

LAW & ETHICS IN THE BUSINESS ENVIRONMENT 9e

Instructor's Manual

CHAPTER ONE

LAW, ETHICS, & BUSINESS: AN INTRODUCTION

MAIN CONCEPTS

Freedom versus responsibility: A duty to rescue

Justifying the “no duty to rescue” rule

Ethical decision making: a toolkit

Corporate governance

Corporations, public policy, and money

Corporate social responsibility

INTRODUCTORY TIPS

Try this hypothetical: If you were walking down the street and saw an infant lying face down in a puddle of water, flailing its little arms and clearly about to drown, would you have to rescue her? Students are invariably surprised and disgusted to learn that bystanders have no legal duty to help others in emergency situations, even when it would be easy for them to do so without risk. Discussion from here could follow two tracks:

(1) Noting the divergence between law and ethics, between what is required by the law and what most people would think is the right thing to do.

(2) Asking *why* the legal requirement is so minimal. (Traditional distinction between “misfeasance v. nonfeasance;” high value placed upon allowing maximum free choice to each person; the difficulty of implementing a rescue requirement.) This should lead into one of the themes of this chapter (and of the book): individual freedom vs. duty to others; individual independence vs. our interdependence within families, corporations, and communities.

Consider also the economic power of large corporations. For example, as noted in the text, Royal Dutch/Shell, Exxon Mobil, Walmart, Apple and BP each generated more income in 2015 than countries such as Belgium, Switzerland, Norway, and Russia. Discuss the effect that such economic power has on citizens of this country and citizens of other countries in which multinational corporations operate. What about political contributions? Do large corporations have too much power? What about large-scale advertising and the power of corporations to sway public opinion?

Another issue for discussion would involve the duty of large multinational corporations to citizens of countries in which they operate. For example, if corporations are reaping large profits because of the availability of cheap labor in third world countries, should the corporations recognize a duty to improve conditions there or should the corporations recognize a duty only to stockholders? What does it mean to humanize capitalism? How can multinational corporations avoid exploiting people, communities, and the environment? Discuss the need for adequate safety measures and environmental protection even in countries where laws on such matters may be lax.

FREEDOM VERSUS RESPONSIBILITY: A DUTY TO RESCUE?

The chapter questions that immediately follow the *Yania* casebook materials require critical engagement with the readings. Students will present with varying experiences with the law and different skill sets to synthesize the content for their formulating responses. A “case” brief is a tool familiar to individuals studying law --- undergraduate students, law students, lawyers, and the judiciary. Appendix A includes an illustration brief of *Yania v. Bigan*. For further guidance, an excellent resource of “How to Brief a Case” can be found at John Jay College of Criminal Justice, Lloyd Sealy Library site, <http://www.lib.jjay.cuny.edu/research/brief.html>. These materials supplement Appendix A and offer further information, sample briefs and identify the relationship between case briefing and legal writing.

***Yania v. Bigan*, Case Questions, p. 4**

1. What happened in this case? If Yania couldn’t swim, then why did he jump?

Yania was on his friend Bigan’s property and was asked to help with the pump. Yania jumped into a large ditch on the property that was filled with water and drowned. Bigan made no effort to save Yania. Yania’s widow apparently contends that Bigan dared (or convinced) Yania to jump across the trench, and Yania must have decided to try, even though he couldn’t swim. Explain why summary judgment standards require the court to consider only the widow’s version of the facts. The judge determined that even if everything the widow alleged in the complaint were true, there was no basis upon which she could win and that the case should, therefore, be dismissed without a trial.

2. Identify each of the arguments made by Yania's widow. For each, explain how the judge dealt with it.

- The widow first argues that Bigan caused Yania to jump by either persuasion or by teasing and taunting him. The judge explains that although a child or a mentally deficient person might have had their will overcome by an adult, “an adult in full possession of his mental faculties” should not have been induced to jump in such a dangerous situation.

