

Models for Ethical Decision Making

Objectives

By the end of this part, the reader will be able to:

- 1 list several reasons why ethical decision making should be studied
2. define the difference between ethics and the law
- 3 describe the six stages of moral reasoning
- 4 provide examples of the reasoning employed at each stage of moral reasoning
- 5 contrast ethical temptations with ethical dilemmas
- 6 compare various business models of ethical decision making
- 7 apply appropriate models of ethical decision making

Key Terms

ethical dilemma

moral development theory

social contract

universal ethical principles **10 Reasons Why We Need to Study Ethical Decision Making**

Even though ethical dilemmas and temptations abound, it is difficult for adults to find meaningful training on the subject of ethics. In many training programs, discussions of ethical dilemmas are marginalized at best, or at worst, sacrificed to the demands of limited class time. Nevertheless, ethical decision-making skills are critical to the long-term success of real estate professionals for a variety of reasons.

Reason # 1. The public demands higher ethical conduct from business professionals. Leading television stories indicate that the public is outraged by personal, government, and business scandals and by inappropriate and notorious conduct of individuals who are in positions of leadership.

Reason # 2. Legislatures continue to coerce practitioners to virtue by enacting statutes, rules, and regulations. When a profession does not guard its own reputation and acts in such a way to harm the public, lawmakers often respond by creating new laws. Typically, these laws deal with disclosure issues and consumers' rights.

For example, in the United States, the Consumer Financial Protection Bureau (CFPB) was created in 2010 as a legislative response to the financial crisis of 2007-2008 and the ensuing recession. The CFPB is an agency of the United States government responsible for consumer protection in the financial sector. Its jurisdiction includes banks, credit unions, securities firms, payday lenders, mortgage-servicing operations, foreclosure relief services, debt collectors and other financial companies operating in the United States.

Reason # 3. Courses on ethics are becoming a mandatory part of training, professional preparation, and university curricula. Many college students take ethics courses as part of their required undergraduate curriculum experience. Approximately 75% of all graduate business students in the U.S. are required to take a course in business ethics. While students may not be required to take a stand-alone course on ethics, many undergraduate and graduate programs tout an emphasis on the development of "social, ethical, and environmental stewardship" in their curricula. The National Association of Realtors®, (NAR) the largest trade association in the U.S. recently

changed its membership renewal requirement so that its members must take a Code of Ethics training course every two years instead of every four.

Though students or professionals who participate in courses on ethics or ethical decision-making do not necessarily become more ethical, mandatory participation in ethics courses sends a powerful message that ethics is important to the profession. Moreover, research studies indicate that participation in those courses may, depending on their format, enhance ethical decision-making skills, and, at the very least, orient students and professionals to the best practices of the profession.

Reason # 4. Complaints and lawsuits against professionals continue to take up limited resources of professional associations and state regulatory agencies. In the U.S. alone, more than 25,000 complaints are filed with real estate licensing authorities yearly.

Reason # 5. There is a clear and urgent need. A survey by the Josephson Institute of Ethics, an organization that studies ethics, revealed that cheating and lying among U.S. high school and college students is a significant issue, though in its most recent study, it appears that some of these behaviors are on the decline. Some of these young people will enter the real estate professional or the financial industry as ethical illiterates. They will look to their professional organizations, teachers, colleagues and supervisors for guidance in making ethically sound business decisions. See Figure 1 below.

Figure 1. Cheating, lying, and stealing among high school students.

CHEATING: In 2010, 59 percent of students admitted they had cheated on an exam in the past year; in 2012 that rate dropped to 51 percent. Students who copied an Internet document for a classroom assignment dropped 2 percent, from 34 percent in 2010 to 32 percent this year.

LYING: Students who said they lied to a teacher in the past year about something significant dropped from 61 percent in 2010 to 55 percent in 2012. Those who lied to their parents about something significant also dropped from 80 percent to 76 percent. In 2012, 38 percent of the students said they sometimes lie to save money; that is a drop of 3 percent from 2010.

STEALING: In 2010, 27 percent of the students said they had stolen something from a store in the past year. In 2012 that number dropped to 20 percent. In 2010, 17 percent said they stole something from a friend in the past year compared to 14 percent in 2012. The percentage who said they stole something from a parent or other relative in the past year also decreased (from 21 to 18 percent).¹

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Reason #6. The role of ethics training for adults becomes more important as other centers of moral influence change or diminish. For example, prior to the 1960s, it was common for schools, places of worship, and media to inculcate values. Schools promoted citizenship and patriotism. Television programs provided moral instruction. Today, in addition to facing enormous financial constraints, many schools cannot meet all of the needs of an increasingly diverse student body. Teachers often do not have the time to discuss ethics or values, and in some cases, the instructional challenge is "*Whose values shall we teach?*"

In some countries, government, business, and religious leaders are revered as icons of ethical behavior and traditional sources of ethical guidance. But many of those leaders have been a disappointment in recent years, particularly as social media has made its users more aware of human failings.

¹ Since 1992, the Josephson Institute of Ethics has issued a biennial report on the ethics of American high school students. It is the largest study of its kind to look at student attitudes and behavior, an important predictor of how they will act as adults. More than 23,000 students across the U.S. participated in the 2012 survey. <https://charactercounts.org/national-report-card/2012-report-card/>

Reason #7. Some would argue that ethics cannot be taught because of the diverse opinion regarding what is ethical. Others would argue that it is precisely that reason why ethics should be taught: to reach consensus about approaching ethical decision making. In spite of the diversity of opinion over topics, it is possible to share basic values such as honesty, justice, caring, and a respect for others. Even in a global society or a culturally diverse country, we can seek and find a common ground in determining ethical behavior and steps to moral judgments.

A *Harvard Business Journal* contributor writes that it is possible to seek common ground based on these guiding principles:

- Respect for core human values, which determine the absolute moral threshold for all business activities.
- Respect for local traditions.
- The belief that context matters when deciding what is right and what is wrong.²

Reason # 8. Unethical practitioners cost their firms in reputation and fines. Unless organizations and companies provide effective, comprehensive ethics programs for its employees, stiff penalties and heavy fines will be imposed when employees violate laws and regulations.

