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SKU: 9781265599379-SOLUTIONS

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Chapter 2 - Business Ethics

CHAPTER OVERVIEW

Chapter Two explains the fundamentals of business ethics and social responsibility. It also provides a framework that allows students to engage with ethics and social responsibility material. This framework is important because it takes away students' tendency to believe questions of ethics are simply matters of opinion. Consider asking your students to use the "WPH framework" throughout the course.

LEARNING OBJECTIVES

After reading this chapter, students will be able to:

2-1 Distinguish between business ethics and the social responsibility of business.s
2-2 Recognize the relationship between business law and business ethics.
2-3 Analyze business decisions using the WH framework.
2-4 Appendix 2A: Explain the theories of business ethics.

LECTURE NOTES WITH DEFINITIONS

In the news…	**Teaching tip:** For each chapter, consider asking students to relate current news items to material from the chapter. In addition to ideas students come up with on their own, consider weaving in news stories provided by the textbook publisher. For Chapter Two, McGraw Hill offers the following story: "Smoke & Mirrors: Tobacco Companies Have Been Steadily Adding More Nicotine to Cigarettes to Make Them More Addictive, Especially to Teenagers." • Apply the WPH framework to the decisions tobacco companies are making. • Is it "socially responsible" for tobacco companies to add nicotine to cigarettes? • Should legal rules provide additional protections to vulnerable consumers, such as teenagers?
2-1 Distinguish between business ethics and the social responsibility of business.	**Ethics** is the study and practice of decisions about what is good or right. • **Business ethics** is the application of ethics to special problems and opportunities experienced by businesspeople. An example of a business ethics question: Is the company in the Case Opener doing the right thing when it attempts to reduce the costs of advertising by not listing all possible complications of the medicine for the consumer? As explained later in this chapter there are several ways of evaluating an ethical decision, for example, the Golden Rule, the Public Disclosure test, or the Universalization Test. One reasonable answer, thus, is can be provided by the Golden Rule. Presumably, if

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	one were the consumer of a medicine, one would want to be informed of all of the possible complications of a medicine before deciding to put the drug into one's body. To not desire information would be the equivalent of not caring about one's health or potentially dying from a dangerous drug. In light of this application of the Golden Rule, a company's decision to cut costs by not listing all possible negative effects of a medicine constitutes ethically questionable behavior. An **ethical dilemma** is a problem about what a firm should do for which no clear, right direction is available. The **social responsibility of business** consists of the expectations that the community imposes on firms doing business inside its borders. • Exhibit 2-1 provides a useful example of the way that the social responsibility of business has affected the way a business operates. For example, notice that the values and goals sections in the code of conduct pyramid put consumer needs and honesty at the forefront of the business's objectives. **Teaching tip:** How are the concepts of ethics and social responsibility different? Do they overlap?
2-2 Recognize the relationship between business law and business ethics.	The legality of the decision is the minimal standard that must be met. *United States of America et al. ex rel. Andrew Hagerty v. Cyberonics, Inc.* (briefed below) compares what is legal with what is ethical. Ethics presumes obedience to law.

2-3 Analyze business decisions using the WH framework.	The WPH framework provides practical steps for responding to an ethical dilemma.
	
	• W: Whom would the decision affect?
	  ○ stakeholders: assorted groups of people affected by the firm's decisions, e.g., owners or shareholders, employees, customers, management, general community, future generations.
	  ○ interests of stakeholders will sometimes be in common and will sometimes conflict.
	  ▪ The Case Nugget in this section involving Maria Lopez provides a useful example of how multiple stakeholders are affected by a business decision. The stakeholders include in this example include the motor suppliers, the CEO, management, and depending on the motor supplier chosen, the workers for the motor suppliers that are not transacted with.
	• P: Purpose—What are the ultimate purposes of the decision?
	  ○ Which values are being upheld by the decision?
	  ○ Values are positive abstractions that capture our sense of what is good or desirable.

