

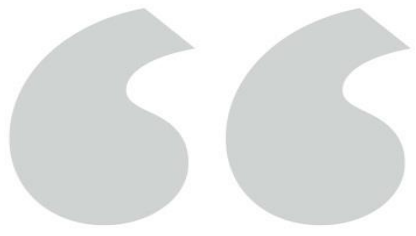


Financial institutions
Energy
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Life sciences and healthcare

Conflicts of interest: the legal and ethical

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Ethics

Considering what is good and right for the self and the other, and can be expressed in terms of the golden rule, namely, to treat others as you would like to be treated yourself. In the context of organisations, ethics refers to ethical values applied to decision-making, conduct, and the relationship between the organisation, its stakeholders and the broader society.



Ethics and the law

The difference

Law

- systematic set of rules and regulations created by an appropriate authority
- may be regional, national, international etc.
- used to govern the actions and behaviours of members
- can be enforced by imposing penalties

Ethics

- principles that guide a person or society in determining good or bad and right or wrong in any given situation
- created by individuals, **law** or professional association norms
- regulates behaviour and conduct by recommending moral rules and guidelines

Legal Ethics

Lewis' Golden Rule

“A practitioner must avoid all conduct which if known could damage his reputation as an honourable lawyer and honourable citizen.”

Often manifests in the following duties:

- Duty to be honest and fair;
- Duty to be true and faithful to the State
- Duty to apply and uphold the law
- Duty to deliver the best service possible to your client
- Duty to uphold the integrity and dignity of the legal profession
- Duty not to overcharge or overreach clients

The ethical landscape

- Thomas Christopher McLaverty
- Study involving 30 senior executives across India, Columbia, Saudi Arabia, the U.S and the U.K interviewed in respect of ethics



Another surprise was how few of the incidents were caused by bribery, corruption, or anti-competition issues (only 16% of all ethical dilemmas mentioned). More often the dilemmas were the result of competing interests, misaligned incentives, clashing cultures.



- Staff Performance Management – 18%
- Cross Cultural Misunderstandings – 18%
- Bribery/Fraud/Anti-competitor Activities – 16%
- Change Management Programs – 14%

