



Proceedings

A monthly newsletter from McGraw-Hill



April 2014 Volume 5, Issue 9



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Dear Professor,

Spring has finally arrived! Welcome to McGraw-Hill's April 2014 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 5, Issue 9 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the April 2014 newsletter topics with the various McGraw-Hill business law textbooks.

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

1. An Arizona bill allowing businesses to deny service to customers for religious reasons;
2. A proposal to require universal background checks for sales of guns online and at gun shows;
3. A Florida man's claim of "ignorance of the law" in response to his arrest for cocaine possession;
4. Videos related to a) the United States Supreme Court's recent expansion of police authority in home searches and b) the now-legendary McDonald's "hot coffee" case;
5. An "ethical dilemma" related to New Jersey's recent ban on direct-to-customer car sales; and
6. "Teaching tips" related to Article 1 ("Arizona Bill Letting Businesses Deny Service for Religious Reasons Sparks Heated Debate") and Video 1 ("Supreme Court Ruling Expands Police Authority in Home Searches") of the newsletter.

In addition to the newsletter, be sure to enjoy the springtime sun!

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Of Special Interest

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

- 1) An Arizona bill allowing businesses to deny service to customers for religious reasons;
- 2) A proposal to require universal background checks for sales of guns online and at gun shows; and
- 3) A Florida man's claim of "ignorance of the law" in response to his arrest for cocaine possession.

Hot Topics in Business Law

Article 1: "Arizona Bill Letting Businesses Deny Service for Religious Reasons Sparks Heated Debate"

<http://www.foxnews.com/politics/2014/02/25/ariz-bill-allowing-owners-to-deny-services-based-on-religion-spark-strong/>

According to the article, Arizona Governor Jan Brewer is facing pressure from both sides of a heated debate over religious rights, as she weighs whether to sign a bill that would legally protect businesses that deny services to customers for religious reasons.

The bill cleared the Arizona Legislature recently. Opponents are calling the measure "state-sanctioned discrimination" and raising such scenarios as gays being denied restaurant service or medical treatment when a business owner's religion doesn't condone homosexuality.

The bill updates existing Arizona law on the "exercise of religion" and protects businesses, corporations and people from lawsuits if they deny services based on a "sincere" religious belief.

Supporters argue the bill is about protecting religious freedom, not about allowing discrimination. And they frequently cite the case of a New Mexico photographer sued for refusing to take wedding pictures of a gay couple.

"This bill is about preventing discrimination against people who are clearly living out their faith," said state GOP Senator Steve Yarbrough, the bill sponsor.

Brewer, a Republican, has five days to sign or veto the bill once it gets to her desk but has yet to clearly indicate what she will do. Brewer suggested over the weekend that she supports a business's freedom of choice but remains unsure whether that has to be put into state law. She vetoed a similar bill proposed last year by Yarbrough.

Despite some support in the state Legislature, prominent Republicans have pressed the GOP governor for a veto, including Sen. John McCain. Five of seven Republican candidates for governor also have called for the bill to be vetoed or withdrawn. The latest is Frank Riggs, a former California congressman, who said it is a "solution in search of a problem."



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According to the new bill, "A person whose religious exercise is burdened ... may assert that violation as a claim or a defense in a judicial proceeding."

In addition to the New Mexico case, a gay couple in Arizona was recently denied service over religious beliefs when the owner of a small bakery declined to bake the couple a wedding cake. "I respectfully declined due to my personal Biblical convictions as a born-again Christian," the owner told an Arizona TV station. "I firmly believe that my convictions in the Bible are more important than money."

Similar legislation has been introduced in Ohio, Mississippi, Idaho, South Dakota, Tennessee and Oklahoma. But Arizona's plan is the only one that has passed.

Supporters of the Arizona legislation also say it is needed to protect people from heavy-handed actions by courts and law enforcement.

The bill allows any business, church or person to cite the law as a defense in any action brought by the government or an individual. It also allows the business or person to seek an injunction once they show their actions are based on a sincere religious belief and the claim places a burden on the exercise of their religion.

Three state House Republicans opposed the bill but have not elaborated on their vote.

"I disagree with the bill," said GOP state Rep. Ethan Orr. "I think it's a bad bill."

Arizona's voters approved a ban on same-sex marriage as a state constitutional amendment in 2008. It's one of 29 states with such prohibitions, according to the National Conference of State Legislatures. Federal judges have recently struck down bans in Utah, Oklahoma and Virginia, but those decisions are under appeal.

Discussion Questions

1. Describe the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution. In your reasoned opinion, does the Arizona bill promote or violate the First Amendment to the United States Constitution? Explain your response.

The First Amendment to the United States Constitution states, in pertinent part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." The first part of this provision is referred to as the "Establishment" Clause, while the second part is known as the "Free Exercise" Clause. Constitution experts have interpreted this provision as prohibiting government from endorsing a particular religion or a particular religious practice, while simultaneously allowing citizens to choose to worship as they see fit.



