Spring 2017
Ethical and Legal Challenges of the Modern Corporation: Law and Business*1
New York University
Syllabus
BSPA-GB.3301.30/ Law-LW 10387.001

Term: Spring 2017
Dates: February 8- May 3 (No class March 15)
Meeting Times: Wednesday 6-9pm
Classroom: Furman Hall, Room 212
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Course Objectives:

This course addresses the ethical and legal challenges of the modern corporation through three lenses: the individual, institutional, and societal, and includes faculty and students from both the Stern School of Business and New York University School of Law. The emphasis of the course 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 institutional perspective, including organizational and cultural norms, and societal implications. Students will also be asked to consider the role, design, and institutionalization of ethics and compliance cultures and programs in global business. The objective is to facilitate professional interaction and joint work between students from both schools.

Professional and leadership challenges arise from perceived conflicts among duties to or expectations of oneself, the firm, and civil society, ethical and cultural norms, the norms applicable to practitioners of particular occupations, and, in some cases, legal imperatives.

1 The course satisfies the Stern Professional Responsibility requirement and the following Stern specializations: law and business, and global business.
We will examine business circumstances that give rise to these conflicts and the role of the law, business practices, market pressures, 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 recognize these issues and to 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, bribery, agency and fiduciary duty, whistle blowing, ethics and compliance programs, corporate investigations, 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.
3. The Balance of the readings is available under the “Resources” tab on NYU Classes.

The readings in the syllabus are noted as either Foundational or Cases. Please be sure to complete all of the readings for each session (they are usually broken into two components but they are all required to be completed for each class).

GRADING:

The weights for the student’s overall grade are:

- Class Participation: 30%
- Class Presentations: 40%
- Three Written Short Papers: 30%
(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 the class each student will be assigned to a team and a case for presentation later in the semester. 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 and demonstrate mastery of the course concepts by appropriate application of course material 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)
Each student should prepare a written analysis of one study question of your choice from three different classes. The papers must be posted on NYU Classes before the class addresses the topic in class. The papers must be submitted on or before sessions 3, 5, and 8. 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:

SESSION #1
PROFESSIONAL DILEMMAS & MORAL ACCOUNTABILITY

READINGS:

FOUNDATIONAL:
1. Legal Ethics, Deborah L. Rhode and David Luban
2. Economic Theories of Regulation: Normative vs. Positive, Linda N. Edwards & Franklin R. Edwards
3. Reinventing Ethics, Howard Gardner
4. Willful Blindness, Introduction and Chapter 1
5. Practical Wisdom- The Right Way to Do the Right Thing, Barry Schwartz and Kenneth Sharpe- Chapters 1, 2, Pages 147-154

CASES:
6. The Price of Lobster Thermidor

Study Questions:
1. Why do causes of market failures tend to bring about laws or regulations to counter their effects?
2. As described by Heffernan, what are the sources of willful blindness and what are its implications for ethical reasoning?
3. Describe, based upon “Practical Wisdom,” the optimal tradeoff between adopting rules and relying on individual discretion.
4. Based on the Edwards article which market failures or imperfections are present in the “Lobster Thermidor” case?
5. Based on the Rhode and Luban reading how might different ethical theories address the market failures in the “Lobster Thermidor” case?

TRUTH & DISCLOSURE

READINGS:
FOUNDATIONAL:
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

CASES:
7. Impugning the Integrity of Medical Science, Catherine D. DeAngelis & Phil B. Fontanarosa
8. What Doctors Aren’t Disclosing, Arlene Weintraub

Study Questions:
1. Is business bluffing ethical? Within what limits?
2. What methods of psychological and ethical reasoning seem most appropriate to “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? Include the “Paradox of Disclosure” in your analysis.

SESSION # 2

CORPORATE DECISION MAKING / TRUTH & DISCLOSURE

READINGS:

FOUNDATIONAL:
1. The Organizational Apology, Maurice E. Schweitzer, Alison Wood Brooks, and Adam D. Galinsky, September 2015, HBR

CASES:
3. A.H. Robins: Dalkon Shield, A.R. Gina & Terry Sullivan
4. The Class-Action Quandary: Cash Payment, No Apology, Meryl Gordon
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 chosen, when and why.
2. At what point should A.H. Robins have apologized? What should they be seeking to achieve?
3. From a corporate and societal perspective, how would you remedy the conflicts evident in “As Drug Industry’s Influence...?” Does the model proposed in “Breaking the Seal” remedy the concerns?

