



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

## Contents

Hot Topics	2
Video Suggestions	11
Ethical Dilemma	17
Teaching Tips	21
Chapter Key	23

## *Dear Professor,*

Welcome to McGraw-Hill Education's August 2018 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 10, Issue 1 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the August 2018 newsletter topics with the various McGraw-Hill Education business law textbooks.

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

1. Actor Johnny Depp's settlement of a \$25 million lawsuit against his former business managers;
2. MGM Resorts International's request for immunity from liability for the 2017 Las Vegas shooting massacre;
3. An increase in hate crimes in America's ten largest cities;
4. Videos related to a) China's World Trade Organization (WTO) challenge to the United States' proposal to impose \$200 billion in tariffs on Chinese goods and b) health care providers suing patients who post negative comments and reviews on social media;
5. An "ethical dilemma" related to the European Union's (EU's) recent decision to fine Google \$5 billion for forcing cellphone makers that use the company's Android operating system to install Google search and browser applications; and
6. "Teaching tips" related to Article 2 ("MGM Resorts Denies Liability for Las Vegas Shooting, Asks Courts for Protection from Lawsuits") and Article 3 ("Hate Crimes are Up in America's 10 Largest Cities. Here's Why") of the newsletter.

This year marks the 10<sup>th</sup> anniversary of the newsletter's publication. It has been my sincere privilege to serve as the author and editor of the newsletter, and I look forward to many more years to come!

Jeffrey D. Penley, J.D.  
Catawba Valley Community College  
Hickory, North Carolina



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

## Of Special Interest

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

1) Actor Johnny Depp's settlement of a \$25 million lawsuit against his former business managers;

2) MGM Resorts International's request for immunity from liability for the 2017 Las Vegas shooting massacre; and

3) An increase in hate crimes in America's ten largest cities.

## Hot Topics in Business Law

### Article 1: "Johnny Depp Settles \$25M Suit against His Business Managers, Avoiding Potentially Embarrassing Trial"

<https://www.usatoday.com/story/life/2018/07/16/johnny-depp-settles-25m-suit-against-biz-managers-avoiding-trial/789791002/>

According to the article, Johnny Depp's \$25 million lawsuit against his former business managers was settled recently, just weeks away from a trial that was expected to rivet the entertainment industry with conflicting claims of greed, over-the-top spending and financial incompetence.

"Representatives for Johnny Depp today announce that Mr. Depp has reached a settlement agreement with his former business managers, The Management Group, following legal action taken against the company by Mr. Depp in January 2017. The terms of the settlement agreement are confidential," according to a statement issued recently in London by Depp's team.

The Hollywood Reporter, Variety and Deadline reported that Depp reached the settlement over the weekend following mediation, averting a trial that was set to begin next month.

Depp's statement said he was "pleased."

"The lawsuit taken out against The Management Group – and the subsequent settlement – is a further demonstration that Johnny is determined to take firm action to protect his personal and artistic reputation in the interests of his family and his career," the statement said.

Depp also managed to promote his latest projects in his statement.

"Following the settlement, Johnny is pleased to be able to revert his full attention to his ongoing artistic endeavors, notably the second leg of the sold-out Hollywood Vampires global tour and the exciting launch of JK Rowling's "Fantastic Beasts: The Crimes of Grindelwald," which will be released in theaters in November this year," the statement said.

"Johnny extends his most sincere thanks and appreciation to the true supporters that have shown their loyalty to both him and his family over recent years."



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

Depp sued his business managers, attorneys Joel and Robert Mandel, for allegedly mismanaging his earnings in 16 years of overseeing his booming career. Depp sought \$25 million, accusing his ex-managers of fraud and negligence, of failing to pay his taxes, making unauthorized loans and overpaying for security and other services.

The Mandels then counter-sued Depp, claiming his own overspending was to blame for his money woes. They asserted he spent multiple millions on his lifestyle, allegedly including \$30,000 a month on wine, and never noticed his dwindling bank account despite repeated warnings from his managers to curtail his spending.

"Depp, and Depp alone, is fully responsible for any financial turmoil he finds himself in today," the managers' lawsuit countered.

The countersuit produced scores of embarrassing headlines about how Depp allegedly frittered away his millions on such goodies as a multi-million-dollar collection of 200 paintings (Warhol, Klimt, Basquiat, Modigliani); collections of jewelry, 70 guitars and 45 luxury vehicles; an \$18 million yacht; private jets rides; and \$75 million for 14 real-estate acquisitions, including multiple homes in Hollywood and penthouse lofts in downtown Los Angeles, a farm in Kentucky, a chain of Caribbean islands and a chateau in France.

Later, the war of words between Depp and his former managers grew louder when the managers labeled the actor "a habitual liar" in response to Depp asserting in an interview that they "clearly let me down."

Then in June, he sat for a Rolling Stone interview that did not help his case. The Rolling Stone story estimated that over the course of his 30-year movie career, Depp's films have made a \$3.6 billion profit. He's been paid approximately \$650 million. And it's almost all gone.

Plus, Depp had no idea he was behind on paying his taxes. "I just had no clue," he said in what the magazine described as "one of the few moments when he looked genuinely worried" about his financial situation.

The trial delving into this mess, scheduled to start August 15 (Depp's lawyers failed to get it postponed), was likely to produce more cringe-worthy revelations that neither side would welcome.

