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Chapter 2: Business Ethics

INTRODUCTION

Among the concepts examined in this chapter are the nature of business ethics and the relationship between ethics and the law. Because of this relationship, a careful study of business law will help your students to understand what is and what is not considered by society to be ethical behavior in business. Throughout the text, the relation between particular laws and the broad, underlying ethical premises on which they rest is discussed.

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

Ultimately, the goal of this chapter is to provide students with basic tools for analyzing ethical and social responsibility issues in a business context. Exactly how to decide these issues is something each person must do alone, on the basis of his or her own convictions. **Questions students must ask themselves include: (1) What are their ethical criteria? (2) How would they apply those criteria in a particular situation? (3) How can they best adapt their standards to the kinds of ethical and social responsibility issues that they will face in the business world?**

CHAPTER OUTLINE

I. Business Ethics

Ethics is the study of what constitutes right and wrong behavior. Ethics focuses on morality and the application of moral principles in everyday life. Business ethics focuses on what constitutes ethical behavior in the world of business. Business ethics is *not* a separate kind of ethics.

A. WHY IS STUDYING BUSINESS ETHICS IMPORTANT?

An understanding of business ethics is important to the long-run viability of a business, the well being of its officers and directors, and the welfare of its employees.

1. Profit Maximization

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When the only goal of a corporation is to maximize profits, in theory, resources flow to where they are most highly valued by society.

2. The Rise of Corporate Citizenship

When resources are not sufficiently allocated to cover social needs, a corporation can be viewed as a “citizen” with expectations that it participate in bettering communities and society.

ADDITIONAL BACKGROUND—

The Pursuit of Profit

Historically, the pursuit of profit was suspect because it pits self-interest against community-oriented interests. In the sixteenth century, with the spread of Calvinism, which valued hard work and regarded business success as evidence of God’s grace, business activity became more respectable. Calvinism grew out of the theological doctrines of French Protestant reformer John Calvin (1509-1564).

Calvin—whose name is an adapted form of Jean Cauvin—was familiar with the writings of Plato, Seneca, and St. Augustine. In a speech written to be delivered in an inaugural ceremony at the University of Paris in 1533, Calvin expressed radical theological views. Forced to flee France, Calvin settled in Geneva, Switzerland. Calvin’s works include *Institutes of the Christian Religion*.

Calvin’s theology is the foundation of the Presbyterian, or non-Lutheran, churches, recognizing only the Bible as the authority in questions of religious belief. Its premises include

- The total depravity of man resulting from Adam’s fall.
- The absolute power of God’s will.
- Because no human has a will of his or her own, the superiority of faith to good deeds.
- The possibility of Christian salvation through God’s grace alone.
- The predestination of those few who are to be saved. Because no one can be certain as to whether he or she is to be saved, however, everyone must lead lives according to religious tenets.

Calvin’s Protestant ethics stressed hard work, self-denial, and an organization of one’s life to serve God. The development of Protestant ethics was a motivating force for the rise of capitalism, because it encouraged hard work even when there was no need for it. Material success as a result of work was interpreted as a sign of faith and possible salvation.

With the Industrial Revolution, the pursuit of profit was firmly united with the welfare of society by the economic theory of capitalism. Profit is good, so the theory goes, because it shows that resources are being put to highly valued uses. The search for profit is not always in society’s best interest, so the criticism goes, because of market imperfections—the lack of competition in some markets, the difficulty of obtaining perfect information about products and consumer desires, and costs and benefits that are either unknown or unaccounted for (pollution, for example). Today a socially responsible firm modifies the ethics of capitalism with other ethical standards and looks at more than simply profits. In making business decisions, social responsibility involves three basic considerations: an act’s profitability, its legality, and whether it is ethically justifiable.

Striking the right balance between making profits and being ethically responsible is not easy. Usually some profits must be sacrificed in the process. *Optimum* profits are the maximum profits that can be realized while staying within legal and ethical limits.

B. THE IMPORTANCE OF ETHICS IN MAKING BUSINESS DECISIONS

To maximize profits and indicate good corporate citizenship, businesses should evaluate a decision's

- Legal implications.
- Public relations impact.
- Safety risks for consumers and employees.
- Financial implications.

1. Long-Run Profit Maximization

In the long run, the consequences (such as lawsuits and bad publicity) of unethical conduct cause profits to suffer. Business ethics is consistent only with long-run profit maximization.

