Insurance, Consumers and Ethics

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I. INSURANCE AND ETHICS

The very nature of insurance raises ethical questions. Insurance can be seen as a human attempt to control and influence an environment that is, depending on one's philosophy, controlled by the hand of the Almighty or subject to the arbitrary whims and caprices of nature. As a result, the attempt by humans to "insure" anything will only meet with limited success. Insurance is the spreading of risk- a pooling of money to provide limited reassurance for a limited set of assets or circumstances. Insurance is perceived as a panacea. When insurance is purchased, some people think, "Oh, now I don't have to worry, everything will be taken care of."

With the help of advertising, the insurance industry has often nurtured this warm and fuzzy yet incorrect notion. Insurance is only a partial or stopgap measure to deal with the uncertainties that the world presents. Insurance does not control the fates. Insurance does not provide the kind of universal coverage and assurance that many people look for. Ethical concerns about insurance are created because of this gap between consumer expectations and genuine insurable risk. Policyholders are often disappointed, angry or disillusioned to find that the insurance they have been paying for does not cover a particular situation. This can leave consumers feeling that insurance is a bad bargain.

The media feeds on consumer sentiment such as "I've paid thousands of dollars of premiums, and this small claim isn't covered", or "Because I forgot two payments, my coverage was cancelled. Now my claim won't be paid after paying premiums for many years", or "I didn't understand what I bought, I thought everything was covered." This decoupling of expectations and reality leads to client frustration and dissatisfaction. As a result, insurance is one of the more tightly regulated industries in the U.S. The business is primarily regulated at the state level with a different set of laws and regulations governing insurance in each state. Unfortunately, there are times when the industry has not been a good corporate citizen. Every time a Martin Frankel or Baldwin United sort of crisis happens, every time some political faction jumps up and down about the number of uninsured in the country, somebody wants more and more regulation of the industry. Often the call comes for federal regulation of the insurance industry; a plan to simply overlay the current system with another, federal layer of regulation and bureaucracy.

People in the business and anyone else who has given it much thought realize what a great product insurance is. As stated earlier, insurance is a pooling of risks by a group with similar loss exposure. It is an efficient method for people to come together and help each other. With each life insurance premium, policyholders are putting their money together, not to help themselves, but to help their families and, indirectly, to help other families as well. When someone else dies, his or her family benefits because a payment can be made from this pool of premiums and the investment income that arises from it. When John Q. Public dies, his claim is paid to his family, from the same pool. People, in more informal ways, have done this for centuries. When someone dies, those remaining help the family. This may appear very basic, but insurance is more than just survivor benefits. Insurance allows people to live a life of financial security in the face of catastrophe. Insurance is required in most industries and professions. This gives assurance of the quality of goods and services that are offered. Commercial insurance for industries and professions has underwriting standards that require certain practices, safeguards, and licensing. In this way, insurance provides a safety net for consumers both in terms of the product or service delivered and financial surety if there is a problem. No one would have surgery, ride in an airplane, get on an elevator, eat in a restaurant, or even drive, if there was no insurance in place. Beyond that, without insurance these businesses could not get off the 'ground floor' as far as tackling the risk issue. One mistake could bankrupt the business and shatter customer confidence. Insurance not only provides protection to the consumer, but also allows consumers to conduct business. Insurance is a tool that can be used in many helpful ways.

Once we accept the proposition that insurance is a good business, the ethical concerns do not end. In many ways, they just begin. Every day in running an insurance business, ethical considerations arise-

1. What is a fair price to charge? Should we charge as much as we can, as little as we can, or something in-between?
2. What is the proper level of customer service? Just enough to get by, more than the customer has bargained for, or something in-between?
3. What kinds of policies and procedures should govern the running of the company? Should we follow the letter of the law, the spirit of the law, or both?
4. Which laws are we talking about, man's laws, God's laws, or both? When can and should we make exceptions to our policies and procedures?
5. How should we contract with other companies? Should we get as much as possible, give as much as possible, or something in-between?
6. What should our benefits and compensation be for the people working within the company? Should we pay them as little as possible, as much as possible, or something in-between?
7. What should be done when someone is not doing the job? Should we help them, get rid of them, or keep them no matter what? How can we best address these ethical dilemmas?

If the reader is looking for simple solutions to these questions, the thing to remember is that above all else the licensee owes an ethical duty to the insurance-buying public. With any given set of circumstances, any of the answers may be right. The questions and the answers change every day. Children are admonished to, “Let your conscience be your guide.” Over the years, from being a child, a teenager, a young adult, and ever onward, the ethical questions can become more and more difficult. One day it will turn out that letting your conscience be your guide is not enough. One needs a moral compass, a set of values to help in difficult situations. In ethical situations, pride, ego, or the dollar can sometimes be the deciding factor. The agent must ask of themselves the following questions:

- How would I want to be treated, not how would someone else want to be treated.
- Does my decision assume people are good and will do the right thing, or does it assume that people will act poorly?
- Am I making my decision based upon what I know today, or am I trying to predict the future?
- Will my decision leave things better than I found them, or create chaos, instability, or despair?
- Do I feel at peace with the decision, or do I feel unsure or uneasy?
- Am I allowing myself to be pushed into a decision when no decision on my part is even needed?

These questions look like a tall order. If taken one at a time, and practiced on a regular basis, they can be mastered. The success of a business is based on more than just financial and operational strategies, goals, and targets. Here are some ideas that can help the agent carry out the mission of doing business the right way, incorporating guiding principles into everyday decision-making-

- Pursue and review every opportunity
- Manage money wisely
- Treat all with respect and dignity
- Follow the letter and spirit of the law
- Lead with your values

II. ETHICAL FOUNDATION

Ethics may be understood most comprehensively as reflection on the moral significance of human action. Ethics also includes the results of such reflection in rules of conduct or ways of life. The terms "ethics" and "morals" are derived from Greek and Latin words meaning "customs, conduct, and character." **Ethics** has come to mean "reflection on values and morality," and may also be called moral philosophy or moral theology. The concept of **Morals** has remained closer to the original denotations relating to the customary behavior of people and communities.

Areas of Ethical Reflection.

Religious or theological ethics- This is ethical reflection and formulation within the context of religious traditions. Jewish and Christian ethics are the dominant forms of religious ethics in the Western tradition. If one or another form of Western ethics is taken as the defining norm of all ethics, then the question may be raised whether there is any Hindu or Buddhist ethics. If, however, ethics is understood as reflection on the moral significance of action in all the varied forms this reflection appears, then ethics is clearly a part of non- Western traditions.

Philosophical ethics- A reflection on the moral significance of action in rational, philosophical perspective. A major pattern of ethics in ancient Greek and Roman cultures and in the Western tradition, philosophical ethics is often erroneously described by philosophers as the only form of ethics. Religious and philosophical ethics are frequently in close interaction with one another and may be combined in a single thinker.

Social ethics- Reflection on the moral significance of human action in communities and societies is the basis of this ethical study. The focus of social ethics may be on the overall social system, on particular sectors or issues in society, on organizations, or on individual action within social collectivities. Social ethics draws upon the resources of the social and natural sciences as well as upon theological and philosophical ethics.

Comparative ethics- This is the study and reflection on the moral significance of action in diverse cultures and social contexts. Comparative perspectives in ethics may be provided by different cultures, different historical periods, or different academic disciplines. Some methodological formulations in comparative ethics are too narrowly Western and rational to be useful for cross-cultural purposes. Cross-disciplinary approaches hold promise of more widely applicable methods.

Ethical Values

Positive characteristics are used to describe the 'ideal' ethical person. Arguing over what best describes such a person is beyond the scope of this book. However, whatever values are chosen work just as well for adults as for people entering their teenage years. It is important that ethical values are taught at a young age. Then they will (hopefully) become a part of the person's mindset for life. The following statement of core values from a middle school serves as a good example-

We believe there are universal moral values, those associated with "should" or "ought" to which people in all successful civilizations subscribe. These values serve as the basis for ethical behavior across all societies and all major religions. In a public education setting, therefore, we believe it is appropriate to foster and promote such ethical values and principles. Though not inclusive of every commonly accepted moral value, the list below, endorsed by the Board of Education, has been developed to include values that are powerful and important to life.

Honesty

Conducts human interactions in a fair and straightforward manner; tells the truth; does not cheat, steal or intentionally mislead; behaves in a manner consistent with one's professed values and ideals (integrity).

Responsibility

Accepts responsibility for the foreseeable consequences of one's actions, reactions, choices, and goals; demonstrates an active commitment to the welfare of others.

Compassion

Demonstrates sensitivity and a decent measure of caring and concern for fellow human beings; exhibits generosity and love.
Perseverance continues the pursuit of goals in the face of adversity; demonstrates a willingness to work (diligence).

Respect

Holds one's self, each other person, and the environment in high regard; acknowledges the inherent value in each human being and each living thing; honors the rights of others to be autonomous and to be treated with dignity. (Not to be confused with an insistence that one is entitled to someone else's respect.)

Cooperation

Interacts with others in a mutually beneficial way; seeks thoughtful and peaceful ways of resolving conflict.

Civic Duty

Respects the principles of representative democracy; expresses informed views; participates in the democratic process; observes rules and laws; demonstrates a commitment to the public good.

