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Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

Contents

Dear Professor,

Spring is here! Welcome to McGraw-Hill Education's April 2019 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 10, 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 2019 newsletter topics with the various McGraw-Hill Education business law textbooks.

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

1. The responsibility of the federal judiciary (including the United States Supreme Court;

2. The insanity defense in a Florida murder case involving a man who dropped his five-year-old daughter from a bridge;

3. Purdue Pharma's recent $270 million settlement with the state of Oklahoma regarding its aggressive marketing of Oxycontin, a painkiller that is part of the ongoing nationwide opioid epidemic;

4. Videos related to a) the college admissions scandal and b) the murder of a North Carolina nurse and the capture of her husband, a suspect in the case;

5. An "ethical dilemma" related to Wells Fargo's recent charitable contributions to organizations that focus their work on promoting affordable housing, small businesses, education and environmental sustainability; and

6. "Teaching tips" related to Article 2 ("Insanity Defense Set for Man Who Dropped Daughter off Bridge") of the newsletter.

I wish all of you a joyous spring season!

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April 2019 Volume 10, Issue 9

Of Special Interest

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

1) The responsibility of the federal judiciary;

2) The insanity defense in a Florida murder case involving a man who dropped his five-year-old daughter from a bridge; and

3) Purdue Pharma's recent $270 million settlement with the state of Oklahoma regarding its aggressive marketing of Oxycontin, a painkiller that is part of the ongoing nationwide opioid epidemic.

Hot Topics in Business Law

Article 1: "'Obama Judges?' 'Trump Judges?' Border Emergency Lawsuits Could Expose or Defuse Partisan Differences"

https://www.usatoday.com/story/news/politics/2019/03/17/clinton-obama-trump-judges-border-emergency-lawsuits-court-appeals/2992578002/

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

According to the article, Congress cannot stop President Trump's emergency declaration at the Mexican border, but the courts will have the final word.

Following the president's recent veto of a congressional resolution rescinding his action, three little-known federal district judges have the best chance to block the emergency declaration. At the same time, they will test Trump's theory that the judiciary is prejudiced against him.

One is a 25-year veteran of the federal court system who was born near the Mexican border and chosen by President Bill Clinton.

Another was the last judge named by President Barack Obama to the federal district court in northern California five years ago.

A third is a former police officer who donated to Trump's 2016 campaign and was named to the federal bench the following year.

They run the political gamut from left to right. Whether that matters depends on who's talking.

To hear Trump tell it, the federal courts are run by "Obama judges" and others who bring their personal ideologies to the bench. He has singled out the U.S. Court of Appeals for the 9th Circuit, based in California, as a "dumping ground for certain lawyers looking for easy wins and delays."

"They will sue us in the 9th Circuit," Trump predicted about his emergency declaration last month. "We will possibly get a bad ruling, and then we'll get another bad ruling, and then we'll end up in the Supreme Court."

California and 19 other states did file their case in the San Francisco-based Northern District of California, guaranteeing that any appeal would be

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

brought in the 9th Circuit. The Sierra Club, represented by the American Civil Liberties Union, also filed there.

The states' case, and possibly the other, will be heard by federal District Judge Haywood Gilliam, an Obama nominee. In a previous case, Gilliam sided with 13 states and the District of Columbia in their quest to block Trump administration changes to federal rules governing insurance coverage for contraceptives.

But to hear Supreme Court Chief Justice John Roberts tell it, there's no such thing as an "Obama judge."

"We do not have Obama judges or Trump judges, Bush judges or Clinton judges," Roberts told the Associated Press earlier this year in a rare rebuke of the president. "What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for."

What's clear is that not all the lawsuits challenging Trump's emergency declaration will be heard by liberal judges. Nor is it clear that it matters: Some judges nominated by Republican presidents have ruled against the administration on issues ranging from the separation of immigrant families at the border to the separation of a CNN correspondent from his White House press credential.

Three progressive groups – Public Citizen, the Center for Biological Diversity and the environmental group Earthjustice – filed separately in federal district court for the District of Columbia, where 11 of 14 judges were named by Democratic presidents. But the first two suits were assigned to Judge Trevor McFadden, nominated by Trump in 2017, and the third likely will be as well.

In Texas, where El Paso County is challenging the border emergency, District Judge David Briones picked up the assignment. The U.S. District Court for the Western District of Texas has mostly Republican-named judges, but Briones dates to the Clinton administration.

"In terms of statistics, it came out differently than one might expect," Elliot Mincberg, senior fellow at the liberal interest group People for the American Way, said of the D.C. and Texas selections.

Federal district courts spread their caseloads among available judges, usually through a random drawing. At the appeals court level, clerks generally create three-judge panels randomly, mixing up the combinations monthly. While "forum-shopping" by lawyers seeking friendly courts is common, the judges usually can't be predicted.

