

# ENGINEERING ETHICS

## *Accepting Gifts And Amenities*

*Department of Philosophy and Department of Mechanical Engineering*

*Texas A&M University*

*NSF Grant Number DIR-9012252*

## **Accepting Gifts And Amenities**

### **Instructor's Guide**

#### **Introduction To The Case**

One of the most challenging and interesting areas of moral reasoning involves deciding where to draw the line between permissible and impermissible actions. Even if we know that some actions are clearly right and others are clearly wrong, there may be gray areas where making decisions is difficult.

Deciding when to accept a gift or amenity illustrates this challenge. In this case, developed from the experiences of a chemical engineer, the students will be asked to decide where they would draw the line between morally permissible and impermissible acts and to justify their decisions. Students will be asked to decide, in other words, how they would distinguish the perfectly proper acceptance of a business favor from an improper acceptance of a bribe.

The topic of bribery has a long history, and bribery seems to be an area in which our moral views are changing. For this reason, a short history lesson may be instructive.

John T. Noonan, a lawyer and historian of moral ideas, traces the history of thought on bribery from 3000 B.C. to the present. He finds that moral concepts change: "Moral concepts found enshrined in traditions do not stay the same. They undergo transformation. They are subject to investigation and criticism. They expand, shrink, or disappear."<sup>1</sup>

This thesis can be illustrated by comparing the history of the concept of bribery with the history of other moral ideas. Until about the sixteenth century, it was considered wrong to take interest on money, and "usury" was a serious sin. It still is in Islamic countries, which have simply preserved the old prohibition. Due to a number of circumstances which we cannot discuss here, the prohibition of taking interest on money was lifted in the West. Today, the term "usury" is reserved for the extraction of excessive interest. Slavery and torture were widely accepted in Western society until the eighteenth century, and now both are condemned as heinous evils.

What is the trend with regard to the concept of bribery? Is the idea likely to remain vigorous and even expand its dominance, so that more and more types of behavior will be condemned as contrary to the anti-bribery ethic? Or is it likely to shrink and wither as a moral concept? Is bribery becoming increasingly tolerated (thus following the pattern of usury), or is it increasingly frowned upon and prohibited, as has been the case with slavery and torture? Noonan believes that the evidence shows that bribery is increasingly viewed with intolerance throughout the world. In fact, in virtually every country in the world bribery is a shameful act. Those who accept bribes do not speak publicly of their bribes anywhere. Noonan claims that only the Westerner supposes that a modern Asian or African society does not regard the act of bribery as shameful in the way Westerners regard it.<sup>2</sup>

There are good moral reasons for this increasing intolerance, especially as the capitalist system becomes more widely accepted:

1. Bribery corrupts the capitalist economic system. The capitalist system is based on competition in an open and free market, where people tend to buy the best product at the best price. Bribery corrupts the free-market mechanism by getting people to make purchases that do not reward the most efficient producer.
2. Bribery is a sellout to the rich. In any situation ruled only by money, the deeper pocket will prevail. If bribery were universally practiced, expert testimony, justice in the courts, and everything else would be up for sale to the highest bidder.
3. Bribery produces cynicism and a general distrust of institutions. It destroys people's trust in the integrity of professional services, of government and the courts, of law enforcement, religion, and anything it touches. There is good evidence that societies which allow bribery tend to have social unrest and perhaps revolutions.
4. Bribery treats people as commodities whose honor can be bought and sold. It thus tends to degrade the respect we owe to other human beings.

### **The Method of Casuistry**

Even if we agree that bribery is wrong, there is still a problem of determining what is and isn't a bribe and when an action is close enough to a bribe to be morally out of bounds. Where, in other words, do we draw the line?

One way of dealing with this question is through the method of casuistry. This method has a long history, going back to classical times, but it has recently been revived in medical ethics. It also has a background in common law. In common law a judge decides a case by comparing it with the way previous judges have decided similar cases in the past. Her reasoning involves citing analogies and disanalogies between past cases and the present one. If the analogies seem more important than the disanalogies, she decides the case in a way similar to the way the earlier judge decided the case. If the disanalogies seem to be more important than the analogies, she decides the case in a different way.

The method of casuistry is similar to the method used by the Board of Ethical Review of the National Society of Professional Engineers when they decide cases involving questions of ethical and professional propriety. Here the method of comparing controversial cases with previous decisions is also used.

