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A monthly newsletter from McGraw-Hill Education **November 2019** Volume 11, Issue 4

Dear Professor,

The fall semester fast progresses! Welcome to McGraw-Hill Education's November 2019 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 11, Issue 4 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the November 2019 newsletter topics with the various McGraw-Hill Education business law textbooks.

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

1. Fashion retailer Forever 21's Chapter 11 bankruptcy filing;

2. The Amber Guyger "Castle Doctrine" case;

3. Whether United States Supreme Court justices should have term limits;

4. Videos related to a) a recent verdict in a North Carolina "alienation of affections" case and b) a recent decision by CVS and Walgreen's to voluntarily "pull" Zantac and related pharmaceutical products from store shelves;

5. An "ethical dilemma" related to office space leasing company WeWork's decision to delay its initial public offering (IPO); and

6. "Teaching tips" related to Article 1 ("Forever 21 Files for Chapter 11 Bankruptcy Protection, May Close up to 178 U.S. Stores") and the Ethical Dilemma ("WeWork Withdraws Its IPO Filing a Week after Replacing Founder as CEO") of the newsletter.

I wish all of you continued good fortune in the fall semester!

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Hot Topics in Business Law

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

1) Fashion retailer Forever 21's Chapter 11 bankruptcy filing;

2) The Amber Guyger "Castle Doctrine" case; and

3) Whether United States Supreme Court justices should have term limits.

Article 1: "Forever 21 Files for Chapter 11 Bankruptcy Protection, May Close up to 178 U.S. Stores"

https://www.usatoday.com/story/money/2019/09/29/forever-21-chapter-11-bankruptcy/3816101002/

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

According to the article, Fashion retailer Forever 21 filed for Chapter 11 bankruptcy protection recently after being hobbled by expensive leases, declining mall traffic, digital competition and fashion choices that fell flat. Forever 21 requested court protection from its creditors in a bid to stay in business.

The family-owned company, which has about 32,800 employees, said it would close "most" of its stores in Asia and Europe and up to 178 stores in the U.S.

The retailer said the exact number of closures would be contingent on negotiations with landlords, but "we ... expect a significant number of these stores will remain open and operate as usual, and we do not expect to exit any major markets in the U.S."

The company, which did not release a list of store closures, is negotiating lease concessions in hopes of lowering its costs. Four landlords account for nearly half of the retailer's leases, according to a court filing.

With about 785 stores worldwide, including 534 company-owned locations in the U.S., Forever 21 is one of the largest specialty apparel retailers. The company's stores are typically smaller than the average department store but larger than many of its apparel competitors.

The fast-fashion retailer's aggressive expansion in recent years has led to problems, including the opening of more than 200 locations in foreign markets from 2005 to 2015, many of them struggling. In the U.S., Forever 21 snapped up retail spaces previously occupied by retailers like Saks, Sears and Borders, but the company now has too much space to sustain what it calls "ultra-low prices."

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Much like other traditional retailers, the company is grappling with digital competition and changing shopping habits. Forever 21, which gets only 16% of its sales from digital sources, has been slow to adapt to e-commerce.

In bankruptcy, Forever 21 said it would continue to honor gift cards, returns and exchanges. Bankruptcy experts typically urge consumers to spend gift cards if there's any concern that a retailer will liquidate.

“This was an important and necessary step to secure the future of our company, which will enable us to reorganize our business and reposition Forever 21,” Forever 21 executive vice president Linda Chang said in a statement.

Across the retail sector, more than 8,200 stores have already announced plans to shut down this year, according to Coresight Research. That's up from nearly 5,900 in 2018.

Mall retailers that have announced plans to liquidate in 2019 have included Payless Shoe Source, Gymboree, Charlotte Russe and Charming Charlie.

Forever 21 is owned by the family of Do Won and Jin Sook Chang, a husband-and-wife team who founded the company in 1984 as Fashion 21 in Los Angeles after immigrating to the U.S. from South Korea three years earlier with no savings.

