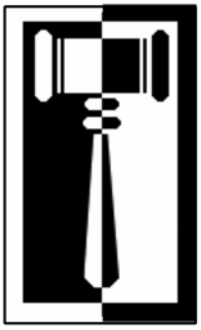
Business Law Text and Exercises 9th edition Miller Solutions Manual

SKU: 9781337624657-SOLUTIONS

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.

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?

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

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
  A. The Public Company Accounting Oversight Board
  B. Enforcement and Penalties
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

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

A. Monitoring the Practices of Foreign Suppliers

B. The Foreign Corrupt Practices Act

1. Bribery of Foreign Officials

2. Accounting Requirements and Violations

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 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.

ADDITIONAL BACKGROUND—

Ethical Business Decisions

A decision or 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.

Thus, 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.

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?

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

- *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?

A practical method for investigating and solving ethical problems can include five steps.

- *Inquiry*: Identify the parties, specify the problem, and list the relevant ethical principles.
- *Discussion*: Put together a list of action options and resolution goals.
- *Decision*: Come to a consensus decision on an action plan.
- *Justification*: Attach reasons to each proposed action and ask whether the corporate stakeholders will accept those reasons.
- *Evaluation*: Consider whether the solution satisfies corporate, community, and individual values.

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.
- Employees take their cues from management. Ethical conduct can be fostered 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).

CITATION—

REAL CASE

This feature is based on the actual case of *Al–Dabagh v. Case Western Reserve University*, 777 F.3d 355 (6th Cir. 2015). In reviewing this example, you might like to discuss the following points:

In this case, Case Western Reserve University School of Medicine decided that Al–Dabagh lacked professionalism and refused to give him a diploma. Is it appropriate to assess professionalism so early in a person's career? Yes. As the U.S. Court of Appeals for the Sixth Circuit observed in the *Al-Dabagh* case, "Professionalism has been a part of the doctor's role since at least ancient Greece." And the court explained that "it is entirely reasonable to assess the presence of professionalism early. For once a medical student graduates, we must wait for a violation before we may punish the absence of it."

Suppose that Case Western had tolerated Al-Dabagh's conduct and awarded him a diploma. What impact might this result have had on other students at the school? Why? Al-Dabagh's expulsion for unprofessional, unethical behavior stood as an example for other students. If Case Western had tolerated Al-

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

Dabagh's conduct and awarded him a diploma, it is likely that other students would have taken their cue from this result to engage in their own misconduct, and they would have expected their misbehavior to be accepted.

Just as the administration of a university sets the ethical tone of the school by its adoption and enforcement of an ethics policy, so does management's behavior set a firm's ethical tone. Top management demonstrates its commitment to ethical decision making by maintaining an ethical workplace. Discharging an employee for ethical reasons, for instance, acts as a deterrent to unethical behavior in the workplace.

A manager who is not committed to an ethical workplace is not likely to succeed in creating one. For example, a manager who looks the other way when he or she knows about an employee's unethical behavior sets an example—one indicating that transgressions will be tolerated.

ADDITIONAL CASES ADDRESSING THIS ISSUE—

Enforcing University Ethics Codes

Cases involving the **enforcement of ethics codes in universities** include the following.

- *Halpern v. Wake Forest University Health Sciences*, 669 F.3d 454 (4th Cir. 2012) (dismissing a medical student for lack of professionalism is "academic").
- *Brown v. Li,* 308 F.3d 939 (8th Cir. 2002) (refusing to approve a Ph.D. thesis because its acknowledgement section was unprofessional is "academic").
- *Richmond v. Fowlkes,* 228 F.3d 854 (8th Cir. 2000) (dismissing a student for "non-cognitive" problems like "sleeping in" is "academic").
- *Harris v. Blake,* 798 F.3d 419 (10th Cir. 1986) (dismissing a student for failing to attend practical class sessions is "academic").
- *Perez v. Texas A&M University at Corpus Christi,* __ F.3d __, 2014 WL 5510955 (5th Cir. 2014) (dismissing a student for tardiness is "academic").

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.

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

- *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.

- *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.

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

A. THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

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.

