
TAKE THE MONEY AND RUN: WHITE COLLAR CRIME AT DHR PATIO HOMES, LLC

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CASE DESCRIPTION

This is a field-based disguised case which describes how a small family business deals with crimes committed by a trusted employee. The problem for the characters in question is how to deal with their most trusted employee, someone they treated like a family member, who they discovered had stolen nearly \$25,000 from them over a two year period. Several factors complicate the owners' decision as to how to proceed: the person in question was their most tenured employee and had become part of the family, the employee and his family were renting a house built by the protagonists for the employee until the employee could establish his own credit, and the employee's brother worked for the firm. The case has a difficulty level appropriate for a sophomore or junior level course in business ethics or small business management. The case is designed to be taught in one class period (may vary from fifty to one hundred minutes depending upon the course structure and the instructional approach employed, see instructor's note) and is expected to require between four to eight hours of outside preparation by students (again, depending upon instructor's choice of class preparation method).

CASE SYNOPSIS

Derived from observation, field interviews, and e-mails, the case describes how two college professors operating several businesses were confronted with the fact that their most senior and competent employee appeared to have purloined nearly \$ 25,000 in company funds. The employee in question, Alan Thompson, was originally hired with his wife Wilma to finish basements in Davis and Hodgetts' rental units. This project was such a success that as the business moved into private home construction Alan became the defacto on-the-job contractor. Growth in their business cost them their bookkeeper and they secured the services of James Carroll, CPA for the firm. When examining the firms' books, Mr. Carroll noticed that certain expenses were either for personal items or duplicates for similar expenses incurred a short time ago. An audit indicated that Alan Thompson was the culprit for these expenses as well as the fact that several charge card receipts had a signature that was not Mr. Thompson's. Davis and Hodgetts had to decide what if any legal action would they take, if they wanted to try to recover any of the stolen funds and if so, how; and how do they want to confront Alan with their findings?

INSTRUCTORS' NOTES

According to Justice Department estimates, nearly 30% of the nation's employees are hard-core pilferers, and up to 80% will steal if no active security measures are in place. Internal theft is costing businesses more than \$60 billion a year. The impact of stealing on small business is especially telling: US Chamber of Commerce statistics show 50% of the failures within the first year of business can be linked to sticky fingers.¹ Formby and Williams noted that "there are 2 types of internal theft - theft of cash and theft of merchandise. Opportunities for theft of cash are available at the cash register, in the credit department, or in payroll or other bookkeeping functions. Merchandise thefts can range from employees taking small items home in their pockets to complex operations. The following factors can determine the extent to which internal theft problems may be correctable: 1. The employer must be aware of the problem. 2. The employer must realize that anyone is a possible offender. 3. The employer must be willing to make security revisions. 4. The system must be evaluated constantly."²

Since employee theft has been well documented over the past twenty years and received much press coverage as of late, thanks to the Enron debacle, one would have thought that theft in the workplace would be expected, detected, punished, and eventually minimized. However, Joshua Kuarantzick indicated that nothing has changed in terms of employee theft in the post Enron era. "Lying and dishonesty simply have become a much more accepted part of business – and of American life. ... Greed still rules the day."³ Worse, the lack of legal, no less moral, behavior on the part of workers has extended not only their own materialism and avarice but has become so rampant as to have created "an engrained tolerance of [others'] lying and bad behavior."⁴ We have come to not only expect illegal and immoral business behavior, but in fact to accept it.

Ironically, this was not the case (pun intended) with Richard and Adrienne Davis and Stephen Hodgetts. They expected Alan Thompson and his wife Wilma to be of high moral character and disposition since Alan and Wilma had become an integral part of the family business; a positive attribute according to Ernest Doud Jr.. "Healthy family relationships drive businesses forward, whereas conflict-centered family relationships drive businesses down. Strength and unity of the family management team sends important messages to four key groups: employees; customers; suppliers; and competitors. Effective working relationships and a unified management team send good news that can pay dividends. Your employees will consider your business a good place to work. The dividend--a more productive work force."⁵

Yet the Davis's and Hodgetts should not have been shocked by the Alan's behavior. [Michelle] "Goodman lost her company because a trusted employee embezzled almost \$1 million, which financially ruined her business. Bonnie J. Merrell was convicted of the crime and started a three year jail sentence last April, according to Maricopa County Superior Court records.... Small businesses tend to fall prey to this swindle because they often give too much financial control to one trusted employee, and often don't have the checks and balances in place to prevent it."⁶

The second irony is that, according to Anita Dennis, it is when the small firms that are doing well that they are the most susceptible to theft or fraud. "A risk of a strong economy is that small business clients may loosen their internal controls, discovering fraud or theft only long after it has happened. The most vulnerable are private companies in the \$10 million to \$30 million range because they are large enough to lose substantial sums but often not yet big enough for adequate finance departments. Employee resentment, misplaced trust and technology are elements that make fraud possible."⁷ Davis and Hodgetts' operation grew from a small home rental business to not one but two home construction companies – clearly a long term employee of the firm could interpret this growth as success, success that the employee might feel has led to the inequitable distribution of wealth back to the owners.⁸

RESEARCH METHODOLOGY

This research is phenomenological in nature and written by two of the characters in the case, the co-owners of the companies in question. This field-based case is disguised and derived from observation, field interviews, reflections, and e-mails.

INTENDED INSTRUCTIONAL AUDIENCE & PLACEMENT IN COURSE INSTRUCTION

This case was primarily developed for undergraduates taking a course in business ethics, although the context of the case, a small business, would also make the case suitable for a course in Small Business Management. The content of the case does include issues in human resource management (i.e. how should the firm now deal with Alan Thompson) and the legal environment of business (what are the legal ramifications of the alleged actions by Alan and Wilma Thompson) and therefore could also be utilized in these topic-driven functional courses. The case specifically deals with how a firm handles the discovery of embezzlement and fraud and should be introduced after the students have read material on white-collar crimes.⁹ The case also deals with employee theft, specifically credit card fraud and embezzlement, as well as conspiracy to commit a crime (the RICO act)¹⁰ - students may benefit from a review of this material.

In terms of a Business Ethics or Business and Society course, the case should be presented in conjunction with readings addressing the topic of the employees and the corporation¹¹ and should be employed as either an end-of-chapter case (for chapter review purposes) or as a case to be read just prior to the chapter material (as an ice-breaking exercise). For a Small Business Management course, this case should be taught in concurrence with readings in managing employees, business law and crime prevention, and business ethics.¹² Given the fact that these topics cover numerous text chapters, this case is more comprehensive in nature and should be employed towards the end of the semester, perhaps as a sectional review.

