Law, Ethics, and Corporate Social Responsibility

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You are the part-owner and general manager of Bistro 24, a popular full-service mid-market eatery located in Broad Ripple. Today was the worst day of your professional life. Here are the gory details:

9 AM

12 PM

10 PM
How does the law affect business?

- Torts
- Employment law
- Contracts
- Criminal law
- Intellectual property
- Real property
- Environmental law
- Tax law
- Corporate law
Roadmap

- Understand purposes of law
- Understand characteristics of law
- Understand broad classifications of law
- Understand various sources of law
- Understand role of courts in creating and interpreting law
Purposes of Law

• Keeping order
• Influencing conduct
• Honoring expectations
• Promoting equality
• Promoting compromise
Characteristics of a Good Law

- Generally and equally applicable
  - Applies to all members of society and applies to various groups in the same way—no special treatment!
- Enforceable
  - Formal mechanism to resolve disputes and punish wrongdoers
- Flexible
  - Law can adapt to changing societal and business needs
- Consistent
  - Law is stable enough to allow individuals and businesses to rely on it for planning purposes
- Pervasive
  - Law touches many aspects of life and business to provide a framework for conduct, but allows freedom to operate within that framework
Classifications of Law

• Public Law
  – Enacted by some authorized government body. Example: Federal securities laws

• Private Law
  – Enacted by private individuals
    • Example: the terms of a lease agreement
    • Example: employment agreement
Classifications of Law

- **Criminal versus Civil Laws**
  - Criminal laws are wrongs against society
  - Civil laws are wrongs against individuals
- **Substantive versus Procedural Laws**
  - Substantive: Gives rights and responsibilities
    - Ex. Your Constitutional rights
  - Procedural: Means or procedures for enforcing substantive rights
    - Ex. Court procedures, rules of evidence
Classifications of Law

- **Statutory Law**
  - Passed by governmental body
  - Also known as Codified Law

- **Common Law**
  - Began in England in 1066 and continues today
  - Non-statutory law
  - Exists in court decisions
  - Following case precedent, or *stare decisis*, “let the decision stand”
  - Ex. Common law claims exist for negligence, fraud, and intentional infliction of emotional distress
Sources of Law—Guidance from the Constitutional Peasant
Sources of Law: How is Law in the U.S. created?

- In general, law in the U.S. is created in four ways:
  - Federal/State Legislation
  - Federal/State Administrative Agencies
  - The Courts
  - Private agreement enforced by Courts
Sources of Law—Federal

- Federal Constitutional Law
  - Establishes government structure
  - Establishes individual rights
  - Defines permissible scope of State power

- Statutory Law at Federal Level
  - Enactments of Congress
    - Ex. Affordable Care Act, Sarbanes-Oxley, etc.

- Administrative agency regulations
  - Promulgated by agencies created by Congress
    - Ex. EPA, OSHA, DOE regulations
Sources of Law—State and Local

• State Constitutions
  – Set forth rights of individuals, structure of State government, scope of State power
  – May grant broader rights than those found in Federal Constitution, but will not trump Federal Constitution

• State Laws/Statutes: enactments of state legislatures

• State administrative agency regulations
  – Ex. IDEM

• Local Laws: ordinances, local rules
Sources of Law—Private Law

- Private Laws—obligations voluntarily agreed to by the parties
  - Contracts
  - Leases
- Parties can seek enforcement of these obligations in Courts
Sources of law—Courts

• Courts resolve disputes
• In resolving these disputes, Courts issue opinions, which we call “cases”
• A case is a written Court opinion that becomes law
  – The Court opinion can interpret a legislative enactment (like a statute or the Constitution)
    • Ex. IN Wage Payment Statute
  – The Court opinion can set forth an interpretation, extension, or refinement of common law
    • Ex. Negligence law
Precedent—*Stare Decisis*

- Courts rely on precedent in rendering decisions.
  - Precedent is a rule of law set forth by a court that is used as the guiding principle for deciding future cases involving similar issues.
- A court should not overturn its own precedent unless there is a compelling reason to do so.
- Decisions made by higher courts are binding on lower courts.
How important are ethics in today's society?
Roadmap

• Provide a working definition of business ethics
• Obtain a framework for ethical decision making
• Understand the relationship between ethics and law
• Understand impediments to ethical action
What is Business Ethics?

