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Understanding what is ethically right vs. what is legally right

By Sujatha Dwaraganath

Sujatha Dwaraganath (vsujatha75@gmail.com) is Manager of Tata Consultancy Services in Chennai Tamil Nadu, India.

- <https://www.linkedin.com/in/sujatha-dwarag-b1a313100>

In the world of law, the differences between ethics and legality can often be misconstrued. There are some who believe that if something is legal, it must be ethical and vice-versa. If something is illegal, it must—by rule of law—be unethical. But this is not always the case. In fact, the lines between what is ethically and morally right and what is legally right are not so straightforward.

In this article, we'll examine this topic in further detail and discuss the difference between ethics and law, particularly as it pertains to corporate ethics and culture and business ethics and procedures. We'll discuss several key concepts and examine several case studies that illustrate the difference between ethics and legality. Let's get started now.

If something is legal, it must be ethical, right?

This is an idea that is espoused by many people in a variety of professions, from lawyers to legislators, corporate officers, and executives. If something you are doing is legal (i.e., you are protected by the law when you do it) it must be ethical, right? How could something that is legal not be ethical?

At first glance, this argument seems to hold up, but if you test it even a little bit, it begins to fall apart like a house of cards. Let's take a look at simple example to show why this argument is incorrect.

Let's say that you cheat on your girlfriend, boyfriend, husband, wife, or partner. You haven't broken the law. There is no law that says you cannot cheat, although if you're married, you may end up paying hefty fees if you get divorced. Still, that is a *civil* penalty, and not a *criminal* penalty.

Long story short, there is no law against cheating on your partner. So it must be fine to do so, right? There's a reason that argument won't hold water in a divorce court or family court. It's obviously untrue.

It may be legal to cheat, but doing so is obviously unethical. You are breaching the trust another person has put in you and harming them in a real, tangible way. You're within your legal rights to do so, but that doesn't mean you're free of the consequences or ethically in the right.

Sure, this is a simplified example. But the main argument (that what is ethical is not always illegal, and vice versa) is exemplified in one of the most high-profile business ethics cases the pharmaceutical industry has ever seen—the case of Martin Shkreli, the drug Daraprim, and Turing Pharmaceuticals.

An illustration of the difference between ethics and legality

Martin Shkreli is an American businessman who was involved in multiple business ventures.^[1] He co-founded a

total of three hedge funds, and he founded Retrophin and Turing Pharmaceuticals, two biotechnology and pharmaceutical companies. He was also the former CEO of Gödel Systems, a software startup.

We're sure you've heard his name before—recently, because he was indicted for fraud and sentenced to seven years in federal prison,^[2] but before that, because of his *incredibly unethical*, yet *perfectly legal* business practices at Turing Pharmaceuticals.

Shkreli, through Turing Pharmaceuticals, acquired the patent for a drug called Daraprim, also known as pyrimethamine.^[3] This medicine was first discovered in the 1950s. It's used to treat several different types of infections, such as toxoplasmosis and cystoisosporiasis.^[4] It is especially important for people who have compromised immune systems, such as pregnant women, because these individuals are more susceptible to parasitic infections.

Globally, this drug is patent-free. It's a generic medication, meaning any pharmaceutical company can produce and sell it. The average cost for a pill worldwide is about \$0.10.^[5] It's incredibly simple to manufacture and not protected by any patents.

In the United States, though, this drug is protected by a patent. The average cost of a Daraprim tablet was about \$13.50 per pill in 2015, before the patent was acquired by Turing Pharmaceuticals. Although that's expensive, it is not beyond reason. A full cycle of Daraprim (generally 3 to 6 weeks) would cost quite a bit of money, but with the help of insurance, you could reasonably pay for the treatment, or maybe even get a hospital payment plan to make the treatment more affordable.

However, once Shkreli, through his company Turing Pharmaceuticals, purchased the drug, he did something that, according to public opinion, was truly unethical, disgusting, and morally outrageous. He increased the price. He didn't double it. He didn't triple it. Turing Pharmaceuticals, under his management, increased the price from \$13.50 per tablet to \$750 per tablet.^[6]

In other words, he raised the price of an essential, life-saving drug—a drug that is on the World Health Organization's List of Essential Medicines—by more than 5,000%.

