

Syllabus [Final Revised]**Responsibility in Business**

LGST 612

Instructor: Eric Orts
Classroom: Colonial Penn Center – auditorium
Classes: Mondays and Wednesdays, 10:30 am to noon.

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 to avoid litigation pitfalls and develop proactive business strategies that are legally informed. Class exercises, discussions, and formal assignments will therefore focus on exploring and reflecting on students' own ethical compasses as they relate 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 prove will 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 work regarding the legal and ethical frameworks that will be useful in their expected work. This course in one version or another is required because business responsibility (broadly understood) is agreed by all serious participants and observers as an essential component of a successful business career.

This particular section of LGST 612 draws on the instructor's expertise in corporate law, as well as business ethics. (See bio appended below.) Classes follows twice a week standard format. Attendance is required for all classes. Missing a class—or coming to class late, leaving during class, or leaving class early—without a bona fide excuse or sound 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 business agent who owes 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 are anchored in practical application, students will self-select or be assigned into teams that will prepare group presentations to be delivered in classes at the end of the semester on a legal and/or ethical problem or issue 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 readings: Required reading materials are provided as files on Canvas. Any handouts circulated in class or electronically via e-mail are also considered required materials. In addition, the following books are required (available in print or electronic versions) and made available also on reserve.

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

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

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.

[Exception: By popular demand of a previous section in this course, students are allowed to refer to electronic tablets or laptops for course materials only. Students promise not to use electronic devices, including smart phones, for any other work, school, or personal interactions outside of accessing course materials. The professor reserves the right to revoke this privilege if students abuse the use of electronic devices for outside purposes.]

MBA Ethics Code: The MBA Ethics Code and all of its rules and standards regarding student integrity, anti-plagiarism, and prohibition of any form of cheating in individual or group work applies in this course, as in any course. Any violations will be prosecuted and strictly enforced by the instructor.

Grading: Grades for the course will be assessed as follows. Note that given time pressures in a short course, feedback on grades will be given only after the end of the course.

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. Classes will be assessed independently with ratings combined at the end of the course. The instructor reserves the right to move this assessment upwards or downwards based on a general impression of quality of class presentation at the end of the course. Unexcused absences from class or departures from the concert rules in class will negatively affect class participation. Regular, informed, and on-topic in-class contributions will count positively. Important note: Failing to attend classes may result in a failed grade for the course. Only bona fide excuses will be accepted for absences.

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 three double-spaced singled-sided pages with standard font and formatting. Include any references if needed. It is also permissible to use an anonymous third-party reporting format in order to preserve confidentiality. Important note: Please submit your essay electronically (at least one day in advance of the due date) to the instructor via Canvas.

3. Essay (25%). A three to four page double-spaced single-sided essay is required on a substantive topic discussed in class or related to class discussion. If there is any question about relevance, students should check the topic with the instructor in advance.

4. Group Project and Presentation (25%). Students will divide themselves or be assigned into groups according to expected occupations or previous occupations or mutual interest in a particular topic. Each group will include approximately four to five students (for a total of twelve groups maximum). 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, real estate, 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 scheduled in classes at the end of the semester.

Note on finality of final grades: Even though the professor does not agree ethically with either the mandatory Wharton MBA curve or the required "LT" designation, these rules will be respected and followed in this course. No appeals to a final grade are allowed (unless an arithmetical error has been made). A breakdown of the final grade will be made available at the request of any student after grades have been submitted.

Informal “free” lunches or dinners: Optional lunches or dinners may be held to get feedback from students about the course as well as to encourage informal professor-student interactions. No credit (or demerit) for class participation will be given for participation (or not) in informal lunches or dinners. Students may either self-organize and schedule (three students minimum and six students maximum) or accept invitations to a designated opening during the course.

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. 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.

We begin this course by considering a contemporary question in the news: the role of business and the regulation of guns (or not) in the United States and elsewhere.

