



# Proceedings

A monthly newsletter from McGraw-Hill Education



January 2018 Volume 9, Issue 6

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## *Dear Professor,*

Happy new year, everyone! Welcome to McGraw-Hill Education's January 2018 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 9, Issue 6 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the January 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. A first-degree murder charge against the defendant who drove his car into a crowd protesting the August 12, 2017 white nationalist rally in Charlottesville, Virginia;
2. Recent regulatory maneuverings by the Securities and Exchange Commission (SEC) regarding cryptocurrencies such as Bitcoin;
3. An Uber driver accused of raping a teen he drove home from a bar in Gwinnett County, Georgia;
4. Videos related to a) the Federal Communication Commission's (FCC's) recent decision to repeal net neutrality and various corporate reactions to the decision and b) a Beverly Hills (California) anesthesiologist charged with murder in the death of a plastic surgery patient;
5. An "ethical dilemma" related to the National Labor Relations Board's (NLRB's) recent decision to overturn the "joint employer rule"; and
6. "Teaching tips" related to Video 1 ("Net Neutrality Repeal: Facebook, Amazon, Netflix and Internet Providers React") of the newsletter.

I wish everyone a safe, prosperous and academically enriching new year!

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## Of Special Interest

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

1) A first-degree murder charge against the defendant who drove his car into a crowd protesting the August 12, 2017 white nationalist rally in Charlottesville, Virginia;

2) Recent regulatory maneuverings by the Securities and Exchange Commission (SEC) regarding cryptocurrencies such as Bitcoin; and

3) An Uber driver accused of raping a teen he drove home from a bar in Gwinnett County, Georgia.

## Hot Topics in Business Law

### Article 1: “Alleged Reckless Driver Charged with First-Degree Murder in Charlottesville Car Attack”

<https://www.usatoday.com/story/news/2017/12/14/neo-nazi-driver-charged-first-degree-murder-charlottesville-car-attack/954321001/>

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

According to the article, the alleged reckless driver who plowed his car into a crowd protesting a white nationalist rally in Charlottesville, Virginia is now charged with first-degree murder, after prosecutors showed a judge surveillance video of the deadly assault.

Prosecutors announced at the start of a preliminary hearing for James Alex Fields that they were seeking to upgrade the second-degree murder charge he previously faced in the August 12 collision in Charlottesville that left 32-year-old Heather Heyer dead and dozens injured. The judge agreed to that and ruled there is probable cause for all charges against Fields to proceed.

Fields’ case will now be presented to a grand jury for an indictment. Authorities had initially said that 19 people were injured, in addition to Heyer, when Fields rammed his 2010 Dodge Challenger into another vehicle on purpose on a crowded street. But testimony at the preliminary hearing revealed that there were many more victims, the *Washington Post* reported.

Fields, who lived in Ohio before his arrest, is charged with eight counts of “aggravated malicious wounding,” meaning that at least eight of the 35 people who were hurt suffered what Virginia law describes as “permanent and significant physical impairment,” the *Post* reported.

Authorities say the 20-year-old, described by a former teacher as having a keen interest in Nazi Germany and Adolf Hitler, drove his speeding car into a group of counter-protesters the day of the “Unite the Right” rally that drew hundreds of white nationalists from around the country. The attack came after the rally in this Virginia college town had descended into chaos — with violent brawling between attendees and counterdemonstrators — and authorities had forced the crowd to disband.

Surveillance footage from a Virginia State Police helicopter, played by prosecutors in court, captured the moment of impact by the car and the



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cursing of the startled troopers on board. The video then showed the car as it reversed, drove away and eventually pulled over.

The video, showed in court by prosecutor Nina-Alice Antony, included some of the final words in the helicopter by crew members, Lt. H. Jay Cullen and Trooper-Pilot Berke M.M. Bates, were monitoring the demonstration. About three hours after the airborne officers witnessed Fields's alleged attack and followed his vehicle as it sped away, the helicopter crashed while Cullen and Bates were flying to another assignment, killing both men. The cause of the crash is still under investigation, the *Post* reported.

Fields, of Maumee, Ohio, sat quietly in a striped jumpsuit with his hands cuffed during the hearing. His attorney Denise Lunsford did not present evidence or make any arguments at the hearing, although she did cross-examine the detective.

Fields was photographed hours before the attack with a shield bearing the emblem of Vanguard America, one of the hate groups that took part in the rally, although the group denied any association with him.

A former teacher, Derek Weimer, has said Fields was fascinated in high school with Nazism, idolized Adolf Hitler, and had been singled out by officials at his Union, Kentucky school for "deeply held, radical" convictions on race.

During her cross-examination of Charlottesville Police Det. Steven Young, Lunsford asked if searches of Fields' computer, phone or social media revealed any evidence that he was part of Vanguard America or any other white nationalist group. Young said, "No."

Young also testified that he was among the first officers to respond to the scene where Fields pulled over. No weapon was found in the car, he said.

Lunsford asked the detective what Fields said as he was being detained.

Fields said he was sorry and asked if people were OK, according to Young. When Fields was told someone had died, he appeared shocked and sobbed, Young said.

Young said authorities had identified 36 victims of the car attack, including Heyer — a number higher than officials have previously given. Some have significant injuries and are "wheelchair bound," Young said.

