



Proceedings

A monthly newsletter from McGraw-Hill



2014 Volume 6, Issue 1

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Dear Professor,

Happy new academic year! Welcome to McGraw-Hill's August 2014 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 6, Issue 1 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the August 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. A recent United States Supreme Court decision regarding police search of the cell phone of an arrested criminal suspect;
2. The National Rifle Association's (NRA's) challenge of proposed legislation that would prohibit stalkers and perpetrators of domestic violence from buying guns;
3. A United States Supreme Court's decision rejecting an abortion clinic "buffer zone";
4. Videos related to a) alleged murder in a hot-car toddler death and b) a United States Supreme Court decision regarding Aereo, Inc.'s "retransmission" of copyrighted television content;
5. An "ethical dilemma" related to the recent United States "Hobby Lobby" decision supporting the religious freedom of privately-held corporations; and
6. "Teaching tips" related to Article 1 ("Supreme Court: Police Need Warrant to Search Cell Phones") and the Ethical Dilemma ("Supreme Court Rejects Contraceptives Mandate for Some Corporations") of the newsletter.

I wish you and your students an enjoyable and enriching 2014-2015 academic year!

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Of Special Interest

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

1) A recent United States Supreme Court decision regarding police search of the cell phone of an arrested criminal suspect;

2) The National Rifle Association's (NRA's) challenge of proposed legislation that would prohibit stalkers and perpetrators of domestic violence from buying guns; and

3) The United States Supreme Court's decision against an abortion clinic "buffer zone".

Hot Topics in Business Law

Article 1: "Supreme Court: Police Need Warrant to Search Cell Phones"

<http://www.cnn.com/2014/06/25/justice/supreme-court-cell-phones/index.html>

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

According to the article, the Supreme Court recently ruled in a unanimous decision that police may not search the cell phones of criminal suspects upon arrest without a warrant -- a sweeping endorsement for privacy rights.

By a 9-0 vote, the justices said smart phones and other electronic devices were not in the same category as wallets, briefcases, and vehicles -- all currently subject to limited initial examination by law enforcement.

Generally such searches are permitted if there is "probable cause" that a crime has been committed, to ensure officers' safety and prevent destruction of evidence.

Criminal suspects in Massachusetts and California were separately convicted, in part, after phone numbers, text messages, photos and addresses obtained from personal electronic devices linked them to drug and gang activity.

Those cases were appealed to the high court, giving it an opportunity to re-enter the public debate over the limits of privacy rights, with a focus on the ubiquitous cellphone and its vast storage of information and video.

The appeals were not related to the recent mass surveillance of phone metadata by the National Security Agency, which has raised similar constitutional concerns.

"The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought," the ruling said. "Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple — get a warrant."

Ellen Canale, a Justice Department spokeswoman, said the agency would work with law enforcement to ensure "full compliance" with the decision.



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"We will make use of whatever technology is available to preserve evidence on cell phones while seeking a warrant, and we will assist our agents in determining when exigent circumstances or another applicable exception to the warrant requirement will permit them to search the phone immediately without a warrant," Canale said.

A January Pew Research Center survey found more than 90 percent of Americans now own or regularly use a cellphone, and 58 percent have a more sophisticated smartphone.

They have become the most quickly adopted technology ever. It's estimated that most of the world's 7 billion people have access to mobile devices, according to the United Nations.

Lower courts nationwide are divided over how to apply a 40-year-old high court precedent allowing searches of a suspect's items after arrest. Home searches generally require warrants and are given greater constitutional protection than vehicles or a person in public.

Of the two cases addressed by the Supreme Court, David Riley's attracted the most scrutiny.

He was detained in 2009 for having an expired vehicle registration and driving with a suspended license. When authorities impounded his vehicle, loaded weapons were found hidden under the hood. After the college student's subsequent arrest, San Diego police took a look at his smartphone. Text messages, contacts and video in the touch-screen device led officers to believe Riley had organized crime connections. A photograph of another vehicle owned by the suspect was linked to an earlier drive-by shooting.

He was convicted in state court and received a 15-year prison sentence.

Separately, Brima Wurie was arrested in 2007 for selling two packets of crack cocaine. He had an old-style flip phone in his pocket, and police in Boston used call logs on the device to trace his real home address, after the suspect gave a bogus one.

There, officers with a search warrant found more drugs, a weapon and ammunition. Wurie was convicted in federal court and is serving 22 years.

In neither case did police seek a warrant before the phones were searched. One appeals court upheld Riley's conviction, and another tossed out Wurie's.

It is unclear from the high court's ruling is whether other defendants convicted on such electronic evidence will also have their cases dismissed.

But the court minced no words in separating such devices from other things a person might have on them when detained by police.



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"Modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse," said Chief Justice John Roberts. "Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person."

The Constitution's Fourth Amendment protects against "unreasonable searches and seizures."

But the Supreme Court has repeatedly affirmed the government's discretion to conduct warrantless initial pat-downs and searches of people and vehicles -- to ensure officers' safety and prevent destruction of evidence.

That included a 1973 ruling upholding the police search of a suspect's crumpled cigarette box, where heroin capsules were discovered. The motorist had first been stopped on suspicion of driving on a suspended license in Washington.

Similar law enforcement searches can include other closed containers, such as wallets and address books, even if it is not initially apparent the items are contraband or dangerous.

But privacy advocates and defense attorneys had argued that portable, easily storable technology makes these appeals different. The court, in sweeping terms, agreed.