How does this method work? In applying a moral principle, you will often find some circumstances in which it clearly applies, borderline cases in which the application is controversial, and other cases where it clearly does not apply. Let's call the cases where the principle clearly does or does not apply paradigm cases and the cases where its application is not clear problematic cases.

Let us consider an example. Most people would probably agree to a moral rule which could be stated in the following form: "People should not steal (or commit theft)." Breaking into a store at night and taking several thousand dollars worth of merchandise would be a clear violation of the rule. We could say the same thing of shoplifting, or "borrowing" a friend's car and failing to return it, or taking a bicycle that someone had forgotten to lock. By contrast, it would seem peculiar to say that picking up a quarter on the street is an instance of theft. The same would go for failing to return a sheet of paper or a paper clip someone had given to you. We probably would not say that an engineer-manager was guilty of theft because he used some management techniques that he had developed while working for his old employer.

Some situations, however, are more problematic. It is not always easy to determine whether a particular action

should count as "stealing" (or "theft"). What would we say about an engineer who helped to develop a new chemical process at Company A and then moved to Company B, where she used some of the same ideas, but applied them in a very different way to a different process? What would we say about an engineer who developed a computer program on company time for his company, and then patented a considerably improved version under his own name? What about borrowing a book from a friend, forgetting about it and then deciding not to return it because the friend has left town?

Examples such as this could be arranged in a series, beginning with clear examples of "stealing" (or "theft"), then moving into more problematic examples, and finally moving to examples which we would not consider to be instances of "stealing" (or "theft") at all. Such a series might look like this:

Moral rule: "People should not steal (or commit theft)."

1. Breaking into a store and taking \$3000 in merchandise.
2. "Borrowing" a friend's car and failing to return it.
3. Taking a bicycle that someone had forgotten to lock.
4. Developing a computer program on company time for your company, and then patenting a considerably improved version of the program under your own name.
5. Borrowing a book from a friend, keeping it by mistake for a long time and then failing to return it. (You discover the book after your friend has moved away, and you decide to keep it.)
6. Using some ideas you developed at Company A for a very different chemical process at Company B.
7. Using some management techniques at Company B that were developed at Company A.
8. Picking up a quarter that you saw someone drop on the street.
9. Failing to return a sheet of paper (or paper clip) you borrowed
10. Picking up a quarter that someone (you don't know who) has dropped on the street.

There would be virtually universal agreement that examples 1-3 are examples of theft. There would be virtually universal agreement that examples 9 and 10 are not examples of theft. There might be disagreement about examples 4 through 8. Probably most people would consider example 4 a type of theft. Example 5 is something many of us have done. We might say that the action is justified, because the expense and trouble to us of returning the book is probably greater than the value of the book to our friend. This might be especially true if we knew the book was old and out of date. We would probably resist the use of the word "theft" to describe our action. Examples 6 and 7 might be considered less clear examples of theft than example 8, except for the potentially large amount of money involved in these two examples.

One of the considerations that makes the determination of what is and is not theft so difficult is that there is no single criterion that can be used to decide the issue. The most obvious such criterion is the monetary value of the property in question. But this criterion will not always work. Snatching a dollar bill from an old lady is more clearly an example of theft than using an idea one developed at Company A for a very different application at Company B, even though the latter example involves vastly greater sums of money than the first. A variety of considerations are relevant, monetary value being only one.

Similar consideration can be applied to bribery. We all agree that accepting bribes is a violation of professional ethics, but we may not always find it easy to determine what is and is not a bribe. Certainly not all examples of accepting gifts and amenities qualify as accepting bribes, just as not all cases of taking another's property should be considered theft. Determining when a rule against taking bribes is being violated requires common sense, discrimination, and powers of moral deliberation. These kinds of abilities should be a part of one's professional

training.

## Application of the Method

Now let's consider the case from chemical engineering that will be presented to the students. We shall call this Case C-X.

C-X. Tom was named the department manager of a large new chemical process unit which was to be designed and then constructed. Tom's responsibilities included forming the process unit staff, looking over the designers' shoulders to assure the plant was designed to be safe, operable and maintainable, and then starting the plant up after construction.

