

SOLUTIONS MANUAL

SECOND EDITION

DYNAMIC BUSINESS LAW

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Chapter 2 - Business Ethics

CHAPTER OVERVIEW

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

LEARNING OBJECTIVES

After reading this chapter, students will be able to answer the following questions:

1. What are business ethics and the social responsibility of business?
2. How are business law and business ethics related?
3. How can we use the WPH framework for ethical business decisions?

LECTURE NOTES WITH DEFINITIONS

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| <p>In the news...</p> | <p>Teaching tip: For each chapter, consider asking students to relate current news items to material from the chapter.</p> <p>In addition to ideas students come up with on their own, consider weaving in news stories provided by the textbook publisher. Stories are available via a McGraw-Hill DVD, and on the publisher's web site.</p> <p>For Chapter Two, McGraw-Hill offers the following story:</p> <p>"Smoke & Mirrors: Tobacco Companies Have Been Steadily Adding More Nicotine to Cigarettes to Make Them More Addictive, Especially to Teenagers."</p> <ul style="list-style-type: none"> • Apply the WPH framework to the decisions tobacco companies are making. • Is it "socially responsible" for tobacco companies to add nicotine to cigarettes? • Should legal rules provide additional protections to vulnerable consumers, such as teenagers? |
| <p>What are business ethics and the social responsibility of business?</p> | <p>Ethics is the study and practice of decisions about what is good or right.</p> <p>Business ethics is the application of ethics to special problems and opportunities experienced by businesspeople.</p> <p>An ethical dilemma is a problem about what a firm should do for which no clear, right direction is available.</p> <p>The social responsibility of business consists of the expectations that the community imposes on firms doing business inside its borders.</p> <p>Teaching tip: How are the concepts of ethics and social responsibility</p> |

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| | different? Do they overlap? |
| How are business law and business ethics related? | <p>The legality of the decision is the minimal standard that must be met.</p> <p><i>Kipps v. Callier</i> (briefed below) compares what is legal with what is ethical. Ethics presumes obedience to law.</p> |
| How can we use the WPH framework for ethical business decisions? | <p>The WPH framework provides practical steps for responding to an ethical dilemma.</p> <ul style="list-style-type: none"> • W: <u>Whom</u> would the decision affect? <ul style="list-style-type: none"> ○ stakeholders: assorted groups of people affected by the firm's decisions, e.g., owners or shareholders, employees, customers, management, general community, future generations. ○ interests of stakeholders will sometimes be in common and will sometimes conflict. • P: <u>Purpose</u>—What are the ultimate purposes of the decision? <ul style="list-style-type: none"> ○ Which values are being upheld by the decision? ○ Values are positive abstractions that capture our sense of what is good or desirable. ○ Four important values often influence business decisions: freedom (to act without restriction from rules imposed by others), security (to be safe from those wishing to interfere with your interests), justice (to receive the products of your labor), and efficiency (to get the most from a particular output). • H: <u>How</u> do we make ethical decisions? <ul style="list-style-type: none"> ○ We use classical ethical guidelines, such as these: ○ The Golden Rule—"Do unto others as you would have done to you." ○ Public Disclosure Test—Suppose your decision would be published in the newspaper. (Our actions are in the open rather than hidden.) ○ Universalization Test—If I take action X, were others to follow my example, would the world be a better place? <p>Teaching tip: Choose a current ethical dilemma from the newspaper and ask students to apply the WPH framework to the dilemma.</p> |
| Appendix on Theories of Business Ethics | <ul style="list-style-type: none"> • Ethical relativism—Asserts that morality is relative. • Situational ethics—Asks the thinker to put herself in the position of the person facing an ethical dilemma. • Consequentialism—Asks the thinker to consider the harms and benefits of making a particular decision • Deontology—Recognizes that certain actions are right or wrong, no matter the consequences. • Virtue ethics—Focuses on individual development, e.g., individuals develop virtues such as courage, and these virtues guide behavior. • Ethics of care—Asks the thinker to focus on caring and maintaining human relationships. |

