**CHAPTER 1**

**TODAY’S BUSINESS ENVIRONMENT: LAW AND ETHICS**

Managers face an increasingly complicated world. Law is a part of the environment and it grows ever more complex as it impacts on parts of business that saw little regulatory interference in years past. Managers must be aware of legal issues, just as they must know something about accounting, personnel management, and other parts of the business environment. Increasingly, ethical issues have come to the forefront and businesses are expected to handle matters with that in mind.

**LAW AND THE KEY FUNCTIONS OF THE LEGAL SYSTEM—**Many definitions can be given to law because it is a general concept. Holmes and Cardozo provide definitions that show that law is, generally, a set of rules that govern conduct that will be enforced by the courts. It includes formal rules, which include what we usually refer to as law, and informal rules that come from a society’s culture and ethics.

**Improving Social Stability by Influencing Behavior—**Law and the legal system define acceptable human behavior and provide a means for controlling unacceptable behavior. To encourage or discourage behavior the legal system needs some measure of “force”—the ability to threaten and impose sanctions including fines and imprisonment. What is the “public interest” varies a lot across countries. Selling dope in Amsterdam is legal; it may result in execution in other countries.

**Conflict Resolution—**The law and the legal system provide a formal mechanism and structure for the resolution of disputes--the court system. Private and public disputes may be resolved within this formal structure of the legal system, which provides substantive and procedural rules for conflict resolution.

**International Perspective: Emerging Nations and the Law**—Haiti, like other very poor countries, does not have an effective rule of law. The more corrupt a country, such as measured by Transparency International, the poorer it is likely to be. The Dominican Republic, which occupies the other half of the island Haiti is on, is less corrupt and much wealthier. How to instill an effective, accepted rule of law is not easy or well understood.

***Add. Info.:*** *Corruption, or lack of well-functioning, legitimate legal system is the major cause of poverty. Some countries, such as Nigeria, are resource rich, but corrupt regimes have stolen hundreds of billions of dollars in oil revenues. Other countries have greater stability, such as Belarus, but its regime is a repressive with a command economy. Even if the Belarus regime were not corrupt, no country can expect development when creativity and freedom of choice is quashed. A Cuban expatriate, who ran a restaurant in Havana, reported that he was required to produce all meals according to recipes provided by the government agency that regulates restaurants.*

**Social Stability and Change—**The law and the legal system must work to preserve society’s values, customs, and traditions. The legal culture and its acceptance are important in explaining the extent to which laws are enforced, obeyed, avoided, or abused. The law and the legal system must provide a means through which the governing authority can bring about important changes in acceptable behavior. Racial discrimination used to be an accepted part of the law and culture; that has changed significantly in the last 40 years. The laws and attitudes about gay marriages are changing now.

**SOURCES OF LAW IN THE UNITED STATES**—Law in the U.S. comes from a mix of common, or judge-made law, and statutory law.

**Constitutions**—A constitution is a fundamental source of law. In most countries, it forms the most fundamental source of law dictating the structure of government and limits on governmental authority.

The U.S. Constitution—It is the oldest written constitution in force in the world, it establishes the branches of the US government and specifies their powers. See Appendix C for full text.

State Constitutions—Specifies the structure of state governments, including their court systems, limits on taxes, and the powers of various authorities. It may not conflict with the U.S. Constitution.

**Legislatures and Statutes**—Legislatures are the key sources of statutory law. The powers of both Congress and the state legislatures are restricted by constitutions.

United States Congress—The Congress was created by the Constitution which specifies its various, including the powers to borrow money, declare war, and so forth. Thousands of bills are introduced each year; about 200 are actually voted upon.

State Legislatures—State legislatures are bicameral (in two parts, typically a house and a senate) except Nebraska. As in Congress, bills go through a committee system prior to dual house passage and signature by governor. National Conference of Commissioners on Uniform State Laws provides text for state statutes, such as the UCC, UPA, and other laws commonly adopted in part or in whole.

