Cengage Advantage Books Foundations of the Legal Environment of Business 3rd edition Jennings Solutions Manual

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CHAPTER 2

BUSINESS ETHICS AND SOCIAL RESPONSIBILITY

LECTURE OUTLINE

2-1 Introduction

2-2 What Is Ethics? (See PowerPoint Slide 2-1)

Use the opening "Consider" to pique students' interest.

✓ Examples

- Lance Armstrong stripped of titles for using PEDs
- Lois Lerner and the IRS and targeting groups for audit
- EPA employee who claimed that he was a CIA agent
- Josephson data on students cheating in high school

2-2a "It's Just Not Right!"

Example – not waiting your turn in line

2-2b Normative Standards: How We Behave to Keep Order (See PowerPoint Slide 2-2)

- Societal Expectations
- Behaviors That We Frown Upon

2-2c On Line-Cutting and Ethics

- Not Statutory Violations
- Unwritten Rules of Conduct
- Cheating in School

ANSWER TO CONSIDER 2.1: We worry because a grade and a diploma are evidence of accomplishment and knowledge. For engineers, doctors, architects, the grades represent knowledge that affects safety. The long-term effect is that we lose competence and professionalism. If there is cheating, we have no way of knowing who has really mastered materials, processes, and information. We use grading systems to evaluate abilities and if there is pervasive cheating then those evaluation systems no longer work.

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2-3 What Is Business Ethics?

✓ Three Layers

- ➢ Basic values (honest, keeping promises)
- ➢ Notions of fairness (how we treat others)
- ➢ Issues related to community, environment, neighbors

2-4 What Are the Basic Theories for Business Ethics? (See PowerPoint Slides 2-3, 2-4, and 2-5)

2-4a Ethical Standards: Positive Law

- Positive Law Is Codified Law
- The Problem Is That Some Conduct May Not Rise to the Level of Criminal Conduct
- Acquittals Do Not Mean That There Was Ethical Conduct
- Use Enron Example on Legality of Off-the-Book Entities – FASB 1125

2-4b Ethical Standards: Divine Command or Natural Law

- Moral Standard Is Established
- Individual Moral Standards Differ; Example of Danica Patrick and Not Getting Caught
- Debate Over Sources of Moral Standards
- Evaluate Moral Standards and Conflicts as New Data Appear

  Example: Employee loyalty versus knowledge of employer's wrongdoing

- Slavery Was Legal, But Not Moral

2-4c Ethical Standards: Moral Relativism and Ethics

- Situational Ethics
- Bribery Is Illegal in Most Countries, But Cultural Standards Have Taken Hold and It Is an Accepted and Largely Unprosecuted Crime
- Stealing Bread When You Are Starving

2-4d Ethical Standards: Religion and Ethics

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- Religious Beliefs or Divine Revelation (Bible, Koran)
- Those Standards Are the Ethical Standards

2-4e Ethical Standards: Utilitarianism

- The Greatest Good for the Greatest Number
- Health Care Allocation

2-4f Ethical Standards: The Theory of Justice and the Social Contract

- The Rules We Would All Agree to If We Sat Down to Negotiate the Rules for Society

2-4g Ethical Standards: Rights Theory

- Behavior Is Restrained By the Inability to Violate Another's Rights

2-5 What Are the Categories of Business Ethics Dilemmas? (See PowerPoint Slides 2-6 and 2-7)

2-5a Taking Things That Don't Belong to You

Example: Pens to postage to embezzlement; downloading copyrighted music from the Internet without paying; the Taco Bell water cups

2-5b Saying Things You Know Are Not True

Example: Blaming others for your slip-ups; sales promises not honored

2-5c Giving or Allowing False Impressions

Example: Refer students back to the movie ads quoting reviews selectively to give the false impression that the reviewer likes the movie; "All songs by 'Original Artists' example." Use the subway/marathon issue discussed below.

