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Answers to Issue Spotters, Using Business Law, Real-World Case Problems & Ethical Questions

CHAPTER 2

ETHICS IN BUSINESS

ANSWERS TO ISSUE SPOTTERS

1A. ***Mac Tools, Inc., markets a product that under some circumstances is capable of seriously injuring consumers. Does Mac 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.

2A. ***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."

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ANSWERS TO USING BUSINESS LAW

2–1A. ***Business ethics***

Personal and business ethics sometimes overlap. Businesspersons do not necessarily adopt one set of principles to guide them in their personal lives and another to provide guidance in business decisions. Business activities are only a part of life, and business ethics is only a subset of ethics. From this viewpoint, the degree to which ethical behavior in business is guided by notions of what is "appropriate," rather than what is "right" or "wrong," is determined by the personal ethics of those who decide how to behave. Of course, ethical decision making can be complicated in business by the number of persons who provide input into those decisions. Few businesspersons have complete control over the decision-making process. In this sense, a decision that represents an amalgam of interests and views may seem to be less a matter of "right" or "wrong" and more what is "appropriate." Personal ethics should play a role in business ethical decision making. It could be hypocritical at best and impossible at worst to apply one set of ethics to one set of situations and another set of principles to another range of conduct. There are, however, many other factors that can influence ethical decisions in a business context.

2–2A. ***Ethical decision making***

Factors for the firm to consider in making its decision include the appropriate ethical standard. Under the utilitarian standard, an action is correct, or "right," when, among the people it affects, it produces the greatest amount of good for the greatest number. When an action affects the majority adversely, it is morally wrong. Applying the utilitarian standard requires (1) a determination of which individuals will be affected by the action in question; (2) an assessment, or cost-benefit analysis, of the negative and positive effects of alternative actions on these individuals; and (3) a choice among alternatives that will produce maximum societal utility. Ethical standards may also be based on a concept of duty—which postulates that the end can never justify the means and human beings should not be treated as mere means to an end. But ethical decision making in a business context is not always simple, particularly when it is determined that an action will affect, in different ways, different groups of people: shareholders, employees, society, and other stakeholders, such as the local community. Thus, another factor to consider is to whom the firm believes it owes a duty.

ANSWERS TO REAL-WORLD CASE PROBLEMS

2–3A. ***Business ethics***

Ethics is the study of what constitutes right and wrong behavior. It is a branch of philosophy focusing on morality and the way moral principles are derived and implemented. Ethics has to do with the fairness, justness, rightness, or wrongness of an action. Those who study ethics evaluate

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what duties and responsibilities exist or should exist for its practitioners. The circumstances set out in this problem underscore the importance of ethics by illustrating the consequences of engaging in ethical misconduct. Those consequences can extend beyond the short run.

Clearly, Glass engaged in ethical misconduct. By fabricating material for more than forty articles for *The New Republic* magazine and other publications whose reputations are founded on truth, Glass betrayed the trust of his editors. He further behaved unethically by fabricating supporting materials to delude *The New Republic's* fact checkers. And once he was suspected, he tried to avoid detection. Later, based on these misdeeds and others, the California Supreme Court refused to admit Glass to the California bar.

Does Glass deserve a "second chance"? Based on the facts in this problem, it can be argued that no, he does not—he had more than one "second chance" and blew them all. This is indicated by the California Supreme Court's citation of "numerous instances of dishonesty and disingenuousness" during Glass's "rehabilitation" following "the exposure of his misdeeds." From a more forgiving perspective, it could be argued that he does deserve another chance—because of his misdeeds, his every move will be closely scrutinized and any misconduct would most likely be swiftly spotted and thwarted.

In the actual case on which this problem is based, Glass had earlier applied for, and been denied, admission to the New York bar. Then, as stated in the facts, on Glass's application to the California bar, the California Supreme Court denied him.

2–4A. *Business ethics*

Business ethics might have been violated in these circumstances by Mark Ramun, John Ramun, and the employees and managers of Gensis.

