



Proceedings

A monthly newsletter from McGraw-Hill



October 2012 Volume 4, Issue 3



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Dear Professor,

I hope the fall semester is progressing nicely for you and your students! Welcome to McGraw-Hill's October 2012 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 4, Issue 3 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the October 2012 newsletter topics with the various McGraw-Hill business law textbooks.

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

1. The recent call of consumer advocates for the federal government (more particularly, the Federal Trade Commission) to more closely regulate hotel fees;
2. Whether political speech is unlimited in its First Amendment (free speech) protection;
3. The legal effect of "giving away" a lottery ticket that later turns out to be the winning ticket;
4. Videos related to a) a Wells Fargo employee's firing for committing a petty crime almost fifty (50) years ago; and b) a man's claim that H.J. Heinz Company, L.P. stole his intellectual property rights;
5. An "ethical dilemma" related to whether it is legal and/or ethical for an employer to "lock out" union employees, with a special emphasis on the National Football League's recent decision to lock out referees; and
6. "Teaching tips" related to Article 1 ("Consumer Advocates: Time to Make Hotel Fees a Federal Issue") and the Ethical Dilemma ("Why Are the NFL Refs Locked Out? It's All in the Game") of the newsletter.

I sincerely hope both you and your students enjoy this material!

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) The recent call of consumer advocates for the federal government (more particularly, the Federal Trade Commission) to more closely regulate hotel fees;

2) Whether political speech is unlimited in its First Amendment (free speech) protection; and

3) The legal effect of "giving away" a lottery ticket that later turns out to be the winning ticket.

Hot Topics in Business Law

Article 1: "Consumer Advocates: Time to Make Hotel Fees a Federal Issue"

<http://travel.usatoday.com/hotels/post/2012/08/resort-fees-spark-outcry-action-from-consumer-advocates/833691/1>

According to the article, on the heels of the news that the hotel industry this year is expected to collect a record \$1.95 billion in add-on fees from guests, consumer and business travel advocates say it's time to complain to the federal government about this form of unfair pricing.

Consumer advocate Ed Perkins and Business Travel Coalition chairman Kevin Mitchell have complained to the Federal Trade Commission about fees such as the controversial "daily resort fee," Perkins writes in his column in the Chicago Tribune.

Their message, he says, is simple: "Stop hotels from hiding part of their true prices from consumers and business travelers."

Fees that are tacked on at check-out time by various hotels in the USA for "housekeeping," "bell captain" and "Internet access" are examples of what the FTC calls "drip pricing," Perkins says.

He explains it this way: A hotel that wants to charge \$200 a night might advertise a nightly rate of \$170 and then charge guests \$30 extra in "mandatory" fees to make up the difference.

If you've been surprised by a fee at check-out time, Perkins says you can file a complaint to the FTC and specifically mention "drip pricing." If you don't mind the fees and think they're fair, you can tell the FTC that, too, he says.

The fees have real impact on consumers, taxpayers and the travel industry, including hotels, Perkins writes. Examples from his column:

1. The hidden fees prevent consumers, corporate travel managers and travel agents from doing accurate side-by-side comparisons of multiple hotels.



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2. Local taxing authorities miss out on potential tax revenue because they collect taxes only on the room rate instead of the overall rate.
3. Travel agencies similarly miss out on commission revenue, since they're paid a portion on the advertised room rate instead of the actual rate.
4. Finally, the hotels that fairly depict their true per-night rate likely lose some customers since their rates appear higher compared to hotels that use the "mandatory fee" pricing scheme.

Perkins says there is precedent for the government to weigh in and require hotels to include fees in their posted prices. He writes:

The U.S. Department of Transportation prohibits airlines from carving out part of the true fare into phony "fuel surcharges" and such; the Florida attorney general forced cruise lines to abandon carving phony "port charges" out of their featured rates, and the Federal Trade Commission took action against a tour operator that was carving out a phony "tax and service" charge.

"Our principle is simple: If consumers have to pay it, hotels should include it in their posted prices," he writes.