Secondary Applications

Although not originally intended for these purposes, the strong emphasis on legal issues (and the associated legal research) and the presence of a licensed accountant (with legal obligations) may provide for additional uses for this case. For example, this case may be quite appropriate for a legal environment of business course (a course usually required for business majors who are not majoring in accounting) given the fact that both criminal and contract law are addressed in the case. This case therefore could serve as a sectional or comprehensive case since it would be covering several issues addressed in the course, including business ethics.¹³

This case may also prove quite useful for students majoring in accounting since it not only describes the legal issues that would be covered in a Business Law I and Business Law II class (the typical classes taken by undergraduate students pursuing an accounting degree) but also the legal and ethical obligations of the accountant who uncovers the embezzlement and fraud discussed in the case. Please note that case question number two addresses this issue but only indirectly – the instructor would have to specify, perhaps in a separate question, that students should include the accountant in their analysis of stakeholder rights, responsibilities and obligations.¹⁴ Given the breadth of material that this case encompasses, it is strongly recommended that this case be used as a sectional case or comprehensive case since it addresses constitutional, criminal, and contract issues.

Regardless of the course in which this case is employed, instructors should be aware that students will have to perform secondary research in order to develop good, very good, and excellent answers to the questions posed in this teaching note. Instructors may decide to offset this need for research by cutting and pasting the secondary material from the case answers into a handout to distribute to their students.

LEARNING OBJECTIVES

The overall purpose of this case is to have students examine two critical and interrelated ethical issues; the uncovering of a white collar crime and the handling of the employee alleged to have committed that crime. This case in particular has practical value to students since many of them may find that they as general employees, supervisors, and in the future HRM specialists and business owners will have to deal with similar situations. Students are asked to probe beyond personalities and the immediacy of the moment and examine the underlying nuances of the posed problem.

Specific learning objectives are as follows:

- 1 For students to understand the legal ramifications and moral obligations associated with uncovering white-collar crimes and to employ secondary research on these topics to support their case answers.
- 2 For students to analyze the legal options available to Davis and Hodgetts.

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3. For students to develop a plan of action for Davis and Hodgetts including whether and how and if they were going to confront Alan Thompson with these allegations.
 4. For students to decide whether and how the alleged stolen funds should be recovered.

TEACHING STRATEGIES

Preparing the Student Prior to Case Analysis

There are several approaches, not mutually exclusive, that an instructor may employ in terms of utilizing this case. It is strongly recommended that prior to reading this case, (regardless of the specific methodology employed) students be exposed to some material on embezzlement, forgery¹⁵ and the proper method for handling an employee suspected of committing a white collar crime.¹⁶ (See Appendix A. This may be used as a class handout if the instructor so chooses.) This will provide students with the proper perspective and allow them to recognize some of the legal and ethical issues embedded in the case.

This conceptual framework may be delivered prior to assigning the case by using at least one (1) of the follow methods:

- a short lecture and/or discussion session on the above noted topics.
- a reading assignment prior to reading the case that covers several of the topics mentioned.
- a short student presentation on each topic.
- a guest lecturer on one of the topics
- a literature search on the described topics.

Case Method

Although most of the students in a business ethics or small business management course may have had some exposure to the case method, it behooves the instructor to provide the students with a review of the case method of analysis. In the traditional case method, the student assumes the role of a manager or consultant and therein takes a generalist approach to analyzing and solving the problems of an organization. This approach requires students to utilize all of their prior learning in other subject areas although the focus should be on the current course content. It is strongly suggested that students prepare for the case prior to class discussion, using the following recommendations:

- allow adequate time in preparing the case
- read the case at least twice
- focus on the key issues
- adopt the appropriate time frame
- draw on all your knowledge of business.¹⁷

The instructor's role in case analysis is one of a facilitator. The instructor helps to keep the class focused on the key issues; creates a classroom environment that encourages classroom discussion and creativity; bridges "theory to practice" by referring back to key concepts learned in this or prior courses; and challenges students' analyses in order to stimulate further learning and discussion. There are several variations of the aforementioned approach including: written assignments, oral presentations, team assignments, structured case competitions, and supplemental field work.¹⁸

Regardless of the variation employed, it is recommended that the students' work be evaluated and graded as partial fulfillment of the course's requirements. However, if this case is not employed as a comprehensive case, it is not recommended that this case (and its related assignments) have a large weight or impact on students' overall course standing.

Using Case Questions

Whether or not the instructor assigns questions for students to analyze with the case is usually a matter of educational philosophy and student readiness. Naumes and Naumes, for example, thought that if the questions were handed out with the case "students will tend to focus only on the issues specifically raised by the questions ..."¹⁹. Lynn, on the other hand, noted that the use of assignment questions provided students with more concrete guidance in case preparation and analysis; specifically directing them to consider the decision to be reached.²⁰

In deciding whether or not to assign questions, the instructor should first answer the following questions:

1. What is the level of course instruction?
2. What type of case is being taught? (Iceberg, incident, illustrative, head, dialogue, application, data, issue, or prediction – see Lundberg et. al. for full descriptions.)²¹
3. What is the instructor's preliminary assessment of the students' ability to be self-directed learners?
4. What are the students' previous experience with case instruction?
5. If the students have already been exposed to the case method, what types of cases have they been exposed to? Case incidents (1-2 page cases with questions)? Short cases (3-8 page cases with and/or without case questions)? Comprehensive cases (greater than 8-15 pages) Harvard-style cases (greater than 15 pages)?²²
6. What is the instructor's preferred method for case instruction? (For example, "sage on the stage", "guide on the side", "student as teacher" (student-lead discussions), "observer and final commentator" (open class discussion with faculty summation), etc....

Role-Playing (100 minutes)

Role-playing enacts a case and allows the students to explore the human, social, and political dynamics of a case situation. This case lends itself quite well to a two-part role playing exercise since it involves a rather simple situation with only three to four characters and therefore most of the class can role play in this exercise.

Prior to role-playing the case part

Prior to role-playing the case part, students should be asked to not only read the case part but to answer the following questions:

1. Who are the key participants in the case? Why?
2. What is the “role” of each of these participants in the organization?
3. What is their motivation or rationale for their behavior?
4. What is the dilemma that the character is facing and/or how can the character assist someone else in solving a problem?

The instructor may either go through these questions prior to case enactment or wait for the role playing exercise to be completed in order to use this material to debrief the class.

Step 1: Assignment of Roles & Instructions (10 minutes)

The class should form groups of three to four students with three of the students enacting the key roles in the case (Richard and Adrienne Davis, and Stephen Hodgetts) and the other acting as observer. The instructor should pass out a short reminder notice about participants staying within their roles.

Step 2: Enactment 1 – Deciding What to Do (20 minutes)

The student enacting the role of Richard Davis should be instructed to start the conversation, summarizing the situation. The instructions to the students playing Richard Davis is that he is highly hurt and offended by Alan Thompson’s embezzlement. He wants to deal with this situation as quickly as possible yet he also wants to recover as much of the stolen money as possible. The instructions to the students playing Hodgetts is that although he is for pursuing legal action against Alan Thomson, he is most worried about what type of damage the Thompson’s might do to the home that they are now renting from the firm. Adrienne Davis feels betrayed by the Alan and Wilma and just wants to put this whole

incident behind her and the firm. The instructor should note how well each group enacts the role-play and offer suggestions (if necessary) if some groups seem a bit confused or lost.

