New York University  
Stern School of Business Administration  
B023101 Sec 1- Professional Responsibility

Fall, 2004         Professor Larry Zicklin  
Time: Tuesday: 9:00 AM - 10:20 AM     Tel#: 476-9200 fax-476 9209
Class Room: KMEC Room 3-70            email: lzicklin@nb.com
Office Hours: Tuesday -10:30-12:00 (Or by Appointment)

Objectives

The purpose of this course is to introduce the student to a broad range of “non-market” issues encountered by managers and business professionals, and to help the student develop a set of analytical perspectives for making judgments when such issues arise. In economics many of these issues can be described as market failures. To a limited extent, we will illustrate how the legal system is used to redress such failures of the market economy. We will also examine the role of ethical norms and reasoning in resolving such issues in managerial life, and in establishing standards of professional responsibility. More directly, the student in this course will exercise professional judgment through discussion and analysis. Most such exercises will require the analysis of one or more cases, as indicated on the attached schedule of class assignments. In addition, we will study writings in the fields of ethical reasoning, professional responsibility, and the law.

In this particular section of Professional Responsibility we will emphasize the FINANCIAL SERVICES industry, as this is where your instructor has spent his career and where many of the students will be spending theirs. In addition, we cannot ignore the events of the past few years and we will devote considerable time reviewing the cases that have been so prominent in the news. We will, however, do them in greater detail and spend the necessary time in attempting to determine what happened and why. Finally, it is reasonable to expect that more news of lapses in professional responsibility will occur during the semester and we will interrupt our planned syllabus and take the time to investigate those that seem most relevant. In addition, we will attempt to invite some guests to class who might shed further light on some of the subjects we will be discussing.

Our semester will be devoted to teaching the most difficult of business subjects: that is the matter of good judgment. No matter how many tools you acquire, the application of good judgment will make all the difference in your career. During these weeks we spend together, there will be an attempt to sensitize you to the seductions that money, power and ego create. We will emphasize the “slippery slope” and how it often overrides good judgment. If you doubt it, consider the following comment in Business Week from Joseph Berardino, former CEO of Andersen Worldwide, who reputedly earned an estimated $3 million a year: “I paid the price, I lost my job. I lost my firm. I’ve got less money today than I had as the newly elected CEO. I lost my partner capital. I lost my retirement. I don’t have any stock options. I may never work again.” In short, we are into serious stuff.
Preparation for Class

The student’s primary obligation in this course is to prepare for class discussion by a thorough reading and analysis of assigned materials. There will be many individual readings but they are normally only a few pages in length. Case discussions and in-class activities are an essential part of the course. Sessions #2 through #14 each have a number of study questions. Students are responsible for mentally preparing answers to all these questions before coming to class. As a basis for further discussion, I will call on students to provide their answers orally.

Written Study Question Analyses

Each student should perform a written analysis for 3 study questions over the course of the term. That is, for 3 sessions the student should write out an analysis for any one of the assigned study questions. These analyses should be no more than 1000 words in length.

Term Project

Students are responsible for a term paper described on the attached page.

Grading

The weights for the student’s overall grade are:
Class Participation 20%;
Written Study Question Analysis 40%;
Term Project 40%.

Textbook

Most cases and readings for this course are found in “Cases and Readings in Professional Responsibility: Markets, Ethics, and Law” 2004-05 Edition available in the NYU Professional Bookstore. Note that the edition for the current academic year is different from prior editions. Our syllabus also contains additional cases or readings that are marked by an asterisk and which will be available on Blackboard.

Final Note

I will try to keep the course as relevant as I can by spending a few minutes at the beginning of every class talking about current events that impact on the subject of Professional Responsibility. This will occasionally involve a new reading that will sensitize you to the issues. Please monitor Blackboard on a daily basis and make yourself familiar with what has been posted. And fear not, some events will take place during the semester.
TERM PROJECT: GUIDELINES FOR CASE ANALYSES

The purpose of this paper is to allow the student to apply principles of professional responsibility to an actual business situation. The student will describe the situation which may be taken from the media or from personal experience and which is pertinent to the area of Professional Responsibility. It would be unusual for the subject to be completely covered in the press so additional investigation will be required.

I. Situation

Provide a description of the situation or practice. This description must be detailed and rich enough to allow the reader a clear sense of the issues and circumstances. You might also list some initial potential solutions that would be subject to later analysis.

II. Analysis

Apply some methods of ethical or legal reasoning to the situation and expand upon some of the potential solutions that should then be analyzed using appropriate concepts from our readings or class discussions. The student should also cite the relevant law if applicable.

