

The main conclusion of the paper is that it is morally wrong to buy shares in a company that is behaving badly unless you are able and willing to prevent the misbehaviour.¹ I have argued elsewhere that companies and their executives have moral duties which go well beyond their legal duties, and that these sometimes include substantial, but limited, responsibilities for advancing the good of the community and protecting it from harm.² In what follows, I take this point for granted.

1. Interventionist shareholders, passive shareholders

Does owning shares in a company generate ethical requirements in relation to that company? At least in some cases it does. This is easiest to see in the case of company takeovers, where the new owners intervene in a major way in the internal functioning of the company – e.g., to restructure it, or to appoint new managers. The newcomers need, ethically speaking, to honour the pre-existing moral responsibilities of the company to employees, suppliers and others. After all, they benefit, and present themselves as morally entitled to benefit, from the willingness of employees, suppliers and others to honour pre-existing moral responsibilities to the company. You cannot claim the moral assets of the firm while repudiating the moral liabilities. The incoming owners also need, ethically speaking, to give due weight to possibly beneficial or adverse effects of their actions on local communities and on the environment.

A new and interventionist shareholder which is itself a company might see itself as having a

conflict of moral duties here – duties to its own shareholders, who have made it clear that they expect its activities to maximise its profits; duties to others. Maybe, but in some such cases the duties to the shareholders will have to give way. This is an instance of an important point: neither a company nor a self-employed plumber doing jobs for householders can justify unfair, malevolent or callous conduct merely by saying that it promotes profits.

What of passive investors? Their sole involvement is to buy and sell their shares, and to collect their dividends. The company and its executives may have all sorts of moral duties, going beyond what is legally required. Are any of these transmitted to passive investors? Or are passive investors somehow morally insulated from the company in which they own shares?

I will tackle these questions in the course of addressing another one: what moral constraints are there on the choice of which shares to buy? The line of reasoning that I advance turns out to depend on the concepts of authorisation and acting on someone's behalf. So in the next section I will investigate these concepts, by way of preparation for the main argument of the paper.

2. Authorisation, and acting on someone's behalf

We need to distinguish various senses of “authorise”, or perhaps kinds of authorisation. There is a weak sense in which Alice authorises Beryl's action if Alice gives permission for Beryl to act in the way specified, in that Alice declares that she will not hinder Beryl's acting, will not seek



Beryl's being penalised for acting, and will oppose any attempt by third parties to penalise or disadvantage Beryl on the grounds that what Beryl did violated rights or privileges of Alice. It is in this sense that we speak of a landowner's authorising someone to drive across their property.

There is a stronger sense of "authorise", in which Alice authorises Beryl's action if and only if Alice empowers Beryl, by exercising Alice's right to request and receive cooperation from third parties for Beryl as Beryl seeks to act in the specified way. It is this sense that a government minister might assist the police by authorising them to obtain access to confidential departmental records.

Most pertinent to our present topic is a third sense of "authorise", in which Alice authorises Beryl's action if and only if Alice appoints Beryl to act as her agent or representative in certain respects, and what Beryl does falls within her terms of appointment.³

Closely related to the idea of acting as someone's agent is the idea of acting on someone's behalf. The idea can best be explained by the following examples:

- (i) If Alice authorises Beryl to act as her agent or representative, then what Beryl does in that capacity is done on Alice's behalf.
- (ii) If Alice authorises Beryl to act as her agent or representative, and Beryl, acting in that capacity and in virtue of the authorisation by Alice, authorises Cathy to do *x* as Beryl's agent or representative, then in doing *x* Cathy acts on Alice's behalf.

Notice that in case (ii), Cathy does *x* on Alice's behalf, and Alice is a source of Cathy's authority to do *x*, even though Alice has not authorised Cathy to act. Suppose, for instance, that Alice authorises a lawyer to act as Alice's agent or representative in reaching an out-of-court settlement, and the lawyer, in the course of carrying out this task, authorises an assistant to provide certain information to the other side. Alice might rightly say to the assistant: "What a blunder! I never authorised you to do that." The assistant could reply: "You are right, but nevertheless I was acting on your behalf."

We do sometimes say "She acted on your behalf" when she merely took it upon herself to do what she thought you would have done if you had had the opportunity, I treat this, however, as a secondary usage irrelevant to the present discussion.

