**Alternate Case Problems**

*Chapter 7*

**Business Ethics**

**7-1. Employment Relationships.** Matt Theurer, an eighteen-year-old high school senior, worked part-time at a McDonald’s restaurant in Oregon. Theurer volunteered to work an extra shift one day, in addition to his regular shifts (one preceding and one following the extra shift). After working about twelve hours during a twenty-four-hour period, Theurer told the manager that he was tired and asked to be excused from his next regularly scheduled shift so that he could rest. The manager agreed. While driving home from work, Theurer fell asleep at the wheel and crashed into a van driven by Frederic Faverty. Theurer died, and Faverty was severely injured. Faverty sued McDonald’s, alleging, among other things, that McDonald’s had been negligent in per­mitting Theurer to drive a car when it should have known that he was too tired to drive safely. Do employers have a duty to prevent fatigued employees from driving home from work? Should such a duty be imposed on them? How should the court decide this issue? How would you decide the issue if you were the judge? [*Faverty v. McDonald’s Restaurants of Oregon, Inc.,* 133 Or.App. 514, 892 P.2d 703 (1994)]

**7–2. Ethical Conduct.** Richard and Suzanne Weinstein owned Elm City Cheese Co. Elm City sold its products to three major customers that used the cheese as a “filler” to blend into their cheeses. In 1982, Mark Federico, a certified public accountant, became Elm City’s accountant and the Weinsteins’ personal accountant. The Weinsteins had known Federico since he was seven years old, and even before he became their accountant, he knew the details of Elm City’s business. Federico’s duties went beyond typical accounting work, and when the Weinsteins were absent, he was put in charge of operations. In 1992, Federico was made a vice president of the company, and a year later he was placed in charge of day‑to‑day operations. He also continued to serve as Elm City’s accountant. The relationship between Federico and the Weinsteins deteriorated, and in 1999, he resigned as Elm City’s employee and as its accountant. Less than two years later, Federico opened Lomar Foods, Inc., to make the same products as Elm City by the same process and to sell the products to the same customers. Federico located Lomar close to Elm City’s suppliers. Elm City filed a suit in a Connecticut state court against Federico and Lomar, alleging, among other things, misappropriation of trade secrets. Elm City argued that it was entitled to punitive damages because Federico’s conduct was “willful and malicious.” Federico responded in part that he did not act willfully and maliciously because he did not know that Elm City’s business details were trade secrets. Were Federico’s actions “willful and malicious”? Were they ethical? Explain. [*Elm City Cheese Co. v. Federico,* 251 Conn. 59, 752 A.2d 1037 (1999)]

**7–3. Ethical Conduct.** Charles Zandford was a securities broker for Prudential Securities, Inc., in Annapolis, Maryland. In 1987, he persuaded William Wood, an elderly man in poor health, to open a joint investment account for himself and his mentally re­tarded daughter. The stated investment objectives for the account were “safety of prin­cipal and income.” The Woods gave Zandford discretion to manage their account and to engage in transactions for their benefit without prior approval. Relying on Zandford’s promise to “conservatively invest” their money, the Woods entrusted him with $419,255. Zandford immediately began writing checks to himself on the account. Paying the checks required selling securities in the account. Before William’s death in 1991, all of the money was gone. Zandford was convicted of wire fraud and sentenced to more than four years in prison. The Securities and Exchange Commission filed a suit in a federal district court against Zandford, alleging in part misappropriation of $343,000 of the Woods’ securities and seeking disgorgement of that amount. Was Zandford’s conduct sufficiently “in connection with a sale or purchase of securities” to constitute a violation of securities law? Did Zandford behave ethically? What effect might such conduct have on third parties? Discuss. [*SEC v. Zandford,* 535 U.S. 813, 122 S.Ct. 1899, 153 L.Ed.2d 1 (2002)]

**7–4. Ethical Conduct.** Eden Electrical, Ltd., owned twenty-five appliance stores throughout Israel, at least some of which sold refrigerators made by Amana Co. Eden bought the appliances from Amana’s Israeli distributor, Pan El A/Yesh Shem, which approached Eden about taking over the distributorship. Eden representatives met with Amana executives. The executives made assurances about Amana’s good faith, its hope of having a long-term business relationship with Eden, and its willingness to have Eden become its exclusive distributor in Israel. Eden signed a distributorship agreement and paid Amana $2.4 million. Amana failed to deliver this amount in inventory to Eden, continued selling refrigerators to other entities for the Israeli market, and represented to others that it was still looking for a long-term distributor. Less than three months after signing the agreement with Eden, Amana terminated it, without explanation. Eden filed a suit in a federal district court against Amana, alleging fraud. The court awarded Eden $12.1 million in damages. Is this amount warranted? Why or why not? How does this case illustrate why business ethics is important? [*Eden Electrical, Ltd. v. Amana Co*., 370 F.3d 824 (8th Cir. 2004)]