## Discussion Questions

1. The article references that the subject settlement agreement was reached after mediation. What is mediation?

*Mediation is a form of alternative dispute resolution (ADR). Through ADR, disputing parties attempt to resolve their case outside of court. In mediation, a neutral third party known as the mediator encourages the parties to reach an amicable resolution of their dispute by settlement. The mediator*



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

*does not render a decision. This is in contrast to arbitration, another form of ADR. In arbitration, the neutral third party known as the arbitrator actually renders a decision in the case. The decision is either binding or non-binding, depending upon the agreement of the parties prior to arbitration.*

2. Does a settlement constitute an admission of liability by the defendant? Why or why not?

*A settlement does not typically constitute an admission of liability by the defendant. In fact, most settlement agreements include express language indicating that despite an agreement to resolve the dispute, the defendant does not admit liability by way of the agreement.*

3. As the article indicates, the terms of the subject settlement are confidential. Is confidentiality a common requirement of a settlement agreement? Why would one or both parties to a settlement agreement want to keep its terms (including settlement amount) confidential?

*Confidentiality is a typical requirement of a settlement agreement, binding the parties not to disclose the terms of the settlement. From the defendant's perspective, disclosing a large settlement might encourage other parties to sue the defendant. From the plaintiff's perspective, confidentiality is a reasonable requirement in order to obtain settlement proceeds.*

## **Article 2: "MGM Resorts Denies Liability for Las Vegas Shooting, Asks Courts for Protection from Lawsuits"**

<https://www.cnn.com/2018/07/17/us/mgm-lawsuit-victims-las-vegas-shooting-trnd/index.html>

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

According to the article, the owner of the Mandalay Bay hotel says it bears no liability in last year's Las Vegas concert massacre and is asking the courts to grant federal protections that shield companies who provide anti-terrorism products and services to civilians.

MGM Resorts International, which is facing a barrage of lawsuits over the shooting, responded recently by naming more than 1,000 of the shooting victims as defendants in two lawsuits of its own. The entertainment giant is not seeking monetary damages but, citing a federal law, asks the courts to protect it from legal actions filed by the victims.

In a recent statement, MGM Resorts called the shooting "the despicable act of one evil individual" and said its lawsuits, filed recently in U.S. District Courts for Nevada and Central California, are intended to benefit the victims and help them heal.

"The Federal Court is an appropriate venue for these cases and provides those affected with the opportunity for a timely resolution," said Debra DeShong, spokeswoman for MGM Resorts.



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

"Years of drawn-out litigation and hearings are not in the best interest of victims, the community and those still healing."

The lawsuit is "utterly reprehensible," said Robert Eglet, a Las Vegas attorney representing about 1,000 victims.

The October 1 shooting, which left 58 dead, hundreds injured and many more traumatized, began when a heavily armed gunman smashed windows in his Mandalay Bay suite on the 32nd floor and rained bullets down on thousands of concertgoers at the Route 91 Harvest Festival across the street. Police said the gunman then fatally shot himself.

MGM Resorts International is the parent company of the corporations that own the Mandalay Bay and the Las Vegas Village, the site of the festival.

MGM hired a vendor, Contemporary Services Corp., to provide security for the event. By hiring CSC, whose services the Department of Homeland Security has approved "for protecting against and responding to acts of mass injury and destruction," MGM is claiming it is absolved from responsibility in the shooting.

Since the attack, more than 2,500 people have brought lawsuits or threatened to file lawsuits against MGM Resorts International and its subsidiaries, according to MGM.

The resort company's lawsuits in Nevada and California name more than 1,000 such victims, many of whose lawsuits were voluntarily dismissed, apparently with the intent of refile them later.

"Defendants' actual and threatened lawsuits implicate the services provided by CSC because they implicate security at the concert, including training, emergency response, evacuation and adequacy of egress," the lawsuits say.

That sentence is important because MGM hopes a judge will agree that a 2002 law called the Support Anti-Terrorism by Fostering Technologies Act, or SAFETY Act, shields the hotel and concert venue owner from liability, putting it instead on CSC.

Congress passed the SAFETY Act after 9/11 to encourage the private sector to deploy security technologies in civilian settings. Companies providing such products and services had been reluctant to do so for fear they would be liable in a terrorist attack, but the 2002 law limits liability and allows companies to assert a government contractor defense for claims stemming from terrorism.

A government contract defense is most commonly but not exclusively employed among military contractors and can provide immunity from liability in some cases.

"We are shocked," said Catherine Lombardo, an attorney representing hundreds of victims said. She added that MGM is "absolutely liable."



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

The company was negligent in letting the gunman into the hotel with so many weapons "and up to the 32nd floor," Lombardo said.

Eglet and Lombardo argue that MGM will not be successful in its invocation of the SAFETY Act.

"It was not designed for this," Lombardo said.

Added Eglet, "If MGM wanted to be certified by the SAFETY Act, they could have done that, but they didn't."

Because the Department of Homeland Security has certified services provided by CSC, the SAFETY Act applies to the Las Vegas shooting, according to the lawsuits. In this case, MGM's lawyers claim, the act and other regulations "make clear that any such claim against the MGM parties must be dismissed."