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	○ Four important values often influence business decisions: freedom (to act without restriction from rules imposed by others), security (to be safe from those wishing to interfere with your interests), justice (to receive the products of your labor), and efficiency (to get the most from a particular output). • H: How do we make ethical decisions? ○ We use classical ethical guidelines, such as these: ○ The Golden Rule—"Do unto others as you would have done to you." ○ Public Disclosure Test—Suppose your decision would be published in the newspaper. (Our actions are in the open rather than hidden.) ○ Universalization Test—If I take action X, were others to follow my example, would the world be a better place? ○ The Case Nugget on Tyson Foods' Bribery Charges provides a useful example of the way the Universalization Test can serve as a guide in making ethical decisions. In this case, Tyson Foods was paying bribes to pass quality inspections. But, foods that are low in quality have to potential to cause diseases, like salmonella, in consumers. Thus, by circumventing safety inspections, Tyson Foods was endangering the health of their consumers. One would be hard pressed to argue that the world is a better place as a result of Tyson Foods' bribes. ○ **E-Commerce and the Law**: This section provides an example of the ethical dilemmas that have been created in the internet age. Specifically, the dilemma consists of weighing the rights of news agencies to protect the information they gather against the right of the government to improve national security, thereby protecting U.S. citizens. **Teaching tip:** Choose a current ethical dilemma from the newspaper and ask students to apply the WPH framework to the dilemma.
Appendix on Theories of Business Ethics	• Ethical relativism—Asserts that morality is relative. • Situational ethics—Asks the thinker to put herself in the position of the person facing an ethical dilemma. • Consequentialism—Asks the thinker to consider the harms and benefits of making a particular decision • Deontology—Recognizes that certain actions are right or wrong, no matter the consequences. • Virtue ethics—Focuses on individual development, e.g., individuals develop virtues such as courage, and these virtues guide behavior. • Ethics of care—Asks the thinker to focus on caring and maintaining human relationships. **Teaching tip:** Ask students how specific theories of business ethics are

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	integrated into the WPH framework. **Teaching tip:** For more information about theories of business ethics, go to these web sites: Philosophy and ethics on the web: http://www.epistemelinks.com/Main/EncyRefs.aspx?TopiCode=Ethi Santa Clara's Markkula Center for Applied Ethics: http://www.scu.edu/ethics/practicing/decision/framework.html A PowerPoint presentation by Ernest A. Kallman and John P. Grillo. Click on "view graphic version." http://www.ecs.csun.edu/~rlingard/COMP450/cs450edm/tsld001.htm
Point/Counterpoint: Do a firm's ethical responsibilities extend beyond maximization of profits?	**Teaching tip:** Here are some questions to help you tie the Point/Counterpoint into class discussion: • What are the costs of corporate responsibility? • What are the costs of *not having* corporate responsibility? • Are there ways in which the interests of a firm can align with the interests of a community outside of profits? For further arguments on both sides of the issue, see: http://umich.edu/~thecore/doc/Friedman.pdf and http://business.time.com/2012/05/28/why-companies-can-no-longer-afford-to-ignore-their-social-responsibilities/

The Complexity of Business Ethics: The Story of Two Biotech CEOs

Elizabeth Holmes is a 31-year-old billionaire whose company, Theranos, is developing a technique for doing medical diagnostic work with the draw of a single drop of blood. The objective is to create a low-priced, less painful alternative to the large blood draws that have been the traditional way to do medical diagnoses.

Ms. Holmes is designing and producing a product that is so cheap that a person can get a cholesterol test for the price of an egg McMuffin. She proudly says that she will not raise prices and will not deny access to this new technology to people in need.

Yet, in an investigative report in the fall of 2015, the Wall Street Journal revealed that Theranos was doing some medical diagnostic work using standard blood drawing technology rather than their own highly touted techniques.

In addition, the FDA announced that the Theranos innovation had not been adequately peer reviewed and was not an approved blood collection device. Martin Shkreli is the founder and CEO of Turning Pharmaceuticals. He is a year older than Ms. Holmes and has an estimated wealth of $100 million. He acquired the drug Daraprim, which is used by HIV and cancer patients, and promptly raised the price from $13.50 to $750.

