

CONFLICT OF INTEREST: WHAT'S TO WORRY?



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DEFINITION: A person P has a conflict of interest if and only if 1) P is in a relationship with one or more others requiring P to exercise judgment in another's behalf and 2) P has a (special) interest tending to interfere with the proper exercise of judgment in that relationship.

EXPLANATION: The crucial terms in this definition are "relationship", "judgment", "interest", and "proper exercise". Let's consider these in turn.

1. **Relationship.** This term is quite general, including any connection between P and another person justifying that other's reliance on P for a certain purpose. So, for example, the editor of an academic journal stands in such a relationship with all those who rely, or might rely, on work the journal publishes.
2. **Judgment.** Judgment (as used here) is the ability to make certain kinds of decisions correctly more often than would a simple clerk with a book of rules and all, and only, the same information. Each profession is defined in part by a distinct domain of such decisions. Those sufficiently adept in the exercise of judgment of that kind are (in that respect at least) competent in that field. Mathematicians, for example, are especially adept at evaluating mathematical proofs; civil engineers, especially adept at predicting the likely serviceability of physical structures; teachers, especially adept at judging academic progress.
3. **Interest.** An interest is any influence, loyalty, concern, emotion, or other feature of a situation tending to make P's judgment (in that situation) less reliable than it would normally be (without rendering P incompetent). Financial interests and family connections are the most common interests discussed in this context, but love, prejudice, gratitude, and the like are also interests (in this sense).
4. **Proper Exercise.** What constitutes proper exercise of judgment is generally a question of social fact, including what people ordinarily expect, what P or the group P belongs to invites others to expect, and what various laws, professional codes, or other regulations require. What is a proper exercise of judgment in one profession may well not be in another. For example, a lawyer who resolves every reasonable doubt in favor of an employer when presenting the employer's case in court exercises her professional judgment properly; an industrial chemist who does the same thing when presenting research at a conference does not. Like other scientists, chemists are

supposed to serve their employer by serving the truth (not, like lawyers, to serve the truth by serving their employer).

COMMENTARY: What's wrong with a conflict of interest? To have a conflict of interest is to be less reliable than one normally is (that is, to be less deserving of reliance). (This is the respect in which the interest in question is special.) To exercise one's judgment when one has a conflict of interest is to take an unusual risk of error. A conflict of interest is not simply a conflict within one's interests, commitments, or values. Rather, it is a conflict between some (special) interest and the proper exercise of competent judgment.

For example: I do not have a conflict of interest just because (in a fit of absent-mindedness) I promised to give this talk after promising to go my son's soccer game (schedule for the same afternoon). That conflict of commitments does not threaten my judgment. I would, however, have a conflict of interest if I had to referee at my son's soccer game. I would find it harder than a stranger to judge accurately when my son had committed a foul. (I honestly don't know whether I would be harder on him than an impartial referee, easier, or just the same.)

Professions generally describe this inability to judge as someone less involved would as a loss of "independence" or "objectivity". In a conflict of interest situation, the professional's judgment depends on something it does not ordinarily depend on, something it should not depend on. For a professional, conflict of interest can be objectionable for at least one of three reasons:

- 1) Insofar as P is unaware of her loss of independence or objectivity, she is incompetent. Professionals are supposed to know the limits of their judgment, especially when these are obvious.
- 2) If those justifiably relying on P for a certain judgment do not know of P's conflict of interest and P knows (or should know) that they do not, P is allowing them to believe that she is not what she seems; she is, in effect, deceiving them (since their reliance on her is justified until she reveals what she knows).
- 3) Even if P informs those justifiably depending on P's judgment that she has a conflict of interest, P's judgment will still be less reliable than it ordinarily is. P therefore risks appearing less competent than usual (and perhaps less competent than members of her profession should be). Conflict of interest can remain a technical problem even after it has ceased to be a moral problem (and, even as a technical problem, can harm the

reputation of the profession, occupation, or individual in question).

