Moral debate is about what ought to be, and never about facts. Disputes over facts are not settled by moral contemplations but by checking the actual situation. However, due to different people having varying opinions and feelings and because it is not always easy to tell which views are right, there will always be differences about what ought to be. Where there are competing values and when two different courses of action both seem right and a decision has to be made as to which should prevail, it is natural that there can be conflicting moral claims in a debate over ethical issues.

Not every ethical dilemma has a right solution. Reasonable people often disagree; otherwise there would be no dilemma. In a business context, however, it is essential that managers agree on a process for dealing with dilemmas and in settling any ethical question with which they are confronted. Because businesses and their stakeholders are interdependent, for the company to be strong the stakeholders need to share a common idea of correct behaviour, a business ethic, and to think of it as a positive force for better decision making, not a constraint in settling differences. Such shared values and agreed-upon processes are at the centre of ethical issues.
Laura L. Nash, in her essay “Ethics without the Sermon” (40. Nash, 2003: 19) suggests a practical, business orientated way for managers to confront ethical problems. She recommends that managers try to answer the following 12 questions about the issue under discussion. The answers should assist in finding a solution to the ethical problem or dilemma:

a. Have you defined the problem accurately? A moral decision is an informed decision, one based on factual neutrality, defused of emotion.

b. How would you define the problem if you stood on the other side of the fence? The purpose of such an investigation is to differentiate the purely expedient from the most responsible action.

c. How did this situation occur in the first place? In deciding the ethics of a situation it is important to distinguish the symptoms from the disease.

d. To whom and to what do you give your loyalty as a person and a member of the corporation? The people involved must have a strong sense of integrity that puts loyalty to ethical principles above personal gain.

e. What is your intention in making this decision? The purity of a company’s intentions (purely for profit or purely altruistic) will have wide-reaching effects inside and outside of the company.

f. How does this intention compare with the probable result? The goodness of intent may melt away before the final result. Responsible companies must try to align intent and likely result to show the probable consequences and the limitation of knowledge that might lead to more harm than good.

g. Whom could your decision or action injure? The possibility of injury is an even more important consideration than potential benefit.

h. Can you discuss the problem with the affected parties before you make your decision? Consultation and a participative decision making process can resolve many potential conflicts.

i. Are you confident that your position will be as valid over a long period of time as it seems now? A difference in time frame can totally change the meaning of a problem.
j. Could you disclose without qualm your decision or action to your boss, your CEO, the board of directors, your family, society as a whole? Would you want your decision or action to appear on the front page of the morning newspaper?

k. What is the symbolic potential of your action if understood? If misunderstood? How the symbol is actually perceived is as important as how your intend it to be perceived.

l. Under what conditions would you allow exceptions to your stand? What conflicting principles, circumstances, or time constraints would provide a morally acceptable basis for making an exception to one’s normal institutional ethos?

These questions help to show the responsibilities involved in the process of solving a moral problem and clarify the issues involved and so help finding an answer to the particular problem. As Nash says: “The good corporation is expected to avoid perpetrating irretrievable social injury (and to assume the costs when it unintentionally does injury) while focusing on its purpose as a profit-making organization. Its moral capacity does not extend, however, to determine by itself what will improve the general social welfare”.

Rushworth M. Kidder (10. Kidder, 2003: 114-117) recommends that one can often categorize a dilemma into one of the following four paradigms:

- Justice versus mercy: fairness, equity, and evenhanded application of the law often conflicts with compassion, empathy, and love.
- Short-term versus long-term: now versus then, reflects the difficulties arising when immediate needs or desires run counter to future goals or prospects.
- Individual versus community: us versus them, self versus others, or the smaller versus the larger group.
- Truth versus loyalty: honesty or integrity versus commitment, responsibility, or promise-keeping.

