



*I'm in decent health—for the moment. But things are slipping. I have prostate cancer, like just about every other man my age. It probably won't kill me . . . but having to get up and pee four or five times a night, standing over the bowl for long minutes just hoping something will come out, this might do me in. My joints are stiff, so it doesn't really feel good to walk. I've got bits and pieces of skin cancer here and there that need to be removed. These things are all treatable, or so they say (there are pills to take and procedures to have done). But it seems to me a waste of money. Why not pass my small savings on to my grandkids, to give them a jump on college tuition?*

*What I don't understand is why people think that it is wrong for someone like me to just call it a day, throw in the towel. How can it be possible that I don't have a right to end my own life, when I'm ready? (But apparently I don't.)*

*I'm tired and I'm ready to be done with life. I'd so much rather just quietly die in my garage with the car running than eke out these last few compromised years. (Even better would be a quick shot or a small dose of powerful pills—but, alas, these are not at my disposal.)*

*But if I do myself in, I will be called a suicide. My death will be added to the statistics: another "elder suicide." How sad! (Doesn't the fact that so many elderly people commit suicide—and with much greater rates of success, I must say, than any other demographic group—tell you something?) Why can't this society just come up with a humane, acceptable plan for those of us ready to be finished? Why can't we old folks go to city hall and pick up our End-of-Life Packet, with the financial and legal forms to bring things into order for our children, with assistance on how to recycle all our unneeded furniture and clothes, and with a neat little pack of white pills: When ready, take all 10 pills at once, with plenty of water. Lie down quietly in a comfortable place, close your eyes, and wait.*

*How can choosing my own end at my own time be considered anything other than a most dignified final exit?*

— Anonymous, June 2003

## QUESTIONS

1. Should people have the moral right to end their lives if they so please?
2. Does being near the end of one's life make the decision to end it justified?
3. What might the phrase "right to die" mean?
4. Do people have the right to seek assistance in dying?
5. Do people have the right to give assistance in dying?
6. What kind of restrictions, if any, should there be on assisted suicide?

Source: Jessica Pierce, *Morality Play: Case Studies in Ethics* (New York: McGraw-Hill, 2005).

## CHAPTER

## 2



# DEFINING BUSINESS ETHICS



## LEARNING OUTCOMES

After studying this chapter, you should be able to:

- 1 Define the term *business ethics*.
- 2 Identify an organization's stakeholders.
- 3 Discuss the position that business ethics is an oxymoron.
- 4 Summarize the history of business ethics.
- 5 Identify and propose a resolution for an ethical dilemma in your work environment.
- 6 Explain how executives and employees seek to justify unethical behavior.

## FRONTLINE FOCUS

### The Customer Is Always Right

Carol was the shift leader at a local fast-food restaurant. She first started working there as a summer job for gas money for that old Honda Civic she used to drive. That was more years ago than she cared to remember, and she had managed to upgrade her car to something far more reliable these days. She enjoyed working for this company. The job was hard on her feet, but when she hit the breakfast, lunch, or dinner rush, she was usually too busy to notice.

Today was an important day. Dave, the store manager, had called an "all staff meeting" to discuss the new healthy menu that the company had launched in response to public pressure for healthier lunch choices—lots of salads and new options for their side items. It was going to take a lot of work to get her staff up to speed, and Carol expected that a lot of the customers would need extra time to work through all the new options, but overall she liked the new menu. She thought that the new lower-priced items would bring in a lot of new customers who were looking for something more than burgers and fries.

The company had sent a detailed information kit for the new menu, and Dave covered the material very thoroughly. As he finished the last PowerPoint slide, he asked if anyone had any questions. Since they had been in the meeting for over an hour, her team was very conscious of all the work that wasn't getting done for the lunch rush, so no one asked any questions.

As a last comment Dave said: "This new menu should hopefully bring in some new customers, but let's not forget what we're doing here. We're here to make money for our shareholders, and to do that, we have to make a profit. So we're only going to make a limited number of these new items. If they run out, offer customers something from the regular menu and don't forget to push the "up-size" menu options and ice creams for dessert—those are still our most profitable items. And if someone wants one of these new healthy salads, make sure you offer them an ice cream or shake to go with it."

Carol was amazed. The company was making a big push for this new menu and spending a ton of money on advertising, and here was Dave planning to sabotage it just because he was afraid that these lower-priced items would hurt his sales (and his bonus!).

#### QUESTIONS

1. Look at Figures 2.1 and 2.2, and identify which stakeholders would be directly impacted by Dave's plan to sabotage the new healthy menu.
2. Describe the ethical dilemma that Carol is facing here.
3. What should Carol do now?

A large company was hiring a new CEO. The four leading candidates worked inside the company so the board decided to ask each candidate a very basic question. The comptroller was brought in. "How much is 2 plus 2?" "This must be a trick question, but the answer is 4. It will always be 4." They brought in the head of research and development, an engineer by training. "How much is 2 plus 2?" "That depends on whether it is a positive 2 or a negative 2. It could be 4, zero, or minus 4." They brought in the head of marketing. "The way I figure it, 2 plus 2 is 22." Finally, they brought in legal counsel. "How much is 2 plus 2?" they asked. He looked furtively at each board member. "How much do you want it to be?"

Tom Selleck, Commencement Speech, Pepperdine University, 2000

## >> Defining Business Ethics

**Business ethics** involves the application of standards of moral behavior to business situations. Just as we saw in our review of the basic ethical concepts of right and wrong in Chapter 1, students of business ethics can approach the topic from two distinct perspectives:

1. A *descriptive* summation of the customs, attitudes, and rules that are observed within a business. As such, we are simply documenting what is happening.
2. A *normative* (or *prescriptive*) evaluation of the degree to which the observed customs, attitudes, and rules can be said to be ethical. Here we are more interested in recommending what should be happening.

**Business Ethics** The application of ethical standards to business behavior.

**Stakeholder** Someone with a share or interest in a business enterprise.

In either case, business ethics should not be applied as a separate set of moral standards or ethical concepts from general ethics. Ethical behavior, it is argued, should be the same both inside and outside a business situation. By recognizing the challenging environment of business, we are acknowledging the

identity of the key players impacted by any potentially unethical behavior—the stakeholders. In addition, we can identify the troubling situation where your personal values may be placed in direct conflict with the standards of behavior you feel are expected of you by your employer.

## >> Who Are the Stakeholders?

Figure 2.1 maps out the relevant **stakeholders** for any organization and their respective interests in the ethical operation of that organization. Not every stakeholder will be relevant in every business situation—not all companies use wholesalers to deliver their products or services to their customers, and customers would not be involved in payroll decisions between the organization and its employees.

Of greater concern is the involvement of these stakeholders with the actions of the organization and the extent to which they would be impacted by unethical behavior. As Figure 2.2 illustrates, the decision of an organization such as WorldCom to hide the extensive debt and losses it was accumulating in its aggressive pursuit of growth and market share can be seen to have impacted all its stakeholders in different ways.