At the district court level, where the border emergency challenges will begin, judges conduct extensive fact-finding. For that reason, Mincberg said, "the political background of judges individually tends to be a little bit less important."

Later appeals to federal circuit courts and the Supreme Court use the facts to address legal and constitutional issues. Those courts are known for being more liberal – such as the 9th Circuit and the District of Columbia Circuit – or conservative, such as the 5th Circuit, which includes Texas.

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

For now, the challenges will proceed slowly, partly because the Trump administration has yet to target specific funds not appropriated by Congress. The president's Feb. 15 emergency declaration is intended to free up $3.6 billion in military construction funds, in addition to nearly $1.4 billion approved by Congress and other monies he can access. For the coming fiscal year, Trump is seeking another $8.6 billion for the wall.

The first hurdle facing all the challengers will be to prove that they have something to lose, and therefore a right to sue.

Twenty state attorneys general, led by California's Xavier Becerra, claim the emergency declaration would redirect drug interdiction money and other funds that would have gone to their states.

The Sierra Club and ACLU argue it would harm border communities, endanger wildlife and damage the environment. The Center for Biological Diversity says its members hike, camp, study wildlife, and conduct scientific, vocational and recreational activities along the border. Earthjustice specifies the risk to graves and spiritual ancestral sites.

Public Citizen's lawsuit was filed on behalf of landowners in South Texas and others whose property could be threatened by the border wall. El Paso County says the emergency declaration would damage its reputation and economy.

If past is prologue on immigration-related cases, Trump's chances of being upheld in the lower courts isn't good – particularly in the Northern District of California.

There, Judge William Alsup blocked Trump's effort to end protections for undocumented immigrants brought to the U.S. as children. Judge Edward Chen blocked his plan to end "temporary protected status" for immigrants fleeing Haiti, Sudan, Nicaragua and El Salvador. Judge William Orrick blocked him from denying funds to sanctuary cities that don't cooperate with federal immigration officials. Judge Jon Tigar refused to let him deny asylum to migrants crossing the Mexican border illegally.

And just weeks ago, Judge Richard Seeborg became the fifth to enter the fray, declaring the administration's plan to add a question on citizenship to the 2020 Census unconstitutional.

Now it will be Gilliam's turn. The 49-year-old former federal prosecutor is among 17 of the 19 Northern District of California judges named by Democratic presidents.

When he blocked Trump from changing Obama's so-called "contraception mandate" in the states that challenged the administration's action, Gilliam said it would cause a "substantial number" of women to lose birth control coverage. He called that potential a "massive policy shift."

Whether that makes him an "Obama judge" in Trump's terminology – or part of Roberts' "independent judiciary" – will be something for both sides to judge.

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

Discussion Questions

1. What is the primary responsibility of the judiciary?

The primary responsibility of the judiciary is to achieve justice for the litigants involved in a case. This includes ensuring all parties due process of law, particularly in terms of correctly interpreting and applying the law to the case.

2. As indicated in the article, United States Supreme Court Chief Justice John Roberts believes that we should all be "thankful" for an "independent" judiciary. Do you agree or disagree with Chief Justice Roberts' assertion? Explain your response.

If justice is indeed "blind," as the famous saying goes, then the judiciary must indeed be independent. Actual justice demands that the judiciary objectively and fairly resolve a case. In turn, objectivity and fairness dictate that judges not allow their personal political affiliations, ideologies and/or personal opinions influence the way in which they address a case.

3. In your reasoned opinion, do judges owe an obligation to the United States president who appointed them? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, judges owe obligations to the American people and to our system of justice, not to the president who appointed them.

Article 2: "Insanity Defense Set for Man Who Dropped Daughter off Bridge"

https://abcnews.go.com/US/wireStory/insanity-defense-set-man-dropped-daughter-off-bridge-61745310?cid=clicksource_4380645_null_headlines_hed

According to the article, no one disputes John Jonchuck dropped his 5-year-old daughter from a Florida bridge to her death four years ago, but whether he is a murderer or insane will soon be up to a jury to decide.

Jonchuck, 29, goes on trial soon for the January 8, 2015, death of his daughter Phoebe, whom he dropped 62 feet into Tampa Bay as a St. Petersburg police officer watched helplessly.

Jonchuck is charged with first-degree murder, but prosecutors are not seeking the death penalty. If convicted, he will automatically go to prison for life.

If his attorneys' insanity defense works, he would be sent to a psychiatric hospital and it is unlikely he would ever be released. To be eligible, he would have to prove he was no longer mentally ill or dangerous. Pinellas County Public Defender Bob Dillinger said he knows of no Florida case where a killer was found not guilty by reason of insanity of first-degree murder and eventually released.

