Howard J. Levine
Distinguished Lecture
on
Business Ethics
and Social Responsibility
Discussion Outline

- Ethics
  - What is “ethics”?  
  - Inspiration for good ethical principles  
  - Why so many scandals?  
  - Examples of ethical issues  
  - Applying ethical principles in real life

- Corporate Social Responsibility (CSR)
  - What is CSR?  
  - How CSR benefits companies, the community, and the environment  
  - Hot topics in CSR
As easy as ABC? We wish!
What is ethics?

– Values? Principles?
– The duty to treat others a certain way?
– The difference between what is merely lawful and that which is “the right thing to do”.
– The impacts of our own actions on the community, on human capital, and on resources create the intersection between ethics and social responsibility.
Here’s who we can benefit
And they occupy this place
Ethical Teachings in Spiritual Traditions
Judeo-Christian

- **Leviticus 19:11** “You shall not steal; you shall not deal falsely; you shall not lie to one another.

- **Proverbs 22:1** A good name is to be chosen rather than great riches, and favor is better than silver or gold.

- **Leviticus 25:14** And if you make a sale to your neighbor or buy from your neighbor, you shall not wrong one another.
Buddhism
- Karma
- “Moral discipline”
- Acting in a loving and compassionate manner toward others

Islam
- Righteousness
- Good character
- Fulfilling promises
- Being honest
Notable ethical lapses

- Equity Funding
- Savings and Loan Crisis
- Enron
- Arthur Andersen
- Tyco
- Adelphia Cable
- Lance Armstrong
- Farmer & Merchants Bank of Long Beach
- Bernie Madoff
- Elizabeth Holmes - Theranos
- Facebook – Cambridge Analytica
- Direct Lending
The list goes on and on ....

- Workplace cases - Uber
- “Mommy track” case vs. Morrison & Foerster
- Gender discrimination cases including vs. Jones Day and Littler Mendelson
- Etc.

- International corporate scandals:
  - Swissair
  - Volkswagen
  - Deutsche Bank
  - Barclays
  - Carlos Ghosn – Nissan, Renault
  - Etc.
One day you are on top, sitting pretty (or pretty smug?)

GORDON CAPLAN
WILLKIE FARR & GALLAGHER

In the midst of a dramatic downturn ravaging the retail industry, the Hudson’s Bay Co., which owns and operates retail spaces in North America and Europe, found an innovative way to improve its future outlook. Last fall, Gordon Caplan guided the company through a series of interlocking real-estate transactions that breathed new life into Hudson’s Bay by bringing in a capital infusion and repurposing real estate through a joint venture with workspace startup WeWork.

“This was the most innovative and interlocking use of both real estate and retail banners that we’ve seen to date,” Caplan says.

In the deal, Hudson’s Bay sold to WeWork its Lord & Taylor flagship building on Fifth Avenue in New York for $50 million and, at the same time, leased back the first floor to keep the department store as an anchor tenant; struck a joint venture with WeWork for the use of other Hudson’s Bay-owned properties in Canada, the United States and Germany; received a $30 million equity investment from Rhone Capital; and bought off an activist investor, all in one 10-week window.

The deal is “a representation to the business world that if you own your own real estate, you can do really transformative things with it,” Caplan says.

It all came together amid the backdrop of another major retailer, Toys R Us, filing for bankruptcy in September 2017, showing that innovative thinking can keep companies such as Hudson’s Bay humming.

“What all of these companies need is capital, time and resources of their best assets—both the retail banners and the underlying real estate,” Caplan says. “In 10 short weeks, Hudson’s Bay was able to put off all three.”

—BEN SEAL
Tomorrow, indictment and a perp walk

AND, you’re immortalized on tape, not in a good way.
If you lose your moral compass?

