Ethical and Legal Challenges of the Modern Corporation: Law and Business
(Includes Professional Responsibility Stern Students)
New York University
Syllabus
Stern course #: Professional Responsibility COR2GB.3101.30
Stern course #: Ethical and Legal Challenges BSPA-GB.3101.30
NYU Law School #: Law-LW 10387.001

Term: Spring 2014
Dates: February 13- May 8 Full semester
- Professional Responsibility: February 13- March 27 (Sessions # 1-6)
- Ethical and Legal Challenges: April 3- May 8 (Sessions # 1-6)
Meeting Times: Thursday 6-9pm
Classroom: Vanderbilt Hall, Room 216
Professors: Karen Brenner/ Helen Scott
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Office Hours: By appointment
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Course Objectives:

This is a new course addressing the ethical and legal challenges of the modern corporation, including faculty and students from both the Stern School of Business and New York University School of Law. The course will be divided into two complementary sections. The emphasis in the first section is on the individual's legal and ethical responsibilities in interacting with the corporation- navigating real world market pressures considering moral and social psychology, ethical norms, and legal imperatives. The second section of the course addresses these challenges from an institutional perspective, including organizational and cultural norms. Students will also be asked to consider the role, design, and institutionalization of ethics and compliance cultures and programs in global business. The

1 Stern Students may register for one or both sections of this course. The first section satisfies the Stern Professional Responsibility requirement and the second section counts towards the following Stern specializations: law and business; global business; leadership and change management.
objective is to facilitate professional interaction and joint work between students from both schools.

Professional and leadership challenges arise from perceived conflicts between the requirements underlying ethical and cultural norms, the norms applicable to practitioners of particular occupations, duties to or expectations of oneself, the firm and, in some cases, legal imperatives. We will examine business circumstances that give rise to these conflicts and the role of the law, business practices, cultural, ethical and psychological norms and reasoning in resolving such issues and in establishing standards of leadership and professional and institutional accountability. The course is intended to help the student develop a set of analytical perspectives and tools for making judgments when such issues arise.

Subjects of study include professional dilemmas and moral accountability, truth and disclosure, conflicts of interest, agency and fiduciary duty, whistle blowing, corporate citizenship and global business issues. The student in this course will be expected to exercise professional judgment through discussion and analysis of cases, as indicated on the attached schedule of class assignments.

As this topic continues to present new and interesting case material, it is likely that during the semester we may interrupt our planned syllabus and take time to discuss issues that are occurring in real time. Students are encouraged to be current with business and legal literature and to bring some of these cases to class for discussion.

READINGS:

1. Course Pack: You may purchase this at the NYU Bookstore. If you are taking only one section of the course, please be sure to purchase only the one you need.
2. Willful Blindness, Margaret Heffernan, Walker Publishing Company, Inc., N.Y. (2011). This is for the FIRST SECTION of the course.
3. The Balance of the readings is available under the “Course Documents” tab on Blackboard (BB).

GRADING:

The weights for the student’s overall grade are:
Class Participation 20%
Class Presentations 40%
Written Short Papers 40%
(No more than 35% of students will receive a grade of A or A-)

CLASS PARTICIPATION:
Students are expected to prepare for class discussion by thoroughly reading and analyzing the assigned materials before each class. In-class discussions are an essential part of the course. All students are responsible for being prepared to discuss all of the study questions before coming to class. Students will be expected to present the assigned materials as a basis for discussion.

CLASS PRESENTATIONS:
On the first day of each section of the course each student will be assigned to a team and a case for presentation later in the semester. For each assignment, the teams will be asked to prepare a 20-minute presentation of the case. The presentation should incorporate a discussion of market conditions, psychological, ethical, cultural, organizational and legal considerations. The presentation should integrate the course material as relevant to the case.
After the presentation, the team is expected to lead the class in a 5-minute discussion. The team is required to submit a “hard-copy” of the presentation to the professors at the beginning of the discussion and each member of the team is required to submit a confidential team evaluation at the conclusion of the presentation.
Options surrounding the presentation format will be discussed in greater detail the first day of class. Your presentation may not exceed 25 slides (including title page, table of contents...)

