



Crossing the Ethical Boundary

Insights from a Fraud Investigator



Learning Objectives

- › Discuss example of an individual that was found to have crossed ethical boundaries
- › Describe a model for ethical decision-making

Definition of Ethics

› Webster's

- Discipline dealing with what is good and bad and with moral duty and obligation
- Set of moral principles: theory or system of moral values
- Principles of conduct governing individual or group
- Guiding philosophy
- Consciousness of moral importance



- ## › At its simplest, ethics is a system of moral principals.
- They affect how people make decisions and lead their lives

Case Study – Scott Tucker

- ▶▶ \$3.5 billion payday loan business
- ▶▶ 1997-2013
- ▶▶ More than 4.5 million borrowers impacted



Payday Loan Business Model

- › Customers are high-risk (previous history of non-payment)
- › Only 7 out of 10 will repay, and there is virtually no recourse
- › Pricing is about \$30 for every \$100 advanced. Loan maturities are approximately 14 days
 - Tenure at job
 - Claimed regular income
 - Established bank account

Payday Loan Business Model

- › Scaled from \$300,000 initial investment in a single store front in 1997 and used Internet to speed things up and make loan process more convenient and efficient through use of online lending software
- › Could approve loans in 3/10ths of a second
- › Use of Internet allowed companies to make loans to borrowers in states where they did not have a physical presence and therefore grow quickly and become *extremely* profitable for Scott Tucker

Where Did Tucker's Business Model Go Wrong

- › Lending website informed borrower of amount they could borrow based on their claimed income and employment
- › Borrowers had to electronically indicate that they had read certain documents online and to preauthorize electronic funds withdrawals from their accounts to repay the loans
- › The loan principal was made available the next day via electronic deposit into the borrower's bank account

Deceptive and Misleading TILA Disclosures

- › The Loan Note and Disclosure had to include the TILA box to disclose the cost of the loan in clear and simple terms
- › For a \$500 loan, the TILA box would indicate finance charges of \$150 and a total of payments of \$650
 - Aside: the loans were for 14 days, so the stated APR on this loan would be 782.14%

Actual Amount Paid On \$500 Loan Was \$1,925

Pmt #5 would often result in a call from the borrower

Payday	Withdrawal	Amount Applied to Finance Charge	Amount Applied to Principal	Principal Balance Remaining
1	\$ 150	\$ 150	\$ -	\$ 500
2	150	150	0	500
3	150	150	0	500
4	150	150	0	500
5	200	150	50	450
6	185	135	50	400
7	170	120	50	350
8	155	105	50	300
9	140	90	50	250
10	125	75	50	200
11	110	60	50	150
12	95	45	50	100
13	80	30	50	50
14	65	15	50	0
	\$ 1,925	\$ 1,425	\$ 500	

Borrower expected to pay \$650--\$500 plus 30% interest

Borrower Harm

- › Borrowers were cash-strapped to begin with
- › Unauthorized withdrawals kept them from paying other obligations and resulted in overdrafts and NSF fees
- › Some borrowers actually had to take out additional payday loans to cover their other obligations, worsening their situation

Scott Tucker's Benefit

- › \$400 million went to support Tucker's lifestyle:
 - Level 5 Racing Team - 4 Porsche and 6 Ferrari automobiles and related racing team assets (\$60 million)
 - Learjet (\$14 million)
 - High-priced jewelry
 - Aspen home (\$8 million) and a Leawood, KS home (\$1.8 million)
 - Over \$200+ million sitting in various bank accounts

Convictions and Judgments

- › Criminal case (2013-2018): 16 years 8 months in federal prison and potential \$3.5 billion judgment
 - Part of reason for length of prison term was his absolute lack of remorse
 - This will be Tucker's second stint in prison. He spent a year in prison related to a bank fraud scheme and was released in 1992
- › He also has a \$1.3 billion judgement against him arising from a civil case brought by the FTC. His wife has a \$30 million judgement
- › Tucker has been charged in Kansas for filing a false tax return that did not reflect more than \$100 million that he made through his businesses

How Tucker Saw Himself

- › Was Tucker remorseful?
- › In a letter to the court, Tucker defended his business practices and implied he was misunderstood
 - “Although I saw myself as being an entrepreneur, a jobs provider, and a contributor to the American economy, I’ve learned that others view me through a different lens. I am very sorry that our leaders castigate me as a villain or some type of predator.”

Another view of Tucker

- › In the Netflix series “Dirty Money”
 - Tucker comes across as arrogant and completely rejects the thought that what he was involved in was wrong. His position was “It was just a business. There was demand, and consumers and the business was built around that.”
 - He was asked “Do you think you are a moral person?” After a pause he answered “I’m a business person”

Is It A Matter of Business or Ethics

- › Are payday loan operations legal?
- › Do payday loan operations serve a legitimate purpose?
- › Do borrowers voluntarily take out loans from payday loan businesses?
- › On average, are payday loans riskier than loans made by banks?
- › Should lenders be rewarded at above average rates for taking above average risk?
- › Do borrowers know the interest rate they are being charged?
- › Can the average payday loan borrower always afford the interest rates they are charged?
- › In some cases do payday loan borrowers end up in a worse financial position than had they not taken out the loan to begin with?
- › Should payday loan operations be legal?

