



CENGAGE LEARNING
LEGAL STUDIES
IN BUSINESS ACADEMIC SERIES

BUSINESS ETHICS

CASE STUDIES AND SELECTED READINGS



MARIANNE JENNINGS
9E



Fit your coursework into your hectic life.

Make the most of your time by learning your way. Access the resources you need to succeed wherever, whenever.



Study with digital flashcards, listen to audio textbooks, and take quizzes.



Review your current course grade and compare your progress with your peers.



Get the free MindTap Mobile App and learn wherever you are.

Break Limitations. Create your own potential, and be unstoppable with MindTap.

MINDTAP. POWERED BY YOU.



cengage.com/mindtap



BUSINESS ETHICS

CASE STUDIES AND SELECTED READINGS



9E

MARIANNE MOODY JENNINGS
Arizona State University



Australia • Brazil • Mexico • Singapore • United Kingdom • United States

This is an electronic version of the print textbook. Due to electronic rights restrictions, some third party content may be suppressed. Editorial review has deemed that any suppressed content does not materially affect the overall learning experience. The publisher reserves the right to remove content from this title at any time if subsequent rights restrictions require it. For valuable information on pricing, previous editions, changes to current editions, and alternate formats, please visit www.cengage.com/highered to search by ISBN#, author, title, or keyword for materials in your areas of interest.

Important Notice: Media content referenced within the product description or the product text may not be available in the eBook version.

***Business Ethics: Case Studies and
Selected Readings, Ninth Edition***

Marianne Jennings

Senior Vice President: Erin Joyner

Vice President, Business & Economics:
Mike Schenk

Senior Product Manager:
Vicky True-Baker

Project Manager: Julie Dierig

Content Developer: Kayci Wyatt, MPS

Product Assistant: Christian Wood

Marketing Manager: Katie Jergens

Content Project Manager:
Jennifer Ziegler

Sr. Digital Project Manager:
Derek Drifmeyer

Manufacturing Planner: Kevin Kluck

Sr. Art Director: Michelle Kunkler

Cover Image: iStockphoto/alphaspirit

Art and Cover Direction, Production

Management, and Composition:

Lumina Datamatics, Inc.

Intellectual Property

Analyst: Jennifer Bowes

Project Manager: Nick Barrows

© 2018, 2015 Cengage Learning, Inc.

Unless otherwise noted, all content is © Cengage.

WCN: 02-300

ALL RIGHTS RESERVED. No part of this work covered by the copyright herein may be reproduced or distributed in any form or by any means, except as permitted by U.S. copyright law, without the prior written permission of the copyright owner.

For product information and technology assistance, contact us at
Cengage Learning Customer & Sales Support, 1-800-354-9706

For permission to use material from this text or product,
submit all requests online at **www.cengage.com/permissions**
Further permissions questions can be emailed to
permissionrequest@cengage.com

Library of Congress Control Number: 2017940314

ISBN: 978-1-305-97254-4

Cengage Learning

20 Channel Center Street
Boston, MA 02210
USA

Cengage Learning is a leading provider of customized learning solutions with employees residing in nearly 40 different countries and sales in more than 125 countries around the world. Find your local representative at **www.cengage.com**.

Cengage Learning products are represented in Canada by Nelson Education, Ltd.

To learn more about Cengage Learning Solutions, visit **www.cengage.com**

Purchase any of our products at your local college store or at our preferred online store **www.cengagebrain.com**

Printed in the United States of America
Print Number: 01 Print Year: 2017

Brief Contents

Preface xii
Acknowledgments xx

UNIT 1

SECTION A

SECTION B

Ethical Theory, Philosophical Foundations, Our Reasoning Flaws, and Types of Ethical Dilemmas 1

Defining Ethics 2

Resolving Ethical Dilemmas and Personal Introspection 29

UNIT 2

SECTION A

SECTION B

SECTION C

Solving Ethical Dilemmas and Personal Introspection 49

Business and Ethics: How Do They Work Together? 50

What Gets in the Way of Ethical Decisions in Business? 61

Resolving Ethical Dilemmas in Business 84

UNIT 3

SECTION A

SECTION B

SECTION C

SECTION D

Business, Stakeholders, Social Responsibility, and Sustainability 115

Business and Society: The Tough Issues of Economics, Social Responsibility, and Business 116

Applying Social Responsibility and Stakeholder Theory 130

Social Responsibility and Sustainability 179

Government as a Stakeholder 184

UNIT 4

SECTION A

SECTION B

SECTION C

SECTION D

SECTION E

SECTION F

SECTION G

Ethics and Company Culture 191

Temptation at Work for Individual Gain and That Credo 192

The Organizational Behavior Factors 196

The Psychological and Behavior Factors 217

The Structural Factors: Governance, Example, and Leadership 243

The Industry Practices and Legal Factors 273

The Fear-and-Silence Factors 300

The Culture of Goodness 335

UNIT 5

SECTION A

SECTION B

Ethics and Contracts 349

Contract Negotiations: All Is Fair and Conflicting Interests 350

Promises, Performance, and Reality 366

UNIT 6

SECTION A

SECTION B

Ethics in International Business 385

Conflicts between the Corporation's Ethics and Business Practices in Foreign Countries 386

Bribes, Grease Payments, and "When in Rome ..." 411

UNIT 7

SECTION A

SECTION B

SECTION C

Ethics, Business Operations, and Rights 425

Workplace Safety 426

Workplace Loyalty 429

Workplace Diversity and Atmosphere 442

SECTION D *Workplace Diversity and Personal Lives* 450

SECTION E *Workplace Confrontation* 460

UNIT 8 **Ethics and Products** 471

SECTION A *Advertising Content* 472

SECTION B *Product Safety* 477

SECTION C *Product Sales* 501

UNIT 9 **Ethics and Competition** 513

SECTION A *Covenants Not to Compete* 514

SECTION B *All's Fair, or Is It?* 525

SECTION C *Intellectual Property and Ethics* 536

The Ethical Common Denominator (ECD) Index:

 The Common Threads of Business Ethics 541

Alphabetical Index 553

Business Discipline Index 559

Product/Company/Individuals Index 569

Topic Index 607

Contents

Preface	xii
Acknowledgments	XX

UNIT

1

Ethical Theory, Philosophical Foundations, Our Reasoning Flaws, and Types of Ethical Dilemmas

SECTION A

Defining Ethics

2

Reading 1.1	You, Your Values, and a Credo	2
Reading 1.2	What Did You Do in the Past Year That Bothered You? How That Question Can Change Lives and Cultures	4
Reading 1.3	What Are Ethics? From Line-Cutting to Kant	6
Reading 1.4	The Types of Ethical Dilemmas: From Truth to Honesty to Conflicts	14
Reading 1.5	On Rationalizing and Labeling: The Things We Do That Make Us Uncomfortable, but We Do Them Anyway	19
Case 1.6	“They Made Me Do It”: Following Orders and Legalities: Volkswagen and the Fake Emissions Test	24
Reading 1.7	The Slippery Slope, the Blurred Lines, and How We Never Do Just One Thing: The University of North Carolina and How Do I Know When an Ethical Lapse Begins?	25
Case 1.8	Blue Bell Ice Cream and Listeria: The Pressures of Success	27

SECTION B

Resolving Ethical Dilemmas and Personal Introspection

29

Reading 1.9	Some Simple Tests for Resolving Ethical Dilemmas	29
Reading 1.10	Some Steps for Analyzing Ethical Dilemmas	34
Reading 1.11	On Plagiarism	34
Case 1.12	The Little Teacher Who Could: Piper, Kansas, and Term Papers	36
Case 1.13	The Car Pool Lane: Defining Car Pool	38
Case 1.14	Puffing Your Résumé: Truth or Dare	39
Case 1.15	Dad, the Actuary, and the Stats Class	42
Case 1.16	Wi-Fi Piggybacking and the Tragedy of the Commons	42
Case 1.17	Cheating: Hows, Whys, and Whats and Do Cheaters Prosper? Culture of Excellence	43
Case 1.18	Speeding: Hows, Whys, and Whats	45
Case 1.19	Moving from School to Life: Do Cheaters Prosper?	46
Case 1.20	The Pack of Gum	46
Case 1.21	Getting Out from under Student Loans: Legal? Ethical?	46

UNIT

2

Solving Ethical Dilemmas and Personal Introspection**SECTION A*****Business and Ethics: How Do They Work Together?***

50

Reading 2.1 What's Different about Business Ethics? 50

Reading 2.2 The Ethics of Responsibility 51

Reading 2.3 Is Business Bluffing Ethical? 52

SECTION B***What Gets in the Way of Ethical Decisions in Business?***

61

Reading 2.4 How Leaders Lose Their Way: The Bathsheba Syndrome and What Price Hubris? 61

Reading 2.5 Moral Relativism and the Either/or Conundrum 64

Reading 2.6 $P = f(x)$ The Probability of an Ethical Outcome Is a Function of the Amount of Money Involved: Pressure 65

Case 2.7 BP and the Deepwater Horizon Explosion: Safety First 66

Case 2.8 Valeant: The Company with a New Pharmaceutical Model and Different Accounting 78

SECTION C***Resolving Ethical Dilemmas in Business***

84

Reading 2.9 Framing Issues Carefully: A Structured Approach for Solving Ethical Dilemmas and Trying Out Your Ethical Skills on an Example 84

Case 2.10 What Was Up with Wall Street? The Goldman Standard and Shades of Gray 85

Case 2.11 Penn State: Framing Ethical Issues 96

Case 2.12 Deflategate and Spygate: The New England Patriots 108

Case 2.13 Damaging Reviews on the Internet: The Reality and the Harm 112

UNIT

3

Business, Stakeholders, Social Responsibility, and Sustainability**SECTION A*****Business and Society: The Tough Issues of Economics, Social Responsibility, and Business***

116

Reading 3.1 The Social Responsibility of Business Is to Increase Its Profits 116

Reading 3.2 A Look at Stakeholder Theory 121

Reading 3.3 Business with a Soul: A Reexamination of What Counts in Business Ethics 124

Reading 3.4 Appeasing Stakeholders with Public Relations 127

Reading 3.5 Conscious Capitalism: Creating a New Paradigm for Business 128

Reading 3.6 Marjorie Kelly and the Divine Right of Capital¹⁶ 129**SECTION B*****Applying Social Responsibility and Stakeholder Theory***

130

Case 3.7 Turing Pharmaceutical and the 4,834% Price Increase on a Life-Saving Drug 130

Case 3.8 Walmart: The \$15 Minimum Wage 133

Case 3.9 Chipotle: Buying Local and Health Risks 134

Case 3.10 Guns, Stock Prices, Safety, Liability, and Social Responsibility 137

Case 3.11 The Craigslist Connections: Facilitating Crime 145

Case 3.12	Planned Parenthood Backlash at Companies and Charities	146
Reading 3.13	The Regulatory Cycle, Social Responsibility, Business Strategy, and Equilibrium	147
Case 3.14	Fannie, Freddie, Wall Street, Main Street, and the Subprime Mortgage Market: Of Moral Hazards	151
Case 3.15	Ice-T, the <i>Body Count</i> Album, and Shareholder Uprisings	162
Case 3.16	Athletes and Doping: Costs, Consequences, and Profits	168
Case 3.17	Back Treatments and Meningitis in an Under-the-Radar Industry	174
Case 3.18	CVS Pulls Cigarettes from Its Stores	176
Case 3.19	Ashley Madison: The Affair Website	177

SECTION C

Social Responsibility and Sustainability 179

Case 3.20	Biofuels and Food Shortages in Guatemala	179
Case 3.21	The Dictator's Wife in Louboutin Shoes Featured in <i>Vogue</i> Magazine	180
Case 3.22	Herman Miller and Its Rain Forest Chairs	181

SECTION D

Government as a Stakeholder 184

Case 3.23	Solyndra: Bankruptcy of Solar Resources	184
Case 3.24	Prosecutorial Misconduct: Ends Justifying Means?	185

UNIT

4

Ethics and Company Culture

SECTION A

Temptation at Work for Individual Gain and That Credo 192

Reading 4.1	The Moving Line	192
Reading 4.2	Not All Employees Are Equal When It Comes to Ethical Development	193

SECTION B

The Organizational Behavior Factors 196

Reading 4.3	The Preparation for a Defining Ethical Moment	196
Case 4.4	Swiping Oreos at Work: Is It a Big Deal?	199
Reading 4.5	The Effects of Compensation Systems: Incentives, Bonuses, Pay, and Ethics	199
Reading 4.6	A Primer on Accounting Issues and Ethics and Earnings Management	204
Case 4.7	Law School Application Consultants	214
Case 4.8	Political Culture: Daiquiris and Ferragamo Shoes and Officials	215

SECTION C

The Psychological and Behavior Factors 217

Reading 4.9	The Layers of Ethical Issues: Individual, Organization, Industry, and Society	217
Case 4.10	Rogues: Bad Apples or Bad Barrel: Jett and Kidder, Leeson and Barings Bank, Kerviel and Société Générale, the London Whale and Chase, Kweku Adoboli and UBS, and LIBOR Rates for Profit	226
Case 4.11	FINOVA and the Loan Write-Off	237
Case 4.12	Inflating SAT Scores for Rankings and Bonuses	241
Case 4.13	Hiding the Slip-Up on Oil Lease Accounting: Interior Motives	242

SECTION D***The Structural Factors: Governance, Example, and Leadership*** 243

- Reading 4.14 Re: A Primer on Sarbanes-Oxley and Dodd-Frank 243
 Case 4.15 WorldCom: The Little Company That Couldn't After All 247
 Case 4.16 The Upper West Branch Mining Disaster, the CEO,
 and the Faxed Production Reports 264
 Reading 4.17 Getting Information from Employees Who Know to
 Those Who Can and Will Respond 268
 Case 4.18 Westland/Hallmark Meat Packing Company and the Cattle Standers 271

SECTION E***The Industry Practices and Legal Factors*** 273

- Reading 4.19 The Subprime Saga: Bear Stearns, Lehman, Merrill, and CDOs 273
 Case 4.20 Enron: The CFO, Conflicts, and Cooking the Books
 with Natural Gas and Electricity 280
 Case 4.21 Arthur Andersen: A Fallen Giant 293
 Case 4.22 The Ethics of Walking Away 299

SECTION F***The Fear-and-Silence Factors*** 300

- Case 4.23 HealthSouth: The Scrushy Way 300
 Case 4.24 Dennis Kozlowski: Tyco and the \$6,000 Shower Curtain 307
 Reading 4.25 A Primer on Whistleblowing 318
 Case 4.26 Beech-Nut and the No-Apple-Juice Apple Juice 318
 Case 4.27 VA: The Patient Queues 324
 Case 4.28 NASA and the Space Shuttle Booster Rockets 327
 Case 4.29 Diamond Walnuts and Troubled Growers 330
 Case 4.30 New Era: If It Sounds Too Good to Be True, It Is Too Good to Be True 332

SECTION G***The Culture of Goodness*** 335

- Case 4.31 Bernie Madoff: Just Stay Away from the Seventeenth Floor 335
 Case 4.32 Adelphia: Good Works Via a Hand in the Till 337
 Case 4.33 The Atlanta Public School System:
 Good Scores by Creative Teachers 341
 Case 4.34 The NBA Referee and Gambling for Tots 343
 Case 4.35 Giving and Spending the United Way 344
 Case 4.36 The Baptist Foundation: Funds of the Faithful 346

UNIT

5

Ethics and Contracts**SECTION A*****Contract Negotiations: All Is Fair and Conflicting Interests*** 350

- Case 5.1 Facebook and the Media Buys 350
 Case 5.2 Subprime Auto Loans: Contracts with the Desperate 350
 Case 5.3 The Governor and His Wife: Products Endorsement and a Rolex 352
 Case 5.4 Subway: Is 11 Inches the Same as 12 Inches? 359
 Case 5.5 Sears and High-Cost Auto Repairs 360
 Case 5.6 Kardashian Tweets: Regulated Ads or Fun? 364

SECTION B***Promises, Performance, and Reality***

366

- Case 5.7 Pension Promises, Payments, and Bankruptcy:
Companies, Cities, Towns, and States 366
- Case 5.8 “I Only Used It Once”: Returning Goods 373
- Case 5.9 Government Contracts, Research, and Double-Dipping 374
- Case 5.10 When Corporations Pull Promises Made to Government 377
- Case 5.11 Intel and the Chips: When You Have Made a Mistake 379
- Case 5.12 Red Cross and the Use of Funds 382
- Case 5.13 The Nuns and Katy Perry: Is There a Property Sale? 383

UNIT

6

Ethics in International Business**SECTION A*****Conflicts between the Corporation’s Ethics and Business Practices in Foreign Countries***

386

- Reading 6.1 Why an International Code of Ethics Would Be Good for Business 386
- Case 6.2 Chiquita Banana and Mercenary Protection 390
- Case 6.3 Pirates! The Bane of Transnational Shipping 394
- Case 6.4 The Former Soviet Union: A Study of Three Companies
and Values in Conflict 395
- Case 6.5 Bangladesh, Sweatshops, Suicides, Nike, Apple, Foxconn,
Apple, and Campus Boycotts 397
- Case 6.6 Bhopal: When Safety Standards Differ 404
- Case 6.7 Product Dumping 406
- Case 6.8 Nestlé: Products That Don’t Fit Cultures 407

SECTION B***Bribes, Grease Payments, and “When in Rome ...”***

411

- Reading 6.9 A Primer on the FCPA 411
- Case 6.10 FIFA: The Kick of Bribery 415
- Case 6.11 Siemens and Bribery, Everywhere 418
- Case 6.12 Walmart in Mexico 420
- Case 6.13 GlaxoSmithKline in China 422