Discussion Questions

1. Describe the Fourth Amendment to the United States Constitution. Specifically how does the Fourth Amendment apply to this case?

The Fourth Amendment to the United States Constitution states:

"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."

From the Fourth Amendment, legal scholars have interpreted an implied constitutional right to privacy. Generally, a person and his or her property may not be searched unless the police have secured a search warrant, and the warrant must be supported by "probable cause." Probable cause is defined as the substantial likelihood that incriminating evidence will be found when a search is conducted. A magistrate (judge) must determine whether probable cause exists, and whether a search warrant should be issued.

In terms of the subject United States Supreme Court decision, the Court has determined that the Fourth Amendment applies to the search of a cell phone. In your author's opinion, the Court's decision is a sound one, since a cell phone qualifies as an "effect." In evaluating this case, it is



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important to realize that the police can still search a suspect's cell phone—before doing so, however, the police must first secure a search warrant based on probable cause.

2. Are you surprised that the United States Supreme Court decision in this case was unanimous? Why or why not?

This is a subjective question, so student responses may vary. It is very interesting that the United States Supreme Court decision was unanimous, particularly in light of the political and ideological differences among the nine (9) Supreme Court justices.

3. Do you agree with the United States Supreme Court decision? Why or why not?

This is an opinion question, so student responses will likely vary. Students who favor aggressive law enforcement might disagree with the decision, while those who favor the implied constitutional right to privacy will likely support it.

Article 2: “NRA: Stalkers Deserve Guns, Too”

<http://www.msnbc.com/morning-joe/nra-stalkers-deserve-guns-too>

According to the article, the National Rifle Association (NRA) is challenging proposed legislation that would prohibit stalkers and perpetrators of domestic violence from buying guns, arguing that not all stalkers are violent and that the bill violates their Second Amendment rights.

The bill, introduced by Minnesota Democrat Senator Amy Klobuchar, would shore up some loopholes in existing federal law, which already bars those convicted of misdemeanor domestic violence against “intimate partners” to include those who harm “dating partners” and adds convicted stalkers to the grouping.

The NRA wrote to senators to voice their opposition to the bill, noting that the group “strongly opposes” the legislation because it “manipulates emotionally compelling issues such as ‘domestic violence’ and ‘stalking’ simply to cast as wide a net as possible for firearm prohibitions.”

The NRA also argued that stalkers should not be prohibited from buying guns.

“‘Stalking’ offenses do not necessarily include violent or even threatening behavior,” the letter continues. “Under federal law, for example, stalking includes ‘a course of conduct’ that never involves any personal contact whatsoever, occurs wholly through the mail, online media, or telephone service, is undertaken with the intent to ‘harass’ and would be reasonably expected to cause (even if it doesn’t succeed in causing) ‘substantial emotional distress’ to another person.”



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The NRA is ignoring some pretty significant numbers when they push against reform: 76% of women who are murdered by an intimate partner were stalked beforehand, according to a study by the New York City Department of Health and a number of universities. At least three women a day are murdered by a boyfriend or a husband, according to the American Psychological Association. Furthermore, domestic abusers with access to guns are seven times more likely to murder their partners, according to a study funded by a number of national health organizations.

Discussion Questions

1. Describe the Second Amendment to the United States Constitution. Specifically how does the Second Amendment apply to this case?

The Second Amendment to the United States Constitution states:

"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."

Although the Second Amendment is succinctly stated, its interpretation will likely never end. The central controversy surrounding the Second Amendment is whether the framers of the Constitution intended for the right to bear arms to be absolute, or whether the right should be subject to reasonable restrictions. In terms of the subject case, the central question is whether prohibiting stalkers and perpetrators of domestic violence from bearing arms constitutes a reasonable restriction.

2. Are you surprised by the National Rifle Association's (NRA's) objection to the subject legislation? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, the NRA's objection to the subject legislation is not surprising, since the organization is an advocate for the absolute, unrestricted right to bear arms.

3. Do you agree with the NRA's position in this case? Why or why not?

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

Article 3: "Supreme Court Strikes Down Abortion Cline Buffer Zone Law"

<http://www.msnbc.com/msnbc/supreme-court-strikes-down-abortion-clinic-buffer-zone-law>

According to the article, in a unanimous opinion, the United States Supreme Court recently struck down a Massachusetts law that set a 35-foot buffer zone around abortion clinics, saying it violates



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the First Amendment. Massachusetts had argued that the buffer zone, which anti-abortion protesters said violated their free speech rights, keeps patients and clinic staff safer.

“The buffer zones burden substantially more speech than necessary to achieve the Commonwealth’s asserted interests,” Chief Justice John Roberts wrote on behalf of the court in *McCullen v. Coakley*. He conceded that Massachusetts has “legitimate interests in maintaining public safety on streets and sidewalks and in preserving access to adjacent reproductive healthcare facilities,” but ultimately “impose serious burdens on petitioners’ speech, depriving them of their two primary methods of communicating with arriving patients: close, personal conversations and distribution of literature.”

The immediate impact of the decision will be on Massachusetts, but advocates expect that similar fixed-distance buffer zones in other states, including one currently being challenged in Maine, will be next.

“If you were a betting man,” said Roger Evans, senior counsel at Planned Parenthood Federation of America, “you would bet that they would all go.”

The Supreme Court stopped short of declaring that the law discriminated against the anti-abortion viewpoint. Nor did it overrule its precedent in a 2000 case upholding a Colorado no-approach law. As such, said Evans, “the silver lining to the court’s opinion is that it does not set the stage for even further erosion of the protective measures outside abortion clinics.”

