

SAMPLE

LEONARD N. STERN SCHOOL OF BUSINESS NEW YORK UNIVERSITY

PROFESSIONAL RESPONSIBILITY: MARKETS, ETHICS & LAW (B02.3101) WINTER 2006
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- ❑ **Meeting Time: Monday -Wednesday 9:00-10:20 PLEASE NOTE: The first meeting of this class will be on January 25th because of my travel schedule. We will find a time to make up a class once we have met.**
- ❑ **Classroom: KMC 2-90**

PROFESSOR Thomas Cooley

- ❑ **Office:** Suite 11-58 KMEC
- ❑ **Office Hours:** Wednesday 4:30-6:00 and by appointment
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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.

ADVANCE READING ASSIGNMENT

Please Note: For this section of the course I expect everyone to come to the first class having read *Conspiracy of Fools* by Kurt Eichenwald, Published by Broadway Books. This is an account of the ENRON scandal. It touches on a vast variety of topics that we will be discussing in this course. It is a gripping read – you won’t be bored. Be prepared to articulate some of the “professional responsibility” issues in our first class.

READING ASSIGNMENTS

All cases and readings for this course are found in:

**Professional Responsibility: Markets, Ethics, and Law
Cases and Readings for 2005-2006 (12th Edition)**

The textbook is available in the NYU Professional Bookstore. *Note that the edition for the current academic year, 2005-06, 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:

Class Participation	30%
Homework: Written Study Question Analysis	30%
Term Paper Project	40%

HOMEWORK: WRITTEN STUDY QUESTION ANALYSIS (3-4 pages typed)

Each student should perform a written analysis for 3 study questions over the course of the term. That is, **for 3 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 3-4 pages in length. The student can submit more than 3 written analyses, but only the top 3 grades will count.

TERM PAPER DESCRIPTION: (1 page typed)

DUE: Session 6

A one-page description of your term paper project as described below.

TERM PAPER PROJECT: (8 – 12 pages typed & double-spaced)

DUE: Session 13

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.

Organize the term paper as follows:

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).

COURSE SCHEDULE

TOPICS & ASSIGNMENTS

SESSION #1

DATE: 01/25/06

INTRODUCTION: THE ENRON CASE

READINGS

Conspiracy of Fools by Kurt Eichenwald, Published by Broadway Books.

STUDY QUESTIONS

1. Looking at the menu of topics for the remaining lectures – which of these important issues manifest themselves in the Enron affair? Make a list and a list of the actors involved.

SESSION #2

DATE: 01/30/06

MARKET FAILURES & PROFESSIONAL DILEMMAS

READINGS

Economic Theories of Regulation: Normative vs. Positive”	Linda N. Edwards & Franklin R. Edwards	p. 5
The Price of Lobster Thermidor	The Economist http://www.suboceansafety.org	p. 365
Pollution Case Highlights Trend to Let Employees Take the Rap.”	Dean Starkman	p. 312
Making An Ethical Decision	Terry Halbert & Elaine Ingulli	p. 15

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
DATE: 02/01/06
TRUTH & DISCLOSURE

READINGS

Is Business Bluffing Ethical?	Albert Carr	p. 73
Ethics and the New Game Theory	Gary Miller	p. 26
Bitter Pill	Ralph T. King, Jr	p. 53
Familiar Refrain: Consultant's Advice on Diversity was Anything but Diverse	Douglas A. Blackmon	p. 59
Today's Analyst Often Wears Two Hats	Roger Lowenstein	p. 65
Double Agents in the Financial System	Roy C. Smith	p. 78
The Numbers Game	Arthur Levitt	p. 67

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? Is there any difference ethically between Towers Perrin and the situation described in "The Numbers Game"(Smith)?

SESSION #3 DATE: 02/06/06 GIFTS, SIDE DEALS & CONFLICTS OF INTEREST
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READINGS

Neutral Omni-Partial Rule Making	Ronald M. Green	P. 22
Bribery & The Foreign Corrupt Practices Act	Kenneth W. Clarkson, et al. Visit: www.transparency.org	p.94
Buynow Stores	Bruce Buchanan	p. 85
Roger Berg	Ronald M. Green	p. 88
Wall Street and the Nursery School	Gretchen Morgenson & Pat McGeehan	p. 99
Hat Trick	Gretchen Morgenson	p. 102
Friends and Family	Melanie Warner	p. 90
A Bribe by Any Other Name	Neil Weinberg	p. 96

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 DATE: 02/06/06 WHISTLE BLOWING & LOYALTY
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READINGS

The Return of Qui Tam	Priscilla R. Budeiri	P. 167
States Passing Whistleblower Statutes	Steve Seidenberg	p. 158

Aircraft Brake Scandal	Kermit Vandivier	p. 133
Moment of Truth	Donald Scheppers and Harry Rosen	Blackboard
He Told. He Suffered. Now He's a Hero	Kurt Eichenwald	p. 143
A Whistle-Blower Rocks an Industry	Charles Haddad, with Amy Barrett	p. 152
Doctor Explains Why He Blew the Whistle	Melody Petersen	p. 156
How Ex-Accountant Added Up To Trouble for Humbled Xerox	James Bandler & Mark Maremont	p. 160
Former Mattel Employee's Battle Shows Whistle-Blowers Walking a Fine Line	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. 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 ("How 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? How did the outcomes of their cases reflect their different approaches 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 #5

