



Proceedings

A monthly newsletter from McGraw-Hill Education



April 2018 Volume 9, Issue 9

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Dear Professor,

Happy Spring everyone! Welcome to McGraw-Hill Education's April 2018 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 9, Issue 9 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the April 2018 newsletter topics with the various McGraw-Hill Education business law textbooks.

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

1. The SEC fraud case against Theranos founder Elizabeth Holmes;
2. Mega-donors seeking to recover a multi-million dollar gift given to the University of Chicago;
3. Federal and state legal actions against opioid manufacturers;
4. Videos related to a) a 2-year-old girl killed by a falling mirror in a Payless Shoe Store and b) a Kansas man wrongfully imprisoned for 23 years who received no compensation from the state;
5. An "ethical dilemma" related to a lawsuit filed by a 20-year-old against Dick's Sporting Goods and Walmart over new gun policies; and
6. "Teaching tips" related to the "Ethical Dilemma" of the newsletter.

Enjoy the beautiful weather!

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Of Special Interest

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

- 1) The SEC fraud case against Theranos founder Elizabeth Holmes;
- 2) Mega-donors seeking to recover a multi-million gift given to the University of Chicago; and
- 3) Federal and state legal actions against opioid manufacturers.

Hot Topics in Business Law

Article 1: “She Was 'the Next Steve Jobs.' Now, Theranos Founder Elizabeth Holmes is Charged with Fraud”

<https://www.usatoday.com/story/tech/2018/03/14/theranos-founder-elizabeth-holmes-charged-massive-fraud/424670002/>

According to the article, Theranos founder Elizabeth Holmes was charged with "massive fraud" by the Securities and Exchange Commission recently, a downbeat coda to a once high-flying Silicon Valley start-up that promised to revolutionize the blood analysis process.

The SEC complaint charged that Theranos raised more than \$700 million from late 2013 to 2015 while "deceiving investors by making it appear as if Theranos had successfully developed a commercially-ready portable blood analyzer" that could perform a full range of laboratory tests from a small sample of blood.

“But in reality, we allege that after years of development, Theranos was able to process just a small number of blood tests upon its proprietary analyzer, and instead conducted the vast majority of its patients’ tests on modified commercial analyzers that were manufactured by others,” Steven Peikin, the SEC’s co-director of enforcement, told reporters.

Holmes, 34, who once graced the cover of countless magazines and was worth billions on paper, has already settled the charges against her.

She will pay a \$500,000 penalty, be barred from serving as an officer or director of a public company for 10 years, and return 18.9 million shares she amassed during the alleged fraud.

Holmes also cedes her voting control of the company she founded in 2003 at the age of 19 after dropping out of Stanford University in order to pursue her start-up.

Theranos and Holmes neither admitted nor denied the allegations in the SEC's complaint, and the settlements are subject to court approval.

Also charged was former Theranos president Ramesh "Sunny" Balwani. Among a variety of charges, the SEC complaint said Holmes and Balwani lied



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about the technology being used by the Department of Defense in battlefield situations.

Gen. James Mattis, who then led the U.S. Central Command, personally pushed Holmes' tech to be used although military regulators flagged issues with Theranos before the notion took wing. Mattis later joined Theranos' board but resigned from that position when he became U.S. Defense secretary in 2016.

Mattis was one of many famous names backing Holmes. The Theranos board often seemed like a Who's Who of historical figures, including former secretaries of State Henry Kissinger and George Shultz, former senators Sam Nunn and Bill Frist and former secretary of Defense William Perry.

But regardless of such boardroom firepower, the company — which Holmes pitched as a salvation to those fearful of needles like herself — never delivered on its grand vision.

Promising a blood test that would require just a finger prick, rather than a vial of blood, Theranos forged ambitious partnerships with Walgreens and other outlets with a mission to install its Theranos Wellness Centers within miles of every American. Theranos' pilot program was conducted in dozens of Walgreens locations in Arizona.

Investors and partners signed on, pushing Theranos' valuation to \$9 billion. Holmes was worth roughly half of that. *Forbes*, *Fortune* and *Inc.* all put her on their covers. *Inc.*'s headline: "The Next Steve Jobs."

A comprehensive investigation of Theranos launched in 2015 by *The Wall Street Journal* put an end to that euphoria. It cited unnamed employees who said the company was facing major problems with its Edison blood testing machines, the promised technological key to reinventing the blood analysis market.

Regulators started to circle, notably the Food and Drug Administration and the Centers for Medicare and Medicaid Services. Among the findings: In some cases, Theranos had to send the blood it had collected from patients out to traditional labs in order to conduct the required analysis of the samples.

In one case in 2015, examiners from Medicare inspected the company's lab, in Newark, Calif., and found deficiencies around Theranos' test for the clotting ability of blood, which is critical when determining the correct dose of blood thinners. Prescribing too much can result in internal bleeding, while too little can lead to a stroke.

