

# CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

## Course Information and Syllabus

Fall Semester 2017

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(August 2017)

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

<b>MEETING ROOM:</b>	<b>012 Katz</b>
<b>MEETING TIME:</b>	<b>Mondays and Wednesdays 09:45 P.M. - 11:00 A.M.</b>
<b>OFFICE:</b>	<b>239 Katz Building</b>
<b>TELEPHONE:</b>	<b>814.863.3640 (direct)</b>
<b>E-MAIL</b>	<b><a href="mailto:lcb11@psu.edu">lcb11@psu.edu</a></b>
<b>WEBSITE</b>	<b><a href="http://www.personal.psu.edu/lcb11">http://www.personal.psu.edu/lcb11</a></b>
<b>BLOG</b>	<b><a href="http://lcbackerblog.blogspot.com">http://lcbackerblog.blogspot.com</a></b>
<b>CONFERENCE HOURS:</b>	<b>Mondays and Wednesdays 4:00 P.M. TO 6:00 P.M., AND BY APPOINTMENT</b>
<b>QUESTIONS:</b>	<b>e-mail anytime; e-conferencing encouraged</b>
<b>FINAL EXAM:</b>	<b>CLASS RELATED QUESTIONS VIA EMAIL EITHER (1) 24 HOUR TAKE HOME FINAL OR (2) PAPER</b>

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### **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:*

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*

School rules require me to notify students of my attendance policy. **Class attendance is required.** I take attendance seriously. You will be required to sign in at each class session via our electronic class system. Attendance will be taken through Canvas. At the start of each class session I will provide you with the attendance code necessary to mark yourself present.

You are responsible for marking your own attendance.

Students with more than four (4) unexcused absences can have their grade lowered one full grade (from A to A- for example) at my discretion.

**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 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.

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### ***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.**

*In order to provide the potential educational benefits of recorded classes to our students, the SIA has decided to automatically record, and to archive for a limited period of time, all class sessions occurring in classrooms in the Katz Building. 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 ANGEL, 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 SIA may jointly decide to retain the edited recording for other purposes).*

*By registering for or attending SIA courses, you consent to the school's making and display of class recordings within the scope of this policy.*

Your professor in each course will explain the access rules she or he has established for each class.

PLEASE NOTE that the SIA's class recording policy is not a substitute for class attendance and preparation, which still is required for all class sessions (unless excused by the professor on an exceptional basis for good reason) and in order to remain in good academic standing with the SIA. The class recording policy is intended to enhance your learning experience, not to substitute for regular class attendance and preparation.

*Questions, Special Requests.* You should direct any questions, concerns or requests

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specifically regarding classroom recordings or any classroom technology (rather than policy or the interpretation thereof) to the AV Team at [av@law.psu.edu](mailto:av@law.psu.edu).

### *GRADING*

**Students will have a choice among two options for determining their course grade. Either they may sit for a 24 hour take home exam OR they may submit a paper.** Each is described in more detail below:

**PAPER OPTION:** 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 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, 2017.**

**EXAM OPTION:** THE EXAM IS OPEN BOOK. You must work alone. You will have 24 hours to complete the exam from the time you pick it up. Students will be given the option of choosing the time you take the exam. The exam may be picked up on any day from the first day of final exams to 3:00 P.M. on the last day of the final exams period (December 11, 2017 through December 15, 2017).

Exams will be distributed through CANVAS and will be submitted through CANVAS. More detailed instructions will be made available later in the semester. EXAMS MUST BE SUBMITTED NO LATER THAN 24 HOURS AFTER PICK UP. The Clock in CANVAS WILL BE TREATED AS PRESUMPTIVELY ACCURATE. I will not police you – you are on your honor to comply with final exam rules.

**ANY EXAM DELIVERED AFTER 3 P.M. ON DECEMBER 15, 2017 OR MORE THAN 24 HOURS AFTER PICK UP WILL RECEIVE A GRADE OF “F”.**

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

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making proposals with respect to the system, are advised to consult their academic dean.

### ACADEMIC HONESTY AND INTEGRITY

#### ACADEMIC HONESTY AND INTEGRITY

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

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.

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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.*

<lcb911@me.com>

### CANVAS

This year I will be relying on PSU's CANVAS system for communication with you. Please bear with me as I learn the system and expect glitches. 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.

