LEONARD N. STERN SCHOOL OF BUSINESS
NEW YORK UNIVERSITY

PROFESSIONAL RESPONSIBILITY:
MARKETS, ETHICS & LAW (B02.3101.03)
Fall Term 2004

Meeting Time: Wednesday 9:00-10:20
Classroom: KMC 2-90

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COURSE 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 or imperfections. 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.

TEXTBOOK
All cases and readings for this course are found in:
Professional Responsibility: Markets, Ethics, and Law

The textbook is available in the NYU Professional Bookstore. Note that the edition for the current academic year, 2004-05, is different from prior editions. Make sure you have the current edition.
PREPARATION FOR CLASS
Each class session consists of several study modules. Each study module contains readings and study questions. Your primary obligation in this course is to prepare for class discussion by thorough reading and analysis of assigned materials. Case discussions and in-class activities are an essential part of the course. All students are responsible for mentally preparing answers to all of the study questions before coming to class. The instructor will ask some students to provide their answers orally, as a basis for further discussion.

GRADING
The weights for the student’s overall grade are:

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<tr>
<th>Component</th>
<th>Weight</th>
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<tr>
<td>Class Participation</td>
<td>20%</td>
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<tr>
<td>Homework: Written Study Question Analysis</td>
<td>40%</td>
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<tr>
<td>Term Paper Project</td>
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HOMEWORK: WRITTEN STUDY QUESTION ANALYSIS (2 to 3 pages typed)
Each student should perform a written analysis for 5 study questions over the course of the term. That is, for 5 sessions of his or her choosing the student should write out his or her analysis for any one of the assigned study questions. These analyses should be 2-3 pages in length. The student can submit more than 5 written analyses, but only the top 5 grades will count.

TERM PAPER DESCRIPTION: (1 page typed)
DUE: Session 4
A one-page description of your term paper project as described below.
TERM PAPER PROJECT: (8 – 12 pages typed & double-spaced)
DUE: Session 10
The purpose of this paper is to allow the student to apply principles of professional responsibility to an actual, specific business situation. The student will describe a situation with which he or she has first-hand familiarity. The student may have been a major or minor actor in the situation, or may have merely witnessed the situation. In any event, the requirements are that the situation raise ethical or legal issues and that the student was there. It would not be appropriate to analyze a situation if you were not in a position to observe it directly.

The paper should have the following major sections:

I. Situation
Provide a description of the situation or practice; this description must be detailed and rich enough to allow the reader to get a clear sense of the issues and circumstances (2-4 pages).

II. Analysis
Apply some method or methods of ethical (or perhaps legal) reasoning to the situation and examine the results of this application. Are the results logical, beneficial, counter intuitive, or in any other way problematic? Here the student should apply, wherever appropriate, concepts from the course and its readings. Also, the student should cite the relevant law (2-4 pages).

III. Resolution & Conclusion
Describe how the situation was actually resolved. Discuss this resolution in light of the ethical analysis from section II (2-4 pages).

Evaluation of Term Paper Project: Good performance (hence good grades) on 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 it presents.

Confidentiality of Term Paper Projects:
The contents of the term paper projects that you submit are held strictly confidential. The term papers are not read by anyone other than the professor and are not disseminated in any fashion to other person(s).
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<tr>
<th>COURSE SCHEDULE</th>
<th>TOPICS &amp; ASSIGNMENTS</th>
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<td><strong>SESSION #1</strong></td>
<td><strong>INTRODUCTION: MARKET FAILURES &amp; PROFESSIONAL DILEMMAS</strong></td>
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| **DATE:** 9/8/04 | **Read:** “Economic Theories of Regulation: Normative v Positive” by Linda N. Edwards and Franklin R. Edwards (p.5)  
(Economics of Market Failure)  
“Making an Ethical Decision” by Terry Halbert and Elaine Ingulli (p.15)  
(Ethical Theories)  
“The Price of Lobster Thermidor” from *The Economist* (p.353)  
“Pollution Case Highlights Trend to Let Employees Take the Rap” by Dean Starkman (p.301)  
**Study Questions**  
1. Why do market failures tend to bring about laws or regulations to counter their effects?  
2. Based on the Edwards article which market failures or imperfections are present in the “Lobster Thermidor” case? In the “Pollution” case?  
3. How might ethical methodology help an executive or legislator to make more effective decisions in the presence of market imperfections?  
4. 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 this market failure. |
| **SESSION #2**   | **TRUTH & DISCLOSURE** |
| **DATE:** 9/15/04| **Read:** “Is Business Bluffing Ethical?” by Albert Z. Carr (p.73)  
“Ethics and the New Game Theory” by Gary Miller (p.26)  
“Double Agents in the Financial System” by Roy C. Smith (p.78)  
“The Numbers Game” by Arthur Levitt (p.67)  
**Cases:** “Bitter Pill” by Ralph T. King, Jr. (p.53) |
“Familiar Refrain: Consultant’s Advice on Diversity was Anything but Diverse” by Douglas A. Blackmon (p.59)

