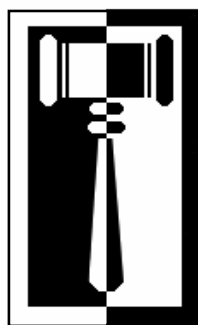


Chapter 2



Ethics in Business

INTRODUCTION

The first concept examined in this chapter is the nature of business ethics and the relationship between ethics and the law. Because of this relationship, a careful study of business law will help your students to understand what is and what is not considered by society to be ethical behavior in business. Throughout the text, the relation between particular laws and the broad, underlying ethical premises on which they rest is discussed.

Ultimately, the goal of this chapter is to provide students with basic tools for analyzing ethical issues in a business context. Exactly how to decide these issues is something each person must do alone, on the basis of his or her own convictions. Questions students must ask themselves include (1) what are their ethical criteria? (2) how would they apply those criteria in a particular situation? (3) how can they best adapt their standards to the kinds of ethical and social responsibility issues that they will face in the business world?

ADDITIONAL RESOURCES—



VIDEO SUPPLEMENTS



The following video supplements relate to topics discussed in this chapter—

PowerPoint Slides

To highlight some of this chapter's key points, you might use the Lecture Review PowerPoint slides compiled for Chapter 2.

Business Law Digital Video Library

The Business Law Digital Video Library at www.cengage.com/blaw/dvl offers a variety of videos for group or individual review. Clips on topics covered in this chapter include the following.

- Ask the Instructor

Ethics: Business Ethics an Oxymoron?—Businesses that act ethically can and do succeed in the marketplace. Like all human activity, business is dependent upon at least a basic set of moral standards. And in the long run, since unethical conduct is detrimental to relationships and reputation, ethical corporate conduct can be a competitive advantage.

- Real World Legal

Pharzime Corporation, Scene 1—A marketing vice president at a pharmaceutical company tries to gain the support of a vice president of regulatory affairs for his marketing strategy for a new drug use. The scene considers the pressure of patent expiration, the regulatory approval process, and legal and ethical strategies for new drug use.

Pharzime Corporation, Scene 2—A new pharmaceutical sales rep confides his anxiety about an aggressive marketing strategy for off-label uses of an FDA-approved drug. A veteran sales rep assures him that the strategy is appropriate. The scene addresses corporate culture, whistleblowing, and the legality and ethics of marketing drugs for off-label use.

Pharzime Corporation, Scene 3—A pharmaceutical sales rep meets with a doctor to introduce new uses of a patented drug and to invite the doctor to serve as an advisor regarding the drug's potential new uses. The legal issues include the ethics and legality of marketing strategies and the relationship between pharmaceutical companies and the medical profession.

- LawFlix

Breaking Away—Others do get ahead by cheating (Scene in which the Italian racing team switches his gears on a hill, gesture rudely, then uses their tire pump to get him out of the race).

Hooziers—Lines you would not cross; individual safety (Scene in the quarter finals in which a player's stitches are pulled, and the coach tells the doctor to patch the player up, against the doctor's advice.)



VIDEO QUESTIONS & ANSWERS



Ask the Instructor—
Ethics: Business Ethics an Oxymoron?

1. According to the instructor in the video, what is the primary reason why businesses act ethically? The instructor in the video says that businesses can and do act ethically because “good, ethical behavior is the best long-term strategy for a company.”
2. Which of the two approaches to ethical reasoning that were discussed in the chapter seems to have had more influence on the instructor in the discussion of how business activities are related to societies? Explain your answer. The instructor states, “[W]ithout minimum ethical standards in place in a society, its [a firm’s] business activities will also collapse.” The idea of minimum ethical standards is more closely associated with duty-based approaches to ethical reasoning, as discussed in the chapter. The instructor says that business is a cooperative activity and draws an analogy between business activities and communities, suggesting that no business “can survive if its members begin to believe that it’s okay to lie to one another, to steal from each other, or to go back on promises.” These statements are similar to the beliefs set forth in Kantian ethics—that individuals should evaluate their actions in light of the consequences that would follow if everyone in society acted in the same way.
3. The instructor asserts that “[i]n the end, it is the unethical behavior that becomes costly, and conversely ethical behavior creates its own competitive advantage.” Do you agree with this statement? Why or why not? Answers to this question will vary depending on the student’s individual beliefs. The student should discuss whether ethical behavior really creates a competitive advantage for the business and why. The student should also analyze some of the instructor’s underlying assumptions, such as the statement, “[B]ecause most people prefer justice and fairness, they are more likely to want to do business with a company that does good than one that does not.” How closely do most people actually watch the activities of a business, especially if the some or all of a company’s business is being conducted abroad? Do people really care more about the ethics of the business or do they care more about the price of the goods that the business sells?