"If Defendants were injured by (the) assault, as they allege, they were inevitably injured both because (the shooter) fired from his window and because they remained in the line of fire at the concert. Such claims inevitably implicate security at the concert -- and may result in loss to CSC," they say.

CSC provided security, "access control" and crowd management services for the festival. It also vetted employees, inspected venues and developed emergency response and evacuation procedures, according to the lawsuits.

Though no federal authority has declared the Las Vegas shooting a terrorist attack -- in fact, investigators have yet to declare a motive for the massacre -- the lawsuits say DHS officials and documents cited the shooting in emphasizing the need to prevent terrorists from hitting soft targets such as concerts and sporting events.

They also say the SAFETY Act defines terrorism as an unlawful act that causes harm to a person in the United States, using weapons designed for mass injury.

"There is no requirement in the statute or regulations of an ideological motive or objective for the attack for it to meet the requirements of the SAFETY Act," the lawsuits say, adding that the guns, bump stocks, high-capacity magazines, incendiary rounds and explosives found in the gunman's suite and van qualify as weapons intended to cause mass injury.

Attempts to reach CSC's legal counsel were not successful. Days after the shooting, the company issued a statement commending its team and first responders for their heroism, and lamenting that three of its employees were shot, one fatally, in the massacre.

"We must commend our staff who stood in the face of danger and assisted those around them during the attack," the statement said.



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

## Discussion Questions

1. Define negligence.

*Negligence is the failure to do what a reasonable person would do under the same or similar circumstances. In order to demonstrate negligence, the plaintiff must prove, by the greater weight of the evidence, that: a) the defendant owed a duty of care to the plaintiff; b) the defendant breached the duty of care; c) the defendant caused the plaintiff harm; and d) the plaintiff sustained damages (physical and/or economic) as a result of the defendant's wrongful action(s).*

2. In your reasoned opinion, was MGM Resorts International negligent in this case? Why or why not?

*This is an opinion question, so student responses may vary.*

3. In your reasoned opinion, does the SAFETY Act immunize MGM Resorts International from liability in this case? Why or why not?

*This is an opinion question, so student responses may vary. The ultimate question related to interpretation of the SAFETY Act is whether the United States Congress intended to immunize a company like MGM Resorts International from liability in situations like the subject case. In your author's opinion, such immunity from liability would require an expansive interpretation of the SAFETY Act.*

### **Article 3: "Hate Crimes are Up in America's 10 Largest Cities. Here's Why"**

<https://www.usatoday.com/story/news/2018/07/17/hate-crimes-up-america-10-largest-cities/776721002/>

According to the article, Miami Beach police recently charged a man with attempted arson after he threatened to burn down a condominium and "kill all the Jews" inside. On July 12, a woman beat a Hispanic man with a brick in Los Angeles and told him to go back to his country. In June, a man harassed a woman in Chicago in a public park for wearing a shirt with the Puerto Rico flag on it.

Though relatively rare, hate crimes have seen an increase in cities across the USA. In California alone, the number spiked 44 percent between 2014 and 2017, up to 1,093 hate crimes last year, the state's attorney general's office reported last week.

The total number of hate crimes in the 10 largest cities in America jumped in 2017, marking four straight years for an uptick in such incidents.



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

The Center for the Study of Hate and Extremism at California State University found a 12.5 percent increase in incidents reported by police last year in Chicago, Dallas, Houston, Los Angeles, New York, Philadelphia, Phoenix, San Antonio, San Diego and San Jose, California.

The number of hate crimes reported in those cities totaled 1,038, up from 923 in 2016, according to the May study. In New York, nearly half of hate crimes last year were committed against Jewish people. In Los Angeles, gay men were targeted most. And in Boston the largest demographic hit by hate crimes were African Americans.

Brian Levin, co-author of the report, attributed the recent increases to greater "incivility" in national politics, citing policies such as President Donald Trump's travel ban from several majority-Muslim countries.

National events can also spur these types of crimes, according to Heidi Beirich, director of the intelligence project at the Southern Poverty Law Center. After the September 11, 2001 terror attacks, crimes against Muslim people were rampant, Beirich said. The FBI reported 8,063 hate crimes in 2000 and 9,730 in 2001.

"We know there can be triggering events and there can also be public figures who demonize vulnerable populations," Beirich said.

Hate crimes are considered criminal acts motivated by prejudice based on race, religion, national origin, sexual orientation, gender identity and disability.

Levin also cited long-term increases in hate crime rates to demographic changes across the country, especially population increases in minority groups. According to the Pew Research Center, growth among Hispanic communities has accounted for half of USA population increase since 2000.

San Jose saw a 300 percent increase in hate crimes between 2014 and 2017, up to 44 hate crimes last year from 11 in 2014. Philadelphia rose more than 200 percent in the same time period, and Phoenix experienced a 25 percent increase.

The Center for the Study of Hate and Extremism forecasts a decline in hate crimes for the first half of 2018 from last year.

"You didn't have the kind of conflicting election that you had in 2016 or a big terrorist attack," Levin said.

Levin also referenced the Unite the Right rallies in Charlottesville in 2017 as another event that could have fueled hate crimes.

Levin said he cannot make predictions for the second half of 2018 because election years – including influential midterms – often lead to an uptick.





# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

"Because of the election coming up and because of the uncertainty in the political world domestically as well as internationally, I would love to forecast a decline, but it's kind of like being in the sixth inning of an Angels game," Levin said. "We're ahead three to nothing in the sixth, but all the big batters are coming up in the last three innings."

Hate crimes increased in 2016, 2014, 2012, 2010 and 2008, according to the study.

The report also points to Russian-based ads on social media – using data from a USA TODAY analysis – as a catalyst for spikes in hate crimes. The rise in hate crimes in late 2016 was linked to a growth in Russian Facebook ad purchases designed to promote stereotypes about Muslim communities in the U.S.

"These stereotypes play a role in identifying who is accepted by the overall community as a legitimate target for aggression or derision," Levin said. The Department of Justice declined to comment on the rise of hate crimes in the U.S.

Beirich said it is hard to address the rising rates of hate crimes especially because so many go unreported. According to the FBI, in 2015 law enforcement agencies reported 5,850 hate crimes across the country. According to the Bureau of Justice Statistics, which uses surveys to compile crime rates across the country, 207,880 hate crimes occurred in 2015.

"I hate to say this, but the data is so poor that it's hard to know what hate crimes are happening in the U.S.," Beirich said. "The data's so bad it's almost like a silent wave of crimes." One of the major challenges cities face is getting residents to report incidents.

"What if you're a gay person in a state that doesn't protect your employment with respect to sexual orientation and you report being a crime victim, and then you're fired from your job," Levin said. "Would you want to go to the police?"

Sgt. Vincent Lewis of the Phoenix Police Department said he believes his city's increase in hate crimes is from more reporting rather than more incidents. He said greater community outreach makes more residents feel comfortable seeking help from police.

"When we have a better relationship with those communities and that education goes both ways, they start to come forward and report," Lewis said. "That gives them a voice and allows them to come forward more often when incidents do occur."

## Discussion Questions

1. Define "hate crime."

*As the article indicates, a "hate crime" is a criminal act motivated by prejudice based on race, religion, national origin, sexual orientation, gender identity or disability.*



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

2. In your reasoned opinion, should the punishment for a hate crime be greater than the punishment for a “traditional” crime? For example, should someone who commits arson against a place of business because its owner is a homosexual be subjected to greater punishment compared to someone who simply commits arson against a place of business? Why or why not?

*This is an opinion question, so student responses may vary. Typically, punishment for a hate crime is greater than punishment for a “traditional” crime (i.e., a crime not motivated by prejudice based on race, religion, national origin, sexual orientation, gender identity or disability.)*

3. As the article indicates, the total number of hate crimes in America’s ten largest cities increased in 2017, marking four straight years for an uptick in such incidents. In your reasoned opinion, what accounts for the noted increase?

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



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

## Video Suggestions

### Video 1: “China Files WTO Challenge to US \$200B Tariff Plan”

<https://www.nbcchicago.com/news/politics/China-US-Tariffs-World-Trade-Organization-488252981.html>

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

### “China Files WTO Challenge to US \$200B Tariff Plan”

According to the article, China's government says it has filed a World Trade Organization case challenging United States President Donald Trump's plan to raise tariffs on Chinese goods worth \$200 billion in an escalating dispute over technology policy.

The Commerce Ministry's recent announcement comes soon after the United States Trade Representative proposed the possible second tariff hike following a measure targeting \$34 billion of goods.

The one-sentence announcement gave no details.

Washington imposed the tariff hikes in response to complaints Beijing steals or pressures companies to hand over technology. The new list of items includes vacuum cleaners, furniture, auto and bicycle parts, French doors and plywood. U.S.-branded smartphones and laptop computers were not on the list of proposed items.

### Discussion Questions

1. What is the mission of the World Trade Organization (WTO)?

*According to its web site*

*([https://www.wto.org/english/thewto\\_e/thewto\\_e.htm](https://www.wto.org/english/thewto_e/thewto_e.htm)), the World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to ensure that trade flows as smoothly, predictably and freely as possible.*



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

2. In your reasoned opinion, what would be the Trump Administration's strongest argument for imposing trade sanctions against China?

*This is an opinion question, so student responses may vary. The Trump Administration contends that China does not trade fairly with the United States, as evidenced by the large trade deficit the United States experiences in its trade with China each year.*

3. In your reasoned opinion, what would be the strongest argument against the Trump Administration's decision to impose trade sanctions against China?

*This is an opinion question, so student responses may vary. Opponents of Trump's trade sanctions against China argue that such sanctions will lead to a trade war, with United States consumers experiencing less choice among competing products and higher product prices.*

## **Video 2: "Doctors, Hospitals Sue Patients Who Post Negative Comments, Reviews on Social Media"**

<https://www.usatoday.com/story/news/politics/2018/07/18/doctors-hospitals-sue-patients-posting-negative-online-comments/763981002/?csp=chromepush>

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

### **"Doctors, Hospitals Sue Patients Who Post Negative Comments, Reviews on Social Media"**

According to the article, retired Air Force Colonel David Antoon agreed to pay \$100 to settle what were felony charges for emailing his former Cleveland Clinic surgeon articles the doctor found threatening and posting a list on Yelp of all the surgeries the urologist had scheduled at the same time as the one that left Antoon incontinent and impotent a decade ago.

He faced up to a year in prison.

