

# Introduction to Ethical Decision-Making

**Ethics is subjective but it is not only subjective. A sound decision-making process overcomes the biases we have to allow decisions that are less idiosyncratic. By setting out the steps of a decision and by applying leading**

scholarship to decisions, we can make it less likely that we will make decisions blinded by our biases. Learning a six-step decision making process in which one applies three leading, contemporary business ethics frameworks is the aim of this chapter of the book.

David Messick, a now-retired ethics professor at the Kellogg School of Business at Northwestern University, has argued that empirical studies demonstrate that we value our own self-interest over the well-being of others. There is nothing too surprising about that finding, but it is one that does create issues for the decisions we make. The more we are biased toward our own self-interest, the more we are likely to rationalize any decision we make and often demonize another person's actions if they annoy us.

Thus, an aim of a decision-making process is to make better, more objective decisions. The model I follow tracks heavily with that of Professor LaRue Hosmer, taught ethics at the University of Michigan Business School for many years. There are other models, but they tend to aim toward the same objective and pose similar questions and steps.



*Professor LaRue Hosmer*

## I. An Introduction to the Six-Step Process

**DECISION-MAKING PROCESSES** attempt to mute biases that we have so that we can make decisions more rationally and defend our reasoning more clearly. Ethics is not unique in this. In a Strategy or Marketing class, it is not enough to simply say that your gut feeling tells you to adopt a certain new marketing effort or corporate strategy. Gut feelings are important, but a company goes through a process to determine best strategies, marketing and human resources approaches. They do this so that they make better decisions. Once they are made, a process allows others to better understand why they are made rather than simply being told that the decision came from the CEO's gut instincts (though that does happen sometimes).

It is a bit strange, then, when people say that ethics can't be taught or that they are simply subjective intuitions or traits of personal character that either one has or one doesn't have. Of course, there are intuitions in ethics, just as there are intuitions in Strategy. Of course, some people have traits that lend themselves well to making ethical decisions in Marketing. But decisions can be made better and are better explained when one tries to apply a reasoning process to dilemmas. That is as true of ethics as it is of anything else.

There is another anomaly about ethics: it is personal and it is private. Well, yes, sort of, and so what? Ethics are personal. They comprise decisions about who we are as human beings, what we value, what we stand for, and how we are identified to the world. There certainly is a personal dimension to ethics, but is ethics private? In one sense, it is absurd to think that it is. Ethics are about how we treat other people, so how could interacting with other people be considered private? Ethics are always about some degree of public interaction where we ask how others should be treated. Ethics cannot be purely private. A follow up response, however, requires us to consider how big of a circle we are thinking of when talking about ethics. Ethical conduct is crucial to a relationship with a significant other. There is privacy in that relationship, but it is not purely private. The wider we draw the circle—to friends, to community, to a business, to a nation, to the human race, to the ecosystem—the more questions are raised of just how private or public our decisions are. As we draw those circles, some things are indeed private. But they are never purely private.

So what? What if they are personal and what if they are a mix of private and public? Even if that is true, we human beings don't simply sit around and let other people do whatever they want to do. Or, when we do see such inaction, we can get pretty disgusted. None of us would say, well, Adolf Hitler had his moral views and they are personal and private to him and so we should not do anything as he kills six million Jews. That would be an absurd moral position. When we see such things, we react. We do not allow anyone to do whatever he or she please when such actions negatively impact others. So even if there are degrees of personal conduct and of private conduct, there are limits too. Defining what those limits are is tough stuff. But I want to be certain to disabuse you of some of these dismissive—and frankly,

thoughtless—rules of thumb that some will toss out to argue that ethics is so different from any other subject in a business or law school that it cannot be taught.

With this in mind, let's look at the decision-making model. The six steps of Hosmer's moral reasoning process ("HMRP") are as follows:

1. Identify the Moral Issue
2. Identify Additional Facts Helpful to Making a Decision
3. Identify the Alternatives Available to Apply to the Problem
4. Identify the Personal Impacts to the Decision Maker
5. Apply Three Leading Contemporary Theories of Business Ethics: Shareholder, Stakeholder, and Virtue
6. Conclude With a Decision

### **A. HMRP STEP ONE: IDENTIFY THE MORAL PROBLEM**

A quick and dirty way of identifying the moral issue is asking who has been harmed and whether they have been harmed in a significant way. Of course, people are harmed all the time. People lose all the time. It's one thing to lose; it's another thing to create an ethical dilemma. Just because your favorite team loses a game, or you lose a job or another company or another individual wins a bid does not mean that there is an ethical dilemma. In a capitalist society, there are winners and losers. Fair or not, the free market system is the one we find ourselves in, and this decision-making framework assumes that to be the case.