UNIT

7

Ethics, Business Operations, and Rights**SECTION A*****Workplace Safety***

426

- Reading 7.1 Two Sets of Books on Safety 426
- Case 7.2 Trucker Logs, Sleep, and Safety 427
- Case 7.3 Cintas and the Production Line 428

SECTION B***Workplace Loyalty***

429

- Case 7.4 Aaron Feuerstein and Malden Mills 429
- Case 7.5 JCPenney and Its Wealthy Buyer 431
- Case 7.6 The Trading Desk, Perks, and “Dwarf Tossing” 432
- Case 7.7 The Analyst Who Needed a Preschool 434

Case 7.8	Edward Snowden and Civil Disobedience	437
Case 7.9	Boeing and the Recruiting of the Government Purchasing Agent	438
Case 7.10	Kodak, the Appraiser, and the Assessor: Lots of Backscratching on Valuation	440

SECTION C

Workplace Diversity and Atmosphere 442

Case 7.11	English-Only Employer Policies	442
Case 7.12	Employer Tattoo and Piercing Policies	443
Case 7.13	Have You Been Convicted of a Felony?	444
Case 7.14	Office Romances	445
Case 7.15	On-the-Job Fetal Injuries	446
Case 7.16	Political Views in the Workplace	448

SECTION D

Workplace Diversity and Personal Lives 450

Case 7.17	Julie Roehm: The Walmart Ad Exec with Expensive Tastes	450
Case 7.18	Facebook, YouTube, Instagram, LinkedIn, and Employer Tracking	452
Case 7.19	Tweeting, Blogging, Chatting, and E-Mailing: Employer Control	454
Case 7.20	Jack Welch and the Harvard Interview	457

SECTION E

Workplace Confrontation 460

Reading 7.21	The Ethics of Confrontation	460
Reading 7.22	The Ethics of Performance Evaluations	463
Case 7.23	Ann Hopkins and Price Waterhouse	465
Case 7.24	The Glowing Recommendation	469

UNIT

8

Ethics and Products

SECTION A

Advertising Content 472

Case 8.1	T-Mobile, Ads, and Contract Terms	472
Case 8.2	Eminem vs. Audi	474
Case 8.3	The Mayweather “Fight” and Ticket Holders	475

SECTION B

Product Safety 477

Reading 8.4	A Primer on Product Liability	477
Case 8.5	Peanut Corporation of America: Salmonella and Indicted Leaders	480
Case 8.6	Tylenol: The Swing in Product Safety	482
Case 8.7	Samsung Fire Phones	486
Case 8.8	Ford and GM: The Repeating Design and Sales Issues	486
Case 8.9	<i>E. Coli</i> , Jack-in-the-Box, and Cooking Temperatures	496
Case 8.10	The Tide Pods	497
Case 8.11	Buckyballs and Safety	498
Case 8.12	Energy Drinks and Workout Powders: Healthy or Risky?	499

SECTION C***Product Sales***

501

Case 8.13	Chase: Selling Your Own Products for Higher Commissions	501
Case 8.14	The Mess at Marsh McLennan	502
Case 8.15	Silk Road and Financing Sales	504
Case 8.16	Cardinal Health, CVS, and Oxycodone Sales	505
Case 8.17	Frozen Coke and Burger King and the Richmond Rigging	506
Case 8.18	Wells Fargo and Selling Accounts, or Making Them Up?	509

UNIT

9

Ethics and Competition**SECTION A*****Covenants Not to Compete***

514

Reading 9.1	A Primer on Covenants Not to Compete: Are They Valid?	514
Case 9.2	Sabotaging Your Employer's Information Lists before You Leave to Work for a Competitor	516
Case 9.3	Boeing, Lockheed, and the Documents	516
Case 9.4	Starwood, Hilton, and the Suspiciously Similar New Hotel Designs	521

SECTION B***All's Fair, or Is It?***

525

Reading 9.5	Adam Smith: An Excerpt from the Theory of Moral Sentiments	525
Case 9.6	The Battle of the Guardrail Manufacturers	526
Case 9.7	Bad-Mouthing the Competition: Where's the Line?	528
Case 9.8	Online Pricing Differentials and Customer Questions	528
Case 9.9	Brighton Collectibles: Terminating Distributors for Discounting Prices	529
Case 9.10	Park City Mountain: When a Competitor Forgets	530
Case 9.11	Electronic Books and the Apple versus Amazon War	531
Case 9.12	Martha vs. Macy's and JCPenney	532
Case 9.13	Mattel and the Bratz Doll	533

SECTION C***Intellectual Property and Ethics***

536

Case 9.14	The NCAA and College Athletes' Images	536
Case 9.15	Louis Vuitton and the <i>Hangover</i>	537
Case 9.16	Tiffany vs. Costco	538
Case 9.17	Copyright, Songs, and Charities	538

The Ethical Common Denominator (ECD) Index:

The Common Threads of Business Ethics	541
Alphabetical Index	553
Business Discipline Index	559
Product/Company/Individuals Index	569
Topic Index	607

Preface

"Never trust the people you cheat with. They will throw you under the bus. Just ask Michael Vick."

—Marianne M. Jennings

"Maybe if you did ethics, you would not have to do so much compliance."

—Marianne M. Jennings

"I diverted the auditor while the others created the ledger the auditor wanted to back up the trades for securities we said we owned. When it came hot off the office printer, they cooled it in the refrigerator and the tossed it around the office like a medicine ball to give it a well worn look that an ordinary ledger would have."

—Former Madoff Securities Employee on how they fooled the auditors

For many years, the Josephson Institute conducted a nationwide survey of high school students and found that 51% to 65% of the students admitted to some form of academic dishonesty, whether turning in downloaded or unsourced papers or copying a classmate's answers during an exam. Interestingly, the figure could be somewhat higher because the work in surveying the students found that the definition of cheating was not always clear. When the Josephson researchers asked the high school students if they had copied another's homework, 76% said that they had but did not consider it cheating. "Team work" was their label for this practice. The Center for Academic Integrity (formerly at Clemson University and transitioning to Duke University) is dedicated to the work of educating college students about the importance of academic integrity and how to prevent cheating. Scholars at the Center's meetings have found that while the number of students who self-report cheating is going down, the number of cheating incidents reported by faculty is increasing. The late Professor Donald McCabe of Rutgers spent his academic career researching cheating by college students and found that college cheating grew from 11% in 1963 to 49% in 1993 to 75% in 2006.¹ Another study puts the level at 85%.² Professor McCabe also found that MBAs have the highest rate of self-reported academic dishonesty (57%) of all graduate disciplines. In the spring of 2013, Harvard expelled 60 students for cheating on an exam in their required course on Congress.³ This headline is ironic and not particularly encouraging, "Dartmouth Suspends 64 Students for Cheating in 'Sports, Ethics, and Religion' Course."⁴

All of the studies and data indicate that there remains a disconnect between conduct and an understanding of what ethics is. The Josephson Institute also found that the high school students who report that they cheat feel very comfortable about their behavior, with 95% saying they are satisfied with their character and ethics. Perhaps we have begun to hold the belief that cheating is not an ethical issue.

Research indicates that if students cheat in high school, they will bring the practices into college. And if they cheat in college, they will bring those practices into the workplace. A look at some of the events in business since the publication of the eighth edition of this book tells us that we are not quite there yet in terms of helping business people understand when they are in the midst of an ethical dilemma and how those dilemmas should be resolved. Following the collapses of Enron and WorldCom, and the ethical lapses at Tyco and Adelphia, we entered the Sarbanes-Oxley era with fundamental changes in the way we were doing business and audits. However, we did not make it even five years before we found ourselves in the midst of the collapse of the housing market and revelations about shoddy and undisclosed lending practices for mortgages. The end result was a dramatic drop in the stock market and a recession because of all the secondary instruments tied to the risky mortgages. The reforms enacted by the Dodd-Frank bill (Wall Street Reform and Consumer Protection

¹ The Center for Academic Integrity study was conducted by the late Professor Donald McCabe on a regular basis over the years. This survey had 4,500 student respondents. For more information on Professor McCabe and his work on academic integrity and the Center for Academic Integrity, go to <http://www.cai.org>.

² Corey Ciochetti, "The Uncheatable Class," Proceedings, Academy of Legal Studies in Business, August 2013 (unpublished paper).

³ Richard Pérez-Peña, "Students Accused of Cheating Return Awkwardly to a Changed Harvard," *New York Times*, September 17, 2013, p. A12.

⁴ *National Review*, February 9, 2015, p. 12.

Act) have not yet been implemented, and as the work of implementation proceeds, we find that British banks were fixing the LIBOR interest rate; MF Global was using funds from customer accounts to cover margin calls; and Bernie Madoff pulled off an 18-year, \$50 billion Ponzi scheme. During 2015–2017, we witnessed GM paying a billion-dollar fine for its failure to disclose the problems with its engine switch, the falsification of emissions tests by Volkswagen, and the creation of two million fake accounts by Wells Fargo employees so that they could meet their quarterly goals for new business.

Beyond the business events that result in new regulation, fines, and prison time, there are the day-to-day ethical breaches that capture media headlines and cause continuing concerns about the ethical culture of business. There are the questions about television reality shows: Was the storage locker a setup, or were those things really in there? Why were graduates not told about the cheaper options available for repaying their student loans? Did Subway really cut us short with an 11-inch sub sandwich when we thought we were buying a footlong? The world of sports brought us questions such as, “Is it really cheating if everyone does the same thing?” Lance Armstrong’s admissions about his use of performance-enhancing drugs found us all debating that issue. Alex Rodriguez has been caught twice using PEDs over the editions of this book.

From analysts not offering their true feelings about a company’s stock to the factory workers safely producing peanut base for cookies and crackers, pressure often got in the way of moral clarity in business decisions. Those pressures then translated into ethical lapses that involve everything from pushing the envelope on truth to earnings management that crosses over into cooking the books and fraud. Weak product designs and products defects often produce a chain of memos or e-mails in the company that reflect employee concerns about product safety. College sports, baseball, and politics all have their ethical issues. The cycles between major ethical and financial collapses seem to be growing shorter. Businesses do exist to make a profit, but business ethics exists to set parameters for earning that profit. Business ethics is also a key element of business decision processes and strategies, because the cases in this book teach us that the long-term perspective, not the short-term fix, serves businesses better in that profit role.

This book of readings and cases explores those parameters and their importance. This book teaches, through detailed study of the people and companies, that business conducted without ethics is a nonsustainable competitive model. Ethical shortcuts translate into a short-term existence. Initially, these shortcuts produce a phenomenon such as those seen with banks and mortgage lenders, auto manufacturers, and even nutritional supplement producers. In some cases, the companies’ conduct was self-destructive. For a time, they were at the top of their game—flummoxing their competitors on how they were able to do what they were doing—and so profitably. But then that magnificent force of truth finds its way to the surface, and the company that does not factor in the ethics of its decisions and conduct finds itself falling to the earth like a meteor’s flash. Long-term personal and business success demand ethics. This edition takes a look at everything from pharmaceutical pricing, to the world of college sports and cheating to get grades, and the downfall of so many. This book connects the moral sentiments of markets with the wealth of nations. Business without ethics is self-destructive.

New to This Edition

A Slightly New Structure and Approach to Address the Chronic Repetition of the Ethical Lapses

We’ve been down this road before, and the historic patterns are now emerging for study and insight. In 1986, before Ivan Boesky was a household name and Michael Douglas was Gordon Gekko in *Wall Street*, I began teaching a business ethics course in the MBA

program in the College of Business at Arizona State University. The course was an elective. I had trouble making the minimum enrollments. However, two things changed: my enrollments and my fate. First, the American Association of Collegiate Schools of Business (AACSB) changed the curriculum for graduate and undergraduate business degree programs and required the coverage of ethics. The other event actually was a series of events. Indictments, convictions, and guilty pleas by major companies and their officers—from E.F. Hutton to Union Carbide, to Beech-Nut, to Exxon—brought national attention to the need to incorporate values in American businesses and instill them in business leaders.

Whether out of fear, curiosity, or the need for reaccreditation, business schools and students began to embrace the concept of studying business ethics. My course went from a little-known elective to the final required course in the MBA program. In the years since, the interest in business ethics has only increased. Following junk bonds and insider trading, we rolled into the savings and loan collapses; and once we had that straightened out, we rolled into Enron, WorldCom, HealthSouth, Tyco, and Adelphia, and we even lost Martha Stewart along the way. We were quite sure—what with all the Sarbanes-Oxley changes and demands on boards, CEO, CFOs, and auditors—that we were through with that level of misconduct. We were, however, wrong. New Century Financial, one of the first of the subprime lenders to collapse, found one angry bankruptcy trustee. The trustee's report concluded that he found astonishing the acquiescence of the auditor to the client's refusal to write down the bad loans in what he called "the post-Enron era." The Lehman Brothers bankruptcy trustee found a letter from a risk officer at the investment banker who tried to warn the CEO and CFO that the firm's financial reports violated its code of ethics. The trustee also found that the risk officer was fired.

Three decades plus after Boesky, we have the GM engine-switch case, which reads very much like the Pinto exploding case tank of the 1970s, and wonder, "Do they not see the ethical and legal issues? Do they just not know that they are crossing these lines? Do they see the patterns from business history?" The good thing about repetitive patterns is that we gain insight into the paths, the reasoning, and the pressures of those involved. The key is to bring out those patterns and train our new business leaders to recognize them and, most importantly, to stop the train of self-destruction those patterns set off. This edition is reorganized to offer greater insights, knowledge, and perspective on these patterns for a new generation of leaders. Today, nearly 100% of the Fortune 500 companies have a code of ethics. We are up to over 75% of companies having some form of ethics training. But we are not quite there until our business leaders grasp the perspective of ethics and its relationship to economics, organizational behavior, company culture, reputation, and financial performance. This edition is structured to walk us through all aspects and types of ethical dilemmas and how we can cope with the pressures that often deprive us of good ethical analysis.

Unit 1: Ethical Theory, Philosophical Foundations, Our Reasoning Flaws, and Types of Ethical Dilemmas

Unit 1 addresses the following questions: What is this ethics thing? How do I manage to work philosophy into my decision processes? How do I find solutions to ethical dilemmas? How do I know when I am really analyzing as opposed to rationalizing or succumbing to pressure? This unit begins with introspection, a right-out-of-the-blocks focus on developing a credo—a way of helping us to think about ethical issues in advance and decide what we would and would not do in a situation. If we think about issues in advance, then when the pressure hits, we at least have the cognitive dissonance of realizing that we did see the issues differently when we were not under so much pressure.

Unit 2: Solving Ethical Dilemmas and Personal Introspection

Once we have focused on our ethical standards and ourselves, we move into analysis of ethical issues in business. This unit offers the introspection of this question: Are my personal ethical standards different when I am at work? Should they be? Why are they different? Further, the magnitude of the mistakes that business people continued to make, despite all the warnings from ongoing debacles, did not indicate that these were close calls. Something had gone awry in their ethics training in business school for them to drift so far from virtue. I continue to emphasize in teaching, consulting, and writing that helping students and business people see that personal ethics and business ethics are one and the same is critical to making virtue a part of business culture. Virtue is the goal for most of us in all aspects of our lives. Whether we commit to fidelity in a personal relationship or honesty in taking the laundry detergent back into the store to pay because we forgot it was on the bottom of our grocery cart, we show virtue. Ethics in business is no different, and we need not behave differently at work than we do in that grocery store parking lot as we make the decision to be honest and fair with the store owner. Substitute a shareholder and the disclosure of option dates and true costs, and we have our laundry detergent example with a stock market twist.

This unit also focuses on the patterns that interfere with good ethical analysis in business such as pressure, hubris, and a singular focus on moral relativism as opposed to a deeper look at the consequences of reliance on that model. This unit allows us to switch back and forth from personal dilemmas to business dilemmas so that we are able to see that the ethical issues are the same in our personal lives as they are in business—only the fact patterns change. We can see that honesty is important, whether studying the complexities of Listeria in making ice cream at Blue Bell or the simple questions contractors face when homeowners ask them to include additional repair work as part of a storm damage claim to their insurers. Instructors and students gain the ability to reduce the most complex of financial cases to the common denominators found in returning that laundry detergent to the store—is this honest? Is this fair? With this understanding of the common denominators, we are free to focus on the psychology of our decision processes rather than on the details of the underlying transactions. The obligation of good faith in dealing with each other does not change simply because we are buying a CDO rather than Tide. This unit also includes the overarching theme of the book over all of its editions: plenty of real-life examples from newspapers, business journals, and my experiences as a consultant and board member. Knowing that other instructors and students were in need of examples, I have turned my experiences into cases and coupled them with the most memorable readings in the field to provide a training and thought-provoking experience on business ethics.

Unit 3: Business, Stakeholders, Social Responsibility, and Sustainability

Unit 3 offers us the bigger perspective—once we slog through the decision processes of fraud, embezzlement, puffing résumés, and cheating on our travel expenses, we move to discussion and understanding of the role of business in society. The cases in this unit are broken into an introduction to business and society, the obligations of business on wages, pricing, our moral ecology, and the issues of the environment and sustainability.

Unit 4: Ethics and Company Culture

Unit 4 is the psychology section that tackles companies' ethical lapses, with the realization that beyond individual ethical lapses (as with one bad apple), there are barrel factors that must be addressed to prevent ethical lapses. This section, through the finance cases and the weaving in of corporate governance, explores those barrel factors with

the recognition that beyond individual lapses there are company, industry, and societal norms that do cause companies and individuals to move that line away from ethical standards to “everybody does it” here at the company, in our industry, and in society. The cases here explore how incentives, organizational behavior practices and processes, reporting mechanisms, industry practices, and societal norms contribute to poor ethical analysis, decisions, and self-destructive behavior. Recognizing and addressing those barrel issues is the theme of Unit 4.

