



Proceedings

A monthly newsletter from McGraw-Hill



April 2015 Volume 6, Issue 9

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Dear Professor,

Spring is finally here! Welcome to McGraw-Hill's April 2015 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 6, 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 2015 newsletter topics with the various McGraw-Hill business law textbooks.

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

1. A medical marijuana trial pitting state versus federal law;
2. A wrongful death lawsuit filed in response to a Cleveland, Ohio police officer's shooting of a 12-year-old boy;
3. A negligence lawsuit filed by a 26-year-old nurse who contracted the Ebola virus against her employer;
4. Videos related to a) an involuntary manslaughter charge filed against a Massachusetts teenager for allegedly sending text messages to her friend urging him to commit suicide, and b) the United States Congress' decision to revisit the "No Child Left Behind" law;
5. An "ethical dilemma" related to Wal-Mart Stores, Inc.'s recent decision to raise the wages of approximately 500,000 of its employees; and
6. "Teaching tips" related to Video 1 ("Massachusetts Police: Teen's Texts Encouraged Friend to Commit Suicide") and Video 2 ("Congress to Take on Rewrite of No Child Left Behind") of the newsletter.

Enjoy the natural wonders of spring!

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Of Special Interest

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

- 1) A medical marijuana trial pitting state versus federal law;
- 2) A wrongful death lawsuit filed in response to a Cleveland, Ohio police officer's shooting of a 12-year-old boy; and
- 3) A negligence lawsuit filed by a 26-year-old nurse who contracted the Ebola virus against her employer.

Hot Topics in Business Law

Article 1: "Medical Marijuana Trial Pits State vs. Federal Laws"

<http://www.usatoday.com/story/news/nation/2015/03/01/medical-marijuana-legalization-grow-trial/24223155/>

According to the article, federal prosecutors are trying to persuade a jury that a cancer-stricken man and his family were illegally growing and distributing marijuana in the forest outside their northeastern Washington home despite claims by the "Kettle Falls Five" that they were instead raising legal medical cannabis for their personal use.

The case against Larry Harvey's family has become a cause célèbre among the marijuana community, which sees it as a prime example of the continued disconnect between state and federal marijuana laws. Washington state last summer allowed legal recreational sales, although the raid on the Harvey's home happened in August 2012. And Congress late last year effectively barred the Justice Department from interfering with states that have medical marijuana systems.

Legalization advocates say it is a case of misguided federal marijuana laws and overzealous prosecutors unable or unwilling to accept the reality that most Americans would prefer to see pot users left alone.

"Some federal law enforcement officials are addicted to punishing people for marijuana-related offenses, and in this case the prosecutors are going on quite a bender," said Robert Capecci, deputy director of state policies for the pro-legalization Marijuana Policy Project. "They appear to be going out of their way to bring the harshest penalties possible. Nobody should face years in prison for providing medical marijuana to seriously ill people whose doctors recommend it. Surely the DEA and federal prosecutors have more pressing matters to address than this."

Federal prosecutors argue the group's medical marijuana claims are just a cover. They say evidence shows the group had been growing far more marijuana than they admit, and seized records they say show the group was paying people to process marijuana for illegal distribution.

"This is clearly a for-profit marijuana grow operation and a criminal act by people who are trying to set up an affirmative defense to their crimes under state law," prosecutors wrote in rejecting the group's efforts to have the case



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dismissed. "The defendant seems to imply that all a person needs to do to avoid federal prosecution for manufacturing marijuana in the state of Washington is to claim that he was manufacturing medical marijuana. It is clear that the defendants are hiding behind the medical marijuana laws in Washington in order to profit from their manufacture of marijuana."

The judge on February 18 dismissed the charges against Harvey, 71, because he's suffering from advanced pancreatic cancer, but allowed prosecutors to keep pressing their case against his wife, son and daughter-in-law. Family friend Jason Zucker on February 24 agreed to a plea bargain, the details of which have been sealed. The three remaining defendants face lengthy prison sentences in part because police seized several firearms after spotting the outdoor grow from a helicopter.

"This president campaigned on respecting state medical marijuana and not going after individual patients who are acting in accordance with those laws," said Tom Angell of the pro-legalization Marijuana Majority. "The fact that his administration is prosecuting this case is shameful and contrary to his campaign pledges. These prosecutions need to be stopped, especially because Congress just passed an amendment in December that is supposed to prevent the Justice Department from interfering with state medical marijuana laws."

