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# Proceedings

A monthly newsletter from McGraw-Hill

**May 2010** Volume 1, Issue 10

The McGraw-Hill Companies

**Contents**



## Dear Professor,

Welcome to McGraw-Hill's May issue of *Proceedings*, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 1, Issue 10 of *Proceedings* follows the same format as previous editions of the newsletter, incorporating "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the May newsletter topics with the various McGraw-Hill business law textbooks.

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

1. Los Angeles' decision to restrict the Hare Krishnas' solicitation of immediate donations at Los Angeles International Airport, and whether such a restriction represents an unconstitutional infringement of free speech rights and/or free exercise of religion rights;

2. An increase in the number of sexual harassment claims filed by male complainants;

3. The Obama administration's establishment of a 35.5 miles-per-gallon fuel efficiency standard for the United States automobile industry by 2016;

4. Recent developments regarding federal regulation of "free" credit reports and the companies who offer them to customers in return for enrollment in credit monitoring services for a fee;

5. Whether a Colorado casino is legally and/or ethically obligated to pay for a $42 million jackpot it claims was the result of computer malfunction; and

6. President Obama's decision to lift restrictions on offshore oil drilling.

This newsletter marks the end of Volume 1 of *Proceedings*, consistent with the fast-approaching end of the 2009-2010 academic year. I sincerely hope that you have found *Proceedings* a valuable resource in terms of bringing topical, interesting law-related material to your students. It has been my absolute privilege to serve as your editor, and I hope to bring you new content in the 2010-2011 academic year!

Have a safe, enjoyable and restful summer.

Jeffrey D. Penley, J.D.
Catawba Valley Community College
Hickory, North Carolina

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**Of Special Interest**

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

1) Los Angeles' decision to restrict the Hare Krishnas' solicitation of immediate donations at Los Angeles International Airport, and whether such a restriction represents an unconstitutional infringement of free speech rights and/or free exercise of religion rights;

2) An increase in the number of sexual harassment claims filed by male complainants; and

3) The Obama administration's establishment of a 35.5 miles-per-gallon fuel efficiency standard for the United States automobile industry by 2016.

## Hot Topics in Business Law

**Article 1: "Court: Hare Krishnas Barred From LAX Solicitation"**

**http://www.azcentral.com/news/articles/2010/03/25/20100325hare-krishnas-ban-at-LAX.html**

This article indicates that the California high court ended a long-running legal battle recently when it barred the Hare Krishnas from soliciting donations at Los Angeles International Airport.

The unanimous ruling written by Justice Carlos Moreno upheld the Los Angeles ordinance barring solicitations as a reasonable security measure to protect harried passengers rushing to make travel connections at the airport known as LAX.

California's other major airports supported Los Angeles' legal position, and the religious group and other organizations will be barred from soliciting donations in California airports.

"Soliciting the immediate receipt of funds at a busy international airport like LAX is particularly problematic," Moreno wrote for the court. "The problems posed by solicitations for the immediate receipt of funds that arise in any public place would be exacerbated in the often crowded and hectic environment of a large international airport."

The Hare Krishnas are still free to preach on airport property and ask passengers to send in donations later. But the group that has been a fixture at the airport since 1974 and was lampooned in the 1980 movie "Airport" is barred from receiving cash and checks on airport property. The ban applies to others groups, too.

The International Society for Krishna Consciousness of California sued in federal court in 1997 when the Los Angeles City Council prohibited the receiving of donations at the city-owned airport. The council later changed the law to allow solicitations in designated areas until the initial federal lawsuit was filed.

U.S. District Court Judge Consuelo Marshall initially ruled in the Hare Krishnas' favor. But the 9th U.S. Circuit Court of Appeals asked the California Supreme Court to decide the case because it was a state law rather than federal law being challenged.

The Krishnas' lawyer, David Liberman, said no further appeals appear possible.

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"It's pretty conclusive and it doesn't look like there are any loopholes," Liberman said. "As far as I can tell, it's over."

## Discussion Questions

1. How do you respond to the argument that the Hare Krishnas' presence at Los Angeles International Airport is free speech protected by the First Amendment to the United States Constitution?

