



Proceedings

A monthly newsletter from McGraw-Hill



November 2014 Volume 6, Issue 4

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Dear Professor,

Fall is in the air! Welcome to McGraw-Hill's November 2014 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 6, Issue 4 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the November 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. Comedian Tracy Morgan's lawsuit against Walmart regarding his near-fatal automobile accident;
2. A homicide charge against a Pennsylvania married couple for the starvation death of their nine-year-old son;
3. The punishment phase of Jodi Arias' murder trial;
4. Videos related to a) Entrepreneur Richard Branson's "jaw-dropping" vacation policy for his employees and b) the death of race car driver Kevin Ward, Jr. and its implications for fellow racer Tony Stewart;
5. An "ethical dilemma" related to First Green bank's "living wage" policy for all of its employees; and
6. "Teaching tips" related to Article 2 ("Parents Charged in Death of Son Found in Home") and Video 1 ("Branson's Jaw-Dropping Vacation Policy") of the newsletter.

I wish everyone a glorious fall season!

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Of Special Interest

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

- 1) Comedian Tracy Morgan's lawsuit against Walmart regarding his near-fatal automobile accident;
- 2) A homicide charge against a Pennsylvania married couple for the starvation death of their nine-year-old son; and
- 3) The punishment phase of Jodi Arias' murder trial.

Hot Topics in Business Law

Article 1: "Walmart Says Tracy Morgan Should Have Worn a Seat Belt"

http://www.cnn.com/2014/09/29/justice/tracy-morgan-crash/index.html?hpt=hp_t4

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

According to the article, Walmart has responded to a lawsuit filed by Tracy Morgan over a deadly car crash that left the comedian in critical condition. The big box store blamed the injuries suffered by Morgan on his failure to wear a seat belt.

Walmart filed a 28-page response to a complaint by lawyers acting for Morgan and three others. Police said a truck driven by Walmart employee Kevin Roper collided with the rear of the vehicle in which Morgan was riding.

Roper pleaded not guilty in June to criminal charges that include vehicular homicide and assault by auto.

Morgan's lawsuit said Walmart was careless and negligent in the operation of the vehicle. It said the company should have known Roper had been awake for more than 24 hours at the time of the accident, and cited Walmart for not complying with Federal Motor Carrier Safety Administration Regulations enacted to combat the dangers of driver fatigue.

The Walmart truck that rear-ended Morgan's vehicle was traveling 20 mph over the speed limit, according to a preliminary report by the National Transportation Safety Board.

The "30 Rock" and former "Saturday Night Live" star was seriously injured in June after the truck slammed into a limo bus occupied by Morgan and four others on the New Jersey Turnpike. The crash killed the star's longtime friend, comedian James McNair, and injured the other passengers. Morgan was hospitalized with broken ribs, a broken nose and a broken leg.

In its response, Walmart said the injuries were "caused, in whole or in part, by plaintiffs' failure to properly wear an appropriate available seat belt restraint device." The company said by not using seat belts, the plaintiffs "acted unreasonably and in disregard of plaintiffs' own best interests."



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Walmart did not directly address the claims regarding Roper because of the ongoing National Transportation Safety Board investigation.

Walmart said Morgan's and the other plaintiffs' damages were not caused by the company or any of its affiliated employees. Instead, the chain noted the possibility that injuries "may have been caused by third parties over whom Walmart had no control."

The next step for Morgan's side is to file a written statement specifying the amount of damages alleged in the initial complaint. Walmart is asking for a trial by jury.

Discussion Questions

1. Tracy Morgan's complaint against Walmart was filed in United States District Court for the District of New Jersey. Is the state of New Jersey a "contributory negligence" or "comparative negligence" jurisdiction?"

New Jersey is a "modified comparative fault" jurisdiction. This means that even if the plaintiff's negligence contributed to his or her injury, the plaintiff can still recover from the defendant. For example, if the jury determines that the defendant's negligence was 70 percent responsible for the plaintiff's harm and that the plaintiff's negligence was 30 percent responsible, the plaintiff will recover 70 percent of his or her damages (i.e., the plaintiff's damage award is reduced by the percentage the plaintiff's negligence contributed to his or her own harm). In New Jersey, if the plaintiff was more than 50 percent responsible for his or her own injuries, the plaintiff cannot recover at all from the defendant.

2. How (if at all) might the answer to Discussion Question Number 1 above affect the outcome of this case?

The jury could accept Walmart's argument that Tracy Morgan's failure to wear a seat belt meant that he was negligent, and that such negligence should either prohibit or reduce his recovery. In your author's opinion, Walmart's "best case scenario" with its defense would be for the jury to reduce Morgan's recovery by a certain percentage; it is highly unlikely that a jury would conclude that Morgan's failure to wear a seat belt (assuming that is factual) meant that he was more than 50 percent responsible for his own injuries. The evidence against Walmart is substantial—as the article indicates, the Walmart truck driver had not slept in over 24 hours, and he was driving over twenty-miles-per-hour above the speed limit when he rear-ended Morgan's vehicle.

