



TH13 - "Can I Buy You Lunch?" and Other Ethical Questions

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Learning Objectives:

Upon completing this program, the participant should know how to:

1. Learn to consider ethical issues from multiple points-of-view
2. Contemplate how business relationships can be viewed now and in the future
3. Consider how gifts affect a business relationship
4. Look at how environmental issues affect the building industry



Case Study #1

When is a door...

Ethics

- How many sides are there to an issue?
– As many as the stakeholders involved
- You may find that what is ethical is different to different people
- Ethics also differ across professions and public, private & non-profit sectors
- Ethics are also looked at from the view of right/wrong or legal/illegal

Where do “Ethics” come from?

- Religion
- Family & Upbringing
- Government
- Culture
- Education & Military Service
- Consequently, few will have the same collective set of principles and bring their own set of concerns



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The ideals which have always shone before me and filled me with the joy of living are goodness, beauty, and truth. To make a goal of comfort or happiness has never appealed to me; a system of ethics built on this basis would be sufficient only for a herd of cattle.

-- Albert Einstein (1879 - 1955)

Ethical Theories

- Consequentialist vs. Nonconsequentialist
- Consequentialist
 - Good & Bad Acts
- Nonconsequentialist
 - Nature of the Acts

Consequentialist

- If the consequences are good, an act is right
 - Consequences for whom?
- Egoism
- Utilitarianism
 - John Stuart Mill
- Capitalist Adam Smith viewed a balance between the two

Consequentialist

- Egoism
 - Self-interest
 - Pouring leftover paint down the drain
 - Firestone “500” tires (1970s)
- Egoism does not ignore others interests
 - Others interests are sometimes your interests
 - Benefit others when it will be reciprocated
- Egoism might best identify with the oxymoron of *business ethics*

Consequentialist

- Utilitarianism
 - Interest of everyone involved
 - Social Improvement
 - Recognizes circumstances
 - Decisions that provide more good over others
- Utilitarianism does not always consider whether an act is right or wrong
- Utilitarianism offers features that make it attractive to organizations

Nonconsequentialist

- Consequences are significant but other factors may be relevant
- Kant's Ethics
- Prima Facie Principles
 - Conflicts of Interest
- Golden Rule??

Nonconsequentialist

- Immanuel Kant (1724-1804)
 - Good Will
 - Categorical Imperative
 - “We should always act in such a way that we can will the maxim of our action to become universal law” ^[Note 1]
 - Always tell the truth
 - Humanity is an End, never a Means



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Case Study #2

Cement For Sale



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Where does business ethics fit into the built environment and affect those that create and maintain it?

Business Ethics

- Businesses often have a Code of Ethics, formal policies or other doctrines governing behavior
 - Private versus Public Sector
- Business-based codes are often not real ethics as they are primarily designed to protect the company ^[Note 2]
 - These codes are driven by expediency and not linked to philosophical traditions.

Business Ethics

- Business-based codes can run afoul when applied in a global setting or in different organizational structures
- Issues may also arise when the public elements of an occupation are considered because of their effect on the public good
 - Company policies that fail to consider environmental issues result in inconsistencies in employee actions

Business Ethics

- Who are the stakeholders in business-based ethics?
 - Company
 - Stockholders/Owners
 - Managers
 - Employees
 - Customers
 - Suppliers
- Stakeholder theory requires a balance between cost efficiency & needs of individuals [Note 2]

Professional Ethics

- Professions often set for themselves a *Code of Ethics*
- These codes can follow two positions [Note 2]
 1. Prudential Approach – Moral duty to stakeholders is compatible with the business objectives of the organizations
 2. Moral Approach – Kantian view that organizations have a duty to look after the need of stakeholders even when it may not benefit the organization

Professional Ethics

- IFMA – Code of Ethics
- BOMA - Code of Professional Ethics & Conduct
- AGC - Ethics/Rules Committee
- Federal Acquisition Regulation (FAR) Council - Contractor Business Ethics Compliance Program and Disclosure Requirements

How do professional codes originate?

- Survey of 81 professional associations found:
 - 68% Rules-based
 - Regulations
 - 32% Value-based
 - Practice & General Values

[Note 2]

How do professional codes originate?

- Rankings of ethical constructs:

– Integrity	52%
– Economic Efficiency	17%
– Contributive	15%
– Environmental	9%
– Distributive	3%
– Equivalence	3%
– Equality	1%

[Note 2]

Professional Ethics

- One dogma of a professional code is the balance between contractual duty and moral responsibility to the public
- The drive for ethical awareness comes from within the profession as opposed to a response to societal pressures [Note 2]

Professional Ethics

- Codes of Ethics are found to improve the professionalism of members and image of the profession, as well as increase credibility of the profession [Note 2]
- While sustainability may not be mandated by professional codes, the development of these professions will be influenced by environmental issues.

Professional Ethics

- Grimshaw points to three aspects of an ethical professional framework [Note 2]
 1. Rules of Conduct/Code of Ethics
 - Regulation
 2. Ideals of a Profession
 - Culture & Leadership
 3. Educational Awareness & Debate
 - Dynamic environment that can respond to new & unpredictable changes
 - Discussion of the professional framework

Quick Case Study

You opened the Thursday paper to see a sale on faucets. You also notice that the exact same faucet you purchased for a job is now 20% less. What do you do...