VIDEO QUESTIONS & ANSWERS



Real World Legal— Pharzime Corporation, Scene 1 and Scene 2

1. In Scene 1, employees discuss whether to market their company’s drug as a treatment for other conditions—even though it has only been approved for treating epilepsy. One employee argues that marketing the drug for more than the one treatment will increase the company’s short-term profits and that obtaining approval for the other treatments will take too long. What theory describes this perspective? Short-term profit maximization is the theory discussed in this chapter that describes the man’s perspective. Some people argue that a corporation’s only goal should be profit maximization, which would be reflected in a higher market value. If all firms strictly adhered to the goal of profit maximization, resources would flow to where they are most highly valued by society. But there is an important difference between short- and long-term profit maximization. In the short run, a company may increase its profits by continuing to sell a product, even though, it knows that the product is defective or otherwise unsuitable for a particular use. In the long run, though, because of lawsuits, large settlements, and bad publicity, such unethical conduct will cause profits to suffer. Thus, business ethics is consistent only with long-term profit

maximization. An overemphasis on short-term profit maximization is the most common reason that ethical problems occur in business.

2. In Scene 2, a new sales rep discusses the company's off-label marketing strategy with a veteran sales rep. Is it unethical or illegal for a sales rep to represent that he is a doctor when he has a doctorate in chemistry but is not actually a physician? Explain. The man has a doctorate degree, but he is not a medical doctor (physician). Although he may not be lying, he is clearly misrepresenting an important fact (about being a doctor) with the intent of getting appointments with busy physician-clients so that he can sell Gensol. It is clearly unethical and possibly illegal (fraud).

LECTURE OUTLINE FOR THIS CHAPTER

- I. Business Ethics
 - A. What Is Business Ethics?
 - B. Why Is Business Ethics Important?
- II. Setting the Right Ethical Tone
 - A. The Importance of Ethical Leadership
 - B. Creating Ethical Codes of Conduct
 - C. Corporate Compliance Programs
 - 1. The Sarbanes-Oxley Act and Web-Based Reporting Systems
 - 2. Compliance Programs Must Be Integrated
 - D. Conflicts and Trade-Offs
- III. Ethical Transgressions in Financial Institutions
 - A. Corporate Stock Buybacks
 - B. Executive Bonuses
- IV. The Sarbanes-Oxley Act
- V. Business Ethics and the Law
 - A. Laws Regulating Business
 - B. "Gray Areas" in the Law
- VI. Approaches to Ethical Reasoning
 - A. Duty-Based Ethics

- 1. Religion
- 2. Philosophy
- 3. The Principle of Rights
- B. Outcome-Based Ethics
- C. Corporate Social Responsibility
 - 1. Stakeholder Approach
 - 2. Corporate Citizenship
 - 3. A Way of Doing Business
 - 4. The Employee Recruiting and Retention Advantage

VII. Business Ethics on a Global Level

- A. Monitoring the Practices of Foreign Suppliers
- B. The Foreign Corrupt Practices Act
 - 1. Bribery of Foreign Officials
 - 2. Accounting Requirements
 - 3. Penalties for Violations

DETAILED CHAPTER OUTLINE

I. Business Ethics

Ethics is the study of what constitutes right and wrong behavior. Ethics focuses on morality and the application of moral principles in everyday life.

A. WHAT IS BUSINESS ETHICS?

Business ethics focuses on what constitutes ethical behavior in the world of business. Business ethics is not a separate kind of ethics.

B. WHY IS BUSINESS ETHICS IMPORTANT?

An understanding of business ethics is important to the long-run viability of a business, the well being of its officers and directors, and the welfare of its employees.

II. Setting the Right Ethical Tone

Some unethical conduct is founded on the lack of sanctions.

A. THE IMPORTANCE OF ETHICAL LEADERSHIP

Management must set and apply ethical standards to which they are committed. Employees will likely follow their example. Ethical conduct can be furthered by not tolerating unethical behavior, setting realistic employee goals, and periodic employee review.

CITATION—

REAL-WORLD CASE EXAMPLE

This feature is based on the actual case of *Mathews v. B and K Foods, Inc.*, 332 S.W.3d 275 (Mo.App. 2011). In reviewing this example, you might like to discuss the following points:

How does the behavior in this case betray a lack of ethics? The court indicated that Mathews was not only responsible to her superiors and the company for her “theft” of time and money. She was also responsible by her example for the conduct of her subordinates. If Mathews’s testimony before the employment commission was truthful, her former manager—who initially sanctioned her time sheets—was similarly responsible for Mathews’s violation of company policy. The employer, too, might have engaged in less than ethical conduct if it tolerated Mathews’s violations for long without at least showing disapproval. Each of these instances would demonstrate dishonesty.

Does it seem likely that an employer would expend the time and effort to deny an ex-employee unemployment compensation because he or she ran a personal errand on company time? Sometimes an employer seizes on a concrete violation of company policy to discipline or discharge an employee who exhibits general disregard for the employer or the policies. A single incident may be only the “tip of the iceberg” in the parties’ relationship. Or a cited occurrence may be a coded reference for other acts. For example, an employee who uses company time to run his or her own business might be discharged for running a “personal errand.”