- The widow next argues that Bigan, as landowner, had an obligation to warn Yania of any dangerous conditions on his property. The facts established that Yania was a coal strip-mine operator and would have been aware of dangers in the water-filled trench. Therefore, even if Bigan had a duty to warn, Yania did not need a warning because he was aware of the danger. This is an opportunity to explain to the students that landowners owe a duty of care to those on their property in most states according to an ascending series of categories, from trespasser to licensee (Yania here) to invitee. Additionally, an employee who is injured on the job generally receives workers' compensation payments even if the employee's own negligence caused the injury. Accordingly, if Yania had been an employee of Bigan, compensation would have been available.
- The widow also argues that Bigan owed a duty to rescue Yania. Yania chose to jump into the trench ("he voluntarily placed himself in the way of danger"). Although Bigan might have a moral obligation to go to Yania's aid, he had no legal obligation to do so. It may be worth asking students why Bigan did not jump in to save Yania. Could it be that there was potential risk of harm or death to Bigan? Could it be that the death occurred so quickly that there was no opportunity to save Yania?

3. According to the judge, Bigan would have been liable in this case under certain circumstances that did not apply here. What are those circumstances?

Bigan would have been liable if Yania was a child or mentally deficient, if he had failed to warn Yania of a danger of which Yania was unaware, or if he did something that put Yania in danger.

4. Suppose you could revise the law of rescue. Would you hold people responsible for doing something to help others in an emergency? If so, what circumstances would trigger a duty to rescue? How much would be required of a rescuer?

Consider whether laws should be rewritten to require rescue attempts. Questions to consider include:

- What is an emergency calling for rescue?
- What constitutes a rescue?
- What if the rescue inadvertently worsens the situation?
- Who should rescue?
- How much should a rescuer be required to do (e.g., call 911 vs. actively attempt to rescue the person)?
- Should compensation be allowed to a rescuer who is injured?

Ask students, working in small groups, to draft a statute addressing the duty to rescue.

5. Additional question to ask: What, if any, role should values play in the law of rescue?

This chapter introduces values—and a tension between values—that threads throughout the book. On the one hand, the value of maximizing individual freedom of choice, our right to believe and to act as autonomous beings; on the other hand, the value of building community, our duty as interdependent social beings to care about and for one another.

The holding in the *Yania* case provides a basis for understanding the intersection between legal duty and the conflict between freedom and responsibility to others. The fact pattern affords students an opportunity to explore the multi-dimensional aspects of the roles values play in personal and business decision-making. With a tragic result of the death of Yania, it offers many constructions and an appreciation for future application of personal ethics.

Facilitate a discussion to identify and describe individual and societal values applicable to a rescue situation. Contrast these findings with the legally required conduct as held by Justice Jones. Board these findings for the class to view the multiple interconnections. Then, move into a deeper discussion around these areas: (1) how might their individual value systems inform their decision to intervene in a rescue situation? (2) Explore with the class the possible values-based “tradeoffs” of different members of society necessary to have a uniform and unequivocal standard for a duty to rescue.

JUSTIFYING THE “NO DUTY TO RESCUE” RULE

***The Duty to Rescue: A Liberal-Communitarian Approach* by Steven J. Heyman, Questions, p. 8**

- 1. According to the writer, a change in our law – a new duty to rescue – might change the way people think, heighten their awareness of one another as members of a community, and lead them to be more responsive to one another. Do you think law can have such power? Can you think of any examples where a change in the law seemed to improve the moral climate of our society?**

Ask students to think of examples of instances where a change in the law effected a change in the way humans behaved for the better: the Civil Rights struggle and its legal aftermath? Is the Americans with Disabilities Act an example?

In “Law, Morals and Rescue,” Anthony Honore argues that “law cannot make men good, but it can, in the sphere of duty at least, encourage and help them to do good.”

An essential preliminary to the survey of the larger vistas of law and morals is to clear our minds about our moral views in the matter of aid to those in peril. By “our moral views,” I mean the shared or common morality. Obviously this is not the same as the statement of what people actually do in a given society—the common practice of mankind. Their actions may fall short of their moral ideals and pretensions. Nor is it the same as that which an individual may accept for himself as morally obligatory. There is a distinction between that which the individual accepts for himself and that which he regards as being of general application. A man may think he has higher ideals, a stricter sense of obligation or duty, than the ordinary run of men could well be expected to entertain. This cherished personal morality, it seems to me, is no part or ingredient of the shared morality, though it may come, in time, to spread to others and so to influence the shared morality.

The shared morality consists, rather, of those moral ideals and duties or obligations which the bulk of the community regard as applying to persons generally....

