



Proceedings

A monthly newsletter from McGraw-Hill Education



October 2017 Volume 9, Issue 3

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Dear Professor,

Fall has arrived! Welcome to McGraw-Hill Education's October 2017 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 9, Issue 3 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the October 2017 newsletter topics with the various McGraw-Hill business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. A \$417 million verdict against Johnson & Johnson based on the link between the use of talcum powder and cancer;
2. A settlement in the "monkey selfie" intellectual property lawsuit;
3. Developments related to the legality of the Trump travel ban on refugees;
4. Videos related to the death of Edith Windsor, plaintiff in the 2013 same-sex marriage case; and b) a fatal crash involving a Tesla equipped with a semi-autonomous driving system;
5. An "ethical dilemma" related to President Donald Trump's pardon of former Maricopa County (Arizona) Sheriff Joe Arpaio; and
6. "Teaching tips" related to Article 1 ("Johnson & Johnson Ordered to Pay \$417 Million in Talcum Powder Case") of the newsletter.

I wish all of you a glorious fall season!

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Of Special Interest

This section of the newsletter covers three (3) topics:

1) A recent \$417 million verdict against Johnson & Johnson based on the link between the use of talcum powder and cancer;

2) A recent settlement in the "monkey selfie" intellectual property lawsuit; and

3) Recent developments related to the legality of the Trump travel ban on refugees.

Hot Topics in Business Law

Article 1: "Johnson & Johnson Ordered to Pay \$417 Million in Talcum Powder Case"

<http://www.cnn.com/2017/08/21/health/johnson-and-johnson-talc-verdict/index.html>

According to the article, a jury recently awarded a California woman \$417 million because she developed ovarian cancer and had used Johnson & Johnson Baby Powder for decades. The award includes \$70 million in compensatory damages and \$347 million in punitive damages.

Eva Echeverria, a 63-year-old from Los Angeles, said she had been using the powder as a regular part of her feminine hygiene routine since she was 11 years old. She stopped using it in 2016, after she read a news story about another woman who used it and had ovarian cancer.

Echeverria's is the first of hundreds of similar cases in California to be decided. Juries elsewhere have returned four other verdicts against Johnson & Johnson, and another case in New Jersey was dismissed. There are thousands of similar cases going through state and federal courts right now.

Echeverria testified that had there been a warning label on the product, she would have stopped using it.

The company has no legal obligation to put such a label on its product. Because talcum powder is legally considered a cosmetic, it does not have to undergo a review by the US Food and Drug Administration like a drug would. But it would have to be properly labeled with ingredients and other information, and the product "must be safe for use by consumers under labeled or customary conditions of use," according to the agency.

Some other talc-based powders on the market carry labels that mention possible risk of ovarian cancer after frequent application in the female genital area.

Scientific studies over the years have produced a mix of results. The International Agency for Research on Cancer, part of the World Health Organization, classifies the genital use of talc-based body powder as "possibly carcinogenic to humans." The U.S. National Toxicology Program has not fully reviewed talc as a possible carcinogen, according to the American



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Cancer Society, which says it isn't clear whether the products increase a person's cancer risk. Johnson & Johnson said in a statement that it will begin the appeals process in the California case.

"Ovarian cancer is a devastating diagnosis and we deeply sympathize with the women and families impacted by this disease," Carol Goodrich, a representative for Johnson & Johnson Consumer Inc., said in a statement. "We will appeal today's verdict because we are guided by the science, which supports the safety of Johnson's Baby Powder. In April, the National Cancer Institute's Physician Data Query Editorial Board wrote, 'The weight of evidence does not support an association between perineal talc exposure and an increased risk of ovarian cancer.' We are preparing for additional trials in the US and we will continue to defend the safety of Johnson's Baby Powder."

Discussion Questions

1. Define compensatory and punitive damages.

Compensatory damages are designed to compensate the plaintiff for "out-of-pocket" losses resulting from the defendant's wrongful actions, including economic and/or physical harm, and emotional pain and suffering. Punitive damages are designed to address egregious actions by the defendant that "shock the conscience" of a reasonable person. They include intent to harm, extremely reckless acts, or grossly negligence acts by the defendant that result in harm to the plaintiff.