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| | <p>Teaching tip: Ask students how specific theories of business ethics are integrated into the WPH framework.</p> <p>Teaching tip: For more information about theories of business ethics, go to these web sites:</p> <p>Philosophy and ethics on the web: http://www.epistemelinks.com/Main/EncyRefs.aspx?TopiCode=Ethi</p> <p>Santa Clara’s Markkula Center for Applied Ethics: http://www.scu.edu/ethics/practicing/decision/framework.html</p> <p>A PowerPoint presentation by Ernest A. Kallman and John P. Grillo. Click on “view graphic version.” http://www.ecs.csun.edu/~rlingard/COMP450/cs450edm/tsld001.htm</p> |
| <p>Point/Counterpoint: Sarbanes-Oxley Act of 2002</p> | <p>Teaching tip: Here are some questions to help you tie the Point/Counterpoint into class discussion:</p> <ul style="list-style-type: none"> • What main point do critics of Sarbanes-Oxley make? • What are the costs of the Sarbanes-Oxley Act? • What are the costs of <i>not having</i> the Sarbanes-Oxley Act? • Which stakeholders most appreciate the Sarbanes-Oxley Act? Which do not? |

CASE BRIEFS WITH ANSWERS TO THE QUESTIONS

Case 2-1 Kipps v. Caillier, 197 F.3d 765 (1999)

Case Brief

Issue:

Did defendant university employees and officials violate the law by firing plaintiff assistant coach because his son refused to play football at defendant university?

Facts:

Several universities recruited Kyle Kipps to play football. Kyle's father, Rexford Kipps, coached for University of Southwestern Louisiana (USL). The head football coach at USL told Rexford Kipps that Kyle was to attend either USL or a school outside Louisiana. Kyle orally committed to play at Louisiana State University (LSU). USL's head coach told Rexford to force Kyle to refuse to play for LSU. When Rexford refused, he was fired. USL's Director of Athletics, along with the President of USL, approved the termination. Rexford sued the head coach, athletic director, university president, and president of the board of trustees.

Procedural History:

District court granted defendants' motion for summary judgment. Plaintiff appealed.

Holding:

Defendants have qualified immunity.

Reasoning:

- Public officials acting within the scope of their duties are shielded from civil liability.
- Court finds that the defendants' actions were objectively reasonable.
- Defendants fired plaintiff to mitigate damages on alumni relations and recruiting efforts, and the court determined this action was objectively reasonable.

Answers to the questions

Critical Thinking

The judge's reasons are listed above. The judge concluded that Kipp's termination was legal because the actions of the defendants were "objectively reasonable," and therefore, legal. The court highlights that fact that the defendants fired Kipp to mitigate damages, especially with regard to alumni relations. It might have also been "objectively reasonable" for a father to advise his son, and for a university to accept the son's subsequent decision.

Ethical Decision Making

The judge's decision highlights consequentialism, e.g., the judge may have been striving to maximize the greatest good for the greatest number. The judge was looking out for the long term best interests of the university.

TEACHING SKILLS: PRACTICE ASKING QUESTIONS THAT FACILITATE UNDERSTANDING

| Practice asking questions encourage the reader to: | Use these questions as models: |
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| "Reduce" the document they are reading. | <ul style="list-style-type: none"> • Why should I care about this issue? • What is the author's conclusion? • What is the author's reasoning? • How does the author's argument relate to the broader issue at hand? • What terms in the author's argument should be clarified? • Could this argument be a metaphor for a more abstract issue? |
| Evaluate reasoning. | <ul style="list-style-type: none"> • What sort of reasons does the author use to prove her point? • Are the reasons stated in an engaging manner? • Is the author using statistics, surveys, logic, or an appeal to common sense? What does each of these methods fail to take into account? How important is that omission to the determination of whether you should accept the reasoning? • Is the argument well-constructed? Is it well written? • Does the author claim any absolute truths? If so, what? • Does the author identify any deficiencies or flaws in her |