The "tense relationship" between John and Mark at Allied may have been caused or exacerbated by either or both of them. And instead of confronting whatever it was that made their relationship "tense," they may have exacted revenge—John by forcing Mark out of the firm, or Mark by leaving it, after ten years. Of course, this is speculation.

What is not speculation, however, is that Mark took 15,000 pages of Allied's documents on DVDs and CDs (trade secrets) when he left the firm. This act was likely a violation of the law (theft or misappropriation) and clearly a violation of business ethics. Later, Mark joined Allied's competitor, Genesis Equipment & Manufacturing, Inc. Genesis soon developed a piece of equipment that incorporated elements of Allied equipment. This points to a second violation of the law and ethics (use of stolen property) by both Mark and Genesis. Mark appears to have been competing against his family in the marketplace and trying to sell his products through another company. Assuming that Genesis profited from its sale of the equipment, this would have caused losses to Allied and unjustly enriched Genesis. If Mark was paid a bonus or given a promotion, he too would have gained undeservedly.

In the actual case on which this problem is based, Allied filed a suit in a federal district court against Genesis and Mark for misappropriation of trade secrets. A jury awarded Allied more than $3 million in damages, but the court issued a judgment as a matter of law in favor of the

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defendants. On appeal, the U.S. Court of Appeals for the Sixth Circuit reversed. "It is neither speculative nor conjectural that Genesis unjustly benefitted from its use of Allied's trade secrets."

2–5A. ***Ethical misconduct***

Ethics has to do with the rightness or wrongness of actions. Business ethics focuses on what is right and wrong in the business world. Business ethics can be more complicated than personal ethics. In the situation described in this problem, the son engaged in unethical personal and business conduct. His personal misconduct included the use of his father's Social Security number to obtain a credit card. His business misdeeds included the misrepresentation to obtain the $350,000 loan. Producing forged documents to show his father that the loan had been paid was both a personal and a business breach of ethics. In each instance, the son did not tell the truth. The son perpetrated fraud on the lender and on his father. These circumstances call for a judgment against the son.

The son acted alone—the father did not contribute to the fraud nor ratify the son's misdeeds—and neither the father nor the partnership benefited from the fraud. By confronting the son, the father arguably attempted to repudiate the misconduct. These factors indicate that a judgment in favor of the father is warranted.

In the actual case on which this problem is based, the court entered a judgment in favor of Adams against the son, and a judgment in favor of the father against Adams. On Adams's appeal, a state intermediate appellate court affirmed this result.

2–6A. ***Ethics and the law***

The law does not codify all ethical requirements. A firm may have acted unethically but still not be legally accountable unless the party that was wronged can establish some basis for liability. Rules of law are designed to require plaintiffs to prove certain elements that establish a defendant's liability in order to recover for injuries or loss. Ethical codes and internal guidelines may have significance in evaluating a company's conduct, but they are not rules of law—a violation of a company policy is not a basis for liability.

In this case, Havensure had the burden of proving liability. Prudential's violation of its own company guideline was clearly wrongful—and might be a matter of concern for insurance regulators—but this misconduct did not create an obligation to Havensure. Havensure cannot establish a cause of action against Prudential for violating its own policy.

In the actual case on which this problem is based, the court ruled in Prudential's favor.

ANSWERS TO ETHICAL QUESTIONS

2–7A. ***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.

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2–8A. ***Social responsibility***

It could be argued that the defendants have an ethical responsibility to society to voluntarily take steps to reduce the availability of their products to meth makers. This might have become a more certain obligation once the defendants were aware that their products were used in the manufacture of meth. Retailers might have been asked to place the products behind the counter or lock them in display cases and limit sales or require consumers to sign for purchases. Retailers might have been educated about the suspicious behavior of buyers with illegal intent. (These measures were imposed as federal regulations in 2005.) The defendants might have developed alternative medications that did not contain ephedrine or pseudoephedrine.

It could also be argued that the defendants have an ethical responsibility to their shareholders and other stakeholders in their companies to fight regulatory efforts to limit the availability of their products so they could continue making profits. The central purpose of their businesses is to make money, not to affect social change. And the effects on society of the meth epidemic are not the natural and foreseeable consequences of the sales of the defendants' products.