What action Alice authorises is not a matter of what Alice intends, but of what Alice commits herself to. Alice may have failed to read the fine print in a contract she signed, and may have authorised Beryl to do something without intending to. Even when Alice does all she can to distance herself from Beryl's action, she may have moral or legal entitlements and liabilities arising from it. Beryl may have secured goods which other people must deliver to Alice, have made commitments which Alice is obliged to fulfil, or have incurred debts or penalties which Alice is obliged to pay. Although Alice can often withdraw her agent's authorisation, normally this affects only the future, and not the past.

Signing a contract without reading it carefully is one way of authorising an action without intending to. Here is another way. Suppose that in appropriate circumstances Alice says to Beryl "I hereby authorise you to do *x*". Suppose also that Beryl must do *y* if *x* is to be done, and that the authorisation given to Beryl has not contained an implicit proviso ruling out doing *y* (either directly, or by ruling out acts of some kind that includes *y*). Then Alice has authorised Beryl to do *y*, and Beryl is acting on Alice's behalf, whether or not Alice intended that Beryl do *y*, or realised that she would do so.

What if doing *y* is not necessary to do *x*, but is one of several feasible ways of doing *x*? Then Alice's saying to Beryl "I hereby authorise you to do *x*" does not constitute authorising Beryl to do *y*. Nevertheless, unless there is an implicit clause ruling out *y*, if Beryl does *y*, acting on her authorisation to do *x*, then Beryl does *y* on Alice's behalf. For example, if Alice appoints Beryl as her agent with instructions to buy her a luxury car, and Beryl buys her a Jaguar, then Alice has not authorised the purchase of a Jaguar, but nevertheless Beryl has acted on the authority she has received from Alice, and has bought the car on Alice's behalf.

There are in general presumed implicit clauses

ruling out a range of methods of doing *x*, including methods that are illegal, immoral, offensive, extravagant, or unduly dangerous. In standard cases, if Beryl must do *y* if *x* is to be done, and *y* is of one of the foregoing kinds, then the authorisation to do *x* lapses; if Beryl goes ahead and does *y*, then she does not do *y* on Alice's behalf. Suppose that Alice authorises Beryl to deliver a message on her behalf. Beryl realises that the message will get to its destination on time only if she exceeds the speed limit, and she does so, causing a road accident. Is Alice, as well as Beryl, morally responsible for the traffic offence and for bringing about the accident? Not necessarily. True, Beryl was carrying out a mission originated by Alice. But it does not follow that Alice was a principal on whose behalf Beryl drove too fast and caused the accident. For Alice's authorisation of Beryl may well have contained an undefeated implicit qualification ruling out breaking the speed limit in order to deliver the message on time.⁴

Presumed exclusion clauses can themselves be cancelled by explicit statements, nods-and-winks, or an emergency, as well as by a practice of condoning the relevant kind of conduct. This is not a moral point, but concerns the nature of authorisation. For when a criminal boss authorises a subordinate to collect a debt, and the only way of doing so is to use violence, then the boss has authorised violence, if the normal presumption against the use of violence has been defeated by background practices and understandings prevailing in the criminal organisation.

When someone acts on your behalf, their doing so will have some moral implications that are similar to those which would have resulted from your acting yourself. For example, suppose that someone commits a crime on your behalf (the standard proviso ruling out criminal methods having been somehow negated). This fact will have an adverse effect on your moral position. But there will be other respects in which the moral implications of your agent's acting may be quite different from those which would have resulted from your acting yourself. For example, the detriment to your moral status may be less, because you did not intend your agent to commit any crime at all.

Plainly there is a difference between "in Alice's interests" and "on Alice's behalf". Someone may have acted on Alice's behalf even though what they did was not in her interests and was not intended to be. And of course someone can act in Alice's interests, and intend to do so, without acting on her behalf.⁵

If an action is done on your behalf, then typically either it is done by someone in their capacity as your agent or representative, or else it is done by someone acting on authorisation issued by someone acting in their capacity as your agent or representative. If an action is done on your behalf, you are not a mere accessory, or peripheral contributor, to the process which leads to the action. Rather you are the principal, or one of the principals, for whom the action is done. You are therefore its ultimate source, or one of its ultimate sources, or at the very least you are a segment of the channel through which the original motivation flows to the action. Hence you share in the main burden of responsibility for the fact that this action was performed. Suppose, for instance, that your press secretary issues a statement on your behalf that contains various lies. In that case you bear a substantial degree of moral responsibility for the lying (whether or not it was justified). Your share is greatly increased if you knew what was about to be done, and took no steps to prevent it.

