



Proceedings

A monthly newsletter from McGraw-Hill Education



May 2018 Volume 9, Issue 10

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Dear Professor,

The end of another academic year draws near! Welcome to McGraw-Hill Education's May 2018 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 9, Issue 10 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the May 2018 newsletter topics with the various McGraw-Hill Education business law textbooks.

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

1. The recent Federal Trade Commission/Uber settlement;
2. Recent developments in the Bill Cosby sexual assault retrial;
3. A trade dispute between the Trump Administration and Rwanda;
4. Videos related to a) a lawsuit filed by the parents of Olivia Kong against the University of Pennsylvania for their daughter's suicide; and b) criminal proceedings against Backpage.com for allegedly promoting advertisements for prostitution;
5. An "ethical dilemma" related to gender pay equity; and
6. "Teaching tips" related to the ethical dilemma ("Leading by Example to Close the Gender Pay Gap") of the newsletter.

I wish all of you a positive culmination of the current academic year, I hope you have a safe, enjoyable and restful summer, and I look forward to sharing new legal developments with you in the 2018-2019 academic year!

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Of Special Interest

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

- 1) The recent Federal Trade Commission/Uber settlement;
- 2) Recent developments in the Bill Cosby sexual assault retrial; and
- 3) A trade dispute between the Trump Administration and Rwanda.

Hot Topics in Business Law

Article 1: “Uber Risks New Penalties after Data Breaches, Watchdog Says”

<https://www.usatoday.com/story/tech/news/2018/04/12/uber-ftc-agree-tougher-terms-settlement-2014-and-2016-breaches/511371002/>

According to the article, the Federal Trade Commission is strengthening its settlement with Uber over a 2016 breach in which tens of millions of Uber riders and drivers' data was accessed.

This new agreement adds tougher requirements to a settlement the agency and ride-hailing company reached in August 2017 over a 2014 breach involving bank information and Social Security numbers for more than 100,000 Uber drivers.

During 2016 when the FTC and Uber were negotiating a settlement into that breach, Uber learned about another breach of more than 25 million U.S. Uber customers who had their names and email addresses accessed — 22 million of them also had their mobile phone numbers accessed. However, Uber did not notify the agency until November 2017, the FTC says.

Also accessed in that breach, which Uber learned about in November 2016: 600,000 names and driver's license numbers of U.S. Uber drivers and customers. Not accessed: credit card numbers or Social Security numbers.

"After misleading consumers about its privacy and security practices, Uber compounded its misconduct by failing to inform the Commission that it suffered another data breach in 2016 while the Commission was investigating the company's strikingly similar 2014 breach," said Acting FTC Chairman Maureen Ohlhausen in a statement. "The strengthened provisions of the expanded settlement are designed to ensure that Uber does not engage in similar misconduct in the future."

After discovering the second breach, Uber initially paid the hackers \$100,000, the FTC says, and failed to notify consumers for about a year. Uber discovered the original breach in September 2014 but did not begin to notify the affected drivers until at least five months later, the FTC says. In both cases, hackers accessed Uber data stored on Github.com, a website used by software engineers.



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Under the new settlement, Uber does not face any fines, but must supply additional audit reports to the FTC and could face civil penalties if it fails to notify the agency of future data breaches. Since the arrival of CEO Dara Khosrowshahi in late August 2017, Uber has refocused the "way we did business and put integrity at the core of every decision we made," said Uber chief legal officer Tony West said in a statement.

"Since then we have moved quickly to do just that by taking responsibility for what happened. I am pleased that just a few months after announcing this incident, we have reached a speedy resolution with the FTC that holds Uber accountable for the mistakes of the past by imposing new requirements that reasonably fit the facts."

Discussion Questions

1. Describe the Federal Trade Commission (FTC).

The Federal Trade Commission (FTC) is a federal administrative agency, established in 1914, that administers antitrust and consumer protection legislation in pursuit of free and fair competition in the marketplace. According to its website (<https://www.ftc.gov>), the mission of the FTC is to "protect consumers by preventing anticompetitive, deceptive, and unfair business practices, enhancing informed consumer choice and public understanding of the competitive process, and accomplishing this without unduly burdening legitimate business activity," its vision is a "vibrant economy characterized by vigorous competition and consumer access to accurate information," and its strategic goals are to protect consumers, maintain competition, and advance organizational performance.

2. Would you classify Uber's failure to notify the FTC of the data breach "wrongdoing" on the part of the company? If so, why? If not, why not?

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

3. As the article indicates, under the new settlement with the FTC, Uber does not face any fines, but must supply additional audit reports to the FTC and could face civil penalties if it fails to notify the agency of future data breaches. Comment on the propriety of this settlement. In your reasoned opinion, do the terms of the settlement achieve justice in this case? Why or why not?

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

Article 2: "Judge Denies Bill Cosby's Request for a Mistrial after Accuser Has Outburst in Court"

https://www.huffingtonpost.com/entry/bill-cosby-mistrial-denied_us_5acf71fde4b0d70f012ec8b5



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According to the article, Bill Cosby's request for a mistrial was denied recently after one of his accusers had an outburst in court on the third day of the comedian's sexual assault retrial.

Chelan Lasha, one of the five women allowed to testify as evidence of Cosby's "prior bad acts," took the stand Wednesday and alleged Cosby drugged and assaulted her when she was 17 years old in Las Vegas in 1986. She was visibly emotional and crying while on the stand, multiple outlets reported.

After Lasha's testimony, Judge Steven O'Neill began giving instructions to the courtroom about the upcoming lunch break. Unprompted, Lasha looked at Cosby and addressed him from the stand.

