



# Proceedings

A monthly newsletter from McGraw-Hill Education



December 2019 Volume 11, Issue 5

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## *Dear Professor,*

Happy Holidays, everyone! Welcome to McGraw-Hill Education's December 2019 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 11, Issue 5 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the December 2019 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. A Pennsylvania sexual orientation/gender identity employment discrimination case;
2. A sexual harassment class-action lawsuit filed against McDonald's;
3. A recent bankruptcy filing by Dean Foods, America's largest milk producer;
4. Videos related to a) a "zip line" negligence case filed in Florida and b) the arrest of an Arizona man in connection with a 1979 "cold case" murder of a California woman;
5. An "ethical dilemma" related to California's stand against GM, Chrysler, Toyota, Nissan and other automakers that are aligning with the Trump administration in its battle over emissions rules; and
6. "Teaching tips" related to Article 1 ("Transgender Ex-Cashier Sues Dunkin' Donuts, Saying Managers Let Coworkers and Patrons Harass Her, Then Fired Her") and Article 2 ("McDonald's Workers File Class Action Suit Alleging Culture of Sexual Harassment") of the newsletter.

I wish all of you a safe and enjoyable holiday season!

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## Of Special Interest

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

- 1) A Pennsylvania sexual orientation/gender identity employment discrimination case;
- 2) A sexual harassment class-action lawsuit filed against McDonald's; and
- 3) A recent bankruptcy filing by Dean Foods, America's largest milk producer.

## Hot Topics in Business Law

### Article 1: "Transgender Ex-Cashier Sues Dunkin' Donuts, Saying Managers Let Coworkers and Patrons Harass Her, Then Fired Her"

[https://www.cnn.com/2019/11/13/us/dunkin-donuts-transgender-lawsuit-pennsylvania/?hpt=ob\\_blogfooterold](https://www.cnn.com/2019/11/13/us/dunkin-donuts-transgender-lawsuit-pennsylvania/?hpt=ob_blogfooterold)

According to the article, a transgender woman is suing Dunkin' Donuts and one of its Pennsylvania franchisees after, the woman alleges, managers at a Bethlehem store allowed customers to harass and attack her, then fired her when she complained and left work to protect herself.

The federal civil rights lawsuit, filed recently in Pennsylvania's eastern district, requests a jury trial and unspecified damages of more than \$150,000. It outlines claims of harassment, a hostile work environment, wrongful termination, retaliatory discharge and a failure to accommodate her HIV status, among its 18 counts.

Referred to as Jane Doe in the lawsuit, the plaintiff is described as an HIV-positive woman of color.

Doe worked at the Dunkin' Donuts in the spring of 2018. Before she was fired, she alleges in the lawsuit, she endured epithets such as "tranny," "n\*\*\*a" and "f\*ggot," while her requests that customers, superiors and coworkers use her preferred name and pronouns were ignored. A shift leader also instructed her to stop using the women's bathroom, the lawsuit says.

The alleged harassment reached its peak when three customers, including a former coworker, berated her with slurs and threatened to kill her, the lawsuit says. The former colleague also shoved her, it says.

Doe called her manager, who told her to go home if she didn't feel safe, which she did, according to the lawsuit. Days later, it says, she was fired.

The company that owns the franchise, Triangle Doughnuts LLC, said she was fired for violating the company's time-off policy, the lawsuit says.

Two numbers linked to Triangle Doughnuts were both disconnected. Another number for Triangle's owner, listed in a Dunkin' Donuts franchise disclosure document, was also disconnected.



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Dunkin' Donuts spokeswoman Michelle King declined to comment on the litigation, but said Dunkin' Donuts locations are independently owned and that neither the plaintiff nor defendants are employed by the company. King declined to provide contact information for Triangle Doughnuts' offices.

"We and our franchisees pride ourselves in our diverse workforces, and we strive to create inclusive work cultures. Our franchisees are required by their franchise agreement to comply with all applicable laws," a corporate statement said.

Bethlehem attorney Victor Scomillio, who court documents say represents the defendants, did not return a phone message.

Shortly after Doe took a cashier position at Bethlehem's Dunkin' Donuts on Fourth Street in or around March 2018, a shift leader called her by her birth name and used male pronouns to describe her, even after Doe asked her to stop, the lawsuit says. The shift leader also referred to Doe as "dude," it says.

The assistant manager and manager also misgendered her, despite her repeated requests to stop, Doe alleges.

Customers did the same, and when Doe corrected them, one customer complained to management that patrons shouldn't have to use Doe's preferred pronouns because Doe was "not a girl," which managers did not contest, the lawsuit says.