DATE: 02/08/06

AGENCY & FIDUCIARY DUTY

READINGS

Duties of Principals and Agents	Kenneth Clarkson et al.	P. 124
Moral Hazard	Robert Pindyck & Daniel	p. 10

	Rubinfeld	
Quality Department Stores	Lawrence Zicklin	p. 109
Old City Enterprises	Lawrence Zicklin	p. 110
The Business Judgment Rule	Jane P. Mallor, et al.	p. 233
The Man Who Paid the Price for Sizing Up Enron	Richard A. Oppel, Jr.	p. 113
Plasma International	TW. Zimmer & P.L.Preston	p. 115
You Bought, They Sold	Mark Gimein	p. 117
My Patients Are Dying	Lawrence Zicklin	p. 126

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? 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 and 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? Do the fiduciary duties materially differ with the behavior of Chung Wu, broker (“Man Who Paid The Price”)?
4. 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?

SESSION #6

DATE: 02/13/06

SALES AND MARKETING

READINGS

Excerpts from Investment Management: Business...	John C. Bogle	P. 200
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or Profession...		
The Selling of Breast Cancer	Susan Orenstein	p. 175
Commissions on Sales at Brock Mason	Tom L. Beauchamp	p. 183
West Virginia CIF	Ingo Walter	p. 186
Disorders made to Order	Brendan I. Koerner	p. 193
Responsibility Yes, but to Whom	Lawrence Zicklin	p. 190

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. Is the situation at Brock Mason similar to that in the “Responsibility Yes, but to Whom” 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? Are any of these problems evident in the “West Virginia CIF” case?

SESSION #7

DATE: 02/15/06

TRADE SECRETS

READINGS

Trade Secrets, Patents, and Morality	Robert E. Frederick & Milton Snoeyenbos	P. 215
Protecting Trade Secrets: Using ‘Inevitable Misappropriation’...	Michael B. Carlinsky & Lara Kreiger	p. 221
Stockbroker’s Story	Bruce Buchanan	p. 205
Fare Game	William M. Carley	p. 206
Corporate Spies: The Pizza Plot	Adam 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 in making this determination?

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

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

SESSION #8
DATE: 02/22/06
BOARD OF DIRECTORS

READINGS

The Business Judgment Rule	Jane P. Mallor, et al.	p. 233
Our Schizophrenic Conception of the Business Corporation	William T. Allen	p. 35
Crisis of Corporate Ethics	Roy C. Smith	p. 263
The Director’s New Clothes	Joan Lubin	p. 236
Testing the Limits of the Business Judgment Rule	Roger Leroy Miller & Gaylord Jentz	p. 244
Excerpts from the Report of a Special Committee Investigating Enron		p. 245
Is There a New Sheriff in Corporateville	Thomas O. Gorman & Heather J. Stewart	p. 249
Boeing CEO Resigns Over Affair With Subordinate	Renae Merle	p. 231

STUDY QUESTIONS:

1. 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?

2. The nature of a corporation has been defined by the 1978 and 1990 Business Roundtables on Governance (“Director’s New Clothes”) as well as by Allen (“Schizophrenic Conception”) – contrast and compare their definitions of a corporation. Which conception of the business corporation do you think currently dominates the crisis in corporate governance?

3. Which market failures does the Sarbanes-Oxley Act address (“New Sheriff in Corporateville”)? What would be Smith’s (“Crisis of Corporate Ethics”) response to the Sarbanes-Oxley Act as a remedy for recent failures in corporate governance?

4. Based on the thesis set forth by Monks/Minow (“Director’s New Clothes) do the actions of boards of directors generally comport with the business judgment rule? Why or why not?

SESSION #9
DATE: 02/27/06
INSIDER TRADING

READINGS

Insider Trading Notes	Constance E. Bagley	P. 290
An Accountant’s Small Time Insider Trading	Tom L. Beauchamp	p. 271
Raymond Dirks and Equity Funding of America	Roy C. Smith	p. 287
Trading Room Ethics”	Lawrence Zicklin	p. 278
Martha Stewart	Roy C. Smith	p. 281
The Case for Insider Trading	Henry G. Manne	p. 284
The Cost of Inequity	The Economist	p.276

STUDY QUESTIONS

1. Should the accountant, Davidson, trade on the information he has obtained from Wolff (“Accountant’s Small Time”)? Use legal theories of insider trading (“Insider trading Notes”) and ethical concepts to support your position.

