CHAPTER 14
WHO OWNS KNOWLEDGE? ETHICAL AND LEGAL ISSUES

TEST YOUR UNDERSTANDING

1. In your own words, describe how ethics relates to knowledge.
   
   Ethics plays a part in all aspects of life as well as in all areas of business. Naturally, it is needed in knowledge-based systems (as it is in all areas of business and technology) due to the possibility of gross misconduct in the use and exchange of knowledge and knowledge-based systems.

2. Review material on the Internet, and write an essay detailing the latest views of ethics in knowledge management.
   
   More and more journal articles have been published in the area of ethics, especially since this course is encompassed as part of the accreditation requirements for a degree in a school of business. Law journals during the past decade have addressed this topic more often than ever before.

3. In what respect is an ethical act different from an immoral or illegal act? Give examples of your own.
   
   An ethical act is one that is innately right. It is different from an immoral act in that an ethical act is more subjective. For example, killing an abortion doctor may be considered an ethical act from the standpoint of the murderer if he believes he is saving unborn children. However, the act in itself is grossly immoral from both viewpoints. An illegal act is deemed subject to prosecution by society as a whole and is objective, whereas an ethical act is more subjective. For example, Robin Hood committed illegal acts when he stole from the rich and gave to the poor, but was ethical in principle.

4. Distinguish between:
   
   a. product liability and tort laws
   b. out-of-bounds and nontrivial errors
   c. code of ethics and self-assessment
   d. implied and express warranties

   a. Product liability holds the manufacturer liable for a defective product under the Uniform Commercial Code whereas tort law is subject to civil laws. Tort law is useful if the knowledge-based system is a service and the UCC is used if the knowledge-based system is a product.

   b. An out-of-bounds error occurs because the expert did not address the problem or the knowledge developer did not accurately enter information that the expert provided. A nontrivial error has a big financial impact on the business.
c. A code of ethics is a written declaration of principles that theoretically govern how employees are to behave whereas self-assessment is an individual’s examination of their own ethical beliefs.

d. An express warranty is one that is orally offered or in writing. An implied warranty is unspoken but is assumed when the sale is made and that the good will do what it is supposed to do.

5. **Explain briefly the ethical decision cycle. In what respect is it viewed as a cycle?**

Before an ethical decision is made, three things are considered: the nature of the act; the consequences of the act on the parties involved; and the consequences of the act on the organization, community, and society. It is a cycle, because once the three steps are undertaken, feedback is obtained which helps to shape the ethical decision-making process in the future. This process occurs over and over again forming an ethical framework.

6. **In your own words, discuss the major threats to ethics. Is one threat more serious than others? Be specific.**

Faster, more powerful computers and sophisticated telecommunication networks are changing the way people work and the way they relate to one another. It de-emphasizes personal communication and can increase violations of ethics since the consequences of the act won’t be readily accessible to the user. This may be the most serious threat. Distributed databases and ease of access to information may create a threat due to the importance and cost of information.

7. **How can a code of ethics be applied in an organization? What are some of the barriers?**

It is imperative that top management is ethical if the organization as a whole is to be ethical. A code of ethics should be established as well and should be discussed among employees and top management. The code must be enforced (for example, people who blatantly violate the code must be dealt with, possibly fired.) The company should also provide training via forums and other means.

A barrier to the application of a code of ethics in an organization may be an overemphasis on the “bottom line” over ethical behavior. A lack of enforcement will also lead to a decline in ethical behavior.

8. **Suppose you were asked to set up a code of ethics for a learning organization. How would you proceed? What steps would you take to do the job?**

First, I would try to define a code of ethics that is agreed upon by top management and the employees. In order to disseminate the ethical code, I would employ a top-down approach. By making sure the CEO and top management act with the utmost ethical integrity this would shape an organization’s image and culture. I think as long as...
management is visible to all other employees, their actions will “rub off” on lower-level employees.

9. Visit a company in your community, and investigate whether it is a learning organization. What ethical issues exist in the firm? Write a brief report on your findings.

Students should be cautioned about the sensitivity of this subject. Care should be taken to contact the human resources director or someone in management who has direct dealings with the code of ethics of the company or its ethics policies. Depending on the company, students reporting their findings should decide whether the name of the company should be mentioned without the permission of the company. This matter has to do with the company’s right to privacy, especially if the findings are unpublished and unknown to company employees.