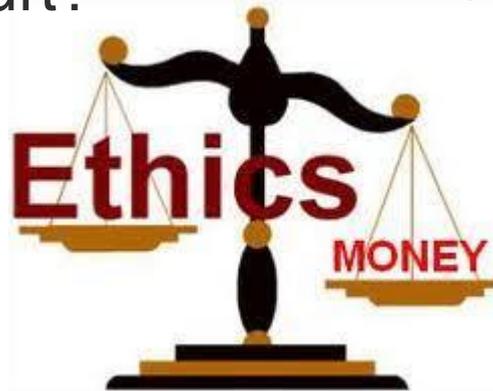
Business Vs Ethics

› Ethical Decisions

- Is this fair?
- Will people be hurt?

› Business Decisions

- What might I gain?
- How will it affect the future?



**Researchers indicate our frame of mind makes a difference.
We may not always realize we are facing an ethical question**

Steps in Ethical Decision-Making Model

1. Frame ethical issue
2. Gather critical facts
3. Consider relevant technical and ethics standards
4. Identify stakeholders and obligations
5. Identify operational issues and technical issues
6. Consider possible alternatives
7. Consider effects on stakeholders
8. Compare and weigh alternatives
9. Decide on a course of action
10. Document your efforts
11. Reflect on your decision

Source: [Ethical Obligations and Decision Making in Accounting](#), 2nd Edition, Mintz & Morris, ©2011.

1. Frame Ethical Issue

- › A frame of reference, or a point of view, refers to the way we look at a given situation
- › How a person views that situation can affect his/her understanding of the facts and influence the determination of right from wrong
- › Some frames can minimize or even omit the ethical aspects of a decision
- › There may be multiple ethical issues – focus on one major one at a time

2. Gather Critical Facts

- › Do not jump to conclusions without the facts
- › Consider who, what, where, when, how and why
- › Facts can be difficult to find because of uncertainty around the ethical issue
- › Assemble as many facts as possible before proceeding
- › Clarify what *assumptions* **you** are making

3. Consider Applicable Accounting and Ethics Standards

Professional ethics rules, regulations and laws include those rules of conduct issued by any professional association or society

- › AICPA
- › Applicable State Accountancy Boards
- › Applicable State CPA Societies
- › Association of Certified Fraud Examiners
- › Other Regulatory Requirements (GAO, SEC, PCAOB, etc.)

Also consider any organizational policies that impact your decision

4. Identify Stakeholders And Obligations

Identify all of the stakeholders

- › Who are the *primary* or direct stakeholders?
- › Who are the *secondary* or indirect stakeholders?
- › Why are they stakeholders for the issue?
 - Perspective – try viewing the issue from the perspective of each stakeholder

You should consider as many stakeholders as possible to get a comprehensive picture of who would be affected by your decision

5. Identify any operational and technical issues

- › Are there any operational or technical matters that may be impacted?
- › What are the potential hard and soft costs of those impacts?
- › What are the magnitude of the impacts and the probability that they will occur?

6. Consider Possible Alternatives

- › Start with determining what might be appropriate courses of actions
- › For each alternative, consider:
 - Is it legal?
 - Is it consistent with professional standards?
 - Is it consistent with in-house rules?
 - Is it right?
 - Is it fair?
 - To whom is it beneficial?
- › Consider matters from various perspectives
- › Be sure you have not been unnecessarily forced into a corner
- › Consider if you need further counsel from within your organization or your organization's legal group

7. Consider Effects on Stakeholders

- › Think about positive and negative consequences for parties impacted by the decision
 - Magnitude of consequences and probability they will occur
 - Are consequences different in the short and long terms
- › Iterative process

8. Weigh Your Options

- › How comfortable are you with each option?
- › You might want to consider how you would feel if you had to discuss your decision in public
- › Would you be concerned with how the decision reflects on your ethics?

“Gut Check”

- › Although prior steps argue for a purely rational approach to the situation, what does your “Gut Check” tell you
- › Intuition is gaining credibility in decision-making – knowing something is not “right”
 - Particularly relevant if you have a lot of experience in the area

9. Make a Decision

- › Ultimately, decision is yours and you should take time needed to try to arrive at right decision
- › And remember...doing nothing **is** actually a decision

10. Document Your Efforts

Once you have made a decision, you should consider documenting it so that you can later remember

- › Your understanding of facts at the time
- › Persons with whom you consulted and their professional affiliations
- › Your basis for your decision
 - Documentation reviewed
 - Notes from discussions
 - Emails with involved parties
- › Some decision require more documentation than others
- › Seek assistance with documentation if needed

11. Reflect On Your Decision

- › Given all the facts and circumstances, did you make an appropriate decision?
- › Would you make the same decision again?
- › Why or why not?

Questions?

Thank You!

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