Culture is universal, and in this unit you will find cases involving the government’s Veteran’s Administration, publicly traded companies, and the ethical lapses of nonprofit ethical lapses. The psychology of organizations and employee decision making in organizations does not change because they work in a nonprofit or government agency. Nonprofit employees have the pressures of raising funds. Government employees experience the pressure of dealing with the powerful and the prospect of losing their jobs. The issues these employees and organizations face are the same as those in for-profit businesses. Indeed, the addition of their issues in an integrative fashion in this edition helps drive home the point that the questions and dilemmas are the same. The principles of ethics are universally applicable.

Unit 5: Ethics and Contracts

This unit has a special focus on the ethics of contracts, from advertising through negotiations, to performance. Issues related to Kardashian tweets, pension promises and Katy Perry’s battle with nuns over buying their convent are a part of this unit. The ethical challenges in contract formation and performance, again, cross all sectors, so this unit has nonprofit and government examples integrated as well.

Unit 6: Ethics in International Business

This unit helps students understand the need for better and deeper ethical analysis of the issues in international business and the importance of analyzing the countries and their ethical standards prior to doing business there. The section addresses the risks and costs of ethical lapses and succumbing to local standards as opposed to establishing company standards prior to those pressure points that occur in international competition. New to this edition is the case study of FIFA and the Foreign Corrupt Practices Act and one on GlaxoSmithKline and bribery of physicians in China. The coverage of factory conditions and safety is continued in this edition.

Unit 7: Ethics, Business Operations, and Rights

This new unit is one that draws together all the cases on workplace issues that affect employees and managers: from safety to conflicts, to privacy, to diversity, to the lost art of confrontation about employee conduct, this section is the one for understanding how ethics bumps shoulders with production demands, technology, profits, and privacy, including a new case on Edward Snowden. From honesty in letters of recommendations to felony convictions to office romances, all matters that affect employers and employees are now in one unit.

Unit 8: Ethics and Products

Unit 8 includes all the issues related to product development, sales, safety, and advertising. From Wells Fargo’s sales tactics to T-Mobile’s contracts, this section focuses on the ethical issues that involve the how, what, and where of sales of products. The issues of social responsibility and products are found here in cases that address everything from Tide Pods being mistaken for candy to Buckyballs, the product that could not be made safe.

Unit 9: Ethics and Competition

Unit 9 has the luxury of focusing entirely on competition. This unit has expanded coverage of the ever-growing concerns about covenants not to compete and employee breaches of those covenants. The societal issues of infringement at Costco of Tiffany engagement rings are emphasized as students analyze cases that illustrate the costs of not honoring intellectual property rights.

What's New and What's Back

The ninth edition continues the features students and instructors embraced in the first eight editions, including both short and long cases, discussion questions, hypothetical situations, and up-to-the-moment current, ongoing, and real ethical dilemmas. Some of the long-standing favorites remain by popular demand—such as the Enron case and Union Carbide in Bhopal, with their long-standing lessons in doing the right thing. There are so many “oldies but goodies” when it comes to ethics cases, but length constraints do not allow me to continue to include in this book all the oldies along with the new cases that promise to be “oldies but goodies.” Check out the availability of custom options noted at the end of this section in order to keep using those “oldies but goodies.” Now there are further opportunities to integrate cases from previous editions into your course.

The ninth edition continues the new training tool introduced in the previous edition to help business people who are working their way through an ethical dilemma. Following the discussion questions for many of the cases, the “Compare and Contrast” questions continue. These are questions provide an example of a company making a decision different from the one made by management in the case at hand. For example, in the Tylenol case (Case 8.6—an “oldie but goodie” that has been updated for this edition to include the company’s recent problems with metal flecks in its infant products), students find a question that highlights this company’s past conduct in comparison with its conduct in a current situation in which the FDA has accused the company of surreptitiously buying up tainted product in order to avoid a recall. There is a contrast between its recall of a product in the 1980s, which was so rapid and received so much acclaim, and its behavior in this event. Why do some companies choose one path, whereas others succumb to pressure? What was different about their decision-making processes? What did they see that the other companies and their leaders did not take into account? This feature is a response to those who worry that students are not given examples of “good companies.” The problem with touting goodness is that it is impossible to know everything a company is or is not doing. For example, Fannie Mae was named the most ethical company in America for two years running. Yet, it had to do a \$7 billion restatement of earnings and is now defunct as a shored-up government entity. BP was an environmental darling for nearly a decade for its responsible environmental programs. However, the explosion at its Deepwater Horizon well, its Texas City refinery, and Alaska pipeline failure illustrate cultural problems within the company. There is a risk in learning of goodness if that goodness is superficial or limited. Studying individual scenarios of contrasting behavior is the learning tool, not the touting of a single company that can always have a lapse. There are no saints in this journey, and keeping the text credible requires a recognition of that limitation but uses it to emphasize the vigilance we all need, as individuals and in business, to avoid lapses and progress in moral development.

Finding and Studying the Cases and Readings

The ninth edition continues the classic readings in business ethics that provide insight into the importance of ethics in business and how to resolve ethical dilemmas. The ninth edition also continues the presence of integrated readings throughout the book

to provide substantive thoughts on the particular areas covered in each section. The organizational structure and indexes, continued from the eighth edition, make material, companies, people, and products easy to locate. A case can be located using the table of contents, the alphabetical index, the topical index, the people index, or the product index, which lists both products and companies by name. An index for business disciplines groups the cases by accounting, management, and the other disciplines in colleges of business. A case can also be located using the “Ethical Common Denominator Chart,” which is explained below.

How to Use the “Ethical Common Denominators across Business Topics Chart”

The Ethical Common Denominators across Business Topics chart, or simply the ECD chart, is a tool that appears along with the indexes for the book and can be used to help students understand the point that only the facts change, but the ethical dilemmas remain the same. This chart provides some ease for that slight discomfort some instructors have with the financial cases and helps students understand that underlying every ethical dilemma are the common patterns of psychology and pressure as well as the need for solid ethical analysis. The ECD chart provides instructors with the opportunity to structure their courses in a way that is comfortable for them. All an instructor needs to know is a general business term; that term can then be referenced in the ECD chart in various ways for instruction, according to instructor preference, needs, and time constraints. The chart groups the cases by the usual business and ethics topics. If, for example, you wanted to cover the environmental cases all in one fell swoop, simply go to “environmentalism” or “sustainability,” and you find the cases and readings listed there. However, if you are looking for a variety of fact patterns to teach, for example, pressure’s role in ethical decision making, you could look under that topic and find the BP case (also an environmental case) as well as the financial factors in the Enron case. If you wanted students to see what pressure can do in the area of contracts, you can use the Wells Fargo case to show how employees make “sales” when incentivized to do so. Students will learn that pressure affects all aspects of business operations. Adam Smith and his theories on markets appear in Section 9, but there is no reason this reading could not be shifted back to the coverage of the philosophical foundations.

An instructor can mix in cases from all the units in covering ethical analysis. The ECD includes a case from each unit under “Ethical Analysis,” because you can pick and choose what topics to cover as you teach how to analyze ethical issues. The ECD chart allows you to introduce that broad exposure to the pervasiveness of ethical issues early in your course, or you can simply use the cases in that unit and go on to topical areas. The chart also allows you to break up the finance cases into areas of discussion on psychology, culture, organizational behavior, hubris, and pressure. You need not focus on the structure of CDOs and secondary instruments markets to understand the culture at Lehman and how its culture led its sales force and managers down a path that proved to be self-destructive. Likewise, you can mix in a Ponzi scheme in a nonprofit with Bernie Madoff, to help students understand how similar the cases are in the issues missed as those running the organizations pursued a business model that could not be sustained over time. The case on the gifts to the governor of Virginia teaches students about conflicts, but it would fit well in Unit 1 as you ask students to analyze the subtle missteps that lead to larger ethical issues. The ECD chart allows a mix-and-match approach or a straight topical approach—both of which allow us to see that the facts change, but good ethical analysis applies, always.

Supplements

Instructor's Manual with Test Bank

The Instructor's Manual with Test Bank is updated with more sample test objective- and essay-answer questions of varying lengths and structures. The questions have been coded for topic and even some for case-specific questions so that exams can be created by subject area. The PowerPoint package, which includes illustrative charts to assist instructors in walking classes through the more complex cases, has been updated and expanded. Instructors can access the Instructor's Manual with Test Bank at login.cengage.com.

PowerPoint Slides

Developed by the author, Microsoft PowerPoint slides are available for use by students as an aid to note taking, and by instructors for enhancing their lectures. Instructors can access PowerPoint files at login.cengage.com.

MindTap

New to this edition is the Mind Tap product. Each unit has multiple choice review questions for each case and reading, followed by 8–10 hypotheticals, and finishes with 3–6 essay questions. Students can review the material and then move into application with the hypotheticals. Finally, the essay questions walk the students through the reasoning process of solving ethical dilemmas. Written by the author, the questions provide an opportunity for all levels of Bloom's from remembering to analysis. MindTap® Business Law is the digital learning solution that powers students from memorization to mastery. It gives you complete control of your course—to provide engaging content, to challenge every individual, and to build their confidence. Empower students to accelerate their progress with MindTap (MindTap: Powered by You).

Acknowledgments

This book is not mine. It is the result of the efforts and sacrifices of many. I am grateful to the reviewers for their comments and insights. Their patience, expertise, and services are remarkable. I have many colleagues around the world who continue to provide me with insights, input, and improvements.

I am grateful for the students and professors who continue to help me with ideas for new cases, corrections (those typos!), and insights that help me as I work on each edition.

I am fortunate to have Kayci Wyatt as my content developer. I am grateful to Vicky True-Baker and Mike Worls for their continuing support of all my work. I continue to love editors. Where I see only deadlines, they see both the big picture of the book and its details: They have vision. I am grateful for their vision in supporting this book at a time when ethics was not a hot topic. They trusted me and understood the role of ethics in business and supported a project that was novel and risky. From the headlines, we now know that ethics instruction in business and business schools is a growth industry.

I am grateful to my parents for the values they inculcated in me. Their ethical perspective has been an inspiration; a comfort; and, in many cases, the final say in my decision-making processes. I am especially grateful to my father for his continual research on and quest for examples of ethical and not-so-ethical behavior in action in the world of business. I am grateful for my family's understanding and support. I am most grateful for the reminder their very presence gives me of what is truly important. In a world that measures success by "stuff" acquired, they have given me the peace that comes from devotion, decisions, and actions grounded in a personal credo of "others first." This road less taken offers so many rich intangibles that we can, with that treasure trove, take or leave "the stuff." My hope is that those who use this book gain and use the same perspective on "stuff."

Marianne M. Jennings
Professor Emeritus of Legal and Ethical Studies in Business

*W. P. Carey School of Business
Arizona State University
marianne.jennings@asu.edu*

Ethical Theory, Philosophical Foundations, Our Reasoning Flaws, and Types of Ethical Dilemmas

UNIT ONE

In the 21st century will occur something worse than the great wars, namely, the total eclipse of all values. The pain the human beast will feel when he realizes he can believe in ... nothing ... will be worse than any he has felt before.

—Nietzsche

This kind of gamesmanship goes on all the time. It's certainly accepted as part of the culture that you game the system as much as you possibly can, and if you don't get caught, it ain't cheating.¹

—Professor Stephen Mosher, Ithaca College, on the Patriots' Deflate-gate scandal

Before we begin the study of business ethics, we should do some introspection: What does ethics mean to you personally? The purpose of this unit is to provide you with an introspective look at yourself and your views on ethics before we bring the business component to you and ethics.

This unit explains three things: What ethics are, why we should care about ethics, and how to resolve ethical dilemmas. The materials in this unit serve as the foundation for the study of issues in business ethics. We begin with a personal look at ethics, discuss why it matters, and then decide how to resolve ethical dilemmas.

¹Tim Rohan, "Gamesmanship vs. Cheating," *New York Times*, January 25, 2015, p. B9.

Defining Ethics

Reading 1.1

You, Your Values, and a Credo

We have a tendency to look at folks who get into ethical and legal trouble and say, “I know I would never behave like that.” You probably would not, but you are only seeing them at their last step. You did not see the tiny steps that led to their eventual downfall. Study how and why they made the decisions they made. The idea is to try to avoid feeling superior to those who have made mistakes; real learning comes with understanding how easily we can fall into ethical missteps through flaws in our analyses and reasoning processes and because of pressures that allow us to feel justified in our actions. Your goal is to develop a process for analysis and reasoning, one that finds you looking at ethical issues more deeply instead of through the prism of emotions, desires, and pressures. You are not just studying ethics; you are studying business history. And you are also studying you. Try to relate your vulnerabilities to theirs. Remember as you read these cases that you are reading about bright, capable, and educated individuals who made mistakes. The mistakes often seem clear when you study them in hindsight. But the ethical analyses of those who made those mistakes were flawed whether through poor perspective, pressure, or, sometimes, the stuff of Greek tragedies, hubris.

One of the goals of this text is to help you avoid the traps and pitfalls that consume some people in business. As you study the cases in this unit and the others that follow, try not to be too hard on the human subjects. Learn from them and try to discover the flaws in their ethical analyses.

One step that can give us greater clarity when we face ethical dilemmas is a credo. A credo is different from a code of ethics and does not consist of the virtues that companies usually list in a code of ethics, for example, “We are always honest; we follow the laws.” The credo demands more because it sets the parameters for those virtues. A credo is virtue in action. A credo defines you and your ethical boundaries.

You get your personal credo with introspection on two areas of questions:

1. Who are you? Many people define themselves by the trappings of success, such as how much money they have or make, the type of cars they drive, their clothes, and all things tangible and material. A credo grounds you and means that you need to find a way to describe yourself in terms or qualities that are part of you, no matter what happens to you financially, professionally, or in your career. For example, one good answer to “Who are you?” might be that you have a talent and ability for art or writing. Another may be that you are kind and fair, showing those Solomon-like virtues to others around you. List those qualities you could have and keep regardless of all the outer trappings.
2. The second part of your credo consists of answering these questions: What are the things that you would never do to get a job? To keep a job? To earn a bonus? To win a contract or gain a client? The answers to these questions result in a list, one that you should be keeping as you read the cases and study the individual businesspeople who made mistakes. Perhaps the title of your list could be “Things I Would Never Do to Be Successful,” “Things I Would Never Do to Be Promoted,” or even “Things I Would Never Do to Make Money.” One scientist reflected

on the most important line that he would never cross, and after you have studied a few of the product liability cases, you will come to understand why this boundary was important to him, “I would never change the results of a study to get funding or promise anyone favorable results in exchange for funding.” A worker at a refinery wrote this as his credo: “I would never compromise safety to stay on schedule or get my bonus.” An auditor in a state auditor general’s office wrote, “I would never sign a document that I know contains false information.” The credo is a list, gleaned from reading about the experiences of others, that puts the meat on Polonius’s immortal advice to his son, Laertes, in Shakespeare’s *Hamlet*: “To thine own self be true” (*Hamlet*, Act I, Scene III). We quote Polonius without really asking, “What does that mean?” The credo takes us from eloquent advice to daily action. The credo is a personal application of the lessons in the cases. You will spot the lack of definitive lines in these case studies and begin to understand how their decision processes were so shortsighted. The goal is to help you think more carefully, deeply, and fully about ethical issues.

A woman who had been a lawyer for 30 years reflected back on her career and realized that she had conducted her professional life in line with two admonitions a senior partner had given to her on her first day as a young associate and new hire in a law firm. The senior partner came into her office and said, “I want you to remember two things: Don’t ever lie to a client. Don’t ever lie to the FBI.” She recalled wondering most of that first day, “What kind of firm am I working for that these are the only two rules? I would never lie to a client. I would never lie to the FBI.” Within days she would understand the senior partner’s wisdom, as well as that she had a credo. A client called and wondered how far along she was on a project for him. She had not even begun the project, but human tendency is to want to say, “Fine. Making progress. Coming along.” However, because of the credo parameters, she told the truth. “I have not started the project yet, but I have set aside two days next week to really get at it—could I call you then?” The client stayed with her and the firm.

She also noted that she came up short on her billable hours that first month and considered adding a few minutes here and there to clients’ bills, but then reasoned, “That would be lying to a client!” She stopped herself over what might have been rationalized away as, “Oh, it’s such a little thing!” She then had a government agent (not FBI) visit her to ask questions as the agent was doing a background check on a classmate who had applied for a government job. She recalled thinking that she should paint the best picture possible about the classmate, even though he had a checkered past. “Instead,” she explained, “I just told the truth.” As she reflected on her decades-long career she noted, “I can’t tell you how many times those two simple rules from that first day have saved me from mistakes.” That’s what a credo does for you.

As you think about your credo, especially who you are, keep the following thought from Jimmy Dunne III in mind. Mr. Dunne was the only partner who survived the near destruction of his financial firm, Sandler O’Neill, when the World Trade Center collapsed on September 11, 2001. Only 17 of Sandler O’Neill’s 83 employees survived the tower’s collapse. Mr. Dunne has been tireless in raising money for the families of the employees who lost their lives that day. When asked by *Fortune* magazine why he works so hard, Mr. Dunne responded, “Fifteen years from now, my son will meet the son or daughter of one of our people who died that day, and I will be judged on what that kid tells my son about what Sandler O’Neill did for his family.”² As of 2015, Sandler O’Neill had paid the college tuitions of 54 children (there were 71 total) of employees who died on September 11, 2001.³ His personal credo focuses on both the long-term reputation of his firm and the impact his choices can have on his children’s reputations.