Textbox.....

Forbes magazine wrote that in 2010, Toyota, the Japanese automaker “expected its global recall related to faulty accelerator pedals — and the sales and production suspension that resulted — to cost about \$2 billion or 180 billion yen. Analysts indicate the cost at about \$1.1 billion but pointed to *future brand damage* [emphasis added] as an additional price. Toyota estimates that lost sales from the accelerator recall will reduce earnings by 70 billion to 80 billion yen and an additional 100 billion yen to fix the faulty gas pedals and floor mats.”³

The good news is that *ethical behavior pays*. The *Wall Street Journal* reported that consumers are willing to pay more for ethical products; for example, the article reports that consumers will pay 65% more for coffee that is ethically produced than for coffee that is unethically produced.⁴

A Morgan Stanley Dean Witter study indicated that S&P 500 companies with sound environmental practices out-performed the S&P 5000 by nearly 2%. Assets involved in social investing, through screening of retail and institutional funds, shareholder advocacy, and community investing, grew 40% faster than all professionally managed investment assets in the U.S. Investment portfolios involved in socially responsible investments grew by more than 240% over an eight-year period, compared with the 174% growth of the overall universe of assets under professional management over the same time period. Another study indicate that 75% of consumers avoid or refuse to buy from certain businesses. The first reason was poor service, but the second reason was the company's business practices.⁵

Reason # 9. New technologies and other developments will create a more competitive--and perhaps cutthroat--marketplace. If professionals do not have coping strategies to deal with unethical conduct or are unable to demonstrate ethical behavior, a great deal of time and money will be spent dealing with misconduct and litigation rather than helping clients and consumers.

² <https://hbr.org/1996/09/values-in-tension-ethics-away-from-home>

³ <http://www.forbes.com/2010/02/04/toyota-earnings-recall-markets-equities-prius.html>

⁴ <http://www.wsj.com/articles/SB121018735490274425>

⁵ Social Investment Forum. (2003). 2003 Report on socially responsible investing trends in the United States (2003). Washington, D.C.C: author. Retrieved from [http:// www.socialinvest.org/areas/research/trends/SRI_Trends_Report_2003.pdf](http://www.socialinvest.org/areas/research/trends/SRI_Trends_Report_2003.pdf)

Reason #10. While it is important that students know what is required to earn a living, it is equally important that they address problems that they will face in the practice of their profession. Today's adults need help in answering questions such as "How shall I conduct my business?"

While learning ethical decision-making skills is intellectually rigorous, it is certainly worth the effort. Financial services practitioners need to acquire mature decision-making skills and habits so that they are prepared to deal with the problems they encounter. Even experienced professionals need an opportunity to discuss the ethical temptations and dilemmas they face.

The Difference between Ethics and Law

Businessman Michael Josephson wrote: "An ethical people and companies often do more than they are required to do and less than they are allowed to do. The law tell us what we can't do (i.e., prohibitions) and, sometimes what we must do (i.e., mandates); it does not answer the bigger question what should we do."⁶ In other words, laws will typically tell us what the minimum acceptable behavior is in any given situation whereas ethics requires us to do more. As an illustration, a law may tell us "Littering is prohibited. \$200 fine." The law emphasizes punishment if one does not comply. But ethics requires us not only to avoid littering, but to keep out environment clean because it is the right thing to do. When people fail do to the ethical thing, they are not always punished, fined, or penalized (although there can be serious professional consequences to being unethical.)

Is it possible to do what is legal but at the same time to be unethical? Certainly. It may be legal for an employer to discuss an employee with other employees. But it is unethical. It may be legal to market credit cards to teenagers who may not have the ability to repay debt or even understand the repayment obligations they have. But it is unethical to do so.

Is it possible to be ethical and do the right thing but that right thing be illegal? Again, yes. It may be the right thing to give a gift to a client as a thank you for business. But in some circumstances, that gift may be perceived as unlawful. In some cultures and countries, it is ethical for medical professionals to provide assistance who wish to end their lives, but in most jurisdictions, assistance would be viewed as illegal.

It is also possible to what is right *and* legal. Any organization or individual concerned with its reputation must consider laws, rules, and regulations. But they must also concern themselves with building trust. This can be challenging to do when an industry has a poor reputation.

✦ For 30 years, Gallup pollsters have surveyed the American public's perception of honesty and integrity among professions. Historically, real estate practitioners rank in the bottom half of the poll, slightly ahead of labor union leaders and behind attorneys.⁷ (See Figure 2.) A minority of poll respondents indicate that real estate agents have high or very ethics.⁸ (See Figure 3.) Perhaps more discouraging, Realtors® sometimes view their colleagues as unethical.⁹ Are these perceptions accurate? Are real estate practitioners less ethical than other professionals?

Figure 2.

⁶ <http://josephsononbusinessethics.com/2013/09/difference-between-what-legal-ethical/>

⁷ The most recent appearance of real estate agents on the Gallup Poll was in 2015: <http://www.gallup.com/poll/1654/honesty-ethics-professions.aspx>

⁸ <http://www.gallup.com/poll/1654/honesty-ethics-professions.aspx>

⁹ "How Ethical is the Net Guy?" REALTOR® Today, March, 1996, p. 11.

Gallup's 2015 Honesty and Ethics of Professions Ratings

Please tell me how you would rate the honesty and ethical standards of people in these different fields -- very high, high, average, low or very low?