- If you have not installed the faucets?
- If you installed the faucets on Tuesday?
- If you brought them from a large, chain store?
- If you brought them from a mom & pop operation?
- If you have an employee/subcontractor who submits a receipt at full price but you learned that they purchased some during the sale?



Ethical Discretion

Ethical Discretion

- Words chosen to convey that decisions and actions must be reputable

“The principle of ethical discretion: respecting the role of individual ethical decision-making but requiring that such decision-making be carried out through a justifiable process of ethical deliberation”

--Samuel J. Levine, Pepperdine University School of Law

Quick Case Study

- On your way back from lunch, you stop to pick up some supplies and notice one of the technicians from Jack Frost HVAC emerging from a men's club known for the Wine & Dine for \$9.99 lunch special. When you return with the supplies, you notice the same technician is about to climb on your roof.
- You have developed a good rapport with Jack Frost HVAC and they are your company's preferred vendor. What do you do?

Ethical Discretion

- People are expected to use a certain amount of discretion in their business dealings
 - Confidentiality of Information
 - Fair Use & Copyright
 - Honesty & Responsibility
 - Environmental Issues

Ethical Discretion

- “Snitches Get Stitches”
- There is a culture of behavior where certain events are not discussed, this silence creates issues with
 - Hostile Work Environments
 - Regulatory Violations
 - Employee Safety
- The result of looking-the-other-way could be far-reaching repercussions

Quick Case Study

- You receive an e-mail by mistake from QRS Electronics. The e-mail was intended for someone with a similar name that works for QRS. What do you do?
 - QRS is your vendor
 - QRS is your competitor
 - The e-mail was opened automatically after you finished another e-mail
 - You are contacted by the sender asking you to delete the message

Ethical Discretion

- As an example, while procuring goods or services, the pricing information contained in bids is often compromised by
 - Buyers who want to lowest price but may not want to use the low bidder
 - Vendors who want to know their competitors pricing so they can see where they stand
 - Another angle is asking how much they were off

Ethical Discretion

- Pricing is confidential unless the bid is in the public sector or all vendors agree to share their pricing at the end
 - Vendors put a lot of work into preparing a bid; therefore, disclosing their price is a breach of confidence & could be destructive to them
 - Bidders deserve a reply but not many details
 - When something besides pricing factors into the decision, full disclosure of these circumstances is a good policy

Ethical Discretion

- When the decision is made, what should you tell the bidders?
 - How about a report card?
 - List any reasons that factored in besides price
 - Schedule
 - Materials
 - Design/Innovation

You were third out of seven bids
Average Price was \$327,000
Your price was \$314,000
[Average Pricing should not be used unless you have 4 or more bids]

Ethical Discretion

- One area of ethical *indiscretion* is in the treatment of copyright.
- While the rules are very clear on copyright, the treatment of copyrighted material is very lackadaisical by many people

What is a copyright?

- It grants owners of a copyright sole rights to reproduce, distribute, and prepare new versions and to display work publicly. [Note 4]
- Copyright is secured automatically when the work is created when it is fixed in a written form or digital file for the first time. "Copies" are material objects from which a work can be read or visually perceived either directly or with the aid of a machine.

What is a copyright?

- Copyrights may be transferred but the transfer of exclusive rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.
- "Any appreciable amount of original text in a bid or a proposal would be protected by copyright" U.S. Copyright Office Opinion dated 3/16/09

What is the "fair use" clause?

- Section 107 of the U.S. copyright law permits in limited situations reproduction of portions of a work without the copyright owner's permission [Note 4]
 - The purpose of the use must be for nonprofit education.
 - How much of the work is reproduced in relation to the copyrighted work as a whole.
 - The effect of the reproduction upon the market for the copyrighted work.
 - Fair Use is typically applied to textual documents as opposed to architectural drawings

What Is Not Protected by Copyright?

Several categories of material are generally not eligible for federal copyright protection
(*Should not be confused with trademarks & patents*)

These include among others:

- Works that have not been fixed in a tangible form of expression
- Titles, names, short phrases and slogans, as well as familiar symbols or designs

What Is Not Protected by Copyright?

Several categories of material are generally not eligible for federal copyright protection. These include among others:

- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
 - Parts of Bids & RFPs may fall under this area
- Works consisting entirely of information that is common property and containing no original authorship

Quick Case Study

- After 4 great years with WanlessCo, Billy Emrich changed employers when he moved across the county. Upon his first order with Walz Supply, he noticed a 20% difference over what he paid before.

What should Billy do?

Ethical Discretion

- What should you do with the information you gained in a specific bidding process?
 - Unrealistic to expect you to forget it
- During the RFP process, participants need to be informed that their information (materials, subcontractors) is open for use on the project
- A fee could be paid to any bidder in exchange for use of any information contained in their bid (forgoing copyright)

Ethical Discretion

- What do you do when you are required to get three bids but the work also seems to go to the same one or two companies?
- Is it fair to ask the same company over and over again to bid on work they have little chance to get?

