TAKING FAIR ADVANTAGE by Geoffrey Klempner

A recent question on Ask a Philosopher[1] highlighted an ethical problem which buyers sometimes face: when is it acceptable to take advantage of a seller's ignorance? Is there anything that you might know which the seller does not know which you have an obligation to reveal to the seller, and if so what?

The second part of the question was: under what circumstances is a seller, who subsequently learns something the buyer knew but deliberately kept quiet about, justified in refusing to honour the sale agreement?

Although it is prima facie wrong to go back on an agreement, whether written or verbal, if I discover that you have taken what I perceive as unfair advantage and broken the rules of fair trading, then I am not obliged to let you get away with it at my expense. However, this general rule can generate some hard cases, where the original infraction is relatively minor and serious consequences follow from breaking the agreement. I won't be discussing this part of the question.

Here is the full text of Clay's question, which appeared on the 37th Page of Questions and Answers:[2]

> **This is a question that has been discussed within a group of acquaintances, sometimes leading to some pretty hot arguments!**
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> **It is a business/ ethics question, and one we deal with on a regular, real life basis.**
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> **You read an ad in the newspaper listing something for sale, and you realize it is worth much, much more than the asking price. You are elated at the prospect of a really good deal! You call the phone number and agree with the seller to go buy it, but when you arrive the seller informs you that he has had several other phone calls, some also showing great interest, and some calls simply letting him know that his item is worth ten times his original asking price. He has now raised his selling price.**
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> **The dilemma: (As argued by my friends and I!)**
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> **You, the buyer, are angry that the seller 'has no honor!!', and should have sold the item at the advertised price. My thoughts are that you were perfectly willing to take advantage of an uneducated seller, and thus you have no complaints if he realizes his mistake. Better luck next time. Since you were willing to take advantage of the seller, you're certainly on no moral high ground here.**
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> **The group's response is that the two issues are totally unrelated. The buyer has no obligation to educate or inform the seller as to his item's true value. The seller still should have honored his original price. A verbal agreement between both parties is just that, and should have been honored.**

An additional issue would be to muddy the waters by including possible different reasons why the seller is selling the item.

If the seller was selling the item in order to raise money to buy medicines for a sick child, and you kept silent about the item's value and paid the original low selling price, then you're really going beyond simply taking advantage of an uneducated seller. On the other hand, the seller might just have wanted the old thing out of his basement, and no actual harm would have occurred. Or are these just questions of degree?

Does the buyer have an obligation to inform the seller of the true value of his item? If the buyer is a 'professional', then the answer, legally, is yes. If I take a painting with 'Rembrandt' barely legible in the corner to your art gallery, and you tell me it's worth 25 and buy it from me for that amount, you're in trouble. A buyer who is just an average person answering an ad in the local newspaper is a different situation. Sort of.

Does the seller have an obligation to honor his original price, even though he was completely ignorant of its true value when the price was set?

We really do wrestle with this, and would very much appreciate your thoughts if you find this question appropriate for your group.

This seems a suitable scenario to test the theory of the 'Business Arena'[3]. According to my theory, different rules apply when items are bought and sold, depending on whether the transaction takes place inside the business arena or outside.

First, we need to prime our intuitions by considering a few more examples:

1. You own a company which specializes in supplying parts for earthmoving equipment -- bucket teeth, bushes, track pads etc. One of your clients has an ancient machine whose parts are hard to come by. While picking through scrap that your competitor is selling off cheap you notice the very item your client is looking for, which you can sell at twenty times the asking price.

2. In a second-hand shop amongst a pile of old children's toys you spot a complete Chinese Mah Jongg set in perfect condition which you you can sell for a hundred on eBay, where you have a thriving games shop. You pay a couple of coins at the till, and walk away grinning.

3. A small company which designs and manufactures a new type of music player is on the ropes as a result of a series of inept and financially disastrous marketing campaigns. As an entrepreneur with many years experience in marketing consumer electronics, you know exactly what would be required to turn the business around. You offer to buy up the company for one penny, with the undertaking that all debts will be honoured and no-one will lose their jobs.

4. You are art critic for the New York Times. In a gallery, far off the beaten track, you find works by a painter whom you recognize as having great talent and potential. You introduce yourself and tell the painter you like her work very much indeed and would like to buy some. The next week your column appears with a glowing review of the

show. The artist is of course delighted, but so are you at having purchased her best work for a song.

