



Spring 2013

Syllabus

Responsibility in Professional Services

LGST 612 [section 8, quarter 4]

Instructor: Eric Orts
Classroom: 245 JMHH
Classes: Tuesdays, 3:00 to 6:00 pm

Office hours: Tuesdays, 1:30 to 2:30 pm
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Biographical introduction: Eric Orts is the Guardsmark Professor in the Legal Studies and Business Ethics Department at the Wharton School with a secondary appointment in the Management Department. His teaching and research focus on corporate governance, corporate and securities law, professional ethics, and environmental sustainability. In this version of LGST 612, he intends to draw especially on his knowledge and experience in teaching corporate law and securities regulation at Wharton and various law schools (including Michigan, NYU, Penn, Sydney, and UCLA), as well as in executive education programs such as the FINRA at Wharton program for regulatory compliance professionals in the securities industry. A bio with additional information is appended below.

Course description: This course is designed to engage MBA students from different business backgrounds with legal and ethical issues that arise specifically in professional services. On one level, the course endeavors to provide knowledge derived from lawyers and business ethicists that should prove useful in practice. On another level, the course encourages students to reflect on their own experiences and to do research with respect to their future fields of expected work regarding the legal and ethical frameworks of their expected careers. The course in one version or another is required because business responsibility (broadly understood) is agreed by almost all serious participants and observers as an essential component of a successful career.

This particular section of the course will meet in a three-hour, one-meeting-per-week format. Because the course consists of only six classes, attendance of the first class is required. However, an arrangement may be made for students joining the course at least by the second class (with responsibility on them for a make-up assignment). Missing subsequent classes—or coming to class late or leaving early—without adequate excuse or justification will be taken into account in the class participation component of the grade described below.

This course focuses on legal and ethical issues in professional services and will therefore be particularly relevant for students entering into fields such as financial services and consulting. But the course is not limited to these occupations, and it is aimed to cover topics broadly useful to students preparing for any managerial, investment, or professional position that is likely to place them in the role of an agent representing and owing legal and ethical duties to employers, clients, suppliers, and customers. The course aims to develop skills in ethical and legal analyses to assist managers and other business professionals when they make individual-level and firm-level decisions about the proper courses of action when duties, loyalties, rules, norms, and interests are in conflict. This particular section of LGST 612 draws heavily on the instructor's expertise in corporate and securities law, as well as professional ethics.

To assure that the course concepts remain anchored in practical application, students will form teams beginning in Class 2 reflecting their future career interests or past experiences in particular industries. They will then prepare a class presentation to be delivered in Class 7 outlining their findings regarding common legal or ethical problems in their target industry as well as ethical "best practices" within it. This will require research and perhaps personal interviews with practicing executives as the basis for the presentation.

Required texts:

William A. Klein, John C. Coffee, Jr. & Frank Partnoy, *Business Organization and Finance: Legal and Economic Principles* (Foundationa Press, 11th ed., 2010) [softcover or e-book version]

Harry G. Frankfurt, *On Bullshit* (Princeton University Press 2005).

Jon M. Huntsman, *Winners Never Cheat—Even in Difficult Times* (Prentice Hall, rev. ed., 2011).

Optional: Harry G. Frankfurt, *On Truth* (Alfred A. Knopf 2012).

These books may be purchased at Penn Book Center or online. Kindle versions of Frankfurt and Huntsman are available at Amazon.com. An e-book version of *Business Organization and Finance* may be purchased at <http://store.westlaw.com/klein-coffee-partnoys-business-organization-finance-legal-economic-principles-11th/144366/22071099/productdetail>. Warning: Unfortunately, the publishers of *Business Organization and Finance* have a rather restrictive policy regarding the resale and reuse of the e-book version. Copies of the books will also be placed on library reserve.

Supplementary readings and handouts: Additional readings or materials will be available on Canvass or provided by handouts in class or electronically via e-mail. These materials are also considered required course materials unless otherwise indicated.

Note for lawyers or MBA/JD students: Some subject matter covered in this course overlaps with corporate law or securities regulation courses taught in law schools. Students with extensive previous educational or professional experience with these topics may therefore wish to take another section LGST 611 (focusing on global management issues) or LGST 612 (with less legally focused material). The material assigned here will be treated in a much different fashion than in law schools, however, and so lawyers or other students who have had related undergraduate courses are also welcome—and may be called on to share their expertise with their colleagues.

