BUSINESS LAW and the Legal Environment

Chapter 2

BUSINESS ETHICS AND SOCIAL RESPONSIBILITY

Suggested Additional Assignments

Research

Ask students to bring to class a sample or description of an advertisement that reflects questionable ethics. They should be prepared to discuss it using the ethics checklist in the chapter.

Interview: Business people on Ethics

Each student (or group of students) can interview a business person about ethics dilemmas they have faced? How did they handle them? Did they make the right decisions? Do they wish they had made a different choice? What were the impacts of their decisions on their companies? On their lives?

Role Play: Rienzi Plaza

The Rienzi Plaza vignette that opens the chapter is well-suited for a discussion of the chapter's themes. Landlord Sheldon Baskin faces a decision. His rent-subsidy contract with the federal government has expired and he can raise rents at Rienzi Plaza by as much as 500 percent. If he raises rents to market rates, then 140 poor and elderly tenants will have to leave. Divide students into groups to represent various stakeholders: the landlord, the tenants, investors, and the government officials who administer the rent subsidy program. Students should brainstorm the business and ethical issues facing their stakeholder and devise negotiating positions, then engage in an all-stakeholder discussion moderated by the instructor.

Chapter Overview

Chapter Theme

Ethical behavior offers significant advantages. Society as a whole benefits; executives who behave ethically have happier, more fulfilled lives; and unethical behavior can destroy a company and the individuals who engage in it. Apparently many students have never discussed these issues with parents, instructors, or religious leaders. It is useful for an authority figure to say openly that ethical behavior is important.

Quotes of the Day

"The one and only social responsibility of business is to increase its profits." –Milton Friedman (b. 1912), Nobel laureate in economics. "The business of business is serving society, not just making money." –Dayton Hudson corporate constitution.

Why Bother with Ethics?

Key Issue

"Doing the right thing" may not generate the greatest profit but over the long run it will lead to the greatest personal satisfaction and fulfillment.

Question: What do you need to be happy in life?

Answer: Sometimes students give pretty outrageous answers: \$1 billion, a mistress; etc. It is useful for instructors to talk about the kinds of non-monetary experiences that bring them satisfaction. Although students may joke about these sorts of "sappy" things, they are listening. Many times, they

will come up to us later in the semester and say, "I would have done such-and-such yesterday, but I remembered our discussion about ethics, so I didn't."

General Question: What did students think of the Economics & Law feature on p. 33? Is money an accurate measure of happiness? Are they willing to make a trade-off between reducing their earnings to spend more time with their friends and family? What trade-offs did their parents make?

Question: What if, after making purchases at the local drugstore, you realize that the cashier forgot to charge you for an item? Or suppose a waitress forgets to charge you for the drink you ordered with your meal?

Answer: It is useful to begin the ethics discussion with small, personal issues such as these because they seem more real to students than abstract business issues. Virtually everyone has had an experience such as these. Usually, at least one student will have been a waiter who has had to pay for items she forgot to charge to the customer. In this way, students can see that their decisions have an impact on real people. It impresses students if instructors give examples of how they behaved [ethically] in such situations. It is also useful if the instructor can give examples of situations in which they behaved unethically and regretted it.

What Is Ethical Behavior?

Ethics Checklist

Some ethics dilemmas are black and white, others are gray. The ethics checklist on page 28 will help students make decisions. At this point, it is useful to write the checklist on the board or display a PowerPoint slide so that it will be available for reference throughout the rest of the class discussion.

Note: The text often refers back to the ethics checklist. Instructors may want to suggest that students bookmark it for easy reference, and may want to bookmark it themselves.

Applying the Ethics Checklist: Making Decisions

Multiple Stakeholders with Competing Interests

To understand the complexity of decisions in the business world students should identify the stakeholders of a typical business organization. A partial list would include shareholders, employees, vendors, customers, communities in which the business has facilities, and state and local governments. Contrast this list with a list of stakeholders affected by a person's non-business decisions: for example, family, friends, and neighbors. Students will recognize that a typical business decision will affect more stakeholders and be unlikely to satisfy all of them. Balancing all of these interests may be difficult, which is why the ethics checklist is a useful template for identifying the components necessary to make informed and ethical business decisions.

