

**UNIVERSITY OF PENNSYLVANIA
THE WHARTON SCHOOL
DEPARTMENT OF LEGAL STUDIES & BUSINESS ETHICS
LGST 612 Section 008
Spring 2017**

***Responsibility in Business:
Navigating the Ethical Challenges of a Complex World***

SYLLABUS

Classroom: Room 340 JMHH
Office: Room 666 JMHH
Class times: Wednesdays, 3:00 to 6:00 pm
Office hours: by appointment
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Instructors: Professor Pierre M. Gentin
Professor Roger M. Machlis

Course Description

In this course, two senior financial services lawyers leverage decades of transactional, litigation and regulatory experience to help students understand and navigate ethical challenges and professional conflicts that frequently arise in the business world. We will learn by debating how to handle real world situations, engage with prominent guest speakers, and discuss sources including films, song lyrics, religious and philosophical teachings, as well as legal authority and economic data. We will reflect critically on our own personal ethical views and work together to acquire the strategies and skills needed to analyze and respond to business dilemmas. We will examine duties and responsibilities – which at times may conflict – owed by professional employees to internal stakeholders (including employers and colleagues), external stakeholders (including clients, customers, investors, regulators and society at large), and to the law itself. Our goal is to emerge from our six week journey with a deeper understanding of the complexity of the ethical issues that lie ahead and to be better equipped to make informed and values-driven decisions. Our course will meet for three hours each week of the six-week session. Each class will be devoted to one of six inter-related themes: (1) FOUNDATION; (2) LAW; (3) CONFLICTS OF INTEREST; (4) CRISIS; (5) TRUTH; and (6) RESPONSIBILITY.

Class Requirements

Students' primary obligation is to diligently prepare for class by reviewing the assigned materials, analyzing and thinking about them in depth in advance of the class, being actively engaged during classroom time, and applying the concepts we discuss to the situations presented in class and the final exam. Because the course consists of only six classes, on-time attendance is required for all classes. Missing a class—or coming to class late or leaving early without a bona fide excuse -- will be taken into account in the class participation component of the grade described below.

Grading

Grades for the course will be assessed as follows.

1. Class Attendance and Participation (33%). Class attendance and the instructors' evaluation of the quality of participation and engagement of students will comprise 33% of the grade. Unexcused absences from class will negatively affect class participation. Regular, informed, and on-topic in-class contributions will count positively.
2. Presentation of an Ethical Situation (33%). In class 4, each student will be present to the class on an ethical situation or crisis that he or she has faced. Each presentation will be limited to 5 minutes which is meant to simulate the presentational constraints and accelerated decision making that students will face in the business world. Students will be required to prepare and submit, by no later than the Friday prior to class 4, a one page memo summarizing the ethical situation or crisis. The grading for this component will be based on both the written submission and the oral presentation. See Class 4 (below) for more details.
3. Final Exam (33%). A final exam based on hypotheticals is designed to assess students' understanding of the concepts covered during the course. In particular, the instructors will be assessing the students' reasoning and judgment, ability to analyze an ethical issue or dilemma, and their decision as to how best to handle it.

Course Material

Representative examples of assigned materials for each class are posted below. The final readings (and other selections) will be made available on Canvas before the course begins.

Class I
March 15, 2017
FOUNDATION

This class provides the foundation for our six week exploration of what it means to be a “responsible” business professional. We will discuss the framework students will need to develop to navigate complex ethical conflicts and crises in business. We will explore philosophical underpinnings as to the meaning, purpose, and value of our professional lives. We will consider how the failure to develop and articulate a clear understanding of purpose and values can lead to decisions that are professionally irresponsible and potentially harmful for ourselves and other stakeholders.

Among the questions we will consider: What are the principles driving us as individuals to work and what do we seek to achieve in our professional lives? What priorities, behaviors and values do we expect of ourselves and our employers? What happens when these values and interests, responsibilities and duties, conflict in the real world? What approach can help us to resolve these tensions and conflicts and reach sound decisions for ourselves and our businesses? Is there a guiding star or moral compass to which we turn and how much guidance does it provide? Are there “red lines” that cannot be crossed? How do we understand the concept of personal integrity and reputation?