10. What is the purpose of self-assessment? How does it contribute to a corporate code of ethics?

Self-assessment allows individuals to examine their own views of ethics in general. The purpose is to formulate an ethical framework or belief system. Employees’ individual ethics contribute as a whole to form an unspoken corporate code of ethics. If this is aligned with the corporate code of ethics, the possibility of achieving an honest and ethical workplace is enhanced.

11. Is a knowledge-based system a product or a service? Explain the pros and cons of this issue and its implications for litigation.

A knowledge-based system may be considered a product if it is mass-marketed and sold as off-the-shelf software like any other product. It may be interpreted as a service if it is specifically developed for an organization. If the knowledge-based system is considered a product, the company that sold it may be held responsible for losses incurred as the result of the system, regardless of fault. If the knowledge-based system is considered a service, negligence cause of action must be proved, in which it must be proved that there was a failure to use sufficient care. This is more difficult to prove.

12. Describe the circumstances in which knowledge developers might be sued for malpractice in the future.

In order to be liable for malpractice, the knowledge developer must be considered a professional, belong to a profession with standards of care, and owe a duty of care to his/her company. If knowledge developers are certified as a profession in the future, they will be held liable for malpractice.

KNOWLEDGE EXERCISES
1. **The chapter suggests three possible owners of knowledge. Who are they? Do you agree?**

   Yes. The possible owners of knowledge are: the domain expert, the organization, and the one who acquires the system. The owners of knowledge are the ones who will ultimately be held responsible for the knowledge practically and legally.

2. **In what ways will knowledge ownership be an issue in the future?**

   Knowledge ownership is a dangerous position, since the owner of knowledge may be the one “left holding the bag” if lawsuits are brought up. Knowledge owners will be held responsible for any losses incurred due to negligence and may be responsible for losses not resulting from negligence (in the case of product tort law). On the other hand, benefits may result from knowledge ownership as well.

   Knowledge ownership may be an issue since an expert may “sell” his ownership of knowledge to a company; an expert may be unwilling to release knowledge that he/she gained on the job to the corporation; and an individual may become an expert through training on a knowledge-based system.

3. **Who would be held liable for a defective knowledge-based system? Discuss in detail.**

   There are three potentially liable parties: the knowledge developer, the organization, and the user that acquired the system. The knowledge developer is subject to personal liability if the system is defective. The organization could be held liable as well if he/she is an employee of the organization. The user that acquired the system (if it used the system to service another customer) could possibly be responsible as well, if it had prior knowledge that the system was defective and used it anyway, for example.

4. **How different do you think a learning organization views or upholds standards of ethics compared to other organizations?**

   A learning organization tends to be proactive, not reactive and looks forward on a regular basis to being creative and ahead of the competition. Upholding standards of ethics would be natural as well as seeing them installed and adhered to in a learning organization.

5. **Do you think litigation is the best route to protect knowledge ownership? Form a group with your peers, and brainstorm the pros and cons.**

   The U.S is known worldwide as the number one country when it comes to litigation. Litigation might force experts to ‘download’ their knowledge, but there is no way he or she can be forced to be forthright or truthful about the integrity, accuracy, or completeness of such download. In this respect, litigation might end up being counterproductive.
6. **The Internal Revenue Service acquires demographic data about tax-paying citizens in an effort to elicit relationships to their tax returns. In your opinion, is this effort an unethical act? Illegal act? Immoral act? Discuss.**

It is obviously legal, in that the IRS has been practicing this procedure for years. But in the author’s opinion, it is unethical to spy on people’s privacy, unless the information gathered is in the public domain.

7. **Shoppers at a national retail chain are asked for their ZIP codes as part of the checkout process. This information is used to determine the pattern of business coming from various regions in the community. As a result, the store decides on its products, prices, and specials to maximize sales volume. Shoppers are not told why ZIP codes are solicited. Is the store’s action ethical? How does it compare to the use of cookies in Web shopping?**

This action is quite similar to cookies that are embedded in a surfer’s hard disk without his knowledge or approval. It is quite unethical and, in many ways, irresponsible to expect customers to give sensitive information without hesitation or an explanation. I would ask the students this question to see what they think. This should raise quite a discussion.