In another incident, patrons also said they didn't want "him" serving them, according to the lawsuit. Rather than defend their employee, the shift leader and assistant manager moved her to the back of the shop, out of view of the customers, the lawsuit says.

After the shift leader told Doe to stop using the women's bathroom -- saying, "They don't feel comfortable with you going in there" -- the harassment intensified, the lawsuit alleges.

A coworker "tried to get in Doe's face aggressively," called her "ni\*\*a" and threatened to beat her up, according to the lawsuit. Customers, including a former coworker, subjected Doe to homophobic slurs and said, "I'll kill your b\*tch a\*\*," it says.

After the former coworker pushed her, Doe reported the incident to police and called her manager, who told her, "If you don't feel safe, go home," the lawsuit says. Doe did just that, it says.

Capt. Benjamin Hackett of the Bethlehem Police Department said he could not find an incident report from April or May 2018 matching Doe's complaint, but he noted that this particular Dunkin' Donuts is situated in a bar district and is the subject of numerous calls to police. Without Doe's actual name, it would be difficult to find a report, he said.



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In the days after Doe called police and left work, the lawsuit says, the manager informed Doe she no longer worked at Dunkin'.

After Doe filed a complaint with the Equal Employment Opportunity Commission, the manager told the commission that employees shouldn't correct customers because the customer is always right, the lawsuit says.

"I did not and will not correct my customers," the manager told the commission, according to the lawsuit.

Triangle Doughnuts told the commission that Doe was fired for violating the company policy that employees must request time off two weeks in advance, the lawsuit says.

Doe does not believe this is the actual cause for her firing, according to the lawsuit. Rather, she feels her discharge was motivated by her sex, her gender identity and/or gender stereotyping, and her attempts to rebuff customers and fellow employees, the lawsuit says.

Triangle Doughnuts' time-off policy is problematic, however, according to the lawsuit, because HIV-positive people may face complications they can't foresee two weeks in advance. Triangle also has no anti-retaliation policy, the lawsuit says.

The EEOC sent Doe a notice of her right to sue her former employer last month, saying it was "terminating the processing of this charge."

Asked to elaborate, spokesman James Ryan said EEOC complaints are confidential and the commission is prohibited from commenting on them. He did not provide an answer to a follow-up email requesting information on how the commission decides to terminate a charge and what a termination entails.

## Discussion Questions

1. Is the type of discrimination described in the article specifically prohibited by the Civil Rights Act of 1964? Explain your response.

*Discrimination based on gender identity or sexual orientation is not currently prohibited by the Civil Rights Act of 1964, although the United States Supreme Court has taken up the issue in its current term. The U.S. Supreme Court cases concerning gay rights are Bostock v. Clayton County, Ga. and Altitude Express Inc. v. Zarda. The case on transgender rights is R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission.*

*For further information regarding the Supreme Court's consideration of the issue, please refer to the following internet address:*



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<https://www.nytimes.com/2019/10/08/us/politics/supreme-court-gay-transgender.html>

2. If the type of discrimination described in the article is not specifically prohibited by the Civil Rights Act of 1964, is it proscribed by any other law(s)? Explain your response.

*The subject case arose in the state of Pennsylvania. The Pennsylvania Human Relations Commission (PHRC) has issued new guidance announcing that it takes the position that employment discrimination based on LGBT status is prohibited by the Pennsylvania Human Relations Act (PHRA). For further information regarding the PHRC's stance on discrimination based on LGBT status, please refer to Teaching Tip 2 article ("New Pa. Guidance Interprets Anti-Discrimination Law to Cover LGBT Individuals").*

3. If the type of discrimination described in the article is not specifically prohibited by the Civil Rights Act of 1964, should it be? Explain your response.

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

## Article 2: "McDonald's Workers File Class Action Suit Alleging Culture of Sexual Harassment"

<https://www.forbes.com/sites/ruthumoh/2019/11/12/mcdonalds-workers-file-class-action-suit-alleging-culture-of-sexual-harassment/#6f1e9b497034>

According to the article, Michigan McDonald's workers filed a class action lawsuit recently, alleging that the company has a systemic sexual harassment problem. The class action suit was filed with support from the TIME'S UP Legal Defense Fund and backed by the American Civil Liberties Union and the labor group Fight for \$15.

Jenna Ries, the former McDonald's worker who is the named plaintiff in the suit, also filed charges with the U.S. Equal Employment Opportunity Commission, a precursor to filing civil rights charges in federal court.

In one alleged incident, a manager cornered Ries, 32, in a walk-in freezer, pinning her against a wall. "I lived in constant fear of losing my job," she said on a Tuesday press call.

The lawsuit comes a little more than a week after the fast-food restaurant ousted CEO Steve Easterbrook for having a relationship with a subordinate employee, which violates the company's non-fraternization policy.