2. In your estimation, is the compensatory damage award in this case excessive? Is the punitive damage award excessive?

This is an opinion question, so student responses may vary. As the article indicates, the award in this case includes \$70 million in compensatory damages and \$347 million in punitive damages. In your author's opinion, more evidence would be necessary to determine whether the compensatory and/or punitive damages awarded in this case were appropriate. Johnson & Johnson will appeal this case, so the appellate court will have an opportunity to determine: a) whether the liability determination was based on the jury's correct determination of the facts and application of law; and b) whether the jury's assessment of damages (both compensatory and punitive) were appropriate in the case.

3. Describe three (3) legal theories of recovery available to the plaintiff in a case like the Johnson & Johnson litigation.

Three legal theories of recovery available to a plaintiff in a lawsuit like the subject case include: a) negligence; b) strict product liability; and c) breach of warranty (for example, breach of the implied warranty of merchantability).

Negligence involves the failure to do what a reasonable person would do under the same or similar circumstances. The four (4) elements of negligence include a) a duty of care owed by the defendant to the plaintiff; b) breach of the duty of care by the defendant; c) causation of harm to the plaintiff by



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the defendant; and d) damages incurred by the plaintiff as a result of the defendant's wrongful actions.

Strict product liability, recognized by certain states, is liability without fault. In order to prevail in a strict product liability case, the plaintiff is not required to show fault on the defendant's part (i.e., that the defendant intended to cause harm, was reckless, or was negligent). Instead, the plaintiff must merely prove that: a) the product was defective; and b) as a result of the defect, the plaintiff experienced harm as a result.

Breach of the implied warranty of merchantability is the failure of the defendant to offer a product suitable for ordinary use.

Article 2: "Monkey Selfie" Lawsuit Ends With Settlement between PETA, Photographer"

<http://www.npr.org/sections/thetwo-way/2017/09/12/550417823/-animal-rights-advocates-photographer-compromise-over-ownership-of-monkey-selfie>

According to the article, back in 2011, Naruto was just an anonymous macaque in the jungles of Indonesia. On one particular day, however, the photogenic primate happened upon a wildlife photographer's camera and snapped a "monkey selfie."

Whether the act was intentional or a quite-too-literal instance of monkeying around, only the grinning primate knows for certain. But it raised a complicated question: Who owns the images Naruto took, the monkey or the man?

It also started a years-long saga in which the U.S. Copyright Office and even Wikipedia weighed in.

Recently, People for the Ethical Treatment of Animals announced a settlement with photographer David Slater, ending a lawsuit it filed on Naruto's behalf.

Under the deal, Slater agreed to donate 25 percent of future revenue from the photos to groups that protect crested macaques and their habitat in Indonesia. Both sides also asked the 9th U.S. Circuit Court of Appeals "to dismiss the case and throw out a lower court decision that said animals cannot own copyrights," The Associated Press reports.

"PETA and David Slater agree that this case raises important, cutting-edge issues about expanding legal rights for nonhuman animals, a goal that they both support, and they will continue their respective work to achieve this goal," read a joint statement on the group's website.

PETA filed the suit in 2015, and early last year, U.S. District Judge William Orrick wrote in a tentative opinion that there was "no indication" that the U.S. Copyright Act extended to animals.



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As The Two-Way has noted, "The U.S. Copyright Office, since the dispute began, has specifically listed 'a photograph taken by a monkey' as an example of an item that cannot be copyrighted." (That also extends to artworks by elephants.) Similarly, Wikipedia's parent organization refused to remove Naruto's photo from its commons, citing the same reasons.

It bears repeating here that it was the monkey that pressed the shutter on Slater's camera, as the photographer was in Sulawesi, Indonesia. Since then, the selfie has become something of a personal brand for Slater, who sells signed copies of the print through his website. A notice on the site states: "As of July 2017, I will be donating 10% of your purchase towards a monkey conservation project in Sulawesi."

Slater's attorney did not answer questions about how much revenue the photos have generated or whether Slater or his company, Wildlife Personalities, which holds a British copyright, would keep the remaining proceeds.

Discussion Questions

1. Define copyright.

A copyright is the right of exclusivity given to the creator of a literary or artistic work.

2. In your estimation, was the settlement reached in this case fair? Explain your response.

This is an opinion question, so student responses may vary. Student responses will most likely depend on their view as to whether only humans are entitled to copyright protection.

As indicated in the article, the subject case settled, and pursuant to the terms of the settlement, photographer David Slater agreed to donate 25 percent of future revenue from the subject photography to groups that protect crested macaques and their habitat in Indonesia (Naruto, the monkey who took the "selfie," is a macaque). This means that Mr. Slater will keep 75 percent of future revenue.