An objection needs to be considered. Suppose that Alice says to Beryl "I hereby authorise you to do *x* as my agent", and that doing *y* is one possible way of doing *x*, and that the authorisation Alice has given to Beryl has not implicitly excluded doing *y*, and that Beryl in fact does *y*. I have argued that in these circumstances Beryl does *y* on Alice's behalf. But is Alice really morally responsible for the fact that *y* is done? Beryl did both *x* and *y*. Surely, it might be said, moral responsibility splits: Alice takes responsibility for the fact that *x* was done, and Beryl takes responsibility for the relativised fact that *given that x was authorised, the agent did x by doing y*. Alice therefore bears no moral responsibility for the fact that *y* was done. This argument is fallacious. To see this, suppose that a parent tells the babysitter to give the child a drink from one of

the bottles on the kitchen table; the babysitter chooses a bottle at random, but it turns out that the bottle chosen, though none of the other bottles, contains weedkiller; the child gets very sick. The foregoing strategy cannot be used to show that the parent was not morally responsible for the babysitter's giving the child a drink from a poisoned bottle (but only, say, for creating a risk of harm).

Notice that one and the same action can be performed both as a principal and as someone else's agent. For example, Beryl might buy an asset, which is to be owned jointly by her and Alice, with Alice authorising Beryl to negotiate and sign the contract on behalf of both of them. Furthermore, one and the same action can fulfil the instructions of several separate principals, for each of whom one person is agent.

3. Moral constraints on what shares to buy

We are now in a position to apply the foregoing general account of authorisation to business ethics. Let us turn to moral constraints on the decisions of which shares to buy. Is it morally permissible to buy shares in a company that has been acting and will probably continue to act wrongly?⁶

Here we need to consider two different kinds of investor: those who are contemplating buying a holding which is large enough to give them the ability to change the company's policies so as to stop it from continuing to behave badly, and those who are not.⁷ I see no reason why it is morally impermissible for investors of the first kind to buy and retain shares in the company, as long as the investor intends to see that the bad behaviour stops.

But suppose that you are thinking of buying a small slice of a company, one, which will give you little capacity to change the company's ethos, policies, and actions, and you know that the company is engaged in persistent wrongdoing. Is it in these circumstances morally permissible for you to buy shares in that company? The following argument suggests that indeed it is not:

- (1) It is in general morally impermissible to allow a sustained series of morally wrong actions to be carried out on your behalf when you can prevent this from happening without violating the rights of those performing the action.
- (2) The broad pattern of the activities of a company that are both mission-directed and consistent with de facto company policy is generated and sustained on behalf of each shareholder.
- (3) Suppose that you are contemplating buying shares in a company engaged in a continuing series of morally wrong mission-directed activities. Even if you cannot prevent the wrong activities from *being carried out*, you can nevertheless prevent them from being carried out *on your behalf*, without violating anyone's rights. The only way of doing so, however, is by refraining from buying shares in the company.
- (4) Therefore it is morally permissible to buy shares in a company which intends to, or is otherwise disposed to, engage in a sustained series of morally wrong mission-directed activities only if either you are able and willing to prevent the misconduct.

In the rest of this section I try to show that the premises of this argument are plausible enough to render the argument a serious threat to people who want to avoid its conclusion.

Defending premise (1)

I argued in Section 2 that if an action is performed on your behalf then you share in the main burden of moral responsibility for the fact that this action was performed, and your share of the burden is increased if you know what is about to be done, and take no steps to prevent it. These considerations take us most of the way to (1), but there are some further points to be added.

Evidently there are two kinds of situation in which you can prevent someone from acting wrongly on your behalf: those where you can

prevent them from acting wrongly, and those where you cannot prevent them from acting wrongly but you can prevent its being the case that their wrong action is carried out *on your behalf*. Why is prevention important in the second kind of situation? Because in general *who does what*, and *who intends to do what*, are morally significant as well as *what outcomes take place*. Even if you cannot prevent a crime or other misdeed from being committed, you have a moral duty to avoid becoming complicit in it yourself.

