Case Study #1: Ethics & EpiPen Price Hikes

Read the sections on Mill and Kant in the chapter on Ethics in our text and the attached piece from USA Today. The completed assignment should be three pages long, (approximately 2000 words) using 12 pt. fonts and single spacing with one inch margins. Please follow the assigned format as exemplified at the end of this document. Each answer should be separated, numbered and proportionate to the number of points possible. This study is worth a total of 100 points. Keep Scrolling Down – Detailed instructions, rubrics and a sample completed assignment are on the pages following the Background! Your completed assignment is due on the 12th (M/W) / 13th (T/Th) of October.

Questions:

1. Paraphrase: To find the conclusion, you must answer the following question: Are Mylan’s price hikes of the EpiPen morally justifiable according to Nathan Bomey in the attached article from USA Today? You will have to make inferences based on the selection and positioning of the quotes and data presented in the article. What reasons does Bomey offer in support of his conclusion – why did Mylan raise the costs of this life-saving device? (10 points)

2. Asking the Right Questions: The overarching question for this case is whether Mylan is morally justified in such dramatic price hikes for the EpiPen. But before you can answer this moral question you need to gather some evidence and critical information. What facts would you need to know about this case to make a reasonably informed judgment? In this section, note that you should be raising questions such as the number of patients affected, their income and insurance status, the impact of similar price hikes on the general economy, the costs of research and development of drugs, etc. but not questions about Mill or Kant. Provide as a bulleted list and pose in question form. For this assignment, you do not have to do the research but you need to raise the kind of questions that would drive such a project. These should be research questions and as such should be data-driven, concrete and answerable. (20 points)

3. Would Kant be likely to justify the Mylan executives’ decision to raise the price of EpiPens to this level? Defend your answer including specific details from Kant’s deontology & provide citations from Kant (primary source = Kant’s writings and does not include secondary commentary from Solomon or from me) to support your answer. (30 points)

4. Would Mill be likely to justify the Mylan executives’ decision to raise the price of EpiPens to this level? Defend your answer using specific details from Mill’s utilitarian approach to ethics & provide citations from Mill (primary source = Mill’s writings and does not include secondary commentary from Solomon or from me) to support your answer. (30 points)

5. Conclusion: Where do you stand on this issue? Do you think the Mylan executives’ decision to raise the price of EpiPens to this level is morally justifiable? Briefly defend your answer without resorting to a repetition of points made in previous sections. (10 points)
Mylan also said it would double the income level at which families are eligible for assistance in purchasing the medication to 400% of the federal poverty level, which stands at $24,300 for a family of four. The company said a family of four with income up to $97,200 won't pay out of pocket.

"As a mother, I can assure you, the last thing that we would ever want is no one to have their EpiPen due to price," Mylan CEO Heather Bresch said on CNBC in an interview. "Our response has been to take that immediate action of making sure everyone has an EpiPen."

Almost immediately, critics assailed Mylan's discount announcement, saying the list price isn't changing and that ultimately consumers will bear most of the costs.
The average wholesale price of EpiPen has increased by 500% since 2009, while the price that insurers and employers pay to Mylan is up 150% over that period. There's no generic equivalent and no brand-name competitor.

Politicians and patient advocates have criticized Mylan for the price increases, describing the company's actions as emblematic of the drug industry's unfair stranglehold on the market for life-saving treatments.

"Nobody is buying this PR move anymore," Rep. Elijah E. Cummings, D-Maryland, ranking member of the House Committee on Oversight and Government Reform, said in a statement. "Mylan should not offer after-the-fact discounts only for a select few—it should reverse its massive price increases across the board immediately. Drug company CEOs are using a corrupt business model to profit off of our most vulnerable citizens and using them like ATMs."

Bresch vigorously defended the price hikes, arguing that the U.S. health-care framework "incentivizes higher prices" through a complex thicket of drug companies, insurers, health-care providers and pharmacy benefit managers.

"There's no question, the system is broken," she said. "There's no transparency, there's no clarity and no one knows what anything costs."

The list price of EpiPen is $600 — and although few patients pay full price out of pocket, the higher price is borne by the health-care system, thus increasing everyone's costs.

It's like college tuition. Though many students don't pay full tuition, higher rates increase the overall cost for everyone.

"Really Congress does need to do something to change this picture," said Marianne Udow-Phillips, director of the Center for Healthcare Research & Transformation at the University of Michigan. "This is a perfect demonstration of the complexity and real problems with pharmaceutical pricing in this country."

