



# Proceedings

A monthly newsletter from McGraw-Hill Education



January 2020 Volume 11, Issue 6

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## *Dear Professor,*

Happy New Year, everyone! Welcome to McGraw-Hill Education's January 2020 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 11, Issue 6 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the January 2020 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 A United States Supreme Court case addressing a recently-repealed New York City gun restriction;
2. The United Nations' recent climate conference in Madrid, Spain;
3. The relationship between Wall Street and sports gambling;
4. Videos related to a) Michigan's recent legalization of recreational marijuana and b) the lab-grown diamond industry;
5. An "ethical dilemma" related to Facebook's refusal to remove political advertisements from its social network; and
6. "Teaching tips" related to the Ethical Dilemma ("Facebook's Mark Zuckerberg Says the Social Network Should Not Be 'Censoring Politicians'") of the newsletter.

I wish all of you the very best in 2020!

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## Of Special Interest

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

- 1) A United States Supreme Court case addressing a recently-repealed New York City gun restriction;
- 2) The United Nations' recent climate conference in Madrid, Spain; and
- 3) The relationship between Wall Street and sports gambling.

## Hot Topics in Business Law

### Article 1: "Supreme Court Focuses on Repeal of New York City Gun Restrictions That Could Moot Second Amendment Case"

<https://www.usatoday.com/story/news/politics/2019/12/02/second-amendment-supreme-court-new-york-city/2586378001/>

According to the article, the most significant Second Amendment case to reach the United States Supreme Court in nearly a decade appeared to fizzle somewhat recently as the justices focused on whether a restriction's repeal makes the issue moot.

Chief Justice John Roberts and a silent Associate Justice Brett Kavanaugh emerged as the likely wild cards in the debate over a New York City rule on transporting legally owned guns that has been replaced.

Because the city no longer blocks firearms owners from taking their guns to shooting ranges or second homes outside the city, the court's four liberal justices seemed inclined to declare the case closed. But several conservative justices said it remains unclear what's allowed and what is not.

"They didn't get all that they wanted," Associate Justice Samuel Alito said in reference to the gun owners who brought the case. While coffee and bathroom breaks apparently are allowed en route to specified locations outside city limits, he said, "It must be a direct trip. It can't include an hour spent with your mother."

The court's liberal justices said that's a question for another day. As things stand now, Associate Justice Sonia Sotomayor said, "the other side has thrown in the towel."

"You're asking us to opine on a law that's not on the books anymore," Sotomayor said.

While the New York City rule was an outlier among gun control restrictions, the high court's willingness to hear the case signaled the potential for a blockbuster ruling that extends gun rights outside the home, or one that makes local and state limitations harder to justify.



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Both Paul Clement, the lawyer for the New York State Rifle & Pistol Association, and Jeffrey Wall, the Justice Department's principal deputy solicitor general, began their turns at the lectern by citing "text, history and tradition" to defend Second Amendment rights. Wall said lower courts have used that to give "thumbs up" to restrictions.

The "text, history and tradition" phrase is one that Kavanaugh used as a federal appeals court judge when dissenting from a ruling that upheld the District of Columbia's ban on semi-automatic rifles and its firearms registration requirements. That seemed to indicate he would favor expanding gun rights, but his position on whether the new case remains ripe was unclear.

If the court declares the case moot, there are more cases in the pipeline, including challenges to permitting requirements for carrying firearms in public in New Jersey and parts of Massachusetts. A federal appeals court struck down Washington, D.C., restrictions in 2017, creating a split among lower courts that eventually may get the Supreme Court's attention.

Backed by the National Rifle Association and the Trump administration, the challengers to New York's abandoned restrictions are hoping the high court takes a stand this time. That would give them a chance to win the biggest Second Amendment victory since landmark rulings a decade ago affirmed the right to keep guns at home for self-defense.

Since its 2008 and 2010 rulings striking down gun restrictions in the District of Columbia and Chicago, the court has refused to hear dozens of cases challenging lesser limits on who can own what types of guns, where they can be taken, what requirements must be met and more. During that time, lower courts have resolved more than 1,000 Second Amendment cases, upholding many gun control measures.

New York City's rule barred licensed handgun owners from taking their guns beyond its five boroughs, even to second homes or shooting ranges. Federal district and appeals courts upheld the 18-year-old rule.

Gun control groups such as Brady, Everytown for Gun Safety and the Giffords Law Center to Prevent Gun Violence lobbied for the city and state to eliminate the rule rather than test it at the more conservative Supreme Court. They feared a decision that would expand public carry rights elsewhere, including to nine states that give law enforcement officials discretion to deny licenses: California, New York, New Jersey, Massachusetts, Maryland, Connecticut, Rhode Island, Delaware and Hawaii.