3. In your reasoned opinion, which type of jurisdiction is better: comparative negligence or contributory negligence? Explain your response.

This is an opinion question, so student responses will likely vary. In a contributory negligence jurisdiction, if the plaintiff's negligence, however slight, contributed to his or her own injuries, the



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plaintiff can recover nothing from the defendant, even if the defendant's negligence was substantial. Currently, only four states (Alabama, North Carolina, Maryland, and Virginia) and the District of Columbia recognize the contributory negligence doctrine. Forty-six states have adopted some form of comparative negligence.

Article 2: "Parents Charged in Death of Son Found in Home"

<http://news.yahoo.com/parents-charged-death-son-found-home-121640021.html>

According to the article, a central Pennsylvania married couple has been charged with homicide in the starvation death of their 9-year-old son, whose decomposing body was found when police were called to their Harrisburg home two months ago.

Police said in documents charging Kimberly and Jarrod Tutko Sr. for the death of Jarrod Tutko Jr. that the 17-pound child had been living in a bare room smeared with a thick layer of feces, and had suffered from several painful conditions.

The bedroom door was locked from the outside and he slept on the bare floor, police said.

"The inside door knob and light switch were both covered in smeared feces," wrote Harrisburg Detective Rodney Shoeman. "The light in the room was found to be inoperable. Located in the middle of the floor was a feces covered stuffed rabbit and blanket. Flies swarmed throughout the room."

An autopsy concluded that the child, who had a genetic disorder with autism-like symptoms, weighed less than 17 pounds and died of malnutrition and neglect. A 10-year-old girl who was close to death was also found in the home and needed urgent medical attention, police said.

"Obviously the malnutrition was horrific," Dauphin County District Attorney Ed Marsico said Tuesday. "The child had significant dental issues that a dentist told us would have been incredibly painful. That's something that indicates he had no dental care whatsoever."

Marsico, who was at the scene when the boy's decomposing body was found in a second-floor bathroom on August 1, called it one of the most horrible crime scenes he has observed. He said the bolted-down television in his third-floor bedroom was tuned to the Disney channel.

"I can only imagine what it was like on a hot summer day in that room," Marsico said. "It was terrible. And this was a kid with special needs that needed extra care."

Marsico said a standard review is done when a child dies, but in this case it is being expanded and child welfare authorities are examining how they handled Jarrod Jr.'s care. The couple's five other children who lived in the home have been placed in foster care, Marsico said.



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"We definitely know the parents were not compliant or always receptive to dealings with Children and Youth, the agencies in both Pennsylvania and New Jersey," where the couple formerly lived, he said.

The arrest affidavit said police found "a pattern of substantiated and alleged neglect" of their children by the parents.

The Tutkos moved to New Jersey to avoid a 2002 court hearing in Schuylkill County that may have resulted in losing custody. At the time of Jarrod Tutko Jr.'s October 2004 birth in New Jersey, the hospital was told to put a hold on releasing him because of an ongoing child welfare investigation involving a sister.

Jarrold Jr. spent his early years moving between foster care and his parent's custody. He was returned to them in 2006, after they had moved to Harrisburg, Shoeman wrote. The family was reported to Pennsylvania's ChildLine system last year and authorities investigated.

Kimberly Tutko told police the couple had been collecting \$710 per month from the state in disability payments apiece for Jarrod Jr., two siblings and Jarrod Sr. Neither parent had a job.

Both Kimberly A. Tutko, 39, and Jarret N. Tutko Sr., 38, remained in the Dauphin County Prison without bail on Tuesday morning. Court records do not indicate whether they are represented by attorneys. She is charged with criminal homicide and endangering the welfare of children; he faces the same charges, along with concealing the death of a child and abuse of a corpse. A hearing is scheduled for next month.

Discussion Questions

1. Define criminal homicide.

Generally, a person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently causes the death of another human being. Criminal homicide is typically classified as murder, voluntary manslaughter, or involuntary manslaughter.

2. How can a person be charged with homicide if he or she did not actively take the life of another human being? Can homicide result from mere neglect?

The two general elements of criminal liability are: a) the existence of the appropriate mental state; and b) a criminal act or omission. In the instant case, even if the parents did not specifically intend to take the life of their 9-year-old son, they can still be found guilty of criminal homicide due to reckless or negligent inattentiveness that led to his death. Parents have a legal obligation to care for their children, and the failure to do so (a criminal omission) can lead to liability.



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3. Evaluate this case in terms of the likelihood that Kimberly and Jarrod Tutko, Sr. will be convicted of criminal homicide. In your reasoned opinion, based on the evidence presented in the article, how strong is the prosecutor's case against the Tutkos?

Although student opinions might vary in response to this question, the evidence against Kimberly and Jarrod Tutko, Sr. is substantial.