As further indicated in the article, both sides to the dispute asked the 9th U.S. Circuit Court of Appeals "to dismiss the case and throw out a lower court decision that said animals cannot own copyrights." This means that the essential legal issue involved in this case, whether only humans are entitled to copyright protection, remains unresolved.

3. In your reasoned opinion, should an animal be able to own a copyright? Why or why not?

This is an opinion question, so student responses will likely vary.



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Article 3: “Justice Kennedy’s Order Temporarily Leaves in Place Trump Travel Ban on Refugees”

<https://www.nytimes.com/2017/09/11/us/justice-kennedy-supreme-court-travel-ban.html?mcubz=0>

According to the article, Justice Anthony M. Kennedy recently issued a temporary order allowing the Trump administration to exclude most refugees from entering the United States while the Supreme Court considers challenges to its revised travel ban.

The so-called administrative stay will probably be in place for only a short time, and the court is likely to issue a more considered ruling in a matter of days.

Had the Supreme Court not acted, an appeals court ruling lifting the ban on refugees would have gone into effect.

The Supreme Court has now interceded three times to fine-tune the scope of Mr. Trump’s revised ban while it considers broader issues about its lawfulness. Issued in January and revised in March, the ban caused chaos at airports nationwide and gave rise to a global outcry, prompting a cascade of litigation as well.

Two federal appeals courts blocked central parts of the ban. One said it violated the Constitution because it discriminated based on religion, the other said that it exceeded the president’s statutory authority to control immigration.

In June, the Supreme Court agreed to hear appeals from those rulings and temporarily reinstated part of the ban — but only for people without “a credible claim of a bona fide relationship with a person or entity in the United States.” The court did not specify who qualified as a close relative, though it did say spouses and mothers-in-law “clearly” counted.

The Trump administration interpreted the Supreme Court’s decision to mean excluding most refugees. It also said that only some relatives of American residents — parents, children, spouses, siblings, parents-in-law, sons- and daughters-in-law and people engaged to be married — could enter. The administration barred other relatives, including grandparents, grandchildren, aunts, uncles, nephews, nieces and cousins.

In July, Judge Derrick K. Watson of the Federal District Court in Honolulu disagreed with the administration’s interpretation of the Supreme Court’s ruling as to both refugees and relatives.

The administration had said it was entitled to exclude refugees whom resettlement agencies had planned to help move to the United States. Judge Watson disagreed, writing that the Supreme Court had meant to allow such people to enter the country.



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“An assurance from a United States refugee resettlement agency, in fact, meets each of the Supreme Court’s touchstones,” he wrote. “It is formal, it is a documented contract, it is binding, it triggers responsibilities and obligations, including compensation, it is issued specific to an individual refugee only when that refugee has been approved for entry by the Department of Homeland Security.”

Judge Watson also said the administration’s approach to relatives was too narrow.

“Common sense, for instance, dictates that close family members be defined to include grandparents,” Judge Watson wrote. “Indeed, grandparents are the epitome of close family members. The government’s definition excludes them. That simply cannot be.”

Bypassing the Ninth Circuit, the administration asked the Supreme Court to intervene. On July 19, the justices declined, sending the case back to the appeals court.

In its brief, unsigned order, the Supreme Court provisionally let stand Judge Watson’s ruling as to relatives. But it blocked his decision “with respect to refugees covered by a formal assurance” until the “resolution of the government’s appeal to the Court of Appeals for the Ninth Circuit.”

Recently, a three-judge panel of the Ninth Circuit ruled against the administration on both points. On Monday, in its latest emergency application to the Supreme Court, the administration challenged only the part of the ruling concerning refugees.

The Department of Justice argued that agreements between the government and resettlement agencies do not give rise to the “bona fide relationship” the Supreme Court said were required to allow entry while the travel ban litigation moved forward.

Note: The above-referenced article refers to President Trump’s original travel ban, issued in January 2017. In September 2017, the president issued a modified travel ban. For the following questions, “original” travel ban refers to the order issued in January, while “revised” travel ban refers to the modified order issued in September.

Discussion Questions

1. What countries were involved in President Trump’s original travel ban? What countries are included in his revised travel ban?

The six (6) countries affected by President Trump’s original travel ban included Iran, Libya, Somalia, Sudan, Syria, and Yemen.

The eight (8) countries affected by President Trump’s revised travel ban include Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen.