Admittedly, there are cases in which an action is carried out on someone's behalf, but that person is not morally responsible for what is done – for example, when a court-appointed lawyer acts on behalf of a child. But when you authorise someone to act as your agent, and in virtue of that authorisation they act on your behalf, and what they do is morally wrong, then you are complicit in the wrongdoing. I pointed out above that an action can be done on your behalf, and you can be complicit in it, even though you do not know about it, and would oppose it if you did know about it: what counts is the relation between the action and the scope of relevant, appropriately linked authorisations, taking into account any explicit or implicit provisos – living ones, not dead letters. When an action is performed on your behalf, it is not merely the case that your authorising someone to do something makes the action *possible*: you are the principal source, or *a* principal source, from which the action flows.

Thus premise (1), fits in well with widespread considered moral judgements about relationships involving agency, and having someone act on your behalf. The phrase “It is in general morally wrong . . .”, occurring in (1), is meant to leave open the possibility of exceptional cases. Amongst the exceptions I have in mind are certain situations in which the costs to you of preventing the misbehaviour from being carried out on your behalf are very high, and cases in which you buy a large shareholding with the intention of bringing the company's bad conduct to an end within a reasonable period of time.

Defending premise (2)

Let us now turn to premise (2), which says that the broad pattern of a company's activities is brought into being on behalf of each shareholder. Economists and business ethicists who assert (2) are not intending to advance a *legal* doctrine, but a moral, or perhaps a sociological one. In discussions of business ethics, it is usually proponents of so-called *stockholder* theories of the firm who affirm (2), or doctrines close in spirit to (2). The economist Milton Friedman put it this way:

the key point is that, in his capacity as a corporate executive, the manager is the agent of the individuals who own the corporation . . .⁸

I see no reason why people holding a *stakeholder* theory, understood as a normative ethical theory of the firm, cannot also assent to statements like (2).⁹

Here is my attempt to argue in favour of (2). What makes it *possible* for a manager to act *on behalf of the company*? – to sign a contract with a supplier, say. A chain of authorisation passing through the chief executive officer, whose own authority derives from the board of directors.

From where does the directors' joint authority come? *From the shareholders collectively*. The company's mission, and the broad outlines of its structure, are specified in the memorandum and articles of association. These exist in virtue of decisions of the founding shareholders, and remain in force in virtue of the current shareholders' collectively refraining from changing them. Furthermore, the directors are elected by the shareholders, are removable by the shareholders, and are accountable to them.¹⁰ Election as a board member consists in being chosen by the shareholders to carry out policies broadly specified by the shareholders. Hence the shareholders together do more than make the directors' actions *possible*: they are the prime movers behind what the board of directors does in governing the company. The board is an agent of the shareholders collectively.

But even if this is so, is the board an agent of *each* shareholder? The supposition that the board members are agents of each shareholder best

explains how they can be agents of the shareholders collectively. Here are some relevant considerations:

- The phrase “the shareholders collectively” does not denote a corporate entity, like the company.
- If it is the shareholders collectively who are the ultimate source of the board’s authority to act, then it is not any subset of the shareholders to the exclusion of others. So, for example, a subset of shareholders who between them acquire 51% of the shares thereby acquire the ability, acting together, to win all votes on matters concerning the authority and composition of the board, but the subset does not thereby acquire status as the sole ultimate source of the board’s authority. After all, resolutions of a university’s Council, or decisions of the High Court, carry with them the authority of the Council, or of the Court, not merely the authority of those members who voted in favour.
- Therefore it is hard to see how the shareholders collectively can confer authority on the board unless their doing so involves at least the following: Each shareholder authorises the board to act on her behalf (in appropriate matters). That individual act of authorisation, however, is conditional upon, and depends for its efficacy upon, similar acts of authorisation by each other shareholder.
- To act as the agent of the shareholders collectively involves acting as the agent of each shareholder – conclusion drawn from the first three considerations
- Therefore we should suppose that when someone (an individual or corporate entity) becomes a shareholder in the company she thereby authorises the people elected as directors, whoever they are, to jointly act as her agents; and we should suppose that this authorisation remains in force for as long as she owns shares in the company.