Mylan hiked the price of EpiPen to maximize profits in anticipation of a generic competitor from Teva Pharmaceutical Industries, Udow-Phillips said. But the U.S. Food and Drug Administration dealt Teva's competitor a sharp setback, saying it wasn't ready to hit the market and delaying the drug until at least 2017.

"Mylan frankly knew that they they had a monopoly," she said.

The controversy over Mylan's move has also cast a spotlight on Bresch's compensation. She received total compensation of $18.9 million for the 2015 fiscal year, according to the company's proxy statement.
That's down 69% from 2014's $25.8 million but more than double 2013's $9 million.

Bresch bristled at CNBC anchor Brian Sullivan's question asking whether "you understand how that looks."

"Brian, I understand better than anyone that facts are inconvenient to headlines," she responded.

As Congress rains down fury on Mylan and other drug companies that have ratcheted up prices, Bresch pledged to collaborate with lawmakers to address the matter. She said she had offered to meet with several key members of Congress and is waiting to hear back.

Meanwhile, patient advocates excoriated Mylan.

“We have to stop pretending this is a surprise,” said Leonard Saltz, chief of gastrointestinal oncology at New York's Memorial Sloan Kettering Cancer Center, who has been an outspoken critic of high prices for new cancer drugs. “This sort of price gauging has become persistent and routine in the pharmaceutical industry, and the massive pharmaceutical lobby in Washington spends enormous amounts of money lobbying to protect its ability to do this sort of thing. It is driving up health care costs, which is bad for the economy, but more importantly, is bad for patients."

What's unclear is whether Congress will act — and if so, what it can do.

One problem is that the U.S. government relinquished the ability for Medicare to negotiate price increases in a deal to gain the pharmaceutical industry's support for the Affordable Care Act, Udow-Phillips said.

Democratic presidential candidate Hillary Clinton has called for Medicare to regain that bargaining leverage.

*Contributing: Liz Szabo.*

Follow USA TODAY reporter Nathan Bomey on Twitter @NathanBomey.
Keep scrolling down for rubrics and a sample completed assignment!

General Suggestions for Writing Case Studies

How not to write your paper:

I. **Focus & Relevance**
   Be sure that you understand the assignment and have understood each question. Your responses should be focused on the questions I’ve asked & not the questions you wish I had asked! It is important to weed out all irrelevant considerations or concerns that an economist or historian or political scientist might have but are not strictly speaking, ethical concerns. Look at the completed sample case study for some ideas.

II. **Format**
   You should copy & paste or re-type *only* the first part of the question (the portion in bold type). Please number each response corresponding to the assigned questions. Papers should be 3 pages, using 12pt. fonts and 1 inch margins all around. There should be an extra space separating your responses to each question. Again, please reference the completed sample case study and follow the format exemplified.

III. **Tone/Voice**
   Ever since George Carlin pointed out that “using your own words” would result in a private and hence meaningless expressions, I’ve had to give up on the phrase, however a certain degree of originality is still important. Your task is to explain a concept as if you were the Teaching Assistant for this class. If you simply repeat the text or my lecture, you haven’t helped your imaginary student. You need to clarify the argument/concept in a way that demonstrates that you really understand it and

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3 Please note that these guidelines are for my class assignments. Individual instructors may have other format preferences and you should consult with your teacher for the details before completing your assignment.
can express the same ideas in a way that is different than has already been explained by the text or by me.

IV. Adequate and Balanced Defense of Your Argument
In questions three and four, you are asked to make an argument using the philosophers we’re studying. Your thesis should be stated clearly in the first sentence of each response. It is important to ensure that your application is consistent with the philosopher’s theory and that you support that application with a well-thought-out defense. You should include a counter-consideration that is relevant to that theory and could impact the philosopher’s conclusions.

V. Quotes
Quoting is a way of supporting your interpretation of an argument or theory. Relevance to your response and to the question asked is critical. Quotes can be edited but be careful not to take the quote out of context, thus altering the intent of the author. The length of the quote must be appropriate to the length of the assignment; short papers require shorter quotes. Quotes illustrating the philosophers’ positions must come from the original author’s works, not from the secondary commentary of the author of our text. If the quotes are drawn from the assigned text for this course, they need only be cited with the page number where it was found (see sample completed assignment). Quotes drawn from other sources including those pertaining to the case require full citation. No quotes should come from sources such wiki-quotes, intelli-quotes, brainy-quotes, Mill-quotes, etc. You may not use quotes that I’ve already used in my lectures or power-point slides!

