B02.3101 - Professional Responsibility

Spring, 2005                                      Professor Ingo Walter
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Course Objectives

The purpose of this course is to introduce students to a broad range of “non-market” issues encountered by managers and business professionals, and to help develop analytical perspectives for making judgments when such issues arise. The course aims at developing a practical set of ethical norms and reasoning in resolving sticky questions in managerial life, and in establishing workable standards of professional responsibility. In the context of some of these issues, we will illustrate how the legal system (civil and criminal) is used to redress failures of the market economy.

The objective is to heighten students’ awareness of – and sensitivity to – issues of individual and corporate conduct that are complex, varied, changing and very much affected by competitive considerations and by legal restraints and penalties. In the end, how an individual handles these situations as they occur throughout a career determines the quality of his or her professional track record, which in turn affects the “value” of that career and the personal satisfaction derived from it. No less important, how these issues are handled at the corporate level is one element in valuing an enterprise as a going concern – and the shareholder-value impact is particularly compelling in reputation-sensitive industries like financial services.

The course material tries to expose students to a wide variety of U.S. and international case situations to help develop the ability to exercise professional judgment – a “sniff-test” – about them. A variety of readings (representing all sides of the issues involved) is included to assist in the process. The cases and readings should be the basis for vigorous classroom discussion intended to get everyone actively involved.
Preparation for Class

The student’s 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 preparing answers to the “study questions” associated with the cases before coming to class. These are not to be handed-in. Instead, the instructor will ask individual students to provide their answers orally, as a basis for further discussion.

Short Papers

Students must turn in 5 case write-ups during the course – maximum of 4 pages each in length. Any cases discussed in class may be selected, but the writeups must be turned in before the case is discussed in class.

Term Project

Students are responsible for submitting a term project at the end of the semester, which is described on a page attached to this course outline. Projects are due at the end of class on Thursday 21 April 2005, but may be submitted earlier by e-mail. No late projects will be accepted. The term project requirements are described below.

Final Examination

There is no final examination in this course.

Grading

All students must pass this course in order to graduate. The full range of grades A through F will be assigned. A passing grade is D. The weights for the student’s final grade are as follows:

- Class Participation 30%
- Case write-ups 30%
- Term Project 40%

Textbook

Most cases and readings for this course are found in Cases and Readings in Professional Responsibility: Markets, Ethics, and Law, 2004-05 Edition. This is available at the NYU Professional Bookstore. Note that this Edition, is different from previous editions. All other cases and readings are posted on Blackboard, as indicated in the course outline.
TOPIC AND ASSIGNMENTS

SESSION #1  Introduction - Market Failures & Professional Dilemmas  
22 Mar 2005

**Read:**

“The Price of Lobster Thermidor” from *The Economist* (p.353)

“Economic Theories of Regulation: Normative v Positive” by Linda N. Edwards and Franklin R. Edwards (p.5)

“Moral Hazard” by Robert Pindyk and Daniel L. Rubinfeld (p.10)

“Making an Ethical Decision” by Terry Halbert and Elaine Ingulli (p.15)

“Neutral, Omni-partial Rule-making” by Ronald M. Green (p.22)

**Study Questions:**

1. Why do market failures tend to bring about law or regulation to counter their effects?

2. What 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  Truth & Disclosure  
24 Mar 2005

**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)

“Today’s Analyst Often Wears Two Hats” by Roger Lowenstein (p.65)
Read: "Is Business Bluffing Ethical?" by Albert Z. Carr (p.73)

"Double Agents in the Financial System" by Roy C. Smith (p.78)

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 assess the long-term effects of bluffing as applied to (i) the job of an equity analyst (Lowenstein & Smith readings) and (ii) celebrity endorser (“Heartfelt Advice”)? 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?