*The Los Angeles ordinance only prohibits the solicitation of immediate donations; as the article indicates, the Hare Krishnas are still free to demonstrate their religious beliefs on airport property and ask passengers to send in donations later. In that sense, the ordinance still protects free speech. Even taking into consideration First Amendment constitutional protections, there is no such thing as absolute freedom of speech. The government can impose reasonable "time, place and manner" restrictions on speech. The efficient and safe operation of Los Angeles International Airport is enough to justify reasonable restrictions on the Hare Krishnas' solicitation of immediate donations.*

2. How do you respond to the argument that the Hare Krishnas' presence at Los Angeles International Airport is the free exercise of religion protected by the First Amendment to the United States Constitution?

*In addition to protecting freedom of speech, the First Amendment to the United States Constitution also protects freedom of religion. The First Amendment provides, in pertinent part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." Since Los Angeles International Airport is government-owned property, constitutional protection regarding the free exercise of religion arguably applies. Remember, however, that the Los Angeles ordinance does not prohibit the Hare Krishnas' exercise of religion; rather, the Hare Krishnas are still free to demonstrate their religious beliefs on airport property, and the only practice the ordinance prohibits is the solicitation of immediate donations.*

3. According to the article, the Krishnas' lawyer, David Liberman, said no further appeals appear possible. "It's pretty conclusive and it doesn't look like there are any loopholes," Liberman said. "As far as I can tell, it's over." Do you agree with attorney Liberman that all appeals have been exhausted?

*Based on the opinion of your author, attorney Liberman is correct. The facts demonstrated in this case appear to indicate no violation of free speech rights, nor a violation of free exercise of religion rights. Although the case does present First Amendment issues, a federal court would likely side with the holding of the California Supreme Court. Attorney Liberman appears to be aware of this, since his comments indicate no initiative on his part to pursue the case in federal court.*

### Article 2: "Sexual Harassment Claims By Men Growing but Not Equal"

**http://abcnews.go.com/Business/TheLaw/sexual-harassment-claims-men-growing-equal/story?id=10198753**

This article notes that after Jed Lorenzen won his sexual harassment lawsuit, he bought himself a new suit.

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"It's my power suit to remind me that's what you get when you stand up for yourself," the 33-year-old Los Angeles, California man said.

When it comes to alleged sexual harassment, more men are standing up for themselves these days. Of the nearly 12,700 sexual harassment complaints filed with the United States Equal Opportunity Commission (EEOC) in the 2009 fiscal year, 16 percent -- some 2,030 -- came from men. That's up from 9.9 percent, or roughly 1,430, a decade-and-half earlier. The number of complaints from men increased even as the number of overall cases has declined.

"It's not really clear whether more men are being subjected to harassment or more men are willing to come forward," said Ernest Haffner, a senior attorney adviser at the EEOC. "There are more decisions in the courts dealing with sexual harassment by men -- it could be that just more men are aware of their rights as they speak to attorneys."

But just because more men are filing claims, it does not mean male victims have achieved parity with their female counterparts -- at least not in the public eye, some experts say.

Attorney Keith Fink, who represented Lorenzen and his twin brother Wyatt in a complaint the two filed against a restaurant, says men still face a stigma in speaking out about sexual harassment. That's true for both male and female-instigated harassment, he said.

"People either are homophobic or they think men can weather the storm of verbal barrage better than a female, or they're just not as empathetic as a female (victim)," he said.

In the Lorenzens' case, a jury awarded the brothers $1,000 each in damages, a figure Fink suspects would have been much higher had his clients been women.

Jed Lorenzen agrees.

"I thought the monetary amount was quite ridiculous, but I think it was because we weren't women up there on the stand, breaking down and crying and looking, I guess, 'more weak.'"

"I don' t consider women weak," he added, "(but) I think because we are men, our case wasn't taken as seriously."

Fink said that the potential for lower awards -- and hence, lower attorney's fees -- is one reason why some attorneys may decline to pursue sexual harassment complaints.

Not all claims are resolved with small awards, however. Some male sexual harassment cases have resulted in payments of tens of thousands or even hundreds of thousands of dollars, including a lawsuit filed by the EEOC against the restaurant chain, The Cheesecake Factory. A settlement reached between the EEOC and the chain last November stipulated that The Cheesecake Factory pay $345,000 to six male employees who claimed they had been subject to "sexually abusive behavior" such as "simulated rape" at a Cheesecake Factory restaurant in Chandler, Arizona, according to an EEOC statement and court documents.

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In court documents filed in response to the lawsuit, The Cheesecake Factory argued that the employees had not been "subjected to unlawful sexual harassment." After the settlement was announced, the chain released a statement to the press saying that it had agreed to the settlement to prevent continued litigation and continued to deny wrongdoing.