Rather than fight it out in court, the city repealed the rule, and the state replaced it with a statute that permits the previously banned transportation of firearms. But Clement argued that the city could reinstate the restrictions, while gun owners still could be at risk for past violations and for what Alito called "non-direct" transporting of firearms.



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Wall, representing the federal government, raised a different reason to keep the case alive: protecting gun owners' right to seek damages for prior restrictions.

Associate Justice Neil Gorsuch cited "a delta of relief that's been denied" and wondered why the case should not be allowed to go forward "despite Herculean, late-breaking efforts" to have it removed from the docket.

Roberts, who has become the court's most likely swing vote following last year's retirement of Associate Justice Anthony Kennedy, asked New York City's lawyer, Richard Dearing, whether declaring the case moot would harm gun owners in any way.

Dearing's answer: No.

Asked Associate Justice Ruth Bader Ginsburg: "What's left of this case?"

## Discussion Questions

1. What does it mean to say that a case is "moot?"

*Essentially, to say a case is moot means that the case is irrelevant.*

2. In your reasoned opinion, is the case moot?

*Although this is an opinion question and student responses may vary as a result, there is a strong argument to be made that the case is indeed moot. As the article indicates, New York City has repealed the subject restriction on the right to bear arms; more particularly, the city no longer blocks firearms owners from taking their guns to shooting ranges or second homes outside the city. The restriction that is the subject of the case no longer exists.*

3. In your reasoned opinion, will the constitutional right to bear arms in the United States ever be fully and clearly resolved (specifically in terms of what the right means?) Why or why not?

*Although this is an opinion question and student responses may vary as a result, in your author's opinion, the constitutional right to bear arms in the United States will never be fully and clearly resolved. Consider the language of the Second Amendment: "A well regulated Militia, being necessary to the security of a free State, the right to keep and bear Arms, shall not be infringed." Although the United States Supreme Court has interpreted this language to indicate an individual right to bear arms, what about specific restrictions related to that right? The court will always play an interpretive role in terms deciding how (if at all) that right can be regulated by the government.*



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## Article 2: “Congressional Leaders at U.N. Climate Summit: ‘We’re Still In’”

[https://www.huffpost.com/entry/cop25-madrid-spain-congressional-delegation\\_n\\_5de53548e4b00149f7334575?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuaHVmZnBvc3QuY29tLw&guce\\_referrer\\_sig=AQAAAFQjtjHXa2zRLWdAEbQb8JP8dbtN6rx7EJQUxhp3wyL426qBdTszhEP8uUYtv3TRRcf2hgevEsVv3G0h2uFPQUrqlL7-xKdwVp\\_WBIHgPubmWoXznZx55ULibdF5axLms19UAAtysdtpKNmNrU5wIu5rTO9k9D4J7lz51YmDnVmrn](https://www.huffpost.com/entry/cop25-madrid-spain-congressional-delegation_n_5de53548e4b00149f7334575?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuaHVmZnBvc3QuY29tLw&guce_referrer_sig=AQAAAFQjtjHXa2zRLWdAEbQb8JP8dbtN6rx7EJQUxhp3wyL426qBdTszhEP8uUYtv3TRRcf2hgevEsVv3G0h2uFPQUrqlL7-xKdwVp_WBIHgPubmWoXznZx55ULibdF5axLms19UAAtysdtpKNmNrU5wIu5rTO9k9D4J7lz51YmDnVmrn)

According to the article, United States House of Representatives Speaker Nancy Pelosi and other Democratic lawmakers recently assured world leaders at the United Nations climate conference in Madrid that the United States will continue to be a leader in combating global climate change, despite backward steps by the Trump administration.

“The United States is still in,” Pelosi (D-Calif.) said at a news conference on the opening day of the U.N. 25th Conference of the Parties. “Our delegation is here to send a message that Congress’s commitment to take action on the climate crisis is iron-clad.”

The COP25 summit opened one month after President Donald Trump kicked off the formal process of withdrawing the United States — one of the world’s largest polluters — from the historic 2015 Paris agreement, which seeks to rein in greenhouse gas emissions and stave off catastrophic warming. Trump has repeatedly dismissed the threat of human-caused climate change and has pushed a fossil fuel-focused “energy dominance” agenda.

Spain stepped up to host the U.N. conference after Chile suddenly backed out in October amid civil unrest. No White House officials were slated to attend the summit, where countries planned to hash out technical details of the Paris accord and were expected to bolster individual commitments to reduce emissions.

Senator Sheldon Whitehouse (D-R.I.) said the American delegation’s presence in Spain “signals the broad consensus of the United States of America in favor of climate action.”

