



LGST 612

Responsibility in Business

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Tuesday and Thursday 3:00 pm – 4:30 pm [room F90]

Office Hours: by appointment

Course Description:

In this course you'll develop a more concrete sense of what it means to behave "responsibly" in business. To ground our discussions, we'll grapple with a range of (real and hypothetical) ethical dilemmas that arise in the business environment. We'll also cover some of the key legal frameworks that require and/or incentivize business professionals to act "responsibly."

More specifically, the goal of this course is to push you to think critically about how you would make decisions in the "gray" areas that you'll certainly encounter. To do that, we'll be exploring current and cutting-edge issues in business ethics, conduct, and culture. Importantly, this class is practice-based and situational: so we'll be thinking through case studies and engaging with guest speakers from the business world.

A large portion of the class will focus on financial institutions and markets, so those interested in the financial services profession (very broadly construed) may find this section of 612 particularly useful.

Grading:

Your grade is divided into three parts: 25% class participation, 35% for a group presentation, and 40% for the final exam.

Class participation. Your class participation grade will primarily be determined by the quality of your comments in class (meaning, how engaged with the reading, how responsive to other

students, and how focused on the discussion questions I set out), your attendance, and your punctuality. I will take attendance and start each session precisely on time and will make a note of any latecomers or missing students each session for grading purposes.

If personal emergency or interviews mean you'll have to miss class or arrive less prepared, please notify me at least an hour before the beginning of the session. Abuse of this notification system will be noted. See me of course with any concerns.

Group presentation. You'll be randomly assigned to groups for purposes of a group presentation to be given on April 21. The presentation should be a post-mortem assessment of a real-world legal/ethical business dilemma. I will suggest ideas for possible topics. The presentations will be five to ten minutes long.

Final Exam. The exam will be multiple-choice and short-answer. It will cover the readings, lectures, and guest discussions. You may use any materials you wish, but may not collaborate with other students.

Course Materials:

All required reading materials (as listed by lecture below) will be available through Canvas.

Class Sessions and Assigned Readings:

Issue 1: What does it mean to be “responsible”?: law vs. ethics

To kick off the course, we'll discuss the basic concept of ethical conduct in business. In doing this, we're going to explore the line between legal and ethical – can something be legal, yet still unethical (and therefore conduct which should be avoided)?

Session 1: Is there something about money?

Reading:

- A. Alain Cohn et al., *Business Culture and Dishonesty in the Banking Industry*, 516 *Nature* 86 (2014)
- B. Ron Caruci, *Why Ethical People Make Unethical Choices*, *Harvard Business Review* (Dec. 16, 2016)
- C. EUGENE SOLTES, *WHY THEY DO IT* (2016) (prologue and chapter 3) (“Soltes”)

Session 2: Is it “wrong”?

In-class reading:

- A. Case 1: “What to Do When there are No Rules” (in-class)
- B. Case 2: “Conduct After Hours” (in-class)

Issue 2: Responsibility to whom?

When you make decisions in the corporate setting, there are a number of stakeholders that will be vying for priority. Where public companies are concerned, traditional corporate law theory maintains that managers and board members should act first and foremost with their shareholders’ interests in view. Meanwhile, investment professionals have to be mindful of the laws and regulation that require them to serve the best interests of their clients. Finally, in some settings (like large financial institutions) there may be social interests at stake, where decisions can impact the stability of the financial system overall.

Session 3: Responsibility to shareholders and clients

Readings:

- A. LYNN STOUT, *THE SHAREHOLDER VALUE MYTH* (2012) (chapter 2 only, “How Shareholder Primacy Gets Corporate Law Wrong”)
- B. Robert Rhee, *A Legal Theory of Shareholder Primacy*, 102 *Minnesota Law Review* 1951 (2018) (parts I and IV only)
- C. Genevieve Helleringer & Christina Parajon Skinner, *Conduct and Culture*, in *GOVERNANCE OF FINANCIAL INSTITUTIONS* (Oxford Univ. Press 2019)

Session 4: Responsibility to society

- A. Steven L. Schwarcz, *Systemic Risk*, 97 *Georgetown Law Journal* 193 (2008)
- B. Tracey Keys et al., *Making the Most of Corporate Social Responsibility*, *McKinsey Quarterly*, Dec. 2009

Session 5: Responsibility inside the firm

Readings:

- A. Thompson Reuters, *Cost of Compliance Study* (2019)
- B. Case 3: “Respect for Control Functions” (in-class)

Issue 3: Responsibility in public markets

In some cases, there is relatively clear law surrounding business leaders' responsibilities. In these sessions, you'll gain a high-level understanding of the range of securities laws and regulations that will be most relevant to your decisionmaking (particularly for those working in financial services or for a public company). As responsible business managers, you'll need to know the basics of these securities laws in order to participate in an initial public offering, to file (or, more likely, review) periodic disclosures, and to steer clear of insider trading violations – to name just a few examples.

Session 6: Public Offerings

Readings

- A. Reeves Wiedeman, *The Sun Sets on We*, New York Magazine, Sept. 30, 2019
- B. Matt Levine, *It's Hard to Say No to Aramco's IPO*, Op-Ed, Bloomberg (Sept. 20, 2019)
- C. Case 4: "A Technical or Ethical Anomaly?" (in-class)

Session 7: Insider Trading and Disclosure

Readings:

- A. SOLTES, chapter 9
- B. Stephen M. Bainbridge, *Insider Trading Compliance Programs* (2019)
- C. Dennis W. Carlton & Daniel R. Fischel, *The Regulation of Insider Trading*, 35 Stanford Law Review 857, 860 (1983)

Issue 4: Conduct and Culture in financial services

Conduct and "culture" in financial institutions has become an increasing focus of financial regulators since the financial crisis. Those planning to enter – or engage with – the financial services profession should be aware of this new regulatory initiative – and of how the financial institutions are responding. We'll hear from practitioners about how this initiative is being operationalized on the ground.

Session 8: From the Regulators' View (Guest speaker Tom Noone, Legal Counsel, Federal Reserve Bank of New York)

Reading:

- A. Christina Parajon Skinner, *Conduct and Culture in Global Banks* (Cambridge University Press, forthcoming 2020) (draft chapters 1, 2 and 5)

Session 9: From the Lawyer's View (guest speaker, Anar Rathod Patel, Counsel, Simpson & Thatcher LLP)

Reading:

- A. John C. Coffee, Jr., *Gatekeepers* (Oxford University Press) (2006) (chapter 6, "Corporate Attorneys as Gatekeepers")

Session 10: On the Trading Floor (guest speaker, Andraya Schneider, Managing Director, Bank of America Merrill Lynch)

Reading:

- A. Complaint, *Messina v. Bank of America*, No. 1:16-cv-03653 (filed May 16, 2016 S.D.N.Y.)

Session 11: Group presentations

Session 12: In-class exam