Discussion Question

Explain the role that “How do I want to be remembered?” plays in your credo?

²Katrina Booker, “After September 11: Starting Over,” *Fortune*, September 11, 2015, <http://fortune.com/2015/09/11/september-11-sandler-oneill/>.

Reading 1.2

What Did You Do in the Past Year That Bothered You? How That Question Can Change Lives and Cultures⁴

It began as a simple exercise to gauge what was on the minds of my students and training and seminar participants. On the first day of the seminar or class, I gave them two index cards and asked them to do the following:

- Describe one thing you did at work during the past year that really bothers you.
- Describe one thing you did in your personal life during the past year that really bothers you.

Note two important things about the exercise. First, participants are asked to do a work and a personal card. For four decades now, one of my greatest challenges has been getting organizations and individuals to see that there is no difference between ethical standards in their personal lives and those at work. If you would not be dishonest with a neighbor in selling her your freezer, you should not be dishonest with a customer, vendor, or regulator at work. Second, the operative word is “bothers,” meaning that they have not remedied what happened or made peace with it.

In the short time given for this challenge, the results were stunning. Just two souls in the thousands who have participated in this exercise since 2010 wrote on a card, “I haven’t done anything that bothers me.” For the remaining students, 60% of whom are executives with a minimum of 10 years’ business experience, there were cathartic experiences as they used the index-card exercise as an outlet for letting go of their ethical demons. Herewith, some examples, and, in the words of the great Dave Barry, “I am not making this up”:

- I used a previous salary number for a loan application even though we had just been assessed a 25% across-the-board salary reduction.
- I followed the advice of my tax accountant who “recommended” that I expense the luxury vehicle as a work vehicle versus the vehicle I really used for business because it had more tax benefits.
- I was asked to alter a head count so that we billed more to a customer.
- When I took over a global customer, I discovered that one of the local branches had received an overpayment of \$50,000 (due to a supplier cost reduction/time issue). The branch had kept the overpayment and was using it as a “piggy bank” to offset pricing discrepancies. They told me they wanted to continue this practice and keep the money.
- I misstated my brokerage account value to my wife, as she doesn’t know that I lost twice as much due to aggressive investment.
- I lied on budget reports at work.
- I let someone else take the blame for a mistake I made at work.
- I held profits for a following quarter to balance earnings.
- I contested a contract agreement because the terms no longer favored us even though we had agreed to the terms when the contract was signed.
- I walked out of Costco knowing that the register did not catch an item in my basket.
- I sold a bike to a friend and it was later stolen. He asked me to inflate the sales price (on the claim form) so he could get a larger sum from the insurance company.

³“Bank That Lost Dozens of Employees on 9/11 Has Sent 54 of Their Kids to College,” *Huffington Post*, September 17, 2015, http://www.huffingtonpost.com/entry/bank-pays-tuition-children-employees-september-11_us_55f97f83e4b0e333e54bfe95.

⁴Adapted from “Ethics at Work: What Did You Do in the Past Year That Bothered You? How That Question Can Change Lives and Cultures,” 29 *AHIA New Perspective* 40 (2010).

- I borrowed a garbage can from a neighbor's house that is abandoned. I plan on returning the can if/when someone moves in.
- Every once in a while I will drink pretty heavy with the guys. Not a big deal, but the fact that I have three kids. These are times I feel guilty because as a dad and parent, it's important to lead by example and be a role model.

There is one more question asked of the students, which was “Do you consider yourself to be an ethical person?” Some answers:

- Absolutely.
- Better than most people.
- I work hard at being ethical.
- I have really good ethical judgment.
- I am not as tempted as most people.

Hailing from the academic world, I am quite accustomed to the “in theory” rejections of my work. The irony is that it would appear that most of those surveyed believe themselves to be ethical in theory. They are, however, having some difficulty in application. “Lost in translation” is an apt description, and an example is in order. In one of my textbooks is a short case study in which two friends who have just seen a movie realize, as they are leaving the theater, that the other theater doors in the multiplex are wide open and that no theater employee is present to monitor patrons. So, the two friends duck in and see two movies for the price of one. The case study, when presented early in the course, nets the usual, “It’s no big deal,” “Everybody does that,” and “It doesn’t really hurt anyone.” On occasion I hear, “Hollywood can afford to spring for another movie for me.” However, there will also be a student or two who will pipe up and exclaim, “It’s not right. You didn’t pay.” Interestingly, the student who chimed in with the moral high ground this past semester came to class one day with a bootleg copy of *The Hurt Locker* to share with another student. I reminded her of her moralizing on the twofer. “This is different!” she sniffed back.

That “this is different” is where we lose employees in our training and cultures. To bring the *Hurt Locker* student around, I had to have her return to the methodical tools we use to analyze ethical issues, the tools that force students to go beyond the emotional reactions and relatively shallow opinions we all bring initially to resolving ethical dilemmas. Who’s affected by your decision to use a bootleg copy? What would happen if everyone participated in movie bootlegging? Why the producers of *The Hurt Locker* would make even less money than they did. However, when quality movies do not reflect their real draw and economic power, we are all affected in that producers no longer undertake those projects. When we bootleg or duck in for free, we are not just seeing a movie for free; we are fooling around with the delicate balances in market forces that are dependent on real demand, transparency, and accurate pricing.

In every example my participants gave on their cards, they had engaged in the behavior that ultimately bothered them because they had neglected to do the hard analysis initially: What are the real costs here? What if everyone does what I am doing? Who else is affected by my decision? For example, on the mortgage application misrepresentation of income confession, a real analysis of that ever-so-slight and ever-so-singular misrepresentation of income, we are forced to internalize just a little bit of responsibility for the Wall Street meltdown. Risk models on mortgage instruments were built on the assumptions we once made about mortgage applicants, loan approvals, and income verification. When borrowers circumvent those assumptions to obtain a loan, folks up and down the economic chain are affected. Before we blame the greed on Wall Street for our economic strife, we do need a little introspection on our participation and contribution.

There is a translation over to the health care field, with an example from Omnicare, a pharmacy services company that dominates nursing home care market. Physicians follow Omnicare pharmacists’ recommendations 80% of the time. McNeil offered rebates

to Omnicare that increased with more Omnicare purchases of McNeil drugs. Omnicare pharmacists also received other perks from McNeil with the result being that Omnicare increased its J&J drug purchases from \$100 million to \$280 million per year. The other result was that McNeil paid a \$98-million civil settlement for getting too close to that Medicare kickback line. That line is a fine one, one that requires introspection and a daily dose of, “Have I gone too far with this sales program?”

Yet another translation comes from Pfizer and its \$2.3-billion fine to settle charges that its sales reps crossed another fine line between selling a drug for its approved purpose and touting it for non-FDA-approved uses. This situation involves an even tougher close call because how does a sales rep respond when a doctor asks about a study and a use? Daily vigilance through constant examples of issues the sales force experiences is the stuff of prevention. The translation of the law, that you cannot promote your company’s drug for a purpose not approved by the FDA, is lost somewhere in those sales calls because those who are in the trenches each day are not asking the following: What happens if everyone does what I am doing? What do I gain for the company through this action? What does the company lose if I have crossed that line?

If bells and whistles went off each time a toe went over the line, we would self-monitor. Sometimes the bells and whistles are delayed because we are at a place that is too close to call or no one is monitoring enough to catch the slip. Internalizing those moments and translating them from “in theory” to “in practice” require a bit more attention to that question, “What did you do in the past year that still bothers you?” If it bothered you, determine why. If it bothered you, determine whether you need to make amends, return an item, pay for something that you did not pay for, and apologize for the falsehood you told another.

This exercise is one of reflection, on both our conduct and then who we really are. That is, when we determine something has bothered us, how do we react? Cover up more and hide from those affected, or do we face the issues head-on and acknowledge our mistakes. Introspection comes from answering “both” question and then by fixing the “bother.”

Discussion Questions

1. Try doing the exercise yourself. Ask friends and family members for examples and discuss with them whether they “fixed” the bother, how, and why.
2. What kinds of things could this exercise reveal about an office or workplace?

Reading 1.3

What Are Ethics? From Line-Cutting to Kant

Personal Reflection: Values, Pressure, and Decisions

The temptation is remarkable. The run is long. The body screams, “No more!” So, when some runners in the New York City Marathon hit the Queensboro Bridge, temptation sets in, and rather than finishing the last 10 miles through Harlem and the Bronx, they hop a ride on the subway and head toward the finish line at Central Park. A total of 46 runners used the subway solution to finish the race in the 2008 New York City Marathon. We look at this conduct and react, “That is *really* unfair.” Others, particularly the 46, respond, “So I skipped a few boroughs. I didn’t do anything illegal.” That’s where ethics come in; ethics apply where there are no laws, but our universal reaction is, “It just doesn’t seem right.”

We all don’t run marathons (or run partial marathons), but we do see ethical issues and lapses each day. A high school student was required to memorize the Preamble to the U.S.

Constitution for an in-class quiz. When he reported to class, one of his classmates, not known for his sartorial splendor, was wearing a suit and tie. When asked why he was so dressed up, the student lifted his tie to show the inside, where he had taped a copy of the Preamble. We call it cheating on a quiz, but there is no criminal act involved in cheating. However, the other students, who have taken the time to memorize the Preamble, look at this conduct and exclaim, “That’s not fair!”

In college, some students use apps to print out labels for their soda cans and chip bags that seem to be normal but have exam information embedded in everything from the bar code to the trademark. Students who study and rely on memory watch others use these unauthorized materials and think, “That’s cheating!” No one will be arrested, but it is not fair. And the grading system will not reflect accurately who really knows the material and who has skated through, although their GPAs will be virtually the same. That idea of self-policing, of stopping ourselves when we take advantage of others, even though our conduct does not violate a law is the self-restraint that ethics brings.

We are probably unanimous in our conclusion that those in the examples cited all behaved unethically. We may not be able to zero in on what bothers us about their conduct, but we know an ethics violation, or an ethical breach, when we see one.

But what is ethics? What do we mean when we say that someone has acted unethically? Ethical standards are not the standards of the law. In fact, they are a higher standard. A great many philosophers have gone round and round trying to define *ethics* and debated the great ethical dilemmas of their time and ours. They have debated everything from the sources of authority on what is right and what is wrong to finding the answers to ethical dilemmas. An understanding of their language and views might help you to explain what exactly you are studying and can also provide you with insights as you study the cases about personal and business ethics. Ethical theories have been described and evolved as a means for applying logic and analysis to ethical dilemmas. The theories provide us with ways of looking at issues so that we are not limited to concluding, “I think ...” The theories provide the means for you to approach a dilemma to determine why you think as you do, whether you have missed some issues and facts in reaching your conclusion, and if there are others with different views who have points that require further analysis.

Normative Standards as Ethics

Sometimes referred to as *normative standards* in philosophy, ethical standards are the generally accepted rules of conduct that govern society. Ethical rules are both standards and expectations for behavior, and we have developed them for nearly all aspects of life. For example, with the exception of the laws covering lines for boarding the vehicle ferries in Washington, no statute makes it a crime for someone to cut in line in order to save the waiting time involved by going to the end of the line. But we all view those who “take cuts in line” with disdain. We sneer at those cars that sneak along the side of the road to get around a line of traffic as we sit and wait our turn. We resent those who tromp up to the cash register in front of us, ignoring the fact that we were there first and that our time is valuable too.

If you have ever resented a line-cutter, then you understand ethics and have applied ethical standards in life. Waiting your turn in line is an expectation society has. Waiting your turn is not an ordinance, a statute, or even a federal regulation. Waiting your turn is an age-old principle developed because it was fair to proceed with the first person in line being the first to be served. Waiting your turn exists because when there are large groups waiting for the same road, theater tickets, or fast food at noon in a busy downtown area, we found that lines ensured order and that waiting your turn was a just way of allocating the limited space and time allotted for the movie tickets, the traffic, or the food. Waiting your turn is an expected but unwritten behavior that plays a critical role in an orderly society.

So it is with ethics. Ethics consists of those unwritten rules we have developed for our interactions with each other. These unwritten rules govern us when we are sharing resources or honoring contracts. Waiting your turn is a higher standard than the laws that are passed to maintain order. Those laws apply when physical force or threats are used to push to the front of the line. Assault, battery, and threats are forms of criminal conduct for which the offender can be prosecuted. But these laws do not address the high school taunters who make life miserable for the less popular. In fact, trying to make a crime out of these too-cruel interactions in the teen years often finds the court's ruling that the statute is too vague. But ethical standards do come in to fill that gap. The stealthy line-cutter who simply sneaks to the front, perhaps using a friend and a conversation as a decoy for edging into the front, breaks no laws but does offend our notions of fairness and justice. One individual put him- or herself above others and took advantage of their time and too-good natures.

Because line-cutters violate the basic procedures and unwritten rules for line formation and order, they have committed an ethical breach. Ethics consists of standards and norms for behavior that are beyond laws and legal rights. We don't put line-cutters in jail, but we do refer to them as unethical. There are other examples of unethical behavior that carry no legal penalty. If a married person commits adultery, no one has committed a crime, but the adulterer has broken a trust with his or her spouse. We do not put adulterers in jail, but we do label their conduct with adjectives such as *unfaithful* and even use a lay term to describe adultery: *cheating*.

Speaking of cheating, looking at someone else's paper during an exam is not a criminal violation. You may be sanctioned by your professor, and there may be penalties imposed by your college, but you will not be prosecuted by the county attorney for cheating. Your conduct was unethical because you did not earn your standing and grade under the same set of rules applied to the other students. Just like the line-cutter, your conduct is not fair to those who spent their time studying. Your cheating is unjust because you are getting ahead using someone else's work.

In these examples of line-cutters, adulterers, and exam cheaters, there are certain common adjectives that come to our minds: "That's *unfair*!" "That was *dishonest*!" and "That was *unjust*!" You have just defined *ethics* for yourself. Ethics is more than just common, or normative, standards of behavior. Ethics is honesty, fairness, and justice. The principles of ethics, when honored, ensure that the playing field is level, that we win by using our own work and ideas, and that we are honest and fair in our interactions with each other, whether personally or in business. However, there are other ways of defining ethical standards beyond just the normative tests of what most people "feel" is the right thing to do.

Divine Command Theory

The Divine Command Theory is one in which the resolution of dilemmas is based upon religious beliefs. Ethical dilemmas are resolved according to tenets of a faith, such as the Ten Commandments for the Jewish and Christian faiths. Central to this theory is that decisions in ethical dilemmas are made on the basis of guidance from a divine being. In some countries, the Divine Command Theory has influenced the law, as in some Muslim nations in which adultery is not only unethical but also illegal and sometimes punishable by death. In other countries, the concept of natural law runs in parallel with the Divine Command Theory. Natural law proposes that there are certain rights and conduct controlled by God, and that no matter what a society does, it should not drift from those tenets. For example, in the United States, the Declaration of Independence relied on the notion of natural law, stating that we had rights because they were given to us by our Creator.

Ethical Egoism Theory: Ayn Rand and *Atlas*

Ethical egoism holds that we all act in our own self-interest and that all of us should limit our judgment to our own ethical egos and not interfere with the exercise of ethical egoism by others. This view holds that everything is determined by self-interest. We act as we do and decide to behave as we do because we have determined that it is in our own self-interest.

One philosopher who believed in ethical egoism was the novelist Ayn Rand, who wrote books such as *The Fountainhead* and *Atlas Shrugged* about business and business leaders' decisions in ethical dilemmas. These two famous books made Ms. Rand's point about ethical dilemmas: The world would be better if we did not feel so guilty about the choices we make in ethical dilemmas and just acknowledged that it is all self-interest. Ms. Rand, as an ethical egoist, would maintain order by putting in place the necessary legal protections so that we did not harm each other.

"Hobbesian" Self-Interest and Government

Philosopher Thomas Hobbes also believed that ethical egoism was the central factor in human decisions, that self-interest was part of human nature. However, Hobbes warned that there would be chaos because of ethical egoism if we did not have laws in place to control that terrible drive of self-interest. Hobbes felt we needed great power in government to control ethical egoism and that we all subscribe to that control through a social contract as outlined in his work *Leviathan*, a book that describes the chaos and confusion that would result without government.

Adam Smith, Self-Interest, and Moral Sentiments

Although he too believed that humans act in their own self-interest, and so was a bit of an ethical egoist, Adam Smith, a philosopher and an economist, also maintained that humans define self-interest differently from the selfishness theory that Hobbes and Rand feared would consume the world if not checked by legal safeguards. Adam Smith wrote, in *The Theory of the Moral Sentiments*, that humans are rational and understand that, for example, fraud is in no one's self-interest—not even that of the perpetrator, who does benefit temporarily until, as in the case of so many executives today, federal and state officials come calling with subpoenas and indictments. (For an excerpt from Adam Smith's *Moral Sentiments*, see Reading 9.5.) That is, many believe that they can lie in business transactions and get ahead. Adam Smith argues that although many can and do lie to close a deal or get ahead, they cannot continue that pattern of selfish behavior because just one or two times of treating others this way results in a business community spreading the word: Don't do business with them because they cannot be trusted. The result is that they are shunned from doing business at least for a time, if not forever. In other words, Smith believed that there was some force of long-term self-interest that keeps businesses running ethically and that chaos only results in limited markets for limited periods as one or two rotten apples use their ethical egoism in a selfish, rather than self-interest, sense, to their own temporary advantage.