Sorted by very high/high

	Very high/ High	Average	Low/ Very low
	%	%	%
Nurses	85	13	1
Pharmacists	68	27	5
Medical doctors	67	27	5
High school teachers	60	29	9
Police officers	56	29	14
Clergy	45	39	11
Funeral directors	44	41	9
Accountants	39	51	7
Journalists	27	42	30
Bankers	25	49	24
Building contractors	25	55	17
Lawyers	21	44	34
Real estate agents	20	53	25
Labor union leaders	18	41	36
Business executives	17	47	32
Stockbrokers	13	42	39
Advertising practitioners	10	46	39
Car salespeople	8	41	49
Members of Congress	8	27	64
Telemarketers	8	34	56
Lobbyists	7	27	60

Dec. 2-6, 2015

GALLUP®

Figure 3. The perception of honesty and ethical standards of real estate agents

	Very High	High	Average	Low	Very Low	No opinion	Very High/High
	%	%	%	%	%	%	%
2015 Dec 2-6	2	18	53	20	5	2	20
2011 Nov 28-Dec 1	3	17	57	18	4	1	20
2008 Nov 7-9	3	14	57	21	4	2	17
2005 Nov 17-20	2	18	58	16	4	2	20
2002 Nov 22-24	2	17	57	19	3	2	19
2000 Nov 13-15	2	15	58	19	4	2	17

	Very High	High	Average	Low	Very Low	No opinion	Very High/High
	%	%	%	%	%	%	%
1999 Nov 4-7	1	13	58	23	3	2	14
1998 Oct 23-25	3	13	60	17	5	2	16
1997 Nov 6-9	3	13	56	20	3	4	16
1996 Dec 9-11	2	14	56	20	5	4	16
1995 Oct 19-22	2	13	56	21	5	3	15
1994 Sep 23-25	1	13	57	23	4	2	14
1993 July 19-21	1	14	57	21	4	3	15
1992 Jun 26-July 1	2	12	55	22	4	5	14
1991 May 16-19	2	15	54	18	4	7	17
1990 Feb 8-11	2	14	54	21	4	5	16
1988 Sep 23-26	3	10	47	27	7	6	13
1985 July 12-15	3	12	49	25	6	6	15
1983 May 20-23	2	11	52	21	7	7	13
1981 July 24-27	3	11	48	22	8	8	14
1977 July 22-25	2	13	51	24	7	3	15

A study of Florida real estate salespeople and brokers revealed that relative to other professional groups, real estate professionals did not use the same level of principled reasoning and could be described as ethically immature in terms of their reasoning skills. The researcher also determined that practitioners with more sales experience and who earned more income scored lower in ethical maturity than less experienced or productive practitioners.¹⁰

Independent studies have confirmed the results of the Florida study. For example, a University of Northern Iowa (UNI) study indicates that the higher the practitioner's income level, the more likely the agent will bend the rules to close a transaction.¹¹ In another UNI study, the researcher determined that the more experienced agents and the higher their income, the less inclined they were to disclose property defects.¹² In a review of sanctions against Florida licensees, a researcher determined that most infractions were committed by brokers rather than by salespeople. Furthermore, committing infractions was not a function of inexperience: the more experienced licensees committed a disproportionately high percentage of infractions.¹³ In addition to this distressing research evidence, there is also a significant number of complaints and lawsuits filed against real estate practitioners, mainly on the issue of disclosure practices. (See Chapter 2).

¹⁰ Deborah H. Long. "Are Real Estate Agents Really Unethical?" REEAction. September/ October 1994, pp. 4-5.

¹¹ A. Ason Okoruwa and A. Frank Thompson. A Summary of An Empirical Analysis of Real Estate Brokerage Ethics. Dept. of Finance, University of Northern Iowa, Cedar Falls, IA.

¹² A. Ason Okoruwa. A Summary of Real Estate Agent Disclosure of Property Defects, Dept. of Finance, University of Northern Iowa, Cedar Falls, IA.

¹³ T. Stacy Sirmans. Summary of Licensing Requirements, Enforcement Effort and Complaints Against (Florida) Real Estate Licensees. Education and Research Foundation of the Florida Real Estate Commission, June, 1994.

There are a number of possible explanations for the misconduct and immaturity of real estate practitioners. Researchers advise that ethical maturity rises in relationship to formal education. However, the majority of real estate commissions do not require more than a high school education of candidates who wish to enter the real estate business. Some real estate agents lack commitment to the profession: few licensees dreamed of becoming real estate salespeople when they were little boys or girls. Rather, they may have entered the business during a period of life transition—such as divorce or job displacement. Some of these agents work part time or remain in the business for only a few years. The real estate business may also attract individuals with a “get-rich-quick” mentality, lured to real estate by its relatively easy entrance requirements and promises of quick wealth. To add to the problem, real estate agents work in competitive, often adversarial environments where emphasis is on financial success, rather than on integrity and expertise.

While it is important not to generalize too broadly about the results of a few research studies or the acts of a small percentage of real estate licensees, it is equally important to note that many acts of misconduct are never reported or caught. However, the majority of real estate practitioners would not do the wrong thing deliberately. The majority of practitioners are good people trying to help others. They find the poor image of real estate agents embarrassing. But they also realize that all real estate professionals face moral temptations and ethical challenges. They often have a difficult time doing the right thing because state and federal laws are confusing, complex, and sometimes contradictory. Moreover, real estate practitioners are not trained in decision-making skills to help them resolve ethical dilemmas. To add to the burden, there seem to be more ethical dilemmas every day: agency, civil rights, stigmatized properties, environmental hazards, and relationships with colleagues, employers, and the community are just a few areas where real estate professionals come across troubling issues.

These dilemmas can be an important impetus for practitioners to see what can be done to improve not only the image of the profession but also improve its collective ethical thinking skills.

It is possible to change the way we think about ethical dilemmas, and it has never been more important to adopt strategies that will help us explore options and to make more mature judgments about the dilemmas we face. In light of the technological, social, and demographic changes sweeping so many of our institutions and countries, it is increasingly important that we learn to navigate new and uncertain ethical terrain. Learning to make sound ethical judgments is a lifetime task, usually begun in childhood by our parents, elaborated upon by teachers and peers, and never finished.

Fortunately, real estate professionals can develop the skills necessary to make more mature decisions and to become more sensitive to ethical problems in the profession. Numerous guidelines and models for ethical decision making exist, including the National Association of Realtor® (NAR) Codes of Ethics. (See Chapter 2).

A Psychological Model of Ethical Decision Making

Though our values may change over time, our principles become habit—or at least, once we are aware of our principles, we should make them habit. This habit of thinking or behaving in a principled way could be called our code of conduct or ethics. Ethics can be defined as a system of moral behavior based on our principles.

During adulthood, we establish patterns of ethical behavior that are fairly consistent. We may agonize over social problems such as abortion and euthanasia and change our minds as we mature, but the way we think about these problems and the way we respond to these issues is remarkably systematized.

