PROFESSIONAL RESPONSIBILITY: MARKETS, ETHICS & LAW (B02.3101.W5)
JANUARY 2004

- Dates & Times:
  Jan. 3 (9:00am - 4:00pm) & Jan. 4 (1:00pm-4:00pm)
  Jan. 10 (9:00am – 4:00pm) & Jan. 11 (1:00pm – 4:00pm)

- Classroom: KMC 5-85

PROFESSOR KOWAL

- Office: 307 Tisch Hall
- Office Hours: By Appointment or via email
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- Teaching Assistant: Sara Natelson sbn214@stern.nyu.edu
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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. 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

This textbook is available in the NYU Professional Bookstore. The edition for the current academic year, 2003-04, is different from prior editions.

PREPARATION FOR CLASS

Each class session consists of several study modules labeled A, B, C, etc., respectively. 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

1. Attend all scheduled class sessions.
2. Homework: 4 Written Study Questions (2 - 3 pages each). Pick ONE study Question out of the assigned readings for each class session to answer. Homework assignments will be due prior to the class meeting and should emailed directly to my teaching assistant, Sara Natelson at sbn214@stern.nyu.edu.
3. Homework papers are due as follows: January 3rd class email homework paper by 9:00am January 2nd, January 4th class email homework paper by 9:00am January 4th, January 10th class email homework paper by 9:00am January 9th & January 11th class email homework paper by 9:00am January 11th.
4. Term Paper Description (1 page): Due in class on January 10th.
5. Term Paper (8-12 pages): Due January 19th.

### 1. ATTENDANCE

There are only 4 sessions for this course. Therefore, you are required to attend all 4 sessions in their entirety. Attendance will be taken. If you do not attend all 4 classes then you will not receive credit for the course. If due to work or personal circumstances you doubt your capacity to attend all 4 classes then you should drop this section and register for another section.

### 2. HOMEWORK: 4 Written Study Question Analyses (2-3 pages typed)

Each student is responsible for handing in a total of 4 written homework assignments – one per class session. Each homework assignment consists of a 2 – 3 page written analysis of ONE study question of your choice from one of the study module(s) we will be discussing that day in class. You may submit more than 4 written homework assignments but only the top 4 grades will count.

### 3. TERM PAPER DESCRIPTION: (1 page typed)

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

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

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.

The paper 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. 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 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 3 options:

1. **Email:** Email term paper to Professor Kowal (rkowal@stern.nyu.edu) as a Word file attachment. Note that the confidentiality of email cannot be guaranteed.
2. **Mail:** Mail term paper to Professor Kowal at Stern School of Business, NYU, 40 West 4th Street, Tisch Hall Room 307, Accounting Department, New York, New York, 10012-1118
3. **Hand Deliver:** Hand deliver term paper to Iantha Coleman, Professor Kowal’s secretary, in Suite 300, Tisch Hall, during regular business hours.

**GRADING**
The weights for the student’s overall grade are:

1. **Class Participation** 20%
2. **Homework** 40%
3. **Term Paper Project** 40%
COURSE SCHEDULE

JANUARY 3: 9:00am-1200pm     Topic & Assignments

A. INTRODUCTION: MARKET FAILURES & PROFESSIONAL DILEMMAS

1. “Economic Theories of Regulation: Normative vs. Positive”
   by Linda N. Edwards & Franklin R. Edwards. (p.5)
   Visit: http://www.suboceansafety.org
3. “Pollution Case Highlights Trend to Let Employees Take the Rap.”
   by Dean Starkman (p.309)
4. “Making An Ethical Decision” by Terry Halbert & Elaine Ingulli (p.15)

Study Questions:
1. Based on the Edwards article, what 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.

