New York University
Stern School of Business Administration
B02.3101.04 - Professional Responsibility
Markets, Ethics, and Law

Fall, 2006
Time: Tuesday and Thursday: 9:00 AM-10:20 AM  Tel#: 476-9200 fax-476 9209
Class Room: KMEC Room 2-90  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. When that occurs, it is further proof that in the business world not every decision can be reduced to a mathematical equation. Judgment therefore becomes the key factor that separates those who attain great success from those whose careers never quite reach their potential. To sharpen the student’s judgment, we will examine the role of ethical norms and reasoning in resolving the “non-market” 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, there will be a slightly greater emphasis on the FINANCIAL SERVICES industry, as this is where I have spent much of my career, and where a number of you will also find yourselves. In addition, we cannot ignore the shameful ethical 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 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 may be visited by a few guests who will shed further light on some of the subjects under discussion.

As indicated above, our semester will be centered on the most difficult of business subjects: that is the matter of exercising 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, ambition 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 subjects that poorly handled, can cost you a career and, as some have recently learned, your freedom.

**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 #13 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 occasionally call on students to provide their answers orally, so be prepared as I never want to embarrass anyone.

**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 25%;
- Written Study Question Analysis 35%;
- Term Project 40%.

**Textbook**

Most cases and readings for this course are found in “Cases and Readings in Professional Responsibility: Markets, Ethics, and Law” 2006-07 MEL digital Coursepack. 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. They 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 become familiar with what has been posted. And fear not, some relevant events will most certainly 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 should be taken from a personal experience and which is pertinent to the area of Professional Responsibility. On occasion, I have permitted students who had no personal business experiences that were relevant, to take a situation from some public source. This has turned out to be a more difficult situation as it would be unusual for the subject to be completely covered in the press so additional investigation would be required. If that is the only alternative, please check with me before beginning your case analysis.

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.

II. Analysis

Apply some methods of ethical or legal reasoning to the situation and offer some 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, if you had the power, would choose to resolve it, choosing from the alternatives in Section I or from a 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. Papers should not exceed 2500 words and they are strictly confidential. Nobody other than the instructor will see them.

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 must be reasonable while lending themselves to implementation given the situation presented.

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

Written Projects are due on session 12.
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<td><strong>Cases:</strong> “The Price of Lobster Thermidor”</td>
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<td>“My Patients Are Dying”</td>
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<td>Read: “What is the Business of Business?”</td>
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<td>Neutral, Omni-Partial Rule-Making, (NORM)</td>
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<td>“Moral Hazard”</td>
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<td>by Robert S. Pindyck and Daniel L. Rubinfeld</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.
4. How might the Green or Halbert readings help you to analyze and solve the Lobster Thermidor and/or Patients are Dying cases?
5. Describe the various fiduciary relationships in “My Patients Are Dying.” Are any fiduciary responsibilities owed to the patients who are dying? Have any fiduciary duties been breached in this case?
2. Truth and Agency  (Truth and Disclosure)  9/7

Cases: "Bitter Pill: How a Drug Firm Paid for University Study, Then Undermined It"
by Ralph T. King, Jr.

“You Have the Only Hard Copy”
By Peter Elkind

Read “The Numbers Game”
by Arthur Levitt

“Is Business Bluffing Ethical?”
by Albert Carr * (Blackboard)

“The Business of Ethics”
By Norman Chase Gillespie

“Lies, Damned Lies, and Managed Earnings”
By Carol J. Loomis * (Blackboard)

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 Arthur Levitt assess the long-term effects of bluffing as applied to the “Hard Copy” 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 Carol Loomis’ observations in “Lies, Damned Lies and Managed Earnings”
4. Analyze the “Hard Copy” situation taking into consideration the business realities as well as the ethical constraints.
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Case: “At Center of Fraud, WorldCom Official Sees Life Unravel”  
by Susan Pulliam

“Roger Berg”  
by Ronald M. Green

“Drug Makers Pay for Lunch As They Pitch”  
By Stephanie Saul * (Blackboard)

“Marsh & McLennan Companies”  
by Ingo Walter

“Drug Maker’s Efforts to Compete in Lucrative Insulin Market are Under Scrutiny”  
by Gardiner Harris and Robert Pear

Read: “Bribery and the Foreign Corrupt Practices Act”  
by Kenneth W. Clarkson et al.

“The Social Responsibility of Business Is to Increase Its Profits”  
by Milton Friedman

Study Questions
1. Using “NORM” (Neutral Omni-Partial Rule Making) and the reading on Ethical Decision Making, create a policy for the two “Drug Makers” cases that would be fair to the public and still enable pharmaceutical 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, or should they “outsource” the problem to intermediaries?

