Answers to Issue Spotters, Using Business Law, Real-World Case Problems & Ethical Questions

CHAPTER 2

ETHICS IN BUSINESS

ANSWERS TO ISSUE SPOTTERS

1A. ***Mac Tools, Inc., markets a product that under some circumstances is capable of seriously injuring consumers. Does Mac have an ethical duty to remove this product from the market, even if the injuries result only from misuse?*** Maybe. On the one hand, it is not the company's "fault" when a product is misused. Also, keeping the product on the market is not a violation of the law, and stopping sales would hurt profits. On the other hand, suspending sales could reduce suffering and could stop potential negative publicity if sales continued.

2A. ***Acme Corporation decides to respond to what it sees as a moral obligation to correct for past discrimination by adjusting pay differences among its employees. Does this raise an ethical conflict between Acme's employees? Between Acme and its employees? Between Acme and its shareholders?*** When a corporation decides to respond to what it sees as a moral obligation to correct for past discrimination by adjusting pay differences among its employees, an ethical conflict is raised between the firm and its employees and between the firm and its shareholders. This dilemma arises directly out of the effect such a decision has on the firm's profits. If satisfying this obligation increases profitability, then the dilemma is easily resolved in favor of "doing the right thing."

ANSWERS TO USING BUSINESS LAW

2–1A. ***Business ethics***

Personal and business ethics sometimes overlap. Businesspersons do not necessarily adopt one set of principles to guide them in their personal lives and another to provide guidance in business decisions. Business activities are only a part of life, and business ethics is only a subset of ethics. From this viewpoint, the degree to which ethical behavior in business is guided by notions of what is "appropriate," rather than what is "right" or "wrong," is determined by the personal ethics of those who decide how to behave. Of course, ethical decision making can be complicated in business by the number of persons who provide input into those decisions. Few businesspersons have complete control over the decision-making process. In this sense, a decision that represents an amalgam of interests and views may seem to be less a matter of "right" or "wrong" and more what is "appropriate." Personal ethics should play a role in business ethical decision making. It could be hypocritical at best and impossible at worst to apply one set of ethics to one set of situations and another set of principles to another range of conduct. There are, however, many other factors that can influence ethical decisions in a business context.

2–2A. ***Ethical decision making***

Factors for the firm to consider in making its decision include the appropriate ethical standard. Under the utilitarian standard, an action is correct, or "right," when, among the people it affects, it produces the greatest amount of good for the greatest number. When an action affects the majority adversely, it is morally wrong. Applying the utilitarian standard requires (1) a determination of which individuals will be affected by the action in question; (2) an assessment, or cost-benefit analysis, of the negative and positive effects of alternative actions on these individuals; and (3) a choice among alternatives that will produce maximum societal utility. Ethical standards may also be based on a concept of duty—which postulates that the end can never justify the means and human beings should not be treated as mere means to an end. But ethical decision making in a business context is not always simple, particularly when it is determined that an action will affect, in different ways, different groups of people: shareholders, employees, society, and other stakeholders, such as the local community. Thus, another factor to consider is to whom the firm believes it owes a duty.

ANSWERS TO REAL-WORLD CASE PROBLEMS

2–3A. ***Business ethics***

Ethics is the study of what constitutes right and wrong behavior. It is a branch of philosophy focusing on morality and the way moral principles are derived and implemented. Ethics has to do with the fairness, justness, rightness, or wrongness of an action. Those who study ethics evaluate

what duties and responsibilities exist or should exist for its practitioners. The circumstances set out in this problem underscore the importance of ethics by illustrating the consequences of engaging in ethical misconduct. Those consequences can extend beyond the short run.

Clearly, Glass engaged in ethical misconduct. By fabricating material for more than forty articles for *The New Republic* magazine and other publications whose reputations are founded on truth, Glass betrayed the trust of his editors. He further behaved unethically by fabricating supporting materials to delude *The New Republic's* fact checkers. And once he was suspected, he tried to avoid detection. Later, based on these misdeeds and others, the California Supreme Court refused to admit Glass to the California bar.

Does Glass deserve a "second chance"? Based on the facts in this problem, it can be argued that no, he does not—he had more than one "second chance" and blew them all. This is indicated by the California Supreme Court's citation of "numerous instances of dishonesty and disingenuousness" during Glass's "rehabilitation" following "the exposure of his misdeeds." From a more forgiving perspective, it could be argued that he does deserve another chance—because of his misdeeds, his every move will be closely scrutinized and any misconduct would most likely be swiftly spotted and thwarted.

In the actual case on which this problem is based, Glass had earlier applied for, and been denied, admission to the New York bar. Then, as stated in the facts, on Glass's application to the California bar, the California Supreme Court denied him.

2–4A. *Business ethics*

Business ethics might have been violated in these circumstances by Mark Ramun, John Ramun, and the employees and managers of Gensis.