The ruling disappointed abortion rights advocates, but it did not surprise them. Less expected was the unanimity. Both Justice Ruth Bader Ginsburg and Justice Sonia Sotomayor had signaled sympathy for the law in oral arguments, with Ginsburg remarking that the state “doesn’t know in advance who are the well-behaved people and who are the people who won’t behave well. After the disturbance occurs, it’s too late.” But besides concurrences by Justice Antonin Scalia and Justice Samuel Alito, who complained that the court did not go far enough, the court spoke as one.

The main plaintiff in the buffer zone case, an elderly grandmother and self-described “sidewalk counselor” Eleanor McCullen said in a statement recently, “I am delighted and thankful to God that the court has protected my right to engage in kind, hopeful discussions with women who feel they have nowhere else to turn.”

The court’s decision accepted McCullen’s lawyers’ characterization that what was at stake was “personal, caring, consensual conversations with women,” which were harder to have at a distance. Pro-choice activists and clinic workers begged to differ, using the hashtag #protectthezone to describe their experiences.

“Our patients are free to talk to whomever they wish to talk with about their medical care, but this is essentially compelling them to engage with the protesters, or be screamed at,” said Marty Walz, CEO of Planned Parenthood League of Massachusetts, who, as a state legislator, co-sponsored the law in question.



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Abortion rights supporters had been pessimistic when the Supreme Court agreed to hear the case. There was no split in the lower courts, one usual prompt for the Supreme Court, and both the district court and the First Circuit Court of Appeals had ruled that the Massachusetts law was constitutional under the Supreme Court's own precedent in a 2000 case.

“The law does not require that a patient run a public-sidewalk gauntlet before entering an abortion clinic,” the three-judge panel of the First Circuit had concluded, adding, “First Amendment rights do not guarantee to the plaintiffs (or anyone else, for that matter) an interested, attentive, and receptive audience, available at close-range.”

According to a survey of members of the National Abortion Federation, 51% of facilities with a buffer zone said they saw criminal activity drop after it was put in place. Three quarters said it had “improved patient and staff access to the facilities.” In the same survey, 92% of facilities said they are concerned about their patients' safety approaching the facility, said the group's president, Vicki Saporta.

“No one should be forced to endure harassment, violence, obstruction, or intimidation when they visit a medical facility,” said Physicians for Reproductive Health board chair Nancy L. Stanwood in a statement, adding “We respect the right of those who disagree with us to voice their opposition; however, we believe that the same respect should be afforded to the right to access health care services free from harassment and violence.”

The American Civil Liberties Union was in a trickier place. It had come out against the last abortion buffer zone case before the Supreme Court, *Hill v. Colorado*, but supported the Massachusetts law as a balance between competing constitutional rights to free speech and to access an abortion.

“We agree that a fixed buffer zone imposes serious First Amendment costs, but we also think the court underestimated the proven difficulty of protecting the constitutional rights of women seeking abortions by enforcing other laws – especially regarding harassment – outside abortion clinics,” said Steven R. Shapiro, the group's legal director, in a statement.

Discussion Questions

1. Is the free speech protection of the First Amendment to the United States Constitution an absolute right, or should it be subject to reasonable “time, place and manner” restrictions? Explain your response.

The First Amendment to the United States Constitution states, in pertinent part:

“Congress shall make no law...abridging the freedom of speech...”



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The specific language of the First Amendment would appear to indicate that the free speech right is absolute, but over the years, the judicial and legislative branches of government have imposed many “time, place, and manner” restrictions on the right. As examples, one may not yell “Fire!” in a crowded theatre when there is no fire, defame another person, or disseminate child pornography and claim freedom of expression. Whether imposing a 35-foot buffer zone around an abortion clinic is a reasonable “place” restriction is obviously subject to interpretation, and student opinions will likely vary in response to the issue.

2. Are you surprised that the United States Supreme Court decision in this case was unanimous? Why or why not?

This is a subjective question, so student opinions will likely vary. Given the political and ideological differences among Supreme Court justices, it may be surprising to many students that the decision was unanimous.

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

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



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Video Suggestions

Video 1: "Tragic Accident or Murder in Hot-Car Toddler Death?"

http://www.cnn.com/2014/06/25/justice/georgia-toddler-death/index.html?hpt=hp_t2

Note: For further information regarding this topic, please also refer to the following article, also included at the above-referenced internet address:

"Tragic Accident or Murder in Hot-Car Toddler Death?"

According to the article, what sounded like the most tragic of accidents -- a dad absentmindedly leaving his toddler in the car on a scorching Georgia day -- is now being treated by police as a horrific crime.

Two new details were added to a revised Cobb County criminal warrant recently: Not only did Justin Ross Harris put his son in the car minutes before arriving at work on June 18, but he also returned to his car hours later during his lunch break.

Harris placed his son, 22-month-old Cooper, into a rear-facing child restraint in the backseat of his Hyundai Tucson after eating breakfast at a fast-food restaurant. He then drove to his workplace, a Home Depot corporate office about a half-mile away, according to the warrant.

The 33-year-old father returned to the car during his lunch break, opening the driver's side door "to place an object into the vehicle," the warrant states. Later that afternoon, around 4:16 p.m., Harris left his workplace near Vinings, outside Atlanta. Within minutes, he pulled into a shopping center asking for assistance with the toddler, who had been in the car for about seven hours at that point, the warrant says.

Besides felony murder, Harris was charged June 19 with first-degree child cruelty.