General Question: The chapter provides a short list of common values: consideration, courage, integrity, responsibility and self-control. Do students agree with this list? Can they suggest other common values? Can they give examples of situations in which they have acted on one of these values?

Organization's Responsibility to Society

Ethics of Advertising, p. 32

Most students are inured to advertising, having been inundated with it since they were very young. Advertising has become even more pervasive and memorable—which can be synonymous with outrageous or tasteless—to compensate for jaded attitudes. (Note: the complete URL for the Ad Graveyard mentioned on page 34 is http://www.zeldman.com/adgraveyard/.) If students were asked to

bring in an example of an advertisement that reflects questionable ethics, this would be a good time to view those ads. How does the ethics checklist aid in analyzing the advertisements?

Organization's Responsibility to Its Customers

Role Play: Rienzi Plaza

If students engaged in this suggested assignment, did they arrive at a consensus solution? What is it? Is it feasible? Students may tend to resolve the problems by relying on government subsidies that do not exist or are inadequate to address the entire problem. If students are unable to arrive at a consensus solution, what are the obstacles? If the landlord and investors convert the entire building to market-rent units or condominiums, have they taken any steps to mitigate the impact on former tenants such as moving allowances, short-term rent subsidies in other buildings, or relocation assistance? Would a Solomonic solution—splitting the difference between various stakeholders—resolve the issues or leave stakeholders dissatisfied? It is worthwhile for students to realize there is no correct result. Following are points that a full discussion should address:

For tenants:

- Moving would be difficult for the elderly tenants, especially because they are unlikely to find another apartment in the neighborhood. They might end up in homeless shelters.
- All of us, or people close to us, may face similar issues as we age. Should society afford special respect and care to elderly people? What answer would the Golden Rule provide?
- Housing is different from other types of investments. Shelter is a human need and those who have invested in low-income housing and received rent guarantees from the federal government were not exposed to the same investment risk as those who undertook non-guaranteed investments. Having received such a benefit from taxpayer dollars, do they have an obligation not to abandon tenants to market forces?

For the community:

- The entire community benefits by having diversity of incomes and ages in its midst.
- "Gentrifying" a community (replacing lower- and middle-income residents with high-income residents) drives out long-term residents and established businesses by increasing real estate values and rents beyond their ability to pay.

For Baskin's investor partners:

- It is not fair to require private landlords to subsidize the rents of low-income tenants. If they deserve rent subsidies, that burden should be born by all taxpayers. We don't expect grocery stores to reduce prices to low-income customers; instead, all taxpayers contribute via food stamps and welfare payments.
- Forcing private investors to bear this burden will make multi-family housing less desirable for investment and lead to a decline in the number and quality of rental units.

For the government:

• The federal government has dramatically cut back on rent subsidies over the past ten years. The subsidies that remain must be allocated as widely as possible. Government cannot solve all of these problems if taxpayers do not provide the funds necessary.

Outcome: Baskin bought time by extending Rienzi Plaza's contract and keeping rents stable for one year, allowing federal and state officials more time to find a solution. He suggested, for example, that if the government agreed to a lower capital gains taxes on the sale, he could reduce the price. In that case, a nonprofit organization dedicated to providing affordable housing might be able to buy the building.

Organization's Responsibility to Its Employees

Enron Pension Plans

The Enron pension plan was dramatically more favorable to top management than to rank and file employees. Lower-level employees bore the risk of loss if either the stock market or the price of company stock declined—and both did, dramatically. By contrast, executive pensions were guaranteed.

Question: Who are the stakeholders this pension issue affected?

Answer: Obviously, it affected employees and company shareholders. When Enron became insolvent and many of its employees lost their savings and pensions, it also adversely affected the communities in which they lived. The real estate market declined and local merchants lost business.

Question: Why is a pension plan any different from regular compensation? It is surely no surprise to learn that top executives earn more.

Answer: Straight compensation is more transparent—companies report it in their filings with the SEC. It is much more difficult to decipher the technical rules of pension plans.

Question: Is it ethical for companies to offer 401(k) plans rather than traditional pension plans? (Traditional plans guarantee employees a certain annual payment for life.)

Answer: 401(k) plans were designed to supplement, not replace, traditional pension plans. Because they are much cheaper for the employer, 401(k)s have tended to replace traditional plans in many companies—at least for lower level employees. Undoubtedly, though, a 401(k) is better than nothing.

