

Year 2019/20  
Version 22.07.2019

## 8071 - Advanced Master in Legal Sciences

### 32552 - Sustainable Business Law (Advanced Corporate Practice)

#### Syllabus Information

**Academic Course:**

2019/20

**Academic Center:**

807 - Masters Centre of the Department of Law

**Study:**

8071 - Advanced Master in Legal Sciences

**Subject:**

32552 - Sustainable Business Law (Advanced Corporate Practice)

**Credits:**

4.0

**Course:**

1

**Teaching languages:**

Theory: Group 1: English

**Teachers:**

Lela Melon

## Presentation

<b>Course:</b> Sustainable Business Law (Advanced Corporate Practice)	<b>Course:</b> 2019-2020
	<b>Term:</b> 3
	<b>Credits:</b> 4
	<b>Language:</b> <a href="#">English</a>
<b>Type of course:</b> Elective	
<b>Professor:</b> Lela Mélon ( <a href="https://www.linkedin.com/in/dr-lela-m%C3%A9lon-ll-m-550b5b30/">https://www.linkedin.com/in/dr-lela-m%C3%A9lon-ll-m-550b5b30/</a> )	

**Office:** 40.222

**Attention hours:** To be arranged on an individual basis with the professor.

**Contact:** [lela.melon@upf.edu](mailto:lela.melon@upf.edu)

## Associated skills

Identification and analysis of pertinent rules on Sustainable Business. Correct understanding of corporate obligations as to their social and legal nature. The multifaceted and interdisciplinary approach to sustainable development. Law and Economics approach to sustainable business. Case resolution. Writing specialized documents. Development of capacities related to the use of arguments through oral presentations and written assignments.

## Learning outcomes

The course is devoted to delivering the knowledge on the pertinent issues of sustainable development through the prism of private business and the challenges the current business form under the pertinent social norms poses for such development. Starting with the international framework for sustainable development, we explore the diverse channels and their necessary transformation in the order of relevance as to the impact they have for sustainable development. After dividing the action into three large subcategories of sustainable public purchases, sustainable corporate conduct under renewed corporate law rules and last but not least, sustainable consumption and supporting environmental legislation at the international level, we focus on the newest developments in the EU law for each of the subgroups defined. In order to offer to the students also some hands-on experience on corporate practice under such new legal framework, we apply the legal knowledge obtained to practical market functioning of the enterprises also through the Law and Economics approach. Subject to the group size, a Problem Based Learning approach will be employed, enabling students to internalise the notions presented throughout this course.

## Prerequisites

There are no pre-requisites to take the course, although background on Corporate Law, Corporate Governance and on the classification of legal systems would be of advantage.

# Contents

Syllabus	
<b>Sessions 1 and 2</b>	<p><b>International Framework for Sustainable Development</b></p> <p>We will be exploring the depth and the meaning of the term ‘sustainability’, its origins and its adaptations through time. International legal documents on sustainability. International obligations of individual nation states and the EU under these documents. The three channels to reach these set goals.</p> <p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Steffen et. al. (2015), ‘Planetary boundaries: Guiding human development on a changing planet’</li> <li>2. Mélon, L. (2019), Ch.3 ‘Future Developments: How Can Corporate Law Contribute to Sustainable Development? The Notion of the “Sustainable Company” in Shareholder Primacy and Global Business (Routledge 2019).</li> <li>3. Pavoni, R. and Pisell, D. (2016) ‘The Sustainable Development Goals and International Environmental Law: Normative Value and Challenges for Implementation.’ Veredas do Direito 13:26.</li> <li>4. The Principles of International Law Related to Sustainable Development (the text will be provided to the students)</li> </ol>
<b>Sessions 3 and 4</b>	<p><b>Recap of Corporate Governance and Corporate Law Framework</b></p> <p>Recalling the institutes of limited liability and separate legal personality, we explore the origins of these concepts and critically appraise them in the light of corrent corporate legal and moral obligations.</p> <p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Millon, D. (1990) ‘Theories of the Corporation’ Washington &amp; Lee University School of Law Scholarly Commons.</li> <li>2. Hansmann, H. and Kraakman, R. (2004) ‘What is Corporate Law?’ Yale Law and Economics Research Paper No.300.</li> <li>3. Armour et. al (2017) ‘Foundations of Corporate Law’ available at <a href="http://www.law.harvard.edu/programs/olin_center/papers/pdf/Kraakman_902.pdf">http://www.law.harvard.edu/programs/olin_center/papers/pdf/Kraakman_902.pdf</a>.</li> <li>4. <a href="#">Woodward, S.E. (1985) ‘Limited liability in the theory of the firm’ in Journal of Institutional and Theoretical Economics 141 (4), pp.152–161.</a></li> <li>5. <a href="#">Ireland, P. (2010) ‘Limited liability, shareholder rights and the problem of corporate irresponsibility’ 34:5 Cambridge Journal of Economics.</a></li> </ol>