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In terms of whether the Arizona bill promotes or violates the First Amendment to the United States Constitution, the argument that it promotes it would be based on “free exercise”; namely, that the bill allows Arizona business owners the “free exercise” right to refuse service to customers on religious grounds. For example, the bill would allow an Arizona business owner the free exercise right to refuse to serve a homosexual customer if the owner condemns homosexuality on religious grounds. Ironically enough, the argument that the bill establishes religion could also be based on the previous example; namely, that by allowing a business owner to refuse to serve a homosexual customer on religious grounds, the bill “establishes” the religious belief that homosexuality is a sin.

To encourage discussion, you might want to ask students the following questions related to a business owner’s refusal to serve a homosexual customer for religious reasons:

- a. *How would a business owner know a customer is homosexual? Would this be based on the assumption that if a customer looks a certain way, he or she is homosexual?*
 - b. *How does serving a homosexual customer violate the religious belief that homosexuality is a sin? If a restaurant owner serves food to a homosexual customer, allowing him or her sustenance for another day, does that support homosexuality?*
2. As the article indicates, according to Arizona Senator Steve Yarbrough, "This bill is about preventing discrimination against people who are clearly living out their faith." Assess this statement in terms of whether the bill prevents discrimination, or instead promotes discrimination.

Student opinion may vary in terms of whether the bill prevents discrimination, or instead promotes it.

Discrimination is defined as the unjust or prejudicial treatment of different categories of people. Assume that a law prohibits discrimination on the basis sexual orientation. If all businesses are held to this standard, how does that law “discriminate” against religious business owners?

Now assume that the subject Arizona law is allowed to stand, meaning that an Arizona business owner could refuse to serve a homosexual customer. Would that, in effect, result in prejudicial treatment of a category of people? Would that be unjust?

3. As the article indicates, the Arizona bill allows any business, church or person to cite the law as a defense in any action brought by the government or an individual. It also allows the business or person to seek an injunction once they show their actions are based on a sincere religious belief and the claim places a burden on the exercise of their religion. How could a party demonstrate that such actions are based on a *sincere* religious belief?

Sincerity is difficult to determine, and religious sincerity is no exception. Perhaps the bill would allow judges to accept the defendant’s word that his or her religious belief is sincere. This would be a subjective standard. Alternatively, perhaps religious sincerity would be based on an objective,



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reasonable person standard. Might this determination be based on how frequently the defendant attends a house of worship?

Article 2: “Congress, Finish the Job on Brady Background Checks”

http://www.cnn.com/2014/02/24/opinion/brady-law-guns/index.html?iid=article_sidebar

Note: In addition to the article, please also see the video located at the above-referenced web site.

Note: This opinion-editorial article was written by Sarah Brady, chairwoman of the Brady Campaign to Prevent Gun Violence, an organization that aims to reduce the number of gun deaths and injuries.

When the "Brady Handgun Violence Prevention Act" went into effect 20 years ago this month, America took a historic stand against gun violence. It was the first federal law to require that licensed dealers refer every gun sale to law enforcement for a background check.

The law honored my husband, Jim Brady, who had been shot in the head in 1981 by John Hinckley Jr., a mentally ill man who attempted to assassinate President Reagan. The shooting left Jim permanently impaired physically and cognitively.

Since February 28, 1994, according to the Bureau of Justice Statistics, background checks have stopped more than 2 million gun purchases by "prohibited purchasers" like convicted felons, domestic abusers, the dangerously mentally ill and fugitives—people who we all agree should not have guns. It's easy to imagine how many lives were saved and how many disabling injuries prevented thanks to Brady background checks.

But a lot has changed over the past two decades, and people who wouldn't pass a background check have found other ways to procure guns easily through unlicensed sales at gun shows or on the Internet, where background checks are not required.

The corporate gun lobby would like us to think these unlicensed sales are transactions between family members and hunting buddies, but the truth is that thousands of guns are sold legally each day without a background check, thereby potentially putting guns directly in the hands of criminals.

In fact, websites like Armslist.com boast upward of 70,000 listings from private sellers, many touting "No background check" as a selling feature. As a result, an estimated 40% of gun sales today occur without a Brady background check. Many of these sales have deadly consequences.

Take Zina Daniel, a victim of domestic violence who procured a restraining order against her estranged husband, making him unable to pass a background check. He bought a semiautomatic



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handgun from a private seller online, where he did not need a background check. He used that gun to kill Zina and two others and wound four more at a nail salon.

Let us think about background checks in another way. Imagine if Zina's husband were on the no fly list and was one of 40% of airline passengers the Transportation Security Administration allowed to fly without undergoing a security screening. Would Americans feel safe in the air in this scenario? Not likely. Yet that is precisely the percentage of gun purchases made daily without a background check.

