

Syllabus**Responsibility in Business**

LGST 612

Instructor: Eric Orts
Classroom: JMHH F-50
Classes: Mondays, 3:00 to 6:00 pm

Office hours: TBA and by appointment
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Course description: This course focuses on legal and ethical responsibility in business. The course aims to encourage students both (1) to reflect on their own personal ethical views as they may apply in complex business situations in various sectors, including general management, banking, consulting, finance, and other business professions and (2) to acquire a core of business-relevant legal knowledge that will enable students to avoid litigation pitfalls and develop proactive business strategies that are legally informed. Class exercises, discussions, and formal assignments will focus on exploring and reflecting on students' own ethical "compasses" and orienting them to contemporary business challenges, as well as developing a basic understanding of key legal principles that are useful in professional business settings. Several selected legal cases will be employed to cover some basic "rules of the game" governing expectations of business responsibility today. On one level, then, the course endeavors to transfer 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. This 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 LGST 612 draws on the instructor's expertise in corporate and securities law, as well as professional ethics. (See bio appended below.) Classes follow 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.

In general, this course focuses on legal and ethical issues that are relevant for students preparing for any managerial, investment, or professional position that is likely to place them in the role of a legal 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.

To assure that the course concepts remain anchored in practical application, students will form teams beginning in Class 2. These teams may be formed to reflect students' future career interests or past experiences in particular industries. Students will prepare a group presentation to be delivered in Class 6 outlining their findings regarding a legal or ethical problem in business relevant to their own interests and career trajectories. This will require research and perhaps personal interviews with practicing executives as the basis for the presentation.

Required texts:

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

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

These books may be purchased at Penn Book Center or online. Kindle versions of Frankfurt's and Huntsman's books are available at Amazon.com. Copies of the books will also be placed on library reserve.

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

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

MBA "Concert Rules": Classes will be conducted according to Wharton faculty-student established "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 and faculty should remain in attendance for the duration of class.
4. Students should display name plates.
5. All phones and electronic devices, including laptops, should be turned off.

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 25% of the grade. Each class will be assessed independently with ratings combined at the end of the course. Unexcused absences from class will negatively affect class participation. Regular, informed, and on-topic in-class contributions will be counted positively.
2. Individual Essay (25%). A short essay is required reflecting on an ethical or legal issue that one has faced or experienced in practice. Include possible "learning lessons" or "take-away principles" to recommend for the future to classmates. The written essay should comprise two to four double-spaced, double-sided, stapled pages. Include any references if needed. It is also permissible to use an anonymous reporting format in order to preserve confidentiality. A hard copy of the essay is due in Class 2. Please also send an e-mail version (at least one day in advance of Class 2 if possible) to the instructor at ortse@wharton.upenn.edu.
3. In-Class Test (25%). An in-class test to be administered in Class 5 is designed to assess students' understanding and retention of some main lessons in professional ethics and the law of business organizations covered in the first four classes of the course. A review session will be held prior to the test.
4. Group Project and Presentation (25%). Students will divide themselves into groups according to expected occupations (or previous occupations) or personal affiliations (e.g., friends or previous collaborators). Each group will include three to four students. Groups will research a topic regarding (a) best ethical and legal compliance practices in a particular firm, (b) a particular ethical or legal issue within a particular business or industry (e.g, consulting, finance, general management, or specific industries such as health care, internet start-ups, or energy), or (c) another topic relevant to business responsibility, law, or ethics. Topics for group presentations must be discussed and cleared with the professor in advance either in person or by e-mail. Presentations on the topics will be given in Class 6.

Informal lunches or dinners: 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 formal 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. Readings other than books or in-class handouts are available on Canvas.

Class 1 Business Responsibility: The Legal and Ethical Context of Business [Mar. 16]

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. Two in-class exercises provide an introduction to business ethics decision-making.

Readings:

Handout: “The Ring of Gyges” Exercise (adapted from Plato’s *Republic*).

Handout: “A Banker’s Costly Cab Ride and Morgan Stanley’s Code of Ethics”

Optional: Original “Ring of Gyges” excerpt

In-class video:

Dan Ariely, Interview with Knowledge@Wharton on The (Honest) Truth About Dishonesty (2013), available at <http://knowledge.wharton.upenn.edu/article/dan-ariely-dishonestys-slippery-slope/>.

Class 2 Ethical Reasoning and Personal Reflections on Business Responsibility [Mar. 23]

Description: This class focuses on reviewing some basic elements of ethical reasoning and sharing students’ own reflections on an ethical or legal challenge that they have faced in practice. Students should select examples to share for pedagogical value that their colleagues may also find valuable or edifying.

Written Assignment: Individual Essay: Prepare a brief personal example of an ethical or legal issue faced in practice with at least one “learning lesson” or other “take-away principle” to recommend for the future to classmates. The written essay should comprise two to four double-spaced, double-sided pages. Include references if needed. Be prepared to share and discuss your example in class discussion.

Readings:

Thomas Donaldson and Patricia Werhane, “Introduction to Ethical Reasoning”

Huntsman, *Winners Never Cheat* [entire book]

Diversity in Business, Excerpt from *Bollinger v. Grutter*, 539 U.S. 306 (2003)

Dutton, “The Wisdom of Psychopaths”

Controversy at Goldman: *Smith v. Goldman Sachs* in the Press

Class 3 Fiduciary Duties in Business Organizations [Mar. 30]

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 owe larger duties to society in general (e.g., ethical arguments favoring “corporate social responsibility” and “corporate citizenship”). 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.

Readings:

Dodge v. Ford Motor Co: Managing for Shareholder Value

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

Meinhard v. Salmon: A Classic Expression of Fiduciary Duties

Cargill: Debt, Equity, Agency, and Fiduciary Duty

Class 4 Obligations to the Truth: Securities Fraud, Insider Trading, and Other Means of Deception in Business [Apr. 6] (with guest lecturer, Aidan Synnott, litigation partner, Paul, Weiss, Rifkind, Wharton & Garrison)

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. Our guest lecturer will provide a practical perspective on litigating corporate cases (and perhaps some tips on how to work well with your lawyers).

Readings:

Frankfurt, *On Bullshit*

Discussion Questions for *On Bullshit*

Basic: Private Rights of Action for Securities Fraud

Note on *Texas Gulf Sulphur* and the Fiduciary Theory of Insider Trading

United States v. O'Hagan: Trading on Misappropriated Inside Information

United States v. Newman (2d Cir. 2014) (slip opinion).

Class 5 Review and In-Class Test [Apr. 13]

Description: This class will consist in a material review session for the first part of class. Students may bring questions for this session. A test that may comprise true/false, multiple choice, and essay questions will be administered in the second part of the class. It will test students' acquisition of knowledge in the course based on material covered in the previous four classes.

Class 6 Student Presentations [Apr. 20]

Description: This class will consist entirely of final student presentations.

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 his recent 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 INSEAD, 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.

Eric 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, mostly in academic, consulting, or executive education contexts. In 2011, he won the MBA Excellence in Teaching Award for an Elective Course (The Law of Corporate Management and Finance).