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The effect of the revision was to drop Sudan from the list, while adding Chad, North Korea, and Venezuela.

2. Conduct some research regarding the countries included in President Trump's original and revised travel bans and the percentage of citizens in those countries who subscribe to the Muslim religion. Describe the results of your research.

According to your author's research, Chad, Iran, Libya, Somalia, Syria, and Yemen are majority-Muslim countries. Sudan is a majority-Muslim country, but as indicated in response to Article 3, Discussion Question 1 above, Sudan is not included in President Trump's revised travel ban. North Korea and Venezuela, countries included in Trump's revised travel ban, are not majority-Muslim.

3. In your reasoned opinion, is President Trump's travel ban a "Muslim" ban? If so, does the ban illegally discriminate on the basis of religion? Explain your response.

These are opinion questions, so student responses may vary.

For an article arguing that the revised travel ban is a Muslim ban, please see the following article:

"Trump's Latest Travel Order Still Looks A Lot Like A Muslim Ban"

<https://fivethirtyeight.com/features/trumps-latest-travel-order-still-looks-a-lot-like-a-muslim-ban/>

For an article including the argument that the revised travel ban is not a Muslim ban, please see the following article:

"Trump's Updated Travel Order Could Block 21 Percent of Muslim Immigration"

<http://www.foxnews.com/us/2017/09/26/trumps-updated-travel-order-could-block-21-percent-muslim-immigration.html>



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Video Suggestions

Video 1: “Edith Windsor, Plaintiff in 2013 Same-Sex Marriage Case, Dead at 88”

<http://www.cnn.com/2017/09/12/politics/edith-windsor-supreme-court-marriage-equality/index.html>

Note: In addition to the video, please also see the following article included at the above-referenced internet address:

“Edith Windsor, Plaintiff in 2013 Same-Sex Marriage Case, Dead at 88”

According to the article, Edith Windsor, the plaintiff in the 2013 United States Supreme Court case that struck down a federal law defining marriage as between a man and a woman, has died at 88, according to her lawyer.

As the lead plaintiff in the legal challenge to the Defense of Marriage Act in 2013, Windsor was a hero to supporters of LGBT rights, who credited the SCOTUS ruling in her case as being the first step to an eventual ruling two years later that cleared the way for same-sex marriage nationwide.

Anthony Romero, executive director of the American Civil Liberties Union, said that with Windsor's death, "we lost one of this country's great civil rights pioneers."

"The wheels of progress turn forward because of people like Edie, who are willing to stand up in the face of injustice," Romero said in a statement. "One simply cannot write the history of the gay rights movement without reserving immense credit and gratitude for Edie Windsor."

Former President Bill Clinton, who had signed DOMA into law, also tweeted about Windsor's death.

"In standing up for herself, Edie also stood up for millions of Americans and their rights. May she rest in peace," Clinton tweeted.

Former President Barack Obama also offered his condolences, and said he had a conversation with her a few days ago, in which he told her "one more time what a difference she made to this country we love."



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"Few were as small in stature as Edie Windsor -- and few made as big a difference to America," Obama said.

Same-sex marriage was legalized by the Supreme Court while Obama was in office.

Windsor, who was from New York, often said that she fought her battle in memory of her wife Thea Clara Spyer, who died in 2009. Windsor and Spyer married in 2007 after some 40 years together as a couple.

When Spyer died, she left her estate to Windsor, who then sought to claim federal estate tax exemptions that exist for surviving spouses. Windsor was barred from obtaining the exemption under DOMA, which defined "marriage" as excluding same-sex couples.

Windsor sought a refund of over \$300,000 dollars but was denied by the IRS. Her lawyers argued that DOMA violated equal protection.

Justice Anthony Kennedy, joining the liberals, wrote the 5-4 opinion striking down the law that he said placed "same-sex couples in an unstable position of being in a second-tier marriage." Kennedy said that the law "demeans" same-sex couples "whose moral and sexual choices the Constitution protects."

"Under DOMA, same-sex married couples have their lives burdened, by reason of government decree, in visible and public ways," Kennedy wrote.

Windsor was survived by her wife, Judith Kasen-Windsor.

"I lost my beloved spouse Edie, and the world lost a tiny but tough as nails fighter for freedom, justice and equality. Edie was the light of my life. She will always be the light for the LGBTQ community which she loved so much and which loved her right back," Kasen-Windsor said in a statement.