Step 3: Debriefing 1 (20 minutes)

The instructor might want to ask the following questions:

- What was the results of the meeting? What did the Davis' and Hodgetts decide to do?
- How many groups decided to go to the police and file a complaint? If so, why?
- How many groups decided they needed to contact a lawyer, an accountant, or an alternative expert for advice?
- Did the Davis's and Hodgetts agree or disagree as to the actions they should take? If they disagreed, what were the reasons?

Step 4: Enactment 2 – The Confrontation (20 minutes)

Four roles will need to be enacted, those of the Davis', Hodgetts and Alan Thompson. The student enacting the role of Richard Davis should be instructed to start the conversation, with summarizing the situation and providing the evidence to support his accusations. The student enacting the part should be instructed to display Richard's emotions (hurt and offended) but to not over-dramatize the situation. The instructions to the students playing Hodgetts and Adrienne should be similar to those in the first exercise.

One method of role play would be to have the student playing Alan Thompson be given a set of choices as to how to enact this role. Those choices could include abject denial, silence, admitting guilt, admitting guilt but protecting his wife, or requesting that his lawyer be present during these discussions. This choice would not only increase the student's motivation to enact the role but also may provide some insight into the student's general outlook on the case. A second method would be for the instructor to assign a different role each student playing the role of Alan Thompson. This would allow, in the debriefing session, comparisons of results based upon how each group's Alan Thompson reacted to the accusations.

Step 5: Debriefing 2 (20 minutes)

The instructor might want to ask the following questions:

- How did Alan Thompson react to the accusations?
- In how many groups was Alan Thompson still retained by the firm? Why or why not?
- In how many groups did Davis and Hodgetts decide to contact the police and press legal charges? In how many groups was this a threat posed by Davis and Hodgetts?
- What were the results of the meeting?

The instructor should then have the class as a whole comment on the results of the role-play and determine with the class their overall sentiment towards DHR's problem. Students should also be given the opportunity to comment on the role-playing exercise as a learning instrument. The instructor might ask the class the following questions:

- Did this exercise animate the case? Did students get a "feel" for the issues surrounding the business offer?
- What were the strengths and weaknesses of the exercise? What changes would they make to the exercise given their experiences with it?

The debriefing session should produce closure for students by connecting the theory of ethical decision-making and trust with case specifics and the results of the role-playing exercise.

SUGGESTED CASE QUESTIONS

Please note that answers to these suggested case questions contain material from secondary sources not provided in the case. Students should be instructed to perform secondary research on the topics raised in each case question.

1. **Explain how terms like embezzlement, forgery, and the RICO act might apply to this case.**

The purpose of this question is to determine whether students understand the basic precepts of embezzlement, fraud and conspiracy; the underlying legal issues surrounding this case. Since this question solicits definitions from secondary sources, a *poor answer* to this question would be either a partial answer to this question (does not address all of the crimes listed in the question and/or describe the application to the case) or does not provide proper footnoting which would designate the sources of information.

A *fair answer* to this question would provide solely the definitions. "Embezzlement is defined as the misappropriation of items with which a person has been entrusted.

Embezzlement differs from larceny in that the perpetrator of embezzlement comes into possession of property legally, but fraudulently assumes rights to it. Charges of embezzlement can even be levied if the embezzler intended to return the property later."²³

Forgery is "the act of criminally making or altering a written instrument for the purpose of fraud or deceit; for example, signing another person's name to a check. To write payee's endorsement or signature on a check without the payee's permission or authority. The 'payee' of a check is the true owner or person to whom the check was payable."²⁴

The RICO act refers to the conspiracy to commit a crime. "The RICO Act was passed by the United States Congress to enable persons financially injured by a pattern of criminal activity to seek redress through the state or federal courts. The RICO Act applies to a wide variety of crimes. Originally, the breadth of the RICO Act was intended to give law enforcement, and private persons, broad power to fight organized crime, whether "organized crime" was traditional mobsters, members of a drug ring, or gangsters. The RICO Act has over time, however, resulted in unforeseen applications."²⁵

A *good answer* to this question would along with the definitions include examples from the case. For example, embezzlement would refer to any items purchased by Alan Thompson using the corporate credit card (the purchase is legal) but then bought either for his own use (i.e. Christmas tree, gasoline) or in order to be resold (i.e. tools). An act of forgery would have occurred if the signatures on some of the credit card receipts were definitely not Alan's although they were signed in his name. RICO would apply if Alan had conspired with his wife Wilma to embezzle these goods as well as planned with his wife for her to forge his name on credit card purchases.

An *excellent answer* might go beyond merely defining embezzlement, forgery, and RICO by providing more details. For example, "One of the most common instances of embezzlement in today's society is employee theft. Employees of many companies have access to company property, creating the potential for embezzlement. Examples include such small crimes as theft of retail items, discounted sale of retail items, and theft from cash registers, but can also include the theft of millions by employees of large firms.

There are a number of warning signs of employee embezzlement. Some general indicators may include:

- ◆ Missing documents
- ◆ Delayed bank deposits
- ◆ Holes in accounting records
- ◆ A large drop in profits
- ◆ A jump in business with one particular customer
- ◆ Customers complaining about double billing
- ◆ Repeated duplicate payments

- ◆ Numerous outstanding checks or bills
- ◆ Disparity between accounts payable and receivable
- ◆ Disappearance of petty cash.”²⁶

In terms of forgery, “there are many kinds of forgery, especially subjected to punishment by statutes enacted by the national and state legislatures. ... The making of a whole written instrument in the name of another with a fraudulent intent is undoubtedly a sufficient making but a fraudulent insertion, alteration or erasure, even of a letter, in any material part of the instrument, whereby a new operation is given to it, will amount to a forgery; and this, although it be afterwards executed by a person ignorant of the deceit.

The fraudulent application of a true signature to a false instrument for which it was not intended or vice versa, will also be a forgery. For example, it is forgery in an individual who is requested to draw a will for a sick person in a particular way, instead of doing so, to insert legacies of his own head and then procuring the signature of such sick person to be affixed to the paper without revealing to him the legacies thus fraudulently inserted.