Recently, a magistrate judge downgraded the lesser charge to second-degree child cruelty.

Mark Gargaros, a CNN legal analyst, offered this interpretation of the downgrading of that charge: "It's almost a concession that they don't believe,



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that the prosecutors don't believe they've got the evidence to say this is intended or premeditated," he said.

The second-degree warrant says Harris "did with criminal negligence causes (sic) a child under the age of 18 cruel or excessive physical or mental pain."

The earlier, first-degree child cruelty warrant said the crime occurs when a person "willfully deprives the child of necessary sustenance to the extent that the child's health or well-being is jeopardized. ..."

"There's a difference between negligence and gross negligence," Cobb Police spokesman Mike Bowman said at a press conference. "The thing about the negligence is that it could happen to anybody. The gross negligence shows that there's some other circumstances revolving around this."

When a reporter directly asked if authorities think it is malice or negligence, Bowman said, "I honestly don't have an answer for that question."

But in a seeming contradiction of the charge being downgraded, Cobb County Police Chief John House said recently in a press release, "The chain of events that occurred in this case does not point toward simple negligence and evidence will be presented to support this allegation."

Witness Dale Hamilton said that an emotional Harris pulled into the shopping center after purportedly realizing he had forgotten to drop Cooper off at day care at 8:30 a.m. The day care is reportedly located at the Home Depot office where Harris works.

"Laid his son on the ground, started doing CPR trying to resuscitate him. Apparently the child wasn't responding," Hamilton said.

Police saw a crowd, and when officers began to investigate, they saw the child on the ground. Once it became clear that Cooper was dead, Harris had to be physically restrained, police said.

"There were a number of witnesses -- passers-by in the area who observed basically the father in a very distressed moment," said Sgt. Dana Pierce of the Cobb County police.

Added Hamilton, "He kept saying, 'What have I done? What have I done?' And that's all that I could ascertain that he was saying."

Police seemed sympathetic at first, and Pierce told media that Harris apparently forgot the child was in the back of the vehicle while he was at work.

The average temperature was about 80 degrees that day, but the mercury topped 92 at the hottest point in the day. Police say the temperature was 88 degrees when the child was pronounced dead at the scene.



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The child's cause of death was "consistent with hyperthermia and the investigative information suggests the manner of death is homicide," the Cobb County Medical Examiner's Office said, according to a Cobb County Department of Public Safety release issued recently.

The release says the medical examiner's office is waiting for toxicology test results before making an official ruling as to the cause and manner of the toddler's death.

The story of the hapless father making an innocent mistake quickly changed as police released more details.

"Within moments of the first responders getting to the scene and doing their job and questions began to be asked about the moments that led up to their arrival at the scene, some of those answers were not making sense to the first responders," Pierce said last week.

"I've been in law enforcement for 34 years. What I know about this case shocks my conscience as a police officer, a father and a grandfather."

When Harris was charged with felony murder and child cruelty, there was vigorous debate over whether the heartbroken father should be punished. Surely, he had suffered enough, many thought. A change.org petition was started urging authorities to release Harris. That petition was withdrawn recently, with this note explaining: "I think that based on the recent developments this petition is no longer relevant. I still pray that this was truly an accident. If that is the case, the DA now knows that the community does not want Justin prosecuted on murder charges."

Atlanta area resident Erin Krans started a second change.org petition asking prosecutors to drop the charges. It has garnered hundreds of signatures.

According to an obituary on legacy.com, Cooper "was a happy baby. He loved to speak with anyone and made impacts on many people's lives in his short time."

The toddler loved cars and trucks and would tell them goodbye as he left parking lots, the obituary said, adding that he had just learned the color red.

"As we passed red vehicles he would tell his mommy and his daddy, 'Bye red car, bye red truck.' He was a joy and will always be cherished," it said.

Last week, Harris pleaded not guilty to felony murder and child cruelty charges. He's being held without bond at the Cobb County Jail and is scheduled to appear before a county judge July 3.

Cooper's mother, Leanna Harris, said that she's been advised not to discuss the case with the media.



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"We have been in communication with the mother throughout the investigation. At this time, I'm not at liberty to discuss her involvement. That's a part of the case our detectives are working on," Pierce said.

Repeated calls to the father's attorney have not been returned, and a woman answering the phone at H. Maddox Kilgore's office said the lawyer would not be commenting at this time.

Home Depot said through spokeswoman Catherine Woodling that, per company policy, Harris is on a leave of absence without pay.

"It is not appropriate to comment on any new developments in this active investigation. Like the rest of our community, we're deeply saddened by this tragic event and we continue to cooperate with authorities on their ongoing investigation," she said in an e-mail.

Discussion Questions

1. The article indicates that Justin Ross Harris has been charged with felony murder. Define felony murder.

The felony murder rule holds that if the death of another human being occurs during the commission or attempted commission of a particularly serious felony, the person(s) who committed the felony can be charged with murder. As a general rule, intent to take the life of another person is not necessary for felony murder liability.

In the subject case, if a court determines that Justin Ross Harris committed felony child cruelty, he could also be convicted of felony murder for the death of his son. This could occur even without proof beyond reasonable doubt that Mr. Harris intended for his child to die.

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

First-degree child cruelty presupposes the criminal intent to harm a child (or extreme recklessness or gross negligence approximating criminal intent), while second-degree child cruelty is based on criminal negligence (the failure to do what a similar person would do under the same or similar circumstances).

