Business and Professional Ethics 9th edition Brooks Solutions Manual

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Business & Professional Ethics for Directors, Executives & Accountants, *9e*

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Chapter 1—Ethics Expectations

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Chapter Questions

1. Why have concerns over pollution become so important for management and directors?

   Because the public perceive that our environment is finite and that our well-being is threatened. In turn they have influenced politicians to enact tougher laws and heavier penalties...up to $2 million/day, with the prospect of personal liability and jail. In addition, U.S. courts have agreed to hear lawsuits brought by foreigners for pollution on foreign soil (see ethics case "Texaco: The Ecuador Issue" in Chapter 1). Finally, pollution can erode the trust necessary to preserve stakeholder support, and this will be seen by stakeholders with resultant negative consequences in consumer and capital markets.

2. Why are we more concerned now than our parents were about fair treatment of employees?

   Our social consciousness is higher due to the reasons listed in Chapter 1.

3. What could professional accountants have done to prevent the development of the *credibility gap* and the *expectations gap*?

   See the discussion on the Treadway, Metcalf and Macdonald Commissions. Also see case "Arthur Andersen's Troubles," in Chapter 2.

4. Why might ethical corporate behavior lead to higher profitability?

   Because attention to ethical concerns can keep corporations out of costly problems such as clean-up of pollution, fines, low morale, and loss of reputation and stakeholder support; and it can open up profitable opportunities such as developing green product lines.

5. Why is it important for the clients of professional accountants to be ethical?

   Because auditors don't check 100% of all transactions and, even if they did, there would be conflicts of interest and other hidden issues which would be found only by chance. Making sure that clients are ethical provides assurance that they will not be hiding things from the auditors or engaging in unethical activities. The value of the auditor's opinion depends upon it.

6. How can corporations ensure that their employees behave ethically?

   By developing ethical corporate cultures based on codes of conduct to provide guidance; training to provide awareness and understanding; monitoring to assure compliance; and rewards or sanctions to reinforce the desired behavior. Also, the top executives should set the best example possible.

7. Why didn't some corporations protect women employees from sexual abuse before 2017–2019?

   Many factors have contributed to changes in workplaces and attitudes toward sexual abuse over the last decade, including the following reasons.

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Sexual abuse was once a taboo subject, but when media reported on sometimes decades-old abuses associated with pedophile priests, residential schools, and sports coaches, etc., taboos were eroded, particularly because abuses had been directed toward boys and men. Public outrage, media appetite, and victims realizing that they were not alone, increased coverage of the topic.

At the same time, cultural norms concerning the roles and treatment of women were changing. The advent of desktop computers even played a role, because corporate employees were expected to type their own documents and not rely on "traditional" secretarial work by women. In professions and workplaces, more and more women were moving into non-traditional jobs. In still male-dominated workplace and professions, women in new roles feared reprisal if they complained of sexual abuse—if, indeed, they could find anyone to complain to. Complaints in male-dominated workplaces—particularly against a high-power or high-profile abuser–may have fallen on deaf ears. As more women gained roles of influence, recognition of workplace discrimination led to employment equity and pay equity programs.

As workplace norms changed, so did cultural ones. Through continued media coverage, people learned more about the pervasiveness of abuse and its recipe: abusers were usually in positions of power and worked to isolate insecure or vulnerable victims and pressure them into secrecy through shame or threats of reprisal. Old attitudes of victim blaming—that women were responsible for or complicit in abuse, and that "No!" did not mean "no"–were being dispelled.

Social media, used as a vehicle by the #MeToo movement in 2017, rocketed the awareness of abuses against women to new heights. The movement spread a feeling of strength-in-numbers and an attitude of "We're not going to take it anymore." Emboldened by widespread support, changing attitudes among women and men, and more women in roles of influence, corporations were forced to appear proactive and intolerant of abuse.

Prior to 2017, there were relatively few instances were powerful men were successfully prosecuted in court with serious fines or prison as outcomes. That all changed with cases involving Bill Cosby (convicted in 2018) and Harry Weinstein (convicted in 2020).[12] Corporations took note, and they took action against executives they formerly excused.

See also the answer to question 13, Chapter 7, page 590: "The #MeToo Movement has finally succeeded in getting women's allegations of sexual abuse to be taken seriously by management and boards of directors. Why did it take so long for this tipping point to be reached?"

8. Should executives and directors be sent to jail for the acts of their corporation's employees?

Yes, they should, if the executives and directors act negligently or without engaging in due

[1] Eric Levenson, "Harvey Weinstein's trial is closely tracking Bill Cosby's. But there's 1 major difference," *CNN.com*, January 28, 2020, https://www.cnn.com/2020/01/28/us/harvey-weinstein-bill-cosby-trial/index.html.
[2] Mike Hayes and Meg Wagner, "Harvey Weinstein found guilty," *CNN.com*, February 24, 2020, https://www.cnn.com/us/live-news/harvey-weinstein-verdict/index.html.

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diligence procedures, which are designed to ensure that reasonable and proper actions are taken.

9. Why are the expectations of a corporation's stakeholders important to the reputation of the corporation and to its profitability?

   Without the support of key or primary stakeholders such as customers and employees, sustained profitability is not possible. A corporation's reputation is based on the elements that such stakeholders find relevant to their support, including credibility, reliability, trustworthiness and accepting responsibility.

10. How can a corporation show respect for its stakeholders?

    By taking their interests into account (respecting them) when making decisions.

11. How can conflicts between the interests of stakeholders be resolved by a corporation's management?

    By displaying sensitivity to each side, ranking the interests involved, and using this ranking to favor the most important, as discussed in the Text, Chapter 4. Stakeholders should be made aware of the ranking and decision process where possible. In the end, tough trade-off decisions may be involved, but stakeholders should have confidence in the process.

12. Why are philosophical approaches to ethical decision making relevant to modern corporations and professional accountants?

    The philosophical approaches to ethical decision making (utilitarianism, deontology, and virtue ethics—see Text, Chapters 3 & 4) are relevant because of stakeholders' greater and growing ethical awareness, sensitivity, and power. Stakeholders can make a difference to the reputations and fortunes of companies and of professional accountants. Their support is needed now more than ever.

13. What are the common elements of the three practical approaches to ethical decision making that are briefly outlined in the chapter?

    The common elements are measures of well-offness, fairness, right(ness), and virtues expected.

14. Is a professional accountant a businessperson pursuing profit or a fiduciary that is to act in the public interest?

    Both, but when there is a conflict between these roles, the professional accountant must place fiduciary duty above personal profit. Otherwise, the public interest will not be protected (which is the primary goal of a professional—see later chapters in the Text, particularly Chapter 6, for discussion).

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15. Will the NOCLAR standards assist or hurt the accounting profession?

For the most part, the NOCLAR standards will assist the accounting profession by bolstering its reputation for serving the public interest. They will:

- Help the profession recover from recent scandals by demonstrating that professional accountants have uniform ethical behavior (Text, pages 10, 15) and stress "…that the primary purpose of professional accountants is to serve the public interest…" (Text, page 15.)
- Help PAs serve the public interest by requiring PAs to internally disclose (and potentially externally disclose) violations or potential violations of law or regulation, by a client or employer, that are not in the public interest.
- Allow them/oblige them to report malfeasance and be pardoned for breaking client confidentiality
- "[W]ill require professional accountants in assurance or in business as employees to report when they discover when their client or employer is not complying with laws or regulations. This will significantly change the role of professional accountants depending on how and when these rules are adopted by the professional body in each jurisdiction. These changes should help reduce the serious expectations gaps that have become apparent between the expectations of public for corporations and the accounting profession." (Text, page 13.)
- "…[W]ill require a professional accountant who discovers or suspects that his or her employer or client is not complying with laws or regulations to report this internally and then externally if no or insufficient action is taken." (Text, page 15.)
- Be included in the 2018 IESBA International Code of Ethics for Professional Accountants (see Text, Chapter 6) to which over 170 professional accounting bodies worldwide including the AICPA, CPA Canada, and ICAEW—as members of the International Federation of Accountants (IFAC), have pledged to harmonize their local codes in the near future. (Text, page 15.)
- May make tax practice less aggressive.

On the negative side:

- Some worry that PAs must know and comply with more and more rules. However, wide acceptance of the NOCLAR standards and harmonization of codes will help reduce this concern.
- Others worry that to avoid being reported upon, companies might hire non-PAs who have no professional obligations. In Canada, the majority of CFO roles are filled by CPAs.

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In the United States, however, an increasing number of CFO positions are being filled by MBAs.[3]

16. Why is it important for a professional accountant to understand the ethical trends discussed in this chapter?

    So that the expectations for business can be understood and so that advice can be given or actions can be screened according to what might be acceptable and desirable, now and in the future, with regard to operations as well as financial matters. Also, the accounting profession is subject to the same set of expectations—and is expected to rise to higher standards of performance–than business.

17. Why should a professional accountant be aware of the Ethics Code of the International Federation of Accountants (IFAC)?

    Because the IFAC Code is the newly defined standard to which all IFAC member organizations, including the AICPA, PA (formerly CICA) and ICAEW, IMA and SMAC have pledged to harmonize their Codes. The IFAC Code contains the common elements to which all professional accountants will adhere worldwide. (See also Text, Chapter 6.)

18. Why is an ethical corporate culture important?

    An ethical corporate culture—also called a culture of integrity–is one in which ethical behavior is considered normal and expected. This behavior is supported by codes, policies, and compliance that can be passed on to employees and agents. Developing and maintaining an ethical corporate culture are now expected aspects of good governance and are, therefore, part of what directors and senior executives must ensure are included in their responsibilities and duties.

19. What three ethics risks must a company guard against, and why?

    From Text, Table 1.7 (Ethics Risks), page 23:

    - **Organizational culture risks** exist when an organization's culture fails to provide sufficient support and guidance to ensure a culture of integrity.
    - **Mindset risks** exist when decision makers, employees, and agents are:
        - improperly motivated, or
        - use ethically unsound rationales for their decisions.

[3] Jamal, Karim. "Developments in the U.S. CPA Profession: Will they be replicated in Canada?" (keynote speech, University of Toronto at Mississauga, September 14, 2018), PAC Annual Conference on Professional Accounting Futures, https://www.utm.utoronto.ca/pac/pac-events/pac-annual-conference-professional-accounting-futures-september-14-2018.

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- **Systemic risks** often originate outside an organization and affect an entire system of activity.

Each of these ethics risks can result in failure to meet the ethical expectations of stakeholders. The consequences can be the loss of reputation, loss of stakeholder support, and prevention of full and/or efficient achievement of strategic objectives. Several topics associated with the management of ethics risks and opportunities, such as developing a culture of integrity, are discussed in the Text, Chapters 4 to 7.

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Case Solutions

Cases Involving Improper Behavior

1. *Selling Only Sugary Drinks* (Chapter 1, page 36)

What this case has to offer

This case looks at actions that might be legal, but not ethical; individual rights versus the common good; and companies that dare to ignore key stakeholders. The case can be examined at a more general level by examining, for example, increases in diabetes and obesity levels; attempts by governments to influence companies to reduce sugar, salt, and fat in their offerings; and companies' willingness—or not—to be influenced.

Teaching suggestions

I find it useful to start off by asking if the class members were surprised to learn how much sugar is in normally consumed sizes of sugary drinks. That raises awareness, and I go on to explore the relationship of sugar to diabetes and obesity problems, and the growing concern for each. I then ask what the ethical issues are in the case, which leads to discussion of the following issues.

The case introduces the conflict between business freedom (the right of the doughnut chain to choose to sell profitable sugary drinks) versus the harm sugary drinks can cause to health and health habits. The company shows a lack of responsibility for the possible health consequences of its products, but it may be satisfying shareholders' demand for profits. In the context of this particular university, the case also suggests that the company ignores customer feedback and refuses to change its offering despite consumer demand for healthy alternatives.

Over the last decade or more, pressure has increased on food companies and fast-food chains to improve the health of their product offerings in order to fight a nearly global increase in diabetes and obesity rates—from New York mayor Michael Bloomberg's 2012 attempt to reduce sugary soda size, to the United Kingdom's 2010 "Public Health Responsibility Deal," to a 2016 Canadian Senate report on taxing sugar. This case offers the opportunity to examine many stakeholders associated with the issue and their often conflicting desires, and the attempts made by governments (e.g., through taxation) and companies (through voluntary measures or all-out opposition, for example, by the American Beverage Association to Bloomberg's proposal) that may or may not have expected or desired outcomes. For example, governments (health-care systems) see rising costs with adverse health outcomes, and reduced productivity. Shareholders want profits, and sugary drinks offer good margins. Some consumers want sugary offerings; others (for example, health-care-associated individuals and associations) see the dangers of those offerings.

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Discussion of ethical issues

1. Why do you think that the doughnut chain continued to sell only sugary soft drinks even though it was under pressure to sell diet soft drinks as well?

   The profit margin on sugary drinks increases with the size of the beverage, because drinks are made by adding water to syrup. The marginal cost of a larger sugary drink is small, so the profit is greater for the larger drink, and the business's owners and/or shareholders need profitability. The profit margin on diet drinks may be smaller if, for example, they are sold as units, rather than on tap. Or, the chain may have made a deal with one drink supplier over another whose offerings include predominantly sugary beverages.

   Henry Ford said about the Model-T produced at the turn of the 20th century that consumers could have any color they wished, as long as it was black. In the fast-food industry, limiting choice can speed up customer flow-through and simplify supply ordering, order filling, storage, employee training, etc., but it is a company-centric decision. Given this particular doughnut chain's customers' reluctance to shop at more than one place when time is limited, the strategy might have been a profitable one in the short term, particularly if the chain had little competition. In the long term, however, especially if product substitution is possible, customers can vote with their feet if they feel their needs are not being met by the doughnut chain. Henry Ford's strategy, for example, was ultimately used against him by a rival company that was more than willing to offer cars in other colors.

2. Was selling only sugary soft drinks ethical?

   Consider the questions of self-interest (the doughnut chain's) versus the common interest (its consumers' health; health problems and societal costs associated with excessive sugar consumption) and consumer feedback (desire for other beverages). It seems that the chain doesn't demonstrate the hypernorm values of compassion or fairness, and lacks responsibility, so its decisions appear to be unethical.

   In the short term, ignoring changing consumer tastes and preferences could be a viable strategy, particularly if consumers have no substitute offerings if the chain has no competition, but over the long term, particularly as more health effects of sugar are exposed, consumer trust in the chain is eroded when it is clear that company interest is greater than consumer interest. Turning its back on a major stakeholder as a long-term strategy will very likely backfire on the company. As noted in the Text, Chapter 1, without the support of key or primary stakeholders such as customers and employees, sustained profitability is not possible. A corporation's reputation is based on the elements that such stakeholders find relevant to their support, including: credibility, reliability, trustworthiness and the taking of responsibility. Not taking their interests into account shows a lack of respect for customers. And where product substitution is possible, consumers can walk away.

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3. Should the university campus officials have forced the doughnut chain to carry diet soft drinks?

Yes, if they want to take an ethical stance and protect their students. However, the university's power to force the doughnut chain to change its product offerings may be limited unless the contract with the chain permits it or is up for renewal. However, if the university really wants to follow some elementary schools, hospitals, and other establishments in developing a healthy food product policy, campus officials may want to try to persuade the chain to offer non-sugar-sweetened drinks. Consumers/students may also provide powerful support by boycotting the chain or, at least, drawing attention to the unhealthy offerings and the chain's denial to offer healthier choices.

Useful Articles, Links, and Videos

"Pepsi gets aggressive on cutting sugar," Alanna Petroff (October 17, 2016), *CNN Money*, http://money.cnn.com/2016/10/17/news/pepsi-sugar-drinks-soda/index.html [Petroff writes that "…two-thirds of [Pepsi's] single serving drinks will have 100 or fewer calories by 2025 as it cuts back on sugar. Currently [2016], less than 40% of its drinks have 100 calories or fewer." In addition, the company says it will reduce saturated fat and sodium in its snack products.]

"Food for thought: Food companies play an ambivalent part in the fight against flab." (December 15, 2012). *Economist*, http://www.economist.com/news/special%2dreport/21568064%2dfood%2dcompanies%2dplay%2dambivalent%2dpart%2dfight%2dagainst%2dflab%2dfood%2dthought . [While a few years old, this article provides graphics and information on voluntary programs by food companies and fast-food chains to improve their offerings while still satisfying shareholders. Given their intentions, how have those companies performed?]

"Introduce sugar tax, ban food and drink ads for kids: Senate obesity report: Number of obese children has tripled, adults has doubled across Canada since 1980," Peter Zimonjic (March 1, 2016*), CBC News*, http://www.cbc.ca/news/politics/senate-obesity-sugar-tax-1.3471469 [Introduces the Canadian senate's obesity report and its recommendations, and counters with failed examples of taxation in other countries.]

World Health Organization, "Global Health Observatory (GHO) data," (2014), http://www.who.int/gho/ncd/risk_factors/overweight/en/ [Interactive website with 2014 data on global overweight, obesity, and body mass index (BMI) data.]

"New York's Ban on Big Sodas Is Rejected by Final Court," Michael M. Grynbaum (June 26, 2014), *New York Times*, http://www.nytimes.com/2014/06/27/nyregion/city-loses-final-appeal-on-limiting-sales-of-large-sodas.html?_r=0

"The Extraordinary Science of Addictive Junk Food," Michael Moss (February 20, 2013), *New York Times Magazine*, http://www.nytimes.com/2013/02/24/magazine/the-extraordinary-science-of-junk-food.html [Although somewhat dated, this article documents a meeting in which many of the

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world's largest food companies, in 1999, admitted culpability in their contribution to growing obesity levels, and what they did—or did not do—in response.]

"What is the single best drink for your health?" [DocMikeEvans video], 4:09, Mike Evans (October 18, 2014), *Evans Health Lab: Whiteboard Health Videos*, accessed at http://www.evanshealthlab.com/category/whiteboard-health-videos/ and https://www.youtube.com/watch?v=YjutUrbIM3I. [Education may be the most important ingredient in the battle against sugary drinks. This video compares drinks and highlights the benefits of one, in particular.]

