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.

About This Section of the Course

This particular section of Professional Responsibility – which has been a mandatory and important part of the Stern School MBA curriculum for over 25 years –
will focus in particular on financial markets and institutions. While many of the issues covered in the readings and cases assigned for this course are generic in character, they are unusually pervasive and complex in the financial sector. Students enrolling in this section of the course should therefore have a professional and personal interest in the financial services industry. Although this is not a requirement, students with no interest in Finance would be well advised to select another section of the course, since the issues discussed in this section will occasionally be somewhat specialized.

Student in this course will have to exercise professional judgment through discussion and analysis. Most class sessions will require the analysis of one or more cases, as indicated in the following schedule of class assignments.

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.

The final examination for the course (see below) will deal mainly with the cases, so it will pay-off handsomely to prepare them as you go along.

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. Proposals are due on 8 February. Projects are due 26 April. No late proposals or projects will be accepted.

Final Examination

There will be a two-hour formal, closed-book final examination in this course. It focuses on the cases. Students who have missed class or haven’t read the assigned material cannot pass the 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%
Final exam  30%
Term Project  40%

Textbooks


Most cases and readings for this course are found in *Cases and Readings in Markets, Ethics, and Law, 2000-01 Edition*.

Both books are available at the NYU Professional Bookstore. Note that *Cases and Readings in Markets, Ethics, and Law, 2000-01 Edition*, is different from previous editions.

Additional cases and readings are contained in a packet that will be distributed on the first day of class.
Course Outline

1. 25 January  Markets, Market Failure and the Web of Social Control

   Note: Since some students are unlikely to have done the reading for the first class session in advance, the following should be read as soon as possible after that class and the study questions considered in the light of what went on during the class session.

   Readings:  Smith & Walter, Chapters 1 and 2.

   “Living with the Organizational Sentencing Guidelines” by Jeffrey Kaplan, Linda S. Dakin, Melinda R. Smolin


   “Why Daiwa Bank Will Pay $340 Million Under the Sentencing Guidelines” by Jeffrey M. Kaplan

   “When the Company Becomes a Cop” by Linda Himelstein

   Study Questions:

   1. How do you think the Corporate Sentencing Guidelines will change corporate behavior?

   2. Are the compliance costs that the Guidelines imply justified?

   3. What are the implications of the Corporate Sentencing Guidelines for the individual employee? Use your own intended career path as a basis for judgment, and be as specific as you can.

2. 1 February  Truth, Disclosure and Financial Analysts

   Readings:  “Is Business Bluffing Ethical?” by Albert Carr

   “Analysts’ Reports: To Be Taken With a Grain of Salt,” by Charles Batchelor (in readings packet)

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1Note that the first class will be held on 25 January, and that there is a makeup class on Friday 3 February – same time, same place.
“Today’s Analyst Often Wears Two Hats” by Roger Lowenstein

**Cases:**

“Bitter Pill” by Ralph T. King, Jr.

“Is Centured, Fined for Wrong Forecast,” by Charles Gasparino (in readings packet)

“Presto, Chango! Sales Are Huge!” by Jeremy Kahn

“Eurobank International and the Rabinski Corporation” by Ingo Walter (in readings packet)

**Study Questions:**

1. Would Albert Carr voice any objections to the corporate actions of Boots described in “Bitter Pill”? Why or why not? Do you agree with Carr? Why or why not?

2. What do you think of Tom Hanley’s treatment?

3. Is there anything wrong with the dot.coms’ revenue projections?

4. How do you evaluate the decision reached by Eurobank executives in the “Rabinski” case?

(NOTE: FRIDAY CLASS TO MAKE-UP CLASS ORIGINALLY SCHEDULED FOR 1/18)

2. **2 February**  Gifts, Side Deals and Payoffs

**Readings:** Smith & Walter, Chapters 8 and 9

**Cases:** “Buynow Stores” by Bruce Buchanan

“Roger Berg” by Ronald M. Green

“The Spin Desk: Underwriters Save IPO Stock for Officers of Potential Clients” by Michael Siconolfi

“Friends and Family,” by Melanie Warner
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?