In the actual case, the court compared the counties' claims to other plaintiffs' attempts to recover from gun manufacturers the costs associated with the criminal use of guns. In terms of legal liability, the circumstances connecting the sales of the medications to the provision of government services were too weak for the counties to recoup their costs from the defendants on a theory of implied contract. Also, the sales of the medications were legal, the operations of the STLs were not, the latter were not likely consequences of the former, and thus, in terms of proximate cause for tort liability, the costs to the counties were not reasonably foreseeable. The suit was dismissed.

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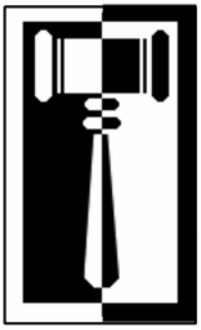
Chapter 2



Ethics in Business

INTRODUCTION

Among the concepts examined in this chapter are 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.

This chapter also presents issues that are involved in determining business ethical responsibility. Business ethics involves the application of ethical standards to business activities.

Ultimately, the goal of this chapter is to provide students with basic tools for analyzing ethical and social responsibility 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?***

LECTURE OUTLINE FOR THIS CHAPTER

I. The Importance of Business Ethics

A. What Is Business Ethics?

B. Why Is Business Ethics Important?

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II. Setting the Right Ethical Tone

- **A. The Importance of Ethical Leadership**
- **B. Ethical Codes of Conduct**
- **C. Corporate Compliance Programs**
- **D. Conflicts and Trade-Offs**

III. The Sarbanes-Oxley Act

IV. Business Ethics and the Law

- **A. Laws Regulating Business**
- **B. "Gray Areas" in the Law**

V. Approaches to Ethical Reasoning

- **A. Duty-Based Ethics**
  - **1. Religion**
  - **2. Philosophy**
  - **3. The Principle of Rights**
- **B. Outcome-Based Ethics: Utilitarianism**
- **C. Corporate Social Responsibility**
  - **1. The Stakeholder Approach**
  - **2. Corporate Citizenship**
  - **3. A Way of Doing Business**

VI. Business Ethics and Social Media

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 and Violations**

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DETAILED CHAPTER OUTLINE

I. The Importance of 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 INPORTANT?

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.

ADDITIONAL BACKGROUND—

Guidelines to Making Ethical Business Decisions

Guidelines for evaluating whether a decision or an action is ethical can be found in the law, business rules and procedures, social values, an individual's conscience, an individual's promises and obligations to others, and personal or societal heroes. An action is most likely ethical if it is consistent with the law, or at least the "spirit" of the law, as well as company policies, and if it can survive the scrutiny of one's conscience and the regard of one's heroes without betraying one's commitments to others.

These guidelines include—

- *The law*: Is the action you are considering legal?
- *Business rules and procedures*: Is the action you are considering consistent with company policies and procedures?
- *Social values*: Is your proposed action consistent with the "spirit" of the law, even if it is not specifically prohibited?
- *Your conscience*: How does your conscience regard your plan? Could your plan survive the glare of publicity?
- *Promises to others*: Will your action satisfy your commitments to others, inside and outside the firm?
- *The law*: Is the action you are considering legal?

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 the same ethical standards to themselves and their company's employees.

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- Employees take their cues from management. Ethical conduct can be furthered by not tolerating unethical behavior, setting realistic employee goals, and periodic employee review.

B. 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.

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. 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.

IV. 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.

CITATION—

REAL-WORLD CASE EXAMPLE

This feature is based on the actual case of *Scott v. Carpanzano,* 2014 WL 274493 (5th Cir. 2014). In reviewing this example, you might like to discuss the following points:

Did Carmela Carpanzano meet the minimum acceptable standard for ethical business behavior? Explain. The minimum acceptable standard for ethical business behavior is compliance with the law. This is sometimes called the moral minimum. If a person only complies with the law, he or she is behaving at the lowest ethical level society accepts. And simply because an action is legal does not mean it is ethical.

