

Questions for Mr Ethicist

Real questions from people facing dilemmas: Read the answers to the three you wrote on before. Choose two of these, and answer a. and b. Include one or more where you disagree with Mr Ethicist's answer.

- a. What principle has Mr Ethicist used in arriving at his answer? Explain.
- b. Do you agree or not with Mr Ethicist's answer? Explain why or why not.

1. *I attend an Ivy League university where students are graded on a curve. During a midterm, the student next to me was copying answers from my paper. Because a higher score for her would mean a lower grade for me, I intentionally wrote some incorrect answers, waited until she handed in her test booklet and then changed my answers to the correct ones. Was this wrong? — Brenna Tinkel, Philadelphia.*

There is something disquieting about your deliberately harming another person, even a cheat. It is reasonable for you to thwart her deceit — telling her to cut it out, or covering your paper with your arm, for instance — but it is overreaching to punish her. Besides, if she doesn't know you've ambushed her, you will neither deter her future cheating nor reform her character. When she gets her grade, she'll conclude only that you're dim-witted, and next time she'll copy from a brighter student.

Incidentally, her cheating would have been wrong even at one of our fine state universities. At a saving of thousands of dollars a year.

2. *I discovered that my supervisor routinely reads employee e-mail. Legal issues aside, is this ethical? I can understand doing so if a crime is suspected, but not as a matter of routine. It feels like a violation of my privacy. What do you think? — Anonymous, New York.*

While it is indeed legal, I agree with you: your supervisor should not routinely read employee e-mail. The right to privacy does not vanish at your office door. That the employer owns the computer system is not germane. The company presumably owns the restrooms, but the boss doesn't get to spy there.

Absent suspicions of specific wrongdoing, one justification for this practice is to ensure that employees use work time for work. This argument is not enough. Every worker every day has passing thoughts unrelated to the job. We all need to make a doctor's appointment or contact a child's school. While your supervisor has a valid interest in learning if an employee is a habitual slacker, there are less intrusive ways to do so. Surely the dismal quality of a layabout's work — or lack of it — will be apparent (as will the gentle snoring sounds emanating from his cubicle).

Also, many e-mail messages that are work-related — an early draft of a report, comments about a co-worker — are not something you necessarily want scrutinized. A desire for privacy is not an admission of wrongdoing, and to assume otherwise is to rupture the bonds of trust between employee and employer. If every legitimate activity were subject to constant monitoring, we'd all be flossing our teeth on prime-time TV. Naked. On CBS.

3. *A senior manager with a consulting firm, I often interview job candidates. My role is both to evaluate them and to “sell” them on our firm, a place I’ve grown less enamored of. In fact, I’m seeking other employment. What do I tell candidates who ask my opinion of the firm? If I tell the truth, I harm my firm’s chance to land them; but a lie is unfair to the candidate. And I can’t avoid doing the interview. — Anonymous, Mass.*

Even with the limitations of your office, you have more latitude than you suggest. While you are rightly inhibited about making derogatory subjective comments about your employer (phrases to avoid: dead-end, soul-crushing, those baboons in strategic planning), you may answer objective questions about, for example, benefits, opportunities for promotion and turnover rates and by so doing vividly convey a sense of the firm. That is, do not give your opinion; stick to the facts.

As that guide to business ethics and more, Matthew 6:24, admonishes, no man can serve two masters — in this case the job candidate and Mammon (or mammon.com, if you work at a today outfit. Or do I mean yesterday?), and you should make it clear to the candidate which master you are serving. He or she knows, or should know, that you are speaking in your official capacity, and you might remind him that your brief is to describe what’s best about the firm. You may not lie, of course, but there is nothing ignominious about a circumscribed response. Both a prosecutor and a defense attorney must speak honestly, but each is understood to speak from a particular point of view, not to offer a panoramic account of the case. That said, if you believe a cataclysm looms at work — e.g., it’s on the brink of bankruptcy; the boss turns into a vampire at night and sucks employee blood — then you can’t in good conscience encourage anyone to sign on. In such an extreme case, you must decline to do interviews that would lure candidates to their doom.