Article 3: "Jodi Arias' Death Penalty Trial: What to Expect"

<http://abcnews.go.com/US/jodi-arias-death-penalty-trial-expect/story?id=25836121&singlePage=true>

According to the article, about 300 potential jurors arrived at an Arizona courthouse recently for the start of the final phase of Jodi Arias' marathon murder trial.

The selected jurors will not determine whether Arias, 29, is guilty or innocent in the 2008 slaying of her sometime-lover Travis Alexander. She has already been found guilty by a different jury.

The new jury's decision will be whether to sentence Arias to death.

Arias' first trial in 2013 lasted five months, was streamed live and had so much raunchy sex in the testimony, evidence photos and text messages that it would have gotten an X-rating if it were a movie.

The former Arizona waitress admitted shooting Alexander, but claimed he was an abusive lover who slammed her to the bathroom floor after she dropped his expensive new camera while taking nude photos of him in the shower. She claimed she ran for a gun and shot him as he charged her. She did not remember, however, stabbing him 29 times, slashing his throat and making a stealthy getaway.

The jury that found Arias guilty then deadlocked on whether to condemn her to death. If the new jury also cannot decide on the death penalty, she will automatically be sentenced to life in prison, although she would be eligible for parole after 25 years.

Here's what to expect:

Even jury selection for the trial is anticipated to take up to three weeks. The testimony will likely drag on until mid-December, the court has said. That could be an optimistic assessment. During the first trial, the lawyers for both sides objected constantly, requiring numerous and lengthy sidebars.

It's unclear whether Arias will take the stand in her own defense this time around. She spent 18 tear-soaked days on the stand during her first trial recounting in cringe-worthy detail the sexual demands that Alexander allegedly made of her and why she could not remember stabbing him numerous times, disposing of the gun and then driving hundreds of miles with her cellphone turned off.



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If her legal team listens to the jury that convicted Arias, they may want to keep her off the stand. William Zervakos, the foreman of the jury that convicted Arias, met with the defense team later and told them Arias "was her own worst enemy" and a "terrible defendant."

Arias and her legal team, however, rarely agree. Arias, who said she wanted to die after the guilty verdict, has changed her mind and is fighting for her life. She may decide to take the stand anyway.

Arias and her top lawyer do not like each other. Kirk Nurmi, charged with her defense, has tried to quit the case, but the court has refused to let him off. Arias tried unsuccessfully to fire Nurmi, complaining in a handwritten motion to the court that he was "curt, rude and condescending." When that did not work, she was granted permission to represent herself. As the court date neared, however, she changed her mind and Nurmi is again her lawyer.

Prosecutor Juan Martinez was aggressive, prompting one of Arias' lawyers to plead with the judge to make him stop yelling at a witness. Several of Arias' expert witnesses have refused to come back because testifying the first time was too traumatic.

Superior Court Judge Sherry Stephens has ruled that this trial will be much different. The daily stream of lurid testimony and Arias' emotional behavior that filled tabloid reports will be stopped. While cameras can record the trial, no video is to be aired until after the verdict is delivered.

Jodi Arias has been churning out paintings from prison and sells copies online, with the money going to her defense fund. She has also sold some of her personal effects. Recently she auctioned off the glasses she wore during her first trial. The money, according to her site, went to charity.

Discussion Questions

1. As the article indicates, Kirk Nurmi, charged with Jodi Arias' defense, has tried to resign as her attorney, but the court has refused his request. Under what circumstances does a criminal defense attorney have the right to resign from a case? Under what circumstances does the court have the right to refuse a criminal defense attorney's request to resign from a case?

Although a criminal defense attorney does have the right to request to be removed from a case (the most common situation triggering such a request would be "irreconcilable differences" between attorney and client), the judge must evaluate whether the attorney's resignation would likely result in a failure of adequate client representation. If the attorney's removal would likely compromise the defense, the judge will likely deny the attorney's request to be removed from the case. In the Jodi Arias case, the court likely denied defense attorney Kirk Nurmi's request because the case is already in the "punishment phase"—i.e., the Arias case is "late in the game" in terms of criminal procedure.

2. In your reasoned opinion, should Jodi Arias take the witness stand in her own defense during the punishment phase of the trial? Why or why not?



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This is a strategic decision for the defense to make. The Fifth Amendment to the United States Constitution provides that “No person...shall be compelled in any criminal case to be a witness against himself...” This is commonly referred to as the “privilege against self-incrimination.” The privilege against self-incrimination means that the defendant makes the choice as to whether to testify. In the instant case, the potential advantage to Jodi Arias’ testimony is evoking sympathy from the judge and jury in terms of the punishment assessed against her. The potential disadvantage is that her testimony might actually lead to greater punishment, depending on how the court perceives her and the testimony she gives on the witness stand.

3. In your reasoned opinion, who should decide the amount and type of punishment a defendant should receive? The federal government? State government? The trial court judge? The trial jury? Another party?

