

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

In the news...	Teaching tip: For each chapter, consider asking students to relate current news items to material from the chapter. 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. For Chapter Two, McGraw-Hill offers the following story: "Smoke & Mirrors: Tobacco Companies Have Been Steadily Adding More Nicotine to Cigarettes to Make Them More Addictive, Especially to Teenagers." • 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?
What are business ethics and the social responsibility of business?	Ethics is the study and practice of decisions about what is good or right. • Business ethics is the application of ethics to special problems and opportunities experienced by businesspeople. An example of a business ethics question: Is the company in the Case Opener doing the right thing when it attempts to reduce the costs of advertising by not listing all possible complications of the medicine for the consumer? As explained later in this chapter there are several ways of evaluating an ethical decision, for example, the Golden Rule, the Public Disclosure test, or the Universalization Test. One reasonable answer, thus, is can be provided by the Golden Rule. Presumably, if

	one were the consumer of a medicine, one would want to be informed of all of the possible complications of a medicine before deciding to put the drug into one's body. To not desire information would be the equivalent of not caring about one's health or potentially dying from a dangerous drug. In light of this application of the Golden Rule, a company's decision to cut costs by not listing all possible negative effects of a medicine constitutes ethically questionable behavior. An ethical dilemma is a problem about what a firm should do for which no clear, right direction is available. The social responsibility of business consists of the expectations that the community imposes on firms doing business inside its borders. Exhibit 2-1 provides a useful example of the way that the social responsibility of business has affected the way a business operates. For example, notice that the values and goals sections in the code of conduct pyramid put consumer needs and honesty at the forefront of the business's objectives. Teaching tip: How are the concepts of ethics and social responsibility different? Do they overlap?
How are business law and business ethics related?	The legality of the decision is the minimal standard that must be met. <i>United States of America v. Alfred Caronia</i> (briefed below) compares what is legal with what is ethical. Ethics presumes obedience to law.
How can we use the WPH framework for ethical business decisions?	The WPH framework provides practical steps for responding to an ethical dilemma. - W: <u>Whom</u> would the decision affect? - 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. - The Case Nugget in this section involving Maria Lopez provides a useful example of how multiple stakeholders are affected by a business decision. The stakeholders include in this example include the motor suppliers, the CEO, management, and depending on the motor supplier chosen, the workers for the motor suppliers that are not transacted with. - P: <u>Purpose</u>—What are the ultimate purposes of the decision? - 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? ○ 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? ○ The Case Nugget on Tyson Foods' Bribery Charges provides a useful example of the way the Universalization Test can serve as a guide in making ethical decisions. In this case, Tyson Foods was paying bribes to pass quality inspections. But, foods that are low in quality have the potential to cause diseases, like salmonella, in consumers. Thus, by circumventing safety inspections, Tyson Foods was endangering the health of their consumers. One would be hard pressed to argue that the world is a better place as a result of Tyson Foods' bribes. ○ E-Commerce and the Law: This section provides an example of the ethical dilemmas that have been created in the internet age. Specifically, the dilemma consists of weighing the rights of news agencies to protect the information they gather against the right of the government to improve national security, thereby protecting U.S. citizens. Teaching tip: Choose a current ethical dilemma from the newspaper and ask students to apply the WPH framework to the dilemma.
Appendix on Theories of Business Ethics	• 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. Teaching tip: Ask students how specific theories of business ethics are integrated into the WPH framework.

	Teaching tip: For more information about theories of business ethics, go to these web sites: Philosophy and ethics on the web: http://www.epistemelinks.com/Main/EncyRefs.aspx?TopiCode=Ethi Santa Clara's Markkula Center for Applied Ethics: http://www.scu.edu/ethics/practicing/decision/framework.html 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
Point/Counterpoint: Sarbanes-Oxley Act of 2002	Teaching tip: Here are some questions to help you tie the Point/Counterpoint into class discussion: • 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 United States of America v. Alfred Caronia, 576 F. Supp. 2d 385 (2008)

Case Brief

Issue:

Did the defendant violate the law in promoting off-label effects of a prescription drug?