Antoon's 10-year crusade against the Cleveland Clinic and his urologist is unusual for its length and intensity, as is the extent to which Cleveland Clinic urologist Jihad Kaouk was able to convince police and prosecutors to advocate on his behalf.

Antoon's plea deal last week came as others in the medical community aggressively combat negative social media posts, casting a pall over one of the few ways prospective patients can get unvarnished opinions of doctors.



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

Among recent cases:

- Cleveland physician Bahman Guyuron sued a former patient for defamation for posting negative reviews on Yelp and other sites about her nose job. Guyuron's attorney Steve Friedman says that although the First Amendment protects patients' rights to post their opinions, "our position is she did far beyond that (and) deliberately made false factual statements." A settlement mediation is slated for early August, and a trial is set for late August if no agreement is reached.
- Jazz singer Sherry Petta used her own website and doctor-rating sites to criticize a Scottsdale, Arizona, medical practice over her nasal tip surgery, laser treatment and other procedures. Her doctors, Albert Carlotti and Michelle Cabret-Carlotti, successfully sued for defamation. They won a \$12 million jury award that was vacated on appeal. Petta claimed the court judgment forced her to sell a house and file bankruptcy. The parties would not discuss the case and jointly asked for it to be dismissed in 2016 but declined to explain why.
- A Michigan hospital sued an elderly patient's two daughters and a granddaughter over a Facebook post and for picketing in front of the hospital they said mistreated the late Eleanor Pound. The operator of Kalkaska Memorial Health Center sued Aliza Morse, Carol Pound and Diane Pound for defamation, tortious interference and invasion of privacy.

Petta's attorney, Ryan Lorenz, says consumers need to know there can be consequences if they post factually incorrect information. Lorenz, who has represented both consumers and businesses on cases involving online comments, says consumers are allowed to offer opinions that do not address factual points.

"Make sure what you are saying is true – it has to be truthful," he says.

"It would be great if the regulators of hospitals and doctors were more diligent about responding to harm to patients, but they're not, so people have turned to other people," says Lisa McGiffert, former head of Consumer Reports' Safe Patient Project. "This is what happens when your system of oversight is failing patients."

As doctors and hospitals throw their considerable resources behind legal fights, some patients face huge legal bills for posting critiques and other consumers face their own challenges trying to get a straight story.

Experts say doctors take on extra risk when they resort to suing a patient.

Doctors typically can't successfully sue third-party websites such as Yelp that allow consumer comments, but they can sue patients over reviews.

Even so, "you can win (a case) and still not win," says Eric Goldman, a professor at Santa Clara University's law school.



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

Goldman, who has tracked about two dozen cases of doctors suing patients over online reviews, says physicians rarely win the cases and sometimes must pay the patients' legal fees.

Physician-patient confidentiality rules complicate options for doctors, Goldman says, but they can respond to factually incorrect reviews if the patient agrees to waive confidentiality and publicly discuss the case.

The comments challenged legally are typically those that were left online. Many medical review sites will remove posts they deem offensive or threatening to doctors, as many of Antoon's or other Kaouk patients' were. Yelp removes reviews only if they violate the consumer website's terms of service.

Patients should first bring up complaints directly to the doctor or other medical provider, says Edward Hopkins, an attorney who represented Carlotti, Cabret-Carlotti and their medical practice for part of the case. Other options could include reporting a doctor to state oversight agencies, consulting with an attorney or filing complaints with a state attorneys' general office.

By the time he was arrested last December, Antoon had tried most every option with very little success.

Along the way, Antoon became a patient advocate – volunteering with Consumer Reports' Safe Patient Project and HealthWatch USA – and advising others who say they were harmed by Kaouk and the Cleveland Clinic.

Cleveland Clinic, one of the top-rated hospitals in the country, has an aggressive legal department. Kaouk and the clinic prevailed in malpractice and fraud cases filed by Antoon and other patients who claimed they were harmed.

Matthew Donnelly, Cleveland Clinic's deputy chief legal officer, attended Antoon's criminal hearing in November.

To Kaouk, a decade of negative reviews on social media led to what he considered an escalation when Antoon sent him several emails, including one with a link to an article about a Chinese crackdown on research fraud that could include the death penalty if people were injured or killed.

The day before Antoon posted on Yelp in November, Kaouk was granted a civil stalking protective order against Antoon, which barred him from contacting the doctor.

"What would be next – showing up at my door?" Kaouk said in court. "That's what we feared." In his posts and emails, Antoon documented alleged issues, including Kaouk and the urology department's lack of credentials to use the robotic device in his surgery. He sent records to the Centers for Medicare and Medicaid Services (CMS), claiming they showed Kaouk was not present in the operating room during his surgery despite his insistence that only Kaouk could perform the surgery.



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

The Ohio Medical Board closed its investigation into Kaouk after five years without reprimanding him in any way. Antoon's complaints to CMS temporarily put the hospital's \$1 billion annual Medicare reimbursement at risk.

Antoon's claims were rejected, and Kaouk was not held liable for the surgery that left Antoon impotent and incontinent.

Along with more than \$40,000 defending himself against the criminal charges, Antoon spent almost two days in jail. He had to post \$50,000 bond in Shaker Heights and again in Cleveland's Cuyahoga County after the case was transferred there.

It is common "for someone in a position of wealth, power and money to go after someone like David to silence critics," says Antoon's attorney, Don Malarcik. "That happens often and it happened here."