2. The Internet Can Ruin Reputations

The Internet has increased the potential for damage to the reputation of a business by employees, consumers, and special interest groups because information that may have been previously unknown is now easier to discover and publicize.

ENHANCING YOUR LECTURE—**9****“SUCKS” SITES—CAN THEY BE SHUT DOWN?****8 8**

In today's online environment, a recurring challenge for businesses is how to deal with cybergrippers—those who complain in cyberspace about corporate products, services, or activities. For trademark owners, the issue becomes particularly thorny when cybergripping sites add “sucks,” “fraud,” “scam,” “ripoff,” or some other disparaging term as a suffix to the domain name of a particular company. These sites, sometimes collectively referred to as “sucks” sites, are established solely for the purpose of criticizing the products or services sold by the companies that own the marks. In some cases, they have been used maliciously to harm the reputation of a competitor. Can businesses do anything to ward off these cyber attacks on their reputations and goodwill?

THE TRADEMARK ISSUE

A number of companies have sued the owners of “sucks” sites for trademark infringement in the hope that a court or an arbitrating panel will order the owner of that site to cease using the domain name. To date, however, companies have had little success pursuing this alternative. In one case, Bear Stearns Companies, Inc., sued a cybergriper, Nye Lavalley, alleging that Lavalley infringed its trademark by creating Web sites including “Bear Stearns” in the domain names. Some of these sites were called “BearStearnsFrauds.com,” “BearStearnsCriminals.com,” and “BearStearnsComplaints.com.”

One of the tests for trademark infringement is whether consumers would be confused by the use of a similar or identical trademark. Would consumers mistakenly believe that Lavalley's sites were operated by Bear Stearns? In the court's eyes, no. The court concluded that Lavalley's “Frauds.com” and “Criminals.com” sites were “unmistakenly critical” of the target companies and that no Internet user would conclude that Bear Stearns sponsored the sites. As to the “Complaints.com” site, however, the court concluded that consumers might be confused—because Bear Stearns could have a “complaints” page on its Web site. Therefore, the “Complaints.com” site violated trademark law, but the other two sites did not.^a

FOR CYBERGRIPERS, THE MORE OUTRAGEOUS THE SUFFIX, THE BETTER

UNIT ONE: THE FOUNDATIONS

For cybergrippers, the message seems to be clear: the more outrageous or obnoxious the suffix added to a target company's trademark, the less likely it is that the use will constitute trademark infringement. This point is underscored in decisions reached by other courts as well. In *Taubman Co. v. Webfeats*,^b for example, a cybergripping case decided by the U.S. Court of Appeals for the Sixth Circuit, the court stressed that Internet users were unlikely to be confused by "sucks" sites using the Taubman Company name. Because the allegedly infringing domain names all ended with "sucks.com," the court concluded that they were unlikely to mislead Web site visitors into believing that the trademark owner was the source or sponsor of the complaint. The court also noted in its opinion that, generally, the more vicious an attack site's domain name, the less likely that a cybergripper will be found liable for trademark infringement.

FOR CRITICAL ANALYSIS

How might cybergripping sites help to improve the ethical performance of the businesses they criticize? Can business owners do anything to prevent the use of their marks in "sucks" sites?

a. *Bear Stearns Companies, Inc. v. Lavalle*, 2002 WL 31757771 (N.D.Tex. 2002).

b. 319 F.3d 770 (6th Cir. 2003).

3. Image Is Everything

Ethics can affect a business's image and the business's impact on the environment, customers, suppliers, employees, the community, society, and the global economy.

C. THE RELATIONSHIP OF LAW AND ETHICS

The law does not, and cannot, codify all ethical requirements. Laws are general and broad in purpose and scope.

1. Moral Minimum

The minimal acceptable standard for ethical business behavior is compliance with the law. But an action that is legal may not be ethical. Excessive corporate salaries may be legal, for example, but may also be seen as unethical.

CASE SYNOPSIS—

Case 2.1: *Scott v. Carpanzano*

Rick Scott filed a suit in a federal district court against Salvatore Carpanzano and others, including Carpanzano's daughter Carmela, alleging claims relating to Scott's loss of about \$2 million in an escrow account. Carpanzano failed to cooperate with discovery, did not respond to attempts to contact him by certified mail, regular mail, or e-mail, refused to appear as requested and ordered, and did not finalize a settlement negotiated between the parties' attorneys. Carmela denied that she was involved in her father's business or the Scott transaction. The court awarded Scott more than \$6 million.

