



Proceedings

A monthly newsletter from McGraw-Hill Education



March 2020 Volume 10, Issue 8

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Dear Professor,

Spring is near! Welcome to McGraw-Hill Education's March 2020 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 10, Issue 8 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the March 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. The recent \$3 billion settlement between the United States government and Wells Fargo regarding the banking giant's "fake accounts" scandal;
2. The recent \$550 million settlement between the state of Illinois and Facebook regarding the social networking company's alleged violation of Illinois' biometric privacy law;
3. Technology entrepreneur Elon Musk's recent controversial statements regarding Facebook;
4. Videos related to a) a Houston, Texas bar security guard's shooting and killing of a customer after an altercation and b) the United States' criminal charging of four Chinese military members in an Equifax breach;
5. An "ethical dilemma" related to a rural Kansas county's jailing of individuals over unpaid medical debt; and
6. "Teaching tips" related to Article 1 ("U.S. Government Fines Wells Fargo \$3 Billion for Its 'Staggering' Fake-Accounts Scandal") and the Ethical Dilemma ("You Wouldn't Think You'd Go to Jail over Medical Bills": County in Rural Kansas Is Jailing People over Unpaid Medical Debt") of the newsletter.

Here's hoping spring arrives in your "neck of the woods" soon!

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Of Special Interest

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

1) The recent \$3 billion settlement between the United States government and Wells Fargo regarding the banking giant's "fake accounts" scandal;

2) The recent \$550 million settlement between the state of Illinois and Facebook regarding the social networking company's alleged violation of Illinois' biometric privacy law; and

3) Technology entrepreneur Elon Musk's recent controversial statements regarding Facebook.

Hot Topics in Business Law

Article 1: "U.S. Government Fines Wells Fargo \$3 Billion for Its 'Staggering' Fake-Accounts Scandal"

<https://www.cnn.com/2020/02/21/business/wells-fargo-settlement-doj-sec/index.html>

According to the article, Wells Fargo was hit with a \$3 billion fine recently by federal authorities outraged by the millions of fake accounts created at the troubled bank over many years.

The settlement with the Justice Department and Securities and Exchange Commission, years in the making, resolves Wells Fargo's criminal and civil liabilities for the fake-accounts scandal that erupted nearly four years ago.

The deal does not, however, remove the threat of prosecution against current and former Wells Fargo employees.

Prosecutors slammed Wells Fargo for the "staggering size, scope and duration" of the unlawful conduct uncovered at one of America's largest and most powerful banks.

As part of the deal, Wells Fargo admitted that between 2002 and 2016, it falsified bank records, harmed the credit ratings of customers, unlawfully misused their personal information and wrongfully collected millions of dollars in fees and interest.

"Today's announcement should serve as a stark reminder that no institution is too big, too powerful, or too well-known to be held accountable and face enforcement action for its wrongdoings," U.S. Attorney Andrew Murray for the Western District of North Carolina said in a statement.

The settlement focused squarely on Wells Fargo's fake-accounts scandal, not the mistreatment of workers, auto borrowers, homebuyers and other customers that the bank has been accused of in recent years.

Authorities said recently that the criminal investigation into false bank records and identify theft at Wells Fargo is being resolved by what's known as a deferred prosecution agreement. Under that agreement, authorities have agreed not to prosecute Wells Fargo for three years as long as it abides by



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certain conditions, including its continued cooperation with "further" government investigations.

In a statement, Wells Fargo CEO Charlie Scharf, who joined the company in September, said, "the conduct at the core of today's settlements — and the past culture that gave rise to it — are reprehensible and wholly inconsistent with the values on which Wells Fargo was built. Our customers, shareholders and employees deserved more from the leadership of this company."

Wells Fargo has also reached a civil settlement over its creation of false bank records with the SEC over its conduct. The \$3 billion fine resolves all three investigations.

The SEC and Justice Department's settlement still leaves open the possibility that current and former Wells Fargo employees could be prosecuted. And in the agreement Wells Fargo admits that senior executives were aware of the illegal activity long ago.

"The top managers of the community bank were aware of the unlawful and unethical gaming practices as early as 2002," the settlement said.

Yet Wells Fargo executives repeatedly refused to acknowledge the shady behavior was being driven by the bank's wildly unrealistic sales goals, which were at the heart of the company's business model. Authorities said that senior executives at the community bank "minimized the problems" by shifting the blame to "individual misconduct instead of the sales model itself."

"This settlement holds Wells Fargo accountable for tolerating fraudulent conduct that is remarkable both for its duration and scope, and for its blatant disregard of customers' private information," Michael Granston, deputy assistant attorney general at the Department of Justice's civil division, said in the statement.

The agreement removes a major cloud that has been hovering above Wells Fargo for years and shows the emphasis by the bank's new management to move past the scandals. Scharf, the well-respected former CEO of Visa and Bank of New York Mellon, was hired last year to get the tarnished bank back on track.

But Wells Fargo's legal troubles are far from over.

The settlement does not include the Labor Department, which launched a probe in 2016 into allegations that Wells Fargo committed wage theft and retaliated against whistleblowers. Multiple former Wells Fargo workers told the media in 2016 that they were fired after calling the bank's ethics hotline.

"When bank workers started to raise alarms about Wells Fargo's fake account scandal, managers retaliated against us," said Killian Colin, a former Wells Fargo employee and a member of the Committee for Better Banks, in a statement. "To make matters worse, frontline employees like us were unfairly scapegoated for trying to meet intense sales pressures.