An unprofessional solution — when the candidate asks your opinion of the place, tiptoe over and pull the fire alarm and scream: “Run for your life! She’s gonna blow!” You can escape during the confusion.

4. *I recently received a job offer, which I orally accepted. When I approached my current employer with my resignation, he made a counteroffer. I now wish to remain with my current employer. Is it correct to revoke my acceptance of the original offer? — Anonymous*

The most virtuous thing to do is stand by your word unless your prospective employer is willing to release you.

He probably will. No one wants a disgruntled worker on staff. But while garnering offers is fine, accepting them isn’t, at least not if what you prefer is to keep your current job and get a nice raise. Next time don’t be so quick to accept an offer you may not want.

There are a couple of ways to make it up to your would-be employer. First, promptly inform him of your plans, to minimize his inconvenience. And second, be candid; tell him why you’ve changed your mind. Who knows, he may match your counteroffer — to which I hope you’ve not blurted out another reckless acceptance.

Be grateful that your indiscretion involved an actual contemporary job offer and not a marriage proposal in a 19th-century novel: you’d be horsewhipped and driven from the county.

5. *I am on the board of a hospital raising funds for a necessary extension. A local businessman with known ties to organized crime has offered a substantial donation.*

Should we take the money? — S. Wagner, Stamford, Conn.

If by “ties to organized crime” you mean that your would-be donor is proffering a cut of his loot, you must decline. Receiving stolen goods is illegal for a charity, just as it is for an individual. If, however, the money is legitimate but you’re troubled by an association with an unseemly figure, you face a tougher decision. It is unsettling to believe that your charity might serve to buff the image of a scoundrel, and so many fund-raisers seek to avoid this. Andy Tiedemann of the Harvard Alumni Affairs and Development Office explains his institution’s approach: “If we felt the money was illegally gained or ill gotten in some way, we would not accept it.” They have no written policy defining “ill gotten,” though, and Tiedemann could not immediately recall a single instance of a donation’s being rejected on those grounds.

Awkward as that position may be, it is the only one our society offers. In his play “Major Barbara,” George Bernard Shaw poses this question: Should the Salvation Army take money from an arms maker? In his introduction to the play, Shaw answers: “It must take the money because it cannot exist without money, and there is no other money to be had. . . . The notion that you can earmark certain coins as tainted is an unpractical individualist superstition.”

The world being what it is, you can do no better than follow Shaw’s advice and Harvard’s example. As long as the money was obtained legally, accept it. Thus, while the Homestead strike would provoke you to revile the name of Andrew Carnegie, at the end of his life, when he offers your town a library, you would be foolish and a bit of a prig to rebuff his largess.

One exception to this policy: decline money from a group whose actions directly clash with the stated goals of your organization. The Sierra Club, for example, ought not accept a donation from General Electric and thereby share the profits of a major polluter of the Hudson River. In the past, I have argued against a health-care organization’s accepting tobacco money. My case was as much aesthetic as ethical: it is simply too bizarre for those producing a product that causes 400,000 deaths a year to contribute to a hospital. Unless such a contribution is accompanied by an acknowledgment of responsibility. That is, a hospital could welcome money to build the Marlboro Lites Emphysema That We Caused and for Which We Are Really Sorry Wing.

6. *I am a state-certified mediator and arbitrator. Recently I mediated a serious dispute to the satisfaction of both parties. One of them, an American-born Japanese businessman, offered to send me a special fish, prepared for eating, as a token of appreciation. I humbly refused the gift as a violation of my code of ethics. He was hurt by my rejection of his Japanese custom, meant only to express appreciation. Was I wrong? — Abraham Best, Lauderhill, Fla.*

You were right. Acceptable business practices vary from culture to culture, and you could argue that when in Tokyo do as the Tokyovians (Tokyoites? Tokyoons?) do. However, you are not in Tokyo; you are in Florida and are bound by the mores of that state (insert presidential-election joke here) and the ethics appropriate to your profession. What’s more, from the American perspective, that code is reasonable. Your case is already resolved and you cannot be corrupted by that fish gift, but it would be unwise to promote the idea that in future cases (perhaps even involving this man), a gift is expected in exchange for a satisfactory decision.