B. TRUTH & DISCLOSURE

Read: 1. “Is Business Bluffing Ethical?” by Albert Carr (p.66)
       2. “Ethics and the New Game Theory” by Gary Miller (p.26)

        2. “Familiar Refrain: Consultant’s Advice on Diversity was Anything but
           Diverse” by Douglas A. Blackmon (p.53)
        2. “Today’s Analyst Often Wears Two Hats” by Roger Lowenstein (p.59)
        3. “Heartfelt Advice, Hefty Fees” by Melody Petersen (p.61)

Study Questions
1. Would Albert Carr voice any objections to the (i) corporate actions of Boots in the
   “Bitter Pill” case 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 assess the effects of bluffing as applied to (i) the job of an
   equity analyst (Lowenstein & Smith readings), (ii) diversity consulting firms (“Familiar
   Refrain”) and (iii) celebrity indorsers (“Heartfelt Advice”)?
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?
C. GIFTS, SIDE DEALS & CONFLICTS OF INTEREST

Read:
1. “Neutral Omni-Partial Rule Making” by Ronald M. Green (p.22)
2. “Battling International Bribery 2001” (p.90)

Cases:
1. “Buynow Stores” by Bruce Buchanan (p.79)
2. “Roger Berg” by Ronald M. Green (p.82)
3. “Wall Street and the Nursery School: A New York Story” by Gretchen Morgenson and Pat McGeehan (p.94)
4. “Tobacco Industry Fought Drug’s Marketing” by Kenneth Chang (p.97)
5. “U.S. Warns Drug Makers on Illegal Sales Practices” by Robert Pear (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 & 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 & Halbert/Ingulli readings to support your position.

3. Have tobacco and drug companies created any market failures or engaged in any conflicts of interest in their current marketing practices as presented in the Chang and Pear readings?

JANUARY 3: 1:00pm-4:00pm

D. AGENCY & FIDUCIARY DUTY

Read:
1. “Duties of Principals and Agents” by Kenneth Clarkson et al. (p.116)
2. “Moral Hazard” by Robert Pindyck & Daniel Rubenfeld (p.10).

Cases:
1. “Quality Department Stores” by Lawrence Zicklin (p.103)
2. “Old City Enterprises” by Lawrence Zicklin (p.104)
4. “You Bought, They Sold” by Mark Gimein (p.109)

Study Questions
1. Sketch out the relationships between parties described or implied in “Quality Department Stores.” Which of these can be called “fiduciary” relationships and which fiduciary duties apply? Given your analysis, how should the investment manager vote?

2. Which fiduciary duties might come into play in “Old City Enterprises” and “Plasma International”? Are Stevens in Old City and Levin of Plasma acting properly in terms of shareholder interests as well as 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?

E. WHISTLE BLOWING & LOYALTY

Read: 1. "The Return of Qui Tam" by Priscilla R. Budeiri (p.183)
   2. "States Passing Whistleblower Statutes" by Steve Seidenberg (p.174)

Cases: 1. "Aircraft Brake Scandal" by Kermit Vandivier (p.149)
   2. "He Told. He Suffered. Now He’s a Hero" by Kurt Eichenwald (p.159)
   4. "Doctor Explains Why He Blew the Whistle" by Melody Petersen (p.172)
   5. "How Ex-Accountant Added up To Trouble for Humbled Xerox" by James Bandler and Mark Maremont (p.176)

Study Questions
1. At what point, if any, should Searle Lawson in the "Aircraft Brake Scandal" 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" and "Doctor Explains" to "Aircraft Brake Scandal" and assess the role that qui tam plays in resolving such situations?

3. Mark Jorgeson ("He Told He Suffered" – Prudential) and James Bingham (How Ex-Accountant Added Up" – 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 their outcomes differ with their approach to whistleblowing?

JANUARY 4: 1:00pm-4:00pm    Topic & Assignments

A. INSIDER TRADING

Read: 1. "Insider Trading Notes" by Constance E.Bagley (p.298)

Cases: 1. "An Accountant’s Small Time Insider Trading" by Tom L. Beauchamp (p.277)
   2. "Raymond Dirks and Equity Funding of America" by Roy C. Smith (p.295)
   3. "Trading Room Ethics" by Lawrence Zicklin (p.284)
   4. "The Case for Insider Trading" by Henry G. Manne (p.287)

Study Questions
1. Should the accountant, Donald Davidson, trade on the information he has obtained from Warner Wolff? Use the legal theories of insider trading and ethical concepts to support your position.
2. Is Ray Dirks’ behavior consistent with the concept of fiduciary duty and the various legal theories of insider trading? Why was he reprimanded by the SEC but ultimately exonerated by the Supreme Court? Use ethical and legal 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 including Manne’s thesis (“The Case for Insider Trading”).