The Utilitarian Theory: Bentham and Mill

Philosophers Jeremy Bentham and John Stuart Mill moved to the opposite end of ethical egoism and argued that resolution of ethical dilemmas requires a balancing effort in which we minimize the harms that result from a decision even as we maximize the benefits. Mill is known for his *greatest happiness principle*, which provides that we should resolve ethical dilemmas by bringing the greatest good to the greatest number of people. There will always be a few disgruntled souls in every ethical dilemma solution, so we just do the most good that we can.

Some of the issues to which we have applied utilitarianism include those that involve some form of rationing of resources in order to provide for all, such as with providing

universal health care, even though some individuals may not be able to obtain advanced treatments, in the interest of providing some health care for all. There is a constant balancing of the interests of the most good for the greatest number when the interests of protecting the environment are weighed against the need for electricity, cars, and factories. Utilitarianism is a theory of balancing that requires us to look at the impact of our proposed solutions to ethical dilemmas, from the viewpoints of all those who are affected, and try to do the greatest good for the greatest number.

The Categorical Imperative and Immanuel Kant

Philosopher Immanuel Kant's theories are complex, but he is a respecter of persons. That is, Kant does not allow any resolution of an ethical dilemma in which human beings are used as a means by which others obtain benefits. That might sound confusing, so Kant's theory reduced to simplest terms is that you cannot use others in a way that gives you a one-sided benefit. Everyone must operate under the same usage rules. In Kant's words, "One ought only to act such that the principle of one's act could become a universal law of human action in a world in which one would hope to live." Ask yourself this question: If you hit a car in a parking lot and damaged it, but you could be guaranteed that no one saw you do it, would you leave a note on the other car with contact information? If you answered, "No, because that's happened to me twelve times before, and no one left me a note," then you are unhappy with universal behaviors but are unwilling to commit to universal standards of honesty and disclosure to remedy those behaviors.

Philosophers are not the easiest folks to reason along with, so an illustration will help us grasp their deep thoughts. For example, there are those who find it unethical to have workers in developing nations labor in garment sweatshops for pennies per hour. The pennies-per-hour wage seems unjust to them. However, suppose the company were operating under one of its universal principles: Always pay a fair wage to those who work for it. A "fair wage" in that country might be pennies, and the company owner could argue, "I would work for that wage if I lived in that country." The company owner could also argue, "But if I lived in the United States, I would not work for that wage, would require a much higher wage, and would want benefits, and we do provide that to all of our U.S. workers." The employer applies the same standard, but the wages are different.

The company has developed its own ethical standard that is universally applicable, and those who own the company could live with it if it were applied to them, but context is everything under the categorical imperative. The basic question is, are you comfortable living in a world operating under the standards you have established, or would you deem them unfair or unjust?

There is one more part to Kant's theory: You not only have to be fair but also have to want to do it for all the right reasons. Self-interest was not a big seller with Kant, and he wants universal principles adopted with all goodwill and pureness of heart. So, to not engage in fraud in business because you don't want to get caught is not a sufficient basis for a rule against fraud. Kant wants you to adopt and accept these ethical standards because you don't want to use other people as a means to your enrichment at their expense.

The Contractarians and Justice

Blame philosophers John Locke and John Rawls for this theory, sometimes called the *theory of justice* and sometimes referred to as the *social contract*. Kant's flaw, according to this one modern and one not-so-modern philosopher (Rawls is from the twentieth century and Locke is from the seventeenth), is that he assumed we could all have a meeting of the minds on what were the good rules for society. Locke and Rawls preferred just putting the rules into place via a social contract that is created under circumstances in which we reflect

and imagine what it would be like if we had no rules or law at all. If we started with a blank slate, or *tabula rasa* as these philosophers would say, rational people would agree—perhaps in their own self-interest or perhaps to be fair—that certain universal rules must apply. Rational people, thinking through the results and consequences if there were no rules, would develop rules such as “Don’t take my property without my permission” and “I would like the same type of court proceeding that rich people have, even if I am not so rich.”

Locke and Rawls have their grounding in other schools of thought, such as natural law and utilitarianism, but their solution is provided by having those in the midst of a dilemma work to imagine not only that there are no existing rules but also that they don’t know how they will be affected by the outcome of the decision, that is, which side they are on in the dilemma. With those constraints, Locke and Rawls argue that we would always choose the fairest and most equitable resolution of the dilemma. The idea of Locke and Rawls is to have us step back from the emotion of the moment and make universal principles that will survive the test of time.

Rights Theory

The Rights Theory is also known as *Entitlement Theory* and is one of the more modern theories of ethics, as philosophical theories go. Robert Nozick was the key modern-day philosopher on this theory, which has two big elements: (1) Everyone has a set of rights and (2) it’s up to the governments to protect those rights. Under this big umbrella of ethical theory, we have the protection of human rights that covers issues such as sweatshops, abortion, slavery, property ownership and use, justice (as in court processes), animal rights, privacy, and euthanasia. Nozick’s school of thought faces head-on all the controversial and emotional issues of ethics including everything from human dignity in suffering to third-trimester abortions. Nozick hits the issues head-on, but not always with resolutions because governments protecting those rights are put into place by Egoists, Kantians, and Divine Command Theory followers.

A utilitarian would resolve an ethical dilemma differently from a Nozick follower. Think about the following example. The FBI has just arrested a terrorist who is clearly a leader in a movement that plans to plant bombs in the nation’s trains, subways, and airports. This individual has significant information about upcoming planned attacks but refuses to speak. There may be clues on his iPhone. However, the FBI has not been able to gain access to the phone; it is locked. The FBI files a petition in federal court for a judge to order Apple to assist the FBI with obtaining access. Apple’s CEO refuses on the grounds of privacy and that providing such access would violate the promises and trust the company has with its customers in preserving their privacy. A utilitarian would want the greatest good for the greatest number and would feel that a court order forcing Apple to assist with access is justified to save thousands of lives. However, Nozick might balk at such a proposal because the captured terrorist’s human right of privacy is violated. As different as they are, ideological views actually enhance our ability to see issues from a 360-degree perspective as we analyze them.

Moral Relativists

Moral relativists believe in time-and-place ethics. Arson is not always wrong in their book. If you live in a neighborhood in which drug dealers are operating a crystal meth lab or crack house, committing arson to drive away the drug dealers is ethically justified. If you are a parent and your child is starving, stealing a loaf of bread is ethically correct. The proper resolution to ethical dilemmas is based upon weighing the competing factors at the moment and then making a determination to take the lesser of the evils as the resolution. Moral relativists do not believe in absolute rules, virtue ethics, or even the social contract.

Their beliefs center on the pressure of the moment and whether the pressure justifies the action taken. Enron's former chief financial officer Andrew Fastow, in his testimony against his former bosses at their criminal trial for fraud, said, "I thought I was being a hero for Enron. At the time, I thought I was helping myself and helping Enron to make its numbers" (Andrew Fastow, trial testimony, March 7, 2006). In classic moral relativist mode, a little fraud to help the company survive was not ethically problematic at the time for Mr. Fastow. In hindsight, Mr. Fastow would also comment, "I lost my moral compass."⁵

Back to Plato and Aristotle: Virtue Ethics

Although it seems odd that Aristotle and Plato are last in the list of theorists, there is reason to this ethical madness. Aristotle and Plato taught that solving ethical dilemmas requires training, that individuals solve ethical dilemmas when they develop and nurture a set of virtues. Aristotle cultivated virtue in his students and encouraged them to solve ethical dilemmas using those virtues that he had integrated into their thoughts. One of the purposes of this book is to help you develop a set of virtues that can serve as a guide in making both personal and business decisions. Think of your credo as the foundation for those virtues.

Solomon's Virtues

Some modern philosophers have embraced this notion of virtue ethics and have developed lists of what constitutes a virtuous businessperson. The following list of virtue ethics was developed by the late professor Robert Solomon:

Virtue Standard	Definition
Ability	Being dependable and competent
Acceptance	Making the best of a bad situation
Amiability	Fostering agreeable social contexts
Articulateness	Ability to make and defend one's case
Attentiveness	Listening and understanding
Autonomy	Having a personal identity
Caring	Worrying about the well-being of others despite power
Charisma	Inspiring others
Compassion	Sympathetic
Coolheadedness	Retaining control and reasonableness in heated situations
Courage	Doing the right thing despite the cost
Determination	Seeing a task through to completion
Fairness	Giving others their due; creating harmony
Generosity	Sharing; enhancing others' well-being
Graciousness	Establishing a congenial environment
Gratitude	Giving proper credit
Heroism	Doing the right thing despite the consequences
Honesty	Telling the truth; not lying
Humility	Giving proper credit

⁵John R. Emshwiller and Gary McWilliams, "Fastow Is Grilled at Enron Trial," *Wall Street Journal*, March 9, 2016, p. C1.

Humor	Bringing relief; making the world better
Independence	Getting things done despite bureaucracy
Integrity	Being a model of trustworthiness
Justice	Treating others fairly
Loyalty	Working for the well-being of an organization
Pride	Being admired by others
Prudence	Minimizing company and personal losses
Responsibility	Doing what it takes to do the right thing
Saintliness	Approaching the ideal in behavior
Shame (capable of)	Regaining acceptance after wrong behavior
Spirit	Appreciating a larger picture in situations
Toughness	Maintaining one's position
Trust	Dependable
Trustworthiness	Fulfilling one's responsibilities
Wittiness	Lightening the conversation when warranted
Zeal	Getting the job done right; enthusiasm

Source: From *A Better Way to Think about Business* by Robert Solomon, copyright © 1999 by Robert Solomon, p. 18. Used by permission of Oxford University Press. See also Kevin J. Shanahan and Michael R. Hyman, "The Development of a Virtue Ethics Scale," 42 *Journal of Business Ethics*, 2002, pp. 197, 200.

The list offers a tall order because these are difficult traits to develop and keep. But as you study the companies, issues, and cases, you will begin to understand the mighty role that these virtues play in seeing the ethical issues, discussing them from all viewpoints, and finding a resolution that enable businesses to survive over the long term.

Discussion Questions

1. Your friend, spouse, child, or parent needs a specialized medical treatment. Without the specialized treatment, your friend, your spouse, or your child cannot survive. You are able to get that treatment for him or her, but the cost is \$6,800. You don't have \$6,800, but you hold a job in the Department of Motor Vehicles. As part of your duties there, you process the checks, money orders, and other forms of payment sent in for vehicle registration. You could endorse these items, cash them, and have those funds. You feel that because you open the mail with the checks and money orders, no one will be able to discover the true amounts of funds coming in, and you can credit the vehicle owners' accounts so that their registrations are renewed. Under the various schools of thought on ethics, evaluate whether the embezzlement would be justified.
2. Three employees of a department store were conversing about their futures. One employee was sharing that when 2017 arrived, in just a few days, most of them would be going to part-time status because of slow sales, the economy, and health care costs. The remaining two employees seemed crestfallen.

But the knowledgeable employee explained that there was something that they could do. "Get yourself fired because the money you make on unemployment will be better than part-time work here, and you can get ninety-nine weeks of unemployment. Plus, you are eligible for medical care through the government because you are unemployed. It's a better deal. It is so not worth it to keep working." When they asked how they could get fired, he had a solution: "Just don't meet your numbers. You'll be gone in no time." Classify the suggestion of getting yourself fired and collecting unemployment under the appropriate ethical school of thought.

3. In the movie *Changing Lanes*, Ben Affleck plays a young lawyer who is anxious to become a senior partner in a law firm in which one of the senior partners is his father-in-law, played by the late Sidney Pollack. Affleck discovers that his father-in-law has embezzled from clients, forged documents, and committed perjury, all felonies and all certainly grounds for disbarment. Affleck finally confronts Pollack and asks, "How do you live with yourself?" Pollack responds that he did indeed forge,

embezzle, and perjure himself, but with the money that he made he became one of the city's greatest philanthropists. "At the end of the day, if I've done more good over here than bad in making the money, I'm happy." Under which ethical theories would you place the characters' ethical postures?

4. Could businesses use moral relativism to justify false financial reports? For example, suppose that the CFO says, "I did fudge on some of the numbers in our financial reports, but that kept 6,000 employees from losing their jobs." What problems do you see with moral relativism in this situation?

Reading 1.4

The Types of Ethical Dilemmas: From Truth to Honesty to Conflicts

The following 12 categories were developed and listed in *Exchange*, the magazine of the Brigham Young University School of Business.

Taking Things That Don't Belong to You

In the book, *How to Become a Grown-Up in 468 East (ish) Steps*, author Kelly Williams Brown lists step number 176 as "Do not steal more than \$3 worth of office supplies per quarter." Regardless of size or motivation, unauthorized use of someone else's property or taking property is still taking something that does not belong to you. That you have a self-imposed limit does not change the fact that there is still a taking. We experience these seemingly small ethical dilemmas daily. The point is not the amount involved, but recognizing that we have taken something that does not belong to us. For example, a chief financial officer of a large electric utility reported that after taking a cab from LaGuardia International Airport to his midtown Manhattan hotel, he asked for a receipt. The cab driver handed him a full book of blank receipts and drove away. The ability to submit receipts for an expense you did not have does not make the expense anything more than taking money from your company that is not yours to take.

Saying Things You Know Are Not True

This category deals with the virtue of honesty. Assume you are trying to sell your car, one in which you had an accident but which you have repaired. If the potential buyer asks whether the car has been in an accident and you reply, "No," then you have given false information. If you take credit for someone else's idea or work, then you have, by your conduct, said something that is not true. If you do not give credit to others who have given you ideas or helped with a project, then you have not been forthright. If, in evaluating your team members on a school project, you certify that all carried their workload when, in fact, one of your team members was a real slacker, you have said something that was not true. If you do not disclose an accident that you had in the last year on an insurance application, you have not told the truth. If you state that you have a college degree on your résumé but have not yet graduated, you have committed an ethical breach. If, in filling out a credit application, you put the salary you have now when your employer has announced a 25% pay cut beginning next quarter, you have not told the truth.

Giving or Allowing False Impressions

This category of ethical breach is the legal technicality category. What you have said is technically the truth, but it does mislead the other side. For example, if your professor asks you, "Did you have a chance to read the assigned ethics cases?" even if you had not read the cases, you could answer, "Yes!" and be technically correct. You had "a chance" to read the

cases, but you did not read them. The answer is not a falsehood because you may have had plenty of chances to read the cases, but you didn't read the cases.

If you were to stand by silently while a coworker was blamed for something you did, you would leave a false impression. You haven't lied, but you allowed an impression of false blame to continue. Many offers that you receive in the mail have envelopes that make them seem as if they came from the Social Security Administration or another federal agency. The desired effect is to mislead those who receive the envelopes into trusting the company or providing information. That effect works, as attorneys general verify through their cases of fraud brought on behalf of senior citizens who have been misled by this false impression method.

In 2012, Tiffany & Company filed suit against Costco when a Costco customer wrote to complain to Tiffany that Costco was selling "Tiffany" diamond engagement rings at a much lower price than the customer had paid at Tiffany. Tiffany investigated and discovered "Tiffany rings" in a Costco store. Tiffany filed suit, and the court held that there was a trademark infringement (*Tiffany and Company v. Costco Wholesale Corporation*, 994 F. Supp. 2d 474 [S.D.N.Y. 2014]). The legal finding confirmed that Costco was giving its customers the false impression that the knock-off ring was a "Tiffany ring." Those who purchased the ring thought that they were purchasing a real Tiffany ring. And Costco took the ring's design, something that did not belong to it, and used it for profit.

Buying Influence or Engaging in Conflict of Interest

This category finds someone in the position of conflicting loyalties. An officer of a corporation should not be entering into contracts between his company and a company that he has created as part of a sideline of work. The officer is conflicted between his duty to negotiate the best contract and price for his corporation and his interest as a business owner in maximizing his profits. In his role as an officer, he wants the most he can get at the lowest price. Bribery is a legal issue but is grounded in conflicts of interest. For example, when nine Fédération Internationale de Football Association (FIFA) executives of the NGO's marketing affiliates were indicted and arrested, they were accused of accepting bribes from cities and countries in exchange for the award of World Cup locations and other events cities and countries sought for economic purposes. When executives for FIFA accept payments from those who seek to win contracts with FIFA, they compromise their judgment and loyalty to FIFA, that is, what is best for soccer, to which country pays the most.

A county administrator has a conflict of interest by accepting paid travel from contractors who are interested in bidding on the stadium project. Certainly, it is a good idea for the administrator to see the stadiums around the country and get an idea of the contractors' quality of work. But the county should pay for those site visits, not the contractors. The administrator's job as a county employee is to hire the most qualified contractor at the best price. However, the benefits of paid travel would and could vary, and contractors could use those site visits and travel perks to influence the decision on the award of the county contract for the stadium. Their interests in obtaining the contract are at odds with the county's interest in seeking the best stadium, not the best travel perks for the administrator. The administrator's loyalties to the county and the accommodating contractors are in conflict.

In 2014, a Texas legislator discovered that lawmakers were writing to the chancellor of University of Texas at Austin (UT), requesting special consideration for friends and family members who had applied for admissions. The general admissions rate for UT applicants is 15.8%. The admission rate for those who had letters from legislators was 58.7%. Public outrage resulted because of the perception of political favoritism—that the chancellor's duty to the university conflicted with his need to have good relationships with legislators for budget and tuition rate purposes. The issue was whether the admissions process was compromised as a result of deference to the legislators writing letters. Those who are involved

in these conflict-of-interest situations often protest, “But I would never allow that to influence me.” The ethical violation is the conflict. Whether the conflict can or will influence those it touches is not the issue, for neither party can prove conclusively that a *quid pro quo* was not intended. The possibility exists, and it creates suspicion. Conflicts of interest are not difficult. They are managed in one of two ways: Don’t do it, or disclose it.