In their claim, the Lorenzen brothers alleged that, in 2006, the two male owners of Los-Angeles-based Vermont Restaurant touched them in inappropriate ways, including one instance in which one of the owners inserted his finger into Wyatt Lorenzen's buttocks. The brothers, who worked as waiters at the restaurant, also accused the owners of making sexual comments, including one owner's claims that he masturbated to photographs of the brothers.

The restaurant owners, Michael Gelzhiser and Manuel Nesta, have maintained that the brothers' allegations were false. In court documents, the owners -- who have since sold the restaurant -- argued that the brothers themselves engaged in inappropriate sexual behavior toward co-workers and customers. (Lorenzen denies the allegation.)

Gelzhiiser and Nesta's attorney, Jonathon Kaplan, said that though the jury awarded the brothers $1,000 each in general damages, the jury denied to award punitive damages -- an important point, he said.

"Punitive or exemplary damages are awarded in order to make an example of an egregiously acting defendant or to punish a defendant," he said. The jury did not find "the requisite behavior or outrageous conduct by defendants in order to impose" such awards.

With respect to male-against-male sexual harassment or same-gender harassment in particular, Los Angeles-based career strategist Cynthia Shapiro said victims often find frustration in trying to appeal for help within their own companies. Companies may feel uncomfortable pursuing complaints against gay or lesbian managers because they fear being labeled homophobic.

"The gay population is very well protected right now," she said. "Companies are sometimes really caught in the middle and the protected class can rise up very strongly and they have the law on their side and I think companies are too scared" to take action against them.

Experts have several theories as to why more men are filing complaints. One is that more men felt comfortable filing complaints against fellow male co-workers after the landmark 1998 United States Supreme Court case, "Oncale v. Sundowner," in which an oil rig worker levied charges of sexual harassment against male co-workers and a supervisor. The court ruled unanimously that federal civil rights laws that ban sex discrimination also apply to same-gender sexual harassment.

Sexual harassment by women against men, meanwhile, took on a cultural resonance in the 1990s after the release of the 1994 film "Disclosure," starring Michael Douglas and Demi Moore. In the film, Moore starred as Douglas' sexually aggressive boss.

"I think that's what really brought awareness to the forefront -- that's when training started to include awareness on both sides," Shapiro said.

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The increase may also stem from a recession that's seen many more men lose their jobs than women. Fink said that sexual harassment claims often begin as wage and hour claims -- complaints over unpaid overtime, for instance -- by fired employees.

Questions about sexual harassment will arise as lawyers seek to discern whether there are other claims to be filed against their clients' former employers.

"Lawyers will try to twist your arm, see if there's (sic) any other claims because there's a finite amount of money involved in wage and hour claims," Fink said.

Discrimination claims can net more money, especially when businesses have employment practice liability insurance, which covers companies for discrimination lawsuits, he said. Such insurance is less common, Fink said, for wage and hour claims.

## Discussion Questions

1. Are you aware of the various theories of sexual harassment available to plaintiffs who file sexual harassment claims? If so, what are they?

*There are several theories of sexual harassment available to plaintiffs who file sexual harassment claims. The first, and most obvious, theory is "offensive contact" sexual harassment. This theory is self-descriptive; namely, that the defendant either touched the plaintiff in an offensive, physical way, or that the defendant's statement(s) and/or action(s) caused the plaintiff to reasonably anticipate offensive physical contact. Essentially, "offensive contact" sexual harassment represents assault and/or battery.*

*"Quid pro quo" sexual harassment literally means "this for that" sexual harassment. Essentially, the defendant promises the plaintiff something beneficial (from an employment standpoint) in return for the plaintiff's submission to the defendant's sexual advances, or conversely, the defendant threatens to punish the plaintiff (again, from an employment standpoint) if the plaintiff does not submit to the defendant's sexual advances. An example of "quid pro quo" sexual harassment would be if the defendant, plaintiff's supervisor, promises the plaintiff a raise and/or a promotion if the plaintiff agrees to have a sexual relationship with her supervisor.*

*"Hostile work environment" sexual harassment represents words and/or materials in the workplace that cause the plaintiff to experience an uncomfortable work environment. An example of "hostile work environment" sexual harassment might include a supervisor's decision to read Playboy magazine in his office, with his secretary being aware of her boss' choice of reading material. "Hostile work environment" sexual harassment can be judged from a "subjective plaintiff" standard (i.e., whether the individual plaintiff was offended) or from a "reasonable person" standard (i.e., whether a reasonable person would have been offended.)*