In a statement from Windsor's attorney, Roberta Kaplan, Kaplan said representing Windsor "was and will always be the greatest honor of my life."

"She will go down in the history books as a true American hero. With Edie's passing, I lost not only a treasured client, but a member of my family. I know that Edie's memory will always be a blessing to Rachel, myself, and Jacob. I also know that her memory will be a blessing not only to every LGBT person on this planet, but to all who believe in the concept of b'tzelem elohim, or equal dignity for all," she said.

GLAAD, an LGBT media monitoring organization, also remembered Windsor on Twitter, saying: "Edie Windsor was a hero and her contributions to the fight for equality and acceptance will be remembered forever."



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Discussion Questions

1. Describe the Defense of Marriage Act (DOMA).

The Defense of Marriage Act (DOMA), enacted by the United States Congress in 1996, was a federal law that, prior to being ruled unconstitutional, defined marriage for federal purposes as the union of one man and one woman and allowed states to refuse to recognize same-sex marriages granted under the laws of other states. Until Section 3 of the Act was struck down in 2013 in the United States v. Windsor case, DOMA barred same-sex married couples from being recognized as "spouses" for purposes of federal laws, effectively barring them from receiving federal marriage benefits. DOMA's passage did not prevent individual states from recognizing same-sex marriage, but it imposed constraints on the benefits received by all legally married same-sex couples.

By defining "spouse" and its related terms to signify a heterosexual couple in a recognized marriage, Section 3 codified non-recognition of same-sex marriages for all federal purposes, including insurance benefits for government employees, social security survivors' benefits, immigration, bankruptcy, and the filing of joint tax returns, as well as excluding same-sex spouses from the scope of laws protecting families of federal officers, laws evaluating financial aid eligibility, and federal ethics laws applicable to opposite-sex spouses.

2. On what constitutional basis did the United States Supreme Court overturn the Defense of Marriage Act?

In United States v. Windsor, decided in 2013, the United States Supreme Court declared Section 3 of DOMA unconstitutional under the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

3. As between the legislative branch of government (the United States Congress) and the judicial branch (the U.S. Supreme Court), which should have authority over this issue?

The primary authority of the United States Congress is to make the law, while the primary authority of the United States Supreme Court is to interpret the law. The Supreme Court has the ultimate power (and responsibility) to decide whether a law enacted by Congress is constitutional. As indicated in response to Video 1, Discussion Question Number 2 above, the Supreme Court struck down Congress' Defense of Marriage Act (DOMA) as a result of its conclusion that DOMA (more particularly, Section 3 of DOMA) violated the Due Process Clause of the Fifth Amendment to the U.S. Constitution. In pertinent part, the Due Process Clause of the Fifth Amendment to the U.S. Constitution states that "(no) person shall be...deprived of life, liberty, or property, without due process of law."



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Video 2: “Tesla’s Semiautonomous System Contributed to Fatal Crash: Feds”

<http://abcnews.go.com/Technology/teslas-semi-autonomous-system-contributed-deadly-crash-feds/story?id=49795839>

Note: The video segment runs through 0:18. In addition to the video, please also see the following article included at the above referenced internet address:

“Tesla’s Semiautonomous System Contributed to Fatal Crash: Feds”

According to the article, federal investigators announced recently that the design of Tesla's semiautonomous driving system allowed the driver of a Tesla Model S in a fatal 2016 crash with a semi-truck to rely too heavily on the car's automation.

"Tesla allowed the driver to use the system outside of the environment for which it was designed," said National Transportation Safety Board Chairman Robert Sumwalt. "The system gave far too much leeway to the driver to divert his attention."

The board's report declares the primary probable cause of the collision as the truck driver's failure to yield, as well as the Tesla driver's overreliance on his car's automation — or Autopilot, as Tesla calls the system. Tesla's system design was declared a contributing factor.

In May 2016, Joshua Brown was driving his Tesla on a Florida highway when the vehicle collided with the side of a truck making a left turn from an oncoming lane. Investigators said they do not know if the truck driver saw the approaching car, because the driver refused requests to be interviewed. Brown was killed in the crash.

An NTSB analysis of a toxicology test found the truck driver used marijuana before the crash, but NTSB investigators could not conclude his level of impairment, if any.

The NTSB said Green's vehicle performed as designed but could be improved to deter drivers from diverting their attention from the road.