4. In your reasoned opinion, should this be a criminal case? Explain your response.

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



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Video 2: "What You Need to Know About the Aereo Decision"

<http://www.washingtonpost.com/blogs/the-switch/wp/2014/06/25/the-supreme-court-just-killed-aereo/?wpsrc=AG0003327>

Note: For further information regarding this topic, please also refer to the following article, also included at the above-referenced internet address:

According to the article, in a 6-3 ruling, the United States Supreme Court has ruled that Aereo is in violation of copyright law when it streams over-the-air television channels to consumers.

The ruling is a major victory for broadcasters, who have demanded that Aereo pay them a fee for carrying television content. Writing for the Court, Justice Stephen Breyer said Aereo is no different from other video providers because the content it sends to viewers constitutes a "public performance." That's despite the fact Aereo gives each of its subscribers their own television antennas in a deliberate attempt to circumvent that legal issue.

"These behind-the-scenes technological differences do not distinguish Aereo's system from cable systems, which do perform publicly," the Court's opinion reads.

This means that like cable companies, Aereo must pay for "retransmission" of broadcast content. Aereo had argued that its service was merely an extension of traditional cloud-based DVR services. Aereo defenders claimed during oral arguments that a negative outcome for the company would result in unintended consequences for the broader cloud computing industry. But the Court does not seem to agree, asserting simply that it does not expect its narrow ruling on Aereo to hamper innovation, as some fear it will.

"Given the limited nature of this holding, the Court does not believe its decision will discourage the emergence or use of different kinds of technologies," according to the opinion.

The high court's sweeping decision means little will change for consumers who had looked to Aereo as a way to drop their cable subscriptions. Consumers have been increasingly clamoring for live television--particularly sports--conveniently streamed over a device of one's choice without having to pay for an entire cable bundle--a service that Aereo offered.

But the court left little hope for Aereo to maintain its business without paying the licensing fees cable companies do to retransmit broadcast program. The decision will fortify the businesses of broadcast networks, which fiercely fought Aereo in several courts over the past two years for what they said amounted to theft of their shows.

Three conservative justices dissented: Antonin Scalia, Clarence Thomas and Samuel Alito. Comparing Aereo to a "copy shop that provides its patrons with a library card," Scalia argued that



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Aereo did not transmit anything at all — its customers play the content to themselves, and so could not have violated copyright law.

While Aereo will likely live on in some form over the near term, its entire business model was predicated on avoiding paying retransmission fees.

Had the Court ruled the other way, the decision would have likely upended the entire television industry.

Discussion Questions

1. What does copyright law protect?

Copyright protection provides the right of exclusivity to the creator of a literary or an artistic work. The right of exclusivity refers to the right to control the dissemination and use of copyrighted material. The creators of literary or artistic works have the right to enjoy the “fruits of their labor” in terms of the profit generated from the sale of copyrighted material.

2. What is the best argument for broadcasters in this case? What is the best argument for Aereo?

The best argument for broadcasters in this case is based on the fact that television shows are copyrighted material, and that as the owners of such material, broadcasters have the right to control the use and dissemination of copyrighted material, as well as any profits generated (or potentially generated) from consumer use of such content. The best argument for Aereo is that it is not directly violating copyright law, since customers access and play the television content themselves; in other words, the company only provides the means by which to access such content. In your author’s opinion, Aereo’s argument is very similar to the one made in the late 1990s by the online music forum Napster—that in merely providing an online forum for customers to share music and other digital file content, Napster argued that it was not directly violating copyright law, since it did not directly upload and download content. In the Napster case, the court was still convinced that Napster had committed “contributory copyright infringement,” since it provided the means (the online forum) by which its visitors violated copyright. A similar argument could be made against Aereo—that providing digital antennas for customers to use to access television stations and programming without networks’ permission constitutes contributory copyright infringement.

3. In your reasoned opinion, do you agree or disagree with the United States Supreme Court decision in this case? Explain your response.

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



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Of Special Interest

This section of the newsletter addresses the recent United States "Hobby Lobby" decision supporting the religious freedom of privately-held corporations.

Ethical Dilemma

"Supreme Court Rejects Contraceptives Mandate for Some Corporations"

<http://www.nytimes.com/2014/07/01/us/hobby-lobby-case-supreme-court-contraception.html? r=0>

According to the article, the Supreme Court ruled recently that requiring family-owned corporations to pay for insurance coverage for contraception under the Affordable Care Act violated a federal law protecting religious freedom. It was, a dissent said, "a decision of startling breadth."

The 5-to-4 ruling, which applied to two companies owned by Christian families, opened the door to many challenges from corporations over laws that they claim violate their religious liberty.

Justice Samuel A. Alito Jr., writing for the majority, emphasized the ruling's limited scope. For starters, he said, the court ruled only that a federal religious-freedom law applied to "closely held" for-profit corporations run on religious principles. Even those corporations, he said, were unlikely to prevail if they objected to complying with other laws on religious grounds.

But Justice Ruth Bader Ginsburg's dissent sounded an alarm. She attacked the majority opinion as a radical overhaul of corporate rights, one she said could apply to all corporations and to countless laws.

The contraceptive coverage requirement was challenged by two corporations whose owners say they try to run their businesses on Christian principles: Hobby Lobby, a chain of craft stores, and Conestoga Wood Specialties, which makes wood cabinets. The requirement has also been challenged in 50 other cases, according to the Becket Fund for Religious Liberty, which represented Hobby Lobby.

Justice Alito said the requirement that the two companies provide contraception coverage imposed a substantial burden on their religious liberty. Hobby Lobby, he said, could face annual fines of \$475 million if it failed to comply.