Holmes said she would have the offending lab rebuilt. But Holmes' problems only grew. Lawsuits flew and regulators pressed on. Holmes stuck by her story but gradually refocused her efforts on perfecting the device that she claimed was capable of doing complex bloodwork from just a drop of blood.



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Last spring, Theranos agreed to pay Arizona consumers \$4.65 million under a consumer-fraud settlement brought by more than 175,000 consumers who purchased Theranos tests at Arizona retail locations since 2013.

The Arizona agreement came a day after Theranos announced a settlement with the Centers for Medicare and Medicaid Services, resolving federal regulators' efforts to revoke that company's laboratory certificate.

Under both the Arizona and federal settlements, Theranos agreed to a two-year ban from the blood-testing business and paid a \$30,000 civil penalty as part of the federal settlement.

The fact that a tech company managed to rake in close to a billion dollars to fund a project that seemed revolutionary but also problematic speaks to the often unchallenged nature of some Silicon Valley ventures.

Part of that comes down to the stardust often sprinkled on tech founders, as the news media ate up the story of Holmes and her disruptive idea. But part stems from the fact that, in many instances, tech entrepreneurs do deliver on the implausible.

Consider Elon Musk. He's gone from helping start a payment company (PayPal) to launching rockets to Mars and building the nation's first all-electric car company, both against considerable odds.

But what stood out in the case of Theranos was how the company and its founder rose to great heights while keeping its vital details cloaked in secrecy.

Dressed all in black like her idol, Apple co-founder Steve Jobs, Holmes typically spoke in broad terms and of grand visions rather than blood analysis specifics.

"We are patient, and we're building this company for the very long term," she told USA TODAY in a 2014 interview after bringing Theranos out of stealth mode. "We're looking to reshape the system."

But while Holmes sat for many interviews, she never shared her the secret sauce: how Theranos was managing to do complex blood analysis with a mere drop of blood sourced from a finger prick and stored in its patented Nanotainers. Typically blood tests require vials of blood extracted with needles.

SEC official Peikin said the agency's ruling sounds a cautionary note for investors who consider putting their money into start-ups that are long on promises and short on specifics.

"Investors should ask questions," he said. "Private companies and particular early stage private companies carry additional risks, they're not subject to the same kinds of oversight and disclosures that public companies are and investors in these companies need to be wary."



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A few fundamental Theranos questions remain: Did Holmes simply promise too much too soon? Did she underestimate her team's ability to develop a revolutionary new blood analysis system that only required a drop of the liquid?

Or was there never any such intention and Theranos was an elaborate fraud from the beginning? Back in 2014, Holmes spoke convincingly about how her company was going to succeed by dint of hard scientific work alone.

"We had to redevelop that analytical system to handle small volumes," she said proudly. "We had to build the infrastructure around it all through software and automation to minimize the involvement of humans, where manual error could be great. It's software, hardware and chemistry.

Holmes paused. "There's no shortcut," she said.

Words that perhaps Holmes herself ultimately did not heed.

Discussion Questions

1. Define fraud.

Fraud is a false statement of fact, made with knowledge of its falsity or reckless indifference as to its truth, with the intent that the listener rely on the false statement, the listener in fact relies on the false statement, and the listener is harmed (economically or physically or both) as a result.

2. Apply the elements of fraud to the SEC complaint against Theranos—more specifically, that Theranos raised more than \$700 million from late 2013 to 2015 while "deceiving investors by making it appear as if Theranos had successfully developed a commercially-ready portable blood analyzer" that could perform a full range of laboratory tests from a small sample of blood. Assuming the allegations are true, do they fully satisfy the elements of fraud? Explain your response.

Assuming the allegations are true, this certainly looks like a case of fraud—All the elements of fraud (presented in response to Article 1, Discussion Question Number 1 above) are present.

3. As the article indicates, Elizabeth Holmes has already settled the case against her. In your reasoned opinion, do the terms of the settlement constitute justice? Explain your response.

This is an opinion question, so student responses may vary. In answering this question, students should be mindful of the particular terms of the settlement referenced in the article—More specifically, Theranos will pay a \$500,000 penalty, be barred from serving as an officer or director of a public company for 10 years, return 18.9 million shares she amassed during the alleged fraud, and cede voting control of the company she founded.



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Article 2: “Mega-Donors Who Pledged \$100 million to University of Chicago Sue to Get Money Back”

<https://www.usatoday.com/story/news/2018/03/06/mega-donors-who-pledged-100-million-university-chicago-sue-get-money-back/399739002/>

According to the article, philanthropist brothers who less than three years ago pledged \$100 million to the University of Chicago to create an institute on the study of global conflict are now waging a legal battle with the university to get their money back.

Thomas and Timothy Pearson want to recoup the nearly \$23 million they've already given the university through their family foundation, alleging the school has shown poor stewardship in its budgetary and hiring decisions, according to a federal lawsuit filed last month in the U.S. District Court of Northern Oklahoma.

