

Chapter 7

Customers, Suppliers and Neighbours

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Abstract

Businessmen have external relations with their customers, suppliers, competitors and neighbours, giving rise to obligations based primarily on a recognition of the difference between the values of the parties, and a respect for the other's point of view, but modified by the fact that money is inherently general, and that each transaction needs to be considered not as a single one but in a context that is generalised with regard to person, circumstance and time. A responsible businessman, therefore, is guided by the principle *caveat vendor* rather than relying exclusively on *caveat emptor*, pays his suppliers promptly, gives more than contractual notice, competes only by fair means, not by foul; and on the basis of the common concerns he does have with those who do not share most of his values, he contributes towards the good of his trade, his locality, and the environment generally.

Note: In the later sections the emphasis is more on shared values, and perhaps more argument is needed to overcome the PD.

§7.1 Duties to Customers

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Besides its internal involvement with shareholders and employees, a business enterprise has external relations, most notably with customers and suppliers, which also give rise to mutual obligations. These are based primarily on the canons of justice, taking into account the other party's point of view, though shared concerns may give rise to further grounds for consideration, since business relations, though external, are not entirely so.

It is useful to schematize monetary transactions, somewhat crude, as customers, those by whom he is paid, and suppliers, those to whom he pays. In each case the obligations arise partly from a recognition of the other's otherness, *alteritas*, partly from the nature of money, so that instead of viewing each transaction as an isolated, one-off bargain, we should see them in a wider context, ranging over customers in general, with typical needs and wants, and ranging also over time.

The customer should not be misled, but helped to make a rational choice in accordance with his needs and values. Although it is up to him to decide what he wants, it is up to the seller to provide goods or services reasonably meeting the standards of the sort of thing asked for. The seller is the expert, and his knowledge should be at the service of the buyer, not used to mislead him. The buyer has to rely on the seller's information, and if the seller is dishonest, needs redress. Even in time past, when buyers and sellers were approximately equal in status, and the goods offered for sale were mostly ones whose quality could be ascertained by the buyer, the principle *caveat emptor*, let the buyer beware, was not always adequate: from early on precious metals were hall-marked, because it was not feasible for the buyer to assure himself that they were not alloyed with base metal; often there were laws against watering milk, and adulterating other foodstuffs; the Crown took responsibility for seeing that weights and measures in the market place were true. The need for reliable warranties, as a qualification of *caveat emptor*, was required by the courts in the nineteenth century, and was codified in the Sale of Goods Act, 1893. In the twentieth century some manufacturers, notably the motor manufacturers, began to get round the Act by inveigling customers to sign an order form waiving their statutory and common-law rights in return for a "warranty" which left everything to the discretion of the manufacturer. There were many cases of people buying cars

which were no good, with engines that did not run smoothly, gear boxes that did not engage, brakes that faded, bodywork that was already rusty under paint that was peeling off. They were being treated dishonestly and unjustly by the motor manufacturers, who had great resources of technical know-how and legal support, and were selling a very complicated product to an individual. At length the Unfair Contract Terms Act was passed in 1974 which struck down clauses in contracts waiving the provisions of the Sale of Goods Act. Legislation was also needed to extend the provisions of the Act to cover services as well as goods.¹ Since then the Insurance Companies, which allowed their over-enthusiastic salesmen to pressure people into buying unsuitable policies, have been learning, at a cost of £100,000,000, the moral that the principle *caveat emptor*, is balanced by the complementary principle *caveat vendor*. Although only the buyer can determine his priorities, and make up his mind what he really wants, it is the responsibility of the businessman, as holding himself out as ready to supply what is wanted, to see that the customer really gets what he really wants.

Customers pay for their goods with money, tokens guaranteed to be qualitatively identical though numerically distinct. In return the businessman has some duty to treat all customers equally, and not charge some more because of inexperience, vulnerability, or special need. The foreigner is an easy prey to an unscrupulous taxi-driver, the motorist stranded with a breakdown to the motor mechanic. But just as their money is reliably as good as that of anybody else's, so the prices charged them should be the same as those charged to other people. It is difficult to specify this duty precisely. It is not wrong for shop-keepers to give discounts to favoured customers or on special occasions, and many contracts are specially tailored in which the businessman is putting himself out to meet the particular needs of his client, and is entitled to charge accordingly. But some principle of open and equal treatment remains. It can be realised in many cases by the prior publication of prices—in many countries hotel rooms have to display the price asked, and taxi-meters similarly assure the passenger that he is being charged only a standard fare. The businessman is not taking advantage of the customer if he is charging him, and the customer

¹ Unfair Contract Terms Act, 1977. (Check whether some other act is more relevant)

knows he is being charged, only as much as what he charges customers generally. He is thus carrying out his duty of being ready to do business with all comers in the absence of special reasons against, and not using the special exigencies of their situation as reason for charging more.