In this case, Carmela appears to have met these standards at their lowest level—she did not participate in the fraud against Scott and her lack of participation in the ensuing litigation can be ascribed to her reliance on her father Salvatore to protect her interests. As arguably misplaced as that reliance might have been, she seems to have been truthful and straightforward with the court.

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Suppose that Carmela had been an active participant in her father's business. Would the result have been different? Yes, and the court in its opinion indicated this by affirming the liability of Salvatore's spouse Marisa who, in contrast to Carmela, played an active role in the Scott transactions and whom the lower court included in the default judgment against the defendants. Of course, even if Carmela had participated in the fraud against Scott, if she had relied on her father to protect her interests in the litigation, as she did in the actual case, she would not likely have been held to have willfully defaulted.

Are the defendants' actions likely to affect their ability to profit from their business in the long run? Any successful business has a plan to attain certain goals in the short run and in the long run. In many, if not most situations, the overriding objective is profit maximization. In attempting to maximize profits, however, businesspersons need to distinguish between short- and long-run profit maximization. In the short run, a business may increase its profits by engaging in misconduct. In the long run, however, because of civil suits, criminal charges, settlements, judgments, and bad publicity, such unethical conduct will cause profits to suffer. Overemphasizing short-term profit is the most common cause of ethical problems in business.

In the facts of this case, Salvatore opted for short-run profits by engineering wrongful transfers and expenditures of Scott's money. Due to the judgment of compensatory and punitive damages against Salvatore, and the subsequently likely bad publicity, the profits of his business will be sorely affected going forward.

ADDITIONAL CASES ADDRESSING THIS ISSUE —

Unethical and Illegal Business Conduct

Other cases involving **unethical and illegal business conduct** include the following:

- *United States v. Anderson,* 580 F.3d 639 (7th Cir. 2009): The nominal president of a company, with authority over its finances, met weekly with one of the men running it to discuss operations and knew that it was misleading customers, supporting a conviction for wire fraud, mail fraud, and conspiracy.

- *United States v. Maxwell,* 579 F.3d 1282 (11th Cir. 2009): A fraudulent scheme to obtain construction contracts set aside for socially and economically disadvantaged companies resulted in a conviction for mail fraud, wire fraud, and conspiracy to commit mail and wire fraud.

- *United States v. Ware,* 577 F.3d 442 (2d Cir. 2009): The defendant issued, edited, or approved press releases with false and misleading statements about companies in which he held stock; sold the stock for substantial profits following the releases when the price rose; and was convicted for securities fraud and conspiracy to commit securities fraud and wire fraud.

- *United States v. Brockenborrugh,* 575 F.3d 726 (D.C. Cir. 2009): A scheme to obtain real property for a deflated price supported a conviction for wire fraud and conspiracy to commit wire fraud, in circumstances that included a forged deed and the defendant's impersonation of a U.S. marshal.

- *United States v. Carbo,* 572 F.3d 112 (3d Cir. 2009): A private contractor was convicted of conspiracy to commit honest services mail fraud, in connection with a scheme to conceal conflicts of interest in the awarding of government contracts by a municipal official.

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- *United States v. Stephens,* 571 F.3d 401 (5th Cir. 2009): A conviction for conspiracy, wire fraud, and identity theft was based on a scheme to obtain donations for hurricane relief through a bogus Web site purporting to be a charitable organization.

- *United States v. Wyatt,* 561 F.3d 49 (1st Cir. 2009): A scheme to facilitate sizable loans to high-risk borrowers and retain substantial escrow payments from the borrowers led to a conviction for conspiracy to commit wire fraud.

- *United States v. Lewis,* 557 F.3d 601 (8th Cir. 2009): The secretive receipt of a $1.4 million payment from a charitable organization that the recipient knew was misrepresenting its deteriorating financial condition led to a conviction for mail fraud, wire fraud, bank fraud, conspiracy, and money laundering.