**Administrative Agencies and Regulations**—Administrative agencies are typically created by legislatures or the executive branch of the government. Agencies are delegated authority to act on certain matters. As empowered under the applicable enabling statute, agencies pass regulations implementing the statute. Those regulations have the same legal authority as a law passed by a legislature. An agency may also have law enforcement authority.

**The Judiciary and Common Law—**Judge-made law or the common law dates to the colonial period, and was derived from English common law. English common law began with the establishment of the King’s Courts (Curia Regis) after 1066. The King’s Courts were an integral part of the William the Conqueror’s efforts to unify England. They were supplemented by local courts and church courts. Important sources of law within the judicial branch of the government now includes (1) the judge-made common law and (2) the judicial review of agency administrative actions and activities.

Case Law—The King’s Courts helped to develop and apply a common and uniform set of laws throughout the country. The decisions of the courts were written down (court reporters) and then were expected to be followed in subsequent disputes; precedent had been created. As now, judges look to other court decisions for guidance.

Doctrine of Stare Decisis—The use of past cases (precedents) in deciding cases forms the doctrine of stare decisis. Precedent has nearly the same force as a statute; judges are expected to follow it.

Value of Precedent—Stare decisis promotes several functions in our legal system:

(a) Clarity and Consistency—businesses can have reasonable expectations about the future enforcement of their agreements and the legal standards to be applied.

(b) Uniformity—encourages businesses to expand and foster economic activity when they are confident of the legal environment as it encompasses an economic activity.

(c) Neutralize Judicial Prejudices—serves to neutralize the prejudices of individual judges by pressuring them to follow precedent rather than their own personal biases and beliefs. Judges who do follow precedent will likely see their decisions overturned upon appeal.

***Add. Info:*** *Overturning precedent is not a simple matter. When should it be done? Supreme Court Justice Stevens: ‘The question whether a case should be overruled is not simply answered by demonstrating that the case was erroneously decided and that the Court has the power to correct its past mistakes. The doctrine of stare decisis requires a separate examination. Among the questions to be considered are the possible significance of intervening events, the possible impact on settled expectations, and the risk of undermining public confidence in the stability of our basic rules of law. Such a separate inquiry is appropriate not only when an old rule is of doubtful legitimacy ... but also when an old rule that was admittedly valid when conceived is questioned because of a change in the circumstances that originally justified it.’*

Changes in Law and Society—A distinct advantage of the common law is that it changes readily to reflect evolution in technology and social attitudes. The law adapted to the existence of e-mail, faxes, and other methods of communication that people wish to use.

***Add. Case: Hessenthaler v. Farzin (Super. Ct., Pa., 1989).*** *Background: Farzin hired a real estate agent to sell his property. The agent found a buyer (Hessenthaler), and informed Farzin. Farzin sent a fax confirming acceptance. Upon seeing the full agreement, Farzin tried to make several changes. Hessenthaler sued for specific performance. Farzin argued that a fax was not sufficient to create a signed writing as required. The trial court found for Hessenthaler stating that the mailgram created a binding agreement. Farzin appealed.*

*Decision: Affirmed. Businesses must be able to use technology such as “electronic mail, telexes and facsimile machines in conducting their business affairs” to meet the statute of frauds sufficient ‘writing’ requirement. The need for the sufficient ‘writing’ was to ensure that the potential for fraud was reduced if not eliminated. Just as the use of seals—personalized impressions on dripped candle wax—disappeared as techniques became available to reduce the potential for fraud, so the courts recognize that electronic mail can be ‘signed’ sufficiently to eliminate the potential for fraud.*