Justice Alito said he accepted for the sake of argument that the government had a compelling interest in making sure women have access to



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contraception. But he said there were ways of doing that without violating the companies' religious rights.

The government could pay for the coverage, he said. Or it could employ the accommodation already in use for certain nonprofit religious organizations, one requiring insurance companies to provide the coverage. The majority did not go so far as to endorse the accommodation.

Chief Justice Roberts and Justices Antonin Scalia, Anthony M. Kennedy and Clarence Thomas joined the majority opinion.

Justice Ginsburg, joined on this point by Justice Sonia Sotomayor, said the court had for the first time extended religious-freedom protections to "the commercial, profit-making world." "The court's expansive notion of corporate personhood," Justice Ginsburg wrote, "invites for-profit entities to seek religion-based exemptions from regulations they deem offensive to their faiths."

She added that the contraception coverage requirement was vital to women's health and reproductive freedom. Justices Stephen G. Breyer and Elena Kagan joined almost all of her dissent, but they said there was no need to take a position on whether corporations may bring claims under the religious liberty law.

The two sides differed on the sweep of the ruling.

"Although the court attempts to cabin its language to closely held corporations," Justice Ginsburg wrote, "its logic extends to corporations of any size, public or private." She added that corporations could now object to "health coverage of vaccines, or paying the minimum wage, or according women equal pay for substantially similar work."

But Justice Alito said that "it seems unlikely" that publicly held "corporate giants" would make religious liberty claims. He added that he did not expect to see "a flood of religious objections regarding a wide variety of medical procedures and drugs, such as vaccinations and blood transfusions." Racial discrimination, he said, could not "be cloaked as religious practice to escape legal sanction."

Justice Alito did not mention laws barring discrimination based on sexual orientation. Justice Ginsburg said all sorts of antidiscrimination laws may be at risk.

Josh Earnest, the White House press secretary, said that the court's decision "jeopardizes the health of women employed by these companies" and added that "women should make personal health care decisions for themselves, rather than their bosses deciding for them." Mr. Earnest urged Congress to find ways to make all contraceptives available to the companies affected.

Lori Windham, a lawyer for Hobby Lobby, said, "The Supreme Court recognized that Americans do not lose their religious freedom when they run a family business."



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The health care law and related regulations require many employers to provide female workers with comprehensive insurance coverage for a variety of methods of contraception. The companies objected to covering intrauterine devices and so-called morning-after pills, saying they were akin to abortion. Many scientists disagree.

No one has disputed the sincerity of their religious beliefs,” Justice Alito wrote. The dissenters agreed.

The companies said they had no objection to some forms of contraception, including condoms, diaphragms, sponges, several kinds of birth control pills and sterilization surgery. Justice Ginsburg wrote that other companies may object to all contraception, and that the ruling would seem to allow them to opt out of any contraception coverage.

A federal judge has estimated that a third of Americans are not subject to the requirement that their employers provide coverage for contraceptives. Small employers need not offer health coverage at all; religious employers like churches are exempt; religiously affiliated groups may claim an exemption; and some insurance plans that had not previously offered the coverage are grandfathered in.

In its briefs in the two cases, *Burwell v. Hobby Lobby Stores*, No. 13-354, and *Conestoga Wood Specialties v. Burwell*, No. 13-356, the administration said that for-profit corporations like Hobby Lobby and Conestoga Wood must comply with the law or face fines.

The companies challenged the coverage requirement under the Religious Freedom Restoration Act of 1993.

Some scholars said the companies would be better off financially if they dropped insurance coverage entirely, and so could not be said to face a substantial burden on their religious freedom. But Justice Alito said the companies also had religious reasons for providing general health insurance. He added that dropping it could place the companies at “a competitive disadvantage.”

The administration argued that requiring insurance plans to include comprehensive coverage for contraception promotes public health and ensures that “women have equal access to health care services.” The government’s briefs added that doctors, rather than employers, should decide which form of contraception is best.

A supporting brief from the Guttmacher Institute, a research and policy group, said that many women cannot afford the most effective means of birth control and that the coverage requirement will reduce unintended pregnancies and abortions. Justice Ginsburg cited the brief in her dissent. The decision’s acknowledgment of corporations’ religious liberty rights was reminiscent of *Citizens United v. Federal Election Commission*, a 2010 ruling that affirmed the free speech rights of corporations. Justice Alito explained why corporations should sometimes be regarded as persons. “A corporation is simply a form of organization used by human beings to achieve desired ends,” he



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wrote. “When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people.”

Justice Ginsburg said the commercial nature of for-profit corporations made a difference.

“The court forgets that religious organizations exist to serve a community of believers,” she wrote. “For-profit corporations do not fit that bill.”

Discussion Questions

1. Describe the relationship of the First Amendment to the United States Constitution to this case.

The First Amendment to the United States Constitution provides, in pertinent part, the following:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”

In terms of the relationship of the First Amendment to this case, the issue is whether a corporation such as Hobby Lobby has a constitutionally-protected right to the “free exercise” of religion. In its decision, the United States Supreme Court concluded (in a 5-4 decision) that a privately-held corporation does have a free exercise right, and that such right extends to denying employees company-provided health insurance coverage for certain contraceptives.

2. Do you agree or disagree with the United States Supreme Court decision in this case? Explain your response.

This is an opinion question, so student responses will likely vary. This is a hotly-contested case, so student discussion of the case will likely necessitate closely-monitored and moderated supervision.