The federal judge in the case has barred the group from claiming protection under medical marijuana laws. In his order, the judge effectively said prosecutors simply had to prove the group was growing marijuana, and that growing and possessing marijuana remains against federal law.

"They can't put on a medical necessity defense. They can't talk about state medical marijuana law," said Kris Hermes of Americans for Safe Access, which supports the family but is not paying for its defense. "Normally these cases don't go to trial, and people typically take plea bargains because they have no defense. Unfortunately, the Obama administration is continuing to aggressively try this case at considerable expense to taxpayers."

Hermes, who has been attending the trial, said the family is fighting the charges because they think it's the right thing to do. But he added: "I've never seen a jury acquit a federal medical marijuana defendant."

Discussion Questions

1. In your reasoned opinion, should marijuana be legal for medicinal purposes? Why or why not?

This is an opinion question, so student responses will most likely vary. Although the legalization of marijuana is a contentious topic, there is a discernible trend in the United States in favor of legalization, especially for medical reasons.

2. In your reasoned opinion, should marijuana be legal for recreational use? Why or why not? If you believe marijuana should be legal for recreational use, should businesses and/or individuals be allowed to sell marijuana for such purpose? Why or why not?



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This is an opinion question, so student responses will most likely vary. Although the legalization of marijuana is a contentious topic, there is a discernible trend in the United States in favor of legalization. Reasonable minds will differ, however, in terms of whether the sale of marijuana by businesses and/or individuals should be legal. Students might make a distinction between the legalization of marijuana for recreational use and legalization of the sale of marijuana by businesses and/or individuals.

3. As between the federal and state governments, which is better suited to regulate the distribution, sale, and use of marijuana?

For several years now, the federal government has “stood down” in terms of its enforcement of federal drug law against marijuana users. In its inaction, the federal government has essentially deferred to states’ rights. States will argue that they are best-suited to regulate, since they are closer to their residents, and since political and ideological differences among the states dictate differences in their approach to the legalization of marijuana. If the federal government decriminalizes marijuana (and there is some talk in the United States Department of Justice in favor of doing so), the regulation of marijuana possession, use and sale will be exclusively within the province of the individual states.

Article 2: “Cleveland: 12-Year-Old's Police Shooting Death His Own Fault”

<http://www.cnn.com/2015/03/01/us/cleveland-responds-lawsuit-police-shooting-tamir-rice/index.html>

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

According to the article, pleading innocence, immunity and ignorance, the city of Cleveland responded to a wrongful death lawsuit filed by Tamir Rice's family by saying the 12-year-old's death was his own fault.

In November, Cleveland Officer Timothy Loehmann fired the fatal shots at Tamir within two seconds of arriving outside a recreation center where the sixth-grader was playing with a pellet gun. In the 41-page response to the family's lawsuit filed recently, the city says that Tamir's injuries "were directly and proximately caused by the failure of Plaintiffs' decedent to exercise due care to avoid injury." The response further says that "Plaintiffs' decedent's injuries, losses, and damages complained of, were directly and proximately caused by the acts of Plaintiffs' decedent, not this Defendant."

The city also claims it is entitled to all "full and qualified" immunities under state and federal law. As to the scores of other allegations in the lawsuit, the city responds by saying that they are untrue, that the independent investigation by Cuyahoga County is still going on, or that the city "is without knowledge or information sufficient to form a belief as to the truth."



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Cuyahoga County's medical examiner has ruled the death a homicide but has issued no determination as to whether the events that caused the boy's death constitute a crime.

Cleveland authorities have repeatedly said that Loehmann mistook Tamir's fake gun for a real one. A witness called 911 on November 22 to say there was "a guy with a pistol" and that although the weapon was "probably" fake, Tamir was scaring people. It does not appear the dispatcher relayed the information to Loehmann and Officer Frank Garmback. Video of the incident shows the two pull up on the snowy grass near a gazebo where Tamir is standing. Within two seconds of exiting the police car, Loehmann shoots the 12-year-old.

The boy died the next day of injuries to "a major vessel, intestines and pelvis."