This is an opinion question, so student opinions will likely vary. Except for federal crimes prosecuted in federal court, the United States government does not determine the amount and type of criminal punishment. Most criminal law, including the particular punishment for the commission of a specific crime, is determined by the state in which the case is tried. A state legislature can enact structured sentencing guidelines, which specify the maximum and minimum punishment that can be assessed for the commission of a particular crime. Aside from legislatively-imposed structured sentencing guidelines, the trial jury recommends punishment to the judge, who ultimately “hands down” the defendant’s sentence.



Video Suggestions

Video 1: “Branson’s Jaw-Dropping Vacation Policy”

<http://money.cnn.com/video/news/2014/09/24/bransons-crazy-time-off-policy.cnnmoney/>

Discussion Questions

1. Richard Branson’s vacation policy for his Virgin Group employees sounds decidedly “European.” Compare the vacation policies of employers in European nations to the vacation policies of United States employers.

The vacation policies of employers in European nations are remarkably different from the vacation policies of United States employees. According to a report by the Center for Economic and Policy Research (CEPR), European countries lead the world in guaranteeing paid leave for its workers. Among Organization for Economic Cooperation and Development (OECD) countries, 16 of the 18 most generous governments when it comes to paid vacation are European. Spain and Germany are among the most holiday-happy, both offering 34 days of paid leave each year. Italy and France guarantee 31 days of paid vacation, and Belgium requires 30. These numbers include both mandatory vacation and public holidays. The CEPR reports that the United States is the only nation among advanced economies that does not provide a legal guarantee of paid leave. Nevertheless, many American companies do provide paid leave. According to the CEPR, 77 percent of U.S. private sector companies offer employees at least some paid vacation, and those workers get an average of 21 paid days. Still, that leaves nearly 1 in 4 Americans without any guarantee of paid time off from work. Those workers are noticeably overrepresented in the lower classes, according to the CEPR. Half of the workers whose wages scale in the bottom 25 percent enjoy no paid leave.

(Source: http://www.huffingtonpost.com/2013/08/01/worlds-most-paid-vacation-days_n_3697394.html)

2. In the United States, is there a legal obligation to provide vacation benefits to employees? In your reasoned opinion, is there an ethical obligation?



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No. As indicated in response to Discussion Question Number 1 above, the United States is the only nation among advanced economies that does not provide a legal guarantee of paid leave. Student opinions may vary in terms of whether employers owe an ethical obligation to provide vacation benefits to employees.

3. In your reasoned opinion, will Richard Branson's "jaw-dropping" vacation policy for his Virgin Group employees be successful? Why or why not?

The success (or failure) of Richard Branson's vacation policy is yet to be determined. Branson is "banking" on his belief that such a policy will inspire his workers to be more productive than they would be if they were "chained to a desk" year-round!

Video 2: "Tony Stewart Not Charged in Death of Kevin Ward Jr."

<http://www.usatoday.com/story/sports/nascar/2014/09/24/tony-stewart-not-indicted-charged-in-kevin-ward-jr-death/15712979/>

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

"Tony Stewart Not Charged in Death of Kevin Ward Jr."

According to the article, Tony Stewart will not face criminal charges in Kevin Ward Jr.'s death, a grand jury in upstate New York decided.

The Ontario County District Attorney's office took the evidence in Stewart's case to a grand jury, which found there was no basis for criminal charges, District Attorney Michael Tantillo announced.

Tantillo said toxicology reports revealed that Ward was under the influence of marijuana at a high enough level to impair judgment.

Tantillo said there were two charges submitted for consideration by the grand jury against Stewart: manslaughter in the second degree and criminally negligent homicide. He said neither received the necessary 12 votes from the grand jury to charge Stewart. The grand jury heard the evidence and testimony from two dozen witnesses (including drivers, track employees, medical personnel and two accident experts) "over the better part of two days" and deliberated for less than an hour before reaching the decision, Tantillo said.

Tantillo said Stewart was presented the opportunity to testify but wouldn't confirm whether he did.

Tantillo said two videos of the incident were examined, a clip that went viral on YouTube and another from the racetrack. The videos were run at 75%, 50% and 25% speed and overlaid with grids and data and "were an important piece of the evidence," Tantillo said. "The videos did not



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demonstrate any aberrational driving by Tony Stewart until the point of impact with Kevin Ward, at which point his vehicle veered to the right up the track as a result of the collision. Prior to that, his course was pretty straight."

Tantillo said there was no toxicology performed on Tony Stewart, but that a certified drug recognition expert interviewed him on the night of Ward's death and determined no basis for alcohol consumption or drug impairment.

Tantillo added that, "the grand jury was never tasked with the responsibility of anything other than to determine whether there was enough evidence to file charges against Tony Stewart. They weren't considering whether anybody else was at fault. However, I'm sure from their deliberations and discussions that the fact that Kevin Ward was observed running basically two-thirds of the track into a hot track in the middle of other cars that still were racing played a big, big factor in their decision."