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### ***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 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.

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### 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 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



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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 manifestation as both law and policy. Its governance trajectories touch on the essence of law and the lawyer's craft; its normative trajectories speak to politics, ethics and morals, to the fundamental organization of cultures of human interactions in the economic sphere.

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?

These questions remained highly contested through the end of the twentieth century. Early on, however, the American bench and Bar seemed to reach an uneasy stalemate about the contours of the debate regarding corporate social responsibility. Since then, it has been academics who argue, mostly among themselves, about the nature, character, and purpose of the corporation beyond those limits of discourse enforced by the practice community.

Within very wide parameters of law, social norm and the operational constraints of risk and compliance in business behaviors, CSR can be understood within three quite broad conceptual categories:

First, it focuses on enterprises--that is on institutions organized for the purpose, principally, of economic activity. Collective and collective activities are at the center of this 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.

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Second, it 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 are found outside the formal structures of state and government. One speaks here of those direct relations between the enterprise and its communities 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, it focuses on the responsibility of enterprises 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. The societal responsibilities of enterprises are not to be confused with the mandatory obligations of everyone subject to its jurisdiction to obey the command of law. 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 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

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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) 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 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 corporations. These 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. 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

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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. For lawyers, policymakers and advocates that means studying 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 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.

The course begins with a focus on the corporation itself, providing a grounding in the corporate form, corporate legal personality and the core principles of corporate law and operation that frames any CSR discussion in law and policy. It then turns to an initial consideration of CSR itself—the elusiveness of consensus on definition, approaches to an understanding of CSR as a legal and normative concept, and the evolution of the field over the last century. The course then turns to CSR in a broader context, focusing on the distinct approaches to the expression of CSR among leading state and civil society actors. The materials then turn to the traditional scope of the legal regulation of CSR, focusing on philanthropy and concepts of waste in U.S. corporate law. The materials then broaden the legal examination to consider emerging legal disclosure regimes in the United States, the U.K. and France. The course then turns to the consideration of the privatization of the law of CSR within corporations, especially those operating within global production chains. The materials consider how self-regulation works and the construction of corporate CSR codes.

The materials then examine recent litigation and future strategies around CSR codes with a focus on veil piercing, mutuality of contract and 3<sup>rd</sup> party beneficiary principles and their transformation. Having considered both self-regulation and legal regulation within national legal orders, the materials then consider CSR codes administered through third parties, with a focus on their legal and social effects, including the emerging role of multi-stakeholder partnerships. From this broad base, the course then turns to indirect

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approaches to the legalization of CSR standards, considering enterprise liability, corporate criminality, corruption and environmental and sustainability standards. In that context, the rise and fall of the use of the U.S. Alien Tort Claims Act is considered. The last section of the materials examines emerging international soft law regimes, principally the UN Guiding Principles for Business and Human Rights and the OECD Guidelines for Multinational Enterprises. The course ends with a consideration of key trends and developments going forward.

### *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 CLASS PAGE EACH WEEK**

#### **Summary Syllabus:**

**Week 1:** *The Corporation—Law and Policy Baselines:* Introduction to the corporate form, corporate legal personality and the legal regulation of the corporation in society.

**Week 2:** *Corporate Social Responsibility;* Definitions and approaches, and the evolution of the field

**Week 3:** *Corporate Social Responsibility in a broader context:* distinct approaches of states, the European Union and NGOs.

**Week 4:** *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:** *Beyond philanthropy:* disclosure regimes in national law.

**Week 6:** *Self-Regulation and its Legal Effects:* Corporate Social Responsibility Codes; what are they and how do they operate.

**Week 7:** *Legal Effects of CSR Codes:* Recent litigation and future strategies with a focus on veil piercing, mutuality of contract, and 3<sup>rd</sup> party beneficiary defenses.

**Week 8:** *Third Party Certification Regimes:* Legal and Social effects.

**Week 9:** *International Soft Law Approaches:* U.N. Global Compact and the U.N. Guiding Principles for Business and Human Rights; OECD Guidelines for Multinational Enterprises.

