

**MBA (FT) – November/December 2020**

**MBAFT-II: 6301 Business Ethics and Corporate Social Responsibility**

*The paper has two sections- Section A and Section B. Section A consists of a case study followed by questions, attempt both the questions. In Section B attempt **any three** questions.*

**Time: 3 Hours**

**Max. Marks: 50**

**Section A- Case Study (Compulsory)**

**Should there be a market for kidneys?**

Alex paused before entering his consulting room knowing that he would have to deliver bad news to his patient Kate. Kate has chronic kidney disease and had been coming to the hospital for several years for dialysis treatment. Over Kate's many hospital appointments, Alex, a nephrologist working at a large hospital outside of Washington DC, had gotten to know her well and understood that the need for daily dialysis treatment had seriously impacted her quality of life. "I'm so sorry, Kate but we still haven't found a donor that's a match for you. I'm afraid we're going to have to keep waiting."

Kate replied, "I can't keep doing this. I can't go on vacation, I can't keep a job. All I do is spend hours every day in the hospital. I read online that you can buy a kidney from someone that's healthy. Is that possible? Would you be able to help me find a kidney for sale online?"

Kate explained that her neighbor, an Iranian national, had pointed out that one can legally buy a kidney in Iran and suggested that she explore the possibility.

Alex paused before answering. He knew that it was illegal to help a patient buy a kidney. Yet here was a patient who showed no signs of finding a kidney donor anytime soon and could in fact die before ever being matched with a kidney.

Should he recommend that Kate visit Iran for this sort of medical tourism or explore possibilities in the United States? What are the legal and ethical implications of this decision?

How do societies determine what is repugnant and what is not? Also, importantly, how do laws and regulations keep up with the changing social attitudes?

**Background to Repugnant Markets**

Any market that deals with goods or services that are considered "immoral" or "unethical" can be considered "repugnant" (Roth et al., 2003). The repugnancy derives from both government legislation and social attitudes, sometimes with one feeding the other. Repugnancy can also arise from a religious context and feed into legal and administrative views, for example, abortion.

What is repugnant can be a "social construct," meaning that a society determines the notions of repugnancy, based on prevailing moral attitudes. This is often reflected in legal and other norms.

Alvin Roth, an economist, offers a detailed analysis of why certain transactions are considered "repugnant." He puts sex (outside of marriage, with underage children, pornography) in this category in addition to servitude, sale of kidneys, prostitution, and drug sales. Many of these transactions have "negative

externalities,” that is, a negative impact on society, either in terms of health, morality, or general behavior in society.

Even though this sense of morality can categorize certain transactions as “repugnant” it doesn’t mean that they don’t happen. The transactions go underground and often thrive due to their illegal nature.

Repugnant transactions often do not enjoy cognitive or moral legitimacy. Legitimacy has been defined as “the process whereby an organization justifies to a peer or superordinate system its right to exist” (Suchman, 1995). This concept has a lot of application when it comes to administrative, legal, and sociological understandings of phenomena. Suchman (1995) offers three frameworks for the legitimacy of any organizational effort: *pragmatic legitimacy*, which presupposes self-interest, and *moral* and *cognitive legitimacy*, depending on how the audience sees the work or transaction as being morally and cognitively valid and serving a good purpose.

Public attitudes towards these transactions can also change over time. Opinions on homosexual marriage experienced a complete turnaround between 1995 and 2015. Roth argues that “same-sex is a prototypical repugnant transaction,” given that the United States is a very conservative country, by many measures (church attendance, attitudes towards sex, etc.). Yet over time, homosexual sex and relationships have been normalized both in the United States and western Europe, and, in the United States, same sex marriage eventually became law with the passage of Marriage Equality Act in 2015 (Roth, 2015). Thus, there is the possibility that in the future other repugnant transactions, such as the sale of human organs, may become mainstream.

Similarly, attitudes towards issues such as usury, paying money to surrogates, and adoption have fluctuated for religious, political, and economic reasons. During the Middle Ages, charging interest for loans was illegal and condemned by the Catholic church. Now, anyone over the age of 21 can apply for payday loans, which have interest rates of 200 to 400%.