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"Today's settlement might bring some relief to consumers and workers," he added, "but it does not relinquish Wells Fargo's duty to change the workplace culture that fueled the disastrous scandal in the first place."

Wells Fargo still faces an even bigger regulatory headache: the unprecedented sanctions imposed by the Federal Reserve in early 2018 that prevent the bank from growing its assets beyond \$2 trillion. If that so-called asset cap is not removed soon, Wells Fargo may not be able to make the loans required to boost profits

"That's a much bigger hurdle. That will take time," said Gerard Cassidy, a banking analyst at RBC Capital. He expects that the asset cap and other enforcement actions against Wells Fargo won't be completely removed until 2022.

The Justice Department and SEC said that the settlement took into account other recent fines imposed against Wells Fargo, as well as the bank's "extensive cooperation" and efforts to repair damage done to customers.

Last month, former boss John Stumpf agreed to a lifetime ban from the banking industry and a \$17.5 million fine for his role in the scandals. Seven other former Wells Fargo executives were fined about \$70 million for what regulators described as described as "the bank's systemic sales practices misconduct."

In February 2018, the Federal Reserve handed down unprecedented sanctions on Wells Fargo for "widespread consumer abuses," including the creation of millions of fake accounts. That penalty, which is still in place and was one of the final acts of former Fed chief Janet Yellen, prevents Wells Fargo from growing its balance sheet beyond \$2 trillion.

Later in 2018, the Consumer Financial Protection Bureau and the Office of the Comptroller of the Currency fined Wells Fargo \$1 billion for forcing customers to pay for car insurance they didn't need and mortgage fees they didn't owe. In some cases, Wells Fargo borrowers even had their vehicles wrongfully repossessed.

Taken together, Wells Fargo's series of scandals have seriously hurt its business. The bank's reputation is tarnished and it has been forced to spend heavily on settlements, lawyers, and fixes to its risk management system.

Wells Fargo's stock, once a favorite in the banking industry, has fallen badly out of favor. Since the scandals began in September 2016, Wells Fargo's stock is down 5%, while over the same time period the S&P 500 has soared 55%. Banking rivals JPMorgan Chase and Bank of America have more than doubled in value.

In other words, Wells Fargo has been left in the dust.



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Discussion Questions

1. What is a deferred prosecution agreement?

This is a self-descriptive term in the sense that it is an agreement to delay prosecution (and perhaps never prosecute), provided that the terms of the agreement are met. In the subject case, authorities have agreed not to prosecute Wells Fargo for three years so long as it abides by certain conditions, including its continued cooperation with further government investigations.

2. As the article indicates, the subject settlement agreement still leaves open the possibility that current and former Wells Fargo employees could be prosecuted. In your reasoned opinion, should they be?

This is an opinion question, so study responses may vary. However, the article indicates that in the subject settlement agreement, Wells Fargo admits that senior executives were aware of the illegal activity long ago. This could be substantial evidence leading prosecutors to charge current and former Wells Fargo employees with criminal wrongdoing.

3. Is the \$3 billion settlement agreement an admission of Wells Fargo's legal liability in the case? Why or why not?

Although a settlement agreement does not generally constitute an admission of legal liability, in the subject case, as part of the settlement agreement, Wells Fargo admitted that between 2002 and 2016, it falsified bank records, harmed the credit ratings of customers, unlawfully misused their personal information and wrongfully collected millions of dollars in fees and interest. In your author's opinion, this is tantamount to an admission of legal liability.

Article 2: "Unique Illinois Privacy Law Leads to \$550M Facebook Deal"

https://abcnews.go.com/Business/wireStory/unique-illinois-privacy-law-leads-550m-facebook-deal-68861584?cid=clicksource_4380645_9_heads_posts_headlines_hed

According to the article, Adam Pezen, Carlo Licata and Nimesh Patel are among millions of people who have been tagged in Facebook photos at some point in the past decade, sometimes at the suggestion of an automated tagging feature powered by facial recognition technology.

It was their Illinois addresses, though, that put the trio's names atop a lawsuit that Facebook recently agreed to settle for \$550 million, which could lead to payouts of a couple hundred dollars to several million Illinois users of the social networking site.

The lawsuit — one of more than 400 filed against tech companies big and small in the past five years, by one law firm's count — alleges that Facebook broke Illinois' strict biometric privacy law that allows people to sue companies that fail to get consent before harvesting consumers' data,



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including through facial and fingerprint scanning. Privacy advocates hail the law as the nation's strongest form of protection in the commercial use of such data, and it has survived ongoing efforts by the tech industry and other businesses to weaken it.

Attorneys who focus on privacy law predict that the Facebook settlement — if approved by a federal judge — will trigger a new round of lawsuits and make the targets of existing ones more likely to settle. Illinois' legal landscape also could shape debates over privacy protection in other states and in Congress, particularly about whether individuals should have the right to sue over violations.

“We're going to see a lot of constituents saying, ‘Why not me?’” said Jay Edelson, a Chicago attorney whose firm first sued Facebook for allegedly breaking Illinois' law. “This settlement, it's going to really make the point that having laws on the books is the difference between people getting to go to court and getting real relief, and otherwise just getting trampled by these tech companies.”

Although the buying and selling of consumer data has become a multi-billion-dollar industry, Illinois' law — the Biometric Information Privacy Act — predates even Facebook's iconic “like” feature and was a reaction to a single company's flop.