“Today’s Analyst Often Wears Two Hats” by Roger Lowenstein (p.65)

**Study Questions**

1. Would Albert Carr voice any objections to the (i) corporate actions of Boots described in “Bitter Pill” and (ii) Towers Perrin in the “Familiar Refrain” case? Do you agree with Carr? Can you identify any market failures in “Bitter Pill” and “Familiar Refrain”?

2. How would Gary Miller and Arthur Levitt assess the long-term effects of bluffing as applied to the job of an equity analyst (Lowenstein)? Would Albert Carr agree?

3. Is there anything ethically wrong about the actions of Towers Perrin, as described in “Familiar Refrain”? What would happen if all or most consulting companies behaved in similar ways?

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**SESSION #3**

**GIFTS, SIDE DEALS & CONFLICTS OF INTEREST**

**DATE:** 9/22/04

**Read:** “Neutral Omni-Partial Rule Making” by Ronald M. Green (p.22) (Ethical Theories)

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

**Visit:** www.transparency.org

**Cases:** “Buynow Stores” by Bruce Buchanan (p.85)

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

“Friends and Family” by Melanie Warner (p.90)

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

“Wall St. and the Nursery School: A New York Story” by Gretchen Morgenson and Pat McGeehan (p.99)

“Hat Trick” by Gretchen Morgenson (p.102)

**Study Questions**

1. Make a list of all the gift practices described in Buynow Stores. In your
judgment, which of these, if any, are inappropriate? Use ethical concepts and methods from the Green and Halbert/Ingulli readings to support your position.

2. Do the Roger Berg and Wall Street Nursery School cases differ materially from BuyNow Stores? Use ethical concepts and methods from the Green and Halbert/Ingulli readings to support your position.

3. Have the insurance brokers (“Bribe by Any Other Name”) and the pension consultants (“Hat Trick”) created any market failures or engaged in any conflicts of interest in their current marketing practices as presented in the Weinberg and Morgenson readings?

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

SESSION #4
AGENCY & FIDUCIARY DUTY
DATE: 9/29/04

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

“Moral Hazard” by Robert Pindyck and Daniel L. Rubenfeld (p.10) (Economics of Market Failure)

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)

“Plasma International” by TW. Zimmer and P.L. Preston (p.115)

“You Bought, They Sold” by Mark Gimein (p.117)

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 “Old City Enterprises” and in “Plasma International”? Are Ed Stevens in Old City and Sol Levin of Plasma acting properly in terms of shareholder interests as well as ethical standards? Are there any moral hazards present here?
3. Considering the Gimein reading (“You Bought, They Sold”) what are appropriate limits, if any, on sales of stock by corporate insiders? Does this behavior present any moral hazards, particularly to shareholders? Are there any material differences between this behavior and the behavior of Chung Wu, broker, in “Man Who Paid The Price” in relationship to fiduciary duties?

SESSION #5
SALES AND MARKETING
DATE: 10/6/04

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

Cases: “The Selling of Breast Cancer” by Susan Orenstein (p.129)
“Commissions on Sales at Brock Mason” by Tom L. Beauchamp (p.137)
“West Virginia CIF” by Ingo Walter (p.140)
“Responsibility Yes, but to Whom?” by Larry Zicklin (p.144)
“Disorders made to Order” Brendan I. Koerner (p.147)

Study Questions
1. In the Brock Mason case, Mr. Tithe, the branch manager, describes the situation with the widow as “unfortunate” but not “unfair.” Do you agree? Use ethical methods and concepts to justify your position. How is the situation at Brock Mason similar to that in the West Virginia CIF case?

2. In what ways, if any, could we determine that pharmaceutical companies (Disorders Made to Order) are ethically responsible for promoting new mental illnesses in order to boost their profits from drug sales? Or, companies that support causes such as breast cancer (“Selling of Breast Cancer”) to market their brand?