- Loss of reputation
- Loss of freedom
- Loss of money
- Loss of ability to earn a future living
- Loss of professional license – disbarment
- Loss of trust – where there’s smoke, there’s fire
- Incalculable damage to personal relationships
Real Estate Examples

- Re-trading/re-negotiation
  - Seller/buyer
  - Lender/borrower
  - Landlord/tenant
  - Broker

- Selective disclosure during due diligence
- Cutting corners on construction quality
- Stiffing subcontractors
- Making changes “after the inspector comes”
Real Estate Examples

- Misuse of the *lis pendens* process
- Housing tax credit abuses
- Falsifying loan applications

**WHO IS HARMED AND HOW?**

**WHAT ARE THE REMEDIES?**
Personal Examples
Ethical Principles in Practice
Ethical principles in practice

Diversity and inclusion
When Tech’s Hottest Names Go Public, This Is Who They Call, says the Wall Street Journal

Julie Gao advised on stock sales that raised more than $20 billion last year, including seven of the 10 largest Chinese tech IPOs
Phuong Phillips - “As a person of color, as an immigrant, as a woman, I want to be able to make sure that I really focus on creating the future of what society is. I want my hiring to reflect that, and hiring diverse law firms makes the statement that you should be hiring diverse people.”
United States Senator and Candidate for President

- Kirsten Gillibrand, UCLA J.D., 1991
- According to the UCLA Alumni Association newsletter, “she received a standing ovation from the House of Representatives for working up until the day that she went into labor.” Is this good?!
What are the elements of CSR?
Kwanzaa’s 7 core principles

- Unity
- Self-Determination
- Collective Work and Responsibility
- Cooperative Economics
- Purpose
- Creativity
- Faith
See “CRE Companies Mind their ESGs” - https://www.cpexecutive.com/post/cre-companies-mind-their-esgs/

For example, Prologis’ focus on solar energy and workforce development programs; Boston Properties working on indoor air quality, building material chemistry, and access to nature and daylight.
Benefit Corporations

- Patagonia, Ben & Jerry’s, The Honest Company, Warby Parker, Eileen Fisher, Seventh Generation
- "General public benefit" means a material positive impact on society and the environment.
- Notice the focus - not solely on the shareholders.
- Triple bottom line: people, planet and profit.
CSR Outside the U.S.

- 23 countries have enacted legislation within the past 15 years to require public companies to issue reports including environmental or social information.

- Seven international stock exchanges require social and/or environmental disclosure as part of their listing requirements including London Stock Exchange and exchanges in Australia, Brazil, India, Malaysia, Norway and South Africa.
Global Reporting on CSR

- 2013 EU Accounting Directive making CSR reporting mandatory for certain companies
- UN’s Global Compact and its reporting framework - over 47,000 COPs – Communications on Progress – have been reported
- In 2013 India enacted CSR legislation requiring covered companies to give 2% of average net profits to charity
In 2016 the Securities and Exchange Commission ("SEC") issued a Concept Release requesting comments on, among other things, disclosure of sustainability and public policy matters, ESG (environmental, social and governance) including climate change, resource scarcity, corporate social responsibility and good corporate citizenship.

Of the over 25,000 comments received, over 10,000 mentioned environmental/climate change risk disclosure.

In October, 2018, two law school professors and numerous institutional investors that collectively manage more than $5 trillion in assets submitted a petition for rulemaking to the SEC, calling for the SEC to develop a standardized comprehensive framework under which public companies would be required to disclose identified environmental, social, and governance (“ESG”) factors relating to their operations.

Here’s a link to the proposal and submitted comments: https://www.sec.gov/comments/4-730/4-730.htm
Appendices

– Josephson Institute’s 12 Ethical Principles
– Examples of the benefits of corporate social responsibility
1 - Josephson Institute’s
12 Ethical Principles for Business Executives

- Ethical values, translated into active language establishing standards or rules describing the kind of behavior an ethical person should and should not engage in, are ethical principles. The following list of principles incorporate the characteristics and values that most people associate with ethical behavior.

1. HONESTY. Ethical executives are honest and truthful in all their dealings and they do not deliberately mislead or deceive others by misrepresentations, overstatements, partial truths, selective omissions, or any other means.