So what is the solution? Congress needs to finish the job the Brady law so effectively started to ensure that guns are kept out of the hands of people who should not have them.

Congress must pick up where it left off last April when, to Jim's and my great disappointment, Senate legislation to expand Brady background checks fell short. The bill received a majority 54 votes, including the support of six "A-rated" National Rifle Association senators, two of whom were the lead sponsors. The American people support this legislation.

In fact, 90% of Americans support universal background checks covering all online sales and gun shows. Three out of four NRA members and 80% of gun owners agree that the scope of background checks needs to be expanded.

In 2013, after the horrific tragedy of the school shooting in Newtown, Connecticut, eight states passed meaningful gun regulations. These laws could save lives and prevent injuries. Let's keep moving forward. Let's finish the job, expand Brady background checks and help keep guns out of the hands of the wrong people.

Discussion Questions

1. Describe the Second Amendment to the United States Constitution. In your reasoned opinion, is the Second Amendment right to bear arms an absolute right, or is the right subject to reasonable, government-imposed restrictions? Explain your response.

The Second Amendment to the United States Constitution addresses the right to bear arms. The Amendment states as follows:

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Whether the Second Amendment right to bear arms is an absolute right, or whether the right is subject to reasonable, government-imposed restrictions will likely never be resolved. The debate centers around the reading of the Second Amendment language. If the language is read in its entirety, one would likely conclude that the individual's right to bear arms is part of a "well-regulated" militia. Conversely, if the Second Amendment language is separated into two parts, the



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second part would indicate an absolute right (“...the right of the people to keep and bear Arms...shall not be infringed.”)

Even if our country were to reach a consensus that the right to bear arms is subject to reasonable government restrictions, there would still be the substantial question as to what is reasonable. Some would agree that universal background checks for all gun sales online and at gun shows represent a reasonable government restriction, while others would not.

2. As indicated in the prefatory not to this article, the article is an opinion-editorial written by Sarah Brady, chairwoman of the Brady Campaign to Prevent Gun Violence, an organization that aims to reduce the number of gun deaths and injuries. Assess Mrs. Brady’s credibility. Is Mrs. Brady merely a “political hack,” or do her arguments have rational substance?

Mrs. Brady is the wife of Jim Brady, a man who stood in the line of fire (he sustained a head wound that left him permanently paralyzed) during John Hinkley’s assassination attempt on then-president Ronald Reagan. At the time, Mr. Brady was serving as an Assistant to the President and White House Press Secretary. Admittedly, Mrs. Brady does have a personal interest regarding government regulation of gun sales. Whether that makes her a “political hack” is subject to student interpretation and opinion. In her opinion-editorial, Mrs. Brady has included facts and persuasive arguments that will likely lead many students to conclude that her arguments have rational substance. If surveys mean anything, as indicated in her opinion-editorial, 90% of Americans support universal background checks covering all online sales and gun shows, and three out of four NRA members and 80% of gun owners agree that the scope of background checks needs to be expanded.

3. In your reasoned opinion, do universal background checks covering all gun sales online and at gun shows violate the Second Amendment to the United States Constitution? Why or why not?

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

Article 3: “Key West Man Tells Cops He Didn’t Think Cocaine Was Illegal in Florida”

<http://abcnews.go.com/US/key-west-man-tells-police-cocaine-illegal-florida/story?id=22721959>

According to the article, a Florida man was sent to jail without bond after telling police he did not know cocaine was illegal in the state.

Recently, Key West police officers arrested Guy Lanchester on Duval Street. A security officer for the Pier House resort saw him and two others acting suspiciously and called police, according to an arrest affidavit.



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When officers arrived, they found Lanchester, 46, and the two others near a parking lot. As the officers approached, Lanchester walked behind a flower pot and began fumbling with a small, plastic baggie containing a white, powdery substance, the arresting officer wrote.

When the officer walked up to Lanchester to see what he was doing, he shoved his hands into the dirt inside the flower pot, leaving the baggie behind, according to the arrest affidavit. The white powder later tested positive for cocaine.

Upon his arrival at jail, Lanchester reportedly told officers, “I don’t understand...I thought cocaine wasn’t illegal in Florida.”

Lanchester has been charged with cocaine possession and tampering with evidence, police said.

Discussion Questions

1. As a basic premise of criminal law, in order for a prosecutor to successfully prosecute a defendant for the commission of a crime, he or she must prove, beyond reasonable doubt, that (a) the defendant had the appropriate mental state (mens rea) for the commission of the crime, usually criminal intent; and (b) the defendant actually committed the criminal act (or failed to do that which the law requires, known as a criminal omission).

In the subject case, assuming the defendant actually believed cocaine was legal in the state of Florida (your author admits this would be a “stretch!”), would his mistaken assumption prevent criminal conviction because of the lack of mental state? Explain your response.