Suppose that Mathews had not admitted to knowing about the “no lunch” sheet policy. Would the result in this case have been different? Why or why not? The court appears to have relied on Mathews’s own testimony that she knew about the “no lunch” sheet policy as evidence that she engaged in “willful misconduct.” Even without this testimony, however, B and K might still have been able to meet its burden of proof if it could have presented actual “no lunch” sheets submitted by Mathews on this and other occasions. This evidence, plus the fact that she was responsible for “no lunch” sheets turned in by employees under her supervision, would have been sufficient to show that Mathews knew about the policy.

B. CREATING ETHICAL CODES OF CONDUCT

Most large corporations have codes of conduct that indicate the firm’s commitment to legal compliance and to the welfare of those who are affected by corporate decisions and practices. Large firms may also emphasize ethics in other ways (for example, with training programs).

C. CORPORATE COMPLIANCE PROGRAMS

Components of a comprehensive corporate ethical-compliance program include an ethical code of conduct, an ethics committee, training programs, and internal audits to monitor compliance. These components should be integrated. The Sarbanes-Oxley Act of 2002 requires firms to set up confidential systems for employees to report suspected illegal or unethical financial practices.

D. CONFLICTS AND TRADE-OFFS

A firm's duty to its shareholders should be weighed against duties to others who may have a greater stake in a particular decision. For example, an employer should consider whether it has an ethical duty to loyal, long-term employees not to replace them with workers who will accept lower pay and whether this duty prevails over a duty to improve profitability by restructuring.

III. Ethical Transgressions in Financial Institutions

Unethical conduct resulted in the single largest bankruptcy of a U.S. business firm.

A. CORPORATE STOCK BUYBACKS

If the management of a company believes that its stock price is low, or below "fair value," the company's funds can be used to buy shares, boosting their price. This benefits corporate executives who have stock options through which they can buy shares at a potentially lower price and sell at the higher price. This is not illegal, but can have the appearance of impropriety.

B. EXECUTIVE BONUSES

Commissions and bonuses are sometimes based on criteria that seem to ignore the consequences of the conduct that they reward. For example, a commission may be paid on the purchase of a risky asset—such as a loan with a significant possibility of default—even if the risk materializes.

IV. The Sarbanes-Oxley Act

This act imposes requirements on a public accounting firm that provides auditing services to an issuer (a certain company that sells securities to investors). Among other things, the act created the Public Company Accounting Oversight Board to oversee these audits. The act also prohibits destroying or falsifying records to obstruct or influence a federal investigation or in relation to a bankruptcy, with sanctions including fines and imprisonment up to twenty years.

V. Business Ethics and the Law

The minimal acceptable standard for ethical business behavior is compliance with the law. Ethical standards, such as those in a company's policies or codes of ethics, must also guide decisions.

A. LAWS REGULATING BUSINESS

Because there are many laws regulating business, it is possible to violate one without realizing it. Ignorance of the law is no excuse.

B. "GRAY AREAS" IN THE LAW

There are many "gray areas" in which it is difficult to predict how a court will rule. For example, if a consumer's misuse of a product harms the consumer, should the manufacturer bear the responsibility? The best course is to act responsibly and in good faith.

ENHANCING YOUR LECTURE—



9

“SUCKS” SITES—CAN THEY BE SHUT DOWN?

8 8



In today’s online environment, a recurring challenge for businesses is how to deal with cybergrippers—those who complain in cyberspace about corporate products, services, or activities. For trademark owners, the issue becomes particularly thorny when cybergripping sites add “sucks,” “fraud,” “scam,” “ripoff,” or some other disparaging term as a suffix to the domain name of a particular company. These sites, sometimes collectively referred to as “sucks” sites, are established solely for the purpose of criticizing the products or services sold by the companies that own the marks. In some cases, they have been used maliciously to harm the reputation of a competitor. Can businesses do anything to ward off these cyber attacks on their reputations and goodwill?

THE TRADEMARK ISSUE

A number of companies have sued the owners of “sucks” sites for trademark infringement in the hope that a court or an arbitrating panel will order the owner of that site to cease using the domain name. To date, however, companies have had little success pursuing this alternative. In one case, Bear Stearns Companies, Inc., sued a cybergriper, Nye Lavalley, alleging that Lavalley infringed its trademark by creating Web sites including “Bear Stearns” in the domain names. Some of these sites were called “BearStearnsFrauds.com,” “BearStearnsCriminals.com,” and “BearStearnsComplaints.com.”

One of the tests for trademark infringement is whether consumers would be confused by the use of a similar or identical trademark. Would consumers mistakenly believe that Lavalley’s sites were operated by Bear Stearns? In the court’s eyes, no. The court concluded that Lavalley’s “Frauds.com” and “Criminals.com” sites were “unmistakenly critical” of the target companies and that no Internet user would conclude that Bear Stearns sponsored the sites. As to the “Complaints.com” site, however, the court concluded that consumers might be confused—because Bear Stearns could have a “complaints” page on its Web site. Therefore, the “Complaints.com” site violated trademark law, but the other two sites did not.^a

FOR CYBERGRIPERS, THE MORE OUTRAGEOUS THE SUFFIX, THE BETTER

For cybergrippers, the message seems to be clear: the more outrageous or obnoxious the suffix added to a target company’s trademark, the less likely it is that the use will constitute trademark infringement. This point is underscored in decisions reached by other courts as well. In *Taubman Co. v. Webfeats*,^b for example, a cybergripping case decided by the U.S. Court of Appeals for the Sixth Circuit, the court stressed that Internet users were unlikely be confused by “sucks” sites using the Taubman Company name. Because the allegedly infringing domain names all ended with “sucks.com,” the court concluded that they were unlikely to mislead Web site visitors into believing that the trademark owner was the source or sponsor of the complaint. The court also noted in its opinion that, generally, the more vicious an attack site’s domain name, the less likely that a cybergriper will be found liable for trademark infringement.