In identifying a moral issue, one is looking at a situation where there has been harm to a vulnerable party who has been unable to protect him or herself particularly well. For instance, we will see a case in the next chapter where there was a depletion of well water for an agricultural plant to operate in Mexico. Residents had previously been able to get clean drinking water by drilling sixty feet deep, but with the depletion, one had to drill 450 feet deep. As a result, children now drink sewage with human waste in it. And so when a five-year old asks, "Daddy, can I have a drink of water?" the father will have to give him human waste to drink. That constitutes a moral dilemma.

In another famous case, orphaned street children sniffed glue in Central America. It may be true that their parents have the primary responsibility to make sure their kids aren't sniffing glue. It is also probably true that the government and the society has a responsibility to make sure that those kids are cared for and not just left on

the street where they end up sniffing the glue in order to relieve hunger pangs and to make them high and to give a bit of relief in an otherwise pretty dreary existence. But this does not preclude a tertiary responsibility, a third level of responsibility held by companies doing business in the area, whose product is what the children sniff. The only thing standing between the children sniffing glue and sniffing his or her brains out and potentially dying is what the company chooses to do.

The moral issue can be stated in a sentence or two. There could be twenty moral harms in a given case. Picking one doesn't mean that that's necessarily the only one that has been brought up in a particular case, but this step provides a focus for an evaluation.

## **B. HMRP STEP TWO: ADDITIONAL FACTS**

Business students and businesspeople tend to do quite well in finding many additional facts and identifying questions that they want to have answers to before they make a conclusion. That's healthy. One of the best things you can do in making an ethical analysis is to find additional facts so that you're not gossiping. This step thus becomes the opportunity to recognize the additional facts that would be helpful to know. One still must often make a decision based on insufficient information; life tends to require that. But this is an opportunity to identify three or four additional facts that would be helpful to know in making a moral decision. Of course, these facts need to be relevant. Additional facts need not be determinative, but they do need to be germane.

## **C. HMRP STEP THREE: AVAILABLE ALTERNATIVES**

Step three looks at additional alternatives. Sometimes, we may think of an ethical issue as an either-or choice. You must either do the saintly thing or risk selling your soul. Frequently there are a lot of options in between. When H.B. Fuller was faced with street children sniffing its shoe-repair glue in Honduras, the company could have bookend choices: get out of the market or continue to sell the product as is. Yet, there were many alternatives Fuller could pursue. It could fund social service agencies to help the kids, place better warning labels so the kids recognize the danger of the product even if they even they were illiterate, or conduct additional research and development to have a safer product. Thus, between the bookends, one finds alternatives.

## **D. HMRP STEP FOUR: IDENTIFY PERSONAL IMPACTS**

Personal impacts are not the impacts on the various human beings that are affected by a corporate decision. That's what stakeholder theory is about. Personal

impacts apply to the following: Assume that you are in the position of being the decision-maker or a person who's making a recommendation to the decision-maker. In that position, what are the consequences to you as a person and what are the consequences to your career resulting from the decision you make? Recognize that from a career standpoint, it can cut both ways. If the company thinks that you spend too much money in order to head off an ethical problem, you may be viewed as a profligate spender who has no business in the tough world of being a manager and may therefore lose your career track or be fired.

On the other hand, if you ignore the problem, things could go the opposite way: you could become the scapegoat. One can imagine an executive saying, "You know, if Tim had told me there was a problem, I would have done something about it. He stayed quiet, he's to blame." So recognize that in many situations, the personal impacts could go in a couple of different directions.

In addition to this career issue, there are personal impacts that relate to your conscience and well-being. These personal impacts have become clichés. The problem with a cliché is that it has enough truth in it to bear repeating, which is why it gets repeated, which is how it becomes a cliché. While I prefer not to perpetuate clichés, let me repeat them one more time.