Such a mistaken assumption would not prevent a criminal conviction. A mistake of law does not prevent formulation of the appropriate mental state (mens rea) for criminal liability.

2. A popular legal maxim is that “ignorance of the law is no excuse.” Describe this principle, and give your opinion as to whether ignorance of the law should ever free the defendant from criminal liability, or serve as a mitigating factor in terms of the defendant’s punishment.

The saying “ignorance of the law is no excuse” is self-descriptive. It stands for the proposition that a person can be civilly and/or criminally liable even if the defendant is not aware that what he or she has done is against the law. Whether ignorance of the law should ever free the defendant from criminal liability or serve as a mitigating factor in terms of the defendant’s punishment is an opinion question, so student responses may vary. It is well-settled judicial precedent that ignorance of the law is neither a valid legal defense freeing the defendant from criminal liability, nor serving as a mitigating factor in terms of the defendant’s punishment.

3. As the article indicates, when the officer walked up to Lanchester to see what he was doing, he shoved his hands into the dirt inside a flower pot, leaving the baggie (containing cocaine) behind. How does this affect Lanchester’s defense?



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Even if ignorance of the law was a recognized defense to criminal liability, the facts in this case demonstrate that the defendant knew what he was doing was wrong. If the officer is to be believed (and officer testimony usually carries to great deal of weight in the minds of jurors), as the officer approached him, Lanchester shoved his hands into the dirt inside a flower pot, leaving the baggie containing the cocaine behind. Unless he was just trying to fertilize the flower, Lanchester knew full well that the possession of cocaine is illegal!

Video Suggestions

Video 1: “Supreme Court Ruling Expands Police Authority in Home Searches”

<http://www.latimes.com/nation/la-na-scotus-lapd-search-20140226,0,3720623.story#axzz2uXUmEMOu>

Discussion Questions

1. Describe the Fourth Amendment to the United States Constitution.

The language of the Fourth Amendment to the United States Constitution is as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment, with its emphasis on the “probable cause” requirement, as well as the requirement for judicial issuance of an arrest warrant or a search warrant, implies a right to privacy.

2. As the supplemental article included in Teaching Tip 2 of this newsletter indicates, according to United States Supreme Court Samuel J. Alito, Jr., “(e)ven with modern technological advances, the warrant procedure imposes burdens on the officers who wish to search (and) the magistrate who must review the warrant application.” Assess Justice Alito’s statement.

In his comment, Justice Alito appears to believe that the warrant requirement is a burden on law enforcement. In crafting the probable cause, warrant, and judicial approval requirements, our Founding Fathers believed that the burden on law enforcement is outweighed by the individual right to privacy.

Technology has made it easier to “call” in an arrest or search warrant and receive judicial approval quickly, in some instances in less than one hour.

3. Do you agree or disagree with the United States Supreme Court’s decision in this case? Why or why not?



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

Video 2: “Ever Hear about the Lady Who Spilled Coffee on Herself at McDonald’s, Then Sued for Millions?”

<http://www.upworthy.com/ever-hear-about-the-lady-that-spilled-coffee-on-herself-at-mcdonalds-then-sued-for-millions?c=recon1>

Discussion Questions

1. What preconceived ideas and opinions (if any) did you have about *Stella Liebeck v. McDonald’s Corporation* (also known as the McDonald’s “hot coffee” case) prior to watching the video, and how did you develop those ideas and opinions? How (if at all) have your notions about the case changed after watching the film?

These are personal experience-based and opinion-based questions, so student responses will vary.

2. Define negligence. What evidence of negligence did Ms. Liebeck introduce against McDonald’s at trial?

Negligence is defined as the failure to do what a reasonable person would do under the same or similar circumstances. In order to demonstrate negligence on the part of the defendant, the plaintiff must prove, by the greater weight of the evidence, that:

- a. the defendant owed the plaintiff a duty of care;*
- b. the defendant violated said duty of care;*
- c. the defendant caused the plaintiff harm; and*
- d. the plaintiff experienced damages as a result of the defendant’s wrongful actions.*

At trial, Ms. Liebeck introduced evidence that McDonald’s Corporation knew its coffee-heating practices were capable of causing harm to customers—As indicated in the video, between 1983 and 1992 (the decade before Ms. Liebeck sustained her injuries) McDonald’s received almost 700 customer complaints related to scalding-hot coffee injuries. Despite these complaints, McDonald’s still heated its coffee to temperatures capable of causing third-degree burns within fifteen seconds of skin contact.