In the video, neither Loehmann nor Garmback appears to provide medical assistance to the boy, and Police Chief Calvin Williams has said that Tamir did not receive first aid until an FBI agent arrived on the scene four minutes later.

An attorney for the Rice family says the city's response to the lawsuit is indicative of well-documented problems within the Cleveland Police Department.

"The Rice family maintains that Tamir was shot and killed unnecessarily by Cleveland police officers," Rice family co-counsel Walter Madison said in a statement.

"Their tactics that preceded his death and the subsequent victim blaming are examples of the institutionalized behavior that has beset the Cleveland Police Department. The Rice family's lawsuit seeks to eliminate certain institutional behaviors and practices that have no place in our diverse community."

Rice family co-counsel Benjamin Crump said the family was "just in disbelief" after reading the response. Crump went on to attack the police department's assertion, put forth in December, that Loehmann gave Tamir three verbal commands to put his hands up.

"It is just incredible that the police officer, based on what we see on the video surveillance recording, gave Tamir three verbal commands to put his hands up and drop the weapon, based on what we see in the video. It was less than 1.7 seconds. The car hadn't even stopped. It's unbelievable."

In December, the United States Justice Department released the results of a two-year investigation that found Cleveland officers use guns, Tasers, pepper spray and their fists excessively, unnecessarily or in retaliation. The police force has used unnecessary and unreasonable force at a "significant rate," employing "dangerous tactics" that put the community at risk, the investigation stated.



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It was also reported in December that Loehmann's previous employer, the Independence Police Department in a Cleveland suburb, had numerous complaints about the officer, including that he was "distracted and weepy" and "emotionally immature" and had demonstrated "a pattern of lack of maturity, indiscretion and not following instructions."

He also showed "dangerous loss of composure during live range training" and an "inability to manage personal stress," the department said.

In December, Crump called for Loehmann and Garmback to be charged and decried what he said was a police tendency to let grand juries determine whether to charge officers involved in shootings. In Tamir's case, he said, "several things were done inappropriately," which is probable cause to charge the officers.

"There is nothing written anywhere in the law that says police officers are to be treated differently from any other citizen," Crump said. "We cannot have children playing cops and robbers on a playground and police officers coming and claiming their lives."

Loehmann and Garmback have been placed on paid leave pending the outcome of the investigation.

Discussion Questions

1. What is a wrongful death lawsuit?

A wrongful death lawsuit is a civil action wherein the plaintiff (usually, a representative of the decedent victim's estate) seeks to recover money damages from the defendant for the death of another individual. Such a lawsuit typically alleges that the defendant's gross negligence or extreme negligence was the proximate cause of the victim's death. Although money will certainly not bring the victim back to life, the idea behind a wrongful death lawsuit is that an appropriate financial damage award will approximate the value of the victim's life, and account for the loss sustained as a result of the victim's wrongful death.

2. In your reasoned opinion, do the facts of this case establish negligence or some other fault-based reason for holding Officer Timothy Loehmann and the Cleveland Police Department liable for the death of Tamir Rice? Explain your response.

Although some students may argue that the real-time actions of a police officer should not be second-guessed, this is admittedly a difficult case for the Cleveland Police Department to defend. The victim was twelve years old, and Officer Loehmann fired his weapon within two seconds of arriving on the scene. It would not surprise your author if the Cleveland Police Department settles this case before trial, or that if the case goes to trial, the jury returns a sizeable verdict in favor of the victim and his family.



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As the article indicates, there is evidence that in December 2014, the United States Justice Department released the results of a two-year investigation that found Cleveland officers use guns, Tasers, pepper spray and their fists excessively, unnecessarily or in retaliation. There is also evidence of Officer Loehmann's personal problems predating the incident. Such evidence would most likely be admissible at trial if the case goes to trial.

3. Comment on the defendants' argument that Tamir Rice was responsible for his own death.

Legally, this is an incredibly difficult argument to successfully make. Usually, children are not deemed to have been contributorily negligent, or to have assumed the risk of injury. Tamir Rice was in the sixth grade when he died.

Article 3: "Ebola Survivor Nina Pham Suing Hospital to Be 'Voice for Other Nurses'"

<http://abcnews.go.com/Health/ebola-survivor-nina-pham-suing-hospital-voice-nurses/story?id=29310858>

According to the article, a 26-year-old nurse who contracted Ebola at the Dallas hospital where she worked plans to sue the hospital's parent company, Texas Health Resources, hoping to be a "voice for other nurses," her lawyer said recently.

