

Syllabus

**Responsibility in Business**

LGST 612 – Section 1

Instructor: Eric Orts  
Assistant: Daniel Remler  
Classroom: Zoom via Canvas  
Classes: Tuesdays and Thursdays, 10:30 am to noon

Office hours: Outside dog walks with Butterbean (by appointment, if covid conditions allow)  
Office: Legal Studies and Business Ethics Department, 648 JMHH (not available now)  
Cell phone: by request if needed  
Office e-mail: [ortse@wharton.upenn.edu](mailto:ortse@wharton.upenn.edu) [preferred mode of communication]

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 course counts as an option for the required MBA core course in the Legal Studies and Business Ethics Department. In keeping with the objective of the MBA curriculum, students have a choice of different instructors and different formats. This particular section of LGST 612 was originally designed as a course for those heading into careers in consulting, financial, or other "professional services," but it has now been broadened to focus 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. This particular section of LGST 612 draws on the instructor's expertise in corporate law, as well as business ethics, business theory, and environmental sustainability. (See bio below.)

To assure that the course concepts are anchored in practical application, students will 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 include interviews with practicing executives or other professionals as the basis for the presentation.

Special notice: This class includes students from a number of different countries, and the diversity of all opinions and perspectives is respected and welcome. However, it is possible and even likely that we will touch on issues that are politically sensitive. Consider carefully the following notice recommended by the Wharton administration:

Because of the current pandemic, some of you may be taking courses while living outside the US. I encourage you to review the syllabus and decide if, in light of your own country's laws, you are willing and able to take this class and complete all of its requirements.

If you feel uncomfortable, and especially if you have doubts about your personal safety given the materials to be covered in this course, then please consider taking another version of an LGST required core course. The instructor will make special accommodations for any student who feels that expressing any view in class or discussing particular material may place themselves at risk in a particular country or jurisdiction.

It is important to emphasize that this course encourages all kind of different perspectives to be voiced, as long as this is done in a civil manner. All MBA students are welcome without regard to their overall economic, political, religious, and social views. All perspectives are welcome in discussions.

Important note re class recordings: Recordings of classes will be conducted as recommended by Wharton and by unanimous consent of class members. Anyone may request avoiding recording during a discussion of sensitive issues, especially if they implicate the safety of students who may be participating from jurisdictions where such discussions may place them at risk. The default rule in keeping with Wharton administration requirements will be for classes to be recorded.

Important additional note: Class recordings are made for the benefit only for enabling students who must miss a class to have access or other education purpose within this course itself. Any personal recording or other non-academic use of class sessions is strictly prohibited and liable to prosecution for violations.

Logistics: Classes follow a twice a week standard format. Because of the ongoing Covid-19 pandemic, this section will meet exclusively online in Zoom sessions via Canvas. Please arrange to login a few minutes before each class. If you have any technical trouble, please go to [computing.wharton.upenn.edu](http://computing.wharton.upenn.edu).

Please attend all of the sessions, if possible. Sessions will be recorded with the consent of class members. If for any reason a particular class is not recorded, please get in touch to make alternative arrangements to discuss content with the instructor. It's understood that these are difficult times for everyone and that various kinds of emergencies or scheduling conflicts may arise with the class schedule. Nevertheless, online class participation may be weighed as part of a student's grade as outlined below. If a student cannot attend sessions live because of time differences, then accommodations will be made, including for class participation credit.

In addition to class discussion of assigned readings, students will have the opportunity to reflect on and share their own individual experiences or areas of special interest. Students will also be assigned to teams that will prepare group presentations to deliver in classes at the end of the semester on an issue relevant to social or environmental responsibility in business. Examples of topics may include, without limitation:

- a case study of a particular company or a comparison of a few different companies focusing on a particular legal, ethical, social, or environmental issue;
- a case study of a particular legal, ethical, social, or environmental challenge in business;
- a case study of new technologies designed to address particular legal, ethical, social, or environmental problems faced in business;
- a general development in some area of the law involving business issues;
- a specific business industry issue involving law, ethics, social responsibility, or environmental sustainability, such as in consulting, finance, or general management;
- an ethical, legal, social, or environmental issue in marketing;
- examples of dishonesty in business (e.g., securities fraud or “greenwashing”) and whether and how to regulate them (or self-regulate); and
- whether or not business has a political responsibility – and if so, what this may mean in actual practice.