VI. Length
Part of the criteria for success is effective use of the space allowed. If you write a single page for a three page assignment, you have not satisfied this criterion. However, this is not an invitation to use the additional space for stream-of-consciousness or irrelevant information not pertinent to the assigned issue. If you are having difficulties with the length, it is usually because you have not recognized or developed sufficiently the various issues involved. Conversely, if your draft is too long, you need to whittle it down to just the relevant essentials, perhaps editing out the anecdotes or redundancies; more is not always better! I am very willing to help if you submit drafts sufficiently before the due date.

VII. Rough Drafts
I have invited all of you to bring rough drafts of your completed assignment in for a preview reading. I do not offer re-writes after I have graded your papers. Rough drafts are brought in during my office hours or by appointment and I only read them in person - with the student present. Please do not submit rough drafts electronically nor should you drop them off in my box.

I support pro-active measures that encourage preparation and thought and with rough draft readings, both the student and I should benefit with the end result being
a better final draft. If your work satisfies my criteria (see rubrics following) for “A” level work, and if the draft is formatted and printed in final draft format, I will sign off on the draft, guaranteeing those students somewhere between 100% and 90% of the points possible for this assignment. Your cut-off for rough draft submissions is 24 hours prior to the due date; I will read no rough drafts the day of or the day prior to the due date.

Standards (Rubrics) for Grading Case Studies

The excellent paper (100-90% of points) will exhibit the following qualities:

Question 1:
- Conclusion is clearly identified in the first sentence.
- Major supporting premises are identified.
- Relevant and critical minor supporting premises are identified.
- Argument has been presented with good logical flow.
- Paraphrase has eliminated all irrelevant or unnecessary information.
- Paraphrase is original and not merely a verbatim repetition of original argument – no quotes are included.
- Argument is clearly understood and consistent with the author’s intent.
- No critique, analysis or irrelevant commentary is provided.

Question 2:
- All items are listed as normatively neutral questions. No immediate bias is evidenced and no questions center on what “ought” or “should” be the case.
- All critical questions have been raised given the space allowed.
- Questions are relevant to the case and would be likely to be relevant to the philosopher/theory being applied to the case.
- Questions are likely to drive effective and informative research. The questions should be factual and assessable/answerable (think in terms of hard data, authoritative studies, historical events or past trends).
- Questions are not phrased in terms of what will, might or could happen but what has happened; remember one cannot gather data from events that have yet to occur.
- Questions are grammatically correct and are presented in a bulleted list.

Questions 3 & 4:
- A clear thesis statement is made in the first sentence.
- Argument is focused on the key issues.
- Argument is clear and well organized.
- Argument is consistent with the assigned philosopher’s theory.
- Argument is effectively supported with relevant reasoned discussion.
- At least one primary counter-consideration is discussed.
- Sufficient detail from the philosopher’s theory is provided.
• Argument is effectively supported with relevant quotes from the philosopher’s primary work & all quotes are cited properly. (Note that in the example to make the most effective use of space allowed, endnotes were used; endnotes do not count as part of the 3 page limit.)
• Quotes provided are not too numerous or disproportionate to student’s original discussion; they play a supporting role not a starring role. No quotes are used from lectures or power-point presentations.
• Responses reflect thoughtful and detailed consideration of not only background material provided but also a further familiarity with the events and history surrounding the issue.
• No immediate personal bias is evidenced.

Question 5:
• Thesis is clearly stated in 1st sentence
• Discussion is not repetitive of any previous section.
• The argument satisfies the ARG criteria.

Overall Impressions:
• Study presents evidence of a thoughtful and deliberative approach.
• Language is clear and explanations/arguments are original
• Effective use has been made of space allowed with the length of each section proportionate to the number of points possible for that section.
• Study reflects careful consideration of background material provided.
• Study reflects that the author has explored the issue beyond the background material provided
• The study is scholarly, with effective use of the essays and relevant philosophical theory.
• There is good logic flow from one response to another – issues raised in earlier questions must link logically with responses to later questions.
• Quotes have been provided which are relevant – supporting arguments made, are of appropriate length, are cited properly, are principally from primary source material and quotes are not those which have been used in lectures.
• Assignment format has been followed.

Good (89-80% points)
The good paper will demonstrate all the above qualities but perhaps to a lesser degree or, will demonstrate some of the above qualities excellently, but not all of the qualities will be presented at a consistently high level.

Satisfactory (79-70% points)
The satisfactory paper will present all of the above qualities but not as strongly as the good paper or, some qualities may be stronger with some not as strong. Insight is not usually present.

Needs Work (69-60% points)
This paper is weak on many of the desired qualities.
Really Needs Work – Pretty Much Unacceptable (59-0% points)
This paper presents few if any of the desired qualities.