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

In the law, there are many "gray areas" in which it is difficult to predict how a court will rule. A company is more likely to succeed in a legal dispute if it can show that it acted ethically, responsibly, and in good faith.

ENHANCING YOUR LECTURE—

9 "SUCKS" SITES—CAN THEY BE SHUT DOWN?

In today's online environment, a recurring challenge for businesses is how to deal with cybergripers—those who complain in cyberspace about corporate products, services, or activities. For trademark owners, the issue becomes particularly thorny when cybergriping 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 Lavalle, alleging that Lavalle 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

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similar or identical trademark. Would consumers mistakenly believe that Lavalle's sites were operated by Bear Stearns? In the court's eyes, no. The court concluded that Lavalle'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 cybergripers, 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 cybergriping 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 cybergriping 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?

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

V. 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. These standards are generally absolute.
- 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

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out of the theological doctrines of French Protestant reformer John Calvin (1509-1564).

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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 Konigsberg, 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

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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 Konigsberg. 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

Utilitarianism focuses on the consequences of an action, not its nature or a set of moral values or religious beliefs. An action is morally correct, or "right," when it produces the greatest amount of good for the greatest number of individuals. Applying this theory requires—

- A determination of who will be affected.
- A cost-benefit analysis—an assessment of the negative and positive effects on those affected.
- A choice among alternatives that will produce the 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.

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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.

VI. Business Ethics and Social Media

Some employers review job candidates' Facebook pages, blogs, and tweets. Some may reject candidates who do *not* participate in social media. Judging a job candidate based on what she or he does outside of the workplace can be seen as unethical.

VII. Business Ethics on a Global Level

There are important ethical differences among, and within, nations.

ENHANCING YOUR LECTURE—

9 **GOOGLE CHINA** **88**

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

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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 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. businesses. U.S firms usually refuse to deal with certain suppliers or arrange to monitor their workplaces to make sure that the workers are not being mistreated.

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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 and Violations

- Accountants are subject to penalties for making false statements in records or accounts.
- 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.

LINKING BUSINESS 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

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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.

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***

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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. It might be pointed out that in a capitalist system it is essential that accurate information be disseminated to avoid any wasting of assets. Partly for this reason, an independent check on an enterprise's management by auditors benefits everyone with an interest in the business.

6. 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 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

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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, form 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.

10. ***What is the difference between legal and ethical standards? How are legal standards affected by ethical standards?*** Legal standards are greatly affected by ethical standards, and there are areas common to both. Killing another human being, for example, is rarely sanctioned by law and is commonly prohibited by religious and secular beliefs. Legal and ethical standards are not the same, however. The law does not codify all ethical requirements. An action might be legal but unethical. Compliance with the law does not always equate with ethical behavior.

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?***

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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?***

ADDITIONAL QUESTIONS—

GAME POINTS

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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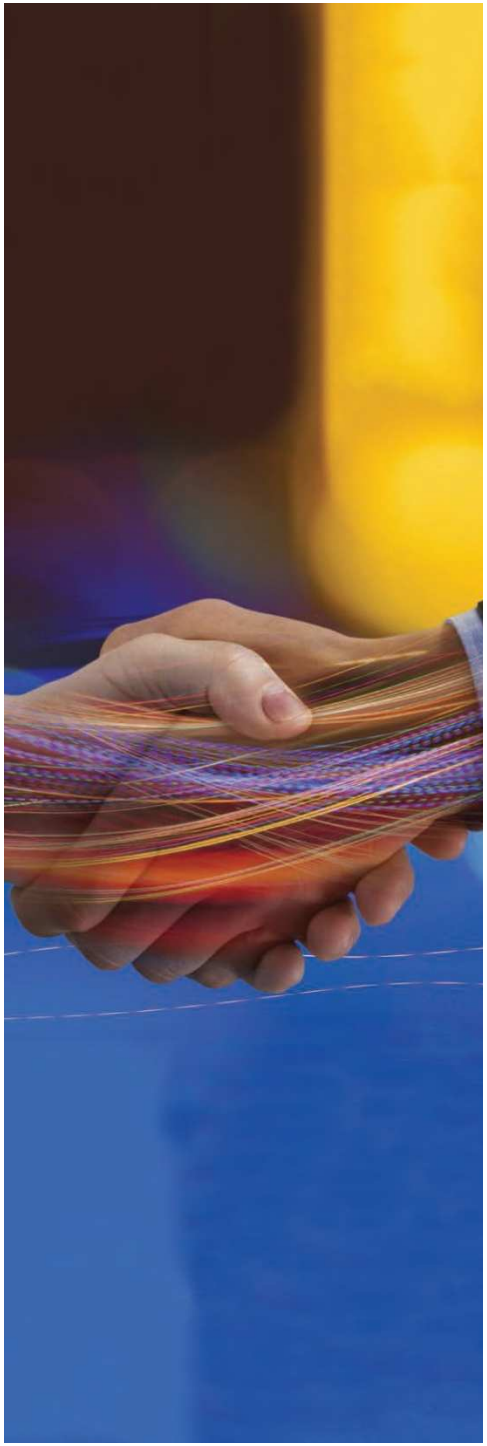