Courage

Demonstrates a willingness to act positively on a moral value even in the face of potential personal loss; a willingness to take calculated risks to achieve a positive result. (Not to be confused with aggressive physical or emotional behavior.)

The real test of the effectiveness of any moral education effort will be its impact on the decisions students make. In the final analysis, we want our students to routinely make ethical choices -

choices distinguishing what should be done from what can be done.[1]

The Link- Law, Ethics and Justice

The link between ethics and justice is difficult to define, and an exploration into its nature has occupied much time for philosophers. Ethics is the study of what is right and wrong, in the sense of obligations in action. Justice is a concept involving the fair, moral, and impartial treatment of all persons. In its most general sense, it means according individuals what they actually deserve or merit, or are in some sense entitled to. Justice is a particularly foundational concept within most systems of "law," and draws highly upon established and well-regarded social traditions and values. From the perspective of pragmatism, it is the name for a fair result.

In his book *The Law*, (1850) Frederic Bastiat concluded that “law is organized justice.” The law is no guarantee of justice, and these terms are by no means synonymous. Justice is an ideal which good law continually strives to achieve. If the law is regarded as the sum total of the rules enforced and administered by courts and other agencies of government, the disparity between law and justice becomes apparent. As explained by Bastiat, law is inseparable from a politically organized society. In a government by a dictatorship, its laws might be oppressive, harsh, and calculated chiefly to maintain the control and domination of the dictator. A rule, regulation, edict or order is no less a law because it is harsh, unwise, or unjust. Law is ever changing and its change should be in the direction of fair, reasonable, equal and impartial treatment of the competing interests and desires of the individuals in the community to whom it applies. To the extent that it fails to do so, it fails to achieve justice.

On the portico of the Supreme Court Building in Washington, D. C. is inscribed in stone "Equal Justice under Law". These words express not only an ideal, but also the relative position of law and justice. Without law and order there can be no justice. The present and future welfare of mankind depends upon the administration of justice according to law. Here are six arguments for the administration of justice according to the law:

1. Law makes it possible to predict the course which the administration of justice will take.
2. Law secures against errors of individual judgment.
3. Law secures against improper motives on the part of those who administer justice.
4. Law provides the magistrate with standards on which the ethical ideas of the community are formulated.
5. Law gives the magistrate the benefit of all the experience of his predecessors.

[1] Lakeside Middle School, Irvine, California

6. Law prevents the sacrifice of ultimate interests, social and individual to the more obvious and immediately pressing but less weighty immediate interests."

Moral Relativism

The position taken by **moral relativism** is that moral or ethical propositions do not reflect absolute and universal moral truths but instead are relative to social, cultural, historical or personal references, and that there is no single standard by which to assess an ethical proposition's truth. Relativistic positions often see moral values as applicable only within certain cultural boundaries or the context of individual preferences. An extreme relativist position might suggest that it is meaningless for the moral or ethical judgments or acts of one person or group to be judged by another, though most relativists propound a more limited version of the theory.

Some moral relativists — for example, the existentialist Jean-Paul Sartre — hold that a personal and subjective moral core lies or ought to lie at the foundation of individuals' moral acts. In this view public morality is a reflection of social convention, and only personal, subjective morality is truly authentic.

Moral relativism does not equate to moral pluralism, or value pluralism, which acknowledges the coexistence of opposing ideas and practices, but does not require that they be equally valid. Moral relativism, in contrast, contends that opposing moral positions have no truth value, and that there is no preferred standard of reference by which to judge them.

Views on Moral Relativism

To express moral relativism another way: There is my truth, and there is your truth, but there is no the truth. A passage from a great author shows that these perplexities have been around for some time--

Anna Karenina

(1877) By Leo Tolstoy Part III, Chapter 20

[Count] Vronsky's life was particularly happy in that he had a code of principles, which defined with unfailing certitude what he ought and what he ought not to do. This code of principles covered only a very small circle of contingencies, but then the principles were never doubtful, and Vronsky, as he never went outside that circle, had never had a moment's hesitation about doing what he ought to do. These principles laid down as invariable rules: that one must pay a cardsharper, but need not pay a tailor; that one must never tell a lie to a man, but one may to a woman; that one must never cheat any one, but one may a husband; that one must never pardon an insult, but one may give one and so on. These principles were possibly not reasonable and not good, but they were of unfailing certainty, and so long as he adhered to them, Vronsky felt that his heart was at peace and he could hold his head up. Only quite lately in regard to his relations with Anna, Vronsky had begun to feel that his code of principles did not fully cover all possible contingencies, and to foresee in the future difficulties and perplexities for which he could find no guiding clue.

His present relation to Anna and to her husband was to his mind clear and simple. It was clearly and precisely defined in the code of principles by which he was guided. She was an honorable woman, who had bestowed her love upon him, and he loved her, and therefore she was in his eyes a woman who had a right to the same, or even more, respect than a lawful wife. He would have had his hand chopped off before he would have allowed himself by a word, by a hint, to humiliate her, or even to fall short of the fullest respect a woman could look for…….

<u>One man's meat...</u>

Shortly before he was elected pope, Cardinal Joseph Ratzinger delivered a withering denunciation of relativism. In its extreme, the view that there are no hard and fast rules on what is right and wrong, on which values are set and should be fought for. It is in contrast to absolutism, that there is one truth. Relativism is "Different opinions, no one authority, and as many 'truths' as there are people or societies or cultures advancing different ways of doing things," says Simon Blackburn, Professor of Philosophy at Cambridge University. It is easy, he says, "to give relativism a slogan: Beauty lies in the eye of the beholder. One man's meat is another man's poison." And when that is applied to ethics, then goodness, virtue and duty also lie in the eye of the beholder.

> “We are moving toward a dictatorship of relativism which does not recognize anything as for certain and which has as its highest goal one's own ego and one's own desires”
>
> Pope Benedict XVI
> (when Cardinal Ratzinger)

So, for the western liberal, living under western liberal influences, with western liberal opinions, he says, contraception and abortion are in, but for the Catholic Church, they are out. In his sermon ahead of the conclave to choose a new Pope, then-Cardinal Ratzinger warned of the need to preserve the Church's traditional Catholic tenets against modern trends, against the "dictatorship of relativism".

Measuring Ethical Judgments

Those who support positions of moral absolutism or universalism often criticize moral relativism; sometimes equating it with outright "immorality" or amorality. Various historical and cultural events and practices, including The Holocaust, Stalinism and communist atrocities of the 20th century, genocide, unjust wars, slavery, terrorism, Nazism, etc., present difficult problems for relativists. An observer in a particular time and place, depending on his outlook (e.g., culture, religion, background), might call something *good* that another observer in a particular time and place would call *evil*. Slavery, for example, was thought by many to be acceptable, even good, in other times and places, while it is viewed by many (though certainly not all) today as a great evil. Critics contend that stating there is no preferred standard of truth, or that standards are equally true, addresses the ultimate validity and truth of the ethical judgments themselves, which, they contend, is a normative judgment (judging how things should or ought to be).

III. ETHICS AND COMMERCE

Business ethics is a form of applied ethics that examines ethical rules and principles within a commercial context. The various moral or ethical problems that can arise in an insurance setting and any special duties or obligations that apply to persons who are engaged in insurance are included. Generally speaking, business ethics is a normative discipline, whereby particular ethical standards are assumed and then applied. It makes specific judgments about what is right or wrong, which is to say, it makes claims about what *ought* to be done or what *ought not* to be done. While there are some exceptions, business ethicists are usually less concerned with the foundations of ethics (metaethics), or with justifying the most basic ethical principles, and are more concerned with practical problems and applications, and any specific duties that might apply to business, and hence insurance, relationships.

Overview of issues in business ethics

General business ethics

This part of business ethics overlaps with the philosophy of business, one of the aims of which is to determine the fundamental purposes of a company. If a company's main purpose is to maximize the returns to its shareholders, then it could be seen as unethical for a company to consider the interests and rights of anyone else. This is especially relevant to the business of insurance, where the ‘product’ is not porcelain, plastic, or paint, but instead protection against risk of loss for the public. Other issues include-

- Corporate social responsibility or CSR: an umbrella term under which the ethical rights and duties existing between companies and society are debated.
- Issues regarding the moral rights and duties between a company and its shareholders: fiduciary responsibility, stakeholder (policyholders, employees and retirees) concept v. shareholder concept.
- Ethical issues concerning relations between different companies: e.g. hostile take-overs, industrial espionage.

- Leadership issues: corporate governance.
- Political contributions made by corporations.
- Law reform, such as the ethical debate over introducing a crime of corporate manslaughter.
- The misuse of corporate ethics policies as marketing instruments.

Professional ethics

Professional ethics covers the myriad of practical ethical problems and phenomena which arise out of specific functional areas of companies or in relation to recognized business professions.

- Ethics of finance and accounting
- Creative accounting, earnings management, misleading financial analysis.
- Insider trading, securities fraud, bucket shop, forex scams: concerns (criminal) manipulation of the financial markets.
- Executive compensation: concerns excessive payments made to corporate CEO's.
- Bribery, kickbacks, facilitation payments: while these may be in the (short-term) interests of the company and its shareholders, these practices may be anti-competitive or offend against the values of society.

