PROFESSIONAL RESPONSIBILITY: L06.3046.001/B02.3101.30

Term: Spring 2011

- Dates: Law & Stern Students: Thursday, 2/10 - 3/24 (Spring break 3/17)
- Law Students Only: Thursday, 3/31 - 4/7
- Meeting Time: First six sessions: 6-9pm
  - Last two sessions: 6-9:20pm
- Classroom: Vanderbilt Hall 216

PROFESSORS: Karen Brenner/ Helen Scott

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COURSE OBJECTIVES

This is a special section of Professional Responsibility including faculty and students from both the Stern School of Business and New York University School of Law. The emphasis in this section is on the interdisciplinary legal and ethical responsibilities of lawyers and business professionals in their interaction with the corporation - navigating real world market pressures considering ethical norms and legal imperatives. The objective is to facilitate professional interaction and joint work between students from both schools.

Professional challenges arise from perceived conflicts between the requirements underlying moral 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, and ethical norms and reasoning in resolving such issues and in establishing standards of professional responsibility. 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, corporate governance, whistle blowing, corporate social responsibility 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 literature and to bring some of these cases to class for discussion.
READINGS:
1. PROFESSIONAL RESPONSIBILITY DIGITAL COURSE PACK: you may order it online or purchase it at the NYU Professional Bookstore. To place the order online: Go to the NYU Book Store web site: http://www.bookstores.nyu.edu; Click on the “Search Textbooks” link; In the “Search by ISBN” option enter____________; Proceed to Checkout and complete your order. After completing your order you will receive an email with your access code and instructions regarding accessing the Digital Course pack.
2. Balance of the readings available under “COURSE DOCUMENTS” on Blackboard.
3. ABA MODEL RULES OF PROFESSIONAL CONDUCT (Law Students).

GRADING

The weights for the student’s overall grade are:

Class Participation 30%
Class Presentation 30%
Three Written Short Papers 40%
(No more than 35% of students will receive a grade of A or A-)

CLASS PARTICIPATION
Your primary obligation in this course is to prepare for class discussion by thorough reading and analysis of assigned materials before each class. Case discussions and in-class activities 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. The instructors will ask students to present the assigned materials as a basis for discussion.

CLASS PRESENTATION
On the first day of 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 15-20 minute presentation of the case. The presentation must include a discussion of market conditions, legal implications and ethical considerations relevant to the case. Those concepts are to be integrated into a position on the professional responsibility issues involved.
After the presentation, the team is expected to lead the class in a 10-15 minute discussion. The team is expected to submit a “hard-copy” of the presentation to the professors at the beginning of the discussion and each member of the team is expected to submit a confidential team evaluation at the conclusion of the presentation. The cases for presentation are relatively well known and therefore information is readily available. Options surrounding the presentation format will be discussed in greater detail the first day of class.

THREE 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 (from sessions 2-6). The papers must be emailed to both instructors
by midnight of the Monday before the class addresses the topic in class. The papers will be evaluated based upon the systematic and thorough application of the relevant market considerations, legal and business constraints, and ethical principles to the situation, and in evaluating the value of those concepts in resolving the professional responsibility issue presented. Papers that use the concepts and vocabulary from class and the readings, including reference to the Model Rules for law students, will be more highly valued.

**COURSE SCHEDULE:**

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<td>PROFESSIONAL DILEMMAS &amp; MORAL ACCOUNTABILITY</td>
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**READINGS:**
1. Legal Ethics, Deborah L. Rhode and David Luban
2. Neutral, Omni-Partial Rule Making, Ronald M. Green

**CASES:**
4. The Price of Lobster Thermidor

Model Rules 1.2 (b), 1.4, 1.6 (b) (1), 1.7, 1.13, 1.16 (b) (3), 2.1, 6.1

**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?

**TRUTH & DISCLOSURE**

**READINGS:**
1. Is Business Bluffing Ethical, Albert Z. Carr
2. The Business of Ethics, Norman Chase Gillespie
3. Bluffing, Jim T. Priest