“Unfortunately we are having to fight our way through a bit of a blockade by the fossil fuel industry,” Whitehouse said. “The America that you know — the America of leadership, the America of progress, the America of confidence, the America of clean and green energy ... That America will be back.”

The 15-member U.S. delegation, which includes Democratic lawmakers from both chambers of Congress, did not bring up Trump or his efforts to undermine climate science during an introductory 30-minute press conference. Instead, they focused on actions being taken by Congress, states, municipalities and private companies.



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Asked about the ongoing impeachment inquiry into Trump, Pelosi said the delegation did not travel to Spain to talk about impeachment or the president.

“We’re here to talk positively about our agenda to save the planet for future generations,” Pelosi said, later calling climate change “a generational and existential threat to humanity.”

As the news conference came to a close, multiple members of the delegation shouted, “We’re still in!”

## Discussion Questions

1. In terms of the constitutional balance of power between the executive and legislative branches of government, argue why the executive branch (i.e., the president) should have the authority to determine how (if at all) to address the issue of global climate change.

*Essentially, the only way an international issue can be addressed between nations is by way of a treaty (an international agreement involving the United States.) Article II, Section 2 of the United States Constitution provides that the president “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators...concur.” This constitutional provision puts the president at the forefront of making treaties with other nations.*

2. In terms of the constitutional balance of power between the executive and legislative branches of government, argue why the legislative branch (i.e., Congress) should have the authority to determine how (if at all) to address the issue of global climate change.

*As indicated in response to Article 2, Discussion Question 1, Article II, Section 2 of the United States Constitution provides that although the president has the power to make treaties, such power is subject to the “advice and consent” of the Senate. This means that ultimately, the president must receive the support of the Senate in order for the treaty to be binding (to the extent that any international agreement is binding). Our Founding Fathers structured Article II, Section 2 to include a legislative “check and balance” on executive authority.*

3. In your reasoned opinion, was it appropriate (from a constitutional “balance of power” standpoint) for the United States congressional delegation to speak on behalf of the country at the U.N. climate summit? Why or why not?

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



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## Article 3: “Wall Street Wades into Sports Gambling as Legalization Spreads”

<https://www.bloomberg.com/news/articles/2019-11-22/wall-street-is-wading-into-sports-gambling?srnd=businessweek-v2>

According to the article, the line between trading and gambling has always been fuzzy. So now that 13 U.S. states have live legal sports betting and several more have approved it following a 2018 Supreme Court ruling, it's natural to wonder if Wall Street will start looking for a piece of the action.

A few firms already are. At least one is actually making bets, much as a hedge fund trades stocks. Susquehanna International Group LLP, a quantitative trading firm headquartered in Bala Cynwyd, Pennsylvania, is building up a sports betting division in Ireland, where such wagers have long been legal. The business unit, called Nellie Analytics—named after co-founder Jeff Yass's dog—has about 20 employees.

Susquehanna is active on the Betfair and Matchbook online sports betting exchanges. Gamblers on those sites can wager against each other, instead of with a third-party bookmaker who sets the odds. Susquehanna offers to take the other side of people's bets. Rather than betting on a single outcome against the house, it aims to make wagers on exchanges when they seem attractively priced—a common practice for professional sports bettors.

Sports betting will not appeal to most hedge funds. For one thing, the market is comparatively small and bets by large funds could easily distort it. A more straightforward way for finance to get into betting is by providing the back-end technology. Exchange operator NASDAQ, Inc. has made a handful of sports betting deals around the globe. It has licensed technology to a U.K.-based soccer betting service called Football Index, a virtual market where users buy and sell stakes in players and earn dividends based on their performance. NASDAQ technology is also used in horse-race betting in Australia, Hong Kong, and Sweden. NASDAQ says it's a natural application of what it already does. “There's no need for a gaming company to reinvent the wheel to handle large volumes of transactions,” says Scott Shechtman, head of new markets at NASDAQ.

Online brokerage TD Ameritrade Holding Corp. is also in the “early stages” of exploring sports betting. “Although we won't comment on any specifics, we are always evaluating potentially innovative products and services,” said Vijay Sankaran, the company's chief information officer, in an emailed statement. Business Insider first reported TD Ameritrade's interest in betting.

The research company Eilers & Krejcik Gaming estimates that sports betting could become a \$17 billion market in the U.S. if it's fully legalized in all 50 states. And it's likely to draw in people from beyond the traditional gaming business. “Sports betting is broadening the field of interest,” says Chris Grove, a partner at Eilers & Krejcik. Financial firms are likely to test the waters, he says, though they may be put off by the lower transaction volumes and complex regulation. Compliance department, meet the state gaming commission.





