CHAPTER 2
ETHICS AND THE LAW

This chapter explains the basic concepts and dilemmas of the application of business ethics and social responsibility in business. The goal of the chapter is to provide the manager with an ethical framework to evaluate business decisions in the global legal environment.

I. THE RELATIONSHIP BETWEEN LAW AND ETHICS.

Of course ethics and law are interrelated. Creating a "good" organizational culture that strives to have the highest ethical standards will ultimately make it more financial healthy. But the law does not--indeed cannot--prohibit all "bad" behavior.

CASE 2.1 *Bammert v. Don's Super Valu, Inc.*, 646 N.W.2d 365 (Wisc. 2002). Plaintiff, an at-will employee, was terminated in retaliation for the legal and proper actions of her non-employee husband. HELD: Although employees *can* recover for wrongful terminations if discharged for their own behavior, which comports with public policy, this rule does not extend to protect the employee for the actions of a spouse. The court refused to create a new public policy exception to the at-will doctrine.

II. THE ETHICAL TONE IS SET AT THE TOP.

The chief officer has the most important role in instilling ethics in the organization. Pay disparities and the wealth gap between corporate executives compared to average workers and public scandals reduce public faith in the business community.

The Imperial CEO. In 2010, an average CEO in Standard and Poors's 500 Index was paid $11.4 million, more than 300 times what the average worker was paid. Consider Dennis Kozlowski, CEO, Tyco International. In 2005 Kozlowski was convicted of grand larceny, conspiracy, and fraud. He was sentenced up to 25 years in prison.

III. ETHICAL BUSINESS LEADER'S DECISION TREE.

To ensure success, managers must create a culture of socially responsibility by asking a series of questions:

A. Is the Action Legal?

B. Would it Maximize Shareholder Value? Maximization of shareholder value is generally not legally required.

C. Is the Action Ethical? What is Ethical? The three main ethical frameworks use *teleological*, *deontological*, or comparative justice viewpoints.

1. A *teleological* view of ethics is concerned about the consequences of decisions. Morality is measured by the effect a decision has on others.

2. A *deontological* view of ethics emphasizes the motivation and principle behind an action, not the consequences. Immanuel Kant emphasized the form of action (not the outcomes) and the reason for choosing said actions.

3. *Comparative Justice.* Consequences of decisions can be compared between rule-based systems and outcome-oriented (*utilitarian*) frameworks consider *Distributive*, *Compensatory* and *Retributive* justice.

4. *How Do Business Leaders Define Ethics?* Many associate ethics with integrity, fairness, and honesty. Ex-CEO of HP, Carly FIorina, said "good leadership means doing the right thing when no one is watching."

E. Historical Perspective: Aquinas on Law and Ethics. Thomas Aquinas believed that human laws were just only if they: (1) are consonant with universal good; (2) can be obeyed; (3) are unambiguous; (4) approved by the community; and (5) universal; and that immoral laws should be disregarded or opposed.

F. Actions That Might Maximize Shareholder Value But Would Be Unethical. Most shareholders would not want their managers to act unethically, even if it meant increasing shareholder value.

G. Actions that Neither Maximize Shareholder Value Nor are Ethically Mandated. Managers must balance social responsibility with shareholder returns. If an action does not maximize shareholder value and the firm has no ethical reason to act, the action should not be taken. Otherwise, the action might result in liability for waste of corporate assets.

H. Actions that Do Not Maximize Shareholder Value but Are Nonetheless Ethically Required. Failure to meet social expectations of ethical behavior can tarnish a firm's reputation and impact corporate good will and earnings.

I. Finding the "Sweet Spot." Ideal courses of action are ethically sound and maximize corporate value. Managers should look for intersections of "shared value" that balance competitive advantage with social responsibility. Ralph Johnson, CEO of Johnson and Johnson says he will do both. *And see* General Electric, the Toyota Prius, Whole Food Markets, and Timberland.

J. Approaches to Resolving the Tension Between Short-Term Results and Long-Term Value. Managers can take affirmative steps to resolve tensions between the short-term and long-term:

1. *Soften the Edges*. Hiring and wage freezes, shortening workweeks, eliminating bonuses, buyout packages.

