

BUSINESS ETHICS IN BUSINESS LAW

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As business law teachers, we are alert to suggestions for improving the effectiveness of our teaching and the stature of the business law teaching profession.

Presentations made at meetings of this Association have emphasized basic functions and applications of business law. For example, in the March, 1956, ABLA Bulletin, Joseph L. Frasca discusses business law as a part of the higher educational process. In the same issue Robert D. Myers explains that business law is a tool of management.

I would like to suggest another thought for consideration. What place does business ethics have in the teaching of business law? This subject should demand attention now and development in the future by the many qualified members of this Association.

There is a growing interest in business ethics among writers in the field of business. There are such recent works as Ethics in a Business Society, by Childs and Cater, and Ethics for Modern Business Practice, by Martindal; also, articles such as the one by Elizabeth M. Sorbet in the December, 1955, issue of The Southwestern Social Science Quarterly, entitled "Recent Tendencies in Business Ethics," and the article in the Encyclopaedia Britannica by Cornelius W. Gillam, entitled "Business Codes."

We can briefly epitomize these writings as pointing out that in business endeavor through the ages, ethics has been one of the unexpressed criteria influencing business decisions which involve conflicts between self-interest and social interest. While Church and State, with great powers of enforcement, have been codifying social standards, there also has existed a public conscience or overall unwritten code of ethics without form or delimitation but which nevertheless is constantly demanding revision and broadening of established standards. Furthermore, from the days when conflicts of interests were between affected individuals and society in a simple industrial economy, our complex economy of today adds conflicts between group interests and social interests.

As pointed out by Professor Sorbet: "Business ethics appears to have moved towards increasingly higher planes. At first ethical standards appeared to apply only to conduct relating to customers, suppliers, and bankers. For some years, external standards in the form of governmental legislation and social questionings had the most ostensible influence on business conduct. Business then entered an era of self-regulation, in which various associations drew up codes of ethical conduct for their members. Now evidence indicates strongly that the management class is assuming responsibility for determining ethical standards." Sorbet also defines ethics as "a code or set of rules that determine the degree of rightness of conduct involving another person or group of persons."

There are actually two "codes of ethics," which could be included in our thinking on the problem. First, there is the individual's code which every man must apply according to his own conscience and ethical standards. Secondly, there is the group code of ethics, which is usually a formal document adopted by an organized segment of society, such as the American Bar Association and other

professional societies. Codes of ethics are now gaining popularity in non-professional or semi-professional business groups and associations. Much in the news lately is the recently adopted AFL-CIO union code of ethics, one of the provisions of which forbids hiding behind the Fifth Amendment by union officials. The apparent theory of such codes is that to follow the strict letter of the law may be unethical and improper when tested by the higher standards set up by the particular group. We may assume that group codes are more effective than individual codes in that the former may be enforced to some extent by various sanctions such as expulsion from the group or other loss of benefits.

We thus look around us and see developing an uneasy feeling among businessmen that we cannot "live by law alone." An article in a recent legal publication is entitled, "Not by Law Alone." Beginning last year at the Harvard School of Business Administration, a seminar is being held annually on "Religion and Ethics in Business Policy Decisions." The advance notice of the seminar for the coming summer indicates its timeliness by reason of three developments in American life: "(1) A renaissance of theological thinking and rediscovery of its contemporary relevance. (2) A rapidly growing awareness among many executives that the deepest religious and ethical, as well as technical, insights are required of them. (3) A serious exploration by teachers of the role that religious and ethical values should play in their responsibilities both in and outside the classroom."

With these general observations on business ethics as a starting point, where does business law fit in? We must not lose sight of the fact that law is government regulation while ethics is voluntary regulation. Russell Decker, of Bowling Green State University, summarizes governmental regulation as being for the purpose of counteracting certain business tendencies, such as the tendency to monopolize, the tendency to engage in anti-social activities, and the tendency of business activities to move in recurring cycles. We may validly assume that self-imposed regulations or codes of ethics should have these same general aims, and that their effectiveness would lessen the demand for governmental regulation in many areas of business. Moreover, teachers of business law well know that there are often questions of law which are not clear-cut and which involve nicely shaded points requiring individual opinion of what is right and wrong. This follows partly from the fact that in the case of most of our laws, it is ethics, morals or social need based upon ethics and morals which came first and these forced adoption of the law. Also, quite often the enactment of a law comes only after extensive negotiation and compromise by legislators. In many cases it is seen that there remains a limbo of uncertainty as to right and wrong still involved in particular business decisions which requires a value-judgment quite apart from the law itself.

