Course Objectives, Readings and Class Preparation

LEONARD N. STERN SCHOOL OF BUSINESS  
NEW YORK UNIVERSITY  

PROFESSIONAL RESPONSIBILITY: MARKETS, ETHICS & LAW  
B02.3101.0W2.SP06  
Winter Intensive 2006  
Dr. Tisha Bender  

Dates: 1/6 - 1/8  
Meeting Time: 9.00 am - 12.00 pm, 1.00 pm - 4.00 pm  
Classroom: KMC 3-80  

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. 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 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  
Professional Responsibility: Markets, Ethics & Law  
The textbook is available in the NYU Professional Bookstore. Please note that the Bookstore is open only until December 23rd, so please be sure to purchase your copy on time!  

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. Class discussions 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. You may be called upon during class to provide answers to these study questions.

Course Requirements and Grades

COURSE REQUIREMENTS:
1. Attend all 6 scheduled class sessions, morning and afternoon, January 6th - 8th.
2. Homework: 3 Written Study Questions (2 - 4 pages each). Pick ONE study Question to answer out of the assigned readings for THREE of the class sessions. The first homework assignment is due on January 5th; subsequent assignments are due on or by January 8th.
3. Term Paper Description: Individual conference with me during breaks and after class
4. Term Paper (8-12 pages): Due January 15th

1. ATTENDANCE
There are only 6 sessions for this course. Therefore, you are required to attend all 6 sessions in their entirety. Attendance will be taken. If you do not attend all 6 classes then you will not receive credit for the course. If due to work or personal circumstances you doubt your capacity to attend all 6 classes then you should drop this section and register for another section.

2. GRADING
Your homework assignments and term paper will be primarily evaluated upon how well you integrate the course concepts - ethical, legal and economic - into your written analysis. Even if the study question that you choose does not ask for an application of course concepts to the situation this should always be a part of your written work for this course.

3. HOMEWORK: 3 Written Study Question Analyses (2 to 4 pages typed)
Each student is responsible for submitting a total of 3 written homework assignments. Each homework assignment consists of a 2 to 4 page written analysis of ONE study question of your choice from one of the study modules we will be discussing in class.

Homework should be submitted electronically. Go to the Assignments area in Blackboard, attach your assignment as a Word File, and click on "Submit".

4. TERM PAPER PROJECT (8 – 12 pages typed & double-spaced) DUE: January 15th
Students are responsible for a term paper. 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. 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.
All term papers should follow this format:

I. Situation
Provide a description of the situation or practice; this description must be detailed enough to allow the reader to get a clear sense of the issues & 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. Here the student should apply, wherever appropriate, concepts from the course and its readings as well as cite the relevant law where appropriate (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).

Important Term Paper Grading Point:
This assignment is graded based upon how systematically and thoroughly the student applies 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.

Note on 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).

Handing In Term Paper Projects:
Since the term papers are due after our class sessions have ended you may hand in your term paper using one of the following options:
1. Mail: Mail term paper to Professor Tisha Bender at Stern School of Business, NYU, 40 West 4th Street, Tisch Hall Room 316, Accounting Department, New York, New York, 10012-1118

GRADE WEIGHTS
The weights for the overall grade are:
1. Class Participation 20%
2. Homework 40%
3. Term Paper Project 40%
DATE: January 6th  
SESSION #1: 9.00 am - 12.00 noon

**INTRODUCTION: MARKET FAILURES & PROFESSIONAL DILEMMAS**

*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.365)

"Pollution Case Highlights Trend to Let Employees Take the Rap" by Dean Starkman (p.312)

**Study Questions**
1. Based on the Edwards article, which market failures or imperfections are present in the "Lobster Thermidor" case? In the "Pollution" case?

2. 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.

**TRUTH & DISCLOSURE**

*Read:*
"Is Business Bluffing Ethical?" by Albert Z. Carr (p.73)

"Ethics and the New Game Theory" by Gary Miller (p.26)

*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)

**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. 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?

DATE January 6th: 1.00 - 4.00 pm
SESSION #2
GIFTS, SIDE DEALS & CONFLICTS OF INTEREST
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)

Cases:
"Buynow Stores" by Bruce Buchanan (p.85)

"Roger Berg" by Ronald M. Green (p.88)

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

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.

AGENCY & FIDUCIARY DUTY/ BOARDS OF DIRECTORS
Read:
"Duties of Principals and Agents" By Kenneth Clarkson, et al. (p.124)

"The Business Judgment Rule" by Jane P. Mallor, et al. (p.233)

Cases:
"Quality Department Stores" by Lawrence Zicklin (p.109)

"Old City Enterprises" by Lawrence Zicklin (p.110)

"Testing the Limits of the Business Judgment Rule" by Roger Leroy Miller & Gaylord Jentz (p.244)

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"? Is Ed Stevens in Old City acting properly in terms of shareholder interests as well as the Business Judgment Rule? Are there any moral hazards present here?

WHISTLE BLOWING & LOYALTY

Read:
"The Return of Qui Tam" by Priscilla R. Budeiri (p.167)

"States Passing Whistleblower Statutes" by Steve Seidenberg (p.158)

Cases:
"Aircraft Brake Scandal" By Kermit Vandiver (p.133)

"A Whistle-Blower Rocks an Industry" by Charles Haddad, with Amy Barrett (p.152)

"Doctor Explains Why He Blew the Whistle" by Melody Petersen (p.156)

"Former Mattel Employee’s Battle Shows Whistle-Blowers Walking a Fine Line" by Michael Hitzik (p.164)

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. 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?

