

## CHAPTER 2

# ETHICAL AND LEGAL ISSUES IN SELLING

### **Outline of Chapter**

- I. Ethics and Personal Selling
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  - B. Factors Influencing the Ethical Behavior of Salespeople
    - 1. Personal, Company, and Customer Needs
    - 2. Company Policies
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- II. Selling Ethics and Relationships
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  - C. Relationships with Colleagues
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- V. Legal Issues
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  - B. Misrepresentation or Sales Puffery

- C. Illegal Business Practices
  - 1. Business Defamation
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  - 4. Conspiracy and Collusion
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  - 8. Privacy laws
  - 9. Do-Not-Call Law
- VI. International Ethical and Legal Issues
  - A. Resolving Cultural Differences
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- VII. Selling Yourself

## **Teaching Suggestions**

1. Begin by asking your students to read through the opening profile regarding Jessica Lehrer. Ask students about her motivation for working as a sales representative, especially since she is a mechanical engineer. Then ask them to define the term "representative". If students struggle, ask who Jessica represents when she carefully goes over a contract and points out the "bad" things to a customer? The definition that works best for this class is that a representative is *someone who acts for someone else*. Why does someone act for someone else? Because they either can't or won't act for themselves. Then ask students "Who does the sales representative represent?" Answers include the company, the customer, self and family, industry, and profession. You can have other answers such as your university, society, and so forth. Then list the various elements of the company, such as manufacturing, management, customer service, accounts receivable, credit, and so forth. This leads into a great discussion on why customers need salespeople to act for them - due to imbalance of information and the customer's need to rely on the salesperson to interpret the situation and recommend the right solution, as well as the need for the customer to represent his/her needs back to the company. You might ask when does a rep represent the customer - it is in the sales call when talking to the customer as well as when back at the company. Now go back to their responses about motivation - how can they relate their motivation for sales positions to this act of representation?  
  
This discussion can accomplish several things. First, you can discuss how salespeople represent the customer to the company and how important that responsibility is. The company depends on that form of representation to get crucial market information to decision makers, not to mention the impact on customer satisfaction and retention. Second, it helps set the stage for later discussions about partnering with internal partners (Chapter 16) and role conflict (Chapter 17). Most relevant to the immediate chapter, however, is that you can discuss how role conflict can tempt someone to act unethically. For example, pressure to achieve what management wants could cause a rep to sell something that the service department believes is inappropriate for a particular situation. Or, a customer could want immediate delivery that causes the rep to lie to shipping in order to get what she needs.
2. Add to this discussion the question of what makes a behavior unethical. For example, is asking questions unethical? Ask students: How can you tell what a customer's needs are if you can't ask questions? Then turn the tables a little. What about asking questions about the buyer's financial status and using that information to set the price? Assume, for example, that you sell franchises. You ask potential buyers for audited financial statements and tell them that you want to make sure they have the capital to invest in such a franchise. Then you also have them fill out a personality profile "to make sure they have the entrepreneur's profile." Then you use this information to set the price and to alter your presentation to fit their personality profile. Is this fair? Is it ethical? Why or why not? (By the way, this example came from a former student who encountered these practices at her former employer.) These questions make for a good discussion on what is fair.
3. Next, you could move the discussion toward the ethical conflicts confronting salespeople. Recall from Jessica Lehrer's profile that she refuses to accept gifts - why would a buyer offer her gifts? Discussion Question 8 offers an excessive gift example from a buyer (and is a true story). Look at Discussion Question 9, as these are real situations as well. You could discuss how the goals of the salesperson, his or her company, and customers can all differ. This discussion could be made very interesting by having your students explore why salespeople seem to confront ethical dilemmas more than accountants, engineers, and production managers. Consider all the opportunities for deception, bribes, gifts, special treatment, etc. Talk about how easily even

legitimate things like entertainment could lead to unethical behavior. It is also important for students to understand the

concept of persuasion versus manipulation. The decision is ultimately the buyer's to make; manipulation takes away from that buyer's right to make an informed decision. This class, while students can learn tools that can help them engage in unethical behavior, is about helping students develop tools that will enable buyers to make informed decisions.