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## Discussion Questions

1. Define gambling.

*Gambling is generally defined as playing “games of chance” for money.*

2. Explain why investing in stocks and other securities does not constitute gambling.

*This is difficult to explain, since investing in stocks and securities does involve chance. Obviously, there is no guarantee that if someone invests in a security, its value will increase. Essentially, investing in stocks and other securities does not constitute gambling because the government so declares. Consider the state lottery—although it is a game of chance for money, any state that operates it condones and even markets it.*

3. In your reasoned opinion, should the federal government prohibit (through regulation) financial services firms from being involved in sports wagering? Why or why not?

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





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## Video Suggestions

### Video 1: “Poet Busted for Pot in 1969 Makes 1st Purchase of Legal Recreational Weed in Michigan”

[https://abcnews.go.com/US/poet-busted-pot-1969-makes-1st-purchase-legal/story?id=67422928&cid=clicksource\\_4380645\\_null\\_headlines\\_hed](https://abcnews.go.com/US/poet-busted-pot-1969-makes-1st-purchase-legal/story?id=67422928&cid=clicksource_4380645_null_headlines_hed)

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

#### “Poet Busted for Pot in 1969 Makes 1st Purchase of Legal Recreational Weed in Michigan”

According to the article, at the age of 28, John Sinclair was arrested in 1969 for possessing two marijuana joints and sent to prison for nearly three years. Recently, the now 78-year-old poet and activist became the first person in Michigan to legally purchase recreational cannabis.

"It went swiftly. I got some weed over the counter," Sinclair said. "It's about time. I've been waiting for this for 50 years."

About a year after Michigan residents voted to allow the sale of recreational pot, hundreds of people lined up outside six dispensaries in the state to purchase weed for the first time without having to have a doctor's prescription.

Michigan became the ninth state in the nation, along with Washington, D.C., to allow people 21 and over to purchase recreational marijuana over the counter. In Vermont, weed is legal to possess, but not to sell.

"It's a good idea," Sinclair said.

John Lennon and Yoko Ono famously held a freedom rally in December 1971 pushing for Sinclair's release. Bob Seger and Stevie Wonder also performed at the concert and Jerry Rubin and Allen Ginsberg were among those who voiced support for the Flint native at the rally. Sinclair, who once managed seminal rock band MC5, was released soon after the event despite his 10-year sentence.



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Adults age 21 and over were able to buy marijuana for recreational use effective Sunday, December 1 in Michigan.

For the historic transaction, Sinclair purchased 10 joints pre-rolled with a strain of cannabis dubbed "Gorilla Glue No. 4."

Asked if he noticed any difference between smoking a perfectly legal spliff compared to the old illegal kind, Sinclair said no.

"It's smoking a joint," said Sinclair, who celebrated by lighting up while attending a poetry reading.

Sinclair made the purchase at 9:49 a.m. at Arbors Wellness, a dispensary in Ann Arbor.

Four of the six dispensaries licensed to sell recreational weed are in Ann Arbor. But according to the state's Marijuana Regulatory Agency, another 30 locations throughout the state are awaiting approval to sell recreational cannabis.

Not every town in Michigan has jumped into the marijuana marketplace. More than 400 cities in the state have rejected businesses that want to supply adult recreational weed.

Illinois is the next state up to allow the dispensaries to sell recreational weed beginning January 1, 2020.

Unlike other states, where citizens voted to allow adults to legally purchase cannabis for recreational use, Illinois' legal weed law was passed by the state legislature in May and signed into law by the governor a month later.

"As the first state in the nation to fully legalize adult-use cannabis through the legislative process, Illinois exemplifies the best of democracy: a bipartisan and deep commitment to better the lives of all of our people," Illinois Governor J.B. Pritzker, a Democrat, said in a statement after he signed the bill June 25.

Other states where recreational marijuana is being legally sold include Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon and Washington. Vermont natives can possess up to 1 ounce of marijuana and grow two mature plants or four immature plants.

## Discussion Questions

1. As the article indicates, more than 400 cities in the state have rejected businesses that want to supply adult recreational weed. Now that Michigan has legalized marijuana for recreational use, must these cities acknowledge the right of businesses to sell it within their jurisdictions? Why or why not?