**B. CONTROL BY LAW: COMPLIANCE & THE CORPORATE SENTENCING GUIDELINES**

**Read:**
1. “Living with the Organizational Sentencing Guidelines” by Jeffrey Kaplan, Linda S. Dakin, Melinda R. Smolin (p.328)
2. “When the Company Becomes a Cop” by Linda Himelstein (p.307)
3. “DOJ Gets Tougher on Corporations” by Steve Seidenberg and Tamara Loomis (p.313)
5. “Enough is Enough” by Clifton Leaf (p.318)

**Study Questions:**
1. Are the compliance costs that the U.S. sentencing guidelines imply justified? Does Leaf (“Enough is Enough”) agree with the guideline’s approach to white-collar crime? Use ethical concepts and methods to support your position.

2. What are the implications of the U.S. sentencing guidelines for the individual employee? Use your own intended career path as a basis for judgment, and be as specific as you can.

**C. SALES ETHICS IN FINANCIAL MARKETS**

**Read:**
1. “Investment Management: Business . . . or Profession and What Role Does the Law Play?” by John C. Bogle (p.140)

**Cases:**
1. “Commissions on Sales at Brock Mason” by Tom L. Beauchamp (p.121)
2. “West Virginia CIF” by Ingo Walter (p.124)
3. “Disorders made to Order” Brendan I. Koerner (p.133)

**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. How is the situation at Brock Mason similar to that at SSB described in “Outrage is Rising As Options Turn To Dust.”

2. In what ways, if any, could we determine that pharmaceutical companies are ethically responsible for promoting new mental illnesses in order to boost their profits from drug sales?

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 agency problems. Do you agree? Justify your position.

JANUARY 10: 9:00am – 12:00pm

NOTE: TERM PAPER DESCRIPTION (1-page) DUE TODAY: I will hold individual conferences during the breaks and lunch hour to go over your term project descriptions.

A. PRODUCT LIABILITY

Read: 1. “Strict Product Liability & Product Liability” by Kenneth Clarkson, et. al. (p.423)

    3. “Will the Lawyers Kill Off Norplant?” by Gina Kolata (p.414)
    4. “Legal Myths: The McDonald’s Hot Coffee Case” (p.419)

Study Questions

1. Should A.H. Robins have introduced the Dalkon Shield when it did? Which legal theories of product liability may apply to A.H. Robins? Do they have any legal defenses?

2. Was McDonald’s “negligent” in the “hot coffee” case? Should McDonalds also be subject to “strict” product liability? Does McDonald’s have any legal defenses? Does the Greene v. Boddie-Noel judicial opinion help in your analysis of the McDonalds case?

3. Can you draw a distinction between the Dalkon Shield, Norplant and breast implant cases? Are there any moral hazards and/or have any fiduciary duties been breached in these cases?

B. SOCIAL RESPONSIBILITY TO STAKEHOLDERS

Read: 1. “The Social Responsibility of Business is to Increase Its Profits” by Milton Friedman (p.358)
    2. “Our Schizophrenic Conception of the Business Corporation” by William T.
Allen (p.255)

**Cases:**
4. “Cut Loose” by Anne-Marie Cusac (p.352)

**Study Questions**
1. Is Plasma International acting properly? What ethical methods and concepts are you applying to reach your conclusion?

2. What advice would Milton Friedman and William Allen give to the CEO of Larami Corp., manufacturer of the Super Soaker? Would you agree with Friedman and/or Allen? Use ethical methods and concepts to support your position.

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

4. Does IBM owe any duty to Fran Asbeck (“Cut Loose”) regarding his health care benefits upon retirement? How would Allen (“Schizophrenic Conception”) and Friedman (“Social Responsibility”) respond to IBM’s behavior?