The first one is the newspaper approach. Are you comfortable with having your proposed action being reported in a newspaper of wide circulation: *The Washington Post*, *The New York Times*, *The Wall Street Journal*, *Le Monde*, or whatever the paper of importance is to you? A variation of this test is the loved one test. There is a wonderful book that was written several years ago by Yale Law Professor Amy Chua, entitled *World on Fire*. Professor Chua interviewed many executives around the world. One executive told Professor Chua that he would never tell his family what he did during the day. Well, if you can't tell your family what you're doing during the day because you're embarrassed by what you do, maybe there's a problem with what you're doing.

The final variation is the tombstone test. What would you like to have said about you on your tombstone or your gravestone? What kind of a person will you be remembered as?

## E. HMRP STEP FIVE: APPLY THREE MORAL FRAMEWORKS

Professor Hosmer's Step Five applies ten ethical principles drawn from thousands of years of philosophy. The modification is to reduce these to three leading, contemporary business ethics frameworks which capture the historical philosophies and place them into a business application.

**Shareholder Theory:** The correct way to state the legal duty of managers to shareholders is that managers should carry out the lawful directives of shareholders. As we will see in the latter chapters of this book, this statement is a simple one of

agency law. Shareholders are the principals and agents are the managers. To be sure, shareholders will be interested in profit. But shareholders may also hold non-economic directives as well such as adhering to standards of journalistic excellence, or employing a percentage of individuals with disabilities, or committing one's business to fostering peace. There are companies that do each of these things and if their shareholders are comfortable with these objectives, there is nothing illegal about them. So, don't just assume that the only thing that matters in a corporation is profit; there may be more. Moreover, what is in the short-term interest of the shareholders and what is in the long-term interest may be two different things, even just in terms of making money. Finally, because corporations are creatures of the law, they should obey the laws that govern them. In using the term "corporations" the same principles apply to any business, so keep that in mind in looking at these cases.

**Stakeholder Theory:** Derived from Kantian principles of human dignity, the stakeholder position is that businesses should be run for the benefit of anyone affected by the action because we ourselves would like to be treated as an end rather than a means to an end. To prioritize what stakeholders to consider, evaluate whether a basic right has been affected; whether vulnerable parties are protected; and whether there is a way to create a greater good for a greater number. This framework can be elaborated and is in detail in Timothy Fort's *The Vision of the Firm*, but these abbreviated versions of these frameworks, (Rights, Justice and Utilitarianism) comprise the leading contemporary theories of business ethics.

**Virtue Theory:** Rather than just considering what duties people in business might have (both shareholder and stakeholder theories are deontological theories of ethics), virtue theory asks what would be exemplary. Because people seem to think that everyone has different virtues, you might take time to "elect" the virtues that a class thinks are most important. After doing that, one then has a list of virtues that can be defined and applied to the cases at hand.

## F. HMRP STEP SIX: CONCLUSION

Step six calls for a conclusion. This could be to choose the Justice approach in the Stakeholder Theory. It could be to choose maximizing profitability in the short term. It could be a mix of a variety of the frameworks. For example, one would design a solution based on respecting rights and protecting the vulnerable because in the long term, such attention is going to create the greatest good for the greatest number, which will also equate with long-term shareholder value.

Every year, studies report that a large percentage of people think that they themselves are highly ethical, while they also think that a large percentage of the rest of the world is not.<sup>1</sup> It's hard to square those two observations except to note that we

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1 Ann E. Tenbrunsel et al., *The Ethical Mirage: A Temporal Explanation as to Why We Aren't as Ethical as We*

are biased and we deceive ourselves. We need something to keep ourselves honest. A framework such as Hosmer's helps us do just that and will help us to make better ethical decisions in business.

## II. Two Famous Legal Cases

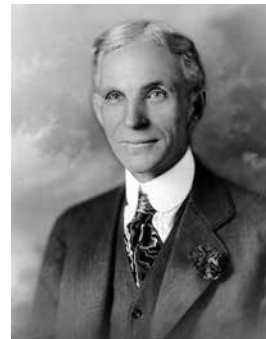
### Dodge v. Ford Motor Co., et al.

204 Mich. 459, 170 N.W. 668 (Mich. 1919)

OSTRANDER, CJ.