"What's the Best Diet? Healthy Eating 101," [DocMikeEvans video], 15:13, Mike Evans (September 24, 2015), *Evans Health Lab: Whiteboard Health Videos*, accessed at http://www.evanshealthlab.com/category/whiteboard-health-videos/ and https://www.youtube.com/watch?v=fqhYBTg73fw [Education may be the most important ingredient in the battle against junk food consumption. This video compares examines changes in health, lifestyles, foods, and diets, scientific evidence, and recommends changes.]

United Kingdom, Department of Health. "Public Health Responsibility Deal," 2010-2015, https://responsibilitydeal.dh.gov.uk/ [This website provides links to videos and articles that include the food industry's efforts to reduce salt and sugar under its voluntary "Responsibility Deal." The information was "published under the 2010 to 2015 coalition government."]

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2. *Buying and Selling Blood* (Chapter 1, page 37)

What this case has to offer

This case examines whether is it ethical to buy and sell blood and, by extension, other body parts that are essential to life. The case invites a comparison of these products to commodities and a discussion of why the sale of human organs is illegal and/or considered abhorrent in many countries.

Teaching suggestions

This is the first case I use each semester, because it clearly illustrates that a good analysis must include both social and economic factors. I begin by asking students to explain why this is a good business idea, and then why this is not a good business idea. Normally, the arguments in favour are economic: it provides money to the poor and homeless; it creates employment; and presumably, it will generate a profit for the owner. Normally, the arguments against are social: it exploits the poor and homeless; it is a violation of the ethos of having blood freely available to everyone (as in Canada); and it commodifies blood, an essential part of human existence. I then remind the students that their responses to all of the cases that we will be taking up must include both economic and social aspects, not just one or the other.

This case can be used to look at questions of altruism versus financial gain; volunteerism versus exploitation; demand for blood, tissue and organs versus their limited supply or the need to increase their supply. A discussion of Maslow's Needs Hierarchy (Text, Chapter 7) can be useful in discussing how ethical values can be shaped by environment and need, and how the disadvantaged might be exploited. Stakeholders in this issue include, but are not limited to, for-profit company collecting blood products; non-profits collecting blood products; company producing pharma products from blood products; donors; recipients of blood products or pharma products derived from blood products; healthcare organizations and regulators. Consider the points of view of, and the effects on, each stakeholder group when for-profit companies are involved in collection and sale of blood products and derivatives.

Discussion of ethical issues

1. Is it unethical to pay donors for making blood donations?

   The practice of paying for blood differs depending on the jurisdiction. In the U.S., blood is paid for, but in Canada, it is not, generally speaking. Whether the practice is unethical depends upon the potential impacts on the stakeholders, particularly on donors who might be harmed, and on whether adding a profit component to the process of health care is ethical when the right to life or health is considered a fundamental right in a society. This latter issue is influenced by whether one believes that government or not-for-profit entities can deliver healthcare as efficiently, effectively, and humanely/fairly as for-profit entities.

   In Canada, access to health care is considered a right of all Canadians, regardless of ability to pay. The Canadian Health Care Coalition, for example, says, "Rooted in our health care system are the values of equity and fairness but these values lie in opposition to the goals of the free

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market. There is a profit to be made in health care and therefore the protection of public health care will require strong and vigilant allies. We [The Coalition] believe in protecting and improving our public health care system; a system that puts patients before profits."[4]

If we look at the 5-question Approach for evaluating decisions, we're stopped at fairness and the impact on stakeholder rights with this issue. Exploiting the disadvantaged offends the rights of that stakeholder group. In addition, the company's profit at the expense of others, or by capitalizing on altruism, is not fair, so paying donors for blood "donations" seems unethical.

Paying for donations is a slippery slope, because there is a risk that coercion or harm could come to people in order to attain their blood products or body parts. In 19th century London, for example, the demand for cadavers was so great that grave robbers and body snatchers/murderers supplied corpses for medical research, and, today, the demand is so high for organs and cadavers that a for-profit industry of "cadaver service firms" or "body-brokers" has arisen, with more than 30 in the United States. The body brokers act as middle persons between cadavers and donors, "…charg[ing] for things like transport, storage and preservation."[5]

It is arguable that organizations paying for blood could offset possible harmful consequences by ensuring that a strict screening mechanism and selection criteria are enforced. Unfortunately, the best intentions and internal controls are often breached.

2. Is blood a commodity that can be bought and sold like any other commodity?

A World Health Organization (WHO) report says that "Blood and blood products are a unique and precious national resource because they are obtainable only from individuals who donate blood or its components."[6] At question is whether one person should benefit at the expense of the health of another person. Accepting harm or injury to another, through allowing the donation of body parts or fluids, is one thing, but paying for those parts or fluids means assigning a price to these essentials of life. While blood is replenishable, most organs cannot be regenerated, and the fear is that the most economically vulnerable are the most likely to accept money for body parts or fluids, to the detriment of their health.

[4] "Pro-Public Healthcare [Position paper]," Amélie Baillargeon, September 8, 2016. Canadian Health Care Coalition [website], http://www.healthcoalition.ca/pro-public-health-care/, [p1] .

[5] "The cadaver market. Death, where is thy bling? A growing industry tries to meet the demand for corpses," *Economist*, February 1, 2014, accessed at http://www.economist.com/news/united-states/21595433-growing-industry-tries-meet-demand-corpses-death-where-thy-bling

[6] World Health Organization and International Federation of Red Cross and Red Crescent Societies. 2010. Towards 100% Voluntary Blood Donation: A Global Framework for Action. http://www.who.int/bloodsafety/publications/9789241599696_eng.pdf, p. 14.

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3. Is there a difference between selling blood that can be used in transfusions and selling blood that will be used to make pharmaceutical products?

   While transfusion blood is transferred from donor to recipient and may have an associated cost to the medical facility, pharmaceutical products are sold for much higher profits that benefit the company, rather than the donor. If considered in terms of fairness—an equal distribution of benefits and harm–to the stakeholders involved, selling pharmaceutical products made from donated materials is not fair unless the increased value is passed on to the donor.

4. Do companies, such as Canadian Plasma Resources, contribute to drug addiction and alcoholism by locating their clinics in poorer neighborhoods?

   The concern is that while $20 to $30 may not represent a lot of money to those who are not in need, and would not be considered adequate compensation for the time required to donate plasma for those earning more than that in hourly compensation, it may be considered a lot of money to those who are in need.

   A WHO report says, "Paid donors often lead lifestyles that expose them to the risk of HIV and other infections that could be transmitted through their blood. The highest prevalence of transfusion-transmissible infections is generally found among paid or commercial donors. People who accept payment for their blood are primarily motivated by the prospect of monetary gain rather than a desire to help save lives. The need to protect their income from blood "donation" compromises issues of honesty in the donor interview and they are highly unlikely to reveal reasons why they may be unsuitable to donate blood. Further, they are often undernourished and in poor health and may give blood more frequently than is recommended, resulting in harmful effects on their own health…Paid donors are vulnerable to exploitation and commercialization of the human body as they usually come from the poorer sectors of society and become paid blood donors due to economic difficulties. Any form of exploitation of blood donors, including payment for blood, coercion and the collection of blood from institutionalized or marginalized communities such as prisoners diminishes the true value of blood donation. A blood donation is a "gift of life" that cannot be valued in monetary terms. The commercialization of blood donation is in breach of the fundamental principle of altruism which voluntary blood donation enshrines."[7]

Useful Articles, Links, and Videos

"Pay for plasma: Calls for and against it from those affected," Julia Wong, *Global News*, May 1, 2016, http://globalnews.ca/news/2652180/pay-for-plasma-calls-for-and-against-it-from-those-affected/

[7] World Health Organization and International Federation of Red Cross and Red Crescent Societies. 2010. Towards 100% Voluntary Blood Donation: A Global Framework for Action. http://www.who.int/bloodsafety/publications/9789241599696_eng.pdf, p. 19-20.

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Plasma Protein Therapeutics Association (PPTA). "Becoming a Plasma Donor," Video, 10:00, posted by Canadian Plasma Resources [website], 2016. http://giveplasma.ca/become-a-donor/becoming-a-plasma-donor/

World Health Organization [WHO] and International Federation of Red Cross and Red Crescent Societies. 2010. *Towards 100% Voluntary Blood Donation: A Global Framework for Action*. http://www.who.int/bloodsafety/publications/9789241599696_eng.pdf

Chapter 7: Organ Donation, in *The Canadian Bioethics Companion: An online textbook for Canadian ethicists and health care workers.* David Unger, 2016. http://canadianbioethicscompanion.ca/the-canadian-bioethics-companion/chapter-7-organ-donation/

"Death, where is thy bling? The cadaver market." (February 1, 2014) *The Economist*, http://www.economist.com/news/united-states/21595433-growing-industry-tries-meet-demand-corpses-death-where-thy-bling

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3. *Pedophile Priests in the Catholic Church* (Chapter 1, page 38)

What this case has to offer

This is a good case to begin a discussion of whistleblowing, and to reflect on the problems of an unethical corporate culture. If an employee is aware of wrongdoing within an organization, what should the employee do? This case can also be used when discussing whistleblowing programs in the Text, Chapter 7 (page 566ff).

Teaching suggestions

Have a class member provide a summary of the Singer article, "The Whistle Blower: Patriot or Bounty Hunter?" located at the end of Chapter 1. This will set the stage for discussing the problems a whistleblower faces, and why whistleblowing is essential to good corporate governance. Whistleblowing enables directors to ensure that appropriate action is taken on problems reported.

Ask the following questions before discussing the ethical issues raised below:

- Do the students remember the pedophile priests' scandal and their reaction at the time?
- Do students think that the scandal resulted in a loss of reputation for the Catholic Church?
- If the students were on a parish council, what would they have done if it were revealed there was a pedophile priest in their parish?

Discussion of ethical issues

1. What are the responsibilities of employees who become aware of unethical behavior by their superiors?

   Often, employees are afraid to report wrongdoing because of the stigma of being labelled a snitch. Consequently, employers must create an environment of trust, so that employees will report wrongdoing. Employees must realize that the consequences of wrongdoing can be extremely damaging to the organization and often to society. As such, employees have an obligation to report wrongdoing to their superiors for the long-term benefit of the firm and society.

2. What actions should be taken by corporate leaders when they receive reports of sexual abuse? Why?

   Corporate leaders must conduct a thorough and private investigation into any reports of wrongdoing. The investigator must be mindful that the whistleblower may be falsely accusing a coworker for personal reasons. Also, the whistleblower may have only limited information that makes the situation incorrectly appear to be an instance of wrongdoing. Consequently, the investigation and its results must incorporate both procedural justice (that the investigative

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process was fair (and prompt)), as well as distributive justice (that the punishment was commensurate with the crime).

3. If unethical or illegal behavior occurs within a business enterprise, how can employees bring about change when initial reports are ignored?

   Ultimate responsibility for the activities of the firm rests with the board of directors. If initial reports to superiors are ignored, then employees have a responsibility to report wrongdoings to the board of directors. If no action is taken, then whistleblowing through the media should be considered.

4. Why do you think that senior managers want to cover-up scandals that occur within their organizations?

   Managers want to protect their personal reputation as well as the reputation of the firm. A loss of personal reputation can end a manager's career, and a damaged reputation can harm the perceived organizational legitimacy of the firm. Good reputation is important for the long-term success of the firm. Consequently, directors, executives, and managers engage in scandal cover-ups, falsely believing that if the scandal is hidden, the wrongdoing does not exist. What these managers fail to remember is that eventually most cover-ups are unearthed. And the combination of a wrongdoing and a botched cover-up can be much more damaging to a firm's reputation than the initial wrongdoing.

5. What actions can senior managers take to repair the damaged reputations of their organizations after scandals become publicly known? Do you think that apologies are worthwhile?

   The organization must create an ethical corporate culture by correcting its operational routines and internal controls in order to ensure that the wrongdoing does not reoccur. Then, the organization must invest in goodwill in order to re-establish trust with its stakeholders (Brown, Buchholtz and Dunn 2014).

   An apology is the first step on the road to repairing a damaged reputation. But, if employees do not believe that the CEO is trustworthy and caring, the apology will not be perceived as sincere (Basford, Offermann & Behrend 2014).

Useful Articles, Links, and Videos

Basford, T.E., Offermann, L.R., and Behrend, T.S. 2014. Please Accept My Sincerest Apologies: Examining Follower Reactions to Leader Apology. *Journal of Business Ethics* 119 (1), 99-117.

Brown, J., Buchholtz, A. and Dunn, P. 2014. *The Role of Moral Salience in Firm-Stakeholder Trust Repair*. Working paper.

Koehn, Daryl. 2013. Why Saying "I'm Sorry" Isn't Good Enough: The Ethics of Corporate Apologies. *Business Ethics Quarterly* 23 (2), 239-268.

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Haberman, Clyde. "The Fight to Reveal Abuses by Catholic Priests" [Video and article], *The New York Times: Retro Report*, March 30, 2014, accessed at http://www.nytimes.com/2014/03/31/us/the-fight-to-reveal-abuses-by-catholic-priests.html on September 23, 2014.

This video uses a medley of television news reports from the 1980s onwards to provide a history of repeated abuses by Catholic priests and repeated promises to end the abuse. The video caption asks the question, "Sexual abuse in the Catholic Church has been making headlines for years. Some priests have been punished, but what about the bishops who shielded them?"

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4. *Sexual Abuse by a Penn State Football Coach* (Chapter 1, page 39)

What this case has to offer

The case describes an important scandal and cover-up. It highlights how an organization's departments and activities can take on a mythical aura such that they become exempt from criticism, and they fail to deal with problems quickly and effectively.

Teaching suggestions

Ask students who have been on sports teams to describe the culture of solidarity.

1. Discuss how team members are expected to contribute "110%."
2. Explain how and why one team member might "take one for the team."
3. Discuss how a team member should deal with other team members who are "not pulling their weight."

After a discussion of the organizational culture of team sports, have a class member provide an overview of the case facts of the Penn State football scandal.

Discussion of ethical issues

1. Football is big business, raising millions and millions of dollars for American universities. Numerous administrators and officials at Pennsylvania State University put a higher value on college football than on the welfare of children. How would an organization develop such a misguided culture?

   Penn State focused on profits to fund university activities, and the football program was extremely profitable. What Penn State overlooked is that profits should not be the sole objective of an organization (particularly a university); profits should not get in the way of operating in an efficient, effective and responsible manner. An organization develops a misguided culture when it puts profits ahead of how those profits are generated.

2. Louis French discovered that a janitor saw Jerry Sandusky abusing a boy in the showers in 2000, but said nothing because he was afraid to "take on the football program." Why do you think that certain organizational departments and programs develop a mystique such that their activities and behaviors cannot be challenged nor questioned? What can organizations do to prevent this from happening?

   Meyer and Rowan (1977) argue that many activities and departments within an organization become so institutionalized that they are accepted in an unquestioning fashion. Their practices and structures become ritualistic, because they reflect socially accepted beliefs and rules about how the organization should be structured and behave. As such, they become rule-like and are accepted in an unquestioning fashion. These myths can become incredibly powerful beliefs that

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determine the actions and activities of the organization. At Penn State, the football program was so institutionalized, so powerful, and so respected, that no one would dare to question its actions or conduct for fear of not being taken seriously or losing a job or promotions.

Myths are very difficult to overcome. It requires senior managers to constantly question why certain activities are sanctioned and approved. Managers must be diligent in challenging accepted beliefs about "this is the way we've always done it." Uncritical acceptance of organizational routines can lead to unacceptable and unethical activities being glibly accepted as normal operating procedures.

Useful Articles, Links, and Videos

Meyer, J., and Rowan, B. 1977. Institutionalized Organizations: Formal Structure as Myth and Ceremony. *American Journal of Sociology* 83, 340-363.

"Sundance Film Review: 'Happy Valley': Amir Bar-Lev offers a typically gripping and thoughtful take on the Penn State scandal," Justin Chang, *Variety*, January 21, 2014, accessed at http://variety.com/2014/film/reviews/sundance-film-review-happy-valley-1201066057/ on September 23, 2014.

This author reviews the film, "Happy Valley," saying it is "a gripping inquiry into the revelations of sexual abuse that shocked the U.S. and devastated Penn State's storied football program. Rather than focusing primarily on Jerry Sandusky's crimes, the film broadens in scope and complexity to examine the assumptions of an entire community, as well as the football-first culture that allowed evil to flourish in its midst."

Jerry Sandusky's Son Discusses Alleged Sexual Abuse, Associated Press, *WOCHit*, July 17, 2014, accessed at http://www.youtube.com/watch?v=c1q-fXzLOiY on September 23, 2014. [Link active in 2020 at https://www.youtube.com/watch?v=TTGLnIal1WA.]

The video describes an interview with Oprah Winfrey says that an adopted son of Jerry Sandusky provides details of the alleged sexual abuse he suffered at the hands of his father. Videos of parts of the interview are available at https://www.youtube.com/watch?v=3JZOTE61bIw.

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Advertising & Sales Promotion Cases

5. Tiger Woods: "Winning Takes Care of Everything" (Chapter 1, pages 39-40)

What this case has to offer

Whether success—celebrity, wealth, profitability, and prowess–replace the hypernorm values of responsibility, integrity, honesty are key discussion points in this case. Many students and businesspeople have the view that they can ignore values because success is all that counts. They often fail to realize that the ends-justify-the-means approach often does not produce medium- or long-term success. Analyzing stakeholder impacts through this case can be very helpful in exploring whether winning really takes care of everything. Companies, like Nike, need to understand their stakeholders and their stakeholders' values. If stakeholders value an ethical corporate culture or strategy, support of an unethical brand or product undermines stakeholder trust in the organization. The same is true for individuals.

Teaching suggestions

I have found it helpful to start by asking how many students play golf or are familiar with Tiger Woods. Then I show the YouTube video noted in the case that tells the story, and then we deal with the questions listed. Considering the celebrity as a brand or corporation can be helpful here: if achieving an ethical corporate culture (culture of integrity) means understanding issues and their stakeholder impact, how far away from that ideal is Tiger Woods or other celebrities like Ray Rice—the football player whose punching of his fiancée went viral on YouTube in 2014?

