

UNIVERSITY OF PENNSYLVANIA
THE WHARTON SCHOOL
DEPARTMENT OF LEGAL STUDIES & BUSINESS ETHICS
Spring 2018

LGST 612-014
***Responsibility in Business:
Aiming High in Business and in Life***

SYLLABUS

Classroom:	Room - TBD
Office:	Room 652 JMHH
Class times:	Wednesdays, 3:00 to 6:00 pm
Office hours:	by appointment
E-mail:	pgentin@cahill.com roger.machlis@credit-suisse.com jbent@wharton.upenn.edu
Presentations:	April 11, 2018, 3:00 to 6:00 pm
Exam:	May 7, 2018 9:00 to 11:00 am Room - TBD
Instructors:	Professor Pierre M. Gentin Professor Roger M. Machlis Teaching Assistant: Jason H. Bent WG '18

Course Overview

Two senior financial services lawyers leverage decades of real-world business experience to help students tackle the business dilemmas and conflicts they will face after graduation. In this course, we debate how to manage ethical problems in the workplace, we learn from prominent business leaders¹, and we address cross-cultural challenges that arise in international businesses. We will discuss many realistic “hypothetical” workplace situations and explore original sources of authority and guidance ranging from legal and economic concepts to films, song lyrics, and religious and philosophical teachings, to help prepare students to deal effectively with the complex problems presented by the business world.

¹ Guest speakers in 2017 included the Co-Founder and Executive Chairman of hedge fund Clarity Capital; the General Counsel of investment bank Moelis & Co.; the Head of Investments and Portfolio Solutions at BlackRock, Inc.; and an Orthodox Rabbi.

Our course is comprised of six three-hour classes: **(I) FOUNDATION; (II) LAW; (III) CONFLICTS; (IV) TRUTH; (V) CRISIS; and (VI) IMPACT.**

Class I: FOUNDATION (3/14/18)

This class provides the foundation for our six week exploration of what it means to be a “responsible” business professional. We discuss the framework students will need to develop to navigate complex ethical conflicts and crises in business. We explore philosophical underpinnings as to the meaning, purpose and value of our professional lives and discuss the need to determine the source(s) of one’s values and how those values will be applied in the real world of business dilemmas.

Assigned 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*, N.Y. TIMES MAGAZINE (Sept. 13, 1970)

Sally Yates, January 30, 2017 Letter to U.S. Department of Justice Attorneys Opposing President Trump’s Executive Order on Immigration

Excerpt from Jean-Paul Sartre, *EXISTENTIALISM AND HUMAN EMOTIONS* (Citadel Press, 1957)

Optional Material:

Excerpt from David Brooks, ROAD TO CHARACTER (Random House, 2015)

Class II: LAW (3/21/18)

In Class II, we explore the role that the law – and authority, in general -- plays in framing and resolving ethical dilemmas in business. We review varying sources of law such as religious and civil authority as well as societal norms. We consider whether acting lawfully is enough to resolve tough business dilemmas and to demonstrate “responsibility”. We review situations where the law is unclear, in conflict with other laws, arguably unjust or has evolved over time. We discuss how an individual’s obligation to comply with the law – or the directions of a business supervisor -- may conflict with his or her own values and we consider the range of possible responses to such conflicts.

Assigned Materials:

Excerpt from *Plessy v. Ferguson*, 163 US 537 (1896) (United States Supreme Court decision upholding racial segregation in the United States)

Excerpt from Arab League Boycott of Israel (Congressional Research Service, August 2017)

Excerpt from Map Shows Where Being LGBT Can Be Punishable By Law (National Geographic, June 16, 2016)

Optional Materials:

Excerpt from Philip K. Howard, *THE DEATH OF COMMON SENSE: HOW LAW IS SUFFOCATING AMERICA* (Random House, 1994)

Class III: CONFLICTS (3/28/18)

In Class III, we examine the various and conflicting duties that employees and companies owe to internal and external stakeholders. We consider how a businessperson should manage such conflicting duties and how to balance those duties against one's own goals and interests and those of one's employer. We 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 owes duties to society in general (e.g., "corporate social responsibility" and "corporate citizenship"), or should be solely focused on maximizing shareholder value. We discuss businesses that engage in "socially irresponsible" behavior and the role of financial firms that finance or invest in such activities. We debate whether it is possible to balance and satisfy both individual values and corporate goals.