**FIG. 2.1 Stakeholder Interests**

| Stakeholders                 | Interest in the Organization                                                                                                                                                       |
|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Stockholders or shareholders | <ul style="list-style-type: none"> <li>• Growth in the value of company stock</li> <li>• Dividend income</li> </ul>                                                                |
| Employees                    | <ul style="list-style-type: none"> <li>• Stable employment at a fair rate of pay</li> <li>• A safe and comfortable working environment</li> </ul>                                  |
| Customers                    | <ul style="list-style-type: none"> <li>• “Fair exchange”—a product or service of acceptable value and quality for the money spent</li> <li>• Safe and reliable products</li> </ul> |
| Suppliers/vendor partners    | <ul style="list-style-type: none"> <li>• Prompt payment for delivered goods</li> <li>• Regular orders with an acceptable profit margin</li> </ul>                                  |
| Retailers/wholesalers        | <ul style="list-style-type: none"> <li>• Accurate deliveries of quality products on time and at a reasonable cost</li> <li>• Safe and reliable products</li> </ul>                 |
| Federal government           | <ul style="list-style-type: none"> <li>• Tax revenue</li> <li>• Operation in compliance with all relevant legislation</li> </ul>                                                   |
| Creditors                    | <ul style="list-style-type: none"> <li>• Principal and interest payments</li> <li>• Repayment of debt according to the agreed schedule</li> </ul>                                  |
| Community                    | <ul style="list-style-type: none"> <li>• Employment of local residents</li> <li>• Economic growth</li> <li>• Protection of the local environment</li> </ul>                        |

**FIG. 2.2 Stakeholder Impact from Unethical Behavior**

| Stakeholders                 | Interest in the Organization                                                                                                                                                                       |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Stockholders or shareholders | <ul style="list-style-type: none"> <li>False and misleading financial information on which to base investment decisions</li> <li>Loss of stock value</li> <li>Cancellation of dividends</li> </ul> |
| Employees                    | <ul style="list-style-type: none"> <li>Loss of employment</li> <li>Not enough money to pay severance packages or meet pension obligations</li> </ul>                                               |
| Customers                    | <ul style="list-style-type: none"> <li>Poor service quality (as WorldCom struggled to combine the different operating and billing systems of each company they acquired, for example)</li> </ul>   |
| Suppliers/vendor partners    | <ul style="list-style-type: none"> <li>Delayed payment for delivered goods and services</li> <li>Unpaid invoices when the company declared bankruptcy</li> </ul>                                   |
| Federal government           | <ul style="list-style-type: none"> <li>Loss of tax revenue</li> <li>Failure to comply with all relevant legislation</li> </ul>                                                                     |
| Creditors                    | <ul style="list-style-type: none"> <li>Loss of principal and interest payments</li> <li>Failure to repay debt according to the agreed schedule</li> </ul>                                          |
| Community                    | <ul style="list-style-type: none"> <li>Unemployment of local residents</li> <li>Economic decline</li> </ul>                                                                                        |

**PROGRESS QUESTIONS**

1. Explain the term *business ethics*.
2. Explain the difference between a descriptive and prescriptive approach to business ethics.
3. Identify six stakeholders of an organization.
4. Give four examples of how stakeholders could be negatively impacted by unethical corporate behavior.

**>> An Ethical Crisis: Is Business Ethics an Oxymoron?**

Our objective in identifying the types of unethical concerns that can arise in the business environment and the impact that such unethical behavior can have on the stakeholders of an organization is to develop the ability to anticipate such events and ultimately to put the appropriate policies and procedures in place to prevent such behavior from happening at all.

Unfortunately, over the last two decades, the ethical track record of many organizations would lead us to believe that no such policies or procedures have been in place. The standard of **corporate governance**, the extent to which the officers of a corporation are fulfilling the

duties and responsibilities of their offices to the relevant stakeholders, appears to be at the lowest level in business history:

**Corporate Governance** The system by which business corporations are directed and controlled.

- Several prominent organizations (all former “Wall Street darlings”)—Enron, WorldCom, Lehman Brothers, Bear Stearns—have been found to have hidden the true state of their precarious finances from their stakeholders.
- Others—Adelphia Cable, Tyco, Merrill Lynch—have been found to have senior officers who appeared to regard the organization’s funds as their personal bank accounts.
- Financial reports are released that are then restated at a later date.
- Products are rushed to market that have to be recalled at a later date due to safety problems (Toyota).
- Organizations are being sued for monopolistic practices (Microsoft), race and gender discrimination (Walmart, Texaco, Denny’s), and environmental contamination (GE).
- CEO salary increases far exceed those of the employees they lead.
- CEO salaries have increased while shareholder returns have fallen. *Fast Company* magazine prints a regular column titled “CEO See-Ya” that targets CEOs who have failed to deliver at least average shareholder returns while earning lucrative compensation packages.

- CEOs continue to receive bonuses while the stocks of their companies underperform the market average (as indicated by the documented performance of the Standard & Poor's 500 Index) and thousands of employees are being laid off.

It is understandable, therefore, that many observers would believe that the business world lacks any sense of ethical behavior whatsoever. Some would even argue that the two words are as incompatible as “government efficiency,” “Central Intelligence Agency,” or “authentic reproduction,” but is “business ethics” really an **oxymoron**?

It would be unfair to brand every organization as fundamentally unethical in its business dealings. There's no doubt that numerous prominent organizations that were previously

**Oxymoron** The combination of two contradictory terms, such as “deafening silence” or “jumbo shrimp.”

**Code of Ethics** A company's written standards of ethical behavior that are designed to guide managers and employees in making the decisions and choices they face every day.

held as models of aggressive business management (e.g., Enron, Global Crossing, HealthSouth, IMClone, Tyco, and WorldCom) have later been proved to be fundamentally flawed in their ethical practices. This has succeeded in bringing the

issue to the forefront of public awareness. However, the positive outcome from this has been increased attention to the need for third-party guarantees of ethical conduct and active commitments from the rest of the business world. Institutions such as the Ethics and Compliance Officer Association, the Ethics Resource Center, and the Society of Corporate Compliance and Ethics, among others, now offer organizations clear guidance and training in making explicit commitments to ethical business practices.<sup>1</sup>

So while these may not be the best of times for business ethics, it could be argued that the recent negative publicity has served as a wake-up call for many organizations to take a more active role in establishing standards of ethical conduct in their daily operations. One of the key indicators in this process has been the increased prominence of a formal **code of ethics** in an organization's public statements. The Ethics Resource Center (ERC) defines a code of ethics as:<sup>2</sup>

A central guide to support day-to-day decision making at work. It clarifies the cornerstones of your organization—its mission, values and principles—helping your managers, employees and stakeholders understand how these cornerstones translate into everyday decisions, behaviors and actions. While



How do conversations regarding ethics change when your business is closely linked to human well-being? Should ethical standards be different for a hospital or day care center?

some may believe codes are designed to limit one's actions, the best codes are actually structured to liberate and empower people to make more effective decisions with greater confidence.

## PROGRESS QUESTIONS

5. Define the term *oxymoron* and provide three examples.
6. Is the term *business ethics* an oxymoron? Explain your answer.
7. Define the term *corporate governance*.
8. Explain the term *code of ethics*.

So the code of ethics can be seen to serve a dual function. As a message to the organization's stakeholders, the code should represent a clear corporate commitment to the highest standards of ethical behavior. As an internal document, the code should represent a clear guide to managers and employees in making the decisions and choices they face every day. Unfortunately, as you will see in many of the case studies and discussion exercises in this book, a code of ethics can be easily sidestepped or ignored by any organization.

### Key Point

Does your company have a code of ethics? Where is it published? How frequently does the company promote it?

Forty years after its production, the Ford Pinto is still remembered as a dangerous firetrap.

In the late 1960s, the baby boom generation was starting to attend college. With increasing affluence in America, demand for affordable transportation increased, and foreign carmakers captured the market with models like the Volkswagen Beetle and Toyota Corolla. Ford needed a competitive vehicle, and Lee Iacocca authorized production of the Pinto. It was to be small and inexpensive—under 2,000 pounds and under \$2,000. The production schedule had it in dealers' lots in the 1971 model year, which meant that it went from planning to production in under two years. At the time, it was typical to make a prototype vehicle first and then gear up production. In this case, Ford built the machines that created the shell of the vehicle at the same time as it was designing the first model. This concurrent development shortened production time but made modifications harder.