Asked why he submitted the case to a grand jury, Tantillo said, "There were probably several reasons. When I reviewed the investigation that had been prepared by the sheriff's department, it was clear a number of the witnesses interviewed had different perspectives on what they'd seen and heard. There were varying versions of what had actually taken place. There was not one clear monolithic story that was presented to me. Additionally, several of the important witnesses chose not to make statements to the police. They did not want to make any statements, so the only way I could find out what they had to say or offer was to subpoena them and compel them to testify, which I did. Finally when you have a case of this magnitude and this interest, I think it's important that the public knows that a large group of citizens drawn at random from the community heard all the evidence in the case and collectively returned a judgment."

The Ward family indicated it was not satisfied with the decision to clear Stewart and said it will "pursue all remedies in fairness to Kevin."

In a statement provided to the *Rochester Democrat and Chronicle*, Ward Jr.'s mother Pam said the "matter is not at rest."

"Our son got out of his car during caution while the race was suspended," she said. "All the other vehicles were reducing speed and not accelerating, except for Tony Stewart, who intentionally tried to intimidate Kevin by accelerating and sliding his car toward him, causing the tragedy. "The focus should be on the actions of Mr. Stewart and not my son."

Pam Ward had no comment on the toxicology report that found her son had enough marijuana in his system to impair his judgment. She did not answer questions aside from the statement. Stewart still could face a civil suit from Ward's family.

The grand jury's decision is a major relief to both Stewart and the NASCAR community, which has been under a cloud since Stewart struck and killed Ward in an August 9 sprint car race at Canandaigua Motorsports Park.



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Tantillo said approximately two dozen witnesses testified. Two videos, photos and "other documentary evidence" also were reviewed.

"After listening to and questioning all of the witnesses, and reviewing all of the evidence, the grand jury has determined that there is no basis to charge Tony Stewart with any crimes; his case was "No-Billed" by the grand jury," Tantillo said in a statement released prior to his press conference.

All along, statements from Stewart-Haas Racing referred to Ward's death as an "accident." Now, it's clear the 23-member grand jury agreed there wasn't sufficient evidence to suggest Stewart was negligent.

This means Stewart, 43, can move forward with his racing career knowing SHR -- which he co-owns -- and his sponsorship situation stands to remain intact.

The finding is consistent with the initial statements by Sheriff Phillip Povero, who said there was no evidence to suggest any wrongdoing on Stewart's part.

But doubts about Stewart's future began to increase when the sheriff announced twice -- on August 12 and August 29 -- that the investigation would continue at least another two weeks.

On September 11, when Povero turned over the results of the investigation to Tantillo, he also said the evidence included a forensic video enhancement recently received from the New York State Police Laboratory in Albany, New York. Five days later, Tantillo announced he was submitting the case to a grand jury to determine if there was enough evidence to charge Stewart.

Stewart has been a star in United States racing for nearly two decades. After becoming only the second driver to win the USAC triple crown (three prestigious open-wheel championships in the same season), he made his Indianapolis 500 debut in 1996 and led the first 31 laps before a mechanical failure. He won the Indy Racing League title the next season while he began racing part time in stock cars.

He made the full-time move to NASCAR's premier series in 1999 and was named rookie of the year with three victories (becoming the first rookie to win in 12 years).

He led the circuit in victories in 2000 (six) and '11 (five) and captured his first championship in 2002. That season also was among the most tumultuous of his career. Stewart nearly lost his ride at Joe Gibbs Racing for striking a photographer after a 12th-place finish at the Brickyard 400.

The Columbus, Indiana native won another title in 2005 and left JGR after the 2008 season to become a co-owner of the rebranded Stewart-Haas Racing. Stewart won his third championship in 2011, and the team expanded to a third car in 2012 with Danica Patrick, who moved full time to Cup



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the next year. Kevin Harvick (replacing Ryan Newman) and Kurt Busch were added this season, making SHR a four-car team with among the largest budgets in the series.

A stake in NASCAR ownership was the latest addition to the burgeoning business portfolio of Stewart, who has spent much of the past decade expanding the reach of his racing empire. Tony Stewart Racing fields championship-caliber teams in the World of Outlaws and USAC series, and Stewart also owns fabled Eldora Speedway, which played host to the Camping World Truck Series the past two seasons (marking the return of a NASCAR national series to its first dirt track in 43 years), and co-owns Paducah (Ky.) International Raceway and Macon (Ill.) Speedway. Stewart, who is single, also has been heavily involved in philanthropy. He formed the Tony Stewart Foundation in 2003 to help chronically ill children, at-risk animals and drivers injured while racing. He has supported several NASCAR-affiliated charities (donating \$1 million to the Victory Junction Gang Camp in 2008). He visited hospitalized fans after a February 2013 Nationwide crash at Daytona International Speedway sent debris into the front stretch stands, hurting more than two dozen.

