Maurice A. Deane Law School at Hofstra University
Law 2738
Corporate Compliance and Ethics
Spring 2016

Instructor: Professor James M. Black II **Email**: James.M.Black@hofstra.edu	**Lectures**: Tuesdays, 4:10-6:00pm, Room 0014
Office: TBD	**Office Hours**: By appointment
Phone: (516) 384-9706	**Text**: The Law of Governance, Risk Management and Compliance by Geoffrey Parsons Miller

Course Description

This course will introduce students to the core concepts of corporate compliance and ethics. We will review the role of compliance as well as the role of compliance officers in today's corporations. Their role is especially important in the current environment of heightened scrutiny by regulators, shareholders and the media. We will spend several classes on the 'nuts and bolts' of compliance: setting the tone and getting the culture right, the code of conduct, helplines/hotlines and training. Then we will focus on specific areas of compliance such as privacy (including Gramm Leach Bliley, HIPAA, US Safe Harbor), human resources/employment issues (e.g. Discrimination, ADA, and Harassment), import export and other trade issues as well as FCPA, AML and OFAC issues. We will finish the course discussing whistleblowers, internal investigations and finally the role of the board of directors and audit committee in corporate compliance. This will be a very practical "how to" class, with special focus on current evolving issues and how companies are dealing with them.

Course Objectives

- To increase your knowledge of how compliance works and is viewed in modern corporations.
- To gain a basic understanding of several specific substantive areas of compliance law.
- To understand the role of compliance professionals.

Instructional Methods

The course will use readings, cases, and class discussion. Reading assignments provide a basis for both lectures and discussions and must be completed prior to each class session. All reading assignments are listed at the end of the syllabus and may be supplemented by other articles or on line resources as the semester goes on. Other than the text book, all other resources will be posted on Blackboard and or e-mailed to students at least a week ahead of the class in which it will be discussed.

Lectures will supplement information gleaned from the reading assignments and strive to integrate course material and draw insights from the material presented. Students are responsible for all materials covered in the readings and discussed during classes.

Attendance/Lateness

Attendance is a critical component of class success and for the accumulation of the necessary substantive knowledge and information to succeed in the class. You are therefore expected to arrive on time and prepared for each class. Late arrivals are disruptive to the class. Please make every effort to arrive on time to class

The rules of the New York State Court of Appeals and the American Bar Association, as stated in the Student Handbook, require law students to be in good and punctual attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of the regularly-scheduled classes in this course. Thus, you may miss no more than four class hours (or two classes) in this two-credit class. If you exceed the permitted absences you will be administratively withdrawn from the course.

It is necessary for all students to sign the daily attendance sheet for each class, keep track of his/her absences and notify the Professor **prior to class** of all absences to ensure correct attendance records.

The Office of Student Affairs has authority to excuse class absences for religious reasons and in cases of truly compelling hardship. If you wish to claim a particular absence as excused, and thus not counted against your maximum number of allowable absences, you must take that issue up with the Office of Student Affairs. I may mark an absence as excused if and only if I receive a note or email from the Office of Student Affairs to that effect. Strict compliance with attendance requirements is imperative and there is no prerogative or discretion which may be exercised in this regard.

Evaluation of Student Performance:

Grade Component	Description	Final Grade
Final Examination	Final Examination.	50%
Midterm Examination	Midterm Examination	30%
Class Participation	Weekly class involvement, preparation, thoughtful and insightful comments.	20%

Miscellaneous Issues

Academic dishonesty will not be tolerated. All work submitted by a student in this course must be the student's own work. Please review the Code of Conduct so that your behavior complies with the appropriate standards of academic integrity.

All cell phones and pagers should be turned to vibrate mode only during class and you should not surf the Web or Instant Message as it will interfere with the learning process and may be a distraction to your fellow students. If you need to attend to some matter during class, please take it upon yourself to leave quietly and promptly so that the class is not unnecessarily disturbed.

Students with disabilities should contact the Dean for Student Services as soon as possible to request reasonable accommodations, if necessary.

Week 1 – January 12

Introduction - the role of compliance in the modern corporation.

In this section of the course, we will begin to analyze the development of corporate compliance generally, the historical background (including key cases and events) that have shaped corporate compliance both domestically and internationally, and how these rulings and policies have contributed to the current landscape of modern corporate compliance.

