

**UNIVERSITY OF PENNSYLVANIA
THE WHARTON SCHOOL
DEPARTMENT OF LEGAL STUDIES & BUSINESS ETHICS**

**LEGAL STUDIES 612-004
Fall 2014, Quarter 2
RESPONSIBILITY IN PROFESSIONAL SERVICES**

Instructor: David Zaring
Contact Information: zaring@wharton.upenn.edu
Classroom: Huntsman G55
Office: Sixth Floor Huntsman Hall
Class times: MW 10:30-11:50
Office Hours: Tuesday 1:30-2:30, Wednesday 1:30-2:30, or by appointment

Instructor:

David Zaring is an Associate Professor at the Wharton School, and has taught at the Penn, Washington & Lee, Vanderbilt, Bucerius, and NYU law schools. Before entering academia, he served in the Department of Justice, handling matters related to ecommerce and internet censorship, health care, and affordable housing. He also served as a political aide to Andrew Cuomo. He writes at the intersection of financial regulation, international law, and domestic administration, and has published over thirty articles, including in the NYU, Michigan, Virginia, and Cornell law reviews, and a number of international law journals. He has consulted for the World Bank, securities regulators on three continents, and writes an occasional column on financial regulation for the New York Times's DealBook vertical. His class approach mixes cases with other exercises and discussion.

Overview:

This course introduces students to the important legal and ethical challenges they will face as leaders in such fields as financial services and consulting. The scope of the course is not limited to these two contexts, however, and will be broadly useful to students preparing for any managerial position that is likely to place them in the role of an advisor and agent representing and owing duties to third parties such as employers, clients, suppliers, and customers. The focus of the course will be on developing skills in ethical and legal analyses that can assist managers as they make individual-level and firm-level decisions about the proper courses of action when duties, loyalties, rules, norms, and interests are in conflict.

Grading:

1. **Overall Contribution to Class:** (25%) Class attendance, instructor evaluation, and peer ratings will comprise 25% of the grade. Because class participation may not come easily for

some, I am happy to discuss strategies for successful classroom participation. Many of these strategies may be helpful beyond this class as well.

2. **Exam** (30%). An open materials, in-class, essay exam will be given in class on November 3. It will focus on a difficult ethical dilemma and ask you to think creatively and coherently about how to resolve it..

4. **Final** (40%). A closed-book, objective, in class final exam will be administered on December 12 from 9:00 am to 11:00 am.

Class:

The readings and other materials will be available at Study.net, along with the course ethics matrix.

Class will be conducted according to concert rules:

1. Class starts and ends on time. Students and faculty are expected to be timely.
2. Students are to sit according to a seating chart.
3. Students should remain in attendance for the duration of class, except in an emergency.
4. Students should display name plates.
5. All phones should be turned off; electronic devices may be used only to access the readings for the day.

CLASS TOPICS AND ASSIGNMENTS

Topic 1: Business and Society

This section of the course focuses on legal and ethical considerations for managers as they operate within society at large. To whom do they owe obligations? How does government, domestic and international, affect the range of choices?

Oct. 20: Moral Obligations and Mandatory Rules

Thomas Donaldson and Patricia Werhane, "Introduction to Ethical Reasoning," in Thomas Donaldson and Patricia Werhane, eds., *Ethical Issues in Business: A Philosophical Approach*, 8th edition (Upper Saddle River: Prentice Hall, 2008).

Case: The Analyst's Dilemma (HBS 394-056, 1993)

Discussion Questions:

1. Have you ever been in a situation like our analyst?
2. Does the analyst have a "dirty hands" problem?
"How you cling to your purity, young man! How afraid you are to soil your hands! All right, stay pure! What good will it do? Why

did you join us? Purity is an idea for a yogi or a monk. . . . To do nothing, to remain motionless, arms at your sides, wearing kid gloves. Well, I have dirty hands. Right up to the elbows. I've plunged them in filth and blood. But what do you hope? Do you think you can govern innocently?" JP Sartre, *Dirty Hands*

3. What are her options? What should she do?

Oct 22: **The Purpose of Business**

Lynn Stout, "The Problem of Corporate Purpose," *Issues in Governance Studies* (Washington, D.C.: The Brookings Institution, 2012).

Milton Friedman, "The Social Responsibility of Business Is To Increase Its Profits," *The New York Times Magazine* (Sept. 3, 1970).

Jay Feinman, "When Is A Manufacturer Liable For Injuries Caused By Its Products?" *Law 101* pp. 167-173 (2010).

Case: "Dicing with Death? A case study of Guidant Corporation's implantable defibrillator business" (Martin Sandbu, 2007).

Discussion questions:

1. What is the nature of the disagreement between Stout and Friedman?
2. What responsibilities does Guidant owe:
 - its shareholders?
 - the Oukrops?
 - Johnson & Johnson?

Oct. 27: **Counterparty Obligations**

Greg Smith, "Why I Am Leaving Goldman Sachs," *The New York Times* (March 14, 2012)

Case: SEC v. Goldman Sachs (Darden Case: UVA-GEM-0101).