...There are strong reasons, I think, why the law should reflect, reinforce, and specify, at least that segment of the shared morality which consists in moral duties owed to others. The first is the advantage to those who stand to benefit. It is true that legal incentives probably influence no more than a tiny minority, but they certainly influence some.... Secondly, there are some reasons for holding that the law ought in general to mirror moral obligations. In doing so, it ministers to an expectation entertained by the majority of citizens.... People to some degree expect a lead from the law, not merely threats and incentives. Rules of law which mirror moral duties have, among other things, an educative function. They formulate, in a way which, though not infallible, is yet in a sense authoritative, the content of the shared morality....

--*The Good Samaritan & the Law*, ed. J. Ratcliffe (NY: Doubleday, 1966).

2. Do you think law should be used as a tool for shaping a shared moral climate? Why or why not?

A negative response is an opportunity to introduce libertarianism—Robert Nozick’s thoughts, for instance, which have not been presented in the chapter, but informs Milton Friedman’s thinking and may be familiar to students as the philosophy that underpins unregulated free market capitalism. Nozick is best known for *Anarchy, State and Utopia* (1974). He champions a short list of natural individual rights, including: the liberty to do whatever one wishes with one’s person or property, as long as one does no harm to another’s person or property; the right of self-defense; and the right to receive compensation from those who violate the rights of others.

Nozick's minimalist state would protect only those rights. He would view as illegitimate attempts by a state to actively promote the public good.

In an attempt to place libertarian views where they would actually support rescue, Heyman writes that liberal political theorists like Locke, Blackstone, and Kant

...all maintain that the state has an obligation to relieve poverty and support those who are unable to provide for their own needs. In Locke's words, both natural rights and "common charity" teach "that those would be most taken care of by the law who are least capable of taking care of themselves."

***Podias v. Mairs*, Case Questions, p. 11**

1. Judge Parillo elaborates on several exceptions to the "no duty" rule. What are they? Which exception does he think might apply to the defendants in this case?

- If an individual already has a pre-existing legal duty to render assistance, that duty impels him to act, for which omission he may be liable.
- In New Jersey, courts have recognized that an existing contractual relationship between the victim and one in a position to provide aid may create a duty to render assistance.
 - In *Szabo v. Pennsylvania RR* the court held that the employer must secure medical care for an injured employee rendered helpless while engaged in work for that employer.
 - It may only be necessary "to find some definite relation between the parties of such a character that social policy justifies the imposition of a duty to act." A general duty arises in many relations to take reasonable precautions for others' safety. This may include the obligation to exercise control over the conduct of third persons with dangerous propensities. In *J.S. v. R.T.H* the court held a spouse has a duty of care to take reasonable steps to prevent or warn of the harm when they have knowledge that their spouse is engaging in sexually abusive behavior against a particular individual.
 - The state's hit-and-run driver statute imposes a duty of a driver to stay at the scene, regardless of fault. Drivers are also required to report all accidents involving injuries to the nearest police department.
- Even though a defendant may be under no obligation to render assistance himself, he is at least required to take reasonable care that he does not prevent others from giving it. *Soldano v. O'Daniels* (Cal. 1983). There may be liability for interfering with the plaintiff's opportunity of obtaining assistance.

The judge determined the defendants has some relationship to the primary wrongdoer and the incident itself. The imposition of duty was found to be in accordance with public policy.

2. What are the four factors the judge uses to determine whether the defendants might be responsible, and what was the result of that analysis?

1. The nature of the underlying risk of harm, that is, its foreseeability and severity. The judge noted that the risk of harm and even death to the helpless victim lying in the middle of the roadway was readily and clearly foreseeable.
2. The opportunity and ability to prevent the harm. All three individuals used their cell phones for purposes other than reporting the accident. They had the opportunity and ability to take simple precautions to save the victim at little, if any, cost or inconvenience to themselves.
3. The comparative interests of and the relationships between or among the parties. The judge found that the defendants were more than innocent bystanders or strangers due to their relationship to the primary wrongdoer (he was giving them a ride home) as well as the incident.
4. Ultimately, based on considerations of public policy and fairness, the societal interest in the proposed solution. The judge determined that the imposition of duty upon the defendants was in accord with public policy, citing New Jersey laws that promote rescue.

3. What might be the next stage in this litigation?

The next stage might be a trial where either a judge or a jury determines liability and damages or perhaps the parties could reach a settlement without going to trial.