3. What might Friedman and Carr thing about the “Drug Makers” problems? Would Green and Halbert apply different criteria when reaching a decision?
Session  Topic and Assignments  9/14

4.  Agency and Fiduciary Duty

Cases:  “SEC Charges Millennium Partners, L.P., Israel Englander and Others for Engaging in Fraudulent Market Timing Scheme”
U.S. Securities and Exchange Commission Memorandum
Good Charity Hospital-- Lawrence Zicklin* (Blackboard)

“Old City Enterprises”
by Lawrence Zicklin

“Deals and Consequences”
by Landon Thomas Jr.

Read:  “Duties of Agents and Principals”
by Kenneth Clarkson, et al.

Study Questions
1. Which fiduciary duties might be at issue in the “Old City Enterprises” case? How should a responsible executive properly represent the shareholder interests as well as ethical standards? Are there any issues of Moral Hazard present here?
2. What should the Chairman of the Ethics Committee recommend to the Good Charity Hospital Board at their upcoming meeting? Support your arguments with material from either our readings or class discussions.
3. To what degree, if any, did Daniel Bayly violate his ethical responsibilities in the “Deals and Consequences” case? Where do your sympathies lie and explain why.
Session 5. Sales and Marketing Ethics in the Financial World 9/19

Cases: “The West Virginia Consolidated Investment Fund”
by Ingo Walter

“Responsibility Yes, But To Whom?”
by Lawrence Zicklin

“NASD Says Firm Gave Improper Rewards. Morgan Stanley Official Fined; 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

Study Questions

1. Analyze the “West Virginia CIF case using any of the past readings or class discussions 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 problems of fiduciary duty. Do you agree? Are any of these problems evident in the Morgan Stanley case? Justify your position using past readings or class discussions.

3. Morgan Stanley earns more from its proprietary funds than from selling outside funds. Why shouldn’t it promote them? Where is the ethical problem?
Session 6.  
Topic and Assignments  
Corporate Governance  
A Board of Directors  

Date  
9/21  

Cases:  “Excerpts from the Report of a Special Committee Investigating Enron”  

“Boeing CEO Resigns Over Affair With Subordinate”  
by Renae Merle  

“Executive Pay: The 9/11 Factor”  
by Charles Forelle, James Bandler and Mark Maremont  
*(Blackboard)  

“Off To The Races Again, Leaving Many Behind”  
by Eric Dash  

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

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

“The Director’s New Clothes”  
by Robert Monks and Nell Minow  

“Crisis of Corporate Ethics”  
by Roy C. Smith  

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 and if so, how?  
2. Based on the thesis set forth by Monks/Minow (“The Director’s New Clothes”), do the actions of Boards of Directors generally comport with the business judgment rule? Why or why not?  
3. Should an effective executive like Harry Stonecipher (Boeing case) have been forced to resign since he was not responsible for supervising the unnamed female executive nor were there any charges of sexual harassment? Why or why not?  
4. Apply the Business Judgment Rule to the situations faced by the boards of directors of Walt Disney (“Testing the Limits”) and Enron (“Committee Investigating Enron”). Were the actions taken by these boards of directors justified by the business judgment rule?
Session 7.  

**Topic and Assignments**

**Date**  
9/26

**Insider Trading**

**Cases:**

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

**Read:**

- “The Case for Insider Trading” by Henry G. Manne
- “Insider Trading Notes” by Constance E. Bagley
- “How to End the Insider’s Game on Wall Street” by Dan Reingold *(Blackboard)*

**Study Questions**

1. 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 her competitors may be doing the same thing?

2. If the Board of Directors approved the compensation in the “Nortel” Case, what is the problem?

3. 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.

4. Is Dan Reingold’s solution to the problem of the “Insider’s Game on Wall Street” to be taken seriously? Use class readings or discussions as background for your answer.
### Session 8

**Topic and Assignments**: Control by Law  
**Date**: 9/28

#### Cases:
- “The Case of Hank Greenberg”  
  by David Boies *(Blackboard)*
- “Pollution Case Highlights Trend to Let Employees Take the Rap”  
  by Dean Starkman
- “Conviction of Banker Vindicates New Strategy by Prosecutors”  
  by Jonathan D. Glater

#### Read:
- “Strong Law Enforcement is Good for the Economy”  
  by Elliot Spitzer
- “Living with the Organizational Sentencing Guidelines”  
  By Jeffrey Kaplan, Linda S. Dakin, Melinda R. Smolin
- “The Revised Corporate Sentencing Guidelines”  
  by Jeffrey M. Kaplan
- “Prosecutors Tough New Tactics Turn Firms Against Employees”  
  By Laurie P. Cohen