While your duty is clear, that Japanese businessman’s hurt feelings are worthy of consideration. (Why does our concern with conflicts of interest trump the Japanese

business ethics of gratitude and strengthened social ties?) And so you must assure him that your actions reflect local custom; they do not imply cultural superiority and certainly not a personal criticism.

7. *I have an opportunity to buy the property of my dreams. The problem is that the elderly couple who have lived there for more than 40 years love the house and assume that I will maintain it. I intend to tear it down and build a more modern house on this beautiful property. If I reveal my plan, they may refuse to sell me the house and land. Am I ethically bound to tell? — W.S., Maryland*

The elderly couple can put a covenant in the deed to limit how a buyer uses the property. If they do not, you have every right to flatten the place or convert it into an Anti-Elderly-Couples Party Barn — or so a two-fisted free-marketeer (or his lawyer) might argue. Similarly, one company might buy a competitor simply to shut it down, contrary to the wishes and expectations of the original owner.

This position, while legal, is ethically dubious. You should volunteer your plans. An honorable business transaction can occur only if both parties have access to all pertinent information. By deliberately withholding facts the seller regards as paramount, you are practicing tacit deceit, and there's nothing ethical about that.

8. *My mother wants to hire someone to clean house and handle the laundry. To assure this person's integrity, she plans to leave loose money around as "bait" during the housecleaner's first few days of work. Here in Brazil, those stray bills can constitute a significant percentage of a housecleaner's wages. My mother sees this "trap" as a perfectly ethical precaution. Do you? — Daniel Hutchins, Juiz de Fora, Brazil*

Your use of "trap" implies one distasteful feature of your mother's scheme: it tiptoes toward entrapment, if not legally, then certainly ethically. The target is minding her own business, only to be lured into wrongdoing. While others working in your mother's house might be in a position to steal, they are unlikely to come upon piles of cash — so impersonal, so fungible, so pocket-size. Theft is clearly wrong, but there is a well-known injunction not to put temptation in someone's path. ("Tempt not a desperate man," says Romeo to Paris.) That's why I don't wear a sport coat made of hundred-dollar bills. (That and because I look so sickly in green.)

People are not crudely divisible into honest and dishonest; different circumstances elicit different behaviors in us all. (Millions of otherwise law-abiding citizens have illegally downloaded music.) As a prudent employer, your mother should not strew cash around the house; as a sensitive human being, she should be mindful of the economic gulf between her and her housekeeper. We do not wave food in the faces of the hungry.

This sort of integrity testing might be justifiable were there probable cause of serious wrongdoing and no other way to address it — for example, in a police precinct plagued by bribe-taking. But it should be a last resort, not a routine part of the job application.

Your mother would do better to check references and hire someone of demonstrated honesty. In any case, she doesn't keep the crown jewels in her bathroom; she will have time to act if her baubles begin vanishing.

9. *I've been happily married for 21 years. Ten years ago, my husband suffered a debilitating disease that keeps us from making love. Four years ago, I bumped into an ex-lover, himself married, and began a sexual relationship, reawakening my sexual feelings. Neither of us would ever divorce. I'm sure I can keep this relationship secret, so my husband will not*

get hurt. My devout Catholicism forbids such an affair, but does secular ethics? — Anonymous

Secular ethics notwithstanding, this secular ethicist is surprised that, in the decade since your husband became ill, you two have not discussed the demise of your sex life. You might also have talked about the many ways people make love, some of which might still be possible for him. Professional advice could be helpful here.