3. Why do those who favor tort reform believe as they do? Why do those who oppose tort reform believe as they do?



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Those who favor tort reform seek to protect businesses from what they believe to be “runaway” jury verdicts. Generally, those who favor tort reform propose a cap (the most commonly-proposed amount is \$250,000) on the maximum damages a plaintiff could recover for emotional distress and punitive damages. Those who oppose tort reform favor the individual’s day in court, and the right of the jury to determine what monetary amount is appropriate to compensate the plaintiff for his or her harm resulting from the defendant’s wrongful actions, and (perhaps) whether a punitive damage award would also be appropriate to (a) account for the defendant’s grossly negligence, extremely reckless or intentional actions and (b) send a message to the defendant and to others that such actions are not to be tolerated in a civilized society.



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Of Special Interest

This section of the newsletter addresses New Jersey's recent ban on direct-to-customer car sales.

Ethical Dilemma

“New Jersey is the Latest State to Ban Tesla’s Direct-to-Customer Car Sales”

<http://www.engadget.com/2014/03/11/new-jersey-bans-tesla-direct-sales-model/>

According to the article, electric vehicle manufacturer Tesla Motors, Inc.’s direct-to-customer sales model just hit another big roadblock. New Jersey's Motor Vehicle Commission has voted in favor of a rule banning direct car sales, effectively kicking Tesla out of the state as of this April. For those keeping score, this is the electric vehicle maker's third such defeat, following similar moves by Arizona and Texas. Although Tesla won a legislative battle to go dealer-free in North Carolina, it appears to be losing the war.

Not surprisingly, the company is furious. It accuses Governor Chris Christie of not just renegeing on a promise to delay the rule for the sake of debate, but of speeding things up to please dealerships that fear real competition.

Whether that is an accurate representation or just corporate bluster, the ban will undoubtedly hurt Garden State residents who want a wider selection of eco-friendly rides.

“To the People of New Jersey”

<http://www.teslamotors.com/blog/people-new-jersey>

Note: The following is a blog written by Elon Musk, Tesla Motors, Inc.’s Chairman, Product Architect and Chief Executive Officer, in response to New Jersey’s ban on Tesla’s “direct-to-customer” sales model.

Recently, under pressure from the New Jersey auto dealer lobby to protect its monopoly, the New Jersey Motor Vehicle Commission, composed of political appointees of the Governor, ended your right to purchase vehicles at a manufacturer store within the state. Governor Christie had promised that this would be put to a vote of the elected state legislature, which is the appropriate way to change the law. When it became apparent to the auto dealer lobby that this approach would not succeed, they cut a backroom deal with the Governor to circumvent the legislative process and pass a regulation that is fundamentally contrary to the intent of the law.



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It is worth examining the history of these laws to understand why they exist, as the auto dealer franchise laws were originally put in place for a just cause and are now being twisted to an unjust purpose. Many decades ago, the incumbent auto manufacturers sold franchises to generate capital and gain a sales force. The franchisees then further invested a lot of their money and time in building up the dealerships. That's a fair deal and it should not be broken. However, some of the big auto companies later engaged in pressure tactics to get the franchisees to sell their dealerships back at a low price. The franchisees rightly sought protection from their state legislatures, which resulted in the laws on the books today throughout the United States (these laws are not present anywhere else in the world).

The intent was simply to prevent a fair and longstanding deal between an existing auto company and its dealers from being broken, not to prevent a new company that has no franchisees from selling directly to consumers. In most states, the laws are reasonable and clear. In a handful of states, the laws were written in an overzealous or ambiguous manner. When all auto companies sold through franchises, this didn't really matter. However, when Tesla came along as a new company with no existing franchisees, the auto dealers, who possess vastly more resources and influence than Tesla, nonetheless sought to force us to sell through them.

The reason that we did not choose to do this is that the auto dealers have a fundamental conflict of interest between promoting gasoline cars, which constitute virtually all of their revenue, and electric cars, which constitute virtually none. Moreover, it is much harder to sell a new technology car from a new company when people are so used to the old. Inevitably, they revert to selling what's easy and it is game over for the new company.

The evidence is clear: when has an American startup auto company ever succeeded by selling through auto dealers? The last successful American car company was Chrysler, which was founded almost a century ago, and even they went bankrupt a few years ago, along with General Motors. Since the founding of Chrysler, there have been dozens of failures, Tucker and DeLorean being simply the most well-known. In recent years, electric car startups, such as Fisker, Coda, and many others, attempted to use auto dealers and all failed.

An even bigger conflict of interest with auto dealers is that they make most of their profit from service, but electric cars require much less service than gasoline cars. There are no oil, spark plug or fuel filter changes, no tune-ups and no smog checks needed for an electric car. Also, all Tesla Model S vehicles are capable of over-the-air updates to upgrade the software, just like your phone or computer, so no visit to the service center is required for that either.