It has even been intimated that a party who makes a copy of a receipt and adds to such copy material words not in the original and then offers it in evidence on the ground that the original has been lost, may be prosecuted for forgery.”²⁷

Additional information on RICO may include the fact that “corporations have been sued under the RICO Act for allegedly distributing false advertisements; lawyers, bankers, accountants, and other professionals, have been sued under the RICO Act for allegedly assisting clients in organizing, or assisting in the organization of, schemes to defraud; spouses have been sued for allegedly concealing the value of marital assets in divorce proceedings; and, civil protest groups have been sued for intimidating and extorting the customers of the industries that the protest aimed to disrupt. Although Congress may not have intended these more unusual applications of the RICO Act, they can be legitimate uses of the RICO Act. If you have been injured by a violation of the RICO Act, you may sue the person who allegedly violated the Act and, if successful, recover a monetary award equivalent to three times the value of the property you lost or that was stolen from you, plus the legal costs and fees you incurred to bring the lawsuit.”²⁸

An *excellent answer* may also describe additional laws that may have been violated by Alan Thompson. For example, if Alan found out about his wife’s forgery and did nothing he would be an accessory to a crime after the fact. An accessory is one “who is not the chief actor in the perpetration of the offence, nor present at its performance, but is some way concerned therein, either before or after the fact committed. ... An accessory after the fact, is one who knowing a felony to have been committed, receives, relieves, comforts, or assists the felon.”²⁹ “Accessories after the fact are in general punishable with imprisonment (with or without hard labor) for a period not exceeding two years, but in the case of murder

punishable by penal servitude for life, or not less than three years, or by imprisonment (with or without hard labor) to the extent of two years.”³⁰ Three points need to be met under this law:

- a. Must have knowledge that a felony has been committed.
- b. Must aid or assist the felon in some way.
- c. The purpose of the aid must be to help the felon escape from the authorities.³¹

2. What are the rights, responsibilities, and obligations for each of the parties involved in this case?

Corporations and individuals alike are empowered by our constitution and our federal laws to own property and to maximize their own wealth (or the wealth of their stockholders). With those rights are attached responsibilities and obligations; both individuals and corporations must be held accountable for their actions.³² The purpose of this question is twofold: a) for students to be able to discern all of the stakeholders involved in the case; b) for students to determine what are the rights, responsibilities, and obligations of each of the stakeholders and how each of these rights, responsibilities, and obligations of each stakeholder impact one another.

A *poor answer* to this question would either leave out at least one of the two key stakeholder groups in this case (either the members of DHR Patio Homes or Alan and Wilma Thompson) and/or would omit at least one of the three factors (rights, responsibilities, and obligations) in the discussion of each party.

A *fair answer* will take a legalistic approach to this question, be overly general, and only focus on the two major parties in question. This answer might first start with a definition of the major three factors described in the question (rights, responsibilities, and obligations). A person’s basic rights are those rights shared by all people and are spelled out in ‘the law of the land’; for the United States those rights would be described in the Bill of Rights and the United States Constitution. The 10th amendment to the constitution indicated that rights not delegated to the federal government would then be delegated to the state or the people (local government).³³ A corporation’s rights were not directly defined in the U.S. Constitution until after the Civil War. “Corporations were chartered for a specific limited purpose (for example, building a toll road or canal) and for a specific, limited period of time (usually 20 or 30 years). ... Congress had written the 14th Amendment to protect the rights of freed slaves, but in an 1886 decision (Santa Clara County v. Southern Pacific Railroad) this was expanded when the courts declared that no state shall deprive a corporation ‘. . . of life, liberty or property without due process of law’.”³⁴ The corporation, therefore, was awarded the same rights as any U.S. citizen.

Since rights are defined by the law, responsibilities and obligations are based upon the law. “Civil law focuses on legal relationships between people and the protection of a person’s rights. Criminal law focuses on wrongs against a person, property, or society.”³⁵

Based upon these definitions, the following answer may be presented in Table Form:

Table 1: A Fair Answer: Legal Rights, Responsibilities, and Obligations		
Stakeholder	Rights	Responsibilities and Obligations
Alan and Wilma Thompson	<ul style="list-style-type: none"> ● Civil rights as contracted labor. Contract law. ● Any legal rights associated with a criminal investigation. I.E. The right to an attorney, assumed innocent before proven guilty. 	<ul style="list-style-type: none"> ◆ To abide by the contract requirements and the laws governing contract labor relations. ◆ To not commit any criminal acts.
DHR Patio Homes, Inc.	<ul style="list-style-type: none"> ■ Civil rights as a contractor of labor. ■ The right to receive any funds embezzled from the firm. 	<ul style="list-style-type: none"> ▶ To abide by the contract requirements and the laws governing contract labor relations. ▶ To provide evidence supporting their allegation of embezzlement in any legal proceedings.

A *good answer* will have the student first realize that the situation has several complications, although the student may still employ a legalistic approach. First, Alan and Wilma Thompson may be accused of committing different crimes (Alan embezzlement, Wilma forgery) by DHR Patio Homes and there is still a question as to whether collusion is involved or if Alan may be an accessory to a crime after the fact. A good answer by a student may go beyond the legalistic framework with the student noting that Alan and Wilma have the right and obligation to protect themselves, their family (if they have one), and their business and should seek out legal counsel even before any charges are brought against them.

Secondly, DHR Patio Homes may claim a breach of contract with Alan and Wilma’s A&W Construction LLC and not only terminate their services but also sue for damages relative to the embezzled amounts. A good answer by a student may indicate that DHR Patio Homes has the right and obligation to protect the interests of its stockholders (Richard, Adrienne, and Stephen) by pursuing the recovery of the stolen funds. DHR Patio Homes should also consult legal counsel and determine whether or not it is in the corporation’s best interest to press legal charges along with seeking compensation for their lost funds.

Third, a good answer will denote that the accountant in this case has rights, responsibilities, and obligations relative to his client (DHR Patio Homes) and include student research on the AICPA code of conduct for accountants. The accountant certainly had the right to request and receive 'the books' from DHR's bookkeeper and to then familiarize himself with those books. Once the accountant suspected that non-business related charges were billed as expenses to Davis and Hodgetts' corporations, he had a responsibility and an obligation to his clients to:

- ❑ *act professionally.* "The quest for excellence is the essence of due care. Due care requires a member to discharge professional responsibilities with competence and diligence. It imposes the obligation to perform professional services to the best of a member's ability with concern for the best interest of those for whom the services are performed and consistent with the profession's responsibility to the public."³⁶
- ❑ *inform the client but to keep the information confidential.* "Rule 301—Confidential client information. A member in public practice shall not disclose any confidential client information without the specific consent of the client."³⁷
- ❑ *act with integrity.* "Integrity requires a member to be, among other things, honest and candid within the constraints of client confidentiality. Service and the public trust should not be subordinated to personal gain and advantage."³⁸

The accountant, however, also has a responsibility to his profession and the public at large. For example, if the accountant does find erroneous reporting and/or illegal acts by his clients he is expected to act in the interest of the public, an act that may be in conflict with his clients' interests. "In discharging their professional responsibilities, members may encounter conflicting pressures from among each of those groups. In resolving those conflicts, members should act with integrity, guided by the precept that when members fulfill their responsibility to the public, clients' and employers' interests are best served."³⁹ "Integrity can accommodate the inadvertent error and the honest difference of opinion; it cannot accommodate deceit or subordination of principle."⁴⁰ In this case, the accountant is obligated to continue his audit of the firm's expenses in order to determine whether the expenses were incorrectly charged to the firm or if there was possible embezzlement.

A *very good* answer by a student will include the aforementioned analysis but go beyond a legalistic framework when dealing with parties' rights, responsibilities, and obligations. The student providing this answer will note that there may be ethical and moral rights and obligations of each of the parties in this case.⁴¹ Generally speaking, when someone says of an act that it is a 'moral obligation,' they refer to a belief that the act is one prescribed by their set of values.⁴² The real question underlying this answer will be what values are driving these obligations and actions.