**Week 10:** *Indirect Approaches in law:* Enterprise Liability, Corporate Criminality, Corruption,

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environmental and sustainability concerns

**Week 11:** *The U.S. as a global CSR Jurisdiction:* The rise and fall of the Alien Tort Claims Act and CSR and alternative sites for national oversight of global CSR standards

**Week 12:** *Emerging Legal Approaches:* Fiduciary Duties of care and good faith (U.S.) and Corporate Compliance.

**Week 13:** *Driving Transformative Change:* The role of multi-stakeholder partnerships - Can new models of voluntary industry- wide and cross-sector partnerships overcome market failures and governance gaps?

**Week 14:** *The Future of Corporate Social Responsibility:* Key trends, environmental sustainability and other perspectives .

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### *Detailed Syllabus With Problems and Assigned Readings:*

#### Week 1

*The Corporation—Law and Policy Baselines:* Introduction to the corporate form, corporate legal personality and the legal regulation of the corporation in society. **Problem 1 (Megamart)**

Readings:

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

(2) CTS Corp. v. Dynamics Corp pf America, 481 U.S: 69 (1987);

(3) Amanda Acquisition Corp. v. Universal Foods Corp., 877 F.2d 496 (7<sup>th</sup> Cir., 1989);

(4) U.K.:

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

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*Corporate Social Responsibility*; Definitions and approaches, and the evolution of the field. **Problem 1 (Megamart) continued.**

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

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

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(10) John G. Ruggie, *Just Business: Multinational Corporations and Human Rights* (New York: W.W. Norton, 2013), pp. xxv-xxxvi.

### Week 3

*CSR a broader context:* (1) the relationship between CSR, sustainable development goals and corporate activity, and the human rights responsibilities of business; and (2) the role of business, states, public and private international organizations—national law, international law, privatized governance, governance gaps and extraterritoriality. *Problem 2 (Creating a CSR Policy)*.

Readings:

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(8) 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.

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(11) Benedict Sheehy, Defining CSR: Problems and Solutions, *J Bus Ethics* 131:625–648 (2015).

### Week 4

*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. *Problem 3 (Happyland Amusement Parks)*.

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*Beyond philanthropy*: disclosure regimes in national law. *Problem 4 (Shmata Apparel)*.

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(1) 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).

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### Week 6

*Self-Regulation and its Legal Effects*: Corporate Social Responsibility Codes; what are they and how do they operate. *Problem 5 (Slick Oil Corp CSR Policies)*.

#### 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.

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--Gap, Inc. [http://www.gapinc.com/content/dam/gapincsite/documents/CodeofVendorConduct\\_FINAL.pdf](http://www.gapinc.com/content/dam/gapincsite/documents/CodeofVendorConduct_FINAL.pdf)

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### Week 7

*Legal Effects of CSR Codes*: Recent litigation and future strategies with a focus on veil piercing, mutuality of contract, and 3<sup>rd</sup> party beneficiary defenses. *Problem 6 (ABC Corp. and disclosure)*.

#### 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).

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(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)

### Week 8

*Third Party Certification Regimes: Legal and Social effects. Problem 7 (Global Labor Network).*

#### Readings

(1) 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>

(2) Errol Meidinger, "[Forest Certification as a Global Civil Society Regulatory Institution](#);" and "[Forest Certification as Environmental Law Making by Global Civil Society](#)."

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

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### Week 9

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*International Soft Law Approaches*: U.N. Global Compact; the U.N. Guiding Principles for Business and Human Rights; OECD Guidelines for Multinational Enterprises. *Problem 8 (Human Rights Due Diligence)*.

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(A) Araya v. Nevsun Resources Ltd., Supreme Court of British Columbia 2016 BCSC 1856; <https://drive.google.com/file/d/0B5JyyTlmKnOfcVhiMjhFbF11UGc/view>.

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### Week 10

*Indirect Approaches in law: Enterprise Liability, Corporate Criminality, Corruption, environmental and sustainability concerns. Problem 9 (Steimens Corp).*

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- (7) Brodie, D., *Enterprise Liability and the Common Law* (Cambridge U. Press 2010).
- (8) 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.
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## Week 11

*The U.S. as a global CSR Jurisdiction: The rise and fall of the Alien Tort Claims Act and CSR and alternative sites for national oversight of global CSR standards. Problem 10 (Rancho Bravo Mine Workers).*

Readings:

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

(2) *Jesner v. Arab Bank*, No. 13-3605 (2<sup>nd</sup> Cir; 2016); cert granted 2017  
<http://www.scotusblog.com/wp-content/uploads/2016/10/16-499-op-below-2d-cir.pdf>.