The compact design called for a so-called saddlebag gas tank, which straddled the rear axle. In tests, rear impacts over 30 mph sometimes caused the tank to rupture in such a way that it sprayed gas particles into the passenger compartment, somewhat like an aerosol. Canadian regulations demanded a greater safety factor, and models for export were modified with an extra buffer layer. However, the Pinto met all U.S. federal standards at the time it was made.

Ford actively campaigned against stricter safety standards throughout the production of the Pinto. The government actively embraced cost-benefit analysis, and Ford's argument against further regulations hinged on the purported benefits. Under pressure, the National Highway Traffic Safety Administration came up with a

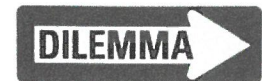


figure that put a value of just over \$200,000 on a human life. Using this figure, and projecting some 180 burn deaths a year, Ford argued that retrofitting the Pinto would be overly problematic.

At one point, over 2 million Pintos were on the road, so it is not surprising that they were involved in a number of crashes. However, data began to indicate that some kinds of crashes, particularly rear-end and roll-over crashes, were more likely to produce fires in the Pinto than in comparable vehicles. A dramatic article in *Mother Jones* drew on internal Ford memos to show that the company was aware of the safety issue and indicted the company for selling cars "in which it knew hundreds of people would needlessly burn to death." It also claimed that installing a barrier between the tank and the passenger compartment was an inexpensive fix (less than \$20). In 1978, in an almost unprecedented

CONTINUED >>

case in Goshen, Indiana, the state charged the company itself with the criminal reckless homicide of three young women. The company was acquitted, largely because the judge confined the evidence to the particular facts—the car was stalled and rammed at high speed by a pickup truck—but Ford was faced with hundreds of lawsuits and a severely tarnished reputation.

Under government pressure, and just before new standards were enacted, Ford recalled 1.5 million Pintos in 1978. The model was discontinued in 1980.

Lee Iacocca said that his company did not deliberately make an unsafe vehicle, that the proportion of deadly accidents was not unusually high for the model, and that the controversy was essentially a legal and public relations issue.

### QUESTIONS

1. Should a manufacturer go beyond government standards if it feels there may be a potential safety hazard with its product?
2. Once the safety issue became apparent, should Ford have recalled the vehicle and paid for the retrofit? Should it have invited owners to pay for the new barrier if they so chose? If only half the owners responded to the recall, what would the company's obligation be?
3. Is there a difference for a consumer between being able to make a conscious decision about upgrading safety features (such as side airbags) and relying on the manufacturer to determine features such as the tensile strength of the gas tank?
4. Once Pintos had a poor reputation, they were often sold at a discount. Do private sellers have the same obligations as Ford if they sell a car they know may have design defects? Does the discount price absolve sellers from any responsibility for the product?

Source: K. Gibson, *Business Ethics: People, Profits, and the Planet* (New York: McGraw-Hill, 2006), pp. 630–32.

## >> The History of Business Ethics

Figure 2.3 documents a brief history of business ethics. It illustrates several dramatic changes that have taken place in the business environment over the last five decades:

- The increased presence of an employee voice has made individual employees feel more comfortable speaking out against actions of their employers that they feel to be irresponsible or unethical. They are also more willing to seek legal resolution for such issues as unsafe working conditions, harassment, discrimination, and invasion of privacy.
- The issue of corporate social responsibility has advanced from an abstract debate to a core performance-assessment issue with clearly established legal liabilities.
- Corporate ethics has moved from the domain of legal and human resource departments into the organizational mainstream with the appointment of corporate ethics officers with clear mandates.
- Codes of ethics have matured from cosmetic public relations documents into performance-measurement documents that an increasing number of organizations are now committing to share with all their stakeholders.
- The 2002 Sarbanes-Oxley Act has introduced greater accountability for chief executive officers

and boards of directors in signing off on the financial performance records of the organizations they represent.

### PROGRESS ✓ QUESTIONS

9. Identify a major ethical dilemma in each of the last five decades.
10. Identify a key development in business ethics in each of the last five decades.
11. Which decade saw the most development in business ethics? Why?
12. Which decade saw the most ethical dilemmas? Why?

## >> Resolving Ethical Dilemmas

So what does all this mean for the individual employee on the front lines of the organization, dealing with stakeholders on a daily basis? In most cases, the code of ethics that is displayed so prominently for all stakeholders to see (and, presumably, be reassured by) offers very little guidance when employees face ethical conflicts in the daily performance of

### FIG.2.3 A Brief History of Business Ethics

| Decade | Ethical Climate                                                                                                                                                                                                                                               | Major Ethical Dilemmas                                                                                                                                                                                                                                                                                                      | Business Ethics Developments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1960s  | Social unrest. Antiwar sentiment. Employees have an adversarial relationship with management. Values shift away from loyalty to an employer to loyalty to ideas. Old values are cast aside.                                                                   | <ul style="list-style-type: none"> <li>• Environmental issues.</li> <li>• Increased employee-employer tension.</li> <li>• Civil rights issues dominate.</li> <li>• Honesty.</li> <li>• The work ethic changes.</li> <li>• Drug use escalates.</li> </ul>                                                                    | <ul style="list-style-type: none"> <li>• Companies begin establishing codes of conduct and values statements.</li> <li>• Birth of social responsibility movement.</li> <li>• Corporations address ethics issues through legal or personnel departments.</li> </ul>                                                                                                                                                                                                                                           |
| 1970s  | Defense contractors and other major industries riddled by scandal. The economy suffers through recession. Unemployment escalates. There are heightened environmental concerns. The public pushes to make businesses accountable for ethical shortcomings.     | <ul style="list-style-type: none"> <li>• Employee militancy (employee versus management mentality).</li> <li>• Human rights issues surface (forced labor, substandard wages, unsafe practices).</li> <li>• Some firms choose to cover rather than correct dilemmas.</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Ethics Resource Center (ERC) founded (1977).</li> <li>• Compliance with laws highlighted.</li> <li>• Federal Corrupt Practices Act passed in 1977.</li> <li>• Values movement begins to move ethics away from compliance orientation to being "values centered."</li> </ul>                                                                                                                                                                                         |
| 1980s  | The social contract between employers and employees is redefined. Defense contractors are required to conform to stringent rules. Corporations downsize and employees' attitudes about loyalty to the employer are eroded. Health care ethics are emphasized. | <ul style="list-style-type: none"> <li>• Bribes and illegal contracting practices.</li> <li>• Influence peddling.</li> <li>• Deceptive advertising.</li> <li>• Financial fraud (savings and loan scandal).</li> <li>• Transparency issues arise.</li> </ul>                                                                 | <ul style="list-style-type: none"> <li>• ERC develops the U.S. Code of Ethics for Government Service (1980).</li> <li>• ERC forms first business ethics office at General Dynamics (1985).</li> <li>• Defense Industry Initiative established.</li> <li>• Some companies create ombudsman positions in addition to ethics officer roles.</li> <li>• False Claims Act (government contracting).</li> </ul>                                                                                                    |
| 1990s  | Global expansion brings new ethical challenges. There are major concerns about child labor, facilitation payments (bribes), and environmental issues. The emergence of the Internet challenges cultural borders. What was forbidden becomes common.           | <ul style="list-style-type: none"> <li>• Unsafe work practices in third world countries.</li> <li>• Increased corporate liability for personal damage (cigarette companies, Dow Chemical, etc.).</li> <li>• Financial mismanagement and fraud.</li> </ul>                                                                   | <ul style="list-style-type: none"> <li>• Federal sentencing guidelines (1991).</li> <li>• Class action lawsuits.</li> <li>• Global Sullivan Principles (1999).</li> <li>• <i>In re Caremark</i> (Delaware Chancery Court ruling regarding board responsibility for ethics).</li> <li>• IGs requiring voluntary disclosure.</li> <li>• ERC establishes international business ethics centers.</li> <li>• Royal Dutch/Shell International begins issuing annual reports on its ethical performance.</li> </ul> |
| 2000s  |                                                                                                                                                                                                                                                               | <ul style="list-style-type: none"> <li>• Cyber crime.</li> <li>• Increased corporate liability.</li> <li>• Privacy issues (data mining).</li> <li>• Financial mismanagement.</li> <li>• International corruption.</li> <li>• Loss of privacy—employees versus employers.</li> <li>• Intellectual property theft.</li> </ul> | <ul style="list-style-type: none"> <li>• Business regulations mandate stronger ethical safeguards (Federal Sentencing Guidelines for Organizations; Sarbanes-Oxley Act of 2002).</li> <li>• Anticorruption efforts grow.</li> <li>• Shift to emphasis on corporate social responsibility and integrity management.</li> <li>• Formation of international ethics centers to serve the needs of global business.</li> <li>• OECD Convention on Bribery (1997–2000).</li> </ul>                                 |