McDonald's board concluded that the relationship between Easterbrook and the unidentified staffer was consensual, the *Wall Street Journal* reported, but that it raised questions about the CEO's judgment regarding his personal affairs and corporate conduct. As part of his exit package, Easterbrook could pocket as much as \$85 million worth of stock and options.



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The class action lawsuit is the latest in a string of sexual harassment complaints against the burger chain. At least 50 workers have filed sexual harassment charges against McDonald's in state courts or with the U.S. Equal Employment Opportunity Commission during the past three years.

In May, the American Civil Liberties Union and Fight for \$15 announced 23 new complaints against McDonald's—20 of them filed with the U.S. Equal Employment Opportunity Commission. Three of the complaints were filed as civil rights lawsuits, and two stemmed from previous allegations.

Workers at the fast-food restaurant went on strike in September 2018 and protested again in May 2019 to draw attention to harassment, calling on the company to do more to prevent it.

“McDonald's is committed to ensuring a harassment and bias-free workplace,” Easterbrook wrote in a May 2019 letter addressed to author and actress Padma Lakshmi, who attended a Chicago rally in front of the company's headquarters.

The company, which has more than 14,000 locations in North America, has long held that it is not responsible for the labor practices and treatment of employees at its franchisees' stores.

The company's position regarding its franchisees is “ridiculous,” says Eve Cervantez, an attorney with the Altshuler Berzon law firm, which represents many of the McDonald's workers who have filed complaints in recent years.

Workers apply for jobs at McDonald's either through its website or in stores that are plastered with McDonald's logos, she says, and they are led to believe that they will work at a big corporation with a human resources department ready to help them if something illegal happens.

A McDonald's spokesperson told *Forbes* that all franchisees must fully comply with laws on sexual harassment and that, under their franchise agreements, failure to do so results in serious consequences, up to and including revocation of the franchise.

The National Labor Relations Board is currently reviewing a case that could decide whether McDonald's is a joint employer of its franchisee staff. If it is found to be a joint employer, that would mean that the company bears some responsibility for working conditions.

Lawmakers have also weighed in on McDonald's handling of sexual harassment. Since June, more than 56 members of Congress and 115 local elected officials have signed letters demanding that McDonald's meet with workers to craft tougher policies aimed at stamping out harassment.

The restaurant industry has historically been a hotbed of harassment. A 2016 survey of female fast-food workers in non-managerial positions found that 40% of them had experienced unwanted sexual behaviors on the job, and women of color were especially likely to be subjected to retribution for speaking up about unwanted sexual attention. Thirty-four percent of African-American women and



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26% of Latinas reported at least one negative action, compared with 17% of white women, according to the survey.

McDonald's has taken some measures to tackle the problem. During the past year, it has introduced harassment training for its U.S. franchisees; released a more detailed policy regarding discrimination, harassment and retaliation; and launched a free help hotline for employees. In August, McDonald's announced that it would expand its nationwide staff training program, starting in October.

"There is a deeply important conversation around safe and respectful workplaces in communities throughout the U.S. and around the world, and McDonald's is demonstrating its continued commitment to this issue through the implementation of Safe and Respectful Workplace Training in 100% of our corporate-owned restaurants," a company spokesperson told *Forbes*.

Despite the company's assurances, employees and critics maintain that McDonald's anti-harassment efforts still fall short.

The concept of consequences for those who violate discrimination and harassment policies is "one of the most glaring flaws in the supposed remedies that McDonald's has put forward because these new measures are mandatory only for corporate-owned stores," says Gillian Thomas, a senior staff attorney with the ACLU's Women's Rights Project. "For the 95% of the 14,000 McDonalds locations that are franchise stores, these highly touted reforms are merely 'encouraged.'"

## Discussion Questions

1. As the article indicates, filing charges with the United States Equal Employment Opportunity Commission (EEOC) is a precursor to filing civil rights charges in federal court. Explain what this means.

*This simply means that before the plaintiff can file a civil rights-related case in federal court, he or she must first file a complaint with the United States Equal Employment Opportunity Commission (EEOC). In response to the filing, the EEOC will investigate the complaint to determine if it has merit, and if the EEOC determines that the case indeed has merit, it will issue a "right-to-sue" letter to the plaintiff, giving the plaintiff the procedural right to file the case in federal court.*

2. What is a class action lawsuit?

*In a class action lawsuit, a group of plaintiffs combine forces to pursue a complaint against the defendant(s). This is based on the notion that there is "power in numbers," i.e., that in pursuing the case, the plaintiffs are stronger together than they would be individually. For a class action lawsuit to proceed, the court must first determine that the plaintiffs have sufficient "commonality of interest," i.e., that their claims are similar enough to combine together in one case.*



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3. As the article indicates, McDonald's (the franchisor), which has more than 14,000 locations in North America, has long held that it is not responsible for the labor practices and treatment of employees at its franchisees' stores. Is that a correct assessment of its potential liability in this case? Why or why not?