<p><b>Session 5</b></p>	<p><b>The issue of ‘Radical Shareholder Primacy’</b></p> <p>Employing comparative law approach, we tend to the issue of shareholder vs. stakeholder oriented corporate laws of civil and common law jurisdictions. The origins of shareholder primacy. The consequences of shareholder primacy. The current radical form of shareholder primacy.</p> <p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Friedman, M. (1970) ‘The Social Responsibility of Business is to Increase its Profits’ New York Times Magazine</li> <li>2. Millon, D. (2013) ‘Radical Shareholder Primacy’ 10:4 University of St. Thomas Law Journal.</li> <li>3. Sjøfjell, B. (2015) ‘Shareholder Primacy: The Main Barrier to Sustainable Companies’ in <i>Company Law and Sustainability: Legal Barriers and Opportunities</i> Sjøfjell B. and Richardson B. (eds), Cambridge University Press, 2015.</li> <li>4. Ajibo, Collins C. (2014) “A critique of enlightened shareholder value: Revisiting the shareholder primacy theory”. In <i>Birkbeck Law Review</i> 2:1, pp.37–58.</li> <li>5. Mélon, L. (2019) Ch.2 ‘The Incompleteness of Modern Corporate Laws’ in Mélon, L. <i>Shareholder Primacy and Global Business</i> (Routledge 2019)</li> </ol>
<p><b>Session 6</b></p>	<p><b>Corporate Social Responsibility</b></p> <p>As an addition to shareholder primacy, the CSR tried to counterbalance the negative effects of this paradigm and ensure a partial integration of negative externalities in the corporate sphere. A critical appraisal of its success will be undertaken and the meaning of CSR as opposed to sustainability will be looked at.</p> <p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Friedman (1970)</li> <li>2. Aggarwal, Priyanka and Kadyan, Aarti (2011) ‘Greenwashing. The darker side of CSR’ in <i>Indian Journal of Applied Research</i> 4 (3), pp.61–66.</li> <li>3. Alves, Igor. M. (2009) ‘Green spin everywhere: How greenwashing reveals the limits of the CSR paradigm’ in <i>Journal of Global Change and Governance</i> 2:1, pp.1–26.</li> <li>4. Mélon, L. (2019) Ch. 3.4.1 in Mélon, L. <i>Shareholder primacy and Global Business</i> (Routledge 2019).</li> <li>5. van Marrewijk, M. (2003) ‘Concepts and definitions of CSR and corporate sustainability: Between agency and communion’ 44:2–3 <i>Journal of Business Ethics</i>, pp.102–105.</li> </ol>

<p><b>Session 7</b></p>	<p><b>Corporate Environmental Liability</b></p> <p>Corporate obligations outside the sphere of corporate law. Compliance and its impact on sustainability. A critical appraisal of the influence of environmental law on corporate behavior.</p> <p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Ong, D.M. (2001) 'The Impact of Environmental Law on Corporate Governance: International and Comparative Perspectives' 12:4 European Journal of International Law, pp.685–726.</li> <li>2. Light, S.E. (2019) 'The Law of the Corporation As Environmental Law' 71 Stanford Law Review. 137 (2019).</li> <li>3. Ewing-Chow, M. and Soh, D. (2009) 'Pain, Gain, or Shame: the Evolution of Environmental Law and the Role of Multinational Corporations' Indiana Journal of Global Legal Studies 16:1.</li> <li>4. Gunningham, N.A. (2005) 'Motivating Management: Corporate Compliance in Environmental Protection' Berkeley Law Scholarship Repository</li> <li>5. EU Environmental Legal Compliance Checklist</li> </ol>
<p><b>Session 8 and 9</b></p>	<p><b>The Public Channel: Green Public Procurement, Sustainable Public Procurement and the Circular Economy</b></p> <p>The indispensable development of sustainable public procurement and the circular economy for the achievement of sustainable development goals. Definitions of the three notions. International and EU legal framework on the matter. The issues with its implementation and practical intake. Public-private partnerships on the matter. The interrelated issue of sustainable supply chain management and the monitoring problem in the public and the private sector.</p> <p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Sjøfjell, B. and Wiesbrock, A. (2016) 'Why Should Public Procurement Be About Sustainability?' in <i>Sustainable Public Procurement Under EU Law: New Perspectives on the State as Stakeholder</i>, Sjøfjell B. and Wiesbrock, A. (eds), Cambridge University Press 2016; University of Oslo Faculty of Law Research Paper No. 2017-17. Available at SSRN: <a href="https://ssrn.com/abstract=2954499">https://ssrn.com/abstract=2954499</a></li> <li>2. Mélon, L. (2019) 'More than a nudge? Arguments and tools for mandating green public procurement in the EU' Sustainability 2019</li> <li>3. Geissdoerfer, M. (2017) 'The Circular Economy – a new sustainability paradigm?' 143 Journal of Cleaner Production, pp.757–768.</li> </ol>