In the suit, Nina Pham alleges that Texas Health Presbyterian Hospital did not train the staff to treat Ebola and did not give them proper protective gear, which left parts of their skin exposed, her lawyer Charla Aldous said.

"One of the most concerning things about the way (the hospital) handled this entire process is you've got a young lady who has this disease which she should not have. And if they properly trained her and given her the proper personal protective equipment to wear, she would not have gotten the disease," Aldous said.

Aldous said Pham hopes the suit will "help make sure that hospitals and big corporations properly train their nurses and healthcare providers."

"This is not something that Nina chose," Aldous said, but "She's hoping that through this lawsuit she can make it a change for the better for all nurses."

Pham is still coping with Ebola's after-effects, including nightmares and body aches, her lawyer said. "She has not gone back to work yet and she is working on recovering," Aldous said. "I don't know if she'll ever be a nurse again."

Texas Health Resources spokesperson Wendell Watson said in a statement: "Nina Pham bravely served Texas Health Dallas during a most difficult time. We continue to support and wish the best for her, and we remain optimistic that constructive dialogue can resolve this matter."



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Last fall, Pham cared for Liberian native Thomas Eric Duncan, who flew to the United States and was diagnosed with Ebola at Texas Health Presbyterian Hospital.

Pham took care of Duncan when he was especially contagious, and on October 8, Duncan died from the virus.

Pham tested positive for Ebola on October 11, marking the first Ebola transmission on United States soil.

On October 16, Pham was transferred to the National Institutes of Health's hospital in Bethesda, Maryland. She was discharged on October 24.

At the news conference announcing Pham's discharge, Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases at the NIH, said she tested negative for Ebola five times, and that it was not clear which treatment saved her because they were all experimental.

"I want to first tell you what a great pleasure and in many respects, a privilege ... to have the opportunity to treat and care for and get to know such an extremely courageous and lovely person," Fauci said, adding that she represents the health care workers who "put themselves on the line."

Pham's dog, Bentley, was also quarantined for several weeks, over fears that he, too, would develop Ebola.

Discussion Questions

1. What is the legal basis for Nina Pham's lawsuit against Texas Health Resources? What cause of action is she alleging?

Nurse Pham's case is based on a negligence cause of action. Negligence is defined as the failure to do what a reasonable person would do under the same or similar circumstances. In order to prevail in a negligence case, the plaintiff must prove, by the greater weight of the evidence, that 1) the defendant owed a duty of care to the plaintiff; 2) the defendant breached said duty of care; 3) the defendant caused the plaintiff harm; and 4) the plaintiff sustained damages as a result of the harm.

Nina Pham's lawsuit asserts that Texas Health Resources was negligent in failing to give her and other nurses proper training in how to address a patient with the Ebola virus and in failing to provide a safe work environment. Negligence is a jury question—Typically, jurors must weigh the evidence presented in a particular case to determine whether the plaintiff has proven negligence on the part of the defendant.



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2. Ms. Pham contracted the Ebola virus at work. Given that fact, should her exclusive remedy be the recovery of workers' compensation benefits? Should she be allowed to sue her employer in civil court for contracting the Ebola virus at work?

Usually, if an employee is injured at work, the employee's sole remedy is to pursue workers' compensation benefits. In order to recover workers' compensation benefits, the plaintiff must prove that she sustained a work-related injury. Worker's compensation is a no-fault system, meaning that the defendant's negligence or intent to harm is irrelevant. There is no jury trial, and the employee will (if she establishes that the injury was work-related) recover benefits according to a strict (and limited) schedule of benefits established by state statute.

There is an exception to the "sole remedy" rule of workers' compensation. If the employer-defendant's gross negligence or extreme recklessness caused the employee-plaintiff's harm, the employee is allowed to sue the employer in civil court. Most likely, in the subject case, the plaintiff is contending that her employer was grossly negligent or extremely reckless in failing to provide proper precautions to guard against one of the deadliest viruses on the planet—Ebola.