Discussion of ethical issues

1. Does winning take care of everything? In golf? In life? In business?

   No, it should not—but it often does cause blind eyes, particularly in the short run. Consider a performance evaluation: it is based on many performance measures, not a single one. Also, short-term success can be undermined if values required for longer term success are ignored, and/or performance or reputation wanes. As future managers, accountants, leaders developing an ethical corporate culture, you will want desirable behaviors throughout your organizations, and you want will employees to have an ethical mindset no matter what they are doing. Just winning is not in keeping with these objectives, and winning alone will not engender trust of stakeholders. Consider how the winning football legacy at Penn State was destroyed by child abuse by an assistant coach, Jerry Sandusky, and the unethical decisions by a legendary coach, Joe Paterno, and university officials to cover it up (See Chapter 1 case "Sexual Abuse by a Penn State Football Coach").

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2. Does how you play the game or run your business ever matter?

   If you learned that your investment banker lied and cheated on his wife and cheated in your last week's tennis game, do you suppose that you would wonder how s/he conducts business? Most of us would lose trust in that person and be inclined to seek another investment banker. When we see people acting with integrity, responsibility, fairness, honesty and compassion in one facet of their lives, we are naturally inclined to respect and trust that person, believing that their behavior is predictable and respectable, given the evidence we have seen, in other aspects of their lives. A significant error of judgement in one aspect of a person's activity will raise questions about their ability to perform in a reliable and trustworthy manner in others.

3. Is the reputational impact of unethical behavior different for a sports star than for a business, or for yourself?

   Tiger Woods along with many other sports stars are phenomena: we are so in awe of their feats—and don't want to miss the thrill of their next appearance—that we are often blinded to their weaknesses or failings. But when their bad behavior becomes public, we recognize that their high profile may not buffer their reputation. Often, such behavior presents companies using stars for marketing with risks they want to avoid, and marketing contracts are terminated using built-in "morals" clause provisions. Businesses find that fallen stars are poor role models for adults or children, and many people realize that their behavior is *not* what they want others to emulate or endorse by buying.

   In the business world, scrutiny of high-level people is less intense if they lack celebrity appeal, but negative reaction can be as significant, and questions can be raised about suitability for promotion or termination. While Tiger Wood's celebrity may protect him from fallout from some misbehavior, it is unlikely that a business person or professional would be similarly protected. For individuals wanting to work in positions of trust—such as professional accountants–the negative fallout could be career-ending.

   It may be helpful to consider other instances where unethical behavior has been negatively received. Many corporations have suffered significantly because the public has realized that the enterprise has been doing something unethical. Examples would include VW for cheating on emissions tests, or Wells Fargo for creating two million fake accounts. Also instructive is the public reaction in October 2016 to what presidential candidate billionaire Donald Trump dismissed as his "locker room talk"—a candid video and tape of lewd, denigrating comments about women. First Lady Michelle Obama eloquently described why his behavior and attitudes are unacceptable today, but also why fear of retribution makes it difficult to speak against people in power. Without celebrity stardom, many people might find that our stakeholders are quite unforgiving.

   In the future, there will be increasing scrutiny of how we do something, or how business earns a profit, not just of what we achieve. Focusing on the quality of how we do something, and the

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values we observe, will protect lasting reputation much more than spectacular short-run success.

Useful Articles, Links, and Videos

"For Tiger, winning does take care of everything," Roxanne Jones (March 27, 2013), *CNN*, http://www.cnn.com/2013/03/27/opinion/jones-tiger-woods/index.html [An editorial explaining why winners do get away with more than non-celebrities, and an assertion that celebrities don't have the job of teaching children; parents do.]

"Donald Trump, 'Locker-Room Talk' and Sexual Assault," (Numerous authors, October 10, 2016). The Opinion Pages, *New York Times*, http://www.nytimes.com/2016/10/11/opinion/donald-trump-locker-room-talk-and-sexual-assault.html?_r=0. [Opinions expressed about the release of a tape of Donald Trump speaking crudely about women and boasting of his sexual exploits.]

"Donald Trump Apology Caps Day of Outrage Over Lewd Tape," Alexander Burns, Maggie Haberman, and Jonathan Martin. (October 7, 2016) *New York Times*, http://www.nytimes.com/2016/10/08/us/politics/donald-trump-women.html

"Watch: Michelle Obama's powerful speech on the Trump sexual assault allegations [article with embedded video]," (October 13, 2016). *Vox*, http://www.vox.com/2016/10/13/13271166/michelle-obama-trump-speech [An eloquent speech on the denigration of women by U.S presidential candidate Donald Trump, why we should expect high standards of behavior, especially from leaders.]

"We Shouldn't Have Needed Photos to Understand Greg Hardy's Violence: Stephen A. Smith didn't change his tune on Hardy until Deadspin's report. That's wrong," Justin Block (September 11, 2016), *Huffington Post*, http://www.huffingtonpost.com/entry/ray-rice-greg-hardy-domestic-violence_us_5640a2c4e4b0307f2cadf8e5

"Ray Rice terminated by team, suspended by NFL after new violent video [article and embedded video]," Jill Martin and Steve Almasy (September 16, 2014). *CNN*, http://www.cnn.com/2014/09/08/us/ray-rice-new-video/index.html

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6. *Pepsi iPhone App Stereotypes Women* (Chapter 1, pages 40-41)

What this case has to offer

This case is an example of divergent beliefs among various stakeholders. Pepsi launched an iPhone application, as part of an advertising campaign targeting young males, which received a wave of criticisms since it was perceived to degrade and objectify women. There are several interesting aspects of this case, such as the reasons why this app was launched in first place and the company's response to social criticisms.

Teaching suggestions

A good way to start the class discussion is to ask what a company should do before launching a public media campaign. Following that, I ask the students their opinions about the AMP iPhone application and whether it should be considered harmless and funny or a serious public relations issue. Finally, I ask the students what a company should do if a media campaign becomes the center of criticisms and what they think about Pepsi's response.

Discussion of ethical issues

1. Do you find it interesting that most of the critics were women and the media, but those who considered the app to be funny were young men?

   From a marketing perspective, this iPhone application was appealing to some target consumers. Clearly, what could be considered acceptable to some target consumers is not necessarily acceptable for all people. Male-centered marketing is a feature of AMP, promoting itself through male dominated extreme sports. The iPhone application may have appeared as a harmless way for guys trying to pick up women; however, its features stereotyped women and were offensive. This case is an example of the topic of moral sensitivity discussed in the Text, Chapter 1.

2. The target market of AMP is males between the ages of 18 and 24. If this group of consumers found the iPhone app to be funny and acceptable, then why did Pepsi withdraw the app?

   Pepsi's intention was probably to attract some attention, but this campaign ended up becoming a social media fiasco. An interesting aspect of this case is how divergent opinions spread very rapidly beyond the company's control through blogs, Twitter and other social media. Ultimately, the company responded to the interests of a large set of stakeholders. The potential costs of keeping this campaign in terms of damaged reputation and loss of business outweighed the financial benefits of the campaign.

3. Are advertising campaigns that are in bad taste also unethical?

   A number of factors might affect people's reaction to an advertising campaign, for example, how relevant the advertising is to the product and its target market, the campaign's style and

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presentation, and where the advertisements appear. Although disrespectful references to gender, race, religion, or culture should never be allowed, drawing a line between bad taste and unethical advertisement is sometimes difficult. Companies may use surveys or focus groups before launching a mass media campaign to make sure it is considered acceptable for a wide audience.

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7. *Should Porn Be Sold by Cell Phone Companies?* (Chapter 1, pages 41-42)

What this case has to offer

This case permits students to discuss the trade-offs between activities that increase profits and activities that are socially responsible. It allows them to see that sometimes firms will forego profitable ventures if the ethics of the venture are questionable.

Teaching suggestions

This is a good case for discussing ethical relativism. Many students find ethical relativism appealing because it does not force them to say that anything is wrong. The theory is often used by students to eschew taking responsibility. So, a general discussion of ethical relativism should be conducted prior to discussing the facts of this case.

Discussion of Ethical Issues

1. If selling pornography is legal, profitable, and readily available elsewhere, should Telus shut down its adult service? Why or why not?

   The argument in favor of permitting adult content on cell phones is "freedom of expression." Some students will try to use an ethical relativism approach; that is, they will argue that whatever is in the individual's interest is ethically acceptable—in other words, that ethics is simply a matter of personal choice. This is a good opportunity to point out the flaws in ethical relativism.

   - This position would allow any practice to be ethically correct (such as slavery, torture, or genocide) if a number of people within that society thought that the practice was acceptable.
   - It does not admit that there is an absolute standard of right and wrong. There are many similarities in the ethical and moral codes of societies over time and through different cultures. Prohibitions about murder and other forms of violence are universal standards that would be abandoned under an ethical relativist approach.
   - Relativism admits of too many exceptions. "The ethical standard may apply to you, but not to me, because it would be inconvenient to me."
   - It is very difficult to define a culture or a social group such that clear standards can be established for that group or sect.

   The implication of ethical relativism is that values become a function of, or are causally dependent upon, an individual's culture. The implication is that ethical truth would be

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"relative" to a specific culture and a specific time. Such a position essentially denies that there is any ethical truth.[8]

Many people forget that having a right also entails having a responsibility. Adults may have a right to view and read anything that they want. But they also have responsibilities.

- Pornography can be harmful to children and so we have a responsibility to not allow them to see such material until they are old enough to understand what the material represents.
- Pornography tends to exploit women and the vulnerable. As such, we have a responsibility to not encourage their exploitation.
- We have a responsibility to be sensitive to the values of others who may be offended by seeing pornography on their cell phones.

2. Telus said that it wanted to be Canada's premier corporate citizen. Should companies such as Telus feel obligated to give back to society?

Some will argue for a false dichotomy, that a firm can either be socially responsible or it can be profitable, but it cannot be both. However, there is no strong empirical evidence to show that firms that are socially responsible are any less profitable than those firms that are not socially responsible. In fact, there are strong reasons for firms to engage in socially responsible activities, many of which have an indirect economic impact.

- Investments in socially responsible activities can increase the firm's reputation, thereby creating an intangible asset for the firm.
- Many young adults who are beginning their careers prefer to work for firms that are socially responsible.
- Community stakeholders adversely impacted by firms that are not socially responsible could lobby regulators to deny licensing permits.

Ultimately, Telus, the mobile phone provider in the case, decided that the values signalled by the porn content service were incompatible with their desire to be "Canada's premier corporate citizen" and withdrew the service.

Useful Articles, Links and Videos

McLean, Catherine (2007) "Why Telus ditched its plans to profit from porn" Globe and Mail, February 22. https://www.theglobeandmail.com/news/national/why-telus-ditched-its-plans-to-profit-from-porn/article17991588/

[8] See *The Encyclopaedia of Philosophy*, 1967, Paul Edwards (ed.), v. 3, pp. 75-78.

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Fournier, Chris (2007) “Telus Stops Selling Porn After Protests From Catholic Church” Bloomberg, February 21. https://web.archive.org/web/20070930073833/http://www.bloomberg.com/apps/news?pid=20601082&sid=aqeEJ53nbyp0&refer=canada

Austen, Ian (2007) “Canadian Company Offers Nude Photos via Cellphone” New York Times, February 19 http://www.nytimes.com/2007/02/19/business/worldbusiness/19cell.html?_r=1&ref=telus-corporation

Carew, Sinead (2008) “Porn to spice up cell phones” Reuters, January 30th http://www.reuters.com/article/idUSN3030000720080130

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8. *Virgin Mobile's Strip2Clothe Campaign: Exploitive, Risqué, and Worthwhile* (Chapter 1, pages 42-43)

What this case has to offer

This case allows students to discuss the issue of freedom of expression, freedom of choice as well as pornography. More importantly, it provides an opportunity to illustrate that having a right also entails having an obligation.

Teaching suggestions

The class should begin with a general discuss of the pervasiveness of pornography. It is readily available to almost everyone at any time. Does the fact that it is readily available make it socially acceptable? The students should also discuss the exploitive and dehumanizing aspects of pornography (See the discussion of the Ethics Case *Should Porn be Sold by Cell Phone Companies? above*).

Discussion of ethical issues

1. The Strip2Clothe campaign may have been in questionable taste, but it did raise tens of thousands of pieces of clothing for the homeless. Does the end justify the means?

   The theory that the end justifies the means is a political theory, often attributed to Nicole Machiavelli. However, it is not an ethical theory. Ethics involves treating people as ends in themselves, and not treating them simply as a means to an end. Providing clothes to homeless people is a very worthwhile end. However, in this case, the end is accomplished by exploiting people. Having vulnerable teenagers perform a striptease for the titillation of others is a form of exploitation. Exploitation (dehumanizing people) is not treating people with the respect and dignity they deserve by virtue of their humanity. As such, the end (clothing) does not justify the means (exploitation).

2. Virgin Mobile has a history of using cutting-edge advertisements. It poked fun at religion in its 2004 holiday commercial Christmas-hanukwanzakah," and it had the company's founder, Sir Richard Branson, stand in a nude suit in New York's Times Square as part of a "Nothing to Hide" campaign. Are marketing tactics that are tasteless and risqué also unethical?

   One of the purposes of marketing is to make a company or product known to potential consumers. Marketing that is in poor taste offends some stakeholders' preferences or values. Tasteless advertising is justified on the basis that the consumer does not remember the advertisement, but does remember the product name. Tasteless advertisements are simply a means of communicating brand name information. But something that is in poor taste is not necessarily unethical. It becomes unethical when the advertisement uses people as a means to an end, or when the advertisement is designed to exploit vulnerable consumers.

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3. Social awareness advertisements—Some years before, the Benetton Group S.p.A. developed the United Colors of Benetton Campaign, originally to draw attention to prejudice against black people. The campaign broadened over time to include other prejudices and consisted of a series of shocking pictures published in unexpected venues. For example, there were pictures of a nun kissing a priest, a bombed car in a street, a white dog kissing a black lamb, an AIDS activist on his death bed in front of a picture of a crucified Christ, and a white girl portrayed with an angelic halo and a black boy with hair like horns. Is the Virgin campaign substantively different that the Benetton campaign of 1992?

   Some advertisements not only market products, but they also remind all of us of our ethnic diversity. The United Colors of Benetton drew attention to ethnic and cultural differences. There were not exploitive; they were not marketing to the vulnerable; and they were not ethically questionable. The Virgin Mobile advertising campaign, on the other hand, was exploitive of teenagers. They were encouraging teenagers to conduct a striptease for the voyeuristic gratification of others. A striptease tends to dehumanize the participant and injures the dignity of the stripper. Virgin was also marketing to the vulnerable. The young are cognitively vulnerable because they have not yet reached their moral maturity. Exploitive advertisements that are marketed to the cognitively vulnerable are considered just as unethical as advertisements that are marketed to the physically vulnerable (e.g., medical remedies to those with allergies) or to the mentally vulnerable (e.g., children, or those grieving or seriously ill).

4. What rule would you put forward that would differentiate ethical from unethical advertising campaigns?

   The two rules that most advertisers follow are:

   1. Do not market to the vulnerable, and

   2. Do not use people in an exploitive manner.

Useful Articles, Links, and Videos

LaVallee, Andrew (2008) “Virgin Mobile Pulls Back Racy Campaign” The Wall Street Journal, July 21
http://online.wsj.com/article/SB121660673649869421.html?mod=djemPJ

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Cases Involving Financial Transactions

9. Goldman Sachs and the Greek Veil (Chapter 1, pages 43-44)

What this case has to offer

This case constitutes an example of a company aiding a client to enter into a business transaction that appears legal, but is not necessarily ethical. Goldman Sachs helped the Greek government to set up structured finance transactions that reduced the book value of Greece's national debt and resulted in an immediate cash windfall from the securitization of future cash inflows from airport landing fees and lottery revenue. These transactions enabled the Greek government to mask the true extent of its deficit and to legally comply with European Union rules for its member countries.

Teaching suggestions

An interesting way to introduce this case is to talk about the size and potential consequences of Greece's bail-out. In May 2010, the European Union members and the IMF agreed on a €110 billion ($147 billion) three-year bail-out package to rescue Greece's embattled economy. Next, I ask students what the potential causes of Greece's crisis were and whether or not it was an avoidable problem. Ultimately, this case highlights how a combination of inefficient oversight, ambiguous accounting rules, and complex financial transactions allowed the Greek government to borrow and spend beyond its means.

Discussion of ethical issues

1. Did Goldman Sachs do anything wrong legally or ethically? Explain your answer.

   Structured finance transactions are part of normal government treasury operations. European governments obtain funds from investors around the world by issuing bonds in yen, dollars or Swiss francs; however, each government needs euros to pay salaries and other expenses. Years later, the bonds are repaid in the original foreign denominations. Investment banks help their government clients to hedge currency-related and other financial risks,

   Goldman Sachs acted on behalf of the Greek government in a series of legitimate financial transactions. Goldman Sachs was only one of several investment banks that worked with the Greek government. Moreover, in their own defense, the firm claimed that these transactions had a "minimal effect on the country's overall fiscal situation."

   However, the intention of these transactions could have been to deceive the European Union rules. It seems somehow unethical to profit by aiding a client to circumvent rules that are in place to ensure the monetary stability of the European Union countries.

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Finally, Goldman Sachs did not only profit from these transactions, but also from helping the Greek government to restructure its debt in 2010, *as well as* from proprietary trades that essentially bet against the country's ability to manage its problems. This may also constitute an ethical dilemma given that the investment bank indirectly contributed to the Greek crisis and later on profited from this country's financial debacle. It would be hard to argue that these transactions were acceptable or ethical because of their highly negative social consequences. It would appear that Goldman Sachs' best guess was that their services to Greece would prove unsuccessful in changing the fundamental financial situation in Greece. Perhaps investment advisers/banks etc. should be required to disclose when they are betting against a product/client.