SESSION #3  Gifts and Side Deals
29 Mar 2005

Cases: “Buynow Stores” by Bruce Buchanan (p.83)

“Roger Berg” by Ronald M. Green (p.88)

“Friends and Family” by Melanie Warner (p.90)

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


Visit: www.transparency.org

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. 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  Whistleblowing and Loyalty
31 Mar 2005

Cases:
“AirCraft Brake Scandal” By Kermit Vandiver (p.159)
“He Told. He Suffered. Now He’s a Hero.” by Kurt Eichenwald (p.169)
“A Whistle-Blower Rocks an Industry” by Charles Haddad, with Amy Barrett (p.178)
“Doctor Explains Why He Blew the Whistle” by Melody Petersen (p.182)
“How Ex-Accountant Added Up To Trouble for Humbled Xerox” by James Bandler and Mark Maremont (p.186)
“Former Mattel Employee’s Battle Shows Whistle-Blowers Walking a Fine Line” by Michael Hitzik (p.190)

Read:
“The Return of Qui Tam” by Priscilla R. Budeiri (p.193)
“States Passing Whistleblower Statutes” by Steve Seidenberg (p.184)

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 Why He Blew the Whistle” 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? And how did the outcomes of their cases differ with their approach to whistleblowing?
4. Is the Qui Tam policy a good idea? Should corporations also use it; that is, should they reward employees who blow the whistle on their colleagues?

SESSION #5  Agency & Fiduciary Duty
5 Apr 2005

Cases: “Quality Department Stores” by Lawrence Zicklin (p.109)
“Old City Enterprises” by Lawrence Zicklin (p.110)
“Plasma International” by TW. Zimmer and P.L.Preston (p.115)
“You Bought, They Sold” by Mark Gimein (p.117)

Read: Duties of Agents and Principals” By Kenneth Clarkson, et al. (p.124)

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” and in “Plasma International”? Are Ed Stevens in Old City and Sol 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?

SESSION #6  Management & Directors - Corporations & Shareholders
7 Apr 2005

Cases: “The Business Judgment Rule” by Jane P. Mallor et al. (p.227)
“The Directors’ New Clothes,” by Robert Monks and Nell Minow (p.230)

Read: Roy C. Smith and Ingo Walter, “The Role and Duties of Corporate Directors (posted on Blackboard)
Study Questions:

1. According to Smith & Walter, which conception of the business corporation currently dominates the crisis in corporate governance and why?

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

3. What reasonable methods might a Compensation Committee use to decide on executive pay, benefit and severance packages?

SESSION #7  
12 Apr 2005  
Linking Boards to Shareholders Through Financial Markets: The Issue of Conflicts of Interest

Cases:  
Ingo Walter, “World Online International N.V.” (posted on Blackboard)

Ingo Walter, “JP Morgan and Banco Español de Crédito” (posted on Blackboard)

Read:  
Roy C. Smith and Ingo Walter, “Institutional Investors” ” (posted on Blackboard)

Roy C. Smith and Ingo Walter, “The Auditors” (posted on Blackboard)

Roy C. Smith and Ingo Walter, “The Bankers” ” (posted on Blackboard)

Study Questions:

1. What were the fiduciary duties of ABN AMRO and Goldman Sachs in the World Online case, and in what ways did they fail to meet those duties?

2. Map-out the conflicts of interest facing JP Morgan in the Banesto case, and suggest how they could be controlled.

3. According to Smith & Walter, what are the key failures in the chain
between the ultimate investors (almost always individuals and households) and the board of companies?

**SESSION #8**  
**Insider Trading – Neil Checkman,**  
**Criminal Defense Attorney**

**Cases:**

- “An Accountant’s Small Time Insider Trading” by Tom L. Beauchamp (p.265)
- “Raymond Dirks and Equity Funding of America” by Roy C. Smith (p.281)
- “Trading Room Ethics” by Lawrence Zicklin (p.272)
- “The Case for Insider Trading” by Henry G. Manne (p.278)

**Read:**

- “The Cost of Inequity” The Economist (p.270)
- “Insider Trading Notes” by Constance E. Bagley ((p.284)

**Study Questions:**

1. Should the accountant, Donald Davidson, trade on the information he has obtained from Warner Wolff? Use ethical concepts and methods to support your position.

2. Is Ray Dirks’ behavior consistent with the concept of fiduciary duty? Why was he reprimanded by the SEC but ultimately exonerated by the Supreme Court? Use ethical concepts and methods 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 #9**  
**Fiduciary Duties to Retail Investors**

**Cases:**

- “Commissions on Sales at Brock Mason” by Tom L. Beauchamp
“West Virginia CIF” by Ingo Walter (p.140)

“Responsibility, Yes -- but to Whom” by Larry Zicklin (p.144)

“Disorders made to Order” Brendan I. Koerner (p.147)

Read: “Investment Management: Business . . . or Profession and What Role Does the Law Play?” by John C. Bogle (p.154)

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. Are there any material difference between the behavior of Jim Edwards, head trader, in “Responsibility Yes, But to Whom?” and Chung Wu, broker, in “The Man Who Paid the Price” in relationship to ethical responsibility and/or fiduciary duties?