2. Does the Roger Berg case differ materially from Buynow Stores?

3. Construct an argument that justifies the practice of “spinning.” Do not neglect the business realities of conducting an IPO.

4. What are the underlying economic causes of bribery? What are its principal effects?

4. 8 February PROJECT PROPOSALS DUE

Fiduciary Duties of Managers and Directors

Readings: “Our Schizophrenic Conception of the Business Corporation” by William T. Allen
“Share and Share Unalike”

“To Cash Out or Not to Cash Out”

Cases: “Quality Department Stores” by Lawrence Zicklin

“Old City Enterprises,” by Lawrence Zicklin

“WorldOnline.com,” by Into Walter (in readings packet)

Study Questions:

1. Sketch out the relationships between parties described or implied in the “Quality Department Stores” case. Which of these can be called “fiduciary” relationships? Justify your answers. Given your analysis, how should the investment manager vote?

2. What should the CEO do in “Old City Enterprises?”

3. Assess the conduct of Nina Brink and her board members at WorldOnline.com, as well as Goldman Sachs and ABN AMRO.

5. 15 February Sales and Trading: Retail Clients

Readings: Smith & Walter, Chapter 3

“Paternalism in the Marketplace: Should a Salesman Be His Buyer’s Keeper?” by James M. Ebejer and Michael J. Morden

“Investment Management: Business or Profession?”

“Losing Battles” by Margaret A. Jacobs and Michael Siconolfi

Cases: “Commissions on Sales at Brock Mason” by Tom Beauchamp

“Derivative Dregs” by G. Bruce Knecht

“New Questions About Block’s Lucrative Tax Loans,” by David Kay Johnston (in readings packet)
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? Justify your position.

2. In what ways was the structure of Brock Mason responsible for the outcome in the widow’s case? What moral hazard was present? How might you change the structure to get a better outcome? What costs would this entail?

3. What are the key issues raised in “Derivative Dregs” and “H&R Block?”

6. 22 February  Sales and Trading: Professional Clients

Readings: Smith & Walter, Chapter 4

Cases: “West Virginia CIF” by Ingo Walter

Study Questions:

1. In the West Virginia CIF case, did the Merrill Lynch salesman act properly in flagging the issue to Danny Napoli? What’s in it for him?

2. In the same case, what were the benefits and risks of Danny’s trip to Charleston?

3. How does the West Virginia CIF case relate to the subsequent Orange County case as described by Smith & Walter (p.21)?

7. 1 March  Conflicts of Interest in Banking and Finance

Readings: Smith & Walter, Chapter 7

“Raising the Stakes,” by Mark Maremont (in readings packet)

Cases: “The Reeves Bankruptcy” by Ingo Walter (in readings packet)

“J.P. Morgan and Banco Español de Crédito” by Ingo Walter (in readings packet)

Study Questions:
1. In the “Reeves Bankruptcy” case, what was the nature of the conflict of interest, and how did it materialize? What should Gene Smith do now? What should happen to Bill Bigelow?

2. In the “J.P. Morgan and Banco Español de Crédito” case, scope-out the matrix of potential conflicts of interest facing the bank? How did they materialize? Which ones are serious and which ones are not? What are the potential costs to Morgan’s shareholders? What should senior management do next?

8. 8 March Market Rigging and Insider Trading

Readings: Smith & Walter, Chapters 5 and 6

“What is Really Unethical About Insider Trading?” by Jennifer Moore

“The Cost of Inequity”

Cases: “An Accountant’s Small Time Insider Trading” by Tom. L. Beauchamp

“Raymond Dirks and Equity Funding of America” by Roy C. Smith

“Trading Room Ethics,” by Lawrence Zicklin

“Marisa and Jeff,” by Calvin Trillin (in readings packet)

Study Questions:

1. Should the accountant, Donald Davidson, trade on the information he has obtained from Warner Wolff?

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?