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In interviews, he explained that he probably should have raised the price even more because those who needed the drug would be willing to pay even more because it was so valuable for their health. Daraprim costs approximately $1 to make. Turning gives away 60% of Daraprim to those who do not have the money to pay for it. Shkreli points out that his primary responsibility is to make profits for those who own Turning. On December 17, 2015, Shkreli was arrested on charges of securities fraud for allegedly using assets from a biotech company he started to pay off unrelated business debts.

CASE BRIEFS WITH ANSWERS TO THE QUESTIONS

Case 2-1 United States of America et al. ex rel. Andrew Hagerty v. Cyberonics, Inc., United States District Court for the District of Massachusetts 2015 U.S. Dist. _____, LEXIS 42166

Case Brief

Issue:

Did Cyberonics violate the False Claims Act (FCA) by knowingly submitting false information to the government?

Facts:

Cyberonics, Inc. is a corporation that sells a medical device known as the VNS system. In 2006, Cyberonics heavily promoted its VNS system, only for it to be denied Medicare coverage, leaving Cyberonics $132 million in debt. To make up for this loss, Cyberonics began allegedly encouraging its salespeople to sell replacement devices to patients who did not need them. Cyberonics employee Andrew Hagerty blew the whistle on Cyberonic's acts, alleging that Cyberonics was violating the False Claims Act by knowingly submitting false claims to the United States government.

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Holding:

The court ruled in favor of Cyberonics, dismissing its FCA claims.

Reasoning:

- The court's decision revolved around Rule 9(b) of the FCA.
- Rule 9(b) states “[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.”
- Hagerty simply claimed that Cyberonics was selling unneeded devices; he did not specify any actual false claims, any specific cases where a device was sold on fraudulent grounds, etc.
    - The court argued that people buy things that they don't need every day; Hagerty needed to provide evidence that Cyberonics was selling unneeded devices on the basis of fraud.

Answers to the questions

Critical Thinking

One of the facts that would be useful to know in this context is the effect size of the fraudulent actions of the salespeople; that is, how many individuals were negatively affected by the dishonest sales practices and how negatively were these people affected? Another fact that could affect one's perception of the judgment is the extent to which the company's executives were involved in the fraudulent sales. If the company simply set quotas and the salespeople took unethical actions to meet these quotas, then that is a very different thing then direct orders from executives to engage in unethical behavior.

Ethical Decision Making

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Just because the FCA claims against Cyberonics were dismissed doesn't necessarily mean that Cyberonics was acting ethically. There are several actions that many people find highly unethical that are also entirely legal, such as driving a high-emission vehicle or smoking cigarettes at home around children. There's an argument to be made that even though Cyberonics might not have broken any laws, it was still acting unethically by providing false information to patients and essentially tricking customers into buying things they didn't need. If the Cyberonics salespeople had used the WPH framework to ask themselves why they were making fraudulent claims and who it affected, their decisions may have been more ethical.

TIPS FOR BUSINESS MANAGERS

1. Many ethical problems faced by business can be solved by following a simple rule---obey the law.
2. Use the language of the various ethical theories to activate the conversation about what the ethical course of action is.
3. Be sensitive to the cultural context in which you are doing business for that context will provide strong signals about what social responsibility means for a business like yours

TEACHING SKILLS: PRACTICE ASKING QUESTIONS THAT FACILITATE UNDERSTANDING

Practice asking questions encourage the reader to:	**Use these questions as models:**
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"Reduce" the document they are reading.	• Why should I care about this issue? • What is the author's conclusion? • What is the author's reasoning? • How does the author's argument relate to the broader issue at hand? • What terms in the author's argument should be clarified? • Could this argument be a metaphor for a more abstract issue?
Evaluate reasoning.	• What sort of reasons does the author use to prove her point? • Are the reasons stated in an engaging manner? • Is the author using statistics, surveys, logic, or an appeal to common sense? What does each of these methods fail to take into account? How important is that omission to the determination of whether you should accept the reasoning? • Is the argument well-constructed? Is it well written? • Does the author claim any absolute truths? If so, what? • Does the author identify any deficiencies or flaws in her arguments, or does she present the reasoning as flawless? • Does the author acknowledge the "other side"?

