



DO  
WHAT IS  
RIGHT,  
NOT  
WHAT IS  
EASY

# THE BUSINESS ETHICS FIELD GUIDE

## Challenge 11: Unfair Advantage

**BY BRAD YARBROUGH**

*This series features 13 articles from Brad Agle, Aaron Miller and Bill O'Rourke, co-authors of The Business Ethics Field Guide. Each article focuses on a common work dilemma, while providing real life examples and insightful solutions. For more information, please refer to the cover story in the November/December 2018 issue.*

We all want to be successful, accomplish our goals and meet our objectives, and it's often common to receive help to achieve our success. Of course, happenstance and good luck are a part of that help and a part of life. Sometimes good luck accompanies hard work and effort, but sometimes our good fortune is problematic because it is achieved unfairly or it puts another person at an unfair disadvantage. If our success involves unjust or unfair means, then It might not be ethical.



Unfair advantage happens when you enjoy a benefit or a position at another person's expense without a legitimate reason for such status. Here are some of the situations that can give rise to an unfair advantage.

**Mistakes:** What if your opponent in a negotiation has made a mistake and does not know nor understand the true facts? What if your opponent is not aware of a very pertinent, recent development that changes the situation? Their misunderstanding or ignorance is your gain.

If opposing counsel is incompetent, might it be appropriate for you to inform them of recent legislation or recent court decisions that could have a bearing on the current litigation?

**Power:** Some advantage comes from size, influence and position. Keep in mind, however, that the world admires those who succeed through outstanding performance yet abhors those who bully others because they can.

Large organizations often impose onerous terms and conditions on smaller suppliers who need the business, such as dragging accounts payable for long times. Would it be appropriate for the larger customer to help the smaller organization to absorb a payables drag by giving the supplier a long term contract that would allow the supplier to secure a swing loan from their bank?

**Information:** Knowledge is power. If you come to that knowledge through diligent research, proper analysis and painstaking investigation, then the advantage seems legitimate. But if you come by the information through illegal or surreptitious means, then the advantage may not be fair.

If your neighbor, a research scientist, informs you that their company just discovered a cure for a major disease and will be publicly announcing it next week, can you purchase a large block of that company's stock before the announcement?

**Costs:** Your unfair advantage may be over a third party. This situation occurs when a cost can be offloaded to a third party without justification. For example, wrongfully blaming another for your mistake when that person is not present to offer a defense is unfair.

# 13 ETHICAL DILEMMAS

Upcoming articles in this series will take a closer look at each dilemma.

- 1 **STANDING UP TO POWER**  
Someone in power is asking you to do something unethical.
- 2 **MADE A PROMISE**  
Conflicting commitments force you to choose.
- 3 **INTERVENTION**  
You see something wrong. How do you proceed?
- 4 **CONFLICTS OF INTEREST**  
Multiple roles put you at cross purposes.
- 5 **SUSPICIONS WITHOUT ENOUGH EVIDENCE**  
You believe something is going on, but you're not sure.
- 6 **PLAYING DIRTY**  
Achieving justice but by doing something unethical.
- 7 **SKIRTING THE RULES**  
Bending a rule for a better outcome.
- 8 **DISSEMBLANCE**  
Misrepresenting the truth for better outcome.
- 9 **LOYALTY**  
Giving up ethical stance to protect valued relationship.
- 10 **SACRIFICING PERSONAL VALUES**  
Living ethically might put burden on others.
- 11 **UNFAIR ADVANTAGE**  
When opportunity exists to wield an unfair upper hand.
- 12 **REPAIR**  
When you are responsible for a mistake.
- 13 **SHOWING MERCY**  
You could grant forgiveness, but you don't know if you should.



Here are some questions to ask to evaluate whether an unfair advantage exists:

**1. What makes the advantage unfair?**

Fairness can be hard to define. If an advantage comes at the expense of another without good reason, it is unfair. Good reason could include hard work, creative strategy, substantial investment or simple good luck. Bad reasons could include theft or misuse of confidential or privileged information.

**2. Who stands to benefit or be hurt by the unfair advantage?**

Who, besides yourself, stands to gain from the advantage? If you change your contractual bid because a friend gave you a tip on your competitor's bid, your employer stands to gain from the advantage. Also consider who will be harmed by your advantage. Innocent people such as the community or family members could be hurt. Consider both sides of the equation.

**3. Did you contribute to the unfair advantage?**

Sometimes we're lucky. Sometimes our hard work pays dividends, but sometimes we put our thumb on the scale. If your conduct created the unfair advantage, you do not deserve to keep it. Keep in mind that good behavior can lead to an unfair advantage. If that occurs, you may be obligated to take steps to make the situation fair.

**4. Did the other party play a role in the advantage you have?**

If your opponent makes a mistake and you know better, can you take advantage of that? It would seem to matter if the mistake was innocent or negligent. Perhaps it would be appropriate to correct the other party's mistake. Think of the trust you would build by such forthrightfulness.

**5. Can you make the advantage fair?**

This might be the most valuable question. Just disclosing your advantage could be an honest step that puts your opponent on notice. Imagine the trust you would build by notifying your opponent that you speak their language when they convert to their native tongue thinking they have privacy. You might lose that advantage but enhance your reputation.

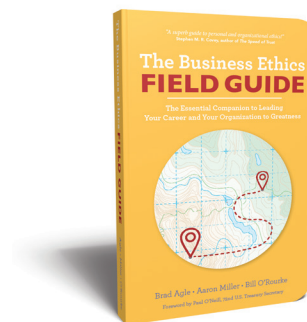
There are steps we can all take to avoid the pitfalls of unfair advantage:

- Remember that you will not always enjoy the advantage. What goes around, comes around. By treating others fairly, you are making an investment in being treated similarly when the power shifts.
- If you catch yourself justifying your taking advantage of others, stop and pause. Rationalization is usually an attempt to manufacture fairness, but fairness is not manufactured; it must be real.
- You cannot put the blame on the other party because they didn't catch you in your bad behavior. We usually approach others in good faith and that's the way they approach us. Don't abuse that trust.

**Some Notable Examples**

I was sitting at an airport waiting for my flight to corporate headquarters. Directly behind me, four individuals were openly discussing upcoming negotiations with our company. This wasn't just any negotiation; it was the biggest single contract our company had.

I could walk away and not hear or I could listen and even take notes. What is the best thing to do? In general, the conduct of talking business in a public place is irresponsible, but I was not concerned with their conduct. I was concerned with how I should act. I could lawfully listen, but it felt wrong. So acting in fairness, I



introduced myself and my employer to the individuals. I sat back down and, surprisingly, they kept talking. Have I fulfilled my ethical obligation? Some would say yes and listen. Others might move elsewhere to prevent hearing them. What's important is to be true to your own moral compass.

What if your competitor copies you on a confidential email that was clearly not intended for you? When do you stop reading it? Do you call your competitor and tell them about this mistake? During a negotiation, your opponent takes copious notes and at the end of the meeting, throws them in your wastebasket. Can you retrieve those notes and read them?

In each of these cases consider the questions and pitfalls presented in this article. If you are enjoying a benefit at someone else's expense and without good reason, you may need to reconsider your approach.

**In Summary**

In business and in life it's great to have an advantage...if it's one that you've come by fairly. You have to put your head on the pillow at night and go to sleep. You have to look yourself in the mirror in the morning. Make that a rewarding experience, not a burden. ✪



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