

LGST 612: RESPONSIBILITY IN BUSINESS

Spring 2017, Q3

Professor Kevin Werbach

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Office hours: T/Th 11-12 (or by appointment)

Course Description and Objectives

Businesses operate in an environment defined not only by market forces, but also by legal, political, and ethical obligations. This course introduces students to important challenges they will face as businesspeople, managers, and entrepreneurs. Fundamentally, this is a course about judgment. A major goal is to develop skills in ethical and legal analysis to make decisions about the proper courses of action when duties, loyalties, rules, norms, and interests are in conflict. In today's environment, leaders without exposure to these subjects can make mistakes or react poorly to situations, at great cost to their firms.

Course Format

This is an interactive course that uses a mixture of case discussion, interactive exercises, group activities, and other formats.

Course Materials

Coursepack available through Study.Net

Attendance Policy

We will meet only twelve times. For many sessions, I have created interactive experiences that former students report are excellent sources of personal insights about responsibility and professionalism in business – but only with sufficient participation. Students who skip class, arrive late, or leave early to attend to other priorities disrupt the experience for all. If you cannot commit to attending class consistently, please consider enrolling in another section either this Quarter or later.

BONUS: Students who attend all twelve classes will receive a 5-point bonus on their final grade.

I recognize that Q3 is a heavy recruiting time, even with the dedicated recruiting period. The only excused reasons for missing class are a medical issue or personal/family emergency. However, you may have three unexcused absences for any reason, without any penalty. (If you enroll after the first class, it will not be counted as an absence.) A fourth or fifth unexcused absence (meaning arriving or leaving more than fifteen minutes from the start/end of the class) will each result in a one-step reduction in your final grade (e.g. A- to B+). Being absent from six or more classes will result in failing the course.

If you must miss a class, be sure to read the material and get notes from a fellow student.

Syllabus

Material listed as “Read,” “Prepare,” or “Watch” should be reviewed prior to class. I will expect you to be familiar with it, and prepared to answer any questions listed on the syllabus.

<p>January 10</p>	<p>Doing the Right Thing</p> <p><i>Do responsible decisions involve more than just following the law? What are your personal moral intuitions or values, and how do they influence you? How should firms evaluate the actions of their employees? Is it desirable—or even meaningful—to talk about organizations being ethical or responsible?</i></p> <p><u>Read:</u> Who Spewed That Abuse? Anonymous Yik Yak App Isn’t Telling Uber Expands Self-Driving Car Service to San Francisco. D.M.V. Says It’s Illegal</p>
<p>January 12</p>	<p>Making Hard Choices</p> <p><i>What happens when obligations (legal or otherwise) come into conflict? How do you decide what to prioritize? Do some business actors have greater obligations than others? Is there always a “win-win” solution, and what should you do if there isn’t?</i></p> <p><u>Prepare:</u> The Analyst’s Dilemma case</p> <ol style="list-style-type: none"> 1. What is the nature of the conflict facing the narrator (let’s call her Jane)? 2. What obligations does Jane have to each side? If you were in her shoes, which set would you consider stronger? 3. What should Jane do? <p><u>Read:</u> Badaracco, How to Tackle Your Toughest Decisions</p>
<p>January 17</p>	<p>Ethical Frameworks</p> <p><i>What are the ways to evaluate decisions with potential ethical or legal repercussions? Can philosophical conceptions of ethics help guide real-world business decisions?</i></p> <p><u>Prepare:</u> Dicing with Death? Case</p> <ol style="list-style-type: none"> 1. Why did Guidant decide not to notify doctors about the short-circuit risks of its implantable defibrillators? 2. Do you think Guidant made the right decision? <p><u>Read:</u> Donaldson & Werhane, “Introduction to Ethical Reasoning”</p> <ol style="list-style-type: none"> 1. What is the difference between consequentialist and deontological ethical arguments? 2. Which of the ethical theories described in the article do you find personally most convincing, and why?

January 31 **Legal and Economic Frameworks**

How does the legal system evaluate business decisions that may result in harms to others? Can economic concepts of cost-benefit analysis avoid the need for subjective decision-making in cases involving difficult choices? How does legal analysis interact with ethical responsibility and other considerations in business decision-making?

Read: Baron, Law and Markets

1. What is the “product safety problem?” What is the socially-optimal response?
2. How does the legal system address liability for defective products?