2. In your reasoned opinion, why are males who file sexual harassment claims often stigmatized and/or ridiculed?

*History demonstrates that minorities are often subject to derogatory treatment, and in terms of sexual harassment claims, male plaintiffs are clearly in the minority (only sixteen percent of all sexual harassment*

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*complaints filed in 2009.) Even today, males who file sexual harassment claims are often stigmatized and/or ridiculed, perhaps due to the United States cultural assumption that with respect to sexual advances and words/material of a sexual nature, men are by their very nature less offended than are women. The retort "Be a man!" comes to mind here, but students should be reminded that United States sexual harassment law clearly protects both men and women.*

3. In your reasoned opinion, should males be allowed to file sexual harassment claims? Why or why not?

*Hopefully, students will answer "yes" to this question. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no state shall ... deny to any person within its jurisdiction the equal protection of the laws." Regardless of gender, individuals are entitled to equal protection of the law. In the opinion of your author, the Fourteenth Amendment to the United States Constitution alone dictates that men be allowed to file sexual harassment claims. As indicated in the article, courts have added assurances to this constitutional protection by judicial precedent.*

**Article 3: "New Fuel Efficiency Rules Require 35.5 MPG Average by 2016"**

**http://www.usatoday.com/money/autos/2010-04-01-fuel-efficiency-rules-mpg_N.htm**

This article indicates that the Obama administration recently unveiled final rules that establish a 35.5 mpg fuel efficiency average for the United States automobile industry by 2016, which the government said would cut fuel use 40%.

While the rules will cost the industry $52 billion to meet, automakers embraced the standards as a way to avoid a patchwork of state and federal rules and called on the government to begin work immediately on rules for the 2017 model year and on.

Administration officials calculate the rules would add less than $1,000 to the average price of a new vehicle in the 2016 model year and that many consumers would earn back the cost in fuel savings over three years.

"This is the most aggressive fuel-economy standard ever set" in the United States, said Transportation Secretary Ray LaHood.

It also has the potential to revisit the troublesome 1970s, when early fuel-economy and emissions rules taxed automakers' expertise and put stumbling, stalling cars on the road.

"The complexity is good for the dealers," because they'll make money fixing tech-heavy new vehicles, said Jim O'Donnell, chief executive officer of BMW North America, at an automotive forum in New York this week.

The rules, in effect, give each vehicle model its own mileage requirement based on its "footprint," or square feet it covers.

To a limited extent, the rules are easier on big vehicles than small ones, recognizing that it is much tougher to make larger, heavier models that get the same mileage as smaller, lighter ones.

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For new models, automakers may think, "If I make my vehicle one square foot bigger," hitting a target might be easier, says Larry Dominique, head of product planning for Nissan in the United States.

The joint rule by the Transportation Department and the Environmental Protection Agency is the first United States limit on greenhouse gas emissions after a Supreme Court ruling classifying carbon dioxide as a pollutant under federal law.

Automakers backed the rule. The actual fuel-economy target is a minimum 34.1 mpg. The difference is to be made up through more-efficient air conditioning that reduces carbon emissions.

The California Air Resources Board and environmental groups also hailed the rule.

The unsteady détente between the industry, environmentalists and the state of California could disappear if California moves to set its own state standards for years beyond 2016, a move automakers oppose.

"America needs a road map to reduced dependence on foreign oil and greenhouse gases, and only the federal government can play this role," said Dave McCurdy of the Alliance of Automobile Manufacturers. "Now we need to work on 2017 and beyond."

By 2016, the average fuel economy for cars is estimated to be 37.8 mpg, while light trucks are expected to average 28.8 mpg.

Automakers will get credits for building electric vehicles, plug-in hybrids and hydrogen fuel-cell models.

**Discussion Questions**

1. In your reasoned opinion, should the federal government mandate fuel efficiency standards, or do you favor a more “market-based” approach to fuel efficiency?