5. Your friend drives an old Ford Capri which is on its last legs. Knowing that you are an experienced mechanic who loves Capris, and that you would jump at the chance to give the car some tender loving care, he offers to sell you the car for fifty. You gladly hand over the money and the next morning start phoning round people you know who might be interested to buy a reconditioned Ford Capri.

The last example is the odd one out, so I will deal with that first. When friends sell things to one another, it would be considered an abrogation of friendship to attempt to gain any advantage from the deal at the expense of the other person. Both parties to the exchange are concerned to ensure that the there will be no room for bad feelings afterwards. In the present case, you both know that you are not going to keep the car, and that you will indeed make a tidy profit on it. It's money that you've well earned for your hard labour. Your friend splashes the cash on a night out and buys a brand new Ford. You are both happy.

The business arena is not like this, nor should we want it to be. I take it as truistic that in the business arena both parties, the buyer and the seller, are looking for the 'best' deal. The buyer wants to get the highest price that the item will realize, while the seller wants to pay the least he or she can.

Even so, one values an atmosphere of amity. It is a wise rule of thumb to trade with someone on the assumption that they would be happy to trade with you in the future. That can be so even if on a particular occasion you got clearly the better deal. There's always next time. It is the institution of the market place which allows you to behave in this way. Even if the contest is friendly, it is still a contest.

I have heard it said that the ideal outcome of any sale is one where no-one 'loses' and buyer and seller are equally happy. That may well be so. But the point is that such an outcome cannot be guaranteed or enforced. The price of making 'equal gain' a necessary condition for taking part in the game of buying and selling would make the game impossible to play.

There is good justification of a law which protects sellers from predatory professional buyers -- as in Clay's example, the expert who recognizes the painting with 'Rembrandt' barely legible in one corner -- because in that case the playing field on which the deal takes place is not level. One of the basic principles of business ethics is that the competition to get the best deal should be a fair competition. Insider knowledge is another widely discussed example of how the playing field can be unfairly tilted, with the added aspect of disloyalty and conflict of interest.

However, there is a remaining area of uncertainty where it is not clear whether or not the rules of the business arena apply. In my answer to Clay's question, I said:

> **Your case appears difficult, because of the lack of context. You present this as a deal in the market place, between people who have never met one another before, and yet in real life people who meet through newspaper ads are not behaving simply as 'traders in the marketplace'. They are just people, who are concerned to do the right thing, not out of friendship or a**

> **concern for one's professional reputation but because it is the decent thing to do.**
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> **It is not decent to make a large profit out of such an exchange based on your superior knowledge. If you know more than you are letting on -- I'm talking about something that makes a big difference, one that would cause serious consternation to the seller -- then you should spill the beans. That would be my view.**

Examples like this -- where neither buyer nor seller does this for a living -- are best not seen as 'business deals'. You are not meeting as dealers but rather as strangers. You are ethically obliged to treat the stranger as you would a friend, and not attempt to gain an advantage in the way that you would naturally do if you were competing in the business arena. It is not accidental that one finds lonely hearts columns right next to ads for old CDs and stamp collections. The buyer and seller enjoy a leisurely cup of coffee and a chat about their favourite rock band.

The remaining examples 1-4 are different, because they all take place in the business arena.

Your competitor kicks himself for not being aware of the true value of his stock, but in truth there's little he could have done about it. The shop manager earns a reprimand for failing to take sufficient care in pricing an item whose purpose she did not recognize. The previous owner of the electronics company now enjoys a secure job at a decent salary, but rues the great opportunity missed as a result of his lack of marketing expertise. The painter watches with a mixture of amusement and regret as the price of her paintings soars. If she'd only had the courage of her convictions, she would have valued her own work more highly and made a more concerted attempt to get into the bigger galleries instead of settling for a backwater.

These are cases, I would argue, of a buyer taking fair advantage. A similar series of scenarios could be described where the seller gets the upper hand, but I don't think it's necessary to labour the point. It has become a cliche that in the business arena knowledge is one the most valuable commodities. You work hard for your knowledge and sometimes pay dearly to acquire it. At the risk of stating the obvious, it is right and fair to make a profit from your superior knowledge, and to gain an advantage at the expense of your less knowledgeable competitor.

Footnotes

1. Ask a Philosopher http://www.philosophypathways.com/questions/

2. Questions and Answers 37, number 31
http://www.pathways.plus.com/questions/answers_37.html#31

3. Geoffrey Klempner 'The Business Arena' Philosophy for Business Issue 5
http://www.isfp.co.uk/businesspathways/issue5.html

This paper was published in Philosophy for Business Issue 39 11 August 2007.