The U.S. Court of Appeals for the Fifth Circuit affirmed the judgment against Carpanzano, but reversed the decision against Carmela—Scott had made no allegations of acts on her part "Even if Scott were able to prove the entirety of the * * * complaint, we fail to see how it would justify a judgment * * * against Ms. Carpanzano."

Notes and Questions

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

ADDITIONAL CASES ADDRESSING THIS ISSUE —

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

- *United States v. Anderson*, 580 F.3d 639 (7th Cir. 2009): The nominal president of a company, with authority over its finances, met weekly with one of the men running it to discuss operations and knew that it was misleading customers, supporting a conviction for wire fraud, mail fraud, and conspiracy.
- *United States v. Maxwell*, 579 F.3d 1282 (11th Cir. 2009): A fraudulent scheme to obtain construction contracts set aside for socially and economically disadvantaged companies resulted in a conviction for mail fraud, wire fraud, and conspiracy to commit mail and wire fraud.
- *United States v. Ware*, 577 F.3d 442 (2d Cir. 2009): The defendant issued, edited, or approved press releases with false and misleading statements about companies in which he held stock; sold the stock for substantial profits following the releases when the price rose; and was convicted for securities fraud and conspiracy to commit securities fraud and wire fraud.
- *United States v. Brockenborough*, 575 F.3d 726 (D.C. Cir. 2009): A scheme to obtain real property for a deflated price supported a conviction for wire fraud and conspiracy to commit wire fraud, in circumstances that included a forged deed and the defendant's impersonation of a U.S. marshal.
- *United States v. Carbo*, 572 F.3d 112 (3d Cir. 2009): A private contractor was convicted of conspiracy to commit honest services mail fraud, in connection with a scheme to conceal conflicts of interest in the awarding of government contracts by a municipal official.
- *United States v. Stephens*, 571 F.3d 401 (5th Cir. 2009): A conviction for conspiracy, wire fraud, and identity theft was based on a scheme to obtain donations for hurricane relief through a bogus Web site purporting to be a charitable organization.
- *United States v. Wyatt*, 561 F.3d 49 (1st Cir. 2009): A scheme to facilitate sizable loans to high-risk borrowers and retain substantial escrow payments from the borrowers led to a conviction for conspiracy to commit wire fraud.
- *United States v. Lewis*, 557 F.3d 601 (8th Cir. 2009): The secretive receipt of a \$1.4 million payment from a charitable organization that the recipient knew was misrepresenting its deteriorating financial condition led to a conviction for mail fraud, wire fraud, bank fraud, conspiracy, and money laundering.

2. Ethics and Company Codes of Ethics

Company codes of conduct are not law but outlines of policy and how employees are expected to act. Professional associations (such as the American Institute of Certified Public Accountants) also issue codes of ethics. Effectiveness is determined by the commitment of the industry or company to enforce the codes.

3. Ethical Uncertainty and “Gray Areas”

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

CASE SYNOPSIS—

Case 2.2: *May v. Chrysler Group, LLC*

For several years, Otto May, Jr., a pipefitter at Chrysler Group, LLC, was the target of racist, homophobic, and anti-Semitic remarks and conduct, including death threats, vandalism, and other acts. May complained to Chrysler. The company investigated and held two meetings to remind the workers in attendance that harassment was not acceptable. But the harassers were never identified and the harassment continued. May filed a suit in a federal district court against Chrysler for hostile work environment harassment (a violation of May’s federal civil rights). A jury awarded May \$709,000 in compensatory damages and \$3.5 million in punitive damages. The court overturned the punitive award. May appealed.

The U.S. Court of Appeals for the Seventh Circuit affirmed the lower court’s judgment. Chrysler might have done more to prevent the harassment against May, but the company did not act with malice or reckless indifference. The company used several strategies to stop and prevent the harassment. These actions had a positive effect—the frequency of the harassment’ gradually decreased and finally ceased.

Notes and Questions

How can business leaders encourage their companies to act ethically? Ethical leadership is important to create and maintain an ethical workplace. Managers can set standards, and apply those standards to themselves and their firm’s employees.