Charlottesville General District Court Judge Robert Downer Jr. also presided over preliminary hearings for three other defendants. Charged in cases related to the August rally are Richard Preston, who is accused of firing a gun, and Jacob Goodwin and Alex Ramos, who are accused in an attack on a man in a parking garage that was captured in photos and video that went viral.

The judge certified the charges against all three men. All those cases will also head to a grand jury.



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Jason Kessler, the main organizer of the Unite the Right rally, was in court for the hearings. When he arrived, a small crowd of angry protesters outside the courthouse chanted, “Blood on your hands.”

## Discussion Questions

1. In the context of criminal procedure, what is a preliminary hearing?

*A preliminary hearing is essentially a “trial before the trial” during which the judge decides not whether the defendant is guilty or not guilty (that is determined at the actual criminal trial), but whether there is enough evidence to force the defendant to stand trial.*

2. What is the difference between first-degree and second-degree murder?

*Both first-degree and second-degree murder involve the unlawful taking of the life of another human being; however, first-degree murder involves premeditation and deliberation, while second-degree murder does not.*

3. In your reasoned opinion, is a charge of first-degree murder justified in this case? Why or why not?

*This is an opinion question, so student responses may vary. In the subject case, the defendant deliberately plowed his car, a dangerous instrumentality, into a crowd of people. Premeditation and deliberation can occur in only a matter of minutes or even seconds, so if the prosecution can demonstrate that the defendant intentionally desired (or exhibited such negligent or reckless disregard for the lives of others that his actions essentially rose to the level of intent) to take the lives of one or more protestors by using his car as a weapon, the premeditation and deliberation element will be relatively easy for the prosecution to prove.*

## **Article 2: “As Bitcoin, Other Currencies, Soar, Regulators Urge Caution”**

<http://abcnews.go.com/Technology/wireStory/bitcoin-currencies-soar-regulators-urge-caution-51786462>

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

According to the article, the public's interest in all things bitcoin and efforts by entrepreneurs to fund their businesses with digital currencies is starting to draw more attention from regulators.

The head of the Securities and Exchange Commission (SEC) recently warned investors on the risks of investing in largely-unregulated digital currencies.



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In December 2017, the SEC halted two attempts to raise money through what's known as an initial coin offering. Legal experts believe this signals that a crackdown on sketchy offerings is coming.

"The SEC has given so many warnings now that people should know they are on notice," said Joshua Klayman, a lawyer with the firm Morrison & Foerster who specializes in legal issues related to digital currencies.

The world of bitcoin and digital currencies can be split into large branches. There are investors who buy the currencies like bitcoin and ethereum. Related but separate from the currencies is an event known as an initial coin offering, or ICO, which allow startups to use the technology behind bitcoin, known as blockchain, to fund projects.

With an ICO, a startup will issue a currency, or sometimes called a token, that can be used to buy services with the company. For example, a startup offering online storage could have tokens that can be used to buy storage.

ICOs have soared in interest this year. CoinSchedule, which tracks the ICO market, says 234 ICOs this year have raised \$3.7 billion for startups. In 2016, 46 ICOs raised less than \$100 million. How these tokens are marketed has become a central question for the SEC. Companies issuing tokens that are usable on their own platform right now aren't a concern, but when the company's marketing implies that these tokens can appreciate in value, that becomes a red flag.

"We have gotten to a point a few times where some of these tokens start looking an awful lot like securities," said Clyde Tinnen, a partner at Withers Bergman.

Investors in ICOs are oftentimes early investors in bitcoin or other digital currencies who, with the rapid rise in price, have become multimillionaires on paper and are now looking for the next hot idea. But some of the ICOs that have been funded are just that — an idea on paper. They might even use language copied and pasted from other ICOs to sell their startup to investors. Others have paid celebrities, like boxing legend Floyd Mayweather and socialite Paris Hilton, to endorse their ICOs.

All this has raised concerns about the potential success of these projects and whether some are just outright scams.

"I am not sure why it took so long to chase down some of these," Tinnen said.

The SEC recently created a division to more closely monitor ICOs for potential scams. The unit brought its first charges last week against a Canadian company known as PlexCorps, which was trying to raise \$15 million in an ICO promising its investors "a 1,354 percent profit in less than 29 days." Two individuals were charged in the scam.

In December 2017, a food review startup called Munchee was forced to withdraw from its \$15 million ICO after the SEC raised concerns that Munchee emphasized that investors should expect



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some sort of return for their investment. By doing so, a company would be offering securities, not tokens, the regulator said. The SEC's cyber unit also was involved in that investigation. Munchee admitted no wrongdoing as part of the settlement.

What made the Munchee case notable, Klayman said, was how quickly the SEC stepped in. Some ICOs have raised money in hours, or only a couple days. Munchee started selling tokens on October 31, and the SEC stepped in the next day.

"The SEC was basically monitoring the Munchee offering in real time - through social media, YouTube, etc. - and stopped it," Klayman said.

Following the launch of bitcoin futures on the Cboe Futures Exchange this week, SEC Commissioner Jay Clayton issued a statement warning investors to be cautious about putting any money into digital currencies like bitcoin.

As for those celebrity-endorsed ICOs, the SEC also put a stop to that, warning that these paid celebrities might be violating U.S. securities laws.

One reason regulators are concerned is the relative popularity of bitcoin and ICOs with non-traditional investors. Historically, the last group to jump into an asset in a bubble is retail investors, who are often the most hurt when the bubble pops. But in the case of bitcoin and other digital currencies, retail investors were among the first to invest.