**CASES:**
4. Impugning the Integrity of Medical Science, Catherine D. DeAngelis & Phil B. Fontanarosa
5. Despite Warnings, Drug Giant Took Long Path to Vioxx Recall, Alex Berenson, Gardiner Harris, Barry Meier and Andrew Pollack
6. What Doctors Aren’t Disclosing, Arlene Weintraub
Model Rules 1.1, 1.2, 1.6, 1.7, 1.13, 1.16, 2.1, 3.3, 3.4, 4.1, 8.4

Study Questions:
1. Would a “Bluffer” (Carr/Priest) voice any objections to the corporate actions of Merck? Do you agree with Carr/Gillespie/Priest?
2. Given the path to the Vioxx recall, create the time line of events and determine whether another path should have been chosen. If so, when and why.
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. Foreign Corrupt Practices Act

CASES:
2. Buynow Stores, Bruce Buchanan
4. Wall Street and the Nursery School, Gretchen Morgenson and Patrick McGeehan
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 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?
4. Does the “Wall Street and the Nursery School” case differ materially from “Buynow Stores”? Use ethical concepts and methods to support your reasoning.

PROFESSIONAL ROLES/SALES & MARKETING

CASES:
1. Commissions on Sales at Brock Mason, Tom L. Beauchamp
2. Responsibility Yes, But to Whom, Lawrence Zicklin
4. Trusted Adviser or Stock Pusher? Finance Bill May Not Settle It, Tara Siegel Bemard

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 are owed by a broker to a client?
2. Is the situation at Brock Mason similar to that in the “Responsibility Yes, But to whom” case?
3. 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?

SESSION # 3
PROFESSIONAL ROLES /AGENCY & FIDUCIARY DUTY

READINGS:
2. The Epistemology of Corporate Securities Lawyering: Beliefs, Biases and Organizational Behavior, Donald C. Langevoort

CASES:
3. Broken Trust: Role of Professionals in the Enron Debacle, Ashish Nanda
4. Old City Enterprises, Lawrence Zicklin
5. At Center of Fraud, WorldCom Official Sees Life Unravel, Susan Pulliam

Model Rules: 1.1, 1.2 (a), (d), 1.3, 1.6, 1.13, 1.16

Study Questions:
1. Which fiduciary 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 is this role complicated by other dimensions of professional roles and responsibilities? (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. Evaluate the conduct of each professional in relation to Enron. What were the embedded conflicts and how has Enron’s culture influenced their respective roles?
PROFESSIONAL ROLES/CORPORATE GOVERNANCE

READINGS:
1. The Business Judgment Rule and the Duty of Care, Constance Bagley & Diane Savage
2. Our Schizophrenic Conception of the Business Corporation, William T. Allen

CASES:
3. Boeing CEO Resigns Over Affair with Subordinate, Renae Merle
4. Risk Management and Corporate Governance- The Case of Enron, Robert Eli Rosen
5. Enron, Enron’s Attorneys, Structured Finance Transactions

Model Rules: 1.1, 1.2, 1.3, 1.6, 1.13, 2.1, 8.4

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. How is the “redesigned corporation” as described by Rosen challenging corporate governance?
3. How would you assess the actions of the Board of Directors in the case of Boeing?

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

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

Model Rules: 1.2d, 1.6, 1.13, 1.16 a-b, 2.1

Study Questions:
1. How does corporate culture influence conceptual schemes as described by Werhane? Will the provisions from SOX and Dodd-Frank be adequate as a counterweight against such influence?
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.
4. 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
4. In Justice Shift, Corporate Deals Replace Trials, Eric Lichtblau
5. Filip Memorandum, Principles of Federal Prosecution of Business Organizations
7. Managing for Organizational Integrity, Lynn Sharp Paine

CASES:
8. Case Expands Type of Lies Prosecutors Will Pursue, Alex Berenson
9. In the Crossfire: Prosecutors’ Tough New Tactics Turn Firms Against Employees, Laurie P. Cohen

Model Rules: 1.2, 1.3, 1.6, 1.7, 1.9, 1.10, 1.13, 2.1, 4.1, 4.2, 4.3

Study Questions:
1. How do you think the U.S. Sentencing Guidelines might change, or have changed, corporate behavior? Consider this from the perspective of the corporation as employer (“Prosecutors’ Tough New Tactics” and “Managing for Organizational Integrity”). Are these changes desirable?
2. Do you agree with the current trend towards the deferred prosecution of white collar crime (“In Justice Shift”)? How does this relate to the principles of the Filip Memorandum?