"The Changs, the founders and owners of Forever 21, serve as a rare and exemplary model of the American Dream," Forever 21's chief restructuring officer, Jonathan Goulding, said in a court filing. In the early days, design and merchandise chief Jin Sook Chang had a "nearly-clairvoyant ability to predict trends," Goulding said.

But the company acknowledged that in recent years, it made bets on new fashion that "failed to resonate with customers," saddling the company with excess inventory that "crowded out new product" due to debt terms that made it difficult to discount.

What's more, a macro trend that has undermined many of its competitors has also barraged Forever 21: Fewer people are shopping in malls.

"Many Forever 21 storefronts are located in malls. As its neighbors have closed, the number of customers walking past Forever 21 has declined. This has led to a decrease in sales through what has traditionally been Forever 21’s predominant retail channel, its brick and mortar stores," Goulding said.

"Despite Forever 21’s continued efforts to adjust its sales strategy to one capitalizing on its online store, it remains saddled with excessive floor space from leases entered almost a decade ago or more in unprofitable markets."

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Neil Saunders, managing director of Global Data Retail, said Forever 21 "was once a colossus on the fashion stage" but has "fallen increasingly out of favor" due to competition like H&M, and "a lack of clarity and differentiation."

"Store standards have also been sliding and consumer ratings for the quality of displays, merchandise, and the amount of inspiration in shops have dipped considerably over the past year,"

Saunders wrote in an analysis. "In an era when it has become very easy to buy online, Forever 21 has not taken care of its physical assets and the profitability of its estate has suffered."

Forever 21's fast-fashion segment, known for generating new styles quickly to appeal to consumers, is also facing challenges.

Cowen retail analyst Oliver Cohen noted earlier this month that fast-fashion retailers face a challenge in the form of increasingly popular clothing rental services, for example.

"Department stores and fast fashion may be at risk if they fail to innovate and adapt to the new emerging trends in retail," he wrote in a note to investors.

In addition to lease concessions, the company's turnaround plan includes "impactful" marketing, investments in e-commerce and a "refocusing" on "trendy and affordable apparel, accessories, jewelry and handbags," Goulding said.

But what if fast-fashion is no longer fashionable?

"Prevailing consumer trends have also been against Forever 21 as some younger shoppers have migrated away from fast fashion in favor of more sustainable models of consumption," Saunders said. "Although this is not the main reason for the decline – as is witnessed by the success of other chains in the segment such as Primark – it has been broadly unhelpful to growth and has added further pressure to a business desperate to drive its sales line."

Discussion Questions

1. What is Chapter 11 bankruptcy?

Chapter 11 bankruptcy is debt restructuring for a business. The bankruptcy court considers, and if it accepts approves, a debt restructuring plan. Chapter 11 does not focus on debt forgiveness (although there may be some debt forgiveness associated with the plan); instead, the mission is to make the debtor's periodic debt payments more manageable, with an eye toward returning to a financially-sound footing in the future.

If a Chapter 11 plan is unsuccessful, the court may modify the plan, or the debtor may convert the filing to a Chapter 7 liquidation bankruptcy.

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2. What is Chapter 7 bankruptcy?

Chapter 7 bankruptcy is liquidation bankruptcy for a business (individual debtors can also file for this type of bankruptcy). In the Chapter 7 process, the petitioning business offers up all of its assets to the bankruptcy trustee, who will then distribute those assets to creditors in an attempt to at least partially satisfy their claims. Once the Chapter 7 process runs its course, any remaining debts are discharged, and the business ceases to exist.

3. In your reasoned opinion, will Forever 21's Chapter 11 reorganization plan be successful? Why or why not?

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

Article 2: "Author of Texas 'Castle Doctrine' Self-Defense Law Says It Wasn't Designed for Defendants Like Amber Guyger"

https://abcnews.go.com/US/author-texas-castle-doctrine-defense-law-designed-defendants/story?id=65978174&cid=clicksource_4380645_null_card_hed

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

According to the article, the former Texas lawmaker who wrote the state's "Castle Doctrine" self-defense law said it "wasn't designed" to be used to defend people like former Dallas police officer Amber Guyger, who was convicted of murder recently for fatally shooting an innocent man in an apartment she thought was her own.