***Add. Info: Technology, Confidentiality, and the Legal Profession****—Use of the faxes and e-mails has generated legal problems. One issue is confidentiality: (1) a message sent to the wrong location or (2) a message sent to a central location and is seen by unintended persons. Is the attorney-client and work-product privileges waived under these circumstances? In P&B Marina Ltd. v. Logrande, 136 F.R.D. 50, the court held that the attorney-client privilege is waived when confidential material is disclosed, even if disclosure is inadvertent. Faxes seen by others were not subject to attorney-client privilege. Jurisdictions are split on disclosure (no waiver, waiver if the parties failed to take reasonable precautions, and waiver in all circumstances). The reasonable precautions reasoning appears to be most common. It is in the interest of the attorney and client to at least use a legend on the cover sheet stating that the information accompanying the cover is confidential and is intended only for use by the addressee. E-mail distribution should be carefully controlled and secure, with an understanding of who has access to emailed documents.*

Reporting Court Cases—The *Davis* case in the text shows how common law rules change with the times, as the Washington supreme court abandons a traditional liability rule. See Appendix B for a discussion of elements of a case and how presented in text.

**CASE: *Davis v. Baugh Contractors—***Baugh did construction work for Glacier that included installing underground pipes that should have lasted many years. When a leak soon developed, Glacier dug down to see what the problem was. While an employee was investigating the leak, a wall in the construction area collapsed, killing Davis. Heirs sued Baugh for negligence. Traditional rule: Baugh, the contractor, was not liable once the property owner accepted the finished work, so suit dismissed.

Decision: Washington State Supreme Court held that the old rule, the Completion and Acceptance Doctrine, is overturned. It is outmoded and harmful. Under the modern approach, a contractor is liable for negligence in work that could be reasonably foreseen to cause injury if defective. Davis’ heirs may sue Baugh.

Questions: 1. The court rejected the common law rule concerning completion and acceptance that had been in effect until this decision (and ordered a new trial). What was the key reason for that decision? How does the new rule affect liability?

Answer: The old rule had been abandoned by most states already. It was outmoded because the complexity of construction has increased such that it is much less likely that a buyer can look at construction and know of defects that may be hidden compared to when buildings were of a much more simple design.

2. A judge on the court dissented from the decision. Explaining his opposition to the decision of the majority, he said this change in the law should have been done by the legislature in a statute, not the court. What are the practical problems with such a view?

Answer: Legislatures rarely care to fiddle with relatively technical rules of law. Their time is spent dealing with broader issues or ones that have an immediate political payoff. Getting legislatures to focus on code rules can be difficult. Further, the construction industry was lined up in opposition to changing the rule. The legislature would be more likely to crater to such organized opposition than the court. There was no organized support on the other side in this matter. Finally, this is a common law, not a statutory doctrine. While legislatures can override common law, courts can change it too.

**The Executive**—The president has the ability to issue executive orders—an order or regulation issued by the president (or an administrative authority under the president's direction) for the purpose of interpreting, implementing, or giving administrative effect to a provision of the Constitution or of some law or treaty.

**International Sources of Law**—Important sources of law include the laws of the individual countries, treaties and trade agreements among those countries, and the rules enacted by international organizations such as the UN, WTO and CISG. Congress must vote to approve treaties with other nations.

***Add. Info: Alternative Legal Traditions****—Generally, there are three major ‘families’ of legal systems: (1) common law, (2) civil law, and (3) religious law. They are not mutually exclusive. The U.S. may be viewed as a common law system, but the civil and criminal codes play huge roles. Similarly, precedents are followed in civil law countries. A summary:*

*Civil Law—The basic source of law are codes; most disputes are resolved by looking to a statute or code. In contrast to the common-law systems where basic laws are developed by judges, the codes of conduct are enacted by the government. Judges play a greater role in proceedings—questioning witnesses and conducting the court proceedings—than their common law counterparts. Major civil law countries include: Japan, Germany, France, Mexico, and Italy.*

*Religious Law—Within Islam and Judaism the law is asserted to be the word of God. Generally, the laws affecting personal relations are derived directly from religious doctrines. The sources of law are the religious writings—for example, the Qur’an in the Islamic legal system and the Torah in the Jewish legal system. The commercial laws in some religious law countries have been adapted from Western codes to assist economic development.*

**CLASSIFICATIONS OF LAW—**The law could be classified in several ways, including: by its source, or according to whether it could be classified as being private or public law, civil or criminal law; or, substantive or procedural law. It is important to note that these categories are not mutually exclusive. For example, a law could be private, civil and substantive.