III. Resolution & Conclusion

Describe how the situation was actually resolved (if it was) or how you would choose to resolve it either from the alternatives in Section I or from new alternative that emanated from your analysis. Discuss the resolution and support your arguments in light of the ethical or legal analysis from section II. Students are asked to clear topics in advance and be responsible for writing their own paper.

IMPORTANT: Good performance (hence good grades) for this assignment consists of systematically and thoroughly applying relevant concepts and methods from the course to the situation, and in testing the worth of those concepts and methods in resolving the ethical issues presented. The methods and concepts may come from the written material or our classroom discussions. The solution should not only be well supported, but it must be reasonable in the light of the situation presented.

NOTE: Project descriptions (1-page) are due on session 7.

Written Projects are due on session 11.
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<td><strong>Introduction—Economics of Market Failures</strong></td>
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<td></td>
<td><strong>Cases:</strong> “The Price of Lobster Thermidor”</td>
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<td></td>
<td>From the Economist (p. 353)</td>
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<td><strong>Read:</strong> Economic Theories of Regulation: Normative v Positive”</td>
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<td></td>
<td>by Linda N. Edwards and Franklin R. Edwards (p.5)</td>
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<td>Making an Ethical Decision</td>
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<td></td>
<td>by Terry Halbert and Elaine Ingulli (p. 15)</td>
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<td>Moral Hazard</td>
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<td>by Robert S. Pindyck and Daniel L Rubinfeld . (p. 10)</td>
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<td>Our Schizophrenic Conception of the Business Corporation</td>
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<td>by William T. Allen (p. 35)</td>
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<td>Neutral, Omni-partial Rule-Making</td>
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<td>By Ronald M. Green (p. 22)</td>
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<td>“Ethics and the New Game Theory”</td>
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<td>by Gary Miller (p.26)</td>
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**Study Questions**

1. Why do market failures tend to bring about law or regulation to counter their effects?
2. What market failures or imperfections are present in the “Lobster Thermidor” case?
3. Based on the Halbert & Ingulli reading, identify at least one market failure related to your employment situation and apply the methods of ethical reasoning to that failure.
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<td>Truth and Agency (Truth and Disclosure)</td>
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**Cases:**
"Bitter Pill: How a Drug Firm Paid for University Study, Then Undermined It" (p.53)
by Ralph T. King, Jr.

"Heartfelt Advice, Hefty Fees"
by Melody Petersen (p.59)

"Two Insurance Brokers Are Sued Over Disclosure Of Commissions”*
By Theo Francis (Blackboard)

**Read**
“The Numbers Game”
By Arthur Levitt (p. 67)

“Is Business Bluffing Ethical?”
by Albert Carr (p. 73)

“Double Agents in the Financial System”
by Roy C. Smith (p.78)

**Study Questions**

1. Would Albert Carr voice any objections to the corporate actions of Boots described in “Bitter Pill”? Why or why not? Do you agree with Carr? Why or why not?

2. How would Gary Miller assess the long-term effects of bluffing as applied to the “Heartfelt Advice” case? Would Albert Carr agree?

3. The markets pay high multiples for consistent earnings growth. Managements typically own large amounts of stock in their companies through the process of option grants. If you were a CEO, how would you rationalize those facts with Arthur Levitt’s observations in “The Numbers Game”
**Session**  
**Topic and Assignments**  
**Date**

3. Gifts, Side Deals, and Conflicts of Interest  
9/21

**Cases:**

“Wall Street and the Nursery School: A New York Story”  
By Gretchen Morgenson and Patrick McGeehan (p. 99)

“Roger Berg”  
by Ronald M. Green (p. 88)

“A Bribe by Any Other Name”  
by Neil Weinberg (p. 96)

“Biotech Firm Claims Piper-Jaffrey Halted Coverage of It As Payback” * (Blackboard)  
by Randall Smith and Geeta Anand

by Deborah Solomon and Robert Frank (Blackboard)

**Read:**

“Bribery and the Foreign Corrupt Practices Act”  
by Kenneth W. Clarkson et al. (p. 94)

“The Social Responsibility of Business Is to Increase Its Profits”  
by Milton Friedman” (p. 346)

**Study Questions**

1. Using “NORM” (Neutral Omni-Partial Rule Making) and the reading on Ethical Decision Making, create a policy for investment research that would be fair to the public and still enable investment banking firms to compete.

2. How should American executives respond when their foreign competitors are bribing officials in developing countries? Should they refrain and risk losing business? Should they make the requested payments, perhaps through a series of intermediaries?