Discussion Questions

1. Define/describe "drip pricing."

As the article indicates, "drip pricing" represents fees that are added at check-out time by various hotels in the United States for services such housekeeping and Internet access. Such fees are not part of the advertised room rate, and are not disclosed clearly to consumers at the time of "check-in."

2. In your opinion, is "drip pricing" unethical? Why or why not?

In your author's opinion, "drip pricing" is unethical in the sense that it is not disclosed clearly to consumers at the time of "check-in," and is not part of the advertised room rate.

3. In your opinion, should "drip pricing" be illegal? Why or why not?

In your author's opinion, "drip pricing" constitutes an unfair and deceptive trade practice, and should be illegal. One of the main purposes of consumer protection law is to give consumers enough information from which to make a reasoned purchase decision, and if a hotel does not disclose mandatory fees for services at the time of "check-in" or in its advertised rate, the consumer does not have enough information to make a proper decision.



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Article 2: "Tom Morello: 'Paul Ryan Is the Embodiment of the Machine Our Music Rages Against'-Rage Against the Machine's Guitarist Blasts Romney's VP Pick and Unlikely Rage Fan"

<http://www.rollingstone.com/music/news/tom-morello-paul-ryan-is-the-embodiment-of-the-machine-our-music-rages-against-20120816#ixzz252DRWIPZ>

Note: The following article is an August 16, 2012 opinion-editorial written by rock group Rage Against the Machine's guitarist Tom Morello in Rolling Stone magazine.

Paul Ryan's love of Rage Against the Machine is amusing, because he is the embodiment of the machine that our music has been raging against for two decades. Charles Manson loved the Beatles but didn't understand them. Governor Chris Christie loves Bruce Springsteen but doesn't understand him. And Paul Ryan is clueless about his favorite band, Rage Against the Machine. Ryan claims that he likes Rage's sound, but not the lyrics. Well, I don't care for Paul Ryan's sound *or* his lyrics. He can like whatever bands he wants, but his guiding vision of shifting revenue more radically to the one percent is antithetical to the message of Rage.

I wonder what Ryan's favorite Rage song is? Is it the one where we condemn the genocide of Native Americans? The one lambasting American imperialism? Our cover of "F**k the Police"? Or is it the one where we call on the people to seize the means of production? So many excellent choices to jam out to at Young Republican meetings!

Don't mistake me; I clearly see that Ryan has a whole lotta "rage" in him: A rage against women, a rage against immigrants, a rage against workers, a rage against gays, a rage against the poor, a rage against the environment. Basically the only thing he's *not* raging against is the privileged elite he's groveling in front of for campaign contributions.

You see, the super rich must rationalize having more than they could ever spend while millions of children in the U.S. go to bed hungry every night. So, when they look themselves in the mirror, they convince themselves that "*Those people are undeserving. They're . . . lesser.*" Some of these guys on the extreme right are more cynical than Paul Ryan, but he seems to really believe in this stuff. This unbridled rage against those who have the least is a cornerstone of the Romney-Ryan ticket.

But Rage's music affects people in different ways. Some tune out what the band stands for and concentrate on the moshing and throwing elbows in the pit. For others, Rage has changed their minds and their lives. Many activists around the world, including organizers of the global occupy movement, were radicalized by Rage Against the Machine and work tirelessly for a more humane and just planet. Perhaps Paul Ryan was moshing when he should have been listening.

My hope is that maybe Paul Ryan is a mole. Maybe Rage *did* plant some sensible ideas in this extreme fringe right wing nut job. Maybe if elected, he'll pardon Leonard Peltier. Maybe he'll throw U.S. military support behind the Zapatistas. Maybe he'll fill Guantanamo Bay with the corporate



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criminals that are funding his campaign – and then torture them with Rage music 24/7. That's one possibility. But I'm not betting on it.

Discussion Questions

1. Is Tom Morello's opinion-editorial protected by the First Amendment to the United States Constitution? Why or why not?