Should Chrysler have been held liable for the actions of May’s harassers? Yes. The proper question in the legal context of this case is whether the employer directs or tolerates the misconduct. The court determined that this employer tolerated the misdeeds by its “shockingly thin” response. Those who actively foster unethical or illegal conduct encourage it in others.

How might the employer have avoided the dispute in this case? Legal and ethical conduct can be furthered by not tolerating illegal or unethical behavior. The employer in this case might have expended greater efforts to identify and punish the perpetrators of the harassment against May. More might also have been done to emphasize the company’s policy with respect to such conduct.

II. Business Ethics and Social Media

A. HIRING PROCEDURES

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

B. THE USE OF SOCIAL MEDIA TO DISCUSS WORK-RELATED ISSUES

Companies that fire employees for “bad mouthing” other employees or managers in social media outlets may violate federal labor law, which protects employees’ right to engage in “concerted activities”—freely associate and converse about workplace issues without employer interference.

C. ETHICS IN REVERSE

Is it ethical for employees to make negative—and sometimes exaggerated—social media posts about managers or other employees?

III. Approaches to Ethical Reasoning

How business decision makers decide whether a given action is the “right” one for their firms depends on the ethical standards that are applied. Fundamental ethical reasoning approaches include the following.

A. DUTY-BASED ETHICS

Duty-based ethics are derived from religious authorities or philosophical reasoning. These standards are focused on concepts of right and wrong, of duties owed and rights to be protected.

1. Religious Ethical Principles

Religious standards dictate how one should treat others (“Do unto others as you would have them do unto you”) and are generally absolute. For businesses, religious principles can—

- Unify employees and increase employee motivation.
- Alienate those with different religious backgrounds or social or political beliefs.
- Cause negative publicity and even protests or boycotts.

2. The Principle of Rights

According to the principle that persons have rights (to life and liberty, for example), a key factor in determining whether a business decision is ethical is how that decision affects the rights of others, including employees, consumers, suppliers, the community, and society.

a. Conflicting Rights

One question is which right takes priority.

b. Resolving Conflicts

One answer is whichever right is stronger in a particular circumstance takes priority.

3. Kantian Ethical Principles

Immanuel Kant believed that people should be respected because they are qualitatively different from other physical objects.

a. People Are Not a Means to an End

Treating human beings as a means to an end (profit, for example) denies their basic humanity. Empowered employees share solutions and are more productive.

b. Categorical Imperative

Kant’s *categorical imperative* is that individuals should evaluate their actions in light of the consequences that would follow if everyone acted the same way.

ADDITIONAL BACKGROUND—

Immanuel Kant, Critic of Pure Reason

A professor of logic and metaphysics at the University of Königsberg, where he had been educated, **Immanuel Kant** (1724-1804) devoted much effort to his philosophical works, including *Critique of Pure Reason*, *Critique of Practical Reason*, *Critique of Judgment*, and *Foundations of the Metaphysics of Morals*. Kant believed that reality can be perceived only to the extent that it complies with the aptitude of the mind that is doing the perceiving. Only phenomena, or things that can be experienced, can be understood; everything else is unknown. Applying this theory to metaphysics, Kant saw God, freedom, and immortality as incomprehensible because they can only be studied through contemplation. Their existences cannot be proven, Kant concluded, but they are of immeasurable importance in moral philosophy, because morality cannot exist without belief in God, freedom, and immortality.

In 1793, when Kant published his views on religion in *Religion within the Limits of Reasons Alone*, the government prohibited him from writing further on the subject. Kant's ideas influenced many later philosophers, including George Hegel and Friedrich von Schiller. Kant led a quiet and regular life in Königsberg. According to German poet Heinrich Heine, the residents of the town set their watches by Kant's daily walks.

B. OUTCOME-BASED ETHICS: UTILITARIANISM

Utilitarianism focuses on the consequences of an action, not its nature or a set of moral values or religious beliefs.

1. Cost-Benefit Analysis

An action is morally correct, or “right,” when it produces the greatest amount of good for the greatest number of individuals. Applying this theory requires—

- A determination of who will be affected.
- A cost-benefit analysis—an assessment of the negative and positive effects on those affected.
- A choice among alternatives that will produce the maximum societal utility (the greatest positive benefits for the greatest number of individuals).

2. Problems with the Utilitarian Approach

An act that produces the greatest good for the most may not seem to be the most ethical.