SHORT PAPERS: (3-4 pages typed and double-spaced, not including citations)

For each section of the course, each student should prepare a written analysis of one study question of your choice from two different classes. The papers must be posted on BB before the session in which the topic is scheduled to be addressed in class.
For the first section, the papers must be submitted on or before sessions 3 and 5. For the second session, the papers must be submitted on or before sessions 3 and 5. The papers
will be evaluated based upon the systematic and thorough application of the relevant course concepts. Papers that integrate the concepts and vocabulary from class and the readings will be more highly valued.

COURSE SCHEDULE: SECTION # 1
SESSION #1
PROFESSIONAL DILEMMAS & MORAL ACCOUNTABILITY

READINGS:
1. Legal Ethics, Deborah L. Rhode and David Luban
2. Neutral, Omni-Partial Rule Making, Ronald M. Green
4. Reinventing Ethics, Howard Gardner
5. Willful Blindness, Introduction and Chapter 1
6. The Price of Lobster Thermidor

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? How might the Green reading help to analyze the case?
3. Based on the Rhode and Luban reading how might different ethical theories address the market failures in the "Lobster Thermidor" case?
4. As described by Heffernan, what are the sources of willful blindness and what are its implications for ethical reasoning?

TRUTH & DISCLOSURE

READINGS:
1. Is Business Bluffing Ethical, Albert Z. Carr
2. The Business of Ethics, Norman Chase Gillespie
3. Bluffing, Jim T. Priest
4. Willful Blindness, Chapter 3
5. At the Track, Racing Economics Collide With Veterinarians’ Oath, Walt Bogdanich, Joe Drape and Rebecca R. Ruiz, NY Times, September 21, 2012
7. Impugning the Integrity of Medical Science, Catherine D. DeAngelis & Phil B. Fontanarosa
8. What Doctors Aren’t Disclosing, Arlene Weintraub
9. The Difference Between Puffery and Fraud, Peter J. Henning

Study Questions:
1. Is business bluffing ethical? Within what limits?
2. What methods of psychological and ethical reasoning seem most appropriate to “Veterinarians’ Oath” and “Doctors Who Don’t Speak Out?”
3. Is there anything ethically wrong about the actions of the medical writers as described in “What Doctors Aren’t Disclosing”? Is disclosure an effective cure for the problem these actions describe?

SESSION # 2
GIFTS, SIDE DEALS & CONFLICTS OF INTEREST

READINGS:
1. Willful Blindness, Chapters 5 and 8
2. Buynow Stores, Bruce Buchanan
4. Health Guideline Panels Struggle with Conflicts of Interest, Duff Wilson
5. You Have the Only Hard Copy, Peter Elkind

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 psychological and ethical concepts and methods to support your position.
2. Assess the long-term effects of “bluffing” as applied to revising a stock ratings system (“You Have the Only Hard Copy”).
3. What principles/guidelines would you determine are appropriate for physicians when interacting with drug representatives or other providers of product/ information? Why would you recommend such guidelines?
SESSION # 3

PROFESSIONAL ROLES

READINGS:
1. Commissions on Sales at Brock Mason, Tom L. Beauchamp
2. Responsibility Yes, But to Whom, Lawrence Zicklin
3. Former Brokers Say JPMorgan Favored Selling Bank’s Own Funds Over Others, Susanne Craig and Jessica Silver-Greenberg
5. Why Wall Street Can’t Handle the Truth, Mike Mayo

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. What duties does a broker owe to a client?
2. Is the situation at Brock Mason similar to that in the “Responsibility Yes, But to whom” case?
3. How would you reconcile the ethics of the practices described in “Former Brokers...” and “Bank Officials...” with shareholder interests?