Former Texas state Senator Jeff Wentworth, a Republican, told the media that he drafted the "Castle Doctrine" twelve years ago to provide protection to citizens who use lethal force to defend themselves against intruders into their own homes.

In Guyger's use of the law, which is similar to Florida's "stand your ground" self-defense law, she claimed she believed she was in her own apartment when she mistakenly entered the unit of 26-year-old Botham Jean, who lived a floor above her at the South Side Flats apartment complex in Dallas and shot him to death after wrongly suspecting him of being a burglar.

"It was designed for you in your home. It wasn't designed for this kind of circumstance that existed in this Dallas case," Wentworth, now a justice of the peace in San Antonio, told the media following Guyger's conviction.

Dallas District Court Judge Tammy Kemp, who presided over Guyger's trial, instructed the jury that they could consider the "Castle Doctrine" in deciding its verdict.

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The jury ended up rejecting the defense and convicted Guyger of murder after less than two days of deliberations.

"Clearly, I don't think anybody anticipated, I certainly did not, that someone would shoot and kill someone in their own house believing that they were in their own," Wentworth said. "I mean that's just a circumstance I don't think anybody had thought of. I can say that I didn't foresee this kind of situation. No."

Wentworth used the term "Castle Doctrine" to refer to his Senate Bill 378, meaning if a person is in their “castle” -- or home, apartment, business or even their car -- the use of deadly force is presumed to be reasonable. Former Texas Governor Rick Perry signed the bill into law in 2007.

"I don't criticize the judge for saying in this instance it was allowable for the jury to consider because if, in fact, the woman (Guyger) truly believed that she was in her house defending herself from an intruder, it would have been an appropriate use. Apparently the jury didn't buy that story," Wentworth said.

He said he wrote the legislation after reading a newspaper article about former Florida Governor Jeb Bush signing that state's "stand your ground" law.

"I thought to myself, 'Well, isn't that amazing that Floridians haven't had this right that we here in Texas have had for decades.' And then I thought, 'You know, I'd better double-check," Wentworth said.

When he went back and checked for such a law, he said he was "shocked" to learn he was wrong and that Texas did not have such a statute.

"Over the years, either through legislative action or court cases, we had lost that right to defend ourselves in our own homes and that, in fact, we had a duty to retreat," Wentworth said. "That just genuinely offended me because, you know, if I'm sitting with my family in my house watching the news at 10 o'clock at night and somebody's bashing in the front door with a crowbar, I shouldn't have to have a duty to retreat."

The "Castle Doctrine" defense was used successfully in January when a homeowner in Corpus Christi, Texas, shot and killed a suspect who had broken into his home. The 41-year-old homeowner invoked the "Castle Doctrine," telling police he feared for his life. He was not charged with a crime, officials said.

In June 2010, the owner of a taco truck fatally shot a man who allegedly stole a tip jar from his truck and started to run away. The case was ruled a justifiable homicide after the taco truck owner invoked the "Castle Doctrine," the Houston Chronicle reported.

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One of the most famous "Castle Doctrine" cases came shortly after the law was passed in Texas when a homeowner in Pasadena, Texas, named Joe Horn fatally shot two burglars in the back after he spotted them allegedly breaking into his neighbor's house and despite a 911 dispatcher telling him repeatedly not to intervene. The Harris County District Attorney's Office presented the case to a grand jury that declined to indict Horn.

In other Texas cases, the law did not apply. In June 2012, a jury convicted a man of killing his neighbor during a confrontation over loud music, rejecting a claim that he was within his rights to fatally shoot the man under the "Castle Doctrine." A jury rejected the defense by retired Houston firefighter Raul Rodriguez, who went to his neighbor's house to complain about the noise and ended up killing the man.