4. On what basis might you argue that there is a duty to aid in each of the following examples:

- (a) An elderly woman has a stroke while shopping at a department store. A sales clerk leads her to the store's infirmary, and leaves her unattended for six hours, during which her condition becomes irreparably aggravated.** The clerk may not have had a pre-existing duty to assist. However, at common law those under no pre-existing duty may be liable if they choose to provide emergency assistance but do so negligently. Additionally, stores may have a duty to develop effective emergency responses when their customers face medical emergencies.
- (b) A psychiatrist releases a violent psychotic who has threatened to kill his ex-girlfriend, without taking measures to warn the girlfriend or to assure that the psychotic is properly medicated.** A relationship existed between

the psychiatrist and the patient. The doctor had a general duty to take reasonable precautions for others' safety including warning the ex-girlfriend of the release.

(c) A passenger on a commuter rail train tells the conductor he is in need of immediate medical attention. Even though the conductor may not have an obligation to personally assist, there may be liability for interfering with the passenger's opportunity to receive assistance. Consider whether the conductor has a duty to stop the train to allow the passenger to disembark to seek medical attention.

5. Where do you think the line should be drawn on bystander liability?

Questions raised may include potential liability from either failing to assist or for offering incompetent assistance, personal safety and individual moral and ethical beliefs. Other issues include enforcement and assignment of bystander liability. In other words, who should be considered the bystander(s) required to assist, especially in a group of people?

ETHICAL DECISION MAKING: A TOOLKIT

"Ethical analysis, unlike much quantitative analysis, can be a messy, complex business, without a clear and definitive outcome. However, we do have tools at our disposal to help us make these complicated assessments." (Text, p.13)

The purpose of this section of the chapter is to familiarize students with the different ethical theories often used to aid in the decision making process.

A discussion of ethical theories can be facilitated using the question posed on page 13 of the text: "Were the decision made by BP before, during and after the Gulf Spill ethical?" To continue a discussion that enables students to recognize their default mode of thinking about ethics and to help introduce ethical analysis, consider the following hypothetical situation:

Assume you are the chief executive officer of a large drug company. You are deciding what price to charge for a new drug that promises to be effective against lung cancer. Assume that insurers would be willing to pay a large price for the drug and that some uninsured members of society could afford to purchase the drug. Some uninsured people, however, would simply be unable to purchase it. How should you go about deciding how much to charge for the drug and whether to offer it at a lower price to some members of society?

1. Free Market Ethics

One theory is that of free market ethics, which is also termed shareholder theory. Milton Friedman is a well-known free market economist and supporter of that view. Under the

free market view, the primary responsibility of a corporation is to improve the value of the investment of shareholders while obeying the law. Decisions regarding society should be made in the political arena and funded by tax dollars. Friedman strongly voiced that view in 1970 (as set forth in the text) when he stated, “. . . In a free society, there is one and only one social responsibility of business --- to use its resources and engage in activities designed to increase its profits so long as it stays with the rules of the game, which is to say, engages in open and free competition without deception or fraud¹.” Under this theory, the drug company, just like BP, should only be concerned with increasing profits and shareholder value.

2. Utilitarianism

Under utilitarianism, the consequences of an act to all those affected by it are considered. A proponent of that theory would try to determine the alternative likely to produce the greatest overall good to all those who would be affected by the decision. Just like the BP example in which shareholders, workers, coastal residents, fish and other creatures, the ecosystem, and the public at large are all considered, in the hypothetical all affected would be considered. That would include stockholders of the company, individuals who need the drug, employees of the company, and insurers.

The BP oil spill demonstrates the difficulty in utilitarian analysis of determining the consequences – both good and bad – that can be traced to a complex scenario. Comparing BP’s decision on the back-up switch with its decision to participate in deepwater drilling in the Gulf illustrates a chief criticism of the utilitarianism – the theory will accept harm, even severe harm, to a small number of stakeholders as long as there is an overall benefit to the majority.

3. Deontology

Deontology is the name given to an entire area of ethical theories based on steadfastness to universal principles. The most famous deontological thinker, Immanuel Kant, stated that these principles may be derived through categorical imperatives, one of which states that individuals should be willing to have the reasons for their actions become universal principles. Steadfast adherence to the Ten Commandments could also be discussed as an example. Under deontological ethics, other people should not be used merely as a means to achieve a purpose with no mutual benefit attached. In the BP oil spill, several deontology principles were violated. The hypothetical may address the confusion that is created with deontology when different universal rights and duties crop up in the same ethical problem and seem to conflict with one another.

