“…An ethic is, as it were, a lightning conductor for human passions, to enable them within a deterministic world, to work in a way that produces a minimum of disaster.”  Bertrand Russell *Spinoza’s Ethics* (1942)

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Tuesday 6-9 pm Room 2-80

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**Textbook:** All cases and readings are found in *Professional Responsibility: Markets, Ethics and Law Cases and Readings for 2003-2004* (Tenth Edition)

The textbook is available at the NYU Professional Bookstore. Note that the edition for this academic year is different from prior editions. Please ensure your edition is current.

**Course Objectives:** The purpose of this course is to introduce 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 analysis of one or more cases, as indicated in the attached schedule of class assignments. In addition, we will study writings in the fields of ethical reasoning, professional responsibility, and the law.

**Attendance:** There are six sessions for this course beginning Tuesday February 3, 2004. Attendance is mandatory. Class participation is an integral component of the final grade.

**Preparation for Class:** The student’s primary obligation is to prepare for class by thoroughly reading and analyzing the assigned materials. Case discussions and in-class activities are an essential part of the course. All sessions have a number of study questions for consideration. Students are responsible for mentally preparing answers to these questions before coming to class and can anticipate being called upon to share their responses as a catalyst for further discussion.

**Homework:** Five written Study Question Analyses  
Each student is responsible for handing in a total of five written homework assignments over the course of the term. Each homework assignment shall consist of 2-3 typed pages of one study question of the student’s choice from the assigned questions for each class session. In answering the questions students should use concrete examples wherever possible drawn from the cases. Students may submit
more than five written analyses but only the top five grades will count. The homework assignment is due on the particular day the topic is due to be discussed in class.

**Term Project:** Students are responsible for the term paper described below.

**Grading:**

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

**TERM PROJECT: GUIDELINES FOR CASE ANALYSIS**

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.

The paper should have the following major sections:

**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 & circumstances (2-4 pages).

**II. Analysis**

Apply 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).

The term paper should be 8 to 12 pages (typed & double-spaced).

**IMPORTANT:** 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.

**DUE DATE:** The Term Paper is due on or before the last day of the course.
TOPICS AND ASSIGNMENTS

SESSION 1

INTRODUCTION—ETHICAL THEORIES, MARKET FAILURES AND PROFESSIONAL DILEMMAS

Making an Ethical Decision (p.15)
Neutral Omni-Partial Rule-Making (p.22)
Economic Theories of Regulation: Normative vs. Positive (p.5)
Ethics and the New Game Theory (p.26)
The Coase Theorem (p.8)
Pollution Case Highlights Trend to Let Employees Take the Rap (p.309)
The Price of Lobster Thermidor (p.365)
http://www.suboceansafety.org
Moral Hazard (p.10)
The Right Thing: When Good Ethics Aren’t Good Business (p.350)
Duties of Agents and Principals (p.116)
You Bought, They Sold (p.109)

Study Questions

1. Business practice may be located in the context of an overall scheme of regulative and constitutive norms. What general normative concepts undergird the practice of business, and what particular conceptions of appropriate action do we think instantiate those general concepts?
2. For the various conceptions of ethics presented by Halbert and Ingulli, differentiate each normative theory with examples distinguishing the content of an ethical action from the grounds that justify our engaging in it.
3. Identify the array of market failures evident in the “Pollution” and “Lobster Thermidor” cases. To what degree is business an “autonomous” practice governed by its own internal “rules of the game?” How and when do legal or ethical imperatives come to trump business goals?
4. Is the rationally most efficient outcome the one most consonant with ethical best practices and professionalism?
SESSION 2

CORPORATE GOVERNANCE

Our Schizophrenic Conception of the Business Corporation (p. 255)

One Size Doesn’t Fit All: In Europe Corporate Governance Rules are Not in the Details (p.246)

Testing the Limits of the Business Judgment Rule (p.226)

Sarbanes-Oxley: Danger for Directors (p.234)

Ready and Able? (p.229)

http://www.internationalpaper.com/about_us/people/ethics/

For Executives, Nest Egg is Wrapped in a Security Blanket (p.223)

In Focus: Corporate Governance SEC Acts on Selective Disclosure (p.290)

Corporate Crime: Government Seeks Tougher Sentences (p.316)

Living with the Organizational Sentencing Guidelines (p.328)

Raymond Dirks and Equity Funding of America (p.295)

The Cost of Inequity (p.282)

The Case for Insider Trading (p.287)

An Accountant’s Small-Time Insider Trading (p.277)

Study Questions

1. How do competing conceptions of the public corporation contour the way we remedy crises in corporate governance?
2. In what ways do market and non-market forces act to resolve breaches of fiduciary duties that are incumbent upon corporate agents? What are the business consequences for each?
3. Suggest robust criteria for evaluating codes of Corporate Governance? What interests or concerns does each criterion try to serve?
4. Does insider trading promote or detract from market efficiency? What justification is used to criminalize insider trading?
SESSION 3

TRUTH AND DISCLOSURE; GIFTS, SIDE DEALS AND CONFLICTS OF INTEREST

Is Business Bluffing Ethical (p.66)

Bitter Pill: How a Drug Firm Paid for a University Study, then Undermined It (p.47)

Familiar Refrain: Consultant’s Advice on Diversity was Anything but Diverse (p.53)

Today’s Analyst Often Wears Two Hats (p.59)

Heartfelt Advice, Hefty Fees (p.61)

Double Agents in the Financial System (p.71)

Buynow Stores (p.79)

Roger Berg (p.82)

Friends and Family (p.84)

Wall Street and the Nursery School: A New York Story (p.94)

Tobacco Industry Fought Drug’s Marketing (p.97)

