



Spring 2019, Quarter 3

Syllabus [second revised]

Responsibility in Business

LGST 612 – Section 3

Instructor: Eric Orts
Classroom: JMHH F-55
Classes: Tuesdays and Thursdays, 10:30 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 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 prove 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 and law, as well as business ethics, business theory, and environmental sustainability. (See bio below.) Classes follow a twice a week standard format. Attendance is required. 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. Given that much of the learning will occur in class interactions with colleagues, missing class without a serious and documented justification constitutes sufficient independent grounds for failure of the course.

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 deliver 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 may also include interviews with practicing executives or other professionals as the basis for the presentation.

Required readings: Required reading materials are provided as files on Canvas or by internet links. Any handouts circulated in class or electronically via e-mail are also considered required materials. In addition, the following book is required (available in print or electronic versions) and made available also on reserve.

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

Optional: Michiko Kakutani, *The Death of Truth: Notes on Falsehood in the Age of Trump* (Crown 2018).

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 may refer to electronic tablets or laptops for course materials only. Students may not use smart (or not-so-smart) phones during class. The instructor reserves the right to revoke this privilege if students abuse the use of electronic devices for outside purposes or if the use of electronic devices becomes disruptive in class.]

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 violation 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. Clarification: Missing more than two classes without a bona fide excuse will result in failing the course.

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 full day in advance of the due date) to the instructor via Canvas.

3. In-Class Test (25%). A test administered in class is designed to assess students' understanding and retention of some main lessons in business ethics and relevant business law covered in the course. It may employ True-False as well as short essay-style questions.

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. Minimum and maximum number for groups will be set in class. 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

are legally required to be followed in this course. No appeals to a final grade will be heard (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: Optional lunches may be scheduled 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. 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 [Jan. 22]

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 will begin this section of the course with reflections on the connections (or not) between responsibility in business and government.

Readings:

Handout: “Business and the Government Shutdown”

Optional: Excerpt from Tucker Carlson editorial, Fox News, Jan. 2, 2019.
<https://video.foxnews.com/v/5985534870001/#sp=show-clips>

Class 2 Ethical Reasoning and Business Responsibility [Jan. 24]

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 Ethical Reasoning and Business Responsibility: Behavioral Aspects [Jan. 29]

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

Readings:

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

Noam Scheiber and John Eligon, "Elite Law Firm's All-White Partner Class Stirs Debate on Diversity," *N.Y. Times*, Jan. 27, 2019, at A1,
<https://www.nytimes.com/2019/01/27/us/paul-weiss-partner-diversity-law-firm.html?action=click&module=Top%20Stories&pgtype=Homepage>.

Geoff Garrett, "Why Diversity Is Much More Than Numbers," Aug. 30, 2018, available at <https://www.linkedin.com/pulse/why-diversity-much-more-than-numbers-geoffrey-garrett/>.

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>.

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-foibles.html>.

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 videos:

Excerpts from Chimamanda Ngozi Adichie, “The Danger of the Single Story,” https://www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story?language=en.

Excerpt from Dan Ariely, Interview with Knowledge@Wharton, available at <http://knowledge.wharton.upenn.edu/article/dan-ariely-dishonestys-slippery-slope/>.

Class 4 Personal Reflections on Ethical/Legal Experiences [Jan. 31]

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.

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 at least one prior to the class meeting.

Class 5 Personal Reflections on Ethical/Legal Experiences (continued) [Feb. 5]

See above.

Class 6 Lessons from Practice [Feb. 7]

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. His experience covers a wide-range of legal cases and situations, with a specialization in U.S. and European antitrust law.

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

Class 7 Fiduciary Duties in Business Organizations [Feb. 12]

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].

Elizabeth Warren, “Companies Shouldn’t Be Accountable Only To Shareholders,” *Wall Street Journal*, Aug. 14, 2018, available at <https://www.wsj.com/articles/companies-shouldnt-be-accountable-only-to-shareholders-1534287687?mod=searchresults&page=1&pos=3>.

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 [Feb. 14]

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].

Optional: Michiko Kakutani, *The Death of Truth*.

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

Note on *Texas Gulf Sulphur* and the Fiduciary Theory of Insider Trading [15].

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

Salman v. United States, U.S. Supreme Court, slip opinion (Dec. 6, 2016) [17]
[note: read only Justice Alito's opinion itself and not the syllabus/summary at the start].

Class 9 In-Class Test [Feb. 19]

Description: This in-class test will include true/false and short essay questions. It will assess students' acquisition of knowledge in the course based on material covered in the previous classes.

Class 10 Student Presentations [Feb. 21]

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

Class 11 Student Presentations [Feb. 26]

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

Class 12 Student Presentations [Feb. 28]

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 as 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 University School of Law. He has also taught and visited at a number of other 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 in law). 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.

He lives in West Philadelphia with his wife Julie, his dog Butterbean, and Zen Dude Cat. He has three adult children and enjoys rowing and yoga as well as politics.