

## Business law

### Week 1

Ethics: - the unwritten rules we have developed for our interaction with each other

- behavior beyond the law
- day-to-day nature of ethics

### School of ethical thought

1. **Divine Command Theory:** ethical standards are based upon religious beliefs. (declaration of independence)
2. **Ethical Egoism Theory:** We all act in our own self-interest and limit our judgments to our own conduct, not the conduct of others. (Ayn Rand- The Fountainhead and Atlas Shrugged)
3. **Utilitarian Theory** 功利主義理論: “Greatest happiness principle,” or doing the greatest good for the greatest people. (Bentham and Mill)
4. **Categorical Imperative** 絕對命令 **and Immanuel Kant:** One ought only to act such that the principle of one’s act could become a universal law of human action in a world in which one would hope to live. (you cannot use others in a way that gives you a one-sided benefit. Everyone must operate under the same usage rules)
5. **Contractarians and Justice:** Putting ethical standards in place by a social contract. Rational thinking people develop a set of rules for everyone. (John Rawls – blank slate, tabula rasa)
6. **Rights Theory:** Everyone has a set of rights and it is the role of government to enforce those rights. (Entitlement theory)
7. **Moral Relativists** 道德相對主義者: Time-and-place ethics. Making ethical choices based on the circumstances.
8. **Plato and Aristotle:** Develop virtues (美德) and determine conduct by those virtues.

### Categories of ethical dilemmas 道德困境

1. Taking things that don’t belong to you
2. Saying things you know are not true (lies, not honest)
3. Giving or allowing false impressions 給予或允許虛假印象 (telling the truth but misleading)
4. Buying influence or engaging in conflicts of interest 購買影響力或參與利益衝突 (conflicting loyalties)
5. Hiding or divulging(洩露) information - (trade secrets to a new place)
6. Taking unfair advantage (business take unfair advantage to whom were not educated)
7. Committing acts of personal decadence(衰落) – (personal conduct influence company reputation 聲譽)

8. Perpetrating interpersonal abuse(進行人際關係虐待) – (sexually harasses, verbally abusive)
9. Permitting organizational abuse(允許組織濫用) – (child labor, demeaning wages, excessive working hours, factory safety standards)
10. Violating rules
11. Condoning(縱容) unethical conduct (failure to report an ethical breach 缺口)
12. Balancing ethical dilemmas

Resolve ethical dilemmas (解決道德困境)

**1. Blanchard and Peale (author of The One Minute Manager, offered 3 questions)**

- a. Is it legal?
- b. Is it balanced?
- c. How does it make me feel?

**2. The Front-Page-of-the-Newspaper Test – Warren Buffett**

- a. "Contemplating 考慮 any business act, an employee should ask himself whether he would be willing to see it immediately described by an informed and critical reporter on the front page of his local paper, there to be read by his spouse, children, and friends." (Envision the consequences before making any act)

**3. Laura Nash (Harvard Divinity School, decision making models)**

- a. Have you defined the problem accurately?
- b. How would you define the problem if you stood on the other side of the fence?
- c. How did this occur in the first place?
- d. To whom and what do you give your loyalties as a person and as a member of the corporation?
- e. What is your intention in making this decision?
- f. How does this intention compare with the likely results?
- g. Whom could your decision or action injure?
- h. Can you engage the affected parties in a discussion of the problem before you make your decision?
- i. Are you confident that your position will be as valid over a long period of time as it seems now?
- j. Could you disclose without qualm your decision or action to your boss, your CEO, the board of directors, your family, or society as a whole?
- k. What is the symbolic potential of your action if understood? It misunderstood?
- l. Under what conditions would you allow exceptions to your stand?

**4. The Wall Street Journal Model**

- a. Am I in compliance 合規 with the law?
- b. What contribution 貢獻 does this choice of action make to the company, the shareholders, the community, and others?
- c. What are the short-and long-term consequences of the decision?