Pay By Touch, a startup that teamed with grocery stores to offer fingerprint-based payments, had gone bankrupt and was expected to auction off its assets, including its database of users' information. Worried about where that user data would wind up, Illinois lawmakers quickly passed a law in 2008 requiring companies to get consent before collecting biometric information and to create a policy specifying how that information will be retained and when it will be destroyed.

It also gave Illinois residents the right to sue for \$1,000 over negligent violations and \$5,000 for intentional violations.

For years, “literally nothing happened,” said John Fitzgerald, a Chicago attorney and author of a book on the law that is due out this year. He couldn't find any record of a case filed before 2015.

Edelson's firm and others that focus on class-action suits were first, accusing Facebook of failing to meet Illinois' standard in multiple lawsuits filed in 2015. The three Illinois men fronting the class-action suit against Facebook said they were never told that the site's photo tagging system used facial recognition technology to analyze photos then create and store “face templates.”

A federal judge later grouped the cases together as a class-action on behalf of Illinois Facebook users who were among the stored face templates as of June 7, 2011.

Facebook only changed the technology last year. The tag suggestion tool was replaced a broader facial recognition setting, which is turned off by default.



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The Illinois law is the basis for two recent suits filed against Clearview AI, a facial recognition company that harvests images by scraping social media sites and other places and then sells access to its database to law enforcement agencies.

Facebook, Twitter, Venmo and YouTube have all demanded that Clearview stop harvesting their users' images following investigative reports by The New York Times and BuzzFeed.

Although there are Illinois lawsuits against other major tech companies, including Google, Snapchat and Shutterfly, the vast majority of the cases are filed on behalf of employees who were directed to use fingerprint scanning systems to track their work hours and who accuse employers or the systems' creators of failing to get their prior consent.

Illinois is one of three states that have laws governing the use of biometric data. But the other two, Texas and Washington, don't permit individual lawsuits, instead delegating enforcement to their attorneys general.

The state's Chamber of Commerce and tech industry groups have backed amendments to gut Illinois' allowance of individual lawsuits or exempt time-keeping systems.

Illinois' law puts "litigation over innovation," said Tyler Diers, the Illinois and Midwest executive director of the industry group TechNet, whose members include Apple, Facebook and Google. "This case exemplifies why consumer privacy law should empower state regulators to enforce rather than line the pockets of class action attorneys," Diers said in a statement.

Facing Illinois' law, some companies opt out of the state. Sony, for instance, refuses to sell its "aibo" robot dog to Illinois residents and says the device's ability to behave differently toward individual people depends on facial recognition technology.

Backers of the law argue that it's not difficult to comply — simply tell consumers you plan to use biometric data and get their consent.

State Representative Ann Williams, a Chicago Democrat, said the ability to sue is critical for consumers facing global companies that make billions of dollars per year.

"If the penalty's only a fine, that's the cost of doing business for them," Williams said. "A settlement like (the Facebook case), we're talking about real money that will go to consumers."

Attorneys who defend smaller companies, though, argue that the law should be narrowed to permit the use of fingerprint scanners to track employees' hours.

"Small and medium-size businesses really do not have the resources to defend these cases or pay some big settlement," said Mary Smigielski, a partner at Lewis Brisbois Bisgaard & Smith and a co-leader of the firm's group focused on Illinois' biometric law.



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The Facebook case wound through courtrooms in Illinois and California for nearly five years before last month's announcement of a settlement, days after the U.S. Supreme Court declined to hear arguments.

Edelson said he hopes that the \$550 million deal, which lawyers on the case described as a record amount for a privacy claim, will put pressure on attorneys to refuse credit monitoring or negligible cash payouts that are more typical in agreements to resolve data privacy suits.

People eligible for the settlement will be contacted directly and don't need to take any action until then, attorneys on the case said.

Discussion Questions

1. Discuss Illinois' Biometric Information Privacy Act.

As the article indicates, Illinois' Biometric Information Privacy Act allows people to sue companies that fail to get consent before harvesting consumers' data, including through facial and fingerprint scanning. Privacy advocates hail the law as the nation's strongest form of protection in the commercial use of such data, and it has survived ongoing efforts by the tech industry and other businesses to weaken it.

2. As the article indicates, Illinois is one of only three states that have laws governing the use of biometric data. The other two states, Texas and Washington, do not permit individual lawsuits, instead delegating enforcement to their attorneys general. Comment on Texas' and Washington's decision to not permit individual lawsuits regarding the use of biometric data. In your reasoned opinion, should Texas and Washington allow individual lawsuits in such cases? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, laws such as Illinois' Biometric Information Privacy Act is a type of consumer protection law, and such laws have traditionally provided consumers with an independent (i.e., an individual) cause of action if they can demonstrate personal harm resulting from the defendant's wrongful action(s). In your author's opinion, Texas and Washington should allow individuals to sue in such cases if those individuals can demonstrate standing to sue (i.e., a personal interest in the litigation and its outcome.)

3. As the article indicates, Tyler Diers, the Illinois and Midwest executive director of the industry group TechNet, claims that Illinois' law puts "litigation over innovation." Do you agree or disagree with Mr. Diers' assessment of this law? Explain your response.

This is an opinion question, so student responses may vary. In your author's opinion, Mr. Diers' statement is a purely political one. Arguably, Illinois' law does not stifle innovation; instead, it merely mitigates the negative effects of such innovation.



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Article 3: “Elon Musk’s Verdict on Facebook: It’s “Lame” and You Should Delete It”

<https://www.cnn.com/2020/02/10/tech/elon-musk-facebook-intl-scli/index.html>

According to the article, Elon Musk has taken another swipe at Facebook.