"A number of concerns have been raised regarding the cryptocurrency and ICO markets, including that, as they are currently operating, there is substantially less investor protection than in our traditional securities markets, with correspondingly greater opportunities for fraud and manipulation," Clayton said.

The price of bitcoin has soared this year, going from less than \$1,000 to \$18,000. Bitcoin's gains have rippled through other digital currencies as well. The price for ethereum is now at \$706 — it was a little over \$8 at the beginning of the year. That's a rise of nearly 8,300 percent.

## Discussion Questions

1. What is the Securities and Exchange Commission (SEC)?

*The United States Securities and Exchange Commission (SEC) is an independent, federal government agency responsible for protecting investors, maintaining fair and orderly functioning of securities markets, and facilitating capital formation. It was created by the U.S. Congress in 1934 (after the stock market collapse of 1929, and during the Great Depression) as the first federal regulator of securities markets. The SEC promotes full public disclosure, protects investors against fraudulent and manipulative practices in the market, and monitors corporate takeover actions in the United States.*



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## 2. What is an “ICO?”

*As the article indicates, an “ICO” is an initial coin offering. Through an ICO, startups can use the technology behind bitcoin, known as blockchain, to fund projects. With an ICO a startup will issue currency, sometimes called a token, which can be used to buy services with the company.*

## 3. In your reasoned opinion, should the Securities and Exchange Commission closely regulate ICOs? Why or why not?

*This is an opinion question, so student responses may vary. In your author’s opinion, the initial coin offering (ICO) parallels the initial public offering (IPO) of standard securities.*

*A security is defined as a financing or investment instrument issued by a company (or government agency) that denotes an ownership interest and provides evidence of a debt, a right to share in the earnings of the issuer, or a right in the distribution of a property. Securities include bonds, debentures, notes, options, shares and warrants, and may be traded in financial markets such as stock exchanges. In your author’s opinion, the obligation(s) related to an ICO parallel the obligation(s) associated with an IPO of standard securities.*

*In your author’s opinion, the federal government must not only determine whether ICOs should be regulated (and if so, to what extent), but also the extent to which it should regulate the cryptocurrency associated with an ICO.*

### **Article 3: “Uber Driver Accused of Raping Teen He Drove Home from Bar”**

<https://www.cbsnews.com/news/uber-driver-accused-of-raping-teen-he-drove-home-from-bar/>

According to the article, an Uber driver faces a rape charge after investigators say he attacked an intoxicated 16-year-old passenger. Police identified the Uber driver as Abdoulie Jagne, 58. He has been jailed and charged with rape.

Gwinnett County police say the incident happened in the early morning hours of Monday, December 11. The girl told officers she had been drinking with friends at a local bar when one of her friends arranged for an Uber driver to pick her up and take her home.

The Uber driver arrived and later dropped the girl off at her apartment complex. After she exited the vehicle, according to police, the girl began beating on doors asking for help. One of the residents called 911.

When officers met the girl, she told them she had been sexually assaulted by the Uber driver. Her pants were down around her ankles when she was found, police said.



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The friend who arranged for the Uber ride gave officers identifying information on the driver, along with vehicle information.

The victim was transported to a local hospital for treatment and an evaluation. The case was transferred to a Special Victims Unit detective, who contacted Uber for information.

With the information gathered from Uber, the detective said the incident likely happened along South Norcross Tucker Road.

"The information provided by the company of Uber does corroborate the victim's story," said Cpl. Michele Pihera of the Gwinnett County Police Department. "We know that the trip from the bar to the apartment complex should have taken a specific amount time, but the trip data indicated that it took a much longer amount of time to complete."

Gwinnett County Sheriff's deputies arrested the driver, Abdoulie Jagne, and took him to the Gwinnett County Jail. Additional charges could be forthcoming, police said.

Investigators in the case ask that any other women who may have been sexually assaulted by Jagne call the Gwinnett County Police Department.

Uber issued the following statement regarding the incident: "What's reported here is horrifying beyond words. Our thoughts are with the rider and her family during this time. This driver has been permanently removed from the app."

## Discussion Questions

1. Describe the doctrine of *respondeat superior*.

*Respondeat superior* literally means "let the master answer." The doctrine of *respondeat superior* stands for the proposition that if an employee commits a wrongful act in the course and scope of his/her employment that causes harm to a third party, the employer is responsible for damages associated with the harm to the third party.

2. In your reasoned opinion, does the doctrine of *respondeat superior* apply to this case? Why or why not?

*This is an opinion question, so student responses may vary. The strongest argument for Uber in this case is that the driver, Abdoulie Jagne, was not an employee when he allegedly raped the minor passenger; instead, he was an independent contractor. As a general rule of law, employers are not responsible for harm to third parties resulting from the wrongful actions of their independent contractors. Uber's drivers are classified as independent contractors.*





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3. How might the doctrines of negligent hiring and/or negligent retention apply to a case like this?