PROFESSIONAL ROLES

READINGS:
1. The Midnight Journal Entry, Anne T. Lawrence
2. The Epistemology of Corporate Securities Lawyering: Beliefs, Biases and Organizational Behavior, Donald C. Langevoort
3. Old City Enterprises, Lawrence Zicklin
4. At Center of Fraud, WorldCom Official Sees Life Unravel, Susan Pulliam
6. Why I am Leaving Goldman Sachs, Greg Smith
7. Broken Trust: Role of Professionals in the Enron Debacle, Ashish Nanda, HBS #903084-PDF-ENG
Study Questions:
1. Which professional duties might be at issue in “Old City Enterprises”? Is Ed Stevens (“Old City”) acting properly in terms of shareholders interests and ethical standards? How/would you address this issue at the upcoming board meeting?
2. In securities matters, who acts as gatekeepers? In such a role, whose interests are served? How do other dimensions of professional roles and responsibilities complicate this role? (You may consider a particular professional role)
3. As described by Langevoort, how does cognitive bias develop and what are its implications for managerial professionals and corporate attorneys (include “Broken Trust” in your discussion)?
4. Is the relationship between broker and client more similar to doctor/patient and lawyer/client or an independent contracting relationship between willing buyer and willing seller?
5. In “The Midnight Journal Entry” what professional duties does Richard Okumoto owe? Which of these duties have the highest priority and why?

SESSION # 4
WHISTLEBLOWING & LOYALTY

READINGS:
1. The Very Idea of a Conceptual Scheme, Patricia H. Werhane
2. Whistle blowing and Professional Responsibility, Sissela Bok
3. The Return of Qui Tam, Priscilla R. Budeiri
4. Sweeping New Whistleblower Incentives and Protections in Financial Reform Bill
5. The Aircraft Brake Scandal, Kermit Vandivier
6. Airline Safety: A Whistleblowers Tale, Stanley Holmes
7. Willful Blindness, Chapters 6, 7 and 11
10. Sometimes, It Takes A Thief To Catch One, Peter J. Henning, NY Times, September 12, 2012
Study Questions:
1. Are the provisions from SOX and Dodd-Frank adequate as a counterweight against corporate cultures as described by Werhane and Heffernan?
2. What are the elements involved in whistle blowing, according to Bok, and what conflicts are imbedded in such an act?
3. Consider the position of Searle Lawson in “The Aircraft Brake Scandal” case. Create a time line of events and determine at what point, if any, he should have blown the whistle to someone outside B.F. Goodrich. Why do you think that the outcome in the “Airline Safety” case was so different for Mark Lund?

REGULATORY COMPLIANCE

READINGS:

1. Who Is the Client? : The Corporate Lawyer’s Dilemma, Ralph Jonas
2. A Nightmare Deferred, Vanessa Blum
3. Filip Memorandum, Principles of Federal Prosecution of Business Organizations
4. Case Expands Type of Lies Prosecutors Will Pursue, Alex Berenson
5. In the Crossfire: Prosecutors’ Tough New Tactics Turn Firms Against Employees, Laurie P. Cohen

Study Questions:
1. What are the implications for whistleblowing in the context of the definition of cooperation in the Filip memorandum?
2. What are the implications of the Corporate Sentencing Guidelines for employees? Consider the situation of Daniel Bayly/Merrill Lynch (“Deals and Consequences”).

SESSION # 5
SOCIAL RESPONSIBILITY & PROFESSIONAL ROLES
READINGS:
1. Restricted Reasons and Permissible Violations, Arthur Applbaum
2. Challenging the Long-Held Belief in ‘Shareholder Value,’ Jesse Eisinger
3. The Social Responsibility of Business is to Increase Its Profits, Milton Friedman
4. Our Schizophrenic Conception of the Business Corporation, William T. Allen
5. Drug Firms See Poorer Nations as Sales Cures, Avery Johnson
6. Willful Blindness, Chapters 4, 10 and 12

Study Questions:

1. According to Applebaum, when may it be appropriate for a professional to restrict his/her moral reasoning in deliberations?
2. According to Heffernan, how can the power of monetary incentives alter moral decision-making?
3. Contrast and compare Allen’s (“Schizophrenic Conception”) definitions of a corporation. Which conception of the business corporation do you think currently dominates and why?