4. Ask students to identify the rationalizations people make about engaging in unethical behavior. Suggest that if they find themselves using some of these statements, it may be an indication that the behavior they are about to engage in may not be ethical.
5. This last discussion is a good lead-in to some questions one could ask oneself to help identify potentially unethical behaviors. We have found this exercise to be especially useful: Have your students write down a behavior they have personally experienced when interacting with a salesperson that they felt was potentially unethical. Discuss the behaviors and use the questions in as a useful check list to evaluate the behaviors.
6. We feel the best way to convey the principles of ethics to students is to have them confront situations, make choices, and justify them. Cases in the text provide opportunities for students to confront such issues and make for great class discussion.
7. After a discussion of all the ways one could run afoul of the law, you could suggest ways of avoiding legal problems by discussing guidelines to reduce the chances of violating laws. Here again, some examples help students to solidify these concepts in their minds. The more concrete you can make this, the better.
8. Sexual harassment is an important issue to discussion. Salespeople can encounter harassment in dealing with customers, their colleagues, and their supervisor. In this chapter, we focus more on sexual harassment arising from customer interactions. Issues concerning harassment from colleagues and supervisors are discussed more in chapter 16 on the relationship between the salesperson and his or her firm.
9. Finally, the issues of ethical and legal issues should be related back to developing long-term, partnering relationships with customer. You might ask the students how importance ethical and legal issues are in the different type of relationships.

### **Suggested Answers to Questions and Problems**

1. *There are certainly many ethical and legal issues in selling, as this chapter demonstrates. Do you think there are more ethical and legal issues in selling than other jobs, such as accounting, finance, retail store management, or the like? Which issues raised in the chapter likely to be present, no matter the job, and which are likely to be specific to sales jobs?*  
Interestingly, many of the bigger cases involving unethical behavior did not involve sales activities, though they may have involved customers. For example, making and selling faulty products in spite of awareness of the fault (Toyota's acceleration problem) is an example where customers were affected, but it was not salespeople at fault. Whether the sales profession is more unethical or not has never been empirically demonstrated; however, some issues, such as harassment, are issues in any job, not just sales. In addition, the principles that guide ethical decision-making are applicable in all fields. The nature and perhaps number of issues may be different, but the same sets of principles can guide an individual in resolving those issues.
2. *Do you think social media and the Internet has made salespeople more ethical? Why or why not?*  
One argument could be that the Internet makes all behavior so public that it adds a watchdog element to selling not present before. Another argument is that the Internet offers so much information on products and services that it is hard to lie about them. But some students will feel that human nature hasn't changed and unethical behavior has been untouched by the internet, especially as these tools are often used unethically and information isn't always accurate on the web.
3. *How has the evolution of selling influenced ethics in professional selling?*  
Because most transactional selling, where the goal is to get the sale and get on to the next one, has been moved to other channels such as the web, many less ethical versions of selling are no longer used. Further, with recognition of customer lifetime value, more emphasis is placed on the relationship and poor ethics has no place in a long-term relationship. Thus, while the evolution has worked to improve ethics, the improvement can also be attributed in part to greater information on the web and changes in sales channels.
4. *What's the difference between manipulation and persuasion? Give two examples of what would be considered manipulation and alternatives of acceptable persuasion. Then describe how your examples of manipulation might fall into the realm of illegal activity and under which law or laws.*  
The difference is the customer's ability or opportunity to make his or her own decision. Manipulation, by leaving out information or lying, takes informed choice away from the customer. While examples will vary, they will likely relate to things like failing to tell a customer that the product won't work in certain circumstances or something like that.
5. *Some professors believe that ethics cannot be taught. Do you agree? Why or why not?*  
Profs who believe ethics cannot be taught are really saying that they believe that they cannot make someone act appropriately. That is probably true. However, sometimes people engage in unethical behavior through ignorance rather than intent. They are deceived by the rationalizations

that others may offer, for example. What can be taught is how to recognize unethical situations and how to respond.