In time past most goods were simple, and the retailer could form a judgement about their quality, and provided they are good, he would have no continuing responsibility once they were sold. But many goods now are complex. They arrive heavily packaged, and the retailer has no opportunity of checking their quality. Many may need servicing, even though of good quality when sold. After-sales service and the supply of spares has become critical, and it is the mark of a good businessman that he is not finished with his customer as soon as the money is paid, but accepts a continuing responsibility to ensure that servicing and spares are available. In the newer industries the responsibility is widely recognised; indeed, in some it is beginning to be understood that in buying a car or a computer, the customer is not buying just a piece of hardware but rather many miles of reliable motoring or the reliable execution of software programs. Older industries are slower to realise their continuing obligations—potteries will sell a tea set for a time, and then discontinue it altogether, although in the nature of things some cups or saucers of a wedding present will be broken, and the value of the whole set is diminished if they cannot be replaced.

— buyers and sellers were approximately equal in status, and the goods offered for sale were mostly ones whose quality could be ascertained by the buyer.² But in many modern purchases the parties are not on a par. The buyer is often an individual buying a very complicated product from a large firm with great resources of technical know-how and legal support. Although it is up to him to decide what he wants, it is up to the seller to provide goods or services reasonably meeting the standards of the sort of thing asked for. The seller is the expert, and his knowledge should be at the service of the buyer, not used to mislead him. The buyer has to rely on the seller's information, and if the seller is dishonest, needs redress. The need for reliable warranties, as a qualification of *caveat emptor*, was required by the courts in the nineteenth century,

² But not always: from early on precious metals were hall-marked, because it was not feasible for the buyer to assure himself that they were not alloyed with base metal.

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§7.2 Duties to Suppliers and Creditors

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Whereas a businessman’s customers are those from whom he receives money, his suppliers are those to whom he pays money. His most important duty is actually to pay them, reliably and promptly; a duty much neglected in many business dealings. A practice has grown up in recent years of large firms failing to pay their suppliers, mostly small firms, over long periods of time, relying on the inefficiency of the legal process, and threatening to withdraw their custom in future if any action is taken to make them honour their obligations. The large firms are, in effect, gaining credit at the small firms’ expense. There is nothing wrong in seeking credit if it is done openly and explicitly. I can offer you a contract whereby you deliver next month and get paid next year when my bills have been paid; and you, knowing that payment will be deferred, can quote a price accordingly. But it is entirely wrong for a big firm, such as GEC, to enter into a contract whereby it undertakes to pay within thirty days, and not keep to it, reckoning that it will cost the supplier too much to take GEC to court, and anyhow the court will not get round to giving a judgement for a year or so. Such practice is clearly wrong. It would be good if it were condemned so severely in the business community that no firm could afford to engage in it. Trade associations and local chambers of commerce could publish the names of regular late payers

³ Unfair Contract Terms Act, 1977. (Check whether some other act is more relevant)

In the absence of effective self-regulation, legislation may be called for, though it would be difficult to enforce. Nevertheless, legislation can be effective in changing business practices. For example, in the nineteenth century many employers short-changed their employees by paying them with tied credits, until the Truck Act outlawed the practice. It may be that some similar Act of Parliament is called for now, if only to make interest on late payments a legally enforceable obligation.⁴

Some large firms, by contrast, not only pay their suppliers fully and promptly, but take care to maintain their independence, refusing to take more than a certain proportion of their output, so that if the large firm should cease trading, or for good reason go to another supplier, the small firm would not go under. It is somewhat analogous to making pension rights transferable, so that the employee is reasonably free to seek other employment and not too dependent on his present firm. It is taking the externality of business relations seriously. Although in as much as we both benefit when we cooperate, we are to some extent mutually dependent, each party to a business transaction is separate, and needs to be able to survive if the cooperation ceased—it is the same in ordinary life:] if you are not going to marry the girl, you should not occupy too much of her time and attention, or monopolize her affections.