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

"He'll be in a state prison for the rest of his life, or a state hospital for the rest of his life," Dillinger said.

Successful insanity defenses are rare. Under Florida law, Jonchuck's attorneys must convince the jury his mental illness was so severe that he did not know what he was doing or that it was wrong.

Jonchuck did have a long history of mental problems before he and his daughter ever reached the Dick Misener Bridge - his family told the Times he had been involuntarily committed 27 times - and seemed to be having a breakdown.

Twelve hours before Phoebe's death, Jonchuck's divorce lawyer, Genevieve Torres, called a state child protection hotline, fearing for the girl's safety.

Torres told the Department of Children and Families operator that Jonchuck had driven to three churches in his pajamas with Phoebe in tow that morning, called Torres "God" and asked her to translate his stepmother's century-old Swedish Bible, which he carried and had become obsessed with. The attorney said Jonchuck was also paranoid that Phoebe wasn't his child.

"He's calling the office every five minutes and saying these religious things and saying the child might not be his - it just really concerns me," Torres told an operator. She added, "It's all craziness and it doesn't make any sense and he's out of his mind."

Torres also told the operator, who was inexperienced, that the department had an open investigation after an earlier caller accused Jonchuck of violence, substance abuse, and inadequate supervision. But the operator thought the attorney was more worried about Jonchuck's safety than the girl's and did not report the call to authorities.

Just after midnight the next day, Jonchuck's PT Cruiser raced past officer William Vickers, who was heading home from his shift in his patrol car. He started following Jonchuck, but never got close enough to read the license plate and didn't know Phoebe was inside.

As they reached the bridge's crest, Jonchuck stopped and got out. Vickers, fearing an ambush, stopped behind him, pulled his gun and yelled at Jonchuck to show his hands. He saw no weapon. Jonchuck yelled at the officer, "You have no free will." He grabbed Phoebe from the back seat, held her over the side momentarily and then dropped her. Vickers thinks she screamed.

Jonchuck drove off but was soon arrested. Vickers scrambled down a ladder to a dock below the bridge but couldn't see Phoebe in the dark water. A marine rescue boat was summoned, and her body was found hours later.

Discussion Questions

1. According to Florida law, what is the definition of insanity?

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

As the article indicates, under Florida law, insanity is a mental illness so severe that at the time of the commission of the wrongful act, the defendant did not know what he was doing or that it was wrong.

Pursuant to Florida law, all people are presumed to be sane. This means that the law assumes a defendant is sane unless the defendant can prove he or she is not sane. The defendant bears the burden of proving his or her insanity, which he or she must prove by "clear and convincing evidence."

2. In your reasoned opinion, is the insanity defense "overused" in the United States justice system? On what basis do you formulate your opinion regarding this issue?

This is an opinion question, so student responses may vary. According to research, the insanity defense is raised in only about one percent of all criminal cases; in turn, the defense is successful in only about twenty-five percent of those cases. That means the insanity defense is successful in only about one-quarter of one percent of all criminal cases. These statistics often surprise students, given the high-profile cases heightening public awareness of the insanity defense and the resulting assumption that the insanity defense is raised frequently.

3. In your reasoned opinion, do the facts set forth in this article support a determination of John Jonchuck's insanity? Why or why not?

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

Article 3: "OxyContin Maker Purdue Pharma Reaches $270 Million Settlement Related to Opioid Crisis"

https://abcnews.go.com/Business/oxycontin-maker-purdue-pharma-reaches-270-million-settlement/story?id=61954203&cid=clicksource_4380645_null_headlines_hed

Note: In addition to the article, please see the accompanying video included at the above-referenced internet address.
According to the article, Purdue Pharma, the company that makes OxyContin, settled its first significant lawsuit recently related to its aggressive marketing of a painkiller that is part of the ongoing nationwide opioid epidemic.

The $270 million settlement with the state of Oklahoma marks a milestone for the company, which is exploring filing for bankruptcy and currently faces 1,600 additional lawsuits by cities, counties and states related to its role in the painkiller crisis.

The deal earmarked $200 million for the Oklahoma State University Center for Wellness and Recovery, a treatment and research center, that would boost the center to a national level. Purdue will also pay $60 million toward the state's legal fees. An additional $12.5 million will go towards measures fighting the opioid epidemic in cities and counties in Oklahoma.

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

Oklahoma Attorney General Mike Hunter's office, which filed the lawsuit, recently disclosed the terms of the deal at a press conference.

In addition, Purdue will not promote opioids in Oklahoma, including "employing or contracting with sales representatives to health care providers" in Oklahoma, Hunter said.

The company issued a statement supporting the settlement.