Materials

- Geoffrey Parsons Miller, *The Law of Governance, Risk Management, and Compliance* (2014) (Chapter 4)
- Roy Snell, *When is a Compliance Officer Not a Compliance Officer?*, The Compliance & Ethics Blog, April 6, 2015, *available at* http://complianceandethics.org/when-is-a-compliance-officer-not-a-compliance-officer/

- Nicole B. Guerin and John M. Tanner, *Mind Your Ethics: Professional Conduct for the In-house Lawyer*, ACC DOCKET, Jan. /Feb. 2015, at 66.

Week 2 – January 19

Ethics and Corporate Culture – setting the tone and getting the culture right

In this section of the course we will discuss the concepts of a culture of compliance. We will review cases and articles that take a deeper look at why companies need to not only have a code and a hotline, but also why they need to matter. The "tone at the top" and "getting the culture right" are key components of any robust compliance program. They are the spirit behind the rules.

Materials

- Geoffrey Parsons Miller, *The Law of Governance, Risk Management, and Compliance* (2014) (Chapter 16)
- LRN, Global Companies, Global Integrity (2007) available at http://www.ethics.org/files/u5/LRNGlobalIntegrity.pdf

- Lyndsay C. Tanner, *Don't Let Ethics Be Left Unsaid*, COMPLIANCE & ETHICS PROFESSIONAl, June 2015, at 43.
- Mary-James Young, *From Compliance Program to Compliance Excellence: The Why's, the How's, and the Results*, COMPLIANCE & ETHICS PROFESSIONAl, August 2015, at 75.

- Roy Snell, *If Everybody is Responsible, Nobody is Responsible*, THE COMPLIANCE & ETHICS BLOG, March 12 2015, *available at* http://complianceandethics.org/if-everybody-is-responsible-nobody-is-responsible/

Week 3 – January 26

The Code of Conduct – the core document of every compliance program

In this section of the course, we will discuss why a company needs need one, how a lawyer drafts one and the key elements it should contain. We will review the obligations created by the code for employees as well as for the company. We will also look at who is and can be bound by a company's code, e.g. employees, outside directors, independent contractors, suppliers, etc, and the benefits and challenges of extending the coverage of the Code.

Materials

- Codes of Conduct of various companies
- Roy Snell, *How to Avoid Ruining Your Code of Conduct*, The Compliance & Ethics Blog, March 23, 2015, *available at* http://complianceandethics.org/how-to-avoid-ruining-your-code-of-conduct/

Week 4 – February 2

The Helpline/Hotline – the pipeline for data that connects a compliance program directly to the people it is there to protect.

In this section, we will review best practices for setting up an ethics hotline/helpline, who should maintain it, including the benefits and challenges of insourcing vs. outsourcing the function. We will discuss the obligations a company undertakes by establishing and operating a hotline/helpline, including a "risks vs. rewards" analysis.

Materials

- Jimmy Lin, *Four Whistleblower Hotline Best Practices*, COMPLIANCE & ETHICS PROFESSIONAl, August 2015, at 73.

Week 5 – February 9

Investigations and Whistle blowers

In this section, we will define whistleblowers and the effect they can have on an organization. We will discuss best practices regarding whistleblowers and how an organization can properly investigate claims from whistleblowers. For a practical application, we will review the role that whistleblowers played surrounding scandals such as Enron and WorldCom.

Materials

- Geoffrey Parsons Miller, *The Law of Governance, Risk Management, and Compliance* (2014) (Chapters 5 and 8)
- Compliance & Ethics Professional, *Ontario Watchdog Considers Corporate Whistleblower Program*, COMPLIANCE & ETHICS PROFESSIONAl, August 2015, at 7.
- Tamara Chuang, *DaVita Will Pay $495 Million to Settle Atlanta Whistle-Blower Case*, THE DENVER POST (May 4, 2015) available at http://www.denverpost.com/business/ci_28046592/davita-will-pay-495-million-settle-atlanta-whistleblower

- Christopher Drew, *Military Contractor Agrees to Pay $325 Million to Settle Whistle-Blower Lawsuit*, THE NEW YORK TIMES (April 2, 2009) available at http://www.nytimes.com/2009/04/03/business/03whistle.html?_r=0

- DOJ, Verizon Communications Pays United States $93.5 Million to Resolve False Claims Act Allegations (April 5, 2011) available at http://www.justice.gov/opa/pr/verizon-communications-pays-united-states-935-million-resolve-false-claims-act-allegations