(3) Dana, David A. and Barsa, Michael, "Three Obstacles To The Promotion Of Corporate Social Responsibility By Means Of The Alien Tort Claims Act: The Sosa Court's Incoherent Conception of the Law of Nations, the "Purposive" Action Requirement for Aiding and Abetting, and the State Action Requirement for Primary Liability"(2010). Faculty Working Papers. Paper 114.  
<http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/114>

(4) [Joel Slawotsky: "Corporate liability for violating international law under The Alien Tort Statute: The corporation through the lens of globalization and privatization" \(July 10, 2013\); Guest Essay-- Joel Slawotsky, Rumors Of Corporate Liability's Demise In The Context Of Alien Tort Suits Have Been Greatly Exaggerated; July 20, 2011\); Joel Slawotsky on "Corporate Liability Under The Alien Tort Statute: The Latest Twist"](#).

(5) Paust, Jordan J., Non-State Actor Participation in International Law and the Pretense of Exclusion (November 2, 2010). Virginia International Journal of Law, Vol. 51, No. 4, 2011; U of Houston Law Center No. 2010-A-34. Available at SSRN: <https://ssrn.com/abstract=1701992> or <http://dx.doi.org/10.2139/ssrn.1701992>

(6) Pall A. Davidsson, "Legal Enforcement of Corporate Social Responsibility within the EU," *Colum. J. Eur. L.* 8:529 (2002).

(7) Robert McCorquodale, "Corporate Social Responsibility and International Human Rights Law," *R. J Bus Ethics* (2009) 87(Suppl 2): 385-400.

### Week 12

*Emerging Legal Approaches*: Emerging Legal Approaches: Fiduciary Duties of care and good faith (U.S.) and corporate compliance. *Problem 11 (Megamart Revisited)*.

#### Readings:

(1) Basic Cases: (A) *Caremark Int'l Deriv. Litig.*, 698 A.2d 959, 970 (Del. Ch. 1996); (B) *Stone v. Ritter*, 911 A. 2d 362 (Del.Supr. 2006) available <http://courts.delaware.gov/opinions/download.aspx?ID=84060>; *Horman v. Abney*, 2017 WL 242571 \*9 (Del. Ch. January 19, 2017); *In re Citibank* (924 A.2d 106 (Del Ch 2009).

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(2) Supply Chain related cases: (A) *In re Puda Coal Inc. Stockholder's Lit.*, C.A. No. 6476-CS (Del. Ch. Feb. 6, 2013); (B) *In re China Agritech Shareholder Deriv. Lit.*, WL 2181514 \*26 (2013)

(3) Strine Jr., L., Hamermesh, R., Balotti, F., and Gorris, J., "*Loyalty's Core Demand: The Defining Role of Good Faith in Corporation Law.*"

(4) Texin, L. "*Corporate Responsibility Scandals: What's the Damage?*" Corporate Citizenship, 6 September 2016.

(5) Ho, V. H., "*Of Enterprise Principles and Corporate Groups: Does Corporate Law Reach Human Rights?*" 52 Colum. J. Transnat'l L. 113, 160 (2013)

(6) India: 'Development, Sovereign Support to Finance and Human Rights: Lessons from India' in Juan Pablo Bohoslavsky and Jernej Letnar Čerňič (eds.), *Making Sovereign Financing and Human Rights Work* (Oxford: Hart Publishing, 2014), pp. 289-302.

(7) 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>.

(8) Douglas Cassel, "Outlining the Case for a Common Law Duty of Care of Business to Exercise Human Rights Due Diligence," *Business And Human Rights Journal* 1:179-202 (2016)(Cambridge University Press) accessible at <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=10291000&fileId=S2057019816000158>.

(9) Evan A. Peterson, "Compliance and ethics programs: competitive advantage through the law," *Journal of Management & Governance* 17(4):1027-1045 (2013).