Quick Case Study

- Your employer has flown you in from the West Coast for this conference, covering:
 - Airfare
 - Hotel
 - Meals
 - Conference Fees
- Suppose you enjoy yourself at the game too much and then comes...

Ethical Self-Discretion

- You need to make a copy of your insurance card so you use the company copier
- You need to fix your fence after a storm and the company's nail-gun is in your truck
- The airfare with your preferred airline is \$10 more than the lowest available. \$50.
- As an appetizer, you order a beer with your dinner
- You purchased a water heater at your company's discounted price

Ethical Self-Discretion

- What seems fairly black & white could turn gray when you consider whether you
 - Keep track of every mile you drive
 - Bring your personal tools instead of renting
- How gray could vary if you work in the public or non-profit sector versus private

Ethical Discretion

- What do you do when a vendor under-bills you (or forgets the invoice all together)
- Another subcontractor wants to use your company's scaffolding or ladders
- You can purchase a LEED-certified product for 10% more than a generic one on a Cost + 10% project
- You find out that the carpet squares you received are from two different die-lots.



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Case Study #3

Working Environment



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Conflicts of Interest

Quick Case Study

- Your company has narrowed the search for a large office to two locations. You learn:
 - That your son-in-law has a business in the complex that is the front runner
 - That your son-in-law is trying open a location in the complex that is the front runner
 - *At what point in the process do you bring this up?*
- Assuming your present position, at what point would you invest in his business?

Conflicts of Interest

- Conflict of Interest rules exist to
 - Limit Private Gain
 - Prevent Misuse of Information
 - Avoid Biases in Judgment [Note 3]
- What can lead to a conflict of interest?
 - Friends & Family
 - Gifts
 - Personal Interests

Conflicts of Interest

- Individuals have to seek out a balance of interests
- Personal values must be set aside until the goal has been reached
 - Ulysses Grant and Samuel Bolivar Buckner at Fort Donelson
 - Gandhi during the Boer War

Conflicts of Interest

- Decisions must not be influenced by outside factors
- Perception is as important as reality when dealing with conflicts
 - Recusing oneself with potential conflicts surface
- Quid Pro Quo

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Gifts

- Gifting has cross-cultural roots
 - Not necessarily economic but aimed at expressing values
- Differs in various countries
 - In some cultures it is “required”
 - What we call a bribe in the USA is just a way of doing business (Add it to the tab?)

Gifts

“Gifting makes individuals more trusting and disposed to act in ways they might not have, but for the gift. Few individuals dislike gift givers – Everyone loves Santa Claus” [Note 3]

Gifts

- Gifts can be large or small
 - It might be said the smaller the gift the grayer the decision to accept it
- Gifts are either exchanged immediately or given with the general expectation that they will be returned [Note 3]
 - Has anyone gone to a 6 year-old's party?

Gifts

- Promotional items are common gifts in the building professions (and can be handy)
 - They can appear at the office
 - Be handed randomly out at trade shows
- While these items may hold no influence over you, they may unknowingly serve as an endorsement to other people

Gifting

- Gifting can also differ on when it occurs
 - Salesman who is trying to get in the door
 - Business that is submitting an RFP
 - Company that just completed a multi-million dollar two-year project
 - After the birth of a couple's first child

Gifting

“In the same way there are no free lunches, there are no free gifts. Gifts, even if given of free will, are not without their strings and expectations that they will be reciprocated” [Note 3]

The American Institute of Certified Public Accountants rules recognize that gifts compromise impartiality and objectivity

Can I buy you lunch?

- Before you answer, consider:
 - What is the purpose and relationship?
 - Is it only you?
 - Could anyone see you go to/at lunch?
 - Even if you go “dutch”, you could send the wrong impression to others
 - What business may be pending before *anyone* in your company?



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Case Study Conclusion

Future of Ethics

- Professionals will have to keep abreast of more and more laws
 - Sarbanes-Oxley
- Better job records *could* be kept on the materials and processes used
 - Better prepared for recalls
 - May find that materials used are unlicensed or forgeries

Future of Ethics

- Globalization is only muddle the ethical situations that people encounter
 - Good reason to abide by a professional code of ethics
- Nothing will be a secret
 - YouTube video of you at *The TFM Show* that may surface in 10 years

Summary

- Ethical Discretion is a honest framework for dealing with bidders and vendors
- In your dealing with your employer, it is best to make sure there is a clear understanding of what is acceptable behavior
 - Having documentation never hurts
- Conflicts of Interest are best identified early

Summary

- If there is one word to describe how one should deal with others professional, it might be:

INTEGRITY



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Thank you!

This concludes the American Institute of Architects
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Any Questions?

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End Notes

1. ***Business Ethics*** by William M. Shaw
2. "Ethical issues and agendas" by Bob Grimshaw in ***Facilities*** 19(1/2)
3. ***PA Times*** 31(6) June 2008
4. Dr. Michael Pierson, OCED 5300 Texas State University