PROFESSIONAL RESPONSIBILITY- LAW AND BUSINESS
NEW YORK UNIVERSITY
SYLLABUS 2008

(2 Sessions Law School Only/ 3 hours 20 minutes each)
(6 Sessions Law and Business School Combined/ 3 hours each)

PROFESSIONAL RESPONSIBILITY:  B02.3101.60/ L06.3046.001
Fall Term 2008

- Meeting Time: 9/2-9/9 6-9:20pm, 9/16-10/28 6-9pm (No Class 9/30)
- Classroom: Furman Hall 210

PROFESSORS: Karen Brenner/ Richard Ketchum

- Office: KMC Suite 10-98
- Office Hours: By appointment
- Email: kbrenner@stern.nyu.edu / rketchum@nyse.com
- Secretary: icoleman@stern.nyu.edu or 998-0048

COURSE OBJECTIVES
The modern world rests on the pillars of the rule of law, the market economy, and civil society. The purpose of this course is to introduce the student to a broad range of issues encountered by lawyers and business people in their role as professionals, in navigating between these pillars. The course is also intended to help the student develop a set of analytical perspectives for making judgments when such issues arise. Professional challenges arise from perceived conflicts between the requirements of universally binding norms, the norms applicable to practitioners of particular occupations, duties to or expectations of oneself and, in some cases, legal imperatives. We will examine circumstances that give rise to these conflicts and we will also examine the role of the law and ethical norms and reasoning in resolving such issues and in establishing standards of professional responsibility.
We will study writings in the fields of ethical reasoning, professional responsibility, and the law. 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.
READINGS:
1. LEGAL ETHICS and CORPORATE PRACTICE, Milton C. Regan & Jeffrey D. Bauman, Thomson-West, 2005 (R&B)
2. ETHICAL ISSUES IN BUSINESS, Thomas Donaldson & Patricia H. Werhane, Pearson-Prentice Hall 8th edition, 2008 (EIIB)
3. PROFESSIONAL RESPONSIBILITY COURSE PACK - Provided to law students in class. Business students are to pick up the course pack from Iantha Coleman, KMC, 44 West 4th Street, 10th floor (CP) before their first class.
4. ABA MODEL RULES OF PROFESSIONAL CONDUCT (Law Students Only)
5. Balance of the readings is available under “COURSE DOCUMENTS” on Blackboard

GRADING
The weights for the student’s overall grade are:
Class Participation 25%
Class Presentation 35%
Term Paper 40%
(No more than 35% of students will receive grades 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. Case discussions and in-class activities are an essential part of the course. The instructor will ask some students to present the assigned materials, as a basis for discussion.

CLASS PRESENTATION
On the first day of joint class, September 16, 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 at the conclusion of the discussion. 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.

TERM PAPER DESCRIPTION: (1 page typed)
Due: Session Five
A one-page description of your term paper project as described below.

TERM PAPER (10-12 pages typed and double-spaced, plus footnotes and bibliography)
Due: on or before a week after the last class
The purpose of this paper is to allow the student to apply market, legal and ethical principles of professional responsibility to an actual, specific business situation. The student will choose a paper topic from either of two options.

Option # 1: The student will describe a professional 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 requirement is that the situation raises ethical and/or legal issues.

Option # 2: The student will choose from one of the topics covered during the semester, i.e. moral standards across boarders, conflicts of interest, sales and marketing, etc. and apply legal and/or ethical principles of professional responsibility to a recent newsworthy case related to such topic.

Organize the term paper as follow:

1. 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, including market dynamics, ethical challenges and legal circumstances (2-4 pages).

2. Analysis: Apply some method or methods of ethical and/or legal reasoning to the situation and examine the results of the application to the situation. Are the results logical, beneficial, counter intuitive, or in any way problematic? The student should apply, wherever appropriate, concepts from the course and its readings. Also, the student should site the relevant law and other sources as necessary. (3-4 pages).

3. Resolution and Conclusion: Describe how the situation was actually resolved. Discuss the resolution in light of the analysis from section 2 (3-4 pages).