- United States v. Causey, Cr. No. H-04-25 (S-2) (S.D. Tex. July, 7 2004).
- *S.E.C. v. Lay*, Civil Action No. H-04-0284 (S.D. Tex. July 8, 2004).
- *The Financial Collapse of Enron – Part 2: Hearing before the Subcomm. On Oversight and Investigations of the Comm. On Energy and Commerce* H.R. 107th Cong. (2002) available at http://www.gpo.gov/fdsys/pkg/CHRG-107hhrg77987/html/CHRG-107hhrg77987.htm

- Simon Romero, *WorldCom's Collapse: The Overview; WorldCom Files for Bankruptcy, Largest U.S. Case*, N.Y. TIMES, July 22, 2002 available at http://www.nytimes.com/2002/07/22/us/worldcom-s-collapse-the-overview-worldcom-files-for-bankruptcy-largest-us-case.html

- *United States v. Ebbers*, 458 F.3d 110 (2nd Cir. 2006).
- Greg Farrell, WorldCom's Whistle-blower Tells Her Story, USA Today, Feb. 14, 2008 available at http://usatoday30.usatoday.com/money/companies/regulation/2008-02-14-cynthia-cooper-whistleblower_N.htm

Week 6 – February 23

Compliance Training – making sure all our constituents know what they need to know in terms they can understand.

In this section of the course we will review the purpose for training, how to choose training topics, how often to train, who to train. We will also discuss best practices, formats for training, e.g. live, on line, etc.

Materials

- CEB COMPLIANCE AND LEGAL, ADVANCE YOUR COMPLIANCE AND ETHICS PROGRAM (CEB 2015)
- Mary Ellen O'Neill, *Tips for Creating and Maintaining a Compliance Program*, COMPLIANCE & ETHICS PROFESSIONAl, July 2015, at 19.
- Anne Marie Logarta, *Conducting Compliance Training in International Locations*, COMPLIANCE & ETHICS PROFESSIONAl, July 2015, at 29.
- Mark Dorosz, *Compliance and the Gentle Art of Persuasion*, COMPLIANCE & ETHICS PROFESSIONAl, May 2015, at 53.
- Andrew M. Rink et al., *Key Elements of a Top-notch Compliance Program*, ACC DOCKET, Jan. /Feb. 2015, at 76.

Week 7 – March 1

Role of the Board and Internal Audit in Compliance

In this section, we will review the role of the board of directors as the highest management authority of an organization. We will focus on the role of the board of directors and their duty to the company regarding internal audits and passing binding corporate rules.

Materials

- Geoffrey Parsons Miller, *The Law of Governance, Risk Management, and Compliance* (2014) (Chapter 2)
- Jan Dhort, Alyssa Vervantes & Delphine Charlot, *Understanding Binding Corporate Rules*, COMPLIANCE & ETHICS PROFESSIONAl, July 2015, at 35.

Week 8

MIDTERM - OPEN BOOK

Weeks 9 & 10 - March 15 & March 22

. Privacy issues including Gram- Leach and HIPAA, US Safe Harbor, comparative rules in the US, EU, Japan, Australia, etc.

At this point in the course we will move to specific areas of compliance. The first section will focus on issues relating to privacy and the protection of personal information. We will discuss the complexities corporations face in protecting personally identifiable

information when operating internationally. We will also compare and contrast the rules regarding privacy in key marketplaces such as the US and EU.

Materials

- Compliance & Ethics Professional, *Belgian Privacy Watchdog Takes Facebook to Court*, COMPLIANCE & ETHICS PROFESSIONAl, August 2015, at 6.
- Gramm-Leach-Bliley Act (GLBA), Pub. L. 106-102, enacted November 12, 1999, codified at 15 U.S.C. § 6801 *et seq*.
- Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191, enacted August 21, 1996, codified 29 U.S.C. § 1181 *et seq*. and 42 U.S.C. § 1320d *et seq*.
- Department of Commerce, *Safe Harbor Privacy Principles* (2000) available at http://www.export.gov/safeharbor/eu/eg_main_018475.asp

- Jim Potepan, *What is 'Personal Information?' It Depends on Where You Live, Information Counts*, May 6, 2015 *available at* http://informationcounts.com/what-is-personal-information-it-depends-on-where-you-live/

- Katia Bloom & K Royal, *Transferring Personal Data Out of the European Union: Which Export Solution Best Fits Your Needs?* ACC DOCKET, June 2015, at 26.
- Peter Ferry, *The 5 Essential Elements of Continuous Monitoring (an Why it Matters)*, METACOMPLIANCE BLOG (May 11, 2015), http://www.metacompliance.com/blog/the-5-essential-elements-of-continuous-monitoring-and-why-it-matters/

Weeks 11 & 12 April 5 & April 12

HR/employment issues - Discrimination, ADA, Harassment, etc. comparing the US, EU and other jurisdictions

In this section, we will discuss the basic framework of employment law in the US. We will analyze the major issues a corporation faces in shaping policies that protect its employee's regarding their personal race, sex, religion, disability and age. We will also review issues the corporations face regarding key employment legislation such as the FMLA and ADA.