Sample Materials:

“God is the Bigger Elvis”: 2012 documentary about Dolores Hart, a successful Hollywood actress who appeared in many films including with Elvis Presley, who gave up her career to become a nun at a Connecticut convent (*available at* <https://www.youtube.com/watch?v=sfwTSZzjh8E>)

Milton Friedman, “The Social Responsibility of Business is to Increase its Profits” (1960)

Sally Yates’ Letter Opposing Donald Trump’s Executive Order on Immigration

Jean-Paul Sartre, “Existentialism and Human Emotions”

Class II
March 22, 2017
LAW

This class explores the role that the law plays in framing and resolving ethical dilemmas in business. We will consider the varying sources of law – religious and civil authority as well as societal norms – and consider the degree to which acting in compliance with the law fully resolves ethical quandaries. We will review situations in which the law is unclear, arguably unjust or has evolved over time, and reflect on

how an individual's obligation to comply with the law may conflict with his or her own values.

Among the questions we will consider: What is the law, and where does it come from? Is the law in a democratic society simply a reflection of the mores and values of a particular community, or is it something else? How should we conduct ourselves when the law is ambiguous or where laws conflict? How does the evolving nature of the law impact our view of its authority? Is "legal" enough? That is, does complying with the law mean that one is acting ethically and responsibly, and does not complying with the law mean that one is acting unethically and irresponsibly? How should an individual react if legal requirements – or the directions of a business supervisor – are, in an individual's view, unjust or morally unacceptable?

Sample Materials:

Plessy v. Ferguson, 163 US 537 (1896) (upholding the legality of racial segregation in the United States)

Bob Dylan, "Percy's Song" (discussing a 99 year prison sentence for vehicular manslaughter)

Philip K. Howard, *The Death of Common Sense*

Class III
March 29, 2017
CONFLICT

During this class, we will examine the varying and conflicting interests and duties that employees and companies owe to internal and external stakeholders. We will review how fiduciary duties of care and liability apply to managers and directors in both a corporate and investment management context and consider whether business firms owe duties to society in general (e.g., "corporate social responsibility" and "corporate citizenship"). We will consider the ethical implications of businesses that engage in "socially irresponsible" behavior and the role of financial firms that finance or invest in such activities. We will analyze a number of employment-related duties, interests and conflicts that arise in business organizations.

Among the questions we will consider: What duties does an individual owe his employer, colleagues and subordinates in a business organization? What duties does an employer owe its employees? What duties are owed to stakeholders external to the employment relationship? In making a discrete business decision, what values does one course of action advance, and what values does it frustrate or negate? How should an individual analyze and manage conflicts of interest and duties? Is it possible to balance individual values and corporate goals? Or is there an inevitable conflict between the objectives of maximizing shareholder value and working in society's best interest?

Sample Materials:

“The Price of Lobster Thermidor”, The Economist, August 23, 1997

“They Sold A Million” Badfinger BBC Documentary (2014) (*available at* <https://www.youtube.com/watch?v=6eUJ03rMrDs>)

Peter Kerins, Somali Perspectives on Piracy and Illegal Fishing

Class IV
April 5, 2017
CRISIS

Description: During this class, students will present on an ethical situation or moral crisis that they have encountered. Examples may include challenges or conflicts with peers or in the employment context, or interactions with law enforcement, police or the legal system. Students are encouraged to think deeply about how the ethical situation they faced is illustrative of some of the concepts and approaches that we have been discussed. Students should anonymize their presentations and should not volunteer any personal or private information they do not wish to share. Student presentations will be limited to 5 minutes to simulate the real world pressures that professionals often face when presenting to senior management and recommending a course of action. The presentation should briefly set forth the basic facts, describe the ethical issue(s), and, in particular, outline the decision taken and the analysis that supported that course of action. The presentation should also briefly identify any key “lesson learned.” After each presentation, there will be 5 minutes of questions and discussion. Students will be required to prepare and submit a one page briefing paper by no later than March 31st.

Sample Presentation: “Navigating the Conflict Between Loyalty to a Friend and My Employer’s Disclosure Requirements Relating to Substance Abuse”

Class V
April 12, 2017
TRUTH

This class explores the general ethical and legal obligations relating to truth and disclosure. We will explore professional situations in which values of privacy, confidentiality and conflicting duties intersect with the value of “truth.” We will discuss how the law understands the concept of deception and will review what constitute “material misstatements and omissions” in the securities law context. We will also review examples of corporations’ public disclosure relating to product defects, the concept of “truth” in advertising and marketing, and in the insider trading and negotiation context.

Among the questions we will consider: What does it mean to be “truthful”? How much information as to important or material facts can, should or must be disclosed to internal and external stakeholders? What values and interests need to be balanced against the value of “truth”?

Sample Materials:

"On Bullshit" (2005), by philosopher Harry G. Frankfurt

Securities and Exchange Commission, “What is Insider Trading?”