The highest reward for a person's toil is not what they get for it, but what they become by it.

—JOHN RUSKIN

Harvard University Professor Lawrence Kohlberg devoted his life to a study of the evolution of moral reasoning. His research not only transformed the landscape of **moral development theory** but also had a profound

influence on ethics education. Kohlberg believed that people learn to reason morally and ethically in a sequence of stages. Cultural factors may speed the stages up, slow them down, or even arrest them. Nevertheless, cultural factors do not change their sequence.

Kohlberg created a map by which he charted the stages of moral development. Kohlberg determined that there are six stages of moral reasoning, as summarized in the box on the facing page.

According to Kohlberg, most children under the age of nine, some teenagers, and many adolescent and adult criminal offenders are in Stages 1 or 2. Individuals in these stages view rules and social expectation as something external to them. Stage 3 and 4 individuals, on the other hand, have internalized those rules and expectations of others, especially those of authorities. These stages are marked by an acceptance and understanding of society's rules and by an acceptance based on the general moral principles that underlie these rules.

Sometimes these principles come into conflict with society's rules—in which event the Stage 5 or 6 individual decides based on principle rather than convention. Only a minority of adults reach this last stage, and usually only after the age of 20.

Kohlberg and later researchers validated his theory of moral reasoning by developing ethical reasoning tests and examining the ways that participants thought about moral dilemmas. One of Kohlberg's most famous test questions asked participants to respond to the following moral dilemma:

How Would You Respond?

Heinz's Dilemma

In Europe, a woman was near death from a special kind of cancer. There was one drug that doctors thought might save her. It was a form of radium that a druggist in the same town had recently discovered. The drug was expensive to make, but the druggist was charging 10 times what the drug cost. The sick woman's husband, Heinz, went to everyone he knew to borrow the money, but he could get only together about half of what it cost. He told the druggist that his wife was dying, and asked him to sell it cheaper or let him pay later. But the druggist said, "No."

Consider the following questions about Heinz's dilemma:

1. If Heinz has no other alternatives, should he steal the drug? Why or why not?
2. What if Heinz does not love his wife? Should he steal the drug? Why or why not?
3. Should he steal the drug for his best friend? Why or why not? What about his favorite pet?
4. Stealing is illegal. But is it always unethical?
5. Should people do everything they can to uphold the law? Why or why not?

The Stages of Moral Reasoning

Stage 6 Universal ethical principles.

General universal principles determine right and wrong. These values are established by individual reflection and may contradict the egocentric or legal principles of earlier reasoning.

What's right: I have to show the greatest respect for the rights and dignity of all people and support a system that protects human rights.

Why: Because that is what my conscience tells me to do.

Stage 5 Social contract.

The rules of society exist for the benefit of all and are established by mutual agreement. However, if the rules become destructive or if one party doesn't live up to the agreement, the contract is no longer binding.

What's right: I have to be responsive to the needs of others within my society.

Why: To keep my society from falling apart.

Stage 4 Law and order.

Being good means being a dutiful citizen and obeying the laws set down by those in power.

What's right: I should be a responsible citizen and follow the rules and regulations of society.

Why: To keep the system from falling apart.

Stage 3 Good girl, nice guy.

Being good pleases other people and wins their praise. Approval is more important than a specific reward.

What's right: I should live up to others' expectations of me.

Why: So people will like me, and so I will like myself.

Stage 2 Look out for number one.

Each person takes care of him- or herself. The only reason to be nice to others is so they will be nice to you.

What's right: I should look out for myself and only be nice to those who are nice to me.

Why: For my own self-interest.

Stage 1 Might makes right.

Obedience to authority in order to avoid punishment is the most important value.

What's right: I should do what I am told.

Why: To stay out of trouble.

Adapted from T. Lickona, 1983, *Raising Good Children*, New York: Bantam. 1976, *Moral Development and Behavior: Theory Research and Sound Issues*, New York: Holt, Rinehart and Winston.

Psychologists can determine from responses to Heinz's Dilemma what kind of reasoning skills individuals have. For example, an individual reasoning at the Stage 1 level might respond to Heinz's Dilemma by stating, "Heinz should not steal the drug because it is bad to steal. Heinz would be a thief, and he would be punished for the theft." A Stage 1 thinker might also be concerned about punishment if Heinz doesn't steal the drug (e.g., perhaps his wife's family would shun him). The overriding concern about punishment rather than for the value of life over property is a response typical of Stage 1 thinkers.

A Stage 2 thinker would consider stealing for his ill wife if she were of value. If it were just an acquaintance who were ill, then the husband might not steal. A Stage 2 thinker might also reason that if Heinz could get something in return by stealing, that is, a wife who would be around a little longer to cook or clean for him, then stealing the drug might be justifiable. Stage 2 thinkers are primarily concerned with their own needs.

Stage 3 thinkers are concerned about what others think. Some Stage 3 thinkers think, "If Heinz doesn't steal the drug, what will people think of him?" Others may reason that people will think ill of Heinz if he is a thief.

A Stage 4 thinker considers the value of life and deems it important, even sacred. However, at this level of moral reasoning, a Stage 4 thinker may feel that no matter how valuable life is, a particular relationship with another person does not obligate one to steal. A Stage 4 thinker might also consider whether the druggist's right to his invention should be respected. A Stage 4 thinker may consider the "contract" between a husband and wife

as binding as any civil laws and may, as a consequence, think that stealing the drug for those you love is appropriate.

A Stage 5 individual might believe that there is some obligation to steal for anyone dying. Moreover, if the law were to punish Heinz for stealing the drug, the law would not be a just law and therefore should be broken. A Stage 5 thinker might say, "Heinz's wife's right to life comes before the druggist's right to property." However, Stage 5 thinkers may also reason that stealing is wrong because society would fall apart if everyone stole what they needed.

Where Stage 5 individuals might ask, "What does it mean to be a good member of my social system? What are my responsibilities to other members of my system?" a Stage 6 thinker would consider, "What does it mean to be a human being? What are my responsibilities to any other human being, even people who do not belong to my system?" Where a Stage 5 person might ask, "Does this action promote my social system?" a Stage 6 person would ask, "Does this action respect the right of the individual people affected?"