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*This is a legal supremacy issue. Essentially, the state of Michigan has two choices: 1) It could require that all local governments in the state recognize the legal right of its citizens to use marijuana for recreational purposes: or 2) It could allow local governments to pass more restrictive laws. As an example of this issue on the federal level, although the federal government has passed automotive emissions regulations for decades, it has also allowed states like California the right to pass more restrictive regulations. Ultimately, the higher legal authority controls whether to hold the lower authority to its standards, or whether to refer to the lower authority to do what it believes is best for its people.*

2. As the article indicates, Illinois will be the next state to allow the purchase of recreational marijuana, effective January 1, 2020. The article also indicates that unlike other states, where citizens voted to allow adults to legally purchase cannabis for recreational use, Illinois' legal marijuana law was passed by the state legislature in May 2019 and signed into law by the governor a month later. In your reasoned opinion, is the legalization of marijuana best determined by referendum (through the vote of the people), or via state legislation (through the initiatives of state representatives)? Explain your response.

*This is an opinion question, so student responses may vary. The answer to this question might largely depend on the respondent's preference for a truly democratic form of government (which would likely favor the use of referenda) or a representative form of government (which would likely favor the utilization of state representatives).*

3. Although the clearly discernible trend is legalization of marijuana at the state level, federal law still outlaws its sale, possession, and use. In your reasoned opinion, what should or will become of this federal law?

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

## **Video 2: "Are Lab-Grown Diamonds the Real Deal?"**

[https://abcnews.go.com/GMA/Style/lab-grown-diamonds-real-deal/story?id=67273479&cid=clicksource\\_4380645\\_null\\_bsq\\_hed](https://abcnews.go.com/GMA/Style/lab-grown-diamonds-real-deal/story?id=67273479&cid=clicksource_4380645_null_bsq_hed)

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

## **"Are Lab-Grown Diamonds the Real Deal?"**

According to the article, if you are shopping for a diamond for that "special someone," you may want to learn more about lab-grown diamonds before you make your purchase.

This option has grown in popularity and been seen on celebrities such as Bindi Irwin.



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A lab-grown diamond is formed by scientists who duplicate the diamond-growing process above ground.

The method takes around six to 10 weeks and claims to be more ethical and environmentally conscious than mining.

Lab-grown diamond company Great Heights says the only difference between its diamonds and mined diamonds is their origin.

"A lab-grown diamond is just as real and contains the exact same properties as one that is formed underground," Alexander Weindling, co-founder and CEO of Great Heights, told "Good Morning America."

Great Heights' diamonds are certified by the same gemologists at organizations that certify mined diamonds.

Gemological Science International is one of the labs that certifies lab-grown diamonds, with 13 labs across four continents.

"A diamond is a solid transparent crystalline form of carbon. Lab-grown diamonds have the same optical, chemical and physical properties as natural diamonds," Debbie Azar, president and co-founder of GSI, claims.

"However, natural diamonds are formed over billions of years, hundreds of miles beneath the Earth's surface under truly remarkable conditions. Natural diamonds are unique as no two are ever the same," Azar added.

If the individuality of the diamonds is not as important to you, lab-grown diamonds are easily available at large stores such as Kay Jewelers, Zales, Jared and James Allen.

"Lab-created diamonds are an exceptional mix of master craftsmanship and science," said Colleen Rooney, the SVP and chief communications officer at Signet Jewelers. "Like natural diamonds, they are comprised of carbon, and exhibit the identical optical, chemical and physical properties as natural diamonds."

According to Great Heights, lab-grown diamonds are as much as 40% to 60% less expensive than naturally mined diamonds.

They are also viewed as more ethical and environmentally friendly because they bypass the traditional mining process.



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"Consumers are looking for sustainable alternatives, even when it comes to diamonds," Ryan Bonifacino co-founder and president of Great Heights, said. "Lab-grown diamonds are environmentally conscious, ethical and cost-effective."

Plus, there is a finite amount of diamonds that can be naturally mined from the earth. Since lab-grown diamonds are made in factories, there is essentially an endless supply, making them less expensive and less rare.

"Natural diamonds are more expensive than lab-grown diamonds of the same color, clarity, cut and carat," Azar said.

Azar said that visually, lab-grown diamonds look just like naturally mined diamonds.

"No one can identify the origin of a diamond just by looking at it," she added.

For some, there may be no clear-cut answer if a lab-grown diamond is better than a naturally mined diamond.

"Lab-grown diamonds offer consumers more options when they shop for diamonds," according to Rooney.

Remember when shopping for the gem, one thing is important to get no matter where the diamond comes from.

"Lab-grown and natural diamonds are optically the same, so because of this, it's important to get a diamond-grading report from a reputable independent laboratory," Azar said.

## Discussion Questions

1. Does this case involve one or more consumer protection issues? If so, what (specifically) are those issues?

*Essentially, this case involves that possibility of misrepresentation or fraud.*

2. Does this case involve one or more ethical issues? If so, what (specifically) are those issues?

*The ethical issue here would be whether a seller of lab-grown diamonds should be able to represent that such diamonds are real (with the ordinary definition of "real" in this case meaning that the diamonds were created by geological processes).*

3. In your reasoned opinion, should the federal government regulate the distinction between lab-grown and naturally-grown diamonds? If so, why? If so, how (specifically)?