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When plaintiffs made their complaint and demand for further dividends, the Ford Motor Company had concluded its most prosperous year of business. The demand for its cars at the price of the preceding year continued. It could make and could market in the year beginning August 1, 1916, more than 500,000 cars. Sales of parts and repairs would necessarily increase. The cost of materials was likely to advance, and perhaps the price of labor; but it reasonably might have expected a profit for the year of upwards of \$60,000,000. It had assets of more than \$132,000,000, a surplus of almost \$112,000,000, and its cash on hand and municipal bonds were nearly \$54,000,000. Its total liabilities, including capital stock, was a little over \$20,000,000. It had declared no special dividend during the business year except the October, 1915, dividend. It had been the practice, under similar circumstances, to declare larger dividends. Considering only these facts, a refusal to declare and pay further dividends appears to be not an exercise of discretion on the part of the directors, but an arbitrary refusal to do what the circumstances required to be done. These facts and



Henry Ford, top; John and Horace Dodge, bottom.

others call upon the directors to justify their action, or failure or refusal to act. In justification, the defendants have offered testimony tending to prove, and which does prove, the following facts: It had been the policy of the corporation for a considerable time to annually reduce the selling price of cars, while keeping up, or improving, their quality. As early as in June, 1915, a general plan for the expansion of the productive capacity of the concern by a practical duplication of its plant had been talked over by the executive officers and directors and agreed upon; not all of the details having been settled, and no formal action of directors having been taken. The erection of a smelter was considered, and engineering and other data in connection therewith secured. In consequence, it was determined not to reduce the selling price of cars for the year beginning August 1, 1915, but to maintain the price and to accumulate a large surplus to pay for the proposed expansion of plant and equipment, and perhaps to build a plant for smelting ore. It is hoped, by Mr. Ford, that eventually 1,000,000 cars will be annually produced. The contemplated changes will permit the increased output.

The plan, as affecting the profits of the business for the year beginning August 1, 1916, and thereafter, calls for a reduction in the selling price of the cars. It is true that this price might be at any time increased, but the plan called for the reduction in price of \$80 a car. The capacity of the plant, without the additions thereto voted to be made (without a part of them at least), would produce more than 600,000 cars annually. This number, and more, could have been sold for \$440 instead of \$360, a difference in the return for capital, labor, and materials employed of at least \$48,000,000. In short, the plan does not call for and is not intended to produce immediately a more profitable business, but a less profitable one; not only less profitable than formerly, but less profitable than it is admitted it might be made. The apparent immediate effect will be to diminish the value of shares and the returns to shareholders.

It is the contention of plaintiffs that the apparent effect of the plan is intended to be the continued and continuing effect of it, and that it is deliberately proposed, not of record and not by official corporate declaration, but nevertheless proposed, to continue the corporation henceforth as a semi-eleemosynary institution and not as a business institution. In support of this contention, they point to the attitude and to the expressions of Mr. Henry Ford. Mr. Henry Ford is the dominant force in the business of the Ford Motor Company. No plan of operations could be adopted unless he consented, and no board of directors can be elected whom he does not favor. One of the directors of the company has no stock. One share was assigned to him to qualify him for the position, but it is not claimed that he owns it. A business, one of the largest in the world, and one of the most profitable, has been built up. It employs many men, at good pay.

'My ambition,' said Mr. Ford, 'is to employ still more men, to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this we are putting the greatest share of our profits back in the business.'



‘With regard to dividends, the company paid sixty percent. on its capitalization of two million dollars, or \$1,200,000, leaving \$58,000,000 to reinvest for the growth of the company. This is Mr. Ford’s policy at present, and it is understood that the other stockholders cheerfully accede to this plan.’

He had made up his mind in the summer of 1916 that no dividends other than the regular dividends should be paid, ‘for the present.’

‘Q. For how long? Had you fixed in your mind any time in the future, when you were going to pay—

A. No.

‘Q. That was indefinite in the future?

A. That was indefinite; yes, sir.’

The record, and especially the testimony of Mr. Ford, convinces that he has to some extent the attitude towards shareholders of one who has dispensed and distributed to them large gains and that they should be content to take what he chooses to give. His testimony creates the impression, also, that he thinks the Ford Motor Company has made too much money, has had too large profits, and that, although large profits might be still earned, a sharing of them with the public, by reducing the price of the output of the company, ought to be undertaken. We have no doubt that certain sentiments, philanthropic and altruistic, creditable to Mr. Ford, had large influence in determining the policy to be pursued by the Ford Motor Company—the policy which has been herein referred to.

It is said by his counsel that—

‘Although a manufacturing corporation cannot engage in humanitarian works as its principal business, the fact that it is organized for profit does not prevent the existence of implied powers to carry on with humanitarian motives such charitable works as are incidental to the main business of the corporation.’