A Stage 6 thinker would take an action that would demonstrate the greatest possible respect for the human right of every individual and support a social system that protects those rights. Standing outside of their own social system, Stage 6 thinkers can evaluate the morality of the system and use the principle of respect for others to guide their actions.

Kohlberg described the higher levels of reasoning, but he was not judgmental. Heinz's Dilemma has no absolute right or wrong answer. What Kohlberg demonstrated was that individuals can come to different conclusions about a situation and share the same level of reasoning skill. For example, Stage 4 thinkers, those with a "law and order" orientation, may say that it is wrong to steal the drug because it is illegal. However, Stage 4 thinkers could also defend stealing the drug because of one's contractual obligations to a spouse.

Research indicates that the average adult reasons primarily at Stage 4, the law and order orientation. According to Kohlberg, Stage 4 thinkers will occasionally use Stage 5 reasoning but they use Stage 3 reasoning, too. He reported that adults can comprehend moral reasoning at one and even two stages higher than their own. They may not be able to produce this higher-stage thinking themselves, but they understand it when they hear it, and they recognize it as superior to their own. Kohlberg asserted that this finding was fundamental to moral leadership.

Kohlberg's theory gives us one strategy for evaluating our reasoning skills. An immature adult will be more concerned with punishment, self-interest, and peer pressure than with higher moral issues. A mature adult will use the criteria of law, social contracts, and universal values as appropriate standards for debating an ethical issue.

Kohlberg also made the following observations:

1. Development in moral judgment continues well into adulthood. People show dramatic changes in their 20s as in their earlier years.
2. Individuals must progress through the stages of moral judgment in sequence.
3. Once a level of moral judgment has become established, that method will not deteriorate because levels are not reversible. Individuals cannot fall from a higher to a lower stage; nor can they jump from the first stage to the third.
4. Movement through the stages is affected when a person's cognitive outlook is inadequate to cope with a given moral dilemma.

In other words, becoming an ethical person is a lifelong task, one that begins at childhood and never stops. It is a laboriously slow process that accelerates when life transitions or life crises prompt us to reexamine our per-

spectives. These life challenges often are opportunities for new ethical growth.

DILEMMA OR TEMPTATION?

What is an **ethical dilemma**? Contemporary philosophers suggest that most difficult situations are really moral temptations, not ethical dilemmas. Choosing between right and wrong, they argue, is not really a dilemma. Most of us recognize the difference between right and wrong, but may not be willing to do what is right when it costs more than we want to pay. A true ethical dilemma forces us to choose between two positive values: for example, between mercy and justice or between long-term goals and short-term goals.

In his book *How Good People Make Tough Choices*,¹⁴ author Rushworth Kidder discusses right-versus-wrong decisions and right-versus-right. Right-versus-wrong conflicts could be simply characterized as ethical *temptations*. For example, cheating on one's income tax; choosing high-sugar, high-fat foods while dieting, lying about your child's age to get lower-priced movie tickets are all illustrations of ethical temptations where we know that we are doing the wrong thing. Most adults do not live in a moral vacuum where they cannot tell right from wrong. They know the right thing to do, but sometimes succumb to temptation and do the wrong thing. Generally, it is reasonably easy to distinguish between an ethical temptation and an ethical dilemma. Ethical temptations are also easier to resolve since the right response can be obvious.

Kidder suggests that the real ethical problems we will face in this century will be the -right-versus-right decisions--real ethical *dilemmas*, where we will have to face two or more positive values. He identifies four such dilemmas: *truth versus loyalty*; *the individual versus the community*; *short-term versus long-term needs*; and *justice versus mercy*. Kidder suggests that determining which of these four paradigms a dilemma fits helps us "cut through mystery, complexity, and confusion--assuring us that, however elaborate and multifaceted, dilemmas can be reduced to common patterns."¹⁵ He further proposes that if the dilemma does not fit, it is because it is a right-versus-wrong issue. Then the answer becomes more clear-cut: we should do what is right, not what is wrong.

As Kidder works through a variety of dilemmas, he ultimately chooses where he would "come down...all things being equal:"¹⁶

- Between truth and loyalty, he would choose truth, citing that those who choose loyalty (to Hitler, Stalin, Hussein) are capable of doing terrible damage to the world. It is harder, he argues, to do that kind of damage from choosing truth.
- Between the individual and the community, he would choose community. Community, he proposes, includes self, but self does not always embrace community.
- Compelled to choose between short-term and long-term, he would favor the long-term because long-term thinking can include the short-term where the reverse is not true.
- Finally, he would choose mercy over justice because mercy suggests love and compassion. A world with love and compassion could exist without justice, but a world of justice would still need love. See Figure 4, Rushworth Kidder's Model.¹⁷

Figure 4. Rushworth Kidder's model of ethical decision making.

¹⁴ Harper Perennial; revised edition (November 24, 2009)

¹⁵ Ibid, p. 22

¹⁶ Ibid, p. 220

¹⁷ Ibid., pp. 112-113.

justice versus mercy	fairness, equity, application of the law versus empathy, compassion and love
short-term versus long-term	immediate needs or desires versus future goals and prospects
individual versus community	us vs. them; self vs. others
truth versus loyalty	honesty versus promise-keeping

There are often signals that an ethical dilemma is on the horizon. The decision makers thinks about the problem in these ways:

- I use words such as "right," "wrong," "bottom line," "values," "conflict of interest," or "ethics."
- I want to call the state regulatory agency or professional association or attorney to determine my response's legality.
- I question whether my actions or inactions will harm anyone. I list the advantages and disadvantages of my decision.
- I question whether I am being fair to everyone. I wonder if I would do the same thing if others were involved. The Golden Rule comes to mind: "Do unto others as you would have them do unto you."
- I feel that something is wrong.
- I feel torn between two or more values, goals, or parties.
- I hesitate to share this problem with others. I worry that others may object to or oppose my decision.
- I worry what others will think about it.

How would you respond? |

In the following case studies, are the individuals facing **temptations or dilemmas**?