ADDITIONAL BACKGROUND—

Jeremy Bentham, Founder of Utilitarianism

Jeremy Bentham (1748-1832) achieved prominence as a philosopher, jurist, reformer, and founder of utilitarianism. Bentham was educated at Oxford and admitted to the bar but did not practice law. Instead he pursued legal, political, and social reform, applying principles of ethical philosophy in his efforts. Bentham believed that the greatest happiness for the greatest number is the basis of morality. Happiness and pleasure were the same, and included social, intellectual, and moral as well as physical pleasures. Each pleasure has certain characteristics, including intensity and duration, and Bentham devised a scale of measurement to

judge the worth of a pleasure or pain. Each person strives to do what makes him or her happiest. The happiness of an individual and the general welfare are complementary; the achievement of the greatest amount of happiness is the goal of morality. Bentham also believed that the purpose of law was to maximize total happiness within the limitations of government. Bentham applied these views to reform legislation and achieved great advances in prison reform, criminal law, health control, civil service, and insurance.

Bentham was also active in codifying laws. In 1816, he attempted to persuade President James Madison to adopt a code of laws devised by Bentham that included all pertinent rules and case precedents added as illustrations of the utilization of the legal theory involved. Madison rejected the idea, but twenty years later, Bentham's theories were adopted by reformers with the goal of formulating a code of American law.

Bentham has been much praised for the application of his philosophy in the area of legal reform. An essential part of legal utilitarianism is reliance on the free market and individual initiative. Bentham also believed in majority rule and the implementation of as much democracy as possible. He assumed that businesslike rationality could solve all human problems. On the other hand, Bentham has been much criticized for his failure to account for or to understand any human emotion other than rational self-interest. As John Stuart Mill pointed out in a famous essay, Bentham seemed not to understand honor, personal dignity, artistic passion, or human desires for perfection, order, power, and action. "Knowing so little of human feelings," Mill wrote, Bentham "knew still less of the influences by which those feelings are formed . . . and no one . . . who . . . ever attempted to give a rule to all human conduct, set out with a more limited conception of either of the agencies by which human conduct *is* or of those by which it *should* be influenced."

C. CORPORATE SOCIAL RESPONSIBILITY

Corporate social responsibility involves incorporating a commitment to good citizenship, with a commitment to making ethical decisions, improving society and minimizing environmental impact.

1. The Social Aspects of CSR

Corporations can actively promote social goals and move toward solving social problems. Some companies publish annual corporate social responsibility—or sustainability, or citizenship—reports to highlight their activities.

2. The Corporate Aspects of CSR

Any socially responsible activity—relevant, significant, and related to a corporation's business—can benefit the firm in terms of increasing goodwill and sales, decreasing operating costs, and more impressive, committed, and long-term employees.

3. Stakeholders

Stakeholders include employees, customers, creditors, suppliers, advocacy groups, and the community in which a business operates. It is sometimes said that duties to these groups should be weighed against the duty to a firm's owners.

IV. Making Ethical Business Decisions

Business decisions involve legal concerns, financial questions, health and safety concerns, and ethical components. All corporate actors should think broadly about how their decisions and actions will affect other employees, shareholders, customers, and the community.

A. A SYSTEMATIC APPROACH

Business Process Pragmatism—a practical method to investigate and solve ethics problems—includes five steps:

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

ADDITIONAL BACKGROUND—

Guidelines to Making Ethical Business Decisions

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

These guidelines include—

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

B. THE IMPORTANCE OF ETHICAL LEADERSHIP

Management must set and apply the same ethical standards to themselves and their company's employees.

1. Attitude of Top Management

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

CASE SYNOPSIS—

Case 2.3: Johnson Construction Co. v. Shaffer

Johnson Construction Co. took a leaky truck for repair to Shaffer's Auto and Diesel Repair, LLC. Shaffer gave a verbal estimate of \$1,000 for the work, but after the repair invoiced Johnson for \$5,863.49. Johnson offered to pay the amount of the estimate plus the costs of parts and shipping, but no more. Shaffer refused to return the truck without payment in full, and began to add storage charges of \$50 a day plus 18 percent interest on the amount of the invoice. Johnson filed a suit in a Louisiana state court against Shaffer, alleging unfair trade practices. The court awarded Johnson \$3,500 in damages and \$750 in attorneys' fees, and awarded Shaffer \$1,000. Shaffer appealed.