4. Virtue Ethics

Virtue ethics focuses on what human beings are capable of being and on how they can cultivate habits of good character that will naturally lead them to their fullest potential. Virtue ethics focuses on moral characteristics engrained within a community. For

¹ “The Social Responsibility of Business is to Increase Its Profits,” New York Times, September 13, 1970.

businesses this is often found in the values statements and corporate culture. BP's corporate culture is discussed in the text. What would the corporate culture or community be for the hypothetical drug company?

Today's complex world presents a challenge to the virtue ethics approach. Individuals are exposed to many different communities that may have very different values. How is virtue defined? How is integrity maintained? These questions may be especially hard to answer when the values of different communities do not align. In the hypothetical, consider the company's ethics, alongside the ethical values engrained in the physicians who worked for the company as it created this new drug.

5. The Ethic of Care

A number of ethicists reject the underlying assumption that ethical decisions are individual decisions that can be made without concern for relationships. The ethic of care is based on caring for others and making decisions with that as the top priority. This difference in assumptions leads the decision maker to consider different perspectives and more heavily rely on relationships than on other aspects of the situation. What are the relationships at stake? The BP disaster highlights how the global hunger for energy and oil causes vast problems that go beyond the oil spill and indicate that we all need to consider relationships as we look for ways to reduce our carbon footprints. What relationships should be considered in the hypothetical?

6. Some External Resources on Ethical Theories

Following are some other sources for information on ethical decision making:

Gerald Cavanagh, *American Business Values*, (Englewood Cliffs, NJ: Prentice Hall, 1984), on the ideology of business, from John Calvin to Frederick Taylor.

Frances Moore Lappe, *Rediscovering America's Values* (New York: Ballantine Books, 1989). In dialogue form, the libertarian vs. the communitarian, freedom vs. fairness debate.

Judith A. Boss, *Ethics for Life: An Interdisciplinary and Multicultural Introduction* (Mountain View California: Mayfield Publishing Company, 1998).

Thomas Donaldson, Patricia Werhane, "Introduction to Ethical Reasoning," from *Ethical Issues in Business, 6th Edition* (Upper Saddle River, NJ: Prentice Hall, 1999), pp. 1-11.

James Rachels, *The Elements of Moral Philosophy* (New York: Random House, 1986).

Manuel Velasquez, *Business Ethics: Concepts and Cases, 4th Edition* (Englewood Cliffs, NJ: Prentice Hall, 1998), pp. 1-143.

Following are challenges to the formula that would have us teach business ethics by asking students to apply abstract theoretical principles to a string of case examples, which point toward alternatives like virtue ethics and the use of uplifting narrative:

Frida Kerner Furman, "Teaching Business Ethics: Questioning the Assumptions, Seeking New Directions," 9 *J. Bus. Ethics* 31-38 (1990). (On use of narrative to teach business ethics.)

Janet McCracken, William Martin & Bill Shaw, "Virtue Ethics and the Parable of the Sadhu," 17 *J. Legal Stud. Educ.* 25-38 (1998).

On the exclusion of women from "philosophical ideals of such things as human nature and morality" see Jean Grimshaw, *Philosophy and Feminist Thinking* (Minneapolis: University of Minnesota Press, 1986). (See especially Chapter 2, "The 'Maleness' of Philosophy.")

On feminist ethics of care:

Rita Manning, *Speaking from the Heart: A Feminist Perspective on Ethics* (Maryland: Rowman & Littlefield, 1992).

Rosemarie Tong, *Feminine and Feminist Ethics* (California: Wadsworth Publishing, 1993)

For a readable introduction to the psychological approach to moral development see Kate Nelson and Linda Trevino, *Managing Business Ethics: Straight Talk about How to Do It Right*, Chapter Five, (New York: John Wiley & Sons, 1995). "A Note on the Ethic of Caring," a Darden Graduate School of Business Case Study (UVA-E-068) discusses both Gilligan and Nell Noddings. Gilligan introduces her own work in "Women's Place in Man's Life Cycle," from *In A Different Voice*. For a thorough critique of Gilligan see Linda Kerber, et.al., "On in a Different Voice: An Interdisciplinary Forum," 11 *Signs*, Winter 1986

7. Why Ethical Theory?

Awareness of the theories provides support in two ways when facing business dilemmas:

- 1) The decision maker is better able to think broadly and deeply when brainstorming using multiple frameworks.
- 2) The decision maker is better able to understand his or her own thinking and articulate it to others.