*According to the doctrine of negligent hiring, if an employer failed to do what a reasonable employer would have done under the same or similar circumstances in terms of the hire decision, the employer is responsible for intentional or negligent acts committed by an employee or independent contractor that result in harm to third parties. Under the doctrine of negligent retention, if an employer failed to do what a reasonable employer would have done under the same or similar circumstances in terms of retaining an employee or independent contractor, the employer is responsible for intentional or negligent acts committed by the employee or independent contractor that result in harm to third parties.*

*In the subject case, if the evidence should indicate that Abdoulie Jagne (the driver) had a propensity to commit an act of aggression against a third party (for example, he had a previous rape conviction before Uber hired him, or he was convicted for assault against a third party while employed by Uber), the plaintiff would have a strong case based on negligent hiring and/or negligent retention theory.*



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## Video Suggestions

**Video 1: "Net Neutrality Repeal: Facebook, Amazon, Netflix and Internet Providers React"**

<http://money.cnn.com/2017/12/14/technology/business/fcc-net-neutrality-reactions/index.html>

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

According to the article, the vote to roll back net neutrality rules on December 14, 2017 was slammed by tech giants like Amazon, Facebook and Netflix. But the move was applauded by internet service providers.

The Republican-led Federal Communications Commission voted 3-2 to repeal regulations aimed at protecting net neutrality -- rules that ensure internet providers can't deliberately speed up or slow down traffic from specific websites or apps. Nor can they put their own content at an advantage over rivals. The rules were first put in place under President Obama in 2015.

Nothing is set in stone yet. The repeal isn't set to take effect until next year. The issue may ultimately end up being decided in court, and Congress may step in with a legislative solution.

A recent poll by the University of Maryland's School of Public Policy found net neutrality rules have broad support among consumers -- 83% to be exact. Here's what some companies and business leaders had to say after the December 14, 2017 vote.

### **Amazon Chief Technology Officer Werner Vogels**

"I am extremely disappointed in the FCC decision to remove the #NetNeutrality protections," Vogels wrote on Twitter. "We'll continue to work with our peers, partners and customers to find ways to ensure an open and fair internet that can continue to drive massive innovation."

### **Facebook Chief Operating Officer Sheryl Sandberg**

"Today's decision from the Federal Communications Commission to end net neutrality is disappointing and harmful. An open internet is critical for new ideas and economic opportunity -- and internet providers shouldn't be able to



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decide what people can see online or charge more for certain websites," Sandberg wrote on Facebook. "We're ready to work with members of Congress and others to help make the internet free and open for everyone."

## **Microsoft Chief Legal Officer Brad Smith**

"The open internet benefits consumers, business & the entire economy," Smith wrote. "That's jeopardized by the FCC's elimination of #netneutrality protections today."

## **Netflix**

"We're disappointed in the decision to gut #NetNeutrality protections that ushered in an unprecedented era of innovation, creativity & civic engagement," read a tweet posted on Netflix's verified account. "This is the beginning of a longer legal battle. Netflix stands w/ innovators, large & small, to oppose this misguided FCC order."

## **Reddit Co-Founder Alexis Ohanian**

"We cannot let this happen to our internet in the US," Ohanian tweeted. "We must keep fighting for #NetNeutrality."

## **Vimeo**

"It's disheartening that the #FCC chose to ignore the public and approve a policy that benefits the few and powerful at the expense of creators, and the stories they work to tell," the company posted on Twitter. "We look forward to challenging this misguided decision in court. #NetNeutrality"

Not everyone is behind the net neutrality rules. Internet service providers like AT&T, Verizon and Comcast have a lot to gain from loosened regulations. (AT&T is seeking to acquire Time Warner, the parent company of CNN).

## **AT&T**

"We do not block websites, nor censor online content, nor throttle or degrade traffic based on the content, nor unfairly discriminate in our treatment of internet traffic," the company said in a statement. "These principles, which were laid out in the FCC's 2010 Open Internet Order and fully supported by AT&T, are clearly articulated on our website and are fully enforceable against us. In short, the internet will continue to work tomorrow just as it always has."

## **Verizon Senior Vice President of Regulatory Affairs Will Johnson**

"Verizon fully supports the open Internet, and we will continue to do so," Johnson said in an emailed statement. "Our customers demand it and our business depends on it."



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## The US Telecom and Broadband Association

"Today, the future of our open, thriving internet has been secured," the group, which represents companies including AT&T and Verizon, wrote. "America's broadband providers -- who have long supported net neutrality protections and have committed to continuing to do so -- will have renewed confidence to make the investments required to strengthen the nation's networks and close the digital divide, especially in rural communities."

### Discussion Questions

1. Define net neutrality.

*Net neutrality is the principle that internet service providers must treat all data on the internet the same, and not discriminate or charge differently by user, content, website, platform, application, type of attached equipment, or method of communication. For example, under the principle of net neutrality, internet service providers are unable to intentionally block, slow down, or charge money for specific websites and online content.*

2. Are you surprised by the expressed position of Amazon, Facebook and Netflix regarding net neutrality? Why or why not? Do the statements of AT & T, Verizon, and the U.S. Telecom and Broadband Association regarding an "open internet" reassure you that the internet will indeed remain open? Why or why not?

*This is an opinion question, so student responses may vary. In your author's opinion, the expressed position of Amazon, Facebook and Netflix regarding net neutrality (that they favor net neutrality) comes as no surprise, since these organizations were formed and flourished according to the principles of net neutrality (i.e., a "free and open" internet).*

*In terms of the statements of AT & T, Verizon, and the U.S. Telecom and Broadband Association, only "time will tell" whether their proffered support for net neutrality will remain in a deregulated internet environment.*

3. In your reasoned opinion, who is the most appropriate party to decide whether to maintain or terminate net neutrality: the Federal Communications Commission (FCC), the United States Congress, or the federal court system (ultimately, the U.S. Supreme Court)? Explain your response.