ANSWER TO ETHICAL ISSUE (The Subway and the Marathon): The runners did not run the race, but they represented, by showing up in Central Park at the finish line, that they had. The situation is not governed by any laws, but those who took the subway and won their age categories accepted the trophies under false pretenses. They also deprived the real winners of the race of their victory and recognition at the time of the race. This is a form of cutting in line – trying to get ahead using methods that are something other than good-faith effort and difficult work. The parallels between business competition and this race are clear. We can always take a shortcut and get ahead temporarily.

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2-5dBuying Influence or Engaging in Conflict of Interest

Example: Those who award contracts accept perks from bidders; wife of attorney general making $100,000 in cattle futures; university researchers who take funding from those who benefit from positive results; elected official's spouse's foundation receives donation from company or special interest group

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ANSWER TO CONSIDER 2.2: Review the explanation and answers in the textbook (p. 47). To help in your analysis, consider the following list of the parties affected by this dilemma:

- Patients who took the drug Wellbutrin
- Their family members
- Other physicians
- Other drug manufacturers
- The public and public health – the decisions made might not have been the best for those in these two groups
- Many who followed Dr. Drew's recommendations, not knowing of his interests with the company

Conflicts of interest is the category. Dr. Drew had a conflict. When you are recommending a product, those to whom you are recommending that product need to know whether your endorsement is scientific or if there is any compensation involved. He also took unfair advantage – Dr. Drew had information that those making the decisions about the drugs did not have.

There are two ways to manage a conflict. You either do not take the money or you take the money, but then disclose that you have taken the money. The fact that Dr. Drew's statements were consistent with his clinical experience or that other doctors felt that he was honest and straightforward in his answers are irrelevant. The fact that Dr. Drew had to justify his answers after the fact is an indication of the conflict, not an excuse for not managing it properly, which meant one of two choices: Don't or Disclose. A conflict is a conflict is a conflict and asserting after the fact that you were not influenced does not change the fact that there was a conflict. Conflicts matter because their nondisclosure affects those who are portrayed in a bad light as a result. Further, a great deal of damage can come from relying on flawed studies, especially when they are flawed due to a financial interest.

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2-5e Hiding or Divulging Information

Example: In contract negotiations, failure to reveal important/material information; with employees, revealing private information – hospital employees disclosing medical information about famous patients

2-5f Taking Unfair Advantage

Example: Capitalizing on another's inexperience; credit card companies and 10:00a.m. cut-off (now addressed in Dodd-Frank bill)

2-5g Committing Acts of Personal Decadence

Example: Office parties that result in drunken behavior that harms others; HP CEO and harm to HP

2-5h Perpetrating Interpersonal Abuse

Example: Harassment; sorority and fraternity hazing

2-5i Permitting Organizational Abuse

Example: Child labor issues, low wages

2-5j Violating Rules

Example: BP Deepwater Horizon rig and turning off the alarms

2-5k Condoning Unethical Actions

Examples: Disclosing problems and confronting violators – allowing someone else to take the blame for something at work that he or she did not do; not speaking up in their defense

2-5l Balancing Ethical Dilemmas

Examples: Downsizing – rights of employees vs. shareholder investment, doing business in South Africa or China

2-6 How Do I Resolve Business Ethics Dilemmas?

2-6a Blanchard and Peale (See PowerPoint Slide 2-8)

- Is It Legal?
- Is It Balanced?

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- How Does It Make Me Feel?

2-6b The Front-Page-of-the-Newspaper Test

- How Would the Story Be Reported? (Use Headlines From Salomon Situation)
- Use an Objective and Informed Reporter's View
- Warren Buffett's Warning to Employees

2-6c Laura Nash and Perspective (See PowerPoint Slide 2-9)

- How Would I View the Problem If I Sat on the Other Side of the Fence? (Jack-In-The Box and E-Coli)
- Am I Able to Discuss My Decision With My Family, Friends, and Those Closest to Me?
- What Am I Trying to Accomplish?
- Will I Feel as Comfortable Over the Long Term As I Do Today?
- Forces Managers to Examine Additional Perspectives

2-6d The *Wall Street Journal* Model (See PowerPoint Slide 2-10)

