

Chapter 9: Ethics, the Law, and Sales Leadership

INTRODUCING THE CHAPTER

Salespeople, as boundary spanners, may find themselves faced many ethical challenges because they have to represent both the company and their customers. Common ethical issues specific to sales can include misrepresentation, bribery, and encouraging rogue purchasing.

Companies and sales managers can reduce unethical behavior by creating the right ethical climate. Codes of ethics are also useful tools, not only because these can provide guidance to salespeople when faced with ethical challenges but also in the creation of the right kind of ethical climate. Companies may also create different forms of systems for identifying and responding to ethical breaches.

Laws also govern salespeople's and sales managers' actions. Such laws include the Uniform Commercial Code, which defines when a sale occurs, the limitations of warranties, and other important elements in selling. Also important are laws such as state laws governing business defamation, the CAN-SPAM act, the FTC's Do Not Call registry, and the Federal Corrupt Practices Act. Managers also have to worry about labor laws, such as those protecting employees from sexual harassment.

Chapter Objectives

After completing this chapter, students should be able to:

- Identify the more common ethical dilemmas that face salespeople, sales managers, and sales executives.
- Distinguish between those organizational policies and practices that support ethical behavior and those that enable unethical behavior.
- Explain how principled leadership can foster a firm's ethical principles and corporate culture.
- Be able to develop an appropriate course of action when you are personally faced with an ethical dilemma.

Chapter Outline

This chapter explores ethics in the sales profession and the actions sales managers can take to support ethical behavior by their employees.

- I. Causes of Unethical Behavior
- II. Approaches to Ethics
 - A. The Golden Rule
 - B. The Conventionalist Approach
 - C. The Protestant Ethic
 - D. The Market Imperative
 - E. The Libertine Ethic
 - F. The Utilitarian Ethic
 - G. Virtue

III. The Salesperson as a Boundary Spanner

A. Common Ethical Issues Facing Salespeople

1. Ethical Breaches Affecting Customer Issues Associated with the Salesperson's Customers
2. Ethical Breaches Affecting the Salesperson's Company

IV. Creating an Ethical Sales Climate

1. Identifying and Responding to Ethical Breaches
2. Due Process Systems
3. Dealing Personally with Ethical Breaches

V. Sales-Related Laws

1. The Uniform Commercial Code
2. Other Important Laws

A. Laws for Sales Managers

B. Leadership Challenges for Sales Managers and Executives

MANAGING YOUR CAREER

This section can easily lead to a stimulating discussion about what ethical practices in job searches. Having two sides (pro/con) assigned to present their points is a 'safe' way to get the discussion flowing. Consider including the discussion with the hiring of a faculty member who quits at the last minute and the implications that may have.

SUPPLEMENTAL VIDEOS DISCUSSION SUGGESTIONS

Ethical Leadership: Before showing this video, ask students what ethical leadership means to them? Write these answers on the board. Then watch the video and discuss how their list matches up with Heiser's perspective. You can also refer to the leadership approaches discussed in Chap 3 and ask students to identify the ethical challenges that each approach might face.

Heiser talks about some leaders do not want to engage in ethical issues. What are the implications when a leader avoids dealing with ethical issues? Ask students to identify ethical breaches in the news, what was leadership doing when these breaches occurred? What role did they play in creating the ethical climate that allowed for the behavior?

Creating Ethical Cultures in Business (Brooke Deterline): Sometimes acting ethically means one has to act with courage. When discussing ethics, students often say they would never act unethically, would refuse if their boss told them to do something unethical, or quit their job. This video is a good opportunity to have a practical discussion of the potential consequences of acting ethically and how easy it to "go along to get along."

Ethics: Yes, Even When Nobody is Watching (Dawne Ware): Prior to the video, ask students where they get their ethics? How do they make ethical decisions when no one is watching or there is no clear "victim"? (This video is a good segue into a discussion about the different ethical approaches). After the video, ask students what they would want students/faculty/staff to think about them at graduation? Probe to get students to talk about how they can act on campus to leave the legacy they hope – does their current actions/behavior match the image they want to leave.

QUESTIONS AND PROBLEMS

1. How does Glenn Gaines work to ensure his salesforce is ethical?

Glenn prioritizes setting expectations and accountability through his organization's training and compliance processes. The ethical principles of his organization are discussed, agreed upon, and communicated, and then reinforced during annual performance reviews. Employees who stray from the organization's ethical principles are encouraged to view the situation from different perspectives to better understand the importance of behaving ethically.

2. Describe the three factors that contribute to many ethical concerns.

Individual factors: specific characteristics, values, and views of an employee and are often driven by self-interest

Issue-specific factors: situation-based and so behavior will vary depending on who will know, who might be hurt, or who will judge the behavior

Environment factors: organization and institutionalized systems and processes that encourage individualistic behavior instead of doing what is best for others

3. Which approach to ethics works best for you? Explain your rationale using an example. How does this approach compare to virtue as an approach?

Answers should vary but a lot of students will choose Golden Rule without really thinking it through, simply because they are already very familiar with it. The challenge is to then pick the one that is the most opposite.