“Purdue has a long history of working to address the problem of prescription opioid abuse and diversion. We see this agreement with Oklahoma as an extension of our commitment to help drive solutions to the opioid addiction crisis, and we pledge Purdue’s ongoing support to the National Center and the life-saving work it will do for generations to come," Dr. Craig Landau, CEO of Purdue Pharma, said in a recent statement.

"The addiction crisis facing our state and nation is a clear and present danger. Last year alone, out of the more than 3,000 Oklahomans admitted to the hospital for a non-fatal overdose, 80 percent involved a prescription opioid medication," Hunter said. "Additionally, nearly 50 percent of Oklahomans who died from a drug overdose in 2018 were attributed to a pharmaceutical drug."

"Deploying the money from this settlement immediately allows us to decisively treat addiction illness and save lives. This agreement is only the first step in our ultimate goal of ending this nightmarish epidemic," Hunter said. "We are out of time to deal with the responsibility. We have to deal with this crisis."

Hunter said the state struck the deal in part because of Purdue's potential bankruptcy, but that the settlement is structured in a way to guarantee the state will be paid, no matter what the company's financial fate may be.

Purdue Pharma is owned by the Sackler family, which is facing increasing censure from financial and philanthropic institutions for its role in manufacturing and marketing opioids.
The families of Dr. Mortimer and Dr. Raymond Sackler, who were not defendants in the suit, announced an additional $75 million donation Oklahoma State's National Center for Addiction Studies and Treatment.

"We applaud Attorney General Hunter for his thoughtful and constructive approach to this agreement, which recognizes the complexity and multiple causes of our nation’s addiction epidemic," the Sackler families' statement said. "We also want to make clear that the recent attacks on our family are not accurate and misdirect attention away from crucial issues such as the terrifying rise in illicit fentanyl overdoses."

Experts said the OxyContin producer could have settled to avoid more public disclosures. The settlement was announced the day after the Oklahoma Supreme Court ruled against Purdue -- as well as Johnson & Johnson and Israel-based Teva Pharmaceutical Industries, the other defendants in the suit -- to delay an upcoming trial by 100 days. The start date remains May 28 in Cleveland County District Court.

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

"I was surprised at the size of the settlement," Richard Ausness, an expert in product liability at the University of Kansas Law School said. "But Purdue avoided a nasty trial and the possibility that more evidence of wrongdoing would come out during discovery or at trial. In addition, most of the settlement money has been earmarked for addiction treatment and Purdue might claim that it is contributing to solving the addiction problem instead of frittering away its assets in fruitless litigation."

Ausness added that Teva and Johnson & Johnson may be able to settle with the state for less because they had a much smaller share of the market.

"I think that it would be wise for them to settle in order to avoid being 'home cooked' by a hostile Oklahoma jury if the case goes to trial," he said.

Discussion Questions

1. On what legal basis did the state of Oklahoma bring an action against Purdue Pharma?

According to the article, the state of Oklahoma brought the lawsuit based on Purdue Pharma's overly aggressive marketing of Oxycontin, an opioid.

2. Discuss the propriety of the $270 million settlement. In your reasoned opinion, does this represent justice in the case? Does this case signal the need for tort reform in the United States, particularly in terms of the potentially devastating liability pharmaceutical companies might have in producing and marketing pharmaceuticals?

In answering these questions, one must keep in mind that a settlement is a voluntary agreement between the litigants involved in a case. No one forced or coerced Purdue Pharma into reaching this settlement. Whether the settlement represents justice is an opinion question—Note that the settlement only involves the state of Oklahoma's claim against the company, not individual consumers or other parties who might have been affected by the dangers of Oxycontin.

Discussions of tort reform usually involve proposed caps to limit the damages a defendant corporation might be required to pay. Do note to students that under our current system of justice, the jury, the trial court judge and the appellate judges all usually "weigh in" in terms of assessing the propriety of a jury-imposed damage award (if the case goes to a jury). There are already numerous "checks and balances" built into our system of justice to determine what amount of money damages are appropriate in a particular case.

3. Considering the subject settlement, what is the likelihood that other states will follow Oklahoma's suit against Purdue Pharma and other opioid manufacturers?

In your author's opinion, the subject settlement is "wind to the sails" of any other states that might want to pursue litigation against Purdue Pharma and other opioid manufacturers. The question remains whether opioid manufacturers will be able to endure the legal onslaught—As the article

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

indicates, Oxycontin maker Purdue Pharma already faces 1,600 additional lawsuits by cities, counties and states related to its role in the painkiller crisis. That number will likely increase.

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

Video Suggestions

Video 1: "The College Admissions Scam Opens a New Front in the Affirmative Action Debate"

https://www.cnn.com/2019/03/17/us/college-cheating-scandal-affirmative-action-debate/index.html

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

"The College Admissions Scam Opens a New Front in the Affirmative Action Debate"

Pull yourself up by your bootstraps.
No leg up or handouts in America.
Why take a spot away from a more deserving student?