It might be protested: The supposition that in the act of buying shares one authorises the board to act as one’s agent is sheer fiction, bearing no

relationship to the behavioural reality constituting most transactions on the stock exchange. I offer two replies. Firstly, important moral truths can sometimes be best expressed in a piece of fiction. I think that when we talk of corporate entities, as well as individual human beings, forming intentions and possessing moral duties, we are engaging in fiction. Qantas does not believe or try to do anything, any more than my iMac does, though in both cases it is often useful to speak as if they do. Secondly, in law and morality doing one thing is often deemed to amount to doing another, whether or not you intend the latter, or realise that you are doing the latter. For example, in signing a contract you may be deemed to have *given your consent* to x, or to have *waived your right* to y, even though you did not give either x or y a moment’s thought. Other things being equal, signing the document places you and the other relevant parties in relevantly equivalent positions to those that would have obtained if you had given x and y very careful thought, and consciously formed the intention to give your consent to x or waive your right to y. I am claiming that each shareholder should be deemed to authorise the board to act as their agent.

Authorisation often has implicit qualifications and limits, imposed either by the person directly issuing the authorisation, or by the company’s policy. In a well-run company, employees cannot use authorisation to pursue the company’s goals as a charter for, or excuse for, employing illegal, highly immoral, dangerous, extravagant or unreasonable means. But explicit or implicit qualifications and limits can be nullified. A board of directors that over the medium-to-long term takes no action to deal with known infractions of the ethical standards to which it nominally adheres, or negligently and obviously fails to monitor non-compliance, thereby removes the relevant qualifications and limits to their employees’ authorisation. This does not imply that such a board has authorised all the role-related bad behaviour of their people. It does, imply, however, that the bad behaviour has been carried out on the company’s behalf.

When a manager’s action counts as an action of the company, this is typically in virtue of the

fact the manager has been authorised to act on behalf of the company – empowered, directly or indirectly, by the directors *acting in their capacity as agents of each shareholder*. Nevertheless I do not want to claim that in all, or even most, of the managers' role-related actions are performed on behalf of the shareholders – I suspend judgement on this statement.¹¹ The statement might be thought to follow from claim (ii) made in Section 2, namely that if A authorises B to act as A's agent or representative, and B, acting in that capacity and in virtue of the authorisation by A, authorises C to do x as B's agent or representative, then in doing x C acts on A's behalf. If this does indeed follow, fine: that provides strong support for (2). But it is not entirely clear to me that it does follow. The board authorises the managers to act on behalf of *the company*, but does the board authorise the managers to act on behalf of *the board*?

What the main argument of this paper turns on is the fact that the board is the agent of each shareholder in pursuing the company's mission, setting its more specific performance goals and strategy, setting up the chain of command and authorisation in virtue of which the managers are enabled and moved to act on behalf of the company, and exercising broad control of the company's activities.¹² It follows that the large-scale pattern of the activities of a company that are both mission-directed¹³ and consistent with de facto company policy is generated and sustained by the board on behalf of each shareholder.¹⁴

Defending premise (3)

Let us now turn to (3). To uphold (3), we need to rule out the suggestion that a particular shareholder Alice might have the option of buying shares but somehow qualifying the blanket authorisation she gives to the board in such a way that if the firm is engaged in a sustained series of morally wrong activities then they are not being carried out on her behalf.

How might Alice go about doing this? Suppose that as soon as she acquires the shares she writes to the board saying, "My authorisa-

tion of the board specifically excludes your permitting any broad pattern of moral wrongdoing to occur; please do not allow any such pattern to arise or continue". Suppose also that she underlines the seriousness of her attitude by investigating the company's ethical performance, and communicating the results to the board, perhaps with specific criticisms and proposals for reform. I doubt, however, that Alice thereby achieves her goal.