Discussion questions:

1. What were the key steps the government took to respond to the financial crisis, and how does this suit fit into it?
2. What is the SEC versus Goldman Sachs lawsuit about in a nutshell?
3. What are credit default swaps on CDOs and CMOs?
4. How does withholding negative information affect demand for and supply of financial instruments? Should the SEC try to regulate this area?

Oct. 29: **The Global Context**

Thomas Donaldson, "Values in Tension: Ethics Away from Home," *Harvard Business Review*, September-October, 1996.

Case: Yahoo! in China (HBS Case 9-609-051)

Discussion questions:

1. What, if anything, did Yahoo! do wrong with regard to its relationship with the Chinese government?
2. What are its ethical duties going forward?
3. Should companies alter their ethical standards depending on where they do business? How does Donaldson address this issue?

Nov. 3 **Exam:** In-class, open materials, written essay.

Topic 2: Inside The Firm

This section of the course focuses on legal and ethical rules that arise for managers as they make organization-affecting decisions, often on a face-to-face basis. In addition to introducing some basic legal concepts, and continuing the study of ethical concepts, the section includes some in-class exercises designed to resemble that face-to-face context.

Nov. 5: **Employment at Will: A Managerial Perspective**

Employment At Will: A Legal Perspective (HBS Note 9-306-036).

Case: Two Tough Calls (HBS Case 9-306-027)

Discussion Questions:

1. What is your appraisal of the employment-at-will doctrine?
2. Given the doctrine, what is this manager's responsibility to Terry and Phil?
3. As the manager, how would you handle the two decisions?

Nov. 10: **Freedom of Contract: An Employee Perspective**

Norman Bishara & Michelle Westerman-Behaylo, "The Law and Ethics of Restrictions on Employee's Post-Employment Mobility," *Am. Bus. Law J.*, Vol. 49, pp. 1-31 (2012)

Case: Wharton Student Gets a Surprise

Exercise: The Fee Dispute (in class)

Discussion Questions:

1. Does Francesca have a contract that can assist her in resolving this issue with McBain?
2. How might Francesca have altered her bargaining position by negotiating different the terms covered by her contract?
3. Should Francesca take the deal offered by McBain?
4. Is McBain acting ethically with regard to Francesca?

Nov. 12: **Managing Legal Risk**

G. Richard Shell, "The Strategist's Dream," in *Make The Rules Or Your Rivals Will* (2009)

Samuel Bodily, "When Should You Go to Court?" *Harv. Bus. Rev.* (May-June 1981).

G. Richard Shell, "A Comment on Business Strategy and Litigation"

Exercise: Dunkle v. Mercury Drug Co.

Discussion Questions:

1. What are the advantages and disadvantages of turning to litigation?
2. How should a manager plan for legal risk?

Topic 3: Organizations

This section of the course focuses on the particular legal structural requirements imposed on firms with regard to their duties to shareholders and third parties, and introduces the ethically grounded legal concepts of fraud and fiduciary obligations.

Nov. 17: **Within-Firm Obligations**

A. Gay Jensen Farms. Co. v. Cargill, Inc., 309 N.W.2d 285 (Minn. 1981).
Meinhard v. Salmon, 164 N.E. 545 (N.Y. 1928).

Discussion Questions:

1. What is a fiduciary obligation, and what does it require of managers?
2. Why was Cargill held liable for the grain elevator's debts in *Jensen Farms*?
3. What was the nature of the business relationship between the litigants in *Meinhard*?
4. Do you agree with Judge Cardozo's decision resolving that relationship, or Judge Andrews' dissent?

Nov. 19: **Firm Obligations To Shareholders And Others**

Dodge v. Ford Motor Co., 170 N.W. 668 (1917).
A.P. Smith Manufacturing Co. v. Barlow, 98 A.2d 581 (Del. 1953).
Alan R. Palmiter, *Corporations, Examples and Explanations* 213-27 (6th ed. 2009).

Discussion questions:

1. What are the advantages hopes to gain Ford by changing its dividend policy?
2. Can a business perform its fiduciary duties and maintain a charitable program?
3. Is it responsible management to give a portion of corporate revenues to charity?

Nov. 24, 26: No class: core classes do not meet

Dec. 1: **Mergers and Acquisitions**

The Fiduciary Relationship: A Legal Perspective (HBS Note: 9-304-064).

Case: Oracle vs. PeopleSoft, (HBS Case 9-306-058).

Discussion questions:

1. Do you think PeopleSoft should accept Oracle's offer?
2. What are the advantages and disadvantages of board resistance?
3. What mechanisms can PeopleSoft use to turn away a hostile bidder like Oracle? Are they effective?

Dec. 3: **Securities Regulation and Insider Trading**

Jane P. Mallor, "Securities Regulation," in *Business Law And The Regulatory Environment* pp. 125-37 (2001).

G. Richard Shell, *The Basic Elements of Business Fraud*

Cases: The Employee Exit Interview
The Inside Trader

Discussion Questions: see The Inside Trader

Dec. 12, 9:00am-11:00 am: **Final:** closed-book, in class, objective.