

# **Risk and Responsibility in Organizations**

**Fordham University School of Law**

**150 West 62<sup>nd</sup> Street, New York, NY 10023**

**Course Number: CPGL-0521-051 and BLGB-739N**

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## **Course Description: Risk and Responsibility in Organizations**

Ethics and compliance has emerged as a key discipline in preventative law, gathering increasing attention and corporate resources. With this growth, and as corporations face unprecedented lack of trust and scrutiny of their conduct, questions about how businesses manage their overall approach to integrity have become more pressing. Companies are increasingly grappling with questions of ethics and integrity that challenge the primacy of shareholder value approaches and expand the remit of governance, risk and compliance approaches into stakeholder trust, organizational culture, and voluntary CSR and human rights standards.

This course will introduce key dimensions of organizational risk and responsibility – (sometimes called non-technical or non-financial risk). The focus is practical, not theoretical – what does evidence about how companies organize and manage themselves tell us about how risk and responsibility concepts are applied? It will cover a range of established and emerging integrity, ethics and compliance issues, including corruption, political risk, human rights, CSR, leadership, culture and behavior. The course will include academic and business readings as well as interactive case studies exploring the actions of real companies in pharmaceuticals, mining and telecoms. Students will apply practical solutions to real risk and corporate integrity challenges faced by multinational organizations in a variety of sectors, and explore the consequences for the compliance function and the core business.

This class is listed in both the Law School and Gabelli School of Business, but will follow a Law School schedule.

## **Method of Evaluation**

Grading will be based on (1) written preparation of short case study assignments to be presented and discussed in class, beginning in week 2 and ending in week 10 (50%) (2) one final paper, to be assigned at the end of week 9, and submitted by the end of week 13 (final deadline is 12 noon on April 27) (50%)

Class participation is an integral part of the course and students enrolling in the course should be prepared to engage in active discussion of the course materials and in-class presentations. It will be very difficult to participate effectively if you have not prepared as requested. Missing class will therefore affect final grading and requires express written permission.

## **Learning Outcomes**

This class aims to provide students with a detailed understanding of the wider external and organizational context in which the ethics and compliance function sits, via an examination of a variety of non-technical risk concepts. The compliance function is unique in modern organizations in that it aims to act as a form of internalized law enforcement, by establishing a set of processes to ensure that employees do not violate applicable rules, regulations and norms.

Corporate integrity scandals have continued apace despite the growth of the compliance function, and it has become increasingly clear that compliance processes will not be effective in a vacuum. This course aims to provide students with the contextual knowledge and skills needed to increase the effectiveness of integrity across the company.

Students would benefit from a practical or academic understanding of the role, methodologies and frameworks core to the ethics and compliance function before joining this class – as these fundamental concepts will not be the focus of this course.

By the end of the course, students will be able to:

- Understand the role of risk and responsibility functions in the wider organization and apply concepts from organizational theory to enhance the overall effectiveness of integrity efforts;
- Enhance governance, risk and compliance efforts via an understanding of the related disciplines of political risk, CSR and human rights;
- Understand how organizational culture and human behavior can enhance or undermine compliance efforts, diagnose organizational cultures and determine optimal interventions to build a culture of compliance;
- Conduct detailed analysis of how real multinational organizations have applied concepts of compliance and the strengths, weaknesses and limits of these approaches.

## Pre-Reading

*The Compliance Function: An Overview*, Geoffrey Miller, NYU Center for Law, Economics and Organization, 2014

*The Trouble with Corporate Compliance Programs*, Todd Haugh, MIT Sloan Management Review, 2017

*Ethics and the Strategic Determination* by Laurence Beer, Chapter 2 in *A Strategic and Tactical Approach to Global Business Ethics*, 2015

*Cultures of Compliance*, Donald Langevoort, Georgetown University Law Center, 2016

## Course Reading and Assignment Schedule

Readings will be uploaded on TWEN in advance of the course. The Professor will also upload weekly case study assignments onto TWEN, the Tuesday morning after each class.

### Part 1: Compliance in Context

#### Week 1, Jan 14 2019: An Organizational Perspective on Compliance

This week will consider how organizations currently understand the role of ethics, integrity and compliance. We will introduce the concepts that will be covered for the rest of the course. We discuss the pre-reading assignments and key debates in the compliance field.

During the first class, students will choose one of two case studies - in either telecoms or mining. We will use these case studies as the basis for interactive exercises and class discussions for Week 2 and Week 7 (inclusive). By exploring what happened to these companies using different frameworks to analyze and identify risk, we will gain a deeper understanding of how to identify and solve complex risk and integrity challenges in organizations. In week 1, the Professor will provide a background pack of information and exercises on these companies and weekly assignments will also be uploaded onto TWEN on the Tuesday morning after each class.

#### Week 2, Jan 28 2019: Corruption Risk and the External Environment

This week will consider how companies can evaluate and manage corruption risk via more detailed consideration of the external environment. In particular, we will explore regulatory guidance from the UK and US on the two critical approaches for managing external risk - corruption risk assessments and third party due diligence. Students will then explore how these frameworks hold up in high risk frontier markets with complex commercial, political and social risk dynamics.