To see this, we must analyse Alice's exclusion clause. It doesn't mean "You are authorised to pursue the company's mission, but you are not authorised to permit any broad pattern of moral wrongdoing". For the point is to prevent its being the case that the bad conduct is carried out on Alice's behalf, and things that Alice has not authorised may still be done on her behalf. (I made this point earlier in the paper: if you authorise your agent to buy you a luxury car, and he buys you a Jaguar, then even though you did not authorise the purchase of a Jaguar, your agent bought the car on your behalf.) What Alice must mean is "You are authorised to pursue the company's mission, conditionally on your not permitting any broad pattern of wrongdoing". Suppose that the board does allow a broad pattern of wrongdoing. Then the condition is not fulfilled, so the authorisation lapses. This implies that Alice owns shares in the company but does not have in force a current authorisation of the board to pursue the company's mission.

But I argued earlier in this Section that the board is the agent of each shareholder, and is currently authorised by each shareholder to pursue the company's mission. If my argument succeeded, then there cannot be a shareholder who issues a blanket authorisation of the board that is conditional on some state of affairs that is unfulfilled. Hence Alice cannot succeed in her attempt to qualify the authorisation she gives to the board in such a way that the company's sustained wrongdoing is not being carried out on her behalf.

Perhaps some readers will dispute this point. If in other respects they agreed with the overall strategy of this paper, then they could modify (3) and (4) accordingly. The amended (3) would

read, “. . . Even if you cannot prevent the wrong activities from *being carried out*, you can nevertheless prevent them from being carried out *on your behalf*, without violating anyone’s rights, either by refraining from buying shares in the company, or else by qualifying relevant authorisations that you issue”. The amended (4), constituting the main thesis of the paper, would read, “It is morally wrong to buy shares in a company that is behaving badly unless either you are able and willing to prevent the misbehaviour, or else you are unable to prevent the misbehaviour but you take active, adequate steps to distance yourself from it.” This thesis, while less dramatic than my actual conclusion, would still be substantial.

The foregoing lines of thought in support of premises (1)–(3) are plausible enough to yield a formidable argument in favour of (4), the main conclusion of the paper.

4. Multi-tiered ownership structures

The foregoing discussion of acquiring and holding shares directly in a morally delinquent company constitutes a first step towards a theory of the ethics of shareholding. In this section, I attempt to take a second step.

Suppose that a firm called Finkcorp is engaged in a continuing program of morally wrong actions. Let Grubstake Ltd be a company that owns shares in Finkcorp, and let Sarah be a prospective shareholder in Grubstake. Suppose that Grubstake is either unable or unwilling to stop Finkcorp’s misbehaviour. Suppose also that Sarah lacks the power to change these facts about the two firms. Is it morally permissible for Sarah to buy shares in Grubstake?

Section 3 above provides arguments for saying that in the respects mentioned Grubstake is acting wrongly. The argument strategy in this paper focuses our attention on the meaning of this fact in the light of Grubstake’s broader behaviour pattern.

Maybe Grubstake Ltd’s retention of shares in Finkcorp is an isolated oversight or bad decision. In that case I see no threat to Sarah’s moral standing generated merely by her acquiring shares

in Grubstake. But there are two other possibilities to be considered. Firstly, what if Grubstake has a deliberate policy of acquiring shares in firms of a certain kind, where for stable, well-known reasons firms of that kind are likely to continue to engage in morally wrong actions? What if, for example, Grubstake’s investment plan calls for buying small shareholdings in a large number of tobacco growers?¹⁷ Well, I argued in Section 3 that the board is the agent of each shareholder in setting the company’s performance goals and strategy, and in exercising broad control of the company’s activities. (To recapitulate: a crucial step in the argument involved the idea that when people’s actions – signing a contract, or granting a pay rise, or accepting a delivery, say – count as an action of the company, they are acting in virtue of authorisation received via people who are authorised to give it. Obviously there have to be authorisers who are not themselves authorised by anyone within the company, namely the shareholders.) It follows that if Grubstake’s investment plan calls for buying small shareholdings in a large number of tobacco growers then the board, if it is properly supervising the management of the company, will have explicitly or implicitly authorised the practice, and therefore that the practice is carried out on behalf of each shareholder in Grubstake. But the practice is morally wrong, for reasons already explained when I was arguing for (4). Since Sarah ought not to allow extended bad conduct to be engaged in on her behalf, and since *ex hypothesi* she cannot stop it, she ought to refrain from buying shares in Grubstake.