Hiding or Divulging Information

Taking your firm’s product development or trade secrets to a new place of employment is the ethical breach of divulging proprietary information. Failing to disclose, as GM did, that you have changed out an engine switch because of flaws that resulted in the car shutting down resulted in a penalty and also many accidents involving owners of vehicles who were not made aware of the problem. A director who discloses advance information to a hedge fund manager about his company’s earnings has divulged private information. Medtronic was investigated by the federal government for its failure to adequately disclose the side effects of its bone growth products. Eventually, Medtronic agreed to release the data it had collected on patients using the product, so independent researchers could provide adequate disclosure of this pertinent information.

Taking Unfair Advantage

Many consumer protection laws exist because so many businesses took unfair advantage of those who were not educated or were unable to discern the nuances of complex contracts. Credit disclosure requirements, truth-in-lending provisions, and new regulations on soliciting students for credit cards all resulted because businesses misled consumers who could not easily follow the jargon of long and complex agreements. *USA Today* illustrated the fairness issues with a riddle. Suppose you have no cash and need to buy \$100 worth of groceries. Which would cost you more?

- a. Taking out a payday loan with a 450% APR
- b. Overdrawing your debit card and paying the \$27 fee

The answer is b because the \$27 fee on your debit card would be equal to a 704% interest rate (assuming a 14-day repayment period and an average \$17.25 fee per \$100 for a payday loan).⁶ In 2016, Uber paid a \$25 million penalty to the cities of Los Angeles and San Francisco for unfair business practices. As part of the settlement, Uber promised to no longer use the phrase “safest ride on the road” in its ads as well as no longer use “the gold standard” to describe its background checks. San Francisco’s district attorney said of Uber, “in the quest to quickly obtain market share, laws designed to protect consumers cannot be ignored.”⁷

Committing Acts of Personal Decadence

Although many argue about the ethical notion of an employee’s right to privacy, it has become increasingly clear that personal conduct outside the job can influence performance and company reputation. Conduct in our personal lives does have an impact on how well we perform our jobs, including whether we can perform our jobs safely. For example, a company driver must abstain from substance abuse because with alcohol or drugs in his blood, he creates both safety and liability issues for his employer. Even the traditional company Christmas party and picnic have come under scrutiny, as the behavior of employees at and following these events has brought harm to others in the form of alcohol-related accidents.

⁶Kathy Chu, “Anger at Overdraft Fees Gets Hotter, Bigger and Louder,” *USA Today*, September 29, 2009, p. 1B.

⁷Elizabeth Weise, “Uber Hit with Hefty \$25M Penalty for Unfair Practices,” *USA Today*, April 8, 2016, p. 1B.

Perpetrating Interpersonal Abuse

Managers can be demanding, but they cross ethical lines when their conduct steps on employee rights. For example, a Forever 21 sales clerk brought suit against that company for on-call scheduling, a practice that requires employees to keep the time for a shift clear so that they can be called in if they are needed. However, there is no compensation for keeping the time clear. There have been several class-action suits by interns who felt they were being used as employees for “grunt” work instead of being given educational and experience opportunities. Long hours and no pay without the rewards of knowledge and experience have resulted in a number of lawsuits for what amounts to workplace abuse. Interpersonal abuse consists of conduct that is demeaning, unfair, or hostile or involves others so that privacy issues arise. A manager who is verbally abusive to an employee falls into this category. The former CEO of HealthSouth, Richard Scrushy, held what his employees called the “Monday morning beatings.” These were meetings during which managers who had not met their numbers goals were upbraided in front of others and subjected to humiliating criticism. A Merrill Lynch executive who dreaded the chastisement when Merrill did not match Goldman Sachs’ earnings complained, “It got to the point where you didn’t want to be in the office on Goldman earnings days.”⁸ A manager correcting an employee’s conduct in front of a customer has not violated any laws but has humiliated the employee and involved outsiders who have no reason to know of any employee issues. In some cases in this category, there are laws to protect employees from this type of conduct, but we are able to look at this conduct and see the ethical issue as we sum up with, “It’s not fair” or “It’s not right.”

Permitting Organizational Abuse

This category covers the way companies treat employees. This ethical category is one that is a focus of companies with their production facilities outside the United States because the issues of child labor, sweatshop conditions, and low wages emerge. However, there are ongoing battles in the United States because of the structure of the new economy of start-ups. Companies such as Uber, Lyft, and other service companies do not use the traditional employee model; they are relying on independent contractors, a model that allows the companies to escape the expenses of benefits and wage taxes. However, those who work for the start-ups have no stability and find health insurance expensive and the lack of unemployment coverage risky. The Department of Labor has been looking into the independent contractor status of so many working in start-ups with the goal of obtaining better wages, coverage, and hours for those who are claimed as independent contractors.

Violating Rules

Rules can be organizational rules or the laws and regulations that govern certain business activities. For example, there are currently 109,000 students participating in the work/study program created in 1961 in order to allow foreign students to obtain a visa and have a rich, cultural experience by studying in the United States while having opportunity for travel through a source of income. The rules of the program, updated as recently as 2014, require employers of these visa students to provide certain levels of wages and a rich cultural experience during the students’ time in the United States. However, many officials worry that the program has become a source of cheap labor for fast-food restaurants, ski resorts, and car washes. The students earn \$7.25 per hour and pay \$75 per week in rent for living in crowded basement facilities, and they are required to pay more from their wages for their food. The result is that the students are unable to take classes or travel and end up working

⁸Randall Smith, “O’Neal Out as Merrill Reels from Loss,” *Wall Street Journal*, October 29, 2007, pp. A1, A16.

25-hour workweeks. There is little enforcement available for the work–study visa program, but the lack of enforcement does not mean that the employers, such as McDonald’s, have not violated the rules of the program.

Condoning Unethical Actions

In this category, the wrong is actually a failure to report an ethical breach in any of the other categories. For example, a state employee who was attending a business conference paid for by the state, and who was allowed to attend as part of her workweek, won an iPad in a vendor raffle. A fellow employee who also attended the conference knows that state law requires employees who win more than nominal prizes (T-shirts, pens, baseball caps) must report those prizes to and turn them over to the state. The winner of the iPad tells his coworker, “If anyone asks you about the iPad, you don’t know anything, and this conversation never happened.” The employee who says nothing becomes part of the problem. Suppose that questions about the vendor who sponsored the raffle arose. The public disclosure of the iPad giveaway would appear nefarious as the public looks back from the perspective of problems with the vendor. Allowing ethical breaches that you know about to occur often brings greater harm to everyone involved. The employee who won the iPad, the employee who knew, and the agency would all be affected in terms of employment and reputation.

Recent studies indicate that over 80% of students who see a fellow student cheating would not report the cheating. A winking tolerance of others’ unethical behavior is an ethical breach. Suppose that as a product designer you were aware of a fundamental flaw in your company’s new product—a product predicted to catapult your firm to record earnings. Would you pursue the problem to the point of halting the distribution of the product? Would you disclose what you know to the public if you could not get your company to act?

Balancing Ethical Dilemmas

In these types of situations, there are no right or wrong answers; rather, there are dilemmas to be resolved. For example, the United States has the highest corporate income tax rate in the world. In an international economy, such a tax rate puts U.S. companies at pricing disadvantage because they have more expenses to cover than companies operating in other countries. As a result, 12 U.S. corporations announced tax inversions or corporate mergers with foreign companies in 2015–2016; Johnson Controls merged with Ireland’s Tyco, saving \$150 million in taxes as a result. Tim Horton’s went back to Canada. Michael Kors moved his company to Hong Kong before ever opening a U.S. store in order to save money on taxes. Company leaders are addressing shareholder and profitability concerns, but U.S. leaders and citizens question “patriotism” in moving jobs overseas. There are stakeholders with different interests and valid concerns in inversions and our task is to balance these ethical dilemmas in order to change the country of their tax base. For example, these 12 categories are resources for you to use as you analyze the cases in this book. As you read, think through the 12 categories and determine what ethical breaches have occurred. These categories help you in spotting the ethical issues in each of the cases.

Discussion Questions

1. Consider the following situations and determine which of the 12 categories each issue fits into.
 - a. PGA golfer Phil Mickelson was scheduled to play in the 2009 Masters Tournament when he learned that his wife Amy had cancer. Mr. Mickelson had sponsors for his participation but felt that he needed to be with his wife and children. He withdrew

from the tournament. As you categorize this dilemma, be sure to think about the aftermath. Mr. Mickelson did play the 2010 Masters, where his wife Amy made her first public appearance on the 13th hole of the last round. Mr. Mickelson described his win that year as being “for Amy.” Discuss any lessons you can glean about balancing from this experience.

- b. A manager at a bank branch requires those employees who arrive late for work to clean the restrooms at the bank. The branch does have a janitorial service, but the manager's motto is "If you're late, the bathrooms must look great." An employee finds the work of cleaning the bathrooms in her professional clothes demeaning. Which category applies?
 - c. Jack Walls is the purchasing manager for a small manufacturer. He has decided to award a contract for office supplies to Office Mart. No one knows of Jack's decision yet, but Office Mart is anxious for the business and offers Jack a three-day ski vacation in Telluride, Colorado. Jack would love to take the trip but can't decide if there is an ethical question. Help Jack decide whether there is.
2. In November 2008, golfer J. P. Hayes was participating in the PGA Tour's Qualifying Tournament, often called Q-School. Mr. Hayes, then 42, discovered after the second round of play that he had used a Titleist prototype ball for play that day, a ball not approved for PGA play. After his discovery, Mr. Hayes called a PGA official to let him know what had happened. As he suspected, Mr. Hayes was disqualified from Q-School. Achievement at Q-School results in a type of automatic right to participate in the PGA's top tournaments for the year. Without Q-School status, golfers do not qualify automatically for tournament play and have to hope for getting into tournaments by other means. The difference in earnings for the year for the golfer who does not qualify at Q-School versus the golfer who does is millions. Mr. Hayes said, "I'm kind of at a point in my career where if I have a light year, it might be a good thing. I'm looking forward to playing less and spending more time with my family. It's not the end of the world. It will be fine. It is fine."⁹ Classify Mr. Hayes under the ethical schools of thought. Describe his credo.
3. Ivan Fernandez Anaya is a world-class runner who stopped short of crossing the finish line in a cross-country race in Burlada, Spain, because he realized that Abel Mutai, who had held a comfortable lead throughout the race, thought he had crossed the finish line but had stopped short (10 yards). His Kenyan not being as good as his Spanish, Ivan motioned and gestured to Abel to cross the finish line ahead of him. Abel caught on, finished first, and Ivan took second place. Ivan's coach said he "wasted an opportunity." Ivan responded, "I did what I had to do. I didn't deserve to win it." Into which categories would you place the ethical issues involved here?

Reading 1.5

On Rationalizing and Labeling: The Things We Do That Make Us Uncomfortable, but We Do Them Anyway

We often see ethical issues around us, and we understand ethics are important. But we are often reluctant to raise ethical issues, or sometimes we use strategies to avoid facing ethical issues. These strategies help salve our consciences. This section covers the strategies: rationalizations and avoidance techniques we use to avoid facing ethical issues.

Call It by a Different Name: "Way Harsh" Labels versus Warm Language

If we can attach a lovely label to what we are doing, we won't have to face the ethical issue. For example, some people, including U.S. Justice Department lawyers, refer to the downloading of music from the Internet as *copyright infringement*. However, many who download music assure us that it is really just the lovely practice of *peer-to-peer file sharing*. How can something that sounds so generous be an ethical issue? Yet there is an ethical issue because copying copyrighted music without permission is taking something that does not belong to you or taking unfair advantage.

When baseball star Roger Clemens was confronted with lying about steroid use, he denied it, and the language his spokesperson used to explain the statements was that Mr. Clemens "misremembered." When Connecticut Attorney General Richard Blumenthal was confronted with the fact that he had overstated his military service as being in Vietnam when he served

⁹"Hayes Turns Himself in for Using Wrong Ball, DQ'd from PGA Qualifier," *espn.com news*, November 23, 2008, <http://sports.espn.go.com/golf/news/story?id=3712372>. Accessed April 28, 2010.

in the Marine Reserves only in the United States, he said, “I misspoke.” When National Director of Intelligence, James Clapper, was confronted by journalist Andrea Mitchell on what appeared to be a false statement in a hearing before congress he explained, “I responded in what I thought was the most truthful, or least untruthful manner, by saying no.”¹⁰

The financial practice of juggling numbers in financial statements, sometimes referred to as *smoothing earnings*, *financing engineering*, or sometimes just *aggressive accounting* is less eloquently known as *cooking the books*. The latter description helps us see that we have an ethical issue in the category of telling the truth or not leaving a false impression. But if we call what we are doing *earnings management*, then we never have to face the ethical issue because we are doing something that is finance strategy, not an ethics issue. One investor, when asked what he thought about earnings management, said, “I don’t call it earnings management. I call it lying.” Referring back to the categories helps us to be sure we are facing the issue and not skirting it with a different name.

Rationalizing Dilemmas Away: “Everybody Else Does It”

We can feel very comfortable and not have to face an ethical issue if we simply assure ourselves, “Everybody else does it.” We use majority vote as our standard for ethics. Following Maria Sharapova’s failed drug test and her admission of taking meldonium, reports emerged that indicated 150 other players were taking the drug as well, thus building the defense of “Everybody does it.”

A day-to-day example is “Everybody speeds, and so I speed.” There remains the problem that speeding is still a breach of one of the ethical categories: following the rules. Although you may feel the speed limit is too low or unnecessary, your ethical obligation is to follow those speed limits unless and until you successfully persuade others to change the laws because of your valid points about speed limits. One tool that helps us overcome the easy slip into this rationalization is to define the set of *everybody*. Sometimes if we just ask for a list of “everybody,” our reasoning flaw becomes obvious. “There’s no list,” we might hear as a response; “We just know everyone does it.” With the speeding example, defining the set finds you in a group with some of the FBI’s most wanted criminals, such as Timothy McVeigh, the executed Oklahoma City bomber; Ted Bundy, the executed serial murderer; and Warren Jeffs, the polygamist convicted of being an accessory to rape, all of whom ran afoul of traffic laws while they were at large and were caught because they were stopped for what we do as well: minor traffic offenses.

When “everybody” is doing something, we say that the norm has shifted. Acceptable behavior has moved in a direction upward, in terms of the speed limit. However, it is important to understand that if something goes wrong while we are operating in our shifted norm, we may be surprised to learn that the shifted norm will not protect us. For example, if we have an accident while speeding within the accepted, shifted norm for the speed limit, that norm is not what standard we are held to. The rule, the actual speed limit, is applied to our conduct, and one of the causes of the accident can be listed as “excessive speed.” When something goes wrong in the shifted norm, hindsight allows the attribution of cause to our falling into the “everybody does it” trap.

Rationalizing Dilemmas Away: “If We Don’t Do It, Someone Else Will”

This rationalization is one businesspeople use as they face tough competition. They are saying, “Someone will do it anyway and make money, so why shouldn’t it be us?” For Halloween 1994, there were O. J. Simpson masks and plastic knives, and Nicole Brown

¹⁰Glenn Kessler, “Clapper’s ‘Least Untruthful’ Statement to the Senate,” *Washington Post*, June 13, 2013, https://www.washingtonpost.com/blogs/fact-checker/post/james-clappers-least-untruthful-statement-to-the-senate/2013/06/11/e50677a8-d2d8-11e2-a73e-826d299ff459_blog.html.

Simpson masks and costumes complete with slashes and bloodstains. When Nicole Simpson's family objected to this violation of the basic standard of decency, a costume shop owner commented that if he didn't sell the items, someone down the street would. Nothing about the marketing of the costumes was illegal, but the ethical issues surrounding profiting from the brutal murder of a young mother abound.

In the Phoenix, Arizona, area, summer storms can cause significant damage to roofs. Contractors who go to customer homes to give repair estimates are often asked by homeowners to add in other repairs in their insurance claim as "storm-caused damages" even though they were preexisting. The contractors often explain, "If I don't agree to do that for them, they will just hire another contractor who will put it in as an insurance claim." Although that may be true, it still does not allow the contractor to participate in insurance fraud.

Rationalizing Dilemmas Away: "That's the Way It Has Always Been Done"

When we hear, "That's the way it's always been done," our innovation feelers as well as our ethical radar should be up. We should be asking, "Is there a better way to do this?" Just as "Everybody does it" is not an ethical analysis, neither is relying on the past and its standards a process of ethical reasoning. Business practices are not always sound. For example, the field of corporate governance within business ethics has taught for years that a good board for a company has independent directors, that is, directors who are not employed by the company, under consulting contracts with the company, or related to officers of the company. Independent boards were good ethical practice, but many companies resisted because their boards had always been structured a certain way that they wanted to continue; they'd say, "This is the way our board has always looked." With the collapses of Enron, Adelphia, WorldCom, and HealthSouth and the scandal of substantial officer loans at Tyco, both Congress, through the Sarbanes-Oxley (SOX) Act of 2002 and the Securities and Exchange Commission (SEC), through follow-up regulations, now mandate an independent corporate board (see Reading 4.14 for a summary of the SOX and Dodd-Frank changes). When board members performed consulting services for their companies, there was a conflict of interest. But everybody was doing it, and it was the way corporations had always been governed. This typical and prevailing practice resulted in lax corporate boards and company collapses. Unquestioning adherence to a pattern or practice of behavior often indicates an underlying ethical dilemma.

