MORAL RESPONSIBILITY AND LEGAL LIABILITY, OR,  
ETHICS DRIVES THE LAW

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ABSTRACT  
As William Shaw’s (2008) textbook states, by way of observation, “To a significant extent, law codifies a society’s customs, ideals, norms, and moral values” (pp. 10-11). Shaw adds that “changes in the law tend to reflect changes in what a society takes to be right and wrong...” (p. 11).

We think Shaw is correct, and we work to have our students understand that ethics drives the law. Focusing on moral responsibility and legal liability, we offer a model that can help students see the relationship between law and ethics. First we highlight the broader concepts establishing moral responsibility and legal liability. Then we show that narrower, more specific principles in ethics have a parallel in law. For the former, we rely on long established considered judgments from ethics and established legal concepts. For the latter, we rely on the four specific elements associated with moral wrong-doing in organizational settings and on the famous 1983 Soldano v. O’Daniels case.

INTRODUCTION  
As McGowan (2005) pointed out, strong pedagogical arguments exist for students in business ethics classes to understand the relationship between law and ethics. Students should understand that an act may be legal and unethical, but an act could also be ethical and illegal. The example of slavery, legal and unethical, and the underground railroad, ethical and illegal, come to mind. Students who grasp the distinction between ethics and law are more likely to think critically.

Cultural reasons also exist for having students understand the relationship between law and ethics. Shaw’s (2008) textbook states, by way of observation, “To a significant extent, law codifies a society’s customs, ideals, norms, and moral values” (pp. 10-11). Shaw’s (2008) textbook adds that “changes in the law tend to reflect changes in what a society takes to be right and wrong...” (p. 11). Other business ethics textbooks make the same observation.

We think the observation is well-grounded. Therefore, we work to have our students understand that ethics drives the law. This paper provides a pedagogical example of how that understanding can be more effectively achieved. Focusing on moral responsibility and legal liability, we offer a model that can help students see the relationship between law and ethics. First we highlight the broader concepts establishing moral responsibility and legal liability. Then we show that narrower, more specific principles in ethics have a parallel in law. For the former, we rely on long established considered judgments from ethics and settled legal concepts. For the latter, we rely on the four specific elements associated with moral wrong-doing in organizational settings and on the famous 1983 Soldano v. O’Daniels case.

MORAL RESPONSIBILITY AND LEGAL LIABILITY  
Years ago, in perhaps the first business ethics textbook, Thomas Garrett (1966) observed that “Man is responsible at least for what he freely wills whether as a means or an end” (p. 8). He observed that “To a large extent, this theory is found in civil law as well as in ethics” (p. 8). Finally, he asked if “I have no responsibility for the evils which I foresee will flow from my actions” (p. 8). In short, Garrett
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Assigning Responsibility and Liability Distributively

In the 1960s, philosophers turned their attention to an individual's responsibility in an organizational setting. Some impetus originated in the civil rights movement: to what extent should an individual white male be held accountable for the harm done by others to blacks? Farrell and Marceau (2013, p. 154-55) noted that while the imposition of criminal liability, namely mens rea and actus reus, is primarily personal and largely private. The law requires the presence of two broad elements for decision-making, generally and specifically.

The law prescribes the presence of two broad elements for the imposition of criminal liability, namely mens rea and actus reus (Blum, et al., 2008, sec. 117). The first element involves intention, i.e., the requisite state of mind or intent, analogous to knowingly and freely doing an act. Criminal statutes define the type of mental state necessary for the crime. For example, some criminal laws impose liability only if the act is done with "purpose," while other criminal laws require mere "negligence" with regard to the act or result. Common categories of "intent" are:

- Purpose: An individual acts with purpose when he knows an act will cause such a result (American Law Institute, 1985, sec. 202).
- Negligence: An individual acts with negligence when he should be aware of a substantial and unjustifiable risk that his conduct will cause such a result (American Law Institute, 1985, sec. 202).

The second element for any crime involves the commission of an "act." Blum et al. (2008, sec. 117) noted that the actus reus element of a crime is insufficient; the actor must do something to contribute to the proscribed harm (Farrell & Marceau, 2013, p. 154-55). Similarly, Velasquez's (2012) concept of moral responsibility depends on the actor doing something—either causing the harm or failing to prevent the harm when he or she had an obligation to do so. This condition, actus reus, simply demands causal connection, again, analogous to the broad moral reasoning above.

The elements of moral responsibility are also present with regard to civil liability for the tort of negligence. A plaintiff must prove that (1) the defendant owed the plaintiff a duty of care; (2) the defendant breached that duty; (3) the defendant's conduct in fact caused harm to the plaintiff; (4) the defendant's conduct was also the proximate cause of the harm; and (5) the plaintiff suffered damages to his person or property (Dieter, et al., 2004, sec. 132). When we deviate from this standard, we have breached our duty of care in the second element. These two elements focus on the "wrongness" of our behavior and the harm that results when we fail to conform our actions to the reasonable expectations of our community. The third and fourth elements focus on the causal connection between the act and the harm, much like Velasquez's (2012) first requirement for moral responsibility. The fifth element of negligence requires a showing of harm to the person or property. Without some type of harm, or "damages," there can be no liability (Dieter, et al., 2004, sec. 71). Similarly, the concept of moral responsibility requires the actor to do something to cause such an effect

Thus, there is considerable overlap between the elements of moral responsibility, criminal liability, and civil liability. We teach our students that while ethics and the law are not coextensive, they have broad similarities. We can go further and show that even at a more specific level, ethics drives the law. Our discussion starts with collective responsibility.

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The court noted that a duty may nonetheless be imposed for negligence based on the following factors:

1) the foreseeability of harm to the plaintiff,
2) the degree of certainty that the plaintiff suffered injury,
3) the closeness of the connection between the defendant’s conduct and the injury suffered,
4) the moral blame attached to the defendant’s conduct,
5) the policy of preventing future harm,
6) the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and

Applying these factors to the facts of the case, the court found that the harm to Mr. Soldano was clearly foreseeable, and a jury could find that the bartender’s refusal to allow the good Samaritan to call the police contributed to Mr. Soldano’s death (Soldano v. O’Daniels, 1983, pp.315-316). With regard to the fourth factor, the court found that the “employee’s conduct displayed a disregard for human life that can be characterized as morally wrong; he was callously indifferent to the possibility that Darrell would die.”

After exploring the role morality plays in setting the law, the court concluded that the bartender owed a duty to Mr. Soldano to allow the good Samaritan to call the police contributed to Mr. Soldano’s death.

REFERENCES