3. Texas recognizes the doctrine of comparative negligence, a theory of tort law which says that the plaintiff's recovery against a defendant who was negligent is reduced by the percentage the plaintiff contributed to her own injuries due to her personal negligence. Texas also recognizes the assumption of the risk doctrine, which bars the plaintiff's recovery if she actively, voluntarily and willingly proceeded in the face of danger, knowing or having reason to know of the risks associated with the subject activity. In your reasoned opinion, was the plaintiff comparatively negligent in this case? If so, to what extent (usually expressed in the form of a percentage)? Did the plaintiff assume the risk in this case? Explain your responses.

A determination of comparative negligence is fact-specific, dependent upon the unique facts, circumstances, and evidence related to a particular case. Although there may be evidence outside the article that might indicate Nurse Pham's comparative negligence, the article does not appear to indicate any evidence of such. It is difficult to imagine a jury concluding that she assumed the risk simply by coming to work or treating a patient—rather, she had a duty to do both.



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Video Suggestions

Video 1: "Massachusetts Police: Teen's Texts Encouraged Friend to Commit Suicide"

<http://www.cnn.com/2015/03/01/us/suicide-text-case/index.html>

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

"Massachusetts Police: Teen's Texts Encouraged Friend to Commit Suicide"

According to the article, a Massachusetts teenager faces a pretrial hearing in April on involuntary manslaughter charges for allegedly sending text messages urging a friend to commit suicide, even after he expressed second thoughts, authorities said recently.

Michelle Carter, 18, was indicted on February 5.

Conrad Roy, 18, of Fairhaven and Mattapoisett, Massachusetts, was found dead in his car of apparent carbon monoxide poisoning on July 13, Sgt. Kevin Kobza, public information officer for the Fairhaven Police Department, said Saturday.

At one point the night of Roy's death, he exited the vehicle and communicated to Carter that he was having second thoughts about taking his own life, Kobza said. Carter then urged him via text message to get back in the car, Kobza said.

Upon searching Roy's cell phone, police discovered "hundreds" of texts between Roy and Carter, many which contained language from Carter that encouraged Roy to take his own life, Kobza said.

"Instead of attempting to assist him or notify his family or school officials, Ms. Carter is alleged to have strongly influenced his decision to take his own life, encouraged him to commit suicide and guided him in his engagement of activities which led to his death," Gregg Milote, director of communications for the Bristol County District Attorney's Office, said in a statement.



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Carter's lawyer, Joseph Cataldo, said recently that the evidence will show this was not manslaughter and that Carter attempted to console Roy on "many occasions."

"The facts that have been given out to the public at this point put her in the worst possible light," Cataldo said. "My heart goes out to the family, but this was a young man who planned this for months and months."

On a Twitter page confirmed by the District Attorney's Office to be Carter's, several photos and tweets about Roy have been posted since his death. One tweet reads, "I can't believe today already marks 4 months without you. I love you and miss you always Conrad..."

In September 2014, Carter organized a softball tournament in Roy's memory and raised \$2,300 for mental health awareness, according to Kobza.

Carter was arraigned on the indictment on February 6 in New Bedford Juvenile Court, released on \$2,500 bail and told not to use social media, according to Miliote.

Carter was indicted as a youthful offender because she was not yet 18 when the alleged crimes occurred. Youthful offenders are tried in juvenile court but the proceedings are public, Cataldo said.

Discussion Questions

1. Define involuntary manslaughter.

Involuntary manslaughter involves the defendant's wrongful taking of the life of another human being as a result of the defendant's negligence or recklessness. It is distinguishable from murder in the sense that murder involves the defendant's intent to take the life of another human being.

2. The article indicates that Conrad Roy, an 18-year-old, chose to take his own life. Comment on the relevance of this fact to Michelle Carter's criminal responsibility for his death.

The crux of the debate in this case is whether Ms. Carter should be responsible for Mr. Roy's death when the evidence indicates that ultimately, Roy chose to take his own life. Obviously, the definition of involuntary manslaughter in the jurisdiction where the case will be tried (Massachusetts) is highly relevant in determining whether the defendant committed the crime. For that reason, please refer to Teaching Tip 1 of the newsletter, which includes the Massachusetts definition of involuntary manslaughter.