During his previous experience Tom had noted that a new type of valve and valve operator could often be used in place of more common gate valves and their operators. In every case the new valve was less expensive and often gave a tighter shutoff than the gate valve. Tom convinced the project designer to add even more of these valves and operators to the design. This improved safety, because more flows could be shutoff more quickly in an emergency.

After a large number of valves had been specified and purchased, the salesman of the valves visited Tom and invited him on a very nice fishing trip to South America. Tom had not known the salesman, Jim, prior to the visit. He also had no direct purchasing responsibilities; he had just wanted the valves for increased safety in the new process unit. Should he accept the fishing trip?

The first thing to notice about this case is that it is not a paradigm case of bribery. In fact, it is not a case of bribery at all. We might define bribery as remuneration for the performance of an act that is inconsistent with the work contract or the nature of the work one has been hired to perform. Tom did not act contrary to his obligations to his employer, and in fact he acted in accordance with his obligations. Furthermore, the gift, was given after Tom's recommendations concerning the valves and (we shall assume) without any prior knowledge and expectation of the gift.

The following might qualify as a paradigm case of a bribe. We shall call it C-1.

C-1. Tom was in charge of designing a large new chemical process unit. He was directed to design the plant to be safe, operable and maintainable, and of course to be as economical as possible within these requirements.

During this period a salesman approached Tom and offered him a number of amenities if he would specify the valve sold by the salesman's company. The valve was more costly and not as safe, but Tom recommended it anyhow. After the valves were purchased, the salesman invited Tom on a very nice fishing trip to South America.

Even though the original case (C-X), unlike C-1, is not a bribe, it does involve accepting a large gift that has some analogies with a bribe. In order to see this, consider the following case, which has very few, if any, analogies with a true bribe. We shall call it C-10.

C-10. Tom was named the department manager of a large new chemical process unit which was to be designed and then constructed. Tom's responsibilities included forming the process unit staff, looking over the designers' shoulders to assure the plant was designed to be safe, operable and maintainable, and then starting the plant up after construction.

During his previous experience Tom had noted that a new type of valve and valve operator could often be used in place of more common gate valves and their operators. In every case the new valve was less expensive and often gave a tighter shutoff than the gate valve. Tom convinced the project designer to add even more of these valves and operators to the design. This improved safety, because more flows could be shutoff more quickly in an emergency.

After a large number of valves had been specified and purchased, the salesman came by and introduced himself, giving Tom a plastic pen worth about five dollars.

It is obvious that there is a continuum of cases here, all the way from C-1 which is a clear case of bribery to C-10 which is clearly not a case of bribery. Now the question is: What place in the continuum do we assign to C-X? Should we call it C-2, indicating that it is very close to C-1 so that it should probably be considered morally wrong? Or should it be labeled C-9, in which case it probably should not be considered morally wrong? Or should we give it some number in between?

In order to begin thinking about this question, consider some of the characteristics of C-1.

1. Tom had direct responsibility for specifying the valves.
2. The salesman approached Tom and made the offer before the valves were specified or purchased.
3. The valves specified were less safe and reliable and more expensive (or in some other way less desirable) than alternative valves.
4. There was in fact a causal relationship between the offer of the amenities and Tom's decision. In other words, Tom requested that Jim's valves be used because of Jim's offer.
5. Even though C-1 involves bribery, the company will probably benefit from an ongoing cordial relationship with suppliers of the valves which Tom purchased. For example, obtaining service will probably be easier. [We shall assume this to be the case.]
6. Tom rarely accepts amenities from suppliers with whom he does not do business. [We shall assume this.]
7. Knowledge of the gift may influence others to buy from Jim, even if Jim's product is not the best.
8. The gift was for a substantial amount of money.

Even if there had been no actual corruption, there was certainly the appearance of corruption. For example, consider IBM's test: "If you read about it in your local newspaper, would you wonder whether the gift just might have something to do with a business relationship?" By this test, there was the appearance of corruption. (In this case, of course, the appearance was not misleading.)

C-10, we shall assume, shares only characteristic #5 with C-1, but C-X shares characteristics 5 and 7-9 with C-1. We shall assume that in C-X Tom often accepts amenities from suppliers after a deal is completed, even if the supplier has not won the sale. Furthermore, even though Tom did not share direct responsibility for purchasing or specifying the valves sold by Jim, he did have an influence on which valves were specified and purchased. So C-X also shares some aspects of characteristic #1 with C-1.