### Study Questions

1. What are the implications of the Corporate Sentencing Guidelines and The Revised Guidelines with regard to Corporate Behavior? Will anything change?
2. Are the compliance costs that the U.S. sentencing guidelines imply justified? Do you agree with the guideline’s approach to white-collar crime? Do you support the prosecutor’s approach (“Conviction of Banker”)? Explain your position using ethical concepts and/or class discussions and readings.
3. What are the implications of the Corporate Sentencing Guidelines for the individual employee? Consider the situations of Hank Greenberg (Greenberg case) and the KPMG employees (Prosecutor’s Tough Tactics).
Session       Topic and Assignments       Date
9.  Whistle Blowing and Loyalty      10/3

Cases: “Moment of Truth: A Whistleblower’s Dilemma in the Financial Services Industry”* (Blackboard)
by Donald Schepers

“Legal Tangle at the Fountain of Youth”
Business Week

“Delta Industries”
by Lawrence Zicklin

“Fraud Busting Begins At Home”
by Mark Green

Read: “The Return of Qui Tam”
by Priscilla R. Budeiri

“Personal Business: Blowing the Whistle: Not for the Fainthearted”*
by Marci Alboher Nusbaum *(Blackboard)

“At Pfizer, the Isolation Increases For a Whistle-Blower”
by Alex Berenson *(Blackboard)

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?
4. Is Pfizer within its rights in the Berenson case? Is management merely protecting the company and its shareholders while preparing their legal defenses?
### Session 10

**Topic and Assignments**

- **Social Responsibility and Human Rights**
- **Date**: 10/5

**Cases**: 
- “Needy & Company” by Lawrence Zicklin *(Blackboard)*
  
- “Curem Pharmaceutical” by Lawrence Zicklin *(Blackboard)*
  
- “Wary of Backlash, Cancer-Drug Makers Weigh Price Limits” by John Carreyrou and Geeta Anand *(Blackboard)*

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

### 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. Why shouldn’t pharmaceutical companies (Wary of Backlash) charge whatever the market will bear? Isn’t that the essence of the capitalist system? Use class readings as background for your answer.
11. **Moral Standards Across Borders** 10/10

**Cases:**
- “The Oil Rig” by Joanne B. Ciulla
- “Lives Held Cheap in Bangladesh Sweatshops” by Barry Bearak
- “Google’s China Problem (and China’s Google Problem)” By Clive Thompson *(Blackboard)*

**Read:**
- “In Praise of Cheap Labor: Bad Jobs at Bad Wages Are Better than No Jobs At All” by Paul Krugman
- “Moral Minimums for Multinationals” by Thomas Donaldson *(Blackboard)*

**Study Questions**

1. Using the writings of Thomas Donaldson and Paul Krugman as background, analyze the Oil Rig case.
2. Donaldson argues for the existence of 10 basic human rights. If human rights exists what responsibilities do corporations have to see that they are respected? Should corporations have the same ethical responsibilities as individuals?
3. How should a corporate executive respond to the issues raised in the Google and China situation? How do you reconcile the business opportunity with the ethical issues?
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**Cases:**

- “A.H. Robins: The Dalkon Shield” by A.R. Gini and Terry Sullivan
- “Legal Myths: The McDonald’s “Hot Coffee” Case” by Public Citizen
- “Repeated Defect in Heart Devices Exposes History of Problems” by Barry Meier
- “Good Pill, Bad Pill: Science Makes It Hard to Decipher” by Gina Kolata

**Read:**

- “The Class-Action Quandary: Cash Payment, No Apology” by Meryl Gordon

**Study Questions**

1. Should A.H. Robins have introduced the Dalkon Shield when it did? 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?

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? Was it 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?

4. How does a pharmaceutical company combat a situation in which serious side effects may not manifest themselves for years after drug has been cleared for sale by the Food and Drug Administration (Good Pill, Bad Pill case) while adhering to its responsibilities to its customers and shareholders?

**Written Projects are due**
Session   Topic and Assignments   Date
13.   Discrimination   10/17

Cases: “Foreign Assignment”
by Thomas Dunfee and Diana Robertson

“Is This The Right Time to Come Out?”
by Alastair D. Williamson * (Blackboard)

"Wall Street Highflier to Outcast: A Woman's Story"*
by Patrick McGeehan *(Blackboard)

“How Corporate America is Betraying Women”
by Betsy Morris *(Blackboard)

Read: “EEOC Guidelines Excerpt”

“When Fear of Firing Deters Hiring”
by Jeffrey Seglin

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

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 created by its employee? Does the bank have any affirmative defenses as provided by the EEOC?

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 “Wall Street Highflier” case? How would you factor in the possibility of significant negative publicity?

4. Is discrimination because of sexual orientation different from discrimination because of sex (Williamson)? Justify your position.