SESSION # 6
TEAM PRESENTATIONS

COURSE SCHEDULE: SECTION # 2
SESSION # 1
TRUTH & DISCLOSURE/CORPORATE DECISION MAKING

READINGS:
1. A.H. Robins: Dalkon Shield, A.R. Gina & Terry Sullivan
2. The Class-Action Quandary: Cash Payment, No Apology, Meryl Gordon
4. Spine Expert Repudiate Medtronic Studies, Barry Meier and Duff Wilson
5. Medtronic Giving Yale Grant to Review Bone Growth data, Barry Meier
6. Breaking the Seal on Drug Research, Katie Thomas, NY Times, June 29, 2013
Study Questions:
1. Should A. H. Robins have introduced the Dalkon Shield when it did ("A.H.Robins")?
   Create a timeline of events for the case and determine whether another path should have been chose, when and why.
2. From a corporate and societal perspective, how would you remedy the conflicts evident in “Spine Expert...” and “As Drug Industry’s Influence...?” Is the Medtronic case a potential model? Why or why not? Does the model proposed in “Breaking the Seal” remedy the concerns?

GIFTS, BRIBERY & CORRUPTION CONTROL
READINGS:
1. Recent Developments in the Foreign Corrupt Practices Act and the New UK Bribery Act (sections 1-2, 4-6), Jon Jordan
2. In Justice Shift, Corporate Deals Replace Trials, Eric Lichtblau
4. The Mounting Costs of Internal Investigations, Peter J. Henning
5. Deferred Prosecution Agreements and Cookie-Cutter Justice. Peter J. Henning
7. For Global Drug Manufacturers, China Becomes a Perilous Market, Katie Thomas, NY Times, July 16, 2013
8. Glaxo Used Travel Firms for Bribery, China Says, David Barboza, NY Times, July 15, 2013
9. 2013 Mid-Year Update on Corporate Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs), Gibson Dunn, July 9, 2013

Study Questions:
1. Do you agree with the current trend towards the deferred prosecution of white-collar crime ("In Justice Shift,” “Deferred Prosecution,” and “2013 Mid-Year")? What are the societal and organizational implications?
2. What were the institutional structures in Wal-Mart and Glaxo that allowed the situations to develop?
3. What are the similarities and differences between the FCPA and the UK Bribery Act? How should organizations respond?

SESSION # 2
CORPORATE INVESTIGATIONS

READINGS:
3. The S.E.C., Whistle-Blowers and Sarbanes-Oxley, Peter J. Henning, New York Times Dealbook, November 9, 2010

Study Questions:
1. What are the organization’s challenges in investigating fraud (include Wal-Mart case in discussion)?
2. The Dodd-Frank Act of 2010 directs the SEC to reward whistleblowers. Because tips are an effective means for identifying misconduct, should companies consider a reward system for tips leading to discovery of fraud? What are the implications of such a system?

SESSION # 3
MORAL STANDARDS ACROSS BORDERS

READINGS:
1. The UN Declaration of Human Rights
2. The Challenge of Cultural Relativism, James Rachels
3. Values in Tension: Ethics Away From Home, Thomas Donaldson
4. US Bill of Rights
6. Caux Round Table Principles for Responsible Business
7. The Creation and Destruction of Value, The Globalization Cycle, Harold James, pgs. 269-277
8. UN Guiding Principles for the Implementation of the UN ‘Protect, Respect, and Remedy’ Framework, pgs. 1-4 and 12-20
10. The UN Guiding Principles on Business and Human Rights, A Guide For the Legal Profession, pgs. 1-10 and 27-33
11. Great Lakes: Great Decisions, Darden Business Publishing, University of Virginia, UV1171
12. Philip Morris’ Global Race, Nanette Byrnes and Frederik Balfour
13. Willful Blindness, Chapter 9

Study Questions:

1. According to Rachels, what is the challenge of cultural relativism and how does it impact a corporation’s global actions?
2. Do human rights exist? If so, as the CEO of a corporation, or counsel advising the CEO, how would you apply these ideas to other countries (“Philip Morris’ Global Race” and “Great Lakes”)?