What can be done about a conflict of interest? One can avoid some conflicts of interest (for example, by putting one's stocks in a blind trust or refusing a gift); escape others (for example, by divesting oneself of the conflicting interest or by withdrawing from the relationship of dependence); or, in some cases, disclose the conflict to those relying on one's judgment (thereby preventing deception and allowing those relying on one to adjust their reliance accordingly). In general, disclosure does not end the conflict of interest but merely renders it less likely to be harmful. What should be done about a conflict of interest depends on all the circumstances, including the relative importance of the decision in question, the wishes of the dependent party, the law, and any relevant code of ethics, professional or institutional.

SOME COMMONLY MISUSED TERMS. A conflict of interest is potential if and only if a) P has a conflict of interest with respect to a certain judgment, but b) P is not yet in a situation where he must make that judgment. Potential conflicts of interest, like time bombs, may or may not go off. Potential conflicts of interest are easier to tolerate than actual conflicts.

A conflict of interest is actual if and only if a) P has a conflict of interest with respect to a certain judgment and b) P is in a situation where he must make that judgment.

A conflict of interest is (merely) apparent if and only if a) P does not have a conflict of interest (actual or potential), but b) someone other than P would be justified in concluding (however tentatively) that P has a conflict of interest. Apparent conflicts are objectionable for the same reason that any apparent wrongdoing is objectionable. It misleads people about their security, inviting waste of resources on unnecessary precautions.

An apparent conflict of interest is resolved by making available enough information to show that there is no actual conflict.

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CASES FOR DISCUSSION

1. **GETTING THE SPIRITS.** The National Red Cross's Technology Transfer Office often consults you, a scientist at Holland Lab, concerning the licensing of technology it owns. About four months ago, you were involved in a complex decision concerning licensing new blood testing technology to a for-profit corporation. You had spent a day at the corporation (in nearby Virginia) in an attempt to evaluate its procedures and understand how the technology would in fact be used. During that time, you met the vice-president for research as well as the scientists, technicians, and managers directly involved. On the basis of what you saw, you recommended going ahead. Your recommendation seemed to be a major factor in the Red Cross's decision to license. Today, your birthday, you received a surprise in the mail when you got home from work, a package containing a birthday card from the vice-president and a case of French wine (worth perhaps \$200). The card says simply, "A token of appreciation." You like good wine. This wine is good enough. Should you accept the gift? (What considerations, if any, weigh in favor? against?) What else, if anything, should you do?

2. **CARRY-ALL CONSULTANT.** You, a scientist at Holland Lab, are asked to serve as a consultant to Carry-All Blood Bags, whose largest customer is the Red Cross. Carry-All wants you as a consultant, they say, because of your long experience testing blood bags. You have in fact had a good deal of experience testing Carry-All products, including a few you have had to send back for redesign. You are pleased with the generous terms they offer. Should you accept? (What considerations, if any, weigh in favor? against?) What else, if anything, should you do?

3. **CARRYING IT ALL INTO THE LAB.** On one of your consulting assignments for Carry-All, you were given a file of impressive results and a sample bag. As you looked through the data, you became increasingly impressed. The results were almost perfect. You did not want to say anything, however, with something more to go on. You could easily check the most worrisome results in your lab in a few hours, on your own time. Should you? (What considerations, if any, weigh in favor? against?)

4. **HELPING CARRY-ALL HELP YOU.** Now an occasional consultant for Carry-All, you are asked to comment on a plan for an extensive project to develop a next-generation blood bag. Important components of the research would be done at Holland--assuring, you realize as you think through the project, full employment in your lab for about two years. Carry-All is concerned both about time and personnel allocations in the budget and overall feasibility of the proposed improvements. Should

you do as asked? (What considerations, if any, weigh in favor? against?) What else, if anything, should you do?

5. **SIGNIFICANT INTEREST.** You, a scientist at Holland Lab, have tested a lot of Dracu, Inc.'s blood processing equipment over the last six years. You have been impressed by Dracu's design, reliability, and price. Yesterday your stockbroker's newsletter listed Dracu's stock as one of twenty "bargains of the year". You have \$10,000 from a five-year CD that paid 9%. A new five-year CD would pay 5%. Dracu has been returning 12% a year in dividends. In addition, your broker is predicting rapid increase in its market price as its products catch on in the market. Should you do as your broker suggests? (What considerations, if any, weigh in favor? against?) What else, if anything, should you do?

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