Reports are conflicted on Lasha's exact wording. According to multiple outlets, she said: "You remember, don't you, Mr. Cosby?" Other outlets, including Reuters, reported that she said: "You know what you did."

The defense immediately objected to Lasha's outburst and asked O'Neill for a mistrial. The judge denied the request but instructed the jurors to disregard Lasha's comment. He also gave her a warning.

Lasha testified that Cosby had made her feel "special" when she was a teen.

"I was a good girl," she said, according to Jezebel. "He took that all away from me. I trusted that man."

Cosby is charged with three counts of aggravated indecent assault. He is accused of drugging and sexually assaulting Andrea Constand, a former women's basketball coach at Temple University, in 2004. Cosby reportedly paid Constand \$3.4 million in a civil lawsuit settlement in 2006. In June, a jury failed to reach a unanimous decision on the charges and O'Neill declared a mistrial.

More than 50 women have accused Cosby of sexual assault, with many saying he drugged and raped them. In a big victory for prosecutors, O'Neill ruled in March that five accusers could testify because their stories closely resemble the allegations made by Constand.

Cosby has denied all the allegations and is standing by his not guilty plea from last year.

Discussion Questions

1. What is the legal/procedural effect of a mistrial?

If the judge declares a mistrial, the jurors are dismissed, and the trial ends. A future trial can take place, assuming the prosecution is prepared to take the steps necessary to effectively begin again.

2. As the article indicates, Judge O'Neill denied the defense's request for a mistrial, but instructed jurors to disregard Chelan Lasha's comment (either "You remember, don't you, Mr. Cosby" or "You



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(Cosby) know what you did,” according to varying reports). Is it possible for jurors to disregard Ms. Lasha’s comment? If not, what is the value of such an instruction?

Although the trial court judge may instruct the jurors to disregard statements made by witnesses, it would admittedly be difficult to the jury to do so. If they are effectively fulfilling their responsibilities, however, jurors will disregard such statements, and will not consider them in rendering a verdict in the case.

3. In your reasoned opinion, was it proper or improper for Judge O’Neill to deny the defense request for a mistrial? Explain your response.

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

Article 3: “Another Trump Trade War, This Time with Rwanda over Clothes”

<https://www.apnews.com/59635b4c9ddc421c80e6cb29c9fc0561>

According to the article, the sweaty mechanic tossed aside the used jeans one by one, digging deep through the pile of secondhand clothes that are at the center of another, if little-noticed, Trump administration trade war.

The used clothes cast off by Americans and sold in bulk in African nations, a multimillion-dollar business, have been blamed in part for undermining local textile industries. Now Rwanda has taken action, raising tariffs on the clothing in defiance of U.S. pressure. In response, the U.S. says it will suspend duty-free status for clothing manufactured in Rwanda under the trade program known as the African Growth and Opportunity Act.

President Donald Trump's decision has not gone down well in Rwanda, a small, largely impoverished East African nation still trying to heal the scars of genocide 24 years ago. Similar U.S. action against neighboring countries could follow; Uganda and Tanzania have pledged to raise tariffs and phase in a ban on used clothing imports by 2019.

The action against Rwanda comes just weeks after Trump met Rwandan President Paul Kagame at the World Economic Forum and proclaimed him a "friend," as Trump sought to calm anger in Africa over his reported vulgar comments about the continent. Kagame currently chairs the African Union, where heads of state just days after the meeting drafted, but decided against issuing, a blistering statement on Trump.

The U.S. trade action is finding a mixed response in Africa, with some upset at Trump again, while others defend the secondhand clothing as popular, inexpensive and well-made.

The U.S. is a "bully" for retaliating against Rwanda's efforts to grow its own textile industry, said Dismas Nkuranga, who deals in secondhand footwear in Rwanda's capital, Kigali.



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"The main objective for Rwanda is to see more companies in the country produce clothes here," said Olivier Nduhungirehe, state minister for foreign affairs. "It's also about giving Rwandans the dignity they deserve, not wearing secondhand clothes already used by other people."

But at the sprawling Owino Market in neighboring Uganda's capital, Kampala, the trade in used clothing continues to crackle, with some sellers shoving merchandise into the arms of shy potential buyers: a pair of jeans for a fraction of a dollar, a T-shirt for even less.

"Affordability is what I want," said John Ekure, the mechanic who was shopping for jeans. As some African governments worry that the bulk imports of used clothes constitute dumping, others question the ability of local clothing makers to satisfy appetites for quality goods at rock-bottom prices.

Rwanda has been supporting Chinese investors to set up textile factories in the hopes that the country eventually can produce affordable products and create 350,000 jobs by 2025. But many in Rwanda who praise the government's decision to raise tariffs as progressive remain concerned about whether that goal can be reached.

In Uganda, where the per capita income is \$615, traders and buyers said they hope the government will not move as swiftly as Rwanda in imposing higher tariffs on used clothes. One trader said he had noticed a rise in the number of Rwandans coming to his stall to check out trench coats and jackets, apparently because such goods have become rare back home.

"If they are telling us they are going to create many industries making clothes, I can tell you they don't have the capacity to do that," Muhammad Kiyingi said of Uganda's government. "Somebody should tell the government to think carefully."

He predicted that tightening restrictions on imports of used clothing from the U.S. would lead to a spike in imports from places like China and the United Arab Emirates instead.

Following Rwanda's lead would "cause more harm than good," said Ramathan Ggoobi, an economist at Uganda's Makerere University. "We have not yet built capacity to produce new products ... so we would be protecting an inefficient producer."