B. ENFORCEMENT AND PENALTIES

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.

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

IV. Business Ethics and the Law

The minimal acceptable standard for ethical business behavior—the *moral minimum*—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. 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? 88

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 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

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

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?

---

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 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

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

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 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

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

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.

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

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

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. The 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—

GOOGLE CHINA

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

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

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. 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.

B. THE FOREIGN CORRUPT PRACTICES ACT

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

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

ENHANCING YOUR LECTURE—

👎👎 ❾ BRIBERY AND THE FOREIGN CORRUPT PRACTICES ACT ❽❽ 👎👎

Many countries have followed in the footsteps of the United States by passing their own anti-corruption laws, sometimes similar to our Foreign Corrupt Practices Act. But, other countries are often not as diligent in weeding out corruption of government officials, for instance.

MEXICO FACES A CORRUPTION ISSUE

Recently, Mexico passed an anti-corruption law that prevents hospital administrators from approving contracts. Medical device supplier Orthofix International NV, based in Texas, faced a problem after passage of the new law. It wanted to continue providing bone-repair products to Mexico. It therefore bribed regional government officials instead of hospital administrators. For years, Orthofix successfully paid over $300,000 in bribes to Mexican officials to retain government health care contracts. Employees at Orthofix called these bribes "chocolates." They generated almost $8.7 million in revenues for the company

THE BRIBING PROCESS

Orthofix's Mexican subsidiary, Promeca, regularly paid cash and gifts, such as vacation packages, televisions, and laptops, to hospital employees in order to secure sales contracts. These employees then submitted falsified receipts for imaginary expenses such as meals and new car tires. As the bribes became too large to hide in this manner, Promeca's employees falsely attributed the payments to promotional and training expenses. After the passage of the anti-corruption law, Mexico formed a special national committee to approve medical contracts. Promeca employees then simply bribed committee members to ensure that they were awarded the contracts.

NO PREVENTION TRAINING OR COMPLIANCE POLICY

It turns out that Orthofix did not have Foreign Corrupt Practices Act prevention training or a compliance policy in place in Mexico. Orthofix did create codes of ethics and anti-bribery training materials, but they were only distributed in English. When Orthofix managers found out about Promeca's over-budget expenses, they inquired, but initially did not do anything further.

THE U.S. GOVERNMENT INVESTIGATES

Well after Orthofix learned of the payments, it self-reported them to the Securities and Exchange Commission (SEC). After negotiations with the SEC, Orthofix agreed to terminate the Promeca executives who were engaged in bribing and to end Promeca's operations. Orthofix required mandatory training for all employees and strengthened its auditing of company payments. In addition, the company paid over $7 million in penalties.

CRITICAL THINKING

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Because managers are potentially responsible for all actions of their foreign subsidiaries whether or not they knew of the illegal conduct, what actions should Orthofix's upper management have taken before this corruption scandal came to light? All anti-corruption prevention training materials and compliance policies should have been translated into Spanish and presented to all Promeca employees. Additionally, after the unusual expenses at Promeca were discovered, Orthofix's upper management should have immediately engaged into a thorough investigation rather than waiting.

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.

☞ CONFLICT PRESENTED ☜

QUESTIONS

When discussing this chapter's Conflict Presented, 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

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

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.

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 businessper-

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

sons 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. 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 analytical reasoning to ethical problems that they apply to considering and deciding legal issues.

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

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?*** 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 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.

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

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 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 everyone would 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?***

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

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?*** 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.

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

Answers to Issue Spotters, Straight to the Point, Real Law, and 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."

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

ANSWERS TO STRAIGHT TO THE POINT QUESTIONS

1A. ***Why is the study of business ethics important?*** An understanding of business ethics is important to the long-run viability of a business firm and to the well being of the firm's officers, managers, and employees. A business firm also owes duties to a variety of "stakeholders" whom the firm's decisions and activities may affect significantly.

2A. ***How can businesspersons encourage ethical conduct in their workplaces?*** Ethical leadership is important to create and maintain an ethical workplace. Managers can set standards, and apply those standards to themselves and their firm's employees. And the employees can encourage their co-workers to act ethically by following those standards.