3. What’s wrong with “Pay to Play” from the Weinberg reading? What might Friedman think about it?
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<td>Agency and Fiduciary Duty</td>
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**Cases:**
- “Quality Department Stores” by Lawrence Zicklin (p. 109)
- “Old City Enterprises” by Lawrence Zicklin (p. 110)
- “The Man Who Paid the Price for Sizing Up Enron” by Richard A. Oppel, Jr. (p. 113)
- “Hat Trick” by Gretchen Morgenson (p. 102)
- “Plasma International” by TW. Zimmer and P.L. Preston (p. 115)
- “You Bought, They Sold” by Mark Gimein (p. 117)

**Read:** “Duties of Agents and Principals” by Kenneth Clarkson, et al. (p. 124)

**Study Questions**

1. Sketch out the relationships between parties described or implied in the case “Quality Department Stores.” Which of these can be called “fiduciary” relationships? Justify your answers. Given your analysis, how should the investment manager vote?

2. Which fiduciary duties might be at issue in the “Old City Enterprises” and “Plasma International” cases? Did the responsible executives properly represent their shareholder interests as well as ethical standards? Are there any issues of Moral Hazard present here?

3. To whom did Chung Wu owe a fiduciary duty in the Sizing up Enron case? Would Friedman or Carr have fired him? How about Green?
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<td>Sales and Marketing Ethics</td>
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**Cases:**
- “The West Virginia Consolidated Investment Fund” by Ingo Walter (p. 140)
- “Responsibility Yes, But To Whom?” by Lawrence Zicklin (p. 144)
- “Commissions on Sales at Brock Mason Brokerage” by Tom L. Beauchamp (p. 137)
- “NASD Says Firm Gave Improper Rewards.. Morgan Stanley Official Find; Incentives Used to Boost Sales of Proprietary Mutual Fund”* by Tom Lauricella (Blackboard)

**Read:**
- “Investment Management: Business or Profession and What Role Does the Law Play?” by John C. Bogle (p. 154)

**Study Questions**

1. Analyze the “West Virginia CIF: case using any of the past readings as a reference. What would you do in Harry Neven’s position? Why?
2. In his article, “Investment Management: Business . . . or Profession,” John Bogle implies that much of the mutual fund business is driven by moral hazards and agency problems. Do you agree? Justify your position.
3. Morgan Stanley earns more from its proprietary funds than from selling outside funds. Why shouldn’t it promote them?
**Session**  
6. **Discrimination**  

**Date**  
10/12

**Cases:**  
- “Foreign Assignment”  
  by Thomas Dunfee and Diana Robertson (p.415)
- “Morgan Stanley Settles Bias Suit for $54 million”*  
  (Blackboard)  
  by Kate Kelly and Colleen DeBaise
- "Wall Street Highflier to Outcast: A Woman's Story"*  
  (Blackboard)  
  by Patrick McGeehan
- “Too Old to Work?”  
  by Adam Cohen (p.429)

**Read:**  
- “EEOC Guidelines Excerpt” (p.425)
- “When Fear of Firing Deters Hiring”  
  by Jeffrey Seglin (p.420)
- “Sexual-Orientation Protection Added to New York Law”  
  by Casey J. Dickinson (p.436)

**Study Questions**

1. In the “Foreign Assignment” case, how would you judge the actions of Bill Vitam? Use ethical concepts and methods, as well as the law to justify your position.

2. If a group such as white males is over-represented in terms of demographic proportions within certain executive job categories, can a firm actively favor women or non-whites in filling future vacancies? And if so, what are the criteria?

3. If you were the CEO, would you have settled the “Morgan Stanley” case? How would you factor in the possibility of significant negative publicity?
## Session 7: Health Care Ethics

**Guest Speaker Dr. Ken Berkowitz**

### Date: 10/19

#### Cases:
- Recruiting Trouble: As hospitals Battle for Patients, A Prosecutor Alleges Bribery  * (Blackboard)
  by Rhonda L. Rundle
- “Merck Takes Author’s Name Off Vioxx Study”* (Blackboard)
  by Thomas M. Burton
- “Pfizer to Settle Medicaid-Fraud Case—Drug Maker Agrees to Pay About $430 Million in Fines over Neurontin”* (Blackboard)
  by David Armstrong and Rachel Zimmerman
- “Results of Drug Trials Can Mystify Doctors Through Omission”* (Blackboard)
  by Barry Meier

#### Readings:
- “How Tightly Do Ties Between Doctor and Drug Company Bind?”*  
  by Abigail Zuger, M.D. (Blackboard)
- “Disorders Made to Order”  
  by Brendan I. Koerner (p. 147)
- “The Selling of Breast Cancer”  
  by Susan Orenstein (p. 129)

### Study Questions

1. Should pharmaceutical companies be held to business or ethical standards that are different from those of the rest of Corporate America? Why or why not? Justify your answer.
2. Should pharmaceutical companies be required to make their research failures public? Why or why not?
3. By necessity, Doctors and pharmaceutical companies are closely bound. Devise a strategy that would insure that their relationship is not harmful to the public.