Materials

- Geoffrey Parsons Miller, *The Law of Governance, Risk Management, and Compliance* (2014) (Chapter 15)
- The Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2611 – 2619 (1993).
- *Jaszczyszyn v. Advantage Health Physician Network*, No. 11-1697 (6th Cir. Nov. 7, 2012) (unpublished).
- The American with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq. (1990).
- *Boitnott v. Corning Inc*., 669 F.3d 172 (4th Cir. 2012).

- *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).
- *EEOC v. Carrols Corp*, Civil Action No. 98-cv-01772 FWS/TWD (N.D.N.Y. 2013).

Week 13 April 19

FCPA, OECD, AML, BSA, OFAC issues

In this section, we will review corporate policy designed to prevent corruption and bribery of foreign officials. We will discuss the major compliance requirements in the US, including the Foreign Corrupt Practices Act (FCPA), Office of Foreign Assets Control (OFAC), as well as the Bank Secrecy Act (BSA). We will discuss the key requirements of each piece of legislation and how they intersect in regards to shaping an effective anti-money laundering policy.

Materials

- Geoffrey Parsons Miller, *The Law of Governance, Risk Management, and Compliance* (2014) (Chapters 13 and 14)
- The Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1 et seq.), available at: http://www.justice.gov/criminal/fraud/fcpa/docs/fcpa-english.pdf
- The Bank Secrecy Act of 1970, 31 U.S.C. §§ 5311 - 5330 (1970).
- DOJ Crim. Div. & SEC Enforcement Div., *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012), available at http://www.justice.gov/criminal/fraud/fcpa
- Nitish Singh, Brendan Keating & Thomas Bussen, *Ten Outrageous Bribes From Around The World*, COMPLIANCE & ETHICS PROFESSIONAl, June 2015, at 45.
- Joseph W. Koletar, *Monitor the Good News*, COMPLIANCE & ETHICS PROFESSIONAl, May 2015, at 57.
- Tipu Sultan Durrani, *Breaking Dawn on Compliance*, COMPLIANCE & ETHICS PROFESSIONAl, May 2015, at 63.
- Robert J. Ward, *OFAC's Global Sanctions: A Greater Headache Than the FCPA?* COMPLIANCE & ETHICS PROFESSIONAl, May 2015, at 65.
- Wam, *Mohamed bin Zayed Orders Establishment of Anti-Corruption Unit*, Emirates 24|7, May 8, 2015, *available at* http://www.emirates247.com/news/government/mohamed-bin-zayed-orders-establishment-of-anti-corruption-unit-2015-05-08-1.589977
- IAN MCKINNELL ET AL., CORRUPTION: IN THE FIGHT AGAINST BRIBERY, THE REST OF THE WORLD IS CATCHING UP 12 (ALM Special Report June 2015).
- Sherry Tao, *Anti-Bribery Battle in China's Healthcare Industry and the New Blacklisting Rules: A Treatment with Side Effects*, ACC DOCKET, Mar. 2015, at 7.

Week 14 - April 26

Import/Export issues

In this section we will review the challenges corporations face regarding importing and exporting goods internationally. We will discuss how corporations can ensure they are compliant with both US and foreign laws when manufacturing, exporting, or importing goods. We will also discuss how the laws and requirements may change based on the types of goods that are being imported or exported.

Materials

- Kasey Ingram & Brian F. Walsh, *A Lean Approach to Evaluating and Addressing Export Compliance Issues in M&A Transactions*, ACC DOCKET, Jan./Feb. 2015, at 56.
- Practical Law, *General Contract Clauses: Export Regulation (No OFAC Investigations)*, THOMSON REUTERS, Mar. 2015, at 24.
- Trade Act of 2002, 19 U.S.C. §§ 3803-3805 (2002).
- 19 C.F.R. § 122.48a (2012).
- 19 C.F.R. § 123.91 (2012).
- 19 C.F.R. § 123.92 (2012).
- 19 C.F.R. § 4.7a (2012).

Note: The Professor reserves the right to modify this syllabus and any course readings during the semester as needed