2. *Lobby for Changes in the Law* or the Enactment of Codes of Conduct. Form coalitions with other companies to lobby state and federal lawmakers for favorable laws that help American companies compete in the global economy while maintaining ethical conduct. OECD and FCPA.

3. *Adopt an Ethics Program.*

4. *Walk the Walk.*

K. Individual Responsibility. Ethics is always an individual choice. If the employee is asked to engage in a legal, but unethical action, she should review the company's code of conduct and perhaps talk to coworkers.

IV. FAILING TO MEET SOCIETAL EXPECTATIONS.

Public perception of a company's socially irresponsible or unethical behavior might result in severe financial setbacks. Corporate social responsibility extends to many areas.

A. Customers and Clients.

1. *General Motors and Chevrolet Malibu's Exploding Fuel Tank.*

2. *Conflicts of Interest: Goldman Sachs.*

B. Employees. Public investigation reveals that clothing companies and retailers have used child labor, impose harsh work conditions, and pay substandard wages. Racial discrimination may still be prevalent in large corporations, e.g., Texaco. Discrimination costs more than money, it saps morale.

C. Investors: Managed Earnings. Companies must consider the desires of stockholders yet follow ethical and legal guidelines. Consider the "Inside Story" of Enron.

D. The Environment. Petroleum and electronics industries must balance costs of environmental clean-up with profits.

1. *BP's* Deepwater Horizon *Oil Spill.*

2. *Disposal of Electronics.*

E. Communities. Companies must negotiate relations with foreign governments and local peoples, e.g., Union Carbide and Bhopal and Unocal in Myanmar. The public has put pressure on companies doing business with repressive regimes.

VI. POSITIVE ACTION.

Despite examples of corporate misconduct, many companies have undertaken socially responsible moves on customer and product safety, in treating employees fairly, for the environment and certain communities.

A. Customers and Product Safety: Johnson & Johnson and Tylenol.

B. Employees: Auditing of Supplier Work Conditions.

C. The Environment: Socially Responsible Investment. The Coalition for Environmentally Responsible Economics is a diverse network of investors, environmentalists and labor unions that are committed to helping corporations promote environmental sound and sustainable practices.

VII. PROMOTING ETHICAL BEHAVIOR.

Managers set the ethical tone of the corporation and play the most important role in creating an ethical environment. Companies need mission statements, a code of ethics and ethics training, regular channels of oversight to review company behavior and should make it easier for employees to blow the whistle.

A. Craft a Mission Statement.

B. Adopt a Code of Ethics.

C. Provide Ethics Training. Boeing provide innovative online ethics training. Citigroup also requires mandatory online ethics training for all employees.

D. Provide Oversight.

E. Make It Easier to Blow the Whistle.

VIII. HONOR OF THE MORALS OF THE MARKETPLACE?

Law imposes a fiduciary duty on officers and partners to act in the best interests of the other party. What duties does a finder owe its client?

CASE 2.2 *Northeast General Corp. v. Wellington Advertising, Inc.,* 624 N.E.2D 129 (N.Y. 1993). Wellington hired Northeast to "find" entities interested in buying or merging with Wellington. The finders agreement stated Northeast would be entitled to a finders fee if any of the "found" companies ultimately purchased or merged with Wellington within three years of being introduced to Wellington. Northeast found and introduced Sternau to Wellington but did not disclose Sternau's reputation for 'raiding' the assets of the purchased company. The transaction proceeded but Wellington cancelled the finders fee check after major shareholders alleged breach of fiduciary duty. Northeast sued. HELD: For Northeast. The agreement did not raise to a fiduciary level.

TEACHING SUGGESTIONS: THE RESPONSIBLE MANAGER.

A. Research Martin Luther King's view of law and theory of civil disobedience. What part can civil disobedience play in today's corporate world? Analyze the recent housing market crisis in terms of race, ethics, and government regulations. What would Dr. King have done had he been CEO of Freddie Mac or Fannie Mae?

B. Have student-teams create a one page code of ethics for their own fictional company, along with the means to enforce and evaluate complaints.