Source: Adapted from Ethics Resource Center, "Business Ethics Timeline." Copyright © 2002, Ethics Resource Center.

their work responsibilities. When employees observe unethical behavior (e.g., fraud, theft of company property, or incentives being paid under the table to suppliers or vendor partners) or are asked to do something that conflicts with their own personal values (selling customers products or services they don't need or that don't fill their needs), the extent of the guidance available to them is often nothing more than a series of clichés:

- Consult the company code of ethics.
- Do what's right for the organization's stakeholders.
- Do what's legal.
- Do what you think is best ("use your best judgment").
- Do the right thing.

However, in many cases, the scenario the employee faces is not a clear-cut case of right and wrong, but a case of right versus right. In this scenario, the **ethical dilemma** involves a situation that requires selecting

**Ethical Dilemma** A situation in which there is no obvious right or wrong decision, but rather a right or right answer.

between conflicting values that are important to the employee or the organization. For example:<sup>3</sup>

- You have worked at the same company with your best friend for the last 10 years—in fact, he told you about the job and got you the interview. He works in the marketing department and is up for a promotion to marketing director—a position he has been wanting for a long time. You work in sales, and on your weekly conference call, the new marketing director—someone recruited from outside the company—joins you. Your boss explains that although the formal announcement hasn't been made yet, the company felt it was important to get the new director up to speed as quickly as possible. He will be joining the company in two weeks, after completing his two weeks' notice with his current employer. Should you tell your friend what happened?
- You work in a small custom metal fabrication company that is a wholly owned subsidiary of a larger conglomerate. Your parent company has announced cost-cutting initiatives that include a freeze on pay increases, citing "current market difficulties." At the same time, the CEO trades in the old company plane for a brand-new Gulfstream jet. Your colleagues are planning to strike over the unfair treatment—a strike that will cause considerable hardship for many of your customers who have come to rely on your company as a quality supplier. Do you go on strike with them?



- At a picnic given by your employer for all the company's employees, you observe that your supervisor—who is also a friend—has had a bit too much to drink. As you're walking home after the party, she stops her car and asks if you'd like a ride home. Do you refuse her offer, perhaps jeopardizing the friendship, or take a chance on not getting home safely?

## RESOLUTION

Resolution of an ethical dilemma can be achieved by first recognizing the type of conflict you are dealing with:

- *Truth versus loyalty.* Do you tell the truth or remain loyal to the person or organization that is asking you not to reveal that truth?
- *Short term versus long term.* Does your decision have a short-term consequence or a longer-term consequence?
- *Justice versus mercy.* Do you perceive this issue as a question of dispensing justice or mercy? (Which one are you more comfortable with?)
- *Individual versus community.* Will your choice affect one individual or a wider group or community?

In the examples used above, both sides are right to some extent, but since you can't take both actions, you are required to select the better or higher right based on your own resolution process. In the first example, the two rights you are facing are:

- It is right, on the one hand, to tell your friend the truth about not getting the promotion. After all, you know the truth, and what kind of world would this be if people did not honor the truth? Perhaps your friend would prefer to hear the truth from you and would be grateful for time to adjust to the idea.

# Discuss

- It is right, on the other hand, not to say anything to your friend because the person who told you in the first place asked you to keep it secret and you must be loyal to your promises. Also, your friend may prefer to hear the news from his supervisor and may be unhappy with you if you tell.

In this example you are faced with a truth versus loyalty conflict: Do you tell your friend the truth or remain loyal to the person who swore you to secrecy?

Once you have reached a decision as to the type of conflict you are facing, three resolution principles are available to you:

- *Ends-based.* Which decision would provide the greatest good for the greatest number of people?
- *Rules-based.* What would happen if everyone made the same decision as you?
- *The Golden Rule.* Do unto others as you would have them do unto you.

None of these principles can be said to offer a perfect solution or resolution to the problem since you

cannot possibly predict the reactions of the other people involved in the scenario. However, the process of resolution at least offers something more meaningful than “going with your gut feeling” or “doing what’s right.”

## PROGRESS ✓ QUESTIONS

13. Give four examples of the clichés employees often hear when faced with an ethical dilemma.
14. List the four types of ethical conflict.
15. List the three principles available to you in resolving an ethical dilemma.
16. Give an example of an ethical business dilemma you have faced in your career, and explain how you resolved it, indicating the type of conflict you experienced and the resolution principle you adopted.

# Life Skills

## >> Making tough choices

What happens when your personal values appear to directly conflict with those of your employer? Three options are open to you: (1) Leave and find another job (not as easy as it sounds); (2) keep your head down, do what you have been asked to do, and hold onto the job; and (3) talk to someone in the company about how uncomfortable the situation is making you feel and see if you can change things. All three options represent a tough choice that you may face at some point in your career. The factors that you will have to consider in making that choice will also change as you move through your working life. Making a job change on the basis of an ethical principle may seem much less challenging to a single person with fewer responsibilities than to a midlevel manager with a family and greater financial obligations.

The important point to remember here is that while an ethical dilemma may put you in a tough situation in the present, the consequences of the choice you make may remain with you far into the future. For that reason, make the choice as objectively and unemotionally as you can. Use the checklists and other tools that are available to you in this book to work through the exact nature of the issue so that you can resolve it in a manner that you can live with.



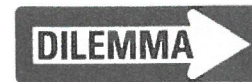
## >> Justifying Unethical Behavior

So how do supposedly intelligent, and presumably experienced, executives and employees manage to commit acts that end up inflicting such harm on their companies, colleagues, customers, and vendor partners? Saul Gellerman identified “four commonly held rationalizations that can lead to misconduct”:<sup>4</sup>

1. *A belief that the activity is within reasonable ethical and legal limits—that is, that it is not “really” illegal or immoral.* Andrew Young is quoted as having said, “Nothing is illegal if a hundred businessmen decide to do it.” The notion that anything that isn’t specifically labeled as wrong must be OK is an open invitation for the ethically challenged employer and employee—especially if there are explicit rewards for such creativity within those newly expanded ethical limits. The Porsches and Jaguars that became the vehicles of choice for Enron’s young and aggressive employees were all the incentives needed for newly hired employees
2. *A belief that the activity is in the individual’s or the corporation’s best interests—that the individual would somehow be expected to undertake the activity.* In a highly competitive environment, working on short-term targets, it can be easy to find justification for any act as being “in the company’s best interest.” If landing that big sale or beating your competitor to market with the latest product upgrades can be seen to ensure large profits, strong public relations, a healthy stock price, job security for hundreds if not thousands of employees, not to mention a healthy bonus and promotion for you, the issue of doing whatever it takes becomes a much more complex, increasingly gray ethical area.
3. *A belief that the activity is safe because it will never be found out or publicized—the classic crime-and-punishment issue of discovery.* Every unethical act that goes undiscovered reinforces this belief. Companies that rely on the deterrents of audits and spot checks make some headway in discouraging

Have you ever seen street vendors encouraging you to “try your luck” with the classic scam known as “find the lady” or the “three-card Monte”? You are shown the queen card, and then the three cards are mixed up with increasing speed. You place a bet on being able to point out the queen when the vendor stops. You win at first, but then . . .