To satisfy the demand for Western fashion, African governments could offer incentives for Western textile companies to set up factories on the continent, said Uche Igwe, an analyst who advises the government in Nigeria, Africa's most populous country.

"It is nice to grow our domestic industries and create employment," he said. "However, we must first fix our infrastructural deficits so that local producers will produce at competitive costs."



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Discussion Questions

1. What is a trade war? In your reasoned opinion, is it reasonable to categorize the actions described in the article as a trade war? Why or why not?

In a trade war, two (or more) countries impose restrictions on their ability to trade goods and/or services with each other. A trade war can begin when one nation decides to impose trade restrictions (tariffs, quotas, etc.) on another country, and the other country responds with retaliatory restrictions. Whether the current trade dispute between the Trump administration and Rwanda rises to the level of a trade “war” is a matter of opinion; usually, the term is reserved for heightened and prolonged trade conflicts.

2. According to the title of the article, this is a (President Donald J.) “Trump trade war.” In your reasoned opinion (and disregarding personal political affiliation, if possible), is this a “Trump” trade war or a “Rwandan” trade war?

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

3. Is it possible for both countries engaged in a trade war to “win?” To “lose?” Explain your response.

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



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Video Suggestions

Video 1: “Parents File Lawsuit against University of Pennsylvania over Daughter’s Suicide”

<https://www.cbsnews.com/news/university-of-pennsylvania-parents-file-lawsuit-over-daughters-suicide/>

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

“Parents File Lawsuit against University of Pennsylvania over Daughter’s Suicide”

According to the article, two years after a University of Pennsylvania student took her own life, her parents are taking legal action to have the school held accountable. Olivia Kong's parents say the school ignored their daughter's cries for help. They hope the lawsuit will honor her memory and evoke change.

Surveillance cameras at the 40th Street subway station in Philadelphia captured the last time the UPenn junior was seen alive.

"You can see her pacing and then she starts walking on the yellow line," said Carol Nelson Shepherd, the family's attorney.

Two years ago, Kong climbed down to the tracks and was hit by an oncoming train.

"Fourteen kids have died at their own hands just since 2013 and many more before that -- a rate that is at least twice that of any other university or college we're aware of in the United States of America," said Nelson Shepherd.

The family is suing the university on three counts, including negligence, misconduct, reckless disregard and wrongful death. Her parents believe the school disregarded their only daughter's repeated cries of help.

"No one from Penn, never, tells these parents that Olivia has expressed nine times a desire to commit suicide," said Nelson Shepherd.

CAPS, which stands for Penn's Counseling and Psychological Service, offers counseling, therapy and crisis intervention.



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"There seems to be something unique about Penn that it is not only a pressure cooker, but there's this culture where the students are almost not permitted to show any vulnerability," said Nelson Shepherd.

It's a phrase coined on the Ivy League campus as "Penn Face."

"'Penn Face' is pretty much where students really act like everything is OK when sometimes things really aren't OK," said sophomore Joshua Tulanda.

Kong's parents believe that's exactly what happened to her. Born in China, she moved to Philadelphia at the age of nine, accelerating in academics at Central High School, before enrolling at Wharton School of Business at UPenn.

Aside from justice, Nelson Shepherd said Kong's parents want to help other students.

"To hopefully cause Penn to take a close look at what they're doing wrong, the inadequacies of their approach to what has become an epidemic of suicides on Penn's campus," Shepherd said.

The university said it doesn't comment on pending litigation.

Discussion Questions

1. Define negligence.

Negligence is the failure to do what a reasonable person (party) would do under the same or similar circumstances.

2. Describe the four (4) elements of negligence.

The four elements of negligence are: 1) duty (owed by the defendant to the plaintiff); 2) breach of duty (by the defendant); 3) causation of harm (by the defendant to the plaintiff); and 4) damages (sustained by the plaintiff—economic, physical, or both).

3. In your reasoned opinion, was the University of Pennsylvania negligent in this case? Why or why not?

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

Video 2: "How Outsourcing to India Gave Prosecutors a Window into Backpage Operations"

<https://www.usatoday.com/story/tech/nation-now/2018/04/12/backpage-outsourcing-editing-classified-advertisements/510439002/>



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

“How Outsourcing to India Gave Prosecutors a Window into Backpage Operations”

According to the article, Backpage.com, the website that federal prosecutors contend was intentionally and illegally designed to help promote ads for prostitution, seemed designed to evade scrutiny.

For years, the website whose founders and employees were indicted recently on federal charges of aiding prostitution had claimed that it policed its adult ads to ward off such illegal activity.

However, company officials also contended that those policies were not written down. The website's lawyer, Liz McDougall, told U.S. Senate investigators that supervisors passed down policies to employees by word of mouth.

In short, she contended that investigators had nothing to look at that would help them understand how Backpage attempted to keep ads that contributed to human trafficking off its website.

But Senate investigators learned that, for a time, Backpage outsourced its moderation work to employees in India. Investigators asked that company for emails it exchanged with Backpage.

Those emails between Backpage and supervisors of the India employees laid out specific rules on what words and images were allowed on the website and which would be banned. The emails also discussed the reasoning behind why some terms were allowed and others were not.

To Senate investigators, it showed the intent of Backpage to create a website where prostitution transactions could be conducted without making them seem overt, even after knowing that some of those transactions likely involved minors.

That initial batch of emails to moderators in India persuaded the court to order Backpage to cough up more. A federal judge in Washington, Rosemary Collyer, ordered website officials to turn over documents and emails about its moderation practices to Senate investigators.

Those emails provided the backbone of the federal case against Backpage's founders, Jim Larkin and Michael Lacey, the former owners of the tabloid alternative newspaper, *Phoenix New Times*.