2. INTEGRITY. Ethical executives demonstrate personal integrity and the courage of their convictions by doing what they think is right even when there is great pressure to do otherwise; they are principled, honorable and upright; they will fight for their beliefs. They will not sacrifice principle for expediency, be hypocritical, or unscrupulous.
3. PROMISE-KEEPING & TRUSTWORTHINESS. Ethical executives are worthy of trust. They are candid and forthcoming in supplying relevant information and correcting misapprehensions of fact, and they make every reasonable effort to fulfill the letter and spirit of their promises and commitments. They do not interpret agreements in an unreasonably technical or legalistic manner in order to rationalize non-compliance or create justifications for escaping their commitments.

4. LOYALTY. Ethical executives are worthy of trust, demonstrate fidelity and loyalty to persons and institutions by friendship in adversity, support and devotion to duty; they do not use or disclose information learned in confidence for personal advantage. They safeguard the ability to make independent professional judgments by scrupulously avoiding undue influences and conflicts of interest. They are loyal to their companies and colleagues and if they decide to accept other employment, they provide reasonable notice, respect the proprietary information of their former employer, and refuse to engage in any activities that take undue advantage of their previous positions.
5. FAIRNESS. Ethical executives and fair and just in all dealings; they do not exercise power arbitrarily, and do not use overreaching nor indecent means to gain or maintain any advantage nor take undue advantage of another’s mistakes or difficulties. Fair persons manifest a commitment to justice, the equal treatment of individuals, tolerance for and acceptance of diversity, they are open-minded; they are willing to admit they are wrong and, where appropriate, change their positions and beliefs.

6. CONCERN FOR OTHERS. Ethical executives are caring, compassionate, benevolent and kind; they like the Golden Rule, help those in need, and seek to accomplish their business objectives in a manner that causes the least harm and the greatest positive good.
7. RESPECT FOR OTHERS. Ethical executives demonstrate respect for the human dignity, autonomy, privacy, rights, and interests of all those who have a stake in their decisions; they are courteous and treat all people with equal respect and dignity regardless of sex, race or national origin.

8. LAW ABIDING. Ethical executives abide by laws, rules and regulations relating to their business activities.

9. COMMITMENT TO EXCELLENCE. Ethical executives pursue excellence in performing their duties, are well informed and prepared, and constantly endeavor to increase their proficiency in all areas of responsibility.
10. LEADERSHIP. Ethical executives are conscious of the responsibilities and opportunities of their position of leadership and seek to be positive ethical role models by their own conduct and by helping to create an environment in which principled reasoning and ethical decision making are highly prized.

11. REPUTATION AND MORALE. Ethical executives seek to protect and build the company’s good reputation and the morale of its employees by engaging in no conduct that might undermine respect and by taking whatever actions are necessary to correct or prevent inappropriate conduct of others.

12. ACCOUNTABILITY. Ethical executives acknowledge and accept personal accountability for the ethical quality of their decisions and omissions to themselves, their colleagues, their companies, and their communities.
Examples:

- Improved financial performance;
- Lower operating costs;
- Enhanced brand image and reputation;
- Increased sales and customer loyalty;
- Greater productivity and quality;
- More ability to attract and retain employees;
- Reduced regulatory oversight;
- Access to capital;
- Workforce diversity;
- Product safety and decreased liability.
Examples:

- Charitable contributions;
- Employee volunteer programs;
- Corporate involvement in community education, employment and homelessness programs;
- Product safety and quality.
CSR can impact the environment

Examples:

– *Greater material recyclability*;
– *Better product durability and functionality*;
– *Greater use of renewable resources*;
– *Integration of environmental management tools into business plans, including life-cycle assessment and costing, environmental management standards, and eco-labelling*. 
Thank you, UCLA!

- Lisa Quateman
- lquateman@polsinelli.com
- (310) 203-5303
- Access these slides at:
Polsinelli provides this material for informational purposes only. The material provided herein is general and is not intended to be legal advice. Nothing herein should be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.

Polsinelli is very proud of the results we obtain for our clients, but you should know that past results do not guarantee future results; that every case is different and must be judged on its own merits; and that the choice of a lawyer is an important decision and should not be based solely upon advertisements.

© 2019 Polsinelli PC. In California, Polsinelli LLP. Polsinelli is a registered mark of Polsinelli PC