Responding to a Twitter post by actor Sacha Baron Cohen calling for Facebook to be regulated over its content, the Tesla founder tweeted over the weekend, “#DeleteFacebook It's lame.”

Baron Cohen asked in his post why Facebook (FB) CEO Mark Zuckerberg was allowed to “control the information seen by 2.5 billion people,” when regulators would not permit one person to wield the same power over water or electricity supplies.

“Facebook needs to be regulated by governments, not ruled by an emperor!” said the actor and comedian.

Baron Cohen is a vocal critic of social media platforms, including Twitter and Google video platform YouTube, describing them as “the greatest propaganda machine in history.” He has directed much of his ire at Facebook, which he says profits off propaganda by not fact checking political advertising.

Facebook has defended its policy on political ads and says hate speech is banned from its platform, as is anyone who advocates for violence. The company did not respond to a request for comment on Baron Cohen and Musk’s tweets.

While Musk did not elaborate on why he thinks Facebook is “lame,” it's not the first time he has publicly criticized the social media platform, or Zuckerberg.

In 2018, he deleted the official Facebook pages of his companies, Tesla and SpaceX, after it emerged that political consulting firm Cambridge Analytica had harvested the personal information of as many as 87 million Facebook users without their knowledge.

“What's Facebook?” Musk tweeted at the time.

Musk maintains a personal account on Instagram, as do Tesla and SpaceX, even though the platform is owned by Facebook. Musk has previously said that Instagram is “probably ok” if it stays “fairly independent” from its parent company.

Musk has also used Twitter to question Zuckerberg's grasp of artificial intelligence, a subject on which they have divergent views. “I've talked to Mark about this. His understanding of the subject is limited,” Musk tweeted after a Facebook Live broadcast in which Zuckerberg said he's “really optimistic” about AI and tired of the fear-mongering peddled by “naysayers.”



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Zuckerberg believes the technology will make cars safer and better diagnose illnesses. Musk has described it as humanity's "greatest existential threat."

The criticism of Facebook by Baron Cohen and Musk follows author Stephen King's announcement earlier this month that he has quit Facebook over false information and inadequate protection of privacy.

Discussion Questions

1. Define defamation.

Defamation is a false statement or bad faith opinion made about someone that damages that person's reputation in the community. Defamation takes two forms: (a) slander, an oral statement; or (b) libel, a written statement. The business equivalent of defamation is disparagement, a false statement or bad faith opinion made about a business and/or its product that damages the business' and/or its product's reputation in the community.

2. Explain the defenses to a defamation action.

There are two (2) defenses to a defamation action: (a) the truth; and (b) a good faith opinion that is not designed exclusively or predominantly to damage the plaintiff's reputation.

3. In your reasoned opinion, has Elon Musk defamed Facebook? Why or why not? Has Sacha Baron Cohen defamed Facebook? Why or why not?

These are opinion questions, so student responses may vary. However, it is important to examine the exact statements made by both Elon Musk and Sacha Baron Cohen. The Tesla founder, Musk, tweeted "#DeleteFacebook It's lame." The ordinary meaning of "lame" is "uninspiring and dull." This could be Musk's good faith opinion regarding Facebook; if it is, a good faith opinion is not defamatory. The actor and comedian, Baron Cohen, asked why Facebook CEO Mark Zuckerberg was allowed to "control the information seen by 2.5 billion people," when regulators would not permit one person to wield the same power over water or electricity supplies. He also remarked that "Facebook needs to be regulated by governments, not ruled by an emperor!" Finally, Baron Cohen is a vocal critic of social media platforms, including Twitter and Google video platform YouTube, describing them as "the greatest propaganda machine in history." He has directed much of his ire at Facebook, which he says profits off propaganda by not fact checking political advertising. Essentially, these statements indicate Baron Cohen's dissatisfaction with Facebook and his strong belief that the company should be more closely regulated by the government. These statements arguably represent nothing more than his good faith opinions. His other statement, that social media platforms constitute "the greatest propaganda machine in history," is essentially a political statement. In terms of the First Amendment to the United States Constitution, political speech is one of the most closely protected forms of free speech.



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Video Suggestions

Video 1: “Bar Security Guard Shoots and Kills Customer at Closing Time after Altercation”

https://abcnews.go.com/US/bar-security-guard-shoots-kills-customer-closing-time/story?id=68881531&cid=clicksource_4380645_2_heads_hero_live_headlines_hed

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

“Bar Security Guard Shoots and Kills Customer at Closing Time after Altercation”

According to the article, a security guard at a popular sports bar shot two people, killing one and injuring another, during an altercation inside the premises at closing time.

The incident occurred inside a Houston sports bar called Ojos Locos Sports Cantina at approximately 2 a.m. on a Sunday morning when a fight broke out as the three security guards were attempting to clear people out of the building for the night, according to the media.

While it is unclear what led up to or caused the incident, video posted to social media shows a group of several people in a physical altercation with one of the security guards before the guard pulls out a gun and fires several times.

"I just heard two gunshots and then we turned around and they were like, "He's dead, he's dead. You killed him," said one witness who spoke to KTRK.

"Everybody was screaming," another witness said. "Everybody was screaming and crying. There (were) a couple girls crying. His best friend, two of his friends, were lying by his side crying, saying, 'Why did you kill my friend? You didn't have to kill him.'"

Several others can be seen approaching the security guard in the chaos immediately after the shooting as screams are heard echoing throughout the



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bar's interior before the guard is seen brandishing his gun to those close to him as they back away.