Going a step further, I have made it a principle within Tesla that we should never attempt to make servicing a profit center. It does not seem right to me that companies try to make a profit off customers when their product breaks. Overcharging people for unneeded servicing (often not even fixing the original problem) is rampant within the industry and happened to me personally on several occasions when I drove gasoline cars. I resolved that we would endeavor never to do such a thing at Tesla, as described in the Tesla service blog post I wrote last year.



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Why Did They Claim That This Change Was Necessary?

The rationale given for the regulation change that requires auto companies to sell through dealers is that it ensures “consumer protection”. If you believe this, Governor Christie has a bridge closure he wants to sell you! Unless they are referring to the mafia version of “protection”, this is obviously untrue. As anyone who has been through the conventional auto dealer purchase process knows, consumer protection is pretty much the furthest thing from the typical car dealer’s mind.

There are other ways to assess the premise that auto dealers take better care of customers than Tesla does. Consumer Reports conducts an annual survey of 1.1 million subscribers, which factors in quality, reliability and consumer satisfaction. The Tesla Model S was the top overall pick of any vehicle in the world, scoring 99 out of 100. This is the highest score any car has ever received. By comparison, in the industry report card, Ford, which sells their cars through franchise dealers, received a score of 50. BMW, which makes competing premium sedans, received a score of 66. Consumers across the country have also voiced their opinion on the sales model they prefer. In North Carolina, a Triangle Business Journal poll found that 97 percent of people polled said Tesla should be allowed to sell cars directly. A poll by the Austin Business Journal showed that 86 percent of respondents were in favor of direct sales, and in a Los Angeles Times poll 99 percent of respondents came to the same conclusion. These aren’t polls that we commissioned and there are many more like them. We have not seen a single poll that didn’t result in an overwhelming majority saying they preferred the direct model to the traditional dealer model. Democracy is supposed to reflect the will of the people. When a politician acts in a manner so radically opposed to the will of the people who elected him, the only explanation is that there are other factors at play.

Going Forward

Some reassurances are also in order. Until at least April 1, everything is business as usual for Tesla in New Jersey. It should also be noted that this regulation deals only with sales, so our service centers will not be affected. Our stores will transition to being galleries, where you can see the car and ask questions of our staff, but we will not be able to discuss price or complete a sale in the store. However, that can still be done at our Manhattan store just over the river in Chelsea or our King of Prussia store near Philadelphia.

Most importantly, even after April 1, you will still be able to order vehicles from New Jersey for delivery in New Jersey on our TeslaMotors.com website.

We are evaluating judicial remedies to correct the situation. Also, if you believe that your right to buy direct at a Tesla store should be restored, please contact your state senator assemblyman.

Finally, we would like to thank the many people who showed up in Trenton recently to support Tesla and speak out against the MVC’s back-door tactics in passing this regulation change without public consultation or due process. It was an amazing response at very short notice and much appreciated.



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Discussion Questions

1. Make the argument that New Jersey state government acted ethically in banning direct-to-customer car sales.

This argument is based on the preservation of jobs. The traditional automobile dealership network creates tens of thousands of jobs in the United States. New Jersey state government can argue that by banning direct-to-customer automobile sales in the “Garden State,” many jobs for New Jersey residents are maintained.

2. Make the argument that New Jersey state government acted unethically in banning direct-to-customer car sales.

This argument is based on what is in the best interests of consumers. The traditional automobile dealership network involves the dealer as an intermediary (in other words, a “middleman”), which makes the cost of the product higher for the customer compared to direct-to-customer sales and distribution.

3. To quote Elon Musk, “I have made it a principle within Tesla that we should never attempt to make servicing (vehicles) a profit center. It does not seem right to me that companies try to make a profit off customers when their product breaks.” Does Elon Musk’s statement indicate sound business ethics, or a lack of true business sense? Explain your response.

This is an opinion question, so student replies will likely vary. Traditionally, vehicle service has been an extremely important component of the overall profitability of an automobile dealership. An automobile seller who does not view vehicle service as a “profit center” definitely has a different vision for the automotive industry!



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Of Special Interest

This section of the newsletter will assist you in covering Article 1 (“Arizona Bill Letting Businesses Deny Service for Religious Reasons Sparks Heated Debate”) and Video 1 (“Supreme Court Ruling Expands Police Authority in Home Searches”) of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 1—“Arizona Bill Letting Businesses Deny Service for Religious Reasons Sparks Heated Debate”)

In addition to the main article addressing Arizona’s Religious Freedom Restoration Act, please refer to the following supplemental article regarding Arizona Governor Jan Brewer’s veto of the law.

“Was ‘Religious Freedom’ Bill Really a Risk for Arizona's Jan Brewer?”

<http://www.latimes.com/nation/nationnow/la-na-nn-arizona-gay-brewer-politics-20140227,0,247193.story#axzz2uXUmEMOu>

According to the article, when the Arizona Legislature passed a bill to grant greater protection to businesses that refuse service to gays and others for religious reasons, it appeared the move had put Republican Governor Jan Brewer between a rock and hard place. How could she risk alienating conservative supporters and veto a bill passed by the GOP-controlled Legislature?