**Private and Public Law—**Public law is concerned with the legal relationships between society members and the government (or other) authority. Private law sets forth the legal relationships among society members.

**Civil and Criminal Law—**Civil law is concerned with the rights and duties that exist among individual society members, or between society members and the government (or other) authority in noncriminal matters. Civil law requires that the wrongdoer be found liable by a preponderance of the evidence. Criminal law concerns legal wrongs, or crimes, committed against all of society. Criminal law requires that the wrongdoer be found guilty beyond a reasonable doubt. One area of criminal law is white collar crime, particularly computer-related crime.

***Add. Case: Werner, Zaroff v. Lewis (Civ. Ct. of N.Y.C., 1992).*** *Background: The plaintiff, a law firm, hired Lewis to work on its computer system. When the firm made its last payment to Lewis, he said to an attorney that if the firm had not paid he would crash the system. When the computer reached job number 56789 the system crashed. A consultant determined that Lewis caused the crash. The firm sued Lewis. The trial court found for the plaintiff and Lewis appealed.*

*Decision. Affirmed “Members of the general public are often captives of those who have developed the expertise needed to understand computers and computer programs, and must rely upon those experts to act with good faith. Some people with computer expertise have utilized their advanced knowledge to instill great anxiety in the computer-using business and consumer public, and have caused great damage to some of them. The imposition of punitive damages against Defendant should send a message to others who would consider committing similar acts in the future, and even to some who may eradicate their already planted, as yet silent viruses which are presently waiting to awaken and wreak their havoc.”*

**International Perspective: Civil Law Systems—**Most nations of the world use a code-based system of laws rather than having part of their legal system from common law. Codes are old; much of the code law in Europe has origins in Roman code law. So when people do business in other countries, it must be remembered that the rules may not be the same and that terms may have different legal meaning. Under code law, judges play a much more active role in litigation and legal procedure is quite different, so U.S. firms in other countries must hire local counsel.

**Substantive and Procedural Law**—Substantive law includes common law and statutory law that define and establish legal rights and regulate behavior. Note the importance that procedure be followed for substantive issues to be heard. [Note that in any area of law, ignorance is no excuse.]

***Add. Case: Barcellona v. Tiffany English (5th Cir.)*** *Background: Waiters at a TGIF restaurant sued, contending that the policy of using tips to satisfy the employer’s obligation to pay minimum wage violated the law. The owners asserted that they were simple farmers, ignorant of the law. The owners were trying to avoid paying damages in addition to back wages and attorneys’ fees. The minimum wage law provides that defendants who act in good faith and have a reasonable basis for believing that they were not in violation can avoid damages. The lower court found for the waiters and awarded back wages and attorney’s fees, but no damages.*

*Decision: The appeals court affirmed the back wage and attorneys’ fees awards but reversed as to damages: “apathetic ignorance is never the basis of a reasonable belief.” If ignorance of the law was a general defense, it would give business people an incentive not to learn the law so that they could claim ignorance, or one could always claim ignorance even if one in fact knew the law. People are expected to know the law that applies to their business.*

**BUSINESS ETHICS AND SOCIAL RESPONSIBILITY—**Opinion polls indicate that many believe that business is less ethical today than in years past. This may well not be so, but a part of the decline in trust in institutions (such as Congress) in general.

**Ethics, Integrity, Morality and the Law**—These terms are not the same. Ethics, in business, has to do with rules or standards of conduct and how those standards are put into practice. Integrity means living by a moral code. Morality concerns conformity to rules of conduct in the context of a society or other institution. Law is often confused with ethics. Some laws are immoral or unethical.