3. In your reasoned opinion, did Michelle Carter commit involuntary manslaughter? Why or why not?

As indicated in Teaching Tip 1 of the newsletter, according to Massachusetts criminal law, a person can commit involuntary manslaughter through an unintentional killing occasioned by an



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act which constitutes such a disregard of the probable harmful consequences to another as to be wanton or reckless. Although students may concur that Michelle Carter's numerous texts were a factor in Conrad Roy's death, did those texts constitute a "killing?" In your author's opinion, the answer to that question is "no," regardless of how deplorable one may believe Carter's communications were. "Killing" involves taking the life of another human being, and Carter did not take Roy's life; instead, he took his own.

Video 2: "Congress to Take on Rewrite of No Child Left Behind"

<http://www.msnbc.com/melissa-harris-perry/watch/re-writing-no-child-left-behind-406145091530>

Discussion Questions

1. The video indicates that standardized testing is a major component of the federal No Child Left Behind law. In terms of education, is standardized testing a legitimate success factor? Why or why not?

This is an extremely contentious issue pre-dating the United States Congress' enactment of No Child Left behind. Many students have informed (warned?) me as their instructor that they are not good test takers. The counter-argument, of course, is that test day is a "day of reckoning," the best formal opportunity to measure academic progress in an objective way and to compare individual progress to the class standard and to the performance of others.

2. The video suggests that children in wealthy school districts have a distinct advantage over children in poor school districts. If standardized testing across districts is utilized, how can wealth even matter in terms of realizing educational and individual student success? Explain your response.

In your author's opinion, the availability of financial resources does matter in terms of student achievement. Although education can occur in a "one-room schoolhouse," studies demonstrate a direct correlation between school district wealth and student performance. In your author's opinion, one of the greatest problem facing education today is equity in educational opportunity across jurisdictions. It will not be an easy problem to resolve, since individual states still carry the weight in terms of school funding, and since there are substantial differences among states (Mississippi versus Connecticut, for example) in terms of the availability of financial resources for formal education.

3. Is education better regulated by the federal government or state governments? Explain your response.

This is an opinion question, so student responses will likely vary. States will argue that they are best-suited to manage and control education since they 1) predominantly provide the funding for



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public education; and 2) are literally and figuratively closer to their students. The federal government will argue that at least some control at the federal level is necessary to address underperforming states when those states will not or cannot resolve their own educational problems. This was one of the primary arguments used to justify the enactment of No Child Left Behind in 2001.



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Of Special Interest

This section of the newsletter addresses Wal-Mart Stores, Inc.'s recent decision to raise the wages of approximately 500,000 of its employees.

Ethical Dilemma

“Don’t Be Soothed By Walmart Pay Hike”

<http://www.cnn.com/2015/02/24/opinion/lathrop-walmart-wages/index.html>

Note: The following article is an opinion-editorial written by Yannet Lathrop, a policy analyst and researcher at the National Employment Law Project, a nonprofit organization that tackles issues affecting low-wage and unemployed workers and advocates for more economic opportunities.

It may have seemed a herculean task, but retail workers have just scored an unprecedented win against a retail giant.

Walmart, the nation's largest private employer, announced last week that it will raise the wages of approximately 500,000 of its employees by lifting its base wage to \$10 by 2016 for current workers (and to the same rate for new hires after six months training).

It's a step in the right direction, but not enough.

To be sure, Walmart's announcement is an impressive development in the fight for better wages, not only because the retail powerhouse has earned a reputation for paying some of the lowest wages in the industry, but most importantly, because it was forced to make the change by its own workers. Over the past several years, Walmart employees -- united under the banner of OUR Walmart -- have engaged in protests and advocacy to press the retailer to improve compensation and working conditions in its more than 5,100 stores nationwide. These workers have held rallies, demanded to speak at shareholders meetings, and reached out to elected leaders and the general public. Their efforts are now starting to pay off, and no doubt, Walmart workers' success will serve as an inspiration to millions of other low-wage workers nationwide, making similar demands in the retail, restaurant and health care industries.

But the fight is not quite over.

Walmart's announcement falls short of what its workers are demanding: a minimum base wage of \$15 per hour, the opportunity to work full-time for



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those who want it, predictability in their work schedules, and respect and dignity in workplaces. Walmart can afford to do much better than an increase to a meager \$10 per hour. In fiscal years 2014 and 2015, the company posted \$16 billion or more in profits and returned between \$7 billion and \$13 billion to its shareholders. The Waltons, owners of Walmart, are worth \$150 billion, which is more than the wealth of the entire bottom 40% of Americans.