Required readings: Required reading materials will be provided via Canvas or internet links. In addition, here are some optional books. If you choose to read one or more of them, please mention them in discussion threads or in your weekly learning journals.

Optional texts: Reading books seems to be a lost art to many in the business world, but for those who would like to do some optional reading, here are some good sources to consider.

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

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

William A. Klein, John C. Coffee, Jr. & Frank Partnoy, *Business Organization and Finance: Legal and Economic Principles* (Foundation Press, 11<sup>th</sup> ed. 2010).

Colin Mayer, *Prosperity: Better Business Makes the Greater Good* (Oxford University Press, hardcover, 2018).

Eric W. Orts, *Business Persons: A Legal Theory of the Firm* (Oxford University Press, rev. ed. 2015).

*The Moral Responsibility of Firms* (Eric W. Orts & N. Craig Smith eds.) (Oxford University Press, paperback ed. 2020).

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.

Our classes this quarter will be conducted via the Zoom network accessible through Canvas. Click on virtual meetings to log in. See also the special rules for online class ethics and etiquette below.

MBA Learning Agreement: Classes will be conducted according to Wharton's faculty-student Learning Agreement, as modified in the context of an online environment.

1. Class starts and ends on time. Students and faculty are expected to be timely.

Online context: Please log in a few minutes before class. We will get rolling on time, and students should feel free to log off on time too. Some time for after-class questions will be made available.

2. [Students are to sit according to a seating chart.]

Online context: The seating chart is waived, but attendance will be noted. Please engage your video unless you are having bandwidth trouble in connecting. Students should signal a desire to contribute – or respond to a request to contribute – by raising their HAND or writing hand in the chat box. And please repeat if the chat scrolls up before you are recognized to keep your HAND up. (Remember to put your HAND down after you speak as well.)

3. Students and faculty should remain in attendance for the duration of class.

Online context: Please try to attend and engage in class as much as possible, though it is understood that various emergencies or inconveniences may arise in the online context. We will take a two or three minute bio/stretch/coffee break half-way through class given the nature of online attention spans and energy drain.

4. Students should display name plates.

Online context: Please use the name that you like to use in your login identifying information. Use nicknames first, and include last names.

5. [All phones and electronic devices, including laptops, should be turned off.]

Online context: You may use devices for research during online classes. Please keep your audio turned off to avoid interference with the general session. Please keep your video feed on, as long as it is not distracting or causing interference with your ability to see and hear others.

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 at Wharton or Penn. Any violation will be prosecuted and strictly enforced by the instructor. Please reference all materials consulted or used in written work or class presentations—and ask the instructor in advance if you have any doubts.

Specific Class Rules on Using Zoom: The requirement to use the Zoom (or other remote) online platform is unprecedented, and the rules of ethics and etiquette – as well as legal responsibility – will no doubt evolve. However, the following understandings will apply to this course.

1. All classes and office hours will be conducted via Zoom connections available via Canvas or as otherwise agreed. Go to the Canvas course site and click on Zoom. Classes and scheduled office hours will be posted there. Please contact Wharton computer support at [computing.wharton.upenn.edu](http://computing.wharton.upenn.edu) if you need technical help.

2. Please keep your audio feeds muted unless speaking. We will try to keep track of all raised HANDS or requests to be recognized in chat, but if it scrolls up and we don't recognize you, please go ahead and write HAND again in general chat. Please use video and audio, but if you have only a phone connection, I will try to make time for you to volunteer a question or comment even if you don't have access to chat.

3. Please do not use direct chat with either the instructor or other students. This can be disruptive (sort of like passing notes or talking/not listening in a physically proximate class).

4. The recording of classes presents ethical and legal questions that we will discuss in the first session. My general view is that some portions of class make sense to record for the

benefit others who may have the challenge of different times zones, unexpected emergencies, or other vital commitments that compete for attention (such as child care). We are strongly encouraged to record session for this reason by the Wharton administration. However, there are some personal, privacy, and security considerations about some classes that may recommend that they not be recorded.