2. Would it make a difference if other investment bankers were also providing such services?

Arguably, if Goldman Sachs had not aided Greece's government to set up these transactions, some other bank would have done it. Most large investment banks offer these services to public and private clients. A recent article by the New York Times highlights that "Instruments developed by Goldman Sachs, JPMorgan Chase and a wide range of other banks enabled politicians to mask additional borrowing in Greece, Italy and possibly elsewhere."[9]

It is very poor ethical reasoning to argue that "someone else will do it if we don't", or that "everyone is doing it," because either approach can justify virtually *any* action. These rationales do not refer to any fundamental ethical principles. Ultimately, a corporation that is interested in its ethical reputation should base its actions on ethical principles, not on what their competitors are doing.

3. What subsequent impacts could the transactions described above have on Goldman Sachs?

Because these deals were not recorded as government loans, they may have misled investors and regulators about the depth of Greece's liabilities. The credit swap enabled Greece to improve its budget and meet a target needed to remain within the region's single currency. Knowledge of Greece's true financial position may have changed investors' perception of the risk associated with this country and the price they may have been willing to pay for the country's securities. Investment banks have a fiduciary duty while issuing public securities. If Goldman Sachs was aware of Greece's potential financial risks and failed to disclose them while issuing securities, the investment bank may be subject to legal actions. At the very least, clients should begin to question Goldman Sachs' loyalty and whether the firm can be trusted.

In addition, there could be more reputational and legal costs for the investment bank. The U.S. Federal Reserve and Securities and Exchange Commission are currently examining financial deals that Goldman Sachs and other banking companies made with Greece before the country's

[9] Story, Louise, Thomas Jr., Landon, and Schwartz, Nelson D. (February 13, 2010). "Wall St. Helped to Mask Debt Fueling Europe's Crisis" *New York Times*, http://www.nytimes.com/2010/02/14/business/global/14debt.html?pagewanted=1&_r=1

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debt crisis. This examination has the potential to create more public relations troubles for Wall Street firms, already troubled by their role in the U.S. financial crisis of 2008.

Useful Articles, Links, and Videos

For additional information on the "Goldman Sachs and the Greek Veil" case, see the interview: "Is Goldman responsible for Greek crisis?," YouTube video, 4:47, posted by RT Moscow, February 11, 2010, at https://www.youtube.com/watch?v=tCe80hsx-ig

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10. *Martha Stewart's Lost Reputation* (Chapter 1, pages 44-48)

What this case has to offer

Martha Stewart is an icon. She represents successful women who are smart, astute, and hard-driving in a male-dominated industry. Although she was once a stock broker and became a director of the New York Stock Exchange, she is best known for creating a billion dollar empire (Martha Stewart Living Omnimedia Inc.) based on the style, good taste and frugality she delivered daily on television, through her magazines, and through her line of housewares. These characteristics are all integrated into her reputation, and are a major reason why people are willing to watch her on TV, buy her goods, and subscribe to her magazines (see the website, *martha stewart* at http://www.marthastewart.com/).

In 2004, what a shock it was to find the she would to go to jail for obstructing justice during the investigation of an alleged financially trivial insider trade of ImClone stock in 2002. It showed that anyone can lose his/her reputation and face great cost. It showed that we all need to be on guard for ethical malfeasance. The case of Martha Stewart Living Omnimedia Inc. (which traded as MSO)[10] shows how reputation is vulnerable. MSO was subsumed as a subsidiary of Sequential Brands Group in 2015, which trades on NASDAQ as SQBG.

MSO offers an opportunity to discuss the link between ethics and reputation, the link between reputation drivers and models, how trust underpins reputation, the cost of losing reputation, the relationship of reputation to brand recognition in marketing, insider trading, and ethical issues in general.

Teaching suggestions

Martha was as revered as she was reviled. Too perfect to be true, she was often the target of mocking comedy, only because she set unattainable standards for perfection in whatever she set her talents to—yet her huge following tried, and her companies were very successful. So while Martha was innocent until proven guilty in court, debates about her innocence or guilt were lively, tainted by some wishing her to fail. So through court, could her reputation escape intact? In class, I begin by drawing attention to Martha's current television show and persona to set the stage, and after calling for a recap of the case, I deal with the questions asked at the end of the case, answered below. I use a set of PowerPoint slides (PPT)to frame my discussion. They are available on the instructor companion website through Cengage as Session 2 of my Ethics & Governance course (PPT 63 to 66 for this case).

Discussion of ethical issues

1. What was the basis of Martha Stewart's reputation?

   See the first section above.

[10] MSO traded from 1999 to 2015.

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2. Why did MSO's stock price decline due to Martha Stewart's loss of reputation?

   Martha was the dominant individual in the formation and delivery of value in the MSO business model – there was really no one else who could fill her role, so revenue and profits were sure to decline. Investors are far-sighted in that the announcement of investigation and charges against Martha created a dark cloud over her image and therefore her reputation. They reasoned that fewer people would want to sleep on Martha Stewart bed sheets if she became a felon, and the profit of MSO would fall. Also, if Martha really was a one-person dynamo whose ideas and savvy made MSO successful, then prospects for continued dynamism would be reduced if Martha was in jail. Reduced profits meant that investors would be prepared to pay less for shares of MSO.

3. Who is Martha Stewart's target market?

   Martha's target market is made up of women (and men) who are respected and are interested in the characteristics that gained her reputation because they would like to identify with those characteristics. I believe that this encompasses a wide age range of homemakers who are interested in good, wholesome value(s).

4. What qualities were associated with the Martha Stewart brand before the controversy? Which of these were affected by the accusations of insider trading, and how? How would you find out for sure?

   Refer to the list of characteristics listed above, and to PowerPoint (PPT) slide 66 for a framework and qualities to start the discussion. Obviously, *the trust in Martha and her products was weakened by the accusations and* some customers might wonder if they really knew the real Martha and what she stood for. They might opt for a brand in which they had trust. Also some retail chains might choose not to carry Marta's brands for fear they would be seen to be dealing with an undesirable person. Attitude surveys could reveal a potential shift, as could cross-sectional focus groups. Observed behavior in the short run could also provide helpful information.

5. What level of sales and profits would MSO have reached if Martha's reputation had not been harmed? Refer to the SEC or MSO websites for information on financial trends.

   The answer is a matter of projection based upon observed trends for MSO and for the industry. Websites with historical price information (such as Historical Stock Price.com) could be useful. The intent is for the students to explore the factors involved, including MSO, competitor and industry trends, economic assumptions that could bear upon revenues and costs, and so on.

6. What range would the stock price have been in at the end of 2002 based on your estimates?

   This follows from the analysis in question 5, and from projecting the price/earnings multiple that shareholders might be willing to pay for those earnings. Based on the MSO 2001 Annual Report, earnings per share were $0.45 in 2001 and $0.44 or $0.43 in 2000. According to a

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search of historical stock prices at Historical Stock Price.com, MSO stock traded during 2001 from $17.50 to $22, approx. Therefore, an estimate of EPS would be 40/1 approx.

7. Stewart's overall net worth was huge relative to her investment in ImClone. Assuming she did not have inside information, was there any way she could have avoided the appearance of having it?

   Yes. She could have responded to the charges quickly and fully, and have been helpful to the investigation. All of this would have indicated that she thought that she was innocent.

8. How could Martha have handled this crisis better?

   In addition to the answer to question 7, Martha could have donated the modest saving of $45,673 to charity. This would have shown that the amount of money involved was not enough to motivate her to break the law and damage her reputation. Other suggestions of this nature are also relevant.

9. Why is insider trading considered harmful? Should insider trading be banned if it assists in moving a stock price to a new equilibrium quickly, so that noninsiders are trading at appropriate prices sooner?

   Insider trading is harmful because it is evidence that privileged insiders with access to information before the rest of the market hears can make an unfair from unknowing investors. It shows investment markets to be unfair and not to be trusted, thus weakening the desire of other investors to participate thereby lowering the pool of funds available and raising the cost of capital. Insider trading may speed up market price transitions, but some investors are losing unfairly in the process so there are victims. Why should insiders be allowed to make unfair profits – once the info becomes known, the market will react and the equilibrium will be real, not want some speculator believes is in his/her interest.

10. If you wished to sell an investment in a company where one of your friends is an insider or even a significant employee, should you call your friend to advise him that you are about to sell? Why, or why not?

    No, you should not. There would be at least an appearance of a conflict of interest and of insider trading that you should avoid. You do not really owe him any such information, and your call could get you and him into trouble.

Subsequent Events

Check for further information:

- U.S Securities and Exchange Commission (SEC) website, at https://www.sec.gov/
- "Martha Stewart." *Wikipedia*. Retrieved from http://en.wikipedia.org/wiki/Martha_Stewart
- For historical stock performance information for MSO, see the website, *Historical Stock*

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Price.com, at https://www.historicalstockprice.com/mso-historical-stock-prices/

- For the latest from Martha Stewart, see her website, *martha stewart*, at http://www.marthastewart.com/

In August 2006, in a settlement of the related civil case brought by the SEC, Stewart agreed to a five-year ban on serving as a director or officer of any public company.

The stock price of MSO fluctuated since Martha's problems surfaced in 2002, and traded below $5 in 2009. MSO was subsumed as a subsidiary of Sequential Brands Group in 2015, which trades on NASDAQ as SQBG.

Useful Articles, Links, and Videos

McFadden, Cynthia and Steven Baker (November 18, 2009) "Martha Stewart Looks to Complete Comeback" ABC News/Nightline. Retrieved from http://abcnews.go.com/Nightline/martha-stewart-dishes-empire-prison-rachel-ray-exclusive/story?id=9106551

Naughton, Keith (March 14, 2004). "Martha's Fall," *Newsweek.* Retrieved from http://www.newsweek.com/marthas-fall-124093

Toobin, Jeffrey (February 3, 2003). "Lunch at Martha's: Interview with Martha Stewart" *The New Yorker.* Retrieved from https://www.newyorker.com/magazine/2003/02/03/lunch-at-marthas

Toobin, Jeffrey (March 15, 2004). "A Bad Thing: Why did Martha Stewart Lose?" *The New Yorker.* Retrieved from http://www.newyorker.com/magazine/2004/03/22/a-bad-thing

Reputation Institute (October 22, 2008). "Reputation Institute Announces 2008 Most Admired U.S. CEOs." Retrieved from http://www.prweb.com/releases/2008/10/prweb1498944.htm

Hancock, David (March 7, 2005). "Martha Back In Business" *CBS News.* Retrieved from http://www.cbsnews.com/stories/2005/03/07/national/main678478.shtml

Martha Stewart Living Omnimedia 2001 Annual Report. 2002. Retrieved from http://media.corporate-ir.net/media_files/nys/mso/reports/mso2001ar.pdf

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Cases Involving the Control of Information

11. Google versus China (Chapter 1, pages 49-50)

What this case has to offer

This case is an example of conflicting interests between Google's operating philosophy and its for-profit objective. It also shows how business done in a foreign country may cause a dilemma between what is legal and what is ethically acceptable.

Google is committed to give users the information they are looking for, company co-founder Larry Page states, "The perfect search engine would understand exactly what you mean and give back exactly what you want."

Furthermore, one of the company's principles is that "you can make money without doing evil." Nevertheless, these principles have to be compromised in order to do business in China, where the government requires Internet engines to censor politically sensitive information, or must allow the government to censor it.

Moreover, this case encourages discussion about how Internet businesses should operate in a country with a questionable record of protecting the online privacy and freedom of expression by its citizens.

Teaching suggestions

A good way to introduce this case is to ask whether acting legally is the same as acting ethically for a company doing business in a foreign country. I ask the students to discuss the various ethical dilemmas that Google confronted when it first started operating in China and later on when the company was a victim of a hacker attack allegedly traced back to China.

Discussion of ethical issues

1. When it began operations in China in 2006, Google had agreed to have the search engine Google.cn censor information. Did Google have an ethical right to renege on its agreement in 2010 by directing its Chinese users to the uncensored search engine Google.com.hk?

   When Google took its search engine into China, it was criticized by human rights groups for allowing the censoring of search results. In response, Google argued that it was better for the Chinese to have a censored Google than no Google at all. The firm could play a useful role for the cause of free speech by participating in China's IT industry instead of refusing to comply and being denied admission to the mainland Chinese market.

   Four years later, Google threatened to leave the Chinese market completely after a series of hacker attacks were traced back to China. Although Google did not explicitly accuse the Chinese government of the breach, Google announced that it was no longer willing to continue

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censoring results on Google.cn, following a breach of Gmail accounts of Chinese human rights activists. The company found that the hackers had breached two Gmail accounts but were only able to access 'from' and 'to' information and subject headers of emails in these accounts. The company's investigation into the attack showed that at least 34 other companies had been similarly targeted.

Chinese government officials stated that Google's move to stop censoring search results was totally wrong and accused it of breaking a promise made when it launched in China.

In a way, Google's decision could be seen as an ethical one, as explained in a 2010 editorial (New York Times 2010):

> "Google's decision to stop censoring its search service in China on Monday was a principled and brave move, a belated acknowledgment that Internet companies cannot enable a government's censorship without becoming a de facto accomplice to repression."

However, Google's move to stop censoring search results was questionable because it involved breaking an initial corporate decision to conform with the local laws and regulations.

2. Google derives its revenue by selling advertising. Should Google be concerned about the type of information that users access through the various Google search engines?

   Google is concerned about the contents delivered by its search engine, particularly regarding advertising contents. The company's policies (2010) state:

   > "Google is a business. The revenue we generate is derived from offering search technology to companies and from the sale of advertising displayed on our site and on other sites across the web. Hundreds of thousands of advertisers worldwide use AdWords to promote their products; hundreds of thousands of publishers take advantage of our AdSense program to deliver ads relevant to their site content. To ensure that we're ultimately serving all our users (whether they are advertisers or not), we have a set of guiding principles for our advertising programs and practices:
   >
   > "We don't allow ads to be displayed on our results pages unless they are relevant where they are shown. And we firmly believe that ads can provide useful information if, and only if, they are relevant to what you wish to find–so it's possible that certain searches won't lead to any ads at all.
   >
   > "We believe that advertising can be effective without being flashy. We don't accept pop–up advertising, which interferes with your ability to see the content you've requested. We've found that text ads that are relevant to the person reading them draw much higher click through rates than ads appearing randomly. Any advertiser, whether small or large, can take advantage of this highly targeted medium.

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> "Advertising on Google is always clearly identified as a "Sponsored Link," so it does not compromise the integrity of our search results. We never manipulate rankings to put our partners higher in our search results and no one can buy better PageRank. Our users trust our objectivity and no short-term gain could ever justify breaching that trust."

On the other side, the information within individual sites retrieved by the search engine is not controlled by Google. The company is not directly concerned with whether or not the retrieved sites contain ethically questionable information, such as sexually explicit or violent content.

3. Do for-profit businesses, such as Google, have an ethical responsibility to lobby for human rights and against censorship in the various countries in which they have commercial operations?

   Google's ethical responsibility may be conflicting with the views on censorship and human rights in several countries. By actively stopping the censorship and potentially leaving the Chinese market, the company exposed itself to a loss of business. Google had to balance its ethical principles, its reputation, and its business objectives before deciding to stop the censorship.

   It was not clear whether or not leaving the Chinese market would seriously hurt Google. Google was not the biggest search provider in China, and its mainland Chinese operation accounted for just a fraction of the firm's total sales. However, Google risked losing market share, revenue, and staff to rivals such as market leader Baidu, up-and-comer Tencent, and U.S. Microsoft. Moreover, Google had trouble growing in China. Google's YouTube service, like the social networks Facebook and Twitter, is blocked.

   Nevertheless, the move to challenge the Chinese Communist Party may not come without a cost. The Chinese Internet search market is growing fast. Also, China Mobile, the biggest cellular company in the country, was expected to cancel a deal to use Google's search engine on its home page, while China Unicom was thought to have canceled plans to create a telephone based on Google's Android system.

4. After the December 2009 attack, Google enhanced the security for all its users. Does Google have any additional ethical responsibility to human rights activists to provide them with even more sophisticated architectural and infrastructure improvements so that their specific Gmail accounts cannot be compromised?

   As part of the company's privacy policy (2010), Google states that:

   > "A greater challenge is to make sure that Google demonstrates respect for users' right to control their own data. Google is transparent about how it uses information and how that information is shared with others (if at all), so that users can make informed choices. Our products warn users about such dangers as insecure connections, actions that may make users vulnerable to spam, or the possibility that data shared outside Google may be stored elsewhere. The larger Google becomes, the more essential it is to live up to our 'Don't be evil' motto."

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All users' personal information should be kept private in general; however, in some cases revealing or leaking information shared through email may expose activists in certain countries and even compromise their personal freedom or their lives. Google does not explicitly mention special security issues in their privacy policy. This issue may be important for the firm's reputation if future privacy breaches involve information from activists.

Other Issues

Baidu.com, Google's primary search engine competition in China, is not noted for its ethical scruples as is illustrated in the case: *China's Tainted Baby Milk Powder* in the Text, Chapter 1.

Students should be encouraged to follow later developments about how Google conducts its business in China.

Is it possible for Google to claim its information integrity is important to maintain the trust of its customers, if the company compromises on its activities in China?

Useful Articles, Links, and Videos

BBC News. (March 23, 2010). "Google stops censoring search results in China," *BBC News.* Retrieved from http://news.bbc.co.uk/go/pr/fr/-/2/hi/business/8581393.stm

Google. Our Philosophy. 2010. Retrieved from http://www.google.com/about/corporate/company/tenthings.html [Link not active in 2020.]

Google Privacy Policy. 2010. http://www.google.com/intl/en/privacy/privacy-policy.html

Helft, Miguel, and Barboza, David (March 22 2010). "Google shuts China site in dispute over censorship," *The New York Times*. Retrieved from http://www.nytimes.com/2010/03/23/technology/23google.html

New York Times. 2010. "Google and China [editorial]," *The New York Times* (March 24). http://www.nytimes.com/2010/03/24/opinion/24wed2.html

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12. *China's Tainted Baby Milk Powder: Rumored Control of Online News* (Chapter 1, pages 50-52)

What this case has to offer

This case offers the opportunity to review many of the main issues in the chapter. It presents two instances of unfettered profit-only behavior:

- Unknowing or uncaring manufacturing profiteers:
    - Who misrepresented a very harmful ingredient, and
    - Others who included that ingredient in their product, which led to life-threatening consequences for other stakeholders and an erosion of the reputation of the companies involved.
- Baidu.com, the Chinese equivalent of Google, being suspected of:
    - Misrepresentation of the information it provides by allowing companies to buy a priority place in frequency listings; and
    - Screening out unflattering news on companies that pay for that service, which also led to a serious erosion of public confidence in Baidu.com and threats to its profitability and ability operate.

