New York University  
Stern School of Business Administration  
Professional Responsibility B02.3101 U2  
Markets, Ethics & Law

August 2005  
August 19, 20, 21  
9am – 4 pm  
Classroom: KMC 2-80  
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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 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 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.

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. Units #2 through #12 each have a number of study questions. All students are responsible for mentally preparing answers to these questions before coming to class. The instructor will ask some students to provide their answers orally, as a basis for further discussion.

Written Study Question Analyses
Each student will do a written analysis for 3 study questions. You must do either question 1 or question 2 in unit one. For 2 other units of his or her choosing the student should write out his or her analysis for any one of the assigned study questions. These analyses should be 3 pages (typed double-spaced) in length. All three assignments must be received by the teaching fellow before the beginning of the first class (August 19).
**Term Project**
Students are responsible for a term paper, described on the next page.

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

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

**Textbook**
All cases and readings for this course are found in:

**Professional Responsibility: Markets, Ethics, and Law**
**Cases and Readings for 2004-2005**

The textbook is available in the NYU Professional Bookstore. *Note that the edition for the current academic year, 2004-05, is different from prior editions.* Make sure you have the current edition.
TERM PROJECT: GUIDELINES FOR CASE ANALYSES

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 and circumstances (2 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. Also, the student should cite the relevant law (3+ pages).

III. Resolution & Conclusion
Describe how the situation was actually resolved. Discuss this resolution in light of the ethical analysis from section II (2-3 pages).

In sum, this paper should be roughly 7-9 typed, double-spaced pages.

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.

NOTE: Written Projects Due 5 pm, August 29, 2005.
August 19, 2005:

Introduction - Market Failures & Professional Dilemmas

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

“Pollution Case Highlights Trend to Let Employees Take the Rap” by Dean Starkman (p.301)

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

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

**Study Questions**

1. 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.

Unit 2 – Truth & Disclosure

**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)

“The Numbers Game” by Arthur Levitt (p.67)

**Read:** “Is Business Bluffing Ethical?” by Albert Z. Carr (p.73)

“Ethics and the New Game Theory” by Gary Miller (p.26)

“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 and Arthur Levitt assess the long-term effects of bluffing as applied to the job of an equity analyst (Lowenstein)? 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?

Unit 3 – Gifts, Side Deals & Conflicts of Interest

**Cases:** “Buynow Stores” by Bruce Buchanan (p. 85)

“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.999)

“Tobacco Industry Fought Drug’s Marketing “ by Kenneth Chang (p.97)

“U.S. Warns Drug Makers on Illegal Sales Practices by Robert Pear (p.99)

**Read:** “Neutral Omni-Partial Rule Making” by Ronald M. Green (p.22)
(Ethical Theories)

“Bribery and the Foreign Corrupt Practices Act” by Kenneth W. Clarkson, et. al (p. 94)

“Hat Trick” by Gretchen Morgenson (p. 102)

**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?

Unit 4 – Whistle Blowing & Loyalty

**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?

4. Is the Qui Tam policy is a good idea? Should corporations also use it; that is, should corporations offer rewards to employees who blow the whistle on their
colleagues?

August 20, 2005:

Unit 5 – Agency & Fiduciary Duty

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)

“The Man Who Paid the Price for Sizing Up Enron” by Richard Oppel, Jr. (p. 113)

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

“Moral Hazard” by Robert Pindyck and Daniel L. Rubenfeld (p.10)
(A. Economics of Market Failure)

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? Are there any material differences between this behavior and the behavior of Chung Wu, broker, in “Man Who Paid the Price” in relationship to fiduciary duties

Unit 6 – Sales Ethics and Marketing

Cases: “Commissions on Sales at Brock Mason” by Tom L. Beauchamp (p.137)

“West Virginia CIF” by Ingo Walter (p.140)

“Responsibilty Yes, but to Whom” by Larry Zicklin (p.144)
“Disorders made to Order” Brendan I. Koerner (p.147)

“The Selling of Breast Cancer” by Susan Orenstein (p. 129)

**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 in the West Virginia CIF case?

2. In what ways, if any, could we determine that pharmaceutical companies (“Disorders Made to Order”) are ethically responsible for promoting new mental illnesses in order to boost their profits from drug sales? Or companies that support causes such as breast cancer (“Selling of Breast Cancer”) to market their brand?

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.