Rationalizing Dilemmas Away: "We'll Wait until the Lawyers Tell Us It's Wrong"

Many people rely only on the law as their ethical standard, but that reliance means that they have resolved only the legal issue, not the ethical one. Lawyers are trained to provide only the parameters of the law. In many situations, they offer an opinion that is correct in that a company's conduct does not violate the law. Whether the conduct they have passed judgment on as legal is ethical is a different question. For example, a team of White House lawyers concluded in a memo in March 2003 that international law did not ban torture of prisoners in Iraq because they were technically not prisoners of war. However, when pictures of prisoner abuse at the Abu Ghraib prison in Iraq emerged, the reaction of the public and the world was very different. The ethical analysis, which went beyond interpretation of the law, was that the torture and abuse were wrong, regardless of their compliance with treaty standards. Following the abuse scandal, the U.S. government adopted new standards for interrogation of prisoners. Although the lawyers were perfectly correct in their legal analysis, that legal analysis did not cover the ethical breaches of interpersonal and organizational abuse.

Rationalizing Dilemmas Away: “It Doesn’t Really Hurt Anyone”

We often think that our ethical missteps are just small ones that don’t really affect anyone else. We are not thinking through the consequences of our actions when we rationalize rather than analyze ethical issues in this manner. The ethical mind is able to analyze dilemmas by thinking about the effect of their conduct on others; for example, going back to the rule of not taking more than \$3.00 of office supplies per quarter. What would happen if every employee took \$3.00 of office supplies per quarter? What would be the impact on their companies? What would be the impact on the economy? In ethical analysis, we are turning to Kant and other schools of thought and asking, “What if everyone behaved this way? What would the world be like?”

When we are the sole rubbernecks on the freeway, traffic remains unaffected. But if everyone rubbernecks, we have a traffic jam. All of us making poor ethical choices would cause significant harm. A man interviewed after he was arrested for defrauding insurance companies through staged auto accidents remarked, “It didn’t really hurt anyone. Insurance companies can afford it.” The second part of his statement is accurate. The insurance companies can afford it—but not without cost to someone else. Such fraud harms all of us because we must pay higher premiums to allow insurers to absorb the costs of investigating and paying for fraudulent claims.

Rationalizing Dilemmas Away: “The System Is Unfair”

Somehow an ethical breach doesn’t seem as bad if we feel we are doing it because we have been given an unfair hand. The professor is unreasonable and demanding, so why not buy a term paper from the Internet? Often touted by students as a justification for cheating on exams, this rationalization eases our consciences by telling us we are cheating only to make up for deficiencies in the system. Yet just one person cheating can send ripples through an entire system. The credibility of grades and the institution come into question as students obtain grades through means beyond the system’s standards. If all students cheat, then the grading system is meaningless. We have no way to determine which students truly have the knowledge base and skills and which ones simply cheated to attain their standing.

Rationalizing Dilemmas Away: “It’s a Gray Area”

One of the most popular rationalizations of recent years has been to claim, “Well, business isn’t all black and white. There’s a great deal of gray.” Sometimes the extent of ethical analysis in a business situation is to merely state, “It’s a gray area,” and the response from the group holding the discussion is “Fine! So long as we’re in the gray area, we’re moving on.” In an interview with *Sports Illustrated*, race car driver Danica Patrick was asked, “If you could take a performance-enhancing drug and not get caught, would you do it if it allowed you to win Indy?” She responded, “Yeah, it would be like finding a gray area. In motorsports we work in the gray areas a lot. You’re trying to find where the holes are in the rule book.”¹¹

However, would those involved in their gray areas change their actions and decisions with the benefit of hindsight or even just more analysis of the issue? There will always be a gray area, but it may be a short-lived strategy. The sophisticated securities that were based on pools of mortgages were easily created, sold, and resold in an unregulated area of the market. But when the mortgages went south, so also did these investments and the

¹¹Dan Patrick, “Just My Type,” *Sports Illustrated*, June 2, 2009, from http://sportsillustrated.cnn.com/2009/racing/06/02/Danica_PED/index.html. Accessed July 10, 2010. Ms. Patrick has subsequently said she was only kidding in her response.

companies that had based their strategies for growth on these gray areas (Lehman Brothers and Bear Stearns), and some are struggling to recover (Citigroup). Ethical analysis demands more than being satisfied with, “It’s a gray area.” Does everyone believe it is gray? Why do I want it to be gray? What if the gray area ends?

Rationalizing Dilemmas Away: “I Was Just Following Orders”

In many criminal trials and disputes over responsibility and liability, many managers will disclaim their responsibility by stating, “I was just following orders.” In fact, when Lehman Brothers collapsed in 2008 because of its substantial holdings in high-risk mortgage pool instruments, many of its fund managers, who were aware of the risks, said, “I have blood on my hands.” But then they explained the reason they kept selling the toxic securities even though they were aware of the problems: “They made me do it; I don’t have to examine what I did.”¹² Following orders does not excuse us from responsibility, both legally and ethically, for the financial harm to those who purchased those toxic securities. Judges who preside over the criminal trials of war criminals often remind defendants that an order is not necessarily legal or moral. Good ethical analysis requires us to question or depart from orders when others will be harmed or wronged.

Rationalizing Dilemmas Away: “We All Don’t Share the Same Ethics”

This rationalization is used quite frequently in companies with international operations. We often hear, “Well, this is culturally acceptable in other countries.” We need a bit more depth and a great deal more analysis if this rationalization creeps into our discussions. Name one culture where individuals are known to claim, “There is nothing I like better than having a good old-fashioned fraud perpetrated against me,” or “I really enjoy being physically abused at work.” This rationalization is a failure to acknowledge that there are some common values that demand universal application and consideration as we grapple with our decisions and behaviors around the world. You will never hear anyone, regardless of cultural differences, who says, “Well, we here in [location] readily accept being swindled.” This rationalization does not take a hard look at the conduct and whether there are indeed some universal values.

Discussion Questions

1. A recent *USA Today* survey found that 64% of patients in hospitals took towels, linens, and other items home with them.¹³ Give a list of rationalizations these patients and their families might use that give them comfort in taking the items.
2. Commercial truckers keep track of their hours on the road through paper logs. The logs were mandated in order to keep track of the federal maximums for commercial truck drivers. The law places a limit of 70 hours of driving in any eight-day period, followed by a mandated 34-hour rest period. The American Trucking Association indicates that the paper logs allow truckers to drive illegally, that is, beyond the limits, something that creates a safety hazard. What rationalizations would the drivers be using for their violations of the safety standards?
3. A man has developed a license plate that cannot be photographed by the red light and speeding cameras. When asked how he felt about facilitating drivers in breaking the law, he replied, “I am not the one with my foot to the gas pedal. They are. I make a product they can use.” What rationalization(s) is he using?
4. A parent has instructed his young son to not mention his Uncle Ted’s odd shoes and clothing: “If Uncle Ted asks you how you like his clothes or shoes, just tell him they are very nice.” His son said, “But that’s not the truth, Dad.” The father’s response was, “It’s a white lie, and it doesn’t really hurt anyone.” Evaluate the father’s ethical posture.

¹²Louise Story and Thomas Landon, Jr., “Life after Lehman: Workers Move On,” *New York Times*, September 14, 2009, p. BU1.

¹³“Theft a Problem at Hospitals,” *USA Today*, March 5, 2010, p. 1A.

Case 1.6

“They Made Me Do It”: Following Orders and Legalities: Volkswagen and the Fake Emissions Test

The EPA announced allegations against Volkswagen AG (VW) of using a “defeat device” in 482,000 of its cars since 2008 in order to make the cars test clean during emissions testing. The EPA alleged that the company used software that activated the full emissions controls only during testing, but that the rest of the time the cars were running without the emissions controls required under the Clean Air Act. The effect of the defeat devices was that the cars emit 40 times the amount of nitrogen oxide permitted under the Clean Air Act. Several research organizations uncovered the alleged devices in their testing and referred the information to the EPA.

Volkswagen admitted that 11 million cars had software installed that allowed emissions control systems to work only during emissions tests. When the vehicles were being driven on the highways and byways, they were emitting the pollutants of diesel-fueled cars. Volkswagen’s CEO resigned, and there were numerous new appointments and realignment that continued into 2016. The head of Volkswagen North America, only in his position for three weeks, resigned.¹⁴ Initially, Volkswagen attributed the emissions issues to “a couple of software engineers” who have been fired with this description, “[Deception] was not a corporate decision; this was something individuals did.”¹⁵

However, as more details emerged, the story of the emissions software changed substantially. Volkswagen’s goal of developing a fuel-efficient diesel engine proved to be elusive. Following years of research, the engineers concluded in 2008 that the two goals were incompatible and began installing the illegal software.¹⁶ In addition, the oft-recited VW goal was to become the #1 car manufacturer in the world by 2018. For example, in 2013, VW’s then-CEO Martin Winterkorn told a group of journalists listening to the goal of becoming the #1 car company in the world, “VW won’t cut back. We will stay in the fast lane.”¹⁷ Another VW officer acknowledged in his testimony before Congress that the cheating may have been triggered by “pressure in the system to get resolutions and also in conjunction with cost pressure as well.”¹⁸ A former car company engineer observed, “[A] declared market penetration goal several times the current status can cloud judgments.”¹⁹ As a result, the fear of failure found engineers and other employees willing to do things that were dishonest and deceptive in order to meet the goals.²⁰ German prosecutors have named Mr. Winterkorn as a suspect in their fraud investigation and have alleged that the former CEO may have known about the emissions issue earlier than his public statements have disclosed.²¹

¹⁴Nathan Bomey, “New Volkswagen North America Chief Winfried Vahland Out after Three Weeks,” *USA Today*, October 14, 2015, <http://www.usatoday.com/story/money/cars/2015/10/14/new-volkswagen-north-america-chief-winfried-vahland-out-after-three-weeks/73916418/>.

¹⁵Mike Spector and Amy Harder, “VW’s U.S. Chief Apologizes, Says Engineers at Fault,” *Wall Street Journal*, October 9, 2015, p. B1.

¹⁶Jack Ewing, “VW Engine-Rigging Scheme Said to Have Begun in 2008,” *New York Times*, October 5, 2015, p. B1.

¹⁷“Report of the Special Examination of Fannie Mae,” Office of Federal Housing Enterprise Oversight (May 2006), available at: <http://online.wsj.com/public/resources/documents/ofheo20060523.pdf>.

¹⁸*Id.*

¹⁹Jayne O’Donnell, “Cheating Devices Not Likely Used by Other Carmakers,” *USA Today*, September 22, 2015, p. 1B.

²⁰Jack Ewing and Graham Bowley, “Volkswagen Sowed Seeds of Forceful Ambition,” *New York Times*, December 14, 2015, p. B1.

²¹William Boston, “Former CEO Named in VW Probe,” *Wall Street Journal*, January 28–29, 2017, p. B3.

Volkswagen's internal investigation revealed that it had "yes-men" who lacked the courage to speak up about issues and problems because of the driven culture. Though the deception was wrong, the employees were responding to management demands that left them with the impossible task of meeting emission goals and deadlines with no legal way to do so.²² In conducting an internal investigation of how the "defeat devices" came to be installed, Volkswagen offered amnesty to any employees who came forward with information.²³ Employees who came forward were told they have "nothing to fear from the company in the way of repercussions on the job as being fired or held liable for damages."²⁴

Volkswagen entered a guilty plea to criminal charges on the emissions falsification and agreed to pay a \$4.3 billion fine.²⁵ Volkswagen has also agreed to a \$28 billion civil settlement for those who purchased the emissions-deceptive cars. The U.S. government has indicted seven Volkswagen executives, several of whom reported directly to Mr. Winterkorn.²⁶

Discussion Questions

1. Explain what leads employees to believe that they must follow orders for their companies.
2. What consequences can you foresee from the employees' actions?
3. What did Volkswagen not make clear about following orders?

Reading 1.7

The Slippery Slope, the Blurred Lines, and How We Never Do Just One Thing: The University of North Carolina and How Do I Know When an Ethical Lapse Begins?

In Scott Smith's book *A Simple Plan*, the lead character, Hank; his brother, Jacob; and a friend, Lou come upon a small plane buried in the rural snowdrifts of Ohio. Upon opening the plane's door, they find the decomposing body of the pilot and a duffel bag full of \$100 bills in \$10,000-dollar packets—\$3 million total. Initially, Hank tells his brother and Lou not to touch the money so that the police can conduct a proper investigation, but then a plan is hatched. Lou and Jacob want to keep one packet of the money and ask Hank what's wrong with doing that. Hank scolds them and says, "For starters, it's stealing." Hank reminds them that with so much money involved, someone would be looking for it and would know that they had taken a packet. Hank also reminds them that even if he didn't take a packet, he would be an accomplice if Jacob and Lou did.

Lou then proposes a solution: take it all. Hank wisely warns the two that they could not spend it because everyone in their small town would know. So, Lou proposes a "simple plan." They will sit on the money for a while, and when the investigation is over and things have cooled down, they can move away and live on their shares of the money. Again, Hank

²²William Boston, Hendrik Varnholt, and Sarah Sloat, "VW Says 'Culture' Flaw Led to Crisis," *Wall Street Journal*, December 11, 2015, p. B1.

²³Jack Ewing and Julie Creswell, "Seeking Information, VW Offers Amnesty to Employees," *New York Times*, November 13, 2015, p. B1.

²⁴William Boston, "VW Seeks Whistleblowers," *Wall Street Journal*, November 13, 2015, p. B3.

²⁵Jack Ewing and Hiroko Tabuchi, "Volkswagen Set to Plead Guilty and to Pay \$4.3 Billion in Deal," *New York Times*, January 11, 2017, p. B1.

²⁶William Boston, "Former CEO Named in VW Probe," *Wall Street Journal*, January 28–29, 2017, p. B3.

reminds them that it is stealing. But Jacob calls it by a different name: lost treasure. Hank succumbs. Such an easy thing, a simple plan.

But the initial decision was flawed. Whatever its soft label, their decision to walk away with the duffel bag was indeed taking something that did not belong to them. From there, the characters begin a game of whack-a-mole. With each twist and turn, they have to cross another line to cover up their seizure of the duffel bag. There is a lie to the sheriff and the problem of a neighbor seeing them near the plane, and more problems come at them each day. Each new problem requires a resolution that involves more dastardly choices. The characters keep slipping, eventually committing murder.

Once you step outside those ethical norms, you do keep going. The proverbial slope becomes more slippery. Professor Dan Ariely of Duke University found that folks who knowingly wore fake designer sunglasses were more than twice as likely to cheat on an unrelated task given to them than those who were not wearing the fake sunglasses.²⁷ Once we have made peace with trademark infringement, we are willing to cross other lines. We just get comfortable with each step.

In a profile of the cheating scandal involving bogus courses at the University of North Carolina, also known as UNC, a *Sports Illustrated* profile described UNC's special admits committee, a process used by many universities to admit students with talent in art or music but who did not have the academic credentials. At UNC, of the 32 special admits allotted each year, only a dozen were for the artistically gifted with the remainder going to athletes. A vice chancellor explained how the special admits committee process deteriorated, "Every time you thought you had seen a too-marginal case, they'd give you a new excuse: This guy can make it."²⁸ A professor who sat on the committee and voted in the "no" minority on many of the athletes expressed, "To this day I regret that I didn't blow the whistle right then and there."²⁹ His regret comes because once the committee made those decisions, they had athletes they needed who simply could not perform academically. They had to find a way to keep them academically qualified. While many strategies were used, the university eventually devolved into creating nonexistent courses in which the student-athletes earned passing grades for courses that never met and had no content. No one woke up one day at UNC and said, "Fake courses! That's the way to get and keep talented athletes!" There was a slow progression of moving lines and increasing tolerance until the NCAA investigation that resulted in headlines, sanctions, and a complete revamping of standards and structures at the university.

Discussion Questions

1. Marilee Jones, the former dean of admissions of the Massachusetts Institute of Technology (MIT), resigned after 28 years as an administrator in the admissions office. The dean for undergraduate education received information questioning Ms. Jones's academic credentials. Her résumé, used when she was hired by MIT, indicated that she had degrees from Albany Medical College, Union College, and Rensselaer Polytechnic Institute. In fact, she had no degrees from any of these schools or from anywhere else. She had attended Rensselaer Polytechnic as a part-time nonmatriculated student during the 1974–1975 school year, but the other institutions had no record of any attendance at their schools.

When Ms. Jones arrived at MIT for her entry-level position in 1979, a degree was probably not required. However, she did progress through the ranks of the admissions office, and in 1997, she was appointed dean of admissions. She later explained that she'd wanted to disclose her lack of degrees at that point but that she had gone on for so long that she did not know how to come clean with the truth. Point to the initial decision, why it was flawed, why Ms. Jones made that decision, and what had to be done after that as a result of that choice.

2. Can you list some lines for your credo that you can glean from *A Simple Plan* and Ms. Jones's experience?

²⁷Dan Ariely home page, <http://web.mit.edu/ariely/www/MIT>. Accessed July 20, 2010.

²⁸S. L. Price, "How North Carolina Lost Its Way," *Sports Illustrated*, March 18, 2015, pp. 66, 67.