Case study #1

You make the final decisions in choosing which real estate investment opportunities are recommended by your firm to its clients. Two real estate fund managers are competing to be the one recommended. The funds are very similar. Deciding between the two is difficult. One of the fund managers offers an attractive intern opportunity to your college-age teenagers. The fund manager says it's a coincidence. It seems like a "win-win," because no one is hurt by the offer and your teenager would benefit.

Case study #2

A customer wishes to make a full-price offer on your listing. You discover that the customer is a known sex offender who was recently released with no conditions as to where the sex offender may now live. The listed property is near several places where children congregate.

Business Models for Ethical Decision Making

Several models of ethical decision making are effective in resolving business dilemmas. Some of these models were originally proposed by earlier philosophers. For example, the eighteenth century philosopher Jeremy Bentham suggested that ethical dilemmas can be resolved by testing for results and consequences. If an action leads to the greatest possible balance of good consequences or to the least possible balance of bad consequences, then the action is ethical. A contemporary of Bentham's, Immanuel Kant believed that ethical dilemmas can be resolved by examining rules, policies, and laws. He also assumed that laws are divinely inspired, and thus, legal actions are ethical. The eighteenth century philosopher Jean Jacques Rousseau proposed that ethical dilemmas can be tested by filtering them through social norms or societal values. In contrast, the twentieth century thinker Martin Buber believed that an individual's personal convictions serve as the ultimate standard for making decisions of ethical dimensions.

Rather than rely on one strategy, it is advisable for the real estate practitioners to consider them all. Each ethical system has strengths and limitations. Each ethical system sheds light on possible solutions to the problem. Each provides us with part of the answer. The next challenge is to integrate the advantages of each philosophical orientation into a working model for ethical conduct.

INTEGRATED MODEL OF ETHICAL DECISION MAKING

Consider the model below as a means of making an ethical decision for coping with the dilemma described previous:

This model of ethical decision making is based on the assumption that no one ethical philosophy can provide a complete response to an ethical dilemma. On the other hand, if the best from all of the philosophies is integrated, and the decision maker considers the dilemma from all perspectives, then it is more likely that we can get closer to the "most correct" response.

How Would You Respond?

The Question of the Murder–Suicide

A real estate agent is called to meet an owner of a home in a middle-class suburb. The property looks somewhat run-down: the lawn has not been tended; some litter is strewn about; the inside is vacant.

The owner of the home shows the property to the agent. When asked why he wants to sell, the owner looks embarrassed and states: "This property belonged to my cousin. About six months ago, he murdered his family in this home and then committed suicide. I inherited this property through the probate court's decision, and I just want to get rid of it as quickly as possible. Tell me what to ask for it so I can be done with this mess."

While other similar properties in the area have been selling for \$240,000 or so, the agent knows that when buyers find out that this property was the scene of a murder–suicide, the seller will be lucky to get \$200,000.

What should the agent do when buyers ask why the seller is offering the property? Should the agent disclose the problem?

Using the Integrated Model for Ethical Decision Making, let's resolve the murder–suicide dilemma posed above. We must first consider what we know about the problem—the *facts*:

- The seller is motivated to sell the property.
- The property appears distressed.
- Comparable property value is approximately \$240,000.

Our *assumptions* are:

- The property will sell under market value because of its condition and the seller's motivation.
- The neighbors are aware of the murder–suicide on the property, but others might not know of the tragedy, particularly prospects from out-of-town. One of the neighbors is likely to tell any prospect or buyer about the tragedy.
- The seller told the agent about the murder–suicide in confidence.
- Some buyers might want to know about the murder–suicide, either because they are superstitious or because they could get better terms or a better price since the property might be considered stigmatized.

We know that a number of people are *stakeholders* in the agent's decision:

- The agent: A listing and possible commission may be at risk; the agent might be sued by the seller for revealing the information to the buyer; the buyer might sue if this information is withheld.
- The seller: The best possible price and terms for the seller may be at risk if the agent reveals that the property has been the scene of a murder–suicide; however, if the agent keeps this information confidential, the seller might be sued later.
- Prospective buyers: Buyers may overpay for the property if they are not fully aware of the stigmas attached to the property; buyers may regret purchasing the property if they find out about the stigma after the fact and may have to hire an attorney to sue responsible parties.
- Superiors: The broker-manager may wish to reject the listing or accept the listing with or without reservations regarding disclosure.
- Peers: Colleagues may find this listing undesirable and may not want to show it.
- Subordinates: Office staff may regard this listing as undesirable and may not feel comfortable dealing with questions from co-brokers and prospective buyers.
- Family: Family members may regard this property as unsavory and may be unsupportive.
- Community: Neighbors may be worried about the effect the sale of this property will have on their own market values; they may also be more than willing to tell what they know about the murder–suicide to all prospective buyers.
- What resources and which advisors can be of help?

In addition to considering the feelings and possible concerns of any and all stakeholders, we may also consider the following:

- Consequences:

What will be the consequences of my action if I take the listing and keep the murder–suicide confidential?

What will be the consequences of my action if I take the listing and disclose information about the murder–suicide to all prospective buyers?

- Rules, policies, and laws:

What are the state laws or rules and regulations of my state regarding disclosure of such matters?

- Social contract:

What does the policy and procedures manual of my office require me to do? What does my professional

code of conduct advise me to do? What would my brokers and peers expect me to do? What does society (friends, family, and neighbors) expect me to do?

- Personal convictions:

What does my conscience tell me to do?

Now let us consider possible answers to these concerns:

What will be the consequences of my action if I take the listing and keep the murder–suicide confidential?

I will keep the seller happy for the short term, but in the long term the risk is great. The seller may be sued by the buyers for withholding material information. As an agent, I could be held responsible.

What will be the consequences of my action if I take the listing and disclose information about the murder–suicide to all prospective buyers?

The buyers may appreciate knowing this information but may also be reluctant to make an offer on this stigmatized property. Buyers may make low offers. The seller may be harmed by disclosure of this information, and if done without the seller’s permission, it may be considered a breach of fiduciary duty.

What are the state laws or rules and regulations of my state regarding disclosure of such matters?