And again:

‘As the expenditures complained of are being made in an expansion of the business which the company is organized to carry on, and for purposes within the powers of the corporation as hereinbefore shown, the question is as to whether such expenditures are rendered illegal because influenced to some extent by humanitarian motives and purposes on the part of the members of the board of directors.’

Let's stop here for a moment. With the facts of this case set out, who do you think won this case? Who do you think should have won this case? The first question is a descriptive one: As a matter of prediction, what do you think the Court decided? The second question is an ethical one: Regardless of what the Court actually decided, what do you think the Court should have decided? Think about this for a few moments and then proceed on to see the results.

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The difference between an incidental humanitarian expenditure of corporate funds for the benefit of the employees, like the building of a hospital for their use and the employment of agencies for the betterment of their condition, and a general purpose and plan to benefit mankind at the expense of others, is obvious. There should be no confusion (of which there is evidence) of the duties which Mr. Ford conceives that he and the stockholders owe to the general public and the duties which in law he and his codirectors owe to protesting, minority stockholders. A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the nondistribution of profits among stockholders in order to devote them to other purposes.

There is committed to the discretion of directors, a discretion to be exercised in good faith, the infinite details of business, including the wages which shall be paid to employees, the number of hours they shall work, the conditions under which labor shall be carried on, and the price for which products shall be offered to the public.

It is said by appellants that the motives of the board members are not material and will not be inquired into by the court so long as their acts are within their lawful powers. As we have pointed out, and the proposition does not require argument to sustain it, it is not within the lawful powers of a board of directors to shape and conduct the affairs of a corporation for the merely incidental benefit of shareholders and for the primary purpose of benefiting others, and no one will contend that, if the avowed purpose of the defendant directors was to sacrifice the interests of shareholders, it would not be the duty of the courts to interfere.

We are not, however, persuaded that we should interfere with the proposed expansion of the business of the Ford Motor Company. In view of the fact that the selling price of products may be increased at any time, the ultimate results of the larger business cannot be certainly estimated. The judges are not business experts. It is recognized that plans must often be made for a long future, for expected competition, for a continuing as well as an immediately profitable venture. The experience of the Ford Motor Company is evidence of capable management of its affairs. It may be noticed, incidentally, that it took from the public the money required for the

execution of its plan, and that the very considerable salaries paid to Mr. Ford and to certain executive officers and employees were not diminished. We are not satisfied that the alleged motives of the directors, in so far as they are reflected in the conduct of the business, menace the interests of shareholders. It is enough to say, perhaps, that the court of equity is at all times open to complaining shareholders having a just grievance.

Assuming the general plan and policy of expansion and the details of it to have been sufficiently, formally, approved at the October and November, 1917, meetings of directors, and assuming further that the plan and policy and the details agreed upon were for the best ultimate interest of the company and therefore of its shareholders, what does it amount to in justification of a refusal to declare and pay a special dividend or dividends? The Ford Motor Company was able to estimate with nicety its income and profit. It could sell more cars than it could make. Having ascertained what it would cost to produce a car and to sell it, the profit upon each car depended upon the selling price. That being fixed, the yearly income and profit was determinable, and, within slight variations, was certain.

Defendants say, and it is true, that a considerable cash balance must be at all times carried by such a concern. But, as has been stated, there was a large daily, weekly, monthly receipt of cash. The output was practically continuous and was continuously, and within a few days, turned into cash. Moreover, the contemplated expenditures were not to be immediately made. The large sum appropriated for the smelter plant was payable over a considerable period of time. So that, without going further, it would appear that, accepting and approving the plan of the directors, it was their duty to distribute on or near the 1st of August, 1916, a very large sum of money to stockholders.

In reaching this conclusion, we do not ignore, but recognize, the validity of the proposition that plaintiffs have from the beginning profited by, if they have not lately, officially, participated in, the general policy of expansion pursued by this corporation. We do not lose sight of the fact that it had been, upon an occasion, agreeable to the plaintiffs to increase the capital stock to \$100,000,000 by a stock dividend of \$98,000,000. These things go only to answer other contentions now made by plaintiffs, and do not and cannot operate to estop them to demand proper dividends upon the stock they own. It is obvious that an annual dividend of 60 percent. upon \$2,000,000, or \$1,200,000, is the equivalent of a very small dividend upon \$100,000,000, or more.