How would you evaluate Tom's action in C-X? Do you think it crosses the line between morally acceptable and morally unacceptable conduct? We shall give several arguments on both sides and then leave it to you to come to a final decision. But before giving these arguments, one observation may be helpful.

There are going to be cases that are unclear in terms of their moral permissibility. Although there are clear cases at either end of the spectrum and even some near the middle that can be decided with reasonable conviction,

there are some cases that are so ambiguous that they must be decided arbitrarily. This is true in the law, and it is also true in morality.

To use a common analogy, there is dusk or twilight as well as daytime and night. If there is any specific point in time where night becomes day or day becomes night, it must be set arbitrarily. This does not mean that there is no difference between day and night, however. It does not even mean that some of the areas of transition are unclear. Most of us would probably say sunrise is more like day than night. Late dusk is probably more like night than day. But what about late evening? Better still, precisely when does day become night? We could set a time. We could say that it is when we have to turn on our car lights when driving, for example. But for other purposes, a different time might be more appropriate. So the moment of transition is not only arbitrary, but it may be arbitrarily set at different times for different purposes.

Now there are a number of cases which we could probably agree on in terms of their location in the continuum. For example, if the offer of the trip had been made before Tom made his recommendation, we would probably agree that Tom should not have accepted the offer. We might want to call this C-2. Let us suppose that Tom still recommended Jim's valves because he genuinely believed they were the best, so that Jim's offer of a trip to South America was not the cause (or at least not a necessary precondition) of Tom's recommendation. In this case, Jim's offer clearly was a bribe, but Tom did not make his decision because of the bribe. Nevertheless, Tom probably should not accept the offer.

Now let's consider some of the arguments, beginning with arguments that C-X should be considered morally impermissible.

Arguments For And Against Tom's Action

### *Arguments Against Tom's Action of Accepting the Invitation*

1. We have pointed out that the tendency in Western morality--and probably morality throughout the world--is to increase the restrictions on bribery. This implies that the restrictions on actions closely related to bribery would also be increased. The corporate codes cited in the student handout give evidence of the increasing restrictions, and by most of these standards Tom's actions would probably be out of bounds.
2. The size of the gift is morally troubling.
3. Knowledge of the gift could influence others to buy from Jim, even if Jim's products are not the most appropriate for them. This might operate as a kind of bribe-ahead-of-time for other people in Tom's plant or in other plants, even if Tom had no idea he would be offered a trip. They might say, "If we buy from Jim, we can expect a nice gift."
4. In morality, one of the important questions to ask is whether you would be willing for others to do the same thing you did. If every salesman offered gifts to people who bought--or recommended the purchase of--his products, and every purchaser accepted the gifts, the practice would of course become universal. Our first reaction is to say this would neutralize the influence of the gifts. You could expect a bribe from somebody, no matter whose product you recommended. Thus Tom might have been offered a nice trip to South America by whatever valve salesman made the sale. But this begins to look like extortion if not bribery: a salesman has to offer something to even have his product considered. Furthermore, smaller companies might not be able to offer the lavish gifts and so might not have their products considered. This would harm the competitive process. Furthermore, the gifts would probably tend to get larger and larger, as each salesman tried to top the other one. Thus, the general acceptance of the practice would have undesirable consequences.

## ***Arguments In Favor of Tom's Action of Accepting the Invitation***

1. We have already pointed out that Tom's action cannot be an example of accepting a bribe in the true sense of the term. In order to be a true bribe taker, Tom would have had to make his decision because of Jim's offer. Since the trip was offered after Tom's decision and Tom did not know about the trip ahead of time, the trip could not be a bribe in the true sense.
2. Tom's company may stand to benefit from the personal relationship between Tom and Jim. It may make it easier to get replacement parts for the valves and to get other types of service from Jim's company.
3. Business life should have its "perks." Business and professional life involves a lot of hard work. Fishing trips and similar amenities add spice to life that is important in terms of job satisfaction and productivity.
4. Accepting the kinds of gifts that Tom took advantage of is quite common in Tom's industry. It adds very little to the cost of the product. Any industry large enough to manufacture the valves in the first place would be able to afford such gifts as this without financial strain.
5. It is true that, in taking the moral point of view, we must assume that everybody has a right to do what we do. But if every salesman offered trips and every person in Tom's position accepted them, no harm would result. Things would equalize. There might be a kind of "extortion" here, but this is just a word. You have to ask what harm is done.