Rodriguez was sentenced to life in prison.

Discussion Questions

1. Describe the "Castle Doctrine."

As the article indicates, according to the "Castle Doctrine," if a person is in her "castle" – i.e., home, apartment, business or even her car – the use of deadly force is presumed to be reasonable. It is a self-defense law.

2. In your reasoned opinion, did the jury reach a just verdict in the Amber Guyger case? Why or why not?

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

3. Evaluate the four (4) Texas cases mentioned at the end of the article in terms of why the "Castle Doctrine" either did or did not apply in each case.

In the Corpus Christie case, the "Castle Doctrine" applied because the person shot and killed a suspect who had broken into his home, and the person asserted that he did so because he feared for his life. In a Houston case, the owner of a taco truck fatally shot a man who allegedly stole a tip jar from his truck and started to run away. Although the case was ruled a justifiable homicide, your author cannot justify application of the "Castle Doctrine" based on the facts presented, since the thief was running away from the truck. In the Pasadena (Texas) case, a man fatally shot two burglars in the back after he spotted them allegedly breaking into his neighbor's house and despite a 911 dispatcher telling him repeatedly not to intervene. Again, your author cannot justify application of the "Castle Doctrine" based on the facts presented, since the alleged burglars had their backs turned to the man who exercised deadly force, and since the home involved was his neighbor's house, not his. In the last case, a jury convicted a man of killing his neighbor during a confrontation over loud music, rejecting a claim that he was within his rights to fatally shoot the man under the "Castle Doctrine." The jury rejected the defense by retired Houston firefighter Raul Rodriguez, who

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went to his neighbor's house to complain about the noise and ended up killing the man. Your author supports the jury's decision in this case, since again, the home involved was not owned by the man who exercised deadly force; rather, it was his neighbor's.

Article 3: "Supreme Court Justices Should Have Term Limits"

https://www.cnn.com/2019/09/30/opinions/supreme-court-term-limits-law-roosevelt-vassilas/index.html

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

Note: The following article is an opinion-editorial written by Kermit Roosevelt, a constitutional scholar and professor at the University of Pennsylvania Law School, and Ruth-Helen Vassilas, a University of Pennsylvania Law School graduate and an associate in the London, England office of Skadden, Arps, Slate, Meagher & Flom, L.L.P.

While on his recent book tour, Supreme Court Justice Neil Gorsuch said that the framers of our Constitution did not want "nine old people in Washington sitting in robes telling everybody else how to live." Yet that is the current reality of our Supreme Court.

These days, it's the justices, and not the people or their elected representatives, who decide who gets health care and who can vote, whom we can marry and who's allowed into the country, who's won a presidential election and who can spend money on the next one.

Meanwhile, the court has also had a historic lack of turnover and nationally embarrassing confirmation hearings. Justices often serve past their prime, including one who stayed after a debilitating stroke, until they feel assured that a politically like-minded president will occupy the Oval Office and guarantee an appropriate replacement. When unexpected vacancies occur, partisans on both sides wage no-holds-barred battles for the seat.

These trends make it no wonder that three-fourths of the country supports swapping out Supreme Court life tenure for term limits. Judicial term limits are not a novel concept; they already exist for many of the highest courts across the Western world. Plus, 49 of 50 U.S. state courts of last resort have term limits, retention elections, or mandatory retirement age.

Even some justices support term limits. Chief Justice John Roberts, while working in the White House Counsel's office in 1983, wrote that "there is much to be said for changing life tenure to a term of years, without possibility of reappointment...." He recognized that "a judge insulated from the normal currents of life for 25 or 30 years was a rarity then, but is becoming commonplace today."

The most direct way to adopt term limits would be through a new constitutional provision. The Constitution, however, is notoriously difficult to amend. Obtaining both House and Senate

supermajority support, followed by ratification from 38 state legislatures, would be nearly impossible. But there are other ways to achieve term limits.