"Upon arrival on the scene, deputies found an adult Hispanic male shot and down inside the club," said the homicide release record from the Harris County Sheriff's Office. "This individual was treated by EMS and was pronounced dead on the scene. A second victim was found inside the club with a gunshot injury to the arm. This individual was transported to an area hospital and is expected to survive."

A spokesperson for Ojos Locos Sports Cantina shared the following statement about the incident:

"A tragic incident occurred at one of our Houston restaurants this morning and we are still gathering details of what happened. Since this is an ongoing police investigation, it would be inappropriate to speculate at this time. We will share additional information when it is available."

A note on the front door of the restaurant states the restaurant will reopen soon. As of now, the security guard who fired the shots has not been arrested or charged with any crimes and, according to Sheriff Ed Gonzalez, that decision will be left up to the district attorney's office.

Discussion Questions

1. Explain self-defense.

Self-defense is the degree of force necessary to counter the aggression of another person. If self-defense is accepted by the jury as legitimate (based on the facts and circumstances of the case), the defendant can avoid criminal and/or civil liability for assault and battery.

2. In your reasoned opinion, is there enough information included in the article and the accompanying video to determine whether the security guard reasonably exercised self-defense? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, there is not enough information included in the article and the accompanying video to determine whether the security guard reasonably exercised self-defense. Although one unidentified witness in the video appears to suggest that the officer's act of shooting was not provoked by direct physical aggression, a video posted to social media (referenced in the article) apparently shows a physical encounter between the officers and some of the bar patrons. The ultimate question in this case is whether the officer reasonably exercised deadly force in this case, and that will ultimately be determined by the evidence introduced in court (if the case is prosecuted and/or litigated.)

3. As the article indicates, the security guard who fired the shots has not been arrested or charged with any crimes and, according to the sheriff, that decision will be left up to the district attorney's office. In your reasoned opinion, what (if any) influence should the opinions and wishes of the



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deceased individual's friends and family members have on the district attorney's decision to prosecute the security guard?

This is an opinion question, so student responses may vary. Although there is a discernable trend in criminal law and proceedings to be mindful of the wishes of the victim and/or the victim's friends and family members, ultimately the decision whether to prosecute rests with the prosecutor.

Video 2: "U.S. Charges 4 Chinese Military Members in Equifax Breach"

https://www.huffpost.com/entry/us-charges-4-chinese-military-members-in-equifax-breach_n_5e417b83c5b6b708870524cc

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

"U.S. Charges 4 Chinese Military Members in Equifax Breach"

According to the article, four members of the Chinese military have been charged with breaking into the networks of the Equifax credit reporting agency and stealing the personal information of tens of millions of Americans, the Justice Department said recently, blaming Beijing for one of the largest hacks in history.

The 2017 breach affected roughly 145 million people, with the hackers successfully stealing names, Social Security numbers and other personal information stored in the company's databases.

The four — members of the People's Liberation Army, an arm of the Chinese military — are also accused of stealing the company's trade secrets, law enforcement officials said.

The case comes as the Trump administration has warned against what it sees as the growing political and economic influence of China, and efforts by Beijing to collect data on Americans and steal scientific research and innovation.

"This was a deliberate and sweeping intrusion into the private information of the American people," Attorney General William Barr said in a statement.

"Today, we hold PLA hackers accountable for their criminal actions, and we remind the Chinese government that we have the capability to remove the Internet's cloak of anonymity and find the hackers that nation repeatedly deploys against us," he added.

The case is one of several the Justice Department has brought over the years against members of the PLA. The Obama administration in 2014 charged five Chinese military hackers with breaking into the networks of major American corporations to siphon trade secrets.



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The criminal charges were filed in federal court in Atlanta, where the company is based.

The indictment, which details efforts the hackers took to cover their tracks, includes charges of conspiracy to commit computer fraud, conspiracy to commit economic espionage and conspiracy to commit wire fraud.

Discussion Questions

1. Discuss the seriousness of the security breach described in the article.

The seriousness of the security breach is evidenced by its sheer size and scope. As the article indicates, the breach has affected roughly 145 million people, with the hackers successfully stealing names, Social Security numbers and other personal information stored in Equifax's databases. Identity theft is a pronounced concern in this case.

2. As indicated in the article, according to United States Attorney General William Barr, "...we hold (the four Chinese military hackers) accountable for their criminal actions." Assess this statement.

An assessment of Attorney General Barr's statement depends, in large part, on how one defines the word "accountable." Although the four members of the Chinese military referenced in the article have been charged with breaking into the networks of the Equifax credit reporting agency and stealing the personal information of tens of millions of Americans, one would imagine that in all likelihood, they will not appear for trial in the United States.

3. In your reasoned opinion, if the United States Justice Department cannot realistically hold the hackers responsible for their criminal wrongdoing, should President Donald J. Trump do so? Should the U.S. Congress do so? If so, how?

This is an opinion question, so student responses may vary. In your author's opinion, it will be very difficult, if not impossible, for any branch of the United States government to truly hold the Chinese hackers responsible for the crime alleged. China will most certainly not extradite four members of its military for trial in the United States.



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Ethical Dilemma

Of Special Interest

This section of the newsletter addresses a rural Kansas county's jailing of individuals over unpaid medical debt.