If your sex life with your husband has indeed ended, you may honorably consider other alternatives. A fulfilling erotic life is an important part of marriage, indeed of human happiness. Many religions enumerate conjugal duties. (Doesn't it sound joyful put that way?) Some states make the failure to fulfill them grounds for divorce. Although your husband has not broached your seeking an erotic life outside the marriage, surely he has considered that you might not simply soldier on, going quietly sexless to your grave.

To raise this matter now is, alas, tantamount to a confession, or at least it risks forcing a confrontation your husband seems not to want. You have entered the realm of don't ask, don't tell.

It is dicey territory. If you continue to pursue an extramarital relationship, you must strive to avoid hurting your husband.

You can not eliminate all risk — when the clothes come off, emotions can be unpredictable — but you can be prudent. This may be less difficult than you imagine. It is not unknown for one spouse to avert his glance from what any outsider would regard as evidence of infidelity. In this sense, your husband may have tacitly acquiesced to your sub rosa sex life.

There remains the conflict between this path and your religion's strictures, but that is something millions of Catholics face each time they employ contraception, for example. Few practitioners of any faith adhere to each of its dictates.

Update: Anonymous decided to end the affair.

10. *An acquaintance who works for a mutual fund regularly visits Japan to meet with companies in which the fund invests. Brokerage firms that do business with the fund set up the meetings and provide translators. Executives of the companies he visits assume he does not speak Japanese and hold private conversations in his presence that could affect investment decisions. My acquaintance needs a translator's help with some technical terms but easily handles conversational Japanese. Must he divulge this to those executives? — Daniel Gottlieb, Los Gatos, Calif.*

Your acquaintance should be candid about his language skills. If he keeps silent in a company's reception room while those around him speak Japanese, he does no wrong. Those who assume he is a monoglot are victims of their own prejudice. By accepting the services of a translator in an actual business meeting, however, he is in effect saying that he needs one — a passive form of deception, perhaps, but deception it is.

This is not to demand total disclosure. Business relationships can be competitive (the interests of all parties rarely coincide) and are often characterized by different levels of understanding. Business secrets can be legitimate. But by partly fostering and then deliberately exploiting a reasonable misunderstanding, your friend crosses the line. Likewise, if he comes upon a colleague who believes herself alone as she takes off her business suit to slip into something more comfortable — a movie moment more often than an actual mutual-fund moment — he would do well to clear his throat rather than let her think she is unobserved.

There is another distinction to be drawn. In the reception room, there is no

expectation of privacy, so no one should be chattering away about business secrets in any language. There is no duty to warn strangers that they're acting imprudently. Among colleagues, though, there are different expectations, including that of candor.

11. *I have an employee with no health insurance — he opted out of our company plan — with a wife and children who rely on his income. He has been loyal and productive. I have no bad things to say about him. Recently he was diagnosed with cancer and will not be able to perform his job. Should I continue to pay his salary even after he stops working? How should employers handle such situations? — Eric Markowitz, Brooklyn*

On the face of it, it is not your individual obligation to continue to pay a person who cannot do his job, although it would be generous of you to do so. There is another way, however, to look at this situation.

If your employee opted out of the health plan because it is too expensive or the deductible too high, you should re-examine the plan. In addition, a more generous leave policy would obviate your question. If one were in place, paid time off would be an ailing employee's right, not an employer's ethical conundrum.

Such programs do place a financial burden on employers, but it is one that employers in many developed nations are able to bear. In France and Germany, for example, according to Tom Geoghegan, an employment lawyer, situations like yours are covered not just by taxpayers but also by employers.

The laws in other countries are not an invariable guide to right conduct — as our mothers chided us, "If Belgium jumped off the roof. . ." — but they can reveal what many nations similar to ours regard as ethically necessary and economically feasible. "If in most European democracies he'd be doing more by law," Geoghegan says of any employer, "it's not morally acceptable to take advantage of the lower standards here." This is a stern but not unreasonable way to put it.

Sometimes it is what we do long before a moment of crisis that is most ethically significant. And it is how we phrase the question that determines what we see as our ethical obligation.

UPDATE: This employee is no longer able to come to work. Markowitz pays him to work from home a few days a week but does not know what he will do if the employee's condition worsens.