The 93-count indictment quotes extensively from internal emails, particularly in making the case for the 50 charges of facilitating prostitution.

One batch of emails in particular appears to have resulted in half of the charges of prostitution. In March 2016, Backpage sent a note to its staff of moderators instructing them no longer to edit out the term "GFE" from ads, according to the indictment. That term stands for girlfriend experience.



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The indictment points to emails from years earlier, in 2010 and 2011, when Backpage employees said that phrase should be banned because it was an obvious indicator of prostitution. In an August 2011 email, a supervisor placed "GFE" on a list of phrases that were "solid sex for money terms."

The indictment lists 25 ads published after April 2016 that contain the term GFE. Each one constitutes a separate charge of facilitating prostitution.

In addition to the prostitution charges, Lacey and Larkin also were charged with financial crimes, because prosecutors allege that they and two other executives who also held corporate positions at *New Times*, Scott Spear and John "Jed" Brunst, used an extensive network of shell companies and foreign banks as repositories of Backpage money.

Also charged in the indictment were Dan Hyer, the Backpage sales and marketing director, and Andrew Padilla and Joye Vought, two people who sent several emails to the team of moderators that would comb ads and scrub them clean of words indicative of prostitution.

The federal indictment seemed to track, in part, the report U.S. Senate released in January 2017 that concluded Backpage was knowingly aiding prostitution activity, some involving underage girls.

When that report was released, Sen. Claire McCaskill, D-Mo. and a former county prosecutor, said the report contained a treasure trove of evidence. She encouraged prosecutors, including U.S. attorneys, to use the emails as a road map.

"I am confident that there is sufficient evidence here to hold some of the people responsible for this accountable in ways that have been very frustrating to the families," she said at the hearing.

The next month, lawyers for Backpage asked for a delay in a civil trial in Washington. The reason cited in their filing was that Backpage was the subject of a criminal grand jury investigation in Phoenix.

The U.S. Senate started investigating Backpage in April 2015, as part of a look into how websites were involved in the prostitution trade.

Backpage had long contended it did all it could to stop ads that offered money for sex or other illegal activity.

For most of those years, the only evidence of that was Backpage's repeated vows and the ads on its website.

Backpage, which started operations in 2004, started moderating ads in 2006, according to the U.S. Senate subcommittee report. It is not clear why.



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Its chief competitor in both classified and adult advertising was the website Craigslist. Backpage mirrored many of the practices Craigslist employed, including hosting specific adult sections and charging for those ads.

This also was a time when the issue of sex trafficking had gained increased political attention. Activists, sometimes armed with specious statistics and horrifying anecdotes, had successfully redefined prostitution as domestic minor sex trafficking.

What had been seen as a nuisance crime that local police sporadically enforced now was seen as a growing menace worthy of federal attention. The women involved no longer were seen as criminals but as victims of persecution who needed rescuing, according to the activists.

Craigslist became the target of activists, politicians and law enforcement officials who said the site was commonly used for sex transactions. The Connecticut Attorney General called it an online brothel, and a Chicago-area sheriff filed a lawsuit saying Craigslist aided prostitution. Craigslist took steps to rectify the concerns, according to testimony its lawyer, McDougall, gave to Congress in 2010. Backpage would hire her later that year.

The adult ads on Craigslist had been free, but Craigslist started charging for the ads at the suggestion of law enforcement who thought credit-card numbers could help them trace possible perpetrators, McDougall testified. The website similarly required people posting adult ads to verify a working phone number.

The website also hired lawyers "at considerable expense" to moderate posts, according to McDougall's prepared congressional testimony.

Those steps resulted in many of the adult ads migrating to Backpage. In a 2009 entry on its blog, Craigslist noted that a sampling of ads on Backpage were far more graphic and explicit than the ads found on Craigslist.

Craigslist closed its "adult services" category in September 2010, bowing to the public pressure. According to internal email, Carl Ferrer, the chief executive of Backpage, said he expected a surge of advertisements to come to the Escorts section of Backpage. He also wrote that he feared harsh scrutiny from law enforcement.

"It is an opportunity for us," Ferrer wrote. "Also a time when we need to make sure our content is not illegal."

That month, Backpage contacted El Camino Technologies, a California company that could hire moderators in India.

Initially, Backpage hired six employees in India for \$3.95 an hour, according to emails. They worked shifts around the clock.



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An October 2010 email to El Camino spelled out rules for pictures on Backpage ads:

"We allow full nudes for men and women," the guidelines said. "However, we do not want to display any explicit images of genitalia. ... Our standard is playboy and not porn."

The guidelines also said moderators should reject ads "that suggest sex for money." It listed three dozen explicit or coded terms that should be banned.

Andrew Padilla, the operations manager for Backpage, thought the India-based moderators initially were too harsh with their edits, according to the emails. Padilla told Monita Mohan, an executive with the company that coordinated the India employees, that the word "sexy" was OK and offered more detailed guidance on nudity, saying photos of a centered thong or g-string were allowed.

However, that same month, the attorney general of Massachusetts was preparing a public hearing on Backpage practices. And Backpage executives decided to impose stricter standards, Padilla wrote in an email to employees.

"Perhaps indefinitely, and certainly over the next four days, we need to intensify our efforts in cleaning (ads)," he wrote. "We're still allowing phrases with nuance but if something strikes you as crude or obvious, remove the phrase."

The next day, Padilla sent a list of terms that should be banned or edited out of ads. "(I)t's the language in ads that's really killing us with the attorneys general," he wrote. "Images are almost an afterthought to them."

