

UNIVERSITY OF PENNSYLVANIA
THE WHARTON SCHOOL
DEPARTMENT OF LEGAL STUDIES & BUSINESS ETHICS
Spring 2019

LGST 612-006
Responsibility in Business

SYLLABUS

Classroom: F90 Jon M Huntsman Hall
Office: 653 Jon M Huntsman Hall
Class times: Tuesdays, 3:00 to 6:00 pm
Office hours: by appointment
E-mail: pgentin@
roger.machlis@credit-suisse.com
pilarck@wharton.upenn.edu

Presentations: April 16, 2019, 3:00 to 6:00 pm
Exam: (Tentative) May 8, 2019 12:00pm – 2:00pm

Instructors: Professor Pierre M. Gentin
Professor Roger M. Machlis
Teaching Assistant: Pilar Castro-Kiltz WG '19

Course Overview

Two senior financial services lawyers leverage decades of real-world experience to help students tackle business dilemmas they will face after graduation. We discuss how to navigate ethical problems in the workplace, we learn from prominent business leaders¹, and we address cross-cultural challenges in international business. We will debate many realistic “hypothetical” workplace situations from the financial services and other sectors and we will seek guidance and wisdom from legal and economic texts, films, song lyrics, and religious and philosophical teachings. Our goal is for students to aim high in business and in life so the success they will achieve ultimately fosters personal and professional fulfillment.

¹ Guest speakers in prior years have included the founder of agriculture-focused alternative asset manager Amera Capital, the 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) IMPACT; (IV) CONFLICTS; (V) CRISIS; and (VI) INTEGRITY.**

Class I: FOUNDATION (3/19/19)

This class provides the foundation for our six-week exploration of what it means to aim high in business and in life. We discuss the framework students can develop to navigate the inevitable conflicts and crises that arise in business. We explore the meaning, purpose and value of our professional lives and aim to identify the source(s) of our personal values, and consider how we will apply those values in the real world.

Assigned Materials:

“God is the Bigger Elvis” (2012) (*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)

Larry Fink’s January 2018 Letter to CEOs;
<https://www.blackrock.com/corporate/investor-relations/2018-larry-fink-ceo-letter>

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)

Class II: LAW (3/26/19)

In Class II, we explore the role that law – and authority, in general – plays in framing and resolving business dilemmas. We review different sources of law and discuss the role of societal norms. We ask whether acting lawfully is enough to be a “responsible” businessperson. We discuss examples where the law is unclear, in conflict with other laws, arguably unjust or has significantly changed over time. We consider how an individual’s obligation to comply with the law – or the directions of a business supervisor – can 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)

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

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

Optional Readings:

Excerpt from David Rose, *REGIONS OF THE HEART: THE TRIUMPH AND TRAGEDY OF ALISON HARGREAVES* (Penguin, 1999)

Class III: IMPACT (4/2/19)

In Class III, we discuss the burgeoning field of impact investing and how companies, asset managers, and asset owners approach environmental, social, and governance (ESG) elements in their business operations. We review how fiduciary duties apply to managers and directors in both a corporate and investment management context and consider whether business owes duties to society or should be solely focused on maximizing shareholder value. We consider the appropriate response by businesses to social media and to investor, customer or employee demands to address pressing social issues. We discuss businesses that engage in “socially irresponsible” behavior and the role of financial firms that finance or invest in such activities. The ultimate question is whether it is possible simultaneously for companies – and people – to do well and do good.

Assigned Materials:

Principles for Responsible Investment (PRI), “The UN Sustainable Development Goals (SDG) Investment Case” (2017)

The Alternative Investment Management Association Ltd (AIMA) and the Managed Futures Association (MFA) Response to the Consultation on Institutional Investors and Asset Managers’ Duties Regarding Sustainability (January 22, 2018)

Barron’s, “Big Investors in Gun Companies Weigh in on Violence” (February 22, 2018)

“More Firms Banned as the World’s Biggest Sovereign Wealth Fund Tries to go Ethical”, CNBC, January 16, 2018

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

The New York Times, “As Funds Invoke Bible Values, Others See Intolerance” (February 28, 2017)

Center for Retirement Research at Boston College, “New Developments in Social Investing by Public Pensions” (November 2016)

Class IV: CONFLICTS (4/9/19)

In Class IV, we examine duties that employees and companies owe to internal and external stakeholders. We consider how a businessperson should manage such conflicting duties and interests. We focus on issues of human dignity at work, interpersonal dynamics, as well as power imbalances in the workplace. We debate whether it is actually 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

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

“A Message to the Penn Community” from the President and the Chair of the Board of Trustees of the University of Pennsylvania (February 1, 2018)

Class V: CRISIS (4/16/19)

In Class V, each student will present an ethical or moral dilemma 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 their dilemma illustrates concepts that we’ve discussed 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.

Class VI: INTEGRITY (4/23/19)

In Class VI, we explore ethical and legal obligations relating to telling the truth. We discuss professional situations in which values of privacy, confidentiality and the advancement of other business goals can impact or undermine one's integrity. 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 "honest": 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 will conclude by reflecting how the inter-related themes of our course point to a vision of success defined by the behaviors and values that each of us chooses.

Assigned Materials

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

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

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

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 Saturday, April 13, 12:00 pm EST) and the oral presentation in Class V on April 16.
- 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 Pierre M. Gentin is General Counsel of McKinsey & Company, Inc. He was a partner in the law firm of Cahill Gordon & Reindel and spent nearly two decades at Credit Suisse where his roles included Global Head of Litigation, Regulatory Investigations and Employment Law, Head of Reputational Risk for the Americas, and General Counsel for the Research Division. Mr. Gentin also served in the U.S. Department of Justice as an Assistant United States Attorney for the Southern District of New York.

Mr. Gentin is a trustee of the Practising Law Institute, Princeton University's Julis-Rabinowitz Center for Public Policy and Finance, and the Touro Synagogue Foundation, and he recently served as co-editor (with the Hon. Layn R. Phillips, et al.) of a book on the mediation of complex financial services disputes. In 2008, Mr. Gentin was named a Young Global Leader of the World Economic Forum (Davos) and he has served on the Forum's Global Agenda Council.

Mr. Gentin graduated from Princeton University 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.