Technology companies such as Microsoft, Apple, Hewlett-Packard (HP), and Google have come under intense scrutiny lately for their movement of revenues around the world with the same dexterity as one of those street vendors. The reason for the movement of those funds? Critics call it deliberate tax avoidance; supporters call it profit maximization. Microsoft, for example, elected to shift the intellectual property (IP) rights for software that the company developed in America to Puerto Rico, Ireland, and Singapore. As a result, the earnings from those IP rights can now be taxed at a much lower local rate rather than at the American rate of as much as 35 percent, which contributes significantly to Microsoft’s overall tax rate of only 4 percent. Google avoided almost \$2 billion in worldwide income taxes in 2011 by moving \$9.8 billion in revenues to a Bermuda shell company (where there is no corporate income tax). Should any one of these companies ever need any of the money being held overseas, rather than “repatriating” the funds (and paying taxes), the company simply



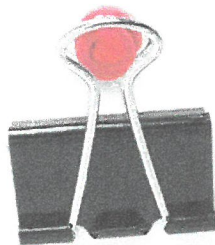
borrowed the money from its subsidiary as a short-term loan (and pays no taxes). HP has used this strategy to borrow funds from subsidiaries in Belgium and the Cayman Islands.

### QUESTIONS

1. Summarize the positions of both critics and supporters of these tax strategies.
2. Supporters and critics of these tax strategies agree that corporations are making use of legal financial options that are available to them under current tax law. However, does that equate to ethical business conduct? Why or why not?

3. The French chairman and CEO of Louis Vuitton, Bernard Arnault, recently announced that he was leaving France for Belgium, allegedly to avoid the new highest-income tax rate of 75 percent. Is that any different from what corporations are doing? Why or why not?
4. Is there a potential solution that would represent a more ethical business approach to the payment of corporate taxes? Explain your answer.

*Sources:* "Corporate Tax Avoidance: The Price Isn't Right," *The Economist*, September 21, 2012; Geoff Lye, "Tax Avoidance: It May Be Legal but Is It Responsible?" *SustainAbility*, October 16, 2012; and Jesse Drucker, "Google Revenues Sheltered in No-Tax Bermuda Soar to \$10 Billion," *Bloomberg*, December 10, 2012.



## Real World Applications

Jane enjoyed her job as an human resource generalist—helping to recruit and hire new employees and seeing those employees succeed in the organization was very rewarding. Occasionally an employee performed below expectations and would be asked to leave the company. Today was one of those days. Steve had been caught falsifying sales reports to make sure he hit his monthly quota, and Jane had been asked to sit in on the meeting in which Steve's manager confronted him with the news. What amazed Jane was Steve's response: "Everybody does it in some form or another. As far as this company is concerned, you're only as good as your last quarter, and sometimes you have to bend the rules a little to meet that expectation." Is Steve's statement a valid defense? Why or why not?

unethical behavior (or at least prompting people to think twice about it). Gellerman argues, "A trespass detected should not be dealt with discreetly. Managers should announce the misconduct and how the individuals involved were punished. Since the main deterrent to illegal or unethical behavior is the perceived probability of detection, managers should make an example of people who are detected."

4. A belief that because the activity helps the company, the company will condone it and even protect the person who engages in it. This belief suggests some confusion over the loyalty being demonstrated here. Companies engaged in unethical behavior—willingly or otherwise—may protect the identity of the personnel involved but only for as long as it is in the company's best interests to do so. Once that transgression is made public and regulatory bodies get involved, most cases would seem to suggest that the situation rapidly becomes one of every man for himself. As we saw with the Enron case, once the extent of the fraud became public, everyone involved suddenly became eager to distance him- or herself from both the activity and any key personnel in direct contact with that activity.

### Key Point

Which of the four rationalizations for unethical behavior do you think gets used the most? Why?

## >> Conclusion

It is unfortunate that the media have been given so much material on unethical corporate behavior over the last decade. Unethical CEOs have become household names to the extent that the term *business ethics* seems to be more of an oxymoron now than ever before. In such a negative environment, it is easy to forget that businesses can and do operate in an ethical manner and that the majority of employees really are committed to doing the right thing in their time at work. The organizations that build an ethical culture based on that fundamental belief can be seen to succeed in exactly the same manner as their more “creative” counterparts, with increased revenue, profits, and market share. In the following chapters we examine how they attempt to do just that.

However, as we will see in the following chapters, the challenge of building and operating an ethical business requires a great deal more than simply doing the right thing. The organization must devote time to the development of a detailed code of ethics that offers “guidance with traction” as opposed to traditional general platitudes that are designed to cover a multitude of scenarios with a healthy mix of inspiration and motivation.

Of greater concern is the support offered to employees when they are faced with an ethical dilemma. This involves not only the appointment of a designated corporate ethics officer with all the appropriate policies and procedures for bringing an issue to his or her attention but also the creation and ongoing maintenance of a corporate culture of *trust*.

## FRONTLINE FOCUS

### The Customer Is Always Right—Carol Makes a Decision

Rachel, one of Carol’s brightest team members, identified the problem that Dave had created for them right away: “So we have a new menu that’s supposed to bring in new customers, but we’re only going to make a few healthy items to ensure that we sell lots of our unhealthy but more profitable items—is that it?”

“Looks like it,” said Carol.

“Well, I hope I’m not working the drive-thru window when we start to run out of the new items,” said Rachel. “Can you say ‘bait and switch’?”

Fortunately, the new menu items wouldn’t start until next week, so Carol had time to work on this potential disaster. She couldn’t believe that Dave was being so shortsighted here. She understood his concern about sales, but healthier menu items would bring in new customers, not reduce his sales to existing ones. Sure, some might switch from their Jumbo Burger to a salad once in a while, but the new sales would more than make up for that. Plus, advertising items and then deliberately running out just wasn’t right. She’d run out of things before—if there had been a run on a particular item or Dave had messed up the supply order—but she had never deliberately not made items just to push customers toward more profitable items before, and she didn’t plan to start now.

For the first week of the new menu choices, Carol worked harder than she had done in a long time. She covered the drive-thru window through the breakfast, lunch, and dinner rushes, and when Dave made his trips to the bank for change or to their suppliers when he forgot something in the supply order, she ran in the back and made extra portions to make sure they never ran out. It was a close call once or twice when she was making things to order, but the customers were never kept waiting.

At the end of the week, she had all the information she needed. Sales were up—way up—the new items were a big hit. She had been able to sell everything she had made without affecting the sales of their traditional items. Now all she had to do was confess to Dave.

#### QUESTIONS

1. Did Carol make the right choice here?
2. What do you think Dave’s reaction will be?
3. What would the risk have been for the restaurant if they had implemented Dave’s plan and deliberately run out of the new items?