The term paper will be evaluated based upon the systematic and thorough application of the relevant market considerations, legal concepts and ethical principles to the situation, and in testing the value of those concepts in resolving the professional responsibility issue presented. It is expected that the papers will reflect some research and substantial analytics. Papers that use the concepts and vocabulary developed in class, including reference to the Model Rules for law students, will be more highly valued.

The term papers are read by the course professors. If you have any concern regarding confidentiality please consult the professors.

COURSE SCHEDULE:

<table>
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<tr>
<th>SESSION # 1 LAW STUDENTS ONLY</th>
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<tr>
<td>THE CORPORATION AND ITS LAWYER</td>
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<td>DATE: SEPTEMBER 2</td>
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READINGS:
1. Model Rules of Professional Conduct
2. Our Schizophrenic Concept of the Business Corporation, William T. Allen (R&B 3-13)
3. Professional Responsibility and the Corporate Lawyer, Milton C. Regan, Jr. (R&B 13-21)
5. Corporate Governance and a Business Lawyer’s Duty of Independence, William T. Allen (R&B 22-29)

SESSION # 2 LAW STUDENTS ONLY
THE LAWYER’S ROLE
DATE: SEPTEMBER 9

READINGS:
1. Understanding Lawyers’ Ethics, Monroe H. Freedman (R&B 33-40)
2. The Adversary System Excuse in the Good Lawyer: Lawyers’ Roles and Lawyers’ Ethics, David Luban (R&B 40-49)
3. The Lawyer’s Amoral Ethical Role: a Defense, a Problem, and Some Possibilities, Stephen L. Pepper (R&B 49-51)
4. The Lysistratian Prerogative: A Response to Stephen Pepper, David Luban (R&B 51-56)
5. The Practice of Justice: A Theory of Lawyers’ Ethics, William H. Simon (R&B 56-64)
6. A New Role for Lawyers?: The Corporate Counselor After Enron, Robert W. Gordon (R&B 64-74)
7. When Law Prevents Righting a Wrong, Adam Liptak

Model Rules 1.6

SESSION # 3
PROFESSIONAL DILEMMAS & MORAL ACCOUNTABILITY
DATE: SEPTEMBER 16

READINGS:
1. Who Is the Client? : The Corporate Lawyer’s Dilemma, Ralph Jonas (R&B 78-79)
2. Legal Ethics, Deborah L. Rhode and David Luban, (R&B 101-105)
3. The New Casuistry, Paul R. Tremblay (R&B 105-110)
4. The Moral Interdependence of Corporate Lawyers and Their Clients. Richard W. Painter (R&B 116-130)
5. Economic Theories of Regulation: Normative vs. Positive, Linda N. Edwards & Franklin R. Edwards (CP)
6. How Unethical are You?, Mahzarin R. Banaji, et.al (CP)
7. Right versus Right, Joseph L. Badaracco (CP)
8. The Price of Lobster Thermidore

Model Rules 1.2 (b), 1.4, 1.6 (b) (1), 1.7, 1.13, 1.16 (b) (3), 2.1, 6.1
TRUTH & DISCLOSURE/ NEGOTIATIONS

READINGS:
1. Is Business Bluffing Ethical, Albert Z. Carr (EIIB 136-142)
2. The Business of Ethics, Norman Chase Gillespie
3. Bluffing, Jim T. Priest
4. Ethics and the New Game Theory, Gary Miller (CP)
5. Negotiation Ethics: How to Be Deceptive Without Being Dishonest/How to Be Assertive Without Being Offensive, Charles B. Craver (R&B 819-826)
6. A Loophole Lets a Foot in the Door, Andrew Ross Sorkin
7. Deals with Hedge Funds May Be Helping Merrill Delay Mortgage Losses, Susan Pulliam
8. The Hand Behind the Deal, Andrew Ross Sorkin

