**Ethics and Corporate Social Responsibility in the Legal Environment of Business**

**Associate Professor Lee Usnick, JD**

**Introduction**

A common understanding of ethics is “the study of how people ought to act.” For the employee/manager/business professional faced with a difficult moral decision, does this definition provide guidance as to the “ought” behavioral choice? Do different people have different definitions of what “ought” means? Does “ought” vary from personal to professional contexts, or stated another way, does a person have an ethical code for her personal life, and another for her professional life? If an act is legal, is it *de facto* ethical?

I think the topic of ethics can pose a challenge for business generally, and for business students and graduates in particular. With multiple objectives on one’s personal and professional radar screen, what should one do when faced with choices that cause moral discomfort. This course is not the place to philosophize about the meaning of a “good life.” Instead, it is a brief opportunity to ask: why should you care about ethics in the business context? My short answer, “Because you will be (if you have not been already) asked to do something you believe is, or could be, unethical.” How will you make your decision when this situation arises?

To move forward, we need a better working definition of ethics. Perhaps more useful definition of ethics would be “…having a *conscious system* in place for solving moral dilemmas.” (Melvin & Guerra-Pujol, *The Legal Environment of Business*, p. 139). Let's consider several approaches you can use in your decision making so that you will have a *conscious system* in place *before* you face an ethical dilemma or other discomforting situation. Being able to articulate (to yourself and your management) the basis for your decision process hopefully will allow you to reason more clearly and formulate a course of action you can explain, justify, and live with.

**Definition of Ethics**

Black's Law Dictionary defines ethics as follows: “of or relating to moral action, conduct, motive or character; also, treating of moral feelings, duties or conduct; containing precepts of morality. Professionally right or befitting: conforming to professional standards of conduct.”

**Code of Ethics**

Much has been written in the ethics literature as well as business law literature about businesses needing a code of ethics for all employed by the business. When did a code of ethics become so important to companies? In the early 1990's, the U.S. Sentencing Commission devised the Federal Sentencing Guidelines, standards that federal judges would be required to follow when sentencing companies and individuals for convictions of white collar crime. Depending on the severity of the offense, the number of times committed, and the amount of loss or harm created, the Guidelines defined the number of months/years for prison sentences as well as the criminal fines to be paid, often millions of dollars. In short, the days of white collar crime earning a company or CEO a slap on the wrist were over. The Guidelines also provided that “...if a company self-reports, cooperates with the government, and has an effective compliance and ethics program, it receives a steep reduction in fines: a 95% cut.” [Joseph E. Murphy, *A Compliance & Ethics Program on a Dollar a Day: How Small Companies Can Have Effective Programs*, Society of Corporate Compliance and Ethics (Aug. 2010) p. 4. See www.corporatecompliance.org for a variety of resources. To access the Official Social Network of the Society of Corporate Compliance and Ethics, go to community.corporatecompliance.org to join for free]. Ideally, having a strong code of ethics will prevent wrongdoing from occurring in the first place (Murphy, p. 4).

**Evaluating a Code of Ethics**

A code of ethics is only as meaningful as its content and *application*. That is, a company might write a perfect code of ethics to provide guidance on how its employees should act, but if the employees are not continuously trained on the code, if it is not actively followed by management, it becomes a meaningless document. Quoting the American College of Healthcare Executives, “a comprehensive, “living” Code of Ethics should contain the following elements:

1. Philosophical Statements: general philosophical statements on what the profession is about, its beliefs, its mission, etc.;

2. Professional Goals: statements about what the profession is striving for, what its members are dedicated to, what services the profession seeks to provide;

3. Statements of Professional Responsibility: statements of the standards of professional conduct the profession's members are expected to meet, usually stated in terms of what is minimally acceptable to the profession;

4. Educational Commitment to Ethics Promotion: statements that interpret ethical standards, as well as promoting those standards within the profession, including information on the application and enforcement of standards;

5. Process for Enforcement: description of the enforcement mechanism, including who will review grievances filed against a professional, who will apply the standard and decide on punishment, what the grievance procedure will entail (due process considerations, appeal, procedures, etc.).”

(Visit the ACHE website at http://www.ache.org and select Ethics in the left menu. You will find very useful models not only of a comprehensive, living code, but also processes and policy statements regarding the code and expected standards of ethical behavior in the profession of healthcare management.) Does your place of employment have a Code of Ethics (or newly termed Code of Conduct)? If so, does it measure up to the comprehensive list above? When you evaluate a Code, you should keep these elements in mind. Anyone can create a document, but creating the workplace that adheres to it is another matter. Government regulators are no longer impressed with what a company has on paper, but rather, with what the company does to create an ethical workplace in compliance with stated standards, laws, codes of conduct for the industry.