**Unit 7 – Management & Directors - Corporations & Shareholders**

**Cases:** “The Director’s New Clothes” by Joan Lubin (p.230)

“Testing the Limits of the Business Judgment Rule” by Roger Leroy Miller & Gaylord Jentz (p.238)

“Excerpts from the Report of a Special Committee Investigating Enron” by Silvia Ascarelli (p.239)

“Is there a new Sheriff in Corporateville?” by Thomas O. Gorman & Heather J. Stewart (p. 257)

**Read:** “Our Schizophrenic Conception of the Business Corporation” by William T. Allen (p. 35)

“Crisis of Corporate Ethics” by Roy C. Smith (p.268)

“The Business Judgment Rule” by Jane P. Mallor, et. al. (p 227)

**Study Questions:**

1. According to William Allen 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? (“New Sheriff in Corporateville”) 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. Apply the Business Judgment Rule to situations faced by the boards of directors of Walt Disney (“Testing the Limits”) and Enron (“Committee Investigating Enron”). Were the actions taken by these respective boards of directors justified by the business judgment rule?

4. Based on the thesis set forth by Monks/Minow (“Director’s New Clothes) do the actions of boards of directors generally comport with the business judgment rule? The nature of a corporation has been defined by the 1978 and 1990 Business Roundtables on Governance (Director’s New Clothes”) as well as by Allen (“Schizophrenic Conception”) – contrast and compare their definitions of a corporation? What do you see as the ultimate nature of a corporation?

Unit 8 – Insider Trading

**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)

“Martha Stewart” by Roy C. Smith (p. 275)

“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 insider trading legal theories 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.

August 20, 2005

Unit 9 – Social Responsibility To Stakeholders

Cases: “Toy Maker Faces Dilemma as Water Gun Spurs Violence” by Joseph Pereira (p.329)

“Bally’s Grand Casino, For Elaine Cohen, Is Her One True Home” by Heidi Evans (p.331)

“Credit Card Companies Target New Niche: the Mentally Disabled” by Joseph Cahill (p.334)

“The Right Thing: When Good Ethics Aren’t Good Business” by Jeffrey Seglin (p.338)

“Cut Loose” by Anne-Marie Cusac (p.340)

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

“Restricted Reasons and Permissible Violation” by Arthur Isak Applbaum (p.19)

“Our Schizophrenic Conception of the Business Corporation” by William T. Allen (p.35)

Study Questions
1. 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.

2. 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.

3. Did the CEO of Smith & Wesson fulfill his fiduciary duties? Justify your position. How would Arthur Applbaum (“Restricted Reasons and Permissible Violation”) judge his behavior?

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

Unit 10 – Moral Standards Across Borders

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)

“Low-Wage Costa Ricans Make Baseballs for Millionaires” by Tim Weiner (p. 378)

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

“United States Bill of Rights” (p. 33)

“Human Rights on the Eve of the Twenty-First Century” by His Holiness the Dalai Lama (p. 372)

“Universal Declaration of Human Rights” United Nations (p. 374)

Study Questions

1. According to the US Bill of Rights and the UN Declaration of Human Rights have any basic human rights been violated in the “Oil Rig” case? Are the ex-pats justified in getting better treatment than the Angolans?

2. 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?
3. Should US labor and safety laws apply to the Northern Mariana Islands? Why or why not? Are sweatshops unethical according to Krugman or Donaldson or any other ethical methods that we have studied?

4. Do human rights exist? If so, what responsibilities do corporations have to see that they are respected? And how would you apply these ideas to workers on cruise ships or in the Bangladesh sweatshops?

Unit 11 – Product Liability


“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)

By J. Jones (p.405)

Read: “Strict Product Liability & Product Liability” by Kenneth W. Clarkson, et.al. (p.409)

“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? Do they have any defenses? 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? Have any fiduciary duties been breached?
Unit 12 – Discrimination & Privacy

Discrimination

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)

Discrimination 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. 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.
Privacy

Cases: “Monday 9:01 A.M.” by Ronald H. Smithies (p.441)

“Open Secrets” by Ellen E. Schultz (p.442)

“Pryning Times” by Ann Carms (p.446)

“Monitoring of Employees Still Growing” by Allison Michael and Scott M. Lidman (p.450)

“TGB Insurance Services Corp. v. Superior Court (p.455)

Privacy Study Questions:
1. Should firms face any restrictions on the internal use of data gathered from their own employees? Why or why not? Consider this specifically with respect to medical/psychological information. Use ethical concepts and methods to justify your position.

2. (A) Draft a policy guideline for a firm as to what aspects of its employees lives are to be considered private, along with applicable safeguards. Assume this memo will be distributed to all employees, both current and prospective. (B) Briefly state your reasoning in setting this policy.

3. Is the idea of privacy for individuals becoming obsolete in the Internet age? How do privacy and technology interact?

4. What market failures surround the issue of privacy? How, then, does the right to privacy interact with economic efficiency?