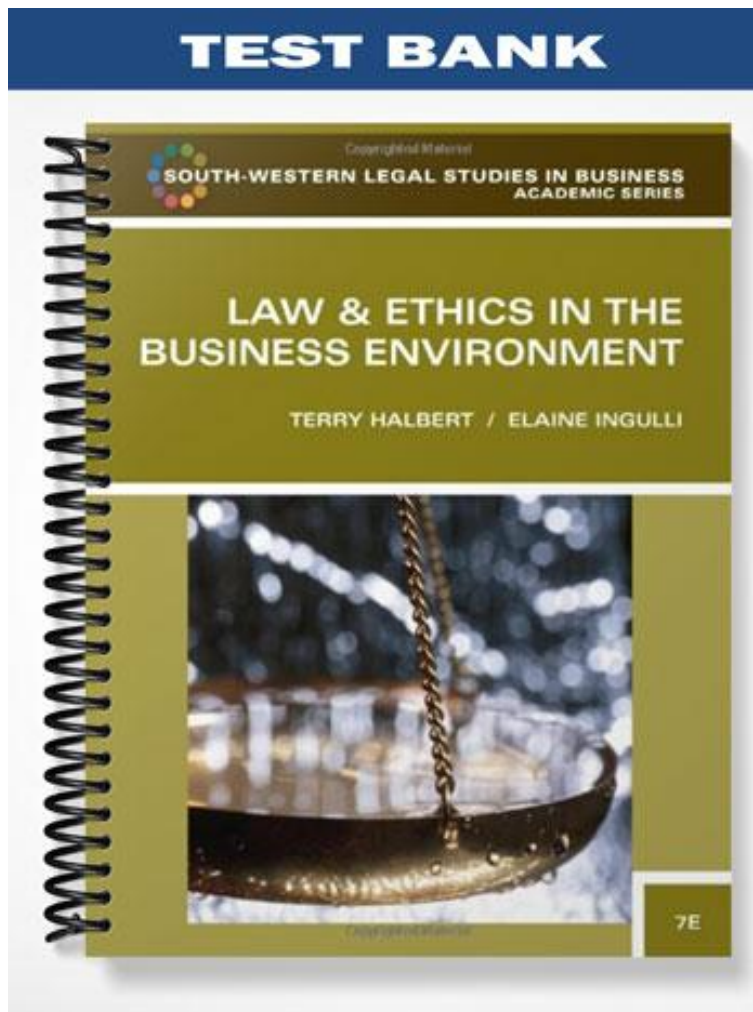


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SOUTH-WESTERN LEGAL STUDIES IN BUSINESS
ACADEMIC SERIES

LAW & ETHICS IN THE BUSINESS ENVIRONMENT

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LAW & ETHICS IN THE BUSINESS ENVIRONMENT

CHAPTER 2

The Duty of Loyalty: Whistleblowing

Questions

1. Select the best definition of whistleblower:
 - a. the sole goal of modern ethics training
 - b. originated from the Latin "*qui tam pro domino rege quam pro sic ipso in hoc parte sequitur*" meaning "who as well for the king as for himself sues in this matter."
 - c. a narrow exception under the general rule of at-will employment
 - d. people who report unethical or illegal activities under the control of their employers

ANSWER: D

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2. Under the legal doctrine of "employment at will" an employee can be lawfully terminated from her job for:
 - I. wearing a shirt that clashes with her suit
 - II. any non-discriminatory reason
 - III. complaining about illegal activity in the workplace
 - IV. only for good cause
 - a. a. I only
 - b. b. II only
 - c. c. I and II
 - d. d. III and IV

ANSWER: C

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3. Exceptions to the rule of employment-at-will include which of the following?

- I. organization of unions
 - II. passage of Sarbanes Oxley Act
 - III. raising of public policy issues
 - IV. promise of implied-contract or covenant-of-good-faith
- a. I only
 - b. II only
 - c. I and II
 - d. I, II, III, IV

ANSWER: D

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4. In the essay, Work Matters, by law professor Marion Crain, all of the following are the result of working except:

- a. People become self-sufficient.
- b. People become more engaged in the democratic process.
- c. People become more engaged in society and social issues.
- d. People stay out of jail.