Note that each side has legitimate reasons for the decision made. Your responsibility will be to lead a discussion that will enable students to think responsibly about an issue that they will almost certainly encounter as soon as they begin their professional careers.

Essays #1 through #4 appended at the end of the case listings will have relevant background information for the instructor preparing to lead classroom discussions. Their titles are, respectively: "Ethics and Professionalism in Engineering: Why the Interest in Engineering Ethics?;" "Basic Concepts and Methods in Ethics;" "Moral Concepts and Theories;" and "Engineering Design: Literature on Social Responsibility Versus Legal Liability." Also, much of the discussion in the ASME vs. Hydrolevel case will be found relevant to this case as well.

### **Recommended Overheads For Use In Classroom Discussion**

The enclosed overheads form a series in which each overhead depicts a slightly different type of gift-giving case. As with the example of borrowing money discussed earlier, the students will need to find means of distinguishing acceptable from unacceptable gifts.

### **Notes**

1. Noonan, John T., Jr., **Brides**, New York: Macmillan, 1984, p. 683.
2. Noonan, p. 703.

### **Accepting Gifts And Amenities**

#### **Overheads**

1. First Installment of the Case
2. First Scenario
3. Second Scenario
4. Third Scenario

5. Fourth Scenario
6. Fifth Scenario
7. Sixth Scenario
8. Seventh Scenario
9. Second Installment

### FIRST INSTALLMENT OF THE CASE

TOM WAS NAMED THE DEPARTMENT MANAGER OF A LARGE NEW CHEMICAL PROCESS UNIT WHICH WAS TO BE DESIGNED AND THEN CONSTRUCTED. TOM'S RESPONSIBILITIES WERE TO FORM THE PROCESS UNIT STAFF, LOOK OVER THE DESIGNER'S SHOULDERS TO ASSURE THE PLANT WAS DESIGNED TO BE SAFE, OPERABLE, AND MAINTAINABLE, AND THEN START UP THE PLANT AFTER CONSTRUCTION.

DURING HIS PREVIOUS EXPERIENCE, TOM HAD NOTICED THAT A NEW TYPE OF VALVE AND VALVE OPERATOR COULD OFTEN BE USED IN PLACE OF MORE COMMON GATE VALVES AND THEIR OPERATORS. IN EVERY CASE THE NEW VALVE WAS LESS EXPENSIVE AND OFTEN GAVE A TIGHTER SHUTOFF THAN THE GATE VALVE. TOM CONVINCED THE PROJECT DESIGNER TO ADD EVEN MORE OF THESE VALVES AND OPERATORS TO THE DESIGN. THE RESULT WAS AN IMPROVEMENT IN SAFETY, BECAUSE MORE FLOWS COULD BE SHUT OFF MORE QUICKLY IN AN EMERGENCY.

### FIRST SCENARIO

AFTER A LARGE NUMBER OF VALVES HAVE BEEN SPECIFIED AND PURCHASED, THE SALESMAN FOR THE VALVES (JIM) VISITS TOM AND GIVES HIM A PLASTIC PEN WITH THE NAME OF JIM'S COMPANY STAMPED IN GOLD. THE PEN IS WORTH ABOUT \$5.

SHOULD TOM ACCEPT THE PEN?

### SECOND SCENARIO

AFTER A LARGE NUMBER OF VALVES HAD BEEN SPECIFIED AND PURCHASED, JIM INVITES TOM TO PLAY GOLF WITH HIM AT THE LOCAL COUNTRY CLUB. TOM IS AN AVID GOLFER AND HAS WANTED TO PLAY GOLF AT THE COUNTRY CLUB FOR SOME TIME SINCE IT IS THE BEST COURSE IN TOWN.

SHOULD TOM ACCEPT THE INVITATION?

### THIRD SCENARIO

AFTER A LARGE NUMBER OF VALVES HAVE BEEN SPECIFIED AND PURCHASED, JIM OFFERS TO SPONSOR TOM FOR MEMBERSHIP IN THE LOCAL COUNTRY CLUB.