Some suggest encouraging court nominees to pledge to retire after a fixed term. Former White House Counsel Robert Bauer, for instance, wrote an essay ahead of Chief Justice Roberts' 2005 confirmation asking that Roberts pledge to serve a fixed term if confirmed. Such an assurance, however, would be unenforceable. A justice, at the conclusion of the promised term, could easily contend that the national importance of his or her continued service outweighs words uttered under pressure long ago. Congress could, in theory, impeach a justice who refused to adhere to the pledge. Nevertheless, removal requires two-thirds Senate approval and could fall prey to the same partisan dysfunction as the confirmation process.

Others suggest imposing a mandatory retirement age instead of term limits. This approach, though, would be discriminatory and ineffective. It would increase the incentive to nominate young judges rather than the best available legal minds and would fail to regularize the appointment process.

The best solution is to create Supreme Court term limits by statute. Several proposals exist for statutory term limits. The one we favor would give justices a fixed term of 18 years. Appointments would be staggered to allow each president two appointments per term, one in both the first and third year.

As each new justice joins the bench, the most senior justice would move to senior status. Justices with senior status would retain the option to sit on lower courts, as Justices Sandra Day O'Connor and David Souter have done post-retirement, and to serve as an active justice as needed, as Justice John Paul Stevens proposed in 2010. The lengthy fixed term would preserve judicial independence, while the regularized appointment process would make the court more responsive to the outcomes of national elections and less subject to chance and partisan hardball.

There's a question of what would happen to the current justices. Some scholars suggest applying the statutory timeframe to them retroactively so that, following a president's first appointment, the most senior sitting justice would be required to move to senior status. Because the sitting justices took office under a different set of expectations, however, such removals strike us as extreme.

Fortunately, they are not necessary. The more moderate solution would be to permit the current nine to keep their seats indefinitely. Though that may mean a 10 or 11-member court for a time, this temporary outcome is preferable to waiting in vain for the "perfect" moment to implement term limits. Each passing year under the current regime increases the likelihood of disruptive vacancies and strategic retirements.

This proposal is lawful under the Constitution. First, Congress has the authority to change the size of the court and has done so repeatedly throughout history. Second, federal judges are constitutionally entitled to "hold their offices" during good behavior and not have their salaries reduced. This plan does not diminish salaries, and it is consistent with a current US law (28 US Code § 371(b)) that

states explicitly that district and circuit judges who take senior status "retain the office." It follows that our legislators can assign senior status to justices, as well.

Political clashes, coupled with Methuselahn tenures, have eroded the institutional integrity of the Supreme Court. By statutorily setting term limits, we can bring predictability and fairness to a broken appointment process. Moreover, we will reduce partisan conflict and appropriately limit the influence of the "nine old people in Washington."

Discussion Questions

1. As the article indicates, three-fourths of the country supports replacing United States Supreme Court life tenure for term limits. In your opinion, how relevant is this in terms of considering whether to adopt term limits for Supreme Court justices?

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

2. As the article indicates, term limits for judges already exist for many of the highest courts across the Western world, and 49 of 50 U.S. state courts of last resort have term limits, retention elections, or mandatory retirement age. In your opinion, how relevant is this information in terms of considering whether to adopt term limits for Supreme Court justices?

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

3. Do you support terms limits for United States Supreme Court justices? Why or why not?

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

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Video Suggestions

Video 1: "A North Carolina Man Just Won A $750,000 Lawsuit after Suing His Wife's Lover"

https://www.cnn.com/2019/10/02/us/alienation-of-affection-laws-north-carolina-lawsuit-trnd/index.html

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

"A North Carolina Man Just Won A $750,000 Lawsuit after Suing His Wife's Lover"

According to the article, a North Carolina man says his divorce was almost unbearable, but an unusual legal claim just landed him a $750,000 judgment.

According to court documents, Kevin Howard recently won a judgment against his ex-wife's lover for "alienation of affections" -- a claim that exists in just a handful of other states across the country -- according to court documents.