CORPORATE CITIZENSHIP: SUPPLY CHAINS

1. Lives Held Cheap in Bangladesh Sweatshops, Barry Bearak
2. In China, Human Costs are Built Into an iPad, Charles Duhigg and David Barboza
4. In Praise of Cheap Labor: Bad Jobs at Bad Wages, Paul Krugman
5. OECD Guidelines for Multinational Enterprises, May 25, 2011, pgs. 1-34
8. Fast and Flawed Inspections of Factories Abroad, Stephanie Clifford and Steven Greenhouse, NYTimes, September 1, 2013
Study Questions:
1. How would you characterize the responsibilities of corporations in managing their supply chains? What ethical and or legal principles inform your response? What role do lawyers have in the process?
2. Compare and contrast the adequacy of the US and European responses to safety issues at factories in Bangladesh. What ethical and legal principles inform their response?

SESSION # 4
CORPORATE CITIZENSHIP: TAXES

2. How Apple Sidesteps Billions in Taxes, Charles Duhigg and David Kocieniewski
3. UK Lawmakers’ Report Criticizes Google’s Tax Affairs, Tom Bergin, Reuters, June 12, 2013

Study Questions:
1. Given the jurisdictional opportunities available to corporations to limit their tax expense what ethical and legal principles should inform their decision with respect to tax strategy?

CORPORATE CITIZENSHIP: CORPORATE POLITICAL CONTRIBUTIONS; SAY ON PAY

READINGS:
4. Killing Conscience: The Unintended Behavioral Consequences of ‘Pay for Performance,’
Lynn A. Stout, March 2013

Study Questions:
1. What societal and corporate challenges are raised by corporate political activity (CPA)?
   What is the best way to organize the CPA function in light of these challenges?
2. Are political speech decisions fundamentally different from ordinary business decisions, and if so, how should these be managed from a corporation’s or societal (regulator’s) standpoint?
3. What are the concerns regarding compensation? Is “say-on-pay” likely to address some of these issues? What are the societal implications?
4. What are the unintended behavioral consequences of current pay for performance plans?
   What are the institutional implications?

SESSION # 5
DEVELOPING AND INSTITUTIONALIZING ETHICAL CULTURES

Readings:
1. Managing for Organizational Integrity, Lynn Sharp Paine
2. Blind spots, Chapter 6
3. Business Ethics and Stakeholder Analysis, Kenneth E. Goodpaster
4. The Road to a Model Ethics and Compliance Program, KPMG
6. The General Counsel as Lawyer-Statesman, Ben W. Heineman, Jr.
7. At SAC, Rules Compliance With An ‘Edge,’ James B. Stewart, NY Times, July 26, 2013
8. Francisco D’Souza of Cognizant, on Finding Company Heroes, NY Times, August 31, 2013, Corner Office
9. When Trying to Follow the Rules Isn’t Enough, James B. Stewart, NY Times, September 20, 2013

Study Questions:
1. In designing an ethical culture and an ethics and compliance program, what guidelines and principles (including moral and social psychology, ethics, and the law) would inform your structure?
2. How would you institutionalize an ethical culture throughout the organization?

SESSION # 6
TEAM PRESENTATIONS

ADDITIONAL READINGS (NOT REQUIRED):


What Money Can’t Buy, The Moral Limits of Markets, Michael J. Sandel

Blindspots- Why We Fail to do What’s Right and What to Do About It, Max H. Bazerman and Ann E. Tenbrunsel

Giving Voice to Values, Mary C. Gentile

High Performance With High Integrity, Benjamin W. Heineman, Jr.