General Questions:

- Are 401(k) plans enough if that is what competitors are also offering?
- How did this unequal pension plan look in the light of day?
- What values do these plans serve? What values do they ignore? Do they violate the Golden Rule?

Gillette and Executive Compensation

James Kilts turned around Gillette as its CEO and then engineered the sale of Gillette to Procter & Gamble for \$57 billion—earning himself \$153 million and two top executives another \$57 million in the process. Implementing the sale required firing 6,000 employees, four percent of Gillette's workforce.

Question: Is it fair to pay top executives so much when 6,000 employees are being laid off?

Answer: Boards of directors argue that such high pay is required to attract and motivate the best people. Other commentators suggest that skilled executives would work for less than \$153 million.

Question: What values does it serve for Gillette to pay these executives over \$200 million while it is laying off 6,000 employees?

Answer: Responding to this question requires identifying the interests of Gillette's shareholders, employees, top executives, and other stakeholders affected by the Procter & Gamble acquisition.

- The sale provided a premium to shareholders, whose stock increased in value 13% alone after the sale was announced. These shareholders include pensions, mutual funds, and other institutional investors who distribute the premium widely to tens of thousands of individual investors.
- As Milton Friedman said, "The one and only social responsibility of business is to increase its profits." Laying off these employees should allow Gillette to cut costs, improve margins, and continue to offer valuable returns to its shareholders.
- The executives did the job that Gillette's board hired them to accomplish. In a free-market economy they are entitled to receive the compensation approved by those who hired them.
- Employment in this country has never followed the Japanese model, where employees traditionally stayed with their employer for their working lives. Indeed, the Japanese model has eroded under competitive pressures from the rest of the world. It is counter-productive to burden

Gillette and other companies with competitive disadvantages by requiring them to place the needs of employees ahead of the needs of other stakeholders.

Update: As this manual went to press, two scandals were unfolding on the executive compensation front:

- It appeared that more than 2,000 companies had backdated their grant of stock options to top executives to make the options more valuable. Since options are granted at whatever price the stock is trading on the day of issue, the options are more profitable if issued on a day when the stock price is low. One study estimated that 29.2 percent of companies had used backdated options and 13.6 percent of options granted to top executives from 1996 to 2005 were backdated or otherwise manipulated. The federal government and some state governments are investigating. (See, for example, Stephanie Saul, "Study Finds Backdating Of Options Widespread," The New York Times, July 17, 2006,
- The U.S. stock market was closed for five days after the terrorist attack of September 11, 2001. When it reopened stock prices declined 14%, the worst full week since Germany invaded France at the beginning of World War II. Many companies rushed to issue stock options to take advantage of this precipitous plunge in stock prices. During the rest of September after the stock market reopened, 511 top executives at 186 companies got stock-option grants. That was 2.6 times as many as in the same stretch of September in 2000, and more than twice as many as in the same period in any other year between 1999 and 2003. Merrill Lynch & Co., across the street from the Twin Towers, lost three employees. On Sept. 24, Merrill granted its president options to buy more than 750,000 shares, at a price 15% below the pre-attack level. At Teradyne Inc. in Boston, an employee delayed a business trip until Sept. 11 to attend a son's soccer game and died on American Flight 11. Teradyne that month gave its CEO more than 600,000 options at a price enabling him to buy stock at 24% below its pre-attack level. (See Charles Forelle, James Bandler and Mark Maremont, Executive Pay: The 9/11 Factor, The Wall Street Journal, July 15, 2006; Page A1.)

Question: Who gains and who loses by these grants?

Question: What would the ethics checklist suggest about these grants?

Organization's Responsibility to Its Shareholders

Ford SUVs and Global Warming: Follow-Up

The text on p. 36 discusses an expensive initiative by Ford Motor Company to increase fuel economy in its sport utility vehicles. After the text was published, the serious financial problems facing Ford and General Motors become front-page news. Consider the following article:

With all of the problems facing General Motors Corp., including the threat of bankruptcy, it's easy to forget that in many ways America's other crisis-ridden car company is in even worse shape. Ford Motor Co. has higher non-labor operating costs than GM, its plants are less flexible, and it has lost twice as much U.S. sales volume over the last five years. It has lagged in modernizing its factories, failed to follow up on the enormous success of hit vehicles like the Taurus, and suffered a brain drain of key executives walking out the door. Now, facing unrelenting pressure from foreign rivals like Toyota and Honda, Ford is at a crucial juncture. In the words of Mark Fields, new head of the company's all-important Americas division, Ford must "change or die."