Those phrases are part of the rhetorical toolkit opponents of affirmative action have long used to attack the policy. But defenders of using racial preferences in college admissions now have a new response to complaints that undeserving black and brown students are getting help:

What about the college cheating scandal?

The outrage over the scam laid out by federal prosecutors has opened a new battleground in the affirmative action war. Opponents of the policy say the allegations bolster their arguments that elite colleges can't be trusted to vet students impartially. Defenders of racial preferences say, "There's a lot more kids at elite colleges because their parents are rich than because they're brown or black."

Looming behind this debate is a big question that may take years to answer: Could revelations from the cheating scandal actually save affirmative action, if and when the US Supreme Court takes up the issue again?

So far, there's little indication to think the scheme uncovered by the feds could sway the court's conservative majority -- which has been shaped by a legal movement long opposed to affirmative action.
Some affirmative action critics, when asked why preferential treatment for racial minorities is wrong but giving a leg up to wealthy students, children of donors and legacy admissions is OK, say both are dubious.

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

Whether an unqualified student gets into college from the "racial preference pool" or the "celebrities-and-cheaters pool," it's not right, says Walter Olson, a senior fellow at the Cato Institute, a libertarian think tank in Washington.

"If racial preference is unjust, then it doesn't magically become just because people notice some other injustice that has different beneficiaries," Olson says. "Two things can be unjust at the same time, and two injustices do not add up to one justice."

At first glance, the admissions scam seems to have little to do with affirmative action. The allegations revolve around the abuse of wealth, Hollywood celebrity and brazen acts of deception. Federal investigators say 50 people took part in a scheme that involved cheating on standardized tests and bribing college coaches and school officials to accept students as college athletes regardless of their abilities.

Actresses Lori Loughlin and Felicity Huffman are among the dozens of parents facing federal charges. Others charged include nine coaches at elite schools. Most of the faces of the scandal are white, wealthy and well-connected.

But the scam strays into the affirmative action minefield because it raises questions that have long driven the debate over racial preferences: What's the difference between a deserving or undeserving college student? When is preferential treatment justified, and when is it wrong? Should there be a level playing field for all students?

People are already answering those questions by filtering them through the lens of the college admissions scam.

Some supporters of affirmative action cite the scandal as evidence that the real scam in college admissions is how wealthy white parents game the system from cradle to campus.

"The college admissions scandal just made affirmative action complaints look completely ridiculous," reads the headline of a recent Esquire column by Charles Pierce.

"Legacy admissions are affirmative action for the rich," reads the headline of an article by Jenice Armstrong, a columnist for The Philadelphia Inquirer and Philadelphia Daily News.

Some even use the scam to indict the vision of America that many affirmative action opponents evoke when they tell poor black and brown students that anyone can make their way to the top if they just work hard enough.
One woman confessed on Facebook to spending years ghostwriting college application essays, letters and resumes for the children of wealthy parents. She wrote that the scandal is proof "the upper class is a closed system."

"THE WHOLE SYSTEM IS RIGGED, YOU GUYS. It is rigged," Jaimie Leigh wrote. "Maybe you went from lower class to middle class, or lower middle class to upper middle class, and you feel like ... I LOVE AMERICA AND BALD EAGLES AND MERITOCRACY, but it's all an illusion."

businesslaw

Mc Graw Hill Educatio

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

What, however, does any of this have to do with the Supreme Court?

Some background might help. When anyone starts talking about how race and class predetermine a child's outcome in the United States, they bump up against some of the most cherished beliefs of the conservative legal world.

The conservative legal movement that helped shape the five conservative justices who now sit on the Supreme Court has long preached the virtues of a "level playing field." Many of its leaders have chided progressives for creating an "entitlement mentality" and pushing unqualified and undeserving students into elite colleges where they're "mismatched."

The act of considering a student's race in school admissions is as odious as racism itself, they say. This movement says the Constitution is "colorblind," that dividing people up by race is unconstitutional, and that all Americans should be treated as individuals, not as members of racial or ethnic groups.

Chief Justice John Roberts once alluded to this legal point of view when he wrote in a voting rights case, "It is a sordid business, this divvying us up by race."

Will Roberts and fellow conservatives on the high court look at revelations from the admissions scam and conclude that divvying up students based on wealth and family connections is also a "sordid" business?

And will they look at the scam and conclude that if the ultra-wealthy go through so much to rig the college admissions process in their favor, how much worse must it be for students who are racial minorities and tend to come from more working-class backgrounds?