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*This is an opinion question, so student responses may vary. In your author's opinion, the federal government should regulate the distinction between lab-grown and naturally-grown diamonds, particularly in requiring that the seller must indicate the origin of the diamond that is being sold. Among the many objectives of consumer protection law, one of its primary objectives is to give the consumer adequate information upon which to make a reasoned purchase decision.*



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## Ethical Dilemma

### Of Special Interest

This section of the newsletter addresses Facebook's refusal to remove political advertisements from its social network.

### “Facebook's Mark Zuckerberg Says the Social Network Should Not Be ‘Censoring Politicians’”

<https://www.usatoday.com/story/tech/talkingtech/2019/12/02/mark-zuckerberg-facebook-should-not-censor-politicians-ads/4350547002/>

According to the article, Facebook CEO and co-founder Mark Zuckerberg recently reiterated his refusal to take down political advertisements on the social network even if the ads contain false information.

Zuckerberg and wife Priscilla Chan appeared before the media at the offices of The Chan-Zuckerberg Initiative.

Facebook is facing backlash for not joining Twitter, which last month stopped accepting political ads. But Zuckerberg has argued that to ban ads on Facebook is an infringement on free speech.

"What I believe is that in a democracy it's really important that people can see for themselves what politicians are saying, so they can make their open judgments," he said. "I don't think that a private company should be censoring politicians or news."

Several hundred Facebook employees noted their disagreement in a letter to Zuckerberg, in which they ask him to reconsider.

"This is clearly a very complex issue, and a lot of people have a lot of different opinions," Zuckerberg said. "At the end of the day, I just think that in a democracy that people should be able to see for themselves what politicians are saying. ... I think that people should be able to judge for themselves the character of politicians."

King also asked Zuckerberg about his dinner with President Donald Trump at the White House three weeks ago and whether Trump lobbied him against banning political ads. "No ... I think some of the stuff that people talk about or think is discussed in these discussions are not really how that works," Zuckerberg said. "I also want to respect that it was also a private discussion."

Facebook, along with other tech giants Amazon, Apple and Google, face antitrust investigations from the Justice Department. The social network in July paid a \$5 billion fine as part of its settlement with the Federal Trade





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Commission over violations of users' privacy rights. And a multi-state investigation by state attorneys general also is focusing on Facebook for anti-competitive business practices.

"There is no question there is real issues that we need to keep on working on," he said, adding, "I think it's important not to lose track of just the enormous good that can be done by bringing people together and building community."

Chan added that "when Mark and I talk about these issues together I also have the lens of being an educator and a pediatrician that's worked deeply with families and individuals in all types of communities, and when I zoom out I also see that these are societal problems. These are not problems that one person, one company can fix on their own. ... We need to work together as a society for that steady progress."

## Discussion Questions

1. As the article indicates, Facebook CEO Mark Zuckerberg has argued that banning political advertisements on Facebook would be an infringement on free speech. Assess the validity of this argument.

*In the constitutional sense, if Facebook were to ban political advertisements on its social network, that would not be an infringement on free speech. The United States Constitution only prohibits governmental interference on free speech.*

2. As the article indicates, Mr. Zuckerberg has also stated that "(a)t the end of the day, I just think that in a democracy that people should be able to see for themselves what politicians are saying...I think that people should be able to judge for themselves the character of politicians." Do you agree or disagree with Mr. Zuckerberg's opinion? Why or why not?

*This is an opinion question, so student responses may vary. An individual's position regarding this issue may likely depend on the confidence he or she has in the public's ability to discern the truth. Arguably in a democracy, it should be up to the people to do so.*

*Reportedly, outside Independence Hall when the Constitutional Convention of 1787 ended, a Mrs. Powel of Philadelphia asked Benjamin Franklin, "Well, Doctor, what have we got, a republic or a monarchy?" Mr. Franklin immediately responded, "A republic, if you can keep it." Franklin's responses presupposes that in our system of government, active involvement of the people is necessary, and that includes discerning the truth in political matters.*

3. If Facebook and Mr. Zuckerberg refuse to ban political advertisements that are false and/or misleading, should the government do it? Why or why not?