The decree of the court below fixing and determining the specific amount to be distributed to stockholders is affirmed.

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Does the result of this case surprise you or confirm the prediction you made at the midpoint of its presentation above? In my 25-plus years of teaching this case, slightly more than half of the students reading this case expected Ford to win. Henry

Ford, after all, was the majority shareholder and the CEO of the company. If he decided to do something, it would be done. Students also argue that Ford's philosophy seems fairly contemporary and wise. He is executing an approach that will result in more market share (or as the auto industry was in its infancy, assure that Ford's large market share would be maintained). Paying employees more also played into another Ford policy of paying his workers enough to be able to purchase the product they produced. So slightly more than half of my students have been very surprised with the result.

Those who weren't surprised advanced two reasons. The first was a rationale based on reverse engineering: there is a Dodge Motor Company so they probably got the dividend to help fund their own company. The second was more philosophical: shareholders rule.

What was your reaction to the way the case came out, both as a matter of prediction—i.e. who won the case—and do you think the Court made the right decision?

*Dodge v. Ford's* emphasis on the duty of managers to its shareholders has been a staple of shareholder advocates for decades. Indeed, it would be a foolish executive who would ignore his/her obligations to the shareholders. But just when one would think that shareholder theory is a simple, straight-forward set of duties from management to shareholders to maximize shareholder value, along comes the Chicago Cubs to confuse things.

## Shlensky v. Wrigley

95 Ill.App.2d 173, 237 N.E.2d 776 (1968)

SULLIVAN J.

This is an appeal from a dismissal of plaintiff's amended complaint on motion of the defendants. The action was a stockholders' derivative suit against the directors for negligence and mismanagement. The corporation was also made a defendant. Plaintiff sought damages and an order that defendants cause the installation of lights in Wrigley Field and the scheduling of night baseball games.

Plaintiff is a minority stockholder of defendant corporation, Chicago National League Ball Club (Inc.), a Delaware corporation with its principal place of business in Chicago, Illinois. Defendant corporation owns and operates the major league professional baseball team known as the Chicago Cubs. The corporation also engages in the operation of Wrigley Field, the Cubs' home park, the concessionaire sales during Cubs' home games, television and radio broadcasts of Cubs' home games, the leasing of the field for football games and other events and receives its share, as visiting team, of admission moneys from games played in other National League stadia. The individual defendants are directors of the Cubs and have served for varying periods

of years. Defendant Philip K. Wrigley is also president of the corporation and owner of approximately 80% of the stock therein.

Plaintiff alleges that since night baseball was first played in 1935 nineteen of the twenty major league teams have scheduled night games. In 1966, out of a total of 1620 games in the major leagues, 932 were played at night. Plaintiff alleges that every member of the major leagues, other than the Cubs, scheduled substantially all of its home games in 1966 at night, exclusive of opening days, Saturdays, Sundays, holidays and days prohibited by league rules. Allegedly this has been done for the specific purpose of maximizing attendance and thereby maximizing revenue and income.

The Cubs, in the years 1961–65, sustained operating losses from its direct baseball operations. Plaintiff attributes those losses to inadequate attendance at Cubs' home games. He concludes that if the directors continue to refuse to install lights at Wrigley Field and schedule night baseball games, the Cubs will continue to sustain comparable losses and its financial condition will continue to deteriorate.

Plaintiff alleges that, except for the year 1963, attendance at Cubs' home games has been substantially below that at their road games, many of which were played at night.

Plaintiff compares attendance at Cubs' games with that of the Chicago White Sox, an American League club, whose weekday games were generally played at night. The weekend attendance figures for the two teams was similar; however, the White Sox week-night games drew many more patrons than did the Cubs' weekday games.

Plaintiff alleges that the funds for the installation of lights can be readily obtained through financing and the cost of installation would be far more than offset and recaptured by increased revenues and incomes resulting from the increased attendance.

Plaintiff further alleges that defendant Wrigley has refused to install lights, not because of interest in the welfare of the corporation but because of his personal opinions 'that baseball is a 'daytime sport' and that the installation of lights and night baseball games will have a deteriorating effect upon the surrounding neighborhood.' It is alleged that he has admitted that he is not interested in whether the Cubs would benefit financially from such action because of his concern for the neighborhood, and that he would be willing for the team to play night games if a new stadium were built in Chicago.