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BUSINESS LAW

TEXT & EXERCISES, 8E

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Ethics in Business

Chapter 2

Chapter Outline

2-1 The Importance of Business Ethics

2-2 Setting the Right Ethical Tone

2-3 The Sarbanes-Oxley Act

2-4 Business Ethics and the Law

2-5 Approaches to Ethical Reasoning

2-6 Business Ethics and Social Media

2-7 Business Ethics on a Global Level

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Learning Outcomes

1. Define business ethics, and explain its relationship to personal ethics.
2. State how businesspersons can discourage unethical behavior.
3. Explain the relationship between law and ethics.
4. Compare and contrast duty-based ethics and utilitarian ethics.
5. Identify examples of ethical problems in the global context.

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2-1 The Importance of Business Ethics

- 2-1a What Is Business Ethics?
  - Business ethics: A consensus of what constitutes right or wrong behavior in the world of business and how moral principles are applied by businesspersons.
- 2-1b Why Is Business Ethics Important?

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2-2 Setting the Right Ethical Tone

- 2-2a The Importance of Ethical Leadership
- 2-2b Ethical Codes of Conduct
- 2-2c Corporate Compliance Programs
- 2-2d Conflicts and Trade-offs

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2-3 The Sarbanes-Oxley Act

1. To oversee the audit of companies, or issuers, whose securities are sold to public investors in order to protect the interests of investors and the public interest.
2. To register public accounting firms that prepare audit reports for issuers.

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2-4 Business Ethics and the Law

- 2-4a Laws Regulating Business
- 2-4b "Gray Areas" in the Law

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2-5 Approaches to Ethical Reasoning

- 2-5a Duty-Based Ethics
  - Religion
  - Philosophy
  - The Principle of Rights
- 2-5b Outcome-Based Ethics: Utilitarianism
  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.
  3. A choice among alternative actions that will produce the greatest positive benefits for the greatest number of individuals.

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2-5c Corporate Social Responsibility

- The Stakeholder Approach
- Corporate Citizenship
- A Way of Doing Business

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2-6 Business Ethics and Social Media

- Businesses face unique ethical issues with respect to social media platforms.
- Hiring decisions

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2-7 Business Ethics on a Global Level

- 2-7a Monitoring the Practices of Foreign Suppliers
- 2-7b The Foreign Corrupt Practices Act
  - Bribery of Foreign Officials
  - Accounting Requirements and Violations

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FACING A LEGAL PROBLEM

Golden West

- Q: Is it legal for Golden West to keep secret its expectations from the employees?
- A: No. Under federal law, it is illegal for an employer that provides retirement benefits to deceive the recipients in order to save the employer money at the recipients' expense.
- Q: Is it ethical for Golden West to keep its expectations secret?
- A: No. Although some groups, including the firm's owners and some current employees, could benefit in the short term from Golden West's actions, compliance with the law is regarded as the moral minimum.

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