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	• How dedicated is the author to her conclusion? • Does the author present the possibility that she is wrong or misguided? • Does the author justify her assumptions? • What assumptions (related to the particular discipline) does the argument support and/or call into question?
Consider an unfamiliar idea.	• What are the major tenets of this belief system? That is, what aspects of other belief philosophies does this philosophy accept? • Is this system of beliefs an extension of another system? A reaction to another system? • What are the key "terms" involved with this idea? How are these terms defined? • What are the various perspectives or approaches within the system? • What are the goals of the perspective/approach? • What is the appeal of the argument/ perspective? • What kind of assumptions does the belief system make about human nature? Are we responsible? Lazy? In control? Out of control? Reasonable? Ignorant? Good? Evil? Self-centered? Other- centered? • What evidence supports this perspective? • What kinds of relationships exist between concepts? • Is there a major conflict between two dominant perspectives, or do many perspectives disagree? • Is there a common thread among the perspectives? • Can we come to a conclusion about the issue based on various perspectives? • What factors confound the issue and prevent a concrete answer?
Investigate the author/expert.	• Who is the author, and where is she "coming from"? Has she had sufficient experience and expertise in the subject? • What (if anything) has the author stated in the past that may confirm or contradict his current argument? If the latter is the case, what factor(s) warrant this contradiction (i.e. change in ideology, pursuit of material self-interest, etc)? • What is the author's intent for writing this piece? • How does the author intend to persuade her audience? • Do I agree with her rhetorical devices? • Is the author trying to be ambiguous or non-linear for a purpose? • Does the author acknowledge the "other side"? • How dedicated is the author to her conclusion?

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	• What stakes do the participants have in the possible outcomes of the discussion? • What value assumptions do those participating bring to the discourse? • What are the dominant paradigms the writer subscribes to? • What do other reasonable scholars have to say about the idea? • Who are the experts on this particular issue and why? • Are the experts' opinions based on a particular belief system or is it an independent opinion that deals with evidence that the expert feels is relevant? • Is the expert defending a particular belief or making an honest attempt to come to an appropriate conclusion?
Probe our individual understanding or knowledge.	• What do I already know about this issue? How can I connect this information to new knowledge? • Where am I "coming from"? How do I fit into the author's view of the world? • How do I feel reading this? Angry? Amused? Ambivalent? Why do I feel this way? • What is the best possible argument you could construct against the author's conclusion? • Do I understand this idea well enough to teach it?
Offer closure, e.g., where does this idea take us?	• Can we accept the author's conclusion? To what degree? With what stipulations? What should we do afterwards? • Would another epistemological approach yield a drastically different conclusion? • Have we kept reasons and conclusions separate? In other words, have we acknowledged that we could agree with the author's reasoning, but nevertheless, could not endorse her conclusion? Have we admitted that we might agree with the author's conclusion but are not satisfied with her reasoning?

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TEACHING IDEAS

Connecting to the Core	One way to connect to the core expands the chapter's discussion of ethics and accounting. You may want to obtain and show your class a PBS videotape called "Bigger than Enron," available at: http://www.pbs.org/wgbh/pages/frontline/shows/regulation/ This videotape explores the collapse of Arthur Andersen, the accounting firm Enron used to help it hide its fraud. The tape asks, "What went wrong?"
Teaching Basics	After showing "Bigger Than Enron," ask the class questions that facilitate

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	understanding. Here are some questions to get you started: • What argument did Hedrick Smith present in the videotape? • Why should business students care about the argument and facts in the videotape? • Is there "another side" to the story? • How did the videotape make you feel, as an American citizen?
Advanced Teaching	In "Bigger Than Enron," FRONTLINE correspondent Hedrick Smith shows how corporate watchdogs, e.g., lawyers, regulators, politicians, and accountants failed to prevent the Arthur Andersen/Enron scandal. Ask your students to write a paper in which they explore a different industry (e.g., toy manufacturing) to consider the extent to which corporate watchdogs have disappointed the American people.

