

# SOLUTIONS MANUAL

Study Guide

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## BUSINESS LAW TODAY

MILLER / JENTZ



8th Edition

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# BUSINESS ETHICS: AN INTRODUCTION

- **Ethics:** Moral principles and values applied to social behavior.
- **Business Ethics:** Moral principles and values applied to situations that arise in a business setting.
  - A particular challenge facing businesses is ethically balancing the competing demands of multiple groups of *stakeholders* – e.g., shareholders, employees, retirees, suppliers, creditors, customers, the communities in which the business operates – whose lives are affected by business decisions.
  - **Corporate Social Responsibility:** The idea that corporations should be accountable to society, not just their shareholders.
- **Legal Behavior:** While certain actions are clearly legal or illegal, many decisions faced by businesses fall within one or more “gray areas” of the law, where probability, rather than certainty, will guide the decisionmakers.
- **Ethical Behavior:** Even where a contemplated action is legal (or, in some circumstances, illegal), business decisionmakers should also consider whether the action is “ethical.”

# SETTING THE ETHICAL TONE

- **Management Attitudes:** Managers who are not committed to creating and maintaining an ethical workplace rarely have one.
  
- Employees tend to follow what they perceive to be management's lead, so managers must model ethical behavior for their employees.
  
- Managers who "look the other way," because an unethical employee is successful, risk other employees believing that acting unethically is the key to success.
  
- Managers should set realistic goals for their employees to reduce the incentive to "cheat" in order to achieve management's goals.
  
- **Codes of Conduct:** Many businesses have formalized their ethical expectations in a written code of conduct.
  
- **Training:** Businesses with and without formal codes of conduct should talk with their employees about the importance of behaving ethically and should consider in-house or out-sourced ethics training programs.

# CORPORATE COMPLIANCE PROGRAMS

- **Sarbanes-Oxley Requirements:** The Sarbanes-Oxley Act of 2002 requires publicly-traded corporations to set up programs to enable employees to confidentially report certain types of suspected illegal or unethical behavior. Some companies encourage employees to report illegal or unethical behavior that is outside the scope of Sarbanes-Oxley.
  
- **Web-based Reporting:** Confidential reporting systems, like Ethicspoint™, allow employees of subscribing companies to report suspect behavior to a third party, which then alerts management or the audit committee of the subscribing companies of information reported to it.
  
- Compliance programs must be consistent and consistently applied across all departments of a company, and should be coordinated and monitored by a committee or “chief governance officer” that is not looking out for the “turf” of a particular department.

# MORAL MINIMUM

- While personal ethics are (or can be) subjective, certain guides are available to businesses trying to meet or exceed the *moral minimum* (i.e., the minimally acceptable standard for ethical business behavior):
  - corporate and professional codes of ethics and compliance programs;
  - **public opinion** and sentiment; and, of course,
  - **personal morality**.
- For businesses operating in more than one place, the moral minimum may vary from place to place – particularly when businesses operate abroad.

# DUTY VS. OUTCOME

- **Duty-Based Ethics:** Ethics based upon an underlying concept of duty regardless of the consequences of action taken or foresworn in keeping with duty. Duty-based ethics generally arise from **religious belief** or **philosophical reasoning**.
  
- **Categorical Imperative:** In deciding whether an action is ethical, one should consider what the effect would be if everyone similarly situated acted in the same way.
  
- **Principle of Rights:** In deciding whether an action is ethical, one should consider what effect her actions would have on the fundamental rights of others.
  
- **Outcome-Based Ethics** (a.k.a. “**situational ethics**”): Ethics based upon the consequences of action taken or foresworn, without regard to any underlying concept of duty or morality.
  
- **Utilitarianism** dictates that a decision to act or not act should be directed to producing *the greatest good for the greatest number of people*.
  
- Applying utilitarianism (or any outcome-based ethical rule) requires a **cost-benefit analysis** of the negative and positive effects of the proposed act or omission on the individuals who are likely to be affected by it.

# BUSINESS ETHICS IN THE GLOBAL MARKET

- In response to numerous scandals involving U.S. companies paying bribes to foreign government officials in order to gain strategic concessions, Congress passed the **Foreign Corrupt Practices Act (FCPA)** in 1977, which:
  - (1) **prohibits** any U.S. company, director, officer, shareholder, employee, or agent from **bribing** any foreign government official if the purpose of the payment is to get the official to act in her official capacity **to provide business opportunities** to the party offering the bribe;
    - The FCPA does not prohibit bribery of minor officials whose acts are purely ministerial, as long as such payments are legal in the foreign country.
  - (2) requires U.S. companies to keep **detailed accounting records** that “accurately and fairly” reflect all foreign activities;
  - (3) prohibits anyone from making **false statements or false entries** in said records; and
  - (4) provides **sanctions** against both companies and individual agents who violate the FCPA.