Countries such as New Zealand and the Netherlands have legalized prostitution, and there is ample evidence to suggest that this has improved the safety and health of sex workers through removing gang involvement and coercion (Abel et al., 2007). While prostitution is a very specific category, it demonstrates that the legalization of repugnant transactions once thought damaging to society can be beneficial for those involved.

Similarly, purchasing surrogacy is no longer illegal in California, whereas it is forbidden in other parts of the United States. In New York, you can work with a surrogate, but you cannot pay the surrogate. In Germany, surrogacy of any kind is illegal and a punishable offense. Actions often become repugnant when money is involved, such as donating kidneys and surrogacy.

### **Market for Kidneys**

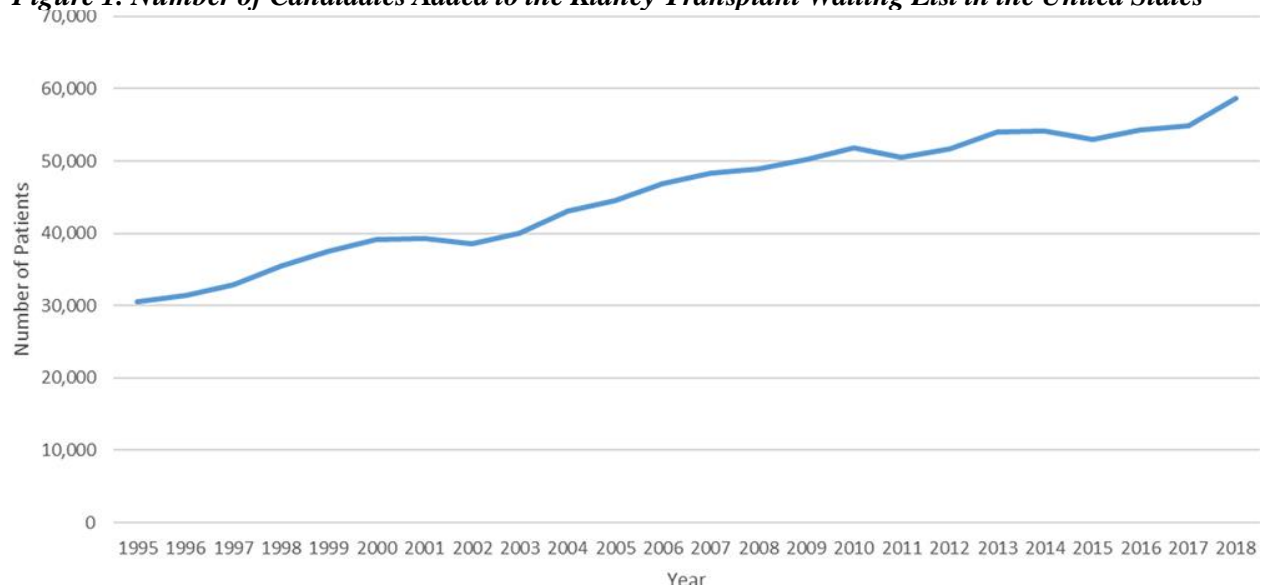
There is a shortage of kidneys around the world, except in Iran (Bengali & Mostaghim, 2017). In Iran, a government foundation manages the process for selling kidneys, setting the price at around USD 4,600 per organ. In a country where the per capita income is about USD 5,600, the sale of a kidney is almost equivalent to a year’s earnings (World Bank, 2019). Bengali and Mostaghim suggest that over 30,000 kidneys have been donated since 1993 in Iran (Bengali & Mostaghim, 2017). However, this system is not fool-proof; likely donors are participating out of economic necessity and not humanitarian concerns, as poverty and lack of economic opportunities force people to sell their kidneys.

The laws in the United States and European Union are restrictive on organ donations (Roth, 2015) and there are restraints on who can donate to whom. In Germany for instance, thousands of people die waiting for kidneys, as one can only donate to immediate relatives (Bengali & Mostaghim, 2017). However, “making

markets illegal doesn't mean that they go away," and can exacerbate the problem by criminalizing the sick, who are looking to purchase a kidney. (Roth, 2015).