"While automation in highway transportation has the potential to save tens of thousands of lives, until that potential is fully realized, people still need to safely drive their vehicles," Sumwalt said. Tesla made updates to its Autopilot design after the crash, warning drivers earlier after they remove their hands from the steering wheel.

A Tesla spokesperson provided a statement that read, "We appreciate the NTSB's analysis of last year's tragic accident, and we will evaluate their recommendations as we continue to evolve our technology. We will also continue to be extremely clear with current and potential customers that Autopilot is not a fully self-driving technology and drivers need to remain attentive at all times."



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According to the media, members of Brown's family said recently that they do not blame the car or the Autopilot system for his death.

Discussion Questions

1. Define negligence.

Negligence involves the failure to do what a reasonable person would do under the same or similar circumstances. The four (4) elements of negligence include a) a duty of care owed by the defendant to the plaintiff; b) breach of the duty of care by the defendant; c) causation of harm to the plaintiff by the defendant; and d) damages incurred by the plaintiff as a result of the defendant's wrongful actions.

2. Define strict product liability.

Strict product liability, recognized by certain states, is liability without fault. In order to prevail in a strict product liability case, the plaintiff is not required to show fault on the defendant's part (i.e., that the defendant intended to cause harm, was reckless, or was negligent). Instead, the plaintiff must merely prove that: a) the product was defective; and b) as a result of the defect, the plaintiff experienced harm as a result.

3. Based on the information included in the article, is Tesla legally responsible for the crash? Why or why not?

This is an opinion question, so student responses may vary. Some students may need more evidence (i.e. evidence above and beyond that presented in the article) before reaching a conclusion regarding liability. As indicated in the article, the National Transportation Safety Board (NTSB), a federal administrative agency, has concluded that Tesla's semiautonomous driving system contributed to the crash. If the case is tried, NTSB evidence related to fault would most certainly help the plaintiff establish that Tesla was at least partially responsible for the fatal crash.



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Of Special Interest

This section of the newsletter addresses President Donald Trump's pardon of former Maricopa County (Arizona) Sheriff Joe Arpaio.

Ethical Dilemma

“Trump Pardons Former Sheriff Joe Arpaio”

<http://www.cnn.com/2017/08/25/politics/sheriff-joe-arpaio-donald-trump-pardon/index.html>

According to the article, President Donald Trump recently pardoned Joe Arpaio, sparing the controversial former Arizona sheriff a jail sentence after he was convicted of criminal contempt related to his hard-line tactics going after undocumented immigrants.

The move drew outcry from civil rights groups, which accuse Arpaio of violating the Constitution in his crackdown on illegal immigration.

During last year's presidential campaign, Arpaio was a vocal proponent of Trump's candidacy, and used his national notoriety to advocate for Trump's similarly aggressive stance on border security and deportations.

In a brief statement released recently, the White House praised Arpaio's career.

"Throughout his time as sheriff, Arpaio continued his life's work of protecting the public from the scourges of crime and illegal immigration," the statement read. "Sheriff Joe Arpaio is now 85 years old, and after more than 50 years of admirable service to our nation, he is (a) worthy candidate for a Presidential pardon."

Arpaio thanked Trump on Twitter.

"Thank you @realdonaldtrump for seeing my conviction for what it is: a political witch hunt by holdovers in the Obama justice department!," he posted.

Arpaio continued: "I am humbled and incredibly grateful to President Trump. I look fwd to putting this chapter behind me and helping to #MAGA"

He said in a Fox News interview recently that he would hold a news conference early next week to discuss the pardon.



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Trump did not consult Justice Department

The pardon is the first of Trump's presidency, though he did not follow his predecessors' practice of consulting with lawyers at the Justice Department before announcing his decision.

"This is the President's pardon," a source with knowledge of the decision said.

Under the Constitution, Trump is permitted wide leeway in issuing pardons. There are no requirements for consultation within the administration before a decision is announced.

"

The President exercised his lawful authority and we respect his decision," said Ian Prior, a Justice Department spokesman.

Trump hinted at his decision earlier this week during a raucous campaign rally in Phoenix.

"So was Sheriff Joe was convicted for doing his job?" Trump queried his supporters. "I'll make a prediction. I think he's going to be just fine, OK."

Trump tweeted about his decision: "I am pleased to inform you that I have just granted a full Pardon to 85 year old American patriot Sheriff Joe Arpaio. He kept Arizona safe!"