3. In his article, “Investment Management: Business . . . or Profession,” John Bogle implies that much of the mutual fund business is driven by moral hazards and fiduciary duty problems. Do you agree? Justify your position.

SESSION #6
WHISTLE BLOWING & LOYALTY
DATE: 10/13/04

Read: “The Return of Qui Tam” by Priscilla R. Budeiri (p.193)
“States Passing Whistleblower Statutes” by Steve Seidenberg (p.184)

Cases: “Aircraft Brake Scandal” By Kermit Vandiver (p.159)

“He Told. He Suffered. Now He’s a Hero.” by Kurt Eichenwald (p.169)

“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)

“How Ex-Accountant Added Up To Trouble for Humbled Xerox” by James Bandler and Mark Maremont (p.186)

“Former Mattel Employee’s Battle Shows Whistle-Blowers Walking a Fine Line” by Michael Hitzik (p.190)

Study Questions
1. Consider the position of Searle Lawson in the “Aircraft Brake Scandal” case. At what point, if any, should he have blown the whistle to someone outside B.F. Goodrich? Use ethical concepts and reasoning to support your position.

2. Compare the situations in “A Whistle-Blower Rocks an Industry” and “Doctor Explains” to “Aircraft Brake Scandal” and assess the role that qui tam laws play in resolving such situations.

3. Mark Jorgeson (“He Told He Suffered” - Prudential) and James Bingham (“Hoe Ex-Accountant” - Xerox) worked at major corporations where they tried to bring truthful accounting numbers to the attention of top management and investors. What personal risks did they run? And how did the outcomes of their cases differ with their approach to whistleblowing?

4. Is the Qui Tam policy a good idea? Should corporations also use it; that is, should corporations offer rewards to employees who blow the whistle on their colleagues?

SESSION #7
TRADE SECRETS
DATE: 10/20/04

Read: “Trade Secrets, Patents, and Morality” Robert E. Frederick & Milton Snoeyenbos (p.211)

“Protecting Trade Secrets: Using ‘Inevitable Misappropriation’ and The Exit Interview” by Michael B. Carlinsky & Lara Kreiger (p.217)
Cases: “Stockbroker’s Story” by Bruce Buchanan (p.201)

“Fare Game” by William M. Carley (p.202)

“Corporate Spies: The Pizza Plot” by Adam L. Penenberg & Marc Barry (p.206)

Study Questions:
1. Are customer records, such as those described in “Stockbroker’s Story” trade secrets, or do they belong to the departing broker? What criteria can we apply in making this determination?

2. How does the situation in “Fare Game” differ from the “Stockbroker’s Story” with respect to the idea of a trade secret?

3. What practices in “The Pizza Plot” do you judge to be inappropriate? What are your criteria for saying so?

SESSION #8
INSIDER TRADING
DATE: 10/27/04

Read: “The Cost of Inequity” The Economist (p.270)

“Insider Trading Notes” by Constance E. Bagley (p.284)

Cases: “An Accountant’s Small Time Insider Trading” by Tom L. Beauchamp (p.265)

“Raymond Dirks and Equity Funding of America” by Roy C. Smith (p.281)

“Trading Room Ethics” by Lawrence Zicklin (p.272)

“Martha Stewart” by Roy C. Smith (p.275)

“The Case for Insider Trading” by Henry G. Manne (p.278)

Study Questions
1. Should the accountant, Donald Davidson, trade on the information he has obtained from Warner Wolff? Use legal theories of insider trading (“Insider trading Notes”) and ethical concepts to support your position.

2. Is Raymond Dirks’ behavior consistent with the concept of fiduciary duty? Why was he reprimanded by the SEC but ultimately exonerated by the Supreme Court? Compare the behavior of Dirks with that of Stewart (“Martha Stewart”). Use legal
and ethical concepts to support your position.

3. Read “Trading Room Ethics” carefully and outline the exact procedure Teri Forman employs to move large blocks of stock. Is this insider trading? Why or why not?

4. Do laws forbidding insider trading make financial markets more or less efficient? Use ideas from both economics and ethics to justify your position as well as including Manne’s thesis (“The Case for Insider Trading”) on insider trading.