12. *I am a subspecialty physician without primary responsibility for patients. I consulted on the care of the C.E.O. of a major company, the seriousness of whose illness was not being fully disclosed to shareholders. I own stock in this company. Once I complete my consultation, may I ethically sell my shares, motivated by the information I gained as a doctor? — Anonymous, Texas*

Medical ethics do not forbid this trade, but investor ethics — a curious phrase, given recent headlines — do, so you may not make this sale.

An essential question for a physician is this: Would my actions adversely affect patient care? In this case, I think not, unless you're hatching an elaborate scheme to short the stock and let the patient deteriorate, a dubious investment strategy but a great idea for a Michael Crichton story. And given that you don't actually treat this patient, there is even less likelihood of your undermining his health.

But what the A.M.A. allows, the S.E.C. does not. Gregg M. Mashberg, an attorney specializing in securities law, notes that the legal issue is complicated (well, he would; he is an attorney, and one who's never even met you). "The physician runs a very serious risk that his stock trade could be deemed illegal insider trading under what we call the

'misappropriation' theory," he notes. That is, material gained in a confidential relationship like that between a doctor and patient may not be used to trade stock. Mashberg's advice is prudent. While your risk of being prosecuted seems slight, the idea that underpins this stricture — you should not trade on privileged physician's information — is ethically sound.

But why assume that the news of a C.E.O.'s ill health would depress a company's stock? The lachrymose shareholders of a struggling company — an automobile manufacturer, an airline carrier — might be delighted to learn that current management had contracted career-ending maladies, and wish them a full recovery and happy retirement.

13. *I bid for art on eBay. A fellow collector whose taste parallels mine often bids against me. He suggested that we agree not to bid on the same prints, so that we don't "drive up the prices." This would benefit us, but wouldn't it be unfair to the seller, who would have less competition and lower prices? I resisted, but I can't quite figure out why it feels wrong. Is it? — Christine Bridges, New York*

It is. Such mischief undermines the purpose of the auction — to let an open market establish an item's price, a process accepted (at least implicitly) by all participants. Your tempter proposes breaking this agreement, covertly violating the terms under which the seller offered the prints. In this, your conspiracy would be a kind of lie.

If you did this in a physical auction house, not a virtual one, you and your crony would be committing a crime. Christine Steiner, a lawyer who represents many arts-related clients, explains: "Collusive bidding is illegal in the auction world and has been the subject of investigations and scandals in the past."

This may not be illegal online — Internet auctions are largely unregulated, Steiner says — but the ethics are the same as in traditional paddle-wagging auctions. One technique for evaluating behavior is to consider how you would feel if you were the other party in the transaction, a style of moral reasoning demonstrated by our mothers when they divide the last piece of cake by having one child cut and the other pick. Alas, your scheme fails the cake test.

Your intrigue is not only unethical, it is also likely to be ineffectual. If many people vie for an item, the absence of a single bidder makes little difference unless the missing party is some combination of unusually wealthy, fiercely competitive and frequently drunk. But this does not get you off the moral hook: you still fail the what-if-everyone-were-to-do-it test.

14. *Our medical practice discovered that a recently discharged office administrator misappropriated several thousand dollars. The police were notified. This fellow then asked if we could "work things out" and avoid the legal system. Some of the physicians are willing to not press charges if he reimburses us. I feel we have an obligation to society and to potential future employers to continue with the criminal-justice system. Agreed? — name withheld, New Jersey*

Not agreed. The criminal-justice system is too blunt an instrument for the social microsurgery you wish to perform, and you have no grandiose "obligation to society" to wield it. Instead, consider how best to serve your practice, your community and the miscreant himself.

Consider these questions. Was his crime a discreditable anomaly rather than his chosen trade? Were there mitigating factors — financial desperation, perhaps? Is he determined not merely to make restitution but also to go straight? If the answers to most

are yes, you should not make it tougher for him to lead an honest life. Many people make mistakes and learn from them. Do not undermine the possibility of redemption.