*According to the Federal Communications Commission's (FCC's) website, the mission of the FCC is to regulate interstate and international communications by radio, television, wire, satellite, and cable in all fifty states, the District of Columbia and United States territories. As an independent U.S. government agency overseen by the U.S. Congress, the FCC is the federal agency responsible for implementing and enforcing America's communications law and regulations (<https://www.fcc.gov/about/overview>).*



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*In terms of whether the issue of net neutrality would be more appropriately addressed by the United States Congress or the federal court system, student opinions may vary. However, Congress and/or the federal court system could intervene if these branches of government determine that the FCC is failing in its essential mission (particularly in terms of net neutrality).*

## **Video 2: “Anesthesiologist Charged with Murder in Death of Plastic Surgery Patient”**

<https://www.cbsnews.com/news/beverly-hills-anesthesiologist-stephen-kyosung-kim-murder-charge-plastic-surgery-patient-mark-greenspan/>

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

According to the article, an anesthesiologist pleaded not guilty recently to murder in the death of a 71-year-old plastic surgery patient in Beverly Hills this fall. Stephen Kyosung Kim, 53, is charged in the September 26 death of the patient, Dr. Mark Greenspan, according to the Los Angeles County District Attorney's Office.

Kim pleaded not guilty to a single count of murder at his arraignment recently in Los Angeles County Superior Court and remains free on bail. Kim was arrested by Beverly Hills police.

While working at the Rodeo Drive Plastic Surgery Center in Beverly Hills, Kim allegedly administered medicine to sedate Greenspan before surgery, according to the District Attorney's Office.

Kim is accused of injecting himself with an unknown drug during the procedure, then allegedly giving Greenspan a lethal dose of Demerol while the patient was in a recovery room, according to the D.A.'s Office. Soon after being administered that dose, the D.A. alleged Greenspan went into cardiac arrest and died.

If convicted as charged, he faces up to 25 years to life in prison.

Kim's next hearing is scheduled for January 25. He is out on bail.

The media spoke recently to the alleged victim's sister by phone.

"I am really raw," says Linda Resnick, "I truly am. My brother is such a deep loss to me." She said it's also a big loss to his patients.

"He loved what he did," she said. "And so many of his patients are going to miss him. He worked for 38 years [at seven different offices] in Southern California."

For now, his sister can only mourn his loss. "It's just painful, very painful," she said.



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Keeping her focused is believing her brother's death will not be in vain.

"I do believe justice will prevail," she said, "I miss him really terribly."

## Discussion Questions

1. Define medical malpractice.

*Medical malpractice is, quite simply put, negligence committed by a health care provider. It is the failure to do what a reasonable health care provider would have done under the same or similar circumstances. Like any other negligence case, the plaintiff must establish four elements in order to prevail: a) the defendant owed the plaintiff a duty of care; b) the defendant breached the extant duty of care; c) the defendant caused the plaintiff's harm; and d) the plaintiff experienced damages as a result. In a medical malpractice action, the defendant is judged according to a "reasonable professional" standard; i.e., in accordance with standards and practices recognized in the health care profession for patient care.*

2. Define murder.

*Murder is defined as the unlawful taking of the life of another human being. First-degree murder is based on premeditation and deliberation, while second-degree murder is not.*

*Murder typically involves the intent of the defendant to take the life of another human being, but it can in certain circumstances occur due to the extreme recklessness or gross negligence of the defendant.*

3. In your reasoned opinion, do the facts of this case support Dr. Stephen Kim's liability for medical malpractice? Murder? Would it constitute "double jeopardy" if Dr. Kim were held liable for both medical malpractice and murder? Why or why not?

*These are opinion questions, so student responses may vary. In your author's opinion, if the evidence included in the article is indeed factual as determined by a trial jury, that Dr. Stephen Kim injected himself with an unknown drug during a cosmetic procedure performed on his patient, Dr. Mark Greenspan, a determination of liability for medical malpractice would be easy to support. Additionally, if the jury should determine that Dr. Kim's actions constituted extreme recklessness or gross negligence equating to intent to take the life of another person, a murder conviction could ensue as well. It would not constitute "double jeopardy" if Dr. Kim were held liable for both medical malpractice and murder, since medical malpractice involves civil liability, while murder involves criminal guilt. The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution only prohibits an additional attempt to convict a defendant if the defendant has already been acquitted previously by a criminal court.*



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## Ethical Dilemma

### “Worker-Friendly Rule Overturned by NLRB”

<https://www.usatoday.com/story/money/2017/12/14/worker-friendly-rule-overturned-nlrb/954187001/>

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

According to the article, the National Labor Relations Board recently overturned a controversial Obama-era rule that held large companies liable for labor law violations by franchisees and subcontractors.

The decision marked the latest move by federal regulators to roll back worker-friendly rules that were passed during the Obama administration and opposed by businesses.

Under the joint employer rule, a company such as McDonald’s could be sued by workers employed by the chain’s franchisees for violating safety or other regulations even though the larger corporation had only indirect control over the employees.

The rule also could allow striking fast-food workers to negotiate with McDonald’s to form a union rather than with thousands of franchisees across the country. Similarly, temporary workers could sue the owner of a factory for better pay or conditions rather than the staffing agency that technically employs those workers.