CORPORATE GOVERNANCE

Corporate Roles, Rights and Responsibilities

Shareholders: Owners whose legal liability is limited by law to their investment in the company. They have the right to: receive accurate financial reports and dividends when declared, attend shareholder meetings, vote on some issues, and hold managers and directors accountability via shareholder derivative suits.

Board of Directors: Elected by shareholders and held by law to a duty of loyalty and care towards the corporation. The board sets overall policy, provides financial information to shareholders, hires and fires management and may file lawsuits on behalf of the corporation.

Officers and Management: Appointed by the board and held to the same duty of loyalty and care. They run the company, implement board decisions and prepare reports.

CORPORATIONS, PUBLIC POLICY AND MONEY

Modern corporations are designed to maximize profit and minimize risk. As a separate entity under the law, corporations can make contracts, lend or borrow, sue or be sued.

Shareholders only risk their investment (limited liability) but have little if any power. Officers and directors are protected from liability under the business judgment rule unless there has been “an abuse of discretion.”

In the case in the text, Citizens United’s challenge of the Bipartisan Campaign Reform Act of 2002 (BCRA) looks at differing interpretations of First Amendment protection of free speech and the role of corporations in the political process.

Citizens United v. Federal Election Commission, Questions, p. 38

- 1. What are the primary arguments advanced by Justice Kennedy, writing for the majority, against the reasoning of the *Austin* case and against the restrictions of BCRA? What arguments does the dissent use in defending BCRA?**

Political speech is the most important, and most protected, speech that exists. It is crucial to the democratic process that political speech be encouraged and heard.

Arguments that the immense wealth of a corporation may distort the messages heard by citizens are not enough to suppress political speech.

Suppressing the speech of corporations prevents their voices and viewpoints from reaching the public. They are unable to advise voters of those who are hostile to their interests.

Corporations may possess valuable expertise on some topics, making them the best equipped to point out errors in the speech of candidates and elected officials.

Finally, BCRA is limited in the technology that is restricted but technology changes so fast that it makes little sense to uphold a law that is so limited in its scope.

The dissent (written by J. Stevens) focuses strongly on the fact that the corporation is not a person. The fact that there are many potentially disparate opinions in a corporation, as well as the potential for people who are not citizens (and therefore cannot vote) to be in control of a corporation, indicate to the dissent that the corporation does not have the right to speak as a human citizen would have.

Congress has found the need to continually regulate corporate participation in political elections to prevent corruption and preserve integrity and citizens' confidence in government.

2. Summarize the differing views of the corporation that emerge from this case.

Justice Kennedy tends to see the corporation as an aggregate of individuals who self-select association based on common interests.

Justice Scalia doesn't seem to care about the definition of the corporation so much as the fact that the corporation can emit speech and the First Amendment protects speech as opposed to any particular definition of speakers. The fact that corporations can have opinions or put forth ideas is enough for him to conclude that the BCRA is unconstitutional.

Justice Stevens sees a significant difference between corporations and humans and does not believe that corporations have the same rights as individuals when it comes to free speech.

3. (a) Find out if the Supreme Court agreed that Hobby Lobby is a "person" under the Religious Freedom Restoration Act of 1993. *Burwell v. Hobby Lobby*, 134 S.Ct. 2751 (2014). The Supreme Court held that corporations are persons under RFRA. It further found that the ACA's requirement that corporations provide contraceptive coverage for their employees violated Hobby Lobby's rights under RFRA. (b) Who are the stakeholders in this case? How are each of them helped/harmed by the

Supreme Court's ruling? The stakeholders include: Hobby Lobby, and similar corporations with religious convictions, employees of those organizations and their families, and health insurers. The decision removes the burden of providing contraceptive coverage from companies such as Hobby Lobby, but leaves their employees without such coverage, which may be critical to their health.

4. Do you think the law should treat corporations as people, with civil rights like those protected by the First Amendment? Why/why not?