Recently, a day after the Legislature gave SB 1062 final approval, Brewer acknowledged that the bill was a “very controversial piece of legislation. We know that. We know that it’s failed in a lot of states across the country.”

Brewer gave no indication how she would handle what supporters described as a “religious freedom” bill. She said she would study the issue.

So she studied.

In fact, David Liebowitz, a political consultant in Phoenix, suggested that Brewer was holding off making a decision to let opposition to the bill build.

“As long as the context is trending in your favor, let it build,” said Liebowitz, who worked in Brewer’s 2010 election campaign.

And with each passing day, opposition did indeed build. At first it came from predictable sources — gay rights groups and Democrats expressing their displeasure, often via Twitter. Rocco DiGrazia, who owns Rocco's Little Chicago Pizzeria in Tucson, created a viral sensation when he posted a



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photograph of a sign he'd placed in his restaurant's window: "We reserve the right to refuse service to Arizona legislators."

But soon others spoke up, reflecting growing tolerance of gays in American life and — in Arizona — the fear of economic boycotts like the ones launched after the state passed a tough anti-illegal immigration bill. Business groups spoke up against SB 1062, as did Mitt Romney, the GOP's standard-bearer in 2012. Even three legislators who voted for the measure backtracked and urged a veto.

Opposition from high-profile members of Brewer's party — including Sens. John McCain and Jeff Flake — helped create a context that wouldn't alienate her from the GOP and eventually help shield her from the repercussions of a veto, Liebowitz said.

McCain, it is worth remembering, vigorously opposed repeal of the "don't ask, don't tell" policy, which prevented gays and lesbians from openly serving in the military. When the Senate voted to ditch "don't ask, don't tell" in 2010, McCain said, "Today is a sad day."

By this week, there were even suggestions that the Super Bowl, scheduled to be held in Arizona in 2015, might go elsewhere.

It was hardly surprisingly, then, when Brewer announced recently that she had vetoed SB 1062.

McCain was among those applauding. "I appreciate the decision made by Governor Brewer to veto this legislation," McCain said in a statement. "I hope we can move on from this controversy and assure the American people that everyone is welcome to live, work and enjoy our beautiful state of Arizona."

Outside the Capitol, protesters held up signs after her veto message: "Thank you Governor Brewer. Arizona is open for business for everyone."

The risk presented by SB 1062 was not such a big risk after all.

Of course, not everyone greeted Brewer's move warmly. The state's four Roman Catholic bishops had urged people to "politely ask" the governor to sign the bill. The Center for Arizona Policy, a conservative group that helped craft the bill, called it "a sad day." Radio host Rush Limbaugh said the governor was "being bullied by the homosexual lobby in Arizona and elsewhere."

In her veto message, Brewer addressed not just SB 1062 but other issues confronting the state, obliquely chiding the Legislature for not focusing on pressing issues.

Brewer reminded lawmakers that she had said earlier that her main priorities were passing a responsible budget and fixing a problem plaguing the state's child protective services system. "Instead, this is the first policy bill to cross my desk," she said.



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She went on to say that the bill “could divide Arizona in ways we cannot even imagine and no one would ever want. Religious liberty is a core American and Arizona value; so is non-discrimination. Going forward, let’s turn the ugliness of the debate over Senate Bill 1062 into a renewed search for respect and understanding among *all* Arizonans and Americans.”

Brewer never directly addressed the possible economic repercussions of SB 1062, but as the bill was debated over the last week, concern about boycotts seemed an ever-present, nagging worry.

The Borowitz Report captured the concern in a satirical headline: “Arizona Confronting Awkward Realization That Gay People Have Money, Buy Stuff.”

Although Brewer may have gotten away somewhat unscathed by SB 1062, the state may not have fared as well.

Barrett Marson, who heads a public relations outfit in Phoenix, said, “Governor Brewer may have saved the Super Bowl. But it doesn’t change the fact Arizona lost the image bowl of 2014.”

Teaching Tip 2 (Related to Video 1—“Supreme Court Ruling Expands Police Authority in Home Searches”)

In addition to the video, please also reference the following article:

“Supreme Court Ruling Expands Police Authority in Home Searches”

<http://www.latimes.com/nation/la-na-scotus-lapd-search-20140226,0,3720623.story#axzz2uXUmEMOu>

According to the article, police officers may enter and search a home without a warrant as long as one occupant consents, even if another resident has previously objected, the Supreme Court ruled recently in a Los Angeles case.

The 6-3 ruling, triggered by a Los Angeles Police Department arrest in 2009, gives authorities more leeway to search homes without obtaining a warrant, even when there is no emergency.