SESSION #9
CONTROL BY LAW
DATE: 11/3/04

Read: “”Prosecutors’ Tough New Tactics Turn Firms Against Employees” by Laurie P. Cohen (p.293)

“When the Company Becomes a Cop” by Linda Himelstein (p.299)

“Pollution Case Highlights Trend to Let Employees Take the Rap” by Dean Starkman (p.301)

“Life in a Federal Prosecutor’s Cross Hairs” by Ann Davis (p.303)


“Conviction of Banker Vindicates New Strategy by Prosecutors” by Jonathan D. Glater (p.309)

“Before Enron, There Was Cendant” by Gretchen Morgenson (p. 311)

“Living with the Organizational Sentencing Guidelines” by Jeffrey Kaplan, Linda S. Dakin, Melinda R. Smolin  (p.313)

“The Revised Corporate Sentencing Guidelines” by Jeffrey M. Kaplan (p.321)

Study Questions:

2. Are the compliance costs that the U.S. sentencing guidelines imply justified? Does agree with the guideline’s approach to white-collar crime? And with the
prosecutor’s approach (“Conviction of Banker”)? How will the “Revised” corporate sentencing guidelines impact corporate behavior? Use ethical concepts and methods to support your position.

3. What are the implications of the Corporate Sentencing Guidelines for the individual employee? Consider the situations of the Darling employees (“Pollution Case”), Sharon Hogge (“Prosecutor’s Cross Hairs”) and KPMG employees (“Prosecutor’s Tough Tactics”).

SESSION #10
SOCIAL RESPONSIBILITY TO STAKEHOLDERS
DATE: 11/10/04

Read: “The Social Responsibility of Business is to Increase Its Profits” by Milton Friedman (p.346)
“Restricted Reasons and Permissible Violation” by Arthur Isak Applbaum (p.19) (Ethical Theories)
“Our Schizophrenic Conception of the Business Corporation” by William T. Allen (p.35)

Cases: “Toy Maker Faces Dilemma as Water Gun Spurs Violence” by Joseph Pereira (p.329)
“Bally’s Grand Casino, For Elaine Cohen, Is Her One True Home” by Heidi Evans (p.331)
“Credit Card Companies Target New Niche: the Mentally Disabled” by Joseph Cahill (p.334)
“The Right Thing: When Good Ethics Aren’t Good Business” by Jeffrey Seglin (p.338)
“Cut Loose” by Anne-Marie Cusac (p.340)

Study Questions
1. What advice would Milton Friedman and William Allen (“Schizophrenic Conception”) give to the CEO of Larami Corp., manufacturer of the Super Soaker? Would you agree with Friedman and/or Allen? Use ethical methods and concepts of fiduciary duty to support your position.

2. If you were the manager of Bally’s Grand Casino, would you do anything differently with respect to Elaine Cohen? What would Friedman (“Increase Profits”) and Allen (“Schizophrenic Conception”) advise the manager to do? Use ethical methods and legal concepts to support your position.
3. Did the CEO of Smith & Wesson fulfill his fiduciary duties? Justify your position. How would Arthur Applbaum (“Restricted Reasons and Permissible Violation”) judge his behavior?

4. Does IBM owe any duty to Fran Asbeck (“Cut Loose”) regarding his health care benefits upon retirement? How would Allen (Schizophrenic Conception”) and Friedman (“Increase Profits) respond to IBM’s behavior?

SESSION #11
MORAL STANDARDS ACROSS BORDERS
DATE: 11/17/04

Read: “United States Bill of Rights” (p.33) (Ethical Theories)

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

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

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

Cases: “The Oil Rig” by Joanne B. Ciulla (p.355)

“For Cruise Workers, Life is No Love Boat” by Joshua Harris Prager (p357)

“Stretching Federal Labor Law Into South Pacific” by Seth Faison (p.359)

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

“Low-Wage Costa Ricans Make Baseballs for Millionaires” by Tim Weiner (p.378)

Study Questions
1. According to the US Bill of Rights, the Dalai Lama and the UN Declaration of Human Rights have any basic human rights been violated in the “Oil Rig” case? Are the ex-pats justified in getting better treatment than the Angolans?

2. Should cruise workers that service US ports enjoy the rights of other US workers? Would Krugman (“Praise of Cheap Labor”) or any of the other ethical thinkers we have studied think that this was an unethical situation?

3. Should US labor and safety laws apply to the Northern Mariana Islands? Why or why not? Are sweatshops unethical according to Krugman, the Dalai Lama or
any of the other ethical thinkers that we have studied?