Questions to consider include the following:

- Since corporations are treated as individual entities in many respects, should that entitle them to all the rights that are granted to people?
- Corporations are already powerful entities. Would First Amendment civil rights give them too much power?
- Are there rights that only seem suited for people? For example, how would the right to bear arms apply to corporations?

CORPORATE SOCIAL RESPONSIBILITY

Corporate Social Responsibility (CSR) claims that, instead of just focusing on shareholders, all stakeholder interests are considered. The idea is not new but is subject to debate. Milton Friedman sees it as an “inappropriate direction for profit-focused companies to pursue” and University of Michigan business strategy professor, Aneel Karnani, says “CSR is either irrelevant or ineffective – take your pick.”

1. Benefit Corporations

More than 2200 companies across more than 50 countries have joined the Benefit or B Corporation movement which redefines what business success means and redirects that power of business. B Corporations focus on the “triple bottom line”: profit, people and planet.

How Benefit Corporations Are Redefining the Purpose of Business Corporations
by William H. Clark Jr., and Elizabeth K. Babson Questions p. 43-44

1. What are the primary market forces favoring the growth of benefit corporations?

A growing number of consumers prefer to make purchases from socially responsible companies. Additionally, the socially responsible investing (SRI) movement has to represent approximately \$8.7 trillion in 2016. SRI investors work to have

corporations change behaviors and make targeted investments in socially responsible companies.

2. How are traditional corporations and benefit corporations similar? What are the main differences between them?

Both traditional and benefit corporations are incorporated under state law with the purpose to make a profit. Both types of corporations have a board of directors and stockholders. Each file annual reports to shareholders. The main differences are:

- Benefit corporations are required to have a purpose of creating “general public benefit” and may identify one or more “specific” public benefit” purposes. A traditional corporation are allowed to form for any lawful purpose but have no explicit purpose requirements
- Traditional corporations owe a fiduciary duty to stockholders. That duty is expanded under a benefit corporation to include all stakeholders (shareholders, employees, suppliers, customers, community, and environment).

3. Research: Find a company that has been certified by B Lab. What kind of business is it? How does it serve the triple bottom line?

There are currently over 2200 B Corps that have been certified by B Lab. Students can find one on their website: www.bcorporation.net

4. *Forbes Magazine* named Exxon Mobil “Green Company of the Year” in 2009 for its focus on natural gas (as opposed to coal). In the same year Exxon Mobile was lobbying against the scientific consensus that climate change was occurring, and that it was mainly caused by the burning of fossil fuels. If Exxon was a benefit corporation, could shareholders sue its directors for this inconsistency?

Shareholders of a benefit corporation can bring an action for failure to consider other stakeholders’ interests so there may be an action for failing to consider the impact of this decision on the environment.

5. Milton Friedman wrote that if business executives use corporate resources to benefit society they are, “in effect, stealing from their shareholders instead of serving their interests ...” How would a proponent of the benefit corporation answer this argument?

Opinions will vary. A proponent could point out the fact that, as consumer demand for purchasing products from socially responsible companies grow, it is the shareholders of those companies that will benefit from the increased sales and profits. Shareholders, as members of communities, should also be concerned about the impact of business decisions on their communities and the environment.

6. Research: Find out if your state has passed legislation for B Corps. If so, locate a company that has been certified by B Lab. What kind of business is it? How does it serve the triple bottom line?

As of August 2017, thirty-three states have B Corp legislation and six others are considering such legislation.

CHAPTER PROBLEMS

1. Dr. Eddingfield and the duty to rescue

This relates to the duty to rescue. Legally, it is not clear that there is any duty on the part of Dr. Eddingfield to leave his location to seek out the sick patient. Dr. Eddingfield is not present at the place of the illness and we assume did not cause the illness. The only potential argument that there is a duty to rescue comes from the history or special relationship between Dr. Eddingfield and the patient. Ethically, Dr. Eddingfield has theoretically signed the Hippocratic Oath which is a promise to aid humanity in terms of medical assistance. Under this oath, Dr. Eddingfield may be ethically obligated to assist the patient.

2. Research: Laws that require or encourage rescue

This first research assignment that asks students to locate statutory material can be a frustrating experience. It helps to offer search tips. Note that a student may be able to find some information about these laws on Wikipedia. Faculty should be clear on what acceptable sources are and how much material students should be expected to find. If faculty plan to have students use Westlaw, LexisNexis, or another legal database during the semester, these questions may be useful for demonstration by faculty and practice by the students.