The NLRB said recently a company would be considered a joint employer only if it had direct control over the workers.

The rule “stacked the deck against small businesses and inserted uncertainty into day-to-day operations,” Cicely Simpson, executive vice president of the National Restaurant Association said in a statement. “Today’s decision restores years of established law and brings back clarity for restaurants and small businesses across the country.”

But Christine Owens, executive director of the National Employment Law Project, a worker advocacy group, said the decision "is just one more example of the Trump administration favoring corporations overworking people." Earlier this year, the Labor Department under President Trump rescinded Obama era guidance that held franchise companies as well as franchisees

#### Of Special Interest

This section of the newsletter addresses the National Labor Relations Board’s (NLRB’s) recent decision to overturn the “joint employer rule.”





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liable for violations such as failing to pay workers the minimum wage or overtime. The broader joint employer standard was also expected to be revoked as Trump filled vacancies on the NLRB in recent months.

## Discussion Questions

1. Describe the National Labor Relations Board (NLRB). What is the mission of the NLRB?

*The National Labor Relations Board (NLRB) is an independent United States government agency with the responsibility to enforce U.S. labor law related to collective bargaining and unfair labor practices.*

*According to the “What We Do” section of its website (<https://www.nlr.gov/what-we-do>), the NLRB is an independent federal agency vested with the power to safeguard employees’ rights to organize and to determine whether to have unions as their bargaining representative. The agency also acts to prevent and remedy unfair labor practices committed by private sector employers and unions. In terms of specific functions, the NLRB engages in the following activities:*

### ***Conducts Elections***

*The National Labor Relations Act provides the legal framework for private-sector employees to organize bargaining units in their workplace, or to dissolve their labor unions through a decertification election.*

### ***Investigates Charges***

*Employees, union representatives and employers who believe that their rights under the National Labor Relations Act have been violated may file charges alleging unfair labor practices at their nearest NLRB regional office.*

### ***Facilitates Settlements***

*When a charge is determined to have merit, the NLRB encourages parties to resolve cases by settlement rather than litigation whenever possible.*

### ***Decides Cases***

*On the adjudicative side of the NLRB are 40 Administrative Law Judges and a Board whose five members are appointed by the President and confirmed by the Senate.*

### ***Enforces Orders***



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*The majority of parties voluntarily comply with orders of the Board. When they do not, the Agency's General Counsel must seek enforcement in the U.S. Courts of Appeals. Parties to cases also may seek review of unfavorable decisions in the federal courts.*

2. As the article indicates, the National Labor Relations Board (NLRB) recently overturned a rule that held large companies liable for labor law violations by franchisees and subcontractors. In your reasoned opinion, should a franchisor be held liable for labor law violations by franchisees and subcontractors? Why or why not?

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

3. As the article indicates, the “joint employer” rule would allow striking employees to negotiate with a franchisor to form a union rather than with individual franchisees. In your reasoned opinion, should employees have the right to negotiate unionization with a franchisor? Why or why not?

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



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## Of Special Interest

This section of the newsletter will assist you in addressing Video 1 (Net Neutrality Repeal: Facebook, Amazon, Netflix and Internet Providers React") of the newsletter.

## Teaching Tips

### Teaching Tip 1 (Related to Video 1—"Net Neutrality Repeal: Facebook, Amazon, Netflix and Internet Providers React"):

#### "The End of Net Neutrality: What It All Means"

<http://money.cnn.com/2017/12/14/technology/net-neutrality-repeal-explainer/index.html>

*Note: In addition to the article, please see the accompanying video also included at the above-referenced internet address. Please use this article and its accompanying video as supplemental material in your coverage of Video 1.*

According to the article, the fight for the future of the internet just came to a head.

The Republican-led Federal Communications Commission voted December 14, 2017 to repeal Obama-era net neutrality protections. The repeal passed along a party-line vote.

Ajit Pai, the FCC chairman appointed by President Trump, has framed the repeal as getting the government to "stop micromanaging the internet."

The move is supported by the telecom industry, which claims existing regulations threaten to hamper broadband investments and innovation.

Technology companies and consumer advocacy groups have loudly protested the repeal effort for months, both online and offline, arguing it could spell the end of the internet as we know it.

Here's what it all means and what's really at stake.

### What Exactly Is Net Neutrality?

The net neutrality rules were approved by the FCC in 2015 amid an outpouring of online support. The intention was to keep the internet open and fair.

Under the rules, internet service providers are required to treat all online content the same. They can't deliberately speed up or slow down traffic from



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specific websites or apps, nor can they put their own content at an advantage over rivals. To take a classic example, this means Comcast can't just choose to slow down a service like Netflix (NFLX) to make its own streaming video service more competitive, nor can it try to squeeze Netflix to pay more money to be part of a so-called internet fast lane.

As Michael Cheah, general counsel at video site Vimeo, previously told the media: the point of the rules is "allowing consumers to pick the winners and losers and not [having] the cable companies make those decisions for them."

## Why Is Net Neutrality Such A Big Deal?

If there's one thing that both sides can agree on, it's that the internet is increasingly central to our lives. Any change to how it's regulated is a hot button issue. (Remember the uproar over repealing internet privacy protections earlier this year?)

"Everyone uses the internet and everyone uses these tech platforms," Michelle Connolly, a former FCC official who supports Pai, previously told the media. "So issues that are coming up right now, people are seeing from a very personal perspective."