*What do you think Jim Keller's (in [The Buyer's Seat 2.1](#)) answer would be to this question? Why? Would his answer differ from that of someone who sells to consumers?*

I've asked Jim this question and he believes that it can be taught; it's just that some people don't want to learn. He had one incident where he left a company rather than engage in unethical behavior. Given that he had one customer (FedEx) for most of his career, he might say that someone who sells to consumers is unlikely to have that same kind of relationship and may, therefore, be more easily led astray.

6. *Your customer asks you what you think of a competitor's product. You know from experience with other customers that it is very unreliable and breaks down frequently. Further, given this particular customer's needs, you expect that it would be an even bigger problem if the customer chose this product. How do you respond? Be specific as to what you would say.*

While answers will vary from student to student, they should have the elements of avoiding direct comparison regarding reliability. Customers do not appreciate it when a salesrep talks down the competition; however, telling another customer's story (and offering to provide contact information for verification) or providing a third-party review that supports your position (such as from Gartner) can make for a professional way to offer a comparison. The point can also be made by stressing the reliability of your product, and by asking how the other product will satisfy certain needs. By letting the customer respond to questions about how important those needs are, the customer can usually figure it out.

7. *Using the scenario from question 6, you have a product that competes directly against the competitor's product brought up by the customer and costs about the same—do you bring up the costs? Your product that serves the customer's needs best costs 20 percent more and you know that budget is an issue. What do you do? Again, write out exactly what you would say.*

Again, answers will vary but the best answer is one that demonstrates the value of reliability. In the next chapter, we will cover the multi-attribute matrix and total cost of ownership, so this question foreshadows material to come, which you can point out in class.

8. *One of our students shared the story of how his family was able to spend their vacation on a private Caribbean island – no exaggeration – as a guest of one of his father's clients. While that may be extreme, what might the ethical issues be with accepting a gift from a customer? How should you respond if offered a gift?*

This true scenario causes a number of issues. At some point, it is likely that the client will call this gift into accounting, wanting something back from the salesperson such as a lower price. Yet, friendships do form between salespeople and their customers – and within the context of friendship, it makes perfect sense.

9. *For each of the following situations, evaluate the salesperson's action and indicate what you think the appropriate action would be.*

*a. In an electronics store, salespeople are offered an extra \$50 for each sale of HDTV models that are being closed out. The manufacturer is offering the spiff, and management is fully aware of it. Salespeople are encouraged to not mention either the spiff or that these are close-out models.*

Offering incentives to the salespeople is not illegal and students may not consider it to be unethical. The unethical aspect of these spiffs is that the customers in the retail store do not know that the retail salespeople are being paid to promote close-out products without letting customers know that.

*b. A customer asks if you can remove a safety feature because it slows down the operators of the equipment.*

Clearly, if a salesperson says yes and someone gets hurt, the manufacturer of the equipment will be held liable for any injuries, as will the employer. We have observed salespeople say, no, don't do that because it voids the warranty. We think that is a rather weak response.

*c. The custom of the trade is that competitive firms submit bids based on specifications provided by the buyer; then the buyer places an order with the firm offering the lowest bid. After a salesperson submits a bid, the purchasing agent calls him and indicates the bid is too high; the lowest bid so far is almost 8 percent lower than that. The buyer asks the salesperson to submit another bid at a price at least 10 percent lower.*

Probably unethical – the practice is not only unethical but illegal if the situation is a government bid but for commercial bids, the practice would be considered unethical if the posted RFP said all bids would be open at a certain time and a decision made.

*d. A few months after joining a company, you learn about a credit card that gives you a 20 percent cash refund on meals at certain restaurants. You get the card and start taking clients only to those restaurants offering the rebate, pocketing the rebate.*

The practice is certainly legal and some might argue that it is no different from using a credit card that rewards users with miles or cash back (such as Discover). The amount, though, raises some serious questions. If the rebate was a cash discount, the company would benefit. Since it is a rebate, the company doesn't necessarily benefit except that the salesperson isn't buying a dinner that is obviously "on sale," as would be the case with a cash discount.

*e. A customer gives a salesperson a suggestion for a new service. The salesperson does not turn in the idea to her company, even though the company's policy manual states that all customer ideas should be submitted with the monthly expense report. Instead, the salesperson quits her job and starts her own business using the customer's suggestion.*

This is clearly unethical. It violates specific company policies.