Walmart's owners, shareholders and executives have the hard work of its 1.3 million employees to thank for their incredible fortune.

The company's announcement hardly qualifies the retailer as a leader among its peers. A leading retail competitor, Costco, pays its employees a starting wage closer to \$12 and an average wage of \$21. Amazon also has a starting wage between \$10 and \$12, up to 20% higher than Walmart's newly increased wage.

Insurance giant, Aetna, recently announced it will increase its base wage to \$16 this April. A strong majority of small business owners support raising the minimum wage, and some already pay their employees substantially more than Walmart's new offer -- such as Detroit's Moo Cluck Moo, a burger restaurant chain whose workers earn \$15 an hour.

Walmart's new wages also fall significantly short of what the general public demands. According to a January 2015 poll conducted by Hart Research Associates for the National Employment Law Project, in a representative national sample of 1,002 adults, three in four Americans, including 53% of Republicans, support raising the federal minimum wage to \$12.50, and 63% want the minimum wage increased to \$15 per hour by 2020.

This is because Americans understand that every additional penny that goes into the pockets of low-wage workers is invested back into the economy right away to pay for basic necessities, such as groceries, medicine, gas and transportation costs, resulting in a ripple effect that benefits the economy, boosts consumer demand and creates new jobs.

In its announcement, Walmart's executives seemed to acknowledge as much, crediting the public's increased spending power for the company's success in fiscal year 2015 and stating that more work remains to be done to grow its business and bottom line.

Walmart would be wise to include a substantially higher pay raise for its workers as a key part of its growth plans for the next few years. Until they do, Walmart workers will keep up their fight -- emboldened by a major breakthrough that few thought was possible.

Discussion Questions

1. Do employers have an ethical obligation to pay a livable wage? Why or why not? If employers do have such an obligation, what exactly is a livable wage? How can it be determined?



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A student's answer to the livable wage obligation question depends on whether he or she adopts the "Friedman" view of social responsibility or the "stakeholder" view of social responsibility. According to noted economist Milton Friedman, business has only one social responsibility aside from legal compliance—generating a profit. The stakeholder view believes that the social responsibility obligation of business is more complex, extending beyond shareholders and addressing the needs and interests of customers, employees, and the community-at-large. Such an obligation could include paying employees a livable wage.

In terms of what exactly is a livable wage, there is no exacting answer. Reasonable minds might differ in terms of what amount of money is required to live; for example, is a smart phone a necessity of life?! Actual geographic differences in the standard of living and political differences across the country also affect the livable wage determination; for example, although Seattle, Washington recently increased its minimum wage to \$15, your author's home state, North Carolina, would not likely consider such an increase in the foreseeable future.

2. As the article indicates, in fiscal years 2014 and 2015, Walmart posted \$16 billion or more in profits and returned between \$7 billion and \$13 billion to its shareholders. How, if at all, is this relevant to the issue of a "livable wage" for Walmart employees?

Such figures are relevant in terms of corporate allocation of wealth among employees and shareholders. Some students will argue that shareholders take the financial risk in investing in a company, and therefore deserve to receive the "spoils" related to undertaking such risk. However, employees also take risks—career, physical, and mental—and their efforts arguably most directly translate into corporate success. Keep in mind that many shareholders do not work for the publicly-traded company in which they invest. Have your students debate who among shareholders and employees who are the true risk-takers and effort-expenders!

3. As the article indicates, the Walton family, owners of Walmart, are worth \$150 billion, which is more than the wealth of the entire bottom 40% of Americans (Sam Walton, Walmart's founder, died in 1992). How, if at all, is this relevant to the issue of a "livable wage" for Walmart employees?

Such information is relevant in terms of concluding whether Walmart can afford a livable wage for employees. The real question regarding such an issue is whether it is good for America and good for our economy for wealth to be so concentrated in the hands of only a few individuals who were so very fortunate to have an entrepreneurial father!