A state intermediate appellate court affirmed. Johnson's owner had testified that he agreed to the \$1,000 estimate but not more. A Shaffer mechanic corroborated this testimony. As for the storage charges, if Shaffer had simply billed Johnson for the amount of the estimate, the firm would have paid it and there would have been no need to store the truck. Shaffer's keeping it was holding it "hostage" in an effort to force an unauthorized payment. This was conversion.

Notes and Questions

Suppose that a basketball coach at State University (SU) engages in a scheme to obtain credits and scholarships for the players in violation of the rules of the National Collegiate Athletic Association (NCAA). Charged with conspiracy to commit fraud, the coach argues that he did not break the law because his intent was not to harm, but to help, SU by ensuring a successful basketball team. Should the coach be exonerated? No. The court should conclude that the coach's intent was irrelevant. If SU had been aware the coach was cheating—activity that the coach kept secret—it would likely have changed its conduct to recruit players who satisfied NCAA requirements.

2. Behavior of Owners and Managers

Those who actively foster unethical or illegal conduct encourage it in others.

3. The Sarbanes-Oxley Act

The Sarbanes-Oxley Act of 2002 requires firms to set up confidential systems for employees to report suspected illegal or unethical financial practices.

V. Global Business Ethics

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

ENHANCING YOUR LECTURE—

**9****GOOGLE CHINA****8 8**

Doing business on a global level can sometimes involve serious ethical challenges. Consider the ethical firestorm that erupted when Google, Inc., decided to market "Google China." This version of Google's widely

used search engine was especially tailored to the Chinese government's censorship requirements. To date, the Chinese government has maintained strict control over the flow of information in that country. The government's goal is to stop the flow of "harmful information." Web sites that offer pornography, government criticism, or information on other sensitive topics, such as the Tiananmen Square massacre in 1989, are censored—that is, they cannot be accessed by Web users. Government agencies enforce the censorship and encourage citizens to inform on one another. Thousands of Web sites are shut down each year, and the sites' operators are subject to potential imprisonment.

Google's Code of Conduct opens with the company's informal motto: "Don't be evil." Yet critics of Google's actions question whether Google is following this motto. Human rights groups have come out strongly against Google's behavior, maintaining that the company is seeking profits in a lucrative marketplace at the expense of assisting the Communist Party in suppressing free speech. And in February 2006, Democratic congressman Tom Lantos, the only Holocaust survivor serving in Congress, stated that the "sickening collaboration" of Google and three other Web companies (Cisco Systems, Microsoft Corporation, and Yahoo!, Inc.) with the Chinese government was "decapitating the voice of dissidents" in that nation.^a

GOOGLE'S RESPONSE

Google defends its actions by pointing out that its Chinese search engine at least lets users know which sites are being censored. Google China includes the links to censored sites, but when a user tries to access a link, the program states that it is not accessible. Google claims that its approach is essentially the "lesser of two evils": if U.S. companies did not cooperate with the Chinese government, Chinese residents would have less user-friendly Internet access. Moreover, Google asserts that providing Internet access, even if censored, is a step toward more open access in the future because technology is, in itself, a revolutionary force.

THE CHINESE GOVERNMENT'S DEFENSE

The Chinese government emphasizes that its censorship of the Internet is no different from the controls placed on information access by other national governments. As an example, it cites France, which bans access to any Web sites selling or portraying Nazi paraphernalia. The United States itself prohibits the dissemination of certain types of materials, such as child pornography, over the Internet. Furthermore, the U.S. government monitors Web sites and e-mail communications to protect against terrorist threats. How, ask Chinese officials, can other nations point their fingers at China for pursuing a common international practice?

FOR CRITICAL ANALYSIS

Do you agree with the assumption made by Google that technological advances and the desire of the Chinese people to embrace liberty will overcome, in time, the current limitations imposed by the Chinese government?

a. "As cited in Tom Ziller, Jr., "Web Firms Questioned on Dealings in China," *The New York Times*, February 16, 2006.

A. EMPLOYMENT PRACTICES OF FOREIGN SUPPLIERS

Concerns include the rights and the treatment of foreign workers who make goods imported and sold in the United States by U.S. businesses. U.S. firms usually refuse to deal with certain suppliers or arrange to monitor their workplaces to make sure that the workers are not being mistreated.