Prepare: California Space Heaters case

1. How should the company make decisions about product safety features? What are the relevant factors and information sources?
2. Under what legal standard will consumer injuries be adjudicated? What will a court consider in assessing liability under that standard?
3. Can the company quantify the impact of different safety choices? How should such calculations influence its decisions?
4. Are there any other steps the company could or should take to address safety concerns about its heaters?
5. Should the heaters be produced at all?

February 2 **Litigation and Dispute Resolution**

Why do some business disputes wind up in court? What is the responsible way to think about litigation as a tool of business strategy? How is resolution of disputes in court different from negotiated settlements?

Read: G. Richard Shell, “Strategist’s Dream”, from *Make the Rules or Your Rivals Will*

1. Why was Ford more successful than Napster in responding to legal threats?
2. How can firms use knowledge of law and the legal system to advance their business strategies?

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

1. What are the business considerations in filing a lawsuit, or pursuing a lawsuit to trial instead of settling?
2. Why do most civil cases settle?

February 7 **Contracts**

Contracts are voluntary legal instruments that anticipate and address potential disputes. In practice, however, contracts can become sources of disputes themselves. And the ethically responsible course of action may be involve more—or less—than a legally enforceable contract requires.

Read: Basic Concepts in the Law of Contracts

(continued)

Prepare: A Wharton Student Gets an Unpleasant Surprise

1. Does Francesca have a legally binding contract?
2. Did Francesca’s contract have to be in writing? Did McBane have to sign it?
3. Is there any other theory, other than enforcing the contract, which Francesca might use in a lawsuit against McBane based on what’s happened here?
4. Should Francesca sign the release?
5. Are employment contracts different from contracts for the sale of goods? Why/Why not?

February 9

Duties in Business Organizations

What responsibilities does the legal system impose on corporations and their leadership? What are the ethical implications of that system, and where might ethical responsibility go further? How does corporate governance shape the ways that executives deal with employees and shareholders?

Read: Basic Framework for Corporate Governance, pp. 1-6

1. In corporate law, what are the respective roles of corporate officers and directors, on the one hand, and shareholders, on the other?
2. What are the special duties of fiduciaries?
3. Why should fiduciaries be held to stricter standards of conduct than others?

Read: G. Richard Shell, Basic Elements of Business Fraud

Prepare: The Employee “Exit Interview” – Common Information

- We will do a negotiation exercise in class based on this material.

February 14

Corporate Responsibility

Should individuals and firms have to do more than manage to maximize shareholder value? Do business managers have responsibilities to broader classes of stakeholders?

Read:

Milton Friedman, Social Responsibility of Business is to Increase its Profits

Lynn Stout, The Shareholder Value Myth

1. What are the best arguments that shareholder value maximization should be the sole focus of corporate management?
2. What are the best arguments that managers should consider broader interests of stakeholders?
3. Which position do you find most convincing, and why?

Alchemist’s Dream Come True

1. Would you sell a product that was known to have harmful health effects, and was banned in the United States?
2. What factors should Great Lakes take into account in evaluating its TEL fuel additives business?
3. What options did Great Lakes have in response to the environmental and health concerns? What should it have done?

February 16 Guest Lecture: Jon Smollen

Jon Smollen co-founded the Temple Law Center for Compliance and Ethics. He was previously EVP and Chief Compliance Officer of Endo Pharmaceuticals, VP and Chief Compliance Officer for Siemens Healthcare USA, and held a number of leadership positions at Wyeth including VP of Compliance and Chief Privacy Officer.

February 21 Insider Trading

When can failure to disclose or misappropriation of information result in legal liability? Is it unethical to benefit from material non-public information, and at what point do actions constitute illegal insider trading?

Prepare: The Inside Trader

- Answer the questions after the scenarios in this reading.

Read:

G. Richard Shell, Confidential Information Trading

With Bill Ackman, Tennis and Herbalife Can Be a Dangerous Mix

Supreme Court Sides with Prosecutors in Insider Trading Case

1. When does a trade constitute insider trading?
2. Why is insider trading prohibited?

February 23 Global Context

An international perspective is important for any manager today. Legal/ethical conflicts become even harder when more than one set of laws or cultural norms is involved.

Prepare: Google in China case

1. How would you assess Google's 2006 decision to operate in China?
2. How and why did Google change its approach to China in 2010?
3. Has Google succeeded or failed in China? What should it do now?
4. How is Google's decision-making about its activities in China different than about activities in the United States?

Read: Tom Donaldson, Values in Tension

1. How does Donaldson propose to avoid the difficulties of both ethical relativism and ethical absolutism in judging global corporate behavior?
2. Are Donaldson's guidelines for ethical management persuasive?