He suffered a setback last August, breaking his right leg during a sprint car race and missing the final 15 races of 2013.

His season-ending crash at Southern Iowa Speedway in Oskaloosa was his third sprint car accident in as many weeks that summer. He was involved in a multi-car crash at Canandaigua Motorsports Park -- the same track where Ward Jr. was killed -- that sent two drivers to the hospital, but Stewart was unhurt. He also flipped his car at Ohsweken Speedway, a dirt track in Ontario, Canada. He raced the next night at the same track and finished fifth.

Stewart's injury that summer came at a time when the spotlight on drivers who moonlight was brighter because of a spate of deaths and injuries. That June, former NASCAR driver Jason Leffler, a close friend and former roommate of Stewart's, died after a sprint car crash.

The fall of 2013 marked just the second time NASCAR didn't have its three-time champion in its run to the championship.

After three surgeries and countless hours of physical therapy, Stewart returned to his No. 14 Chevrolet for the season-opening 2014 Daytona 500 in February but struggled through the regular season, going winless and climbing to a high of 12th in the points standings with a best finish of fourth. He returned to racing dirt cars July 18 at Tri-City Motor Speedway in Auburn, Mich. He won that feature race and finished third in an event the following night at Crystal Motor Speedway in Crystal, Michigan.

He was racing in the Empire Super Sprints Series at a half-mile dirt oval in Canandaigua, N.Y., (30 minutes southeast of Rochester) on the night Ward was killed. Ward and Stewart were battling for position midway through the feature race, and Ward hit the outside wall and spun with a flat tire.



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Upset with Stewart, Ward scrambled out of his car and approached his car under caution while gesturing angrily. After being struck, he was dragged and then thrown from beneath the wheel, and his lifeless body landed a few dozen feet down the track.

According to the Ontario County Sheriff's Office, Ward was declared dead 45 minutes later after arriving at Thompson Hospital. Ontario County Sheriff Philip C. Povero announced his department was beginning an investigation into the incident (including a forensic re-creation of the crash), and that Stewart was being fully cooperative. Povero indicated Ward's death isn't being regarded as a criminal matter but cautioned that could change.

Stewart missed the next three Sprint Cup races and returned at Atlanta Motor Speedway. He made his only public comments there about the incident, reading a 2-minute, 30-second statement in a quavering voice that cracked a few times.

"This has been one of the toughest tragedies I've ever had to deal with both professionally and personally," he said. "This is something that will definitely affect my life forever. This is a sadness and a pain that I hope no one ever has to experience in their life. With that being said, I know that the pain and the mourning that Kevin Ward's family and friends are experiencing is something that I can't possibly imagine. I want Kevin's father, Kevin Sr., and his mother Pam, and his sisters Christi, Kayla, Katelyn to know that every day I'm thinking about them and praying for them."

Stewart did not take questions. He ran as high as fourth in the race but crashed twice and finished 41st.

Discussion Questions

1. Describe the function(s) of a grand jury.

The function of a grand jury is to determine whether the charges against a defendant are sufficient to "carry over" the case to a criminal trial. At the grand jury hearing, the prosecutor will present evidence in an attempt to convince the members of the grand jury that the case should be tried in criminal court. If the grand jury dismisses the case, the prosecutor cannot try the case in criminal court. Essentially, the grand jury hearing is a "litmus test" regarding the preliminary sufficiency of the prosecutor's case against the defendant.

2. In your reasoned opinion, was the grand jury's decision appropriate? Why or why not?

This is an opinion question, so student responses will likely vary. In your author's opinion, the evidence available to the public was not sufficient to demonstrate manslaughter or criminally negligent homicide.



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3. Evaluate the prospects of a potential *civil (tort)* case against Tony Stewart for the death of Kevin Ward, Jr. In your reasoned opinion, if the estate of Kevin Ward, Jr. files a civil complaint against Tony Stewart, what is the likelihood that the estate would prevail in such a case?

The fact that the grand jury effectively dismissed the criminal charges against Tony Stewart does not prohibit the estate of Kevin Ward, Jr. from suing Stewart in civil court for negligence. A civil case against Stewart, however, would not likely be very successful. New York is a “pure comparative fault” jurisdiction. Under a comparative fault system, the plaintiff’s negligence will not bar recovery as in states that employ the contributory negligence doctrine, but it will reduce the amount of damages the plaintiff can recover based on the plaintiff’s percentage of fault. The pure comparative negligence doctrine allows the plaintiff to recover even if he or she is 99% at fault, although the recovery is reduced by the plaintiff’s degree of fault. The pure comparative fault system has been criticized for allowing a plaintiff who is primarily at fault to recover from a lesser-at-fault defendant some portion of its damages. In the subject case, Kevin Ward, Jr. exited his car after the accident and appeared on video to walk toward oncoming cars, including the car being driven by Tony Stewart. He did this at night on a poorly-lit dirt track while wearing a dark suit and helmet. A jury might likely deem Kevin Ward, Jr. principally responsible for his own death, thereby significantly reducing his estate’s recovery, even if the jury should determine that Tony Stewart was negligent (and that conclusion is most certainly not a “given.”) Even worse for the Kevin Ward, Jr. estate, the jury could conclude that Ward actively, voluntarily and willingly proceeded in the face of danger that night, either knowing or having reason to know that doing so subjected him to grave danger. This is known as “assumption of the risk,” and can constitute a complete bar to the plaintiff’s recovery, regardless of whether the case is tried in a contributory negligence or a comparative negligence jurisdiction.