- Compliance
- Contribution (Herman Miller and Eames Chair)
- Consequences

2-6e Kant's Categorical Imperative (See PowerPoint Slide 2-11)

- Are You Comfortable in a World That Uses Your Standards?
- Discuss "The Golden Rule"

2-7 Why Do We Fail to Reach Good Decisions in Ethical Dilemmas? (See Exhibit 2.1 and PowerPoint Slides 2-12 and 2-13)

2-7a "Everybody Else Does It"

ANSWERS TO ETHICAL ISSUES (The Cash Fishing Operations): Have the students discuss whether there are risks in not following the laws, such as in paying taxes, even when you are able to get away with it for as long as the Gulf fishers did. What were the costs of the fishers all behaving in the same way? Is "everybody does it" a good business strategy model? Is following the herd a good business model?

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The Gulf Coast fishers had fallen into an 'Everybody does it" trap, but it is not analysis. Who is affected by your decision to not report income? Well, they are; other taxpayers are, with the result being that they have no history of earnings, including for purposes of government benefit programs such as unemployment and Social Security compensation. They were harming themselves and missed that in their desire to fall into the pattern of "Everybody does it." Rationalizations such as these find us missing the consequences of our actions and decisions.

2-7b"If We Don't Do It, Someone Else Will"

Example: If we don't go into China, someone else will; the risks of human rights violations

Refer students to web for additional examples.

2-7c"That's The Way It Has Always Been Done"

Examples: Conflicts with student lenders and problems for universities

2-7d"We'll Wait Until the Lawyers Tell Us It's Wrong"

Examples: Peer-to-peer file sharing; complex instruments on Wall Street – legality does not determine ethical conduct because hearings later showed that information was withheld from buyers; although the information was withheld legally, the ethical issue of false impression and withholding information remained

2-7e"It Doesn't Really Hurt Anyone"

Examples: Freeway rubberneckers, homeowners who walked away from their mortgages

2-7f "The System Is Unfair"

Example: Cheating does not improve the system

2-7g"I Was Just Following Orders"

Example: German border guards – sometimes morality requires disobedience

2-7h "If You Think This Is Bad, You Should Have Seen…"

Example: 35-day month was a lot worse than what we're doing now

2-7i "It's a Gray Area"

Example: HP and the pretexting

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2-8 Social Responsibility: Another Layer of Business Ethics

✓ Conflicts Among Business Interests (See PowerPoint Slide 2-14)

- Shareholders – want profits
- Employees – want safe and secure jobs

Dilemma: Does a company risk short-term profits by shutting down to install safety equipment?

- Community – wants plant's economic base but does not want its environment destroyed

Dilemma: Should a company shut down to install state-of-the-art scrubbers on its plant?

✓ Friedman Perspective (See PowerPoint Slide 2-15)

- Only answer to shareholders
- Social responsibility takes money from shareholders
- Should only undertake a project if it benefits the business; pollution control for attracting workers is not for the community

2-9 Why Business Ethics?

2-9a Personal Accountability and Comfort: Business Ethics for Personal Reasons (See PowerPoint Slide 2-16)

- Not All Ethical Firms Are Profitable Firms
- Not All Unethical Firms Are Unprofitable

Examples: Michael Milken and Boesky and their fates

- Really a Personal Standard of Behavior – It Is the Correct Thing to Do

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THE PARABLE OF THE SADHU

To assist in your discussion of the case with the students, ask the following and/or highlight these key points.

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1. Have the students list the business analogies:

   a. Grueling course to reach goal
   b. Only have limited time or window for reaching goal
   c. Many challenges in achieving; rules of mountain climbing as survival of the fittest?
   d. Ethical/moral issues often have short-term costs and inconvenience

2. Discuss with the students the cognitive dissonance that comes from one's personal standards being in conflict with the rules of engagement in business.

3. Highlight what happened with McCoy on those previous climbs when he did not make it to the top. Example: had a rich experience with the villagers that was more memorable than a successful climb.