Alienation of affection laws, sometimes known as "homewrecker" laws, allow the spouse to sue another person for "purposefully interfering with the marital relationship," according to Cornell Law School's Legal Information Institute. The person sued is usually the person a spouse cheated with.

Howard had been with his wife for twelve years. When she approached him about separating, the couple started attending marriage counseling. But something felt off, so Howard hired a private investigator, who uncovered the affair.

Howard blamed the other man for alienating his wife from him, according to court records. In August, a judge ruled in Howard's favor.

"He was a colleague of hers from work," Howard said. "He ate dinner with us several times, we spent time together ... I thought this was a friend."

But the lawsuit wasn't just about the money, he said.

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"I believe in the sanctity of marriage," he said. "Other families should see what the consequences are to not only breaking the vow to whatever religion you subscribe to, but also your legal responsibilities."

Cynthia Mills, Howard's attorney, told the media she's argued at least 30 "alienation of affection" cases during her 31-year career. She has five cases of the sort open right now.

"It's very prevalent," she said.

To have a chance at winning the lawsuit, a cheated-on spouse should be able to show the couple was happy before the affair and a lover came between them. In other words, that a third party got in the way of the relationship and caused its downfall.

Mills said the tort began from old English law, when women were viewed as property. In the same way that a man could sue for the theft of a horse, he could sue for the theft of a wife. Now, any spouse can sue regardless of their gender or their partner.

In many of Mills' cases, it's not really about the money, she said.

"The idea is keeping the marriage sanctified and keeping the family together," she said.

But people have still made some serious bank taking their exes to court.

In 2010, Mills said one of her clients received a verdict of $5.9 million.

Last year, a judge ordered a man pay $8.8 million to a husband whose wife he had been seeing for more than a year. Most of the money awarded consisted of punitive damages meant to penalize the defendant, but $2.2 million was in compensatory, or tangible, damages.

Many states have repealed alienation of affection laws, but they still exist in Hawaii, Mississippi, New Mexico, South Dakota, Utah and, of course, North Carolina.

Discussion Questions

1. Define the tort of "alienation of affections."

As the article indicates, alienation of affection laws, sometimes known as "homewrecker" laws, allow the spouse to sue another person for "purposefully interfering with the marital relationship."

2. As the article indicates, the tort of alienation of affections is recognized on only six (6) states. In your opinion, does this indicate that the tort is "outdated?" Explain your response.

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Although student opinions in response to this question may vary, one could arguably contend that the very history of the tort of alienation of affections indicates how outdated it is. The tort originated in old English law, when women were viewed as property. In the same way that a man could sue for the theft of a horse, he could sue for the theft of a wife. Now (and thankfully, from the perspective of gender equity and non-discrimination), any spouse can sue regardless of their gender or their partner.

3. In your reasoned opinion, should Hawaii, Mississippi, New Mexico, North Carolina, South Dakota and Utah continue to recognize the tort of alienation of affections? Why or why not?

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

Video 2: "CVS, Walgreens Stop Selling Heartburn Medicine Zantac Due to Safety Concerns"

https://abcnews.go.com/Health/cvs-stops-selling-heartburn-medicine-zantac-due-safety/story?id=65953269&cid=clicksource_4380645_null_headlines_hed

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

"CVS, Walgreens Stop Selling Heartburn Medicine Zantac Due to Safety Concerns"

According to the article, CVS Health Corp. has suspended sales of the popular heartburn drug Zantac, as well as its own generic, called ranitidine, following a Food and Drug Administration (FDA) alert earlier this month that the medicine contained a possible carcinogen.

Ranitidine is a common stomach acid drug that's available over the counter and by prescription to people of all ages.

"Zantac brand products and CVS brand ranitidine products have not been recalled, and the FDA is not recommending that patients stop taking ranitidine at this time," the company said in a statement. Customers who previously purchased the heartburn medicine at CVS can return it to the stores for a refund.