The "tense relationship" between John and Mark at Allied may have been caused or exacerbated by either or both of them. And instead of confronting whatever it was that made their relationship "tense," they may have exacted revenge—John by forcing Mark out of the firm, or Mark by leaving it, after ten years. Of course, this is speculation.

What is not speculation, however, is that Mark took 15,000 pages of Allied's documents on DVDs and CDs (trade secrets) when he left the firm. This act was likely a violation of the law (theft or misappropriation) and clearly a violation of business ethics. Later, Mark joined Allied's competitor, Genesis Equipment & Manufacturing, Inc. Genesis soon developed a piece of equipment that incorporated elements of Allied equipment. This points to a second violation of the law and ethics (use of stolen property) by both Mark and Genesis. Mark appears to have been competing against his family in the marketplace and trying to sell his products through another company. Assuming that Genesis profited from its sale of the equipment, this would have caused losses to Allied and unjustly enriched Genesis. If Mark was paid a bonus or given a promotion, he too would have gained undeservedly.

In the actual case on which this problem is based, Allied filed a suit in a federal district court against Genesis and Mark for misappropriation of trade secrets. A jury awarded Allied more than $3 million in damages, but the court issued a judgment as a matter of law in favor of the

defendants. On appeal, the U.S. Court of Appeals for the Sixth Circuit reversed. "It is neither speculative nor conjectural that Genesis unjustly benefitted from its use of Allied's trade secrets."

2–5A. ***Ethical misconduct***

Ethics has to do with the rightness or wrongness of actions. Business ethics focuses on what is right and wrong in the business world. Business ethics can be more complicated than personal ethics. In the situation described in this problem, the son engaged in unethical personal and business conduct. His personal misconduct included the use of his father's Social Security number to obtain a credit card. His business misdeeds included the misrepresentation to obtain the $350,000 loan. Producing forged documents to show his father that the loan had been paid was both a personal and a business breach of ethics. In each instance, the son did not tell the truth. The son perpetrated fraud on the lender and on his father. These circumstances call for a judgment against the son.

The son acted alone—the father did not contribute to the fraud nor ratify the son's misdeeds—and neither the father nor the partnership benefited from the fraud. By confronting the son, the father arguably attempted to repudiate the misconduct. These factors indicate that a judgment in favor of the father is warranted.

In the actual case on which this problem is based, the court entered a judgment in favor of Adams against the son, and a judgment in favor of the father against Adams. On Adams's appeal, a state intermediate appellate court affirmed this result.

2–6A. ***Ethics and the law***

The law does not codify all ethical requirements. A firm may have acted unethically but still not be legally accountable unless the party that was wronged can establish some basis for liability. Rules of law are designed to require plaintiffs to prove certain elements that establish a defendant's liability in order to recover for injuries or loss. Ethical codes and internal guidelines may have significance in evaluating a company's conduct, but they are not rules of law—a violation of a company policy is not a basis for liability.

In this case, Havensure had the burden of proving liability. Prudential's violation of its own company guideline was clearly wrongful—and might be a matter of concern for insurance regulators—but this misconduct did not create an obligation to Havensure. Havensure cannot establish a cause of action against Prudential for violating its own policy.

In the actual case on which this problem is based, the court ruled in Prudential's favor.

ANSWERS TO ETHICAL QUESTIONS

2–7A. ***Ethical workplace***

Factors that help to create an ethical workplace include a written code of ethics, a policy statement, the effective communication of ethical policies to employees, and the attitude and conduct of management.

2–8A. ***Social responsibility***

It could be argued that the defendants have an ethical responsibility to society to voluntarily take steps to reduce the availability of their products to meth makers. This might have become a more certain obligation once the defendants were aware that their products were used in the manufacture of meth. Retailers might have been asked to place the products behind the counter or lock them in display cases and limit sales or require consumers to sign for purchases. Retailers might have been educated about the suspicious behavior of buyers with illegal intent. (These measures were imposed as federal regulations in 2005.) The defendants might have developed alternative medications that did not contain ephedrine or pseudoephedrine.

It could also be argued that the defendants have an ethical responsibility to their shareholders and other stakeholders in their companies to fight regulatory efforts to limit the availability of their products so they could continue making profits. The central purpose of their businesses is to make money, not to affect social change. And the effects on society of the meth epidemic are not the natural and foreseeable consequences of the sales of the defendants' products.

In the actual case, the court compared the counties' claims to other plaintiffs' attempts to recover from gun manufacturers the costs associated with the criminal use of guns. In terms of legal liability, the circumstances connecting the sales of the medications to the provision of government services were too weak for the counties to recoup their costs from the defendants on a theory of implied contract. Also, the sales of the medications were legal, the operations of the STLs were not, the latter were not likely consequences of the former, and thus, in terms of proximate cause for tort liability, the costs to the counties were not reasonably foreseeable. The suit was dismissed.