## So How Will Internet Providers Be Regulated?

The FCC is doing away with rules barring internet providers from blocking or slowing down access to online content. The FCC would also eliminate a rule barring providers from prioritizing their own content.

In the absence of a firm ban on these actions, providers will be required to publicly disclose any instance of blocking, throttling or paid prioritization. It will then be evaluated based on whether or not the activity is anti-competitive.

As part of this shift, oversight of internet protections will shift from the FCC to the Federal Trade Commission.

Maureen K. Ohlhausen, the acting head of the FTC, said in a statement Monday that the agency is "committed to ensuring that Internet service providers live up to the promises they make to consumers."

But consumer advocacy groups are less than optimistic.

"Not only is the FCC eliminating basic net neutrality rules, but it's joining forces with the FTC to say it will only act when a broadband provider is deceiving the public," Chris Lewis, VP at Public Knowledge, a nonprofit that focuses on the open internet, said in a statement this week. "This gives free reign to broadband providers to block or throttle your broadband service as long as they inform you of it."



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## And How Will Repealing Net Neutrality Affect Me?

First, it's important to say what won't happen: Billion-dollar services like Netflix are not going to disappear overnight without net neutrality. They have large enough audiences and bank accounts to survive in a changing regulatory landscape.

Instead, net neutrality advocates worry how repeal will impact the next Netflix. Upstart companies may struggle to strike deals with providers and pay up to have their content delivered faster. That could fundamentally alter the future internet landscape.

The repeal could change how customers are billed for services, both for good and bad. T-Mobile, for example, was criticized by net neutrality supporters for effectively making it cheaper for customers to stream videos from Netflix and HBO, putting other video services at a disadvantage.

Without net neutrality, internet providers may pursue similar offers more aggressively, which would likely be viewed as a positive by consumers looking to save money on their streaming media.

Yet, some fear it's also possible internet providers will one day begin charging customers more to access services like Netflix that are currently included as part of your monthly bill.

## So Is This A Done Deal?

Not quite. It's very like this issue could end up being decided in court, or perhaps even by legislation in Congress.

"Whenever we do anything big and major, people go to court," a senior FCC official said last month. "I certainly would not rule that out."

## Teaching Tip 2 (Related to Video 1—"Net Neutrality Repeal: Facebook, Amazon, Netflix and Internet Providers React"):

**"The FCC Has Created an 'Internet for the Elite'"**

<http://www.cnn.com/2017/12/13/opinions/importance-net-neutrality-opinion-baker/index.html>

*Note: This is an opinion-editorial written by Mitchell Baker, Mozilla's cofounder and chairwoman. Please use this article as supplemental material in your coverage of Video 1.*

On December 14, the Federal Communications Commission (FCC) voted to roll back the rules that uphold net neutrality -- the principle that internet service providers (ISPs) must allow equal access to web content, regardless of the source.



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While some on the FCC argue that the decision will boost economic growth, the only thing we know for certain is that eliminating net neutrality will make internet service look a lot more like cable TV. That's good for a handful of corporations, but bad for just about everyone else.

There's a reason why most Americans despise the cable company. In recent years, Comcast, Dish Network and other consumer telecom giants have ranked near dead last in the Harris Reputation Quotient poll, the gold-standard favorability ratings for the nation's most visible companies. The problem isn't just the unauthorized account charges or repair technicians showing up outside the 10 a.m. to 3 p.m. service window. The problem is the underlying structure of the business model.

Cable providers exert too much power over consumers by deciding what content they can and can't access according to inscrutable and unpredictable pricing schemes.

While these corporations are supposed to serve the function of a public utility, they clearly exist to serve the interests of their elite shareholders and executives -- pursuing lax regulations and maximum profit rather than transparency or consumer choice.

So why is the FCC trying to export the flawed and unpopular cable TV business architecture to the realm of internet service? The short answer is that corporate interests are using their extensive influence to promote an "internet for the elites."

For all the legal debates about net neutrality, the issue is actually simple. Rather than accessing internet content as you see fit, you might have to purchase bundles of services and sites set by the opaque decisions of unaccountable for-profit firms.

Imagine, for example, that you're surfing online, and someone sends you a link to a hilarious cat video. When you click on it, you get a message from your internet provider: "We're sorry, but you don't have access to Web Video Service. Would you like to add it to your plan for \$9.99 a month?"

In Portugal, where there are currently no net neutrality rules enforced, this kind of data privileging is already the norm. ISPs there sell plans to access select bundles of websites; others can be accessed only at slow speeds or for additional money.

Slower or selective internet access might sound like a "first world problem" -- a mere inconvenience in the scheme of what the country is facing today. But there's more than convenience at stake. The net neutrality question has important implications for the structure of our economy and society.

Today's telecoms are engaging in a high-tech version of the "vertical monopolies" -- or fully consolidated supply chains -- that Teddy Roosevelt and other trustbusters fought more than a century ago. Increasingly, the owners of internet infrastructure are buying up internet content too -- think Comcast acquiring NBC and BuzzFeed, or Verizon buying Huffington Post and Yahoo.



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In the post-neutrality Wild West, there's little keeping these companies from acting to privilege content from their own subsidiaries or even deny access to competitors' services. This isn't a paranoid pipe dream; consider Verizon's attempts to block Google Wallet.