For example, this student might observe that Alan Thompson may have a moral and ethical responsibility to his employer that goes beyond mere contract obligations, especially since he was treated as one of the family. It was Davis and Hodgetts who gave Alan Thompson his start so to speak in the business and students might believe that there is a personal obligation attached to the relationship. This same student might also note that the reverse is true, without Alan Thompson, Davis and Hodgetts would probably not have developed their second and third businesses. This student would be trying to determine how loyalty as a value impacts this case.

Yet what of Alan's loyalty to his wife in this case? Assuming that Alan did not know of the forgeries, what is his ethical obligation to his wife? In the basic marriage vows, obligations are set forth for husband and wife. "I take you for my lawful husband (or wife) to have and to hold from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, until death do us part."⁴³ For example, the Ohio Legislators defined marriage as having "mutual obligations. Husband and wife contract towards each other obligations of mutual respect, fidelity, and support."⁴⁴

The question that this student then might raise is, how far does this ethical 'support' for husband and wife go? From a legal standpoint, certainly Alan and Wilma have spousal privilege and privileged communications. These rights granted to married couples include the right of a person to refuse to testify against their spouse in the court of law and the right that any communication between spouses not be entered into evidence against them.⁴⁵ The ethical question then is, should Alan either try to cover up his wife's illegal actions, or worse, take the blame for the all of the criminal actions? What are his values relative to his wife and relative to upholding the law?

An *excellent answer* to this question by a student will first expand the impacted parties in the case into a broader, stakeholder framework. Besides the parties immediately impacted by this case and the accountant who dug up the potentially incriminating evidence, there are other stakeholders also impacted by this case including, but not limited to: Alan and Wilma's immediate family (his brother working with him on the job as well as any children they may have), DHR's other subcontractors (who will they now report to, what message does this send them), Davis' and Hodgetts' family (given their socializing with the Thompsons'), suppliers who were doing business with Alan (less sales, perhaps some even assisting Alan in the alleged embezzlement), the local community where the alleged crimes were committed, and the local legal system (where both civil and criminal charges may be brought).

Secondly, in an excellent answer the student will acknowledge that many of the parties in this case may have to deal with conflicting values. Going back to the earlier example, Alan may be dealing with conflicting values of loyalty (his wife, his business associates and friends, and the legal system) brought on by differing responsibilities and

obligations. This conflict of values and obligations may create cognitive dissonance. “In brief, the theory of cognitive dissonance holds that contradicting cognitions serve as a driving force that compel the human mind to acquire or invent new thoughts or beliefs, or to modify existing beliefs, so as to minimize the amount of dissonance (conflict) between cognitions.”⁴⁶ In the above situation, for example, Alan may decide that ‘blood is thicker than water’ therein reducing the importance of loyalty to friends and business associates as compared to family.

For the Davis’ and Hodgetts, the student might note multiple conflicts. They certainly want to recover their embezzled funds but are they willing to prosecute Alan and Wilma in order to obtain those funds? Secondly, they may also want to claim that Alan and Wilma’s actions are a breach of contract but how can they recover their funds from them if Alan longer has a paying job? Third, how would keeping Alan on the job so he can pay off the embezzled funds and pay rent on his house affect the other subcontractors as well as the quality of Alan’s work? Furthermore, Alan and Wilma are currently renting a home that they were supposed to buy from the firm – how would this whole incident affect the sale? If Alan is released from his contract how can he pay for the house, or even the rent? What retaliatory actions might Wilma and Alan taken in terms of the house (damage) once Alan is accused of embezzlement?

In summary, an *excellent answer* by a student will signify the complexities associated with identifying who is directly and indirectly affected by this case and the difficulties in determine which responsibilities and obligations (given the conflicted nature of the underlying values) will drive the parties in question.

3. Develop an action plan for Davis and Hodgetts that will resolve this situation.

This question directly addresses the issue of what Davis and Hodgetts should do in terms of dealing with the discovered embezzlement and forgery. Clearly there are numerous options available to Davis and Hodgetts (including doing nothing) and students answering this question will have to determine what are Davis and Hodgetts’ goals and the priority of those goals relative to developing a solution strategy.

A fundamental attribute of any answer to this question is that, regardless of the solution strategy posed, that there be a general description of the problem being addressed by Davis and Hodgetts. A *poor answer* by a student will then be quite terse (will not be a plan as such) and deal directly with the problem without either describing the problem or dealing with the nuances and associated impacts of the proposed decision. For example, the student in this answer may suggest firing Alan Thompson and then not deal with the associated outcomes: i.e. who is going to replace him on the job, how are the embezzled funds to be recovered, how can DHR protect their rented home from damage, etc....

Regardless of the decision made by the student, there will be no stated goal for the decision-makers. The focus will be upon the immediacy of the problem and a quick and clear solution that promptly deals with the problem.

A student with a *fair answer* will first describe the problem simplistically. At this level of analysis the student may focus either on the legal ramifications of the act (should Alan and his wife be prosecuted for committing these offenses?) or the business ramifications (how do we recover the lost funds? should we fire Alan and who should replace him?), but not both. This student would also note that any decision that is discussed should first be run past legal counsel. Legal counsel will then determine if there are any potential gains and liabilities that the corporation and/or its individual owners might accrue before actually enacting the solution strategy.

For example, if Davis and Hodgetts decided to break their contract with Alan Thompson's corporation (under contract law - an illegal activity by one party of a contract makes the contract null and void),⁴⁷ what compensatory and punitive damages (punitive damages must involve malicious conduct – an intentional tort)⁴⁸ would they be entitled to? Would Thompson have a good case to counterclaim? Furthermore, the student in this answer might suggest that the lawyer recommend some sort of compromise; i.e. Alan Thompson agrees to pay back the embezzled funds over a 24 month period at \$1000/month and agrees to terminate his contract with DHR Patio Homes.⁴⁹

There are numerous possible problem definitions and solution strategies. Some more likely problem definitions and answers are listed in Table 2 below.

Problem	Possible Solutions
Alan and Wilma have broken the law through alleged embezzlement and forgery.	<ul style="list-style-type: none"> Take no legal action. Discuss what their accountant had found with law enforcement officials. Allow their lawyer to handle the matter. Confront Alan and Wilma with the charges before going to the police. File a complaint and press charges.
The firm has accrued \$24,000 of inappropriate and perhaps illegal expenses due to Alan and Wilma's actions.	<ul style="list-style-type: none"> Do nothing to recover the funds. The expenses have already been incurred. Confront Alan and Wilma to determine how Alan and Wilma will pay back the funds. Develop a payback plan ahead of time and then confront Alan and Wilma with their alleged illegal activities.