Banks and other institutions often supply credit. It must be left very largely to the discretion of the creditor what terms to negotiate, because he stands to lose if things go wrong—though the better the security, the less onerous should be their terms. Because legal contracts often do not represent the real understanding, it is important for both parties to be clear what the real understanding is. Legally an overdraft can be called in at a moment's notice, but since that is not the practice, a bank manager should indicate what sort of notice he will give, so that the business can make contingency plans for obtaining alternative finance, should the bank need to have its money back. There are many cases, with regard to suppliers as well as creditors and debtors, where the parties are, with good reason, unwilling to tie themselves down to a legal duty to give notice or to continue an arrangement, but should recognise in all normal circumstances some obligation to give notice, or not to disappoint reasonable expectations, none the less.

⁴ See above, ch.4. §Sanctio2. (Sanctions), (p.4 of codes4)[take in that passage altogether in draft 3]

§7.3 Duties to Competitors

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It may seem strange to say that we have duties towards our competitors, because on the classical view we are locked in cut-throat competition with them in a zero-sum game, where their gain is our loss. But, as the analogy with games, competitions and the law courts, shows, the fact that the exercise is adversarial does not mean that there are no obligations, only that some do not obtain in these situations.⁵ The obligations of honesty and fair dealing hold good both in competitive sports and in the market place. Although there is a natural opposition of interest, with each party striving to succeed, even though it will be at the expense of its rivals, there are different ways of competing, and we have a strong intuitive sense of which are fair and which unfair. To provide a better product or render a better service at a lower price is fair: but when British Airways got hold of the names of those intending to fly with their rival, Virgin (CHECK), and telephoned them offering a comparable flight at a reduced fare, it was properly seen as unethical conduct. They were not competing on a level playing field, but were using information they should not have obtained in order to make special offers, not open to the general public, to persuade just those who had made up their minds to fly with Virgin to change their minds. Rockefeller was defensive, when it emerged that his salesmen were undercutting his rivals and forcing them out of business;⁶ and that again was unfair, because the level playing field was skewed, in this case over time rather than person. It would have been different if Rockefeller had continued to sell at a price his competitors could not match, even after they had gone out of business. He would than have shown himself a more efficient competitor, justly entitled to win everyone's custom. But he did not keep his prices down once he had bankrupted his rivals, but, having achieved a monopoly, acted like a monopolist. Many people buy the *Independent*, just in order to frustrate Mr Murdoch's attempts to drive it out of business by selling *The Times* at a loss.

In any case the classical analysis gives a distorted account. If it were true, competitors would shun one another's company, each seeking a corner of the market all of its own. But members of the

⁵ See above, ch.4, §4.5 (Obligations)

⁶ J.Rockefeller, Look up

same trade foregather together in trade associations and guilds: in many towns they congregate in the same area, in Smithfield, Fisherman's Row, or Chandler's Street, and for good reason. If you want to buy a dress or a curtain fabric, you want as wide a variety of choice as possible. You want to be able to shop around. You will therefore go to where there are many shops in preference to where there is only one. If I am the only milliner in Great Tidworth, I shall have a captive market of all its 800 inhabitants, but few people will come over from Broughton Episcopi, Little Norton, or Plumstead-sub-Hamdon, because the chance of finding what they want in my shop is too small to justify the time and trouble of the journey. I shall do far better if I set up shop in Barchester itself, because though I shall have more competitors, the very fact that they offer greater choice will bring in far more potential customers. Moreover, I can learn from my competitors. I cannot try all innovations by myself. Many will end in failure and I should not be able to stand the loss. But if my competitors are each trying some innovations, I shall be able to observe what happens, and shall be kept on my toes to adopt the ones that catch on. Monopolies usually stagnate, and though they have a captive market, it often becomes a reluctant and resentful one. Competition stimulates improvement and defuses resentment.

Competitors, therefore, have a number of common interests, which constitute grounds for common obligations: moreover, the competitive structure itself, within which they operate imposes duties and non-duties. For the only way to resolve the conflict between respect for the other's point of view and the desire to win, is to accept some system of rules according to which the conflict may be played out.⁷

⁷ (Perhaps have some reference to Pilkington: see Tom Sorell and John Hendry, *Business Ethics*, Butterworth Heinmann, Oxford, 1994, ch.6, pp.153-154.[I have altered the last sentence to take in some of MRG's note, but not all. Does it read all right?]