The Ford Pinto Case: The Valuation of Life as it Applies to the Negligence-Efficiency Argument

The 2016 Wells Fargo Matter: John Stumpf’s Prepared Testimony to U.S. Senate Banking Committee

Class VI
April 19, 2017
RESPONSIBILITY

Description: Our final class synthesizes the topics we have explored throughout the course. Tying together the examples and concepts we have discussed, as well as the practical guidance we have learned from guest speakers, we will reflect on the importance of developing and sustaining an evolving personal framework to analyze and address the inevitable challenges and dilemmas that arise in business. We will also summarize the pragmatic components of that flexible framework so it can be refined over the course of a long, successful career.

Sample Materials:

Henry David Thoreau, Walden, selection from Chapter One (Economy)

Faculty Biographies

Pierre M. Gentin is a partner in the law firm Cahill Gordon & Reindel LLP. Mr. Gentin represents clients in disputes, litigation, investigations, and regulatory enforcement matters, with a focus on the financial services sector.

Before joining Cahill in 2015, Mr. Gentin served for nearly two decades in senior legal and risk positions at Credit Suisse AG. His roles included Global Head of Litigation and Regulatory Investigations, Head of Reputational Risk for the Americas, and General Counsel for the Research Division. Mr. Gentin served on Credit Suisse's firm-wide Global Leadership Council and he was a member of the General Counsel Division's management committee which ran the 2000-person legal and compliance organization. In 2014, *LawDragon* named Mr. Gentin one of the 500 Leading Lawyers in America for his "masterful job managing Credit Suisse's civil disputes, investigations and enforcement actions around the world" and in 2015 *The Legal 500* named him In- House Litigation "Individual of the Year" for the United States. In a 2016 profile, *American Lawyer Media* noted that Mr. Gentin "helped navigate Credit Suisse through the roiling aftermath of the financial crisis" including "dealing with regulators" and "perfect[ing] the art of negotiation."

Before joining Credit Suisse, Mr. Gentin served in the U.S. Department of Justice as an Assistant United States Attorney for the Southern District of New York. He represented the United States government in a wide array of civil cases before the U.S. federal trial and appellate courts.

Mr. Gentin serves on the executive committee and board of trustees of the Practising Law Institute and is co-editor of a forthcoming book "The Mediation of Financial Services Disputes." In 2008, he was named a Young Global Leader of the World Economic Forum and he is a member of the Forum's Global Agenda Council. He is immediate past Chair of the Board of Directors of the Princeton University Center for Jewish Life and has served as Chair for the Bronx Region of the Princeton University Alumni Schools Committee. Mr. Gentin was previously a member of the executive board of the Anti-Defamation League's Lawyers' Division and in 2014 he was honored with the ADL's Human Relations Award. He has served on the Fordham Corporate Law Center's board of advisors and as an Adjunct Professor of Law at Fordham. He speaks frequently at law and business schools.

Mr. Gentin graduated from Princeton University, *magna cum laude*, *Phi Beta Kappa*, and from Columbia Law School.

Roger M. Machlis is a Managing Director and General Counsel of Credit Suisse's Global Asset Management business (CSAM). In the nearly 20 years that Mr. Machlis has worked as a senior legal counsel at Credit Suisse, he has been responsible for providing legal and compliance advice and services to many of the major business divisions across the globe, including Investment Banking Fixed Income, Equities and Emerging Markets, Private Banking and Wealth

Management, and Global Asset Management. As the General Counsel of CSAM for the past 12 years, Mr. Machlis has been a member of the CSAM Management Committee and advised the CEO and management team on numerous strategic business matters; major transactions and new products; significant legal, regulatory, compliance, reputational and employment matters; and changes in law and regulation and public policy matters, among other things. Mr. Machlis sits on various risk management, control and oversight committees and is a critical senior member of a control and challenge function at Credit Suisse. He has worked on governance related matters and has been the Chief Legal Officer to the CS US mutual fund boards. He has periodically represented Credit Suisse at meetings with foreign, US federal and state regulators.

Mr. Machlis' role at Credit Suisse provides a unique perspective on strategic, organizational and human resource matters, and potential ethical and reputational issues, that one encounters in a very complex, highly regulated and global major financial services organization. He is a trusted strategic adviser to senior management and middle management officers. He has managed, coached, and mentored teams of legal and compliance professionals at Credit Suisse on substantive legal topics and how to manage and communicate with internal business clients. He is a member of various trade associations and the Steering Committee of SIFMA's Asset Management Group.

Prior to his tenure at Credit Suisse, Mr. Machlis was a senior internal counsel at Citibank and an associate at Simpson Thacher & Bartlett. He has been practicing law for nearly 30 years. Mr. Machlis received a B.S.E. from the Wharton School of the University of Pennsylvania in 1982, and a J.D. from New York University School of Law in 1986.