There are more than 100,000 people waiting for kidneys in the United States (Roth, 2015). Ross argues that if a price mechanism were introduced for the sale of kidneys, supply and demand would fix this problem, but U.S. law states that the price of kidneys must be zero, considering the donation of a kidney to be a gift. Roth cites the current black market for kidneys in the United States as evidence that there are willing sellers and buyers of kidneys and this could become a regulated industry. At the moment, this market operates mainly by helping U.S. citizens with connections abroad to participate in a form of "medical tourism" for buying kidneys from willing sellers. For instance, as selling kidneys is legal in Iran, operators may set up a donor in Iran and a recipient in the United States and charge a hefty fee for this transaction (Roth, 2015). Even though this is perfectly legal in Iran, the transaction may have other unintended consequences for the donor and they may be selling the kidneys out of coercion, to make money.

**Figure 1. Number of Candidates Added to the Kidney Transplant Waiting List in the United States**



**Source:** Organ Procurement and Transplantation Network

### **Objectification**

Many religious traditions value treating people as ends in themselves and not as a means to achieve something. This can be interpreted as requiring that one must respect the sanctity of life and not instrumentalize the body by trading parts of it for money. Those against the legalized sale of human organs argue that instead of creating a market for the trade of kidneys, governments could act to promote the free donation of organs. From spring 2020, England will implement an opt-out system where all adults will automatically be considered organ donors unless they have recorded a decision not to donate (BBC, 2018). So-called "opt-out" systems make it more likely for adult populations to donate their organs without creating a market for kidneys as advocated by Roth.

### **Coercion**

If a high price is offered, people in certain circumstances may feel they have no choice but to sell their organs when they do not wish to do so, which could be considered coercion. This can take place when people from rich countries who are flush with cash show up in poorer countries such as Iran or India and offer exorbitant amounts (in local currency) to people who may be "coerced" to sell their kidneys. This is a very real problem that Iran is facing, and could become a problem in the United States if people were donating kidneys purely for money.

Roth and his colleagues' work in experimental economics offer some insights into how repugnant markets work and foster coercion. In one experiment, people were asked how much they would have to be paid to eat edible insects. "If you eat an insect, you get \$35, but if you don't, you pay back \$20, since you broke the transaction" (Roth, 2016). The experiment concluded that high incentives are effective at persuading the vulnerable and poor to accept repugnant transactions. If the United States were to introduce a legal market for selling kidneys, it is a possibility that coercion would result in poorer individuals selling a kidney as they have no other choice.

Others believe that selling kidneys can be economically empowering for the poor (Berman et al., 2008). Berman argues that the autonomy argument is erroneous, since banning the sales of kidneys denies the poor the autonomy to sell their kidneys should they so choose to. On the contrary, if one is allowed to sell one's kidney, it may actually open up other avenues or solve financial problems that enable the poor to live freely.

### **Experimental Evidence of Repugnant Markets**

Roth has proposed a model in the form of a "kidney exchange" to overcome the stigma associated with repugnant transactions. In a working paper, he and his colleagues explain a model that has enjoyed some success involving paired exchanges. Paired exchanges involve two patient-donor couples, who are not donor matches for their intended recipient, but each patient in each couple could feasibly receive a transplant from the donor in the other couple (Rapaport, 1986). They point out that this pair of couples can exchange kidneys. This model removes the uncertainty that exists when the need for being placed on a waiting list arises. In this exchange model, there is certainty and also a greater guarantee of a person getting a kidney as and when needed rather than waiting indefinitely. The model has been tested and scholars as well as practitioners vouch for its success. "Kidney pair donations" have been tried across the United States and have been proven to work. Roth and his colleagues point to the success of such a model at Johns Hopkins Hospital involving three couples (Roth et al., 2003). UNOS also has many successful cases involving three or more couples, who have been able to help each other through this innovative program. (UNOS, 2019). However, it has yet to be adopted on a large scale to examine its wider feasibility.

One of the biggest limitations with this model is the ability to find donors who are a match, though the odds of finding a match in this case are higher than in the traditional single donor model. The ability to come together, find donors, and trust that the process will work is one of the biggest obstacles to widespread adoption of the paired exchange solution, which is still in a trial phase.