Those kinds of questions could come up in what will most likely be an epoch-changing case. The Supreme Court is expected eventually to take up an ongoing case centering on Harvard University's affirmative action policies. The case could be the one that delivers a victory in a battle conservatives have been waging for more than 40 years: the abolishment of all racial preferences in college admissions.
What would that victory look like? It would mean colleges could no longer consider race under any circumstances when looking at applicants -- even to promote diversity.

There is one point, however, that both supporters and critics of affirmative action agree on.

The conservative majority on the high court won't shy away from the movement's goal of abolishing affirmative action in college admissions. The revelations from the college scam won't make a difference.

"I don't think it is likely to affect the Supreme Court's handling of upcoming cases," the Cato Institute's Olson says. "The justices bring their own philosophical premises from earlier cases and are likely to view this episode as not especially relevant to the issues they need to resolve."

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

Tanya Hernandez, a professor at Fordham University's School of Law in New York and a defender of affirmative action, agrees.

She says the court's conservative majority has subscribed to the notion that black and Latino students are robbing white and Asian students from college spots they deserve for so long they are immune to evidence that suggests otherwise.

"Some of our Supreme Court justices seem to buy into the same problematic presumptions with such vehemence that evidence of actual wealthy white corruption of merit will not dislodge their belief in the racialized fantasies that black and Latino affirmative action program participants defile merit," Hernandez says.

Some affirmative action opponents are already going after another new narrative that's emerging from the college scam: the belief that wealthy parents pervert the admissions process because of the perks money can buy.

Ivory Toldson, a professor at Howard University in Washington, told Democracy Now:
"We see, at every level of education, from kindergartners being tested by a private psychologist to say that they are gifted, to the various types of ways wealthy people train for tests and manipulate those outcomes -- we see, time and time again, people using their money and their influence to create an unfair advantage for their children."

What's wrong, though, with parents trying to give their kids every edge through legitimate means, asks Rick Hess, an author and resident scholar at the American Enterprise Institute, a conservative Washington think tank.

Hess, who opposes affirmative action in higher education, co-authored a blog post with Sophia Buono questioning people who would link the college scam with affluent parents who hire tutors and counselors for their children.

"Bribing college officials is not the same as hiring a tutor," the headline on their post reads.

They write:

"In their wandering but unceasing war on 'privilege,' the self-styled champions for social justice are vilifying parental behaviors that are more rightly regarded as normal, even admirable."

Hess offers a counterintuitive point to those who say the college scam makes affirmative action critics look "ridiculous."

He says it could make it more likely that the high court will someday strike down affirmative action in higher education.

Hess cited the ongoing Harvard case, which centers on how the school treats its Asian-American applicants. Harvard argued during a lower-court trial that its admission process was fair. The college

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

said it considers a range of student traits and that if it could not consider an applicant's race, the number of black and Latino students on campus would plummet.

While Harvard wasn't directly implicated in the college admissions scam, the scandal only reinforces the notion that elite colleges such as Harvard can't be trusted to vet student applicants fairly, Hess says.

"If I'm a conservative who is uncomfortable about race-based preferences, the argument for race-based preferences that Harvard is making -- that it has so much integrity and it is so careful that we can trust them to dance in gray areas of constitutional propriety because they exercise great discretion -- takes a huge blow," Hess says.

Hess, like some other affirmative action opponents, says he opposes preferential treatment for children of affluent families and donors in admissions. So does Hernandez, the Fordham professor, who is a defender of allowing colleges to use race as a factor in college admissions.

But here's another question that few ask:

Why don't conservatives and liberals get as agitated over preferences based on affluence as they do about race?

The fight over preferential racial policies at colleges has been a long and bitter battle with plenty of high-stakes court cases. But there's been no similar movement to abolish the preferences of students from wealthy families, donors and legacy admissions.

Maybe now there will be.

But it would face one obstacle that lurks in the American psyche, Hernandez says.

We may condemn those wealthy white parents accused of pulling all sorts of strings to get their kids into elite colleges, but many of us want to be like them.

And we would if we had the chance.

"There seems to be a powerful but unstated belief that wealth should come with the entitlement to buy immediate access to any sphere that a rich person desires," she says.

She adds:

"We give a free pass to the wealthy white unscrupulous power grabs that exist with the hope that one day soon we too will be wealthy enough to presume all the same entitlements."
That's the kind of advantage, though, that no federal investigation can end.

Discussion Questions

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

1. Define affirmative action.

Affirmative action is an attempt to address past practices of discrimination against protected classes of individuals by giving those individuals certain opportunities in terms of employment, college admissions, etc.

2. What are the advantages and disadvantages of affirmative action?

The key argument in favor of affmirmative action is that it addresses the "perils and pitfalls" facing individuals who have been subjected to endemic discrimination and seeks to provide those persons with opportunity. The key argument against affirmative action is that it constitutes "reverse" discrimination against other individuals who do not belong to a protected class and were not directly involved in the subject discrimination.