*In the opinion of your author, government regulation is not always a “bad thing.” Instead, “smart” government regulation can advance public policy in such a way as to significantly benefit the interests of the people. A “market-based” solution, in the sense of allowing the automobile industry to self-regulate and improve fuel efficiency standards on its own, seems to have failed (Think “Hummer” and “Ford Expedition!”) Given the fact that fuel efficiency is arguably a matter of national security (since greater fuel efficiency makes the United States less reliant on foreign countries for the provision of oil, a resource essential to the successful operation of our economy and society,) the argument for government-mandated fuel efficiency standards is even stronger.*

2. The new 35.5 mile-per-gallon standard, referred to by United States Department of Transportation Secretary Ray LaHood as "...the most aggressive fuel-economy standard ever set" in the United States, represented a collective, collaborative effort by the Department of Transportation and the United States Environmental Protection Agency. Why did these two (2) agencies collaborate in establishing the new fuel efficiency standard? In your opinion, does this collaborative effort represent effective, efficient government regulation? Why or why not?

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*Both the United States Department of Transportation (DOT) and the United States Environmental Protection Agency (EPA) have a vested interest in the establishment of higher fuel efficiency standards: The DOT has an interest in the sense that automobiles remain the most important source of transportation in the United States, and the EPA in the sense that higher fuel efficiency standards result in the advancement of environmental quality (higher fuel efficiency standards translate into lower carbon emissions.)*

*In the opinion of your author, the collaborative effort between the DOT and the EPA is an excellent example of smart, logical interaction between government agencies to advance public policy and the common good.*

3. The article refers to the fact that California may move to set its own state standards beyond 2016. Would such a move be constitutional? Why or why not?

*California's potential move to establish its own state standards for fuel efficiency would be constitutional if the federal government allows it, and history demonstrates that the federal government has deferred to California before in terms of its desire to regulate transportation in the interests of its people. Although the Supremacy Clause of the United States Constitution generally states that conflicting state law is subservient to federal law, the federal government certainly has the right to craft exceptions to this rule. California led the nation in terms of the establishment of strict vehicle emission control standards, and even though California standards were stricter than the federal standards, the federal government allowed those measures. Given your author's experience in a desert drive from Phoenix, Arizona to Los Angeles, California, I certainly understand the federal government's justification; miles from Los Angeles, I could see the smog arising from the "City of Angels!"With a state population of approximately 37 million, and with twelve (12) million cars commuting daily on the Los Angeles freeway system alone, it is easy to justify stricter California fuel efficiency and emission control standards.*

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## Video Suggestions

**Video 1: "Free Credit Report Crackdown"**

**http://www.cnn.com/video/#/video/business/2010/04/01/mxp.westhoven.credit.report.cnn?hpt=T2**

**Purpose of video:** To discuss recent developments regarding federal regulation of "free" credit reports

(Note: The following Discussion Questions and Answers focus principally on the best-known credit monitoring service, Experian's "Triple Advantage," and Experian's associated web site, www.freecreditreport.com, although they apply also to other companies offering "free" credit reports and credit monitoring services.)

**Discussion Questions**

1. Based on your review of the video, are organizations who offer "free" credit reports in return for customer enrollment (for a fee) in credit monitoring services engaged in unfair and deceptive trade practices? Why or why not?

*(Note: In addressing Discussion Question 1, have your students review the nine (9) freecreditreport.com commercials at http://www.youtube.com/watch?v=YzkBhfbwRkg&NR=1.)*

*Loosely defined, an "unfair and deceptive" trade practice would include any statement or conduct that would have the tendency or likelihood of misleading consumers. In light of that definition, there is a strong argument to be made that organizations who offer "free" credit reports in return for customer enrollment (for a fee) in credit monitoring services do engage in unfair and deceptive trade practices. The most commonly-known of these organizations, Experian (www.freecreditreport.com), entices consumers to their web site based on constant reference to a free credit report, when in actuality, the purpose of luring consumers to its site is to enroll them in a credit-monitoring service for a fee (as the web site indicates, "When you order your $1 Credit Report and free Score here, you will begin your 7-day trial membership in Triple Advantage. If you don't cancel your membership within the 7-day trial period, you will be billed $14.95 for each month that you continue your membership.") This arrangement brings to mind the term "bait and switch," with the "bait" being the "free" credit report, and the "switch" being automatic enrollment in the credit monitoring service for a $14.95 monthly fee. Remember that pursuant to federal law, consumers have the unconditional right to a free credit report from each of the three (3) nationwide credit reporting companies (Equifax, Experian and TransUnion) without enrolling in a credit monitoring service. It does appear that Experian and other credit*

*monitoring services are "selling" the "free" credit report rather than the credit monitoring service.*

*(Note: In defense of Experian, with respect to its freecreditreport.com commercials, at the end of each commercial, there is a statement to the effect that the free credit report is conditioned upon enrollment in "Triple Advantage," Experian's credit monitoring service. There is, however, no mention of a fee for credit monitoring in any of the commercials; the customer is not informed of a fee until he/she visits www.freecreditreport.com.)*

2. Based on your review of the video, are organizations who offer "free" credit reports in return for customer enrollment (for a fee) in credit monitoring services engaged in fraud? Why or why not?