Question: What caused Ford's dire financial condition?

Answer: This article states that Ford's problems arise from high "legacy costs" relating to pension and health-care benefits promised under contracts with unions, questionable investments, and an inflexible corporate culture that is unable to implement efficient manufacturing practices.

Question: In light of its financial condition can Ford afford to pursue the SUV fuel-economy initiative?

¹ Michael Oneal and Jim Mateja, "Stuck at side of road: Ford's woes outweigh even GM's; culture, past moves costly; turnaround not in sight," The Chicago Tribune, March 5, 2006

Answer: Ford clearly needs new ideas, direction, and management organization to compete with other car manufacturers, particularly Toyota. Ford's problems didn't arise from the fuel economy initiative, and perhaps focusing on building more fuel-efficient vehicles should be part of its overall restructuring.

Organization's Responsibility Overseas

Issue: A child's life in Guatemala, p. 37

A young girl is grateful for the opportunity to work long hours in a factory for pay of \$30 a week. Otherwise, her family would go hungry. Many American companies, such as Nike, Wal-Mart, and Sears, have been criticized for making goods in overseas sweatshops. Some economists argue, however, that sweatshops offer an escape from back-breaking rural poverty.

Question: Are there too many sweatshops, or too few?

The case for sweatshops:

- Industrialization is the first step out of poverty. Countries that industrialize ultimately end up with higher wages and a higher standard of living. Consider Taiwan and South Korea versus India.
- If sweatshops are required to pay higher wages and improve conditions, they will simply move to other countries or mechanize. In either case, workers will lose their jobs.
- If, alternatively, sweatshops increase wages, consumers will buy less, and factories will close.

The case *against* sweatshops:

• They are simply inhumane: children working 12 hour days under barbarous conditions. No civilized human being would buy products made in such conditions.

General Questions:

- How much are students willing to pay in higher prices to eliminate sweatshops and child labor?
- How much are they willing to pay in taxes to subsidize Third World incomes?
- What is our obligation as citizens of the world?

Employees' Responsibility to Their Organization

Issue: Using Company Resources for Personal Needs:

Darby works past 8:00 PM so that she can order dinner at the company's expense, buys extra food for lunch the following day, and uses Holden's photocopying equipment and mailroom for personal purposes.

Questions:

- If Darby feels that she is underpaid, is she justified in using Holden's resources for her own personal needs?
- What would happen if her boss at Holden realized what she is doing? Or the clients to whom her dinner or taxi is charged?
- How would she feel if she had to pay business expenses out of her own pocket?
- How many students have taken similar liberties with their employers? Did they consider it ethical to do so?
- What liberties would students consider to be off-limits? If they think it is acceptable to send, say, two or three letters a week through the company mailroom, would it be acceptable to use company resources to mail 20 applications to graduate school? 100 letters to prospective employers? 250 invitations to a wedding?

Suggested Additional Assignment Follow-up: Interview

If students conducted the interview with a business person, this would be a good time to discuss them.

Practice Test

1. A Harvard Business School alumna told this story about her life as an MBA student in the 1980s:

During the spring of my first year, I took a Business Policy class. One of the young men in the class hung a bigger than life-size poster in the back of the room. It was a naked woman chained to a tree next to a Paul Bunyan-type man, fully clothed in a flannel jacket, with a chain saw. He was starting to de-limb her. The class broke up. The professor was standing there doubled over in laughter. There were 85 men guffawing away as if it were the funniest thing they'd ever seen. The women just sat there with their mouths open.

Did this professor and these students behave ethically? What would you consider to be ethical behavior in this circumstance for the men, the women, and the professor?

<u>Answer:</u> The Harvard alumna went home that night and prepared a short statement for the class about why she felt as if she had been raped the day before. Her friends talked her out of delivering the statement, but she has always regretted that she remained silent.