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| | <p>arguments, or does she present the reasoning as flawless?</p> <ul style="list-style-type: none"> • Does the author acknowledge the "other side"? • How dedicated is the author to her conclusion? • Does the author present the possibility that she is wrong or misguided? • Does the author justify her assumptions? • What assumptions (related to the particular discipline) does the argument support and/or call into question? |
| <p>Consider an unfamiliar idea.</p> | <ul style="list-style-type: none"> • What are the major tenets of this belief system? That is, what aspects of other belief philosophies does this philosophy accept? • Is this system of beliefs an extension of another system? A reaction to another system? • What are the key "terms" involved with this idea? How are these terms defined? • What are the various perspectives or approaches within the system? • What are the goals of the perspective/approach? • What is the appeal of the argument/ perspective? • What kind of assumptions does the belief system make about human nature? Are we responsible? Lazy? In control? Out of control? Reasonable? Ignorant? Good? Evil? Self-centered? Other- centered? • What evidence supports this perspective? • What kinds of relationships exist between concepts? • Is there a major conflict between two dominant perspectives, or do many perspectives disagree? • Is there a common thread among the perspectives? • Can we come to a conclusion about the issue based on various perspectives? • What factors confound the issue and prevent a concrete answer? |
| <p>Investigate the author/expert.</p> | <ul style="list-style-type: none"> • Who is the author, and where is she "coming from"? Has she had sufficient experience and expertise in the subject? • What (if anything) has the author stated in the past that may confirm or contradict his current argument? If the latter is the case, what factor(s) warrant this contradiction (i.e. change in ideology, pursuit of material self-interest, etc)? • What is the author's intent for writing this piece? • How does the author intend to persuade her audience? • Do I agree with her rhetorical devices? • Is the author trying to be ambiguous or non-linear for a purpose? • Does the author acknowledge the "other side"? |

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| | <ul style="list-style-type: none"> • How dedicated is the author to her conclusion? • What stakes do the participants have in the possible outcomes of the discussion? • What value assumptions do those participating bring to the discourse? • What are the dominant paradigms the writer subscribes to? • What do other reasonable scholars have to say about the idea? • Who are the experts on this particular issue and why? • Are the experts' opinions based on a particular belief system or is it an independent opinion that deals with evidence that the expert feels is relevant? • Is the expert defending a particular belief or making an honest attempt to come to an appropriate conclusion? |
| <p>Probe our individual understanding or knowledge.</p> | <ul style="list-style-type: none"> • What do I already know about this issue? How can I connect this information to new knowledge? • Where am I "coming from"? How do I fit into the author's view of the world? • How do I feel reading this? Angry? Amused? Ambivalent? Why do I feel this way? • What is the best possible argument you could construct against the author's conclusion? • Do I understand this idea well enough to teach it? |
| <p>Offer closure, e.g., where does this idea take us?</p> | <ul style="list-style-type: none"> • Can we accept the author's conclusion? To what degree? With what stipulations? What should we do afterwards? • Would another epistemological approach yield a drastically different conclusion? • Have we kept reasons and conclusions separate? In other words, have we acknowledged that we could agree with the author's reasoning, but nevertheless, could not endorse her conclusion? Have we admitted that we might agree with the author's conclusion but are not satisfied with her reasoning? |

TEACHING IDEAS

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| <p>Connecting to the Core</p> | <p>One way to connect to the core expands the chapter's discussion of ethics and accounting. You may want to obtain and show your class a PBS videotape called "Bigger than Enron," available at:</p> <p>http://www.pbs.org/wgbh/pages/frontline/shows/regulation/</p> <p>This videotape explores the collapse of Arthur Andersen, the accounting firm Enron used to help it hide its fraud. The tape asks, "What went wrong?"</p> |
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| Teaching Basics | <p>After showing “Bigger Than Enron,” ask the class questions that facilitate understanding. Here are some questions to get you started:</p> <ul style="list-style-type: none"> • What argument did Hedrick Smith present in the videotape? • Why should business students care about the argument and facts in the videotape? • Is there “another side” to the story? • How did the videotape make you feel, as an American citizen? |
| Advanced Teaching | <p>In "Bigger Than Enron," FRONTLINE correspondent Hedrick Smith shows how corporate watchdogs, e.g., lawyers, regulators, politicians, and accountants failed to prevent the Arthur Andersen/Enron scandal. Ask your students to write a paper in which they explore a different industry (e.g., toy manufacturing) to consider the extent to which corporate watchdogs have disappointed the American people.</p> |