5. Students may not record classes or parts of classes themselves. Nor may they record any part of the officially preserved recordings on Canvas. It will be considered a violation of academic integrity rules for a student to record or otherwise copy any Zoom class or discussion. Also, any use of an officially recorded class for anything other than a personal educational purpose is prohibited. For example, taking any authorized or unauthorized clip from a class and posting it on Facebook or other social media, or sending it to any third party, would be an ethical violation subject to disciplinary and potentially legal action.

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

1. Class Participation and Discussion Threads (25%). Please engage in contributions to the class and discussion threads available on Canvas. These will be opened and closed periodically, and you may contribute to them before and after any class. They will close after a certain period of time has elapsed. Please use these to consider issues to raise in the online classes, or to record thoughts after classes. The contributions should be thoughtful and should use proper grammar and spelling. In other words, they should be professional. You may also suggest discussion thread topics and provide references of interest.

2. Learning Journals (25%). Please keep a learning journal with entries made once or twice each week. Submit your learning journal entries together as a whole at the end of the course via Canvas. Each entry should be no more than 250 to 300 words. You may provide a summary of what you learned from online class, readings, or independent research. New ideas, thoughts, and emotional reactions to materials or conversations are OK to include. Select highlights for yourself to share and remember for the future. The pedagogical objective is similar to a final exam: to secure certain important “takeaways” in your mind and memory for possible future guidance or reference.

3. Individual Essay (25%). A short individual essay is required reflecting on an ethical, legal, social, or environmental issue that one has faced or experienced in practice in a business context. 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 single-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 Class 5 via Canvas.

4. Group Project and Presentation (25%). Students will be assigned into presentation groups. Groups will research a topic regarding (a) best ethical and legal compliance practices in a particular firm or industry, (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), (c) a topic in social responsibility or environmental sustainability, or (d) another topic relevant to business responsibility, law, or ethics.

Important requirement: Topics for group presentations must be cleared with the professor in advance either in person (i.e. virtually) after an online class or online office hours, during dog-walk office hours, or via e-mail.

There will be no final exam.

Note on grades in online context of the Covid-19 crisis: The mandatory MBA curve is currently suspended, and no LT grades will be required to be assigned. Note that this does not mean that all students will automatically pass the course or get A's! No pass/fail option is given.

Note on finality of final grades: No appeals to a final grade will be heard (unless an arithmetical error has been made) because doing so would not be fair to all students. A breakdown of the final grade will be made available at the request of any student after final grades have been submitted. Given the short time period of the course, it will be difficult to give student an interim assessment of how well they are doing as the course progresses.

Syllabus revisions. This version of the course is subject to 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. 21]

Description: This class introduces 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.

## **Class 2 Ethical Reasoning and Business Responsibility [Jan. 26]**

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* (8<sup>th</sup> ed. 2007) [2A].

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

A Banker's Costly Cab Ride and Morgan Stanley's Code of Ethics [2C]

Optional: Original Ring of Gyges excerpt from Plato's *Republic* [2D].

## **Class 3 Ethical Reasoning and Business Responsibility: Behavioral Aspects [Jan. 28]**

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

### Readings:

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](https://www.washingtonpost.com/opinions/youre-not-as-virtuous-as-you-think/2015/10/15/fec227c4-66b4-11e5-9ef3-fde182507eac_story.html) [3A]

Kevin Dutton, "The Wisdom of Psychopaths," *Scientific American* (Oct. 2012), <https://www.scientificamerican.com/article/wisdom-from-psychopaths/> [3B].

Stephanie Creary, "How To Be a Better Ally to Your Black Colleagues," *Harvard Business Review* (July 8, 2020), <https://hbr.org/2020/07/how-to-be-a-better-ally-to-your-black-colleagues>

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-ales.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>.



Videos:

Chimamanda Ngozi Adichie, “The Danger of the Single Story,” [https://www.ted.com/talks/chimamanda\\_adichie\\_the\\_danger\\_of\\_a\\_single\\_story?language=en](https://www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story?language=en).

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

**Class 4 Obligations to the Truth I: Ethics, Politics, and Business [Feb. 2]**

Description: This class discusses the general ethical and legal obligations of telling the truth: in life, in politics, and in business. It includes consideration of the larger philosophical question of what the well-known philosopher Harry Frankfurt calls “bullshit” (in the technical sense of the term).

In this political season, consider also the role of truth in the U.S. Presidential election. What is a “big lie”? If one is told, what is the responsibility of business to respond?

Readings:

Frankfurt, *On Bullshit* [4A].