Such an analysis helps describe the basic issues, the conflicting basic values that make it difficult to make the tough decision. Such an analysis can help in finding a solution to the dilemma by having thought through the problem and the applicable ethical theory and by having tried to apply the relevant theory to it.
Jürgen Habermas, a contemporary German philosopher, developed a strategy for moral decision making in business, known as the “rational interaction for moral sensitivity strategy” (RIMS). Here, Habermas focuses on the process by which ethical decisions are made, not on the content of moral considerations. He refers to the “ideal speech situation” – the situation where all participants in the discourse are truly equal and in which all forms of coercion or force have been removed. The only thing of force is the most rational argument. Habermas sets the following basic rules that need to be complied with in the “ideal speech situation” for the formulation of moral knowledge:

- The only evidence that participants may introduce into the discourse is empirical experience which is objectively accessible. (Facts only).
- The process of communicative interaction is driven only by the force of the strongest rational argument. (Excluding personal inclination and emotion).
- Only those experiences, arguments, and norms that can attain consensual agreement are regarded as knowledge. (Universalization within the group).
- Any knowledge formulation in this way is always open to future revision. (Openness to re-examination).

Habermas accepts that his “ideal speech situation” is difficult to achieve in business. However, if the people in an organization are serious about wishing to find acceptable solutions to moral problems or dilemmas faced by them, then the participants in the discourse should act as if they were equals (42.Rossouw, 2002: 73). RIMS or the discourse ethic is often seen as utopian (could one expect that an employers organization and a union in wage negotiations would employ the RIMS method?), but it can be a valuable tool if participants in a dialog accept the rules – at least it can provide a measure to gauge the correctness of the collective action. The ethic of dialog (employing the RIMS rules) can be seen as underpinning Kant’s categorical imperative. The co-operative discourse of a group to argue through a problem provides understanding and is a democratic way of finding and agreeing answers and institutions.

John Rawls developed his “veil-of-ignorance” (see page 24) as a tool to advance fairer conditions for co-operation - to achieve fair choices of principles of justice. Michael Pendlebury (19. Pendlebury, 2003) suggests “that we often do better to apply the veil-of-
ignorance test repeatedly, flexibly and directly to specific issues that concern us – doing this with a minimum of standing normative commitments, and assuming ignorance in the relevant parties only with respect to information that might prejudice their decisions (e.g., information about who they are in the corresponding real-world bargaining situation)”.

The thoughts of Nash, Habermas, Rawls, and Pendlebury all provide suggestions as to the process that could be employed to find answers to ethical questions and dilemmas in business. All are closely related. Nash’s list of questions requires total objectivity – as advocated by RIMS, and Rawls’s veil-of-ignorance. While it is of course most helpful to have a procedure that one can follow, it alone does not settle the question which of the diverse ethical theories one should lean on when contemplating a moral problem.

James Rachels in his book “The Elements of Moral Philosophy” (21. Rachels, 1999: 194) lays out what he sees as a satisfactory moral theory. He makes the following points:

- As Kant said, because we are rational beings, we can take some facts as reasons for acting in a certain way but we should act from duty, not from inclination. We ought to do the act supported by the weightiest reasons.
- Kant also said that the categorical imperative is binding on all rational agents simply because they are rational. Non-acceptance means not only immorality but also irrationality. This is so because a moral judgment must be based on good impartial reasons.
- But if you accept any considerations as reasons in one case, you must also accept them as reasons in another similar case. One cannot accept reasons some of the time and not at another time nor can one expect others to accept reasons but make an exception for oneself. People have different merit and this means what people deserve, their “desert”, is dictated by their behaviour. A person’s voluntary action (which dictates its desert) justifies treating one person differently from another as long as such treatment is consistently applied. This is in line with Kant’s imperative that we should respect the dignity, the autonomy of persons – that we should never merely treat a person as a means but always as an end.
• Rachels says “only a philosophical idiot would propose to eliminate love, loyalty and the like from our understanding of the moral life”.

• Drawing on Henry Sidgwick\(^\text{36}\), Rachels suggests as single moral standard an ethic that values “the interest of everyone alike”. Such an ethic would support the good that people be as well-off as possible and such an ethic should be used in measuring institutions, laws, motives and traits of character. It would be consistent with love, friendship, loyalty, pride in one’s work, keeping promises and so on.

• While merit needs to be considered when deciding on treatment in order to be just and fair, the question as to why one appears to have greater merit than another must be answered in order to show the actual desert, e.g. natural advantages of birth are not legitimate bases of desert.