## **Suggested Answers to Case Problems**

### **Case 2-1: Barton Hargrave**

#### Questions

1. *How do you respond to the pricing issue if you can't actually prove Ruhter is lying until a customer tries them and then realizes it is more?*

One way is to probe with customers to determine how much they are actually being charged or going to be charged – lay it out side by side. An indirect way is to focus on the total cost, that your prices are more like Southwest Airlines who charge one price for a ticket and include bags, not like these cheap airlines that charge for everything and end up costing a lot more.

2. *How do you respond to the question about leaving the business? What if a client asked about the lawsuit directly, saying, "I hear your company filed suit against Ruhter. Wasn't that a cheap shot at a competitor?"*

The only way to handle the question is with a straight denial, then point out that some competitors may wish you were exiting the business but there's no truth to that rumor. In most situations like this, the company will tell you how to respond to queries about the lawsuit. Failing that, the best way would be to say something like, "Actually, defending yourself against a competitor who can be a little weak in the truth is one way to respond to a cheap shot."

Note: This scenario is based on a situation faced by one of our former students. The names and industry have been changed, but the situation is real.

### **Case 2-2: DuBois Polymers**

#### Questions

1. *What should Josh do about the Boise situation? Should he try to find out if Boise plans to bid on Farley contract and if so, what their strategy is?*

No, he shouldn't. Even if he knew their strategy, he shouldn't disclose that, it wouldn't be fair to Boise. Plus, there would be no reason for DuBois to trust her if she did, though to be honest, if Mitch himself isn't trustworthy (and he probably isn't) then he isn't trusting Betsy now.

2. *What should Josh do about the Mohawk account?*

The temptation is to violate company policy by lying to her company about a trial. A more legitimate approach would be to give the trial amount directly to Mohawk as a legitimate trial, with the approval of the boss and as a courtesy to Marsha, or to seek approval for a somewhat lower price as a sales strategy. However, Marsha is pushing pretty hard for Josh to engage in some unethical behavior (such as divulging Boise's pricing strategy), and setting a precedent here is the first step down a slippery slope to further demands and potentially severe pressure to engage in further unethical behavior. The best choice is to stick to his guns and avoid giving anything to Marsha at present.

3. *Describe Josh's relationship with Marsha. Where should he go with this account in the future?*

One would hope Josh had a partnership with the largest distributor, but it doesn't look that way. Or at least, it appears that this is probably not the account to have to rely on for a majority of one's sales. Josh would be better suited to build up other distributors so that when

Marsha leaves him for someone who will give in to the demands, he is prepared to take the hit.

### **End of Chapter Role Play Case**

Copy a buyer sheet for each student in the class. There are three versions. After the role play, you may want to begin debriefing this by asking how they handled each situation. Start with Version A, but divide it into those who were asked to adjourn for margaritas and those who were asked to visit a strip club. Further, you can then discuss what might happen if a female salesperson was asked by a male buyer to attend a strip club (according to articles in the trade press, this does happen, and is more likely to happen in male-dominated industries). You can then ask how common each situation is. With Version C (which is based on a real article), why might a buyer consider this to be an ethical issue?

Chapter 2 role play

Version A:

If the rep is of the opposite sex, respond to the request for the sale like this. “Well, it all sounds good, but I’m not quite convinced. Why don’t we adjourn to this little place I know down the street and talk it over? They have the best margaritas in town.” If the rep is of the same sex, respond to the request like this. “Well, it all sounds good, but I’m not quite convinced. Say, there’s this place down the street, totally nude, and the dancers are really hot. Why don’t we move this conversation over there?”

Chapter 2 role play  
B:

Version

Respond like this. “Well, it all sounds good but I’ve got good people, they’ll figure it out. And I have no money in the budget for this. I know you said that training is another 20% but if you’ll throw in free training, I’ll take it.” If the rep says yes, then say, “Ok, I’ll check with the CFO and see what we can do. But I’ll warn you, she’s a cheapskate and she’ll probably want you to sweeten the deal.”