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Of Special Interest

This section of the newsletter will assist you in addressing Video 1 ("Massachusetts Police: Teen's Text Encouraged Friend to Commit Suicide") and Video 2 ("Congress to Take on Rewrite of No Child Left Behind") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Video 1—"Massachusetts Police: Teen's Texts Encouraged Friend to Commit Suicide"): Massachusetts Murder Defense—Involuntary Manslaughter

<http://www.massmurderdefense.com/pages/manslaughter-in.html>

Note: The following is a definition and description of involuntary manslaughter according to Massachusetts law:

Involuntary Manslaughter

As with voluntary manslaughter Massachusetts statutory law does not define involuntary manslaughter. Rather, Massachusetts common law, as pronounced by the courts, provides the definition for involuntary manslaughter:

One can commit involuntary manslaughter through:

(1) An unintentional killing occasioned by an act which constitutes such a disregard of the probable harmful consequences to another as to be wanton or reckless; or

(2) An unintentional killing resulting from a battery.

The first theory under which a person may face conviction for involuntary manslaughter requires an unintentional, yet unlawful killing resulting from the wanton or reckless conduct of the defendant. This theory of involuntary manslaughter is sometimes called "Welansky manslaughter," after the 1944 case in which the owner of a nightclub was convicted of involuntary manslaughter when a fire in his club caused the death of over 400 patrons.

That case also established that wanton or reckless conduct includes both affirmative acts and failures to act where a duty to act exists. Such acts or omissions must embody a disregard for the probable harmful consequences to another. The conduct must involve a high degree of likelihood that substantial harm will result to another. The law requires that the defendant have knowledge of the circumstances and the intent to do the act that caused the death, and also requires that the circumstances presented a danger of serious harm such that a reasonable man would have recognized the nature and degree of danger. Wanton and reckless conduct is distinct from negligence or gross



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negligence for which, in the common law of Massachusetts, there is no criminal liability.

The second theory on which a defendant may face conviction for involuntary manslaughter requires that the defendant commit a battery, not amounting to a felony, which causes death. A person who uses a level of force against another that is likely to cause harm and which produces death is guilty of involuntary manslaughter. The law requires that the prosecution establish that the defendant knew, or should have known that his conduct created a high degree of likelihood that substantial harm would result to another. This means that the same standards of proof apply to both voluntary and involuntary manslaughter.

The punishment for both voluntary and involuntary manslaughter, as set by statute, is the same. The maximum sentence for an involuntary manslaughter conviction is imprisonment for twenty years, except in circumstances where the voluntary manslaughter involves explosives or infernal machines, in which cases the maximum punishment is life imprisonment.

Teaching Tip 2 (Related to Video 2—“Congress to Take on Rewrite of No Child Left Behind”): U.S. Department of Education—No Child Left Behind

Note: For the latest news and resources concerning the No Child Left Behind law, please see the following internet address:

<http://www2.ed.gov/nclb/landing.jhtml>



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

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Kubasek et al., Dynamic Business Law	Chapters 7, 8 and 9	Chapters 5 and 7	Chapter 2	Chapters 5 and 7
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapters 7, 8 and 9	Chapters 5 and 7	Chapter 2	Chapters 5 and 7
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 5 and 6	Chapters 4 and 5	Chapter 1	Chapters 4 and 5
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 5, 6 and 7	Chapters 3 and 5	Chapter 4	Chapters 3 and 5
Barnes et al., Law for Business	Chapters 5, 6 and 7	Chapters 4 and 5	Chapter 3	Chapters 4 and 5
Brown et al., Business Law with UCC Applications	Chapters 5 and 6	Chapters 2 and 5	Chapter 1	Chapters 2 and 5
Reed et al., The Legal and Regulatory Environment of Business	Chapters 10 and 13	Chapters 6 and 13	Chapter 2	Chapters 6 and 13
McAdams et al., Law, Business & Society	Chapters 4 and 7	Chapter 4 and 5	Chapter 2	Chapters 4 and 5
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 10 and 23	Chapters 2 and 23	Chapter 5	Chapters 2 and 23
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapters 1 and 6	Chapters 1 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, 12th Edition 2015© (0078023815)
- 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, 3rd Edition 2015© (0078023785)
- 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)
- Melvin, The Legal Environment of Business: A Managerial Approach, 2nd edition 2015© (0078023807)
- McAdams et al., Law, Business & Society, 10th Edition 2012© (0073525006)
- Reed et al., The Legal and Regulatory Environment of Business, 16th Edition 2013© (0073524999)