Rachels’ moral theory is essentially founded on Kantian deontological ethics and his suggested moral standard of valuing “the interest of everyone alike” dovetails with Rawls’ difference principle (see page 24) and Kant’s categorical imperative (see Page 11). The notion to treat people according to their desert does not violate Kant’s or Rawls’s theories provided the treatment is always consistently applied. It supports Kant’s demand that we should respect the dignity and autonomy of others. A rational being is morally entitled to choose and act according to her wish (although such an act is not necessarily ethical, only rational decisions that are acted upon from a maxim that is universalizable are morally right) and she is responsible for what she has elected, provided the decision was made freely, without coercion and with the full knowledge of all the relevant facts.

As has been shown, ethical decision making depends on both the decision-making process itself and on the experience, intelligence and integrity of the decision makers. To many competing ethical claims one cannot often find satisfactory solutions. In the end executives resolve conflicts in their own minds and hearts. But what is clear is that if management’s total loyalty is towards the maximization of profits, achieving higher standards of ethical practice will be impossible. Defining the purpose of the company as

\(^{36}\) English utilitarian philosopher (1838-1900).
exclusively economic is a deadly oversimplification which allows overemphasis on self-interest at the expense of consideration of others.

The decision-maker must know that no ethical theory gives a reliable answer in all situations. When moral conflicts are involved one has to carefully consider one’s action and must keep the consequences of one’s actions in mind, e.g., what action do I take as a medical doctor if I can save the life of only the mother or the child?

As Bernd Noll (41. Noll, 2002) proposes in his book entitled Wirtschafts- und Unternehmensethik in der Marktwirtschaft, because the different theories all have very valuable inputs but are not in harmony, a compromise needs to be found. Noll recommends that usually one should follow Kantian theory. If an action complies with the categorical imperative it should be preferred over one that does not. But it could be that the consequences of an action are of such importance or have such a severe impact that they cannot be ignored and that the utilitarian theory must dominate over Kantian theory. Noll calls this the “substitution principle”.

I believe, as enunciated by Noll, that although Kantian moral philosophy should always be given primacy, one needs to be tolerant of the utilitarian and virtue ethical theories and that one should be open to use them with integrity where on the rare occasion it is called for in setting ones own ethical guidelines and those for a business. However, discipline and objectivity need to be employed – one cannot use one theory to-day and another tomorrow depending on one’s inclination or on what would seem to be the most prudent. To do that would result in subjective, illegitimate and probably immoral decisions and actions.

Kant’s categorical imperative that one should always treat the humanity in a person as an end, and never merely as a means – that one should respect the dignity and autonomy of the individual is for me an overriding ethical principle. Kant said that the three elements of his categorical imperative (Universalization, Treating People as Ends and the Ideal Kingdom of Ends – refer page 11) really all express the same thing. The kingdom of ends
refers to the community of people and if one accepts the need for respecting the dignity of a person one automatically acknowledges the truth of the kingdom of ends. Respecting the dignity and autonomy of all rational beings is also expressed in Kant’s imperative that we should act only on maxims which one can will to be universal laws of nature. This is so because this test demands of us to think carefully whether our proposed maxim could in similar circumstances be acted upon by all other rational beings, i.e., we show respect for the autonomy of others. While it has been argued that the universalization requirement is very onerous, rigid and void of all emotions, I doubt that this was really Kant’s intent. We need to employ rationality rather than emotion in arriving at a decision or action, but this does not mean that emotional facts should be ignored and that rationality cannot be applied when designing a maxim for an action dealing with emotional issues. For instance, the decision to dismiss a loyal employee because of cost saving measures must take into consideration all the relevant facts – even those that are emotional, e.g.:

- The years of service;
- The loyalty and commitment to the company displayed by the employee over the years;
- The contribution made by the employee to the company;
- The circumstances - financially, health-wise, in the job market and so on - in which the employee will find her/him self.
- The real savings that the company would achieve.

A decision needs to be taken in a rational manner, from Good Will as Kant would say, from duty only and not based on the decision-maker’s own inclination, but all the above and other relevant facts must be taken into consideration.