By late October 2010, Backpage had hired more India-based moderators, bringing the total to 13. It also stopped reviewing their work, according to the emails, authorizing them to edit ads and publish them.

"As long as your crew is editing and not removing the ad entirely, we shouldn't upset too many users," Padilla wrote to Mohan.

An internal note said that with the new, stricter guidelines, Backpage was editing 70% to 80% of its ads.

In late October 2010, Backpage altered its policies, according to an email sent to staff, banning photos of bare bottoms and the words "GFE" and "PSE," which stand for "girlfriend experience" and "porn star experience."

According to the indictment, those terms were defined in the email as being indicative of a "sex act for money."



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Also banned were pricing for increments less than an hour. The email said new guidelines on female frontal nudity would follow.

Padilla, the operations manager, said ads that violated the new rules would be edited. Warnings would be sent to the people who created the ads

"We have to be fair to the users and give them time to adjust," he wrote.

In February 2011, Padilla wrote Mohan that some customers who had been restricted on the site before were being given a "clean slate." He said he expected this would increase the number of ads that needed to be edited.

He also wrote that the staff should go slightly easier on some borderline violations of policy. "I realize that this more lenient policy can't necessarily be easily conveyed to our moderation crews," he wrote. "But I feel the general attitude change should be communicated in some form. "Put succinctly, moderators should err on the side of the user," he wrote.

By 2012, Ferrer and the company that coordinated with the moderators in India were exchanging emails that discussed what words should be allowed. A group of India moderators suggested terms that were similar to the ones banned.

A spreadsheet attached to the email contained definitions for some terms, making plain what certain terms meant.

For example, "car date" was defined as, "The act of prostitution, occurring in a vehicle. Some examples: It appears as before that we have a woman car dating in our neighborhood." Sometime in 2012, according to the Senate report, Backpage ended its contract with the moderators in India.

Three years later, Senate subcommittee investigators asked the company about its contract with Backpage.

That company said its contract with Backpage was the first time it ever had that dealt with moderating escort ads, according to the subcommittee's report. And that the company had not had a similar client since.

And, yes, they did still have the emails.

Discussion Questions

1. Comment on the strength or weakness of the federal case against Backpage, its founders and/or its employees for facilitating prostitution.



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Whether the federal case against Backpage is strong or weak is an opinion question, and student responses may vary.

2. Comment on the strength or weakness of the federal case against Backpage, its founders and/or employees for financial crimes.

Whether the federal case against Backpage is strong or weak is an opinion question, and student responses may vary.

3. Does Backpage's outsourcing of its moderation work to employees in India serve in any way to immunize the company, its founders and/or its employees from criminal liability in this case? Why or why not?

As the article indicates, for a time, Backpage outsourced its moderation work to employees in India. In your author's opinion, such outsourcing in no way serves to immunize Backpage, its founders or its employees from criminal liability in this case. Although authority can be delegated, ultimate accountability rests with the delegator.



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Of Special Interest

This section of the newsletter addresses the issue of gender pay equity.

Ethical Dilemma

“Leading by Example to Close the Gender Pay Gap”

<https://www.cbsnews.com/news/salesforce-ceo-marc-benioff-leading-by-example-to-close-the-gender-pay-gap/>

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

“Leading by Example to Close the Gender Pay Gap”

According to the article, the "Me Too" movement has shaken the workplace to its core. It has such power that it has come to mean more than sexual harassment. "Me Too" is now also about the issue of unequal pay between men and women.

According to the U.S. Census Bureau, a woman made 60 cents for every dollar made by a man in 1960. 40 years later, in 2000, that gap had been narrowed by just a dime. And it has taken nearly two decades more to shave another dime off the gap. Today women still make 20% less on average than their male counterparts.

A tech company called Salesforce is the perfect example of just how tough it can be to close the remaining pay gap. Salesforce is huge - 30,000 employees, \$10 billion in annual revenue - and it was just ranked by Fortune as the number one best place to work among big companies. That helps explain why founder and CEO Marc Benioff was so cocky when the woman who runs his human resources department came to talk to him in 2015 about equal pay.

Lesley Stahl: So, when Cindy Robbins came to you and said, "Do you know we may have a problem with unequal pay in the company?" what was your reaction?

Marc Benioff: Well, I said, "That's not possible here." You know, it's-- it's not possible.

Lesley Stahl: -- Why was it impossible?

Marc Benioff: It's impossible because we have a great culture here. We're-- we're a 'best place to work.' And we don't do that kinda thing. We don't play



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shenanigans paying people-- paying people unequally. It's unheard of. It's crazy.

Crazy because Benioff had already made promoting and retaining women a priority at Salesforce. But personnel chief Cindy Robbins says he'd never ordered an audit to make sure men and women were being paid equally.

Lesley Stahl: Did you suspect that there was a problem?

Cindy Robbins: I suspected there was some level of disparity because we've never really had this as part of our pay philosophy or as our pay culture. And--

Lesley Stahl: And the assumption was it was true in all companies at that point.

Cindy Robbins: It was. Started to be talked about, but not really. And what I told Marc was, "The one thing we can't do is do the assessment, look under the hood, see a big dollar sign, and shut the hood."

Lesley Stahl: So did you agree to the audit just to prove to her that she was wrong?

Marc Benioff: I-- I (LAUGHTER) really felt that there's no way that this can be true.

Lesley Stahl: But you said, "Let's do the audit."

Marc Benioff: I said, "Well, we have to do it." You know, she-- she actually-she said, "Well, do you agree that we're gonna pay men and women equally?" I said, "Of course I agree." "Well, you-- you know that-- what-- what it's gonna cost you, don't you?" "I don't know, what is it gonna cost me?" "Well, I don't know. You have to agree first." So, I said, "Okay, -- I agree. I agree." All right, let's do this.