Business Ethics—Peter Drucker, among others, noted that business ethics and personal ethics should not be held distinct. We should put into practice what we believe in all parts of our lives. Moral relativism is business will produce bad results. Bad ethics in business is bad ethics; no way around it.

Political Reality—Bribes, one way or another, are required to do much business in many countries. While the Foreign Corrupt Practices Act will be discussed in Ch. 22, the general point is, can one justify paying bribes to corrupt officials to get business, because if you do not, someone else will? No. In the U.S., campaign contributions are essentially required if a firm wishes to have better treatment at the hands of politicians. This can be seen as indirect corruption.

**Issue Spotter:** **OK to Grease Palms?** You can quit if you do not like it, but that is the way things are done in a number of cities in the U.S. You might try playing dumb, hoping the inspectors will sign, figuring the new guy does not know the system, but that is not likely to last long, and soon there may not be any permits being issued or they may delay inspection visits, holding up construction, which is a very costly result. One person is unlikely to be able to change such unethical practices. Contractors do not like it, but must have the permits. The heads of the inspection departments are either in on the take, know all about it, or may be powerless to deal with it. However, liability for making payments, even if extorted by the government inspector, can be strict and result in criminal sanctions.

**Perceptions of Ethics and Responses**—Corporations face problems with public perceptions of their honesty and with employee honesty. Corporate codes of ethics have not seemed to improve the situation. Some studies show that corporations that make the most effort to inform employees of ethical standards are most likely to be subject to federal regulatory investigations. Most Americans think there is more dishonesty now than a decade ago. To stem this problem, more companies hire ethics specialists. Talk is not enough; there must be incentives to act more honestly.

**Ethics Codes and Compliance Programs—**Talking about ethics and compliance is one thing; making it happen is another. To reduce legal punishment, more and more companies are adopting *compliance programs* that meet DOJ standards. Companies that have effective programs face lower levels of punishment under the Sentencing Guidelines.

**Cyberlaw: Online Ethics and Legal Compliance**

Many companies have employees take online classes in legal requirements and ethical decisions. The advantage of such classes is that there must be positive responses to questions asked; when people sit in classes they may not pay attention, so the online classes seem to be effective.

**International Perspective: Does Regulation Improve Business Ethics?**

World Bank study of business practices and legal rules indicates that corrupt countries tend to have more regulation. Government control often gives corrupt bureaucrats greater ability to extort. Many simple steps in business in poor countries require many more legal, bureaucratic steps than they do in Western countries, making it all the harder for ordinary people to earn a living.

**Issue Spotter: Putting Ethics into Practice—**Most larger companies have codes of ethics that are distributed to employees. As the statements in the book indicate (that are taken from a code of conduct of a large firm; this was given to a sales clerk employee) most employees will not relate to the code. Nothing the ordinary employee does can relate to antitrust issues. Few are in a position to affect decisions to grant credit or not. Such codes may be well-intended but only matter if they are put into practice at the relevant levels within an organization.

**Ethics and Corporate Social Responsibility—**CSR can be very vague. Peter Drucker put it in the contest of business leadership. Leaders must be sure the corporate mission is fulfilled. Earning a profit for investors is socially responsible. Part of doing that means minimizing errors that are harmful to the value of the organization over time. Google tries to incorporate this notion with the “Don’t be evil” rule. Some companies have staffs that consider operations within the company within the social responsibility context, as well as issues of company participation in community activities. The Lamson case makes clear—law and ethics can be quite distinct.

**CASE: *Lamson v. Crater Lake Motors***—Lamson was long time sales manager at a car dealership. He advocated honest dealing with customers; no high-pressure sales tactics. The company hired an outside marketing firm. It used techniques Lamson thought were unethical—but they worked. He objected to the decline in ethical standards and would not cooperate with the marketing firm. He was fired and sued, saying the company violated its own code of ethics. Jury held for him. Employer appealed.