Model Rules 1.1, 1.2, 1.6, 1.7, 1.13, 1.16, 2.1, 3.3, 3.4, 4.1, 8.4

SESSION # 4
ROLES /AGENCY & FIDUCIARY DUTY
DATE: SEPTEMBER 23

READINGS:
1. The Emerging Responsibilities of the Securities Lawyer, Commissioner A.A. Sommer, Jr. (R&B 626-631)
2. The Attorney as Gatekeeper: An Agenda for the SEC, John C. Coffee, Jr. (R&B 636-647)
3. SEC Gores GC in SOX Dust-Up, Tamara Loomis (R&B 648-651)
4. Restricted Reasons and Permissible Violations, Arthur Applbaum (CP)
5. Cops, Counsel, and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations, Robert C. Nelson and Laura Beth Nielsen (R&B 223-248)
6. Sharing Accounting’s Burden: Business Lawyers In Enron’s Dark Shadows, Lawrence A. Cunningham (R&B 198-208)
7. Moral Hazard, Robert Pindyck & Daniel Rubenfeld (CP)
8. The Epistemology of Corporate Securities Lawyering: Beliefs, Biases and Organizational Behavior, Donald C. Langevoort (R&B 349-359)
12. Disloyal Agents, David Cavers
13. Old City Enterprises, Lawrence Zicklin

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

READINGS:
1. Risk Management and Corporate Governance- The Case of Enron, Robert Eli Rosen (R&B 360-364)
2. Enron, Enron’s Attorneys, Structured Finance Transactions (R&B 879-898)
3. Broken Trust: Role of Professionals in the Enron Debacle, Ashish Nanda (CP)
4. The Business Judgment Rule and the Duty of Care, Constance Bagley & Diane Savage (CP)
5. Our Schizophrenic Conception of the Business Corporation, William T. Allen (R&B 3-13)
6. Corporate Governance (A Special Report); Why CEOs Need To Be Honest with Their Boards: Too often, chief executives sugarcoat the truth; that’s more dangerous than ever- Kaja Whitehouse
7. Corporate Governance (A Special Report); Where the Action Is: forget the audit committee or compensation committee; The new hot seat on boards is on the nominating committee- Judith Burns
8. When Chairman & CEO Roles Get a Divorce, Joanne S. Lublin

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

SESSION # 5
REGULATORY COMPLIANCE
DATE: OCTOBER 7

READINGS:
1. Punishing the Business Organization, The Organizational Sentencing Guidelines (R&B 1062-1065)
3. A Nightmare Deferred, Vanessa Blum (R&B 1080-1083)
4. Case Expands Type of Lies Prosecutors Will Pursue, Alex Berenson (R&B 1046-1049)
5. Corporate Accountability and Compliance in Health Care- Will Health Care Be the Next Enron?, Williams, Kastner & Gibbs PLLC (R&B 987-993)
9. Given the Latitude to Show Leniency, Judges May Not- Adam Liptak
10. Prosecutors’ Tough New Tactics Turn Firms Against Employees, Laurie P. Cohen
11. In Justice Shift, Corporate Deals Replace Trials, Eric Lichtblau
12. McNulty Memorandum, Principles of Federal Prosecution of Business
Model Rules: 1.2, 1.3, 1.6, 1.7, 1.9, 1.10, 1.13, 2.1, 4.1, 4.2, 4.3

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<th>WHISTLE BLOWING &amp; LOYALTY</th>
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READINGS:
1. In the Execution Chamber, the Moral Compass Wavers, Benedict Carey
2. Blowing the Whistle, Many Times- Mary Williams Walsh
3. The Very Idea of a Conceptual Scheme, Patricia H. Werhane
4. Pinto Fires & Personal Ethics: A Script Analysis of Missed Opportunities, Dennis A. Gioia (R&B 337-349)
5. Whistle blowing and Professional Responsibility, Sissela Bok (EIB 128-135)
6. The Return of Qui Tam, Priscilla R. Budeiri
7. The Aircraft Brake Scandal, Kermit Vandivier (CP)