So they did the audit, and Benioff found that Salesforce did have a persistent pay gap between women and men doing the same job.

Lesley Stahl: And it was widespread? It was a lot of cases?

Marc Benioff: Just everywhere. It was through the whole company, every division, every department, every geography.

Lesley Stahl: So how did you remedy that?

Marc Benioff: We said we're gonna pay men and women equally at Salesforce, and we're gonna go through and we're gonna level set every job and every divi-- division, every department. And we're gonna make sure that we have gender equality.

Lesley Stahl: So when you went to correct, how much did it actually cost?



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Cindy Robbins: It-- it cost about \$3 million for us to do those adjustments the first year. More than 10% of the women at Salesforce got bigger paychecks. As a pioneer in cloud computing, Salesforce was already a powerhouse at the time - the fastest growing software company ever. 150,000 companies use its products to manage every detail of their relationship with their customers.

One of the reasons it's considered such a great place to work is that, from 1999, when he founded the company, Benioff has emphasized philanthropy and social responsibility. He pays employees to give their time to local schools and charities, and Salesforce has donated more than \$180 million to non-profits.

Lesley Stahl: Why do you think, given your culture, why do you think it happened here?

Marc Benioff: I think- it's happening everywhere.

Lesley Stahl: But why particularly here and why is it happening everywhere?

Marc Benioff: There's a cultural phenomenon where women are paid less. And the World Economic Forum says that it'll take more than 100 years for us to pay men and women equally. So we better get going now. (LAUGHTER)

Ellen Kullman: I think what he's doing is absolutely phenomenal. And he is committed. Ellen Kullman is the former CEO of DuPont, and now co-chairs an organization of high-powered businesswomen pushing for equality in the corporate world.

Ellen Kullman: Our daughters are facing the same issues that we faced early in our career. And we made a decision that unless people like us did something about it, who would?

What they did was form Paradigm for Parity, which basically tries to jawbone big-company CEOs into closing their gender gaps.

Ellen Kullman: What we're saying is they should have gender parity at senior leadership in the company. That means 50% of your most senior leaders are women.

Lesley Stahl: So it's not about pay. It's really about numbers of women in the upper echelon--

Ellen Kullman: So pay's an outcome of an un-level playing field. Until you level that playing field, you're gonna get that same outcome.

Marc Benioff: We saw in our company a lot of meetings where there were just men. Like, we would have a meeting and I would look around the room and I'm, like, "This meeting is just men. Something is not right."



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Lesley Stahl: And these would be the leadership meetings.

Marc Benioff: These would be a leadership meeting. And then I said to myself, "I am not gonna have any more meetings that aren't at least a third women."

Lesley Stahl: Really?

Marc Benioff: Absolutely.

Lesley Stahl: But that meant giving everybody promotions.

Cindy Robbins: Not necessarily. It meant identifying who the high potential women were.

Lesley Stahl: Potential.

Cindy Robbins: Yes.

Lesley Stahl: Okay.

Cindy Robbins: So a door opened. Our job was to stay invited to these meetings, going forward. Technology companies are notoriously male-dominated, both in their overall workforce and in management. So achieving power parity in Silicon Valley is a struggle.

Lesley Stahl: So what percent of the leaders in this company are women?

Cindy Robbins: 20% of our leadership are women.

Lesley Stahl: What would you like?

Cindy Robbins: Oh, well--

Lesley Stahl: 50?

Cindy Robbins: --I would love 50 --

Lesley Stahl: Yeah, there you go--

Cindy Robbins: --I'm a woman, you know? I'm an (LAUGH) executive.

Lesley Stahl: Did you yourself, in your career, ever discover that you were being paid less than a man who was doing a comparable job?



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Cindy Robbins: You know, there were times in my career where I said, "I don't know if this is the right pay. And I kind of thought, "Well, if I say something it's gonna go up the chain." And do I wanna be viewed as the complainer? Right?"

Lesley Stahl: This is so what women across the board fear. Women are afraid to ask for a raise. This is a huge problem that we have.

Cindy Robbins: Uh-huh (AFFIRM).

Marc Benioff: This is part of a total package. You can't look at one of these things independent of the other. You know, at some point you're gonna ask me about #MeToo. Because that's the fourth door. You know, you can say equal opportunity is one critical part of gender equality.

Then you can say equal advancement, that's a critical part of gender equality. Then you can say equal pay, that's the third door. And the fourth door is preventing sexual harassment. All of these things together is gender equality.

One recent case of gender inequality in Hollywood got so much attention that it ended up in Jimmy Kimmel's monologue at the Oscars.

Jimmy Kimmel: And we all know the story: Mark Wahlberg was paid a million and a half dollars to re-shoot his scenes, while Michelle Williams, for her re-shoots, got per-diem. She was paid \$80 dollars a day for the same thing.

Ironically, the re-shoots were for a film titled "All the Money in the World."

Jimmy Kimmel: To his credit, Mark Wahlberg announced he would be donating all \$1.5 million to the Time's Up legal defense fund. So I guess now the ball's in your court, Michelle. What are you gonna do with that 80 bucks? (laughter)

Lesley Stahl: We had the #MeToo women speak up, and now we've had a rash, small rash, but a rash of women speaking out and saying, "I'm not paid the same." It's interesting that it's coming at the same time as #MeToo. It-- it's as if women are gaining muscles.