(a) International: Most of the information easily available on the web about the French duty to rescue relates to the death of Princess Diana. It may be helpful to have those sorts of examples to demonstrate how people were prosecuted in France for this incident and compare it to the Kitty Genovese situation in America.

(b) Domestic: An internet search of “Duty to rescue state statutes” will provide students with information they need to compare statutes from two states.

(c) Good Samaritan: These laws will also be easy to find. The phrase “Good Samaritan” usually works. Have students check to see if their home state protects people who are *not* medically trained from liability. Case law connection: have students check to see if any defendants lost cases on the grounds of having been “grossly negligent.”

3. Duty of Care and the Drowning Stranger

Students should apply the ethics of care philosophy to the *Yania* case. Things to consider include:

- What was the nature of the relationship between Yania and Bigan and how might that affect the duty to rescue?
- How did the failure to rescue impact Mrs. Yania?
- Did Mr. Yania have other family? Children?
- How did his death impact employees who worked for him? Did his business shut down?
- What other circumstances would still be relevant? (For example, was rescuing Yania feasible? Was it safe?)

The benefits of adopting such a rule include possibly saving a life. The detrimental effects include the potential harm (and perhaps even loss of life) to the rescuer.

4. Nigerian Oil

These questions provide a good opportunity for the faculty member to discuss corporate social responsibility from many perspectives. There is a utilitarian discussion about the potential negative publicity and then sales declines from operating in a country like Nigeria. This also can tie in to the discussion about the Citizens United case and whether it is the role of the corporation to make political statements through financing speech or through decisions not to do business in a country where profit may exist. Students should be encouraged to look at this situation using all of the different tools mentioned in the chapter to see if any of those tools result in different opinions.

5. Research: The American Petroleum Institute

In May 2013, the transparency rule was vacated and sent back to the SEC to reconsider. The SEC issued final rules in June 2016. However, in January 2017, President Trump signed a law repealing the SEC rule after the repeal passed both houses of Congress.

6. Executive Compensation

- (a) Free market ethics would consider whether the high levels of executive compensation maximize the company's profitability. In other words, are the high levels of compensation necessary to attract the most effective executives to an organization. If not, the money should instead be distributed to the shareholders, or used to pay lower level employees more, if it can be determined that better pay for employees leads to better productivity. Utilitarians would consider how the high compensation packages affect all stakeholders, the executives, the employees, the shareholders, customers, among others. A deontological thinker would consider what principles apply to the situation. For example, if you consider the principle that a person should consider whether their decision

should be repeated if they are in different position the next time the ethical dilemma arises, the executive should consider if she/he were instead a lower level employee, would s/he want such disparity in compensation. Virtue ethicists would consider the morals of the business communities and consider whether the compensation decisions are consistent with those morals. Finally, if the ethic of care were considered, how the compensation disparities would affect the various relationships that the companies have would be central to the analysis.

- (b) The SEC announced that it was still examining this rule in February 2017, deciding to reopen the public comment period on the rule.

7. Research: Gas and Oil Lobbying Expenditures

Direct students to Opensecrets.org to research lobbying expenditures. Oil and gas companies have spent in excess of \$100 million on lobbying for the past ten years.

8. Research: Astroturf Organizations

GMO Answers is an example of an agriculture astroturf group. Friends of Coal and Energy in Depth are examples fossil fuel astroturf groups. These activities are supported by the free market ethical perspective, which encourages companies to spend money on political efforts that will result in increased profits.

9. BP

Students can explore the different justifications for criminal punishment, including deterrents. Ask them to put themselves in the shoes of company executives and consider which punishments would convince them to avoid making ethically dubious decisions. How big would the fines have to be? How much jail time is necessary?

CHAPTER PROJECT

The B Lab website provides information about numerous B corps. Rankings of socially responsible companies can be found here:

<https://www.forbes.com/forbes/welcome/?toURL=https://www.forbes.com/sites/karstenstrauss/2016/09/15/the-companies-with-the-best-csr-reputations-in-the-world-in-2016/>

This research project is a good opportunity for students to use Google for research, while also considering the veracity of the websites they visit.