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DATE January 7th: 9.00 am - 12.00 noon
SESSION #3
SALES AND MARKETING

Read:
"Investment Management: Business . . . or Profession and What Role Does the Law Play?" by John C. Bogle (p.200)

Cases:
"The Selling of Breast Cancer" by Susan Orenstein (p.175)

"West Virginia CIF" by Ingo Walter (p.186)

"Responsibility Yes, but to Whom?" by Larry Zicklin (p.190)
“Disorders made to Order” Brendan I. Koerner (p.193)

**Study Questions**

1. 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?

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 fiduciary duty problems. Do you agree? Justify your position.

**TRADE SECRETS**

**Read:**

"Trade Secrets, Patents, and Morality" Robert E. Frederick & Milton Snoeyenbos (p.215)

"Protecting Trade Secrets: Using 'Inevitable Misappropriation' and The Exit Interview" by Michael B. Carlinsky & Lara Kreiger (p.221)

**Cases:**

"Stockbroker’s Story" by Bruce Buchanan (p.205)

"Fare Game” by William M. Carley (p.206)

"Corporate Spies: The Pizza Plot" by Adam L. Penenberg & Marc Barry (p.210)

**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 is 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?

**PRIVACY**

**Cases:**

"Monday 9:01 A.M." by Ronald H. Smithies (p.455)

"Open Secrets" by Ellen E. Schultz (p.456)

"Prying Times" by Ann Carms (p.460)
"Monitoring of Employees Still Growing" by Allison Michael and Scott M. Lidman (p.464)

"TGB Insurance Services Corp. v. Superior Court" (p.469)

**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?

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**DATE** January 7th: 1.00 - 4.00 pm
**SESSION #4**
**INSIDER TRADING**

**Read:**
"The Cost of Inequity" *The Economist* (p.276)

**Cases:**
"An Accountant’s Small Time Insider Trading" by Tom L. Beauchamp (p.271)

"Raymond Dirks and Equity Funding of America" by Roy C. Smith (p.287)

"Trading Room Ethics" by Lawrence Zicklin (p.278)

"Martha Stewart" by Roy C. Smith (p.281)

"The Case for Insider Trading" by Henry G. Manne (p.284)

**Study Questions**
1. Should the accountant, Donald Davidson, trade on the information he has obtained from Warner Wolff? Use legal theories of insider trading 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.

**CONTROL BY LAW**

**Read:**
"Pollution Case Highlights Trend to Let Employees Take the Rap" by Dean Starkman
"Life in a Federal Prosecutor’s Cross Hairs" by Ann Davis (p.314)

**Study Questions:**
1. What are the implications of the Corporate Sentencing Guidelines for the individual employee? Consider the situations of the Darling employees ("Pollution Case") and Sharon Hogge ("Prosecutor’s Cross Hairs").

DATE June 8th: 9.00 am - 12.00 noon
SESSION #5
**PRODUCT LIABILITY**
**Read:**
"Strict Product Liability & Product Liability" by Kenneth W. Clarkson, et. al. (p.422)

**Cases:**
"A.H. Robins: Dalkon Shield" by A. R. Gini & Terry Sullivan (p.398)

"The Class-Action Quandary: Cash Payment, No Apology" by Meryl Gordon (p.406)

"In Breast Implants Scandal, Where Was Dow Corning’s Concern for Women?" by Andrew W. Singer (p.408)

"Will the Lawyers Kill Off Norplant?" by Gina Kolata (p.413)

"Legal Myths: The McDonald’s Hot Coffee Case" (p.418)

"Unreasonably Dangerous: Greene v. Boddie-Noell Enterprises, Inc." by J. Jones (p.420)

**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?

**SOCIAL RESPONSIBILITY TO STAKEHOLDERS**
**Cases:**
"Toy Maker Faces Dilemma as Water Gun Spurs Violence" by Joseph Pereira (p.341)

"Bally’s Grand Casino, For Elaine Cohen, Is Her One True Home" by Heidi Evans
Study Questions
1. Use ethical methods and concepts of fiduciary duty to advise the CEO of Larami Corp., manufacturer of the Super Soaker. State how you would support your position.

2. If you were the manager of Bally’s Grand Casino, would you do anything differently with respect to Elaine Cohen? Use ethical methods and legal concepts to support your position.

DATE January 8th: 1.00 - 4.00 pm
SESSION #6
DISCRIMINATION
Read:
"EEOC Guidelines Excerpt" (p.439)

"Sexual-Orientation Protection Added to New York Law" by Casey J. Dickinson (p.450)

Cases:
"Foreign Assignment" by Thomas Dunfee and Diana Robertson (p.429)

"Now Look Who’s Taunting. Now Look Who’s Suing" by Jane Gross (p.431)

"When Fear of Firing Deters Hiring" by Jeffrey L. Seglin (p.434)

"Is this the Right Time to Come Out?" by Alistair D. Williamson (p.436)

"Too Old to Work?" by Adam Cohen (p.443)

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. 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.

**MORAL STANDARDS ACROSS BORDERS**

*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.380)

"Human Rights on the Eve of the Twenty-First Century" by His Holiness the Dalai Lama (p.384)

"Universal Declaration of Human Rights" United Nations (p.386)

*Cases:*

"For Cruise Workers, Life is No Love Boat" by Joshua Harris Prager (p.369)

"Lives Held Cheap in Bangladesh Sweatshops" by Barry Bearak (p.375)

"Low-Wage Costa Ricans Make Baseballs for Millionaires" by Tim Weiner (p.390)

"Up Against Wal-Mart" by Karen Olsson (p.491)

**Study Questions**

1. 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?

2. 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?

3. Considering the "Wal-Mart" case 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)?