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.

Read: “The Social Responsibility of Business is to Increase Its Profits” by Milton Friedman (p.346)

SESSION #10 Product Liability
21 Apr 2005 PAPERS DUE


“The Class-Action Quandary: Cash Payment, No Apology” by Meryl Gordon (p.391)

“In Breast Implants Scandal, Where Was Dow Corning’s Concern for Women?” by Andrew W. Singer (p.393)
"Will the Lawyers Kill Off Norplant?" by Gina Kolata (p.398)

"Legal Myths: The McDonald’s Hot Coffee Case" (p.403)

"Unreasonably Dangerous: Greene v. Boddie-Noell Enterprises, Inc.” By J. Jones (p.405)

Read:  
“Strict Product Liability & Product Liability” by Kenneth W. Clarkson, et.al. (p.407)

“The Coase Theorem” by A. Mitchell Polinsky (p.8)

Study Questions:

1. Should A.H. Robins have introduced the Dalkon Shield when it did? Why or why not? What method of ethical reasoning seems most appropriate to this problem? Why?

2. Was McDonald’s “negligent” in the “hot coffee” case? Should McDonald’s also be subject to “strict” product liability for selling “unreasonably dangerous” coffee? 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?

3. Can you draw any distinctions between the Dalkon Shield, Norplant and breast implant cases? Are moral hazards present in these cases or in product liability cases in general?

SESSION #11 Discrimination
26 Apr 2005

Cases:  
“Foreign Assignment” by Thomas Dunfee and Diana Robertson (p.415)

“Now Look Who’s Taunting. Now Look Who’s Suing” by Jane Gross (p.417)

“When Fear of Firing Deters Hiring” by Jeffrey L. Seglin (p.420)

“Is this the Right Time to Come Out?” by Alistair D. Williamson (p.422)

“Too Old to Work?” by Adam Cohen (p.429)
**Read:**

“EEOC Guidelines Excerpt” (p.425)

“Sexual-Orientation Protection Added to New York Law” by Casey J. Dickinson (p.436)

**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. Can the bank (employer) be held liable, according to the EEOC, for the sexually harassing behavior of its employees? Does the bank have any 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. 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? Should similar laws and regulations be applied to both? Justify your position.

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**SESSION #12  Moral Standards Across Borders**

28 Apr 2005

**Cases:**

“The Oil Rig” by Joanne B. Ciulla (p.355)

“For Cruise Workers, Life is No Love Boat” by Joshua Harris Prager (p.357)

“Stretching Federal Labor Law Into South Pacific” by Seth Faison (p. 359)

“Lives Held Cheap in Bangladesh Sweatshops” by Barry Bearak (p.363)

**Read:**

“In Praise of Cheap Labor: Bad Jobs at Bad Wages Are Better than No Jobs at All” by Paul Krugman (p.368)

**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. Are any basic human rights been violated in the "Oil Rig" case? Are the expats justified in getting better treatment than the Angolans?

3. Should US labor and safety laws apply to the Northern Mariana Islands? Why or why not? Are sweatshops unethical according to criteria that we have discussed in this course?
GUIDELINES FOR TERM PROJECT

There are two options:

(A) A legal or ethical business situation with which you have first-hand familiarity. You may have been a major or minor actor in the situation, or may have merely witnessed it. In either case, the requirement is that the situation involved ethical or legal issues, and that you were there.

(B) A case that has been recently featured prominently in the news which raises important legal or ethical issues.

You can choose either Option A or Option B.

The paper should be as short as possible consistent with coverage of the following points:

I. Situation

Provide a description of the situation. This description must be detailed and rich enough to allow the reader to get a clear sense of the issues and circumstances (2-4 double-spaced pages).

II. Analysis

Apply a workable method of ethical 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 you should apply, wherever appropriate, concepts discussed in this course and in the readings (2-4 double-spaced 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 double-spaced pages).

NOTE: The paper is due at the end of class on Thursday 21 April 2005. No late papers will be accepted.