The mega-donor brothers are upset the institute didn't invite their family to many of the institute's events since they announced their donation in 2015.

“The U of C failed to deliver on the most fundamental of its obligations,” the Pearson Family Foundation alleges in the lawsuit.

The brothers, who were born in Iowa and did not attend the university, announced in 2015 that they picked the University of Chicago over at least dozen academic institutions to establish the Pearson Institute for the Study and Resolution of Global Conflicts within the university's Harris School of Public Policy.

Thomas Pearson said at the time of the announcement that the family's choice "underscores our recognition of the university's history of fostering an environment where rigorous inquiry is successfully applied to society's toughest problems."

Thomas was an executive and general counsel for Alliance Holdings, a Tulsa outfit that produces and markets coal to U.S. utilities and industrial users. He's also served as executive council of Cohesive Capital Partners, a New York-based, direct private equity firm. Timothy Pearson heads an Atlanta-based marketing management consulting firm that serves Fortune 1000 clients and previously was an executive at KPMG.

The donation, at the time, was equal to the second biggest donation in the university's history.

The *Maroon*, the university's student-run newspaper, on Monday was the first to report that the lawsuit was filed in a federal court in Tulsa, where the brothers live.

In the philanthropic world prior to the creation of the global conflicts institution, the Pearsons perhaps had been best known for underwriting the Nobel Peace Prize Concert in Oslo.



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The family foundation alleges the university “secretly” elevated to faculty director James Robinson, a political scientist and economist hired away from Harvard University, to serve as the institute’s director just days before the school faced a contractual obligation to name a director.

The lawsuit also alleges Robinson “is not suited for, the ‘day-to-day operations’ and management role required” of the position.

They also questioned the university’s decision to hire “two junior, non-tenured professors from academic institutions that are ranked below the U of C in national academic standings” for positions funded by the family foundation grant. The two scholars came from Columbia University and New York University.

The lawsuit also alleges the U of C is in breach of the grant agreement, because the dean of the Harris School, which houses the institute, has failed to meet with the Pearson family semi-annually and keep the family apprised on the institute’s activities.

The institute held at least 24 events in 2016-17 school year, but failed to “apprise the Pearson Family” or “invite them” to at least 22 of the events, the lawsuit claims.

In a statement, the university said the lawsuit was without merit and suggested the Pearsons were violating the tradition of academic freedom with their complaints about hiring decisions.

“The university honors its grant agreements with its donors, and it did so with the Pearsons,” university spokesman Jeremy Manier said in a statement. “Further, all academic and hiring decisions are the sole purview of the university and its faculty, guided by the principle of academic freedom. The Pearsons’ complaint is without merit, and the university will vigorously defend itself against the baseless allegations.”

Thomas Pearson sued the Evanston, Ill.-based Garrett-Evangelical Theological Seminary in 2011, after becoming dissatisfied with that institution’s administration of a \$1.2 million scholarship he created in honor of his parents.

Discussion Questions

1. What are the legal requirements for an effective gift transaction?

A gift requires three (3) elements: a) donor intent; b) the donor’s delivery of the gift to the donee; and c) donee acceptance.

2. Is this a gift subject to a condition precedent? A gift subject to a condition subsequent?



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A gift subject to a condition precedent means that a condition must be satisfied before the gift takes place. A gift subject to a condition subsequent means that a later condition operates to revoke a gift. In the subject case, there is no evidence to indicate that any conditions were specifically attached to the \$23 million gift the Pearsons made to the University of Chicago.

3. In your reasoned opinion, will Thomas and Timothy Pearson successfully recoup the nearly \$23 million they have given the University of Chicago? Explain your response.

In your author's opinion, since the Pearsons did not attach any conditions to the gift they made to the University of Chicago, the Pearsons will not successfully recoup the gift.

Article 3: "A Small Town Louisiana Lawsuit Could Pose a Major Threat to Opioid Manufacturers"

https://www.huffingtonpost.com/entry/opioids-lawsuit-louisiana_us_5a96ee65e4b0e6a5230438d2

According to the article, facing a national opioid crisis showing few signs of abating, victims of the epidemic and government officials have increasingly sought to bring direct legal action against opioid manufacturers. An ongoing federal lawsuit in Ohio has grabbed national headlines, but a small parish filing in Louisiana made possible in part by the state's unique civil code could have long-term consequences for the drug producers in the state and beyond.

Four years ago, Tyler M. Roach and his wife were injured when their car was rear-ended. Roach's wife was prescribed and became addicted to opioid-based painkillers due to her injuries, according to their attorney Scott Bickford.

Their child, born during this period, was diagnosed at birth with Neonatal Abstinence Syndrome, or NAS, Bickford said. According to a court filing, the newborn spent several painful days detoxing in a Neonatal Intensive Care Unit (NICU) and will likely suffer from developmental issues for the remainder of her life.