**Some Approaches to Ethical Decision Making**

**1. Ethics Checklist.** Some business law writers provide an approach that asks you to consider the problem at hand from the perspectives of all interested/affected parties. This is a handy approach to doing the groundwork, making sure your facts of the situation are comprehensive and that your viewpoint is not constrained by tunnel vision. In other words, this checklist helps you gather all relevant data and keep an open mind by considering all points of view. But once completed, does this approach help you make a decision when presented with an ethical dilemma? [Let me say here that there is extensive discussion in the Ethics literature on what constitutes an ethical dilemma. My short answer for our lecture is this: a decision that presents the decider with two or more mutually exclusive alternatives, all of which are equally desirable, or all of which are equally undesirable, according to certain ethical principles or moral theory. A discussion on identifying true ethical dilemmas is beyond our scope here.] Does the checklist approach give you a moral standard or ethical principle or set of rules to apply to the various alternatives under consideration, so that at the end of the day, you can intelligently explain/defend your choice? I'm not sure that it does.

**2. Teleological Theories.** This approach asks the question, “Which alternative will produce the greatest good?” Examples of this approach include the classic cost-benefit analysis and more broadly, Utilitarianism, which seeks to produce the greatest good for the greatest number, or alternatively, to maximize the good over the bad. Critics of this approach say this is not helpful because (1) definitions of 'good' vary from person to person, culture to culture, and (2) outcomes are not sure things. In other words, can you be certain that decision A will result in outcome Z? And, (3) the answer can vary, depending on whether we are talking short term (3 days, 3 months) or long term (3 years) outcomes. For example, Johnson and Johnson took a hit on short term earnings when it recalled a pain reliever product from the market due to product tampering, but in the long run, it gained great marketing benefits for its concern for customer safety.

**3. Deontological Theories**. Decision makers using a deontological approach believe that a rule or principle for decision making is morally compelling because of its own nature, not because of the result its application will produce. For example, a manager in this camp could apply such rules as, “Always tell the truth,” or “Never misrepresent the facts either by lying or by omission.” Her decision will then be based on truth telling, full disclosure and transparency. But, in application, what this approach often comes down to is the criticized result of “situation ethics.” A decision is never made in a vacuum, but rather takes place in a particular set of circumstances or conditions. As a result, the deontologist must ask, “In this situation, what is the right thing to do?” [The philosopher Immanuel Kant addressed this problem with his concept of the Categorical Imperative. This concept holds that the rule or principle upon which a decision is based must be universally acceptable such that all persons, if acting this way, will produce results that make the world a good place for everyone, from the lowest to the highest within the social order. My explanation is fearfully oversimplified!]. The problem with situation ethics is that most people can justify or rationalize anything, usually, depending on the particular facts of the situation. Therefore, someone might decide one way in one situation, and then the opposite way in another situation presenting the same kind of problem. Results are then inconsistent and indefensible to others and ultimately, to oneself.

**4. Principles Based Approach.** Some ethicists argue that decisions should be based on Principles. For example, in the health care ethics literature, the well-known ethics writers Beauchamp and Childress list 4 principles: (1) Do good, (2) Do no harm, (3) Autonomy, and (4) Justice. Numerous critics of this approach say it fails because (1) definitions of 'good' and 'harm' and even 'justice' have varying meanings, and (2) autonomy cannot be morally justified if everyone is not operating on a level playing field with regard to one’s empowerment to make decisions. (For example, a person cannot decide to become a doctor if he has no access to the kind of education required for the MD degree and certifications to practice medicine). Do not confuse this principles approach with the approach known as **Virtue Ethics.** Virtue Ethics lists traits that are regarded in most cultures as desirable character and behavior traits: honesty, loyalty, persistence, caring, virtuous, and so on. Critics of this approach say that focusing on a character trait or behavior does not offer sufficient guidance in resolving an ethical dilemma, one is which two or more equally compelling courses of action are possible, and which are mutually exclusive so that the actor must chose only one course of action.

**5. Covenantal Ethic.** Laura L. Nash, while teaching Ethics at Harvard Business School, wrote a book entitled “Good Intentions Aside: A Manager's Guide to Resolving Ethical Problems.” In it, she redefines the context of business ethics by arguing that a decision does not exist in a vacuum, that it must be placed in the context of the type and nature of the business relationship. The relationship is critically important. She argues that all relationships should be based on the altruistic concept of service to others, that acting solely to make money is not an ethical basis for action. She terms her approach Covenantal Ethic, using covenant in the sense of 'promise.' The Covenantal Ethic can be broken down into its definitional parts: (1) Create value, for a (2) fair return, in a (3) mutually beneficial relationship, within a (4) long-term context. You can see by these parts that Nash's view of business ethics involves helping the client solve his problems, thereby creating value, for a fair profit so as to create a win-win relationship that will endure over the years, not just through this quarter's earnings report. In her opinion, making money in a way that does not provide win-win value to the customer and the company has no moral justification, that actions based solely on maximizing profits is not an ethically defensible position for a company, and will not produce long term success and survival.