4. Note the regrets he had *after* the successful climb as he looked back not knowing what had happened to the Sadhu and the resulting regrets.

ANSWER TO ETHICAL ISSUES (Am I My Brother's Keeper?): Discuss with the students the following:

1. Perceived sunk cost is a pressure that drives the decision.
2. Desire to succeed drives the climbers.
3. Perception that rules are different for mountain climb vs. life.
4. Regard for human life.

2-9b Importance of Ethics in Business Success and the Costs of Unethical Conduct (See PowerPoint Slide 2-17)

- Short-Term Profitability Through "Ethical Shortcuts" Can Contribute to a Firm's Demise
- Executives Feel Ethical Behavior Strengthens a Firm's Competitive Edge
- Johnson & Johnson Example of Tylenol Recall – Earned It High Respect and Higher Earnings in Spite of Cost
- Tylenol and the Recall of $100 Million in Inventory
- BP
  - Failure to smart-pig the oil pipelines
  - Saving money and not realizing safety issues
  - Production and profits down
  - Years to recover trust and market capitalization

2-9c Ethics as a Strategy (See PowerPoint Slide 2-18)

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- Affords Opportunity for Planning and Ability to Answer Social Needs and Cultural Changes; Use Union Carbide and Bhopal Example
- Creates Goodwill Between Business and the Community; Absence of Goodwill Can Be Costly

2-9d The Value of a Good Reputation (See PowerPoint Slide 2-19)

- Illegal or Unfair Conduct Stays in the Public Mind
- Difficult for Firms to Recover Financially – Salomon's Lack of Recovery

2-9e Leadership's Role in Ethical Choices (See Exhibit 2.2 and PowerPoint Slides 2-20 and 2-21)

- Ethical Choices Are a Form of Voluntary Regulation
- Remedying Problems Before Regulation Is Put Into Place
- Examples of Abuses (Poor Ethical Choices) That Led to Regulation
  - Credit disclosure
  - Johns-Manville and asbestos
  - The Subprime lenders being regulated now
  - Self-regulation by music industry to avoid censorship of artists
  - Self-regulation on tamper proof would have helped
  - Use example of New Century and its collapse and lure of subprime money

2-10 Creation of an Ethical Culture in Business (See PowerPoint Slide 2-22)

2-10a The Tone at the Top and an Ethical Culture

- Those Who Lead Live Their Ethics Code
- "Walk the Talk"

2-10b Dodd-Frank, Sarbanes-Oxley, Sentencing, and an Ethical Culture (See PowerPoint Slides 2-23 and 2-24)

- Sarbanes-Oxley Requires These Components in an Ethics Program Following Collapses of WorldCom, Enron, Etc.
- Dodd-Frank Elaborates on These Requirements and Expands Protections and Compensation for Whistleblowers
  - Code of ethics
  - Training

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- Anonymous reporting
- Follow-up on employee reports
- Board action
- Self-reporting of missteps
- Sanctions and terminations for violators
- Officer involvement

2-10c Reporting Lines: An Anonymous Ethics Line for an Ethical Culture (See PowerPoint Slide 2-25)

2-11 Ethical Issues in International Business (See PowerPoint Slide 2-26)

✓ Cultures, Laws, and Standards Vary

- ➢ Issues of bribes, grease payments, and culture-related gifts
- ➢ Problems of economic development where bribery is common
  - ⮝ Additional costs
  - ⮝ Lack of trust
  - ⮝ Basic assumptions underlying economic model of capitalism don't exist and make investment more difficult

✓ Business Must Decide Whether to Operate Under One Uniform Set of Standards

✓ Delicate Balancing of the Four Pillars of Trust in Economic Systems (Use Exhibit 2.3 and PowerPoint Slide 2-27)

- ➢ Corruption in any breaks down investment
- ➢ All four must be honest for markets to function

ANSWERS TO CHAPTER QUESTIONS AND PROBLEMS

1. The court held that there was indeed a breach of the covenant not to compete that Ms. Miller had agreed to and that what was done was wrong, but there could be no recovery unless the college could show damages – they were unable to quantify their losses, so there was no legal remedy. However, ethically, the conduct was clearly a disclosure of private information or even taking the intellectual property of the potential student lists that belonged to the college. In addition, Ms. Miller did not keep her word to not compete directly if she left her employment, at least for a certain amount of time. [*Stevens-Henager College v. Eagle Gate College*, 248 P.3d 1025 (Utah 2011).]