**JANUARY 10: 1:00pm – 4:00pm**

**Topic & Assignments**

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<th>A. PATTERNS OF DISCRIMINATION</th>
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<tr>
<td><strong>Read:</strong> 1. “EEOC Guidelines (excerpt)” (p.443)</td>
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<td>2. “Sexual-Orientation Protection Added to New York Law” by Casey J. Dickinson (P.454)</td>
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<tr>
<td>3. “McKinney’s Consolidated Laws of New York” (p.456)</td>
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| **Cases:** |
| 1. “Foreign Assignment” by Thomas Dunfee and Diana Robertson (p.431) |
| 3. “Is this the Right Time to Come Out” by Alistair D. Williamson |

**Study Questions**
1. In the “Foreign Assignment” case, how would you judge the actions of Bill Vitam using legal and ethical concepts to justify your position? Can the bank (employer) be held liable for sexual harassment, according to the EEOC, for the actions of its employees? Does the bank have any possible defenses?
2. Is sexual harassment against men a legitimate concern? Is the situation at Jenny Craig comparable to that in Foreign Assignment? Why or why not?

3. Is discrimination because of sexual orientation different from discrimination because of sex? What about discrimination based upon age? Should similar laws and regulations be applied to both? Justify your position.

### B. PRIVACY

**Read:** 1. “HIPAA Privacy Rules Go Into Effect” by Michael N. Mercurio (p.475)
   - “HIPAA: New Federal Privacy Rules and Their Impliactions” by NickLittlefield and Colin Zack (p.482)

**Cases:**
1. “Monday 9:01 A.M.” by Ronald Smithies (p.461)
2. “Open Secrets” by Ellen Schlutz (p.462)
3. “Prying Times” by Ann Carrns (p.466)
4. TGB Insurance Services Corp v. Superior Court (p.487)

**Study Questions**
1. In “Monday 9:01 A.M.” have any privacy rights been violated?
2. Should firms face any restrictions on the internal use of data gathered from their own employees, specifically medical/psychological information through EAP programs? Are there any market failures surround the issue of privacy?

### C. TRADE SECRETS

**Read:** 1. “Trade Secrets, Patents, and Morality” by Robert E. Frederick & Milton Snoeyenbos (p.203)

**Cases:**
1. “Stockbroker’s Story” by Bruce Buchanan (p.191)
2. “Fare Game” by William M. Carley (p.192)
3. “Corporate Spies: The Pizza Plot” by Adam Penenberg & Marc Barry (p.196)
4. “Foote Cone Loses Two Accounts From Coke in Wake of Pepsi Suit” by Suzanne Vranica (p.201)

**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 with respect to “Stockbroker’s Story”
with respect to the idea of a trade secret?

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

D. MORAL STANDARDS ACROSS BORDERS

Read: 1. “In Praise of Cheap Labor: Bad Jobs at Bad Wages Are Better than No Jobs at All” by Paul Krugman (p.380)
   2. “Moral Minimums for Multinationals” by Thomas Donaldson (p.384)

Cases: 1. “The Oil Rig” by Joanne B. Ciulla (p.367)
   2. “For Cruise Workers, Life is No Love Boat” by Joshua Harris Prager (p.369)
   3. “Stretching Federal Labor Law Into the South Pacific” by Seth Faison (p.371)
   4. “Lives Held Cheap in Bangladesh Sweatshops” by Barry Bearak (p.375)

Study Questions
1. According to Donaldson, have any basic human rights been violated in the oil rig case? Are the ex-pats justified in getting better treatment than the Angolan workers?

2. Should cruise workers that service US ports enjoy the rights of other US workers? Is this an unethical situation according to Krugman or other ethical thinkers we have studied?

3. Should US labor & safety laws apply to the Northern Mariana Islands? Are sweatshops unethical according to Krugman and Donaldson, as well as other ethical thinkers that we have studied?

4. Donaldson argues for the existence of 10 basic human rights. Do human rights exist? Is so, how would you apply these ideas to workers on cruise ships or in the Bangladesh sweatshops?

E. CONCLUDING DISCUSSION