Which of these approaches is the best one? Which one appeals to you the most? If you were the final decision maker in your company and faced an ethical dilemma, which would give you the most guidance? There is no 'right' answer to these questions, and that is not what I am asking from you. What I am asking you to do is to take a moment to reflect on your decision making standards. In other words, what guides you? And perhaps more importantly, on what standards do you justify your decisions? You MUST be able to articulate your reasoning process, the basis (rules and/or principles) underpinning your reasoning. Otherwise, your decision looks as if you used **Ethical Egoism**, an approach that says, “Decide so as to produce the best decision for yourself.” Some writers argue that Ethical Egoism is perfectly acceptable so long as the decider is honest with himself as to the basis for his decision. (“I am deciding to do X because it produces the best outcome for me.”) My feeling is, using this approach, you won't win friends or clients in the long run. By definition, you will be viewed as incapable of producing a win-win outcome as you always take care of yourself first and foremost, no matter who gets hurt in the process. In the worst case, you will be viewed as a dangerous person to interact with. (“Watch your back when dealing with Lee; she only looks out for herself!”)

**Another Perspective: Relationship between Law and Ethics**

Lastly, let me ask you a larger philosophical question, and that is, to consider the law in your decision making. Some writers assert that law is the expression of the minimum standard of ethical conduct. However, other writers refute this argument on the assertion that a law can be completely immoral and unethical under any theory of moral reasoning. For example, given the criminal justice system with all its flaws (such as the DNA and other evidence processing errors committed by Houston Crime Lab, resulting in the conviction of innocent defendants), the argument has been made that capital punishment can never be morally justified. Regardless of a company's opinion of a law and government agency regulation, some companies believe that all laws and regulations must be followed, no questions asked. If you have ever shopped at COSTCO, you might have seen its Code of Ethics posted in the employee break area. The Code's No. 1 Rule: Obey the law! Whether dealing with vendors, the company, employees, customers, the community, the LAW COMES FIRST. No decision can be justified under this Code of Ethics if it breaks the law. As a Texas attorney, I must agree with this. But this is not as easy to live with as it may seem at first. We can all cite examples of a current law that we believe to be unethical/immoral, yet one which the government will and does enforce. In other words, a law may be enacted by the government, but we do not want to follow it because we believe it to be morally offensive, doing harm, and resulting in very negative consequences for all involved. Some ethicists have graphically characterized an action in a multidimensional view:

|  |  |
| --- | --- |
| Unethical and Illegal | Ethical and Illegal |
| Unethical and Legal | **Ethical and Legal** |

Obviously, we would like to make decisions which we believe fall into the lower right box. But life is often not that simple. My question is, where do you draw your line in the sand? What will you be willing to do, and why? Would you be comfortable taking an action you believe is legal but unethical ? Or put another way, just because something is legal, should you do it? Is ethics something above and beyond law? More importantly would you be willing to take an action you believed to be the only ethical course even though you know it to be illegal?

In summary, you must know your ethical standards. How do you reason through difficult decisions? For me, as an attorney, my answer is simple in that any decision must start with the law. Illegal courses of action are not an option, in my opinion. I agree with the COSTCO Code of Ethics #1 Principle: **Obey the Law**. For me, as a Texas attorney and officer of the court, I must obey the law even if to do so might offend my ethical principles. What is your view? How would you explain your approach to ethical decision making? What theory and/or principles have you selected to guide your critical thinking about an ethical dilemma in business? Whatever your approach or viewpoint, you must be able to explain it and apply it appropriately. Otherwise, you will not be making a MORAL decision, but rather simply deciding to act based on reasons or beliefs other than ethical theories or moral principles. Do you see the distinction?

**“Doing the Right Thing” and Costs & Benefits**

As you read about business ethics in different sources, you will see a recurring theme: “doing right is good for business.” I have not seen any academic journal article that provides supporting data to this intuitive saying. Certainly, doing the right thing can enhance a company’s reputation in the eyes of the public. But a note of caution here: my view of the ‘right thing’ may be your polar opposite. So again, you see that you must have a theoretical framework, a moral theory or ethical principle or principles, upon which to argue your position of ‘right-ness.” I remember reading a business ethics text that put it this way, and here I am paraphrasing as I cannot remember where or when I read it: “as one human being to another, does this (action or strategy or plan or behavior) look good or bad?”

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