*Not necessarily. As the article indicates, workers apply for jobs at McDonald's either through its website or in stores that are plastered with McDonald's logos, and they are led to believe that they will work at a big corporation with a human resources department ready to help them if something illegal happens. As the article further indicates, the National Labor Relations Board is currently reviewing a case that could decide whether McDonald's is a joint employer of its franchisee staff. If it is found to be a joint employer, that would mean that the company bears some responsibility for working conditions.*

### **Article 3: "America's Largest Milk Producer, Dean Foods, Files for Bankruptcy"**

<https://abcnews.go.com/Business/americas-largest-milk-producer-dean-foods-files-bankruptcy/story?id=66947892>

According to the article, Dean Foods, America's largest milk producer and home to multiple well-known brands, recently filed for bankruptcy protection.

The Dallas-based company announced it initiated Chapter 11 proceedings "to enable us to continue serving our customers and operating as normal as we work toward the sale of our business," Eric Beringause, who recently joined the Dean Foods as president and CEO, said in a statement.

Dean Foods products include Dairy Pure, TruMoo, Land O'Lakes, Lehigh Valley Dairy Farms and Oak Farms.

Its bankruptcy filing comes amid a sour year for the milk industry.

Last year, total sales dropped \$1.1 billion, according to the Dairy Farmers of America. The net sales for 2018 were \$13.6 billion, compared to \$14.7 billion in 2017.

However, sales of dairy alternative products have been soaring.

Over a 52-week period that ended in June 2018, oat milk and non-dairy milk blends saw the highest growth, with dollar sales up 23% and 51%, respectively.

Dean Foods announced that it had received around \$850 million in debtor-in-possession financing, a type of financing for companies that are financially distressed and in bankruptcy, from some existing lenders.



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A potential sale of "substantially all assets" to Dairy Farmers of America, Inc. has been discussed, according to Dean Foods. If both parties reach an agreement, the sale would allow for higher or otherwise better offers in the bankruptcy.

Dean Foods will operate normally amid the reorganization efforts.

The company has approximately 15,000 employees across the country.

## Discussion Questions

1. What is Chapter 11 bankruptcy?

*Chapter 11 bankruptcy is reorganization bankruptcy for a business. Through the Chapter 11 reorganization process, business debts are not typically forgiven; instead, the debt obligation is restructured through a repayment plan that is more palatable to the debtor in terms of periodic payments.*

2. How does Chapter 11 bankruptcy compare to Chapter 7 bankruptcy?

*Chapter 7 bankruptcy is liquidation bankruptcy for a business (or an individual). Through the liquidation process, upon distribution of the bankruptcy estate to eligible creditors, any remaining debts are discharged, and the business ceases to exist as an ongoing concern.*

3. What is "debtor-in-possession" financing?

*Debtor-in-possession (DIP) financing is a special form of financing provided for companies in financial distress, typically during restructuring under Chapter 11 corporate bankruptcy law. Usually, this debt is considered senior to all other debt, equity, and any other securities issued by a company, placing the new financing ahead of a company's existing debts in terms of priority for repayment.*

*DIP financing may be used to keep a business operating until it can be sold as an ongoing concern if this is likely to provide a greater return to creditors than the firm's closure and corresponding liquidation of assets. It may also give a troubled company a "fresh start."*



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## Video Suggestions

### **“Mother Whose 10-Year-Old Fell from Zip Line Files Lawsuit in Florida”**

[https://abcnews.go.com/US/mother-10-year-fell-zip-line-files-lawsuit/story?id=66768903&cid=clicksource\\_4380645\\_null\\_headlines\\_headline](https://abcnews.go.com/US/mother-10-year-fell-zip-line-files-lawsuit/story?id=66768903&cid=clicksource_4380645_null_headlines_headline)

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

### **“Mother Whose 10-Year-Old Fell from Zip Line Files Lawsuit in Florida”**

According to the article, the mother of a 10-year-old boy who suffered serious injuries after falling from a zip line in September has filed a lawsuit.

Kimberly Barnes, of Lakeland, Florida, is suing Urban Air Adventure Park, also in Lakeland. The suit claims employees failed to check or secure the boy's harness at safety checkpoints before he went on the ride.

"He went to go have fun that day," Barnes said. "He was with his friend to celebrate his friend's birthday, and maybe literally an hour, hour and a half, after they were open, I got a phone call that he had fallen from a harness."