Ellen Kullman: It's about time. (LAUGH)

When Ellen Kullman was running DuPont, she found that one thing holding women back – especially when it came to promotions - was unconscious bias.

Ellen Kullman: And the perception is, do they need longer in a job to prove themselves as opposed to a man? We were promoting women every 30 to 36 months into same kinda jobs as we were promoting men every 18 to 24 months. So if you go out ten years, they're being paid vastly differently.



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Lesley Stahl: I'm gonna read you a statistic. When men had children, their earnings went up 6%. So they're rewarded for being a father. When women have children, their earnings decrease 4% with each child.

Ellen Kullman: Unconscious bias. The assumption that they're not committed. The assumption that they won't be there when you need them.

Bias Training: Our example is: Shannon is the proud parent of a new baby boy. Some companies are now offering their employees unconscious bias training sessions in which facilitators try to help people identify attitudes they may not even know they have.

Bias Training: Shannon is a woman who returned to work last month after taking maternity leave. The assumption is, Shannon will be tired, not able to give work her full attention. And the conclusion is I'd better not give Shannon any challenging tasks. She won't be able to concentrate.

That's the so-called mommy penalty. At Salesforce they have worked to address it by offering on-site daycare, generous family leave, flexible schedules, and now, equal pay. But Benioff has found out just how hard bringing that about really is.

Marc Benioff: We did it the first time. We were so happy with ourselves. It was great. Then all of a sudden we kind of did our audit again and the same thing happened again. We're, like, "How can this be?" But it turned out we had bought about two dozen companies. And guess what? When you buy a company, you just don't buy its technology, you don't buy its culture, you also buy its pay practices.

Lesley Stahl: So they would come in and the men were paid much more and then that got eaten up into your statistics, into your audit. So you had to redo the whole thing all over again, costing as much as the first time.

Marc Benioff: It cost us as much as the first time. In total, it's now cost us \$6 million.

Lesley Stahl: Are you gonna have to do this audit every year --

Marc Benioff: More than every year. We're gonna have to do this continuously. This is a constant cadence. You're gonna have to constantly monitor and keep track of that, but that's easy today. We run our company the same way every company is run with computers and technology and software. What do you think, that we're-- running our pay scales on 3x5 cards?

Cindy Robbins: There is power in data. I'm looking at all forms of data now that I was not looking at a couple years ago in my role. I'm looking at how women and men are given merit increases, stock grants, promotions, and taking a look at, "Is there bias? Is there disparity?"



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Benioff's become a national figure, an activist CEO who takes public positions on controversial issues. In 2015, he threatened to pull Salesforce investments from states that passed anti-gay or anti-transgender laws. Now his cause is equal pay for equal work.

Lesley Stahl: This is your passion.

Marc Benioff: This is part of who I have become as a leader, that I believe as a CEO that I can show other CEOs how to create a great culture in their company. You can't be a great CEO and say that I'm not committed to gender equality today. I-- I don't think it's possible.

Lesley Stahl: Well, you say that companies have to do this, but you are talking to CEOs, some of whom are telling you, "I can't do this."

Marc Benioff: Many CEOs will just simply say, "I'm not interested." I've had CEOs call me and say, "This is not true. This is not real." And I'll say to them, "This IS true. Look at the numbers."

Lesley Stahl: Look at your own numbers.

Marc Benioff: Look at your own numbers.

For many years, CEOs have publicly embraced the *concept* of equal pay, but then complained about how hard it is to get there. Remember that prediction that it'll take 100 years to get to pay parity?

Lesley Stahl: 100 years, really?

Marc Benioff: Oh, it's crazy, isn't this?

Lesley Stahl: Yeah.

Marc Benioff: This is ridiculous.

Lesley Stahl: It won't take 100 years, or will it?

Marc Benioff: Well, you know, I mean there is a lot of resistance. But this-- there's never been an easier time to make this change. CEOs with one button on one computer can pay every man and every woman equally. We have the data. We know what everyone makes. There's no excuse. Everybody can easily do this now.

Discussion Questions

1. As the article indicates, according to the United States Census Bureau, a woman made 60 cents for every dollar made by a man in 1960. Today women still make 20% less on average than their male counterparts. Provide a critical assessment of this data.



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This data is both encouraging and discouraging. It is encouraging in the sense that progress in closing the gender pay gap has occurred. It is discouraging in the sense that actual pay equity has not yet been achieved.

2. Comment on the following quote by Marc Benioff:

“There's never been an easier time to make (the pay equity) change. CEOs with one button on one computer can pay every man and every woman equally. We have the data. We know what everyone makes. There's no excuse. Everybody can easily do this now.”

In your author's opinion, Mr. Benioff's assessment is both timely and accurate. Chief executive officers have both the power and the responsibility to achieve pay equity within their organizations.

3. The article indicates that according to the World Economic Forum, it will take more than one hundred years to pay men and women equally. In your reasoned opinion, is this an accurate prediction? Why or why not?

This is an opinion question, so student responses may vary. It would be interesting to determine whether the World Economic Forum would apply this time horizon to only lesser developed countries, or to developed, post-industrialized countries like the United States as well.



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Of Special Interest

This section of the newsletter will assist you in addressing the Ethical Dilemma (“Leading by Example to Close the Gender Pay Gap”) of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to the Ethical Dilemma—“Leading by Example to Close the Gender Pay Gap”): Equal Pay/Compensation Discrimination

<https://www.eeoc.gov/laws/types/equalcompensation.cfm>

For guidance regarding the Equal Pay Act and compensation discrimination, please have students review the following excerpt from the United States Equal Employment Opportunity Commission’s website:

Equal Pay/Compensation Discrimination

The Equal Pay Act requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. Job content (not job titles) determines whether jobs are substantially equal. All forms of pay are covered by this law, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. If there is an inequality in wages between men and women, employers may not reduce the wages of either sex to equalize their pay.