Hospitals, including the Cleveland Clinic, combat negative comments with their own rating systems, which let them "control their message," McGiffert says.

Some comments posted by Antoon and Dan Galliano, another patient who claimed he was injured, disappeared from the websites RateMDs and Vitals, as shown in screenshots Antoon took right after they were posted.

Cleveland Clinic spokeswoman Eileen Sheil says it posts all the government-required satisfaction survey responses patients fill out about doctors on its ratings site, once at least 30 are received. Comments are not edited.

Sheil says Cleveland Clinic will request comments to be removed from other sites when they violate the sites' terms of service.

RateMDs did not respond to requests for comment. Vitals spokeswoman Rosie Mattio says the site has a care team that will investigate reviews it is contacted about.

"While we will not pull down a necessarily negative review, we will remove the review if we find that it violates our terms and includes material that is threatening, racist or vulgar," Mattio says.

On Yelp, business owners can flag a review to be removed for violation of Yelp's terms of services. Yelp reviews flagged comments and removes those that include hate speech or a conflict of interest or that are not based on a commenter's firsthand experience.

The website doesn't intervene over factual disputes, Yelp spokeswoman Hannah Cheesman says. Instead, it classifies consumer reviews as "recommended" or "not currently recommended" based on an automated software review.



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

If Yelp's software detects multiple reviews from the same IP address or biased reviews from a competitor or disgruntled employee, it puts the comment in the not-recommended category. Consumers can still view such reviews by clicking on another page, but those comments are not factors in Yelp's five-star rating system.

McGiffert has long advocated for a federal database where people could report medical errors and infections. Unless that happens, online review sites – including hospitals' own and ones that will remove some reviews doctors object to – are among the only places patients can find physician reviews.

Doctors such as Kaouk suggest they are the ones who are disadvantaged.

"It is something that if anybody would look just by Googling my name online, you would see what he has written about me," Kaouk says of Antoon.

## Discussion Questions

1. Define defamation.

*Defamation is a false statement of fact or a bad faith opinion expressed about another person that damages that person's reputation in the community.*

2. Define slander and libel.

*There are two (2) form of defamation: slander and libel. Slander is an oral statement, while liable is a written statement. Both meet the standard definition of defamation: A false statement of fact or a bad faith opinion expressed about another person that damages that person's reputation in the community.*

3. Describe two (2) defenses to a defamation action.

*There are two (2) defenses to a defamation action: 1) the truth; and 2) a good faith opinion. A truthful statement (if proven) is an absolute defense to defamation, and if an opinion is given in good faith without a specific desire to damage the plaintiff's reputation, the defendant who expressed the opinion is not liable for defamation.*





# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

## Of Special Interest

This section of the newsletter addresses the European Union's (EU's) recent decision to fine Google \$5 billion for forcing cellphone makers that use the company's Android operating system to install Google search and browser applications.

## Ethical Dilemma

### **“EU Fines Google a Record \$5 billion over Mobile Practices”**

[https://www.apnews.com/545535773fa74473b03884f0824c82ae/EU-fines-Google-a-record-\\$5-billion-over-mobile-practices](https://www.apnews.com/545535773fa74473b03884f0824c82ae/EU-fines-Google-a-record-$5-billion-over-mobile-practices)

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

### **“EU Fines Google a Record \$5 billion over Mobile Practices”**

According to the article, European regulators came down hard on another U.S. tech giant recently, fining Google a record \$5 billion for forcing cellphone makers that use the company's Android operating system to install Google search and browser apps.

The European Union said Google's practices restrict competition and reduce choices for consumers.

While Google can easily afford the fine, the ruling could undermine the company's business model, which relies on giving away its operating system in return for opportunities to sell ads and other products.

Google immediately said it will appeal, arguing that its free operating system has led to lower-price phones and created competition with its chief rival, Apple.

Android has "created more choice for everyone, not less," Google CEO Sundar Pichai tweeted.

Google has 90 days to put remedies in place regardless of its appeal — which could involve unbundling key apps and allowing Android handset manufacturers to sell devices using altered versions of Android.

Mozilla Foundation, the non-profit group that creates the lightweight ad-blocking browser Firefox Focus, said the ruling gives it the opportunity to displace Chrome as the default browser in some phones. It has been in talks with manufacturers from Huawei to Samsung about that.

The ruling creates "a huge opportunity," Denelle Dixon, Mozilla's chief operating officer, said recently.



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

It is also possible not much will change. Google Search, Chrome and the Play Store are popular with consumers and developers. Handset manufacturers could choose them despite unbundling.

"It's possible phone manufacturers won't actually take advantage of the newfound freedom they have," said Thomas Vinje, lead lawyer for FairSearch, the Brussels-based lobbying group backed by Oracle, TripAdvisor and others that was the main complainant in the case. "It at least opens up the possibility."

The fine, which caps a three-year investigation, is the biggest ever imposed on a company by the EU for anticompetitive behavior.

The ruling could stoke tensions between Europe and the U.S., which regulates the tech industry with a lighter hand. Still, some U.S. politicians welcomed it.

Democratic Senator Richard Blumenthal of Connecticut tweeted that the fine should "be a wake-up call" to the Federal Trade Commission and should lead U.S. enforcers to protect consumers. Blumenthal previously called on regulators to investigate how Google tracks users of Android phones.