Walgreens said recently it too was "removing Zantac and ranitidine products from our shelves while the FDA continues its review of the products," a spokesperson said. Results from FDA lab tests showed some heartburn pills contained an impurity called N-nitrosodimethylamine (NDMA) in small amounts. As a probable carcinogen, NDMA may be capable of increasing cancer risk when taken in high doses over a long period of time.

On September 18, a division of the Swiss pharmaceutical company Novartis said it was halting worldwide distribution of ranitidine.

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Canada's federal government has also asked companies to stop distributing ranitidine products while it completes an assessment of the drug to see if it is safe.

Discussion Questions

1. As the article indicates, Zantac and related pharmaceutical products have not been recalled by the Food and Drug Administration (FDA). Considering that fact, should CVS and Walgreen's voluntarily "pull" the drug? Why or why not?

The decision of CVC and Walgreen's to voluntarily "pull" the drug from store shelves is based on precaution, with the joint objectives of protecting consumers and the retailers. This decision protects consumers' health, and reduces the potential legal exposure of the retailers.

2. Based on the evidence presented in the article, should the FDA issue a mandatory recall of Zantac and related pharmaceutical products? Why or why not?

Although student opinion may vary in response to this question, in your author's opinion there is not enough evidence presented in the article to justify an FDA-orchestrated mandatory recall of Zantac and related pharmaceutical products.

3. Assume that CVS and Walgreen's had chosen not to voluntarily "pull" Zantac and related pharmaceutical products from store shelves. What would have been the legal implications choosing this option? From a product liability standpoint, does it matter whether the FDA has issued the recall? Explain your response.

Depending on the jurisdiction, product liability can be based on strict liability and/or negligence. In states that recognize strict product liability, the plaintiff-consumer does not need to establish proof of the retailer's intent to harm or negligence; instead, the plaintiff-consumer must merely establish that the product was defective, and that he or she was harmed by the product. In a negligence-based product liability case, the plaintiff-consumer must establish that the retailer failed to do what a reasonable retailer would have done in the same or similar circumstances—More specifically, that a) the retailer owed the consumer a duty of care; b) the retailer breached the duty of care; c) the retailer caused the consumer harm as a result; and d) the consumer can prove damages resulting from the harm.

In terms of strict product liability theory, it would be irrelevant whether the Food and Drug Administration (FDA) had issued the recall—again, the only relevant questions would be: a) Was the product defective? and b) Was the plaintiff-consumer harmed? In terms of negligence theory, whether the FDA issued the recall might be relevant in the jury's determination regarding whether the retailer failed to do what a reasonable retailer would have done in the same or similar circumstances. More specifically, it would be easier to conclude breach of duty if the retailer failed to react to a mandatory FDA recall as opposed to choosing to engage in a voluntary recall.

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Ethical Dilemma

This section of the newsletter addresses office space leasing company WeWork's decision to delay its initial public offering (IPO).

"WeWork Withdraws Its IPO Filing a Week after Replacing Founder as CEO"

https://www.cbsnews.com/news/wework-ipo-pulled-company-withdraws-its-ipo-filing/

According to the article, WeWork parent the We Company recently withdrew its plan to take the office space leasing company public less than a week after ousting its CEO.

WeWork's new co-chief executive officers, Artie Minson and Sebastian Gunningham, said in a statement that "We have decided to postpone our IPO to focus on our core business, the fundamentals of which remain strong," according to The Associated Press.

WeWork is the biggest tenant in New York City, and has made its name leasing, renovating and subleasing office space in cities nationwide. It was once privately valued as high as $47 billion. Since filing regulatory documents to go public on August 14, however, it has faced questions about its large financial losses, funding and corporate governance. Before pulling out, WeWork was considering an IPO well below $20 billion, according to the AP.