TOM IS AN AVID GOLFER AND HAS WANTED TO BE A MEMBER OF THE CLUB FOR SOME TIME, BUT HAS NOT FOUND A SPONSOR.

SHOULD TOM ACCEPT JIM'S OFFER?

#### FOURTH SCENARIO

AFTER A LARGE NUMBER OF VALVES HAVE BEEN SPECIFIED AND PURCHASED, JIM INVITES TOM TO A SEMINAR ON VALVES TO BE HELD IN SOUTH AMERICA. THERE WILL ALSO BE OPPORTUNITIES FOR FISHING AND RECREATION. TOM'S COMPANY WOULD HAVE TO PAY FOR TRANSPORTATION, BUT JIM'S COMPANY WILL COVER ALL THE EXPENSES IN SOUTH AMERICA. TOM IS SURE HIS MANAGER WILL AUTHORIZE THE TRIP IF ASKED, BUT OTHER MANAGERS IN THE FIRM, WHEN PLACED IN AN EQUIVALENT SITUATION, FEEL UNEASY ABOUT THESE TYPES OF OFFERS.

SHOULD TOM ASK HIS MANAGER FOR THE AUTHORIZATION TO TAKE THIS TRIP?

#### FIFTH SCENARIO

AFTER A LARGE NUMBER OF VALVES HAVE BEEN SPECIFIED AND PURCHASED, JIM INVITES TOM ON A VERY NICE FISHING TRIP TO SOUTH AMERICA. JIM'S COMPANY WILL COVER ALL THE EXPENSES. TOM IS SURE HIS MANAGER WILL AUTHORIZE THE TRIP IF ASKED, BUT OTHER MANAGERS IN THE FIRM, WHEN PLACED IN AN EQUIVALENT SITUATION, FEEL UNEASY ABOUT THESE TYPES OF OFFERS.

SHOULD TOM ASK HIS MANAGER FOR AUTHORIZATION TO TAKE THE TRIP?

#### SIXTH SCENARIO

BEFORE TOM'S DECISION TO RECOMMEND ANY TYPE OF VALVE, JIM VISITS AND OFFERS TOM A VERY NICE FISHING TRIP TO SOUTH AMERICA IF TOM WILL RECOMMEND JIM'S COMPANY'S VALVES. JIM'S VALVES ARE THE SAFEST AND LEAST EXPENSIVE.

WHAT SHOULD TOM DO?

#### SEVENTH SCENARIO

BEFORE TOM'S DECISION TO RECOMMEND ANY TYPE OF VALVE, JIM VISITS TOM AND OFFERS HIM A VERY NICE FISHING TRIP TO SOUTH AMERICA, IF TOM WILL RECOMMEND THE VALVE PRODUCED BY JIM'S COMPANY. JIM'S VALVES ARE LESS SAFE AND MORE EXPENSIVE THAN OTHER TYPES OF VALVES.

WHAT SHOULD TOM DO?

#### SECOND INSTALLMENT

AFTER THE PLANT IS CONSTRUCTED, TOM AND JIM BECOME VERY GOOD FRIENDS AND SOCIALIZE ON MANY OCCASIONS. THEY AND THEIR WIVES VISIT EACH OTHER IN THEIR HOMES AND IN THEIR LAKE HOUSES. THEY ALSO GO FISHING ON EACH OTHER'S BOATS. EVEN AFTER TOM LEAVES THE ORIGINAL PLANT, HE REMAINS GOOD FRIENDS WITH JIM.

TOM IS THEN INVITED TO FLY IN JIM'S PLANE TO MEXICO FOR A WHITE WING DOVE HUNT. TOM NEVER DID ANYTHING TO HELP JIM AND HIS COMPANY, OTHER THAN HIS INITIAL

## RECOMMENDATION OF THE VALVES.

### SHOULD TOM ACCEPT THE INVITATION?

#### **Accepting Gifts And Amenities**

##### **Student Handout**

**June, 1992**

*Department of Philosophy*

*Department of Mechanical Engineering*

*Texas A&M University*

*NSF Grant Number DIR-9012252*

As engineers, you can expect to be given responsibilities that exceed those of non-professionals. This reflects the respect which your professional knowledge commands in the workplace. It also means that your favor will be courted by vendors and others who can benefit from your good will.