Plaintiff alleges that the other defendant directors, with full knowledge of the foregoing matters, have acquiesced in the policy laid down by Wrigley and have permitted him to dominate the board of directors in matters involving the installation of lights and scheduling of night games, even though they knew he was not motivated by a good faith concern as to the best interests of defendant corporation, but solely by his personal views set forth above. It is charged that the directors are acting for a reason or reasons contrary and wholly unrelated to the business interests of the corporation; that such arbitrary and capricious acts constitute mismanagement and

waste of corporate assets, and that the directors have been negligent in failing to exercise reasonable care and prudence in the management of the corporate affairs.

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Let's stop here again as we did with the *Dodge v. Ford* case with the same two questions. Who do you think won the case? Who do you think should have won the case? Take a moment to think about those questions and then continue on with the case.

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The question on appeal is whether plaintiff's amended complaint states a cause of action. It is plaintiff's position that fraud, illegality and conflict of interest are not the only bases for a stockholder's derivative action against the directors. Contrariwise, defendants argue that the courts will not step in and interfere with honest business judgment of the directors unless there is a showing of fraud, illegality or conflict of interest.

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Plaintiff argues that the allegations of his amended complaint are sufficient to set forth a cause of action under the principles set out in *Dodge v. Ford Motor Co.*, 170 N.W. 668 (Mich.). In that case plaintiff, owner of about 10% Of the outstanding stock, brought suit against the directors seeking payment of additional dividends and the enjoining of further business expansion. In ruling on the request for dividends the court indicated that the motives of Ford in keeping so much money in the corporation for expansion and security were to benefit the public generally and spread the profits out by means of more jobs, etc. The court felt that these were not only far from related to the good of the stockholders, but amounted to a change in the ends of the corporation and that this was not a purpose contemplated or allowed by the corporate charter.

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Plaintiff in the instant case argues that the directors are acting for reasons unrelated to the financial interest and welfare of the Cubs. However, we are not satisfied that the motives assigned to Philip K. Wrigley, and through him to the other directors, are contrary to the best interests of the corporation and the stockholders. For example, it appears to us that the effect on the surrounding neighborhood might well be considered by a director who was considering the patrons who would or would not attend the games if the park were in a poor neighborhood.

Furthermore, the long run interest of the corporation in its property value at Wrigley Field might demand all efforts to keep the neighborhood from deteriorating. By these thoughts we do not mean to say that we have decided that the decision of the directors was a correct one. That is beyond our jurisdiction and ability. We are merely saying that the decision is one properly before directors and the motives alleged in the amended complaint showed no fraud, illegality or conflict of interest in their making of that decision.

While all the courts do not insist that one or more of the three elements must be present for a stockholder's derivative action to lie, nevertheless we feel that unless the conduct of the defendants at least borders on one of the elements, the courts should not interfere. The trial court in the instant case acted properly in dismissing plaintiff's amended complaint.

We feel that plaintiff's amended complaint was also defective in failing to allege damage to the corporation. The well pleaded facts must be taken as true for the purpose of judging the sufficiency of the amended complaint. However, one need not accept conclusions drawn by the pleader. Furthermore, pleadings will be construed most strongly against the pleader prior to a verdict or judgment on the merits.

There is no allegation that the night games played by the other nineteen teams enhanced their financial position or that the profits, if any, of those teams were directly related to the number of night games scheduled. There is an allegation that the installation of lights and scheduling of night games in Wrigley Field would have resulted in large amounts of additional revenues and incomes from increased attendance and related sources of income. Further, the cost of installation of lights, funds for which are allegedly readily available by financing, would be more than offset and recaptured by increased revenues. However, no allegation is made that there will be a net benefit to the corporation from such action, considering all increased costs.

Plaintiff claims that the losses of defendant corporation are due to poor attendance at home games. However, it appears from the amended complaint, taken as a whole, that factors other than attendance affect the net earnings or losses. For example, in 1962, attendance at home and road games decreased appreciably as compared with 1961, and yet the loss from direct baseball operation and of the whole corporation was considerably less.

The record shows that plaintiff did not feel he could allege that the increased revenues would be sufficient to cure the corporate deficit. The only cost plaintiff was at all concerned with was that of installation of lights. No mention was made of operation and maintenance of the lights or other possible increases in operating costs of night games and we cannot speculate as to what other factors might influence the increase or decrease of profits if the Cubs were to play night home games.