The majority, led by Justice Samuel A. Alito Jr., said police need not take the time to get a magistrate's approval before entering a home in such cases. But dissenters, led by Justice Ruth Bader Ginsburg, warned that the decision would erode protections against warrantless home searches. The court had previously held that such protections were at the “very core” of the 4th Amendment and its ban on unreasonable searches and seizures.

The case began when LAPD officers responded to reports of a street robbery near Venice Boulevard and Magnolia Avenue. They pursued a suspect to an apartment building, heard shouting inside a unit



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and knocked on the door. Roxanne Rojas opened the door, but her boyfriend, Walter Fernandez, told officers they could not enter without a warrant.

"You don't have any right to come in here. I know my rights," Fernandez shouted from inside the apartment, according to court records.

Fernandez was arrested in connection with the street robbery and taken away. An hour later, police returned and searched his apartment, this time with Rojas' consent. They found a shotgun and gang-related material.

In its decision, the high court said Fernandez did not have the right to prevent the search of his apartment once he was gone and Rojas had consented.

In the past, the court has frowned upon most searches of residences except in the case of an emergency or if the police had a warrant from a judge.

But Alito said police were free to search when they get the consent of the only occupant on site.

"A warrantless consent search is reasonable and thus consistent with the 4th Amendment irrespective of the availability of a warrant," he said in *Fernandez vs. California*. "Even with modern technological advances, the warrant procedure imposes burdens on the officers who wish to search (and) the magistrate who must review the warrant application."

He also said Rojas, who appeared to have been beaten when police first arrived, should have her own right to consent to a search. "Denying someone in Rojas' position the right to allow the police to enter her home would also show disrespect for her independence," Alito wrote for the court.

Justices Sonia Sotomayor and Elena Kagan joined Ginsburg in dissent and faulted the court for retreating from the warrant rule.

"Instead of adhering to the warrant requirement, today's decision tells the police they may dodge it," Ginsburg said.

She noted that in 2006, the court had ruled in a Georgia case that a husband standing in the doorway could block police from searching his home, even if his estranged wife consented. In its opinion, the majority said that rule applied only when the co-owner was "physically present" to object.

The voting lineup seemed to track the court's ideological divide and its gender split, with male and female justices taking opposite sides. The six men — Chief Justice John G. Roberts Jr. and Justices Antonin Scalia, Clarence Thomas, Stephen G. Breyer, Anthony M. Kennedy and Alito — voted to uphold Rojas' consent to the search. The court's three women would have honored Fernandez's objection.



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Fernandez was later convicted for his role in the street robbery and sentenced to 14 years in prison. After the California Supreme Court upheld his conviction, he appealed to the U.S. Supreme Court challenging the search of his apartment.



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Chapter Key for McGraw-Hill/Irwin Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
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Kubasek et al., Dynamic Business Law: Summarized Cases	Chapters 5 and 7	Chapters 5, 7 and 9	Chapter 2	Chapters 5 and 7
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 4 and 5	Chapters 4, 5 and 6	Chapter 1	Chapters 4 and 5
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3 and 5	Chapters 3, 5 and 7	Chapter 4	Chapters 3 and 5
Barnes et al., Law for Business	Chapters 4 and 5	Chapters 4, 5 and 7	Chapter 3	Chapters 4 and 5
Brown et al., Business Law with UCC Applications	Chapters 2 and 5	Chapters 2, 5 and 6	Chapter 1	Chapters 2 and 5
Reed et al., The Legal and Regulatory Environment of Business	Chapters 6 and 13	Chapters 6, 10 and 13	Chapter 2	Chapters 6 and 13
McAdams et al., Law, Business & Society	Chapters 4 and 5	Chapters 4, 5 and 7	Chapter 2	Chapters 4 and 5
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2 and 9	Chapters 2, 9 and 22	Chapter 5	Chapters 2 and 9
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapters 1 and 8	Chapters 1, 6 and 8	Chapter 1	Chapters 1 and 8



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This Newsletter Supports the Following Business Law Texts:

- Barnes et al., Law for Business, 11th Edition 2012© (0073377716)
- Bennett-Alexander et al., The Legal Environment of Business in A Diverse Society, 1st Edition 2012© (0073524921)
- Brown et al., Business Law with UCC Applications Student Edition, 13th Edition 2013© (0073524956)
- Kubasek et al., Dynamic Business Law, 2nd Edition 2012© (0073377678)
- Kubasek et al., Dynamic Business Law: The Essentials, 2nd Edition 2013© (0073524972)
- Kubasek et al., Dynamic Business Law: Summarized Cases, 1st Edition 2013© (0078023777)
- Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 15th Edition 2013© (0073377643)
- McAdams et al., Law, Business & Society, 10th Edition 2012© (0073525006)
- Reed et al., The Legal and Regulatory Environment of Business, 16th Edition 2013© (0073524999)
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