Table 2: Likely Case Problem Definitions and Associated Solution Strategies*	
Problem	Possible Solutions
Given Alan and Wilma's actions, the firm can no longer trust them and must sever their contract with Alan's firm.	Confront Alan and Wilma – allow Alan the option of volunteering to break the contract. Threaten Alan and Wilma into volunteering to break the contract. Have their lawyer send a notice that they are in breach of contract due to their illegal activities. Unilaterally break the contract – fire Alan without an explanation.
Alan will need to be replaced (both as the “acting” contractor on the job and as subcontractor).	Contractor Have either Adrienne or Richard Davis temporary serve as contractor. Hire one of the subcontractors to serve as acting contractor. Recruit a new contractor from outside the firm's subcontractors. Subcontractor Have Alan's brother take over the subcontract and form his own LLC. Solicit a new subcontractor.
* Not an inclusive list.	

A *good answer* will certainly include the first two elements of the answers described above (a specific recommendation which should first be run past the company's lawyer) and will deal with both the legal and business ramifications of the case. Furthermore, the student developing a good answer will ask a more fundamental question, that is, what is it that the owners want to accomplish given the circumstances? Until the owners of the company have a goal in mind as to how they want to resolve this problem, it will be difficult for legal counsel to recommend action beyond the most cursory cost/benefit analysis. For example, if Davis and Hodgetts just want to get rid of Alan as quickly as possible, the lawyer might suggest actions that will support a breach of contract and an injunction⁵⁰ but will not support recovery of the embezzled funds, protection of the rented property from damage, defending society from this “law breaker”, nor collecting damages caused by a potential work slowdown (replacement costs).

A *very good answer* by a student will also indicate that the owners might have multiple objectives in mind and that these objectives might operate synergistically (they support one another) or are at cross purposes (operate against one another). In the above plan, where Davis and Hodgetts want to break their contract with Alan Thompson, complimentary objectives might be to seek both civil and legal remedies to their problem with the goal of legally breaking the contract while having Alan convicted of embezzlement.⁵¹ Crossed purpose goals, on the other hand, would be a desire for the repayment of the embezzled funds through legal action while seeking to break the work

contract (assuming that Alan has no real assets to attach and no immediate employment elsewhere). The courts may in fact order Alan to repay the funds but he would have no clear way in which to pay them back.

An *excellent answer* would have the student require that Davis and Hodgetts first prioritize their goals (i.e. recover of funds, protecting their business assets, getting rid of Alan, protecting society, revenge, etc...) and then develop several scenarios for achieving those objectives. Going back to our earlier example, if Davis and Hodgetts' primary goal is to retrieve the stolen funds then they will have to develop several plans that aim at obtaining that goal while perhaps meeting secondary objectives. For example, if Davis and Hodgetts wanted to recuperate the allegedly stolen funds while extracting some form of revenge they could:

- a. threaten to go to the police if Alan does not pay them back (develop a payment schedule that would not exceed the statute of limitations)⁵²
- b. go to the police and file a report alleging embezzlement and/or forgery and threaten to push ahead with their claim if Alan does pay them back
- c. not only extract the embezzled funds from Alan but threaten to go to the police if Alan doesn't provide them with a very low bid on future services rendered. (Please note that we are in no way advocating these actions, especially since they involve blackmail.)⁵³

Note: The instructor may also want students to use a particular format or rubric for developing these action plans and should feel free to do so. These approaches could include a SWOT, cost/benefit, or a stakeholder approach. See below two examples of stakeholder analysis.

Table 3: Evaluating a Stakeholder Based Upon Influence and Importance⁵⁴

Influence of Stakeholder	Importance of Stakeholder			
	Unknown	Little/No Importance	Some Importance	Significant Importance
Unknown				
Little/No Influence				
Somewhat Influential				
Significant Influence				

Table 4: The Stakeholder Analysis Matrix⁵⁵

Stakeholder	Stakeholder Interest(s) in the Project	Assessment of Impact	Potential Strategies for Obtaining Support or Reducing Obstacles

4. **Assume that the above plan includes confronting Alan Thompson with these accusations, what would be the most effective way for Davis and Hodgetts to do this?**

This question forces students to deal with one of the most difficult solutions to this problem, and the one most usually recommended for dealing with conflict resolution, confrontation.⁵⁶ The student is asked to deal with the delicacies of the situation (accusing someone of embezzlement and his wife of forgery is a very serious charge) and specifically must address how Davis and Hodgetts can best protect their legal rights and business interests, as well as perhaps their personal safety. The students must also be very cognizant of Alan Thompson's rights as well and his potential reaction to the accusations.

All students in their answers should indicate that "unless there is some urgency arising from the circumstances surrounding the employee theft, it is generally better to map out a plan and discuss the matter with an attorney before confronting the employee. Once confronted, employees are likely to cover their tracks, hide assets or flee with assets. Nonetheless, an employee should be confronted as soon as possible after the thefts are discovered."⁵⁷

A *poor answer* to this question would suggest either avoiding the confrontation, if at all possible, or suggest having a third party (i.e. the accountant, the firm's attorney) meet with Alan to discuss the issue. Although third party consultation is recommended for resolving strong conflicts, it is not recommended that the accusing party be absent from the meeting.⁵⁸ From a legal standpoint, Alan (as the accused) has the right to confront his accuser(s) as well the witnesses that may testify against him.⁵⁹

A *fair answer* by a student would discuss the procedures that Davis and Hodgetts should follow during the confrontation, they include:

- a) *communicating care* - confrontations that occur out of revenge, spite and anger are typically not effective.
- b) *identifying the specific actions that they are questioning* – rather than making an accusation, discuss the specific findings of the accountant.
- c) *sharing true feelings* – by sharing their feelings with Alan about the situation, Alan will have a greater appreciation of Davis and Hodgetts' position.
- d) *communicating future expectations* – based upon the conversation, Davis and Hodgetts need to clearly lay out what steps they will take and what steps Alan needs to take in order to resolve this situation.
- e) *maintaining control of the conversation and be prepared to be accused as well* – Alan may want to put Davis and Hodgetts on the defensive by accusing them of erroneous and/or illegal behavior. Davis and Hodgetts need to allow Alan to air his

grievances but bring the conversation back to the problem of the inappropriate expenses and the forged signature.⁶⁰

A *good answer* would include the above guidelines but also include details dealing with the structure of the confrontation; specifically, having a neutral site for the meeting, the formality of the setting, and the timeboundedness of the meeting.⁶¹ Given the seriousness of the meeting, a good student's answer would recommend that the meeting take place in a formal meeting area that is not affiliated with either DHR or any of their hired professionals (lawyer, accountant, banker, broker, etc...), perhaps a small meeting room at a hotel or restaurant, and that only beverages be available (a meal would indicate less formality). Secondly, the meeting should take place at a time convenient to both parties and allot enough time (say at least one hour) to go over the accusation as well as a discussion of solution strategies. One or both parties might feel threatened as the meeting progresses and certainly should be allowed to request a second meeting where third parties may be present to represent the interest of both parties in question.