Some state laws, such as California’s, require that a crime such as a murder–suicide has to be disclosed if committed within three years of marketing the home. Some courts have rules that disclosure of death is not material. My state does not yet have a law or court case that would help me decide what to do.

What does the policy and procedures manual of my office require me to do?

My policy and procedures manual reminds me to keep my principal (seller)’s interests above those of others.

What does my professional code of conduct advise me to do?

My professional code of ethics also advises me to keep my client’s interests above those of others, but also reminds me to be honest with all parties.

What would my brokers and peers expect me to do?

The broker/owners of my firm would want me to take the listing, but would want to know all the circumstances so they could decide how to market it appropriately. My peers might feel uncomfortable with the listing.

What does society (friends, family, and neighbors) expect me to do?

My major concern would be the neighbors. They want the property sold, because right now the property is poorly maintained. But they also are worried that the home has a “reputation” that could damage property value in the area.

What does my conscience tell me to do?

I think buyers have a right to know not only the material/physical defects of the property, but anything with-in reason that might adversely affect the future value of the home. I would like to be able to give this information to prospective buyers. On the other hand, I respect my seller’s right to confidentiality.

By speculating about possible decisions and their outcomes, the agent is practicing investigative decision making; that is, the agent is experimenting with hypothetical results of any particular decision, a process that can help the decision maker reach the terminal, or final, decision.

What might the terminal decision be? If the agent integrates the responses to all of the questions that were raised, a possible decision would be:

I will explain to the seller that I would like the listing on this property. I will explain the seller's right to keep information confidential, such as the unfortunate tragedy that took place on this property. I will also explain to the seller that sometimes a seller's right to confidentiality conflicts with the buyer's right to know. This is one of those cases.

While the courts and the legislature in this state have not yet spoken to the issue of disclosure about murder or other crimes on marketed property, I would certainly not want my seller to be the test case, nor would I want my brokerage firm or anyone in it named in a lawsuit by an angry buyer. I may not disclose this information to the buyer but certainly a neighbor is likely to.

I will ask the seller to give me the listing but also to give me permission to reveal this information to buyers at an appropriate point. I would like this permission in writing. Needless to say, I will discuss this with my broker, and if the listing is acceptable on these terms, we will have a special marketing session with the other agents with our firm to discuss how to respond appropriately to questions about the murder-suicide. We will do our best to get the seller the highest price possible under the circumstances for the seller's sake, as well as for the sake of other property owners in the neighborhood.¹

While other responses to this problem are possible, consider the response above (and other possible solutions) by this set of criteria:

- Have you defined the problem accurately?
- How would you define the problem if you were the buyer? the seller? your broker? your peers? the neighbors?
- To whom did you give your loyalty first and foremost? Was that the appropriate choice?
- Who, if anyone, would your decision harm?
- Did (or can or should) you discuss this decision with anyone else?
- Would your response to this dilemma be the same tomorrow? One year from now? Ten years from now?

THE KEW GARDENS PRINCIPLE

Sometimes real estate agents face an ethical dilemma where "doing no harm" is not enough. Avoiding doing harm *may be* an appropriate response to the conflict between a buyer's right to know about a murder-suicide on the property before making an offer to purchase. But what if by avoiding injury to one party, we have not exhausted the full range of possible moral actions?

Consider the case of the sex offender described earlier. How is the real estate agent's dilemma in that case different from the dilemma in the murder-suicide? What are some of the ethical concerns that the seller agent faces in dealing with the sex offender? What should the agent do if the sellers decide to sell to this buyer with full knowledge of the offender's criminal past? What if the sex offender has hired the agent as a buyer's broker?

You may find that your best response leaves you less than satisfied in this particular instance. For example, you may have concerns having to do with the buyer's right to live anywhere he wishes that directly conflict with your personal concerns about the nature of his rehabilitation if he is choosing to live where children congregate. (In some states, such as Ohio, state laws do not permit sex offenders to live within a certain distance of schools. In those jurisdictions, the real estate licensee's would suggest to the buyer that the offender should obtain legal advice about whether he can occupy the home he is attempting to buy.)

Your desire to do what is right for the seller is also in conflict with the potential harm to the community if the buyer completes this transaction and then commits another sex offense.

Your response may also be contingent upon whether or not the legal system can do any more than it already has by incarceration. While you know that legally you *must* present the offer, you even debate whether you should *submit* it, knowing that the owners might accept.

Once the offer is accepted by the sellers, you wonder if you should take a course of action to obstruct the contract from going through—such as picketing the property. To do so might be a breach of fiduciary duty to the seller and could leave you open to a lawsuit by the buyer.

The buyer's criminal record may have negatively affected his credit so that a loan contingency clause in the contract cannot be met. Thus, the sales contract itself may provide a resolution to this dilemma.

Most jurisdictions require that sex offenders must register their whereabouts within a short time of release from prison or be incarcerated yet again. One course of action available to the real estate licensee is to make certain that the sex offender does in fact register in a timely way.

In the earlier dilemma concerning a murder–suicide on the property, it may have been sufficient to do no harm; that is, the agent had a responsibility to see that neither the seller, the buyer, nor any other parties were injured by the agent's action. In this case, it may be important and of a higher priority to help others.

Under these circumstances, it is sometimes helpful to consider a model of ethical decision making called the “Kew Gardens Principle.” The Kew Gardens Principle takes its name from a shocking New York City homicide case in the 1960s where it was at first thought that a young woman, Kitty Genovese, had been brutally murdered in front of numerous witnesses, none of whom called police or even called for help, even though they were all safe inside their homes.¹⁸

Applying the Kew Gardens Principle

An agent has an increased moral obligation to aid another person based on four factors:

Need Is there a clear need for aid (for example, harm has been or is about to be done)?

Proximity Are you “close” to the situation (not necessarily in space, but in terms of notice)? Do you know of the need, or could reasonably be held responsible for knowing?

Capability Do you have the means to provide help without taking undue risk?

Last Resort Is anyone else likely to help?

Source: The Kew Gardens Principle, Michael Rion, see Chapter 2, Part 1 and 2, from D. G. Jones 1982, *Doing Ethics in Business*. © 1982. Reprinted with permission of D. G. Jones.