Babies exposed to opioids in utero can develop an addiction to the drug, according to National Institutes of Health research. A diagnosis after birth of NAS often includes immediate withdrawal symptoms — such as excessive crying, heavy sweating, diarrhea, tremors, convulsions, seizures, vomiting, difficulty sleeping, loss of appetite and pain as soon as 24 hours to 10 days after birth.

But newer studies suggest that NAS can also have long-term side effects, including Attention Deficit Disorder, cognitive deficits, growth delays, depression, behavioral problems, life-long infertility and an inability to function independently.

Facing the reality of their own child's battle with NAS, the Roaches in late fall reached out to a local lawyer recommended by friends. On Feb. 26, their new legal team filed a class action petition listing



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Tyler Roach “natural tutor for Baby K.E.R.” as the lead plaintiff. The filing details allegedly fraudulent activity by a local pharmacy as well as the drug manufacturers and distributors. Unspecified damages are requested.

If the litigants are successful, pharmaceutical companies will be forced to contend with a second front — on top of the consolidated, federal suit out of Ohio — that could cost them hundreds of billions of dollars in additional damages.

The Roaches are hardly alone in having a child with an NAS diagnosis: Experts estimate that anywhere from one to just under six out of every 1000 births every year involves a woman who took prescription opioids during pregnancy, according to Kanwaljeet J.S. “Sunny” Anand, a professor of pediatrics who specializes in pain medicine at Stanford University’s School of Medicine and who is participating in the lawsuit.

“On average, one infant with NAS is hospitalized every hour in the U.S.,” he said. With so many other infants and young children also affected, the potential size of this class action lawsuit is enormous. In a Feb. 27 press conference about the case, Bickford invited all Louisiana children suffering from NAS to join the class suit.

If the litigants are successful, pharmaceutical companies will be forced to contend with a second front — on top of the consolidated, federal suit out of Ohio — that could cost them hundreds of billions of dollars in additional damages.

Not surprisingly, the defendants don’t think that there is much merit to either case.

“The misuse and abuse of prescription opioids is a complex public health challenge that requires a collaborative and systemic response that engages all stakeholders,” said John Parker, a spokesman for Healthcare Distribution Alliance, a national trade association representing wholesale distributors including McKesson, Cardinal Health and AmerisourceBergen. “Given our role, the idea that distributors are responsible for the number of opioid prescriptions written defies common sense and lacks understanding of how the pharmaceutical supply chain actually works and is regulated.”

But that’s not the position of the Drug Enforcement Administration, which has held that distributors are responsible for the number of opioid prescriptions and fined members of the trade group almost \$200 million for questionable distribution in the last three months alone.

Over the past two years, more than 350 lawsuits have been filed against corporations that manufacture, distribute and retail opioids. Early on, the plaintiffs were individuals. But criminal investigations, like the DOJ’s case that yielded record fines of mega-distributor McKesson, provided hard facts necessary to support civil actions. Soon, public awareness and pressure on elected officials meant that whole states like Oklahoma and South Carolina, along with large cities like Seattle and Chicago, filed their own grievances.



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That's a lot of different lawyers trying to subpoena the same documents and depose the same witnesses. So to prevent that bureaucratic pileup, the courts chose to pause all of the various proceedings and consolidate the individual suits into one giant lawsuit known as a Multidistrict Litigation (MDL).

“If nothing else, the MDL creates one center for handling all of the documents and exchange of information,” said Johnny Denenea, an attorney with expertise on MDL. The consolidation will create a single discovery process, determine which “test cases” will be tried first and provide infrastructure for the division of any settlement.

The MDL landed in the first jurisdiction to file — Cleveland, Ohio — and in the courtroom of U.S. District Judge Daniel Polster, a 20-year veteran of the bench with a track record of brokering settlements, including a 2016 dispute about protests at the Republican National Convention and a 1999 conflict over ownership of the San Francisco 49ers.

Polster is attempting to bring mediation to the MDL. In most situations, an elaborate tango begins at the start of a case, Denenea explained. The opposing counsels will typically file a series of motions and counter-motions aimed at prolonging the process with the hopes of draining the other party's war chest. Attorneys will exploit any potential loopholes that could result in a summary judgement.

However, in what Denenea described as a highly irregular move, Polster on Jan. 9 forbade both sides from moving forward with such legal maneuvers. Instead, Polster ordered all parties involved to attend a summit with the aim to “educate the Court and each other on supply-chain dynamics and other issues relevant to resolving this MDL, and to pursue further settlement discussions.” Then, sensing that some parties might prefer the court of public opinion, Polster issued a gag order on Feb. 7.

“This is an unusual case,” he later told Bloomberg News. “The problem is urgent, life-threatening and ongoing. I took this step because I thought it would be the most effective path.”

That's where the Louisiana suit comes in. By filing the complaint in rural St. Tammany Parish (population around 250,000) and naming citizens of the state of Louisiana as plaintiffs, the case is so far able to stay out of the aggregated-mega suit — and the gag order.

