

CORPORATE RESPONSIBILITY

Syllabus

April 11, 12, 25, 26, 2024

5:30-8:30PM on weekdays and 4:00-7:00PM on weekends

Welcome to Corporate Responsibility. Financial misconduct is often perpetrated in the context of operating businesses. It leads to tremendous financial losses, loss of reputations, lawsuits, government penalties, bankruptcy, criminal proceedings and many collateral consequences.

For example, when Enron's fraud (the largest ever at that time) was uncovered in October 2001, shareholders lost approximately \$74 billion. Hundreds of lawsuits were spun off. Multiple large bankruptcies were filed. Dozens of high-profile criminal proceedings were initiated. Enron's employees lost most of their retirement funds. Arthur Andersen LLP, one of the Big Five business accounting firms in the world, was criminally indicted just before it also collapsed and its 85,000 employees lost their jobs.

This is why understanding various remedies and checks and balances available in corporate operations is critical for the investigation, uncovering, prevention, and prosecution of financial improprieties and crimes. This is true for big and small business operations alike. The scale of business operations is of no consequence, when fraud, fraudulent conveyances, embezzlement, conversion, and other financial improprieties and crimes are concerned.

This course will address various remedies, checks, and balances available in corporate operations for the investigation, uncovering, prevention, and prosecution of financial improprieties and crimes. It will expound on legal and equitable remedies available to victims of financial misconduct. It will help you better understand how to navigate such remedies and establish checks and balances by delving deeper into intra-corporate structures, conduct, and management obligations.

I. Introduction

A. Corporate Structure Fundamentals

B. Problems in Corporate Transactions and Activities

1. Introduction
2. Conflicts of Interest Between Governance and Corporation
3. Insider Transactions and Self-Dealing
4. Misrepresentations
5. Concealments
6. Transfers
7. Embezzlement
8. Conversion
9. Violating Laws and Regulations to Advance Corporate Goals (*e.g.*, bribing governments)
10. Tortfeasor Enrichment
11. Government Interventions (forfeiture proceedings, False Claims Act actions)

II. Civil Law Tools to Redress Harm Caused by Financial Misconduct

A. Causes of Action

1. Misrepresentation Fraud
2. Transfer Fraud
3. Preferential Transfers
4. Other Intentional Torts
5. Non-Intentional Torts

B. Remedies

Legal vs. Equitable Dichotomy

1. Pre-Judgment Remedies
2. Post-Judgement Remedies
3. Bankruptcy

4. The Civil Dossier: Consistency in Subsequent Litigation

- (i) Issue Preclusion
- (ii) Claim Preclusion
- (iii) Judicial Estoppel

III. Establishing Checks and Balances

A. Corporate Management Obligations—Duties to the Corporation and the Shareholders

B. Corporate Management Obligations—Duties to Creditors (employees, government agencies, trade creditors, general creditors)

- 1. Fiduciary Duty of Care
- 2. Fiduciary Duty of Loyalty
- 3. Fiduciary Duty of Good Faith
- 4. Fiduciary Duty to Act Fairly and Honestly
- 5. Fiduciary Duty to Avoid Diverting Assets
- 6. Fiduciary Duty to Avoid Dissipating Assets
- 7. Fiduciary Duty to Avoid Unduly Risking Assets
- 8. Obligations and Bankruptcy Considerations

B. Checks and Balances

- 1. Separation of Powers
- 2. Moderating Officer Authority
 - (i) Compliance Committees (shareholders, directors, officers)
 - (ii) Employee Discharge Committees
 - (iii) Creative Use of Committees—independent decision makers
- 3. Independent Audits
- 4. Mandatory Disclosures
- 5. Mandatory Recusals
- 6. Veto Powers
- 7. Independent Directors