Consequently, the case offers the opportunity to review:

- The limits and consequences of profit-only thinking, and the need for balance with stakeholder interests;
- The importance of reputation based on ethical behavior, particularly its trust components; how it can be lost, and the consequences of losing it;
- The need for constant skepticism and information challenging even when dealing with people or companies you think can be trusted;
- How difficult it is to restore trust and reputation, and how to do it.

Teaching suggestions

It is useful to start out by asking what the role of a corporation is. This usually produces the response, "To earn or maximize profits," as well as something like, "Yes, but not at any cost." I then promote a short debate between these factions to get the profit-only group to open their minds to alternatives.

I then ask what the consequences are in this case of focusing only on profit as the two companies did. This discussion leads to a consideration of the loss of reputation and a consideration of the

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determinants of reputation (Text, Figure 1.3); the rights (particularly to life and health), expectations, and role of stakeholders (see Text, Figure. 1.1, Map of Corporate Stakeholder Accountability) and Text, Table 1.6 (Ethics Risks), and who—the Board and executives–should be responsible for ensuring those rights are respected (see Text, Figure. 1.2, Corporate Governance Framework).

During these discussions, when a sufficient platform of knowledge has been built up, or at the end of these discussions, the answers to the case questions can be taken up.

I finish the case discussion by asking, if the class members were on the board or were senior executives, how would they guard against the risks evident in this case? This points the class toward the framework and purpose of the rest of the Text. (See, in particular, the Text, Chapter 7 for discussion of ethics risk and opportunity management.)

Discussion of Ethical Issues

1. Given strong profit growth, has there been any damage to Baidu.com's reputation?

   I would argue yes. Stock price changes reflect who the condition (profit) of the company will be in 6-9 months. Reputation problems usually affect future profits downward, and this is confirmed by the BIDU stock price decline from $308 to $110 noted at the end of the case.

2. What would future reputational damage affect, and how could it be measured?

   Reputational damage will undermine the support of stakeholders such as customers, governments and so on, that is needed for the company to reach its full potential over the medium and longer term. Given an alternative, customers will shop elsewhere. This impact could be measured by estimating the loss in value of brand image (for which there are measurement models) and by estimating the loss of future contribution margin on goods or services that will not be sold.

3. What steps could Baidu.com take to restore its reputation, and what challenges will it have to overcome?

   Baidu must restore its standing on the four determinants of reputation (Text, Figure 1.3) by proving (a) that it was not guilty of the allegations, or (b) that it was guilty, but will not transgress again. Proving innocence will likely involve opening up their processes to scrutiny, perhaps by an auditor of high reputation; or by showing appropriate company policy and indicating commitment to and monitoring of those policies. The company may also want to take other measures, such as building an image of good corporate citizenship, to assist in the restoration. Baidu faces the challenge of overcoming rumors about past acts, and competitor restrictions to Baidu web browser spiders. Baidu may wish to become as transparent as possible about its procedures and positions in order to offset the damage caused by the secrecy that seems to suggest that the company has something to hide.

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4. Governments throughout the world have been slow to react publicly to serious problems such as SARS, mad cow disease, and now melamine contamination. Who benefits and who loses because of these delays?

   Unfortunately, delays in reacting lead to delays in publicizing serious problems—thus causing more people to be infected or killed–and the unnecessary spread of the problem, resulting in losses due to curtailment of travel, closing of businesses, and falling productivity. In the end, governments clean up the mess, and we all lose in one way or another, except for the drug companies whose profit may rise due to the treatments involved. It is interesting to note the second order or ripple effects, such as those caused to other patients by the delay of medical procedures due to the diversion of hospital and other care facilities.

5. In some cultures, a "culture of secrecy" or manipulation of the news is tolerated more than others. How can this be remedied by other governments, corporations, investors, and members of the public?

   Secrecy is usually a misguided policy because the truth usually comes out, and many stakeholders, including those who seek to benefit from the secret, are needlessly affected before it does. That is the lesson from SARS, mad cow disease, suppression of information about rapists, and many other calamities. We must all understand this lesson and encourage/demand full, frank, and early disclosure of such problems. After all, it is the right of stakeholders to know about risks that may reasonably be expected to affect their lives and health.

6. Many other companies with long supply chains, including subcontractors in far-off lands, have found themselves in difficulty. For example, in 1995 Nike was accused of employing child labor in Pakistan and Cambodia through its subcontractors and subsequently changed its policy and practices with respect to the minimum age of employees working in contract factories. However, it is very difficult to verify age when people do not have birth certificates or when they can be bought cheaply on the black-market.

   a. Under such conditions, what are a firm's responsibilities with respect to checking that each stage in the supply chain is complying with company policy? **[Note: This question 7 in the Text.]**

      Companies must accept responsibility for the quality and integrity of all inputs and processes it uses worldwide, otherwise its reputation and the welfare of its stakeholders are at risk. Company policies must reflect that reality in order to control the risks the company faces.

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b. Are there organizations that can help companies set standards and confirm adherence to them? If so, what are the organizations' mandates and website addresses? **[Note: This question 8 in the Text.]**

- Most large professional accounting firms have this service.
- See CSR discussion in the Text, Chapter 7 (Section Sustainability, Corporate Social Responsibility, & Corporate Citizenship, page 542ff.)

7. Should Menu Foods be held responsible for the melamine found in its products? **[Note: This question 9 in the Text.]**

   Yes, see question 6a., above.

8. Would your response be different if it were the lives of people that were at stake rather than the lives of animals? **[Note: This question 10 in the Text.]**

   No. It is not appropriate to provide a product that is harmful to health—to humans or dogs– without disclosing the risks fully and adequately so that users are not misled. Not to disclose risks does not respect the rights of the consumer and ultimately affects us all if time and resources are involved in diagnosis, remediation and prosecution. It is evident that the risks to reputation are similar, so protection is essential from that perspective as well.

9. How and why does Nike disclose its policies and practices with regard to supply chain responsibility, and what are the major factors covered? **[Note: This question 11 in the Text.]**

   Nike policies and practices are disclosed on company websites and in printed material. The company does so in order to bolster its reputation and signal to its stakeholders (particularly agents, employees and activists) its expectations and values, and the standards it will monitor. Such disclosure, if credible, will create a cushion of goodwill in the minds of the media and key stakeholders that will give Nike time to tell its story if rumors of malpractice surface. Factors covered in such disclosure can be found in company disclosures. See, for example, the Nike Code related to Child Labor at http://www.apparelsearch.com/Education/Research/Child_Labor_Clothing/Child_Labor_Fashion_Industry_2005/V_Apparel_Appendices/Surveys_from_companies/Nike.htm .

Subsequent Events

The officials at the Sanlu Dairy, a company that distributed tainted milk, were convicted of selling fake and substandard products in late 2008 and early 2009. The chairwoman was sentenced to life in prison;, three senior executives were sentences to death; and others were sentenced to life in prison or to terms ranging from five to 15 years. Fines were also levied. (See Vause 2009.)

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Useful Articles, Links, and Videos

"China executes two over tainted milk powder scandal," (November 24, 2009). *BBC News.* Retrieved from http://news.bbc.co.uk/2/hi/8375638.stm

"China milk poisoning cases rise," (September 22, 2008). *BBC News*. Retrieved from http://news.bbc.co.uk/2/hi/asia-pacific/7628622.stm

"China's baby-milk scandal: Formula for disaster," (September 18, 2008). *Economist*. Retrieved from http://www.economist.com/node/12262271

"Sanlu Milk Sickens Babies" (December 1, 2010). *China Daily*. Retrieved from http://www.chinadaily.com.cn/china/china_2008sanlu_page.html

This website provides a series of articles, videos, photos and up to date news on China's Tainted Milk Powder scandal.

Vause, John. "Death sentences in China tainted milk case," (January 23, 2009). *CNN*. Retrieved from http://edition.cnn.com/2009/WORLD/asiapcf/01/22/china.tainted.milk/index.html

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Cases Concerning the Environment

13. Nestlé Bottles Water in a California Drought (Chapter 1, pages 52-53)

What this case has to offer

This case looks at distribution, extraction, and sustainability for an essential resource that is in great demand, but short supply. It also looks at self-determination and control of resources by First Nations on their remaining land, which, in Canada, has only been possible since 1991.

Teaching suggestions

I begin by asking how many people in the room have bottled water. Often, they hold them up by the neck and shake the bottles. I ask why they like bottled water. The normal responses are: convenience, portability, and taste (i.e., no chemicals). Then we talk about the pros and cons of bottled versus tap water. Having this discussion before we take up the case, makes the analysis more personal and relevant to the students.

This case has an element of "Not in my backyard" or "NIMBY" to it: unethical resource extraction—done for centuries–might be acceptable when it is far away or when the resource is plentiful, but not acceptable when too close to home or when the resource is depleted. Similarly, a sovereign nation (i.e., the Morongo Band of Mission Indians) taking control of its own resources and not sharing them is now being viewed by other stakeholders as unacceptable—but the reverse—relegating first peoples to reserves was once considered nation building. So this case can be used to examine stakeholder perspective (that may or may not be ethical or hypocritical), stakeholder power and influence, as well as business actions that may be legal, but not ethical.

Discussion of ethical issues

1. Do you think that it is ethical or unethical for Nestlé to drain the groundwater in the Millard Canyon spring during a drought?

   Unethical: If we consider that the water is essentially a non-renewable resource, necessary for life, but in short supply, this case shows that the company (and the Morongo Band) may be profiting in the short term at the expense of other Californians living with water restrictions in drought conditions. One might also argue that the Nestlé is profiting at the expense of the Morongo Band who, with fewer resources for economic development, has leased land to the bottling operation. Consider the same question, but when water is *not currently* in short supply. Aren't the conditions also

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unethical? Consider, for example, the story of Nestlé in Elora, Ontario, and how under-valued the resource is and has been. Scarcity is a temporal condition. Resources have been extracted unsustainably for decades. Has that been fair to future generations?

2. Does Nestlé have an ethical obligation to disclose proprietary information, such as the amount of groundwater extracted and the water levels in the Millard Canyon spring? Or does Nestlé have the right to privacy and therefore need not disclose water consumption information?

   That Nestlé doesn't make public its water extraction data—so to prove that there is enough water to extract–exacerbates the public sentiment that the bottler is not exhibiting the hypernorm values of honesty, integrity, responsibility, compassion and fairness. This, in turn, erodes Nestlé's reputation. While the company and the Morongo Band have a right to privacy, non-disclosure can damage the reputation of both, because it leads to jealousy and speculation—right or wrong—of collusion, cover up, and lack of fairness. Both organizations have many stakeholders, but these include consumers: is there any evidence that disgruntled local consumers boycotted Nestlé or the Morongo casinos?

3. From a marketing perspective, what, if anything, is required of companies in order to sell bottled water in an ethical manner?

   Resource protection-minded individuals, consumers, and competitors want to see that resources are managed sustainably, responsibly, and fairly, and that a fair price is paid for the resource from which the company will profit. Chapter 1 discusses how resources, once plentiful and cheap, are now valued more highly as they are depleted. However, Nestlé continues to extract water under drought conditions in Elora, Ontario in 2016.[11]

Useful Articles, Links, and Videos

"WATER our most precious resource," YouTube video, 5:04, posted by Robeco Asset Management, April 24, 2014. https://www.youtube.com/watch?v=VIaw5mCjHPI
[Although this video is produced by a company with a vested interest in desalination, it is an effective overview of limited water resources and their use and necessity.]

[11] Leslie, Keith (August 21, 2016). "[1]Nestlé continues to extract water from Ontario town despite drought: activists." *The Globe and Mail*, http://www.theglobeandmail.com/news/national/nestle-continues-to-extract-water-from-ontario-town-despite-severe-drought-activists/article31480345/

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[Annie Leonard], "The Story of Bottled Water," *The Story of Stuff Project* [website] video, 8:04, March 22, 2010, http://storyofstuff.org/movies/story-of-bottled-water/. [The Story of Stuff Project is a group dedicated to reducing consumerism and increasing community activism in environmental issues. While figures are presented as facts with no references, the video provokes questions to challenge consumers and corporations.]

Globe staff (December 7, 2015). "The Globe examines the future of our most critical resource: water." *The Globe and Mail*, http://www.theglobeandmail.com/news/headwaters-series-indexpage/article27517652/

Leslie, Keith (August 21, 2016). "Nestlé continues to extract water from Ontario town despite drought: activists." *The Globe and Mail*, http://www.theglobeandmail.com/news/national/nestle-continues-to-extract-water-from-ontario-town-despite-severe-drought-activists/article31480345/

Morongo Band of Mission Indians: A Sovereign Nation [website]. http://www.morongonation.org/

Indigenous and Northern Affairs Canada: First Nations Land Management [website], https://www.aadnc-aandc.gc.ca/eng/1327090675492/1327090738973

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14. *The Union Carbide-Bhopal Case* (Chapter 1, pages 53-55)

What this case has to offer

I find this case to be an excellent way of:

1. Breaking the ice with a new group and developing a good learning dynamic.

   Essentially this means getting to know the group, getting them to start discussing issues which they are not used to and sharing their thoughts and values. I have found that one of the most effective ways of fostering learning in ethics is to create a dynamic where class members are led to discuss issues and to share their values and beliefs with their peers.

2. Developing a greater awareness and appreciation of more ethical issues.

   Usually, the discussion dynamic produces a greater awareness by everyone of issues which are important to the group and why. Often people are influenced by their circumstances to think narrowly about their own interests, or to dismiss views contrary to their own as hare-brained, but when their colleagues express them, they listen and develop an appreciation for them.

3. Stimulating discussion, leading to a desire to learn more about ethics

   Bhopal-Union Carbide provides ample opportunity for *stimulating* discussion about real issues: issues that are *relevant and important* to business and to professionals. As a result, people see the importance of learning more about ethics and about making ethical decisions.

4. Exploring the following specific ethical issues, among others:

   - Do businesses have responsibilities beyond what is prescribed by law?
   - Whose laws should apply, foreign or domestic?
   - Should businesses satisfy the needs of current or future shareholders?
   - Should businesses respond to the needs of non-shareholder stakeholders?
   - Should businesses subscribe to goals other than profit?
   - When/how should trade-offs between profit and safety be made?
   - What is the appropriate role for the company/for government?
   - Can a company get away with unethical behavior in far-away lands?
   - Who is to blame for the tragedy in Bhopal?
   - What can be done to avoid a recurrence?

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Teaching suggestions

Usually, I barely introduce myself and the objectives of the course/session, and then ask the participants to read the Bhopal-Union Carbide Case. It takes them about 7-10 minutes, and then I start the discussion by asking them what ethical issues they noted (question 1) and why they thought each was an ethical problem. The suggestions come with increasing frequency, and the class will want to debate each of the controversial issues as it comes up. I usually resist this until maybe four or five major items are on the table and then I find I can find a natural entry point to begin exploring the issues I have listed on the previous page. The ethical issues brought forward will rarely be in the order I have organized them into, nor will all the issues listed be raised without prompting. I don't worry about this, partly because I can steer the discussion to cover the main issues and partly because I usually want to cut off discussion after about 45 minutes. Even if all the issues are not dealt with by that time, most of the pedagogical objectives outlined above will have been met. I wind up the case discussion dealing with questions 2 and 3, and then move into a discussion of the other issues raised in Chapter 1 using overheads covering:

- Background: a definition of ethics, reasons for heightened interest in ethics
- Important concepts: stakeholder, corporate social contract, codes of conduct
- Objectives of business: Milton Friedman's doctrine and rejoinders

This usually takes 90 minutes, in total, at a brisk pace. The students are very energized and keen to go on. Sometimes we have to finish the discussion of Friedman at the beginning of our next session.

Discussion of ethical issues/questions

1. What are the ethical issues raised by this case?

   Profit vs. safety

   Among the first topics ethical issues suggested will be the causing of death and injury by a commercial process. I usually play devil's advocate here, by asking questions and reminding the participants that “the traditional role of business is to pursue profit and only profit, within the law, of course...” “Isn't it the traditional role of government to create the laws and set standards to protect society?” “Anyway, weren’t most of those killed or injured just illegal squatters or poor living in a shanty town?”

   It doesn't take long for the class to agree that safety should be one of a corporation's goals, if not for altruistic reasons, then for the self-interest inherent in continued profitability. Where they find difficulty is in assessing the trade-off between safety and profit—or in this case, the reduction of a loss. They don't have a framework to handle this assessment and trade-off, nor the trade-off between short- and long-term profit, and are pleased to hear that the frameworks for ethical decision making will be helpful here.

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Assessing blame: the role of government, whose laws should apply?

The discussion often moves rather quickly to who is to blame for the tragedy. Some will claim that the government was at fault for not regulating tightly enough. After all, that is the role of government, and business' role is to respond to government. They often couple this argument with the issue of business needing to be competitive on a global basis and thus—with the encouragement of developing countries' governments–needing to ovoid heavy cost/red tape safety regulations. To this, I ask how they think laws and regulations are set: do laws reflect how society wants to be governed, and/or is there a lag? What causes this lag time for the political process? How does lobbying by special interest groups, including the companies to be regulated, fit in? So, the class comes to realize that believing that the traditional division of roles of business and government will result in the fair and proper treatment of society may be naïve.

In developing countries, the probability of bribery and ignorance influencing the process of standard-setting is significant, so relying on developing countries' regulations may be risky if your company may be judged by higher standards, such as those in your largest market, or at home. The latter was the case for Union Carbide, even though the Indian government had encouraged the operation (thinking Union Carbide and its products to be of high quality and high value-added).