Facts:

The defendant, Alfred Caronia, a sales representative for a pharmaceutical company, marketed the drug Xyrem, a depressant inducing sleep, to doctors. The FDA had reviewed the drug, and approved it safety for the purpose of treating only one condition: cataplexy, i.e. a narcoleptic condition. Several, potentially deadly, side effects had been associated with Xyrem, and FDA regulations mandated that those under the age of 16 should not use the drug. Caronia was found to have marketed Xyrem to doctors for purposes not warranted by the FDA, including combating daytime sleepiness, fibromyalgia, muscle disorders, chronic pain and weight loss. These uses had not been approved by the FDA. So, Caronia was marketing off-label uses for a drug.

Procedural History:

The defendant is seeking to dismiss allegations of illegally marketing Xyrem for off-label uses.

Holding:

The defendant's motion to dismiss charges was denied.

Reasoning:

- The court rejected the defendant's argument that he was not accountable in that the he provided the cooperating physician with the black box warning that outlined Xyrem's side effects. The reason behind this rejection was the established rule that FDA regulations

pertaining to the marketing of off-label uses by a sales representative is prohibited regardless of what direction the representative provided for that use.

- The court reasoned that consumers require the protection of regulations for their safety to be ensured; that is, consumers would have little awareness of the health hazards that related to health uses that have no scientific basis. Consequently, business representatives hold a large degree of power that can be harnessed to make more profits in the absence of any regulations on marketing and drug distribution.
- After finding that Caronia's speech constituted commercial speech, the court ruled that the restriction on Caronia's marketing of off-label uses was constitutional pursuant to the Central Hudson test. Specifically, under the fourth prong of Central Hudson, a restriction on speech is allowed if it is "not more extensive than necessary to serve [the government's] interest." The court found that, contrary to being extensive, the restriction was highly needed to ensure that patients were not given prescribed medications for uses that could be entirely inappropriate.

Answers to the questions

Critical Thinking

1.) The relationship between pharmaceutical companies and the physicians who prescribe medications could be dangerous to patients in that patients have little expertise in medicine and the potential negative effects of different medicines. Consequently, were pharmaceutical companies and physicians to team up for the goal of making a good profit, consumers would have little ability to defend themselves as they would have little information about whether a particular use of a drug is its intended use. Presumably, consumers go to doctors because they trust that doctors' interest is in bettering their health.

2.) At first, Caronia's speech was deemed to be protected under the umbrella of commercial speech. The logic behind protecting commercial speech is that consumers have a right to be informed about the products that they purchase. Hence, commercial speech is a necessary component of a business transaction. After making this point, Judge Vitaliano used to the Central Hudson test to see if restrictions on commercial speech in this case were legally justified on grounds that they supported the public interest. Judge Vitaliano, pursuant to the fourth prong of Central Hudson, reasoned that despite being commercial speech and not inherently misleading, restrictions on Caronia's speech was justified in that those restrictions were in the interest of protecting the health of patients that receive drugs such as Xyrem.

Ethical Decision Making

1.) Ethics starts with thinking about "the other." Gleason's behavior shows little regard for the health of "the other," in this case, his patients. Specifically, what makes Gleason's behavior particularly morally questionable is the nature of the doctor-patient relationship. Presumably, patients go to doctors because they trust that doctors' can provide recommendations regarding how to improve their health. Gleason breaks this trust by essentially taking a bribe from Orphan in exchange for promoting the use of Xyrem for uses not approved by the FDA. In other words, Gleason is using his expertise and position of power in the doctor-patient relationship to deceive patients in to thinking that their needs are being attended to adequately, when in reality, their needs are being significantly shaped by Gleason's and Orphan's desires to make a profit. This deception is highly questionable behavior.

TEACHING SKILLS: PRACTICE ASKING QUESTIONS THAT FACILITATE

UNDERSTANDING

Practice asking questions encourage the reader to:	Use these questions as models:
“Reduce” the document they are reading.	• 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.	• 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 arguments, or does she present the reasoning as flawless? • 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?
Consider an unfamiliar idea.	• 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?
Investigate the author/expert.	• 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"? • 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?
Probe our individual understanding or knowledge.	• 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?