"He was going to be airlifted because it was a trauma situation at that point, and that's when I lost it," she added.

According to a statement from the family's law firm, Morgan & Morgan, the boy's harness gave way seconds after leaving the "Sky Ride" platform, and he fell over 20 feet, landing on cement.

He was airlifted to a hospital, where he spent five days, with serious injuries. He required surgery for broken bones, a collapsed lung and a brain injury.

Barnes said that her son is still recovering, adding that his behavior and attitude have changed and he still misses school days when he cannot tolerate the pain.

"In this case, three different people supposedly trained on safety procedures failed to take the necessary steps to ensure our client's safety, and the result



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was horrific," the family's attorneys said in a statement. "But this isn't just employee failure; we believe it was the lack of proper training and oversight by management as well a failure to have appropriate safety measures in place in the event of employee error."

The Florida Department of Agriculture told the media that the agency's inspector "noted no deficiencies in the equipment at the time of the incidents nor did Urban Air have a history of device deficiencies during prior inspections of the facility. The report indicates that the incident was a result of operator error."

## Discussion Questions

1. Define negligence. Does the evidence described in the article definitively prove negligence? Why or why not?

*Negligence is defined as the failure to do what a reasonable person would do under the same or similar circumstances. In order to prove negligence, the plaintiff must prove by the greater weight of the evidence:*

- a. That the defendant owed the plaintiff a duty of care;
- b. That the defendant breached the duty of care;
- c. That the defendant caused the plaintiff harm; and
- d. That the plaintiff experienced damages (physical and/or economic) as a result.

*In terms of whether the facts presented in the article prove negligence, student responses may vary, but in your author's opinion, the facts present a strong case of negligence.*

2. Is this a *res ipsa loquitur* negligence case? Explain your response.

*At common law, res ipsa loquitur is a doctrine that infers negligence from the very nature of an accident or injury in the absence of direct evidence on how any defendant behaved. Based on the facts presented in the article, this appears to be a strong "res ipsa" case. Ordinarily, an accident like this would not occur were it not for the negligence of the defendant.*

3. Is this an assumption of the risk case? Why or why not?

*Assumption of the risk is a defense to negligence liability. It contends that the plaintiff actively, voluntarily, and willingly proceeded in the face of danger, with potential harm being foreseeable. This is not an assumption-of-the-risk case, since the plaintiff was ten (10) years old at the time of the accident. Ordinarily, the law holds that a child does not assume the risk, since a child cannot contemplate the magnitude of the danger.*



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## Video 2: "Arizona Man, 73, Arrested in 1979 Cold Case Murder of California Woman"

[https://abcnews.go.com/US/arizona-man-73-arrested-1979-cold-case-murder/story?id=67063768&cid=clicksource\\_4380645\\_null\\_headlines\\_hed](https://abcnews.go.com/US/arizona-man-73-arrested-1979-cold-case-murder/story?id=67063768&cid=clicksource_4380645_null_headlines_hed)

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

### "Arizona Man, 73, Arrested in 1979 Cold Case Murder of California Woman"

According to the article, investigators may have solved a 40-year-old murder with the arrest of a 73-year-old Arizona man.

Charles Gary Sullivan was charged recently with the open murder of 21-year-old Julia Woodward of San Rafael, California, 40 years after the woman's bludgeoned body was discovered in a shallow grave near Reno, Nevada, authorities said.

Sullivan is scheduled to be arraigned in Washoe District Court on November 19, according to authorities.

Woodward had left her family's California home on February 1, 1979, to go job hunting in Nevada. Two months after her arrival, her body was found in a canyon in Hungry Valley, about 20 miles north of Reno.

Police said her eyes were sealed shut with Band-Aids, her legs were zip-tied, and it appeared that a blow to the head killed her.

"It's like if your child had cancer, you would know everything there is to know about the disease," her mother, Cecily O'Connor, told the media when detectives re-opened the case in 2015. "In this case, you just want to know what happened. You want to be there with her in your mind and think about what really happened."

Using DNA tools that were unavailable four decades ago, investigators tied Sullivan to Woodward's death, according to an indictment filed in August and unsealed this week.

"The defendant, Charles Gary Sullivan, in or about 1979, within the County of Washoe, State of Nevada, did willfully, feloniously, without authority of law, and with premeditation, deliberation, and malice aforethought, and/or in the perpetration or attempted perpetration of a sexual assault, kill Julia Woodward by striking her with a rock," the indictment said.

Sullivan is being held without bail, according to jail records.



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This was not Sullivan's first brush with the law relating to a crime against a woman. Sullivan, according to court documents, was charged, but not convicted, with kidnapping a 25-year-old California woman. A Nevada County, California jury did find Sullivan guilty of false imprisonment and making a criminal threat.