This good will is often sought by means of gifts and amenities of various sorts. For, while you have been studying engineering, those who study marketing have been learning how to increase sales and curry the good will of those who make purchasing decisions.

Sometimes accepting these gifts and amenities may be a proper part of a business relationship. In some situations, however, accepting them may be a serious breach of business and professional ethics, and perhaps even a violation of the law. Drawing the line between proper and improper acceptance of gifts and amenities may be the first issue in professional ethics that you will face.

The issue of gift giving is troublesome because the line between the legitimate acceptance of a gift or amenity and taking a bribe is often not easy to draw. It is for this reason that many companies and governmental agencies have come up with rules to guide employees in the treacherous terrain of accepting gifts and amenities.

For example, this is a partial list of gifts which a large electronics firm considers it improper for engineers to accept:

- door prizes at a conference;
- raffle prize by a supplier or distributor;
- any gift of excessive value (supervisor must be notified);
- fare lower than commercially available;
- cash rebates;
- tickets to sporting events or other entertainment given as an outright gift where the supplier does not intend to accompany the employee;
- sports team sponsorship by supplier;
- extravagant dinner or entertainment; and
- any gift, favor, hospitality or entertainment that could in any way create a feeling of obligation or could compromise professional judgement. 1

The mere fact that a corporation makes the effort to construct such a list indicates the importance that it ascribes to proper conduct in this area.

The codes of many large corporations also furnish policies for accepting favors. Here are a few examples:

It is a serious violation of our Standards for anyone to seek a competitive advantage through the use of gifts, gratuities, entertainment or other favors. Under no circumstances may we offer or give anything to a customer or a customer's representative in an effort to influence a contract award or other favorable customer action. It has been and will continue to be General Dynamics policy to compete solely on the merits of its products and services. [General Dynamics standards of conduct]

Staff members and their families may not solicit or accept any gifts of significant value, lavish entertainment or other valuable benefits intended to influence Chase's business. Staff members may not solicit or accept personal fees, commissions or other forms of remuneration because of any transactions or business involving Chase. [Chase Manhattan Corp.]

Employees will give no gifts to customers except items of nominal value which fit the legal, normal, and customary pattern of the Corporation's sales efforts for a particular market. [R. J. Reynolds Industries]

With the exception of reasonable business entertainment and other activities permitted in accordance with the following paragraph, no employee of the Company shall give or transfer anything of value to or for the benefit, directly or indirectly, of the employee or agent of another person, including any customer, union representative or supplier....Reasonable business entertainment would cover, for example, a lunch, dinner, or occasional athletic or cultural event; gifts of nominal value (\$25 or less); entertainment at Pleasantdale Farm or other Company facilities; or authorized transportation in Company vehicles or aircraft. In addition, reasonable business entertainment covers traditional Company-sponsored promotional events. [Allied Chemical Corp.]

No IBM employee, or any member of his or her immediate family, can accept gratuities or gifts of money from a supplier, customer or anyone in a business relationship. Nor can they accept a gift or consideration that could be perceived as having been offered because of the business relationship. "Perceived" simply means this: If you read about it in your local newspaper, would you wonder whether the gift just might have something to do with a business relationship? No IBM employee can give money or a gift of significant value to a supplier if it could reasonably be viewed as being done to gain a business advantage. If you are offered money or a gift of some value by a supplier or if one arrives at your home or office, let your manager know about it immediately. If the gift is perishable, your manager will arrange to donate it to a local charitable organization. Otherwise, it should be returned to the supplier. Whatever the circumstances, you or your manager should write the supplier a letter, explaining IBM's guidelines on the subject of gifts and gratuities. Of course, it is an accepted practice to talk business over a meal. So it is perfectly all right to occasionally allow a supplier or customer to pick up the check. Similarly, it frequently is necessary for a supplier, including IBM, to provide education and executive briefings for customers. It's all right to accept or provide some services in connection with this kind of activity--services such as transportation, food or lodging. For instance, transportation in IBM or supplier planes to and from company locations, and lodging and food at company facilities are all right. [IBM]