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

| SESSION # 6 |
| CONFLICTS OF INTEREST IN MARKETPLACE |
| DATE: OCTOBER 14 |

READINGS:
1. Payload: Taking Aim at Corporate Bribery- Nelson D. Schwartz and Lowell Bergman
3. Buynow Stores, Bruce Buchanan
4. Hat Trick, Gretchen Morgenson
5. Marsh & McLennan Companies, Ingo Walter
6. Contingency Fee Con-Men, Lester Brickman
7. The Foreclosure Machine, Gretchen Morgenson & Jonathan D. Glater
8. Inquiry Assails Accounting Firm in Lender’s Fall, Vikas Bajaj
9. Health Industry Practices That Create Conflicts of Interest, Troyen A. Brennan, et.al
10. Neutral, Omni-Partial Rule Making, Ronald M. Green

| STANDARDS OF TRUTH & DISCLOSURE IN MARKETPLACE |
READINGS:
1. Tattered Standard of Duty on Wall Street- Ben Stein
2. Fingerhut’s Price Strategy, Lee Fennel (EIIB 491-505)
3. Triple-A Failure, Roger Lowenstein
4. Where the Fingers are Pointing, Floyd Norris
5. If You Can’t Sell, Good Luck, Gretchen Morgenson
6. Investment Management Business or Profession, John C. Bogle
7. Drug Makers Scrutinized Over Grants, Gardner Harris

SESSION # 7
STANDARDS OF TRUTH & DISCLOSURE IN MARKETPLACE
DATE: OCTOBER 21
FILM/ PRESENTATIONS

READINGS:
1. In Vioxx Settlement, Testing a Legal Ideal: a Lawyer’s Loyalty, Adam Liptak
2. Setback for Effort to Ease Rules on Promoting Drugs, Stephanie Saul
3. Impugning the Integrity of Medical Science, Catherine D. DeAngelis & Phil B. Fontanarosa
4. Reporting Mortality Findings in Trials of Rofecoxib for Alzheimer Disease or Cognitive Impairment, Bruce M. Psaty & Richard A. Kronmal
5. Guest Authorship and Ghostwriting in Publications Related to Rofecoxib, Joseph S. Ross et.al
6. Citing Ethics, Some Doctors Are Rejecting Industry Pay, Gina Kolata
7. A. H. Robins: Dalkon Shield, A.R. Gina & Terry Sullivan (CP)
8. The Class-Action Quandary: Cash Payment, No Apology, Meryl Gordon
9. Doctors Start to Say ‘I’m Sorry’ Long before ‘See You in Court’, Kevin Sack
10. Repeated Defect in Heart Devices Exposes a History of Problems, Barry Meier
11. Justices Shield Medical Devices from Lawsuits, Linda Greenhouse et.al
12. Medical Device Ruling Redraws Lines on Lawsuits, Barnaby Feder

SESSION # 8
SOCIAL RESPONSIBILITY TO STAKEHOLDERS
DATE: OCTOBER 28
PRESENTATIONS

READINGS:
1. Managing for Stakeholders- R. Edward Freeman (EIIB 39-53)
2. The Social Responsibility of Business is to Increase Its Profits, Milton Friedman (EIIB 34-39)
3. Business Ethics and Stakeholder Analysis, Kenneth E. Goodpaster
5. Make Money, Save the World- Stephanie Strom
6. Wal-Mart Sets Agenda of Change- Michael Barbaro
7. Google: From Don’t Be Evil to How to Do Good
8. Do it Right
9. Going Global
10. Just Good Business
11. Leaders: How good should your business be?; Ethical capitalism

**MORAL STANDARDS ACROSS BORDERS**

**READINGS:**
2. In Europe, Sharper Scrutiny of Ethical Standards, Nicola Clark
3. Ethical Responsibilities and the International Lawyer: Mind the Gaps, Lauren R. Frank, Selected Sections of the CCBE Code (R&B 1235-1241)
5. In Praise of Cheap Labor: Bad Jobs at Bad Wages, Paul Krugman (CP)
6. The Challenge of Cultural Relativism, James Rachels (EIIB 438-447)
7. Values in Tension: Ethics Away From Home, Thomas Donaldson (EIIB 476-486)
8. Don’t Be Evil, Michael Shermer
9. Managing for Organizational Integrity, Lynn Sharp Paine (EIIB 274-287)

Model Rules: 1.7, 5.4, 5.5, 8.5