Sullivan, court documents read, picked up a woman hitchhiking from her aunt's funeral in Utah to Yuba City, California. Instead of taking her there, he allegedly zip-tied her wrists and ankles and took her to a remote area off the interstate. The woman was able to escape and fled to the road and flagged down two men driving by on an ATV.

## Discussion Questions

1. This case dates to 1979. Does the statute of limitations not prohibit such claims from being prosecuted? Why or why not?

*Since this case involves murder, the statute of limitations does not prohibit the claim from being prosecuted. Murder is the only crime that does not carry with it a corresponding statute of limitations period.*

2. In your reasoned opinion, if a case is forty years old, can the prosecution prove guilt beyond reasonable doubt? Why or why not?

*Although student responses may vary in response to this question, in your author's opinion, the prosecution can prove guilt beyond reasonable doubt in a forty-year-old case. The DNA results in this case can prove guilt beyond reasonable doubt, given the scientific accuracy of such testing.*

3. As the article indicates, according to court documents, Charles Gary Sullivan was previously charged (but not convicted) with kidnapping a 25-year-old California woman. In the case, a California jury did find Sullivan guilty of false imprisonment and making a criminal threat. In the subject case, is this evidence admissible against the defendant in court? Why or why not?

*If the prosecution seeks to introduce such evidence, it will be within the discretion of the trial court judge to determine whether such evidence is admissible. In making such a decision, the judge must determine that the probative value of the evidence outweighs the potentially prejudicial effect such evidence will have on the jury's decision-making in the subject case.*



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## Ethical Dilemma

### Of Special Interest

This section of the newsletter addresses California's stand against GM, Chrysler, Toyota, Nissan and other automakers that are aligning with the Trump administration in its battle over emissions rules.

### California Won't Buy Cars from GM, Chrysler or Toyota Because They Sided with Trump over Emissions

<https://www.cnn.com/2019/11/19/business/california-limits-purchase-automakers-emissions-rules/index.html>

According to the article, the state of California is taking aim at GM, Chrysler, Toyota, Nissan and other automakers that are aligning with the Trump administration in its battle over emissions rules.

California issued a statement recently saying that as of January the state would only buy vehicles from automakers that recognize the California Air Resources Board's authority to set tough greenhouse gas emissions standards for vehicles. California also pledged only to do business with automakers that committed to stringent emissions reduction goals.

Separately, the state also said it will no longer buy sedans that are powered only by internal combustion engines, no matter who manufactures the car. It will buy only plug-in electric or hybrid sedans, although California would make an exception for certain public safety vehicles. That rule does not apply to SUV or truck purchases.

"Car makers that have chosen to be on the wrong side of history will be on the losing end of California's buying power," said California Governor Gavin Newsom in a statement. "In court, and in the marketplace, California is standing up to those who put short-term profits ahead of our health and our future."

General Motors, Fiat Chrysler, Toyota and Nissan, among others, formed a group to intervene in federal court cases to argue that there should be a single set of emissions and mileage rules nationwide. Currently, the Trump administration and the Environmental Protection Agency are seeking to strip the right of California to set tougher emissions rules for itself and for 13 other states that follow the rules California sets. The 14 states that follow California's rules have about a third of the US population.

California's ban could take a bite out of affected automakers' sales, particularly GM and Chrysler. Between 2016 and 2018, California purchased \$58.6 million in vehicles from GM, \$55.8 million from Fiat Chrysler, \$10.6 million from Toyota and \$9 million from Nissan, according to Reuters.



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Four automakers — Ford, Volkswagen, Honda and BMW — have reached a deal with CARB to cut emissions through improved fuel mileage and use of electric vehicles, even as the EPA rolls back national rules to cut emissions. Those automakers could benefit from California's rules on who it will buy from in future. Tesla (TSLA), the only California-based automaker, makes nothing but electric vehicles and thus also complies with the rules.

The automakers that are pushing for a single set of emissions rules say they believe the EPA and California should reach a deal that both sides can live with. They say in court filings they are willing to have rules more stringent than current mileage and emissions standards, but they're not able to meet the ambitious targets that California has set for the future.

Although details of California's vehicle purchase rules are not yet spelled out, they could prevent the state from purchasing all-electric vehicles made by the automakers challenging it court, including GM's Chevrolet Bolt, in favor of a gasoline-and-electric hybrid vehicle made by Ford, which does not currently have any electric-only vehicles available for sale. Volkswagen does have an electric version of the Golf available for sale in California, but it is imported and not made at its sole US plant in Tennessee.