4. Do human rights exist? If so, what responsibilities do corporations have to see that they are respected? And how would you apply these ideas to workers on cruise ships or in the Bangladesh sweatshops?

SESSION #12
PRODUCT LIABILITY
DATE: 11/24/04

Read: “Strict Product Liability & Product Liability” by Kenneth W. Clarkson, et.al. (p.409)

“The Coase Theorem” by A. Mitchell Polinsky (p.8) (Market Failure)


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

“In Breast Implants Scandal, Where Was Dow Corning’s Concern for Women?” by Andrew W. Singer (p.393)

“Will the Lawyers Kill Off Norplant?” by Gina Kolata (p.398)

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

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

Study Questions
1. Should A.H. Robins have introduced the Dalkon Shield when it did? Why or why not? Which legal theories of product liability (Clarkson, et al) may apply to A.H. Robins? Do they have any defenses? What method of ethical reasoning seems most appropriate to this problem? Why?

2. Was McDonald’s “negligent” and/or strictly liable, i.e. “strict product liability” (Clarkson, et al) for selling “unreasonably dangerous” coffee in the “hot coffee” case? Does McDonald’s have any legal defenses? Can the judicial opinion in “Greene v Boddie Noell Enterprises, Inc.” be distinguished from the opinion in the McDonald’s case?

3. Can you draw any distinctions between the Dalkon Shield, Norplant and breast implant cases? Are moral hazards present in these cases or in product liability cases in general? Have any fiduciary duties been breached?
SESSION #13
WORKPLACE RIGHTS: NON-DISCRIMINATION & PRIVACY
DATE: 12/1/04

Read: “EEOC Guidelines Excerpt” (p.425)

“Sexual-Orientation Protection Added to New York Law” by Casey J. Dickinson (p.436)

Cases: “Foreign Assignment” by Thomas Dunfee and Diana Robertson (p.415)

“Now Look Who’s Taunting. Now Look Who’s Suing” by Jane Gross (p.417)

“When Fear of Firing Deters Hiring” by Jeffrey L. Seglin (p.420)

“Is this the Right Time to Come Out?” by Alistair D. Williamson (p.422)

“Too Old to Work?” by Adam Cohen (p.429)

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. According to the EEOC, can the bank (employer) be held liable for sexual harassment due to the actions of its employees? Does the bank have any defenses, including any affirmative defenses provided by the EEOC?

2. Is sexual harassment against men a legitimate concern? Is the situation at Jenny Craig (Gross) comparable to that in the “Foreign Assignment”? Why or why not?

3. 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?

4. Is discrimination because of sexual orientation different from discrimination because of sex (Williamson)? What about discrimination based upon age (Cohen)? Should similar laws and regulations be applied to all of these classes? Justify your position.
PRIVACY

Cases: “Open Secrets” by Ellen E. Schultz (p.442)

“Prying Times” by Ann Carrns (p.446)

“Monitoring of Employees Still Growing” by Allison Michael and Scott M. Lidman (p.450)

“TGB Insurance Services Corp. v. Superior Court (p.455)

Study Questions:
1. Should firms face any restrictions on the internal use of data gathered from their own employees? Why or why not? Consider this specifically with respect to medical/psychological information. Use ethical concepts and methods to justify your position.

2. Is the idea of privacy for individuals becoming obsolete in the Internet age? How do privacy and technology interact?

3. What market failures surround the issue of privacy? How, then, does the right to privacy interact with economic efficiency?

4. (A) Draft a policy guideline for a firm as to what aspects of its employees lives are to be considered private, along with applicable safeguards. Assume this memo will be distributed to all employees, both current and prospective. (B) Briefly state your reasoning in setting this policy.

SESSION #14
GLOBALIZATION & DOMESTIC MARKETS
DATE: 12/8/04

Cases  “Nobodies: Does Slavery Exist in America?” by John Bowe ((p.461)

“Down and Out in White-Collar America” by Nelson D. Schwartz (p.472)

“Up Against Wal-Mart” by Karen Olsson (p.477)

Study Questions:
1. Considering the “Nobodies” and “Wal-Mart” cases do any market failures exist in the American labor market? Have any basic human rights been violated here (US Bill of Rights, UN Declaration of Human Rights)?

2. Do companies violate any fiduciary duties when they outsource of American white-collar jobs to cheaper labor markets in third world countries (“Down & Out”)? Apply ethical concepts and market failures to this dilemma.