_keep scrolling down for a sample completed assignment!_
Case Study #1: Kant, Mill & Arizona & House Bill 2281

1. **Paraphrase:** This film presents a condemnation of AZ House Bill 2281 which the makers of the film charge as targeting the teaching of ethnic studies in AZ high schools. The film argues that the funding of ethnic studies in the high schools is a critical and significant contributor to student success and fulfills the needs of underrepresented students that are not otherwise met in the conventional curriculum. Further it is argued that those supporting AZ HB2281 are motivated by a poor understanding of the ethnic studies program and at the very least a callous indifference to the needs of those underrepresented students. Lastly, it is argued that AZ HB2281 is tantamount to censorship.

2. **Asking the right questions:**
   - What is the population distribution by race/ethnicity of AZ high school students?
   - What was the drop-out rate for AZ Latino students before vs. during the program? How did the drop-out rate of students who participated in the program compare to the overall drop-out rates of the school district?
   - Are there statistical correlations between drop-out rates and unemployment, homelessness and crime?
   - What portion of tax revenue is spent on crime prevention and mediation in Arizona?
   - Are there estimates of lost tax revenue due to unemployment and homelessness in Arizona?
   - How have the students in the ethnic studies program performed on standardized tests as compared to the general population of students in the district?
   - Was there an increase in school violence or public disturbances linked to racial tension during the period the program was taught?
   - Have any scientific studies been performed to link diversity of curriculum to student success?
   - To what degree is the contribution of non-white persons included or recognized in current curriculum not focused specifically on ethnic-studies as evidenced by inclusion in texts and other course material?
   - What was the racial background of the students who participated in the program?
   - What is the ethnic/racial background of those who serve in the AZ House?
   - Is the public funding of AZ schools very limited or decreasing & how does AZ per student spending compare to other states in the US?
   - Have there been significant changes to the tax revenue or apportionment towards education in the state of Arizona & how does the percentage of proportionment compare to other states in the US?
   - How much does the ethnic studies program cost per student compared to the general courses taught and how many students as a percent of the total school district population does it serve?
   - In other states/cities/districts what impact has the institution of ethnic studies programs had on the students who participate in terms of completion, transfer and continuing success post-graduation?

3. **Mill’s Position on AZ House Bill 2281:**
   Mill would ultimately argue that Arizona is not morally justified in passing this bill. At first glance it might seem that as a utilitarian, Mill would be forced to support this bill. Public school funds are always limited and schools across the nation are largely in a situation of economic triage —allowing those who won’t succeed without intervention to languish and sacrificing the programs geared towards the most excellent in order to serve the middle majority of students. Mill, as a utilitarian, would weigh the moral worth of this bill
in terms of outcomes and the number of people affected. From such a cost-benefit analysis, it appears that the ethnic studies programs are more expensive and do serve a smaller population of students. Since the utilitarian credo demands acting to promote the good for the greatest number of people and does not demand an egalitarian distribution, it might seem that the cash-strapped state of Arizona might make the same argument other schools have been forced to make regarding music, art and language courses. However, looking more carefully, there are three critical reasons why Mill would have rejected Arizona’s House Bill 2281.

First, the previous argument ignores the fact that the outcomes were significant in terms of greater retention and graduation rates, better scores on standardized exams, higher transfers to colleges, and a significantly more motivated student body who felt empowered to work towards issues of social justice and equal opportunities for Latinos. Under the old system, one must consider the cost of educating students who fail or drop-out. The waste of finite public resources, combined with the social cost of high school drop-outs in terms of quality of life, higher incidences of crime, unrealized potential and lost productivity cannot be disregarded.

Secondly, Mill held there is a connection between education, a just society and the greatest good or ‘happiness’ as he called it. For Mill, happiness involved free will, empowered action, a sense of pride and most importantly, a kind of higher rational dignity. (p.720) He argued, “The present wretched education and wretched social arrangements are the only real hindrance to its being attainable by almost all.” If it can be adequately shown that the ethnic studies do contribute to such qualities for a significant number of students – and anecdotal evidence supports this – then this is just the sort of program of which Mill would most approve. Many of the participants reported a significant change in their understanding of how their ancestors contributed to this country and that they had gained a real sense of empowerment and optimism about their own future.