To avoid the year-long wait through formal channels—through the foundation run by the government—many people, who come to the country for transplants, make side deals with Iranians or Saudis (Bengali & Mostaghim, 2017). Many people in Iran, including donors and government officials, do not see it as exploitative but rather as an opportunity for the poor to earn some money. The Iranian religious establishment and government have approved the sale of kidneys as long as no one is harmed in the transaction.

In the United States, Matas and Schnitzler (2004) found that a kidney transplant from a living, paid unrelated donor could save USD 94,579 through savings on the cost of dialysis (dialysis costs around USD 50,000) and the current cost of organ acquisition. "Therefore, a payment to a living kidney donor of \$80,000 together with the provision of improved post donation health benefits, would still produce a net financial saving to society compared to providing chronic dialysis therapy for that potential recipient while he waits for a deceased donor kidney. The benefit to recipients in this setting would be the minimization or even avoidance of needing dialysis, resulting in enhanced quality of life and longevity. Thus, theoretically, living kidney donors could be paid up to \$80,000, while at the same time saving money and increasing health benefits" (Berman et al., 2008). Berman and her colleagues also suggest that since a monetary compensation for kidney donations could be unpalatable in the United States, the payment could be offered in other forms of compensation such as a college scholarship.

The World Health Organization, while recognizing that most people can live healthy lives with just one kidney, does not endorse the sale of organs, arguing that it exploits the sellers and often the procedures undertaken are risky. In 2004, the organization passed a resolution to discourage the exploitation of live donors: Resolution WHA57.18 (2004). It acknowledges the risk of the exploitation of live kidney donors and urges member states to “protect the poorest and vulnerable groups from transplant tourism and the sale of tissue and organs” and requests the director-general to provide support for member states in this endeavor (WHO, n.d.). The resolution notes that “the welfare of the live kidney donor is largely neglected in schemes where disadvantaged individuals are exploited and encouraged to sell their kidneys.” This is a clear danger to donors who are poor and vulnerable and one that has no easy solutions.

### **Conclusion**

While repugnant transactions will continue to exist, there is no denying that we must find ways of addressing them, both sociologically and legally. For example, with transactions involving “immoral” activities such as sex, there are cognitive biases—often coming from religious (some denominations of Christianity, for instance) or other ethical grounds—that make these transactions less legitimate.

There is no foolproof mechanism to prevent fraud and the criminal exploitation of people. However, regulating and legalizing some form of trade in the kidney industry may be a way to get a handle on this. Similar to legalizing prostitution and its impact on the trade in countries like New Zealand and the Netherlands, a well-regulated, legal kidney trade could perhaps be able to meet the demands of those who are on the waiting list for transplantation, while offering protection for donors. Others will argue, however, that organ trade should never become a legitimate transaction, and instead may point to other ways of addressing the problem, such as through “opt-out” organ donation schemes adopted in the United Kingdom and other countries in western Europe.

### **Discussion Questions (Answer in 400-500 words each)**

1. How does a transaction become “ethical” or “repugnant”? What aspects of the workings of the kidney market are legitimate or not? **10 Marks**
2. What are the options and obstacles in managing a repugnant market like the sale of kidneys in terms of maintaining safety and allowing fair access? How can government and hospitals prevent fraud and the exploitation of people? **10 Marks**

### **Sec B (Attempt any three) (Answer in 400-500 words each)**

1. Imagine your team has been asked to develop a business ethics training session for employees at a major corporation. Put together a presentation that covers the major elements of workplace morality your team feels would be most important for workers to understand. **10 Marks**
2. What might be some benefits and costs of acting unethically in business? Distinguish between benefits and harms to the individual and benefits and harms to the firm? **10 Marks**
3. What makes a decision or issue unethical? Are there some ethical values or principles that you believe are relative to one’s culture, religion, or personal opinion? Are there some that you believe are not? What makes them different? **10 Marks**

4. What ethical theory do you think is most commonly used in business? Provide evidence to support your assertion and give reasons explaining why this theoretical approach is more likely than others to dominate business decisions. **10 Marks**
5. What have been the main influences on the development of corporate governance codes and guidelines worldwide? Critically discuss whether it would be desirable to have one model of corporate governance applicable to all countries? **10 Marks**
6. Critically examine the influence of religious thought and wisdom traditions such as Indian, Christian denominations, Islam, Taoism and Confucianism, among others on business ethics. **10 Marks**