

SKILEX MÜRREN

CORPORATE GOVERNANCE IN THE GLOBAL ECONOMY

Main Lecturer: Prof. Jeff Whitehead, Cornell Law School

Co-Lecturer: Prof. Susan Emmenegger, Bern Law School

Dates: 15 November 2021, 18:15-20:00 (remote); 22 November 2021, 18:15-20:00 (remote). These classes will also be recorded. Further dates: Monday, 10 January 2021, 14:00 - Friday, 14 January, 12:00 (in-person, Mürren)

ILIAS: 451743-FS2022-0: Skilex Mürren

ECTS: 5

Information and sign-up: Florence.Zuber@ziv.unibe.ch

Course Description

Corporate governance is evolving globally. This course will focus on the U.S. approach to corporate governance. A principal focus will be on large, publicly-traded corporations that dominate much of the U.S. business environment.

This course focuses on basic duties around the corporate form by directors and officers in the modern corporation. This course will focus upon US solutions while inviting you to contribute your understanding of Swiss and EU solutions.

A wide range of knowledge and experience exists within the class, and many of you have not had prior experience with corporate law or the laws of other sorts of business organizations. No knowledge is assumed so please feel comfortable to ask questions about what you don't understand.

Learning Outcomes

(1) Ability to understand basic principles of corporate governance, including various forms of control. (2) Ability to analyze and apply legal principles to different factual circumstances. (3) Ability to evaluate certain legal documents affecting corporate governance.

Course Organization

This seminar will start with two introductory lectures given by Zoom. This will allow you to get a first impression of the class, the topics, and the lecturers. We will allocate the seminar topics after the second lecture.

We will meet again for a full week seminar in Mürren, starting on 10 January 2022 at 14:00. The seminar ends on 14 January 2022 at 12:00.

Students will present their assigned topic in German or English. The presentation should take between 15 and 20 minutes and will be followed by a discussion.

Written papers have to be submitted by 31 January 2022.

Grades will be based on the following criteria: 50% for the oral presentation (this includes general class participation). 50% for the written paper.

An active discussion will be encouraged. Please read the materials in advance of class and be prepared to discuss them in class. We will review some of what is in the readings, but will also spend time discussing issues beyond the materials on the basis that you have already read them. I (Prof. Whitehead) understand the students are very conversant in English, but papers may be presented in German, as German was my Hauptfach in my undergraduate studies.

Please note that the Syllabus indicates that some of the reading is optional. Accordingly, please check the Syllabus before beginning the reading for each class. Please also note that the Syllabus is subject to change. If changes are made, they will be announced in class.

Seminar Organization

The seminar takes place at the Hotel Eiger in Mürren. Students will stay at the Eiger Guesthouse. Rooms are mostly double rooms. We will assign the rooms to students of the same gender, except if another room assignment is specifically requested. We will try to accommodate all requests, but cannot guarantee this.

Costs: Rooms, breakfast and dinner are covered by the university. Students have to buy their own lunch and ski passes, as well as their train tickets to Mürren.

Daily Schedule: We will usually meet in the morning (except on the first day of the seminar) and discuss two topics until noon. In the afternoon, students are free to ski or explore the area. We will have another fireside talk about a variety of topics on US, Swiss, and EU law before dinner. Dinner and after-dinner activities are at the discretion of the students.

About Professor Whitehead

Professor Whitehead is an adjunct professor of at Cornell Law School. His specialization includes the law relating to corporate governance, financial markets, strategic transactions, general health law, food and drug regulation and mental health law, and he teaches courses in business law, complex healthcare transactions, healthcare systems, mental health systems and international drug and vaccine regulation.

In private practice, Professor Whitehead worked in the United States, Europe, and Asia as outside counsel, and general counsel of several multinational financial firms for more than thirty-four years. Among his practice areas, Professor Whitehead represented U.S. and non-U.S. public and private firms in overall corporate management, as well as in M&A and other strategic transactions. Professor Whitehead is a active member of the American Health Lawyers.