Shkreli did not do anything illegal

Boosting the price of Daraprim, like Shkreli did, was not against the law. In fact, doing so was a decision that was completely within Shkreli's right as a corporate officer. It was legal.

In fact, it could be argued (and it was argued by Shkreli and his defenders) that a corporate officer has an *unethical requirement* to take actions that will further the success of their company. And getting 5000% more profit per pill? That definitely benefits Turing Pharmaceuticals.

But is it ethical? If you asked anyone who was arguing in good faith, the answer would have to be a resounding “no.” That's why there was so much media coverage dedicated to Shkreli—this disconnect between what is ethical and what is legal was shown in detailed, stark relief.

It was simply impossible for the public to believe that something that is so clearly unethical is perfectly legal. In some ways, it still boggles the mind. The public did get some kind of justice, though. Shkreli was indicted and convicted of fraud in early 2018, and he will be behind bars for seven years.

But the irony is that his conviction had nothing to do with Daraprim, which remains absurdly expensive.^[7] In fact, Shkreli was indicted for fraud because of his involvement with a different company, Retrophin, which he

founded in 2011, and two of his hedge funds.^[8]

In the eyes of the law, there is nothing wrong with a 5000% increase in Daraprim's price, despite the fact that the parasitic diseases that it treats (e.g., toxoplasmosis) primarily affect children, pregnant women, HIV-positive individuals, and others with compromised immune systems.

Legality cannot be the same as ethics

Here is the crux of the argument about the difference between legality and ethics. If legality and ethics were the same thing, there would never be a need to make a new law. Anything that is legal would be, by default, ethical.

In other words, there would be no way to separate legality from morality. Let's say, for example, that a manufacturer of sippy cups for children was using a particular type of plastic for all of their products, and this plastic is found to be toxic, but there is no legislation regarding its use.

If you consider legality and ethics to be the same thing, it would be impossible to pass a law related to the use of this plastic. There is no law banning its use. Therefore, its use is *legal*. Therefore, its use is *ethical*. Therefore, any attempt to limit its use would be unethical.

This is a simplified example, of course, but you can see how this circular logic applies to this subject, and why it falls apart when we look at something like the Shkreli case.

The fact of the matter is that we, as humans, can inherently understand when something is unethical (e.g., a 5,000% increase in a life-saving medication). And that understanding—knowing when something is *wrong*, even when it is *legal*—is at the heart of all legislation.

We hope this article has been informative, and helped you understand the lines between ethics and legality, and how these two things are distinct. When working in corporate and business law, it is essential to understand these differences and how they can inform corporate ethics codes, business conduct, and your own corporate policies and processes.

¹ Dan Mangan, "'Pharma Bro' Martin Shkreli 'wanted to be Stevie Cohen,' but then said 'sorry for the inconvenience' after losing \$5M of this investor's money" *CNBC*, June 30, 2017. <https://cnb.cx/2FT0oN6>

² Stephanie Clifford, "Martin Shkreli Sentenced to 7 Years in Prison for Fraud" *The New York Times*, March 9, 2018. <https://www.nytimes.com/2018/03/09/business/martin-shkreli-sentenced.html>

³ Beth Mole, "Drug made famous by Shkreli's 5,000% price hike is still \$750 a pill" *Ars Technica*, May 4, 2018. <https://arstechnica.com/tech-policy/2018/05/drug-made-famous-by-shkrelis-5000-price-hike-is-still-750-a-pill/>

⁴ Drugs.com, Pyrimethamine monograph. <https://bit.ly/2OKDSJ6>

⁵ Ed Miseta, "High Drug Prices: Should We Blame Pharma Or The FDA?" *Clinical Leader*, Sept. 29, 2015. <https://bit.ly/2TQim6v>

⁶ Emily Mullin, "Turing Pharma Says Daraprim Availability Will Be Unaffected By Shkreli Arrest" *Forbes*, Dec. 21, 2015. <https://bit.ly/2WMH21P>

⁷ Shefali Luthra, "'Pharma Bro' Shkreli Is In Prison, But Daraprim's Price Is Still High" *Kaiser Health News*, May 4, 2018. <https://bit.ly/2HPw5cK>

⁸ Stephanie Clifford and Colin Moynihan, "Martin Shkreli Is Found Guilty of Fraud" *New York Times Deal Book*, August 4, 2017. <https://nyti.ms/2FS4oNM>

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