Groups criticize decision

Arpaio, who was sheriff in Maricopa County, Arizona, until last year, was found guilty of criminal contempt last month for disregarding a court order in a racial-profiling case. His sentencing had been scheduled for October 5.

"Not only did (Arpaio) abdicate responsibility, he announced to the world and to his subordinates that he was going to continue business as usual no matter who said otherwise," U.S. District Judge Susan Bolton wrote in a July 31 order finding him guilty.

However, civil rights groups and others pushed back against the possibility of Arpaio's pardon, and slammed the decision on Friday.

"Once again, the president has acted in support of illegal, failed immigration enforcement practices that target people of color and have been struck down by the courts," the American Civil Liberties Union wrote in a statement. "His pardon of Arpaio is a presidential endorsement of racism."

"Joe Arpaio illegally targeted and terrorized Latino families. Our community voted him out of power. Donald Trump can't change that," wrote Greg Stanton, the Democratic mayor of Phoenix, which sits in Maricopa County.



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Arizona Sen. John McCain said in a statement on the pardon that "no one is above the law and the individuals entrusted with the privilege of being sworn law officers should always seek to be beyond reproach in their commitment to fairly enforcing the laws they swore to uphold."

"Mr. Arpaio was found guilty of criminal contempt for continuing to illegally profile Latinos living in Arizona based on their perceived immigration status in violation of a judge's orders," McCain said. "The President has the authority to make this pardon, but doing so at this time undermines his claim for the respect of rule of law as Mr. Arpaio has shown no remorse for his actions."

Arizona's other Republican senator, Jeff Flake, wrote on Twitter that he would have "preferred that the President honor the judicial process and let it take its course."

Trump has openly feuded with Flake over the past week.

Former acting Attorney General Sally Yates, whom Trump fired in January after she refused to defend his controversial Muslim travel ban, also slammed the pardon.

"With his pardon pen, POTUS reveals his own contempt for our Constitution, our courts, and our founding principles of equality and justice," Yates wrote on Twitter.

Former sheriff had questioned Obama birth record

Arpaio, who has called himself "America's toughest sheriff," was an early Trump supporter. Like Trump, he helped fuel unfounded allegations that President Barack Obama was not born in the United States. He used frequent appearances on television to establish a national platform for his views on immigration, which relied on tough enforcement measures and racial profiling.

He became known for his treatment of those he held in an outdoor jail known as "Tent City," where he made people wear pink underwear and work in chain gangs.

Trump's pardon of Arpaio is the earliest a president has pardoned someone in his first term since George H.W. Bush pardoned nine individuals on August 14, 1989.

Bill Clinton waited almost two years before issuing a pardon. George W. Bush and Barack Obama both waited about a year.

Discussion Questions

1. Describe the presidential pardon as authorized in the United States Constitution.

According to Article II, Section 2 of the United States Constitution:



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“The President shall...have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.”

2. In your reasoned opinion, did President Trump have the legal authority to pardon former sheriff Joe Arpaio? Why or why not?

The language of Article II, Section 2 is clear, granting the president wide-ranging authority to grant pardons (except in cases of impeachment). In your author’s opinion, in terms of whether President Trump had the legal authority to pardon Mr. Arpaio, the answer to this question is decidedly “yes.”

3. In your reasoned opinion, did President Trump act ethically in pardoning Mr. Arpaio? Why or why not?

In your author’s opinion, in terms of legal authority versus ethical justification, the ethical issue is the more interesting question. Student opinions may vary in terms of whether President Trump acted ethically in pardoning Mr. Arpaio.



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Of Special Interest

This section of the newsletter will assist you in addressing Article 1 (“Johnson & Johnson Ordered to Pay \$417 Million in Talcum Powder Case”) of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 1-“Johnson & Johnson Ordered to Pay \$417 Million in Talcum Powder Case”): “Johnson & Johnson Told to Pay \$72 Million in Talcum Powder Cancer Case”

<http://money.cnn.com/2016/02/24/news/companies/cancer-johnson-and-johnson-talcum-powder/index.html>

Note: In addition to Article 1 (“Johnson & Johnson Ordered to Pay \$417 Million in Talcum Powder Case”), presented earlier in this newsletter, please see the following article for other litigation against Johnson & Johnson addressing the relationship between talcum powder and cancer:

“Johnson & Johnson Told to Pay \$72 Million in Talcum Powder Cancer Case”

According to the article, Johnson & Johnson has been ordered to pay damages to the family of a woman who died of cancer she said was caused by the company's talcum powder.