SESSION # 5
PRODUCT LIABILITY/MARKET RESOLUTIONS
READINGS:
1. Doctors Start to Say ‘I’m Sorry’ Long before ‘See You in Court’, Kevin Sack
2. An Attempt to Revive the Lost Art of Apology, Alina Tugend

CASES:
3. A. H. Robins: Dalkon Shield, A.R. Gina & Terry Sullivan
4. The Class-Action Quandary: Cash Payment, No Apology, Meryl Gordon
5. Repeated Defect in Heart Devices Exposes a History of Problems, Barry Meier
6. When Heart Devices Fail, Who Should Be Blamed?, Barry Meier

Study Questions:
1. Should A. H. Robins have introduced the Dalkon Shield when it did (“A.H. Robins”)? What method of ethical reasoning seems most appropriate to this issue? Create a timeline of events for the case and determine whether another path should have been chosen, when and why.
2. Have any fiduciary duties been breached in the Guidant heart device case (“Repeated Defect”)? Can you identify any market failures? Create a timeline of events and determine what and when other action may have been taken and why.

SESSION # 6
SOCIAL RESPONSIBILITY TO STAKEHOLDERS/ALTERNATIVE MODELS

READINGS:
1. Restricted Reasons and Permissible Violations, Arthur Applbaum
2. The Social Responsibility of Business is to Increase Its Profits, Milton Friedman
3. Business Ethics and Stakeholder Analysis, Kenneth E. Goodpaster
4. Caux Round Table Principles for Responsible Business

Study Questions:
1. According to Applebaum, when may it be appropriate for a professional to restrict his/her moral reasoning in deliberations?
2. How would Friedman reconcile the Caux Principles for Responsible Business or Goodpaster’s multi-fiduciary stakeholder theory with his own?

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
CASES:
6. In Praise of Cheap Labor: Bad Jobs at Bad Wages, Paul Krugman
7. Lives Held Cheap in Bangladesh Sweatshops, Barry Bearak
8. New York Manhole Covers, Forged Barefoot and Sweaty in India, Heather Timmons and J. Adams Huggins

Model Rules: 1.7, 5.4, 5.5, 8.5

Study Questions:
1. According to Rachels, what is the challenge of cultural relativism and how does it impact a corporation’s global actions?
2. Are sweatshops unethical according to Krugman (“In Praise of Cheap Labor”) or the Dalai Lama?
3. Do human rights exist? Is so, as the CEO of a corporation, or counsel advising the CEO, how would you apply these ideas to workers in Bangladesh (“Lives Held Cheap”) and India (“New York Manhole Covers”)?

SESSION # 7 LAW STUDENTS ONLY
THE CORPORATION AND ITS LAWYER

READINGS:
1. Model Rules of Professional Conduct
2. Professional Responsibility and the Corporate Lawyer, Milton C. Regan, Jr.
3. Corporate Governance and a Business Lawyer’s Duty of Independence, William T. Allen
4. The Moral Interdependence of Corporate Lawyers and Their Clients, Richard W. Painter

SESSION # 8 LAW STUDENTS ONLY
THE LAWYER’S ROLE

READINGS:
1. Understanding Lawyers’ Ethics, Monroe H. Freedman
2. The Adversary System Excuse in the Good Lawyer: Lawyers’ Roles and Lawyers’ Ethics, David Luban
4. A New Role for Lawyers?: The Corporate Counselor After Enron, Robert W. Gordon
5. The Transformation of the Big Law Firm in Lawyers’ Ideals/Lawyers’ Practices, Marc Galanter & Thomas Palay