# [For Review]

## 1. Define the term *business ethics*.

*Business ethics involves the application of standards of moral behavior to business situations. The subject can be approached from a descriptive perspective (documenting what is happening) or a prescriptive perspective (recommending what should be happening). In either case, the expectation is that business ethics should not be a separate set of standards from general ethics. Ethical behavior, it is argued, should be the same both inside and outside a business situation.*

## 2. Identify an organization's stakeholders.

*An organization's stakeholders are any companies, institutions, or individuals that have a connection with or vested interest in the efficient and ethical operations of that organization. Depending on the market or industry in which the organization conducts business, those stakeholders can include shareholders, employees, customers, suppliers, wholesalers, creditors, community organizations, and the federal government.*

## 3. Discuss the position that business ethics is an oxymoron.

*It would be unfair to brand every organization as fundamentally unethical in its business dealings. There's no doubt that numerous prominent organizations that were previously held as models of aggressive business management (Enron, Global Crossing, HealthSouth, IMClone, Tyco, and WorldCom) have later been proved to be fundamentally flawed in their ethical practices. This has succeeded in bringing the issue to the forefront of public awareness. However, the positive outcome from this has been increased attention to the need for third-party guarantees of ethical conduct and active commitments from the rest of the business world.*

## 4. Summarize the history of business ethics.

*Several dramatic changes have taken place in the business environment over the last five decades:*

- *The increased presence of an employee voice has made individual employees feel more comfortable speaking out against actions of their employers that they feel to be irresponsible or unethical. They are also more willing to seek legal resolution for such issues as unsafe working conditions, harassment, discrimination, and invasion of privacy.*
- *The issue of corporate social responsibility has advanced from an abstract debate to a core performance-assessment issue with clearly established legal liabilities.*

- *Corporate ethics has moved from the domain of legal and human resource departments into the organizational mainstream with the appointment of corporate ethics officers with clear mandates.*
- *Codes of ethics have matured from cosmetic public relations documents into performance-measurement documents that an increasing number of organizations are now committing to share with all their stakeholders.*
- *The 2002 Sarbanes-Oxley Act has introduced greater accountability for chief executive officers and boards of directors in signing off on the financial performance records of the organizations they represent.*

## 5. Identify and propose a resolution for an ethical dilemma in your work environment.

*Resolution of an ethical dilemma can be approached in two stages: recognizing the type of conflict you are dealing with and then selecting a resolution principle based on that conflict type. Conflict types can be grouped into four categories:*

- *Truth versus loyalty. Do you tell the truth or remain loyal to the person or organization that is asking you not to reveal that truth?*
- *Short term versus long term. Does your decision have a short-term consequence or a longer-term consequence?*
- *Justice versus mercy. Do you perceive this issue as a question of dispensing justice or mercy? (Which one are you more comfortable with?)*
- *Individual versus community. Will your choice impact one individual or a wider group or community?*

*Three resolution principles can then be considered:*

- *Ends-based. Which decision would provide the greatest good for the greatest number of people?*
- *Rules-based. What would happen if everyone made the same decision as you?*
- *The Golden Rule. Do unto others as you would have them do unto you.*

## 6. Explain how executives and employees seek to justify unethical behavior.

*When their conduct or decisions are questioned as being unethical, most executives and employees seek to rationalize their behavior with four common justifications:*

- *A belief that the activity is within reasonable ethical and legal limits—that is, that it is not “really” illegal or immoral.*

- *A belief that the activity is in the individual's or the corporation's best interests—that the individual would somehow be expected to undertake the activity.*
- *A belief that the activity is safe because it will never be found out or publicized—the classic crime-and-punishment issue of discovery.*
- *A belief that because the activity helps the company, the company will condone it and even protect the person who engages in it.*

## [Key Terms]

Business Ethics 24

Code of Ethics 26

Corporate Governance 25

Ethical Dilemma 30

Oxymoron 26

Stakeholder 24

## [Review Questions]

1. Based on the history of business ethics reviewed in this chapter, do you think the business world is becoming more or less ethical? Explain your answer.
2. How would you propose the resolution of an ethical dilemma using the Golden Rule?
3. Why should a short-term or long-term consequence make a difference in resolving an ethical dilemma?
4. Of the four commonly held rationalizations for unethical behavior proposed by Saul Gellerman, which one do you think gets used most often? Why?
5. Is it ever acceptable to justify unethical behavior? Why or why not?
6. Explain what “doing the right thing” in a business environment means to you.

## [Review Exercises]

You are returning from a business trip. As you wait in the departure lounge for your flight to begin boarding, the gate attendant announces that the flight has been significantly overbooked and offers incentives for passengers to take later flights. After several minutes, the offer is raised to a free round-trip ticket anywhere in the continental United States plus meal vouchers for dinner while you wait for your later flight. You give the offer serious consideration and realize that even though you'll get home several hours later than planned, the inconvenience will be minimal, so you give up your seat and take the free ticket and meal vouchers.

1. Since you are traveling on company time, does the free ticket belong to you or your company? Defend your choice.

2. If the later flight was actually the next day (and the airline offered you an accommodation voucher along with the meal vouchers) and you would be late getting into work, would you make the same choice? Explain your answer.
3. What if the offer only reached a \$100 discount coupon on another ticket—would you still take it? If so, would you hold the same opinion about whether the coupon belonged to you or your company?
4. Should your company offer a clearly stated policy on this issue, or should it trust its employees to “do the right thing”? Explain your answer.

## [Internet Exercises]

1. Locate the website for the Ethics and Compliance Officer Association (ECOA). The ECOA makes a public commitment to three key values. What are they? How does the mission of the ECOA differ from that of the ERC?
2. Locate the website for the Ethics Resource Center.
  - a. Find the Research Publications page, and select a recent research report.
  - b. Briefly summarize the ethical issue discussed in the report.
  - c. Do you agree or disagree with the conclusions reached in the report? Explain your answer.

## [Team Exercises]

### 1. Thanks for the training!

Divide into two groups, and prepare arguments *for* and *against* the following behavior: *You work in the IT department of a large international company. At your annual performance review, you were asked about your goals and objectives for the coming year, and you stated that you would like to become a Microsoft Certified Systems Engineer (MCSE). You didn't get much of a pay raise (yet another cost-cutting initiative!), but your boss told you there was money in the training budget for the MCSE course—you're attending the training next week. However, after receiving the poor pay raise, you had polished your résumé and applied for some other positions. You received an attractive job offer from another company for more money, and, in the last interview, your potential new boss commented that it was a shame you didn't have your MCSE certification because that would qualify you for a higher pay grade. The new company doesn't have the training budget to put you through the MCSE training for at least two years. You tell the interviewer that you will complete the MCSE training prior to starting the new position in order to qualify for the higher pay grade. You choose not to qualify that statement with any additional information on who will be paying for the training. You successfully gain the MCSE certification and then give your two weeks' notice. You start with your new company at the higher pay grade. Is that ethical?*

### 2. What you do in your free time . . .

Divide into two groups, and prepare arguments *for* and *against* the following behavior: *You are attending an employee team-building retreat at a local resort. During one of the free periods in the busy agenda, you observe one of your colleagues in a passionate embrace with a young woman from another department. Since you work in HR and processed the hiring paperwork on both of them, you know that neither one of them is married, but your benefit plan provides coverage for "life partners," and both of them purchased health coverage for life partners. As you consider this revelation further, you are reminded that even if they have both ended their relationships with their respective partners, the company has a policy that expressly forbids employees from dating other employees in the company. Both you and the colleague you observed have applied for the same promotion—a promotion that carries a significant salary increase. What is your obligation here? Should you report him to your boss?*

### 3. Treatment or prevention?

Divide into two groups, and prepare arguments for *treatment* (Group A) and *prevention* (Group B) in the following situation: *You work in your city for a local nonprofit organization that is struggling to raise funds for its programs in a very competitive grant market. Many nonprofits in your city are chasing grant funds, donations, and volunteer hours for their respective missions—homelessness, cancer awareness and treatment, orphaned children, and many more. Your organization's mission is to work with HIV/AIDS patients in your community to provide increased awareness of the condition for those at risk and also to provide treatment options for those who have already been diagnosed. Unfortunately, with such a tough financial situation, the board of directors of the nonprofit organization has determined that a more focused mission is needed. Rather than serving both*