Ethics of human resource management

The ethics of human resource management (HRM) covers those ethical issues arising from the employer-employee relationship, such as the rights and duties owed between employer and employee-

- Discrimination issues include discrimination on the bases of age (ageism), gender, race, religion, disabilities, weight and attractiveness.
- Issues affecting the privacy of the employee: workplace surveillance, drug testing.
- Issues affecting the privacy of the *employer*: whistle-blowing.
- Issues relating to the fairness of the employment contract and the balance of power between employer and employee: slavery, indentured servitude, employment law.
- Occupational safety and health.

Ethics of sales and marketing

Marketing which goes beyond the mere provision of information about (and access to) a product may seek to manipulate our values and behavior. To some extent society regards this as acceptable, but where is the ethical line to be drawn?

- Pricing: price fixing, price discrimination, price skimming.
- Anti-competitive practices: these include but go beyond pricing tactics to cover issues such as manipulation of loyalty and supply chains.
- Specific marketing strategies: greenwash, bait and switch, shill, viral marketing, spam, pyramid scheme, planned obsolescence.
- Content of advertisements: attack ads, subliminal messages, sex in advertising.
- Children and marketing: marketing in schools.
- Black markets, grey markets.

Issues in Product advertising

Alcohol advertising
Cosmetics advertising
Gambling advertising
Tobacco advertising
Professional Services advertising
Pharmaceuticals advertising

Ethics of production

This area of business ethics deals with the duties of a company to ensure that products and production processes do not cause harm. Some of the more acute dilemmas in this area arise out of the fact that there is usually a degree of danger in any product or production process and it is difficult to define a degree of permissibility, or the degree of permissibility may depend on the changing state of preventative technologies or changing social perceptions of acceptable risk. This includes-

Defective, addictive and inherently dangerous products and services.

- Ethical relations between the company and the environment: pollution, environmental ethics, carbon emissions trading
- Ethical problems arising out of new technologies: genetically modified food, mobile phone radiation and health.
- Product testing ethics: animal rights and animal testing, use of economically disadvantaged groups (such as students) as test objects.

International business ethics

While business ethics emerged as a field in the 1970's, international business ethics did not emerge until the late 1990's, reflecting the international developments of that decade. Many new practical issues arose out the international context of business. Theoretical issues such as cultural relativity of ethical values receive more emphasis in this field. Other, older issues can be grouped here as well. Issues and subfields include:

- The search for universal values as a basis for international commercial behavior.
- Comparison of business ethical traditions in different countries.
- Comparison of business ethical traditions from various religious perspectives.
- Ethical issues arising out of international business transactions
- Issues such as globalization and cultural imperialism.
- Varying global standards - e.g. the use of child labor.
- The way in which multinationals take advantage of international differences, such as outsourcing production (e.g. clothes) and services (e.g. call centers) to low-wage countries.
- The permissibility of international commerce with pariah states.

Issues in business ethics

Conflicting interests- Business ethics can be examined from various perspectives, including the perspective of the employee, the commercial enterprise, and society as a whole. Very often, situations arise in which there is conflict between one or more of the parties, such that serving the interest of one party is a detriment to the other(s). For example, a particular outcome might be good for the employee, whereas, it would be bad for the company, society, or vice versa. Some ethicists see the principal role of ethics as the harmonization and reconciliation of conflicting interests.

Ethical issues and approaches- Philosophers and others disagree about the purpose of a business in society. For example, some suggest that the principal purpose of a business is to maximize returns to its owners, or in the case of a publicly-traded concern, its shareholders. Thus, under this view, only those activities that increase profitability and shareholder value should be encouraged. Some believe that the only companies that are likely to survive in a competitive marketplace are those that place profit maximization above everything else. However, some point out that self interest would still require a business to obey the law and adhere to basic moral rules, because the consequences of failing to do so could be very costly in fines, loss of licensure, or company reputation. The economist Milton Friedman is a leading proponent of this view.

Other theorists contend that a business has moral duties that extend well beyond serving the interests of its owners or stockholders, and that these duties consist of more than simply obeying the law. They believe a business has moral responsibilities to so-called stakeholders, people who have an interest in the conduct of the business, which might include employees, customers, vendors, the local community, or even society as a whole. They would say that stakeholders have certain rights with regard to how the business operates, and some would even suggest that this even includes rights of governance.

Smokescreen- Some observers believe that corporate ethics policies are primarily rooted in utilitarian concerns, and that they are mainly to limit the company's legal liability, or to curry public favor by giving the appearance of being a good corporate citizen. Ideally, the company will avoid a lawsuit because its employees will follow the rules. Should a lawsuit occur, the company can claim that the problem would not have arisen if the employee had only followed the code properly. Sometimes there is disconnection between the company's code of ethics and the company's actual practices. Thus, whether or not such conduct is explicitly sanctioned by management, at worst, this makes the policy duplicitous, and, at best, it is merely a marketing tool.

IV. CREATING AN ETHICAL WORKPLACE

Being ethical involves knowing how to choose between right and wrong. Those who have been involved in ethical discourse know that no two dilemmas are ever alike. When contemplating an ethical dilemma and choosing between competing alternatives and consequences, the ethical person metaphorically takes out his or her moral compass and navigates through the decision-making process and arrives at a “right” course of action-

- How do those involved in business learn to think systematically about an ethical dilemma?
- What factors are considered when choosing a “right” course of action?
- Does business management support ethical decision-making by providing appropriate ethics support to assist employees in dealing with ethical dilemmas encountered in the workplace?

Corporate ethics policies

Many companies have formulated internal policies pertaining to the ethical conduct of employees. These policies can be simple exhortations in broad, highly-generalized language (typically called a corporate ethics statement), or they can be more detailed policies, containing specific behavioral requirements (typically called corporate ethics codes). They are generally meant to identify the company's expectations of workers and to offer guidance on handling some of the more common ethical problems that might arise in the course of doing business. It is hoped that having such a policy will lead to greater ethical awareness, consistency in application, and the avoidance of ethical disasters.

Successful Policy- To be successful, most ethicists would suggest that an ethics policy should be:

- Given the unequivocal support of top management, by both word and by example.
- Explained in writing and orally, with periodic reinforcement.

- Doable....something employees can both understand and perform.
- Monitored by top management, with routine inspections for compliance and improvement.
- Backed up by clearly stated consequences in the case of disobedience.
- Remain neutral and nonsexist.

Ethics officers

Ethics officers (sometimes called "compliance" or "business conduct officers") have been appointed formally by organizations since the mid-1980s. One of the catalysts for the creation of this new role was a series of fraud, corruption and abuse scandals that afflicted the U.S. defense industry at that time. This led to the creation of the Defense Industry Initiative (DII), a pan-industry initiative to promote and ensure ethical business practices. The DII set an early benchmark for ethics management in corporations. Another critical factor in the decisions of companies to appoint ethics/compliance officers was the passing of the Federal Sentencing Guidelines for Organizations in 1991, which set standards that organizations (large or small, commercial and non-commercial) had to follow to obtain a reduction in sentence if they should be convicted of a federal offense. Although intended to assist judges with sentencing, the influence in helping to establish best practices has been far-reaching.

In the wake of numerous corporate scandals between 2001-04 (affecting large corporations like Enron, WorldCom and Tyco), even small and medium-sized companies have begun to appoint ethics officers. They often report to the Chief Executive Officer and are responsible for assessing the ethical implications of the company's activities, making recommendations regarding the company's ethical policies, and disseminating information to employees. They are particularly interested in uncovering or preventing unethical and illegal actions. This trend is partly due to the Sarbanes-Oxley Act in the United States, which was enacted in reaction to the above scandals. A related trend is the introduction of risk assessment officers that monitor how shareholders' investments might be affected by the company's decisions.

Moral Autonomy- An increasing number of companies require employees to attend seminars regarding business conduct, which often include discussion of the company's policies, specific case studies, and legal requirements. Some companies even require their employees to sign agreements stating that they will abide by the company's rules of conduct. Not everyone supports corporate policies that govern ethical conduct. Some claim that ethical problems are better dealt with by depending upon employees to use their own judgment. Central to acting ethical is the development of individual moral autonomy. To act in a morally autonomous manner, an individual must sense a demand to act in a given situation rather than exist in a state of avoidance. Moral choosing involves the exercise of will by a person who is present to a situation, conscious of what he or she is doing and aware of a purpose to be achieved. Ethical choice is an action that is freely undertaken. Moral autonomy is developed in individuals as part of a formal learning process and that process is a distinct form of thought which has its own particular concepts, methodology and procedures. An individual must have reasoning skills to deal with the dilemma prior to the presentation of the situation. To encourage moral autonomy in the workplace, an organization must achieve a balance between the environment it creates and the ways in which it encourages and supports ethical behavior. With a diverse employee population, an organization must first understand the dynamics of its workforce, and then provide the appropriate kinds of ethics support that encourages ethical behavior among all its employees.

Part of the foundation of every business should be a well thought-out and executed ethics program. To begin the process of implementing an ethics program, an organization should conduct an ethics assessment to identify those specific elements that comprise the ethics program and support the organization's ethical culture. Ethics can be taught within an organization. Tools are used to sensitize employees to ethical issues encountered in the workplace and provide ethics support mechanisms to assist in choosing a "right" course of action.