	4. Barcelona City Council, 2018 Sustainable Public Procurement Plan
<b>Session 10</b>	<p><b>The EU legal framework for sustainable business – possibilities and pitfalls</b></p> <p>Recapping the legislation presented in previous sessions and critically appraising its effectiveness in practice. Discussing about the possibilities for further action and observing the developments at the EU level (the propositions, Green Papers, White Papers and Action Plans)</p> <p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Barnard, C. and Deakin, S. (2002) 'Reinventing the European corporation? Corporate governance, social policy and the single market ' in <i>Industrial Relations Journal</i> 33 (5), pp.484–499.</li> <li>2. Vitols, S. <i>The Sustainable Company: A New Approach to Corporate Governance</i> (European Trade Union Institute 2011) <ol style="list-style-type: none"> <li>a. Vitols, S. 'What is the Sustainable Company?'</li> <li>b. Watt, A. 'Signal Change: Environmentally Sustainable Corporate Behaviour Requires a Change in Incentives'</li> </ol> </li> <li>3. Sjäfjell, B. (2009) 'Internalizing externalities in E.U. law: Why neither corporate governance nor corporate social responsibility provides the answers' in <i>The George Washington International Law Review</i> 40 (4), pp.977–1024.</li> <li>4. Mélon, L. (2019) Ch.3 'Future Developments: How Can Corporate Law Contribute to Sustainable Development? The Notion of the "Sustainable Company' in Mélon, L. <i>Shareholder Primacy and Global Business</i> (Routledge 2019).</li> </ol>
<b>Session 11</b>	<p><b>Law and Economics Approach to Sustainable Business</b></p> <p>The market approach to sustainable business. The economic appraisal of existing and envisaged rules. The empirical proof on (non)profitability of sustainable business. The consumer side pressures for sustainable business.</p> <p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Schaltegger, S. et al. (2012) 'Business cases for sustainability: the role of business model innovation for corporate sustainability' 6:2 <i>International Journal of Innovation and Sustainable Development</i>.</li> <li>2. West, M. (2002) 'Legal determinants of World Cup success' in University of Michigan John M. Olin Center for Law and Economics Discussion Papers, Paper No. 9.</li> <li>3. Chassagnon, V. (2011) 'The law and economics of the modern firm: a new governance structure of power relationships' <i>Revue d'économie industrielle</i> 2011.</li> </ol>

	<ol style="list-style-type: none"> <li>4. Aaseva, A. (2018) '(Un)Sustainable Development(s) in International Economic Law: A Quest for Sustainability' 10 Sustainability.</li> <li>5. Friede, G. et al. (2015) 'ESG and financial performance: aggregated evidence from more than 2000 empirical studies' 5:4 Journal of Sustainable Finance and Investment.</li> </ol>
<b>Session 12</b>	<p><b>Future prospects</b></p> <p>Studying the concepts presented in the previous sessions in the light of possible future developments. Application of the existing rules to the current business reality and vice versa: which market realities would need further legislative intervention? Practical discussions, case law analysis and analysis of proposals of the EU Commission and the EU Parliament on the matter.</p> <p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Sjøfjell, B. and Mark B. Taylor, M.B. (2015) 'Planetary Boundaries and Company Law: Towards a Regulatory Ecology of Corporate Sustainability' University of Oslo Faculty of Law Research Paper No. 2015-11.</li> <li>2. Ziegler, M. (2013) 'Book Review - Colin Mayer: Firm Commitment', available online at <a href="http://www.frankfurt-school-verlag.de/rmm/downloads/Review_Ziegler.pdf">http://www.frankfurt-school-verlag.de/rmm/downloads/Review_Ziegler.pdf</a>.</li> <li>3. <a href="#">Esty, D.C. and Cort, T. (2017) 'Corporate sustainability metrics: What investors need and don't get' 8:1 Journal of Environmental Investing.</a></li> <li>4. <a href="#">Sjøfjell, B. and Richardson, B.J. (2015) 'The Future of Company Law and Sustainability' University of Oslo Faculty of Law Research Paper No. 2015-34.</a></li> <li>5. <a href="#">Sjøfjell, B. (2018) 'Redefining the Corporation for a Sustainable New Economy' 45:1 Journal of Law and Society.</a></li> <li>6. <a href="#">TBA – latest EU developments</a></li> </ol>

## Teaching Methods

The course will develop along a full term, with twelve two-hour sessions. Each of them will consist of a lecture by the professor, a discussion about the required readings, and in some cases additional activities addressed to specific issues of the course. Depending of the nature of such activities, active participation of students will be required. Readings for each session are compulsory as a basis for discussion, without exception.

## Evaluation

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Apart from lectures, course activities will imply course and reading assignments, as well as active participation by students. The evaluation of the course will combine continuous assessment and a final examination, according to the following criteria:

Assessment guidelines	
Precision and pertinence of content will be highly valued in each of the assignments.	
Pertinence and originality of active participation will be highly valued	
Quality of arguments and pertinence of answers will be highly valued	
<b>Retaking conditions:</b>  For students failing the course after the final examination, it will be possible to retake the exam while grades for course assignments and class participation are maintained.	

## Bibliography and information resources

### Bibliography:

Mélon, L. *Shareholder Primacy and Global Business* (Routledge 2019)

Sjafjell, B. *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press 2015)

### Required readings and additional materials:

Required readings will be available for students at the beginning of the course.

Additional materials may be required to prepare course activities. The professor will give indications about such activities and the required materials.