That's because Louisiana operates under a unique legal system that still heavily relies upon portions of the Code Napoleon, the French civil code created by Napoleon Bonaparte during the state's days as a U.S. territory. Under that civil code, plaintiffs who file in the state have the right to a trial with a jury who are also subject to the code.

The plaintiffs hope that the state's unique laws, as well as the infant distinction, will keep the case out of Polster's court, but ultimately that decision rests solely with the powerful federal judge.



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The Louisiana lawsuit begins with a seven page historic explanation of the Louisiana Civil Code, and entire sections of the text are even written in French. Additionally, several subsections detail the history of the Louisiana Bar and “Twinning” agreements between the Supreme Court of Louisiana and the Court of Cassation — France’s high court. The lengthy civics lesson in the suit is intended to keep the litigation in state — and out of Polster’s attempt at arbitration.

The team representing the Roach family is known for extracting money from corporations that ends up going into state coffers. Jack Harang, noted for a \$1.06 billion environmental pollution judgement against Exxon Mobil, and Warren Perrin, famed for soliciting an apology from Queen Elizabeth II for the expulsion of Acadians from Nova Scotia, are among the lawyers filing.

The plaintiffs believe that keeping the matter in the state will keep any potential settlement in the pockets of the victims. The local jurisdiction will also result in a larger cut of any reimbursed legal fees for the lawyers.

A state-level judgement in the plaintiffs’ favor could total billions of dollars and set an important precedent. Denenea explained that when cases like these are lumped into a federal MDL, damages are distributed very differently. The bulk of the funds from such settlements typically land with state governments. Theoretically, this revenue would be used to fund medicare for victims as well as treatment and prevention campaigns. But the Louisiana litigants believe that smaller entities, like municipalities, are better equipped to administer these programs.

The theory is well supported by experts in the field. “Within the public health sector, we often say, ‘Public health starts locally,’” said Olivia Carter-Pokras, a professor at the University of Maryland’s School of Public Health. “If you want to make a change, you must begin at the bottom.”

To that end, the parties behind the class action suit described themselves as a “legal-medical partnership.” While a victory would present a windfall in legal fees, the plaintiffs’ representatives are publicly focused on creating solutions to the opioid crisis.

The lawyers have attended dozens of meetings with public health professionals, victims and doctors over the last three months. Denenea described plans for detoxification programs and public health services with a focus on protracted, long-term care.

“The damages could be driven by police costs and bail costs, but the solution is public health,” he said.

Overwhelming consensus opinion among legal experts is that opioids cases filed against pharmaceutical giants are standing on very solid ground. But it’s still not clear how long these cases could take, or in what jurisdictions they will ultimately end up.

What is clear is that a new chapter is beginning for a large, yet neglected group of victims.



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“It is high time that the medical and legal communities stand up to demand comprehensive treatment and care for the most needy and vulnerable citizens of our great country,” said Anand, the professor of pediatrics participating in the suit.

Discussion Questions

1. What is a class action lawsuit?

A class action lawsuit involves numerous plaintiffs who have sufficient commonality of interest in order to jointly pursue a cause of action against one or more defendants.

2. As the article indicates, United States District Judge Daniel Polster is attempting to bring mediation to the Multidistrict Litigation (MDL). What is mediation?

Mediation involves a neutral third party, known as a mediator, who attempts to convince the litigants that it is in their mutual best interest to settle the case. A mediator does not have decision-making authority, but instead attempts to convince the parties that settlement is their best option.

3. In your reasoned opinion, will the plaintiffs be successful in this case? Why or why not?

By Young & Rubicam for the plaintiffs, the court ruled in favor of the plaintiffs.



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Video Suggestions

Video 1: “2-Year-Old Girl Killed by Falling Mirror in Payless Shoe Store”

<https://www.cbsnews.com/news/ifrah-siddique-girl-dies-after-mirror-falls-on-her-payless-shoesource-2018-03-04/>

According to the article, a family says a 2-year-old girl died recently after a mirror fell on her at a Payless ShoeSource store in Riverdale, Georgia. CBS affiliate WGCL-TV reports that first responders were told that the young girl was struck in the back of the head.

Ifrah Siddique was rushed to the hospital where she eventually died from her injuries, according to a spokesperson from the Clayton County Fire Department.

Several members of the girl’s family showed up to the Payless location to seek answers from staffers. They said they went to the store to purchase the young girl a new pair of shoes.

"We're all still in a state of shock," the girl's cousin, Aqib Iftkhar, told the station. Iftkhar said the family doesn't want to see another child hurt, and communications with anyone at the retail chain has been limited. "We want to make sure this doesn't happen again."

Iftkhar said the mirror wasn't secure and was only held up by one screw before it fell on Siddique.

In a statement, Payless ShoeSource said they are cooperating with authorities during the investigation.

"Our deepest sympathies go out to the family of Ifrah Siddique during this time of incredible loss," the statement. "We are devastated by this tragic event and are fully cooperating with authorities to research and understand the nature of this accident."