It is TI policy that TIers may not give or accept any gift that might appear to improperly influence a business relationship or decision. If we receive any substantial gift or favor, it must be returned and our supervisor notified. This policy does not apply to items of small value commonly exchanged in business relationships, but even here, discretion and common sense should be our guide. In commercial business, the exchange of social amenities between suppliers, customers and TIers is acceptable when reasonably based on a clear business purpose and within the bounds of good taste. Excessive entertainment of any sort is not acceptable. Conferences accompanied by a meal with suppliers or customers are often necessary and desirable. Whenever appropriate,

these meals should be on a reciprocal basis. [Texas Instruments]

In spite of the attempts of many companies to provide rules in this area, you will find that there are many situations which are not covered by the rules. The set of cases presented in class illustrates the transition from a case of accepting a favor that almost anyone would find permissible to a case of accepting a favor that almost anyone would find impermissible. In between are cases which will provoke more thought and discussion. In considering these cases, ask yourself what principles you use to differentiate the permissible from the impermissible cases of accepting favors. Notice that there is not a single principle (such as the monetary value of the gift) that will provide the basis of an acceptable answer in every case. Try using some of the guidelines suggested in the various corporate policy statements presented above. Ask yourself which guidelines seem most workable and fair.

In leading the discussion, your instructor will be guided in part by some insights gained through the use of a method of analyzing moral cases which has a history traceable to the Romans. This method goes by the name of "casuistry". By using series of cases from the clearly acceptable to the clearly unacceptable, casuistry invites us to isolate the similarities between permissible and impermissible actions. The method does not, however, give automatic answers to difficult cases, so it is important to keep in mind that sometimes drawing the line between proper and improper acceptance of gifts and amenities has an element of arbitrariness. This is the reason that it is helpful to have corporate guidelines, such as the ones provided earlier.

Don't let the fact that some decisions are arbitrary obscure the fact that some cases of accepting favors are clearly permissible and others are clearly impermissible. There is a clear difference between night and day, even though there may not be any non-arbitrary way to determine the precise point at which night turns into day. But don't conclude that a decision on accepting a gift is arbitrary until you have examined all of the similarities and differences between the case in question and the more clear-cut cases.

### **Annotated Bibliography**

Carson, Thomas L., "Bribery and Implicit Arguments", **Journal of Business Ethics**, Vol. 6, pp. 123-125, pp. 361-364.

A philosophical discussion of the moral status of bribes and bribery.

Christiansen, Donald, "Spectral Lines: Ethical Judgments", **IEEE Spectrum**, 26:2, Feb. 1989, p. 25.

Christiansen, Donald, "Spectral Lines: Ethical Dilemmas Revisited", **IEEE Spectrum**, 26:4, April 1989, p 21.

A series of gift-giving cases which asked the readers of *IEEE Spectrum* to reply with their solutions. An interesting interplay between professional engineers.

"Cornerstone 1: Understanding Ethics in the Business of TI," Dallas, Texas: Texas Instruments Ethics Office, n.d.

"Cornerstone 2: Gifts, Travel, Entertainment...and TI Ethics," Dallas, Texas: Texas Instruments Ethics Office, 1989.

Both of the previous references are taken from pamphlets given to every TI employee. They serve as quick references on ethical issues. These two deal with the employee/vendor relationship.

"Ethics in the Business of TI," Dallas, Texas: Texas Instruments Publishers, 1990 rev.

The TI employee manual describing the corporate ethical policies.

"Forum: Letters to the Editor: Getting Down to Cases," **IEEE Spectrum**, 26:5, May 1989, p. 10.

A series of gift-giving cases which were made up by the editors. The editors then asked for feedback from their readers on what they would do in the given situations.

Jonsen, Albert R. and Toulmin, Stephen, **The Abuse of Casuistry**, Berkeley: University of California Press,

1988.

A philosophical study of the method of casuistry.

Longnecker, Justin C., "The Ethical Issues of International Bribery," **Journal of Business Ethics**, Vol. 7, 1988, pp. 341-346.

Argues that the maxim, "Do as the Romans do," is not a good guide in the area of international bribery.

Noonan, John T., Jr., **Bribes**, New York: MacMillan, 1984.

A masterly historical survey of bribery.

Skooglund, Carl, "Unacceptable Gifts and Favors," **News.Archives**, a TI online system, Dallas, Texas: Oct. 16, 1989.

The Texas Instruments corporate ethicist discusses TI policy regarding gift-giving.