A reference letter (vetted by your lawyer) can inform future employers about this fellow in a more nuanced way than a felony conviction on a rap sheet, a stigma that will severely narrow his options, not ease his return to the straight and narrow. If bringing him to justice publicly would reliably deter others from similar acts, it might be merited. But would it? The edifying spectacle of other trials did not prevent his own pilfering. Sending him to jail, a possible outcome, is akin to sending him to crime college, where he can mingle with more sophisticated practitioners, learn new techniques and be treated with the brutality that can motivate further misdeeds.

If yours is a publicly held company, you may be obliged to pursue this through the courts. Similarly, your insurance or other contractual involvements may require that. But if this is a private matter, regard the criminal-justice system as a last resort, a way to resolve problems that can't be settled more humanely. (I've quarreled with my sister, but she has never called the cops. Not that she has a case. That would stick. I'd be back on the street in no time.)

UPDATE: The members of the practice voted to press charges.

15. *After I worked for months as a management consultant, my client became increasingly hard to pin down for payments due. I then withdrew, halfway through the project, for lack of funds. May I recoup some of my costs by using material I produced for him for future clients? May I share documents he provided, even if they might contain confidential information? (We have no nondisclosure agreement.) — Anonymous, Montreal*

You must respect the business secrets of even a deadbeat. Confidentiality is not contingent on pay but is a component of honorable conduct — without which it would be tough to work with one another — and not only a contractual obligation but also an expression of ordinary virtue.

Those parts of your work that do not impinge on this tightwad's privacy are yours to recycle. Marketing plans, supply-chain management schemes, hors d'oeuvre ideas for a sales rep's retirement party — many of these are generally applicable and may be proffered to future clients.

The one person who may not use any of your work is the schnorrer himself. Similarly, if you had agreed to sell him your car and he refused to pay for it, he could not use it to drive to the mall to buy a lot of stuff he won't pay for.

16. *A colleague helped my wife and me find an apartment in a row house. A longstanding oral agreement gives him first refusal should the owner want to sell the building. Recently the owner offered to sell me the building, asking me not to tell my colleague. I think we must inform him — he got us the apartment. My wife disagrees; she says business is business. You? — M.D., New Jersey*

Business may be business, but it need not be business as practiced by Andrew Carnegie or Andrew Fastow or . . . is your wife named Andrew?

You should not repay your colleague's thoughtfulness by abetting this deception. Your candor does not guarantee your colleague the building. If the owner prefers to sell it to you, you need not decline out of loyalty to your colleague, but you must deal openly with him. One other thought: the owner may have a different view from your colleague's of what arrangement they made; such is the ambiguous nature of oral agreements, the fluid nature of memory.

17. *I am a 13-year-old boy. My school has a monthly pizza sale. Parents buy pies from a pizzeria and sell them to us for \$1 a slice. I bought a whole pie at the pizzeria and offered slices for \$2 to kids at the end of the long line. A school counselor stopped me. She said that I was unethical and was "taking advantage of people." I thought I was providing a service to people based on the principle that "time is money." Who is right? — Ben Gammage, San Diego*

Time may be money, but how much, really, for an eighth grader, who is not paid to attend school? And do we really want all our interactions based on the variable-pricing airline-seat model? Were pizza a necessity of life (as many teenagers regard it) and in short supply, you would have been guilty of profiteering, as your counselor charged. But there was plenty of pizza, so you didn't exploit anyone. And pizza does remain a luxury, so nobody was compelled to buy your pricier slices. (Were they? I assume there was no gunplay.) Thus your actions were not unethical, but they were poor social policy — if that's not too fancy a way to describe undermining a pizza party.

Your counselor's concern was valid, if poorly expressed. The dollar-a-slice deal made possible a schoolwide pizza party, affordable fun for everyone. Judging by the long line, it's something people enjoy.

You turned it into a two-tiered system — kids with money don't wait; kids without money do — shifting it from a we're-all-in-it-together event to something less communitarian (if more profitable).