Finally, as a classic libertarian, Mill was opposed to excessive government intervention. (p.811) He wrote, “The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.” (p.811) There appears to be little evidence to support that there was an active harm incurred through the teaching of ethnic studies. Contrarily, there is good evidence that an ethnically diverse curriculum is pedagogically defensible. The Arizona state legislators’ move has effectively curbed a cherished practice of academic freedom which is clearly consistent with Mill’s position on governmental overreach. Encyclopedia Britannica defines academic freedom as, “…the freedom of teachers and students to teach, study, and pursue knowledge and research without unreasonable interference or restriction from law, institutional regulations, or public pressure.” In order to justify this Bill, the legislators needed to demonstrate positive harms such as proving a clear link between an increase in racially motivated violence and the program. Mill argued strenuously against censorship in On Liberty, “If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.” It seems clear that, in this case, there are greater harms in censorship and the erosion of freedom than there are gains made in the name of consistency and standardization. When one includes the books that were also banned, this looks like a bad Bill likely to result in worse consequences.

4. **Kant’s Position on AZ House Bill 2281:**

I will argue that Kant would also reject the passage of AZ House Bill 2281. There are two critical reasons that would drive Kant’s rejection of this bill. First, the bill is inconsistent with the duty of an educator. Kant is a deontologist, not a utilitarian; this means we have to act based solely on the idea of duty and not on anticipated outcomes. Kantian duties are to be derived by looking at the meaning or intention behind the actions – we are to act from what Kant calls “pure practical reason.” (p. 698) “But if
pure reason of itself can be and really is practical, as the consciousness of the moral law proves it to be [cf. §2.2 on the “fact of reason”], it is still only one and the same reason which, whether from a theoretical or a practical perspective, judges according to a priori principles….vi Kant’s idea of “a priori principles” is that we cannot rely on subjective preference or individual anecdotal experience – principles must be drawn from what things are. This means that to figure out the duty of an educational program, one must look at the purpose or definition of education. Kant wrote, “It is, however, not enough that children should be merely broken in; for it is of greater importance that they shall learn to think. By learning to think, man comes to act according to fixed principles and not at random.”vii If the principle purpose of education is to create a climate for and growth of critical thinking and the ethnic studies programs serve that purpose well, then the ethnic studies are not only defensible but obligatory. There is very good evidence that critical thinking is a significant part of the design of this curriculum.

Secondly, passage of the AZ House Bill 2281 is in direct conflict with Kant’s conception of respect for persons. When discussing duties, Kant emphasizes the importance of developing and preserving that “ennobling” characteristic of human dignity and that this should be the practical content of a child’s educational experience.viii Under much of the standardized curriculum, a child only reads about the contributions of one particular culture or ethnicity – often and in the case under consideration in AZ, one to which the child does not belong. Certainly embedded in Kant’s idea of human dignity is respect – a sense of inherent worthiness – for every person as “end in itself.” (p. 705) To be consistent in our commitment to respect for persons, we cannot talk about respect for only some persons. When some people, solely by virtue of their ethnicity, are excluded from the narrative in the curriculum, a clear message is sent that those groups of people are not only less worthy than others but that their contributions are culturally and historically insignificant. Given his dedication to the idea of telling the truth, I doubt Kant would approve of this message which is tantamount to a lie and thus entirely inconsistent with being respectful! (p.705)

However, I also don’t believe that Kant would be completely unequivocal in his rejection of AZ House Bill 2281. It might be reasonably argued that Kant would reject any curriculum focused on specific ethnicities or student populations. For Kant, one of the most important criteria for moral action is the principle of universalizability. This means that we can’t approve of an action or policy unless it can be applied to all persons as a “universal law.” (p.699) Certainly there are good reasons to be concerned about preserving a common core educational experience. This seems to imply that Arizona would have to either cover all ethnicities in every class for every student or ignore the issue of ethnicity entirely which could lead to the loss of important sociological, psychological and even philosophical insights. Kantian approaches do result in the possibility that sometimes conflicts of duties result in a scenario of no perfect options available. I believe that for Kant, the better – but not perfect choice – would ultimately be to support these ethnic studies until at some point in the future, the core curriculum becomes more inclusive or in some very distant future, ethnic identity becomes irrelevant.

5. Conclusion: I believe these programs need to be supported – not at the sacrifice of other programs or student populations but as an addition and enhancement of their educational opportunities. The argument in Arizona thus far, has been presented as a bit of a utilitarian false dilemma: either serve the majority at the sacrifice of the minority or serve the minority, thus diminishing the good to the majority. My answer to those utilitarians is to serve all, and in doing so, increase the good for current and future generations. The means by which this can be accomplished is to increase school funding as AZ is one of the lowest states in per student spending in the nation.ix Further, I believe that Kant has left out a big piece of the educational experience when he omits the subjective aspects; the passion and engagement that these programs are capable of generating must be preserved. If a student’s education is not relevant to that student, all efforts
become futile. At some point in the future, with the development of more inclusive curriculum and texts, these programs may not be as es

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viii Ibid.