An individual alleging a violation of the EPA may go directly to court and is not required to file an EEOC charge beforehand. The time limit for filing an EPA charge with the EEOC and the time limit for going to court are the same: within two years of the alleged unlawful compensation practice or, in the case of a willful violation, within three years. The filing of an EEOC charge under the EPA does not extend the time frame for going to court.

Equal Pay/Compensation and Sex Discrimination

Title VII also makes it illegal to discriminate based on sex in pay and benefits. Therefore, someone who has an Equal Pay Act claim may also have a claim under Title VII.

Other Types of Discrimination

Title VII, the ADEA, and the ADA prohibit compensation discrimination on the basis of race, color, religion, sex, national origin, age, or disability. Unlike



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the EPA, there is no requirement under Title VII, the ADEA, or the ADA that the jobs must be substantially equal.

Teaching Tip 2 (Related to the Ethical Dilemma—“Leading by Example to Close the Gender Pay Gap”): “What You Should Know: Questions and Answers about the Equal Pay Act

For further guidance regarding the Equal Pay Act and compensation discrimination, please have students review the following additional excerpt from the United States Equal Employment Opportunity Commission’s website:

https://www.eeoc.gov/eeoc/newsroom/wysk/qanda_epa.cfm

Background

EEOC enforces the Equal Pay Act (EPA). The EPA prohibits pay discrimination based on sex, but it is limited to pay discrimination between employees who are performing the same job at *the same location*.

1. Do women and men have to be performing identical jobs for the EPA to apply?

No. The EPA does not require that the jobs be identical. The following requirements apply:

- a significant portion of the job tasks are the same for the positions being compared;
- the two jobs involve similar levels of skill, which means similar levels of experience, ability, education, and training;
- the two jobs involve similar levels of mental and physical exertion;
- the two jobs involve similar levels of responsibility or accountability; and
- the two jobs are performed under similar working conditions.

2. Do the two individuals have to be working in the same place?

Generally, yes. However, workers at different worksites sometimes may be compared if the same managers oversee the operations of both locations and workers frequently transfer between the two locations.

3. If I’m being paid less than someone of the opposite sex who is doing the same job as me at the same location, does that mean that my employer is violating the EPA?

Not necessarily. Under limited circumstances, an employer is permitted to pay someone of the opposite sex more, even though he or she is performing the same job. To justify the higher pay, the employer would have to show that the higher pay is based on one of the following:

- a seniority system that rewards employees based on length of employment;



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- a merit system that rewards employees for exceptional job performance;
- an incentive system that pays employees based on the quality of their work or the amount of work they perform; or
- another factor related to job performance or business operations, such as paying a shift differential to workers on less popular shifts.

4. What can I do if I believe my employer has violated the EPA?

If you believe that your employer has violated the EPA, you can either file a charge with the EEOC or you can file a lawsuit in court. Under the EPA, you are generally required to file your lawsuit within two years of when you received the discriminatory pay. You should be aware that filing a charge with the EEOC does not extend your two-year time frame for filing an EPA lawsuit.

5. Do other laws also prohibit pay discrimination?

Yes, all of the laws enforced by the EEOC prohibit pay discrimination. Pay discrimination based on sex is also prohibited by Title VII of the Civil Rights Act of 1964. Title VII prohibits discrimination in compensation and other terms and conditions of employment, so it is broader than the EPA. Title VII also prohibits discrimination in compensation or other aspects of employment based on race, color, religion, or national origin. The Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act prohibit discrimination in compensation or other aspects of employment based on age (40 or over), disability, or genetic information.

6. Where can I find more information about pay discrimination?

Several documents on EEOC's website provide background information on the EPA and other EEO laws prohibiting pay discrimination:

- EEOC Compliance Manual Section on Compensation Discrimination: <http://www.eeoc.gov/policy/docs/compensation.html>
- Questions and Answers: Compliance Manual Section on Compensation Discrimination: <http://www.eeoc.gov/policy/docs/qanda-compensation.html>



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Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapters 1, 4, and 45	Chapters 5 and 7	Chapters 3 and 25	Chapters 3 and 25
Bennett-Alexander & Hartman, Employment Law for Business	N/A	N/A	Chapters 1, 3, 4 and 8	Chapters 1, 3, 4 and 8
Kubasek et al., Dynamic Business Law	Chapters 6, 7 and 44	Chapters 7 and 9	Chapters 2 and 43	Chapters 2 and 43
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 1, 4 and 6	Chapters 6 and 7	Chapters 2 and 24	Chapters 2 and 24
Liuzzo, Essentials of Business Law	Chapters 3, 6 and 36	Chapters 3 and 4	Chapters 2 and 33	Chapters 2 and 33
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 5 and 47	Chapters 5 and 7	Chapters 4 and 51	Chapters 4 and 51
McAdams et al., Law, Business & Society	Chapters 4, 8 and 16	Chapters 4 and 7	Chapters 2 and 13	Chapters 2 and 13
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 17, 22 and 25	Chapters 9 and 22	Chapters 5 and 12	Chapters 5 and 12
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 12, 13 and 15	Chapters 10 and 13	Chapters 10 and 20	Chapters 10 and 20
Sukys, Brown, Business Law with UCC Applications	Chapters 2, 5 and 13	Chapters 5 and 6	Chapters 1 and 23	Chapters 1 and 23



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This Newsletter Supports the Following Business Law Texts:

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