(E) OPTIONAL: José A. Tabuena, "The Chief Compliance Officer versus the General Counsel: Friend or Foe," *Compliance & Ethics Magazine* pp. 4-7; 10-15 (2006) available [http://www.corporatecompliance.org/Portals/1/PDF/Resources/past\\_handouts/CEI/2008/601-3.pdf](http://www.corporatecompliance.org/Portals/1/PDF/Resources/past_handouts/CEI/2008/601-3.pdf)

(F) OPTIONAL: Claire Hill and Brett McDonnell, *Stone v. Ritter and the Expanding Doctrine of Loyalty*, 76 Fordham L. Rev. 1769 (2007), available at [http://scholarship.law.umn.edu/faculty\\_articles/83](http://scholarship.law.umn.edu/faculty_articles/83)

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***Driving Transformative Change:*** The role of multi-stakeholder partnerships - Can new models of voluntary industry-wide and cross-sector partnerships overcome market failures and governance gaps? *Problem 12 (Gama Plaza Factory Building Fire).*

### ***Required Reading:***

(1) Baumann-Pauly, Nolan, Labowitz & van Heerden, "Setting and Enforcing Industry- Specific Standards for Human Rights –The Role of Multi-Stakeholder Initiatives in Regulating Corporate Conduct".

(2) Patscheke, Barmettler, Herman, Overdyke & Pfitzer, "Shaping Global Partnerships for a Post-2015 World." *Stanford Social Innovation Review*. 2014

(3) Nelson & Jenkins, "Tackling Global Challenges: Lessons in System Leadership from the World Economic Forum's New Vision for Agriculture Initiative. CSR Initiative, HKS. January, 2016.

(4) Oxfam Briefing Paper, "Moral Hazard? 'Mega' public-private partnerships in African agriculture." September, 2014. Available at [https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/oxfam\\_moral\\_hazard\\_ppp-agriculture-africa-010914-en\\_O.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/oxfam_moral_hazard_ppp-agriculture-africa-010914-en_O.pdf)

(5) The example of global garment supply chains:

(A) Shift, "From Audit to Innovation: Advancing Human Rights in Global Supply Chains," available at <http://www.shiftproject.org/publication/audit-innovation-advancing-human-rights-global-supply-chains/>; read pp. 3-8 plus a case study of your choice;

(B) Labowitz & Baumann-Pauly, "Beyond the Tip of the Iceberg: Bangladesh's Forgotten Apparel Workers," NYU-Stern Center, available at <http://static1.squarespace.com/static/547df270e4b0bal84dfc490e/t/5672d01f841aba5776Od628a/1450364959693/Beyond+the+Tip+of+the+Iceberg+Report.pdf>;

(C) World Economic Forum, "Shared Responsibility: A New Paradigm for Supply Chains," available at [http://www3.weforum.org/docs/WEF\\_GAC\\_Supply\\_Chains\\_%20A\\_New\\_Paradigm\\_2015.pdf](http://www3.weforum.org/docs/WEF_GAC_Supply_Chains_%20A_New_Paradigm_2015.pdf); skim Appendices.

(D) Backer, Are Supply Chains Transnational Legal Orders?: What We Can Learn From the Rana Plaza Factory Building Collapse, 1(1) *University Of California Irvine Journal Of*

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*International, Transnational, And Comparative Law* – (Vol. 1(1), 2017).

### Week 14

***The Future of Corporate Social Responsibility:*** Key trends, environmental sustainability and other perspectives.

(1) Backer, “The Perils and Promise of Drafting a Comprehensive Treaty on Business and Human Rights: Principles, Pragmatism and Principled Pragmatism in Shaping a Global Law for Business Enterprises,” *North Carolina Journal Of International Law* (Vol. 42(1):– 2017);

(2) Backer, L., [\*Theorizing Regulatory Governance Within its Ecology: The Structure of Management in an Age of Globalization\*](#), 23 *Contemporary Politics* – (Special Issue forthcoming 2017).

(3) Schumpeter, “Social saints, fiscal fiends: Opinions vary on whether fines can be “socially responsible” while avoiding taxes”. *The Economist*. January 2, 2016.

Available at: <http://www.economist.com/news/business-and-finance/21684770-social-saints-fiscal-fiends-opinions-vary-whether-firms-can-be-socially-responsible?frsc=dg%7Cc>

(4) R v Powell and Westwood, [\[2016\] EWCA Crim 1043](#); and Robert Biddlecombe, “[Piercing the Corporate Veil Following Breaches of UK Environmental Permits](#),” *Environmental Litigation* (September 19, 2016).

(5) 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>.

(6) 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 \(2015\)](#).