FOR CRITICAL ANALYSIS

How might cybergripping sites help to improve the ethical performance of the businesses they criticize?

Can business owners do anything to prevent the use of their marks in “sucks” sites?

- a. *Bear Stearns Companies, Inc. v. Lavalley*, 2002 WL 31757771 (N.D.Tex. 2002).
 b. 319 F.3d 770 (6th Cir. 2003).

VI. Approaches to Ethical Reasoning

Ethical reasoning is the process by which an individual examines a situation according to his or her moral convictions or ethical standards. Fundamental approaches include the following.

A. DUTY-BASED ETHICS

1. Religion

Religious standards provide that when an act is prohibited by religious teachings, it is unethical and should not be undertaken, regardless of the consequences. Religious standards also involve compassion (“Do unto others as you would have them do unto you”).

ADDITIONAL BACKGROUND—

Ethics, Calvinism, and the Search for Profits

Historically, the pursuit of profit was suspect because it pits self-interest against community-oriented interests. In the sixteenth century, with the spread of Calvinism, which valued hard work and regarded business success as evidence of God’s grace, business activity became more respectable. Calvinism grew out of the theological doctrines of French Protestant reformer John Calvin (1509-1564).

Calvin—whose name is an adapted form of Jean Cauvin—was familiar with the writings of Plato, Seneca, and St. Augustine. In a speech written to be delivered in an inaugural ceremony at the University of Paris in 1533, Calvin expressed radical theological views. Forced to flee France, Calvin settled in Geneva, Switzerland. Calvin’s works include *Institutes of the Christian Religion*.

Calvin’s theology is the foundation of the Presbyterian, or non-Lutheran, churches, recognizing only the Bible as the authority in questions of religious belief. Its premises include

- The total depravity of man resulting from Adam’s fall.
- The absolute power of God’s will.
- Because no human has a will of his or her own, the superiority of faith to good deeds.
- The possibility of Christian salvation through God’s grace alone.
- The predestination of those few who are to be saved. Because no one can be certain as to whether he or she is to be saved, however, everyone must lead lives according to religious tenets.

Calvin’s Protestant ethics stressed hard work, self-denial, and an organization of one’s life to serve God. The development of Protestant ethics was a motivating force for the rise of capitalism, because it encouraged hard work even when there was no need for it. Material success as a result of work was interpreted as a sign of faith and possible salvation.

With the Industrial Revolution, the pursuit of profit was firmly united with the welfare of society by the economic theory of capitalism. Profit is good, so the theory goes, because it shows that resources are being put to highly valued uses. The search for profit is not always in society's best interest, so the criticism goes, because of market imperfections—the lack of competition in some markets, the difficulty of obtaining perfect information about products and consumer desires, and costs and benefits that are either unknown or unaccounted for (pollution, for example). Today a socially responsible firm modifies the ethics of capitalism with other ethical standards and looks at more than simply profits. In making business decisions, social responsibility involves three basic considerations: an act's profitability, its legality, and whether it is ethically justifiable.

Striking the right balance between making profits and being ethically responsible is not easy. Usually some profits must be sacrificed in the process. Optimum profits are the maximum profits that can be realized while staying within legal and ethical limits.

2. Philosophy

Ethical standards based on a concept of duty may be derived solely from philosophical principles. A central postulate in the ethics of Immanuel Kant, for example, is that individuals should evaluate their actions in light of the consequences that would follow if everyone in society acted the same way. This **categorical imperative** can be applied to any action.

ADDITIONAL BACKGROUND—

Immanuel Kant, Critic of Pure Reason

A professor of logic and metaphysics at the University of Königsberg, where he had been educated, Immanuel Kant (1724-1804) devoted much effort to his philosophical works, including *Critique of Pure Reason*, *Critique of Practical Reason*, *Critique of Judgment*, and *Foundations of the Metaphysics of Morals*. Kant believed that reality can be perceived only to the extent that it complies with the aptitude of the mind that is doing the perceiving. Only phenomena, or things that can be experienced, can be understood; everything else is unknown. Applying this theory to metaphysics, Kant saw God, freedom, and immortality as incomprehensible because they can only be studied through contemplation. Their existences cannot be proven, Kant concluded, but they are of immeasurable importance in moral philosophy, because morality cannot exist without belief in God, freedom, and immortality. In 1793, when Kant published his views on religion in *Religion within the Limits of Reasons Alone*, the government prohibited him from writing further on the subject. Kant's ideas influenced many later philosophers, including George Hegel and Friedrich von Schiller. Kant led a quiet and regular life in Königsberg. According to German poet Heinrich Heine, the residents of the town set their watches by Kant's daily walks.