A BEST PRACTICES TEACHING TIP

"Buzz" Sessions.	This teaching technique involves splitting a class up into small subgroups, two or three students per group, and subsequently, having students address a complex question that can yield several different answers. The usefulness of this strategy for enhancing student learning has been demonstrated by several education studies. For example, according to Wilbert J. McKeachie "data has found that students in two- and three-man groups write more new ideas after a five-minute discussion than students working alone" (63). Thus, the use of Buzz Sessions can promote more student engagement, and maximize the potential for creative thinking, the cognitive task that ranks highest on Bloom's Taxonomy of Learning. For more specific information on incorporating "Buzz" Session into lectures, see "Teaching Tips: A Guidebook for the Beginning College Teacher." References: Wilbert J. McKeachie, Teaching Tips: A Guidebook for the Beginning College Teacher, 7th ed., 1978.

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ANSWERS TO QUESTIONS AND PROBLEMS

1.	Business law provides a floor of acceptable behavior. Business ethics builds on business law. It often has higher aims for acceptable behavior.
2.	Classical ethical guidelines such as the golden rule, public disclosure test, and universalization test always provides some sort of guidance. One behavior is rarely as good as the next.
3.	The WPH approach provides a practical set of rules for thinkers to follow as they sort out how to respond to an ethical dilemma.
4.	In actuality, the court ruled in favor of Kaplan, claiming that there wasn't enough scientific evidence to support the contention that hiring based on credit history disproportionally affected blacks negatively. However, basing a hiring decision primarily on credit reports is potentially unfair to minorities, or anyone who has little alternative but to go into debt in order to have access to basic needs. The reason for this injustice is based on the influence of the environment on individuals. More concretely, those living in poverty often have little access to education,

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	and thus, face the often impossible task of overcoming poverty. Credit is often used as a means to buy goods or services when one does not have the income to afford such goods and services. These goods can include very basic goods necessary for living an adequate life, such as food, water, and shelter, and services can include basic services such as hospital or medical costs. As a consequence, it is potentially unfair to base a hiring decision on credit histories because those histories can be less representative of how responsible or productive someone is, and more representative of simply someone's having a very low-income with few choices but to go into debt to afford basic goods and services. This case gained a lot of media attention, and therefore, did potentially affect other companies' use of credit histories in their hiring process. It did not necessarily change most companies' behavior, but its media attention potentially made people at minimum more aware of the potential discriminatory effects of reviewing credit histories to make hiring decisions.
5.	The Supreme Court ruled, in a 5-4 decision, in favor of Walmart. The basis for this ruling was the Court's viewing that the plaintiffs did not have enough in common to constitute a class. While Walmart may have won in part as a result of the substantial amount of power it holds in the U.S. by supplying many households with essential goods, it is also probable that the Court's decision was largely a result of the dominant values on the bench that propel the view that markets and labor disputes are best resolved when government intrusion is limited.
6.	By refusing to file the patent applications, Trzaska was thinking of the careers of him and his fellow attorneys, as well as the legal profession as a whole. Not only could it seriously damage the reputation of Trzaska and his colleagues if his team was caught violating professional ethics, but it would tarnish the reputation of lawyers everywhere, which is why the code of ethics exists in the first place. On the other hand, the L'Oreal managers were likely thinking of their own jobs and reputations as well. Allowing Trzaska to disregard the quota and effectively disobey orders would reflect poorly on the managers' abilities and possibly get them fired. It is very possible that the management saw this as a "him or us" situation and fired Trzaska to save themselves. The managers likely chose the values of efficiency and security in making their decision to fire Trzaska; that is, the easiest and safest choice for them to make to keep things running smoothly was to fire him. However, the court disagreed with L'Oreal's decision. The court held that instruction by an employer that would result in the disregard of obligatory ethical standards clearly violates public policy, and that an employee cannot be terminated for refusing to engage in conduct in which he or she is prohibited from engaging. Thus, the court reversed the dismissal of Trzaska's suit and remanded for further proceedings.
7.	Obviously, the executives and shareholders of Dragon are some of the stakeholders negatively affected by the ordeal because due to the L & H shares being worthless. The less obvious stakeholders, however, include the employees of Dragon. Even if the Dragon didn't go completely under and displace all of its employees, there was likely plenty of downsizing to help cover the cost of repairing Dragon's financial situation. Going by the Golden Rule standard within the WPH framework, the decision of Goldman Sachs' team to not inform Dragon about the status of L & H because Dragon didn't ask is highly unethical. Surely, Goldman Sachs would not have appreciated if Dragon was in their position and didn't inform them of a poor business partner, so it's hardly ethical that Goldman Sachs did just that. Ideally, a business should go as far to fulfill a contract as they would want the other party to go in fulfilling the contract. Both businesses must try to strike a fair balance between serving both their own interests and the interest of the other party.
8.	This law is intended to protect arrestees from predatory sales practices of bail bondsmen. Without the law, a bail bondsman can sell their services to individuals immediately after