GIFTS, SIDE DEALS & CONFLICTS OF INTEREST

READINGS:

FOUNDATIONAL:
1. Willful Blindness, Chapters 5 and 8
2. Physicians and Drug Representatives: Exploring the Dynamics of the Relationship, Susan Chimonas, Troyan A. Brennan & David J. Rothman

CASES:
4. Buynow Stores, Bruce Buchanan

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. What principles/guidelines would you determine are appropriate for physicians as employees of hospitals with duties to patients and employers and when interacting with
drug representatives or other providers of product/ information? Why would you recommend such guidelines?

SESSION # 3

PROFESSIONAL ROLES

READINGS:

FOUNDATIONAL:
1. The Epistemology of Corporate Securities Lawyering: Beliefs, Biases and Organizational Behavior, Donald C. Langevoort
2. Restricted Reasons and Permissible Violations, Arthur Applbaum

CASES:
4. At Center of Fraud, WorldCom Official Sees Life Unravel, Susan Pulliam
5. The Midnight Journal Entry, Anne T. Lawrence
6. Old City Enterprises, Lawrence Zicklin

Study Questions:
1. According to Applebaum, when may it be appropriate for a professional to restrict his/her moral reasoning in deliberations?
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?
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?
6. 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?

PROFESSIONAL ROLES

READINGS:

FOUNDATIONAL:
2. Why Wall Street Can’t Handle the Truth, Mike Mayo
3. ‘Customers First’ to Become the Law in Retirement Investing, Tara Siegel Bernard, NY Times, April 6, 2016

CASES:
4. Responsibility Yes, But to Whom, Lawrence Zicklin
5. Commissions on Sales at Brock Mason, Tom L. Beauchamp

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?

SESSION # 4

GIFTS, BRIBERY, FCPA, UK BRIBERY ACT

READINGS:

FOUNDATIONAL:
2. Bribery Act 2010, Chapter 23, Sections 1-8, (Pages 1-6)
3. Despite Prosecutions, Corruption Levels Stay the Course, Robert Appleton, Corporate Counsel, September 1, 2015

CASES:

4. Glaxo Used Travel Firms for Bribery, China Says, David Barboza, NY Times, July 15, 2013
5. For Global Drug Manufacturers, China Becomes a Perilous Market, Katie Thomas, NY Times, July 16, 2013
6. Glaxo Says It Will Stop Paying Doctors to Promote Drugs, Katie Thomas, NY Times, December 16, 2013
7. Former Head of Glaxo in China Is Accused of Bribery, David Barboza and Katie Thomas, NY Times, May 13, 2014

Study Questions:
1. What are the similarities and differences between the FCPA and the UK Bribery Act? How should organizations respond?
2. What were the institutional structures at Glaxo that allowed the situation to develop?

WHISTLEBLOWING & LOYALTY

READINGS:

FOUNDATIONAL:

2. The Very Idea of a Conceptual Scheme, Patricia H. Werhane
3. Whistle blowing and Professional Responsibility, Sissela Bok
4. The Return of Qui Tam, Priscilla R. Budeiri
5. Willful Blindness, Chapters 6, 7 and 11

CASES:
6. The Aircraft Brake Scandal, Kermit Vandivier
7. Airline Safety: A Whistleblowers Tale, Stanley Holmes

Study Questions:
1. Are the whistleblowing provisions adequate as a counterweight against corporate and professional cultures as described by Werhane, Heffernan, and Gladwell? 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?
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?

SESSION # 5

CORPORATE COMPLIANCE ENFORCEMENT

READINGS:

FOUNDATIONAL:

1. Who Is the Client? : The Corporate Lawyer’s Dilemma, Ralph Jonas
4. The Changing Role of Criminal Law in Controlling Corporate Behavior, pages ix-xvi, 1-6, 38, 41-67
5. Cooperating With the DOJ: A Shift in Policy, Michael P. Kelly, Corporate Counsel, April 21, 2015
6. 2015 Mid-Year Update on Corporate Non-Prosecution Agreements (NPAs) and Deferred Prosecution Agreements (DPAs), Gibson Dunn, July 8, 2015, Pages 1-5 (UPDATE)

CASES:

Study Questions:
1. What are the implications for whistleblowing in the context of the definition of cooperation in the Filip and the Yates memoranda?
2. What are the implications to corporate culture in light of the evolving standards of cooperation?
3. In what way, if any, would the conduct of Merrill Lynch or Dan Bayle, have changed in light of the Yates Memo?