3A. ***How does the Sarbanes-Oxley Act help to prevent unethical management decisions?*** The Sarbanes-Oxley helps to prevent unethical business management decisions by providing for greater government oversight of public accounting practices. For those firms that violate the act, sanctions can be imposed—accounting licenses can be suspended and financial penalties can be assessed.

4A. ***How should business decision makers proceed when the legality of a particular action is not clear?*** When business firms cannot predict with a fair amount of certainty whether a given action would be legal, the decision makers should proceed with caution and evaluate an action and its consequences from an ethical perspective.

5A. ***What are the two fundamental approaches by which ethical business reasoning has traditionally been characterized?*** One approach defines ethical behavior in terms of duty, which implies the existence of certain rights. The other approach determines what is ethical in terms of the consequences, or outcome, of a given action.

6A. ***What is the concept of corporate social responsibility?*** Groups concerned with employee safety and other causes often urge corporations to act responsibly with respect to those causes. That corporations have such a responsibility is the concept of corporate social responsibility.

7A. ***How might social media raise ethical questions with respect to business hiring decisions?*** An online search of a job applicant can reveal the prospective employee's postings, photos, videos, blogs, and tweets—or the absence of a social media presence. A determination of the candidate's suitability for the job can be influenced by the display of these outside activities or by the lack of a display. Is this ethical?

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

ANSWERS TO REAL LAW QUESTIONS

2–1A. *Business ethics*

Ethical behavior on the part of employees is an important issue—as important as the ethics of their employers. In any set of employment circumstances, an unethical employee may engage in wrongful conduct.

In this problem, Priscilla Dickman worked for the University of Connecticut Health Center. Her employer received complaints that she was getting non-business-related phone calls and that she was absent from her work area when she should have been present. Based on materials found on her work computer, the state investigated her for violations of state law. She was convicted of engaging in "personal business for financial gain on state time utilizing state resources." Separate investigations resulted in convictions for forgery and filing an unrelated fraudulent insurance claim She "retired" from her job and filed a claim against the health center, alleging that her former employer had initiated the investigations to harass her and force her to quit. The claim was dismissed for lack of "credible evidence or legal support."

All of Dickman's acts noted in these facts can be perceived as unethical—the conduct complained of to her employer, the activities revealed by the state's investigations, and the filing of the claim against her employer. The factor that these acts have in common is *fraud*. The conduct for which she was convicted of engaging in "personal business for financial gain on state time utilizing state resources" was presumably undertaken without her employer's knowledge or there would have been no conviction. The activities on which her other convictions were based would also have involved deceit. And the reasons for the dismissal of her claim indicate that it, too, was knowingly false.

In the actual case on which this problem is based, Dickman appealed her claim's dismissal. A state intermediate appellate court affirmed it.

2–2A. *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 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.

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

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.

2–3A. ***Business ethics***

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

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 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."

ANSWERS TO ETHICAL QUESTIONS

2–4A. ***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.

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

Business Law Text and Exercises 9th edition Miller Solutions Manual

2–5A. ***Ethical leadership***

Managers set the standards for attitudes and behavior in a workplace. Managers who are not committed to maintaining an ethical workplace will not succeed in creating one. Employees take their lead from managers. If managers act unethically, employees will do likewise.

In this problem, Mark Clapp, the director of a city's Public Safety Department (PSD), made "inappropriate statements" to a subordinate about the qualifications and conduct of Albert DiBrito, the PSD's deputy director. Meanwhile, DiBrito made similarly "inappropriate statements" about Clapp to other PSD employees. Clapp's statements seem to have led to DiBrito's.

There are a number of steps that the city's manager Richard Lewis could take to prevent future conflicts. Disciplinary actions—suspension without pay or even termination—represent one set of possibilities. Incorporating an ethical code of conduct into the city's statements of policy, or at least prohibiting such statements as contributed to the dispute here, constitute other courses of action.

Whatever steps Lewis takes, however, he should do something. To do nothing would be perceived by other employees as an endorsement of Clapp's and DiBrito's behavior. This would encourage, not discourage, more conflict.

