TRUST AND HONESTY IN THE REAL WORLD: A JOINT COURSE FOR LAWYERS, BUSINESS PEOPLE AND REGULATORS


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Introduction

*Enforcing trust and honesty*

Open any newspaper and you find stories of financial scandals, frauds and questionable ethical behavior in the business and professional worlds. The latest and lasting scandals in corporate America touched the highest level of corporate management and professional firms raising the question of whether business leaders are being taught the value of trust and honesty. Yet the very fabric of our economic prosperity and social stability are woven with trust and honesty. Distrust and dishonesty are not new. However, we appear to be at a tipping point where we run the risk of a culture that accepts and justifies corporate abuse of trust and dishonesty. The consequences include higher costs, slower growth and less freedom.

The goal of these Course materials is to help students and seasoned practitioners recognize the ease with which trust and honesty can be lost, understand the impact of the business environment and social culture on trust and honesty, and explore measures to reinforce and, if necessary, restore trust and honesty in the business environment. These course materials are founded on *Trust and Honesty, American’s Business Culture at a Crossroad* (Frankel, 2006). The centerpiece of each module in this book is a case study drawn from actual business experience. Assigned readings from *Trust and Honesty* provide required context for each teaching module. The case study assessments and discussions are used to highlight and illustrate the issues in more specific and practical terms. They demonstrate the complexity and indeterminacy of the issues. Role-plays are provided with each module to provide the students with opportunities to test their ideas, simulate real life situations, manage tradeoffs and build consensus with their peers.

*Course Content*

The modules address three themes. The first theme explores why trust and honesty are at a crossroads. In this section issues of a general culture of acceptance of dishonesty, the “everyone does it” justification, and the limitation of the market in disciplining for distrust are explored. The students will grapple with questions including: What is trust? When is it violated? What are the differences between the spirit and letter of the law? Why is dishonesty accepted? Why do we need regulation if we have the market? The students will also get an appreciation of the high price of such an attitude of acceptance. The modules in this section are:

**Part I: The Problem: “Everyone Does IT.” Acceptance of Fraud and Unfair Treatment of Investors**
- Module 1: The Nature of Fraud: Charles Ponzi – Entrepreneur or Con Artist
- Module 2: Acceptance, Justification and Legitimization of Fraud: The Story of Market Timing
- Module 3: The Role of markets and Law in Establishing Trust and Honesty: The Market for Lemons
The second theme in the book is the effect of the general business environment and culture on trust and honesty. The starting point is the hypothesis that there is a current trend in American business and more broadly in our culture of accepting, justifying, and sometimes even legitimizing, abuse of trust and dishonesty. Where does this trend lead and what culture does it breed? What are the barriers to this trend? Have the barriers been lowered? These barriers include not only the law, but also limitations that people impose on themselves, call it morality or ethics. Special attention will be placed on the role of professionals (e.g. lawyers, accountants, professors) in curbing dishonesty. We explore the slippery slope to deception. How does an honesty strategy evolve into one that is questionable and ultimately dishonest? Students will be challenged with questions such as: Why did so many leading professionals and their organizations fail to keep up the barriers to moral and legal wrongs? How did they become trade organizations rather than remain professionals, and what is the difference between the professionals, business people and traders? In this part as well the cost of failing to establish barriers becomes evident. The modules that cover this theme are:

Part II: The Effect of Environment and Culture on Trust and Honesty
- Module 4: E.F. Hutton’s Slide into Oblivion: The Slippery Slope
- Module 5: Balancing Power and Accountability at GovCorp
- Module 6: Managing Medical Conflicts of Interest: The Lead Paint Dilemma

The third theme of these course materials focuses on the actions necessary to ensure that trust and honesty remain foundations of corporate and professional America. We begin by examining how the corporation and individual can halt the slide toward abuse of trust and dishonesty. The responsibility of the organization and its management is explored through the practice and application of fiduciary law: When does a fiduciary relationship exist and what are the duties that it carries? What are the individual’s responsibility to assure trust and honesty? The students will explore the power of the individual to bring about cultural change, the difficulty of challenging abuse of trust and the strategies that can reduce the costs and burdens of doing so. The section concludes with actions that can be taken to restore trust once it has been lost. The modules in this section are:

Part III. Enforcing Trust and Honesty
- Module 7: Enforcement by Fiduciary Law: City of Hope v. Genentech
- Module 8: Enforcement by the Individual: Blowing the whistle at Enron
- Module 9: Restoring Trust: Transforming WorldCom into MCI

An interdisciplinary focus
We believe that lawyers should understand not only the law but also the business environment to which law applies. Similarly, businesspersons must understand the basic tenets of the law and their lawyers’ positions. Policy makers, who create and enforce the law, will greatly benefit from understanding the nature, objectives, and approaches of law and of business. Each of these disciplines presents a different vocabulary, focus and objectives. They all work in our society and for our society, and all contribute to its advancement. None of these disciplines can or should dominate the objectives and the
areas of the others. In fact, if any of these disciplines reigns supreme it is unlikely to contribute to a healthy economy and a better way of life. When the objectives of these disciplines compete or clash with each other, we must determine which objective should trump the others, and better still: how we can mediate among them and benefit from both.

Thus, this Course is designed to expose students to the language, views and methods of two other disciplines that affect their own, and to the role of each discipline in establishing and maintaining trust and honesty in America. The students will examine the considerations of the other disciplines and engage in mediating among their different objectives. This exercise will produce a better for all concerned.

Focus on student-developed solutions
In this Course, no answers are provided. Rather, class discussions lead students to reach their own conclusions. Many aspects of trust and honesty are unclear. By analyzing case studies students will evaluate options and tradeoffs based on actual situations that legal, business and policy leaders face. Role playing exercises that complement the case studies bring the issues to life. Students analyze the situations as well as work with those in other disciplines to enhance their understanding. Finally, students learn to strengthen their consensus-building skills to bring their desired solution to reality. Hopefully they will become better management, and better legal advisers to management.