Class format and student participation: Classes will combine lecture, Socratic dialogue, group discussion, and group and individual presentations. Students will be expected to have read material assigned for class and to be prepared to discuss it.

Grading: Grades for the course will be assessed as follows.

1. Class participation (25%). Class attendance and the instructor's evaluation of the performance and quality of participation of students will comprise 20% of the grade. Each class will be assessed independently with ratings combined at the end of the course.
2. Short-answer/essay test (25%). A 30- to 45-minute closed-book, in-class test will be given in Class 6 on the materials read and discussed in Classes 1 through 5. This test will include both short answer and short essay questions.
3. Group project (25%). Students will be divided into groups in Class 2 according to expected occupation (or, if not yet known, previous occupation). Groups will research a topic regarding (a) best ethical and legal compliance practices, (b) a particular ethical or legal issues within a particular professional services industry (e.g. consulting firm, hedge fund, banking subdivision, broker-dealer firm, investment adviser, insurance company, or other service-related or consumer-facing business), or (c) another topic relevant to business responsibility, law, or ethics discussed with the professor in advance. Group presentations on the topics will be given in Class 7.
4. Essay (25%). A short essay is required of four to five pages in length (12-point type, doubled spaced) on a topic, approved by the professor in advance, that advances the student's understanding of an ethical, moral, or legal topic related to career or personal interests. Topics may include case studies of challenges faced in a particular firm, role models admired for their character and professionalism in ethical or legal matters, historical investigations of scandals or best practices, and, in general, any topic that is broadly relevant to the course and that is of special interest to a given student.

Quality feedback/informal lunches/dinners: A series of optional lunches or dinners will be held to get feedback from students about the course as well as to encourage general informal interactions between students and professor. No credit for class participation (or the reverse) will be given for participation in informal lunches or dinners (or not).

Syllabus revisions. This version of the course is subject to possible revision in accordance with students' interests as well as time pressures of coverage or substitutions of course materials.

Course outline

Specific assignments will in general follow the outline provided below. Any changes will be announced in class. Any revised versions of the syllabus will also reflect any changes.

Class 1 Business Responsibility: The Legal and Ethical Context of Business [Mar. 12]

Description: This class provides an introduction to the course and reviews its coverage, requirements, and mutual expectations (including a primer on the use of legal rather than business school cases). It focuses on how law and ethics establish non-market constraints on business persons (both firms and individuals). It reviews the structure of business enterprise focusing on its participants (owners, investors, managers, and employees). A review of ethical and legal frameworks related to business responsibility is presented.

Readings:

Business Organization and Finance, pp. iii-iv, 1-4.

Donaldson and Werhane, "Introduction to Ethical Reasoning"

"The Ring of Gyges" Exercise

Optional: Excerpt from Plato's *Republic* [on the Ring of Gyges]

Class 2 Practical Lessons; Business Forms, Agency Law, and Fiduciary Duties [Mar. 19]

Description: This class begins with a sharing and discussion of class members own legal and ethical experiences. The class also provides an introduction to legal variations of business firms (e.g., sole proprietorships, partnerships, limited liability companies, and limited liability partnerships) and the ubiquitous use of legal agency in business practice (including employment). It introduces students to various associated legal ideas, including vicarious liability, limited liability, and fiduciary duties of care and loyalty.

Class exercise: In advance of class, each student should reflect on an ethical and legal experience that he or she has confronted in previous professional or business experience to share with the rest of the class. Select an experience with an eye toward sharing useful knowledge or a "learning lesson" with colleagues. We will begin class with a discussion of these lessons from practice and what they may mean for students with different career trajectories.

Readings:

Introductory case: “A Banker’s Cab Ride” and Morgan Stanley’s Code of Ethics

Introductory perspective: Greg Smith, “Why I Am Leaving Goldman Sachs,” N.Y. Times, Mar. 14, 2012, at A27.

Business Organization and Finance, pp. 5-8, 12-47, 51-67, 71-79, 90-105.

A. Gay Jenson Farms. Co. v. Cargill, Inc., 309 N.W.2d 285 (Minn. 1981).

Meinhard v. Salmon, 164 N.E. 545 (N.Y. 1928).

Class 3 Responsibility and Accountability within Business Corporations [Mar. 26]

Description: This class reviews the basic legal structure of the business corporation, the largest, most popular, and most widespread business form used for most professional services firms in the world today (with some exceptions that now borrow features from corporate law, such as limited liability). It addresses how fiduciary duties apply to managers and directors in a corporate context and raises questions about whether business firms owed larger duties to society in general (e.g., ethical arguments favoring “corporate social responsibility” and “corporate citizenship”).