Discussion Questions for *On Bullshit* [4B].

Thomas Lyon, et al, “CSR Needs CPR: Corporate Sustainability and Politics,” *California Management Review* (2018) [4C].

Videos:

Joe Biden, Inaugural Address, Jan. 20, 2021, <https://www.cnn.com/videos/politics/2021/01/20/joe-biden-inauguration-speech-vpx.cnn>

Amanda Gorman, “The Hill We Climb,” Jan. 20, 2021, <https://www.oprahmag.com/entertainment/a35268319/amanda-gorman-inauguration-poem-transcript/>

Optional:

Michiko Kakutani, *The Death of Truth*.

Frankfurt, *On Bullshit* [short book version].

**Class 5 Personal Reflections on Ethical/Legal Experiences [Feb. 4]**

Description: This class focuses on sharing students' own reflections on an ethical or legal challenge that they have faced in practice – or some other issue based on some direct knowledge. Students should select examples to share for pedagogical value that their colleagues may also find valuable or edifying.

Written Assignment – Personal 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 day (24 hours) prior to the class meeting.

**Class 6 Personal Reflections on Ethical/Legal Experiences (continued) [Feb. 9]**

See above.

**Class 7 Lessons from Practice [Feb. 11]**

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, and Erin Morgan, litigation associate, Paul, Weiss, Rifkind, Wharton & Garrison, New York City.

**Class 8 Fiduciary Duties in Business Organizations [Feb. 16]**

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:

Note on Reading Legal Cases [8A]

*Meinhard v. Salmon*: A Classic Expression of Fiduciary Duties [8B].

*Dodge v. Ford Motor Co*: Managing for Shareholder Value [8C].

American Law Institute, *Principles of Corporate Governance*, sect. 2.01 [8D].

*Cargill*: Debt, Equity, Agency, and Fiduciary Duty [8E].

Note on Employment Law [8F].

Optional: Oliver Hart and Luigi Zingales, “Companies Should Maximize Shareholder Welfare Not Market Value,” 2 *Journal of Law, Finance, and Accounting* 247 (2017) [8G].

**Class 9 Obligations to the Truth II: Securities Fraud, Insider Trading, and Other Means of Deception in Business [Feb. 18]**

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:

*Basic*: Private Rights of Action for Securities Fraud [9A].

Note on *Texas Gulf Sulphur* and the Fiduciary Theory of Insider Trading [9B].

*United States v. O’Hagan*: Trading on Misappropriated Inside Information [9C].

*Salman v. United States*, U.S. Supreme Court, slip opinion (Dec. 6, 2016) [9D]  
[note: read only Justice Alito’s opinion itself and not the syllabus/summary at the start].

**Class 10 Student Presentations [Feb. 23]**

Description: The last three classes will consist entirely of final student presentations.

Groups: TBA

**Class 11** Student Presentations [Feb. 25]

Groups: TBA

**Class 12** Student Presentations [Mar. 2]

Groups: TBA

## **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 currently serves on the executive committee of the Andrea Mitchell Center for the Study of Democracy, as well as the advisory council of the Center of Ethics and the Rule of Law – both at Penn. He is also currently serving a term on the faculty Senate Executive Committee. He is a founding director of the Alliance for Research on Corporate Sustainability.

Previously, he served as the founding faculty director of the Initiative for Global Environmental Leadership at Wharton and as a co-faculty director of the FINRA Institute at Wharton executive education program for certified regulatory and compliance professionals.

His primary research and teaching interests are in corporate governance, environmental law, sustainable management, professional ethics, and business theory. Examples of his research include the following books and articles: *Business Persons: A Legal Theory of the Firm* (Oxford University Press, rev. paperback ed. 2015); *The Moral Responsibility of Firms* (co-edited with Craig Smith) (Oxford University Press 2017); “Senate Democracy: Our Lockean Paradox,” *American University Law Review* (2019); “Collective Rights and the Court: A Theory of Constitutional Commodification” (with Amy Sepinwall), *Washington University Law Review* (2020).

Before joining Wharton's faculty, 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, the Tsinghua University School of Economics and Management, 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 Harvard's Kennedy School.

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 has been 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. In 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, their dog Butterbean, and Zen Dude Cat. He has three adult children and enjoys rowing and yoga, as well as general reading and politics.