3. What are the managerial issues raised in “Marisa and Jeff?”

4. Do laws forbidding insider trading make financial markets more or less efficient? Use ideas from both economics and ethics to justify your position
9. **22 March**  
**Product Liability**

**Readings:**  
“Product Liability”

“The Coase Theorem” by A. Mitchell Polinsky

“Credit Card Companies Target Niche: The Disabled”

**Cases:**  
“A.H. Robins: Dalkon Shield” by A. R. Gini & Terry Sullivan

“In Breast Implants Scandal, Where was Dow Corning’s Concern for Women?” by Andrew W. Singer

“Will the Lawyers Kill Off Norplant?” by Gina Kolata

“The Class-Action Quandry: Cash Payment, No Apology,” by Maryl Gordon

**Study Questions:**

1. Should A.H. Robins have introduced the Dalkon Shield when it did? Why or why not?

2. Does the breast implant case differ materially from the Dalkon Shield case? Be as specific and complete as you can.

3. What sorts of moral hazard does strict product liability create? Do these apply to the case of Norplant?

4. Consider three possible laws (i) *no* product liability (producer never liable for harm caused by products), (ii) producers liable when *negligent* (producer liable when product causes harm, and it can be shown that producer should have taken more care in the design of its product), (iii) *strict* producer liability (producer liable for harm caused by unreasonably dangerous product, even when it can be shown that the producer took all reasonable care). Which policy is most economically efficient, and how does this depend upon information asymmetry? Which policy is most fair?

10. **29 March**  
**Globalization of Standards of Conduct**

**Readings:**  
“Moral Minimums for Multinationals” by Thomas Donaldson

“Doing Well By Doing Good” (in readings packet)
“In Praise of Cheap Labor,” by Paul Krugman

Cases: “Union Carbide: Chemical Dangers” by Rogene Buchholz

Study Questions:

1. Analyze the situation faced by Union Carbide in India. What social responsibility did Union Carbide have? Where and why did it go wrong? How about UCIL? How about the Indian authorities? What about the U.S. government?
2. What are the pros and cons of Paul Krugman’s views on the exploitation of developing countries’ labor markets?”

11. **5 April**  
**Patterns of Discrimination**

**Readings:**  “EEOC Guidelines Excerpt”

**Cases:**  “Foreign Assignment” by Thomas Dunfee and Diana Robertson

“Wall Street’s Secret Society,” by Alan Deutschman

“Socializing of a Staffer and Boss’s Wife Spells Woe at Brokerage Firm” by Ann Davis (in readings packet)

**Study Questions:**

1. In the “Foreign Assignment” case, how would you judge the actions of Bill Vitam?

2. In the “Foreign Assignment” case, how does the structure of the bank affect the outcome of the case? How might you change this structure to get better results?

3. How do you react to the issues raised in the “Wall Street's Secret Society?”

12. **12 April**  
**Privacy**

**Readings:**  “Open Secrets”

“Markets and Privacy”

“Monday 9:01 a.m.”

**Cases:**  “Prying Times,” by Ann Carns

“The Eroded Self” by Jeffrey Rosen

**Study questions:**
1. What are the pros and cons of the New York Times management’s action in “Prying Times?”

2. Outline a plan to deal with privacy issues in the context of the Internet and financial services.

13. **19 April**  **Whistleblowing**

**Readings:** Smith & Walter, Chapter 10

“Whistleblowing: Its Moral Justification”
by Gene G. James

**Case:** “Aircraft Brake Scandal”
by Kermit Vandivier

“He Blew the Whistle, and Health Giants Quaked”

**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?

2. According to the criteria, as described in “Whistleblowing: Its Moral Justification,” is whistleblowing permissible in the “Aircraft Brake Scandal” case? Is it obligatory?

3. What do you think about the Bear Stearns approach to whistleblowing as described in Smith & Walter. Can it survive Ace Greenberg’s retirement from the firm?