Lawyers for the family say a jury in St Louis, Missouri, awarded \$72 million in damages.

Jackie Fox died of ovarian cancer in 2015, aged 62, two years after being diagnosed with the illness. Her family said she used Johnson & Johnson's talcum powder for nearly 50 years, and claimed her death was a direct result.

The family argued the company knew about the possible risks of using products containing talc, but failed to warn consumers about them.

The case is part of a wider lawsuit brought by nearly 50 women against Johnson & Johnson.

Responding to the verdict, Johnson & Johnson issued a statement saying its products are safe.

"The recent U.S. verdict goes against decades of sound science proving the safety of talc as a cosmetic ingredient in multiple products, and while we sympathize with the family of the plaintiff, we strongly disagree with the



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outcome," Carol Goodrich, a Johnson & Johnson spokeswoman, said in a statement.

Talc is a naturally occurring mineral composed of magnesium, silicon, oxygen, and hydrogen. It's used to absorb moisture in many kinds of cosmetic products, from baby powder to make up.

Scientists are divided over the potential risks of talc. Lawyers for Fox's family presented several studies they said prove the link between talc and ovarian cancer. Other studies say the evidence is too weak to make the connection.

The American Cancer Society says it is not clear if products containing talcum powder increase cancer risk. The International Agency for Research on Cancer, which is part of the World Health Organization, classifies talc as "possibly carcinogenic to humans."

Because products containing talcum powder are classified as cosmetics, they do not have to undergo review by the Food and Drug Administration. However, they must be properly labeled and "they must be safe for use by consumers under labeled or customary conditions of use," the FDA states.

Teaching Tip 2 (Related to Article 1—"Johnson & Johnson Ordered to Pay \$417 Million in Talcum Powder Case"): The Link between Talcum Powder and Cancer

For additional information regarding whether there is a scientifically established relationship between the use of talcum powder and cancer, please refer to the following web sites:

<https://www.consumersafety.org/products/talcum-powder/>

<https://www.cancer.org/cancer/cancer-causes/talcum-powder-and-cancer.html>



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Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapters 4, 8 and 20	Chapters 4 and 20	Chapters 3 and 4	Chapter 20
Bennett-Alexander & Hartman, Employment Law for Business	N/A	N/A	N/A	N/A
Kubasek et al., Dynamic Business Law	Chapters 5, 10 and 12	Chapters 5 and 10	Chapters 2 and 5	Chapter 10
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 5 and 8	Chapter 5	Chapters 2 and 5	N/A
Liuzzo, Essentials of Business Law	Chapters 5, 28 and 33	Chapters 5 and 33	Chapters 2 and 5	Chapter 33
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3, 8 and 20	Chapters 3 and 20	Chapters 3 and 4	Chapter 20
McAdams et al., Law, Business & Society	Chapters 5, 7 and 16	Chapters 5 and 7	Chapters 2 and 5	Chapter 7
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2, 9 and 24	Chapters 2 and 9	Chapters 2 and 5	Chapter 9
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 6, 10 and 11	Chapters 6 and 10	Chapters 2 and 6	Chapter 10
Sukys, Business Law with UCC Applications	Chapters 2, 15 and 33	Chapters 2 and 15	Chapters 1 and 2	Chapter 15



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This Newsletter Supports the Following Business Law Texts:

- Barnes et al., Law for Business, 13th Edition ©2018 (1259722325)
- Bennett-Alexander et al., Employment Law for Business, 8th Edition ©2015 (0078023793) New edition available Jan 2018!
- Kubasek et al., Dynamic Business Law, 4th Edition ©2017 (1259723585)
- Kubasek et al., Dynamic Business Law: The Essentials, 3rd Edition ©2016 (007802384X) New edition available Jan 2018!
- Liuzzo, Essentials of Business Law, 9th Edition ©2016 (07802319X) New edition available Feb 2018!
- Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 16th Edition ©2016 (0077733711) New edition available Jan 2018!
- McAdams et al., Law, Business & Society, 12th Edition ©2018 (1259721884) – New edition now available!
- Melvin, The Legal Environment of Business: A Managerial Approach, 3rd edition ©2018 (1259686205)
- Pagnattaro et al., The Legal and Regulatory Environment of Business, 17th Edition ©2016 (0078023858) New edition available Jan 2018!
- Sukys (formerly Brown/Sukys), Business Law with UCC Applications, 14th Edition ©2017 (0077733738)