"Removing vehicles like the Chevy Bolt and prohibiting GM and other manufacturers from consideration will dramatically reduce California's choices for affordable, American-made electric vehicles and limit its ability to reach its goal of minimizing the state government's carbon footprint, a goal that GM shares," GM said in a statement. "GM is committed to an all-electric future which is why we support California's initiative to electrify their fleet."

Fiat Chrysler has only one all-electric vehicle, an electronic version of the Fiat 500 that is built in Mexico. And that is set to be discontinued at the end of the current model year. But it said it has committed to spending \$10 billion to develop 30 vehicles with some form of electrification by 2022. "Fiat Chrysler fully embraces the goal of reducing vehicle emissions to ensure an environmentally sustainable future," it said.

## Discussion Questions

1. In your opinion, are emissions more appropriately regulated by the federal government or by state governments? Explain your response.

*This is an opinion question, so student responses will likely vary. To combat its severe pollution problem, California has enforced heightened emissions standards since the 1970s, and the government deferred to California's discretion for over forty (40) years. Exclusive federal control of automobile emissions would be a dramatic "about-face" in terms of shared authority with the states.*

2. In your opinion, who will prevail in the litigation pitting the Trump administration against the state of California?



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*This is an opinion question, so student responses will likely vary. As indicated in response to Ethical Dilemma Discussion Question 1, to combat its severe pollution problem California has enforced heightened emissions standards since the 1970s and the federal government deferred to California's discretion for over forty (40) years. Exclusive federal control of automobile emissions would be a dramatic "about-face" in terms of shared authority with the states. The court may very well honor past practices and the status quo.*

3. Is the essence of this case fundamentally about law, or is it about ethics? Explain your response.

*In your author's opinion, this case involves consideration of both law and ethics.*



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## Of Special Interest

This section of the newsletter will assist you in addressing Article 1 ("Transgender Ex-Cashier Sues Dunkin' Donuts, Saying Managers Let Coworkers and Patrons Harass Her, Then Fired Her") and Article 2 ("McDonald's Workers File Class Action Suit Alleging Culture of Sexual Harassment") of the newsletter.

## Teaching Tips

### **Teaching Tip 1 (Related to Article 1—"Transgender Ex-Cashier Sues Dunkin' Donuts, Saying Managers Let Coworkers and Patrons Harass Her, Then Fired Her"): "New Pa. Guidance Interprets Anti-Discrimination Law to Cover LGBT Individuals"**

<https://www.pepperlaw.com/publications/new-pa-guidance-interprets-anti-discrimination-law-to-cover-lgbt-individuals-2018-09-27/>

For some interesting information regarding the state of Pennsylvania's position regarding employment discrimination based on LGBT status, please see the following article:

### **"New Pa. Guidance Interprets Anti-Discrimination Law to Cover LGBT Individuals"**

In a significant development for Pennsylvania employers, the Pennsylvania Human Relations Commission (PHRC) has issued new guidance announcing that it takes the position that employment discrimination based on LGBT status is prohibited by the Pennsylvania Human Relations Act (PHRA).

Public support for LGBT rights has risen dramatically in recent years, but laws protecting LGBT individuals have lagged behind public opinion. Only 21 states have laws that prohibit private sector employment discrimination based on sexual orientation and gender identity. Pennsylvania is not one of those states.

The PHRA prohibits employers from discriminating against employees or applicants for employment on the basis of certain protected traits, including sex. The Act also prohibits discrimination in public accommodations, housing and commercial property. The Act does not explicitly prohibit discrimination based on LGBT status, and no Pennsylvania reported case has held that the PHRA prohibits discrimination based on LGBT status. The Pennsylvania legislature has considered and rejected bills that would have explicitly protected LGBT status under the PHRA.

The PHRC, however, recently released new guidance expanding the definition of the term "sex" under the Act to include LGBT status. The PHRC is an agency of the executive branch of the Pennsylvania government under the direction of Governor Tom Wolf. The new PHRC guidance broadens the



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definition of “sex” under the Act to include “sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and/or gender expression depending on the individual facts of the case.” As a result, the PHRC now takes the position that the Act prohibits “discrimination on the basis of sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and gender expression.” The guidance announces that the PHRC will accept sex discrimination complaints from individuals alleging discrimination based on their LGBT status, and employers will be forced to defend those complaints.

The PHRC’s issuance of guidance is similar to the approach taken by the U.S. Equal Employment Opportunity Commission (EEOC) with respect to the same issue under the federal nondiscrimination law, Title VII of the Civil Rights Act of 1964. Title VII does not explicitly prohibit LGBT status discrimination. Since Title VII was enacted over 50 years ago, federal courts have frequently concluded that Title VII *does not* protect employees from discrimination based on LGBT status.<sup>3</sup> Bills introduced in Congress to amend Title VII to specifically include LGBT status in the definition of “sex” have failed to pass.