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	they've been arrested, which gives the arrestee virtually no time to collect their thoughts and make a decision that truly reflects their interests. By allowing solicitation of bail bond services only after an arrestee has made a "bona fide request," the law can be more certain that an arrestee actually wants bail services and isn't simply acting out of the initial panic that may come from being arrested. Within the context of the WPH framework, this law ensures that the purposes behind the solicitation are sound in order to protect the arrestee stakeholders in this situation.
9.	The Supreme Court ruled in favor of Caperton on grounds that CEO contributions to the campaign of Justice Benjamin probably created in a bias that would result in Justice Benjamin leaning towards Massey Coal Company. The Court implicitly did seem to accept that the involvement of Justice Benjamin was unfair. One reason for being unethical is tied to the principle in the legal system that everyone is entitled to a trial governed by reason. In this case, rather than opposed to appealing to reason, one could envision the Justice ruling in favor of the CEO as essentially a repayment for his campaign contributions. This was how the Court reasoned. However, it is important to notice that, like most ethical issues, there was a counterargument against the majority ruling in two dissenting opinions. In one, Justice Scalia seems to argue that if such a bias exists, then it is likely that in all states in which Justices are elected there is probably a bias. But on practical grounds, there are advantages gained in electing Justices, so bias may be a cost worth the benefits. With regard to the last question, though not entirely determinable, it is possible that the CEO purposely contributed to the Justice's campaign as future rulings by the Justice could definitely boost his company's profits.
10.	Mitsubishi's violation of the NDA would likely cause tech companies to be very cautious about how they approach potential investors. These companies may disclose less amounts of sensitive information to potential investors out of fear that the investor would later disclose the information or use it themselves without benefiting the company. In certain contexts, Mitsubishi's actions can be supported by the WPH framework. For example, if the chip technology truly was the "Holy Grail of memory technology," products derived from the technology would likely sell very well and bring in large amounts of revenue for Mitsubishi. This revenue would directly benefit Mitsubishi shareholders and would likely indirectly benefit employees. If Mitsubishi was considering these stakeholders, then its actions seems less unethical. However, Mitsubishi's actions can be argued to be quite unethical under the WPH framework when interpreted differently. After all, Mitsubishi essentially benefited from Stern's ideas without Stern getting any credit or compensation. Stern was a stakeholder who was negatively affected in this instance. Mitsubishi's actions also violate some of the How's of the WPH framework, such as the Golden Rule. It's doubtful that Mitsubishi would have appreciated Stern using its ideas for his own gain without permission, so arguably it's unethical that Mitsubishi used Stern's ideas without permission.

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