

ENVIRONMENTAL GOVERNANCE and the Private Sector – ENV 5223
(Class satisfies the ABA experiential Course requirement)
(Class satisfies the MELP Environmental Economics core requirement)

2 hrs.

July 10-13; July 17-20 (1-4PM)

**Visiting Professor Victor B. Flatt (Case Western Reserve University School of Law;
Burke Center for Environmental Law) (he, him, his)**

Office Hours: by appointment (Room TBD or by Zoom)

Professor Victor Flatt, 713-922-0392, vflatt@vermontlaw.edu;
Vbf4@case.edu

Textbook: None – materials will be posted on TWEN; I do suggest that printing out the materials for classroom discussion may be helpful. A couple of parts of the course will be asynchronous (to watch on your own) in place of some parts of class meetings.

I WILL ALSO BE FORWARDING MORE recent short news articles about the topics that we will be covering. You should read these as well.

This class first examines the economic underpinnings for environmental law and for the power of markets, including moral questions about markets and private governance.

It then examines the push for more private sector accountability and governance in environmental matters (such as ESG (“Environment, Social and Governance”) and CSR (“Corporate Social Responsibility”) policies) and how this relates to legal requirements in the private sector, particularly laws governing financial and risk disclosure.

The class also looks at private sector environmental governance. In particular, the class will examine the concept of business sustainability drivers and practice, private environmental governance, and what legal standards apply.

Students will prepare

1) a short “in house” email memo (less than 2000 words) addressing a specific issue related to a publicly traded company and investor guidance and decisions [i.e. are the company’s environment/climate/social policy consistent with large investor concerns?], and

2) undertake a practical exercise in drafting either a) a corporate financial disclosure statement relating to environmental or climate risks, b) a corporate sustainability plan, c) a “comment” on private sector sustainability rules under consideration, or d) a private environmental governance agreement (contract). ***MOST IMPORTANTLY, all assignments will include explanations of parts/sections.***

Students may consult with each other on practical document drafting ideas but need to do their own work

There are no course pre-requisites

Grading and Curve

Grades will be based on both the in house email memo (40%) (due Monday, July 17 at beginning of class) and the draft and explanation of one of the above practical document drafting exercise (60%) (due on Sunday, July 23, by 5:00 P.M. E.D.T. by email to vflatt@vermontlaw.edu)

ATTENDANCE and participation is expected. Grades may be adjusted up or down for exceptional participation or inadequate attendance or participation.

From VLS Faculty manual:

VLS has a recommended average grade of B in required courses, sectioned courses, and courses with an enrollment over 40.

Modifications to the Syllabus

The instructor reserves the right to make modifications to this syllabus as necessary over the course of the semester.

July 10

DISCUSSION OF CLASS, ASSIGNMENTS, AND GRADING

- I. Introduction to property, environmental law, environmental externalities, market based solutions and objections
- II. Commodity Trading Primer
- III. Using the Private Sector and Private Economic Behavior- Are Markets Moral?

IV. Problems with Environmental Markets (standardizing the commodity; irreversible loss)

Assignments:

Garrett Hardin, Tragedy of the Commons (excerpt)

Carol Rose, Rethinking Environmental Controls . . . (Flatt edit)

E&E News, “Carbon Markets: The Epic Journey of a Modest Proposal,” May 2016;

Victor B. Flatt, *Chapter on Environmental Markets*

Pappas and Flatt. “The Costs of Commodification,” 9 U.C. Irvine L. Rev. 731 (2019) (Flatt edit);

(all on TWEN)

July 11

V. Private Environmental Governance

VI. The Demand for corporate Information and ESG

Assignments (these are all short):

Michael Vandenberg, *Private Environmental Governance* Introduction (excerpted from 99 Cornell Law Review)

Irma Russell and Roger Martella, Corporate Social Responsibility and Multinational Corporations

Sarah Light, The Law of the Corporations as Environmental Law (71 Stan. L. Rev. 137 (2019) (intro-Flatt edit)

Virginia Ho article, Modernizing ESG Disclosure (2022 Ill Law Rev), Part 1

Greenfin – The coming ESG Explosion

Rise of ESG Law Firms

(All on TWEN)