Decision: Reversed. There is no legal basis for a suit for wrongful discharge. It was an at-will relationship; the company need not have a reason to dismiss Lamson. There may have been dubious tactics, but Lamson cannot cite illegal actions by the marketing firm or his employer.

Questions: 1. Suppose some of the sale tactics used by RPM violated Oregon law. What could Lamson do about it? Unless he suffered the effects of an illegal practice by making a purchase based on such practice, he had no complaint at law. Who would know more about such practices; those involved in putting them in place or a customer? Do you think any other car dealer would want to hire Lamson if he went public about his complaints?

Answer: The court noted that Lamson may have had a case under Oregon law if he was told to hide something that could involve health and safety conditions, but nothing else. Hence, while certain sales practices are illegal, there was nothing Lamson could do about it except for what he did—complain internally. If he complained to the state, which would be unlikely to do anything, he could have been fired for that. Those who act as whistleblowers, internally or externally, put themselves at great risk and are unlikely to be hired by another company. No one wants a snitch in their employ. The accountant who blew the whistle at Enron and helped bring the house of cards down had a very difficult time finding another job despite her high-level experience.

2. Why do you think the courts are shy to get involved in such incidents? Should the courts be enforcers of company’s ethical practices and codes of ethics?

Answer: Codes of ethics are internal documents that usually have no legal consequence. The job of courts is to enforce the law, not act as arbiters in cases of codes of ethics. It would be a great expansion of power and duties for courts to act as evaluators of ethical issues in companies that went beyond legal obligations.

***Add. Case: Soldano v. O’Daniels (Calif. Ct. App., 1982)*** *Background: A man threatened to shoot Soldano. Another man ran into a bar and asked the bartender to call for help. The bartender refused to call the police and refused to let the man call. Soldano was killed. Soldano’s child sued the bartender for wrongful death. The trial court dismissed the case, stating that a person may not be held liable for nonactions. Plaintiff appealed.*

*Decision: Reversed. According to the Restatement of Torts, a person does not incur a duty to act just because he realizes that action would help another person. The defendant asserts that he was not legally compelled to assist Soldano. The appeals court held that in certain cases a duty to act does arise when another person is in peril. This duty arises when a) the harm is imminent, b) the certainty of the injury is undisputed c) there is a close connection between the defendant's conduct and the injury suffered, d) the defendant’s conduct is morally blameworthy and, e) the cost of imposing the duty is light. Here there was an immediate harm. The failure to allow a call for help was closely connected to Soldano’s shooting. The bartender displayed an immoral disregard for life. A minimal burden could have possibly helped save a life. Based on its new interpretation of a duty to help, the court ordered a new trial. [Note: This case has been little cited; it did not set a trend. The issue is should the law serve to enforce higher ethical standards?]*

***Add. Case: United States v. Stanley (S.Ct., 1987)—****Stanley was a sergeant in the U.S. Army. In 1958 he volunteered to participate in a program he was told would test protective clothing in chemical warfare. Without his knowledge, he was given doses of LSD as part of an experiment. Later he suffered mental problems, his marriage and careers floundered. The Army revealed in 1975 that he had been given LSD. He sued the government under the Federal Tort Claims Act, claiming that his mental problems stemmed from the drug. The trial court dismissed the case because the federal government is not liable for harms inflicted upon military personnel during their service. Court of Appeals affirmed and Stanley appealed to the Supreme Court.*

*Decision: Affirmed. The majority opinion noted that the Constitution gives Congress the power to make rules for the armed forces. Congress could restrict the ability of military personnel to sue the government for harms they incur during military service. Justice Brennan dissented in part, noting that the government treated Stanley no better than a test animal. The Army’s actions violated the Nuremberg Code, established at the Nazi war crimes trials of 1947, which prohibits experimentation on humans without informed consent. He argued that Stanley should have been allowed to sue the officers who conducted tests on him, although his case against the federal government was properly dismissed.*