Ethics Tools: Codes of Ethics

A code of ethics is a type of credo or statement of belief. It can contain things permitted along with things proscribed as a part of its rules of operation. In the late 1980s, The Conference Board, a leading business membership organization, found that 76% of corporations surveyed had codes of ethics. Some business ethicists disagree that codes have any value. Usually they explain that too much focus is put on the codes themselves, and that codes themselves are not influential in managing ethics in the workplace. Many ethicists note that it's the *developing* and *continuing dialogue* around the code's values that is most important. Occasionally, employees react to codes with suspicion, believing the values are "motherhood and apple pie" and codes are for window dressing. But, when managing a complex issue, especially in a crisis, having a code is critical. More important, it's having *developed* a code that matters.

Developing Codes of Ethics

To avoid the window dressing effect, a code should not be a mail order laminate copy of someone else's, or mandated by the human resource department. Codes are insufficient if intended only to ensure that policies are legal. All staff must see the ethics program being driven by top management. Note that codes of ethics and codes of conduct may be the same in some organizations, depending on the organization's culture and operations and on the ultimate level of specificity in the codes

The following guidelines are considered when creating a code of ethics:

1. **Review any values need to adhere to relevant laws and regulations;** this ensures the organization is not (or is not near) breaking any of them. Increased priority is placed on values that will help the company organization operate to avoid breaking these laws and to follow necessary regulations.
2. **Review which values produce the top three or four traits of a highly ethical and successful product or service-** for insurance, this includes objectivity, confidentiality, and accuracy, etc. Identify which values produce behaviors that exhibit these traits.
3. **Identify values needed to address current issues in the workplace.** A company representative can be appointed to interview staff to collect descriptions of major issues in the workplace. These issues can be considered to determine which is ethical in nature, e.g.., issues in regard to respect, fairness and honesty. Identify the behaviors needed to resolve these issues. Identify which values would generate those preferred behaviors. There may be values included here that some people would not deem as moral or ethical values, e.g., team-building and promptness, but for managers, these practical values may add more relevance and utility to a code of ethics.
4. **Identify any values needed, based on findings during strategic planning.** Companies must self-analyze their SWOT status (identifying the organization's Strengths, Weaknesses, Opportunities and Threats). Determine which behaviors are needed to build on strengths, shore up weaknesses, take advantage of opportunities and guard against threats
5. **Consider any top ethical values that might be prized by stakeholders.** For example, consider expectations of employees, clients/customers, suppliers, members of the local community, etc.
6. **Collect from the above steps, the top five to ten ethical values which are high priorities in the organization**

Examples of ethical values might include

a) Trustworthiness: honesty, integrity, promise-keeping, loyalty

b) Respect: autonomy, privacy, dignity, courtesy, tolerance, acceptance

c) Responsibility: accountability, pursuit of excellence

d) Caring: compassion, consideration, giving, sharing, kindness, loving

e) Justice and fairness: procedural fairness, impartiality, consistency, equity, equality, due process

f) Civic virtue and citizenship: law abiding, community service, protection of environment

7. In the code of ethics; attempt to associate with each value, two example behaviors which reflect each value. A code of ethics may seem as empty words because many only list ethical values and don't clarify these values by associating examples of behaviors.

8**. Include wording that indicates all employees are expected to conform to the values stated in the code of ethics.** Add wording that indicates where employees can go if they have any questions.

9**. Obtain review from the floor.** Get input from as many people in the company as possible.
10. **Announce and distribute the new code of ethics.** Ensure each employee has a copy and post codes throughout the facility.
11. **Update the code at least once a year.** As stated before, the most important aspect of codes is developing them, not the code itself. Continued dialogue and reflection around ethical values produces ethical sensitivity and consensus.
12. Note that the code does not include values and preferred behaviors for every possible ethical dilemma that might arise. The goal is to focus on the top ethical values needed in the company and to avoid potential ethical dilemmas that seem mostly likely to occur.)

For an example of an ethical values code, see 'Ethical Values' in Section II above.

Ethics Tools: Codes of Conduct

Codes of conduct specify actions in the workplace and codes of ethics are general guides to decisions about those actions. Corporate codes of conduct can take a number of formats and address any issue - workplace issues and employee rights for example. Also, their implementation depends totally on the company concerned. Crafting of a code can involve management, employee representatives and/or randomly or otherwise selected employees. The Conference Board distributes the formats in three categories:

- **Compliance codes**: directive statements giving guidance and prohibiting certain kinds of conduct.
- **Corporate credos**: broad general statements of corporate commitments to constituencies, values and objectives.
- **Management philosophy statements**: formal enunciations of the company or bosses' way of doing business.

Fundamentally, a code of conduct depends on its credibility: the extent to which it is taken seriously by industry, employees, consumers and governments. Credibility, in turn, depends on monitoring, enforcement and transparency: the extent to which outside contractors, workers, the public, nongovernmental organizations and governments are aware of the code's existence and meaning.

A code can be made transparent through its posting and dissemination and through training regarding its provisions. Monitoring can be internal or external Responses to violations by employees, subsidiaries, vendors or business associates can include: monetary fines or penalties, the imposition of probationary status, demands for corrective action, providing education to the violator, cancellation of contract, or termination.

Developing a Code of Conduct

The following concepts should be considered when developing codes of conduct:
1. **Identify key behaviors needed to adhere to the ethical values proclaimed in the code of ethics**, including ethical values derived from review of key laws and regulations, ethical behaviors needed in the product or service area, behaviors to address current workplace issues, and behaviors needed to reach strategic goals.
2. **Include wording that indicates all employees are expected to conform to the behaviors specified in the code of conduct.** Add wording that indicates where employees can go if they have any questions.
3. **Obtain review from key members of the organization.** Be sure legal counsel reviews the drafted code of conduct.
4. **Announce and distribute the new code of conduct** Ensure each employee has a copy and post codes in a prominent place.
5. **Note that the code cannot include preferred behaviors for every possible conduct issue that might arise.)**
6. **Examples of topics typically addressed by codes of conduct include**: preferred style of dress, avoiding illegal drugs, following instructions of superiors, being reliable and prompt, maintaining confidentiality, not accepting personal gifts from stakeholders as a result of company role, avoiding racial or sexual discrimination, avoiding conflict of interest, complying with laws and regulations, not using organization's property for personal use, not discriminating against race or age or sexual orientation, and reporting illegal or questionable activity.

Ethics Tools: Policies and Procedures

Policies and procedures can be designed with the idea in mind to elicit desirable behaviors from the code of conduct, including personnel reports, job descriptions, performance appraisal forms, management-by-objectives expectations, standard forms, checklists, budget report formats, and other relevant control instruments to ensure conformance to the code of conduct. In doing so, a company should avoid creating ethical dilemmas such as conflicts-of-interest or infringing on employee's individual rights.

1. Manage values- Organizations can manage values through use of policies and procedures. With social responsibility for example; to produce behavior aligned with this value, organizations often institute policies such as recycling waste, donating to local charities, or paying employees to participate in community events.
2. A high value on responsiveness to customers might be implemented by instituting policies to return phone calls or answer insurance policy questions within a certain period of time.
3. Job descriptions and performance appraisals- a business might particularly value technical knowledge, creativity and systems thinking. They use job descriptions and performance appraisals to encourage behaviors aligned with analysis and design skills. 4. Include policies and procedures to address ethical dilemmas. See the next section, "Ethics Tools: Resolving Ethical Dilemmas," to select a method.
4. Include policies and procedures to ensure training of employees about the ethics management program. See the section, "Ethics Tools: Training."

5. Include policies and procedures to reward ethical behavior and impose consequences for unethical behavior.
6. Include a grievance policy for employees to use to resolve disagreements with supervisors and staff.
7. Once a year, review all personnel policies and procedures. Consider including all staff during this review.

Ethics Tools: Resolving Ethical Dilemmas

Definition of an Ethical Dilemma. Perhaps too often, business ethics is portrayed as a matter of resolving conflicts in which one option appears to be the clear choice. For example, case studies are often presented in which an employee is faced with whether or not to lie, steal, cheat, abuse another, break terms of a contract, etc. However, ethical dilemmas faced by managers are often more real-to-life and highly complex with no clear guidelines, whether in law or often in religion.

Guide- A practical standard for recognition of a significant ethical conflict involves noting the presence of

a) significant value conflicts among differing interests
b) real alternatives that are equally justifiable, and
c) significant consequences on "stakeholders" in the situation.

An ethical dilemma exists when one is faced with having to make a choice among these alternatives.

<u>Examples of Ethical Dilemmas</u>

"A customer asked for a policy quote from us today. After giving him the quote, he said he couldn't afford it. I know he could get it cheaper policy from a competitor. Should I tell him about the competitor -- or let him go without getting what he needs? What should I do?"

▪ "Our company prides itself on its merit-based pay system. One of my employees has done a tremendous job all year, so he deserves strong recognition. However, he's already paid at the top of the salary range for his job grade and our company has too many people in the grade above him, so we can't promote him. What should I do?"

▪ "The business bordering our property is in poor shape. As a result, the people from that business come over and try to get jobs at our place. At first they were given the jobs nobody else wanted. Now there are so many of them here wanting to work, the business owners are afraid to tell them to leave. Other company ‘stakeholders’ seem to think it’s a good idea to let them come over and stay here, no matter what. How should this be resolved?”