§7.4 Duties to Trade

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Less controversial than the claim that a firm has duties to its competitors is that it has duties to its trade, or line of business. In some modern industries, especially in newer science-based ones, research will benefit the industry as a whole, but is too expensive to be undertaken by any one firm. Many firms help to provide education for new recruits to the industry. In both cases a partial justification can be made out in terms of enlightened self-interest, but it is evident that this is often only a rationalisation.⁸ [When a new product is being launched, or a new factory built, very careful estimates are made of the return on the expenditure. But no such analysis is made of likely benefits from contributing to a research centre or providing scholarships for students.]⁹ Sometimes the research pays off, sometimes the students supported subsequently take jobs with the company. But the connexion between money laid out and benefits obtained is tenuous. We cast bread upon the waters, hoping that in many days the return will justify the deed, but reckoning that anyhow it behoves a firm in a particular trade to make some contribution to the good of that trade.¹⁰

Trades often also seek to maintain standards, to police themselves, eliminating cow-boy operators who cheat the public and bring the whole trade into disrepute. They are right to do so, but care is needed. The mediaeval guilds kept up standards, but tended also to restrict competition. Doctors in the United States manage to be very well remunerated, with the result that medical attention usually difficult and always expensive to obtain; so much so that it is beyond the reach of the poor. Many economists have argued that all restrictions in the name of quality control are against the public interest, and that members of the public should be left free to make their own choice. But that is unrealistic. I do not have the knowledge to choose a good doctor, and having only one life, cannot afford to discover by trial and error who is competent to look after my health. Although at first it might seem that an absence of regulation would extend competition by opening the industry to new

⁸ (Compare p.11 of false3.(old ch.3, §6,)XRefReq)

⁹ Perhaps omit, as point has been already made.]

¹⁰ (Some duplication of rationalisation argument: collate with other places: ch.8, §5.)

competitors, if there were a general perception that many operators were shoddy, the end-result would be to put a great premium on having already acquired a reputation for reliability. Some degree of regulation and certification not only gives the public information that it needs about quality, but also can enable new firms to compete with those already established. But the dangers remain. There is a standing temptation to raise standards, ostensibly for the benefit of the public, but actually to restrict competition and increase the remuneration of those already practising. Although it is good to have very highly trained doctor to attend me, it is better to have some less highly qualified medical auxiliary than none at all. Many occupations are over-qualified and too expensive. Moreover, by setting a long obstacle race for would-be entrants, they not only restrict the number of those who actually qualify, but ensure that nobody can qualify until he is past the first flush of youth, and no longer liable to have new ideas. Lawyers and chartered accountants in particular have a reputation for being staid, dull and obstructive: the air of middle-aged mediocrity of these professions is at least partly due to the way their governing bodies demand an over-long period of deadening training.

There is no simple answer to the question of how highly qualified the entrants to a trade should be. What is desirable is that the decision should not be entirely in the hands of established practitioners, whose collective interest has a natural tendency to diverge from the public interest. There needs to be some element of lay control. Adam Smith was suspicious of the confabulations of professionals. [Insert quote: RefReq] If there is always some non-professional present when training programmes, standards of qualification, or codes of conduct are being drawn up, it will be less easy to have a covert conspiracy against the public, and on occasion the lay members may raise the embarrassing question of whether the public might not be better served if there were less well qualified people offering a less good service, but at an affordable price.

The principle of lay control can be implemented in many ways. Most schools and some universities have governing bodies largely composed of laymen. Many appointments in the Church are made by laymen. In recent years some firms have been appointing non-executive directors from outside the industry. It is difficult to get the right balance of expertise—only those well versed in the trade can really understand what is going on—and impartiality—only those from outside can really take the outsider's viewpoint. But in discharging his duty to his trade the businessman needs not only to secure that the interests of the trade are collectively realised but, paradoxically, that they are confronted, and if necessary challenged, by some wider public interest.

§7.5 Duties to Neighbours

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Firms have duties to the local community and to wider ones. The underlying argument is the one already given, that a firm is a corporation, a centre of decision-making, and hence able, and needing to, take into account a wide variety of considerations in arriving at its decisions. In particular, a firm can reasonably be said to be located in the place where it operates. It has the power to alter the way things happen in its locality, just as I have in mine, and questions can be asked about the things it does, which a responsible businessman will want to be able to answer satisfactorily, and show thereby that business is essentially a cooperative exercise, and not merely a matter of self-interest.¹¹

Three different sets of neighbours may be identified: the local community, the national state, and—perhaps—the whole of mankind. In addition, we can identify a non-personal neighbourhood, the environment, as being also a focus of concern. The responsibilities of business enterprises to the State and to the Third World will be dealt with in separate chapters; here we shall discuss only their responsibilities to the local community, and the (largely local) environment.

To a considerable extent the firm's responsibilities to the local community are commuted into the payment of rates and taxes. But sometimes there are special needs which the local community is unable to meet, or opportunities open only to the firm, and then there may be good reason for further action. As in other cases, the action can be justified on grounds of enlightened self-interest—if the locality is a good one and the local community flourishing, people will want to work for the firm and to do business with it—but in many cases the underlying motivation is purely moral.