These conclusions make it obvious that while a good business manager should be able to make decisions based upon rigid application of rules of business law, even where legal questions are resolved for him by the company attorney, yet there are many decisions he must make independently of the law and these should be based upon some "code of business ethics." Furthermore, should not the business law instructor, perhaps more than any other business teacher, feel called upon to bring this point home to business students? In teaching business law, do we too strongly hew to strict legal lines without reminding the student that "ethics" is usually the forerunner of law, and that in many cases the application of ethical standards might be "better business" than the insistence upon the last "pound of flesh" justified by the letter of the law?

Our hypothesis may have been suggested by Joseph Lazar, in the October, 1956, ABLA Bulletin: "The concept of management as a 'profession' has begun to take hold. Thus, even though the management concept itself is vague and still relatively shapeless and without common features or definition, the ancient and time-worn concept of 'profession' strikes a familiar chord. For, like ministers, doctors, lawyers, or teachers, the concept of 'professional' denotes social responsibility and ethical behavior based upon a moral sense." It is said that when Harvard confers the degree of Master of Business Administration, business is referred to as "the oldest of the arts and the youngest of the professions."

If this idea is taking form in the business world, then why should not teachers of business law, most of us members of the legal profession that has had a code of ethics for many years, be among the first to promote a general code of business ethics? Or, if it be determined that a code of "business ethics" is too broad, then why not a "Code of Managers' Ethics"? It can be argued that only in a Utopia would unions not have their "racketeers" and management, their "robber barons." But is this less or more reason why we should propose and work toward some such written code? The purpose of such a code would be to formulate desirable, though admittedly often unattainable, standards to strive for with betterment of society as a by-product.

So far as I can find, recent books and articles on "business ethics" do not go so far as to suggest specifically how the subject might be brought into the classroom and given practical meaning. It should be obvious that if business managers in later life are to have a "built-in" code of ethics, the process should be started in the classrooms. But our traditional teaching approach is to make the student constantly aware of nice points of law and legal "loopholes." He learns that though he has made a solemn oral promise and may feel morally bound to carry out his promise, he may hide behind the Statute of Frauds with legal immunity; that though he feels justly obligated to pay a debt, the statute of Limitations entitles him to ignore it entirely; that if when a minor twenty years of age, he makes a promise which he feels should be carried out, the law gives him the right to avoid that promise; that if a lender charges slightly more than the legal rate of interest, the borrower may obtain relief at law, though he realized great benefit from the loan and feels morally obligated; that a promise based upon a past consideration is generally unenforceable regardless of fairness and justice. We can think of many more such illustrations.

In addition to situations like those just mentioned, where the legal lines are comparatively clear-cut, the business manager must also make close decisions of law involving such things as the reasonable-man test, the reasonable-time test, interpretations of intentions, the rule of substantial performance, and other such principles on which even the best legal minds may differ. The term "good faith" is used several times in the new Uniform Commercial Code, where it is defined as "honesty in fact in the conduct or transaction concerned." Thus, the new commercial code expressly recognizes that there are areas where ethical considerations must govern legal decisions. The important point is, that if a business manager can apply sound ethical judgment in drawing these and other legal lines, he will have greater confidence in the eventual acceptance of his decisions.

In conclusion, it should be noted that if business law teachers are to discuss this subject in the classroom, it must be by the administration of small doses so as not to seem like "preaching." The better theme often would be that

"ethics is good business." At the same time, the student should be reminded that he learns legal techniques, not to use unethically as a "sword" against the unwary, but to have such techniques available as a "shield" against the unscrupulous. To further assist the instructor, there are unlimited illustrations in business law which bear out the desirability of superimposing the ethical judgment upon the legal judgment in decision-making. For example, the insurance business is well supplied with such possibilities. Often claims are paid or points conceded to the insured by top insurance managers resulting in good will and better business relations in cases where the insured has no legal grounds whatsoever to sustain his position.

If we, as teachers of business law, take the lead in our classrooms to impress upon students the importance of ethics in legal decisions our influence will extend far beyond the classroom. Also, we as an Association can exercise great influence by further development of this subject in the future. It is no doubt true that in the past business ethics has been like Mark Twain's definition of weather--something everybody talks about but nobody does anything about. However, it seems that our social conscience is ripe and that there is a worthy field for future endeavor by members of this Association--the field of "business ethics in business law."