Chapter 2 role play

Version C:

Your response is: “I don’t know. I read in Computing Magazine that people are unhappy with Gartner and that Gartner isn’t acknowledging the problem. I’m not sure that is the type of company I want to do business with.”

## EXERCISE 2-1 IDENTIFYING YOUR ETHICAL DECISION PROCESS

Below is a list of activities and behaviors that a salesperson may engage in. Under what conditions would the behavior be ethical or unethical? If the behavior is always ethical, write “Always ethical,” or list any situational influences that determine if the behavior is ethical or unethical, or write “Always unethical.”

1. Offering gifts directly to a purchasing agent, like sales promotion prizes and “purchase volume incentive bonuses.”

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2. Asking for preferential treatment from a buyer who is also a supplier.

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3. Asking for preferential treatment from your banker when that banker is considering a purchase from you.

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4. Exaggerating the seriousness of a problem in order to explain a delay in shipping.

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5. Allowing for personalities—for example, liking one buyer more than others—to enter into the pricing negotiation.

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6. Trying to go directly to departments that use your product, because the purchasing agents won’t see you.

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7. Seeking information about competitors from good customers.

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8. Raising prices when you know you are the only supplier for a company.

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9. Asking for information about other bids so you can adjust yours.

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10. Giving preferential treatment to a customer over another as compared to the usual treatment.

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11. Writing off the cost of duplicating a proposal for a buyer as a travel expense because the company doesn't let you write off copying expenses.

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12. Taking the afternoon off after making a big sale.

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Go back to the previous page and review your responses. Were you able to identify situations which made a behavior ethical? Situations that made it unethical? If you used a lot of situations to explain when something might be ethical or unethical, then you may have a situational perspective on ethics. If the converse is true, then you may have a deterministic perspective. The idea is that some people like believe that the ethicality of an action can only be determined by understanding the situation (e.g. it's okay to steal to feed yourself). Others say that the situation does not determine ethicality, a higher code of conduct does (e.g. it is never okay to steal).

Now consider the constituents that were involved in each decision. Who would be hurt by the action? Go back and add that to each situation. Consider the impact on the buyer, the seller, their companies, and society in general. What you have just done is taken another approach to determining the ethicality of an action: the consistency approach. This approach looks at who is hurt and who is benefited. If benefits outweigh the hurts, then the action is ethical. The difficulty, of course, is deterring the value of the benefits and the costs of the hurts. One version of this considers who will find out about the action. Only if someone else (who can punish the salesperson) finds out about the act is it considered ethical. From a societal perspective, that approach is not very helpful!

Which approach describes you the best? Can you think of any ethical dilemmas you might have faced? Did you use one of these approaches in resolving your conflict?

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Now consider the following scenarios and rate the salesperson's behavior:

1. The customer signs the order but fails to initial one of the little boxes, the one that determines how long the rental agreement is for. You don't notice until you get back to the office, 45 minutes away. You know that the customer wanted a 24 month lease so you just initial it and turn it in.

☐ Illegal  
☐ Unethical or immoral  
☐ Ethical but inappropriate  
☐ No problem

Reason:

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2. You convince a physician who has just opened a new practice to purchase an unusually large amount of supplies, informing him that he will get an excellent discount.

☐ Illegal  
☐ Unethical or immoral  
☐ Ethical but inappropriate  
☐ No problem

Reason:

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3. You have a customer awaiting a shipment that is due to arrive tomorrow. If the customer knew it, though, they could wait until next week when the product goes on sale and save a bundle.

☐ Illegal  
☐ Unethical or immoral  
☐ Ethical but inappropriate  
☐ No problem

Reason:

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4. An employee (of the opposite sex) of the buyer's company, but not the buyer, asks you out as you are leaving the plant after making a sales call

☐ Illegal  
☐ Unethical or immoral  
☐ Ethical but inappropriate  
☐ No problem

Reason:

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5. The buyer offers to take you out to dinner to say thank you for all your support for their company.

- ☐ Illegal  
☐ Unethical or immoral  
☐ Ethical but inappropriate  
☐ No problem

Reason:

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