***Add. Case: Grimshaw v. Ford Motor****—Plaintiffs were Grimshaw, a passenger, and the heirs of a woman (Grey) who had bought a Ford Pinto that stalled on the highway. Another car hit the Pinto, causing it to burst into flames. Gray died as a result of burns. Grimshaw suffered extensive burns. Evidence was that Ford used cost-benefit analyses before it marketed the Pinto. The company knew that the fuel tank design of the car was problematic, and it weighed the cost of redesigning the tank against liability that might arise if the car was sold as is. Ford kept the cheaper fuel tank. Plaintiffs alleged that the defendant could have included safety features on the car to prevent the kind of accident they suffered. The jury awarded plaintiffs over $3 million in compensatory damages and $125 million in punitive damages. The judge reduced the punitive damages. Ford appealed.*

*Decision: Affirmed. The Pinto was rushed through production. Ford did not do its normal testing with this car. Engineering decisions were dictated largely style. The fuel tank was less than a foot from the rear of the car. It lacked many crush resistant features, making it more susceptible to explosions upon rear ending. In crash testing, the Pinto failed to meet government specifications. Once the Pinto failed its crash testing Ford should have redesigned and retested the fuel system. The court held that the company could have fixed the fuel tank problem relatively cheaply. Despite the fact that the car could have been fixed cheaply, Ford management decided to go ahead and market the car, knowing about the potential fuel tank problems. The court rejected Ford’s cost-benefit analysis that placed human lives in the scale with cost and inconvenience of reworking an existing automobile design. The court noted that “Ford’s institutional mentality was shown to be one of callous indifference to public safety.”*

**Discussion Question**

It is generally true that ignorance of the law is no excuse. Citizens are deemed to have constructive knowledge of the law. Yet, as well know as this rule is, it is surprising how often it is proffered as an excuse. (A Westlaw search cases finds hundreds of examples). Examples include: *Deluco v. Dezi* (Conn. Super) (lack of knowledge regarding the state’s usury laws is no excuse for the inclusion of an illegal interest rate in a sales contract); and *Plumlee v. Paddock* (ignorance of the fact that the subject matter of the contract was illegal was not excuse). The courts have provided a small exception to the rule when it comes to people in lack of English language skills. Consider *Flanery v. Kuska,* (defendant did not speak English was advised by a friend that an answer to a complaint was not required); *Ramon v. Dept. of Transportation,* (no English and an inability to understand the law required for an excuse); *Yurechko v. County of Allegheny,* (Ignorance and with the fact that the municipality suffered no hardship in late lawsuit filing was an excuse).

**Case Questions**

1. This points out that the legal system has limits. Its acceptability is dictated by legal culture--which determines whether law will be enforced, obeyed, avoided, or abused. It is limited by the informal rules of the society--its customs and values. One limit is the extent to which society will allow the formal rules to be imposed when a crime is committed in odd circumstances. Here there was an intentional murder. Does the motive for the murder, the effort to save several lives by sacrificing one life, make it a crime that should be punished? Not all crimes are treated the same. It also raises questions about the desirability of not giving judges flexibility in sentencing.

There was a precedent for a light sentence in this case in U.S. law: *U.S. v. Holmes,* 20 F. Cas. 360 (No. 15383) (C.C.E.D. Pa. 1842). The case involved a sinking ocean liner. Several passengers made it to the only lifeboat, which was far too overcrowded. The captain decided to save the women and children and threw several men overboard. The lifeboat was rescued. The grand jury refused to indict the captain from murder, only for manslaughter. He got a six month sentence.

The British judge in the case here imposed the death penalty upon the person who survived. The judge found it difficult to rule that every man on board had the right to make law by his own hand. The Crown reduced the sentence to six months.