Conflicts of interest



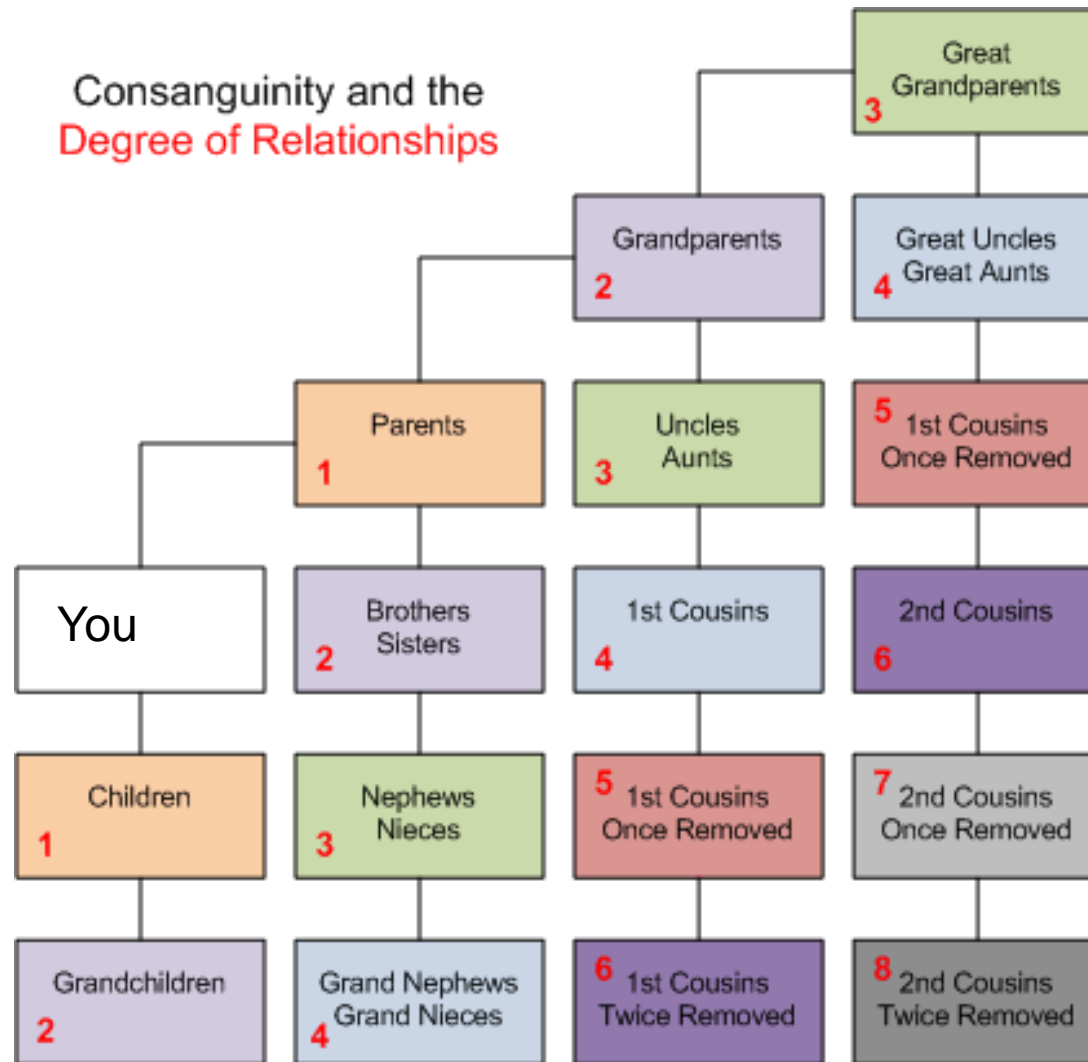
Personal financial interest

A direct material interest of a person, of a **financial, monetary** or **economic** nature, or to which a monetary **value** may be attributed

Companies Act - Directors duties

- The procedure for disclosure of personal financial interests by directors is set out in s75
 - Must disclose before the matter is considered
 - Must disclose any material information relating to the matter
 - May disclose pertinent thoughts
 - Must leave the meeting after disclosure
 - Must not take part in the consideration of the matter
 - Must not execute any document unless expressly authorised by the board to do so.
- Includes personal financial interests of related persons
- The Companies Act contains only a partial codification of the fiduciary duties and duty of care and skill of directors, which means that the common law still applies

Related persons



Conflict of Interest

A conflict of interest is a situation in which a professional, who is in a position of trust, has a competing professional or personal interest. Such competing interests can make it difficult to fulfil his or her duties impartially.

A conflict of interest exists even if no unethical or improper act results.

Practical Scenarios

Practical scenario 1

The company you serve is considering three service providers for a contract. A director of the company discloses that her sister is a director of the counterparty. She abstains from voting, but remains in the room. The sister's business is by far the most suitable for the contract, and the voting in her favour is unanimous. Is the resultant decision valid?

A: Yes – notwithstanding the slight procedural irregularity, the decision was untainted by bias, and is the right choice for the company.

B: No – the strict requirements of the Companies Act disregard the best interests of the Company.

C: Yes, provided that the director is not the person who signs the agreement with the sister's entity.

Practical scenario 2

You are the company secretary of a subsidiary in a multinational group of companies, and an invitee of the holding company's investment committee. After the afternoon tea break of the second day spent in the quarterly investment committee, hearing presentations from different jurisdictions and making decisions regarding projects, you realise that the meeting is not technically quorate. You draw the company secretary aside to discreetly voice your fears, but the company secretary doesn't listen to you. What do you do?

A: nothing – you are simply an invitee to the meeting, and are not responsible for the secretarial function of the holding company. After all, you may be wrong.

B: at the next break, you raise the matter with a committee member that you have become friendly with over the two days.

C: that evening at the farewell dinner you approach the chairman of the committee to explain your concern.

Practical scenario 3

Your father-in-law has bought shares in a listed company that the company you serve is looking at partnering with (and performed a comprehensive due diligence on). He asks your views on the future prospects of the business. Any views you raise will not influence any buy/sell behaviour – he is a long-term investor who has already bought into the business. What should you do?

A: You politely decline to comment – you are an insider and any information you share would not be in the public domain.

B: You give your views on the management team – that you think they are sensible and intelligent individuals.

C: You give your honest views on the financial position of the business.

Practical scenario 4

A whistle-blower comes forward with some very damaging disclosures regarding a senior manager in the company that you serve. You have known the whistle-blower for years, and do not have a high opinion of their personal or professional integrity. If the mere fact that these kinds of allegations are being made come to light, it will almost certainly end the senior manager's career. What should you do?

A: Present the matter to the board, but disclose your reservations regarding the whistle-blower.

B: Present the matter to the board, without mentioning your reservations regarding the whistle-blower.

C: Discreetly investigate the matter yourself to see whether you can independently substantiate the allegations before bringing the matter to the board.



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