It added, "Out of respect for the family, no further information will be provided at this time."

Discussion Questions

1. Define negligence.



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Negligence is the failure to do what a reasonable person would do under the same or similar circumstances. Negligence requires four elements: a) a duty of care owed by the defendant to the plaintiff; b) breach of the duty of care; c) causation of harm; and d) damages (economic and/or physical).

2. Define negligence per se.

Negligence per se means that the negligence in the case is so obvious, there is no need to introduce any other evidence. This case may likely involve negligence per se, particularly if the mirror was not secure and was only held up by one screw before it fell on Ifrah Siddique.

3. In your reasoned opinion, is this a clear case of liability on the part of Payless ShoeSource? Why or why not?

As indicated in response to Video 1, Discussion Question Number 2 above, this looks like a clear case of liability, particularly if the mirror was not secure and was only held up by one screw before it fell on Ifrah Siddique.

Video 2: “Kansas Man Wrongfully Imprisoned for 23 years Receives No Compensation from State”

<https://www.cbsnews.com/news/kansas-man-wrongfully-imprisoned-23-years-no-compensation-from-state/>

According to the article, when Lamonte McIntyre was exonerated for a double murder in October, he walked out of a Kansas prison with a clean record – but not a dime to his name, reports CBS News' Dean Reynolds. After losing 23 years of his life behind bars, the state is offering him nothing.

Kansas is one of 18 states that offer wrongfully convicted prisoners no compensation at all upon their release.

"I think it's unjust, but me being angry about it is not going to change it," McIntyre said. Tricia Bushnell of the Midwest Innocence Project worked to win McIntyre's release. She said McIntyre has other reasons to be angry. She called this case the "perfect storm."

For example, at his trial in 1994 when he was 17, there was no physical evidence or motive presented. Worse, according to McIntyre's current lawyers, lead police detective Roger Golubski built the case by threatening witnesses. Bushnell said the fallout may impact other potential exonerations.

She said there are about a dozen people behind bars whose cases are connected to detective Golubski.



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Golubski has since retired, and said he did nothing wrong. But Mark Dupree, who became the state's attorney a year ago, has asked the Kansas Bureau of Investigation to review his conduct.

"If my office receives that information and there's probable cause to charge Mr. Golubski, it will happen," Dupree said.

He agrees that McIntyre got a raw deal. "He did. And the only thing we can do is push forward," he said.

Pushing forward is exactly what Lamonte McIntyre is doing. He is studying to be a barber.

"I want to spend the rest of my life being happy. I don't want to be bitter. That's taking away from me. I don't have any more time to give," he said.

Discussion Questions

1. Define wrongful imprisonment.

Wrongful imprisonment indicates that a defendant has been improperly incarcerated due to insufficient evidence (i.e., evidence that does not properly indicate proof beyond a reasonable doubt).

2. In your opinion, should the prosecuting attorney and/or the sentencing judge be held legally responsible for wrongful imprisonment? Explain your response.

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

3. In your reasoned opinion, how much compensation (if any) should the state pay Lamonte McIntyre for wrongful imprisonment?

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



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Of Special Interest

This section of the newsletter addresses an age discrimination lawsuit filed by a 20-year-old against Dick's Sporting Goods and Walmart over new gun policies.

Ethical Dilemma

“20-Year-Old Sues Dick’s Sporting Goods, Walmart over New Gun Policies”

<https://www.usatoday.com/story/money/business/2018/03/06/walmart-dicks-sporting-goods-sued-over-new-gun-policies/39828802/>

A 20-year-old Oregon man has accused Walmart and Dick’s Sporting Goods of age-discrimination for refusing to sell him a rifle.

Tyler Watson filed Oregon county court lawsuits against the retailers recently, six days after they announced they would not sell guns to buyers under 21. The companies added the higher age restriction after the massacre at Marjory Stoneman Douglas High School in Parkland, Fla.

Oregon law allows state residents to buy shotguns or rifles as of age 18. Federal law also allows people 18 and older to buy rifles or shotguns from licensed dealers.

Watson's lawsuits may be the first of their kind in the U.S., his attorney, Max Whittington, told *The Oregonian/Oregon Live*, media outlets that first reported the cases.

Watson went to a Field and Stream store owned by Dick's Sporting Goods in Medford, Ore., on Feb. 24 "for the purpose of buying a .22 caliber Ruger 10/22 rifle," according to the lawsuit filed in state Circuit Court.

He left after being told the store would not sell him any firearm, including rifles and shotguns, or ammunition for the weapons, unless he was 21, the lawsuit alleged. The refusal came four days before the retail chain publicly announced its new sales policy for firearms.

Watson encountered a similar scenario when he went to a Walmart store in Grants Pass, Ore., on March 3 "for the purpose of buying a rifle," according to a separate lawsuit filed in state Circuit Court.