3. The Principle of Rights

According to the principle that persons have rights (to life and liberty, for example), a key factor in determining whether a business decision is ethical is how that decision affects the rights of others, including employees, customers and society.

B. OUTCOME-BASED ETHICS

Utilitarianism is a philosophical theory first developed by Jeremy Bentham and advanced by John Stuart Mill. It focuses on the consequences of an action, not on the nature of the action itself or on any set of preestablished moral values or religious beliefs. An action is morally correct, or “right,” when, among the people it affects, it produces the greatest amount of good for the greatest number. Applying the utilitarian theory thus requires (1) a determination of which individuals will be affected by the action in question; (2) a **cost-benefit analysis**—an assessment of the negative and positive effects of alternative actions on these individuals; and (3) a choice among alternative actions that will produce maximum societal utility (the greatest positive benefits for the greatest number of individuals).

ADDITIONAL BACKGROUND—

Jeremy Bentham, Founder of Utilitarianism

Jeremy Bentham (1748-1832) achieved prominence as a philosopher, jurist, reformer, and founder of utilitarianism. Bentham was educated at Oxford and admitted to the bar but did not practice law. Instead he pursued legal, political, and social reform, applying principles of ethical philosophy in his efforts. Bentham believed that the greatest happiness for the greatest number is the basis of morality. Happiness and pleasure were the same, and included social, intellectual, and moral as well as physical pleasures. Each pleasure has certain characteristics, including intensity and duration, and Bentham devised a scale of measurement to judge the worth of a pleasure or pain. Each person strives to do what makes him or her happiest. The happiness of an individual and the general welfare are complementary; the achievement of the greatest amount of happiness is the goal of morality. Bentham also believed that the purpose of law was to maximize total happiness within the limitations of government. Bentham applied these views to reform legislation and achieved great advances in prison reform, criminal law, health control, civil service, and insurance.

Bentham was also active in codifying laws. In 1816, he attempted to persuade President James Madison to adopt a code of laws devised by Bentham that included all pertinent rules and case precedents added as illustrations of the utilization of the legal theory involved. Madison rejected the idea, but twenty years later, Bentham’s theories were adopted by reformers with the goal of formulating a code of American law.

Bentham has been much praised for the application of his philosophy in the area of legal reform. An essential part of legal utilitarianism is reliance on the free market and individual initiative. Bentham also believed in majority rule and the implementation of as much democracy as possible. He assumed that businesslike rationality could solve all human problems. On the other hand, Bentham has been much criticized for his failure to account for or to understand any human emotion other than rational self-interest. As John Stuart Mill pointed out in a famous essay, Bentham seemed not to understand honor, personal dignity, artistic passion, or human desires for perfection, order, power, and action. “Knowing so little of human feelings,” Mill wrote, Bentham “knew still less of the influences by which those feelings are formed . . . and no one . . . who . . . ever attempted to give a rule to all human conduct, set out with a more limited conception of either of the agencies by which human conduct is or of those by which it should be influenced.”

C. CORPORATE SOCIAL RESPONSIBILITY

The question of corporate social responsibility concerns the extent to which a corporation should act ethically and be accountable to society in that regard.

1. **Stakeholder Approach**

Stakeholders include employees, customers, creditors, suppliers, and the community within which a business operates. It is sometimes said that duties to these groups should be weighed against the duty to a firm's owners.

2. **Corporate Citizenship**

Corporations are sometimes urged to actively promote social goals.

3. **A Way of Doing Business**

Some argue that this should be pursued as a "way of doing business" rather than as a special program.

4. **The Employee Recruiting and Retention Advantage**

Some suggest that such activities should be relevant and significant to a firm's stakeholders. This focus can help a firm retain its employees, especially altruistic younger workers.

VII. Business Ethics on a Global Level

A sense of what is ethical varies from individual to individual, from group to group, and from nation to nation (and these ethics vary over time). The text notes employment discrimination as an example.

ENHANCING YOUR LECTURE—**9****GOOGLE CHINA****8 8**

Doing business on a global level can sometimes involve serious ethical challenges. Consider the ethical firestorm that erupted when Google, Inc., decided to market "Google China." This version of Google's widely used search engine was especially tailored to the Chinese government's censorship requirements. To date, the Chinese government has maintained strict control over the flow of information in that country. The government's goal is to stop the flow of "harmful information." Web sites that offer pornography, government criticism, or information on other sensitive topics, such as the Tiananmen Square massacre in 1989, are censored—that is, they cannot be accessed by Web users. Government agencies enforce the censorship and encourage citizens to inform on one another. Thousands of Web sites are shut down each year, and the sites' operators are subject to potential imprisonment.