**5. Peter Drucker (management expert)**

- a. primum non nocere = above all do no harm

**6. Categorical Imperative (Kant)**

- a. Do unto others as you would have them do unto you (treat others as we would want to be treated)

## 7. The Jennings National Enquirer Test

- a. Make up the worst possible headline you can think of and then reevaluate your decision

Method avoid facing ethical dilemmas (helps slave our conscience)

### 1. Re-labeling

- a. Downloading music = copyright infringement, peer-to-peer file sharing
- b. Financial practice = cooking the books, smoothing earnings, financing engineering, earnings management

### 2. Rationalizations 合理化

- a. Everybody else does it
- b. If we don't do it, someone else will
- c. That's the way it has always been done
- d. Well wait until the lawyers tell us its wrong
- e. It doesn't really hurt anyone
- f. The system is unfair
- g. I was just following orders
- h. You think this is bad, you should have seen...
- i. It's a gray area

### Steps to follow for analyzing an ethical dilemma

1. Make sure you have a grasp 把握 of all the fact available.
2. List any information you would like to have but don't and what assumptions you would have to make, if any, in resolving the dilemma
3. Take each person involved in the dilemma and list the concerns they face or might have
4. Develop a list of resolution for the problem
5. Evaluate the resolutions for costs, legalities, and impact
6. Make a recommendation on the actions that should be taken

## Week 2

4 views on social responsibility and business

### 1. Inherence 固有 school of social responsibility

- a. Advise managers to serve shareholders and to act only with shareholders' interests in mind. Manager would not become involved in any political unless it was in the shareholders' best interest to do so

### 2. Enlightened Self-interest 開明的自利 school of social responsibility

- a. Advise managers to be responsible to shareholders by being responsive to the larger society

### 3. Invisible Hand 不可分割的 school of social responsibility

- a. Role of business ought 應該 to serve larger society and it does so best when serving shareholders only

### 4. Social Responsibility 社會責任感 school of social responsibility

- a. Role of business is to serve larger society, so it should serve the needs of the larger society.

2 questions companies are faced with on social responsibility issues

1. Whose interests should a corporation serve?
2. To whom should a corporation be responsive in order to best serve that interest?

**P = f(x)**: the probability of an ethical outcome is a direct function of the amount of money involved. (more money involved, less likely an ethical outcome, slope is negative)

### **Censorship** 審查

- According to the American Civil Liberties Union (ACLU), it is the “Suppression 抑制 of words, images, or ideas that are offensive,”

### **Morals clause** 道德條款

- Part of a contract for actors, athletes and others that prohibits private conduct that would subject that person to public ridicule

### **Shareholders**

- Owners of shares of stock in a corporation

### **Stakeholders**

- Groups of people who are impacted by a company’s business decisions including customers, suppliers and the government

### **Steroids** 類固醇

- Prescription medication often used illegally to increase the performance of competitive athletes

### **“Toes to the Line” philosophy**

- Doing no more than what is required under the law while violating the spirit or intent of the law

## **Chapter 1 (quiz 2)**

### **I. Definitions of Law**

- A. Aristotle - Law Is Reason Unaffected by Desire
- B. Holmes - Law Embodies the Story of a Nation’s Development Through Many Centuries
- C. Blackstone - That Rule of Action Which Is Prescribed by Some Superior and Which the Inferior Is Bound to Obey
- D. *Black’s Law Dictionary* - A Body of Rules of Action or Conduct Prescribed by the Controlling Authority, and Having Legal Binding Force
- E. Rules Enacted by a Government Authority that Govern Individuals and Relationships in Society

### **II. Classifications of Law**

- A. Public Law or Statutory Law(成文法)
- B. Private Law - Contracts, Employer Regulations
- C. Criminal Law - Carries Fine And/or Imprisonment 徒刑, Governmental Enforcement (only the government can enforce the criminal law)
- D. Civil Law (民法) - Individual Enforcement, Liability