²⁹*Id.*

Case 1.8

Blue Bell Ice Cream and Listeria: The Pressures of Success

In February 2015, the South Carolina Department of Health and Environmental Control, in doing routine sampling, found *Listeria* in Blue Bell Chocolate Chip Country Cookie Sandwiches and Great Divide Bars. Texas health officials began testing at Blue Bell's Brenham, Texas, facilities and found *Listeria* in the same products as well as others. The Kansas Department of Health and Environment then found *Listeria* in institutional services Blue Bell cups of chocolate ice cream.³⁰ Blue Bell had been issuing recalls of the specific products tested, but when Oklahoma found *Listeria* in products from that plant, Blue Bell voluntarily recalled all of its products on the market. Ten people were hospitalized with *Listeria* and there were three deaths that resulted.³¹

The FDA opened an investigation of Blue Bell to determine what executives knew about the presence of *Listeria* in its plants.³² Blue Bell had recalled all of its products in 23 states in April 2015 and suspended all operations until August 2015. Blue Bell determined, after an internal investigation, that its processes for cleaning after finding *Listeria* in its plants were not adequate.

In addition, the Justice Department followed its policy of opening investigations in food safety cases when the product contamination results in deaths. The focus of these investigations is whether managers and leaders in the companies were aware of sloppy processes, findings of contamination, and so on. For example, there are allegations that Blue Bell did not follow practices recommended by both government regulators and industry groups, something that resulted in the *Listeria* problems. *Fortune* magazine reported that Blue Bell found *Listeria* at the plant in 2013 but did not take the appropriate steps to correct the problem nor was there any disclosure about the issue. "The FDA released inspection reports showing that the company had found the bacteria in its Oklahoma plant, on surfaces such as floors and catwalks, on 17 occasions beginning in March 2013."³³ What experts refer to as "recall creep" will be a focus of the investigation: What did they know and when did they know it? "Recall creep" occurs when companies begin with small recalls and assure the public of very limited numbers of products being affected. However, as more *Listeria* was found, Blue Bell had to increase the recall from what was initially just an ice cream treat and its single-serving cups to all of its products.

The public inspection reports³⁴ revealed the following:

- In February 2015, at Brenham, Texas, plant, swabbing tests revealed *Listeria* on freezer tunnel, outside the freezer drain, and on several food contact surfaces, and it was found that "plant not constructed in a manner as to prevent condensate from contaminating food and food-contact surfaces."
- In 2014, issues such as rust on doorways, not closing lids on various food containers, and no towels available at handwash sinks were detected.
- In 2013, at the Sylacauga, Alabama, plant, the condensation problem arose as well as the failure to put lids on fruit and other ingredients used to make the ice cream.

³⁰The Centers for Disease Control and Prevention, "Multistate Outbreak of Listeriosis Linked to Blue Bell Creameries Products," February–June 2015, <http://www.cdc.gov/listeria/outbreaks/ice-cream-03-15/>.

³¹*Id.*

³²<http://www.fda.gov/Food/RecallsOutbreaksEmergencies/Outbreaks/ucm438104.htm>.

³³Peter Elkind, "How the Ice Cream Maker Blue Bell Blew It," *Fortune*, September 25, 2015.

³⁴You can read all of the reports for state and federal agencies at the FDA site: <http://www.fda.gov/AboutFDA/CentersOffices/OfficeofGlobalRegulatoryOperationsandPolicy/ORA/ORAElectronicReadingRoom/ucm446102.htm>.

- In 2013, at the Sylacauga, Alabama, plant, the inspector found dented elbows in the milk line and a failure to cover fruit and other ice cream ingredients.
- In September 18, 2012, "Crickets shall be removed, eradicated from milk storage rooms & evaporator room."
- In 2011, at the Broken Arrow, Oklahoma, facility, there was no soap in the container where the employees are to wash their hands.
- In 2010, at the Brenham plant, there was the same condensation problem on the ice cream sandwich production line as well as problems with employees not wearing gloves and not washing their hands, sugar bags with holes in them, spider webs near the confectioners' sugar, fans used to cool cookies were not cleaned.
- In 2009, at the Brenham plant, the inspection found that, "All reasonable precautions are not taken to ensure that production procedures do not contribute contamination from any source." The findings include condensation from steel pipes dropping into ice cream prior to packaging.

Discussion Questions

1. Explain why the company was struggling to perform maintenance.
2. What do you think went through employees' minds at these facilities?
3. What kinds of communications would help employees and management in these production issues?

Resolving Ethical Dilemmas and Personal Introspection

Reading 1.9

Some Simple Tests for Resolving Ethical Dilemmas

Nearly every business professor and philosopher have weighed in with models and tests that can be used for resolving ethical issues. The following sections offer summaries of the thoughts and models of others in the field of ethics.

Management Guru: Dr. Peter Drucker

An internationally known management expert, Dr. Peter Drucker offers the following as an overview for all ethical dilemmas: *primum non nocere*, which in translation means “Above all do no harm.” Adapted from the motto of the medical profession, Dr. Drucker’s simple ethical test in a short phrase encourages us to make decisions that do not harm others. This test would keep us from releasing a product that had a defect that could cause injury. This test would have us be fair and decent in the working conditions we provide for workers in other countries. This test would also prevent us from not disclosing relevant information during contract negotiations. Johnson & Johnson has used Dr. Drucker’s simple approach as the core of its business credo (see Case 8.6).

Laura Nash: Harvard Divinity School Meets Business

Ethicist Laura Nash of the Harvard Divinity School has one of the more detailed decision-making models, with 12 questions to be asked in evaluating an ethical dilemma:

1. **Have you defined the problem accurately?** For example, philosophical questions are often phrased as follows: Would you steal a loaf of bread if you were starving? The problem might be better defined by asking, “Is there a way other than stealing to take care of my hunger?” The rephrasing of the question helps us think in terms of honoring our values rather than rationalizing to justify taking property from another.
2. **How would you define the problem if you stood on the other side of the fence?** This question asks us to live by the same rules that we apply to others. For example, Donald Trump once explained that when his employees develop a construction proposal for a customer for a price of \$75 million, he simply adds on \$50 to \$60 million to the price and tells the customer the price is \$125 million. Trump’s firm then builds it for \$100 million and is praised by the client for bringing the project under price. Mr. Trump explains that the customer thinks he did a great job when he really did not. If Trump were on the other side, would he feel the same way about this method he uses for “managing customer expectations”? And note the use of the soft label here. This question forces us to look at our standards in a more universal way.
3. **How did this situation occur in the first place?** This question helps us in the future. We use it to avoid being placed in the same predicament again. For example, suppose that an employee has asked his supervisor for a letter of recommendation for a new job the employee might get if the references are good. The

supervisor has always had difficulty with the employee, but has found him to be tolerable, has kept him on at the company, and has never really discussed any of his performance issues with him or even put those concerns in his annual evaluation. Should he make things up for the letter? Should he refuse to write the letter? Should he say innocuous things in the letter such as “He was always on time for work.” This reluctant supervisor is in this situation because he has never been honest and candid with the employee. The employee is not aware that the supervisor has had any problems or issues with him because the fact that he has asked for the reference shows that there has not been forthright communication.

4. **To whom and what do you give your loyalties as a person and as a member of the corporation?** Suppose that you know that your manager has submitted false travel invoices to the company. The expenses are false, padded, and unnecessary. No one in the accounting or audit department has caught on to his scheme. To say something would mean that you are loyal to your company (the corporation) but that you have sacrificed your loyalty to your manager.
5. **What is your intention in making this decision?** Often we offer a different public reason for what we are doing as a means of avoiding examination of the real issue. An officer of a company may say that “liberal” accounting interpretations help the company, smooth out earnings, and keep the share price stable. But her real intention may be to reach the financial and numbers goals that allow her to earn her bonus.
6. **How does this intention compare with the likely results?** Continuing with the previous example, the stated intention of increasing or maintaining shareholder value may work for a time, but eventually, the officer and the company will need to face the truth about the company’s real financial picture. And the officer’s real intention will be foiled as well, because under Sarbanes-Oxley, officers who earn bonuses based on false financial statements must repay those bonuses and face criminal penalties as well.
7. **Whom could your decision or action injure?** Under this question, think not only of the direct harm that can result from a poor ethical choice but all the ripple effects as well. For example, GM lawyers entered into confidential settlements with plaintiff car owners in order to avoid disclosure of documents and depositions of various employees, including officers and engineers.³⁵

As the documents continue to emerge through federal court filings in the litigation over the defective cars, the decision-making of GM is clear from memos and e-mails. For example, Jim Federico, a top engineer who left GM shortly after the problems became public, was scheduled to be deposed by one of the plaintiff’s lawyers. Mr. Federico had been in charge of GM’s internal investigation into the switch and ignition problems. However, one day before his scheduled deposition, the lawyer settled the case for his client, a settlement that included a confidentiality agreement. GM settled the case after having gone through two years of discovery. That settlement, entered into in July 2013, was the fifth of a series of settlements with confidentiality. The plaintiffs in those cases received payments, but the promise to keep silent about what they had discovered, something lawyers are entitled to do legally; postponed the public disclosure of the problems, with additional accidents and deaths resulting until the recall, almost two years later. Their clients benefited, but other car owners had information withheld and experienced harm.

8. **Can you engage the affected parties in a discussion of the problem before you make your decision?** If you are considering “cheating” on a spouse or significant other, you face an ethical dilemma. The fact that you could not discuss what you are about to do with a person who has been very close to you and whom you would betray indicates that your secret decision and action cross an ethical line.
9. **Are you confident that your position will be as valid over a long period of time as it seems now?** Sometimes cheating on an exam or purchasing a paper on the Internet seems to be an expedient way of solving time pressures, financial worries about going to school, or even just the concerns about finishing a semester or a degree. However, this question asks you to think about this small decision over the time frame of your life. When you look back, how will you feel about this decision? Or what if your friend, roommate, or even someone who happens to see you cheat carries that knowledge of your ethical indiscretion with him or her? You always have the worry that he or she will know of your misstep and perhaps would be involved in your future in such a way that this knowledge could affect your potential. For example, what if someone who knows that you cheated works for a company you very much want to work for? Suppose further that the person interviewing you sees that you went to the same school as the employee who currently works for the company. One question to that employee might be “Say, I see you went to school at Western U. I interviewed a Josh Blake from Western U. He wants to work with us. Do you know him? And what do you think of him?” Think ahead to the person’s possible response: “Yes, I knew him at school. He cheated.” Interestingly, this is what happened to Joseph Jett, a Wall Street investment banker who was at the heart of a trading scandal at Kidder Peabody (see Reading 4.9 for more details). When his credentials, a Harvard MBA, were reported, someone from the school emerged to let the world know that although he had finished

³⁵Bill Vlasic, “Inquiry by G.M. Is Said to Focus on Its Lawyers,” *New York Times*, May 18, 2014, p. A1.

his coursework at Harvard, he did not have his degree because he had not paid some fees. The fees may have been unpaid parking tickets or perhaps library fines. What seemed like an expedient budget decision at the time he was a graduate student turned out to be something that harmed Mr. Jett's credibility when he was most in need of a good reputation. Over the long term, your decision might not seem as practical as it did during the pressure crunch of college.

10. **Could you disclose without qualms your decision or action to your boss, your CEO, the board of directors, your family, or society as a whole?** This question asks you to evaluate your conduct as if it were being reviewed by those who run your company. If you are thinking of padding your expense account, you will realize that you could not talk about your actions with these people because you are betraying their trust. This question also has a second part to it: Could you tell your family? Sometimes we rationalize our way through business conduct or personal conduct but know that if we had to face our families, we would realize we had landed on the wrong side of the ethical decision. In the movie *While You Were Sleeping*, Peter is a wealthy lawyer who has fallen away from his parents' simple values. When his mother learns that Peter is engaged to marry an already married woman, she exclaims, "You proposed to a married woman?" Peter looks very sheepish. What seemed to be a fine decision in the confines of his social life suddenly looked different when his family was told.
11. **What is the symbolic potential of your action if understood? If misunderstood?** A good illustration for application of this question is in conflict-of-interest questions. For example, Barbara Walters, prior to her retirement from regular network news reporter for ABC News, was a cohost of the ABC prime-time news show *20/20*. In December 1996, Ms. Walters interviewed British composer Andrew Lloyd Webber (now Sir Andrew Lloyd Webber), and the flattering interview aired the same month as a segment on *20/20*, just prior to the opening of Sir Webber's Broadway production of *Sunset Boulevard*.
Two months after the interview aired, a report in the *New York Post* revealed that Ms. Walters had invested \$100,000 in Sir Webber's just-premiered *Sunset Boulevard*. ABC News responded that had it known of the investment, it would have disclosed it before the interview aired. ABC does have a policy on conflicts that permits correspondents to cover "businesses in which they have a minority interest."
Sir Webber's *Sunset* cost \$10 million to produce and investors received back 85% of their initial investment. Ms. Walters' interest in *Sunset* was 1%.
Applying this question, even if everyone understands Ms. Walters' good intentions, the appearance is that of a conflict between her role as an investor in Webber's production and that of her role as an objective reporter, and regardless of its size the public is likely to perceive that the favorable journalism piece was done to pump up the production and hence ensure a return on her investment.
12. **Under what conditions would you allow exceptions to your stand?** You may have a strong value of always being on time for class, events, meetings, and appointments. You have adopted an absolute value on not being tardy. However, sometimes other values conflict. For example, suppose that your friend became ill and needed someone to drive her to the hospital, making you late for a meeting. You would be comfortable with that variance because your exceptions relate to the well-being of others. Likewise, you would drive more slowly and carefully in a storm to get to your meeting, something that will make you late. But, again, your exception is the safety and well-being of others. You won't be late because you stopped to talk or you didn't leave your apartment on time, but you are comfortable being late, an exception to your rule on punctuality, when safety and well-being are at stake.

These questions help us gain perspective and various views on the issue before us, and at least two of the questions focus on the past—what brought us to the dilemma and how we might avoid such dilemmas when we have caused them to arise.

A Minister and a One-Minute Manager Do Ethics: Blanchard and Peale

The late Dr. Norman Vincent Peale, an internationally known minister, and management expert Kenneth Blanchard, author of *The One Minute Manager*, offer three questions that managers should ponder in resolving ethical dilemmas: Is it legal? Is it balanced? How does it make me feel?

If the answer to the first question, "Is it legal?" is no, you might want to stop there. Although conscientious objectors are certainly needed in the world, trying out those philosophical battles with the SEC and Internal Revenue Service (IRS) might not be as effective as the results achieved by Dr. Martin Luther King Jr. or Mahatma Gandhi. There is a place for these moral battles, but your role as an agent of a business might not be an

optimum place to exercise the Divine Command Theory. In early 2010, four individuals from the company Wise Guys, Inc., were indicted for wire fraud as well as gaining unauthorized access to computers for their cornering of the ticket markets for the 2006 Rose Bowl, the 2007 MLB playoffs, the play *Wicked*, and concerts for Bruce Springsteen and Hannah Montana.³⁶ The four had hired Bulgarian programmers to circumvent the controls placed on ticket sites to require entry of data prior to being able to purchase tickets. The result was that the four cornered the primary and, consequently, secondary ticket markets for the events noted. Regardless of how strongly we may feel about having access to tickets, the four are accused of violating the laws by circumventing computer access controls.

Answering the second Blanchard and Peale question, “Is it balanced?” requires a manager to step back and view a problem from other perspectives—those of other parties, owners, shareholders, or the community. For example, an M&M/Mars cacao buyer was able to secure a very low price on cacao for his company because of pending government takeovers and political disruption. M&M/Mars officers decided to pay more for the cacao than the negotiated figure. Their reason was that some day their company would not have the upper hand, and then they would want to be treated fairly when the price became the seller’s choice.

Answering “How does it make me feel?” requires a manager to do a self-examination of his or her comfort level with a decision. Some decisions, though they may be legal and may appear balanced, can still make a manager uncomfortable. For example, many managers feel uncomfortable about the “management” of earnings when inventory and shipments are controlled to maximize bonuses or to produce a particularly good result for a quarter. Although they’ve done nothing illegal, managers who engage in such practices often suffer such physical effects as insomnia and appetite problems.

The Oracle of Omaha: Warren Buffett’s Front-Page-of-the-Newspaper Test

This very simple ethical model requires only that a decision maker envision how a reporter would describe a decision or action on the front page of a local or national newspaper. For example, with regard to the NBC News report on the sidesaddle gas tanks in GM pickup trucks, the *USA Today* headline read, “GM Suit Attacks NBC Report: Says Show Faked Fiery Truck Crash.” Would NBC have made the same decisions about its staging of the truck crash if that headline had been foreseen?

When Salomon Brothers’ illegal cornering of the U.S. government’s bond market was revealed, the *BusinessWeek* headline read, “How Bad Will It Get?”; nearly two years later, a follow-up story on Salomon’s crisis strategy was headlined, “The Bomb Shelter That Salomon Built.” During the aftermath of the bond market scandal, the interim chairman of Salomon, Warren Buffett, told employees, “Contemplating any business act, an employee should ask himself whether he would be willing to see it immediately described by an informed and critical reporter on the front page of his local paper, there to be read by his spouse, children, and friends. At Salomon we simply want no part of any activities that pass legal tests but that we, as citizens, would find offensive.”

A manager of a company came up with a slight variation of the newspaper test by having all of his employees begin every meeting and discussion by asking, “What if the cameras were running? Would we be proud of this discussion or would we be worried?” The purpose of the “What if the cameras were rolling?” test is to have you step back from the business setting in which decisions are made and view the issue and choices from the perspective of an objective outsider.

³⁶Joel Stonington, “Four Charged in Bid to Buy, Resell Tickets,” *Wall Street Journal*, March 2, 2010, <http://online.wsj.com/article/SB10001424052748703943504575095622582020594.html>.