February 28 **Responsibility in a Big Data World**

We live in age of digital networks and devices, ubiquitous information, and ever more sophisticated analytics. What new issues of legal and ethical responsibility do firms face with the growth of predictive modeling and pervasive data collection?

Read:

The White House, *Big Data: Seizing Opportunities, Preserving Values* (2014), pp. 1-10, 15-21, 39-47

1. What are the primary innovations of big data and business analytics?
2. What are the key elements of the U.S. approach to privacy law? Will it be effective for the novel challenges of big data?
3. How can the use of analytics result in discrimination?

Charles Duhigg, *How Companies Learn Your Secrets*

1. How was Target able to predict whether its customers were pregnant?
2. Is there anything illegal or unethical about Target's practices?
3. How can companies using these kinds of techniques avoid violations of privacy, discrimination, and other problems?

March 3 **Final Paper Due**

The final paper should be uploaded to Canvas before 11:59pm on Friday, March 3.

Grading

Quizzes (30%)

There will be three quizzes to be completed online on Canvas. These will focus mostly on the reading materials, but may also include key points from class sessions. The quizzes are open book, but you must do them individually. Each quiz is worth 10% of the course grade.

Participation (20%)

You will be assessed on the overall quality of your contributions in all forms of class discussion.

Final paper (50%)

The largest single component of the grade will be a paper of 6-12 pages in length, double spaced. Details on the assignment are provided below.

All assignment deadlines are specified in Canvas. Un-excused late submissions will receive a markdown, based on the degree of lateness.

YellowDig

This course incorporates the YellowDig service into the Canvas course site, which allows you to clip news items and other web links to share with fellow students. Please use it to share—and comment on—examples of legal and ethical issues relevant to the course. I may discuss particularly interesting clips in class.

Final Paper

The topic of your final paper is the ride-hailing service Uber, which legendary investor Peter Thiel has called “the most ethically challenged company in Silicon Valley.” From its launch in 2010, Uber has grown to a reported \$5.5 billion in 2016 revenue and a valuation of over \$60 billion in its most recent funding rounds, with ambitious plans to transform local transportation around the world. At the same time, it faces an unusually large number of criticisms. Is Uber evil? Is it actually a force for good? And does that matter?

Specifically, your paper should do the following:

1. Based on what you've learned in this course, do you believe Uber's model of entering communities without following local taxi regulations is a responsible business strategy? Why or why not?
2. Identify two (2) other legal or ethical concerns that Uber has faced, or is currently facing. Take a position on whether Uber has engaged in responsible behavior in each area, and offer recommendations for what Uber should do going forward.
3. Put yourself in the shoes of a major public pension fund, which has the opportunity to invest in Uber. Do Uber's various controversies factor into your investment decision at all? Why or why not?

You are expected to obtain additional information beyond your own intuitions and the course materials. There are many articles, blog posts, and other useful materials about Uber and its challenges easily located through online searches. I will put a starter list of articles on the course Yellowdig, but you should not limit yourself to that selection. And you are encouraged to add additional materials you find to Yellowdig for others.

In your paper, you must identify facts or arguments you take from an outside source. I don't care about the precise format: you may use footnotes, endnotes, or a bibliography with sources identified in parentheses in the text. Don't forget to take a stand: A good paper will use the materials as a foundation for

your own analysis and conclusions. Feel free to take any position pro or con regarding Uber's actions, so long as it is well-supported.

The most successful papers will demonstrate a mastery of the topics covered in the course. To the extent possible, you should tie your conclusions to ethical theories and legal concepts we discussed. You are not expected to incorporate *every* course topic into the paper; for example, I'm unaware of any suggestion that Uber executives are involved in insider trading. Use the material that is relevant to your arguments, either directly or by analogy. If your issues involve specific areas of law we did not cover in the course, just acknowledge any assumptions you are making.

The paper must be written individually, but you may discuss your topic with anyone you choose.

Instructor

Kevin Werbach is an Associate Professor in the Legal Studies and Business Ethics department. His research focuses on Internet policy, telecommunications regulation, and gamification (using game design techniques in business). He was Counsel for New Technology Policy at the Federal Communications Commission during the Clinton Administration, served on the Obama Administration's Presidential Transition Team, and created one of the first massively open online courses (MOOCs) on the Coursera platform. He was named Wharton's first "Iron Prof" in 2010. When not teaching, Professor Werbach's passions include vegetarian cooking, the Philadelphia Eagles, and World of Warcraft.