Whittington said Watson did not know about the new age policy for gun sales when he went to the Field and Stream store four days before the policy was announced. It was not immediately clear whether Watson learned about the change before he went to the Walmart store.



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"He was really just trying to buy a rifle," Whittington said of the initial purchase attempt. The attorney also said Watson is not part of any organized movement taking action against retailers that have enacted tighter restrictions on gun sales.

The lawsuits seek legal injunctions ordering the retailers "to stop unlawfully discriminating against 18-, 19-, and 20-year-old customers at all Oregon locations," as well as unspecified punitive damages because of "the willful nature of the discrimination."

Walmart spokesman Randy Hargrove said Tuesday that the company, one of the nation's largest gun sellers, reviewed its policy on firearm sales in light of recent events.

"As a result, we raised the age restriction for the purchase of firearms and ammunition to 21 years of age. We stand behind our decision and plan to defend it," said Hargrove. "While we haven't seen the complaint, we will respond as appropriate with the court."

Dick's Sporting Goods did not immediately respond to an email seeking comment.

Former U.S. attorney general Albert Gonzales told Fox News last week that he anticipated that retailers' revised age restrictions for gun sales would face legal tests in state or local courts.

"These are lawful products, like them or not," said Adam Winkler, a professor at the UCLA School of Law who has written about the constitutional right to bear arms and is the author of *We the Corporations: How American Businesses Won Their Civil Rights*.

"I think these actions by companies are on shaky legal grounds in many states," added Winkler. Separately, the National Rifle Association last month criticized legislative proposals to ban people under age 21 from buying rifles or shotguns.

"Passing a law that makes it illegal for a 20-year-old to purchase a shotgun for hunting or an adult single mother from purchasing the most effective self-defense rifle on the market punishes law-abiding citizens for the evil acts of criminals," the gun rights organization said.

Discussion Questions

1. What specific types of discrimination are prohibited by state and/or federal law?

Numerous types of discrimination are prohibited by state and/or federal law, including race, gender, national origin, culture, disability, and age discrimination.

2. Does a 20-year-old have legal standing to sue for age discrimination?



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This is not well-settled law. Under the Age Discrimination in Employment Act (ADEA), no employer may discriminate against anyone over the age of 40. However, in the subject case, Tyler Watson is only 20 years old, and he is not an employment candidate or an employee.

3. In your reasoned opinion, will Tyler Watson be successful in his lawsuit against Walmart and Dick's Sporting Goods for age discrimination? Explain your response.

Tyler Watson's success in his lawsuit against Walmart and Dick's Sporting Goods will depend on his ability to establish judicial precedent establishing that young people (i.e., under the age of 40) cannot be discriminated against on the basis of age.



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Of Special Interest

This section of the newsletter will assist you in addressing the Ethical Dilemma "20-Year-Old Sues Dick's Sporting Goods, Walmart over New Gun Policies" of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to the Ethical Dilemma--"20-Year-Old Sues Dick's Sporting Goods, Walmart over New Gun Policies": "Dick's Sporting Goods Bans Sales of Assault-Style Weapons after Parkland, Florida School Shooting")

<https://www.usatoday.com/story/money/2018/02/28/dicks-sporting-goods-bans-sales-assault-weapons-after-parkland-florida-school-shooting/380382002/>

Note: Please use the following article to more thoroughly address the issues presented in the Ethical Dilemma of this newsletter:

"Dick's Sporting Goods Bans Sales of Assault-Style Weapons after Parkland, Florida School Shooting"

According to the article, Dick's Sporting Goods is banning sales of assault-style weapons across all its stores after the Parkland, Fla. school shooting.

The nation's largest sporting goods retailer announced the move in an open letter and an appearance by CEO Ed Stack on Good Morning America.

The retailer will also end sales of high-capacity magazines and sales of guns to people under 21 years old.

Assault-style weapon sales ended at Dick's-branded stores after the Newtown, Conn. school shooting in 2012. But the company was still selling them at its 35 Field & Stream locations, which specialize in hunting and outdoors products.

"As we looked at what happened down in Parkland, we were so disturbed and saddened by what happened, we felt we really needed to do something," Stack told GMA's George Stephanopoulos.

Stack acknowledged that the Parkland school shooter had purchased a shotgun at one of the company's stores in November. Though the killer did not use the gun in the shooting, the realization served as a catalyst for action.

"We did everything by the book, we did everything that the law required and still he was able to buy a gun," Stack said. "When we looked at that, we said,



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The systems that are in place across the board just aren't effective enough to keep us from selling someone a gun like that."

Although the decision drew praise from gun-control proponents, don't expect it to make a big impact on gun sales. Sales of guns and ammunition are "highly fragmented and characterized by a large number of small players," according to market-research firm IBISWorld.

The four largest gun sellers control only 5% of the market. The U.S. had about 6,550 gun shops as of November 2016. And although online sales have increased in popularity, federal regulations requiring local dealers to fulfill gun purchases have empowered mom-and-pop shops.