Google's Code of Conduct opens with the company's informal motto: "Don't be evil." Yet critics of Google's actions question whether Google is following this motto. Human rights groups have come out strongly against Google's behavior, maintaining that the company is seeking profits in a lucrative marketplace at the expense of assisting the Communist Party in suppressing free speech. And in

February 2006, Democratic congressman Tom Lantos, the only Holocaust survivor serving in Congress, stated that the “sickening collaboration” of Google and three other Web companies (Cisco Systems, Microsoft Corporation, and Yahoo!, Inc.) with the Chinese government was “decapitating the voice of dissidents” in that nation.^a

GOOGLE’S RESPONSE

Google defends its actions by pointing out that its Chinese search engine at least lets users know which sites are being censored. Google China includes the links to censored sites, but when a user tries to access a link, the program states that it is not accessible. Google claims that its approach is essentially the “lesser of two evils”: if U.S. companies did not cooperate with the Chinese government, Chinese residents would have less user-friendly Internet access. Moreover, Google asserts that providing Internet access, even if censored, is a step toward more open access in the future because technology is, in itself, a revolutionary force.

THE CHINESE GOVERNMENT’S DEFENSE

The Chinese government emphasizes that its censorship of the Internet is no different from the controls placed on information access by other national governments. As an example, it cites France, which bans access to any Web sites selling or portraying Nazi paraphernalia. The United States itself prohibits the dissemination of certain types of materials, such as child pornography, over the Internet. Furthermore, the U.S. government monitors Web sites and e-mail communications to protect against terrorist threats. How, ask Chinese officials, can other nations point their fingers at China for pursuing a common international practice?

FOR CRITICAL ANALYSIS

Do you agree with the assumption made by Google that technological advances and the desire of the Chinese people to embrace liberty will overcome, in time, the current limitations imposed by the Chinese government?

a. “As cited in Tom Ziller, Jr., “Web Firms Questioned on Dealings in China,” The New York Times, February 16, 2006.

A. MONITORING THE EMPLOYMENT PRACTICES OF FOREIGN SUPPLIERS

Concerns include the rights and the treatment of foreign workers who make goods imported and sold in the United States by U.S. firms. Should a U.S. firm refuse to deal with certain suppliers or make arrangements to monitor their workplaces to make sure that the workers are not being mistreated?

B. THE FOREIGN CORRUPT PRACTICES ACT

Side payments to government officials in exchange for favorable business contracts are not unusual in some countries, nor are they considered to be unethical.

1. Bribery of Foreign Officials

In the United States, the Foreign Corrupt Practices Act (FCPA) in 1977 prohibits U.S. businesspersons from bribing foreign officials to secure advantageous contracts.

2. Accounting Requirements

Accountants, in particular, may be subject to penalties for making false statements in records or accounts. Internationally, a treaty signed by the members of the Organization for Economic Cooperation and Development also makes the bribery of foreign officials a crime.

3. Penalties for Violations

Business firms may be fined up to \$2 million. Individuals can be fined up to \$100,000 (the firm cannot pay the fine) and imprisoned up to five years.



FACING A LEGAL PROBLEM



QUESTIONS

When discussing this chapter's Facing a Legal Problem, you might like to ask the following questions.

1. What should be the measure of corporate responsibility? The answer to this question will differ depending on whose yardstick you use. Traditionally, corporate philanthropy has been used to measure corporate responsibility. Today, many feel that being ethically responsible involves how a corporation conducts its affairs at all levels of operation. For example, does it deal ethically with its shareholders and its employees? Do the corporation's suppliers protect the human rights of their employees? Does the corporation investigate complaints about its products?

2. If a corporation fails to conduct its operations ethically or respond quickly to an ethical crisis, what might happen? Today's corporations are subject to more intensive scrutiny—both by government agencies and the public—than they ever were in the past. If a corporation fails to conduct its operations ethically or respond quickly to an ethical crisis, its goodwill and reputation (and thus future profits) will likely suffer as a result.

ANSWER TO ETHICAL QUESTION

What factors help to create an ethical workplace? Factors that help to create an ethical workplace include a written code of ethics, a policy statement, the effective communication of ethical policies to employees, and the attitude and conduct of management.

TEACHING SUGGESTIONS

1. To emphasize the relation between law and ethics, emphasize their distinction by discussing the theory of civil disobedience. Ethics are created by moral values. Whether to obey the law is itself an ethical question. Some individuals may choose to ignore the law if their ethical principles conflict

with it. If there is a conflict between a law and an ethic, should an individual disobey the law, or should an individual obey the law even if he or she thinks it would be unethical to do so? Is there a higher law than what society provides in a particular place at a particular time?

2. Ethical standards are subjective. They are derived from personal religious beliefs or philosophical assumptions concerning the nature of goodness, fairness, rightness, or justice. Each of us decides what we believe in and how to act on those beliefs. Have students give examples of their own ethical standards and explain how they arrived at those standards.

3. There are a number of hypotheticals that could be used to introduce this chapter's subject matter. Have students imagine that they own a company at which there is an opening at a beginning level. There are two applicants—one, the students' personal friend and the other, a member of the opposite sex (or of a minority). The latter individual is more qualified for the job than the friend. Ask the students to suppose that in spite of whatever profit the most qualified person might generate, they would rather have their friend on the job. State that in this hypothetical, hiring the friend would violate the law against discrimination. Would the students hire the friend in violation of the law?