- E. Substantive Laws(實體法) - Gives Rights and Responsibilities
- F. Procedural Laws - Means for Enforcing Substantive Rights
- G. Common Law
  - 1. Began in England (1066)
  - 2. Exists today - nonstatutory law
  - 3. Exists also in court decisions - stare decisis , “let the decision stand,” or following case precedent
- H. Statutory Law 成文法
  - 1. Passed by some governmental body
  - 2. Appears in written form
- I. Law Versus Equity
  - 1. In common law England, remedies were separated into **legal remedies and equitable remedies**
    - a. Legal = money
    - b. **Equitable = injunctions 禁令**, specific performance
  - 2. Separated the remedies so that courts of chancery could give remedies when courts of law could not
  - 3. Today all courts are authorized to award legal or equitable remedies

### III. Purposes of Law

- A. Keeping Order
  - 1. Examples: Traffic laws, criminal laws, trespass laws, property laws
  - 2. Safety – USA Patriot Act
    - a. Reporting requirements
    - b. Search warrants
- B. Influencing Conduct - *Examples* : Disclosure statutes for securities, antitrust laws, negligence and standards of normal or liability-free conduct
- C. Honoring Expectations - *Examples* : Contracts, landlord/tenant, securities investment, property ownership
- D. Promoting Equality - *Examples* : Title VII, Age Discrimination Act, Pregnancy Discrimination Act, bussing, antisegregation statute, Social Security system, antitrust laws
- E. Law as the Great Compromiser - *Examples* : Union/management laws and regulations, contract interpretations, divorce property settlements, probate distributions

### IV. Characteristics of Law

- A. Flexibility - *Examples* : On-line transactions and fax machines have made us revisit when a contract acceptance occurs
- B. Consistency - Allows Businesses to Rely on Law for Planning
- C. Pervasiveness 普遍程度

### V. The Theory of Law: Jurisprudence 法理 (legal philosophy)

- A. A Primer on Jurisprudence (Legal Philosophy in a Nutshell; Five Minutes of Legal Philosophy)
  - 1. Positive law; law is what is given as law
  - 2. Law is what benefits the people
  - 3. Law is justice or treating everyone according to the same standard
  - 4. That which is unjust cannot be law

5. Natural law; principles that exist regardless of laws
- B. The Common Law (Ideas and Doubts: Oliver Wendell Holmes) - Law arises because we have to co-exist; I can only do as much as others are willing to tolerate. Peer pressure is responsible for much of law.
- C. My Philosophy of Law: Roscoe Pound - Law is social control through the use of force.

## VI. Sources of Law

- A. Constitutional Law 憲法
  1. At federal and state level
  2. Establishes government structure
  3. Establishes individual rights
- B. Statutory Law at the Federal Level
  1. Enactments of Congress - United States Code - Cite or citation = U.S.C. (e.g., 15 U.S.C. sec. 77) - *Examples* : Sherman Act, National Labor Relations Act, Occupational Health and Safety Act, the USA Patriot Act, and all treaties
  2. Administrative agency regulations - Code of Federal Regulations - Cite or citation = C.F.R. (e.g., 12 C.F.R. sec. 226)
  3. Executive orders = presidential orders
- C. Statutory Law at the State Level
  1. Enactments of state legislatures - state codes - Uniform laws are part of state codes - Cite = Nevada Revised Statutes – N.R.S. - *Examples* : Uniform Commercial Code, Uniform Partnership Act, Uniform Limited Partnership Act
  2. State administrative agency regulations - Cite: various
- D. Local Laws of Cities, Counties, and Townships
  1. Ordinances - zoning, traffic, curfew
  2. County or city
- E. Private Laws
  1. Contracts
  2. Leases
  3. Employer regulations
- F. Court Decisions
  1. Language in statute unclear
  2. Court provides interpretation or clarification of the law