### **Reading**

*A Resource Guide to the FCPA* by the Criminal Division of the DOJ and Enforcement Division of the SEC, 2012. Sections on risk assessment (58-59) and third party due diligence (60-61)

*The Bribery Act Guidance*, by UK Ministry of Justice 2010. Sections on risk assessment and due diligence (25-28)

*Being an Ethical Business in a Corrupt Environment* by S. Ramakrishna Velamuri, William S. Harvey, and S. Venkataraman, Harvard Business Review March 2017

*Week 2 case study preparation*

### **Week 3, February 4 2019: Political Risk**

This week will consider how political risk analysis might be used to enhance our understanding of organizational risk and support the work of compliance programs. We will also discuss recent developments in corporate activism, with a focus on the US social and political risk context.

### **Reading**

*Why your Company needs a Foreign Policy*, by John Chipman, Harvard Business Review, September 2016

*When CEOs should speak up on Polarizing Issues* by Alison Taylor, Harvard Business Review October 2018

*Week 3 case study preparation*

### **Week 4, February 11 2019: Corruption Risk in the Organization**

This week will begin to introduce how concepts from behavioral ethics and organizational culture can help us understand how companies become involved in large scale fraud and corruption scandals, and why compliance programs fail. Managing the external environment is only one part of the anti-corruption challenge. We also need to understand how the realities of human behavior can support or undermine our compliance efforts.

### **Reading**

*Week 4 case study preparation*

*Head to Head: A Conversation on Behavioral Science and Ethics*, by Jeff Kaplan and Azish Filabi, Ethical Systems, 2017

*Why Your Compliance Program is a Million Dollar Waste of Time*, by Hui Chen and Eugene Soltes, Harvard Business Review 2018.

### **Week 5, February 19 2019: Human Rights**

The requirement to address human rights issues in business is gaining traction following the introduction of the UN Guiding Principles on business and human rights in 2011. This week will introduce key concepts in human rights and business and explore the basics of human rights risk management and due diligence by conducting a country level Human Rights Impact Assessment on our case companies.

## **Reading**

*The Universal Declaration of Human Rights*

*Business and Human Rights: Interview with John Ruggie*, Business Ethics Magazine, October 30, 2011.

*Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, John Ruggie

*Week 5 case study preparation*

## **Week 6, February 25 2019: Human Rights and Anti-Corruption Compliance**

This week will explore whether and how to align anti-corruption compliance and human rights assessments. We will look at synergies and misalignment between these two frameworks and approaches, especially in the context of new and emerging legislation focused on supply chain risk.

## **Reading**

*Linking Human Rights and Anti-Corruption Compliance*, Joanna Drewert and Kaustav Bannerjee, UN Global Compact Human Rights and Labor Working Group, October 2016

## **Week 7, March 4 2019: CSR, Sustainability and Compliance**

This week will introduce central concepts from corporate social responsibility and sustainability and understand where and how and where compliance and sustainability teams can align to tackle ethical questions.

## **Reading**

*The Privatization of Compliance*, Scott Killingsworth, Social Science Research Network, 2014

*Private Companies and the Public Interest*, by Lisa Misol, Human Rights Watch, 2005

*Creating Shared Value*, by Michael Porter and Mark Kramer, Harvard Business Review 2011

## **Part 2: Cultures of Compliance**

### **Week 8, March 11 2019: Introduction to Key Concepts in Organizational Culture**

This week will introduce key concepts in organizational culture, and their relationship with corporate ethics. We will look at what corrupt organizational cultures have in common and explore what theory tells us about building cultures of integrity. We will also introduce concepts of group dynamics and culture.

## **Reading**

*Three Levels of Culture*, by Edgar Schein, in *Organizational Culture and Leadership* 2004

*What do Corrupt Firms have in Common?* by Alison Taylor, Columbia Center for the Advancement of Public Integrity, 2015

*Business as Usual: the Acceptance and Perpetuation of Corruption in Organizations (39-55)*, by Vikas Anand, Blake Ashforth and Mahendra Joshi, *Academy of Management Executive* 2004

*Inside Amazon: Wrestling Big Ideas in a Bruising Workplace*, by Jodi Kantor and David Streitfeld, *New York Times*, August 15, 2015

### **Week 9, March 25 2019: Organizational Group Dynamics**

We will continue our exploration of group and team dynamics and the role of leadership and tone at the top.

At the end of week 9, the final paper assignment will be given to you. You will have completed all necessary reading by this point. The deadline is April 29 2019.

### **Reading**

*Levels of Analysis: Diagnosis and Intervention*, David Berg, Yale School of Medicine

*We Shouldn't Always Need a 'Business Case' to do the Right Thing*, by Alison Taylor, Harvard Business Review, September 2017

*Five Levels of an Ethical Culture*, by Alison Taylor, BSR Working Paper, 2017

### **Week 10, April 1 2019: Group Dynamics and Culture, Continued**

We will continue our exploration of group and team dynamics, social and organizational identity. We will explore how those dynamics affected Wells Fargo.

### **Reading**

*How Wells Fargo's Cutthroat Corporate Culture Allegedly Drove Bankers to Fraud*, Bethany McLean, Vanity Fair, Summer 2017

### **Week 11, April 8 2019: Culture and Incentives**

The role of incentives in compliance is the focus of significant current attention. We will review the latest thinking and revisit the Wells Fargo case study.

### **Reading**

*Incentivizing Ethics: Managing Incentives to Encourage Good and Deter Bad Behavior*, Transparency International UK 2015

*Case study preparation part 1*

### **Week 12, April 15 2019: Culture and Leadership**

### **Reading**

*Why the Assholes are Winning*, Jeffrey Pfeffer, Journal of Management Studies, 2016

*Case study preparation part 2*

### **Week 13, April 22 2019: Wrap Up and Discussion of Key Lessons Learned**