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Of Special Interest

This section of the newsletter addresses First Green bank's "living wage" policy for all of its employees.

Ethical Dilemma

“Bank to Pay Everyone at Least a ‘Living Wage’”

http://money.cnn.com/2014/09/29/smallbusiness/living-wage/index.html?hpt=hp_t4

According to the article, 17% of First Green's 66 employees will be getting a raise under the company's new "living wage" program.

Under that policy, no one will be paid less than \$30,000 a year, or the hourly equivalent for part-time workers. That means the base pay at the bank will be roughly \$14.40 an hour, or nearly double the Florida state minimum wage of \$7.93.

"We don't believe in low wages. We don't need them to make money," Kenneth LaRoe, the bank's founder and CEO, said.

His payroll costs will go up, but not by much. LaRoe estimates initially it will cost the bank an additional \$16,000 and then about \$30,000 by the end of the year.

That's partly because he expects that employees who already make a little more than \$30,000 will get larger-than-usual raises during their year-end reviews.

But over time, he believes the new policy will make the bank money by attracting and retaining the best workers.

By next year, LaRoe's goal is for 75% of his employees to earn an income that falls in at least the 90th percentile of pay for their positions and geographic location. In 2016, he wants that to be the case for 85% of his staff.

LaRoe expects to hit those goals in part by eliminating salary caps at the bank.

Until now, he said, if somebody hit the pay ceiling for their position, she could not get a raise without a promotion.

"That's just dumb," LaRoe said. "If you've got the best teller in the world, why don't you want to pay them the best wages?"



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Imitation is sincerest form of flattery: LaRoe's living wage program is identical to one implemented this past spring by C1 Bank, another Florida-based business.

Trevor Burgess, C1 Bank's chief executive officer, was raised by a single mother who worked as a secretary.

"I saw firsthand that you need a living wage. My bank was doing quite well. And I had 26 people (all women) who earned under \$30,000. It was just the right thing to do," Burgess said.

What determines a living wage? There is no single definition, number or formula for a "living wage." It depends on factors like where you live, how big your household is and whether you're the sole breadwinner. It also depends on what you assume it should be able to pay for.

Most agree, however, that a living wage is very often higher than the minimum wage, especially for adults supporting children.

In arriving at \$30,000 for their living-wage base, First Green and C1 Bank relied in part on a calculator created by Amy Glasmeier, a professor of economic geography at Massachusetts Institute of Technology.

The MIT calculator estimates the minimum needed to cover basic costs such as housing, food, childcare, transportation, medical care and taxes, not including potential government assistance. Other living-wage and cost-of-living calculators exist, but they each use somewhat different assumptions.

Meanwhile, some cities have passed living wage laws that govern the minimum that employers must pay staff for city-contracted jobs. In fact, on Tuesday, New York Mayor Bill DeBlasio will expand the city's living wage law to cover more workers and to raise their hourly pay to \$11.50 from \$10.30 if they receive health benefits, or to \$13.13 from \$11.90 if they do not.

Discussion Questions

1. Does an employer have a legal obligation to pay a "living wage?"

An employer must honor a federal, state, or locally-mandated minimum wage; however, the employer is under no legal obligation to pay a "living wage" (assuming a "living wage" is actually higher than the government-imposed minimum wage).

2. In your reasoned opinion, does an employer have an ethical obligation to pay a "living wage?" Why or why not?

This is an opinion question, so student responses will likely vary. As the article indicates, First Green founder and CEO Kenneth LaRoe apparently believes that paying a "living wage" is not just



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appropriate from an ethical perspective—in the long term, it will attract and retain the best workers, thereby generating the bank greater profit.

3. Does a “living wage” policy make “good business sense?” Why or why not?

As indicated in response to Discussion Question Number 2 above, a “living wage” policy arguably does make “good business sense,” in that it will attract and retain the best workers, thereby generating the bank greater profit.



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Of Special Interest

This section of the newsletter will assist you in addressing Article 2 ("Parents Charged in Death of Son Found in Home") and Video 1 ("Branson's Jaw-Dropping Vacation Policy") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 2—"Parents Charged in Death of Son Found in Home"):

For the Pennsylvania statutory definition of homicide, please see the following reference:

Criminal homicide - 18 Pa. Cons. Stat. § 2501

<http://law.onecle.com/pennsylvania/crimes-and-offenses/00.025.001.000.html>

§ 2501. Criminal Homicide

- (a) Offense Defined.--A person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently causes the death of another human being.
- (b) Classification.--Criminal homicide shall be classified as murder, voluntary manslaughter, or involuntary manslaughter.