2. Joya is the head of the personal insurance division of a large insurance company. Six months before, she was almost promoted to vice-president, but she lost out to Bill, a colleague from another division. Bill has now called a meeting to discuss who should be promoted to head the marine insurance division. In Joya's opinion, Ichiro is the most qualified person. However, she knows that Bill will not support him because he is Japanese and a relatively recent immigrant to the United States. Nonetheless, Joya is astonished at the meeting when Bill announces that the staff in the marine insurance division strongly object to Ichiro because of his drinking problem. Joya knows that Ichiro does not have a drinking problem and the staff in his department think he would be a terrific choice. Based on Bill's false information, those at the meeting agree that the promotion should go to Jim, who happens to be a friend of Bill's. Joya knows that Jim is unpopular in his division because of his harsh, demanding style. She thinks that his appointment as department head will be disastrous. At the end of the meeting, Bill says that he will report the sense of the meeting to the CEO. Joya knows the CEO (they exchange pleasantries when passing in the hallways), but they have no regularly scheduled meetings. Nor is Joya likely to have the opportunity to mention Bill's behavior in a casual way. She is concerned that if she reports Bill is lying, the CEO will think she is causing trouble out of jealousy that Bill got the job she wanted. What should Joya do?

Answer: If Joya's concern about the CEO's reaction prevents her from bringing an obvious wrong to his attention then she exacerbates two problems:. First, Bill's false statement that Ichiro has drinking problem will harm Ichiro's reputation within the company and possibly result in adverse employment consequences for Ichiro. Second, Bill's lying will go unchecked and probably embolden him to lie again, fostering an unethical culture within the company as described on p. 28. Pursuing an ethical course is often a courageous act. Joya should arrange a meeting with the CEO and explain the facts to him.

3. Executives were considering the possibility of moving their company to a different state. They wanted to determine if employees would be willing to relocate, but they did not want the employees to know the company was contemplating a move because the final decision had not yet been made. Instead of asking the employees directly, the company hired a firm to carry out a telephone survey. When calling the employees, these "pollsters" pretended to be conducting a public opinion poll and identified themselves as working for the new state's Chamber of Commerce. Has this company behaved in an ethical manner? Would there have been a better way to obtain this information?

<u>Answer:</u> The company's approach was unethical and, frankly, stupid, relying on the assumption that the employees would never speak to each other and connect the dots. Employees were amazed to find that they had all received the same calls, and were incensed when they realized what had

happened. They vented their anger to a newspaper reporter, who wrote a front-page article about the company's lies and insensitivity. The company spent millions on an employee relations campaign and a public-relations blitz but has yet to undo the damage. Steve Goldfarb, "Little white lies," *Across the Board*, May 1992, vol. 29, no. A5, p. 53.

4. Mark is an executive for a multinational office equipment company that would like to enter the potentially vast Chinese market. The official tariffs on office equipment imported into China are so high that these goods are uncompetitive in the local market. Mark discovers, however, that many companies sell their goods to importers offshore. These importers then negotiate "special" tariff rates with Chinese officials. Because these custom officials are under pressure to meet revenue targets, sometimes they are willing to negotiate lower, unofficial rates. What would you do if you were Mark?

<u>Answer:</u> This is what Mark said: "Although participants refer to this practice as 'selling water goods,' the fact is, it is nothing more or less than smuggling. Such a practice would be bad for us because we would lose control of our product. But more than that, we won't besmirch our reputation. We'd rather not be in the business at all."

5. Rap artist Ice-T and his band, Body Count, recorded a song called Cop Killer in which the singer gleefully anticipates slitting a policeman's throat. (The lyrics to this song are available at http://lyrics.duble.com/lyrics/B/body-count-lyrics/body-count-cop-killer-lyrics.htm.) Time Warner, Inc., produced this song and other gangsta rap recordings with violent and sexually degrading lyrics. Recorded music was an important source of profits for the company, which was struggling with a \$15 billion debt and a depressed stock price. If Time Warner renounced rap albums, its reputation in the music business—and future profits—might have suffered. This damage could spill over into the multimedia market, which is crucial to Time Warner's future. The company was concerned about several important stakeholders—shareholders, consumers, suppliers (rap musicians). What decision would you have made if you had been CEO of Time Warner?

Answer: Answers will vary.