3. Is it ethical for a corporation to deny employees health coverage on religious grounds, particularly when the religious beliefs of the corporation are different from the religious beliefs of employees? Explain your response.

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



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Of Special Interest

This section of the newsletter will assist you in addressing Article 1 ("Supreme Court: Police Need Warrant to Search Cell Phones") and the Ethical Dilemma ("Supreme Court Rejects Contraceptives Mandate for Some Corporations") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 1-“Supreme Court: Police Need Warrant to Search Cell Phones”):

For an interpretation of the United State Supreme Court decision addressing police search of an arrested person’s cell phone, please see the following opinion piece by Danny Cevallos, a criminal defense attorney and CNN legal analyst:

“Cell Phone Ruling Keeps Cops Out of Your Business”

http://www.cnn.com/2014/04/28/opinion/cevallos-police-search-cell-phone/index.html?hpt=hp_t3

Recently, the U.S. Supreme Court issued its unanimous ruling in two cases testing the authority of police to conduct a warrantless search of an arrested person's cell phone, holding that police generally must obtain a warrant before searching the cell phone of someone they arrest.

For the most part, the justices' rulings in cases dealing with the Fourth Amendment go largely unnoticed by the public, but the court has reminded us in this opinion that modern technology is subject to the same original privacy rights that flow from the Constitution.

Most citizens are not interested in these cases the way they are in issues like same-sex marriage or gun control. On the whole, Americans don't worry too much about search-and-seizure issues because they think these cases don't apply to them.

"Those cases only apply to criminals."

"I'm not planning on getting arrested."

"I have nothing to hide."

The sentiment is understandable. Most of these cases involve application of the "exclusionary rule" to throw out evidence like guns or drugs, based on the way it was seized.

But this does not mean that only criminal defendants have an interest here. The rest of us should pay attention for two reasons. First, most people don't



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realize how easy it is for the police to arrest a person and seize his or her property. Second, our private information is no longer on a piece of paper in a safe. It's in the form of data, and it's on our person, or in that thing they call the "cloud." If police can access your cell phone without a warrant, they can access your entire life.

Don't believe me? What's in your cell phone right now? Is there anything you wouldn't want a stranger swiping through? How about the apps on your phone? Do you do any banking or other transactions on there? Cell phones not only contain data -- they are now becoming a portal beyond the device itself, into a third-party world, whether that's your health information, your finances, or anything else out there in the cloud.

And if you're like most people, you're not immune to arrest. Police can potentially arrest you for minor infractions like littering, jaywalking, and traffic offenses. And just because they arrest you, should they be able to swipe through your pictures and text messages? Police can search containers on your person without a warrant if they contain evidence that might be destroyed, or a potential weapon. Unless you can throw your iPhone like a ninja shuriken, it's probably not much of a weapon.

The two cases decided recently by the Supreme Court involved somewhat different factual situations.

In *Riley v. California*, the case involved a stop for a traffic violation, which led to David Riley's arrest on weapons charges. An officer performed a "search incident to arrest" (one conducted without a warrant) and accessed information on a phone in Riley's pocket. He saw on the phone the repeated use of gang terminology. A later search at the station of the phone's digital contents led to Riley being charged in a gang shooting.

The *United States v. Wurie* case involved an arrest after police observed Brima Wurie engage in a drug sale. As in *Riley*, the officers seized a cell phone and noticed on the screen that the phone was receiving multiple calls from "my house." The officers opened the phone, traced the "my house" number to an apartment, obtained a search warrant and found drugs, a firearm and other bad stuff.

In deciding these two appeals, the Supreme Court ruled that the police generally may not, absent a warrant, search digital information on a mobile phone seized from an arrestee.

Officers may still examine the physical aspects of a cell phone to ensure that it will not be used as a weapon -- which is a definite possibility due to modern criminal ingenuity. But the Supreme Court has now announced that absent certain urgent circumstances, the actual data on a phone is never physically dangerous. You can't throw an emoji at anyone, or stab someone with a Snapchat. Citizens enjoy more substantial privacy interests when digital data is involved, says the court.

The Supreme Court ruling in the *Riley* case says American jurisprudence has "recognized that the Fourth Amendment was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in



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an unrestrained search for evidence of criminal activity. Opposition to such searches was in fact one of the driving forces behind the Revolution itself."

Teaching Tip 2 (Related to the Ethical Dilemma—"Supreme Court Rejects Contraceptives Mandate for Some Corporations"):

For an interpretation of the Hobby Lobby decision and its effect on the country, please see the following opinion piece by Binyamin Appelbaum, an economics reporter for the New York Times:

"What the Hobby Lobby Ruling Means for America"

<http://www.nytimes.com/2014/07/27/magazine/what-the-hobby-lobby-ruling-means-for-america.html? r=0>

Last month, as you've probably heard, a closely divided Supreme Court ruled that corporations with religious owners cannot be required to pay for insurance coverage of contraception. The so-called Hobby Lobby decision, named for the chain of craft stores that brought the case, has been both praised and condemned for expanding religious rights and constraining Obamacare. But beneath the political implications, the ruling has significant economic undertones. It expands the right of corporations to be treated like people, part of a trend that may be contributing to the rise of economic inequality.

The notion that corporations are people is ridiculous on its face, but often true. Although Mitt Romney was mocked for saying it on the campaign trail a few summers ago, the U.S. Code, our national rule book, defines corporations as people in its very first sentence. And since the 19th century, the Supreme Court has ruled that corporations are entitled to a wide range of constitutional protections. This was a business decision, and it was a good one.

