Human Rights”, in Karin Buhman, Mette Morsing, & Lynn Roseberry, eds., *Corporate Social and Human Rights Responsibilities: Global Legal and Management Perspectives*, (Palgrave Macmillan, 2010) 25-51.

(I) Richard Meeran, “Access to Remedy: The United Kingdom Experience of MNC Tort Litigation for Human Rights Violations,” in *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect* (Surya Deva and David Bilchitz, eds. Cambridge 2013) pp. 378-402.

Week 14

Group Presentation 4: Grievance mechanisms, anti-corruption efforts and assessment of reporting.

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