Teaching Tip 2 (Related to Video 1—"Branson's Jaw-Dropping Vacation Policy"):

"Why Richard Branson's Holiday Policy Will Not Suit All Employers"

<http://www.forbes.com/sites/davidprosser/2014/09/28/why-bransons-holiday-generosity-will-not-suit-all-employers/>

Note: The following is an opinion-editorial written by David Prosser, a contributor to Forbes Magazine.

The old PR maestro has done it again. Sir Richard Branson, who has been successfully pulling off high-profile publicity stunts for four decades now, has just garnered another bunch of positive headlines with a new initiative aimed at some of his Virgin employees. Sir Richard trusts them so completely, he explains, that he is abolishing holiday leave – instead his staff will now be entitled to take as much holiday as they want, whenever they want, without clearing it with their managers first. What a great boss, the media is cooing.



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The underlying principle here, of course, is as old as the hills – it's the sort of lesson that parents learn early on as they work out how to bring up their children. Give your kids a bit of a responsibility and there's every chance they'll bend over backwards not to abuse your trust; rule with a rod of iron, on the other hand, and they'll always be looking for a sneaky way to pull a fast one.

At Virgin, Sir Richard takes the view that his staff won't take advantage of the new system – that is, they'll only take time off when they can see doing so won't be disruptive to the business, or place an unfair burden on their colleagues.

In doing so, Sir Richard is not the first business leader to make this bet. Indeed, he is understood to have got the idea from his daughter Holly, who came across an American company that operates successfully in this way.

So is it a blueprint that entrepreneurs building the companies of tomorrow should follow? Well, possibly – as long as they recognize the potential flaws of operating a totally flexible holiday policy.

For one thing, there is a very real danger of this turning into an exploitative practice, particularly at organizations where staffing is lean. It's one thing telling your staff they're free to take time off whenever there's a quiet moment, but if the quiet moment never arrives, they'll end up taking less holiday than they do today – and resenting you for it.

Another danger is a different kind type of damage to staff morale. Most of your staff will likely repay the faith you've shown in them – but it only takes one abuser of the system to mess things up, particularly in a small company where everyone knows everyone else's business. The last thing you want is colleagues at each other's throats.

Also consider whether flexible holiday will just be the start. If you're prepared to trust your employees to police their own leave, why can't they police themselves all the time? Do you even need them to come into the office at all or can they simply be left to get on with the work that needs doing at home? If you feel comfortable with that, great, but many employers won't.

None of which to say Sir Richard's new employment policy is a bad idea, or even that he hasn't introduced it with the best of intentions (as well as with a beady eye on PR, of course). But if you're running your own company and you're thinking of copying his example, don't be deceived by the almost entirely positive press he's receiving – this isn't a completely free lunch.



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

| | Hot Topics | Video Suggestions | Ethical Dilemma | Teaching Tips |
|--|--------------------|--------------------------|------------------------|----------------------|
| Kubasek et al., Dynamic Business Law | Chapters 7 and 9 | Chapters 7 and 42 | Chapters 2 and 42 | Chapters 7 and 42 |
| Kubasek et al., Dynamic Business Law: Summarized Cases | Chapters 7 and 9 | Chapters 7 and 42 | Chapters 2 and 42 | Chapters 7 and 42 |
| Kubasek et al., Dynamic Business Law: The Essentials | Chapters 5 and 6 | Chapters 5 and 24 | Chapters 1 and 24 | Chapters 5 and 24 |
| Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment | Chapters 5 and 7 | Chapters 5 and 51 | Chapters 4 and 51 | Chapters 5 and 51 |
| Barnes et al., Law for Business | Chapters 5 and 7 | Chapters 5 and 25 | Chapters 3 and 25 | Chapters 5 and 25 |
| Brown et al., Business Law with UCC Applications | Chapters 5 and 6 | Chapters 5 and 23 | Chapters 1 and 23 | Chapters 5 and 23 |
| Reed et al., The Legal and Regulatory Environment of Business | Chapters 10 and 13 | Chapters 13 and 21 | Chapters 2 and 21 | Chapters 13 and 21 |
| McAdams et al., Law, Business & Society | Chapters 4 and 7 | Chapters 4 and 12 | Chapters 2 and 12 | Chapters 4 and 12 |
| Melvin, The Legal Environment of Business: A Managerial Approach | Chapters 10 and 23 | Chapters 12 and 23 | Chapters 5 and 12 | Chapters 12 and 23 |
| Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society | Chapters 6 and 8 | Chapters 8 and 11 | Chapters 1 and 11 | Chapters 8 and 11 |



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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)