*(Note: In addressing Discussion Question 2, have your students review the nine (9) freecreditreport.com commercials at http://www.youtube.com/watch?v=YzkBhfbwRkg&NR=1.)*

*Fraud consists of a false statement, or conduct equivalent to a false statement, that causes harm to a victim. In order to prove a fraud case, a plaintiff must demonstrate five (5) elements: 1) a false statement of fact; 2) made with knowledge of its falsity, or with reckless disregard as to the truth of the statement; 3) made with the intent that the listener rely; 4) the listener does rely; and 5) the listener is harmed (economically, physically, or both.) In terms of whether organizations who offer "free" credit reports in return for customer enrollment (for a fee) in credit monitoring services are engaged in fraud, there is an argument to be made that the word "free" (in the context of a "free" credit report) is a false statement, since the credit report is not actually free if a customer requests one through a credit monitoring service such as Experian's "Triple Advantage" program.*

*(Note: In defense of Experian, the company does offer a seven-day cancellation period for its credit monitoring service. Further, with respect to its freecreditreport.com commercials, at the end of each commercial, there is a statement to the effect that the free credit report is conditioned upon enrollment in "Triple Advantage," Experian's credit monitoring service. There is, however, no mention of a fee for credit monitoring in any of the commercials; the customer is not informed of a fee until he/she visits www.freecreditreport.com.)*

3. As the video indicates, and as a result of federal government mandate, anyone can obtain a truly free credit report by requesting one through www.annualcreditreport.com. According to www.annualcreditreport.com, "this central site allows you to request a free credit file disclosure, commonly called a credit report, once every 12 months from each of the nationwide consumer credit reporting companies: Equifax, Experian and TransUnion." Should a company ever be allowed to charge a fee (either directly or indirectly) for something otherwise provided for free? Why or why not?

*In the "back and forth" regarding the question of whether a company should ever be allowed to charge a fee, either directly or indirectly, for something otherwise provided for free, companies who offer credit monitoring services will argue that the customer is not being charged for the credit report, and in that sense, the credit report is actually free. These companies will argue that they charge only for their valuable credit monitoring services, and that they make no apologies for charging such a fee. The counterargument here is that the customer is indirectly being assessed a fee for the credit report, since the customer could not obtain one through a credit monitoring service without paying for credit monitoring.*

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*Perhaps the solution here would be for credit monitoring services to focus on selling their credit monitoring services, rather than emphasizing the offering of a free credit report that is already available to the customer through other sources such as www.annualcreditreport.com.*

**Video 2: "$42 Million Jackpot Was a Mistake, Casino Says"**

**http://www.aolnews.com/money/article/42-million-jackpot-was-a-mistake-casino-says/19421798**

(Note: For additional information, please also see the article accompanying this video at the same web address)

**Purpose of video:** To discuss the legal and/or ethical obligation of a Colorado casino to pay a $42 million jackpot resulting from what the casino claims to have been a computer malfunction

1. In the video, Louise Chavez proclaims "I put my money in there (the slot machine), and whatever I won, I should get." From a legal standpoint, is Mrs. Chavez correct?

*From a legal standpoint, Mrs. Chavez is most likely not entitled to the $42 million. In order to recover, Mrs. Chavez would have to successfully demonstrate a legal theory of recovery. Contract law would seem to favor the casino (Fortune Valley Hotel and Casino) here. There is an implied contract between the casino and the customer. An implied contract is an agreement not based on spoken or written words exchanged between the parties; instead, an implied contract is based on the actions and/or conduct of the parties. The implied contract would be for the customer to pay money for the opportunity/chance to win a prize; in return, the casino would be obligated to pay the prize consistent with the "rules of the game." Arguably, the "rules of the game" would not obligate the casino to honor a prize based on a computer malfunction. Further, the "rules of the game" limited the "jackpot" to $251,000 (See Discussion Question 2 below.) The key here is for Colorado casino regulators to "get to the heart of the matter" in terms of determining whether the machine truly malfunctioned, and as the video indicates, the appropriate Colorado officials are investigating.*

2. Does the fact that the casino posted a $251,000 prize limit for the subject slot machine have any bearing on the outcome of this case? Why or why not?