*Although this is an opinion question and student responses may vary, in your author's opinion such involvement by the government may run afoul of the First Amendment, particularly in terms of free*



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*speech. Historically, political speech has been the most protected speech of all. With that being said, your author believes that it is incumbent upon the people to determine whether political advertisements are false and/or misleading. Arguably, if the people cannot “keep” our system of government, they do not deserve it.*



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## Of Special Interest

This section of the newsletter will assist you in addressing the Ethical Dilemma ("Facebook's Mark Zuckerberg Says the Social Network Should Not Be 'Censoring Politicians'") of the newsletter.

## Teaching Tips

**Teaching Tip 1 (Related to the Ethical Dilemma—"Facebook's Mark Zuckerberg Says the Social Network Should Not Be 'Censoring Politicians'"): "Twitter Bans Political Ads after Facebook Refused to Do So"**

<https://www.cnbc.com/2019/10/30/twitter-bans-political-ads-after-facebook-refused-to-do-so.html>

*Note: To assist you in addressing the article presented in the Ethical Dilemma, please also see the following article and its accompanying video at the above-referenced internet site:*

### **"Twitter Bans Political Ads after Facebook Refused to Do So"**

According to the article, Twitter CEO Jack Dorsey announced recently that the company is axing political ads from its site.

Twitter's stock dropped more than 1% in after hours trading following the announcement.

The move sets Twitter in stark contrast to Facebook, which has received criticism from lawmakers and its own employees in recent weeks over its policy to neither fact check nor remove political ads placed by politicians. Facebook has argued it should not be the one to make decisions about its users' speech and that politician's speech is newsworthy. Earlier this month, Chinese video app TikTok became the first major social media platform to ban political ads from its platform.

Dorsey explained the company's reasoning behind the decision in a series of tweets.

"A political message earns reach when people decide to follow an account or retweet," Dorsey wrote. "Paying for reach removes that decision, forcing highly optimized and targeted political messages on people. We believe this decision should not be compromised by money."

Dorsey said it would be "not credible" for Twitter to tell users it is committed to stopping the spread of misinformation while allowing advertisers to target users with political ads just because they've paid Twitter to do so.



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Without naming Facebook or its CEO Mark Zuckerberg, Dorsey seemed to take a shot at the company's rhetoric around political ads. Zuckerberg has recently been discussing the importance of "free expression" in connection to Facebook's political ad policy, like at a Georgetown University event dedicated to that ideal.

In his final tweet on the topic, Dorsey said pointedly, "This isn't about free expression. This is about paying for reach. And paying to increase the reach of political speech has significant ramifications that today's democratic infrastructure may not be prepared to handle. It's worth stepping back in order to address."

In the Georgetown speech, Zuckerberg said Facebook once considered banning political ads as well and that they don't even make up a significant portion of the business. But ultimately, Zuckerberg warned about the difficulty of drawing a line in such a policy and said, "when it's not absolutely clear what to do, we should err on the side of greater expression."

Zuckerberg held firm on his political ads policy on Facebook's earnings call, which came about an hour after Dorsey's announcement. Facebook declined to comment, and pointed to Zuckerberg's prepared remarks from the company's earnings call.

Twitter CFO Ned Segal tweeted that the company will see no change to its Q4 guidance based on the change. Like at Facebook, political ad spend on Twitter is a relatively small portion of the business, clocking in at less than \$3 million in sales during the 2018 U.S. midterm elections, Segal said. Dorsey addressed the slippery slope theory in his tweets explaining the move, saying Twitter also considered barring only candidate ads, but said issue ads present a way around this. In the end, he said, Twitter decided to ban issue ads as well since the company believed it's unfair to allow everyone but the candidates themselves to buy ads on topics they care about.

This is not the first time Dorsey has taken a jab at Zuckerberg as the entire tech industry continues to receive mounting scrutiny over its privacy and competitive policies. At an event in New York last week, Dorsey said "hell no," to the question of whether he would join Facebook's new cryptocurrency association, according to The Verge.

Dorsey's announcement was quickly praised by several key Democrats. Former Secretary of State Hillary Clinton wrote on Twitter, "This is the right thing to do for democracy in America and all over the world. What say you, @Facebook?"

House Antitrust Subcommittee Chairman David Cicilline, D-R.I., also said it was a "good" step, adding, "Your move, Google/Facebook." Cicilline is one of the leaders of the bipartisan House inquiries into Facebook, Google, Amazon and Apple.

Rep. Alexandria Ocasio-Cortez, D-N.Y., also applauded Twitter's new policy. Ocasio-Cortez, who questioned Zuckerberg on political ads at a hearing last week as a member of the House



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Financial Services Committee, tweeted, “Not allowing for paid disinformation is one of the most basic, ethical decisions a company can make.”

President Donald Trump’s 2020 presidential campaign manager Brad Parscale called Dorsey’s announcement “a very dumb decision” in a statement posted to Twitter. Parscale said it was a move to “silence conservatives,” even though the policy applies to all political parties.