B. THE FOREIGN CORRUPT PRACTICES ACT

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

1. Prohibition against the Bribery of Foreign Officials

In the United States, the Foreign Corrupt Practices Act (FCPA) in 1977 prohibits U.S. businesspersons from bribing foreign officials to secure advantageous contracts. Business firms may be fined up to \$2 million. Individuals can be fined up to \$100,000 (the firm cannot pay the fine) and imprisoned up to five years.

2. Accounting Requirements

Accountants (and others) are subject to penalties for making false statements in records or accounts.

TEACHING SUGGESTIONS

1. To emphasize the relation between law and ethics, emphasize their distinction by discussing the theory of civil disobedience. Ethics are created by moral values. Whether to obey the law is itself an ethical question. Some individuals may choose to ignore the law if their ethical principles conflict with it. ***If there is a conflict between a law and an ethic, should an individual disobey the law, or should an individual obey the law even if he or she thinks it would be unethical to do so? Is there a higher law than what society provides in a particular place at a particular time?***

2. Ethical standards are subjective. They are derived from personal religious beliefs or philosophical assumptions concerning the nature of goodness, fairness, rightness, or justice. Each of us decides what we believe in and how to act on those beliefs. Have students give examples of their own ethical standards and explain how they arrived at those standards.

3. There are a number of hypotheticals that could be used to introduce this chapter's subject matter. Have students imagine that they own a company at which there is an opening at a beginning level. There are two applicants—one, the students' personal friend and the other, a member of the opposite sex (or of a minority). The latter individual is more qualified for the job than the friend. Ask the students to suppose that in spite of whatever profit the most qualified person might generate, they would rather have their friend on the job. State that in this hypothetical, hiring the friend would violate the law against discrimination. ***Would the students hire the friend in violation of the law?***

Other hypotheticals involving employment might be used. ***For example, would students, as owners of a business, offer a prospective employee a lower salary if (1) the employee indicated during the interview that she expected a lower salary than they had been prepared to offer based on other companies' salaries for similar positions? (2) paying the lower salary would violate no law? (3) the position was unique within the company (so that there were not other employees with whom she could compare pay)?***

4. To introduce social responsibility, a hypothetical involving a violation of the law could be given, but a violation as to which there is no risk of being caught. For example, have students suppose that as businesspersons they will have an opportunity to make more money by meeting with competitors and fixing prices, conduct which is illegal. For this hypothetical, tell them that the authorities will not discover that the prices have been fixed. In fact, the price rise could be small—pennies per item—but the increases in net profit could be considerable. ***Is price-fixing fair? Ethical? Socially responsible? Does it make any difference what the extra profit is used for? If the students imagine that they need the money, would price-fixing be wrong? Would their answers be different if there was an even chance that they would be caught? Why?***

5. It might be pointed out that in a capitalist system it is essential that accurate information be disseminated

to avoid any wasting of assets. Partly for this reason, an independent check on an enterprise's management by auditors benefits everyone with an interest in the business.

6. Suggest that students apply the same type of analytical reasoning to ethical problems that they apply to considering and deciding legal issues.

Cyberlaw Link

Should ethical standards be adapted to deal with the new forms of social disruption made possible by the Internet (for example, data theft, hacking, virus implanting, and invasion of privacy)? What new ethical standards, if any, are needed to resolve problems online?

DISCUSSION QUESTIONS

1. ***How does a law come to be an expression of an ethical principle?*** A law is what society deems proper behavior. An ethical value is also an expression of what is considered appropriate conduct. When people wish to enforce or change an ethical value, they often politicize the issue, urging politicians to create or amend a law. When the law changes, it more effectively represents the ethic that served as the impetus for its change.

2. ***What are reasons for unethical business behavior?*** Employers or owners who condone it. The belief that it won't be discovered. The corporate structure, which can insulate individuals from responsibility for their acts through its distance from the acts' consequences and the collectivity (impersonality?) of corporate decision making. Lack of clarity as to what ethical standards are appropriate and acceptable in the business context.

3. ***In negotiating a business deal, is "strategic misrepresentation" permissible? Do you have to disclose everything?*** These questions concern the ethical conflict inherent in a business context. From a duty-based ethics viewpoint, in an absolute sense, it would be unethical not to disclose information on which the negotiator knows the other side might hinge its decisions. In contrast, a negotiator owes an ethical duty to negotiate in the best interests of whomever he or she is negotiating for. When one ethical duty conflicts with another, a decision has to be made as to which duty is more fundamental. Frequently, questions faced by businesspersons do not have clear-cut answers, but involve choices between arguably equally good alternatives.