Negligence is a factor that is usually debated. The local management, if they were adequately knowledgeable, clearly lost track during the shutdown of how many fail-safe safeguards were under repair. The loss of good human power as a result of cost-cutting is probably the responsibility of the U.S. firm, even though they only own a slim majority (50.9%) of the company, because they had the knowledge to understand what the result might be. They certainly failed to follow-up on the state of repair of the facility, as they would have done in the United States. A similar case can be made for the culpability of the Indian government, but it is important to note that neither the Indian courts nor the U.S. shareholders took much notice of this. They blamed the management in the United States. The lesson here, in hindsight, is that following the tighter U.S. regulations would have been advisable.

Can unethical behavior go unnoticed?

Some students will think that they and their companies can get away with unethical or illegal acts. Of course they can, but there is a risk of getting caught, and the cost of restitution may be enormous. Anyone who believes that developing countries are too far away to attract attention is mistaken. The question to be asked on behalf of profit-only advocates is whether the increasing risk of exposure is worth taking.

Aside from loss of life and health, what is the greatest loss?

This is an interesting question to put to the class. Some will say reputation...and I will ask how to put a value on it. After some thought, the suggestion will come that this cost

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is represented by an estimate of lost sales to potential customers. Actually the right answer is the lost margin of profit on those lost sales, and this can be estimated relatively easily. The total can be staggering to most companies and far exceeds the legal penalties, which might be assessed. This is a revealing discussion for many hard-line students.

What can be done to avoid a recurrence?

Most large companies have developed internal mechanisms to maintain safety and ecological standards on a worldwide basis. This usually involves a mechanism for instant notification to head office to enable coordinated, effective crisis management. As a result of this tragedy, the heads of Union Carbide and Dow Chemical in Canada caused the Canadian Chemical Producers Association to develop a self-policing Responsible Care program (see http://www.canadianchemistry.ca/responsible_care/index.php/en/index) designed to minimize the chance of problems developing and to quickly remediate them if they did occur. This program became so highly thought of that it has been copied in the United States and around the world. It is interesting to note for the class that often such learning and useful programs have to wait until tragedies happen. Proactive management is needed to avoid this.

2. Did the doctrine of "Limited Liability" apply to protect the shareholders of Union Carbide Corporation (U.S.)?

   Many people have heard that the doctrine of limited liability will protect you, if you are a shareholder, if difficulties arise for the company you own. But they really don't understand what the doctrine means, and, like the Union Carbide shareholders, they are in for a shock in certain circumstances. This is because the doctrine of limited liability applies when a shareholder has bought shares directly from the company and has paid for all that they own in the transaction. If a problem then develops for the company, no one can require the shareholder to put up more money. However, the doctrine does not protect the shareholder from losing the market value of the shares owned. To this extent, any shareholder—like the Union Carbide (U.S.) shareholders–can still be at risk, despite the doctrine of limited liability.

3. Were the Indian operations, which were being overseen by the managers of Union Carbide Corporation (U.S.), in compliance with legal, moral, or ethical standards?

   One of the more interesting parts of this case discussion occurs when the students grapple with whether the Indian operations were in accord with legal, moral, or ethical standards. This forces them to figure out the differences, if any. Only a very few will continue to argue that there are no differences at all, and these people are generally lawyers. (Lawyers tend to be susceptible to functional fixation in this regard.) Usually the students will want to separate the analysis on two reference dimensions—Indian and U.S.–and arrive at the conclusions in the following table.

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Compliance With…			
Reference Society	**Legal**	**Moral**	**Ethical**
Indian standards	Yes	Yes/No	No
USA standards	No	No	No

I usually have to clarify what I mean by moral and ethical standards, which I do as follows:

- Moral has to do with habits—what current practices or mores are.
- Ethical refers to what mores should be—respecting a set of relatively absolute rights or values, like the right to life, to health, etc. In clarifying this concept, I like to ask the students to consider whether the impact of the actions was "right" or not.

As society's social consciousness is heightened, the perception of proper behavior appears to move toward the ethical end of the spectrum.

In my view this is an outstanding case to start off the study of ethics.

Subsequent Events

See Union Carbide Corp. (2001-2016). "[Bhopal] Chronology" on the website http://www.bhopal.com/Chronology for an update on events. In 2006, Dow Chemical, which merged with Union Carbide in early 2001, was asked for further funds by the Indian government.

Useful Articles, Links, and Videos

"Bhopal trial: Eight convicted over India gas disaster," (June 7, 2010). *BBC News*, http://news.bbc.co.uk/2/hi/south_asia/8725140.stm

Little, Allan (December 3, 2009). "Bhopal survivors fight for justice." *BBC News.* http://news.bbc.co.uk/2/hi/south_asia/8390156.stm

"Bhopal Disaster – BBC Video – The Yes Men," YouTube Video mimicking a BBC News video, 5:29, posted by razorfoundation, http://www.youtube.com/watch?v=LiWlvBro9eI . ["Impersonating a Dow Chemical spokesman on BBC, "Jude Finisterra" promises a huge compensation for the thousands of victims of the Bhopal disaster."]

Browning, Jackson B. (1993). "Union Carbide: Disaster at Bhopal." Union Carbide Corporation. Retrieved from http://storage.dow.com.edgesuite.net/dow.com/Bhopal/browning.pdf

[This report was written by retired vice president, Health, Safety, and Environmental Programs, Union Carbide Corporation.]

"Company Defends Chief in Bhopal Disaster," (August 2, 2009). *New York Times*, http://www.nytimes.com/2009/08/03/business/global/03bhopal.html

Union Carbide Corp. (2001-2016). "Bhopal" [website]. http://www.bhopal.com/Chronology

[This website provides background information on the Bhopal gas tragedy, and a series of webpages documenting the history, chronology of events, remediation, litigation, etc.]

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15. *Texaco: The Ecuador Issue* (Chapter 1, pages 56-58)

What this case has to offer

This is the case of a company that has to answer for problems from its past in a foreign land that were thought to have been put behind it years ago. It provides a real-life, interesting vehicle for discussion of:

- Responsibility of a corporation on foreign soil and the role of the foreign government involved;
- The reality of modern stakeholders and the pressures they can bring to bear;
- The fickleness of a foreign government;
- The difference between legal behavior and ethical behavior;
- Lingering consequences of some actions; and
- Shared liability (with government, and for an act of God).

Teaching suggestions

I begin this case with a brief introduction about the challenges of operating in foreign lands with varying cultures. I point out that today's world is very small, in that:

- CNN will broadcast any problem from any part of the world within one day of its occurrence;
- A corporation is increasingly accountable to stakeholders in its consumer and capital marketplaces;
- A corporation is subject to the activities of interest groups from all over the world.

I review the lawsuits that have been filed asking what the claims involve and point out that *compensation is being sought for illness, loss of property (livestock), loss of livelihood (from the forest), and loss of sustenance (food and water).* This is critical ethically because the reparations made by Texaco do not address all of these issues directly or fully, but I don't articulate this until the class realizes it, or until the end of the case discussion.

I then ask the questions posed by the case and enjoy the discussion they bring.

Discussion of Ethical Issues

Responsibility of the corporation and of the foreign government

The assertion that the company's goal is to make profit, and the government is to say how, breaks down in this case, because the contest is between unequal adversaries. The company has more knowledge, its resources are more focused, and foreign government officials are often able to be influenced to assist the company. Consequently, unless the company is very careful—and this

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requires internal motivation beyond immediate profit and government initiatives–corporate actions will appear to take advantage of a weaker foreign government and be considered unethical.

Stakeholder networks

Students should not view Texaco's problem in a static framework. The stakeholder groups suing Texaco influence each other and also external groups such as Texaco's customers in the United States. Boycotts are possible. Accountability is now worldwide, and issues management people stay on top of emerging problem areas so that corporations can put their best foot forward at all times in a dynamic world.

Legal vs. ethical approach

Texaco has relied upon legal agreements with the Ecuadorian government to resolve its problems. Unfortunately, the government has changed its mind—as any political unit will sometimes do–and has joined the lawsuits. Moreover, unless Texaco's solutions appeal to the aggrieved stakeholders, their actions against the company will continue, and the problem will continue. Unless action considered ethical is taken, Texaco's problems will continue.

1. Should Ecuadorians be able to sue Texaco in U.S. courts?

   Why shouldn't the Ecuadorians be able to sue in U.S.courts? If they weren't, companies would get away with unethical acts when their assets were moved beyond foreign jurisdictions. Students will come up with many reasons for not allowing such suits.

2. If an oil spill was caused by an act of God, an earthquake, should Texaco be held responsible?

   A company should not be liable for an act of God unless there is some confounding aspect of negligence, or unless there is a contractual responsibility to pay. Negligence is, however, subject to judgment, such as who should pay for pollution caused by a downpour that washes out a mining tailings pond. Was the dam adequate?

3. Do you find Texaco's arguments against the lawsuits convincing? Why or why not?

   Texaco's arguments showed evidence of concern, but the associated actions did not seem to address the reasonable concerns raised in the three lawsuits. I would find for the Ecuadorians if I were the judge.

Subsequent Events

In 2001, Chevron and Texaco merged to become Chevron Corporation.

See Chevron Corp. (2001-2017). "Ecuador Lawsuit: The Facts About Chevron and Texaco in Ecuador," https://www.chevron.com/ecuador/ for updates.

On August 16, 2002, the U.S. Court of Appeals dismissed the *Aguinda v. Texaco* and *Jota v. Texaco*

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litigation on the basis of *forum non conveniens*, meaning that the proper venue was in the courts of Ecuador since that was the site involved, and where the plaintiffs, records and other evidence was located.

In the fall of 2003, a lawsuit was filed against ChevronTexaco in Ecuador (to which ChevronTexaco replied on October 21, 2003). The trial continues in 2009 amid charges of prosecutorial misconduct.

Useful Articles, Links, and Videos

Berlinger, Joe (Producer)(2009). "Crude" [Documentary film]. See trailer at http://www.imdb.com/video/imdb/vi2637365785/

This documentary details the story of a lawsuit issued by tens of thousands of Ecuadorans against Chevron (Texaco) claiming contamination of the Ecuadorean Amazon.

"Chevron Statement on Ecuador Court Filings," (September 17, 2010). *The Wall Street Journal*, http://www.marketwatch.com/story/chevron-statement-on-ecuador-court-filings-2010-09-17?reflink=MW_news_stmp [Link not active in 2020.]

Chevron. "Chevron Statement on Ecuador Court Filings [press release]," (September 17, 2010), https://www.chevron.com/stories/chevron-statement-on-ecuador-court-filings.

Forero, Juan (April 28, 2009) "In Ecuador, High Stakes in Case against Chevron." *Washington Post*, http://www.washingtonpost.com/wp-dyn/content/article/2009/04/27/AR2009042703717.html

Pelley, Scott (May 4, 2009) "Amazon Crude" [Video]. *CBS 60 Minutes*, http://www.cbsnews.com/video/watch/?id=4988079n&tag=mncol;lst;1

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Product Safety Cases

16. The Right to be Informed? – The Link Between Talcum Powder and Cervical Cancer (Chapter 1, pages 58-60)

What this case has to offer

While this case looks specifically at Johnson & Johnson (J & J) and a link between talcum powder and cancer, it can also be used generally to examine the link between J & J's past deeds—namely, the pulling of all Tylenol from shelves in 1982–and the goodwill and consumer trust that action created. J & J seemed predictably to be a good and trustworthy company. But recent lawsuits against the company because of harmful effects of Tylenol on liver health, talcum powder linked to cervical cancer, and pernicious Risperdal marketing, to name just a few scandals, show that trust is no longer well-founded and its Credo is no longer providing the guidance it once did. Why has this change occurred? Why is it worthy of reflection?

Teaching suggestions

I begin by reviewing the J & J Tylenol recall of 1982. We talk about the importance of the company's Credo in influencing the decision to recall the company's largest selling product worldwide. That sets up a discussion about how a company can lose sight of its values. Why did the company fail to ensure that it continued to promote an ethical corporate culture?

The case provides the opportunity to discuss ethical wall art (a well-intentioned Credo without a method of implementation) versus codes of conduct/ethics that require active implementation, review, training, and oversight. In short, this case illustrates what happens when a corporate culture strays badly because the company's credo is not seen as an important living document.

Discussion of ethical issues

1. Was J & J's decision to not inform its customers of the potential risks of extended use of talcum powder products acceptable?

   From the viewpoint of its Credo, J & J did not meet the needs of "doctors, nurses and patients, to mothers and fathers and all others who use our products." From the viewpoint of customers, J & J's actions—or inaction–were reprehensible. If we evaluate J & J actions on the basis of hypernorm values, they were not acceptable. For example, not acting on the possibility that a correlation existed between the use of the talc and cervical cancer shows a lack of honesty, compassion, fairness, integrity, and responsibility on J & J's part. That J & J was so responsive in the Tylenol crisis surely led consumers to trust J & J and to believe it would predictably remove a future product—like the talcum powder–if it could cause harm. That trust was later betrayed.

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2. If J & J knew about the potential risks of talcum powder products in 1987, should the company have withdrawn all its talcum products in the same way that it recalled all of its Tylenol products in 1982?

   Tylenol in 1982 posed a double threat: 1) sudden death, and 2) uncertainty of the extent of the problem, since the tainting was post-production and could not be traced to any particular batch number.

   Talcum powder posed a different threat: 1) prolonged exposure over years was necessary to cause death, and 2) use of the product on one part of the body was most at issue. At a minimum, J & J should have added a warning to its talcum powder label, as soon as correlative effects were observed, to the effect that the product should not be used on genitalia, and that prolonged exposure to the talcum powder may cause cervical cancer. By doing nothing, J & J acted unethically, irresponsibly, and without compassion, fairness, integrity, honesty, or predictability.

3. Do you think that Credos are effective at encouraging ethical business behavior?

   It depends. No credo, code of ethics or code of conduct can be effective on its own. Unless top management supports the spirit of the document, encourages its use, and is responsible for adherence, the document is just ethical art—to be hung on the wall. That said, if properly supported, a credo can provide excellent directional guidance—as an ethical compass–in a readily digestible form, as it did for J & J in 1982.

   It is true that a code of ethics or code of conduct has more detail than a credo, and therefore provides more detailed guidance to employees. Usually, it tells employees how to act if they identify misconduct, including whistleblowing. Training is usually associated with a code, and employees may be required to sign off on it, saying that they understand it and will abide by it. Policies and procedures should be reflective of the code; for example, hiring policies may include fairness as a cornerstone. Reward systems may depend to some degree on performance related to the code. Someone, for example, an ombudsperson, compliance officer or ethics officer, is responsible for the code and for overseeing with its implementation, and executives—particularly the CEO—must encourage its use and must visibly "walk the talk" themselves.

   In the cervical cancer case, we have no evidence that the J & J Credo was anything more than a feel-good statement that required no tangible commitment on the part of J & J employees, executives or subsidiaries. Why did the directors allow such an iconic ethical foundation to be replaced by a focus on short-run profit?

Useful Articles, Links, and Videos

Kristof, Nicholas (September 15, 2015). "When Crime Pays: J & J's Drug Risperdal" [Editorial]. *New York Times*, http://www.nytimes.com/2015/09/17/opinion/nicholas-kristof-when-crime-pays-jjs-drug-risperdal.html?_r=0

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Ingram, David, and Krasny, Ros (November 4, 2013). "Johnson & Johnson to pay $2.2 billion to end U.S. drug probes." *Reuters*, http://www.reuters.com/article/us-jnj-settlement-idUSBRE9A30MM20131104

[This article discusses J & J's health care fraud, in the form of inappropriate marketing of and kickbacks to pharmacists, for "anti-psychotic drugs Risperdal and Invega and the heart drug Natrecor."]

Brill, Steven [September 15, 2015]. "America's most admired lawbreaker." *Huffington Post*, http://highline.huffingtonpost.com/miracleindustry/americas-most-admired-lawbreaker/

[This is a 15-chapter exposé of J & J's 20-year Risperdal marketing and cover-ups by lawyer-journalist, Steven Brill. It includes links and videos.]

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17. *Valeant Pharmaceuticals vs. Coca Cola – Which Business Model is Worse: Price Gouging or Fostering Obesity & Diabetes?* (Chapter 1, pages 60-61)

What this case has to offer

This case offers the opportunity for students to consider what a business model is, why it is important, and how it may become unsustainable and/or unprofitable because it is unethical. Also, the case raises the opportunity to consider the motivation for developing unethical business models, and how these motivations may be monitored and controlled.

Teaching suggestions

I find that it is helpful for students to consider first what a business model is, and why it is important. A business model refers to how a company creates value, and how it realizes that value from customers, patients, and others. A successful business model is one where the value created is in demand, and where that demand and value can be sustained in the face of competition, regulation, operational risks, and ethical challenges. Over time, changes occur in how business models are perceived, and that can change how successful they are. For example, MacDonald's originally made a substantial profit by selling their Big Mac sandwich at a very low profit, but selling their fries at very high profit. That strategy worked until competitors caught up with the value of their offerings and forced MacDonald's to innovate to create additional items of value.

From the point of view of shareholders, executives, and employees, a sustainable business model is to be sought after rather than one which permits a quick profit and then mounting losses and/or risks. The current business models of both Valeant and Coca Cola present significant ethics risks that students should be alert to, and they should consider how to compare and remedy each.

Stakeholder assessment can be very useful here, both with regard to impacts on patients/customers, and on executives, particularly in view of the role equity incentive schemes can play in motivating short-term thinking that ignores important ethics risks.

Discussion of ethical issues

1. Compare the ethicality of the two business models: (a) price gouging and questionable practices by Valeant to (b) contributing to obesity and diabetes by Coca Cola. Which is worse?

   a) Valeant

   Valeant, as part of its business model under CEO Michael Pearson, decided that in-house R&D on drugs was a money loser, and that mergers and acquisitions with/of pharmaceutical companies with medically successful or potentially successful drugs made more sense. A decision was made to slash R&D, slash overheads, and to "… *[look] for situations of untapped pricing power* in existing drugs," [companies to buy that had drugs with little or no competition] and *to pursue the purchasing and licensing of many so that prices could be raised exorbitantly.*

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Patients were held hostage by their disease: very little, if any, substitution is possible. [Emphasis added.] So, very bluntly, the drug users would be forced to pay or suffer and quite possibly die. Paying the exorbitant costs associated with the company's drugs would mean a huge financial burden on individuals, families, healthcare facilities, insurance companies (who would pass those costs on to others with higher premiums).