8. **The board of directors of a commercial bank had an attorney whose job was handling cases of bad loans and other legal matters affecting the bank. The attorney’s main line of business was real estate. Cases requiring specific expertise were referred to attorneys in town at the recommendation of the bank’s attorney.**

*One day, a case came up in which an employee sued the bank and one of its vice presidents for sexual harassment. The bank’s attorney decided to handle the case himself. After a lengthy trial, the court ruled in favor of the employee. The jury awarded her $350,000 in damages.*

*When asked why he did not have another attorney try the case, the bank’s attorney replied that he thought he was saving the bank money by trying it himself, even though he had no prior experience with sexual harassment cases. At the outset, he did not think the case had much substance. The bank, on the other hand, was not happy with the results and blamed the attorney for botching the case.*

*a. Could any aspect of the attorney’s decision to handle the case be considered unethical, immoral, or illegal? b. Should the attorney be fired by the bank? Why or why not? c. Visit a local law library or talk to a local attorney and determine whether the bank attorney violated the American Bar Association’s code of ethics.*

*a. First, there is nothing illegal about the bank’s attorney handling the case. He is a licensed attorney and is trained to handle a variety of cases, even though his specialty is real estate. It could be that he had good intentions in handling the case and trying...*
to save the bank some hefty fees. It is difficult to judge the sincerity of the gesture. It could be that he simply wanted to grab as much business from the bank as he could. If so, then it would be unethical and unprofessional for him not to refer it to a specialist in the field.

b. This possibility was in fact raised by the chairman of the board in a closed session with senior members of the board. Since the attorney in question has been with the bank a long time and has generally served the overall legal needs of the bank (especially in litigating past due auto loans), there was reluctance to remove him from the board. For a $300 million bank, the damages were viewed as affordable. What the bank ended up doing was to write off the damages. The vice president in question was also fired.

c. It would be interesting to see what the students will find out. On the surface, the attorney did not violate any fiduciary aspects of the relationship with the bank. From the author’s experience with this attorney, he is a well-meaning person, but not very smart. Yet, the bank’s chairman of the board kept him on the board.

9. A knowledge-based repository was installed in the loan department of a local commercial bank to determine the qualifications of auto loan applicants. The knowledge captured was based on the department vice president’s experience. The bank paid the knowledge developer (an outside consultant) in full for the knowledge database.

Four months later, the developer learned through one of the bank employees that the bank had modified the knowledge base to develop a real estate loan knowledge-based system on its own. The junior loan officer took the software home and spent time learning how to build a knowledge-based system. He then worked with the senior vice president of the real estate department to build the new database. Several modules of the auto loan database that check for the applicant’s assets, salary, place of employment, and so on were copied into the new system. The approach to the system and the procedure were identical.

The developer filed a lawsuit against the bank, seeking damages and the right to ownership to the system. The bank, in turn, filed a countersuit, claiming it purchased the knowledge package outright and, therefore, owed the developer nothing.

a. What went wrong in this case?
b. Was an implied or express warranty part of the auto loan knowledge base?
c. Are any ethical, moral, or legal considerations at issue here?
d. Who do you think owns the knowledge in the real estate repository?
e. Based on the material presented in the chapter, how do you think the court would rule?
f. Who owns the procedure used to build the knowledge base? Is it proprietary?

a. What went wrong in this case is simply the bank decided it owned the system, they paid for it, and felt they could do what they wanted with it. The developer, on the other hand, felt that he built the system with certain specialty (tricks of the trade) and therefore owned that part of the building process. The bank did not give the
developer the courtesy of telling him that they were in the process of building another system based on the auto loan advisor. At attorney’s advice, the bank felt it did not need to answer to the developer.

b. There was implied warranty to the extent that upon installing the system, the developer warranted the system to be free of errors and will serve the needs for which the bank contracted for. Based on the case, there was no express warranty or anything in writing between the bank and the developer.

c. The key question here, “Is it ethical for the bank to freely benefit from the technical expertise embedded in the auto loan advisor to build a real estate loan knowledge-based system on its own?” is open to discussion.

d. Since the knowledge was acquired from the bank’s vice president in charge of the loan area, it seems obvious that the bank as an entity owns the knowledge rather than the developer. In terms of the bank versus the vice president, legally the bank owns the knowledge since it has invested in annual training (attending conferences, workshops, paying for advanced courses at a local university) regularly over the past 16 years the vice president has been with the bank.

e. The material in the text generally supports the way a local court ruled on the case. The developer lost the case on the basis that since he was paid fully for a service he rendered, the bank should feel free to do whatever it wishes with the knowledge-based system. There was no prior agreement or understanding regarding the proprietary nature of the knowledge-based system.

f. See e above.