Offer closure, e.g., where does this idea take us?	• Do I understand this idea well enough to teach it? • 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?
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TEACHING IDEAS

Connecting to the Core	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: http://www.pbs.org/wgbh/pages/frontline/shows/regulation/ 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?"
Teaching Basics	After showing "Bigger Than Enron," ask the class questions that facilitate understanding. Here are some questions to get you started: • 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	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.

A BEST PRACTICES TEACHING TIP

"Buzz" Sessions.	This teaching technique involves splitting a class up into small subgroups, two or three students per group, and subsequently, having students address a complex question that can yield several different answers. The usefulness of this strategy for enhancing student learning has been demonstrated by several education studies. For example, according to Wilbert J. McKeachie "data has found that students in two- and three-man groups write more new
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	ideas after a five-minute discussion than students working alone” (63). Thus, the use of Buzz Sessions can promote more student engagement, and maximize the potential for creative thinking, the cognitive task that ranks highest on Bloom’s Taxonomy of Learning. For more specific information on incorporating “Buzz” Session into lectures, see “Teaching Tips: A Guidebook for the Beginning College Teacher.” References: Wilbert J. McKeachie, Teaching Tips: A Guidebook for the Beginning College Teacher, 7th ed., 1978.
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ANSWERS TO QUESTIONS AND PROBLEMS

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.	In actuality, the court ruled in favor of Kaplan, claiming that there wasn’t enough scientific evidence to support the contention that hiring based on credit history disproportionately affected blacks negatively. However, basing a hiring decision primarily on credit reports is potentially unfair to minorities, or anyone who has little alternative but to go into debt in order to have access to basic needs. The reason for this injustice is based on the influence of the environment on individuals. More concretely, those living in poverty often have little access to education, and thus, face the often impossible task of overcoming poverty. Credit is often used as a means to buy goods or services when one does not have the income to afford such goods and services. These goods can include very basic goods necessary for living an adequate life, such as food, water, and shelter, and services can include basic services such as hospital or medical costs. As a consequence, it is potentially unfair to base a hiring decision on credit histories because those histories can be less representative of how responsible or productive someone is, and more representative of simply someone’s having a very low-income with few choices but to go into debt to afford basic goods and services. This case gained a lot of media attention, and therefore, did potentially affect other companies’ use of credit histories in their hiring process. It did not necessarily change most companies’ behavior, but its media attention potentially made people at minimum more aware of the potential discriminatory effects of reviewing credit histories to make hiring decisions.
5.	The Supreme Court ruled, in a 5-4 decision, in favor of Walmart. The basis for this ruling was the Court’s viewing that the plaintiffs did not have enough in common to constitute a class. While Walmart may have won in part as a result of the substantial amount of power it holds in the U.S. by supplying many households with essential goods, it is also probable that the Court’s decision was largely a result of the dominant values on the bench that propel the view that markets and labor disputes are best resolved when government intrusion is limited.
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 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.
9.	The Supreme Court ruled in favor of Caperton on grounds that CEO contributions to the campaign of Justice Benjamin probably created a bias that would result in Justice Benjamin leaning towards Massey Coal Company. The Court implicitly did seem to accept that the involvement of Justice Benjamin was unfair. One reason for being unethical is tied to the principle in the legal system that everyone is entitled to a trial governed by reason. In this case, rather than opposed to appealing to reason, one could envision the Justice ruling in favor of the CEO as essentially a repayment for his campaign contributions. This was how the Court reasoned. However, it is important to notice that, like most ethical issues, there was a counterargument against the majority ruling in two dissenting opinions. In one, Justice Scalia seems to argue that if such a bias exists, then it is likely that in all states in which Justices are elected there is probably a bias. But on practical grounds, there are advantages gained in electing Justices, so bias may be a cost worth the benefits. With regard to the last question, though not entirely determinable, it is possible that the CEO purposely contributed to the Justice's campaign as future rulings by the Justice could definitely boost his company's profits.
10.	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.