Similarly, in a post-neutrality era, ISPs could become gatekeepers for online content and services, requiring companies to fork over cash to ensure their sites are accessible at prime speeds. This would create huge new advantages for the biggest entrenched companies relative to the scrappy young start-ups fueling innovation.

Or consider an overtly political scenario. In a rural area with little or no competition among providers, it's conceivable that a politically-motivated billionaire -- on the left or the right -- could buy up the ISP and limit access to information sources that don't align with his or her point of view.

The FCC's proposal, which goes to extreme lengths in handicapping regulators, could make this possible.

I've devoted my career to internet technology, including co-founding the open source software community Mozilla, because I believe in the promise of a web that is open, equitable and accessible to all. The internet is supposed to be an effective counterpoint to concentrated elite power.

Even as our society has grown more partisan in recent decades, this vision of the internet has, refreshingly, transcended party and ideology. That's why it's not only progressive groups fighting to save net neutrality but also social conservatives, libertarians and business groups.

In a major poll during the last round of FCC deliberations, 83% of self-described "very conservative" voters were concerned about the specter of ISPs gaining power to "influence content" online.

Similarly, large majorities of conservatives believed Congress should make sure that cable companies don't "monopolize the internet" or "reduce the inherent equality of the internet" through differential pricing.

FCC Chair Ajit Pai is trying to make the end of net neutrality look like a *fait accompli*. He believes he cannot only undermine sensible federal rules but also pre-empt states from taking prudent action to protect residents and even restrict cities from creating their own municipal access services.

But he's mistaken. There will be judicial pressure to overturn the FCC ruling. And by calling our members of Congress and making net neutrality a headline issue in the coming elections, we can also defend a fair and open internet through the legislative process.

If there was one big lesson of the 2016 election -- from Bernie's insurgency to Trump's election -- it's that both left and right are wary of concentrated elite power. Turning internet service over to unaccountable cable TV-style corporate control is one of the surest ways to strengthen elite power relative to everyone else.



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

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
<b>Barnes et al., Law for Business</b>	Chapters 5, 7, 24 and 31	Chapters 5, 6 and 7	Chapters 3 and 25	N/A
<b>Bennett-Alexander &amp; Hartman, Employment Law for Business</b>	Chapter 1	N/A	Chapters 1 and 15	N/A
<b>Kubasek et al., Dynamic Business Law</b>	Chapters 7, 9, 34, 41 and 44	Chapters 7, 8, 9 and 44	Chapters 2, 42 and 44	Chapter 44
<b>Kubasek et al., Dynamic Business Law: The Essentials</b>	Chapters 4, 6, 7 and 20	Chapters 4, 6, and 7	Chapters 2, 4 and 24	Chapter 4
<b>Liuzzo, Essentials of Business Law</b>	Chapters 3, 4, 6, 19 and 31	Chapters 3, 4 and 6	Chapters 2, 6 and 32	Chapter 6
<b>Langvardt (formerly Mallor) et al., Business Law: The Ethical, Global, and E-Commerce Environment</b>	Chapters 5, 7, 36 45 and 47	Chapters 5, 6, 7 and 47	Chapters 4 and 51	Chapter 47
<b>McAdams et al., Law, Business &amp; Society</b>	Chapters 4, 7, 8, and 9	Chapters 4, 7 and 8	Chapters 2 and 14	Chapter 8
<b>Melvin, The Legal Environment of Business: A Managerial Approach</b>	Chapters 9, 11, 16, 17 and 22	Chapters 9, 17, and 22	Chapters 5 and 17	Chapter 17
<b>Pagnattaro et al., The Legal and Regulatory Environment of Business</b>	Chapters 10, 13, 15 and 17	Chapters 10, 13 and 15	Chapters 2, 15 and 22	Chapter 15
<b>Sukys, Brown, Business Law with UCC Applications</b>	Chapters 5, 6, 22, 23 and 28	Chapters 5, 6 and 28	Chapters 1 and 24	Chapter 28





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## This Newsletter Supports the Following Business Law Texts:

- Barnes et al., Law for Business, 13<sup>th</sup> Edition ©2018 (1259722325)
- Bennett-Alexander et al., Employment Law for Business, 9<sup>th</sup> Edition ©2019 (0078023793) *New edition now available!*
- Kubasek et al., Dynamic Business Law, 4<sup>th</sup> Edition ©2017 (1259723585)
- Kubasek et al., Dynamic Business Law: The Essentials, 4<sup>th</sup> Edition ©2019 (007802384X) *New edition now available!*
- Liuzzo, Essentials of Business Law, 9<sup>th</sup> Edition ©2016 (07802319X) *New edition available Feb 2018!*
- Langvardt (formerly Mallor) et al., Business Law: The Ethical, Global, and E-Commerce Environment, 17<sup>th</sup> Edition ©2019 (0077733711) *New edition now available!*
- McAdams et al., Law, Business & Society, 12<sup>th</sup> Edition ©2018 (1259721884)
- Melvin, The Legal Environment of Business: A Managerial Approach, 3<sup>rd</sup> edition ©2018 (1259686205)
- Pagnattaro et al., The Legal and Regulatory Environment of Business, 17<sup>th</sup> Edition ©2016 (0078023858) *New edition now available!*
- Sukys (formerly Brown/Sukys), Business Law with UCC Applications, 14<sup>th</sup> Edition ©2017 (0077733738)