It has been suggested that business is a game and deception is an important element of negotiation, just as poker is a game in which bluffing plays an important part. The better an individual is at deception, the more successful he or she will be at negotiation. Those who do not anticipate deceit are fooling themselves. One of the problems with this suggestion is that there is no stated point at which deception is no longer acceptable. By comparison, in poker, it is acceptable to attempt to confuse other players as to the cards you have been dealt but it is not acceptable to bribe the dealer to deal you better cards. Also, if deception were widely practiced, the expense of protecting against it would increase for business and society.

4. ***Why would a corporation prefer to be seen as ethical?*** Consumers may be less willing to buy products of companies that appear to be unethical. Investors may prefer to invest in a firm that is perceived as ethically responsible. Suppliers may prefer to do business with ethical firms. In other words, socially responsible activities can improve profits.

5. ***Does a company have a duty to act in socially or politically beneficial ways?*** There is no agreement as to whether a company has a duty to act in a beneficial way. In deciding whether to do so, a company should consider the appropriateness and feasibility of an activity, the extent to which it will help the company, and whether expected gains will justify expected costs. Management must be prepared to explain its decision to shareholders and the public.

6. How does a corporation's investment in a political or social agenda affect its duty to its shareholders?

People invest in business to make a profit, and a company's shareholders may have such a variety of political and social views that the company's pursuing a particular political or social goal may be divisive. Diverting corporate funds reduces the amount available for dividend payments. Diverting other resources reduces what is available to produce goods and services for sale. Investors may also be less likely to invest in a company that engages in behavior seen as unethical out of fear of consumer hostility toward the company.

7. To whom might a corporation owe a duty? A corporation may owe a duty to its shareholders, its employees and their families, its customers, and society as a whole. **What must a corporation do if it finds itself subject to conflicting duties?** There is no law that says which of these duties comes first or how much weight should be given to each in the balance. When there is no conflict between duties, the question of how best to fulfill a single duty involves trade-offs. When these duties overlap, a balance must be struck. Determining which duty takes precedence involves difficult trade-offs.

8. Because business controls so much wealth and power, what duty does it arguably have to society? It has been argued that business owes a duty to society to use its wealth and power in beneficial ways—promoting human rights, striving for equal treatment of minorities in the workplace, acting to safeguard the environment, and eschewing profits from activities that society deems unethical. Generally, business has been responsive to social needs, donating to programs that benefit society.

9. Do businesses have an ethical duty to use enhanced security measures to protect confidential customer information? Why or why not? For example, if an employer allowed its employee to store customers' unencrypted personal information on a laptop outside of the office, would this violate any ethical duty? Yes, because the information has been entrusted to their care and the theft of such information is well known. Also, from an ethical standpoint, in terms of profit, customers may be less willing to do business with a firm that does not protect such information. No, so long as the firm that possesses the data does not itself misuse it, because any theft or other misuse that might occur would be an illegal and unethical act on the part of its perpetrator, not the possessor.

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

ACTIVITY AND RESEARCH ASSIGNMENTS

1. Suggest that students research the basis for their personal ethical standards. **How well (or poorly) do these bases coincide with the law as they know it? Is there a code of human conduct so basic that everyone would agree to follow it?**
2. Have students research the conflict that seems to exist between the Judeo-Christian and Islamic ethics, between the Western and Arabic cultures. **Is the apparent gap bridgeable? Do we in fact have a common ethics? Do our ethics at least derive from a common source?**
3. Ask students to discover exactly how a value can become a law. **What does the lobbying process involve? Do your students believe that good customs actually do become law? What factors distinguish good from bad customs?**

4. Have students choose an employer and discover as much as they can about the people who work for the employer. ***What are the job categories and what percentages of each are held by women and minorities? How does the employer determine wages? How flexible is the employer's policy?***

5. Some business firms publish annual reports concerning their socially responsible activities. Critics of these reports call them advertising ploys. Suggest that students obtain and read one or more of the reports. ***What activities do these firms consider socially responsible? What influence might the reporting of these activities have on the firms' management? Are firms that issue these reports likely to increase these activities?***