*the prevention and treatment goals, the organization can only do one. The debate at the last board meeting, which was open to all employees and volunteers, was very heated. Many felt that the treatment programs offered immediate relief to those in need, and therefore represented the best use of funds. Others felt that the prevention programs needed much more time to be effective and that the funds were spread over a much bigger population who might be at risk. A decision has to be reached. What do you think?*

**4. Time to raise prices . . .**

*Divide into two groups, and prepare arguments for and against the following behavior: You are a senior manager at a pharmaceutical company that is facing financial difficulties after failing to receive FDA approval for a new experimental drug for the treatment of Alzheimer's disease. After reviewing your test data, the FDA examiners decided that further testing was needed. Your company is now in dire financial straits. The drug has the potential to revolutionize the treatment of Alzheimer's, but the testing delay could put you out of business. The leadership team meets behind closed doors and decides the only way to keep the company afloat long enough to bring the new drug to market is to raise the prices of its existing range of drug products. However, given the financial difficulties your company is facing, some of those price increases will exceed 1,000 percent. When questions are raised about the size of the proposed increases, the chief executive officer defends the move with the following response: "Look, our drugs are still a cheaper option than surgery, even at these higher prices; the insurance companies can afford to pick up the tab; and, worst case scenario, they'll raise a few premiums to cover the increase. What choice do we have? We have to bring this new drug to market if we are going to be a player in this industry."*

# Thinking Critically

2.1

## >> Hostess Brands: Impossible to Save?

With a legacy dating back to the 1920s, when the Continental Baking Company in New York City sold “Hostess” cake products and “Wonder” bread goods, the renamed Hostess Brands filed for Chapter 11 liquidation in mid-November 2012, closing all factory operations and ending 18,500 jobs. The news prompted panic-buying of Twinkies (with some being resold on eBay by aspiring entrepreneurs looking to generate a quick profit), as consumers feared that the brand would be lost from their grocery shelves forever. Hostess booked a net loss of \$1.1 billion in fiscal 2012 on revenues of only \$2.5 billion. The liquidation marked the end of a slow decline—the company had spent 8 of the last 11 years in bankruptcy—and now media attention is divided between the apparent fight among more than 80 potential suitors for Hostess’s iconic brands (Wonder bread, Twinkies, Ho-Ho’s, Ring Dings, and Ding-Dongs) and the aggressive finger-pointing as to who was to blame for the final demise of the company.

Since the company is in formal liquidation, the product lines and equipment will be sold through a “363” sale, meaning they will be sold free of liabilities for the financial mess that remains. Analysts forecast a sales price of as much as \$1 billion, with the hope that some jobs will be retained along with the sale of assets. What remains, however, will be an acrimonious debate over recriminations between the major players involved in the demise of Hostess Brands—the company leadership, the unions representing Hostess employees, and the private equity and hedge fund companies that claimed on more than one occasion to be “saving” Hostess brands for the future.

Critics argue that for a company with such an “unhealthy” line of products, the leadership failed to adjust to changing consumer tastes. Twinkies may be an iconic brand, but when competitors such as Coca-Cola and General Mills were adapting product lines to maintain market leadership, simply offering 100-calorie “Twinkie bites” wasn’t enough to keep the company afloat.

The first bankruptcy filing came in 2004. Burdened by a “stale” product line, high labor costs (including a mind-numbing matrix of 372 collective-bargaining agreements with a dozen different unions), 5,500 different delivery routes, 40 different pension plans, and \$450 million in debt on the balance sheet, the future for Interstate Bakeries Corporation (IBC), as the company was then known, looked bleak. IBC remained in bankruptcy for five years, fighting off a \$580 million bid from Bimbo Bakeries USA (owner of such brands as Sara Lee, Entenmann’s, and Thomas’ English Muffins) in 2007, only to emerge in 2009 with an equity infusion of \$130 million from private equity firm Ripplewood Holdings; steep concessions from its unions on pay rates, work contracts, and negotiated layoffs that were expected to generate about \$110 million in savings; and concessions from its key lenders that supported the continued survival of the company.

Key lenders included hedge fund companies Silver Point Capital (owning 30 percent of the \$450 million debt), Monarch Alternative Capital (owning another 30 percent), and other lenders owning the remaining 40 percent. Both Silver Point and Monarch were assumed to have purchased IBC debt at a steep discount with a business strategy to “turn the company around” and replace the debt at full price. As part of that commitment, they

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agreed to forgo half of the \$450 million in debt and exchange the other half (\$225 million) for new debt in addition to providing supplemental funding of \$360 million.

With restructured debt and \$490 million of fresh capital (\$360 million from lenders plus \$130 million from Ripplewood), the newly named Hostess Brands was expected to perform wonders. However, all that new debt had to be serviced (interest payments) in addition to dealing with falling sales and arcane union arrangements such as separate deliveries for separate product lines to the same retail locations in order to comply with existing agreements with the Teamsters Union.

The capital infusion enabled the company to crawl through to another bankruptcy in late 2011, but the funds were used for operating costs and debt service only, with no investment in vehicles or plant equipment. Inevitably, the company turned to the unions for yet more concessions to lower operating costs. Negotiations continued throughout 2012. The unions took the position that they had given enough in 2009 and pointed to specific leadership decisions such as unfunded pension obligations and increased executive salaries of as much as 80 percent, as evidence of explicit unfairness in the negotiations.

By late 2012, faced with billions of dollars in debt and unions that were unwilling to be any more flexible than they had already been, Hostess Brands elected to liquidate. In one final act of apparent callousness, the leadership team of the company was allowed to keep \$1.8 million of awarded bonuses in order, it was argued, to ensure that they didn't leave before winding down the company effectively. Fifteen thousand employees were dismissed immediately, with about three thousand being retained to manage the wind-down phase. The government-run Pension Benefit Guaranty Corporation will assume any remaining pension benefit entitlements.

## QUESTIONS

1. Was the leadership of Hostess Brands to blame for the demise of the company? Why or why not?
2. What role did the unions play in the ultimate liquidation of Hostess Brands?
3. Private equity firms and hedge funds are being singled out in this case. Was their conduct unethical? Why or why not?
4. What could have been done differently by the ownership and management of Hostess Brands?
5. Was there a long-term future for Hostess Brands? Why or why not?
6. What do you think will happen now?

Sources: John Carney, "How Hostess Failed: Hedge Funds vs. Unions," CNBC.com, November 16, 2012; David A. Kaplan, "Hostess Is Bankrupt . . . Again," *Fortune*, July 26, 2012; Susan Adams, "Why Hostess Had To Die," *Forbes*, November 21, 2012; and Anthony Castellano, "Judge Allows Hostess to Give Executives \$1.8M in Bonuses," ABCNews.com, November 30, 2012.

