CURRICULUM INTERNATIONAL BUSINESS LAW: CLIMATE CHANGE AND SUSTAINABILITY

1. Contract Law and Psychology of Negotiations

Coordinator: Prof. mr. R.P.J.L. Tjittes and dr. R. Ronay

This course addresses the principles of contract law and the psychological dimensions of contract negotiations. It is a course in which the legal perspective and the behavioral perspective are intertwined.

The course does not deal with the specifics of national laws of contract; instead it focuses on the universal themes of contract law. This more abstract approach provides you with a broader understanding and prepares you for a future in which you will exchange thoughts with colleagues from other national jurisdictions.

The topics analyzed in the contractual component of the course include, but are not limited to: a) the notion of contract; b) formation of contract; c) validity of contracts; d) interpretation and contents; e) supervening events in the life of contract; f) remedies for non-performance; g) third-party consequences.

The component on contract negotiations will provide you with an experiential, simulation-based introduction to the theory and practice of negotiation and help you understand how your personal background, values, feelings and personal style affect your performance as a negotiator.

The topics to be discussed in the behavioral classes on negotiations will be: a) value distribution in single-issue, two-party negotiations; b) value creation in multi-issue, two-party negotiations; c) psychological factors in dispute resolution; introduction to counseling: the lawyer-client relationship.

2. The Anatomy of Corporate Law

Coordinators: Prof J Winter, Mr M Schouten, Mr K de Roo

This course addresses the economics of corporate law with a focus on the role that corporate constituencies play in the running of the corporation, as well as on the relations amongst them.
Rather than focusing on the analysis of specific legal systems, this course pays particular attention to the issue of the economic rationale behind different legal approaches to the organization of business corporations in contemporary societies. One of its main targets is to examine whether and how different institutional and economic settings justify tailored legal approaches to the regulation of business corporations.

The topics analysed in the course include, but are not limited to: a) the economics of shareholder behaviour; b) collective action problems and the rationale of the separation of ownership and control in business corporations; c) the duties of the directors of the corporation; e) the relationships between corporations and third parties; f) economic rationales for group structures and joint ventures; and g) behavioural aspects of corporate decision making.

3. International Law on Climate Change and Sustainability
Coordinator: Mr. C. Kaupa

Climate change and sustainability are global issues. International law thus seems to be the primary legal instrument to look at. In this course, we will first go into relevant international law concepts relating to climate change and sustainability. The role of international law, both its potential and its limitations, will be discussed. This part serves as an introduction. We then switch to the United Nations negotiations process, including the UN framework Convention the Kyoto Protocol and the Paris Agreement. The limits of the UN negotiating process and the potential for fragmentation of the climate regime will be considered. We then deal with a number of separate issues, such as the climate as a global common, the potential role of the international court of justice in climate change-related claims and climate engineering and international law. Last, a number of alternative international approaches will be looked at, such as climate change and international investment treaties and the WTO and Climate Change.

4. Problems of Market Regulation
Coordinator: Prof. dr. G. Davies

The course addresses the policy dilemmas and challenges involved in regulating markets. It tries to identify the interests and perspectives which conflict, and show how different approaches to regulation support or suppress certain of these interests or perspectives. The course is built around the why, how, what and who of markets: why do we want them? For welfare, in the economic sense, or for wellbeing, or both? How do we regulate them, and which techniques of regulation and governance achieve which goals? What do we want to be subject to market exchange, and which goods and services, if any, are either unsuited to
buying and selling because transacting them destroys their value, or unsuited to competition because they are natural monopolies? And finally, who should decide how a market is regulated, those with the relevant expertise, or political actors, and how do their roles interact? There is a certain emphasis on transnational markets, and the law and policy dilemmas, and trilemmas, which arise when a market spans multiple jurisdictions.

5. Energy and Climate Governance
*Coordinator:* prof. dr. P.H. Pattberg

Global governance of human-induced climate change, including both mitigation and adaptation, is a hotly debated subject. Current (international and transnational) climate policy is the result of a complex and long-lasting negotiation process at multiple levels of governance. In this process, the science of the complex earth and climate system is closely linked to questions on the socio-economic effects of climate change, the options for global environmental governance as determined by the structure of international organizations, international economic and political relations and environmental law. Reaching the 2 degree temperature target of the 2015 Paris Agreement will require a fundamental transition of global energy systems. Therefore the course will investigate the relation between climate change and global energy policy.