▪ "My boss told me that one of my employees is among several others to be laid off soon. I'm not to tell my employee yet or he might tell the whole organization which would soon be in an uproar. Meanwhile, I heard from my

employee that he plans to buy braces for his daughter and a new carpet for his house. What can be done?"
· "My data management supervisor told me she had noticed several personal letters printed from a computer that I was responsible to manage. While we had no specific policies then against personal use of company facilities, I was concerned. I approached the letter writer to discuss the situation. She told me she'd written the letters on her own time to gain proficiency using our word processing system. What should I do?"
· "A fellow employee told me that he plans to quit the company in two months and start a new job which has been guaranteed to him. Meanwhile, my boss told me that he wasn't going to give me a new opportunity in our company because he was going to give it to that fellow employee of mine now. How do I handle this situation?"

Methods to Resolve Ethical Dilemmas
Organizations should develop and document a procedure for dealing with ethical dilemmas as they arise. Ideally, ethical dilemmas should be resolved by a group within the organization to which every employee has access and feels comfortable approaching. On an individual level, methods which can be used include emphasis of the Golden Rule, an ethical checklist, and a list of key questions.

The Golden Rule

Do unto others as you would have them do unto you.
Simple and sure, this advice has stood the test of time. Note that The Golden Rule is probably the most common method to resolve ethical dilemmas.

Ethical Checklist

An Ethical Checklist

A code of ethics, a code of conduct, policies, procedures, and seminars on ethics are all important to ensuring a company is doing all it can to be an ethical, upright organization. For practical implementation managers and employees can use the following ethical checklist. To gauge how a person is handling a specific ethical dilemma, use the set of questions in the “Litmus Test” section further on in the book or the questions found on page 2.

Each question is answered. Answers can be “Strongly agree/disagree” (or a modifier between these two extremes) or a yes-no (equivalent of a digital 1 or 0) value. Sort of a moral inventory of the situation. Weight is given to the responses and the results are judged accordingly. Participants can then determine from their own answers how to handle the ethical dilemma.

A Dozen Questions to Address Ethical Dilemmas

1. Have you defined the problem accurately?

2. How would you define the problem if you stood on the other side of the fence?
3. How did this situation occur in the first place?
4. To whom and to what do you give your loyalty as a person and as a member of the corporation?
5. What is your intention in making this decision?
6. How does this intention compare with the probable results?
7. Whom could your decision or action injure?
8. Can you discuss the problem with the affected parties before you make your decision?
9. Are you confident that your position will be as valid over a long period of time as it seem now?
10. Could you disclose without qualm your decision or action to your boss, your CEO, the board of directors, your family, society as a whole?
11. What is the symbolic potential of your action if understood? Misunderstood?
12. Under what conditions would you allow exceptions to your stand? [2]

Ethics Tools: Training

The ethics program is essentially useless unless all staff members are trained about what it is, how it works and their roles in it. The nature of the system may invite suspicion if not handled openly and honestly. In addition, no matter how fair and up-to-date is a set of policies; the legal system will often interpret employee behavior (rather than written policies) as de facto policy. Therefore, all staff must be aware of and act in full accordance with policies and procedures. This is true, whether policies and procedures are for ethics programs or personnel management. This full accordance requires training about policies and procedures.
1. Orient new employees to the organization's ethics program during new-employee orientation.
2. Review the ethics management program in management training experiences.
3. Involving staff in review of codes is strong ethics training.
4. Involving staff in review of policies (ethics and personnel policies) is strong ethics training.
5. One of the strongest forms of ethics training is practice in resolving complex ethical dilemmas. Have staff apply them to real life ethical dilemmas.
6. Include ethical performance as a dimension in performance appraisals.

Religious views on business ethics

Many faiths have extensive literature and legal code on the accumulation and use of wealth; and many businesses rely on these ethical guidelines, both as a

[2] Adapted from: Nash, L. (1981). Ethics Without the Sermon. Harvard Business Review, (59))

result of the religious beliefs of owners and managers, and as a way of ensuring that their actions meet the otherwise unwritten ethical standards of local communities.

Christian Business Ethics- In Christianity, the basis of this theology is the Old Testament and the New Testament. For example, Jesus asked his disciples, "If you lend to those from whom you hope to receive, what credit is that to you?" (Luke 6:34). Although this may be a general injunction to disinterested benevolence, it has also been read as a condemnation of interest or usury. Jesus referenced this especially when one lends to another believer, the idea being that, as a Christian with an eternal mindset, ultimately God is our rewarder and lending to a fellow believer should be left to God to reward over collecting nominal interest.

Business can be compared to a poker game. Both, it is argued, require nondisclosure and distrust in order to succeed, with only the naive showing their true intentions. Mark Twain's observation that "an ethical man is a Christian holding four aces" reflects a notion still in vogue today-that ethics and competitive environments like business or winner-takes-all games rarely mix.

A Separate Business Ethic?- The poker metaphor serves to legitimize business behavior that would be considered immoral in the personal realm-bluffing, deception and contributing to another's harm. All of these behaviors are justified in the name of their "real world" contexts. Advocates of dual morality, that is, applying one set of ethics in the marketplace and another in the home and church, expect employees to lay aside personal values and to focus solely on generating corporate profits. Everything possible, except perhaps breaking the law, must be done to enhance the bottom line. Subordinates have no right to interject personal values, such as environmental protection, fairness to fellow workers or contempt for dishonest sales techniques, into corporate matters

Oil baron John D. Rockefeller was Influenced by his devout Baptist mother. He developed on the one hand a strong personal religious ethic. His shrewd father taught him on the other hand to win at any cost in business, once boasting, "I cheat my boys every chance I get. I want to make them sharp." Rockefeller resolved this contradiction by compartmentalizing his life into two separate realms. Ruthless in business, he gave kickbacks to railroads, violently suppressed labor unrest and bribed competitors' employees to give him inside information. However, in his personal life he donated nearly half a billion dollars to a countless variety of worthy causes. One writer concludes that "Rockefeller was a conscientious Christian who struggled to end the livelihood of his every rival."

Such a segmented ethical system seems inherently unchristian because it ignores the twin doctrines of creation and sovereignty. The apostle Paul argues that no realm of life is beyond the lordship of Christ. No human activity-including the practice of business-falls outside of His lordship. To argue otherwise is to denigrate His authority. On the contrary, Martin Luther correctly asserted that Christian vocation is best expressed in life's most common experiences.

Jewish Business Ethics- The basis of all Jewish law is the Torah; and in it there are commandments concerning the kashrut (fitness) of one's money. These laws are developed and expanded upon in the Mishnah and the Talmud.

An interesting discourse on Jewish Business Ethics comes from Rabbi Yitzchok Breitowitz[3]. As with the Rockefeller example above he observes many people have an attitude that …"if I don't tell the rabbi how to run his business, the rabbi shouldn't tell me how to run mine." Very often, people live fragmented dichotomized lives where what one does in the office from 9 to 5 (or if you're a workaholic from 8 to 7), are their own private affair and then at home a person can observe the holidays, or the rituals of Judaism, on the weekends, or three-days-a-year, or whatever.

The Rabbi goes on to say-
And yet we find in the Talmud a very interesting statement. The Talmud discusses what types of questions people are asked by God after their deaths. They come up to heaven; God asks them a variety of questions. The very first question that we are held accountable for after our deaths is "Nasata V'netata Be'emunah" which means "did you conduct your business affairs with honesty and with probity?" The second question is "did you set aside time for the study of the Torah, etc." But question #1 is- were we ethical in the conduct of our business. If you look throughout the Torah, you will see a constant juxtaposition between the ritual commands of Judaism and the ethical obligations between one human being and another. One verse may say, don't eat meat and milk and the other verse will say, do not cheat, do not misrepresent, do not engage in fraud, because they are all part of the same religious structure. The notion of a dichotomy between ritual behavior and social behavior is a dichotomy that is totally foreign to Judaism because all of them are part of the same God-given basis of morality.

We know that the Torah has 613 mitzvot. Of course, none of us can do all of them but one of the mitzvot in the Torah is a mitzvah that says "Kedoshim Tiyu, be holy." Now, what does that mean? I mean, basically, is 'be holy' something that simply says do the other 612? Or is there some extra dimension that this mitzvah entails? The great commentator, the Ramban, tells us that "Kedoshim Tiyu" is a requirement of a Jew not to just obey the letter of

[3] Jewish Business Ethics: An Introductory Perspective (Part I) *Rabbi Yitzchok Breitowitz* http://www.jlaw.com/Articles/JewBusEthI.html

the law but to obey the spirit of the law as well. Ramban posits that it is entirely possible for a person to be 100 percent observant, keeping all the mitzvot and yet in the famous immortal phrase, he can be a "Naval B'rshut HaTorah" he can be a repulsive, disgusting individual within the confines of the law. It is not enough just to obey the law. One must go beyond the law and embrace the ethical imperatives that are within that legal structure. This is the concept of going "Lifnim Mishurat HaDin" going beyond the law, not just confining oneself to the law.