The Obama-era EEOC, however, issued numerous decisions and guidance stating that a claim of discrimination based on sexual orientation is a form of discrimination on the basis of sex under Title VII.<sup>4</sup> The U.S. Courts of Appeals for the Second, Sixth and Seventh Circuits have agreed with the EEOC and held that Title VII prohibits LGBT status discrimination, but other federal courts have disagreed.<sup>5</sup> The U.S. Supreme Court will likely make the ultimate determination on the issue.

It is likely that some Pennsylvania employers will challenge the PHRC’s new interpretation expanding the definition of “sex” under the Act. Perhaps anticipating one type of challenge, the PHRC notes that employers “are free to avail themselves of the protections found within [Pennsylvania’s] Religious Freedom Protection Act” (RFPA) if they believe that enforcement of the PHRC’s guidance against them will violate their free exercise of religion. The guidance devotes nearly two of its six pages to describing how to challenge a PHRC action under the RFPA.

Pennsylvania employers should consider taking the following steps to prepare for the PHRC’s enforcement of its interpretation of discrimination based on sex:

- revise nondiscrimination and equal employment opportunity policies and practices to ensure that sexual orientation, transgender identity, gender transition, gender identity and gender expression are included as protected classes
- conduct nondiscrimination training and anti-harassment training for employees and supervisors that covers discrimination and harassment based on LGBT status
- be cognizant of whether a reduction in force or particular employment policy may have an adverse impact on LGBT individuals
- accommodate employees in the process of a gender transition



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- respect the gender pronouns preferred by an individual employee
- remain just as vigilant about inappropriate behaviors targeted at an individual's sexual orientation, transgender identity, gender transitioning status, gender identity and gender expression as the employer would be for sex, race, age, disability and other protected traits
- consult legal counsel if considering a challenge to the guidance's applicability to a particular employer or factual scenario.

## **Teaching Tip 2 (Related to Article 2—"McDonald's Workers File Class Action Suit Alleging Culture of Sexual Harassment"): "Facts about Sexual Harassment"**

For some interesting information regarding the law pertaining to sexual harassment, please see the following Equal Employment Opportunity Commission (EEOC) internet address:

<https://www.eeoc.gov/eeoc/publications/fs-sex.cfm>



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

	<b>Hot Topics</b>	<b>Video Suggestions</b>	<b>Ethical Dilemma</b>	<b>Teaching Tips</b>
<b>Barnes et al., Law for Business</b>	Chapters 25 and 44	Chapter 5	Chapter 3	Chapter 25
<b>Bennett-Alexander &amp; Hartman, Employment Law for Business</b>	Chapters 1, 3, 9 and 10	N/A	N/A	Chapters 1, 3, 9 and 10
<b>Kubasek et al., Dynamic Business Law</b>	Chapters 32 and 43	Chapter 7	Chapter 2	Chapter 43
<b>Kubasek et al., Dynamic Business Law: The Essentials</b>	Chapters 19 and 24	Chapter 6	Chapter 2	Chapter 24
<b>Liuzzo, Essentials of Business Law</b>	Chapters 21 and 33	Chapter 3	Chapter 2	Chapter 33
<b>Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment</b>	Chapters 30 and 51	Chapter 5	Chapter 4	Chapter 51
<b>McAdams et al., Law, Business &amp; Society</b>	Chapters 13 and 15	Chapter 4	Chapter 2	Chapter 13
<b>Melvin, The Legal Environment of Business: A Managerial Approach</b>	Chapters 12 and 20	Chapter 22	Chapter 5	Chapter 12
<b>Pagnattaro et al., The Legal and Regulatory Environment of Business</b>	Chapters 18 and 20	Chapter 13	Chapter 2	Chapter 20
<b>Sukys, Brown, Business Law with UCC Applications</b>	Chapters 21 and 23	Chapter 5	Chapter 1	Chapter 23



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## 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)
- Kubasek et al., Dynamic Business Law, 4<sup>th</sup> Edition ©2017 (1259723585) *New edition available for Summer/Fall 2019 use*
- Kubasek et al., Dynamic Business Law: The Essentials, 4<sup>th</sup> Edition ©2019 (125991710X)
- Liuzzo, Essentials of Business Law, 10<sup>th</sup> Edition ©2019 (1259917134)
- Langvardt (formerly Mallor) et al., Business Law: The Ethical, Global, and E-Commerce Environment, 17<sup>th</sup> Edition ©2019 (1259917118)
- 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)
- Sukys (formerly Brown/Sukys), Business Law with UCC Applications, 14<sup>th</sup> Edition ©2017 (0077733738) *New edition available for Summer/Fall 2019 use*