The course includes: an overview of the science of climate change, its impacts (IPCC Fifth Assessment Report) uncertainties, mitigation, adaptation; discussion of climate change policy options at multiple levels of governance, including the international climate change regime, national and European policies, and transnational approaches; analysis of the political challenges in climate change and the positions of different countries and actors; assessment of the economics of climate change including analyzing the flexible mechanisms (Emission trading, Clean Development Mechanisms) and options for Post Kyoto measures; analysis of the challenges for a transition to renewable energy at various scales; the relation between global energy policy (including its geo-political aspects) and the climate change regime.

6. Climate Change Liability
*Coordinator:* Prof. J.L. Smeehuijzen

Courts are a new front line of climate action with cases against governments, oil firms and energy companies. Advocates use the law to try to force stronger government action to cut carbon emissions, and win damages from the companies responsible to cover the costs of dealing with the impacts of warming. Lawyers won a rare victory – which in 2018 was affirmed in appeal – in the Urgenda case in the Netherlands, with the court ruling the Dutch state must increase its cuts to emissions. A Pakistani farmer has also won a ruling that the “lethargy of the state in implementing [climate policies] offends the fundamental rights of the citizens”. And a Peruvian farmer has sued German energy company RWE over its alleged contribution to the melting glaciers near his Andean hometown.
These are all matters of climate change liability. In this course, climate change liability will be addressed from a variety of legal disciplines. For a start, the traditional tort law perspective will be central, asking the question whether traditional tort law can realistically serve as a basis for a claims against emitters of greenhouse gases or governmental authorities that fail to take effective measures. Climate change liability is further addressed from a more public law perspective, for example questioning whether public law in a particular system could be used to call on a governmental liability for a failure to take action to prevent climate damage. We will end the course at the crossroads of public and private law, considering certain forms of interaction between their liability regimes.

7. The Circular Economy LAB
Coordinator: Dr. A. Duarte Correia

Our current economic, financial and business models lead to economic scarcity of resources. Our dependence on natural resources to achieve economic growth is no longer sustainable. Our production and consumption patterns exceed the environmental resources of our planet and its ability to provide us with all we need to maintain our current lifestyle.

A new circular economy model focus on e.g. longevity of products, in renewability, reuse and on minimizing waste and resource use. Rethinking the processes of production and consumption is thought to benefit the economy, boost innovation, global competitiveness and job creation. For the legal profession, the transition to a circular economy represents a new opportunity to rethink and adapt regulation to sustainable business models.

In Europe, the rethinking of regulation has been put in motion. In 2015 the EC adopted a Circular Economy Package including measures to support and stimulate Europe’s transition towards a circular economy. The EC has revised legislative proposals on reduction and management of waste.

This course examines the main principles and drivers for the transition to a circular economy, the legal implications, legal barriers and legal opportunities, and the rise of new sustainable business models. The course also explores some of the most pressing short-term business challenges, providing examples of problematic business products and business cases. Is technology innovation helping or working against the principles of the Circular Economy? Regulation is not designed to respond to the circular economy developments. What are the current challenges and how can regulation respond and protect consumer interests?

Industry experts and thought leaders will help us brainstorm and learn practical lessons from their first-hand experiences and their business circular economy expertise.

8. Corporate Social Responsibility
Coordinator: Dr. A. Duarte Correia

The business case for sustainability indicates that increased sustainability performance is not an obstacle to profitability; it is the key for the financial viability of corporations. It is also the
key for managing the exponential growth of the world population and of consumption. In this context, what are the corporation’s social responsibilities?

We will debate questions such as: which framework, mandatory or voluntary and integrated or not, is most suitable to contribute to the development and implementation of sustainability reporting? How can sustainability ratings (e.g. Dow Jones Sustainability Index) contribute to the development of corporate sustainability and responsible investment? How can large investors such as pension funds contribute to the development of corporate sustainability and responsible investment?

We will explore the underlying concepts of sustainability, materiality, stakeholder engagement, sustainability reporting, integrated reporting and responsible investment. How these topics are developing globally, with a particular focus on the European Union (EU) regulatory and voluntary developments, but also the United States and South Africa. We will look at landmark EU Directives, implications of international agreements such as the Paris agreement and the Sustainability Development Goals; the work of pioneer leading organizations such as the United Nations Global Compact, United Nations-supported Principles for Responsible Investment, Global Reporting Initiative, International Integrated Reporting Council, CDP, former Carbon Disclosure Project and the Sustainability Accounting Standards Board; the concept of shared-value and fiduciary duty; and the roles of the EU, national Governments and the investors, such as pension funds.