Law and Ethics in Business: Case Study Wells Fargo

1. **Discuss and describe the litigation process that Wells Fargo would go through if customers filled a Class Action civil law suit against it for the actions depicted in this article.**

Rogue Wells Fargo employees exercised gross misconduct by opening bank accounts without consent and this could potentially lead to a Class Action civil law suit filed against Wells Fargo. According to Kerley et al. (2010), a Class Action civil law suit is one in which one or more persons who share a claim with a large number of others file a law suit against an organization or company in their own names purporting to represent numerous others in the same predicament as theirs. Class Action law suit are practical in cases where the complainants are too many such that individual legal redress would be inappropriate. In the case of Wells Fargo, over two million people were affected by the opening of the shadow accounts. This essay details the litigation process that Wells Fargo would go through in the event of customers filing a Class Action civil law suit against it.

Following a Class Action civil law suit by a complainant, a court order will be issued instructing the complainant to circulate a notice to all possibly the affected customers who had unauthorized accounts opened by Wells Fargo since the court decision would affect them (Greer , 2010). Following the notice which may be circulated through mass media, affected individuals can either "opt in" and collectively seek legal redress or decide to "opt out" of the Class Action. Wells Fargo would then be required to respond to the filed complaint by indicating what portions of these claims it admits to and portions that it contests and whether it has anything against the plaintiffs. Failure to respond to the complaint would lead to a default ruling by the court against Wells Fargo. After Wells Fargo responds to the filed complaint, the next phase of Class Action civil litigation would kick in involving submission of necessary documents for the preparation of the case to a court officer.

At this stage, Wells Fargo can seek an out of court settlement with the class attorneys. Should an out of court settlement be agreed upon, the court would have to be notified. In the event that an out of court settlement is not arrived at and subsequent event that the case is not dismissed by a motion, Wells Fargo will have to face trial in court where its attorney and attorney for the class will present arguments for their sides. The judge will make a ruling as to whether Wells Fargo should pay compensation or not. If Wells Fargo is not contented with the judge's or Jury's ruling, it can file an appeal through its lawyers with the high court.

2. Discus and describe the ethical theory of utilitarianism and apply its principles to the actions of Wells Fargo depicted in this article

In contemporary society, we ought to be considerate in our decisions and actions since they have great impacts on others around us. This calls for acting in ethical or morally upright ways so as to promote happiness and cohesion in our social setups. The ethical theory of utilitarianism is one in which the above sentiments hold true and serve as the basic axioms on which the theory was developed by Jeremy Bentham (1748-1832) and John Stuart Mill (1806 -1873) (Moreland, 2009). This essay discusses and describes the ethical theory of utilitarianism and applies its principles to the actions of Wells Fargo in the shadow account opening scandal.

The ethical theory of utilitarianism is build on three principles the first being that happiness I the only state that is good in itself or better stated as the only thing with intrinsic value. Consequently, the pursuit of happiness is at the center of our motives, decisions and actions according to White (2016). The second principle of utilitarianism gives the moral compass that guides on whether to rule an action as right or wrong. It states that right actions are those that promote happiness while wrong actions are those that promote unhappiness. Due to this principle, utilitarianism is classified as a consequential ethical theory due to its emphasis on the outcome of an action rather than the motive or intentions behind the action. The last principle emphasizes on equality for all by stating that everyone's happiness counts equally.

Relating the three principles to Wells Fargo actions, it's apparent that there the pursuit of happiness was the motive behind the gross misconduct by Wells Fargo rogue employees in opening unauthorized accounts and subsequently transferring funds from actual accounts thereby inflating fees and charges to customers. The rogue employees simply wanted to boosts their sales figures in order to earn more salary and commission which would translate to more happiness. Considering the second principle of right versus wrong action, the action by the rogue Wells Fargo employees can be ruled as wrong going by the consequences. The shadow account opening resulted in unhappiness in more than 2 million people (the customers) compared to happiness in a few rogue employees (about 5.300) who were fired by their employer; Wells Fargo. Finally Wells Fargo's agreement to pay restitution in full to all the affected and decision to fire the 5,300 rogue employees is a right course of action considering the consequences of these actions. Compensating the affected customers is right as it promotes happiness to more than 2 million people and firing the 5300 employs is also right since it further gives justice to the over two million affected customers. Even though firing the rogue employees would promote unhappiness to them, it is still right going by the numbers i.e unhappiness to 5300 versus happiness to over 2 million. That is utilitarianism for you.

3. **Describe and discuss ethical theory of Kantian ethics and apply its principles to the actions of Wells Fargo depicted in the article above**

It is not always or at all times that human beings have control of the consequences of their actions. That is why, basing our moral codes of contact on the consequences of our actions, as suggested by utilitarianism ethical theory and other consequential theories, might not offer the best ethical framework and moral guideline for contemporary society. Immanuel Kant, a German psychologist offers an alternative ethical theory called Kantian theory in which he suggests that the only good thing in itself is good will (Bailey & Martin, 2011). In this essay, I am going to discuss and describe the Kantian ethical theory and apply its principles to the actions of Wells Fargo depicted above.