But as Noll points out there can be the exceptional circumstance that will result in a ghastly consequence if one strictly abides by the categorical imperative, e.g., if one knows that a terrorist group has planned and is perfectly capable of executing the killing of a large number of people (think for instance of the recent horror attack on the school in Beslan, Russia) and one can avoid this dastardly deed only by obtaining information from one of their number in custody. As painful and horrifying as it may be, one may have to employ coercion in order to obtain that information from the imprisoned terrorist. Such
action seems in line with Rachels’ thoughts that people should be treated according to their deserts and it would certainly be in line with the utilitarian doctrine of the greatest happiness for the greatest number of affected people. Kant might not be partial to such an action because it goes totally against his respect for the dignity of the individual concept (although he favours treating people according to their desert) and his claim that coercion is morally not permissible (even though Kant supports punishment).

Some philosophers believe that Kant’s prohibition of extreme acts such as killing, lying and coercion are interpreted too severely. They believe that Kant would in fact allow such extreme acts in certain desperate situations. As James Rachels suggested (see page 76) – we ought to do the act supported by the weightiest reason but we need to do this rationally, not because our personal inclination may put greater weight on an act than logic would. This is a difficult question because it can also be claimed that departing from a narrow, strict interpretation of Kantian prohibitions may lead to introducing “slippery slope” arguments into his theory. Nevertheless, as signaled earlier, I support the more lenient interpretation of Kant’s injunctions, presupposing always that the agent acts from a universalizable maxim. Careful reflection on and definition of the meaning of some of the extreme actions is needed. For instance, it has been suggested that having to pay tax is coercive. I do not believe this to be true – certainly not in a democracy – because every citizen can disagree via the ballot box with the need of taxation and every citizen has the right to suggest a different system of financing government and its duties to society. While it is true that those who refuse to pay the tax due by them will be punished, this circumstance is a price citizens have to pay for the privilege of living in a free society which is made possible only by agreed institutions with which all have to comply. Being punished for not abiding by such institutions is not coercive (bullying, browbeating) but the desert for flaunting the law. People in Rawls’ original position would, I believe, accept a system of taxation, which is also universalizable in accordance with Kant’s categorical imperative. In terms of Aristotelian virtue ethics a decision to

37 The metaphor “slippery slope” portrays one on the edge of a slippery slope, where taking the first step down will inevitably cause sliding to the bottom. For example, it is sometimes argued that voluntary euthanasia should not be legalized because this will lead to killing unwanted people, e.g. the handicapped or elderly, against their will. (2. Audi, 1999)).
use coercion under the circumstance described above may be as difficult as that which a
doctor has to take when he is confronted with a case of limited resources which allow
him to save only a certain number of critically ill patients. Whatever action the agent
decides on, it will be a painful action because it involves coercion, betrayal or inflicting
suffering or even death. Such situations are referred to as “tragic dilemmas,” the solutions
of which will not fill the virtuous person with happiness but because a virtuous person
would have acted in a temperate manner she ought not to feel guilty or bad for having
found herself in the invidious position where she was forced to perform the act.

In summary, one should primarily be guided by Kant’s categorical imperative but
consider the consequences carefully and if these seem too severe it may be right to
introduce utilitarian theory into the decision process, employing Noll’s “substitution
principle”. And although what is “too severe” can be open to interpretation, virtue ethics
should help guide one to the morally most acceptable action. It may be argued that
relying on the “substitution principle” is merely another form of introducing “slippery
slope” arguments into dilemma solving. Such an argument would be fallacious I believe,
because the Kantian moral theories will not be compromised by “slippery slope”
arguments if acts comply with the Formula of Universal Law. Rather, Kantian, utilitarian
and virtue ethics will be applied in their pure, unsullied form in an honest attempt to
solve a dilemma by finding the right answer that does not have consequences that are too
appalling.

In the hustle and bustle of everyday business there is no time to go into such detail when
having to decide on an action other than the most important or difficult decisions. It is for
this reason that a code of ethics is necessary because it should provide a much simpler
and faster pointer toward the ethically correct action and help to ensure consistent
behaviour. Part III of this report will deal with codes of ethics.