

Money Matters: Jewish Business Ethics
Presentations: January and February 2012
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Topics:

Hot Tips: The Ethics of Insider Trading

By the Sweat of Their Brows: Wages of the Working Poor

Morally Bankrupt? The Ethics of Debt Discharge

State of the Union: The Right to Organize, to Bargain Collectively, and to Strike

Fabulously Wealthy or Filthy Rich? The Ethics of CEO Compensation

Buyer Aware: Another Side to Business Ethics

Overview:

Money Matters addresses Judaism's view of the economic dilemmas and monetary quandaries that we face daily in both our personal and professional lives. The goal of this course is to provide a sensitive, fair, and unshakable economic paradigm grounded in 3,000 years of tradition and practical experience—an ancient yet fresh spin on how we view ethics of money.

Students will emerge from this course with an understanding that only a divine economic system can ensure unequivocal justice while recognizing the virtue in each stakeholder's position. Money Matters will show how the Torah's sharply discerning yet holistic rulings inspire us with the confidence to confront any ethical economic dilemma.

Insider Trading Outline:

Insider trading refers to the trading of a company's stocks or other securities by individuals with access to confidential or non-public information.

- Accountant at public company and I know that a public report of profits will be good and stock will go up. So I buy it the day before the disclosure. Price goes up---I make money.

- **Contrast:** I own a neighborhood drug store. I know that the business is going to fail because a chain drug store is moving in next door. I sell business and do not disclose this.
 - Arms-length transaction vs. fiduciary
 - Duty to Disclose.

- **Securities and Exchange Commission v. Texas Gulf Sulphur Co.**
 - Texas Gulf conducted surveys of 15000 square miles of land in Canada. Geologists realized that there was copper and zinc and silver in high amounts. These results were so remarkable that all the witnesses who were in court testified they had never seen anything like this. They were going to keep it a secret. Purchases of stock are made.

 - “The core of Rule 10b-5 is the implementation of the Congressional purpose that all investors should have equal access to the rewards of participation in securities transactions. It was the intent of Congress that all members of the investing public should be subject to identical market risks,— which market risks include, of course the risk that one's evaluative capacity or one's capital available to put at risk may exceed another's capacity or capital. The insiders here were not trading on an equal footing with the outside investors. They alone were in a position to evaluate the probability and magnitude of what seemed from the outset to be a major ore strike; they alone could invest safely, secure in the expectation that the price of TGS stock would rise substantially in the event such a major strike should materialize, but would decline little, if at all, in the event of failure, for the public, ignorant at the outset of the favorable probabilities would likewise be unaware of the unproductive exploration, and the additional exploration costs would not significantly affect TGS market prices. Such inequities based upon unequal access to knowledge should not be shrugged off as inevitable in our way of life, or, in view of the congressional concern

- U.S. v. O'Hagan, 521 U.S. 642, 117 S.Ct. 2199 (1997)

- Grand Metropolitan PLC (Grand Met) retained prominent law firm regarding a tender offer to purchase Pillsbury stock. Respondent was a partner at the prominent law firm and he started purchasing options. Purchased so much he had more than any other investor. Grand Met publically disclosed its offer and the price increases dramatically.
- He made a profit of \$4.3 million. Allegedly Used the money to cover up prior embezzlement of client trust funds. Sentenced to prison for defrauding law firm and client. Court upheld conviction.
- Under the “traditional” or “classical theory” of insider trading liability, § 10(b) and Rule 10b–5 are violated when a corporate insider trades in the securities of his corporation on the basis of material, nonpublic information. Trading on such information qualifies as a “deceptive device” under § 10(b), we have affirmed, because “a relationship of trust and confidence [exists] between the shareholders of a corporation and those insiders who have obtained confidential information by reason of their position with that corporation.” [*Chiarella v. United States*, 445 U.S. 222, 228, 100 S.Ct. 1108, 1114, 63 L.Ed.2d 348 \(1980\)](#). That relationship, we recognized, “gives rise to a duty to disclose [or to abstain from trading] because of the ‘necessity of preventing a corporate insider from ... tak[ing] unfair advantage of ... uninformed ... stockholders.’ ” [*Id.*, at 228–229, 100 S.Ct., at 1115](#) (citation omitted). The classical theory applies not only to officers, directors, and other permanent insiders of a corporation, but also to attorneys, accountants, consultants, and others who temporarily become fiduciaries of a corporation.
- The “misappropriation theory” holds that a person commits fraud “in connection with” a securities transaction, and thereby violates § 10(b) and Rule 10b–5, when he misappropriates confidential information for securities trading purposes, in breach of a duty owed to the source of the information. See Brief for United States 14. Under this theory, a fiduciary's undisclosed, self-serving use of a principal's information to purchase or sell securities, in breach of a duty of loyalty and confidentiality, defrauds the principal of the exclusive use of that information. In lieu of premising liability on a fiduciary relationship between company insider and purchaser or seller of

the company's stock, the misappropriation theory premises liability on a fiduciary-turned-trader's deception of those who entrusted him with access to confidential information.