Economic activities often pollute, and businessmen are often asked to take into consideration the effect they are having on the environment. Some feel obscurely guilty, and wonder if there is any way they can obtain a clean bill of health: others are robustly defiant, and say it is up to the legislators to lay down acceptable standards of emissions, and within those limits they are free to do whatever will maximise profits.

Both views are wrong. While it is true that all human activity impinges on the environment, it is not the case that it is necessarily

¹¹ [This last half-sentence takes up MRG's note on p.61 of Autumn 94]

for the worse. The English countryside is the result of centuries of human interaction with the land. Sometimes it is right to take steps to keep some areas in their pristine state: in Brazil almost all the Atlantic seaboard has been brought under cultivation, and it right to protect the remaining virgin forest. The Amazon rain forest needs protection because of the extremely destructive exploitation to which it has been subject hitherto.. But not every exploitation is malign: to eliminate malarial swamps or the very existence of the smallpox virus is to make the world a better place, even though a less natural one.

Many industrial processes, however, do have bad effects. Waste products pollute the atmosphere, the water table, or landfill sites. Each ton of coal burnt contributes to acid rain, eroding ancient buildings and destroying forests, and to the greenhouse effect, which may, for all we know, have disastrous consequences in the next century.¹² Such considerations should weigh with anyone taking decisions. The view that it is up to the law to set limits to what may be legitimately done, and that within those limits the businessman is free to do whatever seems most profitable is, as we have seen,¹³ a mistake. The law is inevitably too crude an instrument to define accurately what may or may not be done, and often considerations of enforceability or public policy will make it impracticable or inexpedient to enact a law which, on the merits of the case, ought to be enacted. The fact that there is no law against sending out sulphur dioxide into the atmosphere is no reason for thinking that it is perfectly all right to do so. Considerations of practicality often also prevent laws actually in force from being enforced. Adverse neighbourhood effects are covered by the law of nuisance, but it is often difficult and expensive to invoke the law. Can an angling association prove in court that the dearth of fish in their stretch of the river is due to the effluent from my factory and not to that from another one higher up the stream? But the doctrine that one can damage one's neighbour so long as the damage cannot be provably laid at one's door is a doctrine that few responsible men would care to endorse.

But the absence of legally enforced restraints is relevant. It determines the context in which the businessman operates, and

¹² See also ch.1, §2, (adam4 pp.3-4)(was pp.5,6 of Justdut1.doc) (perhaps move from there to here).

¹³ In ch.6, §3 (state4 p.4); see also ch.3, §3, p.5 of (false5).

the competition he has to meet. If everyone else is spewing out sulphur dioxide, I cannot afford to put in expensive apparatus to scrub my emissions—and anyhow it will not make much difference to an atmosphere already much polluted. My customers are not prepared to pay for the privilege of being environmentally pure, and the actual benefit will be marginal. And even if there were laws imposing strict controls on emissions, we should merely lose business to Third World countries that were not so picky.

There is force in these arguments, but they do not conclude the matter. At any one time we are caught up in a situation not of our own devising, and must live in the world as it is, not as we would like it to be. But we need not be completely conformed to the world. Some moves are open, at least to monitor, and perhaps to mitigate, the adverse effects of our activities. Carelessness, rather than economy, is often responsible for the worst pollution. Many effluents can be recycled, or made less noxious before they are released. Often, indeed, they can be degraded biologically, if only we allow time and take trouble to find the bacterium with the right appetite. And the pressure of the best practice is effective over time in raising standards in the locality, or industry, as a whole.

Because some environmentalists are woolly-minded idealists, anxious to save the whale, but altogether unaware of the realities of industrial life, and because the neighbours who suffer from neighbourhood effects are manifestly only neighbours, many businessmen and politicians have responded by rejecting environmental concerns, even against their own interests. But often they need to employ woolly-minded idealists as researchers, or sell to them as customers: one of the key factors in the rehabilitation of the North of England has been to make it a place where managers and those with rare abilities are willing to have their families grow up. Britain and the United States have been scandalously complaisant over their emissions of sulphur dioxide and nitrogen oxides because Members of Parliament and Congressmen think that Norway and Canada are good places for acid rain to fall, but forget that most of the damage is done to their own buildings and their own woods and lakes. The communists cared little for the environment, and one of the factors that undermined the morale of their ruling élite was the evident mess they were making of the world, and the coughs and asthma of their wives and daughters.¹⁴

¹⁴ ?Ref from Edward.