## VII. Introduction to International Law

- A. Customs (Country-By-Country Basis)
- B. Treaties
  1. Bilateral - between two nations
  2. Multilateral - among three or more nations
  3. Geneva Convention 日內瓦公約 - prisoners of war
  4. Vienna Convention - diplomatic relations
  5. Warsaw Convention - air travel
- C. Private Law In International Transactions
- D. International Organizations (United Nations)
- E. Act of State Doctrine

1. Expropriation
2. Confiscation or nationalization
3. Taking of private property by a government
- F. Trade Laws and Policies
  1. Tariffs
  2. Treaties, e.g., GATT, NAFTA
- G. Uniform International Laws
  1. Contracts for the International Sale of Goods (CISG)
  2. For uniformity in international contracts
- H. The European Union (EU)
  1. Group of fifteen countries (other countries are affiliated)
  2. Aiming for barrier-free trade; uniform laws; ease of transaction negotiation and execution
  3. Uniformity in currency, job safety, immigration, customs, licensing, and taxation
  4. Euro introduced in January 1999

## Chapter 3

### I. Types of Courts

- A. Trial Courts 初審法院
  1. Place where case begins
  2. Jury is here
  3. Single judge
- B. Appellate Courts 上訴法院
  1. Review actions of trial courts
  2. Usually have published opinions of uniformity and consistency
  3. No trials are held

### II. How Courts Make Decisions

- A. The Process of Judicial Review 司法審查
  1. Determine whether error was made
  2. Transcript is reviewed
  3. All other evidence is reviewed
  4. Parties submit written briefs to summarize the evidence and issues
  5. Oral arguments made before panel of judges (generally three judges, but at U.S. Supreme Court level, it is nine)
  6. Judges vote on whether there is reversible error (error that might have affected the outcome)
  7. Vote on case - can be a dissenting opinion
  8. Possible actions of reviewing court: checking for error
    - a. **Affirm** - no reversible error and decision stands
    - b. **Reverse** - reversible error and decision is reversed
    - c. **Remand** - error that requires further proceedings
  9. Statutory interpretation
    - a. Courts at appellate level can review statutory application
    - b. Can determine scope of statute

- B. The Doctrine of *Stare Decisis* (let the decision stands)
1. Courts will follow previous decisions for consistency: setting precedent
  2. Exceptions (when precedent is not followed)
    - a. Cases are factually distinguishable
    - b. Precedent is from another jurisdiction
    - c. Technology changes
    - d. Sociological, moral, or economic changes or needs
  3. Interpreting precedent 解讀先例
    - a. The rule of law in the case is the precedent
    - b. Dicta is not the precedent
    - c. Dicta is the discussion of the rule of law
  4. Changing precedent
    - a. Technology issues
    - b. Economics and nuisance cases
  5. When precedent is not followed
    - a. Different states/circuits
    - b. *Dicta* vs. ruling; dissenting opinions
    - c. Distinguishable facts/case
    - d. Moral reason, economics, balance

### III. Parties in the Judicial System 司法系統 (Civil Cases)

- A. Plaintiffs 原告
1. Initiate the lawsuit
  2. Called petitioners 請願 in some cases
- B. Defendants 被告
1. Alleged to have violated some right of the plaintiff
  2. Party named in the suit for recovery
- C. Lawyers
1. Those who act as advocates 倡導 for plaintiffs and defendants
  2. Have fiduciary 信託 relationship with clients
  3. Privilege exists with client
    - a. Can keep what client tells them confidential 機密
    - b. Exception is advance notice of crime to be committed
  4. Sarbanes-Oxley and privilege
    - a. Must notify CEO of financial fraud
    - b. If no action, must notify audit committee
    - c. If no action, must notify board
    - d. If no action, must resign
  5. Represent client and see that procedures are followed
  6. Lawyers in other countries
    - a. Canada and Britain – barristers
    - b. Quebec and France – *avocet notaire*
    - c. German – *Rechtsanwalt*
    - d. Japan – *Bengosh Shiho-Soshi*
- D. Judges
1. Mediators in the case