[P]laintiff's allegation that the minority stockholders and the corporation have been seriously and irreparably damaged by the wrongful conduct of the defendant directors is a mere conclusion and not based on well pleaded facts in the amended complaint.

Finally, we do not agree with plaintiff's contention that failure to follow the example of the other major league clubs in scheduling night games constituted negligence. Plaintiff made no allegation that these teams' night schedules were profitable or that the purpose for which night baseball had been undertaken was fulfilled. Furthermore, it cannot be said that directors, even those of corporations that are losing money, must follow the lead of the other corporations in the field. Directors are elected for their business capabilities and judgment and the courts cannot require them to forgo their judgment because of the decisions of directors of other companies. Courts may not decide these questions in the absence of a clear showing of dereliction of duty on the part of the specific directors and mere failure to 'follow the crowd' is not such a dereliction. For the foregoing reasons the order of dismissal entered by the trial court is affirmed.

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Both *Dodge v. Ford* and *Wrigley v. Shlensky* are shareholder cases. The *Dodge* case is more of a corporate governance case. That is, courts have no difficulty looking at property and deciding who owns it. They do such things all the time. In this case, Ford Motor Company had built up a substantial amount of cash and, as a matter of corporate governance, the principals (the shareholders) have a strong argument that they are entitled to their portions of that property. On the other hand, the *Wrigley* case is more of a strategy case. Relying on the business judgment rule, the court is saying that as long as there is a plausible reason for executive's strategies, the courts will not interfere. If shareholders don't like the strategy, they can invest elsewhere, but a long-term strategy, which builds in seemingly non-economic values, can still be upheld. Both of these cases are good law and so it is worth keeping in mind that "managing for the shareholders" is not as clear cut as one might think.

There are stakeholder aspects to these cases as well. Wrigley clearly was concerned about his customers, to make sure they didn't leave the park late at night into (what was then) a not-so-safe area around the ballpark (with little parking). He also wanted to build a long-term family brand image around the Cubs and Wrigley Field. Finally, he had concerns about the impact of late night games on the local community. Thus, one could characterize Wrigley's strategy as a stakeholder strategy.

One could do the same with respect to Henry Ford who proposed to lower the price of cars and to increase his employees' wages. This would help both customers and employees, two key stakeholder groups. It might also help the shareholders if, by doing so, he had more productive and loyal workers and grabbed more market share. But because the court was focused on accumulated profits (and also because 1919 was different than 1970 in terms of courts' review of property rights), short-term shareholder interests prevailed.

One could analyze these cases according to the virtues of honesty, accountability, creativity, loyalty, diligence and other virtues to assess the actions of the participants in the case.



In short, the laws you will learn in this book and in your course are laden with normative considerations. Thus, it is worth asking, at the end of each case, whether the case was decided fairly or not. Do you agree with the opinion of the court? Is there a better result? What are the values that underlie the opinion?

In addition, one can use the Hosmer framework, and in particular, the theories of shareholder, stakeholder, and virtue, in order to analyze the participants of these cases. In fact, over the years, many ethics have written research papers that come out of law cases and, with additional research, written extensive papers on these topics.

As a way to promote this integration of law and ethics, bundled with this textbook is *Ethics Vignettes*. These provide summaries of cases on ethical issues ranging across multiple disciplines found in business schools and also across various industries. A very large number of these vignettes are law cases, which provide a ready stepping-off point for the integration of law and ethics. Others come from regulatory or media sources and area also readily amenable to the analytical tool provided in this chapter. At the end of each chapter, there will be references to *Ethics Vignettes* and cases that can be discussed as an ethics as well as a legal case.

## NOTES AND QUESTIONS

1. **WHEN YOU THINK** of the American legal system, what values do you see? Are they different from what you think they were historically? What, if anything, might improve them? In what respect do you think the legal system is fair or not? What about other legal systems with which you might be familiar?

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2. **AFTER THINKING ABOUT** *Dodge v. Ford* and *Wrigley v. Shlensky*, how do you think those cases should have been decided? Why? What values underlie those decisions? Are they good values to apply today? Can you reconcile why these two seemingly different cases might be consistent with each other?

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3. **THINK OF AN** example of a business that you think acted badly and one that you think acted well. How does the Hosmer process help you articulate why one can be described as bad and why the other can be described as good?

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