Readings:

David Gelles and Clair Cain Miller, “Business Schools Now Teaching #MeToo, N.F.L. Protests and Trump,” N.Y. Times, Dec. 25, 2017, available at <https://www.nytimes.com/2017/12/25/business/mba-business-school-ethics.html>.

Eric Lipton and Daneille Ivory, “Trump Says His Regulatory Rollback Already Is the ‘Most Far-Reaching’” N.Y. Times, Dec. 14, 2017, available at <https://www.nytimes.com/2017/12/14/us/politics/trump-federal-regulations.html? r=0>.

Vanessa Fuhrmans and Rachel Feintzeig, “CEOs Choose Sides on Gun Control at Their Own Risk,” Wall St. J., available at <https://www.wsj.com/articles/ceos-choose-sides-on-gun-control-and-risk-alienating-the-other-side-1519840498>.

Optional: “Will Parkland Flip the Switch on Gun Control?” Knowledge@Wharton article and podcast, Mar. 6, 2018, available at

<http://knowledge.wharton.upenn.edu/article/will-parkland-flip-switch-gun-control/>.

Optional: “Gun Control After Parkland: What Can Firms Really Do?” Knowledge@Wharton article and podcast, Mar. 12, 2018, available at <http://knowledge.wharton.upenn.edu/article/ethical-debate-guns/>

Class 2 Ethical Reasoning and Business Responsibility [Mar. 14]

Description: This class focuses on reviewing some basic elements of ethical reasoning.

Readings:

Thomas Donaldson and Patricia Werhane, “Introduction to Ethical Reasoning,” excerpt from *Ethical Issues in Business: A Philosophical Approach* (8th ed. 2007) [1].

The Ring of Gyges Exercise (adapted from Plato’s Republic) [2]].

A Banker’s Costly Cab Ride and Morgan Stanley’s Code of Ethics [3]

Optional: Original Ring of Gyges excerpt from Plato’s Republic [4].

Class 3 Lessons from Practice [Mar. 19]

Description: A guest lecturer will come to class and will impart some basic advice and field questions about employing and managing lawyers in business practice. Please have questions ready for him as well.

Guest lecturer from practice: Aidan Synnott, litigation partner, Paul, Weiss, Rifkind, Wharton & Garrison, New York City.

[Spring “snow day” surprise: Mar. 21]

Class 4 Ethical Reasoning and Business Responsibility: Behavioral Aspects [Mar. 26]

Description: This class focuses on reviewing some basic elements of ethical reasoning, with specific attention to behavioral context and parameters.

Readings:

Huntsman, *Winners Never Cheat*.

Diversity in Business, excerpt from *Bollinger v. Grutter*, 539 U.S. 306 (2003) [5].

Kevin Dutton, “The Wisdom of Psychopaths,” *Scientific American* (Oct. 2012), <https://www.scientificamerican.com/article/wisdom-from-psychopaths/> [6].

Nitin Nohria, “You Are Not as Virtuous as You Think,” *Washington Post* (Oct. 15, 2015), https://www.washingtonpost.com/opinions/youre-not-as-virtuous-as-you-think/2015/10/15/fec227c4-66b4-11e5-9ef3-fde182507eac_story.html. [7]

Maureen Sherry, “A Colleague Drank My Breast Milk and Other Wall Street Tales,” *N.Y. Times*, Jan. 23, 2016, available at <https://www.nytimes.com/2016/01/24/opinion/a-colleague-drank-my-breast-milk-and-other-wall-street-tales.html>.

Optional: Thomas Donaldson, “Values in Tension: Ethics Away From Home,” *Harvard Business Review*, Sept.-Oct. 1996, available at <https://hbr.org/1996/09/values-in-tension-ethics-away-from-home>.

Optional: George Yancy, “Will America Choose King’s Dream or Trump’s Nightmare?” *N.Y. Times*, Jan. 15, 2018, available at <https://www.nytimes.com/2018/01/15/opinion/martin-luther-king-trump-racism.html>.