Professor Whitehead received his B.A., from Brigham Young University and his J.D. from Brigham Young University Law School, cum laude. Following graduation, Professor Whitehead was law clerk to Judge Bruce R. Thompson of the United States District for Nevada.

DATES AND TOPICS

Monday, 15 November 2021	Introduction
18:15 - 20:00 Remote (zoom)	Basic duties and responsibilities Materials: Shareholder Voting Excerpts from <i>Smith v. Van Corkom</i> ; <i>Blasius Industries, Inc. v. Atlas Corp</i>
Monday, 22 November 2021	Introduction
18:15-20:00 Remote (zoom)	Extension and further discussion of basic duties Materials: Unocal and Revlon Duties
SKILEX IN MUERREN	
Monday, 10 January 2022	Senior Management
14:15 - 16:00 Hotel Eiger Conference Room Pre-dinner: fireside talk	

	<u>Materials:</u> Excerpts from <i>Unocal Corp. v. Mesa Petroleum Co.</i> , <i>Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.</i> , and <i>Air Products and Chemicals, Inc. v. Airgas, Inc.</i>
Tuesday, 11 January 2022	Activist Shareholders
9:15 - 12:00 (incl. breaks) Hotel Eiger Conference Room Pre-dinner: fireside talk	<u>Materials:</u> Activist Shareholders; Changes in Senior Management? Marcel Kahan & Edward B. Rock, Embattled CEOs
Wednesday, 12 January 2022	Introduction to Derivatives and New Equity Products
9:15-12:00 (incl. breaks) Hotel Eiger Conference Room Pre-dinner: fireside talk	<u>Materials:</u> Excerpts from Frank Partnoy & David A. Skeel, Jr., <i>The Promise and Perils of Credit Derivatives</i> . Please also skim: Robert M. McLaughlin, <i>Over-the-Counter Derivative Products</i> , Chapter 3 Derivatives
Thursday, 13 January 2022	The Changing World of Equity
9:15-12:00 (incl. breaks) Hotel Eiger Conference Room Pre-dinner: fireside talk	<u>Materials:</u> Ronald J. Gilson & Charles K. Whitehead, <i>Deconstructing Equity: Public Ownership, Agency Costs, and Complete Capital Markets</i> , and excerpt from <i>CSX Corp. v. The Children's Investment Fund Management (UK) LLP</i> and Note on the Growing Role of Derivatives
Friday, 14 January 2022	Moral Hazard: The Changing World of Debt
9:15-12:00 (incl. breaks) Hotel Eiger Conference Room Pre-dinner: fireside talk	<u>Materials:</u> Excerpt from Paul Milgrom & John Roberts, <i>Economics, Organizations and Management</i> ; <i>Marriott Corp. Spinoff (A)</i> ; Charles K. Whitehead, <i>The Evolution of Debt: Covenants, the Credit Market, and Corporate Governance</i> . Please recall: Partnoy & Skeel, <i>The Promise and Perils of Credit Derivatives</i>

STUDENT PRESENTATION TOPICS

The materials are loosely related to the presentation topics, but they also serve as a general source on US corporate law. The student presentations will serve as a starting point for the lecture and discussion during the seminar. In other words: Prof. Whitehead will pick up on the presentation and expand it further.

Number	Topics	Student name
1	Can a board be required to investigate mergers and acquisition under the duty of loyalty as well as the duty of due care, if so, how?	
2	What objectives of board governance are protected by the business judgment rule and which categories would not be protected	
3	What are recent developments in corporate governance under the business judgment rule?	
4	[tbd]	
5	What is the role of Sarbanes-Oxley legislation in regard to corporate financials and corporate board relations with auditors?	
6	What were the lessons of the financial crisis with regard to corporate governance? Are there clear lessons to be learned?	
7	By what standard should a corporate board's decision to issue debt instrument be governed?	
8	What social duties do corporate board members assume while managing their duty of due care and loyalty to the company?	
9	How did the financial crisis of the 2005-07 alter the duties of due care and loyalty?	
10	Do the new financial accounting standards of the US and Europe modify a board's fiduciary duties, and if so how?	