2. (answer on Internet for students) The general rule that exists now is that since the government has ordered the posting of warning labels on cigarettes, and since the dangers of smoking are well known, consumers have been warned and are not due compensation if they kill themselves by smoking. The *Cippoline* case, since reviewed by the Supreme Court, appears to be of limited impact since the victim was adjudged to have become addicted to cigarettes before the warning label was ordered in 1964. If cigarette makers were held responsible for all health problems associated with cigarettes, then, like alcohol and other dangerous products, the damages would likely be so high it would effectively ban the products. Presumably, in a free society if adults are clearly informed of the risks of products that cannot be made safe, they accept the risk. Tobacco and alcohol producers cannot take the dangers out of the products except at the margin by encouraging responsible drinking and the like. Are drugs like cocaine different?

3. The court found no liability for the manufacturers. There was no defect; the product was safe for intended use. Safety instructions were clear; the parents let the boys ride the bikes. Anything can be dangerous--baseballs are dangerous when they hit the head, swings are dangerous when kids jump out of them; there is only so much that can be done to make the government the “national nanny” as the *Washington Post* once said about excessive consumer protection. Parents must accept a high degree of responsible for their own children.

4. (answer on Internet for students) The Court held it a form of sex discrimination to prevent women of child-bearing age from holding the more dangerous jobs. The company argued that it did this to protect itself from possible liability in case of damage to babies and that the decision was ethical. The replacements for these workers were often men or more senior women, who tended to be higher income workers, so this was not a current cost-saving move. Note that a 2002 ruling related to the ADA significantly restricted this earlier case.

5. The appeals court held it was entirely appropriate to fire Noonan and to deny him severance benefits because he violated Staples’ Code of Ethics. The Code clearly stated what was expected and what the consequences would be for violations. That enables the Code to have more meaning in practice than it being only happy talk that is not meaningful in practice. A company may enforce employment codes of behavior. Had Noonan been terminated for not violating the Code of Ethics, he would have received severance benefits. Such a rule helps give added incentives for employees to stick by the Code.

6. The appeals court affirmed that the employer had the right to terminate the employee for failure to be fully cooperative in the investigation of the complaint of sexual harassment that had been filed against him. While he was not found to have violated the harassment policy, he was evasive and uncooperative, which violated the company’s code of ethics, which was a justification for termination.

**Ethics Questions**

1. The nature of our political system forces firms to participate in the political process. Those that fail to do so, if they are of any size, are more likely to be subject to political attack. In a sense, firms “buy” protection by keeping a flow of contributions going, especially to incumbent members of Congress. Competition also means that if a firm does not lobby for special privilege, then it may suffer if competitors achieve such status in the tax code or some area of regulation. Many business leaders do not much care for the Washington, D.C. operations their firms support but know that it is a part of the modern legal environment of business.

2. The high mark up suppresses the demand for fair trade goods, thereby reducing the market for fair trade goods. If the retail prices reflected the actual additional cost, not the profit maximizing price to the retailer that exploits the goodwill from “fair trade,” then it is hard to argue that the company is being particularly socially responsible.

3. The company was in a no-win situation. It was attacked by environmentalists and some locals for “destroying” the environment, even though the pollution was acceptable. When the company later stated it would close the plant, which as not profitable, it came under fire for destroying jobs. It eventually upgraded the plant and kept it open, but it was never a profitable operation. The plant should probably not have been built in such a remote location, as that made it a target. Built in a higher-density area and there would have been fewer issues as the environmental impact on an existing industrial area would have been small. Corporate social responsibility can involve difficult tradeoffs that do not always allow a win-win result.

4. If ethics is to be theoretical or applied only in formal situations, then it means little.

**Internet Assignment**

Look at these major websites for the U.S. Code and federal court system as well as key legal materials of the federal government: Office of Law Revision Counsel, U.S. Code: <http://uscode.house.gov/>

Cornell University Law School, U.S. Code: [www.4.1aw.cornell.edu/uscode/](http://www.4.1aw.cornell.edu/uscode/) United States Courts: [www.uscourts.gov/](http://www.uscourts.gov/) United States Supreme Court: [www.ussc.gov/](http://www.ussc.gov/)