A *very good answer* will go beyond the above answers by having Davis and Hodgetts prepare for the worst case scenario, a threat of violence. Once violence is threatened, Davis and Hodgetts should:

- "Remain calm and try to be professional. Do not reflect the confrontational person's behavior.
- Empathize with the individual and actively listen to that person's concerns and issues.
- Allow the person to vent. Sometimes a person will verbally act out if an audience is present. Removing the person to a more private area (if it's safe to do so) to discuss the problem is ideal.
- Use the team approach. If a disruptive person is more responsive to another employee, let that staff member handle the transaction.
- Comply with the request if the disruptive person wants to speak with a [third party] supervisor. Never deny an individual the opportunity to take a matter to a higher authority.
- Tell the individual that his/her behavior is unacceptable if the individual starts to become confrontational. Let the person know that you will discontinue service if he or she continues to act that way.
- Call a supervisor, other staff members or security personnel to assist you if the situation escalates and you feel threatened.

- ❑ Always be aware of your surroundings especially if you know you are dealing with a person with behavioral problems. Make sure to leave yourself an avenue of escape.
- ❑ Call 911 immediately if you observe a coworker or individual being subjected to disruptive behavior where the activity becomes life threatening.⁶²

An *excellent answer* will include the above material but most importantly recognize that no matter how much Davis and Hodgetts put into their preparation and planning for this meeting that the unexpected may happen. Nonetheless, a student presenting an excellent answer will also make sure to at least have Davis and Hodgetts develop some possible responses Alan may have to their accusations and what their reaction might be to that response. See Table 5 below for examples.

Alan's Possible Responses	Davis and Hodgetts' Possible Reactions
1. Denies allegations that the expenses were inappropriate and/or his signature was forged. Includes pleading ignorance.	Davis and Hodgetts threaten to take legal action against Alan and/or Wilma (criminal and/or civil). Davis and Hodgetts suggest that Alan consult an attorney and then meet with DHR, their accountant and their attorney to discuss this issue. Davis and Hodgetts say nothing more at the meeting and take whatever actions they deem fit (i.e. legal actions, firing Alan, etc...).
2. Walks out of the meeting without saying anything.	Davis and Hodgetts go ahead and file both civil and criminal charges. Davis and Hodgetts try to arrange another meeting. Adrienne tries to meet with Wilma to discuss what is going on.
3. Thompson admits embezzlement and wife's forgery.	Davis and Hodgetts go ahead and file both civil and criminal charges. Davis and Hodgetts suggest that Alan consult an attorney and then meet with them, DHR's accountant and attorney to discuss this issue. Davis and Hodgetts work out a payment plan for the embezzled funds. Davis and Hodgetts claim breach of work contract but do not file criminal charges.
4. Thompson admits embezzlement but denies forgery.	Same as above.
* Not an inclusive list.	

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5. **Assume that you were Alan Thompson and accused of these crimes. How would you react if you were innocent of the charges? How would you react if you were innocent of these charges but your wife was guilty of forging your signature? How would you react if both you and your wife were guilty?**

Questions three and four looked at this case from the viewpoint of Davis and Hodgetts. The purpose of this question is to have the students put themselves in Alan Thompson's place (a place we hope they never have to be in but certainly may find themselves in), that of the suspected perpetrator of a crime that may not only lead to a loss of income but also a loss of freedom. They also must address the issue of what are the rights of the accused in this case, regardless of innocence or guilt.

A *poor answer* by a student will overlook the issue of the rights of the accused and directly answer the question based upon his or her own personal values or the student's perception of Alan's values. For example, the student might indicate that an innocent person has nothing to hide and therefore if Alan were innocent he should fully cooperate with Davis and Hodgetts while denying the charges. If Alan was innocent, but his wife was not, the student might have Alan either deny her guilt or admit her guilt and then determine whether or not Alan was willing to cooperate with Davis and Hodgetts in order to protect his wife. If both parties were guilty, the student might have Alan deny his and his wife's guilt, have Alan "scapegoat" his wife, or admit that they were both guilty and willing to work things out with Davis and Hodgetts.

A *fair answer* by a student will first recognize the seriousness of the situation, regardless of Alan and his wife's guilt or innocence. "They say that a man who represents himself [in court] has a fool for a client. And with God as my witness, I am that fool!"⁶³ In other words, individuals proceeding without any attorney when accused of a crime take a high stakes gamble with their freedom, their money, or both.⁶⁴ The student in this answer would therefore strongly suggest that Alan and his wife consult with an attorney so that Alan and his wife will both understand what their guilt and/or innocence would mean in this situation and to develop a legal strategy for dealing with this accusation. This student would then cover the possible options described in the *poor answer* for each set of circumstances (guilty or not guilty) except that these options would be discussed with their attorney.

A *good answer* would start off by acknowledging Alan's rights as someone who is accused of a crime and then certainly suggest that Alan seek legal counsel regardless of his guilt or innocence. The rights of the accused include, but are not limited to: the presumption of innocence, the right to counsel, the right against self-incrimination, the right to information (i.e. charges, witnesses), the right to a speedy and public trial, the right to

put on a defense, and the right to appeal.⁶⁵ These rights are derived from the Bill of Rights and are as follows:

Fourth Amendment. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law. . . .

Sixth Amendment. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury... and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

Fourteenth Amendment. Nor shall any State deprive any person of life, liberty, or property, without due process of law.⁶⁶

This answer would include the material in the *poor* and *fair* answers but also would likely suggest that the attorney, not Alan, be the one to contact Davis and Hodgetts re: the accusation. The attorney might request, for example, to meet with the accountant to make sure that the inappropriate and duplicate expenses were accurate and that the forgery was just not a 'lazy' signature. From a procedural standpoint in dealing with Davis and Hodgetts, the lawyer's actions (regardless of Alan's guilt or innocence) may be quite similar; try to discredit the evidence and the expert while developing plausible alternative explanations for the alleged inappropriate, duplicate expenses, and the forgery. If Alan's lawyer believes that Davis and Hodgetts have solid evidence, the lawyer might then try to broker a deal with Davis and Hodgetts that keeps this whole affair away from the courts (regardless of Alan's admittance of innocence or guilt). The lawyer may also suggest a deal to Alan and Wilma, (regardless of their innocence or guilt) if the lawyer believes that the reached agreement would cost less than his or her attorney fees and possible court charges.

A *very good answer* would include all of the prior material but also point out that Alan and Wilma in all probability do not have a personal attorney nor be able to afford one. The likelihood that Alan would consult an attorney therefore would be quite low and the

student providing this *very good answer* might suggest that perhaps at best Alan might retain the services of a public defender. More importantly, the student would point out in this answer that in all probability Davis and Hodgetts do have a lawyer and certainly are in a better position to afford an attorney than Alan and Wilma. This would put Alan in a very poor power position in his dealings with Davis and Hodgetts⁶⁷ (regardless of his guilt or innocence) and certainly allow Davis and Hodgetts to use conflict resolution tactics of forcing and coercion.⁶⁸ This student might conclude that even if Alan were blameless, it would make no sense for him to insist on his innocence since Davis and Hodgetts were in a position to presume his guilt and require proof to the contrary. Immediately settling the matter with Davis and Hodgetts in this situation would presumably be the best approach (regardless of actual guilt or virtuousness) since Alan seemed to have little ammunition to prove his innocence.