U.S. Warns Drug Makers on Illegal Sales Practices (p.99)

http://www.transparency.org

Study Questions

1. Propose a working theory for degrees of truth and disclosure in business situations.
2. Apply and distinguish ethical principles to the Roger Berg, Wall Street Nursery School and Buynow Stores cases, discussing the way in which the cases are analogous and materially differ from each other.
3. Describe any market failures created by tobacco and drug companies or conflicts of interest perpetrated by them. Appeal to normative principles to justify critiquing or condoning these practices.
4. How would you distinguish and justify appropriate and inappropriate gift-giving?
SESSION 4

AGENCY AND FIDUCIARY DUTY; SALES ETHICS; TRADE SECRETS

Quality Department Stores (p. 103)
Old City Enterprises (p.104)
Plasma International (p.107)
Commissions on Sales at Brock Mason Brokerage (p.121)
The West Virginia Consolidated Investment Fund (p.124)
The Man Who Paid the Price For Sizing Up Enron (p.131)
Disorders Made to Order (p.133)
Stockbroker’s Story (p.191)
Fare Game (p.192)
Corporate Spies: The Pizza Plot (p.196)
Foote Cone Loses Two Accounts From Coke in Wake of Pepsi Suit (p.201)
Trade Secrets, Patents, and Morality (p.203)
Protecting Trade Secrets: Using “Inevitable Misappropriation” and the Exit Interview (p.209)

Study Questions

1. Sketch out the relationships between the parties described or implied in the Quality Department Stores case. Given various fiduciary and non-fiduciary duties that obtain, how would you go about ordering which duties to privilege? How should the investment manager vote?
2. How do the trade secrets in Fare Game differ from those in Stockbroker’s Story? What criteria determine responsibilities with respect to proprietary information?
3. A product or service may be ethically tainted yet still worth promoting. Under what conditions would you not sell a product that presents significant potential for profit because of ethical concerns?
4. Outline the efficacy of the exit interview and the standards used by courts to hold former employees liable for misappropriation.
SESSION 5

WHISTLE BLOWING AND LOYALTY; PRODUCT LIABILITY;

http://www.whistleblowers.com

Aircraft Brake Scandal (p.149)

He Told He Suffered. Now He’s a Hero (p.159)

A Whistle-Blower Rocks an Industry (p.168)

Doctor Explains Why He Blew the Whistle (p.172)

How Ex-Accountant Added Up To Trouble for Humbled Xerox (p.176)

Former Mattel Employee’s Battle Shows Whistle-Blowers Walking a Fine Line (p.180)

The Return of Qui Tam (p.183)

States Pass Whistleblower Statutes (p. 174)

A.H. Robins: The Dalkon Shield (p.399)

Legal Myths: The McDonald’s “Hot Coffee” Case (p.419)

Unreasonably Dangerous: Greene v. Boddie-Noell Enterprises, Inc. (p.421)

Strict Liability and Product Liability (p.423)

Study Questions

1. Is the Qui Tam policy desirable? Should firms foster a corporate culture where they offer rewards to employees who blow the whistle on their colleagues? Should whistle-blowing primarily be carried out internally or to relevant entities outside a company?

2. Was McDonald’s negligent in the Hot Coffee case? Should the company be subject to strict product liability? What kinds of legal defenses could they raise? Apply principles from the opinion in Greene v. Boddie-Noel to your analysis of Hot Coffee.

3. Distinguish the approaches towards whistle-blowing in the He Told He Suffered-Prudential and How Ex-Accountant-Xerox cases. How did the outcomes in the cases and the risks faced by the individuals differ because of these distinctions?

4. What sorts of moral hazards are present in cases of strict product liability?
SESSION 6

SOCIAL RESPONSIBILITY AND HUMAN RIGHTS; DISCRIMINATION; PRIVACY; MORAL STANDARDS ACROSS BORDERS

Toy Maker Faces Dilemma as Water Gun Spurs Violence (p.341)

Bally’s Grand Casino, for Elaine Cohen, Is Her One True Home (p.343)

Credit Card Companies Target New Niche: The Mentally Disabled (p.346)

Cut Loose (p.352)

The Social Responsibility of Business Is to Increase Its Profits (p.358)

Code ‘Is Failing’ to Prevent Rich Companies from Bribing Officials (p.88)

The Oil Rig (Case Study) (p.367)

For Cruise Workers Life Is No “Love Boat” (p.369)

Lives Held Cheap in Bangladesh Sweatshops (p.375)

In Praise of Cheap Labor: Bad Jobs at Bad Wages Are Better than No Jobs at All (p.380)

Foreign Assignment (p.431)

When Fear of Firing Deters Hiring (p.436)

Is This the Right Time to Come Out? (p.438)

McKinney’s Consolidated Laws of New York…Human Rights Law (p.456)

Open Secrets (p.462)

Prying Times (p.466)

Privacy Procrastination: HIPAA Rules Are Now in Effect (p.479)

Study Questions

1. Should commensurate business standards be applied in foreign situations as those operative in the United States? Should executives be cultural relativists or take a more absolute approach with respect to business practices and moral standards? Should American executives, first and foremost, aim to be competitive?
2. Corporate Social Responsibility (CSR) is often considered a desideratum of business. Discuss Milton Friedman’s critique of CSR in the context of a particular case, pointing out the strengths and weaknesses of his argument.

3. Should firms be limited in their ability to use data gathered from their own employees? Why or why not? What kinds of information warrant greater levels of privacy protections? When, if ever, may employees’ privacy rights justifiably be invaded?

4. Do notions of employee rights, such as privacy, intersect with economic efficiency? What market failures can we associate with the issue of privacy?

5. Should a firm be paternalistic in its relations with clientele, treating certain groups or individuals as requiring preferential or unequal treatment. Or, are all economic agents fair game for maximizing profit in a free and open marketplace?