2. Can be elected or appointed
- E. Name Changes for Parties on Appeal
  1. Appellant or petitioner - party appealing the lower court's decision
  2. Appellee or respondent - party who won below and is not appealing
  3. Some states reverse the name of the case on appeal

#### IV. The Concept of Jurisdiction 管轄權

- A. Authority of a Court to Hear a Case
- B. Subject Matter Jurisdiction Is Jurisdiction Over the Subject Matter of the Case
- C. In Personam Jurisdiction Is Jurisdiction Over the Parties in a Case

#### V. Subject Matter Jurisdiction of Courts: The Authority Over Content

##### A. The Federal Court System

##### 1. Federal District Court

- a. General trial court of the federal system
  - b. Subject matter jurisdiction
    - i. when the United States is a party - *Examples* : Criminal prosecutions by federal agencies, contract breach actions by federal agencies
    - ii. federal question - *Examples* : Suits by private individuals under securities laws, Sherman Act, etc.
    - iii. diversity of citizenship - *Example* : Suit where plaintiff and defendant are from different states and the claim exceeds \$75,000
    - iv. one issue that arises is what law will be applied to the case; federal courts apply state law, they do not make up a new system of federal common law
  - c. There are 94 federal districts
    - i. each state is at least one federal district
    - ii. D.C. and Puerto Rico are also federal districts
    - iii. number of districts per state is determined by population and case load
  - d. Opinions of federal courts are reported in the *Federal Supplement* - Cite: F.Supp.
2. Specialized courts (courts of limited original jurisdiction)
    - a. Tax court
    - b. Bankruptcy court
    - c. U.S. Claims court
    - d. Judge Advocate General (military courts)
    - e. Courts for other agencies
    - f. U.S. Court of International Trade
  3. U.S. Court of Appeals
    - a. Formerly known as U.S. Circuit Court of Appeals
    - b. Thirteen federal circuits (14th is proposed via division of the 9th circuit)
    - c. Group federal districts into these thirteen circuits
    - d. Generally a panel of three judges reviews appeals from Federal District Court unless *en banc*

- e. Opinions found in *Federal Reporter* - Cite: F., F.2d or F.3d
  - 4. U.S. Supreme Court
    - a. Must decide to review cases
    - b. Issues writs of certiorari on those cases they will review
    - c. Has original jurisdiction for
      - i. disputes between and/or among states
      - ii. charges of espionage or ambassadors and foreign consuls
    - d. Nine judges with lifetime appointments
    - e. Opinions reported in
      - i. *United States Reports* - official reports - Cite: U.S.
      - ii. *Supreme Court Reports* - Cite: S.Ct.
      - iii. *Lawyers Edition* - Cite: L.Ed., L.Ed.2d
  - B. The State Court Systems
    - 1. State Trial Courts
      - a. Generally called superior, circuit, district, or county court
      - b. States also have limited, specialized jurisdiction trial courts
        - i. small claims
          - (a) lesser damage claims
          - (b) no lawyers
        - ii. Justice of the Peace courts
          - (a) smaller damage claims
          - (b) lawyers permitted to appear
        - iii. traffic courts - for citations
        - iv. probate courts - for wills, guardianships, conservatorships, etc.
    - 2. State Appellate Courts
      - a. Opinions reported in regional reporters
      - b. Example: Pacific Reporter, P. or P.2d
    - 3. State Supreme Courts
      - a. Opinions also reported in regional reporters
      - b. Example: 45 Wash.App. 442
  - C. Judicial Opinions
    - 1. Reported (published) for precedent
    - 2. Cases have cross-references for research tools
  - D. Venue
    - 1. Location of Court in the System
    - 2. In some cases the community is so involved in a case that selections of a jury in that community would seal one's fate
- VI. *In Personam* Jurisdiction of Courts: The Authority Over Persons**
- A. Ownership of Property Within the State - Property ownership in the state = *in rem* jurisdiction
  - B. Volunteer Jurisdiction - Parties Agree to It