**PROJECT DESCRIPTION DUE TODAY**
8. **Whistle Blowing and Loyalty**

**Cases:**
- “Moment of Truth: A Whistleblower’s Dilemma in the Financial Services Industry”* (Blackboard) by Donald Schepers
- “A Whistle-Blower Rocks an Industry” by Charles Haddad, with Amy Barrett (p. 178)
- “Doctor Explains Why He Blew the Whistle” by Melody Petersen (p. 182)

**Read:**
- “The Return of Qui Tam” by Priscilla R. Budeiri (p. 193)
- “Personal Business: Blowing the Whistle: Not for the Fainthearted”* by  Marci Alboher Nusbaum (Blackboard)
- “States Passing Whistleblower Statutes” by Steve Seidenberg (p. 184)

**Study Questions**

1. Consider the position of Joel Steiner in the "Moment of Truth” case. Did he handle the situation correctly? Did he have alternatives? Would you have done anything differently, and if so, why? Use readings and ethical concepts to support your position.

2. Is the Qui Tam policy a good idea? If it is, why shouldn’t corporations offer rewards to employees who blow the whistle on their colleagues?

3. Should regulators react to the firing of Chung Wu in the Personal Business Case? Why or why not? How would you react if you were a Paine Webber client? What if you were the company CEO?

**Final Project Descriptions Are Due Today**
9. Corporate Governance

Cases: Excerpts from the Report of a Special Committee Investigating Enron” (p. 239)

“Testing the Limits of the Business Judgment Rule”
by Roger LeRoy Miller and Gaylord A. Jentz (p. 238)

Read: “The Business Judgment Rule”
by Jane P. Mallor, et al. (p. 227)

“The Director’s New Clothes”
by Robert Monks and Nell Minow (p. 230)

“Is There a New Sheriff in Corporateville?”
by Thomas O. Gorman and Heather J. Stewart (p. 243)

“Crisis of Corporate Ethics”
by Roy C. Smith (p. 257)

Study Questions

1. Do you have any problems with the courts decision in the “Testing the Limits…” case? Why or why not? Should the “Business Judgment Rule” be changed?

2. Had the “New Sheriff in Corporateville” been there a few years ago, would it have changed the events in the Enron case?

3. Does “The Director’s New Clothes” lead you to believe that the scandals of the last few years were preventable, or were they inevitable?
Session 10. Insider Trading

Cases:
- “Raymond Dirks and Equity Funding of America” by Roy C. Smith (p. 281)
- “Trading Room Ethics” by Lawrence Zicklin (p. 272)
- “Insider Trading After O’Hagen”* by David Zornow & Keith Krakaur (Blackboard)
- “Nortel Gave Bonuses Before Selloff—Cash Payments Preceded Warning of Restatement: Accounting Probe Widens”* (Blackboard) by Ken Brown and Mark Heinzl

Read:
- “Insider Trading Notes” by Constance E. Bagley (p. 284)
- “Celebrities May Be Tip of Insider Trading Iceberg….”* (Blackboard) by Alison Beard and Julie Earle

Study Questions
1. Did the “O’Hagen” Case break any new ground regarding the misappropriation theory? Why or why not?
2. Is “Ray Dirks’” behavior consistent with the concept of fiduciary duty? Why was he reprimanded by the SEC but ultimately exonerated by the Supreme Court? Use ethical concepts and methods to support your position.
3. Outline the procedures Teri Forman employs to move large blocks of stock in “Trading Room Ethics.” Is this insider trading? Why or why not? In Teri’s position, would you act any differently? Consider the fact that many of her competitors do the same thing?
4. If the Board of Directors approved the compensation in the “Nortel” Case, what is the problem?
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<td>Social Responsibility to Stakeholders</td>
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**Cases:**
- “Needy & Company”*
  by Lawrence Zicklin (Blackboard)
- “Curem Pharmaceutical”*
  by Lawrence Zicklin (Blackboard)
- “Cut Loose”
  by Anne-Marie Cusac (p.340)
- “Credit Card Companies Target New Niche: The Mentally Disabled” (p. 334)
- “Bally’s Grand Casino, for Elaine Cohen, is Her One True Home” (p. 331)
  by Heidi Evans