Rabbi Breitowitz continues with this example-
Let me give you a story which illustrates how this works in the business context. There was a rabbi, Rabba Bar Chanah who once hired workmen to transport barrels of wine for him. They were negligent and as a result, the barrels of wine broke and this man incurred a severe financial loss. He took the workers to court, suing them for the value of the wine that was destroyed and the workers' only defense was, "You know, we can't afford it. We don't have the money. What are you going to do about it?" So the courts found in favor of the workers. So, Rabba Bar Chanah questioned the court and said, "Is this the law? Is it not the law that I am entitled to recover for their negligence?" And the court told him, "For you, this is the law. You are a righteous person and because you are a righteous person, you have to take into account the equities of the situation, the unfairness, the fact that these are people who need the money, etc., and, therefore, you are compelled by virtue of your righteous status to go beyond pressing your exact legal rights." Well then, and perhaps this is an ancient example of chutzpah, they turned around and sued him for their wages. They said, "Well, wait a second, you didn't pay us our wages for that day." So, he was dumbfounded. He said, "Okay, it's one thing to say I can't recover from you but are you going to recover from me when you broke my wine because of your negligence?" Astoundingly, the court said, "Yes! That's a good idea. You have to pay." And, once again, he asked, "Is this the law?" And they told him, "For you, that's the law. These are people who need the money and therefore, you must go beyond the law."

What Buddha says- A website discussing “Buddhist business ethics” echoes the same sentiment.[4] For brevity’s sake it can be summed up with a passage from the site-

> “Buddhist ethical principles are very noble and in an ideal world their practice would lead to peace and harmony but, unfortunately, as the Buddha has taught, people are motivated by greed, hatred and delusion - even Buddhists.”

[4] Buddha Net- http://www.purifymind.com/BuddhistEthics.htm

V. CONSUMER PROTECTION

Since the 1970’s the states have enacted or promulgated an array of consumer protection laws and regulations. Market, regulatory, and legal forces have combined with societal perceptions to continually transform the way in which the insurance industry is viewed. Every agent needs to be aware of the impact of consumer protection on his or her job. Whether dealing with a business owner, an employee, a dependent; whether of substantial wealth or of modest means, all of these people have rights under state law when filing an insurance claim. Consumer protection includes watching out for the public's well being, as well as seeing that all claims are settled fairly. This section will help the reader gain knowledge of consumer protection. This material may be used by any insurance professional as a means of acquiring a perspective on the issues involved in consumer protection.

The Public's Well Being

The first piece of legislation passed in the consumer protection area was the Federal Trade Commission Act of 1914. Its self-stated basic purpose is:

"Unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce are declared unlawful."

A result of the consumer movement that followed is regulation and litigation. Insurers in general and adjusters in particular are thrown into the spotlight. After a loss has occurred, the consumer, often in an agitated emotional state, looks to the insurer to be made whole again. If this cannot be done under terms of the insurance contract, no amount of explanation can assuage the hurt caused by the economic gap and financial hardship. The policy becomes a red flag to the consumer's raging bull, leaving legions of lawyers and other "consumer advocates" to bridge the economic gap on the insured's behalf. Proper documentation and knowledge of legal procedure are basic for protection of the insurance professional and, ultimately, the insured public he or she serves.

One of the oldest principles of doing business was expressed during the days of the Roman Empire in the Latin phrase "*Caveat emptor*" or "Let the buyer beware." In other words, it was up to the purchaser of goods or services to make sure of getting what he or she paid for.

Governments did take some part in regulating commerce, even in early times, by controlling coinage, supervising weights and measures, and issuing charters and licenses. Businessmen cooperated in such procedures and did some regulating on their own, as in the case of the medieval guilds. But generally in pre-industrial times the relationship between buyer and seller was based on the "*caveat emptor*" principle.

With the coming of the industrial revolution in the 19th century and the development of complex urban societies, buyers became more and more removed from sellers and correspondingly less able to bargain with them. A demand arose for regulation to protect consumers from error or fraud on the part of producers, which under the industrial system had the potential for adversely affecting millions of people. Around the turn of the century in the United States, muckraking books exposed abuses in the meatpacking and other industries, and government agencies for consumer protection began to be set up. The process was expanded by the Depression, the growth of industry after World War II, and the Great Society programs of the 1960's.

As the movement now known as consumerism gained strength, in fact, so many regulations were put into effect that some critics claimed the correct term for the situation might be "*Caveat venditor*" or "Let the seller beware." Deceptive trade practices now to a large extent are not only unethical and poor business policy but also illegal, with stated penalties enforceable if an unhappy buyer calls on the proper government agency for help and is able to prove his case.

Overview of Consumer Protection-

Numerous state and local government agencies protect, promote, and serve the interests of consumers.

The basic purposes of a Deceptive Trade Practices Act (DTPA) and/or Consumer Protection Act are often expressed like this- "to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection."

Although most businesses operate in a fair and legal manner, thousands of consumers lose money every year due to unscrupulous business practices and consumer fraud. There are a variety of state and federal laws protecting consumers from unscrupulous business practices. When making any sort of commercial transaction, it is important for consumers to be aware and informed of any rights they may have. Consumers are granted rights under consumer protection provisions and there are a number of points to keep in mind when making any commercial transaction.

A consumer with a product or service complaint should first contact the person or company who sold him or her an item or performed a service. Complaints usually can be resolved at this level. If not, call or write the consumer complaint department at the company's headquarters. Whenever filing a complaint, remember to maintain records of any correspondence, persons spoken to, dates and times, and do not send any original documents.

Another consumer resource is the local Better Business Bureau (BBB). BBBs are non-profit organizations, sponsored by local businesses, meant to promote good relations between consumers and businesses. Though BBBs have no legal authority, they may contact businesses involved in disputes and offer some form of arbitration to settle the matters. Check the white pages of the phone book for the nearest office.

Prohibited Practices- Consumer Protection Act- The "false, misleading, and deceptive business practices" prohibited by the legislative action of various states includes but is not limited to:
- Causing confusion or misunderstanding about the source, certification, sponsorship, or approval of goods or services.
- Causing confusion or misunderstanding about association, connection, or affiliation with or certification by another.
- Using deceptive representations about geographic origins of goods or services.
- Representing goods as new that are used, secondhand, reclaimed, reconditioned, or deteriorated.
- Representing goods or services as being of a particular grade, quality, or standard, or goods as being of a particular style or model, if they are of another.
- Using false or misleading representation of facts to disparage the goods, services, or business of another.
- Advertising goods or services and not intending to sell them as advertised.
- Advertising goods or services without intending to supply a public demand that reasonably could be expected, without stating a limitation of quantity in the advertising.
- Making false or misleading statements about the amount, existence of, or reasons for price reductions.
- Representing that obligations, rights, or remedies are conferred by or involved in an agreement which it does not have or which are illegal.
- Making false or misleading statements of fact knowingly about the need for repair service, parts, or replacement.
- Misrepresenting authority of an agent, salesman, or representative to negotiate final terms of a consumer transaction.
- Basing repair charges for an item in whole or part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed without separating the charges for the work and the charge for the warranty or guaranty.
- Resetting, disconnecting, or turning back the odometer of a motor vehicle to reduce the number of miles shown on the odometer gauge.
- Fraudulently advertising a sale by representation that a person is going out of business.

◆ Using a chain referral plan in the sale or offer to sell goods or anything of value, promising future consideration to the buyer for furnishing the seller with the names of other prospective buyers.
◆ Misrepresenting the rights or remedies provided by a warranty or guarantee.
◆ Selling or offering to sell a right of participation in a multi-level distributorship, either directly or in association with the sale of goods or services, promising a rebate or payment to individuals conditioned on their recommending or securing additional individuals for positions in the sales operation and not exclusively in relation to proceeds from the retail sale of goods.
◆Representing that work or services were performed on or parts replaced in goods when they were not.
◆Filing suit for payment of money on a contract signed by a defendant for goods, services, loans, or extensions of credit for personal, family, household, or agricultural use in any county but the one in which the defendant is living at the time of the suit or the one in which he signed the contract.
◆Inducing a consumer into a transaction by failure to disclose information, which would have caused the consumer not to enter the transaction.
◆Using the term "corporation" or "incorporated" or using an abbreviation for such terms in the name of an unincorporated business entity.

Agents should be familiar with certain definitions common to deceptive trade practice actions;

Goods- These are defined as tangible chattels or real property purchased for lease or use.

Services- Refers to work, labor or services purchased or leased for purchase including services furnished in connection with the sale or repair of goods.

Consumer- This means an individual, partnership, corporation, or governmental entity that seeks or acquires by purchase or lease any goods or services.

Unconscionable action or course of action- This is an act or practice which, to a person's detriment, does one or both of the following. 1.) It takes advantage of the lack of knowledge, ability, experience, or capacity of a person to a grossly unfair degree 2.) It results in a gross disparity between the value received and consideration paid in a transaction involving transfer of consideration.

Definition of advertisement

The term 'advertising' as it applies to insurance solicitation is defined by many state insurance codes as to include envelopes, stationery, business cards, or other materials designed to describe and encourage the purchase of a policy or certificate of disability insurance, life insurance, or an annuity.

Consumer Lack of Knowledge-This concept under consumer protection law has been interpreted as meaning "taking advantage of the consumer's lack of knowledge to a grossly unfair degree." A statement such as this should be a warning to insurance professionals. They have superior knowledge of the terms, conditions and settlement procedures involved in the insurance contract. They are acting in their capacities as principal when dealing with a consumer who is held to a much lower duty of care. Under the Deceptive Trade Practices Act, the consumer has been held to have a duty of care of being ignorant, unthinking, and credulous.