*As indicated in response to Discussion Question 1 above, under an implied contract theory, the casino would be obligated to pay a prize consistent with the "rules of the game." If the casino had indeed posted a $251,000 prize limit for the slot machine in question, that would be an integral part of the "rules of the game." In mediation of this dispute, I would propose that Fortune Valley Hotel and Casino pay Mrs. Chavez the posted prize limit, $251,000, in full and final settlement of her claim. Such a gesture might "calm the media hounds" surrounding this case, and would represent a positive public relations maneuver on the part of the casino.*

3. Regardless of your answer in response to Discussion Question 1 above, does the casino have an ethical obligation to compensate Mrs. Chavez more than what it did (The casino gave her a free night's lodging, a free breakfast, and a return of the $20 she spent gambling)? Why or why not?

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*This is an opinion question, so student responses will likely vary. As students learn in my Business Ethics class, legal standards often represent minimum required standards of conduct, while ethical obligations often represent higher standards. That being said, even if Fortune Valley Hotel and Casino arguably owes no legal obligation to Mrs. Chavez (see the response to Discussion Question 1 above), students may believe that it owes an ethical obligation to pay her at least the maximum posted jackpot, $251,000. In this case, the ruling of Colorado officials as to whether the $42 million amount showing on the subject slot machine was the result of computer error will be very interesting.*

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**Of Special Interest**

This section of the newsletter addresses President Obama's recent approval of expanded offshore oil drilling.

## Ethical Dilemma

(Note: This Ethical Dilemma is based on President Barack Obama's recent approval of expanded offshore oil drilling. Before answering the following Discussion Questions, please review the video entitled "Obama Offshore Drilling Plan" at **http://www.cbsnews.com/video/watch/?id=6351721n**.)

**Discussion Questions**

1. From an ethical perspective, is reducing United States dependence on foreign oil sound justification for expanding offshore oil drilling? Why or why not?

*Student responses to this question will likely be influenced by their environmental values. Although oil companies claim they can extract oil offshore with only the most minimal of environmental "footprints," environmentalists are skeptical of such claims (Remember the Exxon Valdez oil spill, one of the worst "manmade" environmental disasters in the history of the United States.) Others may feel that despite the environmental risks, the United States has no realistic choice except to pursue oil resources domestically. This argument contends that access to energy is a matter of national security, and that in the interests of national security, the United States should pursue domestic energy resources either at all costs, or at least within an acceptable level of risk.*

2. From an ethical perspective, is creating United States jobs sound justification for expanding offshore oil drilling? Why or why not?

*In announcing that he would lift certain restrictions on offshore oil drilling, President Obama cited the creation of United States jobs as one of the benefits of his decision. With a United States unemployment rate of 9.7% as of March 2010, the creation of domestic jobs is certainly a persuasive argument for expanding offshore oil drilling. As was indicated in response to Discussion Question 1, student responses to this question will likely be influenced by their environmental values. Staunch environmental advocates will argue that environmental interests effectively "trump" job creation in terms of national (and global) priorities, and they would also contend that domestic jobs can be created by public policy (and law) favoring the development of alternative energy (wind, solar, etc.) Those less fervent about environmental interests might argue that in terms of the overall well-being of our nation, nothing is more important than economic growth and resulting job creation, and that jobs in the oil industry are more certain and stable than jobs in the speculative development of alternative energies. Regardless of student opinion concerning this issue, an increase in offshore oil drilling would undeniably result in job creation, and for an economy presently "hurting" for job growth, such an opportunity is difficult to ignore.*

3. Traditionally, the Republican Party has embraced the idea of offshore oil drilling (Recall Republican nominee John McCain's "Drill, Baby, Drill!" campaign slogan during the 2008 presidential campaign), while the Democratic Party has not. The video suggests that President Obama might have "green-lighted" offshore oil drilling in an attempt to gain Republican support for a more comprehensive energy plan (To include initiatives such as the control of carbon emissions and the development of alternative energies, ideas traditionally embraced by the Democratic Party.) Assuming that this suggestion is true, is such a tradeoff legitimate from an ethical perspective? Why or why not?