“You Wouldn’t Think You’d Go to Jail over Medical Bills’: County in Rural Kansas Is Jailing People over Unpaid Medical Debt”

<https://www.cbsnews.com/news/coffeyville-kansas-medical-debt-county-in-rural-kansas-is-jailing-people-over-unpaid-medical-debt/>

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

According to the article, there is at least one issue a divided electorate can come together on this election year: A recent poll finds 90% of those surveyed agreed on the importance of making health care more affordable.

Millions of Americans remain uninsured.

As Meg Oliver reports in partnership with ProPublica, some people are even going to jail because they're squeezed by a system that is putting new demands on overburdened incomes.

Tres and Heather Biggs' son Lane was diagnosed with leukemia when he was five years old. At the same time, Heather suffered seizures from Lyme disease.

"We had so many — multiple health issues in our family at the same time, it put us in a bracket that made insurance unattainable," Heather Biggs said. "It would have made no sense. We would have had to have not eaten, not had a home."

Tres Biggs was working two jobs but they fell behind on their medical bills, then the unthinkable happened.

"You wouldn't think you'd go to jail over medical bills," Tres Biggs said.

Tres Biggs went to jail for failing to appear in court for unpaid medical bills. He described it as "scary."

"I was scared to death," Tres Biggs said. "I'm a country kid — I had to strip down, get hosed and put a jumpsuit on."

Bail was \$500. He said they had "maybe \$50 to \$100" at the time.



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In rural Coffeyville, Kansas, where the poverty rate is twice the national average, attorneys like Michael Hassenplug have built successful law practices representing medical providers to collect debt owed by their neighbors.

"I'm just doing my job," Hassenplug said. "They want the money collected, and I'm trying to do my job as best I can by following the law."

That law was put in place at Hassenplug's own recommendation to the local judge. The attorney uses that law by asking the court to direct people with unpaid medical bills to appear in court every three months and state they are too poor to pay in what is called a "debtors' exam."

If two hearings are missed, the judge issues an arrest warrant for contempt of court. Bail is set at \$500.

Hassenplug said he gets "paid on what's collected." If the bail money is applied to the judgment, then he gets a portion of that, he said.

"We're sending them to jail for contempt of court for failure to appear," Hassenplug said.

In most courts, bail money is returned when defendants appear in court. But in almost every case in Coffeyville, that money goes to pay attorneys like Hassenplug and the medical debt his clients are owed.

"This raises serious constitutional concerns," said Nusrat Choudhury, the deputy director of the ACLU. "What's happening here is a jailhouse shake-down for cash that is the criminalization of private debt."

CBS News went to court on debt collection day. They wouldn't allow our cameras in, but we watched more than 60 people swear they didn't have enough money to pay, and only one of them had an attorney representing them.

Michael Hassenplug continues to operate.

Discussion Questions

1. As the article indicates, attorneys like Michael Hassenplug have built successful law practices representing medical providers to collect debt owed by their neighbors. According to Mr. Hassenplug, "I'm just doing my job." Comment on attorney Hassenplug's statement.

Attorney Hassenplug is correct in the sense that in the United States' adversarial legal system (based on an "us versus them," "I win, you lose" mentality,) it is the responsibility of the attorney to zealously represent her client. In turn, it is the job of opposing counsel to zealously represent his client.



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2. According to the article, ACLU (American Civil Liberties Union) Deputy Director Nusrat Choudhury believes that Coffeyville, Kansas courtroom practices regarding medical debt collection represent “serious constitutional concerns.” What, specifically, are those constitutional concerns?

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution guarantees equal justice according to the law. Arguably, a poor person being incarcerated for failing to pay a debt, as opposed to a wealthy person’s relative ease of ability to pay a corresponding debt, would violate equal protection. Coffeyville, Kansas would argue that the defendant is not being incarcerated for failing to pay a debt, but instead for failing to appear in court.

3. In your reasoned opinion, should the failure to pay private debt obligations be criminalized? Why or why not?

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



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Of Special Interest

This section of the newsletter will assist you in addressing Article 1 (“U.S. Government Fines Wells Fargo \$3 Billion for Its ‘Staggering’ Fake-Accounts Scandal”) and the Ethical Dilemma (“‘You Wouldn’t Think You’d Go to Jail over Medical Bills’: County in Rural Kansas Is Jailing People over Unpaid Medical Debt”) of the newsletter.

Teaching Tips

Teaching Tip 1: (Related to Article 1—“U.S. Government Fines Wells Fargo \$3 Billion for Its ‘Staggering’ Fake-Accounts Scandal”): “Wells Fargo Scandal Explained”

For a brief summary of the Wells Fargo scandal when the story first captured the attention of the media, please see the following internet link:

<https://www.youtube.com/watch?v=9zeH-S3A6pg>

Teaching Tip 2 (Related to the Ethical Dilemma—“‘You Wouldn’t Think You’d Go to Jail over Medical Bills’: County in Rural Kansas Is Jailing People over Unpaid Medical Debt”): “Debtor’s Prisons, Then and Now: FAQ”

For an interesting supplemental article regarding the concept of “debtor’s prison’s,” please see the following article:

“Debtor’s Prisons, Then and Now: FAQ”

In 2011, Robin Sanders was driving home when she saw the blue and red lights flashing behind her. She knew she had not fixed her muffler and believed that was why she was being pulled over. She thought she might get a ticket.

Instead, Sanders, who lives in Illinois, was arrested and taken to jail. As she was booked and processed, she learned that she had been jailed because she owed debt — \$730 to be precise, related to an unpaid medical bill. Unbeknownst to her, a collection agency had filed a lawsuit against her, and, having never received the notice instructing her to appear, she had missed her date in court.