Readings:

Business Organization and Finance, pp. 106-17, 122-42, 146-70, 177-207, 218-21.

Dodge v. Ford Motor Co., 170 N.W. 668 (1917).

American Law Institute, *Principles of Corporate Governance*, sect. 2.01.

Class 4 Obligations to the Truth: Securities Fraud, Insider Trading, and Other Means of Deception [Apr. 2]

Description: This class discusses the general ethical and legal obligations of telling the truth, including prohibited “material omissions” that are the equivalent of fraudulent behavior such as in the case of insider trading. The focus is primarily on securities fraud, though the larger question of “bullshit” (understood as a technical philosophical term) in commercial life is also considered.

Readings:

Business Organization and Finance, pp. 170-77, 213-15.

Basic, Inc. v. Levinson, 485 U.S. 224 (1988).

Securities and Exchange Commission v. Texas Gulf Sulphur Co., 401 F.2d 833 (2d Cir. 1968).

United States v. O'Hagan, 521 U.S. 642 (1997).

Frankfurt, *On Bullshit*

Optional: Frankfurt, *On Truth*

Class 5 **Law and Ethics in Contemporary Financial Markets** [Apr. 9]

Description: This class examines emerging legal and ethical issues arising in new financial markets with a particular focus on the reforms of the Dodd-Frank Act. It also examines current regulatory and ethical issues such as the proper role of business firms in politics (and public disclosure of any such role).

Business Organization and Finance, pp. 402-55.

Morrison and Foerster, *The Dodd-Frank Act: A Cheat Sheet* (2010).

Citizens United v. Federal Election Commission, 558 U.S. 310 (2010).

Class 6 **Wrap-Up and Exam: Ethics and Law in Professional Services** [Apr. 16]

Description: This class begins with some structured exercises based on Jon Huntsman's lessons from his business experience. The second part of the class tests students' acquisition of knowledge in the course based on material covered in the first five classes and provides some optional structured time for students discuss and confirm plans for final group presentations on selected ethical and legal issues in professional services.

Reading:

Huntsman, *Winners Never Cheat*

In-class short-answer and short-essay test.

Class 7 **Student Presentations** [Apr. 23]

Student group reports on best practices in selected firm or industries—or other selected issues.

End of quarter: Final essays are due on a topic discussed with the professor in advance. Please submit in both hard copy (sixth floor mailbox in Legal Studies and Business Ethics Department) and electronic version (to ortse@wharton.upenn.edu). Due date: **Friday, April 26.**

Full Bio of Instructor

Eric Orts is the Guardsmark Professor at the Wharton School of the University of Pennsylvania where he has taught since 1991. He is a tenured professor in the Legal Studies and Business Ethics Department with a joint appointment in the Management Department. He also serves at the faculty director of the Initiative for Global Environmental Leadership and faculty co-director of the FINRA at Wharton Institute's Certified Regulatory Compliance Professional Program. His primary research and teaching interests are in corporate governance, securities regulation, environmental law and management, and professional ethics. An example of his research is a forthcoming book on *Business Persons: A Legal Theory of the Firm* (Oxford University Press 2013).

Prior to joining Wharton's faculty, Professor Orts practiced law as a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison in New York City and was a Chemical Bank fellow in corporate social responsibility at Columbia Law School. He has also taught and visited at a number of other leading business and law schools, including the University of Pennsylvania Law School, NYU School of Law, Sydney Law School, Tsinghua University School of Economics and Management, the University of Michigan Law School, and UCLA School of Law. He has also been a visiting Fulbright professor in the law department of the University of Leuven, the Eugene P. Beard Faculty Fellow at Harvard University's Center for Ethics and the Professions, and a faculty fellow in the Center for Business and Government at the Kennedy School at Harvard. Next semester, he will be a visiting exchange professor at INSEAD.

Professor Orts is a graduate of Oberlin College (BA), the New School for Social Research (MA), the University of Michigan (JD), and Columbia University (JSD). He is a member of the bar of New York and the District of Columbia, as well as an elected member of the American Law Institute, and belongs to several other professional and academic associations. He is a founding board member of the Alliance for Research on Corporate Sustainability (ARCS) and serves on the editorial board of *Business Ethics Quarterly*.

In work over the course of his career, he has advised and interacted with a wide range of companies in different sectors and in different countries.

Professor Orts won the MBA Excellence in Teaching Award for an Elective Course in 2011.