3. In your reasoned opinion, will revelations from the subject college admissions cheating scandal actually "save affirmative action?" Explain your response.

This is an opinion question, so student responses will likely vary. The obvious question here is that if the privileged few, those who can afford to "pay to play," are allowed a "leg up" in terms of college admissions, why should individuals belonging to protected classes that have been historically discriminated against not be allowed some degree of preferential treatment?

Video 2: "Husband of Murdered North Carolina Nurse Captured, Authorities Say"

https://abcnews.go.com/US/husband-murdered-north-carolina-nurse-captured-authorities/story?id=61743727

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

"Husband of Murdered North Carolina Nurse Captured, Authorities Say"

According to the article, the husband of a murdered North Carolina nurse has been captured, authorities said Sunday.

Rexford Lynn Keel Jr., 57, was taken into custody just outside Tucson, Arizona, about 34 miles from the Mexican border, Nash County Sheriff Keith Stone told reporters recently. He had a large amount of cash on him when he was caught on Interstate 10, authorities said.

"I can only speculate ... he was headed toward the Mexican border," Stone said, adding that had he made it, it would have been "a lot tougher" to arrest him.

His wife, Diana Keel, 38, an emergency room nurse, was found dead recently near Leggett, North Carolina, about 30 minutes from her home in Nashville. She was reported missing by her daughter on March 9.

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

The North Carolina Wildlife Resources Commission was searching for Lynn Keel in the air Sunday morning when they received a tip that he was traveling westbound on I-10. Arizona State Police took him into custody without incident just before he came within Tucson city limits around noon eastern time, Stone said.

"We got a killer off the streets today," Stone said.

Lynn Keel has been charged with first-degree murder, Stone said. He is currently being held in Arizona as he awaits extradition and will appear in court soon.

Authorities initially considered Lynn Keel armed and dangerous as the manhunt for him began, but he was not armed when he was captured, Stone said. Lynn Keel obtained the vehicle he was driving, which had North Carolina license plates, from his father, Stone said. Lynn Keel left the state before his arrest warrant was issued, Stone said, adding that "he was able to leave the state and go about his business" before the charges had been filed. He was last seen in Nashville, North Carolina.

When interviewed by investigators last week, Lynn Keel said he didn't report his wife missing because she would leave "from time to time" and "stay gone a couple of days," authorities said. Authorities are also following up on the death of Lynn Keel's former wife, Elizabeth Edward Keel, on January 1, 2006, according to the Nashville Sheriff's Office. The medical examiner's office ruled Elizabeth Keel's death an accident based on blunt trauma to the head after she fell and hit her forehead on the corner of the concrete steps in front of the couple's home, according to the sheriff's office.

Investigators are now reviewing Elizabeth Keel's death report, autopsy report, photographs, and notes from the primary deputy and investigator and other witnesses in detail, Brandon Medina, chief deputy of the Nash County Sheriff's Office, said.
Lynn continued to live in the same home where his first wife died, authorities said.

Discussion Questions

1. Define first-degree murder.

First-degree murder is the intentional taking of the life of another human being with premeditation and deliberation.

2. Is evidence of flight admissible in court? In your opinion, is evidence of flight a clear indication of the defendant's (the subject defendant's or any other defendant's) guilt?

Evidence of flight is potentially admissible in court, subject to judicial discretion. The trial court judge controls the portal of admissibility of evidence. In making a decision regarding the admissibility of evidence related to flight, the judge must determine whether the probative value of the evidence outweighs the potentially prejudicial effect such evidence might have on the jury's determination of guilt.

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

3. Will Keel's first wife's death be admissible at trial regarding his second wife's death (or vice versa?)

The answer to this question is similar to the one given above in response to Video 2, Discussion Question Number 2. Evidence of Keel's first wife's death is potentially admissible in court, subject to judicial discretion. The trial court judge controls the portal of admissibility of evidence. In making a decision regarding the admissibility of evidence of Keel's first wife's death, the judge must determine whether the probative value of the evidence outweighs the potentially prejudicial effect such evidence might have on the jury's determination of guilt.

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

Of Special Interest

This section of the newsletter addresses Wells Fargo's recent charitable contributions to organizations that focus their work on promoting affordable housing, small businesses, education and environmental sustainability.

Ethical Dilemma

"Wells Fargo Donates $444M to Nonprofits for Affordable Housing, Small Businesses"

https://www.foxbusiness.com/financials/wells-fargo-donates-444m-to-nonprofits-to-support-affordable-housing-small-businesses

According to the article, Wells Fargo increased its charitable donations last year, surpassing its philanthropic goal, in an effort to support nonprofit organizations that help the local communities and small businesses around the U.S.