So let us turn to the second possibility. What if Grubstake has a policy, approved by the board, of investing in a great many firms of widely different kinds, on the basis of certain financial criteria, where it is predictable that there will be caught up in the draft a significant number of firms that are engaged in extended series of morally wrong actions? The moral upshot is, I think, essentially the same as that stated in the previous paragraph. True, there is a difference between the situations: in the former case, Grubstake’s investment policy is explicitly, intentionally directed towards buying small shareholdings in a large number of tobacco

growers, whereas in the second case Grubstake's investment policy is merely such that its implementation foreseeably involves buying small shareholdings in a significant number of tobacco farms, weapons sellers, whaling fleets, and so on.

But the difference between intending and foreseeing does not matter much in this context. If it is morally impermissible for you to break a certain promise, endanger some child, etc, then it is morally impermissible whether you intend to do so, or merely intend to perform some action which you foresee will involve your doing so – though of course whether you intend to break the promise or endanger the child, is relevant to more fine-grained evaluation of the wrongdoing and of your character. It does not matter whether Grubstake intends, or merely foresees, that it will be buying shares in tobacco farms, weapons sellers, and whaling fleets. We are supposing that the board of Grubstake has approved a policy, which it foresees will involve Grubstake's doing precisely this (or which it knows to involve a high likelihood that Grubstake will do this). In that case, Grubstake's investment activities, including the sequence of investments in the badly behaving companies, involve a sustained series of morally wrong actions carried out on behalf of each shareholder in Grubstake.

We have been supposing that Sarah lacks the ability to significantly affect the policies and actions of Grubstake's board. It follows via (4) that Sarah ought not to buy shares in Grubstake Ltd.¹⁸

In Section 3 I drew attention to the phrase, "It is in general morally impermissible," occurring in premise (1), and said that it was meant to leave open the possibility of exceptional cases; amongst the exceptions were certain situations in which the costs of preventing the misbehaviour from being carried out on one's behalf were very high. The existence of such situations does not have much bearing on the results so far reached in this Section, since there is no shortage of opportunities to get good financial returns from investing in companies whose behaviour is impeccable. The point about costs does, however, take on some importance in relation to superannuation. It might be thought that if the main

argument of this Section works, then a parallel argument will show that an individual ought not to join a superannuation scheme whose trustee directs its operations on behalf of the members and whose investment policy foreseeably results in its buying shares in companies that are engaged in long series of morally wrong actions.

I think that this conclusion is in general correct, but it does not apply in every case. Some people, such as Australian academics, hold jobs that make compulsory the membership of some specific superannuation scheme. The trustee of the scheme acts on behalf of the members. Suppose that the board of the trustee has adopted an investment policy that foreseeably results in its buying shares in companies that are engaged in persistent misbehaviour. If a prospective employee refuses to join the scheme, then she cannot hold the job. A moral duty not to join the scheme would impose high financial and non-financial costs on many prospective employees.

Many moral duties – not all – have exceptions in cases where the burden of compliance is very heavy. You may have made a solemn promise to attend a wedding, but if through no fault of your own it turns out that getting there would involve your risking serious bodily injury, then you do not act wrongly in abandoning the attempt to get to the wedding. I think that some employees may be excused from the duty to refrain from joining the relevant superannuation scheme by the high costs of compliance.

This does not entirely let them off the hook. If you fail to attend the wedding, then you may need to do something about the fact that you broke your promise – to offer a very non-perfunctory apology, perhaps even to take the relevant people out to dinner. Similarly there may be secondary moral duties arising from joining a superannuation scheme that does not use some kind of ethical screening of proposed investments. These might include a duty to lobby the board to adopt such a screening. There is little reason to believe that a board's doing so would typically have a seriously adverse financial impact on the scheme.

Notes

¹ This paper constituted my Presidential Address to the Australian Association of Professional and Applied Ethics, in September 2001. I thank C. A. J. Coady and other members of the Centre for Applied Philosophy and Public Ethics for their helpful comments on earlier versions.

² 'Langtry, Bruce: 1995, 'The Right Thing for a Business To Do', *Res Publica* 4(1), 10–14. Notice that my claim is consistent with both Stockholder and Stakeholder approaches to business ethics – though not with *every* kind of Stockholder theory.

³ The foregoing sentence should be qualified by noting cases in which A authorises B to act on C's behalf – for example, a guardian might authorise someone to act as a child's agent in certain business dealings.