July 12

VII. The Elements of a Corporate Sustainability Plan and ESG

Measuring Intangibles SAM' CORPORATE SUSTAINABILITY ASSESSMENT METHODOLOGY

EP Next Generation Governance – Developing Position Statements Sustainability Plan

Have a printed or at least PDF of a Fortune 500 Corporate Sustainability Plan (your choice);

IN CLASS EXERCISE – Developing ESG Programs/Sustainability Reports

More in depth DISCUSSION OF FIRST ASSIGNMENT

July 13

VIII. The Sustainability Ratings AGENCIES

Discuss SASB Materiality at <http://materiality.sasb.org>

IX. Financial Disclosure Requirements Related to the Environment (Practice and Critique)

Assignment –

Jill E. Fisch, *Making Sustainability Reporting Sustainable*, 107 Geo. L. J. 923 (2019) [excerpt];

Virginia Ho article, part 2

ESG Reporting Frameworks and Regulations, point b

please review Sustainability Accounting Standards Board (SASB – Part of Values Reporting Foundation part of International Sustainability Accounting Standards Board) web presence (seek to understand how organization works (SASB – Bloomberg; ISSB; online materials; using your own search methods);

(all on TWEN)

July 17 will be asynchronous for you to watch on your own and post questions

Watch first 2 hours, 20 minutes of Sustainability Accounting Board March 2, 2022 meeting recording (about 15 minutes in middle is a break)–

[SASB Standards Board Meeting - March 2, 2022 - YouTube](#)

ASSIGNMENT:

Prepare 2 written questions about the presentation, and email to me by 11:00 AM on July 16, to vflatt@vermontlaw.edu

****First assignment due by 5 PM by email to vflatt@vermontlaw.edu**

July 18

In depth DISCUSSION OF SECOND ASSIGNMENT

Material Disclosure of financial risk - government regulation

Assignments:

Go online and find and download the official Securities and Exchange Commission (SEC) Reporting – Form 10-K (and explanations)

Virginia Ho article, Part 3

Hannah Vizcara, *Regulatory Activity and Legal Liabilities Affecting Management of Financial Climate Risk*, blog post, March 24, 2020

In class look at SEC Proposed Climate Financial Disclosure Rule;

(all on TWEN)

July 19 (SPECIAL TIME 1:00 to 2:30 – remainder of class is asynchronous)

Asynchronous portion, please view video of Flatt, et al. shareholder litigation and greenhouse gas issues BEFORE CLASS

https://uhlc.zoom.us/rec/play/n8JQ96bCeAdtsJcrbzET_-J953P6OMQV2o7dZzLMA4Flo8yJG7mJxOCi-xEhMksxy9mdoRwcnliuPozw.6ZnePE9stuhY_bXB?continueMode=true&xzmrtaid=AHsX-tMtR8ygtMT2O4ugJw.1614290658997.f17be7617b393ac07825e10665e7ec4a&xzmrhtaid=937

X. Additional Legal Liability Potential with ESG and Sustainability

Discussion of Shareholder proposal video
Financial Disclosure Discussion Continued
Shareholder Materiality and Litigation

Assignment:

Please email 2 questions about the asynchronous presentation before class 12:30 PM to (vflatt@vermontlaw.edu)

Latham and Watkins – ESG Litigation Roadmap (TWEN)

July 20

The Private Sector as Primary Environmental Regulatory Body (Absence of Government Policy and Power of Investment and Consumers)
Also conflicting government policy

Assignment:

Michael Vandenberg, *Private Environmental Governance* (Flatt edit), 99 Cornell L. Rev. 129 (2013) (TWEN).

Sarah Light, *The Law of the Corporations as Environmental Law* (71 Stan. L. Rev. 137 (2019) (part 2-Flatt edit)

Flatt, *Climate Change Adaptation: The Impact of Law in the Private Sector*, (with Yee Huang), white paper from the Center for Law Environment Adaptation and Resources, and the Center for Progressive Reform, August 2012, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2120083 (and on TWEN)

SECOND ASSIGNMENT due on Sunday, July 23, by 5:00 P.M. E.D.T. by email
vflatt@vermontlaw.edu