**7–5. Ethical Conduct.** Richard Fraser was an “exclusive career insurance agent” under a contract with Nationwide Mutual Insurance Co. Fraser leased computer hardware and software from Nationwide for his business. During a dispute between Nationwide and the Nationwide Insurance Independent Contractors Association, an organization representing Fraser and other exclusive career agents, Fraser prepared a letter to Nationwide’s competitors asking whether they were interested in acquiring the represented agents’ policyholders. Nationwide obtained a copy of the letter and searched its electronic file server for e-mail indicating that the letter had been sent. It found a stored e-mail that Fraser had sent to a co-worker indicating that the letter had been sent to at least one competitor. The e-mail was retrieved from the co-worker’s file of already received and discarded messages stored on the server. When Nationwide canceled its contract with Fraser, he filed a suit in a federal district court against the firm, alleging, among other things, violations of various federal laws that prohibit the interception of electronic communications during transmission. In whose favor should the court rule, and why? Did Nationwide act ethically in retrieving the e-mail? Explain. [*Fraser v. Nationwide Mutual Insurance Co.,* 352 F.3d 107 (3d Cir. 2004)]

**7–6. Ethical Conduct.** Unable to pay more than $1.2 billion in debt, Big Rivers Electric Corp. filed a petition to declare bankruptcy in a federal bankruptcy court in September 1996. Big Rivers’ creditors included Bank of New York (BONY), Chase Manhattan Bank, Mapco Equities, and others. The court appointed J. Baxter Schilling to work as a “disinterested” (neutral) party with Big Rivers and the creditors to resolve their disputes and set an hourly fee as Schilling’s compensation. Schilling told Chase, BONY, and Mapco that he wanted them to pay him an additional percentage fee based on the “success” he attained in finding “new value” to pay Big Rivers’ debts. Without such a deal, he told them, he would not perform his mediation duties. Chase agreed; the others disputed the deal, but no one told the court. In October 1998, Schilling asked the court for nearly $4.5 million in compensation, including the hourly fees, which totaled about $531,000, and the percentage fees. Big Rivers and others asked the court to deny Schilling any fees on the basis that he had improperly negotiated “secret side agreements.” How did Schilling violate his duties as a “disinterested” party? Should he be denied compensation? Why or why not? [*In re Big Rivers Electric Corp.,* 355 F.3d 415 (6th Cir. 2004)]

**7–7**  **Ethics and the Law.**  Prudential Insurance Co. of America has a company guideline not to change the amount of a salesperson’s commission once a client has been quoted a price for insurance. Despite this principle, in order to reduce the quoted price for insurance offered to York International Corp., Prudential cut the fee that it paid to a broker. A competing broker, Havensure, LLC, filed a suit, arguing that the reduced quote caused it to lose York as a potential customer. Is a company’s violation of its own policy unethical? Is it a basis for legal liability? Explain. [*Havensure, LLC v. Prudential Insurance Co. of America,* 595 F.3d 312 (6th Cir. 2010)]

**7–8. Ethical Leadership.**  David Krasner, who worked for HSH Nordbank AG, complained that his supervisor, Roland Kiser, fostered an atmosphere of sexism that was demeaning to women. Among other things, Krasner claimed that career advancement was based on “sexual favoritism.” He objected to Kiser’s relationship with a female employee, Melissa Campfield, who was promoted before more qualified employees, including Krasner. How do a manager’s attitudes and actions affect the workplace? [*Krasner v. HSH Nordbank AG,* 680 F.Supp.2d 502 (S.D.N.Y. 2010)]

**7–9.** **Ethical Misconduct.**  Frank Pasquale used his father’s Social Security number to obtain a credit card. Later, pretending to act on behalf of his father’s firm, Pasquale borrowed $350,000. When he defaulted on the loan and his father confronted him, he produced forged documents that showed the loan had been paid. Adams Associates, LLC, which held the unpaid loan, filed a suit against both Pasquales. Should the court issue a judgment against the father and the son? Discuss. [*Adams Associates, LLC v. Frank Pasquale Limited Partnership,* 2011 WL 112665 (N.J.Super. A.D. 2011)]

**7-10. A Question of Ethics**

Three-year-old Randy Welch climbed up to a shelf and picked up a disposable butane cigarette lighter. Randy then used the lighter to ignite a flame, which set fire to his pa­jama top. Welch and his parents brought a product-liability suit against the lighter’s manufacturer, Scripto-Tokai Corp., for damages. One of the questions raised in this case was whether the risks attending the lighter were sufficiently “open and obvious” that the manufacturer did not need to warn of those risks. [*Welch v. Scripto-Tokai Corp.,* 651 N.E.2d 810 (Ind.App. 1995)]

**1.**  If you were the judge, how would you decide this issue? Explain your reasoning.

**2.**  Generally, how can a court decide what kinds of risks should be open and obvi­ous for the ordinary consumer? How can a business decision maker decide such questions?