⁴ Even if there was such a qualification, there may be other features of the situation which generate a moral duties for Alice arising from the accident – e.g., if her agent was her employee – rather than a contractor, say – then maybe she ought to compensate third parties adversely affected by the accident, though surely she can leave it to the agent to pay the fine for speeding.

⁵ The difference is very important for the purposes of this paper. For example, it enables me to maintain that even when company boards take into account only the interests of big shareholders, ignoring or even acting contrary to the interests of small shareholders, those boards may still be acting *on behalf of* small shareholders.

⁶ Perhaps there are cases in which a firm's long-term behaviour has been seriously harmful to the community, or to the environment, and without adequate justification, but in which one would hesitate to say that the firm's conduct has been *morally wrong*. If so then a separate question arises concerning whether it is morally wrong to buy and retain shares in such a company. But I'll confine myself to the issue as formulated in the body of this paper.

⁷ In some cases a shareholder may lack the ability *single-handedly* to change the company's policies, but a group of shareholders acting together may be able to do so. What each would-be small investor must consider is this: Are there other shareholders in the company who, with my participation, would be willing act together to reform the company's conduct, and if so would we have reasonable prospects of success?

⁸ Friedman, M.: 1970, 'The Social Responsibility of

Business is to Increase its Profits', *New York Times Magazine*, September 13, 1970.

⁹ Evan and Freeman's key Stakeholder Fiduciary Principle includes the clause, "[Management] must act in the interests of the stakeholders as their agent," where the stakeholders are to be understood as including the shareholders. This statement should be interpreted as consistent with (2), but not as entailing it. For the stakeholders include many people who cannot reasonably be supposed to have authorised anyone in the company to do anything. What I think Evan and Freeman mean by describing managers as agents of stakeholders is that management has fiduciary duties to the stakeholders, to act in their interests. Evan, W. and R. Freeman: 1988, 'A Stakeholder Theory of the Modern Corporation: Kantian Capitalism', in Beauchamp, T. and N. Bowie (eds.): 1988, *Ethical Theory and Business* (Prentice-Hall, Inc, Englewood Cliffs NJ), p. 103. I have expressed my disagreement with Evan and Freeman, in Langtry, Bruce: 1994, 'Stakeholders and the Moral Responsibilities of Business', *Business Ethics Quarterly* 4, 431–443.

¹⁰ I have discussed accountability in my paper 'Accountability and Business', *Interface* 3(2), October 2000 (Somewhere in the production process, the *Interface* editors mistakenly attributed my paper to someone else).

¹¹ Suppose that Beryl signs a contract on behalf of the company. Notice that even if we were to suppose that she does so on behalf of each shareholder, it would not follow that the other parties to the contract are entering into a transaction with each shareholder. If I ask you go to the supermarket and buy some fruit on my behalf, then I make various commitments, and accept various benefits, related to your transaction with the supermarket, but I myself do not engage in a transaction with the supermarket.

¹² Cf. Bosch, *op. cit.*, Chapter 5. Bosch emphasises the importance of recent legal changes in reforming the actual behaviour of boards, so that they function far more effectively in carrying out their nominal duties than they did, say, 20 or 30 years ago.

¹³ I say "mission-directed" rather than "profit-directed" because often the mission of a company includes elements that are not treated as mere means to making financial profits (even when being consistent with some profit is a constraint on the other parts of the mission).

¹⁴ "Shareholders have delegated many of their responsibilities to the directors who act as their stewards . . ." *Report of the [U.K.] Committee on the*

Financial Aspects of Corporate Governance, quoted by Henry Bosch, *The Director at Risk*, Pitman Publishing, 1995, p. 76.

¹⁷ Here and the next paragraph I make an obvious but controversial moral assumption about tobacco farming etc, for the sake of the illustration. Use your own examples, if you do not like mine.

¹⁸ Notice that my argument did not involve my asserting or implying that the broad pattern of the activities of Finkcorp that are both mission-directed

and consistent with de facto company policy in Finkcorp is generated and sustained on behalf of each shareholder in Grubstake.

*Centre for Applied Philosophy and Public Ethics,
The University of Melbourne,
Parkville 3010,
Victoria, Australia
E-mail: bruce1@unimelb.edu.au*