The big bank donated $444 million to nearly 11,000 organizations that focus their work on promoting affordable housing, small businesses, education and environmental sustainability

"We want to help people find an affordable place to live, work with diverse small business owners on growth and expansion and support young people in learning job skills that can translate into a steady income," Wells Fargo CEO Tim Sloan said in a statement. "And we recognize that families and neighborhoods need the public and private sectors to work together in providing both resources and expertise."

More than $117 million was dedicated to increasing affordable housing, including nearly $75 million through its Neighborhood LIFT program, a collaboration with NeighborWorks America, to provide financial education and assistance with down payments for prospective homebuyers in low- and moderate-income communities. Wells Fargo said the program expanded to nine cities in 2018 and will reach 10 additional cities this year.

Wells Fargo also donated $24 million to assist entrepreneurs in rural and urban markets gain access to capital and training, part of its Wells Fargo Works for Small Business: Diverse Community Capital commitment through 2020. The company said the program has helped owners of small businesses "retain and create" 36,000 jobs.

Additionally, the company allocated $16 million to nonprofits that work to bring renewable energy to low-income communities, provide environmental education, resiliency planning and green infrastructure.

The company used $90 million of its charitable donation to support local K-12 education, scholarships and financial education.

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

"With so many Americans working to make ends meet, there's an increased urgency for immediate assistance, as well as strategic, long-term action to address systemic challenges like poverty, affordable housing, and sustainable neighborhoods," Wells Fargo Foundation President Jon Campbell said in a statement.

Discussion Questions

1. After conducting some online research, define the "economic" view of social responsibility.

The economic view of social responsibility was first espoused by Milton Friedman, a noted economist formerly at the University of Chicago. According to Mr. Friedman, aside from legal compliance, there is only one social responsibility of business—namely, to generate a profit.

2. After conducting some online research, define the "socioeconomic" view of social responsibility.

According to the socioeconomic view of social responsibility, business has ethical responsibilities other than merely generating a profit. As a corporate citizen of the community, business also has a duty to make the lives of its stakeholders (i.e., anyone affected by the corporation's decision-making, not just shareholders) better.

3. In your reasoned opinion, which view of corporate social responsibility is better—the economic view, or the socioeconomic view? Explain your response.

This is an opinion question, so student responses may vary. In your author's opinion, the socioeconomic view of social responsibility is preferable, not just because it is the "right thing to do," but because by having a community presence and impact, business itself can benefit. In serving the community as an involved corporate citizen, employees will be more devoted to the business and its mission, and customers will be more likely to patronize the business. The argument here is that the socioeconomic view of corporate social responsibility is a "win-win" for everyone.

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

Of Special Interest

This section of the newsletter will assist you in addressing Article 2 ("Insanity Defense Set for Man Who Dropped Daughter off Bridge") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 2—"Insanity Defense Set for Man Who Dropped Daughter off Bridge"): "The Criminal Defense of Insanity"

For a summary of the insanity defense, including the history of the defense and the burden of proof, and the four (4) different tests for determining whether a defendant is insane, please refer to the following internet address:

https://www.justia.com/criminal/defenses/insanity/

Teaching Tip 2 (Article 2—"Insanity Defense Set for Man Who Dropped Daughter off Bridge"): "Insanity Defense"

For the National Alliance on Mental Illness' (NAMI's) position regarding the insanity defense, please refer to the following internet address:

https://www.nami.org/Learn-More/Mental-Health-Public-Policy/Insanity-Defense

Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapters 2, 5, 6, 7 and 46	Chapters 5 and 25	Chapter 3	Chapter 5
Bennett-Alexander & Hartman, Employment Law for Business	N/A	Chapter 5	N/A	N/A
Kubasek et al., Dynamic Business Law	Chapters 3, 7, 8, 9, 10 and 45	Chapter 7	Chapter 2	Chapter 7
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 3, 6, 7 and 25	Chapter 6	Chapter 2	Chapter 6
Liuzzo, Essentials of Business Law	Chapters 1, 3, 4 and 34	Chapters 3 and 33	Chapter 2	Chapter 3
Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3, 5, 6, 7 and 20	Chapter 5	Chapter 4	Chapter 5
McAdams et al., Law, Business & Society	Chapters 4, 7 and 15	Chapters 4 and 13	Chapter 2	Chapter 4
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 4, 9, 21 and 22	Chapters 12 and 22	Chapter 5	Chapter 22
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 3, 10, 13 and 18	Chapters 13 and 20	Chapter 2	Chapters 13
Sukys, Brown, Business Law with UCC Applications	Chapters 2, 3, 5, 6 and 15	Chapter 2 and 23	Chapter 1	Chapter 2

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Proceedings

A monthly newsletter from McGraw-Hill Education

April 2019 Volume 10, Issue 9

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