The Kantian ethical theory is based on three underlying or guiding principles the frits one being the concept of the categorical imperative (*"Kantian Ethics,"* 2016). In the point of view of Immanuel Kant, there were two types of imperatives namely hypothetical and categorical imperatives. Hypothetical imperatives are those that drive us into action conditionally e.g. we eat because we want to get satisfied while categorical imperatives are those that drive us into action unconditionally e.g. we should not lie neither should we kill. Categorical imperatives form commands that provide a moral framework. The second guiding principle of Kantian ethics is based on the principle of universalisability and provides a test of morality of actions (*"Kantian Ethics,"* 2016). In this principle, we should only act on a maxim if an only if at the same time we would will that it becomes a universal law. Therefore, for an action to pass the morality test, it should be applicable to all individuals without creating a contradiction at conception or a contradiction of will. We have a perfect duty to perform moral actions and an imperfect duty not to act in an immorally manner. The last principle of Kantian ethics is the principle of treating people as an end and not a means to an end. In this principle, people should be respected and not used as a means to achieve our selfish interests (*"Kantian Ethics,"* 2016).

In relations to the actions of the rogue employees of Wells Fargo, there was no good will in the shadow opening of accounts and subsequent transfer of funds from actual accounts since this would result in increased charges levied to customers. This therefore was an immoral act from the onset. Basing on the principle of categorical imperatives, we have a moral duty not to lie but to always tell the truth. The actions of the rogue employees of Wells Fargo exemplified great deceit which was in contravention of the perfect duty to always tell the truth. In opening shadow accounts and increasing fees charged to customers, the rogue Wells Fargo employees acted in contravention to the principle of treating people as an end and not a means to an end. The rogue employees we interested in attaining their selfish interests of earning more commission using other people's credentials. The action to fire the 5300 employees involved in the dubious act of opening unauthorized accounts is the perfect demonstration of how the Kantian principle of universalisability can be used to shape morals in society. Punishing wrong doers e.g. by firing irresponsible employees can be universally applied hence discouraging people from doing wrong.

4. **Describe and discuss ethical theory of Aristotelian ethics and apply its principles to the actions of Wells Fargo depicted in the article above**

We all desire to live a happy and more fulfilling life or better stated to prosper in life. It is this desire to achieve a happy state that fuels our decisions and action in life according to Aristotelian ethical theory (*"Aristotle's ethics, 2016"*). Aristotelian ethics was developed by Aristotle, a Greek philosopher, who was of the opinion that ethics is a matter of logic, reason and self actualization. The focus of this essay will be a brief description and discussion of

Aristotelian ethics and application of its principles to the actions of Wells Fargo depicted in the article above.

Aristotelian ethics is based on three building principles the first being the declaration that everyone is in pursuit of happiness and good living, a state called eudemonia and which is desired simply because of its good sake ("Aristotle on the Virtues, 2016"). Consequently, we tend to act in a manner that will most likely drive us to attainment of this state of fine living. N The second guiding principle of Aristotelian ethics is the concept of virtue. According to "*Aristotle's ethics*" (2016), virtues are aspects of character which when embraced lead us to eudemonia or the state of happiness. In Aristotelian ethical theory, a desired virtue usually is the mean between two extremes of the virtue i.e excessiveness and deficiency of the virtue. Through our cognitive abilities and exercise of good reasoning skills, we are able to identify the mean and embrace it hence place us on the right path to happiness. However, the ability to identify the mean virtue is different among different individuals depending on what Aristotle called "Phronesis" which actually refers to practical wisdom of knowing the right way to behavior act when faced with a certain prevailing condition. The last principle of Aristotelian ethics is that character formation is a complex vicious cycle which requires practice and experience in order to give us the correct mental disposition which will make us more virtuous. In other words, we become more virtuous through learning and experience or education

In line with the actions of Wells Fargo depicted in the article, we understand the motive for the wrong doing of the rogue employees in opening unauthorized accounts. The desire for "good living" was the motive for their deceitful unethical practice. However, due to the lack of practical wisdom or Phronesis, the rogue employees were not able to identify the mean virtue; integrity but instead opted to act in dishonesty. On the other hand, the action of Well Fargo

Management in firing the rogue employees is a good act since it will help them to be more virtuous when faced with a similar situation in future because we become more virtuous through learning and experience.

5. **From the point of view of an investor in Wells Fargo, discuss potential legal causes of action that such an investor could pursue based on the articles of Wells Fargo depicted in the article**

Investors could opt to sue wells Fargo executive for negligence since the shadow account opening happened right under their watch. There is a possibility that some of the executive members were aware of the inappropriate use of customer's documents to open unauthorized accounts and thus there is a need to have them take responsibility for their negligence or inaction as they knew the legal consequences that such gross misconduct could result to. Following such legal redress by a Wells Fargo investor, the bank's top executives who were involved in the massive sham account opening would be punished. This is the most probable legal cause of action since the bank reacted by firing 5300 junior employees and none from senior management. Such legal redress would seek the court to order appointment of new executive by the board or resignation of top level executives due to loss of confidence in the current executives by investors.

Another possible legal cause of action that a Wells Fargo investor would seek is to file a case against Wells Fargo seeking to be protected from potential losses that might arise following payout to disgruntled customers in the event of a successful Class Action civil law suit. The investors could also seek a refund of their investment form the bank due to its acting in contravention of US banking regulations.

Another legal cause of action that Wells Fargo investors could opt to pursue is filing a case in court seeking a comprehensive review and possible overhaul of some of the banks practices e.g. whether unrealistic retail sales targets imposed on the banks employees is the root cause of the gross misconduct that come to the public lime light in recent days. Such legal redress would help the bank streamline its operations and avoid similar occurrence in future thus protecting investor's interests.

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