Debra Shoemaker Ford, a citizen of Harpersville, Alabama, spent seven weeks in the county jail without ever appearing in court. Her crime was a failure to pay the monthly fees mailed to her by a private probation company, called Judicial Correction Services. She was on probation because of a traffic violation.

In Benton County, Washington, a quarter of those in jail are there because they owe fines and fees. And in Ferguson, Missouri, simmering anger with the



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police and court system has given rise to a pair of lawsuits aimed at the local practice of imprisoning indigent debtors.

The American tradition of debtors' imprisonment seems to be alive and well. But how could that be? Jailing the indigent for their failure to meet contractual obligations was considered primitive by ancient Greek and Roman politicians, and remains illegal and unheard of in most developed countries. Under the International Covenant of Civil and Political Rights, the practice is listed as a civil-rights violation.

In the United States, debtors' prisons were banned under federal law in 1833. A century and a half later, in 1983, the Supreme Court affirmed that incarcerating indigent debtors was unconstitutional under the Fourteenth Amendment's Equal Protection clause. Yet, citizens like Sanders and Ford are, to this day, routinely jailed after failing to repay debt. Though *de jure* debtors' prisons are a thing of the past, *de facto* debtors' imprisonment is not. So what do we really know about modern-day debtors' imprisonment – *how* it returned, when, and where? Below, seven frequently asked questions about the history and abolition of debtors' imprisonment, and its under-the-radar second act.

What is a debtors' prison?

A debtors' prison is any prison, jail, or other detention facility in which people are incarcerated for their inability, refusal, or failure to pay debt.

What is the history of debtors' prisons in the United States?

From the late 1600s to the early 1800s, many cities and states operated actual "debtors' prisons," brick-and-mortar facilities that were designed explicitly and exclusively for jailing negligent borrowers – some of whom owed no more than 60 cents. These dungeons, such as Walnut Street Debtors' Prison in Philadelphia and the New Gaol in downtown Manhattan, were modeled after debtors' prisons in London, like the "Clink" (the origin of the expression "in the clink").

Imprisonment for indebtedness was commonplace. Two signatories of the Declaration of Independence, James Wilson, an associate justice of the Supreme Court, and Robert Morris, a close friend of George Washington's, spent time in jail after neglecting loans.

But for those without friends in high places, debtors' imprisonment could turn into a life sentence. In many jurisdictions, debtors were not freed until they acquired outside funds to pay what they owed, or else worked off the debt through years of penal labor. As a result, many languished in prison – and died there – for the crime of their indigence.

But that was outlawed, right?

Yes, technically.



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After the War of 1812, a costly stalemate, more and more Americans were holding debt, and the notion of imprisoning all these debtors seemed increasingly “feudal.” Moreover, America was seen as a country of immigrants, and many European immigrants had come here to escape debt. So, in 1833, Congress abolished the practice under federal law. Between 1821 and 1849, twelve states followed suit.

Meanwhile, with the advent of bankruptcy law, individuals were given a way out of insurmountable debt, and creditors were made to share some of the risk inherent in a loan transaction. Legislation passed in 1841, 1867, and 1898 replacing a system that criminalized bankruptcy with one designed to resolve as much debt as the debtor could afford, while absolving the remainder.

During the 20th century, on three separate occasions, the Supreme Court affirmed the unconstitutionality of incarcerating those too poor to repay debt. In 1970, in *Williams v. Illinois*, the high court decided that a maximum prison term could not be extended because the defendant failed to pay court costs or fines. A year later, in *Tate v. Short*, the justices ruled that a defendant may not be jailed solely because he or she is too indigent to pay a fine.

Most importantly, the 1983 decision in *Bearden v. Georgia* compelled local judges to distinguish between debtors who are too poor to pay and those who have the financial ability but “willfully” refuse to do so.

When (and why) did the courts revert to jailing debtors?

Experts say that the trend, though ongoing, coincided with the rise of “mass incarceration.” Alec Karakatsanis, a lawyer who last year brought one of the only lawsuits to successfully challenge a local court system for jailing indigent debtors, says that the first step was the normalization of incarceration.

“In the 1970s and 1980s,” he says, “we started to imprison more people for lesser crimes. In the process, we were lowering our standards for what constituted an offense deserving of imprisonment, and, more broadly, we were losing our sense of how serious, how truly serious, it is to incarcerate. If we can imprison for possession of marijuana, why can’t we imprison for not paying back a loan?” As a result of the greater reliance on incarceration, says Karin Martin, a professor at John Jay College and an expert on “criminal justice financial obligations,” there was a dramatic increase in the number of statutes listing a prison term as a possible sentence for failure to repay criminal-justice debt.

“In the late 80s and early 90s,” she says, “there was a major uptick in the number of rules, at the state level but also in the counties, indicating jail time for failure to pay various fines and fees.” Next came the fiscal crisis of the 2000s, during which many states were contending with budget deficits and looking for ways to save. Many judges, including J. Scott Vowell, a circuit court judge in Alabama, felt pressured to make their courts financially self-sufficient, by using the threat of jail time – established in those statutes – to squeeze cash out of small-time debtors.



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Finally, in only the last several years, the birth of a new brand of “offender-funded” justice has created a market for private probation companies. Purporting to save taxpayer dollars, these outfits force the offenders themselves to foot the bill for parole, reentry, drug rehab, electronic monitoring, and other services (some of which are not even assigned by a judge). When the offenders can’t pay for all of this, they may be jailed – even if they have already served their time for the offense.