ANSWERS TO QUESTIONS AND PROBLEMS

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| 1. | Business law provides a floor of acceptable behavior. Business ethics builds on business law. It often has higher aims for acceptable behavior. |
| 2. | Classical ethical guidelines such as the golden rule, public disclosure test, and universalization test always provides some sort of guidance. One behavior is rarely as good as the next. |
| 3. | The WPH approach provides a practical set of rules for thinkers to follow as they sort out how to respond to an ethical dilemma. |
| 4. | Employers to have a duty to respect the religious beliefs of their employees. They do not have to respect employees’ non-religious beliefs. So, the question here is whether Friedman’s veganism was a religious belief. Friedman argued that his belief that it is immoral and unethical for humans to kill or exploit animals is a religious belief. The court disagreed. Veganism does not “address fundamental or ultimate questions such as the meaning of human existence and the purpose of life, the beliefs were not comprehensive, because they did not derive from a power or being or faith to which all else was subordinate, and no formal or external signs of a religion were present.” The court viewed veganism as a secular philosophy and would not protect it. |
| 5. | Erickson won the suit. The value of justice applies here, e.g., people must be treated equally. Their gender should not matter. The court ruled that, “[a]lthough Title VII does not require employers to offer any particular type or category of benefit, when an employer decides to offer a prescription plan covering everything except a few specifically excluded drugs and devices, it has a legal obligation to make sure that the resulting plan does not discriminate based on sex-based characteristics and that it provides equally comprehensive coverage for both sexes.” |
| 6. | The court ruled that the First Amendment does not give media agencies the right to record or broadcast an execution from within a prison. If ENI had applied the Golden Rule, it might have demonstrated more sensitivity to Timothy McVeigh’s family. It is unlikely his family would have wanted the world to watch the execution. |
| 7. | The court granted a summary judgment in favor of the doctors, pharmacies, and drug manufacturers. Price’s wrongful conduct precluded him from moving forward against the doctors, pharmacies, and drug manufacturers. In particular, he obtained the drug through his own fraud, deception, and subterfuge. He misrepresented his medical history in a quest to get Oxycontin. If the court had allowed Price to move forward, it would have rewarded him for his bad behavior and encouraged other deceptive drug seekers to file lawsuits. |
| 8. | A landowner does not owe a duty to those who are lawfully upon his or her property to warn them |

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| | <p>against defective or dangerous conditions which emanate from outside that property. However, it is likely that Clark had a moral duty to warn Galindo. Under an ethic of care, Clark could have focused on maintaining his human relationship with Galindo. Also, the golden rule supports the idea that you should do your best to look out for others.</p> |
| 9. | <p>Guilbeault raises an interesting point revolving around business ethics. Ethically, Reynolds, and all other companies for that matter, should inform consumers of any possible hazards associated with their products. However, this would most likely hurt sales, so companies usually act unethically and withhold such information. If Guilbeault is correct, and Reynolds did know about the dangers of smoking prior to 1970, then the company should be responsible for not making such information public. Ethically, Reynolds should have warned consumers about the dangers of smoking as soon as they had knowledge showing smoking to be dangerous. The court's opinion was largely based on technicalities of the law and not on ethics. The court granted the defendant's motion to dismiss in part, and denied the motion in part. It was the opinion of the court that Guilbeault failed to fully and specifically allege facts supporting his claims of fraud, manufacturing defect, and conspiracy. It was this lack of facts in these areas that led the court to dismiss the plaintiff's claim with regards to the listed areas. However, the court also found that the plaintiff was not required to propose an alternative, safer design to make a claim based on strict product liability. Instead, the plaintiff only had to allege that there was a defect in the product that made it unsafe for its intended purpose. Therefore, the court denied the defendant's motion to dismiss on the plaintiff's claim of strict product liability; this claim remained to be argued by the plaintiff.</p> |
| 10. | <p>The court granted a summary judgment in the defendant's favor, ruling that Guin's complaint should be dismissed. Guin failed to prove that Brazos breached a duty to him. Legally, Brazos was not required to encrypt data stored on the hard drive of a computer. Brazos acted with reasonable care in handling Guin's personal information. Additionally, Guin did not suffer an injury. Finally, the laptop theft was not reasonably foreseeable to Brazos.</p> |