CORPORATE INVESTIGATIONS

READINGS:

FOUNDATIONAL:

CASES:
Study Questions:
1. Given the Yates memorandum, what does Gilman suggest about the implications of corporate investigations?
2. What are the organization’s challenges in investigating fraud (include Wal-Mart case in discussion)? How should the Wal-Mart investigation have been structured (identify challenges and incorporate concepts from the additional readings)?

SESSION # 6

GLOBAL CORPORATE CITIZENSHIP

READINGS:

FOUNDATIONAL:
1. Willful Blindness, Chapters 4, 9, 10 and 12
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. The UN Declaration of Human Rights
6. The Challenge of Cultural Relativism, James Rachels
7. Values in Tension: Ethics Away From Home, Thomas Donaldson
8. US Bill of Rights
10. Caux Round Table Principles for Responsible Business
11. The Creation and Destruction of Value, The Globalization Cycle, Harold James, pgs. 269-277
12. UN Guiding Principles for the Implementation of the UN ‘Protect, Respect, and Remedy’ Framework, pgs. 1-4 and 12-20

CASES:
5. Drug Firms See Poorer Nations as Sales Cures, Avery Johnson
6. Philip Morris’ Global Race, Nanette Byrnes and Frederik Balfour
7. Great Lakes: Great Decisions, Darden Business Publishing, University of Virginia, UV1171
8. Driven to Suicide by an ‘Inhuman and Unnatural’ Pressure to Sell, Geeta Anand and Frederik Joelving, NY Times, August 11, 2016

Study Questions:

1. Contrast and compare Allen’s (“Schizophrenic Conception”) definitions of a corporation. Which conception of the business corporation do you think currently dominates and why?
2. According to Rachels, what is the challenge of cultural relativism and how does it impact a corporation’s global actions?
3. 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,” “Drug Firms,” “Driven to Suicide,” and “Great Lakes”)?

SESSION # 7
CORPORATE CITIZENSHIP: SUPPLY CHAINS

FOUNDATIONAL:

1. In Praise of Cheap Labor: Bad Jobs at Bad Wages, Paul Krugman
3. Business as Usual is Not an Option, Sarah Labowitz and Dorothee Baumann-Pauly, April 2014 (Pages 6-11, 16-17, 26-29, 30-38)
4. Why Corporations Fail to Do the Right Thing, Christine Bader, The Atlantic, April, 2014
5. Companies Struggle to Comply With Rule on Conflict Minerals, Lynnley Browning, September 7, 2015, NY Times

CASES:
8. Lives Held Cheap in Bangladesh Sweatshops, Barry Bearak
10. 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 # 8
DEVELOPING AND INSTITUTIONALIZING ETHICAL CULTURES

Readings:

FOUNDATIONAL:

1. Managing for Organizational Integrity, Lynn Sharp Paine
2. Blind spots, Chapter 6
3. Business Ethics and Stakeholder Analysis, Kenneth E. Goodpaster
4. The GC as Lawyer-Statesman, Ben W. Heineman, Jr.
5. Fostering an Ethical Organization from the Bottom Up and the Outside In, Megan F. Hess and Earnest Broughton, Kelley School of Business, 2014
7. Preventing Bad Behavior at Your Company, Dan Currell and Aaron Kotok, Corporate Counsel, March 17, 2015

CASES:


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?
3. What are the implications of expanded claw back provisions (“The Wallet“) on organizational behavior and on society? What are the unintended consequences?

TEAM PRESENTATIONS

ADDITIONAL READINGS (NOT REQUIRED):
The Inside Counsel Revolution- Resolving the Partner- Guardian Tension, Ben W. Heineman, Jr.
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.
Solitude and Leadership, William Deresiewicz
Ties That Bind, Donaldson/Dunfee