What are some types of debt that people are sent to jail for not paying?

There are two types: private debt, which may lead to involvement in the criminal justice system, and criminal-justice debt, accrued *through* involvement in the criminal justice system.

In the first category are credit card debt, unpaid medical bills and car payments, and payday loans and other high-interest, short-term cash advances, which indigent borrowers rely on but struggle to repay.

In these cases, the creditor – a predatory lender, a landlord, or a utility provider – or a debt collector (hired by the creditor) may bypass bankruptcy court and take the debtor straight to civil court. If the debtor fails to show up, or if the judge deems that the debtor is “willfully” not paying the debt, the judge may write a warrant for the debtor’s arrest on a charge of “contempt of court.” The debtor is then held in jail until he or she posts bond or pays the debt, in a process known as “pay or stay.” The second category, termed “criminal justice financial obligations,” actually consists of three sub-categories: fines, i.e. monetary penalties imposed as a condition of a sentence, including, say, a traffic ticket; fees, which may include jail book-in fees, bail investigation fees, public defender application fees, drug testing fees, DNA testing fees, jail per-diems for pretrial detention, court costs, felony surcharges, public defender recoupment fees, and on and on and on; and restitution, made to the victim or victims for personal or property damage. Also in this category are costs of imprisonment (billed to inmates in 41 states), and of parole and probation (44 states).

If an offender or ex-offender fails to pay any of this debt, the court will outsource the debt to a private debt collector, and the process of taking the debtor to court, described above, begins all over again.

I’m confused, is this a civil or a criminal matter? Is this debt private or public?

That’s confusing for debtors, too. For indigent people, a civil proceeding regarding private debt – say, an unpaid payday loan – may have criminal ramifications; conversely, involvement in a criminal case may create debt, causing a new civil proceeding.

According to Martin, this ambiguity has grave consequences. For one, indigent debtors do not know whom to negotiate with – the DMV, which mailed the speeding ticket, or the debt collector that now seems to be pursuing the matter. Also, criminal-justice debt affects private creditworthiness and eligibility for a driver’s license, making it harder to get a job, get a home, get a loan, or otherwise find a way to avoid jail, repay the debt and regain solid economic footing.



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Most importantly, explains John Pollock, the coordinator of the National Coalition for a Civil Right to Counsel, indigent defendants have a right to counsel in criminal cases, but not in civil ones. Yet, as noted, they may be jailed for failing to show up at a civil hearing or for not resolving civil debt. In other words, poor people with debt face criminal consequences but without the Constitutional protections afforded to criminal defendants.

If debtors' imprisonment is unconstitutional, why does it happen?

It happens for two reasons. The first is that judges may incarcerate debtors who fail to show up at debt-related proceedings.

In these cases, the crime is not failure to pay, but rather “failing to appear in court,” “disobeying a court order,” or “contempt of court.”

The second is that the Supreme Court, in *Bearden*, did not define two key terms: “indigent” and “willful.” How are judges supposed to decide whether a debtor is “indigent” or, rather, is “willfully” refusing to pay?

By leaving this *mens rea* determination to individual judges, rather than providing bright-line criteria as to how to make the distinction, the justices left open the possibility that a local judge with high standards for “indigence” could circumvent the spirit of *Bearden* and send a very, very poor debtor to jail or prison.

In practice, different judges have different criteria for deciphering whether a debtor is “indigent.” Some judges will determine how much money a debtor has by having him or her complete an interview or a short questionnaire. Some judges will rule that the debtor is not “legitimately” indigent and is, instead, “willfully” neglecting the debt – because the debtor showed up to the courtroom wearing a flashy jacket or expensive tattoos.

And other judges will consider all nonpayment to be “willful,” unless or until the debtor can prove that he or she has exhausted absolutely all other sources of income – by quitting smoking, collecting and returning used soda cans and bottles, and asking family and friends for loans.



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Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapters 5 and 6	Chapter 5	Chapter 3	Chapters 2 and 5
Bennett-Alexander & Hartman, Employment Law for Business	N/A	N/A	N/A	N/A
Kubasek et al., Dynamic Business Law	Chapters 7 and 8	Chapter 7	Chapter 2	Chapters 2 and 7
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 6 and 7	Chapter 6	Chapter 2	Chapters 2 and 6
Liuzzo, Essentials of Business Law	Chapters 3 and 4	Chapter 3	Chapter 2	Chapters 2 and 3
Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 5 and 6	Chapter 5	Chapter 4	Chapters 4 and 5
McAdams et al., Law, Business & Society	Chapters 4 and 7	Chapter 4	Chapter 2	Chapters 2 and 4
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 9 and 22	Chapter 22	Chapter 5	Chapters 5 and 22
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 10 and 13	Chapter 13	Chapter 2	Chapters 2 and 13
Sukys, Brown, Business Law with UCC Applications	Chapters 5 and 6	Chapter 5	Chapter 1	Chapters 1 and 5



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This Newsletter Supports the Following Business Law Texts:

- Melvin, Business Law and Strategy, 1st Edition ©2021 (0078023823)
- Barnes et al., Law for Business, 14th Edition ©2021 (1260247767)
- Bennett-Alexander et al., Employment Law for Business, 9th Edition ©2019 (1259722333)
- Kubasek et al., Dynamic Business Law, 5th Edition ©2020 (1259723585)
- Kubasek et al., Dynamic Business Law: The Essentials, 5th Edition ©2021 (1260253384)
- Langvardt et al., Business Law, 17th Edition ©2019 (1259917118)
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