Other hypotheticals involving employment might be used. For example, would students, as owners of a business, offer a prospective employee a lower salary if (1) the employee indicated during the interview that she expected a lower salary than they had been prepared to offer based on other companies' salaries for similar positions? (2) paying the lower salary would violate no law? (3) the position was unique within the company (so that there were not other employees with whom she could compare pay)?

4. To introduce social responsibility, a hypothetical involving a violation of the law could be given, but a violation as to which there is no risk of being caught. For example, have students suppose that as businesspersons they will have an opportunity to make more money by meeting with competitors and fixing prices, conduct which is illegal. For this hypothetical, tell them that the authorities will not discover that the prices have been fixed. In fact, the price rise could be small—pennies per item—but the increases in net profit could be considerable. Is price-fixing fair? Ethical? Socially responsible? Does it make any difference what the extra profit is used for? If the students imagine that they need the money, would price-fixing be wrong? Would their answers be different if there was an even chance that they would be caught? Why?

5. Suggest that students apply the same type of analysis to ethical problems that they apply to considering and deciding legal issues.

Cyberlaw Link

Should ethical standards be adapted to deal with the new forms of social disruption made possible by the Internet (for example, data theft, hacking, virus implanting, and invasion of privacy)? What new ethical standards, if any, are needed to resolve problems online?

DISCUSSION QUESTIONS

1. How does a law come to be an expression of an ethical principle? A law is what society deems proper behavior. An ethical value is also an expression of what is considered appropriate conduct. When people wish to

enforce or change an ethical value, they often politicize the issue, urging politicians to create or amend a law. When the law changes, it more effectively represents the ethic that served as the impetus for its change.

2. What are reasons for unethical business behavior? Employers or owners who condone it. The belief that it won't be discovered. The corporate structure, which can insulate individuals from responsibility for their acts through its distance from the acts' consequences and the collectivity (impersonality?) of corporate decision making. Lack of clarity as to what ethical standards are appropriate and acceptable in the business context.

3. In negotiating a business deal, is "strategic misrepresentation" permissible? Do you have to disclose everything? These questions concern the ethical conflict inherent in a business context. From a duty-based ethics viewpoint, in an absolute sense, it would be unethical not to disclose information on which the negotiator knows the other side might hinge its decisions. In contrast, a negotiator owes an ethical duty to negotiate in the best interests of whomever he or she is negotiating for. When one ethical duty conflicts with another, a decision has to be made as to which duty is more fundamental. Frequently, questions faced by businesspersons do not have clear-cut answers, but involve choices between arguably equally good alternatives.

It has been suggested that business is a game and deception is an important element of negotiation, just as poker is a game in which bluffing plays an important part. The better an individual is at deception, the more successful he or she will be at negotiation. Those who do not anticipate deceit are fooling themselves. One of the problems with this suggestion is that there is no stated point at which deception is no longer acceptable. By comparison, in poker, it is acceptable to attempt to confuse other players as to the cards you have been dealt but it is not acceptable to bribe the dealer to deal you better cards. Also, if deception were widely practiced, the expense of protecting against it would increase for business and society.

4. Why would a corporation prefer to be seen as ethical? Consumers may be less willing to buy products of companies that appear to be unethical. Investors may prefer to invest in a firm that is perceived as ethically responsible. Suppliers may prefer to do business with ethical firms. In other words, socially responsible activities can improve profits.

5. Does a company have a duty to act in socially or politically beneficial ways? There is no agreement as to whether a company has a duty to act in a beneficial way. In deciding whether to do so, a company should consider the appropriateness and feasibility of an activity, the extent to which it will help the company, and whether expected gains will justify expected costs. Management must be prepared to explain its decision to shareholders and the public.

6. How does a corporation's investment in a political or social agenda affect its duty to its shareholders? People invest in business to make a profit, and a company's shareholders may have such a variety of political and social views that the company's pursuing a particular political or social goal may be divisive. Diverting corporate funds reduces the amount available for dividend payments. Diverting other resources reduces what is available to produce goods and services for sale. Investors may also be less likely to invest in a company that engages in behavior seen as unethical out of fear of consumer hostility toward the company.

7. To whom might a corporation owe a duty? A corporation may owe a duty to its shareholders, its employees and their families, its customers, and society as a whole. What must a corporation do if it finds itself subject to conflicting duties? There is no law that says which of these duties comes first or how much weight should be given to each in the balance. When there is no conflict between duties, the question of how best to fulfill a single duty involves trade-offs. When these duties overlap, a balance must be struck. Determining which duty takes precedence involves difficult trade-offs.

8. Because business controls so much wealth and power, what duty does it arguably have to society? It has been argued that business owes a duty to society to use its wealth and power in beneficial ways—promoting human rights, striving for equal treatment of minorities in the workplace, acting to safeguard the environment, and eschewing profits from activities that society deems unethical. Generally, business has been responsive to social needs, donating to programs that benefit society.