Review the case of the child molester again, this time considering the four elements of the Kew Gardens Principle:

- Is there a clear *need* for aid?
- How close is the agent to the situation? (*proximity*)
- How *capable* is the agent?

¹⁸ Recent investigations suggest that Ms. Genovese's assault was not witnessed by nearby apartment dwellers since the attack was not in a clear line of sight of those apartments. Ms. Genovese may have also received some aid by neighbors. See https://www.washingtonpost.com/lifestyle/style/her-shocking-murder-became-the-stuff-of-legend-but-everyone-got-the-story-wrong/2016/06/29/544916d8-3952-11e6-9ccd-d6005beac8b3_story.html?utm_term=.91b1566b3f92

- Is anyone else likely to help? (*last resort*)

After reviewing these four elements, is your response to the case of the child molester any different than before? Why or why not? How should this case be handled if the agent is representing the buyer? Which model of ethical decision making—the Integrated Model or the Kew Gardens Model—do you think is more appropriate in resolving this dilemma?

THE WHITE LIE TEST

While many business issues deal with potentially catastrophic matters, such as bridge design and automotive safety, fortunately most ethical problems that real estate practitioners face do not life and death issues. More frequently, they deal with ethical issues require them to choose between loyalty to their firms and colleagues or to the possibility of earning commissions and obligations to clients. Some practitioners choose the "If I'm not asked, I won't tell" philosophy about problems. Real estate professionals may also minimize problems or re-characterize them in a better light. But when serious defects or risks in properties come to light, courts have made it clear that risk is not considered confidential issues and rather, must be disclosed to clients and, in some cases, to the public.

How Would You Respond? The Fire

Buyers work with a relocation agent and purchase a home after obtaining appropriate inspections. The inspections reveal little of concerns. Shortly after the buyers take occupancy, a teenager in the neighborhood comes for a visit, looks around the home, and remarks, "The Fried family (the sellers) sure did a good job of fixing the house after the big fire here last year." The buyers call the relocation agent immediately and ask if the agent knew about the fire, and the agent responds "Yes." When asked why the agent did not tell the buyers about the fire, the agent said that she did not want to unduly alarm the buyers, particularly because all of the damage from the fire had been "taken care of."

Here are the questions to ponder regarding disclosure concerns:

- Why am I considering concealing this information?
- Is it because I want to spare the client or firm unnecessary concern?
- Am I concerned the client will not accept the firm's proposal or go through with a contract if the truth is known?
- Do I not know how to tell the truth in a tactful way?
- How will failure to disclose appear to the prospective client?
- Will it appear as a white lie?
- Will the client say "Thanks for sparing our feelings?" or will they say "Now that we know you lied to us about this issue, what else have you lied to us about?" In other words, will my relationship to the client or firm be damaged?

Michael Josephson, founder of the Josephson Institute of Ethics, notes that in relationships of trust, any act of concealment, any undelivered promise, any exaggeration will be perceived as a lie. It is also likely that the lie will be found out, and when it is, the public is rarely forgiving of the professional who failed to provide information that was perceived as critical and necessary to their purchases. Most professionals don't want to lie, but they often don't know how to tell the truth.

Real estate licensing boards usually state that problems that have been *properly corrected* to not have to be discussed with prospective buyers. However, since it is often difficult for brokers to determine if repairs have been properly dealt with, it is best to disclose the issue and let buyers take the appropriate steps. In the case of a fire, it would be important to determine whether the fire was caused, for example, by faulty wiring or by a grease fire in the kitchen. The former would be of more concern than the latter, but brokers should disclose the occurrence

so that the buyers can govern themselves accordingly.

THE PARENT TEST

Michael Josephson, a former attorney, became an ethicist when he first became a father. He realized that he did not want his children to decide ethical outcomes based on legal parsings and interpretations--the way he used to teach ethics to his law students. He suggests that a viable way of choosing the best ethical outcome is to take the perspective of a parent: "Would I do it if my children were looking over my shoulder?"

Even professionals who do not have children can benefit from this outlook. All of us are being observed--by our spouses, our families, our friends, and our work colleagues. They watch how we handle ourselves in tough situations. They learn from what we *do*, not from what we *say*. In this way, we are all role models for ethics (or lack of them), even if we did not ask for the nomination.

Considering what our children and peers would think and feel if they "caught us in the act" can be a powerful deterrent to unethical behavior. In Arthur Miller's play, *All My Sons*, a father must defend his illegal conduct to his teenage son. He says, "Son, I'm no worse than anyone else." His son responds, "No, Dad, you're right. But I thought you were better." None of us wants to disappoint those who look up to us.

Summary

No matter which model we use to help us resolve an ethical dilemma, our final course of action may be open to public and professional scrutiny. How will our peers judge us? How would your decision look on the front page of your local newspaper? Though real estate professionals may think their decision may have only minor repercussions, we often do not know all the consequences of our actions. Everything we say and everything we do sends a message.

Notes

1.

Review Questions

Choose the letter of the answer choice that best answers the question, and check your responses with the Answer Key at the back.

1. The average adult uses Stage 4 thinking, a reasoning level that emphasizes
 - A. obedience and punishment.
 - B. law and order.**
 - C. self-interest.
 - D. peer pressure.
2. Providing a good example by thinking and acting ethically is consistent with Kohlberg's findings that
 - A. adults are attracted to higher moral reasoning.**
 - B. hypocrisy is an ineffective teacher of moral reasoning.
 - C. politicians are dishonest.
 - D. values should be taught in elementary school.

3. The Integrated Model for Ethical Decision Making requires the decision maker to consider:
 - A. consequences of one's actions.
 - B. societal values.
 - C. laws and policies.
 - D. one's conscience.
 - E. all of the above.**

4. The Kew Gardens Principle imposes a special burden on the decision maker if that individual is
 - A. the last resort.**
 - B. acting on conscience.
 - C. capable of harming another.
 - D. aware of the dilemma.

5. The Parent Test suggests that ethical problems may be resolved by which question?
 - A. Is it a temptation or a dilemma?.
 - B. What would my attorney say?
 - C. How would a child resolve this problem?.
 - D. Would I do it if my children were looking over my shoulder?.**