In the actual case on which this problem is based, Lewis suspended Clapp for five days without pay and fired DiBrito. DiBrito filed a suit in a federal district court against the city, alleging a violation of his constitutional rights. The court issued a summary judgment in the city's favor. On DiBrito's appeal, the U.S. Court of Appeals for the Sixth Circuit affirmed.

© 2019 Cengage Learning. All Rights Reserved. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part.

BUSINESS LAW

TEXT & EXERCISES

NINTH EDITION

ROGER LeROY MILLER
WILLIAM ERIC HOLLOWELL

CHAPTER 2 ETHICS IN BUSINESS

Business Law Text and Exercises 9th edition Miller Solutions Manual

Learning Outcomes

LO1
- Discuss how businesses can discourage unethical behavior.

LO2
- Explain the relationship between law and ethics.

LO3
- Compare duty-based ethics and utilitarian ethics.

LO4
- Identify some ethical problems in the global context.

© 2019 Cengage. All rights reserved.

The Importance of Business Ethics (1)

- What is Business Ethics?
  - Ethics is the study of right and wrong behavior; whether an action is fair, right or just.

© 2019 Cengage. All rights reserved.

The Importance of Business Ethics (2)

- What is Business Ethics?
  - In business, ethical decisions are the *application* of moral and ethical principles to the marketplace and workplace.

© 2019 Cengage. All rights reserved.

The Importance of Business Ethics (3)

- Why is Business Ethics Important?
  - Directors and officers owe a complex set of ethical duties to the company, shareholders, customers, community, employees, and suppliers.

© 2019 Cengage. All rights reserved.

The Importance of Business Ethics (4)

- Why is Business Ethics Important?
  - When these duties conflict, ethical dilemmas are created.

© 2019 Cengage. All rights reserved.

LO1

Setting the Right Ethical Tone (1)

- The Importance of Ethical Leadership.
  - Attitude of top management.
  - Management must be committed to creating an ethical company.
  - Management must deal with unethical issues quickly.

© 2019 Cengage. All rights reserved.

LO1

Setting the Right Ethical Tone (2)

- Ethical Codes of Conduct.
  - Explicitly states a company's ethical priorities.

© 2019 Cengage. All rights reserved.

LO1

Setting the Right Ethical Tone (3)

- Corporate Compliance Programs.
  - Ethical codes of conduct just one part of a comprehensive program.
  - Other components include: ethics committee, ethical training programs, and internal audits.

© 2019 Cengage. All rights reserved.

LO1

Setting the Right Ethical Tone (4)

- Corporate Compliance Programs.
  - Must be integrated throughout firm.
  - Coordinated and monitored by a committee separate from other corporate departments.

© 2019 Cengage. All rights reserved.

LO1

Setting the Right Ethical Tone (5)

- Conflicts and Trade-Offs.
  - Firms have ethical obligations to both internal and external stakeholders.
    - Internal: staff and shareholders.
    - External: community.

© 2019 Cengage. All rights reserved.

The Sarbanes-Oxley Act (1)

- Attempts to increase corporate responsibility by:
  - Stricter disclosure requirements.
  - Harsher penalties for legal violations.
  - Corporate officers take responsibility for financial statements and SEC reports.
  - CEOs and CFOs must personally certify reports.

© 2019 Cengage. All rights reserved.

The Sarbanes-Oxley Act (2)

- The Public Company Accounting Oversight Board.
  - Oversee audits to protect investors and public.
  - Register public accounting firms; establishes standards relating to preparation of audit reports.

© 2019 Cengage. All rights reserved.

The Sarbanes-Oxley Act (3)

- Enforcements and Penalties.
  - Enhanced penalties, as high as $15 million for intentional violations.
  - Prohibits destroying or falsifying records with the intent to obstruct or influence a federal investigation or in relation to bankruptcy proceedings.

© 2019 Cengage. All rights reserved.

Business Ethics and the Law (1)

- Moral Minimum.

LO2

  - Minimum standard for ethical business behavior, really means bare compliance with the law.
  - Some actions may be legal, but not ethical.