Public Perception

Consumers remit premium dollars today, trusting that the protection they are buying against catastrophe will be there at some unknown future time when they need it. Policyholders trust that the representations made by sales agents are accurate and honest. They trust that companies will be willing and able to pay their claims in a timely manner.

The public's perception of the industry is not helped by the media and politicians cultivating a distrust of the insurance industry. High-pressure sales tactics used by some agents have also kindled the fires of consumer fears. Sales practices of the few have spoiled the sales environment for others. The specter of unscrupulous agents has been fueled by regulatory scrutiny and public disclosure of insurance industry sales practices. The consequences of such actions can be extremely painful to individuals and to companies. When such sales abuses are combined with tightened underwriting, restricted coverages and slow, reduced and/or refused claims payments, they bring on a growing distrust of the industry.

V. ETHICS CASE STUDY- ANNUITY SALES

A Bad Image- Unfortunately, nearly since the first annuity commission check was cashed, complaints have been made against annuity sellers and selling practices. Even the most reputable of insurers stand accused. Perhaps the nature of annuity policies, that they are ‘reverse insurance,’ confuses both agents and buyers, leading to false impressions. Anecdotal reports tell us that some unethical agents are drawn toward policies sold to the elderly because they are often vulnerable to scare tactics and pressure pitches. Policy lapses are yet another concern in the marketing of annuities. Such problems and practices result in bad press.

Selling to the Senior Market

The potential of the senior market is huge and growing rapidly. If adults age 55 and over are included, the senior market is projected to exceed 91,000,000 by the year 2030, based on U.S. Census data. This has significant bearing on both for-profit and non-profit marketing efforts. Seniors and pre-retirees who plan now by building the best asset management strategy will reap the greatest benefit from those who market financial products to seniors. Senior-focused selling, active networking and focusing on senior needs, will provide for growth in this market. An understanding the dynamics of this market will benefit the insurance industry. It will also be of assistance to seniors, who will have more information and product choice at their disposal.

Gray hair is appearing at an ever-increasing clip in the workplace. Senior Americans comprise 10 percent of the workforce, but account for 22 percent of the nation's job growth.

Between 2010 and 2050, the United States is projected to experience rapid growth in its older population. In 2050, the number of Americans aged 65 and older is projected to be over 95 million. According to the Census Bureau, there were 204 million Americans aged 25 or older in 2010. By 2030, this number will increase by 23% to more than 251 million. Most of this growth will occur among people aged 65 and older. The Census Bureau estimates that while the number of people between the ages of 25 and 64 will increase by 15.5 million (9.4%) between 2010 and 2030, the number of people aged 65 and older is projected to grow by 31.7 million, or 79.2%.

According to the Bureau of Labor Statistics, workers aged 55 and over will increase twice as fast as the aggregate workforce. The senior market is as deep as it is wide. One of its more interesting characteristics is its diversity. In 1996, the baby boomer generation of approximately 78 million began turning 50 at the rate of 300,000 per month. In an unprecedented paradigm shift, both parents and their children are now members of the senior population, with ages ranging from 50 to over 100 and experiences ranging from the Great Depression to Woodstock.

Risk and the Senior Client- Risk is traditionally defined in terms of uncertainty, the uncertainty concerning the occurrence of a loss. The major risk associated with old age is insufficient income during retirement. When workers retire, they lose their normal work earnings. Unless they have accumulated sufficient financial assets on which to draw, or have access to other sources of retirement income, such as Social Security or a private pension, they will be confronted with a serious problem of economic insecurity. Retired persons generally own insufficient financial assets. Financial assets are important since investment income can supplement any retirement income, and the assets provide a cushion for emergencies.

Application of basic sales principles to the senior market should play a key role in a thorough marketing plan with the greatest potential for success. Here are ten key points to remember in dealing with the senior market;

1. Never think that the elderly market is "old." They do not consider themselves old.

2. Never attempt to scare them into buying. Scare tactics turn people off.
3. Always treat them as equals
4. Do not pander or be obsequious. Never talk down; they are not dumb. In fact, they are probably smarter -and richer -than you.
5. Do not hoodwink or con. Seniors are skeptical; they have seen it all before.
6. Do not paint all seniors with a broad brush; they are not all alike. There are several age cohorts above age 50 and numerous niche markets.
7. Guarantees are taken seriously. Seniors fear being taken.
8. Glitz and gaudiness have no place. Seniors are conservative about expenditures as a result of being on fixed incomes.
9. Ads should look like ads. No elaborate *fonts*. Type should be at least 12 point in an easy to follow format, not condensed or spread.
10. As with any other client, treat seniors with respect.

Product complexity

The stage may be set for a national crisis in retirement planning, as many seniors are underestimating their own longevity and are not saving enough for retirement, according to a recent survey[5]. Questions were designed to test participant's knowledge of retirement and income planning statistics and issues involving longevity and its impact. Consumers are underestimating their own longevity and not saving adequately for their retirement, and this sets the stage for a national crisis in retirement planning. Individuals aged 56 to 65 within at least five years of retirement were asked to respond to a quiz designed to test their knowledge of retirement and income planning statistics and issues in the areas of:

- Longevity and its impact
- Income, expenses, and inflation in retirement
- Annuities as a retirement planning tool
- Long-term care and protection of assets

On average, respondents answered only five of the fifteen questions correctly. This failing score of 33% suggests that seniors have misconceptions about issues affecting their retirement. Specifically, they underestimated the life expectancy of a 65-year old (and how many years they are likely to spend in retirement), and they do not consider longevity a significant financial risk in terms of appropriately planning for their retirement. Further, their answers revealed that they underestimate how much money they should be saving compared to experts' recommendations and that they may intend to withdraw from their retirement savings at levels considered too high. They demonstrated a lack of understanding of the extended time horizon they would be living in

[5] The "MetLife Retirement IQ Test" was developed by the MetLife Mature Market Institute and in May 2003 surveyed 1,201 men and women between the ages of 55 and 65 who are within five years of retirement.

retirement and of inflation's full effect on the future value of their money. Their responses also indicated that they underestimate long-term care expenses and do not fully understand annuities – the primary insurance product designed to protect retirees' income.

Cost Factors in Resource Allocation

In a dynamically changing economic environment, holding on to assets can become as cutthroat as survival in one of the reality-based television shows; which means that seniors have to continually be on their toes. They must anticipate and assess their need for new products or services in order to stay ahead of the game. Faced with the dilemma of unlimited strategic choices but limited resources, seniors must seek help from representatives of the financial services industry to assist them find the best course of action. There are a variety of consumer costs associated with purchasing insurance or financial products. Product complexity can lead down the path of incorrect decisions and the purchase of incorrect or overpriced annuities or consumer products. Greater product complexity is driven by an increased volume and diversity of offerings. Straight-life to variable to second-to-die policies are offered by indirect sales, product seminars, and personal sales calls from anybody who can squeeze a name out of a database.

Take banks as an example, with changes brought about by the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 garners the insurer new access to customers of the banking institution. Even at relatively low penetration rates, a substantial volume of low cost business can be generated by the bank customer list. Furthermore, insurance product complexity makes the sale of insurance products more difficult for new channels, and experience suggests that tenure in product marketing is a strong contributor to success. Product integration is the holy grail of both 'one stop shopping' and 'financial services convergence'. Consumers clearly seek convenience, performance, and trust in their contemporary buying habits. Product proliferation, with or without profit subsidization from one product to another, is unlikely to be a sustainable market strategy. Linking financial services products in a seamless, efficient package, designed for particular market segments and life cycle needs, has great conceptual and 'street' appeal. Whether or not the cost of delivering such a program of services, principally driven by the technology requirements, is anybody's guess.

Issue of Buyer Competence

Short term memory/judgment- The brain's ability to learn and remember recent events can change over time due to any number of reasons. Researchers and doctors working with diseases like Bipolar depression and Alzheimer's are finding out that the brain of a disease victim suffers decrements (reductions) in its short-term memory and learning capacities.

Insurance agents are expected to make objective evaluations as to the ability of an individual to contract. Examples of short-term memory capability test indicators include the following;

Count backwards from 100 by sevens- Thus, 93, 86, 79, 72, 65, … and so on.

"I am going to say three words- bacon, brown, skillet." (Any three words will do, but associated words are acceptable.) "We will discuss other matters for a few minutes, and then you will need to recite the words back to me."

These short-term memory test indicators are for illustrative purposes only. Any tests or indicators should be previewed and probably approved by a representative of the insurance company the agent is representing.

Necessities- Consider the case where the 'indicators' show "…that a prospective insured may lack the short-term memory or judgment to knowingly purchase an insurance product…" What is the agent to do? Someone who completely lacks the powers of understanding is not capable of making a contract, except that the individual is statutorily liable for the value of necessities furnished under a contract. Necessities mean such things as groceries and rent, not insurance.

Substantial inability may not be proved solely by isolated incidents of negligence or improvidence. A senior who may exhibit short-term memory loss would not seem to fall into the *non compos* class. However, an insurance contract made by a person of unsound mind before a judicial determination of incapacity has been determined, is subject to rescission. Bolstering the case for such a rescission would be proof that a person is substantially unable to manage their financial affairs or resist fraud or undue influence. A person lacking sufficient mental capacity to enter into a contract is not held competent even if he has not been judged insane by a court. He or she is one who is unable to understand the effect and nature of their act in making the agreement. An insane person's voidable contract can be ratified or disaffirmed when he or she is again sane, or by the guardian during insanity or his or her representative after death.