Stack described Dick's change as a direct response to the Parkland students who have pushed for change following the shooting. He said the company remains a "staunch" supporter of Second Amendment rights, adding that he owns a gun himself.

The move comes as businesses are coming under pressure to cut ties to the gun-rights lobby. Several major companies have cut discounts for members of the National Rifle Association, including Delta Air Lines, United Airlines, Enterprise, Avis Budget, Hertz, TrueCar, MetLife and Symantec.

Asked whether Dick's is prepared for a backlash, Stack said yes.

"We know that this isn't going to make everyone happy but when we take a look at what those kids and the parents and the heroes in the school, what they did, our view was if the kids can be brave enough to organize like they this, we can be brave enough to take these out of here," Stack said.

The company also took the unusual step of calling for Congress to ban assault-style weapons, raise the minimum age to purchase a gun to 21 and outlaw sales of high-capacity magazines and bump stocks.

The retailer asked Congress to impose "universal background checks" and "ensure a complete universal database of those banned from buying firearms."

"We hope others join us in this effort to let our kids know that their pleas are being taken seriously," Stack said in his open letter.

One immediate question: Will Dick's competitors follow suit?

Walmart banned assault-style weapons in 2015. It was not immediately clear if the company still sells guns to people under 21 or if it sells high-capacity magazines. A spokesperson was not immediately available for comment.

Cabela's and Bass Pro Shops, which are now the same company, continue to sell assault-style weapons and high-capacity magazines.



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Representatives of Cabela's and Bass Pro Shops were not immediately available for comment. Dick's Sporting Goods investors did not appear to be concerned by the financial implications of the decision. The company's stock rose 0.6% shortly after the opening bell.

Teaching Tip 2 (Related to the Ethical Dilemma--"20-Year-Old Sues Dick's Sporting Goods, Walmart over New Gun Policies": "Walmart Bans Gun Sales to Anyone under 21 after Parkland, Florida School Shooting")

<https://www.usatoday.com/story/money/2018/02/28/walmart-bans-gun-sales-anyone-under-21-after-parkland-florida-school-shooting/383487002/>

Note: Please use the following article to more thoroughly address the issues presented in the Ethical Dilemma of this newsletter:

"Walmart Bans Gun Sales to Anyone under 21 after Parkland, Florida School Shooting"

Walmart is banning sales of guns to people younger than 21, becoming the second major retailer to make such a move Wednesday following the Parkland, Fla. school shooting.

The nation's largest private employer and retailer made the announcement hours after Dick's Sporting Goods earlier said it would make a similar move.

The decision comes amid billowing pressure on political leaders and business executives to take action to stem gun violence.

Walmart said it would make the policy change "as quickly as possible" and said it would require shoppers to be 21 to buy ammunition.

"In light of recent events, we've taken an opportunity to review our policy on firearm sales," the company said in a statement. "Going forward, we are raising the age restriction for purchase of firearms and ammunition to 21 years of age."

The company had already banned sales of assault-style guns in 2015. Dick's banned sales of such weapons at its big-box locations in 2012 but extended the ban to its 35 Field & Stream shops Wednesday.

Walmart also said it would remove "items from our website resembling assault-style rifles, including nonlethal airsoft guns and toys."

"Our heritage as a company has always been in serving sportsmen and hunters, and we will continue to do so in a responsible way," Walmart said.



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Unlike Dick's Sporting Goods, which called for policy changes to outlaw assault-style rifles and raise the minimum age for purchasing a gun to 21, Walmart made no similar political call.



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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, 7 and 33 | Chapters 5 and 7 | N/A | N/A |
| Bennett-Alexander & Hartman, Employment Law for Business | N/A | N/A | N/A | N/A |
| Kubasek et al., Dynamic Business Law | Chapters 7, 8 and 48 | Chapters 7 and 8 | N/A | N/A |
| Kubasek et al., Dynamic Business Law: The Essentials | Chapters 6, 7 and 8 | Chapters 6 and 7 | N/A | N/A |
| Liuzzo, Essentials of Business Law | Chapters 3, 4 and 24 | Chapters 3 and 4 | N/A | N/A |
| Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment | Chapters 5, 7 and 23 | Chapters 5 and 7 | N/A | N/A |
| McAdams et al., Law, Business & Society | Chapters 4 and 7 | Chapters 4 and 7 | N/A | N/A |
| Melvin, The Legal Environment of Business: A Managerial Approach | Chapters 9, 22 and 23 | Chapters 9 and 22 | N/A | N/A |
| Pagnattaro et al., The Legal and Regulatory Environment of Business | Chapters 7, 10 and 13 | Chapters 10 and 13 | N/A | N/A |
| Sukys, Brown, Business Law with UCC Applications | Chapters 5, 6 and 29 | Chapters 5 and 6 | N/A | N/A |



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This Newsletter Supports the Following Business Law Texts:

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