*If President Obama lifted restrictions on offshore oil drilling in an attempt to garner Republican support for initiatives such as the control of carbon emissions and the development of alternative energies, there is no guarantee of such support. It is often said that politics is a 'dirty game," and reciprocity is not a commonly-recognized rule of the game, especially in light of the current partisan political environment. Obama's support for "Drill, Baby, Drill!" is not only risky in terms of receiving Republican support for initiatives such as the control of carbon emissions and the development of alternative energies, it is also risky in terms of alienating members of the Democratic Party. Many Democrats may feel that President Obama has "sold out" in terms of lifting restrictions on offshore oil drilling, and that such a decision was not ethically justified, since ethical standards related to environmental preservation effectively "trump" any perceived ethical obligation on the part of President Obama to engage in bipartisanship.*

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# Proceedings

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The McGraw-Hill Companies

**Of Special Interest**

This section of the newsletter will assist you in covering Video 1 ("Free Credit Report Crackdown") presented earlier in this newsletter.

## Teaching Tips

**Teaching Tip 1:**

As a "follow-up" to Video 1 ("Free Credit Report Crackdown"), have your students visit www.freecreditreport.com. The top of the web page includes the federally-required "truth-in-advertising" regarding the fee the company charges for its credit monitoring service. Included below is the language of the truth-in-advertising disclosure:

***IMPORTANT INFORMATION:*** *When you order your $1 Credit Report and free Score here, you will begin your 7-day trial membership in Triple Advantage. If you don't cancel your membership within the 7-day trial period, you will be billed $14.95 for each month that you continue your membership. You may cancel your trial membership anytime within the trial period without charge.*

Ask students whether this disclosure is adequate in terms of protecting the interests of consumers, or whether a change in the name of the web address (www.freecreditreport.com) to exclude the word "free" and/or an extension of the "trial period" would be preferable. In the opinion of your author, the name "freecreditreport.com" is inherently deceptive, as it implicitly represents that the purpose of the site is to assist a visitor in obtaining a free copy of his or her credit report, when in fact the real purpose of the site is to induce visitors to enroll in the company's credit monitoring service for a fee.

**Teaching Tip 2:**

As an additional "follow-up" to Video 1 ("Free Credit Report Crackdown"), have your students visit www.annualcreditreport.com. This resource allows access to a free annual credit report from the three (3) credit reporting agencies: Equifax, Experian and TransUnion. Notice the disclosed purpose of the web site: "This central site allows you to request a free credit file disclosure, commonly called a credit report, once every 12 months from each of the nationwide consumer credit reporting companies: Equifax, Experian and TransUnion." Further, "AnnualCreditReport.com is the official site to help consumers to obtain their free credit report." Have your students compare www.freecreditreport.com and www.annualcreditreport.com in terms of the services these organizations provide.

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

| | Hot Topics | Video Suggestions | Hypothetical or Ethical Dilemmas | Teaching Tips |
|---|---|---|---|---|
| **Kubasek et al., Dynamic Business Law** | Chapters 5, 43 and 46 | Chapters 13 and 45 | Chapter 46 | Chapter 45 |
| **Kubasek et al., Dynamic Business Law: The Essentials** | Chapters 4, 23 and 24 | Chapters 7 and 25 | Chapter 23 | Chapter 25 |
| **Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition** | Chapters 3, 47, 51 and 52 | Chapters 9 and 48 | Chapters 47 and 52 | Chapter 48 |
| **Barnes et al., Law for Business, 10th Edition** | Chapters 4, 25 and 47 | Chapters 9 and 46 | Chapter 47 | Chapter 46 |
| **Brown et al., Business Law with UCC Applications Student Edition, 12th Edition** | Chapters 2, 35 and 40 | Chapters 7 and 20 | Chapter 40 | Chapter 20 |
| **Reed et al., The Legal and Regulatory Environment of Business, 15th Edition** | Chapters 6, 18 and 20 | Chapters 8 and 17 | Chapter 18 | Chapter 17 |
| **McAdams et al., Law, Business & Society, 9th Edition** | Chapters 5, 13 and 20 | Chapters 6 and 15 | Chapter 17 | Chapter 15 |

## This Newsletter Supports the Following Business Law Texts

Barnes et al., Law for Business, 10th Edition, 2009© (007352493X)
Brown et al., Business Law with UCC Applications Student Edition, 12th Edition, 2009© (0073524948)
Kubasek et al., Dynamic Business Law, 2009© (0073524913)
Kubasek et al., Dynamic Business Law: The Essentials, 2010© (0073377686)
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition, 2010© (0073377643)
McAdams et al., Law, Business & Society, 9th Edition, 2009© (0073377651)
Reed et al., The Legal and Regulatory Environment of Business, 15th Edition, 2010© (007337766X)