9. Do businesses have an ethical duty to use enhanced security measures to protect confidential customer information? Why or why not? For example, if an employer allowed its employee to store customers' unencrypted personal information on a laptop outside of the office, would this violate any ethical duty? Yes, because the information has been entrusted to their care and the theft of such information is well known. Also, from an ethical standpoint, in terms of profit, customers may be less willing to do business with a firm that does not protect such information. No, so long as the firm that possesses the data does not itself misuse it, because any theft or other misuse that might occur would be an illegal and unethical act on the part of its perpetrator, not the possessor.

ACTIVITY AND RESEARCH ASSIGNMENTS

1. Suggest that students research the basis for their personal ethical standards. How well (or poorly) do these bases coincide with the law as they know it? Is there a code of human conduct so basic that no one would not agree to follow it?
2. Have students research the conflict that seems to exist between the Judeo-Christian and Islamic ethics, between the Western and Arabic cultures. Is the apparent gap bridgeable? Do we in fact have a common ethics? Do our ethics at least derive from a common source?
3. Ask students to discover exactly how a value can become a law. What does the lobbying process involve? Do your students believe that good customs actually do become law? What factors distinguish good from bad customs?
4. Have students choose an employer and discover as much as they can about the people who work for the employer. What are the job categories and what percentages of each are held by women and minorities? How does the employer determine wages? How flexible is the employer's policy?
5. Some business firms publish annual reports concerning their socially responsible activities. Critics of these reports call them advertising ploys. Suggest that students obtain and read one or more of the reports. What activities do these firms consider socially responsible? What influence might the reporting of these activities have on the firms' management? Are firms that issue these reports likely to increase these activities?

LINKING THE LAW TO YOUR CAREER—



MANAGING A COMPANY'S REPUTATION



Bonus Question

Valuable company resources are used to create and publish corporate social responsibility reports. Under

what circumstances can a corporation justify such expenditures? Clearly, very small businesses cannot even think about spending resources to create corporate social responsibility reports. In general, also, corporations that are not publicly traded will not spend resources creating corporate social responsibility reports. In other words, unless a company has to file with the Securities and Exchange Commission, there is typically little reason to spend resources on social responsibility reports. Publicly held corporations, in contrast, once they are relatively large, will find that there is some payoff to creating and distributing on a wide basis social responsibility reports. A positive, well-received reputation may help in recruiting better employees. It may create a more positive environment for the corporations' stock price. Finally, being known as a "good corporate citizen" certainly cannot hurt when a company is under investigation by regulators.



BEFORE THE TEST—



ISSUE SPOTTERS



1. Delta Tools, Inc., markets a product that under some circumstances is capable of seriously injuring consumers. Does Delta have an ethical duty to remove this product from the market, even if the injuries result only from misuse? Maybe. On the one hand, it is not the company's "fault" when a product is misused. Also, keeping the product on the market is not a violation of the law, and stopping sales would hurt profits. On the other hand, suspending sales could reduce suffering and could stop potential negative publicity if sales continued.
2. Acme Corporation decides to respond to what it sees as a moral obligation to correct for past discrimination by adjusting pay differences among its employees. Does this raise an ethical conflict between Acme's employees? Between Acme and its employees? Between Acme and its shareholders? When a corporation decides to respond to what it sees as a moral obligation to correct for past discrimination by adjusting pay differences among its employees, an ethical conflict is raised between the firm and its employees and between the firm and its shareholders. This dilemma arises directly out of the effect such a decision has on the firm's profits. If satisfying this obligation increases profitability, then the dilemma is easily resolved in favor of "doing the right thing."



MORE LEGAL QUESTIONS—



GAMEPOINTS



1. You're playing Sun Ascendant, a video game in which the sun has burned out, and your goal is to accomplish certain tasks, advance to different levels, collect eight "Golden Orbs," and ultimately restart the

fire in our sun. The difficulty of mastering the tasks increases at each level. At the fifth level—Mars—you become stalled. There are Web sites on which players reveal the steps to win the game. Is it ethical to consult these sites? Why or why not? Ethics is the study of what constitutes right and wrong behavior, focusing on morality and the way in which moral principles are derived or the way in which such principles apply to conduct in daily life. Sometimes the issues that arise concern fairness, justice, and “the right thing to do.” In the context of this problem, to address these questions, it might be considered what is at stake. If there is a competition with other players or some other situation in which consulting outside sources is questionable, then it is unethical to review the Web sites. If, however, you are playing alone, and you have made your best attempt to advance, it may not be unethical to seek help.

2. Still playing Sun Ascendant, you advance no farther than Venus, the seventh level. Frustrated, you purposely damage the game disk and attempt to return it to the game outlet where you bought it. If the seller won't take it back, you vow to complain about the game and the vendor on every gamers' site on the Internet. What are the ethics in this situation? Discuss. The ethics in this situation relate to fairness, justice, “the right thing to do,” and personal honesty and integrity. Intentionally lying to a vendor about the condition of goods sold is untruthful, illegal, and unethical. It is a breach of a duty of good faith, without which the social and economic dealings among us all could not continue. To further lie to others about the same issue would compound the breach. None of the approaches to ethical reasoning described in this chapter would support any of the acts set out in the problem.



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