4. If a salesperson is considered a boundary spanner, who does the person represent?

Answers may vary, but they should include the organization they work for, customers, themselves, and family.

5. Do you believe a customer who receives two tickets to a company's suite for the Super Bowl is accepting a gift? Explain your position

Students may take different positions (e.g., gift or bribe) and likely it will be based on the intent behind the sharing of the two tickets.

6. Explain how puffery differs from misrepresentation? Use an example to illustrate your rationale.

The key difference between misrepresentation and puffery is dishonesty. Puffery is a vague general exaggeration while misrepresentation is a lie. An example, it would be puffery to say, "we deliver super-fast" because "fast" can have different meanings to different people, but if a salesperson claims that orders are shipped in 24 hours, knowing that it takes 2 days to ship, then they are misrepresenting their product.

7. Which of the following are legal practices versus illegal practices? If you determine that not enough information is provided, what would make the practice legal or illegal?

a. **A salesperson offers a discount to a small drugstore if the store will set up a special display of his product at its entrance**

This practice is legal and fairly common.

b. **A salesperson sends two bottles of wine, valued at \$100 each, to a customer as a thank-you gift after making a large sale.**

This could be considered illegal. The sale was large, so thank you gifts worth \$200 might be ok, but the value of the gifts is certainly more than the IRS would allow as a reasonable expense.

c. **A buyer asks the salesperson out for drinks after work.**

Not enough information is provided. If the buyer is just taking the salesperson out after a successful sale, then there might be nothing wrong. If the buyer is using it as a condition to offer the salesperson business, then this might be considered unethical but would be difficult to prove as a bribe.

d. **A buyer provides a salesperson with a competitor's proposal, including pricing information.**

If the competitor's proposal were marked "confidential, for the customer's eyes only," then the competitor could take civil, not criminal, action. If the buyer is a buyer for the government, then there may be laws dealing with the situation that might make it illegal. For example, it would be illegal in certain instances to open a competitor's bid early and then use that to leverage other prices down.

8. As a sales manager, you find yourself faced with the following situations. Identify the ethical or legal issue in each and discuss how you would handle the problem. (All of these were experienced by former students.)

a. **Your boss, a regional sales manager, forwards several ethnic jokes and lewd e-mails to you and your entire sales and support staff. Two of your salespeople complain to you.**

This practice creates a negative work environment and the salespeople could take legal action. A possible way to handle the problem is to tell the regional sales manager that the e-mails are offensive and some employees have already complained and not to do it again. Further, the instance should be documented and placed into the manager's permanent file with the warning that if done again, the manager would be terminated. Alternatively, the manager could be terminated immediately if there is a clear computer use policy forbidding such behavior.

b. **A customer has called and asked you to send someone else to his office as he does not want to be called on by his currently assigned salesperson. When you ask why, he says it is because he objects to the salesperson's sexual orientation.**

If discussing in class, note that this type of situation has occurred for many reasons – sexual orientation, race, ethnicity, and faith are just a few examples. While there are no legal ramifications for the customer, the manager has to tread carefully. To comply with the customer's wishes may win the company business, but if the salesperson who owns the account is penalized as a result, then the company has also discriminated against that salesperson and legal action could ensue. In many situations, the manager has left it up to the salesperson to decide whether anyone should call on that account and how credit for the account is awarded. A key point is to document any and all conversations regarding the situation.

- c. **You have asked a salesperson to create a training session for your entire sales team. The task will require the salesperson to spend about \$60 on extra materials that the company policy expressly prohibits salespeople from charging on their expense report. She agrees, then submits an expense report with the \$60 listed as entertainment for a client, which is an acceptable expense. You notice the \$60 on her expense report; she hasn't said anything about it, but you know she was conducting the training session on the day in question and couldn't have entertained a client that day.**

The manager should deny the expense because it cannot be documented. We've seen managers turn a blind eye to such a practice because the company policy is wrong; however, such a choice carries the potential consequence of the manager being reprimanded or fired as a result.

- d. **A company has introduced a new product and requires all salespeople to memorize a demonstration script related to it. To encourage salespeople to learn the script, your boss will award new HDTVs to the team that makes the best presentation. Two salespeople come to you and say, "Let's just let Beverly represent our team, we don't have time for this. We need to be out selling." Do you let Beverly represent the team? And if the salespeople don't bother to learn it because they won't win, what do you do? Are ethics involved here?**

As a side note, Beverly won the demonstration contest anyway. However, what is the purpose of the contest? That purpose still needs to be accomplished. To skip the competition may not be a violation of ethical principles but it isn't sound management. However, to put Beverly forward as the winner is lying if there has been no team level competition and would degrade the trust management would have in you.

9. Your boss has asked you to do something you believe to be unethical. What are your options?

Answers will vary. A lot of students will say they will refuse to do the behavior, explain the ethical issues to their boss, or leave their job. This is a good discussion opportunity to talk about how hard it is to handle ethical issues when it is a boss or leader making the request (i.e., is it easy to just quit a job? What are the implications if you walk away?)