• The specialized study of moral right and wrong focusing on business institutions, organizations, and activities.
Why is it important to have ethics in the business environment?

• It’s the right thing to do.
• Builds trust within the organization and leads to stability.
• Encourages good relations with customers.
Approaches to Resolving Ethical Dilemmas

• Blanchard and Peale
  – Is it legal?
  – Is it balanced?
  – How does it make me feel?

• The Front-Page-of-the-Newspaper Test
  – How would the story be reported?
  – Use an objective and informed reporter’s view
Approaches to Resolving Ethical Dilemmas

• Laura Nash and Perspective
  – How would I view the problem if I sat on the other side of the fence?
  – Am I able to discuss my decision with my family, friends, and those closest to me?
  – What am I trying to accomplish?
  – Will I feel as comfortable over the long term as I do today?
Approaches to Resolving Ethical Dilemmas

• The *Wall Street Journal* Model
  – Compliance: Are you violating any laws?
  – Contribution: What does this action contribute to my customers, shareholders, bondholders, employees, community, and suppliers?
  – Consequences: How will this action affect me, my company, my family, our employees, and our shareholders?
Ethical Decision-Making Framework

1. Identify Issues/Facts
2. Identify Alternatives
3. Apply Ethical Standards
4. Make Decision
5. Test Decision: “Red Face Test”
6. Execute

- Is it legal?
- Is it balanced?
- How does it make me feel?
- How would it be reported?
- How would I view this if I were on the other side of the fence?
- Can I discuss this decision with my family?
- What are the consequences?
- Does my decision make a positive contribution?
Roadblocks to Ethical Decision-Making

• Organizational culture
• Obedience to authority
• Self-serving rationalizations
  – Denial of responsibility
  – Denial of injury
  – Denial of the victim
  – Condemnation of the condemners
  – Appeal to higher loyalties
  – Everyone else is doing it
  – Claim to entitlement
Law = Ethics?

• Where does the law intersect with ethics?
• If something is legal, is it always ethical?
• If something is ethical, is it always legal?
• Does ethics influence the law?
  – *Soldano v. O’Daniels*
  – *Note:* This case is something of an outlier, but it demonstrates the potential for ethics to drive legal policy
• Law sets the minimum standard of behavior; ethics requires more…
Corporate Social Responsibility

WE REPLACED OUR STYROFOAM CUPS WITH PAPER CUPS, BUT IT'S NOT SO CLEAR THAT IT HELPS THE PLANET.

WE DIDN'T DO IT TO HELP THE PLANET. WE DID IT TO LOOK LIKE THE SORT OF COMPANY THAT CARES ABOUT THAT SORT OF THING.

OH, IN THAT CASE IT'S WORKING GREAT.

AS SOON AS YOU STOP WHINING.
Corporate Social Responsibility

• Corporate Social Responsibility refers to a corporation’s responsibilities or obligations toward society.
  – Whose interests should a corporation serve?
  – To whom should a corporation be responsive in order to best serve that interest?
    • Shareholders only
    • Larger society
Two Traditional Views of CSR

• Shareholder view: company’s only responsibility is to legally and ethically make money for owners.
  – Profits belong to the shareholders—not management.
  – In a competitive marketplace, companies will have to use resources wisely, provide good customer service, and pay good wages to employees in order for company to stay profitable.
  – Societal benefits are thus a byproduct of seeking to maximize profits in a competitive market.
Two Traditional Views of CSR

• Stakeholder View: Corporations should be run for the benefit of all stakeholders.
  – Managers should give share of profits not only to stockholders, but also to other stakeholders.
  – A stakeholder is any individual who can affect the achievement of the organization’s objectives or who is affected by the achievement of the organization’s objectives.