An *excellent answer* would include the above information but also to discuss attorney-client interaction in more detail. “The relationship of client and attorney is one of trust, binding an attorney to the utmost good faith in dealing with his client. In the discharge of that trust, an attorney must act with complete fairness, honor, honesty, loyalty, and fidelity in all his dealings with his client. An attorney is held to strict accountability for the performance and observance of those professional duties and for a breach or violation thereof, the client may hold the attorney liable or accountable. *Beal v. Mars Larsen Ranch Corp., Inc.*, 99 Idaho 662, 667-668, 586 P.2d 1378, 1383-1384 (1978) (citation omitted).”⁶⁹

Given this relationship, this student might question how an attorney could represent Alan and Wilma if they were actually guilty. “The easy answer to this is that the defense attorney should never ask the client that question or allow the client to confess to him/her. It is not for the defense attorney to determine whether a crime was committed. To do so is a substitution of the values of the defense attorney in the place of the jury's determination of a legal conclusion and undermines the search for justice within the system. The more difficult answer is that the defense attorney should not concern him/herself with overtaking the job of the jury and passing judgment on the client. That not only is contrary to the role of the defense attorney, but interferes with the role that is expected of him/her. The most zealous advocacy of a client's position cannot be attained when the defense attorney is morally troubled in an attempt to judge a client. In this situation, justice is served by ignorance.”⁷⁰ More specifically, Alan's attorney, when interacting with Davis and Hodgetts (or their representatives), should always assume the position that his client is innocent until proven in court otherwise.

The student might also ask what the attorney should do if one of the two parties (Alan and Wilma) is innocent, the other guilty, or, more importantly, the interests of Alan and Wilma seem at odds with one another. For example, “as guaranteed by section 15 of article I of the California Constitution, the right to effective assistance of counsel “... means

more than mere competence. Lawyering may be deficient when conflict of interest deprives the client of undivided loyalty and effort.” (*Maxwell v. Superior Court* (1982) 30 Cal.3d 606, 612 [180 Cal.Rptr. 177, 639 P.2d 248, 18 A.L.R.4th 333]. ... Conflicts of interest broadly embrace all situations in which an attorney’s loyalty to, or efforts on behalf of, a client are threatened by his responsibilities to another client or a third person or by his own interests.)”⁷¹

In this situation, if the attorney felt that Alan would be better off by ‘bargaining off his wife’ so to speak in order to achieve the best deal possible with Davis and Hodgetts, the lawyer should immediately inform the couple that he can not represent both of them in this matter. This student would probably conclude that regardless of the situation, it would be better if Alan and Wilma had separate attorneys.

EPILOGUE

After a discussion with their lawyer, Hodgetts and the Davis’ agreed to confront Alan with their accountant’s findings. It turned into a very uncomfortable meeting. Evidence was presented as to the inappropriate credit card charges, the multiple purchases of gas and tools, and the felonious signature on certain credit card charges. Further evidence was presented to Alan that matched his wife’s signature to some of the credit card charges. Alan neither agreed to nor denied the charges. That being the case, Richard took the keys to the company truck and tool shed and then described to Alan what their continued working relationship would be. Rather than being fired, Alan would be working for his brother (who would form his own company) and his brother’s monthly check would be docked approximately \$4000/month to recover all the losses. Furthermore, Alan would now have to find a way to get a mortgage for his house or vacate the premises within 30 days. Alan still made no comments and left the meeting.

The next day Adrienne filed a police report detailing both Alan’s and Wilma’s actions while Alan and Wilma packed in order to vacate the rented house. When Adrienne went to submit the police report she found out there was already a warrant for Wilma’s arrest for passing checks with insufficient funds. It was issued two years ago, and they couldn’t find her. However, they weren’t actively looking. Adrienne supplied the police with Wilma’s current address yet no actions were taken and Adrienne did not press charges.

Alan, Wilma, and their family vacated the home they were renting within the 30 day time period. A foreman was hired to supervise all of the subcontractors’ work (including Alan and his brother) and discharged Alan and his brother for poor workmanship about a month after. Approximately \$9,000 was recovered from Alan although the cost of redoing his and his brother’s poor workmanship exceeded the compensated funds.

APPENDIX A

EMBEZZLEMENT (<http://www.whitecollarcrimefyi.com/embezzlement.html>)

What is embezzlement? Embezzlement is defined as the misappropriation of items with which a person has been entrusted. Embezzlement differs from larceny in that the perpetrator of embezzlement comes into possession of property legally, but fraudulently assumes rights to it. Charges of embezzlement can even be levied if the embezzler intended to return the property later.

Four points must be proven to support the case for embezzlement:

1. The relationship between the defendant and the aggrieved party was a fiduciary one
2. The lost property came into the defendant's possession through that relationship
3. The defendant fraudulently assumed ownership of the property or transferred it into the ownership of another
4. The defendant's misappropriation of the property was intentional

How does embezzlement relate to employee theft? One of the most common instances of embezzlement in today's society is employee theft. Employees of many companies have access to company property, creating the potential for embezzlement. Examples include such small crimes as theft of retail items, discounted sale of retail items, and theft from cash registers, but can also include the theft of millions by employees of large firms.

How can employee embezzlement be detected? There are a number of warning signs of employee embezzlement. Some general indicators may include: Missing documents, delayed bank deposits, holes in accounting records, a large drop in profits, a jump in business with one particular customer, customers complaining about double billing, repeated duplicate payments, numerous outstanding checks or bills, disparity between accounts payable and receivable, and disappearance of petty cash.

A particular employee may be embezzling money if he or she: goes out of his or her way to work overtime, begins spending more lavishly than salary might indicate, and has the same address as a vendor

What steps can an employer take to investigate and resolve possible embezzlement? Since embezzlement is usually discovered by way of circumstantial evidence, an active approach by the employer is required to uncover the perpetrators of the crime. An investigation should be conducted quickly but subtly. Company officials should compile a list of employees who may have had the opportunity to commit the suspected embezzlement. These employees should be interviewed, more than once if necessary. The employer should try to recover as many records as possible to find accounting discrepancies or other evidence. If the crime appears to exist on a large scale, the

employer may need to contact outside advisors – including attorneys, insurance agents, and investigative specialists – to assist with the inquiry.

If guilt can be assigned to one or more individuals, the employer will have to determine what action to take against them within the company. Termination is not out of the question if there is strong evidence indicating guilt. Then, the employer must decide whether or not a civil suit will be filed and whether or not to turn the evidence over to public authorities for a criminal trial.

How are embezzlers punished? The penalty for an embezzlement violation typically depends on the value of the property that is misappropriated. A perpetrator is usually fined an amount on the same order of the value of the property, and may receive a prison sentence as well.

ENDNOTES

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