© 2019 Cengage. All rights reserved.

Business Ethics and the Law (2)

- Laws Regulating Business.
  - Extensive government regulations.
  - Ignorance does not dismiss liability.

© 2019 Cengage. All rights reserved.

Business Ethics and the Law (3)

- "Gray Areas" in the Law.
  - When the law is "silent" on an action's legality.
  - In addition, courts decide on a case by case basis, looking for "reasonable" acts or "foreseeable" results.

© 2019 Cengage. All rights reserved.

LO3

Approaches to Ethical Reasoning (1)

- Duty-Based Ethics: derived from religious and philosophical principles.
  - Religion.
  - Philosophy.
  - Principle of Rights.

© 2019 Cengage. All rights reserved.

LO3

Approaches to Ethical Reasoning (2)

- Duty-Based Ethics.
  - Religion.
    - The rightness or wrongness of an action is usually judged according to its conformity to an absolute rule that commands a particular form of behavior.

© 2019 Cengage. All rights reserved.

LO3

Approaches to Ethical Reasoning (3)

- Duty-Based Ethics.
  - Philosophy: Kant.
    - Premised on the belief that general guiding principles for moral behavior can be derived from human nature.
    - The categorical imperative is a central postulate of Kantian ethics.

© 2019 Cengage. All rights reserved.

LO3

Approaches to Ethical Reasoning (4)

- Duty-Based Ethics.
  - Philosophy: Kant.
    - The rightness or wrongness of an action is judged by estimating the consequences that would follow if everyone in a society performed the act under consideration.

© 2019 Cengage. All rights reserved.

LO3

Approaches to Ethical Reasoning (5)

- Duty-Based Ethics.
  - The Principle of Rights.
    - This principle derives from the belief that every duty gives rise to a corresponding right.
    - The belief in fundamental rights is a deeply embedded feature of Western culture.

© 2019 Cengage. All rights reserved.

LO3

Approaches to Ethical Reasoning (6)

- Duty-Based Ethics.
  - The Principle of Rights.
    - The ethicality of an action is judged by how the consequences of the action will affect the rights of others.

© 2019 Cengage. All rights reserved.

LO3

Approaches to Ethical Reasoning (7)

- Outcome-Based Ethics: Utilitarianism.
  - Utilitarianism: action is ethical based on what produces the greatest good for the greatest number of people.

© 2019 Cengage. All rights reserved.

LO3

Approaches to Ethical Reasoning (8)

- Outcome-Based Ethics: Utilitarianism.
  - Cost-benefit analysis is performed to determine the effects of competing alternatives on the persons affected.
  - The best alternative is the one that produces the greatest good for the greatest number.

© 2019 Cengage. All rights reserved.

LO3

Approaches to Ethical Reasoning (9)

- Corporate Social Responsibility.
  - Corporations should be interested in impact on civil rights, environment, consumer protection, employee safety and welfare.

© 2019 Cengage. All rights reserved.

LO3

Approaches to Ethical Reasoning (10)

- Corporate Social Responsibility.
  - Stakeholder Approach.
  - Corporate Citizenship.
  - A Way of Doing Business.

© 2019 Cengage. All rights reserved.

Business Ethics And Social Media

- Businesses now face unique ethical issues with respect to all social media platforms.
  - Hiring decisions may be considered unethical when based on:
    - Online profiles.
    - Lack of online presence.

© 2019 Cengage. All rights reserved.

LO4

Business Ethics on A Global Level (1)

- Frequent conflicts in ethics between foreign and U.S. businesspersons. In some countries:
  - Alcohol and certain foods are forbidden.
  - Little protection for discrimination against women.

© 2019 Cengage. All rights reserved.

LO4

Business Ethics on A Global Level (2)

- Monitoring the Practices of Foreign Suppliers.
  - Corporate watch groups can disseminate information instantly around world.

© 2019 Cengage. All rights reserved.

LO4

Business Ethics on A Global Level (3)

- Foreign Corrupt Practices Act.
  - Bribery of Foreign Officials.
  - Accounting Requirements.

© 2019 Cengage. All rights reserved.