In its ruling, the EU said Google broke the rules by requiring cellphone makers to take a bundle of Google apps if they wanted any at all.

The bundle contains 11 apps, including YouTube, Maps and Gmail, but regulators focused on three that had the biggest market share: Google Search, Chrome and the company's app store, called Play Store.

The EU also took issue with Google's payments to wireless carriers and phone makers to exclusively pre-install the Google Search app.

It ruled, too, that Google broke the law by forcing manufacturers that took its apps to commit to not selling devices that use altered versions of Android.

Regardless of the pending appeal, failure to come up with remedies to rectify the behavior after 90 days risks a further penalty of up to \$15 million a day.

EU Competition Commissioner Margrethe Vestager said that given the size of the company, the 4.34 billion euro fine is not disproportionate.

The Google crackdown comes at a sensitive time for trans-Atlantic relations, with President Donald Trump lambasting the EU as a "foe" only last week. The U.S. imposed tariffs on EU steel and aluminum this year, and the EU responded with duties on American goods.



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

"We have to protect consumers and competition to make sure consumers get the best of fair competition," Vestager said. "We will continue to do it, no matter the political context."

The penalty is on top of a 2.42 billion euro fine (\$2.8 billion) that regulators imposed on Google a year ago for favoring its shopping listings in search results.

Neither fine will cripple the company. Google parent Alphabet, made \$9.4 billion in profit in the first three months of the year and has over \$100 billion in cash reserves.

"What is important is that Google has to change its abusive behavior," said Rich Stables, CEO of the rival search engine Kelkoo.

Android is technically an open-source operating system that Google lets cellphone makers use for free. As a result, it is the most widely used system, beating Apple's iOS by a wide margin.

The EU wants to ensure that phone makers are free to pre-install apps of their choosing. It also wants cellphone makers to be able to more easily use altered versions of Android, like Amazon's Fire OS.

Both Amazon and Samsung, maker of the popular Galaxy line of phones, declined to comment on the ruling.

Google argues that downloads are easy and while the inclusion of its suite of apps help phones run well out of the box, competitors' apps are a tap away.

It also argues that not supporting so-called "forked" versions of Android ensures a baseline of experience across some 24,000 different models of Android devices. Vestager called the compatibility argument a "smokescreen."

European regulators have set the pace in shaping rules for the tech industry.

The EU has clashed repeatedly with Microsoft over the years, fining it over its bundling practices and its promotion of its Internet Explorer browser.

In 2016, the EU ruled that Apple was getting preferential treatment from the Irish government and demanded it pay \$15 billion in back taxes. The EU has also tangled with Amazon and Intel. European regulators have likewise taken a harder line on data privacy. After the scandal this spring involving the misuse of Facebook users' personal data during the U.S. presidential election and other campaigns, the EU began enforcing tougher new rules.

## Discussion Questions

1. What is the European Union (EU)?



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

For a comprehensive description of the European Union, including its expressed goals and values, please see [https://europa.eu/european-union/about-eu/eu-in-brief\\_en](https://europa.eu/european-union/about-eu/eu-in-brief_en)

2. As the article indicates, the European Union has fined Google a record \$5 billion for forcing cellphone makers that use the company's Android operating system to install Google search and browser apps. In your opinion, is such a fine justified? Why or why not?

*This is an opinion question, so student responses may vary.*

3. Assess Google's projected argument on appeal (namely, that its free operating system has led to lower-price phones and created competition with its chief rival, Apple). In your reasoned opinion, does Google have a strong argument on appeal? Why or why not?

*This is an opinion question, so student responses may vary.*



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

## Of Special Interest

This section of the newsletter will assist you in addressing Article 2 ("MGM Resorts Denies Liability for Las Vegas Shooting, Asks Courts for Protection from Lawsuits") and Article 3 ("Hate Crimes are Up in America's 10 Largest Cities. Here's Why") of the newsletter.

## Teaching Tips

### Teaching Tip 1 (Related to Article 2-"MGM Resorts Denies Liability for Las Vegas Shooting, Asks Courts for Protection from Lawsuits"):

#### "MGM's Suit is Not an Attack on Victims of Las Vegas Shooting"

<https://www.nbcnews.com/storyline/las-vegas-shooting/mgm-s-suit-not-attack-victims-las-vegas-shooting-n892291>

For an analysis piece regarding MGM's attempt to avoid liability for last year's Las Vegas concert massacre, please see the following article and the related video included at the above-referenced internet address:

#### "MGM's Suit is Not an Attack on Victims of Las Vegas Shooting"

According to the article, MGM Resorts International has filed a complaint for declaratory judgment in federal court in Las Vegas, naming victims of the 2017 mass shooting in that city and their loved ones as defendants.

It is a move that will invite an unflattering public narrative — MGM, the wealthy company and owner of the property where scores of innocent concertgoers were slaughtered by a lone gunman, apparently blames the victims by hauling them into court and forcing them to live through the agony again.

Except that is not what this is.

MGM is technically "suing" the defendants, but not in the familiar "personal injury" sense. That is, MGM is not accusing the victims of carelessly causing MGM harm, nor are they demanding money from the bereaved. This case will not culminate in emotional testimony from shooting victims before a jury. It's likely that this case will be decided by a judge, with little or no testimony required at all.