2. The gum is not yours. Title has not passed. You did not pay for it. It is not an intentional crime, but you did take something that does not belong to you.

   Most folks resist taking the gum back, even if they would drive back 20 miles to get their fries if the restaurant forgot them at the drive-through. Here are some responses of students. Go

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through each one and apply the rationalizations to them:

- "It's not worth my time, trouble, and effort – not a big deal."
- "I have some experience in retail and it would cost them more to straighten it out than it would for you to just keep it, so you should just keep it."
- "I walked out of a store once with a CD that I hadn't paid for and I didn't take that back, so why would I take the gum back?"
- "It's like this: Sometimes I don't pay; sometimes they overcharge me, but it all works out in the long run."

Bring them back to it's not their gum.

They have some flexibility – they could call the store and see what the store wants them to do – store could make a gift. They could take care of things the next time they are in the store. The store will survive if they don't take the gum back; however, this is a bright-line exercise – you can see that you got something without paying.

3. BYU has established its values and has agreed to enforce them in order to create a culture with its standards. BYU is not basing its decision on the immediate results – i.e., losing a national championship opportunity. Rather, it is basing its decision on the long-term goal of preserving its values. It may also enjoy unanticipated benefits in terms of recruitment, donations, etc.

4. The judge also reminded Mr. Scrushy that he is a convicted felon. Mr. Scrushy must now wear a GPS tracking device, can no longer travel via private means of transportation, and must provide probation officers with written summaries of his trips. This monitoring will continue until he is sentenced or until his appeal of his conviction is decided.

   The classic ethical issue here is giving a false impression – knowing what the terms of the probation were and what the probation officer needed to know, Mr. Scrushy chose to hang his hat on a technicality. Letter of the law vs. spirit of the law and could vs. should. Gray area that netted him more punishment.

5. This type of cheating ring is fairly typical. When we were in junior high and had algebra first period, we would walk out and find the students from 2nd through 6th period waiting anxiously. We would say, "It was hard," or "It was hard, but if you studied, you will be okay." Some folks evolved to, "Well, it was hard and you better know _____." From there others moved along to, "Well, it was hard, and you better know _____, and there was this one question . . ." From there, students move along into assigning which questions to memorize so that they can be passed along. Doctors who took the board certification exam remembered exam questions, wrote them down, pooled their resources, and then sent them off to their board-review course. The board-review course then included those questions in their study materials for course participants. A comparison shows that the questions are not identical, but they certainly did memorize the gist of them.

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The doctors do pay for the courses and the doctors are dependent upon these courses because, well, aren't we all a'feared of just studying? We want a review course to take some of that pain away. But, in the zeal to remove the pain some doctors and their review courses have crossed over into just getting the questions. Hence, the ABIM scandal.

Stakeholders: exam takers who did not cheat; the testing company; the patients – suffer because doctors may not understand medicine and treatment!

Ethical theory – would they want to be treated by doctors who could not pass an exam? If they were setting up the rules, they would want certified doctors. There is rationalization – everyone does it is not analysis of the problem and the implications for society. Integrity of the doctors – can they be trusted? If they need the public on other issues, will they win them with this kind of behavior?

INTERACTIVE/COOPERATIVE LEARNING EXERCISES

Have the students (in groups) use the ethical models presented to evaluate the ethics of the following products:

1. The "Mommy-to-be-Doll" that features a teen-looking twelve-inch tall doll with a baby and stomach that snap on and off. The doll is a top seller. Husband for the doll is an optional accessory.
2. "Crash-Dummy" action figures that break apart upon impact.
3. Bubble gum and candy cigarettes.
4. Quick-loss diet programs.
5. Radar detectors.

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