Optional: Recently discovered speech by Martin Luther King, Jr., at Bowdoin College, <http://community.bowdoin.edu/news/2018/01/50-years-after-the-loss-of-mlk-bowdoin-remembers-his-historic-visit-to-campus/>.

Optional: Catharine A. MacKinnon, “#MeToo Has Done What the Law Could Not,” *N.Y. Times*, Feb. 5, 2018, <https://www.nytimes.com/2018/02/04/opinion/metoo-law-legal-system.html>.

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 5 Personal Reflections on Ethical/Legal Experiences [Mar. 28]

Description: This class focuses on 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. A guest lecturer will also come to class and will impart some basic advice and field questions about employing and managing lawyers in business practice.

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 three double-spaced pages. Include references if needed. Be prepared to share and discuss your example in class. Please submit essays via Canvas on the day prior to the class meeting.

Class 6 Personal Reflections on Ethical/Legal Experiences (continued) [Apr. 2]

See above.

Class 7 Fiduciary Duties in Business Organizations [Apr. 4]

Description: This class reviews the basic legal structure of the business corporation, the largest, most popular, and most widespread business form used for most largely capitalized firms in the world today (with some exceptions that now borrow features from corporate law). The class 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, limited liability partnerships, and benefit corporations) and the ubiquitous use of legal agency in business practice (including especially employment and management). 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 [8].

American Law Institute, *Principles of Corporate Governance*, sect. 2.01 [9].

Meinhard v. Salmon: A Classic Expression of Fiduciary Duties [10].

Cargill: Debt, Equity, Agency, and Fiduciary Duty [11].

Optional: Oliver Hart and Luigi Zingales, “Companies Should Maximize Shareholder Welfare Not Market Value,” 2 *Journal of Law, Finance, and Accounting* 247 (2017) [12].

Class 8 Obligations to the Truth: Securities Fraud, Insider Trading, and Other Means of Deception in Business [Apr. 9]

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:

Harry Frankfurt, *On Bullshit*.

Discussion Questions for *On Bullshit* [13].

Basic: Private Rights of Action for Securities Fraud [14].

Note on *Texas Gulf Sulphur* and the Fiduciary Theory of Insider Trading [5].

United States v. O’Hagan: Trading on Misappropriated Inside Information [16].

Salman v. United States, U.S. Supreme Court, excerpts from slip opinion (Dec. 6, 2016) [17].

Class 9 Essay [Apr. 11 open for submission; Apr. 19 deadline]

Description: An essay of three to four page double-spaced single-sided essay should be submitted on Canvas. It should cover a topic discussed in class or related to class discussion. If there is any question about relevance, students should check the topic with the instructor in advance.

Class 10 Student Presentations [Apr. 11]

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

Class 11 Student Presentations [Apr. 16]

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

Class 12 Student Presentations [Apr. 19]

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. He is a tenured professor in the Legal Studies and Business Ethics Department with a secondary appointment in the Management Department. He also serves at the faculty director of the Initiative for Global Environmental Leadership. His primary research and teaching interests are in corporate governance, environmental law and management, professional ethics, and business theory. Examples of his research include *Business Persons: A Legal Theory of the Firm* (Oxford University Press, rev. paperback ed. 2015) and *The Moral Responsibility of Firms* (co-edited with Craig Smith) (Oxford University Press 2017).

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 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.

Orts is a graduate of Oberlin College (BA with honors in political theory and a minor in philosophy), the New School for Social Research (MA in political science), the University of Michigan (JD), and Columbia University (JSD). He is a member of the bar in New York and the District of Columbia, as well as an elected member of the American Law Institute. He belongs to several other professional and academic associations. He is a founding board member of the Alliance for Research on Corporate Sustainability and serves on the editorial board of *Business Ethics Quarterly*. He previously served as the academic co-director of the FINRA at Wharton executive education program for compliance and regulatory professionals

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.