10. Which of the laws discussed in the chapter do you think salespeople are most likely to violate? What about their sales managers?

Answers will vary. Salespeople might find themselves breaking UCC laws with regards to warranties, business defamation laws when bad-mouthing a competitor, privacy laws, or engage in tying agreements, thus violating Sherman Act.

Sales managers could be most likely to violate the 1964 Civil Rights Act if they fail to prevent or address sexual harassment. Managers also need to worry about laws around labor and hiring issues.

ROLE PLAY

Axis Manufacturing

Break into groups of three. In each group, one person is Tisha, the buyer for American Spice, and another is Pat, the salesperson who is responsible for the American Spice account. Don't worry about matching gender to the names in the case. Discuss strategies for how to handle American Spice (the client) and how to respond to the regional vice president. Have the third person in your group play "devil's advocate." This person's job is to suggest unethical strategies to each of the other two people. The "devil" should do so by calling timeout and whispering a suggestion to each person, who must then act out that suggestion. The other person should listen to the unethical suggestions, explain the implications of those choices, and then present alternatives.

Strategies Pat can use to handle American Spice and respond to the regional vice president: to the regional vice-president, tell the truth about what is happening and ask for help. With American Spice, Pat can probe to determine whether costs are higher than Califra's, if there are supply chain issues that Pat can help with, and similar ideas to help American Spice win the business legitimately.

An example of unethical strategies from the "devil's advocate": Suggest to Pat to offer free "samples" as a way to get the price down. Suggest to Tisha to request to see Califra's prices or proposal, or to raise prices to Califra.

ANSWERS FOR CHAPTER CASELETS

Caselet 9.1: Bienestar SA

Case Question:

1. How would Shelby's response vary under different ethical approaches?

- a. Golden rule approach – There could be a conflict on how different people want to be treated; therefore the Shelby might face a challenge in deciding how each party wants to be treated.
- b. The conventionalist approach – There are gray areas where it would be difficult to tell whether certain acts are legal or illegal. Further, what is conventional within a company may be different than what is conventional in general society.
- c. The Protestant Ethic – Shelby might focus on doing what can be defended, not what is right. Thus, a great deal of effort might be spent on arguing or developing arguments to support activities.
- d. The Market Imperative – What might be right for the customers might not be right for the organization and vice versa.
- e. The Libertine Ethic – Some customers can be harmed indirectly by Shelby's actions even though the she performed those actions in good faith. The question then becomes how to resolve those fairly for everyone involved.
- f. The Utilitarian Ethic – It can be difficult deciding what would be the best outcome for all who are involved. Further, means are not an issue, which means that there could actions that are questionable but undertaken in order to achieve objectives.

Caselet 9.2: Magnitron Security Systems

Case Questions:

- 1. Is the real root of Magnitron's problem its new compensation plan? If not, what is it? If so, what do you do about it while growing the sales from new accounts?**

It is unlikely that the root of the problem is the compensation plan, but rather the company culture that supports unethical behavior and the compensation plan is just one part of that culture.

Some students may argue that the culture shifted with the hiring of the CSO and the implementation of the compensation plan. Their discussion should include ideas for how the compensation plan can be shifted to reward ethical behaviors and growth.

- 2. Given that the lack of an ethics policy is something that should be addressed, what should Manny have done differently, if anything? What role, if any, should Magnitron's CSO play? What type of approach to monitoring, investigating, punishing, and implementing an ethics policy should Manny suggest to the committee?**

Student answers will vary. Students should have specific examples of what Manny can suggest to the committee (e.g., suggest an employee board system).

- 3. What should Manny do to get salespeople to support the need for a clear ethics policy?**

To get the employees to support the need for clear ethics policies he could talk to them and assure them that while he does not doubt their honesty, having an ethics policy would provide an official guideline for standards of conduct. He could ask the salespeople to give their contribution on how the policies can be structured and how to deal with misconduct, if any.

Students may develop other choices; the issue is to make sure that they have thought it through carefully.

OTHER IN-CLASS EXERCISES

An interesting debate is whether ethics can really be a function of a corporate culture (i.e., leadership) or whether the best route is to hire ethical people. This exercise can be started by briefly debating that question. But while interesting, the debate serves little practical value because the Federal Sentencing Guidelines (FSG) require that companies develop policies and practices that encourage and support ethical behavior. Companies that fail to do so face significantly greater penalties should problems arise. Thus managers have to operate as if ethics can be a function of corporate culture.

One mechanism for illustrating the various ethical approaches is to divide the class into groups and assign each group an ethic: The Golden Rule, the Libertine, the Protestant ethic and so forth. Using that approach and that approach only, develop policies and procedures for the following behaviors:

- Dating subordinates who report directly to you
- Personal use of company equipment and materials
- Loaning equipment to customers that you intend to later sell as new
- Entertaining customers

Any policies and procedures must include limits as to what is and is not acceptable, mechanisms for reporting and evaluating potential violations, and punishment if determined guilty of a violation.

Each group can then report out its recommendations. Ask if differences or similarities are due to personal preferences or the nature of the ethical philosophy.