**Read:**
- “The Right Thing When Good Ethics Aren’t Good Business”
  by Jeffrey L. Seglin (p. 338)

**Study Questions**

1. What advice would Milton Friedman give to the CEO of Needy? Would you agree with him? If you were the CEO of Needy, how much pressure would you put on Janet to take on this new responsibility? Use ethical methods and concepts to support your position.
2. How might Milton Friedman react to the facts in the Curem case? What alternatives might he consider?
3. Does IBM owe any duty to Fran Asbeck (“Cut Loose”) regarding his health care benefits upon retirement? How would Allen (Schizophrenic Conception of the Business Corporation”) and Friedman (“Social Responsibility is to Increase Profits”) respond to IBM’s behavior?
Session | Topic and Assignments | Date  
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Cases: “The Oil Rig”  
by Joanne B. Ciulla (p. 355)  

“Lives Held Cheap in Bangladesh Sweatshops” (p.363)  
by Barry Bearak  

“Sweatshops: Finally Airing the Dirty Linen”*  
by Aaron Bernstein (Blackboard)  

Read: “In Praise of Cheap Labor: Bad Jobs at Bad Wages Are Better than No Jobs at All” (p.368)  
by Paul Krugman  

“Moral Minimums for Multinationals”*  
by Thomas Donaldson (Blackboard)  

“Universal Declaration of Human Rights”  
United Nations (p. 374)  

“Human Rights on the Eve of the Twenty-First Century”  
by His Holiness the Dalai Lama (p. 372)  

Study Questions  

1. Using Thomas Donaldson’s writing as background, analyze the Oil Rig and Bangladesh Sweatshop cases.  
2. Donaldson argues for the existence of 10 basic human rights. If human rights exist, what responsibilities do corporations have to see that they are respected? Should corporations have the same ethical responsibilities as individuals?  
3. How would Krugman, and Donaldson react to companies verifying their conformance to labor standards in third world countries? Support your arguments.  

*Final Written Papers Are Due Today*
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**Cases:**

- A.H. Robins: The Dalkon Shield  
  By A.R. Gini and Terry Sullivan (p. 383)

- Legal Myths: The McDonald’s “Hot Coffee” Case (p. 403)

- “Unreasonably Dangerous: Greene v. Boddie-Noell Enterprises”  
  by J. Jones (p. 405)

- “In Door Safety Cases, Ford Settles and a Mother Struggles.”*  
  (Blackboard)  
  by Ralph Blumenthal

**Read:**

- “Strict Liability and Product Liability”  
  by Kenneth W. Clarkson, et al. (p. 407)

- “The Class-Action Quandary: Cash Payment, No Apology”  
  by Meryl Gordon (p. 391)

**Study Questions**

1. The “A.H. Robins” Senior Management and Board were composed entirely of men. Would this case have been different if there were a reasonable representation of women in these roles?

2. Was the “McDonalds” and “Greene v. Boddie” cases just a lawyer’s pay day, or are there substantive issues here?

3. Does “Strict Liability” seem unfair to you? If so, how would you change it?
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<td>14.</td>
<td><strong>Enron, WorldCom, Adelphia, Imclone, Qwest, HealthSouth:</strong> What’s Going On?</td>
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**Cases:**

“Crimes of Others Wrecked Enron, Ex Chief Says”  
by Kurt Eichenwald*  
(Blackboard)

**Read:**

"What’s Wrong?  Venal Sins: Why the Bad Guys of the Boardroom Emerged en Masse”*  
by David Wessel (Blackboard)

"Joe Berardino Presided Over the Biggest Accounting Scandals Ever and the Demise of a Legendary Firm. Here’s What Happened.”*  
by John A. Byrne (Blackboard)

"Restoring Trust in Corporate America"  
by John A. Byrne *(Blackboard)

"Analysts' Contracts Link Pay to Deal Work"  
by Charles Gasparino* (Blackboard):

**Study Questions**

1. Is Joe Berardino a victim or a responsible party?
2. Given what happened at Enron, why shouldn’t Ken Lay be held responsible?  
What if he didn’t know?
3. Sell-side analysts and investment bankers have been linked for years. Why did their relationship cause such disastrous problems during the late 90s? Why shouldn’t they be linked? Were they the only culprits?