2. Compare the behavior of Dirks (“Raymond Dirks”) with that of Stewart (“Martha Stewart”) in relationship to the concept of fiduciary duty. Why was Dirks reprimanded by the SEC but ultimately exonerated by the Supreme Court? 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 #10 DATE: 03/01/06 CONTROL BY LAW
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READINGS

Living with the Organizational Sentencing Guidelines	Jeffrey Kaplan, Linda S. Dakin, Melinda R. Smolin	p. 324
The Revised Corporate Sentencing Guidelines	Jeffrey M. Kaplan	p. 332
Prepared Testimony	Judge Ricardo H. Hinojosa	p. 316
Strong Law Enforcement Is Good for the Economy	Eliot Spitzer	p. 299
The Case of Hank Greenberg	David Boies	p. 302
Prosecutors' Tough New Tactics Turn Firms Against Employees	Laurie P. Cohen	p. 304
When the Company Becomes a Cop	Linda Himmelstein	p. 310
Life in a Federal Prosecutor's Cross Hairs	Ann Davis	p. 314
Conviction of Banker Vindicates New Strategy by Prosecutors	Jonathan D. Glater	p. 322

STUDY QUESTIONS

1. How do you think the U.S. Sentencing Guidelines, as well as the “revised” guidelines, will change corporate behavior? Consider this from the perspective of the corporation (employer) in the “Company Becomes a Cop”(Kidder, Peabody) and “Prosecutors’ Tough Tactics” (KPMG) readings.
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? And with the prosecutor’s approach (“Conviction of Banker”)? Support your position with ethical concepts.
3. What are the implications of the Corporate Sentencing Guidelines for the individual employee? Consider the situations of the Hank Greenberg (“Hank Greenberg Case”), Sharon Hogge (“Prosecutor’s Cross Hairs”) and KPMG employees (“Prosecutor’s Tough Tactics”).

SESSION #11**DATE: 03/06/06****SOCIAL RESPONSIBILITY TO STAKEHOLDERS****READINGS**

The Social Responsibility of Business is to Increase Its Profits	Milton Friedman	P. 358
Our Schizophrenic Conception of the Business Corporation	William T. Allen	p. 35
Restricted Reasons and Permissible Violation	Arthur Isak Applbaum	p.19
Toy Maker Faces Dilemma as Water Gun Spurs Violence	Joseph Pereira	p. 341
Bally's Grand Casino, For Elaine Cohen, Is Her One True Home	Heidi Evans	p. 343
Cut Loose	Anne-Marie Cusac	p. 352
Down and Out in White Collar America	Nelson D. Schwartz	p. 486
Credit Card Companies Target New Niche: the Mentally Disabled	Joseph Cahill	p. 346
The Right Thing: When Good Ethics Aren't Good Business	Jeffrey Seglin	p. 350

STUDY QUESTIONS

1. What advice would Friedman ("Increase Profits") and Allen ("Schizophrenic Conception") give to the CEO of Larami Corp., manufacturer of the Super Soaker ("Toymaker Faces Dilemma")? 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 ("The Right Thing")? Justify your position. How would Applbaum ("Restricted Reasons") judge his behavior?
4. Does IBM owe any duty to 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 #12 DATE: 03/08/06 MORAL STANDARDS ACROSS BORDERS
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READINGS

US Bill of Rights		p. 33
In Praise of Cheap Labor: Bad Jobs at Bad Wages...	Paul Krugman	p. 380
Human Rights on the Eve of the 21 st Century	His Holiness the Dalai Lama	p. 384
Universal Declaration of Human Rights	United Nations	p. 386
The Oil Rig	Joanne B. Ciulla	p. 367
For Cruise Workers, Life is No “Love Boat”	Joshua Harris Prager	p. 369
Stretching Federal Labor Law into the South Pacific	Seth Faison	p. 371
Lives Held Cheap in Bangladesh Sweatshops	Barry Bearak	p. 375
Low-Wage Costa Ricans Make Baseballs for Millionaires	Tim Weiner	p. 390
Nobodies: Does Slavery Exist in America?	John Bowe	p. 475
Up Against Wal-Mart	Karen Olsson	p.491

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 (“Life Is No Love Boat”)? 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 (“Stretching Federal Labor”)? Are sweatshops unethical according to Krugman or the Dalai Lama?
4. Do human rights exist? If so, as a corporation how would you apply these ideas to workers in the Bangladesh (“Lives Held Cheap”) and Costa Rican sweatshops (“Baseballs for Millionaires”)? What about sweatshops or working conditions in America (“Nobodies” and “Walmart” cases)

SESSION #13 DATE: 03/08/06 DISCRIMINATION
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READINGS

EEOC Guidelines	EEOC	p. 439
Sexual-Orientation Protection Added to New York Law	Casey J. Dickinson	p. 450
Foreign Assignment	Thomas Dunfee and Diana Robertson	p. 429
Now Look Who's Taunting. Now Look Who's Suing	Jane Gross	p. 431
Is this the Right Time to Come Out?	Alistair D. Williamson	p. 436
Too Old to Work	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 created by its employees? Does the bank have any affirmative defenses as provided by the EEOC?
2. Is sexual harassment against men a legitimate concern? Is the situation at Jenny Craig ("Look Who's Taunting") comparable to that in the "Foreign Assignment"?
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 ("Too Old To Work")? Should similar laws and regulations be applied to all of these classes? Justify your position.