# Thinking Critically

2.2

## >> UNEQUIVOCAL DEDICATION TO BUSINESS ETHICS?

At a time of increasing skepticism that businesses can be both successful and ethical, one group of companies, which between them account for almost a billion dollars in global sales, have come together as the charter members of the Business Ethics Leadership Alliance (BELA). Formed in December 2008, the founding membership consisted of 17 companies from a wide range of industries, including retail, airlines, financial services, and computers. Some of the names may be familiar to you:

- Accenture
- Avaya
- CACI International
- Crawford
- Dell
- Dun & Bradstreet
- Ecolab
- Fluor
- General Electric
- Jones Lang
- Lasalle
- NYK Line

- PepsiCo
- Sempra Energy
- Southern Company
- The Hartford
- United Airlines
- Walmart

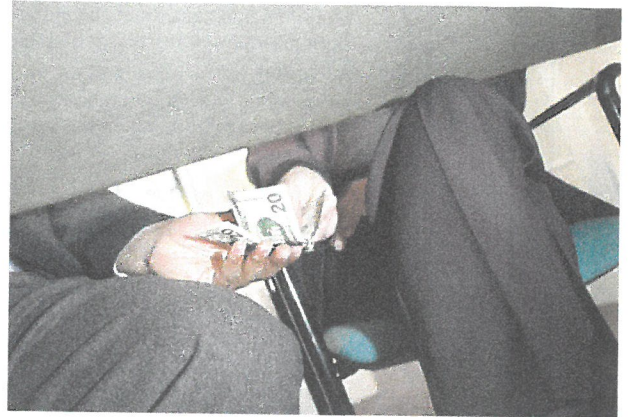
Working with the Ethisphere Institute, an international think tank that dedicates itself to “the creation, advancement and sharing of best practices in business ethics, corporate social responsibility, anti-corruption and sustainability,” BELA appears to take a very clear position and invites public and private companies to join it in making an explicit pledge to four core values: (1) legal compliance, (2) transparency, (3) identification of conflicts of interest, and (4) accountability.

Responding to a situation where “through the cacophony of media stories, political finger pointing, infuriating reports of greed, and compelling stories of hardship, the business community as a whole has been characterized as a barrel full of bad apples that has the ability to spoil the global economy,” the alliance members present themselves as “a growing quorum made up of some of the world’s most recognizable companies joining together to affirm an unequivocal dedication to business ethics.” In addition, they see it as their responsibility to “reestablish ethics as the foundation of everyday business practices.”

Response to the new alliance has been mixed. Optimists appear to see this new organization as a step in the right direction, arguing that “a public so badly burned by ethical shortcomings in so many American companies will be cynical for years to come, but BELA is to be applauded for trying to turn the situation around.” There are certainly some large companies getting involved here—Walmart, GE, Dell, and Pepsi—and they appear to be committing to specific changes in their business practices that directly correlate to many of the ethical problems identified at companies such as Enron, WorldCom, Tyco, and many others.

However, many cynics see this as just a public relations exercise for companies that have had their own business practices brought into question in the past and are now seeking redemption through a commitment to a new ethical philosophy. For example, Walmart paid \$11 million to the Department of Justice in settlement of a case involving the hiring of illegal immigrants by its cleaning contractors in 2005. Other class action suits are pending against the world’s largest retailer. In 2006, Sempra Energy agreed to pay more than \$377 million in response to allegations of manipulation of the price of natural gas during the 2001 California energy crisis.

For such a young alliance, much appears to be promised, including audits every two years and the requirement of strict compliance to the four core values, with the threat of removal from the alliance for failure to comply. It remains to be seen, however, whether such a public commitment by such well-known organizations can truly make a dent in a growing global conviction that businesses cannot really be trusted to perform in an ethical manner.



## QUESTIONS

1. Visit the website for BELA at [www.ethisphere.com/bela](http://www.ethisphere.com/bela). Define the four core values in detail, and explain which one you think will be the hardest for members to achieve and why.
2. Do you think it was a good idea to welcome founding members with such widely publicized ethical transgressions in their past? Why or why not?
3. BELA is a U.S.-driven initiative at the moment. Do you think it will achieve a wider global acceptance over time? Why or why not?
4. Are the four core values—legal compliance, transparency, identification of conflicts of interest, and accountability—enough to establish a credible reputation as an ethical company? What other values would you consider adding and why?

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5. Cynics could argue that this is simply a public relations exercise for companies that have performed unethical business practices in the past. Optimists could argue that this is, at the very least, a step in the right direction of restoring the ethical reputation of business as a whole. What do you think?
6. According to the rules of BELA, members will be audited every two years to make sure they are in compliance with BELA standards, and can face removal from the alliance should that audit provide evidence of failure to comply. Do you think the threat of removal from the alliance will keep members in line? Why or why not?

Sources: F. Guerrero and J. Birchall, "U.S. Groups in Ethical Standards Push," *Financial Times*, December 8, 2008; P. Faur, "17 U.S. Companies Form Business Ethics Leadership Alliance," [www.comunitelligence.com](http://www.comunitelligence.com), December 10, 2008; "Business Ethics Leadership Alliance Forms to Affirm Core Business Ethics Principles, Supply and Demand Chain Executive," [www.sdcexec.com/online](http://www.sdcexec.com/online), December 12, 2008; and C. MacDonald, "Business Ethics Leadership Alliance: What's in a Promise?" <http://businessethicsblog.com/2008/12/12/business-ethics-leadership-alliance-whats-in-a-promise/>; and [www.ethisphere.com/bela/](http://www.ethisphere.com/bela/).

# Thinking Critically 2.3

## >> TEACHING OR SELLING? • Drugmakers Worried about Conflicts of Interest Modify Their Approach to Sponsorship of Continuing Education

In response to increasing criticism over its sponsorship of physician-education courses (and the suggestion of undue influence on doctors' prescriptions and procedures), the drugmaker Pfizer announced in July 2008

that it would no longer pay marketing communications companies to arrange continuing medical education (CME) courses, which doctors must take to maintain their licenses. Pfizer said it would support medical education only when it was put on by hospitals and professional medical associations. Zimmer Holdings, a medical device manufacturer that manufactures hip, knee, and elbow implants, suspended funding of all CME activity. The company said it will restrict the way it funds courses in the future by identifying an independent third party, such as a professional society, to organize educational programs.

"We understand that even the appearance of conflicts in CME is damaging, and we are determined to take actions that are in the best interests of patients and physicians," Dr. Joseph M. Feczko, Pfizer's chief medical officer, said in a press release.

Industry support for CME has quadrupled since 1998, to \$1.2 billion a year, according to the Accreditation Council for Continuing Medical Education (ACCME), an organization in Chicago that approves CME providers. More than half of that is funneled to marketers, with the rest going to hospitals, medical associations, and other nonprofit entities.

As industry money for continuing education proliferates, so do worries that many of the courses have become at least partly aimed at promoting products. The industry and its outside marketers say they ensure that the courses remain free of commercial influence. But some medical experts argue that when employees of communications firms are beholden to pharmaceutical and device companies, they will produce CME courses that are slanted in favor of their sponsors, even if they don't realize what they are doing. "There's not only a perception of bias, there's a reality," says Dave Davis, a vice president of the Association of American Medical Colleges.

In January 2010, Pfizer appeared to modify its 2008 position by announcing a \$3 million grant to Stanford University to create continuing medical education courses that the company claims will come with "no conditions,



and the company will not be involved in developing the curriculum.” However, critics have argued that the curriculum will most likely focus on at least two areas in which Pfizer has major product lines: smoking cessation and heart disease.

**QUESTIONS**

1. Where is the conflict of interest in this CME relationship?
2. Do you think doctors are likely to be influenced by such promotional tactics? Why or why not?
3. If the pharmaceutical company is paying for the event, shouldn't it have the right to promote its products at the event? Why or why not?
4. Pfizer stated in 2008 that it would only support medical education put on by hospitals and professional medical associations. How can it then justify the Stanford grant?
5. Has Pfizer simply replaced one conflict of interest with another? Why or why not?
6. Propose an alternative approach to ensure that CME is provided without a conflict of interest.

Sources: Arlene Weintraub, "Teaching Doctors or Selling to Them," *BusinessWeek*, July 31, 2008; Duff Wilson, "Using a Pfizer Grant, Courses Aim to Avoid Bias," *The New York Times*, January 11, 2010; and Jacob Goldstein, "Stanford's Continuing Medical Ed., Brought to You by Pfizer," *The Wall Street Journal*, January 11, 2010.