6. H. B. Fuller Co. of St. Paul is a leading manufacturer of industrial glues. Its mission statement says the company "will conduct business legally and ethically." It has endowed a university chair in business ethics and donates 5 percent of its profits to charity. But now it is under attack for selling its shoemakers' glue, Resistol, in Central America. Many homeless children in these countries have become addicted to Resistol's fumes. So widespread is the problem that glue-sniffers in Central America are called "resistoleros." Glue manufacturers in Europe have added a foul-smelling oil to their glue that discourages abusers. Fuller fears that the smell may also discourage legitimate users. What should Fuller do?

Answer: The board of directors announced that the company would stop selling Resistol in Central America. Instead, it halted sales to retailers and small-scale users in Honduras and Guatemala, but continued to sell the glue in large barrels to industrial users. It has substituted a less toxic chemical in the glue's formulation and has tried to develop a safe water-based glue. It has contributed to community programs in Central America. Critics point out that the glue is still readily available to children in Nicaragua, El Salvador, and Costa Rica. Diana B. Henriques, "Black Mark for a Good Citizen," New York Times, Nov. 26, 1995, P. C1.

7. According to the Electronic Industries Association, questionable returns have become the toughest problem plaguing the consumer electronics industry. Some consumers purchase electronic equipment to use once or twice for a special occasion and then return it—a radar detector for a weekend getaway or a camcorder to videotape a wedding. Or a customer might return a cordless telephone because he cannot figure out how it works. The retailer's staff lacks the expertise to help, so they refund the customer's money and ship the phone back to the manufacturer labeled as defective. Excessive and unwarranted returns force manufacturers to repackage and reship perfectly

good products, imposing extra costs that squeeze their profits and raise prices to consumers. One retailer returned a cordless telephone that was two years old and had been chewed up by a dog. What ethical obligations do consumers and retailers have in these circumstances?

Answer: Answers will vary.

8. Consider this complaint from an ethics professor:

I make my living teaching and writing about ethics . . . But in our own world—in our departments of philosophy and religious studies and medical humanities and ethics institutes—what happens?

- Job openings [for instructors] are announced for positions that are already earmarked for specific persons . . . [O]ver half the positions announced in the official employment newsletter for the American Academy of Religion were not "real."
- It is extremely common for letters of application, even those responding to announced openings, to go without acknowledgment.
- There are numerous instances of candidates who are brought to campus for interviews and who wait in vain to hear anything from their prospective employers. When the candidates finally call, embarrassed but desperate, they are told, "Oh, that position has been filled."
- Do recruiters have any ethical obligations to job candidates?

Answer: Answers will vary.

9. Six months ago, Todd, David, and Stacey joined a large, prestigious accounting firm in Houston. On paper, these three novices look similar and each graduated from a top MBA program. All three were assigned to work for the same client, a national restaurant chain. They quickly became friends and often lunched together. One day, a senior manager in the firm stopped by the conference room where Todd and David were working to ask if they would like to join him for lunch at the posh Hunter Club nearby. David said, "Thanks, that'd be great, but we usually eat lunch with Stacey. Could she come, too?" The manager hemmed and hawed for a minute, shifted his weight from one foot to the other, and finally said, "The Hunter Club doesn't allow women at lunch." What should Todd and David do?

<u>Answer:</u> This was a true case (in which the names have been changed). Todd and David told the manager that they could not have lunch with him because Stacey was their friend and they did not feel comfortable excluding her. The manager seemed a little cold to them for some time afterwards, but eventually he seemed to get over it.

10. Genentech, Inc. manufactured Protropin, a genetically engineered version of the human growth hormone. This drug's purpose was to enhance the growth of short children. Protropin was an important product for Genentech, accounting for more than one-third of the company's total revenue of \$217 million. Although the drug was approved for the treatment of children whose bodies made inadequate quantities of growth hormone, many doctors prescribed it for children with normal amounts of growth hormone who simply happened to be short. There was no firm evidence that the drug actually increased growth for short children with normal growth hormone. Moreover, many people questioned whether it is appropriate to prescribe such a powerful drug for cosmetic reasons, especially when the drug might not work. Nor was there proof that it was safe over the long term. Was Genentech behaving ethically? Should it have discouraged doctors from prescribing the drug to normal, short children?

Answer: Answers will vary.

11. **ROLE REVERSAL** Write one or two paragraphs that could be used as an essay question describing an ethical dilemma that you have faced in your own life.