In Pearson's six years at Valeant, the company made over 100 acquisitions, and the stock price rose about 800% (Vardi 2014), so shareholders were very happy. That is, until the press began to question Valeant's approach, and Pearson was summoned to a public hearing in Washington in 2015 to defend the ethics involved in gouging the disadvantaged. Pearson's executive compensation and the value of shares he owned skyrocketed to $182.9 million for 2016[12].

It should also be noted that Valeant's mode of doing business involves other questionable practices, in addition to its fundamental business model, including the following:

- A decision was made to purchase Canadian pharmaceutical Biovail—using a Barbados subsidiary (Vardi 2014)–to reduce taxes from 36% to 3% and to try to lower them further. (Larcker and Tayan 2016, 1) Executive incentives in the form of performance awards were based on generating compound 3-year returns and increased exponentially with 3-year return targets.

- In 2014, a failed acquisition brought Valeant's business model under scrutiny (particularly, in 2015, "…the extent of its relationship with specialty [U.S.] pharmacy Philidor, which it relied on to fill key prescriptions and guide patients and doctors through the reimbursement process" (Larcker and Tayan 2016, 2)).

- In 2016, Valeant filed a Form 8-K statement with the SEC. It included the following statement (Valeant Pharmaceuticals International, Inc. 2016):

  > "As part of this assessment of internal control over financial reporting, the Company has determined that the **tone at the top** of the organization and the **performance-based environment** at the Company, where challenging targets were set and achieving those targets was a key performance expectation**, may have been contributing factors resulting in the Company's improper revenue recognition and the conduct described** [in the 8-K form]." (Valeant Pharmaceuticals International, Inc. 2016) [Emphasis added.]

b) Coca-Cola

Coca-Cola's business model is to offer products that can be addictive. They may cause harm to health and lead to obesity and/or diabetes which, some argue, has reached epidemic

[12] Janet McFarland (June 4, 2016). "The CEOS who cashed in as their companies cut back." *The Report on Business*, B6. Available at http://www.globeinvestor.com/servlet/ArticleNews/story/GAM/20160604/RBCDCOVEREXECCOMPMAIN

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proportions. By contrast to Valeant's customers, Coca Cola customers *choose* to imbibe or not: they are not forced to use company products by circumstances beyond their control. That is not to say that they may not be ignorant of the health effects and may be addicted to sugar and other health-pernicious ingredients, but consumers may be able to overcome those problems with education and discipline. But because being overweight, or having obesity and/or diabetes have significant societal impacts, governments prodded on by health advocates have tried various means by which to reduce sugar, salt, fats, and especially trans-fats in processed foods. An earlier example of a business model like Coca Cola's would be that of cigarette companies. Coca Cola, it should be noted, has not been as quick to reward executives with stock-based incentive programs.

Warren Buffett, through his investment company Berkshire Hathaway, owns 9% of Coca-Cola. He says he loses no sleep over possible negative health effects of the products. In fact, he says he "…checked the actuarial tables, and the lowest death rate is among six-year-olds. So [he] decided to eat like a six-year-old." In addition to loving coke, eating ice cream for breakfast and potato sticks as snacks, the octogenarian also says, "If I eat 2700 calories a day, a quarter of that is Coca-Cola. I drink at least five 12-ounce servings. I do it every day." (Sellers 2015)

Students should come to the realization that several aspects of Valeant's business model fall short of expectations of ethical behavior because they are not fair to patients and payers of health costs, to taxpayers, and perhaps to competitors. Preying upon patients who are ill through no fault of their own is unacceptable and unethical. Successful maximization of earnings is not sufficient to justify such unethical behavior.

Coca Cola's selling of addictive harmful products to individuals, some of whom understand the risks, and most of whom have non-harmful choices, is also unethical. But diabetes risks are not yet well enough understood by the public to force government regulation related to disclosure and restricted sales practices.

Inevitably, the profitability of the business models of both Valeant and Coca Cola will diminish over time, and shareholders, executives and others should take note.

2. From a business standpoint, what is the most significant loss that could occur to each of Valeant and Coca Cola as a result of their business models?

In the medium and longer term, reputation loss leading to profit loss could be each company's biggest problem. With it, end users may choose product substitution, if they can.

In the short term, Valeant has been forced to reduce drug prices by the pressure brought to bear through the U.S. Congress, and it has been forced to collapse its conflicted distribution arrangement with Philidor. Whether for health or other reasons, CEO Pearson has been forced out or has chosen to leave. As a result, the value or profit generated by its business model has been greatly diminished. Going forward, Valeant's reputation has been greatly tarnished, which

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will diminish its ability to work with stakeholders in the future, and will undermine its sales if and when competing products appear.

Valeant has been vilified publicly and politically, and what its business model set up—whether intended or not–as a quiet extortion between patient [or healthcare facility] and company, was publicly exposed, with concomitant public outrage. All that said, Valeant became a "Wall Street machine" run by a former hedge fund manager (Pearson). Hedge fund manager Bill Ackman, a major Valeant shareholder, said in 2014, "We like that long term alignment and that leveraged compensation for performance." (Vardi 2014)—so shareholders were still happy…until the stock fell by 90%. (Larcker and Tayan 2016, 2)

For Coca Cola, the slower recognition of its unethical business model will take longer to impact and weaken the value of its business model. However, perhaps to remedy and offset the degree of reliance on harmful products, or in response to competitors like Pepsi, Coca Cola has begun to develop healthier, non-sugary products including bottled water. (Petroff 2016).

3. Based on your assessment of the two business models, what would you do if you owned shares in each company: Continue to hold? Sell? Something else? What was your reasoning for the action chosen?

   A) If you hold Valeant shares, you have already lost most of their value. If you believe that the company has learned its ethics lesson, still has reasonable growth prospects, and may be temporarily depressed by adverse publicity, then you might want to continue to hold. If not, it would be wiser to sell and seek investments with better ethical business models and prospects.

   B) If you hold Coca-Cola shares, you could be like Warren Buffett and hold on, because you think consumers will continue to eat like six-year olds, and you have faith that the company will modify its business model successfully. However, if you believe that the traditional value in the Coca Cola business model will continue to be partly unethical and be depressed as a result, you sell.

   The major lesson for an investor should be that the ethicality of a company's business model should be part of the investment risk assessment process. Given the rapidity with which the public and regulators have begun to react, investing in companies with questionable business models and practices will be increasingly unwise.

4. Review the incentive remuneration disclosures in Valeant's Securities Exchange Commission (SEC) 10-K filings for 2012, 2013, and 2014. (See https://www.last10k.com/sec-filings/vrx) or Larcker and Tayan, 2016). Were the incentive arrangements with Valeant's CEO, Michael Pearson, appropriate?

   Pearson's remuneration was dominated by performance stock unit (PSUs) awards that *dwarfed* the salary, non-equity incentives, and other compensation received. The following table, originally from the Valeant May 19, 2015 Meeting of Shareholders (Valeant SEC Sch. 14A, 2015,

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p. 56), shows that the non-PSU components are quite reasonable for a company of Valeant's size.

Chair and CEO Michael Pearson's Compensation, 2012 to 2014 (No PSU Awards Included)

Year	Salary (Millions)	Bonus	Stock Awards	Option Awards	Non-Equity Incentive Plan	All Other Compensation	Total
2014	$1.9	$ -	$ -	$ -	$8.0	$0.4	$10.3
2013	$1.8	-	-	-	$4.8	$0.5	$7.0
2012	$1.7	-	-	-	$3.8	$0.6	$6.1

Modified table from (Larcker and Tayan 2016, 5)

However, Pearson's remuneration was also based on performance stock (PSU) award agreements signed in 2008, 2011, and 2015 that specified very large stock awards provided 3-year targets for company profitability and growth were achieved: "The performance units were structured to offer an exponential payout for exceptional long-term share price performance and zero payout if base-level thresholds were missed." (Larcker and Tayan 2016, 2) Some idea of the size of these allocations can be seen on page 59 of the Valeant Shareholder Meeting Announcement (2015).

Initially, the compensation looked reasonable, because it rewarded long-term performance, but on second look, the rewards were possibly the highest ever in the industry. (Milstead 2015) Hedge fund managers and shareholders did not begrudge the compensation package because enormous returns were generated. The company had become a "Wall Street machine." (Vardi 2014)

How the returns were generated was not really sustainable, however: the company could not remain a going—or growing–concern with its business model for wealth, not health. Executives—particularly Pearson, a major shareholder—were becoming very rich, but society wasn't becoming better off, so the compensation does not seem appropriate.

Perhaps the most prescient article on the impact of over-incentivizing of Michael Pearson, was "Valeant Pharmaceutical's Prescription For Disaster" by Vardi and Gara (May 10, 2016, which is well worth reading at http://www.forbes.com/sites/nathanvardi/2016/04/13/valeant-pharmaceuticals-prescription-for-disaster/#3d1cb3e36c65 It is clear, in retrospect, that the business model that Michael Pearson was incentivized to undertake was not ethical and therefore not sustainable.

5. How much of a price increase for Isuprel and Nitropress would have been considered reasonable, and would not have attracted negative attention?

Companies need to make reasonable returns on their capital to remain viable. But when excessive returns are made that cause harm to the health of others, particularly when disadvantaged already and have no choice, those returns are considered unethical. When

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companies need to cover increases in R&D costs, overheads, or cover costs for low-volume drugs that are essential to treatment of some medical problems, we can understand the need to raise prices. But Valeant worked to reduce overheads and slash R&D costs by buying companies with already marketable drugs (Larcker and Tayan 2016, 2). At the same time, the executive incentive payments increased significantly. Valeant bought Isuprel and Nitropress because they had no generic alternatives (Rockoff and Silverman 2015), meaning that *physicians would need to prescribe them, no matter what the price*. In summary, price increases that would have brought reasonable rates of return (i.e., comparable to industry norms) would have been acceptable.

It is worth noting that duty to shareholders is not sufficient to justify unlimited increases in profit, as was inferred by a spokesperson for Valeant in 2015: "Our duty is to our shareholders and to maximize the value" of the products that Valeant sells…Sometimes pricing comes into it, sometimes volume comes into it." (Rockoff and Silverman 2015)

Useful Articles, Links, and Videos

Esterl, Mike, and Joann S. Lublin. (October 1, 2014). "Coke Scales Back Executive Equity Compensation, Bowing To Pressure: Beverage Giant Looks to Pacify Investors, Including Buffett, Who Called Pay Plan Excessive." *Wall Street Journal*, http://www.wsj.com/articles/coca-cola-tweaks-executive-compensation-plan-1412170448 (accessed October 26, 2016).

[An embedded video talks about Coke's strategy for increasing sluggish sales.]

Larcker, David F., and Brian Tayan (April 28, 2016). "CEO pay at Valeant: Does extreme compensation create extreme risk?" *Stanford Closer Look Series*, https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-closer-look-56-ceo-pay-valeant-extreme-pay-risk.pdf (accessed October 25, 2016).

Milstead, David (July 30, 2015). "Valeant's $3-billion man: CEO's big bet pays off." *Globe and Mail*, http://www.theglobeandmail.com/report-on-business/careers/management/executive-compensation/valeants-strong-performance-means-big-rewards-for-ceo/article25788189/ (accessed October 25, 2016).

Petroff, Alanna (October 17, 2016). "Pepsi gets aggressive on cutting sugar." *CNN Money*, http://money.cnn.com/2016/10/17/news/pepsi-sugar-drinks-soda/index.html (accessed October 19, 2016).

[Petroff writes that "…two-thirds of [Pepsi's] single serving drinks will have 100 or fewer calories by 2025 as it cuts back on sugar. Currently [2016], less than 40% of its drinks have 100 calories or fewer." In addition, the company says it will reduce saturated fat and sodium in its snack products.]

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Rockoff, Jonathan D., and Ed Silverman (April 26, 2015). "Pharmaceutical Companies Buy Rivals' Drugs, Then Jack Up the Prices." *Wall Street Journal*, http://www.wsj.com/articles/pharmaceutical-companies-buy-rivals-drugs-then-jack-up-the-prices-1430096431 (accessed October 26, 2016).

Sellers, Patricia (February 25, 2015). "Warren Buffett's secret to staying young: 'I eat like a six-year-old.'" *Fortune*, http://fortune.com/2015/02/25/warren-buffett-diet-coke/ (accessed October 26, 2016).

Valeant Pharmaceuticals international, Inc. (April 9, 2015). "Schedule 14A Information" (Notice of Annual Meeting of Shareholders May 19, 2015), United States Securities and Exchange Commission, https://www.sec.gov/Archives/edgar/data/885590/000119312515123856/d898925ddef14a.htm (accessed January 23, 2017).

Valeant Pharmaceuticals International, Inc. (March 21, 2016). "FORM 8-K: Valeant Pharmaceuticals International, Inc." United States Securities and Exchange Commission, https://www.sec.gov/Archives/edgar/data/885590/000119312516511157/d164248d8k.htm (accessed October 25, 2016).

Vardi, Nathan (April 22, 2014). "Bill Ackman Outs Valeant CEO Mike Pearson As A Billionaire." *Forbes*, https://www.forbes.com/sites/nathanvardi/2014/04/22/bill-ackman-outs-valeant-ceo-mike-pearson-as-a-billionaire/#7f9319bb3b29 (accessed October 25, 2016).

Vardi, Nathan and Antoine Gara (May 10, 2016). "Valeant Pharmaceuticals' Prescription For Disaster." *Forbes*, https://www.forbes.com/sites/nathanvardi/2016/04/13/valeant-pharmaceuticals-prescription-for-disaster/#a00870c206c5 (accessed January 23, 2017).

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18. *The Betaseron Decision(A)* (Chapter 1, pages 62-63)

What this case has to offer

Betaseron A is a terrific case for breaking the ice with a class, and for getting them to start thinking about business ethics problems in a real-life setting. Specifically, they will have to wrestle with:

- The role of a corporation – is it to make profit, how much, how;
- The role of government in setting standards and looking after the public;
- The role of stakeholders in the corporation's achievement of its strategic goals;
- The long-run view vs. the short run; and
- Real trade-offs executives have to make.

The case evokes great discussion and provides a memorable learning experience.

Teaching suggestions/Major ethical issues

I usually advise the students that the case is based on a real-life problem, and one that pharmaceutical companies face continuously. I then write three headings on the board to facilitate keeping track of suggestions and the discussion on the problems identified at the end of the case: pricing, distribution of scarce product, and supply enhancement. I ask: "Whose fault is this lack of product?" Answers vary between the corporation and the government, but in the end I ask: "If it is the government's fault, does the company have to worry about it?" The answer is *yes, if the corporation wants to maintain the trust and confidence of its customers and the medical community*. Both of these stakeholder groups are essential to the achievement of the corporation's strategic goals. They are primary stakeholders per the discussion of stakeholder theory (See Text, Chapter 4, section Stakeholder Impact Analysis—Comprehensive Tool for Assessing Decisions and Actions, page 206ff).

I then put forward that, if the company were to charge $50,000 for a 12-month dosage of Betaseron, the limited supply would be enough to serve the market. I ask if this isn't the right approach for the company if its role is to maximize profit. A lively discussion ensues and usually turns into a discussion of how much profit is enough. We then turn to the issues of enhancing supply, and of fair, cheap distribution. Opinions differ, and we cover such issues as: should the company care; legal realities caused by unhappy relatives and sufferers, cost, alternatives, giving up secrets to other manufacturers who would be licensed, and so on. I finish by reading the class the actions taken by the corporation that are described in the Betaseron B case that is attached below. The class is always surprised by the long-run, stakeholder-oriented view taken by the corporation.

The author, Ann Buchholtz, who is now at the University of Georgia, has an excellent teaching note on the A and B cases:

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THE BETASERON® DECISION (B)
Dr. Ann Buchholtz, University of Georgia

On August 20, 1993, Berlex announced its distribution and price plan for Betaseron® and sent a letter to all U.S. neurologists detailing its pricing and distribution.

- Persons who have either commercial medical insurance or an annual family income of more than $50,000 would pay $1000 per month. However, to encourage strict compliance to the treatment regimen, Berlex would give patients two months of the drug free of charge after ten consecutive months of compliance. Therefore, anyone who adheres to the prescribed treatment regimen would pay $10,000 (annually), the highest price to be paid for the drug.
- Persons with an annual family income between $20,000 and $50,000, without medical insurance, would be provided financial assistance by the company to help support the annual costs of the medication.
- Persons with an annual family income below $20,000, who have no medical insurance, would be provided the medication free of charge.

To minimize out-of-pocket expenses, Berlex developed the *Betaseron® Card* which would identify patients to pre-chosen pharmacies and provide information about their payment program and price. Qualified patients would receive interest-free deferred payment for up to 55 days. This was intended to enable most patients to pay their bills after they received reimbursement. The card was provided through a financial institution and financed by Berlex. After 55 days, a finance charge of 12% would be applied to any unpaid balance. Berlex would not receive any portion of the interest payments and would not profit from the card.

Distribution was set to begin in October 1993, with distribution handled by PCS Health Systems, Inc., a nationwide network of affiliated pharmacies. This managed pharmacy network served two purposes. First, it enabled Berlex to cut costs by minimizing handling charges; Berlex estimated that patients would save about $2000 per year. It also enabled Berlex to provide the drug only to specifically identified patients and insure that, once therapy has begun, the supply of the drug would be continuous.

Initial access to the drug was determined by a lottery, designed to provide equal access to the initially limited supply. Physicians who wished to obtain Betaseron® for their patients enrolled them in the program during an open registration period from August 23 to September *15,* 1993. At the conclusion of the registration period, patients were assigned a randomly generated number. Patients who registered for the drug after the close of registration were put at the end of the list on a first-come, first-served basis. Those with numbers under 1000 were slated to begin receiving the drug immediately. Those with numbers under 12,000 would have the drug by year's end. Those with numbers between 12,001 and 40,000 were expected to have access to the drug by mid to late 1994 and those with numbers over 40,000 would probably not be supplied Betaseron® until late 1994 or early 1995. Berlex placed no restrictions on which MS patients physicians could enroll, in spite of the FDA indication for ambulatory relapsing, remitting MS.