ANSWER: D

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5. The Sarbanes Oxley Act was passed in response to:

- I. concerns that investors received full and complete information about potential corporate fraud
- II. a lack of investor confidence
- III. corporate scandals beginning with Enron
- IV. discrimination against an employee when providing information she reasonably believes constitutes a violation of federal security laws

- a. I only
- b. II only
- c. I and II
- d. I, II, III, IV

ANSWER: C

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6. "Groupthink" is always to be trusted because the great number of people needed to come to one consensus is usually correct.
- a. True
 - b. False

ANSWER: B

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7. The Constitution does not always protect free-speech rights for what public employees say on the job. Which of the following is true?
- a. When a citizen enters government service, the citizen need not accept certain limitations on his or her freedom.
 - b. Public employees may speak out on matters of public concern and have First Amendment protection but not when they speak out in the course of their official duties.
 - c. As public employees speak out and receive First Amendment protection, there is an acceptable chilling of the speech of all potential whistleblowers.
 - d. None of the above

ANSWER: B

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8. To determine whether a public employee receives First Amendment protection from speech (and therefore cannot be fired for it), the Supreme Court has stated that all of the following are important except:
- a. The employer must have a justification for treating the employee differently than it would treat a member of the general public.

- b. The speech cannot be about political topics.
- c. The speech must be about something of great public concern.
- d. The speech cannot be made as part of the employment (such as an internal memorandum).

ANSWER: B

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9. There are several reasons why whistleblowing may not be protected on an international level. These include:
- a. Dictators typically do not care if companies are engaging in illegal activities.
 - b. Collective or collaborative cultures may frown on whistleblowing instead of working together to fix a problem.
 - c. Many nations across the globe do not have the dishonesty problems that are found in western nations.
 - d. Most business is not truly international and so there has been no push for globalization of protection.

ANSWER: B

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Essay Questions

10. Given the information in the text, why is public policy towards whistleblowing an inconsistent issue?

ANSWER: It is an exception to employment-at-will developed simultaneously in different states, providing a variety of rules. Often states look to the courts for guidance; however, not all states recognize this tort at all.

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11. How was Sherron Watkins of Enron a typical whistleblower? An atypical whistleblower?

ANSWER: Ms. Watkins is typical of whistleblowers because she had knowledge of damaging information, and she disclosed it to her supervisor's superior. However, she was an atypical whistleblower because as an accountant, she had sufficient expertise to know that her corporation was possibly breaking the law and defrauding the public. Second, her disclosure to the president of the company did not lead to the type of investigation that was necessary to stop any wrongdoing. Her actions did not cause the immediate collapse of Enron. Third, even though she blew the whistle on her boss, she did not immediately get fired; in fact, she received praise for the action.

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12. Explain what happened in the 1968 Supreme Court's re-interpretation of the First Amendment to the U.S. Constitution regarding public employees' limited speech protections.

ANSWER: In 1968, the case of *Pickering v. Board of Education* addressed a public school teacher's criticism of the local school board. The Court weighed "the interests of the teacher, as a citizen, in commenting upon matters of public concern" against the State (a.k.a. the school board). The *Pickering* case gave public employees limited speech protection.

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13. Describe at least two other times since the *Pickering* decision in which the Supreme Court revisited the ruling. What were the outcomes?

ANSWER: In 1983, in *Connick v. Myers*, Ms. Myers had distributed a questionnaire at her place of employment. The circular not only addressed internal matters, but also matters of legitimate public concern, including pressure put on employees to work on political campaigns. The *Connick* court determined that the questionnaire had just enough public interest to be examined under the *Pickering* test, although a statement limited to internal matters would not be. Myers lost the case since the court demonstrated that her questionnaire interfered with working relationships in the workplace.

In 2006, Richard Ceballos, a deputy district attorney, supervised other lawyers in the DA's office. A defense attorney contacted Ceballos to tell him he would be challenging a search warrant because the warrant was based on "inaccuracies" in the supporting affidavit. Ceballos agreed to investigate. When he arrived at the scene in question, a "long driveway" was a separate road. Ceballos told his supervisors that the case should be dismissed because of the obvious misrepresentations in the affidavit. Ceballos was later reprimanded for this behavior, which in turn led to retaliations, reassignments, transfers, and denied promotion. He sued, claiming those

actions violated his First Amendment rights. The Supreme Court Justices were divided in their opinions.

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14. As discussed in the text, False Claims Act or *qui tam* suits have been successful in the health care industry. The text mentions several things that all these successful claims have in common. Discuss those things.

ANSWER: (1) All *qui tam* plaintiffs tried to fix the problems internally before they went to the outside; (2) all were told that the behavior they were concerned about was either legal or were told to drop the complaint; (3) very few believed that they would have to “blow the whistle” in the beginning; (4) none blew the whistle out of any concern for money, but instead were concerned with public health and safety; and (5) most of them found the process incredibly grueling.

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15. What does Dworkin suggest in her essay are four activities any organization should implement for effective compliance behavior towards whistleblowing?

ANSWER: (1) Establish a written compliance program; (2) Train employees regarding compliance; (3) Establish a simple reporting procedure; and (4) Investigate and respond quickly to allegations.

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