WeWork founder Adam Neumann stepped down as CEO last week. The company has been cutting costs as it seeks to shore up its balance sheet. The We Company also has an eclectic portfolio of side businesses meant to cater to the well-being of its members — a community-building vision set forth by Neumann, a magnetic Israeli immigrant who partly grew up on a kibbutz, and his wife Rebekah Neumann, a certified yoga instructor who studied both business and Buddhism at Cornell University.

Those ventures include a fitness company called "Rise by We," a school for children called "WeGrow," and a co-living rental company "WeLive." An acquisition spree included the social media network Meetup.

For now, WeWork has cash. It was sitting on $2.5 billion at the end of June. But it continues to burn more money than it brings in. Its yearly loss amounts to nearly $5,200 per customer. The company is on track to burn $2.7 billion this year.

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Some $1.5 billion will arrive next year from its biggest investor, the Japanese firm SoftBank. But even with that infusion, uncertainty remains about whether WeWork can raise enough cash to support its aggressive growth. Last week, S&P Global Ratings cut WeWork's credit rating to "junk" status.

Discussion Questions

1. What is an initial public offering (IPO)?

An initial public offering (IPO) represents an initial issuance of stock. When an IPO occurs, the company converts from being a closely-held private company to a publicly-traded one. If successful, an IPO can generate much-needed financial capital that the company can use to expand its sphere of influence.

2. As the article indicates, WeWork was once privately valued at $47 billion. Should private companies subject to stricter regulation in terms of requiring financial disclosure? Why or why not?

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

3. Why was WeWork valued at less than $20 billion (less than one-half of its private valuation of $47 billion) prior to its planned IPO?

When a company decides to "go public" with its stock, financial data is subject to much closer scrutiny by government regulatory authorities and the public itself. Going public requires greater transparency, which assists in a more accurate determination of the true value of a company.

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Teaching Tips

This section of the newsletter will assist you in addressing Article 1 ("Forever 21 Files for Chapter 11 Bankruptcy Protection, May Close up to 178 U.S. Stores") and the Ethical Dilemma ("WeWork Withdraws Its IPO Filing a Week after Replacing Founder as CEO") of the newsletter.

http://catalogs.mhhe.com/mhhe/findRep.do

Teaching Tip 1: (Related to Article 1—"Forever 21 Files for Chapter 11 Bankruptcy Protection, May Close up to 178 U.S. Stores"): "Chapter 11-Bankruptcy Basics"

For a detailed description of the Chapter 11 bankruptcy process, please refer to the following internet address:

https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics

Teaching Tip 2 (Related to the Ethical Dilemma—"WeWork Withdraws Its IPO Filing a Week after Replacing Founder as CEO"): "IPO Basics Tutorial"

For a detailed tutorial of the initial public offering (IPO), please refer to the following internet address:

http://i.investopedia.com/inv/pdf/tutorials/ipo.pdf

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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 2, 5 and 44	Chapters 6, 20 and 46	Chapter 3	Chapters 3 and 44
Bennett-Alexander & Hartman, Employment Law for Business	N/A	N/A	N/A	N/A
Kubasek et al., Dynamic Business Law	Chapters 3, 7 and 32	Chapters 8, 10 and 45	Chapter 2	Chapters 2 and 32
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 3, 6 and 19	Chapters 7 and 25	Chapter 2	Chapters 2 and 19
Liuzzo, Essentials of Business Law	Chapters 1, 3 and 21	Chapters 4 and 34	Chapter 2	Chapters 2 and 21
Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 2, 5 and 30	Chapters 6 and 48	Chapter 4	Chapters 4 and 30
McAdams et al., Law, Business & Society	Chapters 4 and 15	Chapters 7 and 15	Chapter 2	Chapters 2 and 15
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 3, 20 and 22	Chapters 9 and 21	Chapter 5	Chapters 5 and 20
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 3, 13 and 18	Chapters 10 and 18	Chapter 2	Chapter 2 and 18
Sukys, Brown, Business Law with UCC Applications	Chapters 3, 5 and 21	Chapters 6 and 15	Chapter 1	Chapters 1 and 21

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