Patients with MS and their advocates were left with a host of questions. Was the lottery system a fair way to resolve the distribution dilemma? How fair was the pricing structure? Did Berlex do everything possible to guarantee equitable access to the drug? Who were the winners and who were the losers? Lastly, what problems were likely to result from this solution?

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19. *Magnetic Toys Can Hurt* (Chapter 1, pages 63-64)

What this case has to offer

This case offers an opportunity to discuss a poorly handled hazardous products case; consider the rights of stakeholders including shareholders, victims, employees and others; and learn about practical risk- and crisis management from an ethical perspective.

Teaching suggestions

The discussion might begin by asking the class whether Mega Brands acted properly or not, and why. They should raise the following:

- Lack of cooperation with the U.S. Consumer Products Safety Commission (CPSC):
    - Delays in providing info, and
    - Delay in recalling products as requested.
- New labeling might not provide enough protection

Then the class should be asked which stakeholders benefited (shareholders wishing to sell their shares in the short run) and which were disadvantaged by Mega Brands' actions (victims, shareholders wishing to hold their investments beyond the short term, and so on).

That will provide a platform for asking how Mega Brands' actions could have been improved, which will set the stage for taking up the end-of-case questions.

Discussion of Ethical Issues

1. If you were an executive of Mega Brands, what concerns would you express to the CEO about the Magnetix Toy issues noted above?
    - The rights of the victims and their families, our employees (some of whom will leave) who will see their reputations tarnished by association, our distribution channel partners and long-term shareholders have been damaged. Was the loss worth the benefit?
    - Legal liability will likely ensue for the company and its senior executives that will be costly to defend in terms of time and money.
    - Damage to reputation will be lasting and serious, thus depressing sales and profits. Mega Brands sells in the children's toy market—where children are considered more vulnerable than adults–and the company should realize that it is really selling trust, not toys.

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- The company's risk management systems and practices were faulty:

System flaws

  - No recording, analysis, and risk assessment of complaints
  - No scanning of media for potential problems
  - No reporting system to top management and the Board
  - No responsibility allocated for someone to champion and oversee the risk management process

Practice flaws:

  - Denied responsibility
  - Non-cooperative with authorities
  - No worthy risk assessment
  - No consideration of company values and how those are signalled to employees and other stakeholders
  - Undermined reputation

2. If the CEO didn't pay any attention, what would you do?

- Report the matter to the company's Board through the governance and/or audit committee.
- Consider whistleblowing to the media.

3. Should the CPSC have more powers to deal with such hazards and companies? If so, what would they be? If not, why not?

- Yes, because companies now seem to be able to ignore sound requests from authorities.
- Significant investigatory powers and the ability to levy fines for:
  - Ignoring requests
  - Failing to have systems that record, examine, and report on complaints
  - Failing to monitor the quality of complaints and risk management systems
- Legal orders for recovery of ill-gotten profits
- Prosecution for egregious cases leading to fines for companies and jail for officers

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Useful Articles, Links, and Videos

Consumer Reports (April 14, 2009). "Mega Brands fined $1.1 million for failing to report Magnetix incidents," https://www.consumerreports.org/cro/news/2009/04/mega-brands-fined-1-1-million-for-failing-to-report-magnetix-incidents/index.htm

Morgenson, Gretchen (July 15, 2007) "Toy Magnets Attract Sales, and Suits." *New York Times*, http://www.nytimes.com/2007/07/15/business/yourmoney/15magnet.html?_r=1&scp=1&sq=Mega%20Brands%20magnetix%20toys&st=cse

"In the News: Magnetix" (2007, 2009). *Chicago Tribune,* (Feature Article Collections on Mega Brands) http://articles.chicagotribune.com/keyword/magnetix [Link not active in 2020.]

[This webpage identified many articles on Magnetix and Mega Brands from 2007 and 2009. In 2020, a search using terms "Magnetix" and "Chicago Tribune" retrieves many of the articles.]

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20. *Bausch & Lomb's Hazardous Contact Lens Cleaner* (Chapter 1, pages 64-65)

What this case has to offer

Most companies do not react effectively and quickly enough to an ethical crisis, particularly over a hazardous product discovery, so this case offers the opportunity to engage students to illustrate the:

- Dangers of ignoring or minimizing the potential problems, and the motivations for doing so;
- Very real conflicts in the interests of stakeholders, such as shareholders and managers versus the potential victims;
- Trade-offs needed between these interests, and when to make them;
- Trade-offs between short-run and long-run interests;
- Role of corporations; and
- Due diligence expected of executives and the Board.

Reference to the crisis management discussions and readings in the Text, Chapter 7 would be useful. In fact, this case could be used to illustrate a simple crisis management problem.

Teaching suggestions

To get the class discussion started, I ask the class to vote on whether the role of modern corporations ought to be to maximize profit or to serve the interests of all its stakeholders, including shareholders. The case will lead them to see that the second objective may (and we hope will) lead to the first, but before they realize that, divide the class into two groups for discussion purposes: one, to take the role of the CEO, Ron Zarrella who has acted in what he thinks is the best interest of the shareholders; the other, to take the role of the victims and their families.

The victim's reps can then be asked what was wrong with the CEO's actions. They will say that he was too slow to react to save their health by halting sales and sending warnings to users.

The CEO's reps should be asked to respond, and they will say that they didn't have all the information they thought necessary to halt sales earlier and send warnings, because those actions would have had a serious negative affect on profits and, therefore, on shareholders' interests (as well as bonuses).

At this stage, I ask which shareholders interest they are thinking of: current or potential future shareholders. The normal answer is current shareholders, and I ask if the interests of current shareholders are the same as future shareholders. The answer is not necessarily, and we explore this important point. I ask the class if they think the CEO should be striving to satisfy current shareholders or potential future shareholders. I also ask if the interests of potential future shareholders are the same as for non-shareholder stakeholders. This discussion will lead the students to reconsider the question I

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asked them about voting on the role of modern corporations and will prepare them for the discussion of what the CEO should have done.

The class should be asked if there were anything that should have been done more quickly that happened in real life that could/should have been done earlier to assist in the CEO's decision. This will lead to a list such as:

- Press for early information on anomalous information (Hong Kong issue and Renu's five-times higher infection than competitors).
- Implement an online complaint system to enable early warnings to be received, and follow-up on complaints when they are reported.
- Monitor world media for potential problems, such as those in Hong Kong, and assess whether our company could be involved.
- Brief the Board of Directors and seek their input, since they are the representatives of the shareholders and will consider the risks to the company and themselves carefully. This illustrates the governance realities for CEOs.
- Implement a comprehensive risk management system and mentality in the company.
- Clarify company values and priorities in advance, as did Johnson & Johnson in their credo, which was so helpful to executives in the Tylenol Crisis by showing that the interests of patients were paramount. (See the Text's Index for Tylenol entries.)

I finish the case discussion by asking the class what the priorities of the CEO should be when facing another problem such as this. Hopefully they will put the victims' interests ahead of the current shareholders' interests. I then ask them to vote again on the question I put to them at the beginning.

Discussion of ethical issues

1. What lessons should be taken from B&L's Renu experience?

   See above.

2. What should Zarrella have done and when?

   See above.

Useful Articles, Links, and Videos

Smith, Aaron (April 27, 2006). "Bausch sold ReNu in US knowing problems in Asia." *CNNMoney*, http://money.cnn.com/2006/04/27/news/companies/bausch/

Pettypiece, Shannon (April 14, 2006). "Bausch & Lomb Ads Apologize to Consumers on Cleaner." *Bloomberg*,

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http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aTbkZI1HbPW0&refer=us [Link not active in 2020.]

Dobbin, Ben (March 15, 2010). "New CEO, Chairman appointed at Bausch & Lomb." *Associated Press*, http://www.boston.com/business/articles/2010/03/15/new_ceo_chairman_appointed_at_bausch__lomb/

Walsh Juliann and Duncan Moore (April 12, 2006) "Bausch & Lomb Isn't Recalling Contact Lens Cleaner." *Los Angeles Times,* https://www.latimes.com/archives/la-xpm-2006-apr-13-fi-drops13-story.html

Feder, Barnaby (May 15, 2006). "Bausch Issues Worldwide Recall of Contact Lens Cleaner." *New York Times*, http://www.nytimes.com/2006/05/15/business/15cnd-eye.html

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Accounting & Auditing Cases

21. Where Were the Accountants? (Chapter 1, pages 65-66)

What this case has to offer

This case was designed to raise questions about two major scandals (the savings and loan "S&L" crisis and Bank of Credit and Commerce International (BCCI) bank scandal) and one health problem (smoking) and ask *why accountants were not more proactive* in avoiding the problems, and more proactive in matters which bear upon their expertise. This *leadership* is what many would like to see in a profession they would like to join. In the process of discussion, students will gain *a better understanding of the accountant's expertise and role as a professional*.

Teaching suggestions and discussion

This case is a good one for assigning students to do some research in advance on the S&L crisis and on the BCCI scandal. For the former, I would refer them to Epstein (1993), and for the latter, to Beaty and Gwynne (1991).[13] The students can then report to the class on what they found out about the two scandals to provide background for the discussion. The history involved is something a budding accountant should know, partly in order to avoid a repeat of similar unfortunate happenings.

Based on this understanding, I would ask whether the scandals could have been avoided and how? This usually produces the response that, had accountants been quicker to appreciate the danger in each, and had they spoken out more forcefully, the problems could have been avoided or prevented from getting as large and bad as they did.

I then ask why didn't accountants recognize the potential of the problem earlier and speak out. The answer revolves around self-interest and lack of understanding of the potential downside. For instance, accountants should have known—and probably did know–about the financial uncertainty of S&Ls but hoped that fortunes would turn around and all would be well. It was not in the *short-term self-interests* of accountants involved as auditors or as management personnel to blow the whistle too loudly. Jobs and/or clients would have been lost.

The motivation for non-disclosure of the BCCI fraud is probably similar, although it was finally brought to light by a report of the firm's auditors in Great Britain: Price Waterhouse & Co. The lesson here is that a professional's short-term self-interest does not provide a suitable basis for protecting the profession as a whole or the interests of investors, depositors and the public who ultimately have to pick up the cost.

In the case of the health-related debate on the costs associated with smoking, I would ask the class how an accountant could have provided leadership in the gathering of information. The discussion should

[13] In 2020, many online sources could be used as substitutes if these articles cannot be accessed. Academic libraries should be able to provide free access for students.

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progress from suggestions for employing traditional costs to estimates of costs, which would be part of a cost-benefit analysis (i.e., costs which are beyond those which would fit into a traditional financial statement, such as a surrogate cost for pain and suffering). This area is often beyond the scope of many college programs for accountants, but the question is should it be? Accountants are experts in measurement and should be able to contribute to such analyses. As subjects like the measurement of environmental impacts become more important, perhaps accountants thinking of measurement beyond traditional limits will become more popular. When they do, accounting education will adapt, and more accountants will be prepared and willing to speak out on non-traditional, but important, subjects. If they don't, some other group will assume the leadership of the measurement function in these emerging areas.

Useful Articles, Links and Videos

Atkinson, Dan (January 8, 1999). "Accountants in BCCI net." *The Guardian*, http://www.guardian.co.uk/business/1999/jan/08/6

Beaty, Jonathan and Gwynne, S.C. (July 29, 1991). "B.C.C.I.: The Dirtiest Bank of All." *Time*, http://content.time.com/time/magazine/article/0,9171,973481,00.html

[Link in 2020 provides excerpt only or full article with registration. Article may be able accessible for free through academic libraries.]

Epstein, Marc J., (February 1993), "Accountants and the S&L crisis," *Management Accounting* 74 (8), p. 24ff.

[The full article is accessible through academic library databases, such as http://search.proquest.com/docview/229757929?pq-origsite=gscholar or https://go.gale.com/ps/anonymous?id=GALE%7CA14171389&sid=googleScholar&v=2.1&it=r&linkaccess=fulltext&issn=00251690&p=AONE&sw=w.]

McCarroll, Thomas. (April 13, 1992) "Accounting Who's Counting?" *Time*, http://content.time.com/time/magazine/article/0,9171,975255,00.html

[Link in 2020 provides excerpt only or full article with registration. Article may be able accessible for free through academic libraries.]

Roohani, Saeed, Knight, Lee, and Knight, Ray (January 1, 1994). "S&L Crisis: A learning experience for accountants." *Journal of Bank Cost & Management Accounting* 7 (3), https://www.questia.com/library/journal/1P3-7406605/the-s-l-crisis-a-learning-experience-for-accountants

[Link in 2020 provides excerpt only. Article may be able accessible for free through academic libraries.]

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"BCCI Investigation Day 2 Part I," *C-Span* video, 59:00, Aug. 2, 1991, http://www.c-spanvideo.org/program/IIn ; "BCCI Investigation Day 2 Part II," *C-Span* video, 54:00, August 2, 1991, https://www.c-span.org/video/?20576-1/bcci-investigation-day-2-part-ii ; "BCCI Investigation Day 2 Part III," *C-Span* video, 1:38:00, August 2, 1991 http://www.c-spanvideo.org/program/III .

[A U.S. Senate subcommittee hears testimony on the Bank of Credit and Commerce International's finances and its effects on U.S. financial and security interests. Additional testimony available through the C-span.org website.]

"BCCI Investigation," *C-Span* video, 2:08:42, October 25, 1991, https://www.c-span.org/video/?22300-1/bcci-investigation

[The Senate Committee on Foreign Relations heard testimony into the Bank of Credit and Commerce International scandal and its effects on U.S. financial and security interests. Additional testimony available through the C-span.org website.]

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22. *To Resign or Serve?* (Chapter 1, pages 66-67)

What this case has to offer

This case combines the facts of two real-life situations. It offers the opportunity to:

1. Work with the stakeholder concept,
2. Reason through two business arrangements to produce the best accounting disclosure of the transactions involved from a traditional accounting perspective and an ethical perspective,
3. Face the decision to resign or continue to serve a client,
4. Consider what effort should be made to give your views as out-going auditor to the in-coming firm, and
5. Consider when it is appropriate to take on a client when another auditor has resigned.

Due to placement of this case in Chapter 1, the discussion of ethical issues and ethical decision frameworks will not be as well developed as it would be if the case were used after the material in Chapter 4 were dealt with.

Teaching suggestions

Just for fun, I take a vote of the class at the outset to see how many students think that resignation was appropriate, and how many would be prepared to take on the audit after the incumbent had resigned.

I believe that the business arrangement put forward in the case needs to be understood before the ethics issues and fundamental questions can be appreciated. Consequently, I begin with a discussion of renegotiations of overdue loans to enable calling them current (which has long been a practice in the lending industry), and of insuring against non-payment of accounts receivable (which has been done by governments for oversees trade and factors for years, but not by the type of company employed as insurer in this case).

Based on this understanding, the students can specify who are the stakeholders involved and what their interests are, including:

- Current shareholders: accurate portrayal of reality as a basis for decisions, but higher rather than lower profits
- Future shareholders: accurate portrayal of reality as a basis for decisions, but lower rather than higher profits
- Lenders to the bank: continuing arrangements, repayment according to terms
- Creditors: repayment according to terms

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- Suppliers: continuing arrangements, payment
- Employees: continuing employment
- Auditors: continuation of reasonable fee for service arrangements, reasonable audit risk, low possibility of lawsuits and legal settlements, no loss of reputation
- Management: stable/increasing profits to support their continuance, bonuses and the price of shares or options held
- Accounting profession: no loss of reputation which could damage their franchise and their ability to maximize their independence and future income
- Regulators, etc.

The conflicts in interest which show up in this listing should be underscored with the students, because they are at the root of most ethical problems, and they provide a framework for deciding how to best disclose the transactions flowing from the two business arrangements.

Discussion of important issues

Renegotiation of overdue loans to call them current

For this to be substantive rather than just form, the collectability of the loans has to be improved and assured. Repeated renegotiations would imply non-collectability, and should be evident during the course of an audit. The case is silent on the audit work undertaken, but the resignation implies that the auditors had decided the collectability was in serious question.

Use of insurance against non-collectability

This approach is not new, but the familiarity of the insurer to the nature of risk involved, and the capacity of the insurer to pay off in the event of large losses, would have to be scrutinized carefully. Given the extent of losses being experienced by banks in regard to real estate loans, it is unlikely that any insurer, other than a government, could sustain the payout required. Once again this may be why the auditors decided to resign.

Persuasion vs. qualification vs. Resignation

Customarily, as in the case, an auditor who believes statements should be changed or unfair presentation will result, will call for a meeting with the management and/or the audit committee of the Board and will ask for proper disclosure to be made. If adequate changes are not made, the auditors can qualify their auditor's report and disclose the reason for doing so. They need not resign. If, however, an auditor loses confidence in the integrity of the management of a client, then resignation at the earliest possible moment is the best way to avoid legal liability, which will probably ensue. However, the auditor must also consider his/her responsibility to the shareholders. If his/her resignation is without notifying the shareholder of the reason, then the auditor's fiduciary duty to the

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shareholder has not been properly discharged, because the shareholder may never know of the auditor's concern until it is too late. Resignation from an audit without rendering a report or advising the audit committee of the reason is most unusual.

Courtesy among auditors/Protection of shareholders and auditor's interests

Codes of conduct for auditors usually provide that incoming auditors contact out-going auditors to advise them of their appointment and whether they had any problems with the client to advise the incoming group about. This would be the opportunity to protect the interests of the shareholders by passing along concerns, and for the incoming auditor to assess whether he/she should take on the job. If this opportunity does not present itself, and in this case it apparently has not, the outgoing auditor, James, should assess whether he should advise Jack of his concerns. I believe he should do so, and follow-up in writing; otherwise, his duty would not be discharged to the shareholders. If this is not done, I believe James would be acting unethically and probably would be open to legal liability, as well.

Students should be able to understand more fully the purpose of an auditor and his/her responsibilities as a result of studying this case.

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