That is because MGM filed for something called "declaratory judgment". The Declaratory Judgment Act permits a federal court to "declare the rights and other legal relations" of parties to "a case of actual controversy." A declaratory judgment can be "brought by any interested party" involving an actual controversy. It is appropriate where parties — like the victims — could presently sue, but just haven't done so yet.



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

Here, MGM is asking a federal court to pre-emptively determine whether a particular federal law prohibits a lawsuit by the victims against MGM, instead forcing them to sue only the vendor that provided security, Contemporary Services Corporation. The law is called the SAFETY Act.

In a post-9/11 era, private security companies faced a new era of liability for acts of terrorism. In response, Congress enacted the Support Anti-Terrorism by Fostering Effective Technologies Act in 2002.

The SAFETY Act limits liability for claims resulting from an "act of terrorism" where qualified security technologies or services are involved. Because CSC provided the security services to a customer, MGM, and CSC has a special designation by DHS, the casino and resort company claims that CSC is a covered seller of services under the SAFETY Act.

The Act creates an exclusive federal cause of action resulting from an "act of terrorism" that may cause a loss to the seller. But under the act, a lawsuit is only permitted against the seller, CSC, and not against the buyers or "downstream" users of CSC's services. MGM claims it is a "buyer" and cannot be sued by anyone injured in the Las Vegas shooting.

The parent company of the Mandalay Bay Resort and Casino and the Route 91 Harvest festival venue, where the October 2017 mass shooting took place, filed the lawsuit because it believes that federal law shields it from liability for the shooting, and it wants a court to say so before the victims have a chance to sue MGM.

If MGM is right, then both the potential plaintiffs and MGM have an interest in knowing sooner, rather than later, who can be named as a defendant, and in what court.

For the victims and future plaintiffs, there are several reasons to oppose this action by MGM. The victims would want to choose their own forum by filing a complaint in the state or federal court of their choosing. In addition, they would want to avoid letting MGM avoid liability before their actual liability, if any, is determined in court, based on the facts and evidence.

While this "lawsuit" by MGM will be perceived as an aggressive, offensive maneuver, it's the opposite. It is really a request to determine the extent of MGM's proposed defense.

## **Teaching Tip 2 (Related to Article 3-“Hate Crimes are Up in America’s 10 Largest Cities. Here’s Why”): FBI-What We Investigate-Hate Crimes**

For information regarding the Federal Bureau of Investigation’s (FBI’s) involvement in investigating hate crimes, including recent hate crime statistics, please refer to the following internet address:

<https://www.fbi.gov/investigate/civil-rights/hate-crimes>



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

## Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapters 2 and 5	Chapter 6	Chapter 3	Chapters 2 and 5
Bennett-Alexander & Hartman, Employment Law for Business	N/A	N/A	N/A	N/A
Kubasek et al., Dynamic Business Law	Chapters 3 and 7	Chapters 6 and 8	Chapters 2 and 6	Chapters 3 and 7
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 6 and 7	Chapter 7	Chapter 2	Chapters 6 and 7
Liuzzo, Essentials of Business Law	Chapters 3 and 4	Chapters 4 and 36	Chapters 2 and 36	Chapters 3 and 4
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 5 and 6	Chapter 6	Chapter 4	Chapters 5 and 6
McAdams et al., Law, Business & Society	Chapters 4 and 7	Chapters 7 and 16	Chapters 2 and 16	Chapters 4 and 7
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 3 and 9	Chapters 9 and 25	Chapters 5 and 25	Chapters 3 and 9
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 4 and 10	Chapters 10 and 12	Chapters 2 and 12	Chapters 4 and 10
Sukys, Brown, Business Law with UCC Applications	Chapters 3 and 6	Chapters 6 and 34	Chapters 1 and 34	Chapters 3 and 6



# Proceedings

A monthly newsletter from McGraw-Hill Education



August 2018 Volume 10, Issue 1

## This Newsletter Supports the Following Business Law Texts:

- Barnes et al., Law for Business, 13<sup>th</sup> Edition ©2018 (1259722325)
- Bennett-Alexander et al., Employment Law for Business, 9<sup>th</sup> Edition ©2019 (1259722333) *New edition now available!*
- Kubasek et al., Dynamic Business Law, 4<sup>th</sup> Edition ©2017 (1259723585)
- Kubasek et al., Dynamic Business Law: The Essentials, 4<sup>th</sup> Edition ©2019 (125991710X) *New edition now available!*
- Liuzzo, Essentials of Business Law, 10<sup>th</sup> Edition ©2019 (1259917134) *New edition now available!*
- Langvardt (formerly Mallor) et al., Business Law: The Ethical, Global, and E-Commerce Environment, 17<sup>th</sup> Edition ©2019 (1259917118) *New edition now available!*
- McAdams et al., Law, Business & Society, 12<sup>th</sup> Edition ©2018 (1259721884)
- Melvin, The Legal Environment of Business: A Managerial Approach, 3<sup>rd</sup> edition ©2018 (1259686205)
- Pagnattaro et al., The Legal and Regulatory Environment of Business, 18<sup>th</sup> Edition ©2019 (1259917126) *New edition now available!*
- Sukys (formerly Brown/Sukys), Business Law with UCC Applications, 14<sup>th</sup> Edition ©2017 (0077733738)