Incorporation encourages risk-taking: Investors are far more likely to put money into a business that can outlast its creators; managers, for their part, are more likely to take risks themselves because they owe nothing to the investors if they fail.

The rise of corporations, which developed more fully in the United States than in other industrializing nations, helped to make it the richest nation on earth. And economic historians have found that states where businesses could incorporate more easily tended to grow more quickly, aiding New York's rise as a banking center and helping Pennsylvania's coal industry to outstrip Virginia's. The notion of corporate personhood still sounds weird, but we rely upon it constantly in our everyday lives. The corporation that published this column, for instance, is exercising its constitutional right to speak freely and to make contracts, taking money from some of you and giving a little to me.

Since the 1950s, however, the treatment of corporations as people has expanded beyond its original economic logic. According to Naomi Lamoreaux, a professor of economics and history at Yale



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University, the success of incorporation led states to broaden eligibility to advocacy groups, like the N.A.A.C.P. and the Congress of Racial Equality, which then became “the first corporations to convince the Court that they deserved a broader set of rights.” Ever since, the court has intermittently extended the logic of those rulings, and in 2010 it ruled that an advocacy group called Citizens United had the right to spend money on political advertising — and that every other corporation did, too. Last month, it added religious rights to the mix.

The basic justification is that corporations, owned by people, should have the same freedoms as people. And in many ways, of course, they already do. Chick-fil-A does not sell sandwiches on Sundays. Interstate Batteries tells prospective employees, “While it is not necessary to be a Christian to be employed, it is a part of the daily work life for Interstate team members.” In 1999, Omni Hotels said its new owner, a Christian, had made a “moral decision” to stop selling pay-per-view pornography.

But corporations, as F. Scott Fitzgerald might have put it, are not like you and me. Those special legal powers, which allow them to play a valuable role in the economy, can also give them the financial power to tilt the rules of the game by lobbying for particular legislation, among other things. “Those properties, so beneficial in the economic sphere, pose special dangers in the political sphere,” Justice William Rehnquist wrote in a dissenting opinion from a 1978 ruling that is a precursor to *Citizens United*. “Indeed, the States might reasonably fear that the corporation would use its economic power to obtain further benefits beyond those already bestowed.”

The danger is not only that corporations can act at the expense of society, but also that the people who control them can act at the expense of their own shareholders, employees and customers. While the Hobby Lobby decision ostensibly addresses only a narrow set of circumstances — a corporation with relatively few owners, a religious objection to particular kinds of birth control — these sorts of limited rulings have a history of becoming more broadly cited as precedent over time. Also, the logic of this particular decision was so expansive and open-ended. “A corporation is simply a form of organization used by human beings to achieve desired ends,” Justice Samuel Alito wrote. “When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people.” Justice Ruth Bader Ginsburg argued in her dissenting opinion that a corporation might object on religious grounds to paying for blood transfusions, vaccinations or antidepressants. Other scholars say the same logic could justify a right to privacy as a shield against regulatory scrutiny, or a right to bear arms.

Minority shareholders have little power to influence the choices that corporations make. Benjamin I. Sachs, a law professor at Harvard University, notes that while federal law lets union members prevent the use of their dues for political purposes, shareholders do not have similar rights. “If we’re going to say that collectives have speech rights, then we should treat unions and corporations the same,” Sachs told me. Employees are even more vulnerable. When companies like YUM! Brands, which owns KFC and Taco Bell, campaign against minimum-wage increases, they are effectively using the profits generated by their employees to limit the compensation of those same employees. And of course, some of Hobby Lobby’s 13,000 workers will now need to pay for contraception.



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Shareholders can sell their shares, sure, and employees can find new jobs. But every increase in corporate rights is a potential limitation on the menu of available jobs and investments. “The idea that if you don’t like what the corporation is doing you should sell your stock, or find a different job, has a certain amount of appeal,” said Darrell A.H. Miller, a professor of law at Duke University. “But it also assumes that people are able to just fish and cut bait. Capital is easier to move around than your body and your family.”

If the court follows the logic of its Hobby Lobby decision in the decades to come, it’s not so hard to imagine a job market where people must interview employers about their religious and political views. Or where people who need to make a living may just feel compelled to accept a work environment increasingly shaped by their employers’ beliefs.



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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	Chapter 5	Chapters 7 and 12	Chapters 2 and 5	Chapters 2 and 5
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapter 5	Chapters 7 and 12	Chapters 2 and 5	Chapters 2 and 5
Kubasek et al., Dynamic Business Law: The Essentials	Chapter 4	Chapters 5 and 7	Chapters 1 and 4	Chapters 1 and 4
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapter 3	Chapters 5 and 8	Chapters 3 and 4	Chapters 3 and 4
Barnes et al., Law for Business	Chapter 4	Chapters 5 and 8	Chapters 3 and 4	Chapters 3 and 4
Brown et al., Business Law with UCC Applications	Chapter 2	Chapters 5 and 33	Chapters 1 and 2	Chapters 1 and 2
Reed et al., The Legal and Regulatory Environment of Business	Chapter 6	Chapters 11 and 13	Chapters 2 and 6	Chapters 2 and 6
McAdams et al., Law, Business & Society	Chapter 5	Chapters 4 and 16	Chapters 2 and 5	Chapters 2 and 5
Melvin, The Legal Environment of Business: A Managerial Approach	Chapter 2	Chapters 23 and 25	Chapters 2 and 5	Chapters 2 and 5
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapter 1	Chapters 8 and 15	Chapter 1	Chapter 1



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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)