Assigned Materials:

"The Price of Lobster Thermidor", *The Economist* (Aug. 23, 1997)

Peter Kerins, *Somali Perspectives on Piracy and Illegal Fishing*, *OCEANS BEYOND PIRACY*

"Harvey Weinstein; Timeline of Hollywood Success and Hidden Abuse" (*USA Today*, 2017)

Optional Material:

"They Sold A Million" *Badfinger* BBC Documentary (2014) (*available at <https://www.youtube.com/watch?v=6eUJ03rnrDs>*)

Class IV: TRUTH (4/4/18)

In Class IV, we explore ethical and legal obligations relating to truth and disclosure. We discuss professional situations in which values of privacy, confidentiality and the achievement of other business goals can conflict with the value of “truth.” We consider how the law understands the concept of deception and review what constitute “material misstatements and omissions” in the securities law context. We ask what it means to be “truthful” in the business context: in everyday discussions between bosses and their subordinates, among colleagues, between management and boards of directors, and among business people and external stakeholders including clients, counterparties, and the community. We explore what values and interests need to be balanced against the value of “truth.”

Assigned Materials:

Securities and Exchange Commission, What is Insider Trading? (Jan. 15, 2013)

Christopher Leggett, The Ford Pinto Case: The Valuation of Life as it Applies to the Negligence-Efficiency Argument (March 25, 2010)

“The Top 10 Work Situations Where Honesty Is Not The Best Policy” (Forbes, July 31, 2012)

Class V: CRISIS (4/11/18)

In Class V, each student will present on an ethical situation or moral crisis that they have encountered in their professional or personal lives. Examples may include challenges or conflicts with peers or in the employment context, or interactions with law enforcement, police or the legal system. Students will be encouraged to think deeply about how the ethical situation or crisis they faced is illustrative of some of the concepts and approaches that we have been discussing in class. 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 will 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, as well as any lessons learned. Students will be required to prepare and submit a one page briefing paper by no later than April 9th.

Class VI: IMPACT (4/18/18)

In Class VI, we synthesize the topics that we have explored throughout the course. Tying together key concepts, class discussion and the guidance of guest speakers, we focus on the practical importance of developing and sustaining a personal framework that will enable students to address the inevitable challenges and dilemmas that arise in business. We summarize the pragmatic components of that flexible framework so it can be refined over the course of a long, successful career, as we aspire to be better and more responsible persons in business and in life. We will also touch on the specific concept of “impact” at both the personal and business level, as we learn about the emerging world of impact investing and environmental, social, and governance (ESG) approaches that various businesses have adopted.

Assigned Materials:

Excerpt from Henry David Thoreau, WALDEN, Chapter One (Economy) (Ticknor and Fields, 1854)

Excerpt from “When Can Impact Investing Create Real Impact?” (Stanford Social Innovation Review, Fall 2013)

Class Requirements

Students are responsible for:

- reviewing and giving thought to the assigned materials before class
- on-time attendance at all six classes
- actively participating during classroom time

Please note the following:

- no electronic devices (e.g., phones, laptops, iPads, etc.) may be used in class (without prior permission of the professors)

Grading

- Class Attendance and Participation (33%). Class attendance and the quality of participation and engagement of students will comprise 33% of the grade. Unexcused absences from class, or coming late or leaving early, will negatively affect the class participation component of the grade. Regular, informed, and on-topic in-class contributions will count positively.
- Presentation of an Ethical Situation (33%). The grading for this component will be based on both the written submission (due April 9) and the oral presentation in Class V on April 11th.

- 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

The final readings (and other selections) for the course will be made available on Canvas before the course begins.

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 described Mr. Gentin as "erudite, analytical and knowledgeable beyond the law."

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 editor (with the Hon. Layn Phillips, et al.) of the Financial Services Mediation Answer Book (PLI Press; 2017). 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 a member of the external advisory council of the Princeton University Julis-Rabinowitz Center for Finance and Public Policy and is immediate past Chair of the Board of Directors of the Princeton University Center for Jewish Life. 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 more than 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 13 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 over 30 years. Mr. Machlis graduated *magna cum laude* with a B.S.E. from the Wharton School of the University of Pennsylvania in 1982, and received a J.D. from New York University School of Law in 1986.