Unique Ethics and Compliance Issues

Complexity and competence issues as discussed above put the agent in an evaluation/judgment quandary requiring the skills of King Solomon. Is this product too complex for understanding? Is a particular senior citizen lacking the memory skills to comprehend what is being presented? The way to avoid problems in this area is to employ ethical safeguards:

Document client files- A properly documented file contains complete and accurate accounts of client-agent interaction. This allows the agent to properly account for the need for insurance and substantiates the reason for the sale.

Change can cause problems- With any new product or change in law, seek professional legal opinions as to proper procedure. Insurance providers will no doubt have promulgated procedures they feel are appropriate in dealing with seniors when selling a particular product.
Service is essential- Transparency and self-policing, honesty and forthrightness are items hard to quantify, but an agent who maintains a checklist of integrity will seldom have to regret any action he or she has taken.

Example Sales Systems

Your Picture Here→☐

There follows an example of annuity solicitation materials similar to those for sale online to insurance agents. Several websites package and produce 'systems' designed to "help the agent succeed…." Does this type of information help or hurt the annuities industry? You be the judge.

Example material follows-

✧¤✧¤✧

With 77% of the nation's wealth in hand, 44 million seniors comprise the best market for your services. These loyal clients need your advice. Once you know how to serve them, your business will be easier and more lucrative. Stop wasting time with baby boomers that have all their cash tied up in their 401(K) plans. Seniors have their money in their control, right now! Don't wait for business; learn how to efficiently attract and serve America's largest and most lucrative market today!

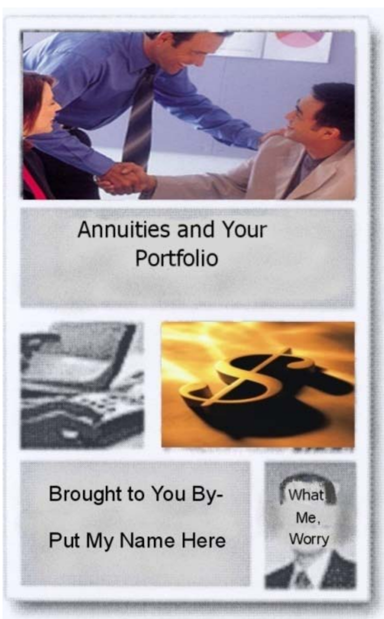
It's not what you say; it's how you say it.
Really Understand Senior Psychology, Serve More People, and Close More Sales
Create Senior Advertising that Really Works— Get 2% to 4% Responses to Direct Mail and Ample Response to Ads
Implement Marketing Strategies Tailor-Made for Seniors and Get Responses From Qualified Investors
Sell in a Way that Inspires Senior Prospects' Confidence to do Business with YOU! Learn the Most Suitable and Appealing Products and Services for This Market and How To Present Them
Learn to Position Yourself as a Local Senior Financial Expert and have the Newspapers Calling You for Interviews on Senior Financial Issues
Position Yourself Above Every Other Advisor In Town Attempting to Capture Senior Business

Annuity Marketing and Annuity Sales
[Promoted as “foolproof” methods to increase an agent’s annuity sales]

Annuity Direct Marketing Presentation Sales Kit

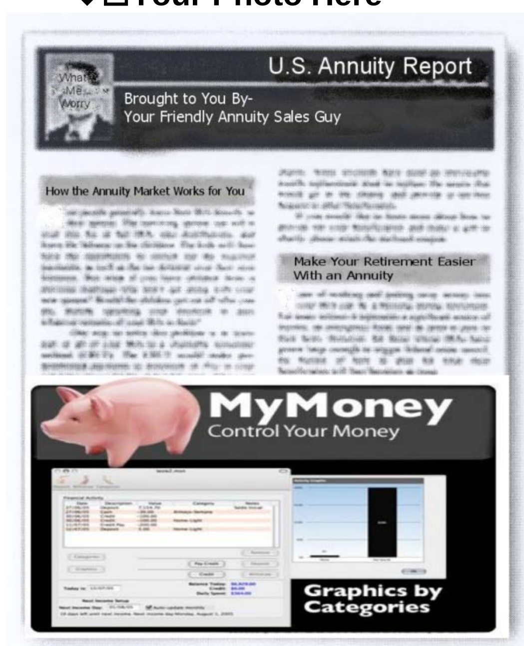
Annuity Seminar Presentation Sales Materials

🡻☐Your Photo Here



Your Photo Here🡹☐

Annuity Lead Scheme



Annuity Newsletter for Prospective Clients

The theory seems to be this-
‘Personalizing’ with the agent’s name and face is proof that the book and agent can be accepted as authority. Kind of a self-generated *nihil obstat quominus imprimatur* (nothing hinders it from being published).

Other copy accompanying the product pitch goes something like this-

The Challenge of Annuity Marketing and Annuity Sales
Other annuity agents, investor inertia to do nothing and increasing regulations make it look like you have a lot of competition. However, if done correctly, annuities are still one of the easiest financial products to sell.

The annuity companies are so product focused that any annuity sales system they provide is focused on the product, not the client. As a result, it appears that people don't want annuities and the sale is hard. Nothing could be less true when you focus your annuity marketing and annuity sales presentation on the person. As an example, how many people do you think want to attend a seminar "How to Save Taxes With Annuities" which is an obvious product pitch**. How many more people want to attend when your seminar is called "Nine Ways to Save Taxes in Retirement."** As soon as you drop your product focus and have your attention on the desires of the prospect, you make more money.

First, your job is not to tell, educate or explain annuities to seniors.
In fact, the more you say, the less likely you are to make a sale. If you want to sell anything, your job is to ask questions. If you now spend more than 50% of a prospect interview talking, you must change that by learning how to sell by allowing the prospect to sell themselves. They will do so when you ask the right questions.

Only once the prospect tells you that they need a solution (to cut tax, keep money safe, provide a guaranteed monthly income), do you present any annuity solution or begin talking about products. In fact, you should close the sale (get the prospect's agreement that they need to solve a problem) BEFORE you explain anything about products. Most annuity agents do it the other way round--they explain the product details, going through page after page of the product brochure and then try and close after the prospect's head is filled with confusing new information. This is all because the product companies have you focused on the product, not the person.

Above, you can click on the links which explain systems that will make your life easy and provide you leads from motivated and interested seniors. These annuity marketing systems and annuity lead systems not only fill your pipeline with appointments, you will close more often and faster (no more two hour appointments). We do not market or sell any insurance; we only help you see more people and sell more and faster.

No matter what asset marketing system you use, there is no need to struggle when you can make a sale a day using these proven and guaranteed systems and also have more referrals than you can imagine.

Summary

The insurance business is filled with ethical challenges and significant day-to-day conflicts of interest. Few industries are built so exclusively on the basis of trust as is insurance. Agents are placed in the position of having dual loyalties; to the client and the company. In a relationship with the client, the agent faces the conflict of serving the client's needs while operating on a commission.

There is no client unless there is sale. Once the agent is about to make a sale, he or she may find that the product that yields the highest commission may not be in the client's best interest. In a competitive environment like that of insurance sales, this dilemma poses serious challenges to the individual. Agents must also present the client to the underwriter. Agents and brokers are always wedged between the client and the insurer that underwrites the risk when they sell insurance products.

Industry diversification into mutual funds and other financial products is substantially raising the risks of doing business. This product diversification may make good economic sense to company management, but it can bring new challenges to the sales force. The sales force's deficiency in product knowledge and lack of understanding of compliance requirements in new areas have the potential for causing a multitude of future disasters. Consolidation in the industry among financial service companies and among insurers and health care providers, however strategically sound, brings unease to the workforce. These anxieties, of course, are justified when mass layoffs occur as newly combined companies seek operating leverage. In such a case, planned productivity gains do not materialize as employees become paralyzed with fear. Pithy phrases like "teamwork" and "corporate family" become meaningless to the work force. When the increased compensation of top executives is publicly disclosed, organizations cannot disguise the disparity between the treatment of top executives and of those who have lost their jobs. Factors such as these lend to a distrust of the industry, not only by customers and prospects, but by employees, regulators, shareholders and the public at large. Part of the solution is that ethics cannot be seen as something set apart from business, but something embedded in the fabric of the insurance business. Agents must be encouraged to bring their values to work.

These guiding principles can be used to help us make decisions every day. Every agent should be able to make decisions based on his or her internal ethical and spiritual code. As the public face of the insurance industry, agents must make ethical commitments without concern for what others think, without being attached to the outcome, and supporting others in this area. When right decisions are made with the help of ethical and spiritual guides, criticism will arise from all corners. If the agent rethinks and second-guesses in the face of criticism, he or she may find themselves moving to a less ethical outcome. Good and truth usually stand the test of time and may not always be immediately apparent. Taking an ethical stand will always be scrutinized and criticized by someone. An ethical and spiritual path in business, as in life is an individual one. Ethical choices may not be popular- ethical decisions are not reached by consensus but by conviction.