Borrowing from Zuckerberg’s approach, Dorsey made a call for regulation of his industry. But Dorsey’s appeal was for “more forward-looking political ad regulation” that takes into account the unique capabilities of internet advertising.

Twitter will begin enforcing its new policy on Nov. 22, Dorsey said, after it releases its final policy on Nov. 15.

## **Teaching Tip 2 (Related to the Ethical Dilemma): “Facebook Just Killed a Misleading Election Ad: Here’s Why”**

<https://www.cnn.com/2019/12/02/tech/facebook-bbc-conservatives-ad-ge19/index.html>

*Note: To assist you in addressing the article presented in the Ethical Dilemma, please also see the following article and its accompanying video at the above-referenced internet site:*

### **“Facebook Just Killed a Misleading Election Ad: Here’s Why”**

According to the article, Facebook allows politicians and political parties to lie or mislead in their paid advertisements, freeing them from the fact-checking the company applies to other ads.

But there is at least one way a political party can get in trouble with the social media platform in the middle of an election campaign: abusing intellectual property.

Recently, Facebook banned a British election video from the Conservative Party after the BBC complained that the footage distorted its journalism and could damage "perceptions of our impartiality."

In the 15-second ad, senior BBC journalists were shown saying things like "pointless delay to Brexit" alongside a montage of protest footage and debates in parliament, all set to dramatic music. But the clips were from reporters quoting politicians' own statements, including Prime Minister Boris Johnson, who is campaigning in the December 12 election under the slogan "get Brexit done."

According to Facebook's ad library, the Conservative party spent less than £10,000 (\$12,930) on the ad, which was viewed around 430,000 times. (The same person can view an ad multiple times.) The ad has been replaced with the following message in the library: "This ad was taken down because it goes against Facebook's Intellectual property policies."



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The BBC said they initially asked the Conservative Party to take the ad down, but they declined. So the BBC approached Facebook, which banned it. Facebook said it was "a valid intellectual property claim from the rights holder, the BBC" because the Conservatives had used its footage without permission.

"Whenever we receive valid IP claims against content on the platform, in advertising or elsewhere, we act in accordance with our policies and take action as required," a Facebook spokesperson said. Facebook's advertising policies state "ads must not contain content that infringes upon or violates the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights."

The social media giant's policy on political ads has received harsh criticism from across the world. The scrutiny prompted Twitter to announce that it would limit political ads next month. The United Kingdom imposes strict rules on how broadcasters can report on politics, especially around elections. While newspapers are free to impart political biases, broadcasters must be impartial. The BBC often faces even more intense scrutiny because it is publicly funded.

Facebook did not address the BBC's claim that its material had been used in a misleading way. It stuck purely to the legal arguments.

The Conservative Party did not respond to a CNN's request for comment, but told the BBC, "All political parties make use of BBC content. We will be asking the BBC if in the interests of fairness they intend to complain about other political parties who use their content."



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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 4 and 5	Chapters 5 and 46	Chapter 3	Chapter 3
<b>Bennett-Alexander &amp; Hartman, Employment Law for Business</b>	N/A	N/A	N/A	N/A
<b>Kubasek et al., Dynamic Business Law</b>	Chapters 5, 6 and 7	Chapters 7 and 45	Chapter 2	Chapter 2
<b>Kubasek et al., Dynamic Business Law: The Essentials</b>	Chapters 5 and 6	Chapters 6 and 25	Chapter 2	Chapter 2
<b>Liuzzo, Essentials of Business Law</b>	Chapters 3, 5 and 36	Chapter 3	Chapter 2	Chapter 2
<b>Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment</b>	Chapters 3 and 5	Chapters 5 and 48	Chapter 4	Chapter 4
<b>McAdams et al., Law, Business &amp; Society</b>	Chapters 4, 5 and 16	Chapters 4 and 15	Chapter 2	Chapter 2
<b>Melvin, The Legal Environment of Business: A Managerial Approach</b>	Chapters 2, 22 and 25	Chapters 21 and 22	Chapter 5	Chapter 5
<b>Pagnattaro et al., The Legal and Regulatory Environment of Business</b>	Chapters 6, 12 and 13	Chapters 13 and 18	Chapter 2	Chapter 2
<b>Sukys, Brown, Business Law with UCC Applications</b>	Chapters 2, 5 and 34	Chapters 5 and 15	Chapter 1	Chapter 1





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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, 5<sup>th</sup> Edition ©2020 (1260247899)
- 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, Business Law with UCC Applications, 15<sup>th</sup> Edition ©2020 (1259998169)