Among other rights, the First Amendment to the United States Constitution guarantees the right to freedom of speech, and historically, political speech has been the most judicially-protected form of speech. Since Mr. Morello's opinion-editorial is a form of political speech, it is highly protected by the First Amendment.

2. In his opinion-editorial, has Tom Morello defamed Paul Ryan? Why or why not?

Defamation represents a false statement or a bad-faith opinion that damages someone's reputation in the community-at-large. Morello has made some extreme statements in his opinion-editorial, including assertions that Ryan has a "rage against women, a rage against immigrants, a rage against workers, a rage against gays, a rage against the poor, (and) a rage against the environment," and that Ryan is an "extreme fringe right wing nut job." Politicians, however, are expected to have "thick skin" when it comes to the campaign season (as well as the overall political process), and Morello can argue that his assertions against Ryan, political in nature, are either factual or represent a good-faith opinion on his part.

3. Does the First Amendment to the United States Constitution (more particularly, the "free speech" protection of the First Amendment) effectively "trump" a defamation claim? Explain your response.

No, the First Amendment to the United States Constitution does not "trump" a defamation claim. If a statement is either false or a bad-faith opinion made predominately to damage a person's reputation, the speaker has defamed that person, and can be held responsible for monetary damages. If a defendant has defamed a plaintiff, defamation liability actually "trumps" free speech protection.

Article 3: "Woman Who Gave Away Lotto Ticket Won't Give Up"

http://abcnews.go.com/US/emily-leach-california-woman-gave-lotto-ticket-give/story?id=17022138#.UEO_a8FIS7J

According to the article, Emily Leach, who won a million-dollar jackpot in California last January, said she is hoping to fight the state lottery's decision stopping her from collecting a second jackpot of



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\$260,000 -- winnings that came from a ticket Leach has famously claimed she accidentally gave away to a stranger in March.

A lottery official informed her that "we gave the check to the man" in June, Leach said. She has asked a lawyer to explore her options.

A California Lottery spokesman confirmed that Leach would not receive the \$260,000 jackpot, a decision reached after an "extensive investigation" by the California Lottery's security and law enforcement division.

"We feel very confident that the person who claimed the ticket is the rightful owner of the ticket and that is not Emily Leach," Russ Lopez, the California Lottery's deputy director of communications, said

These days, Leach, 31, is living with her mother in Reno, Nevada after being kicked out of her California home. (She said the landlord evicted her after deciding he could charge a higher rent to new tenants.)

"Right now, I'm just trying to hold on to every penny," she said.

Leach said she has to stay thrifty because of her ailing health. She used part of her January winnings to pay off \$300,000 in medical bills she ran up after a ruptured spleen and a life-threatening bout with pancreatitis a couple of years earlier. Leach said she still has large bills for medication she must take.

It doesn't help, Leach says, that she doesn't have a real job anymore.

She said she was put on unpaid leave from her job at the VA Palo Alto Health Care System after her first lotto win because coworkers complained that there were threats made against her after her win, and they made for an unsafe work environment. She said she was later informed that she would be terminated at the end of her leave this month.

A hospital spokesman confirmed that Leach is currently an employee but said he could not provide additional information without written consent from Leach.

Leach made headlines for the lotto ticket dispute in March, after she said she accidentally gave a winning scratch-off ticket to a man who was begging her for help at a Mountain View, California convenience store. She alleged that the man pressured her and took advantage of her.

Leach claims that she meant just to give the man money but instead, gave him cash and a lottery ticket -- the winning lottery ticket, she later learned -- while she was distracted by a phone call from her doctor.



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"I will be the first to admit I got flustered. I shouldn't have been doing so many things at once," she said. "But I was just trying to help the guy."

But the California Lottery's Lopez said that surveillance footage from the convenience store shows Leach willingly giving a man her ticket. An account of the incident given by the man claiming the ticket, Lopez said, was corroborated by the cashier who sold it.

"There was no coercion," Lopez said. "It was an act of kindness that unfortunately got messy when the numbers were drawn."

Lopez said the man who claimed the prize money has asked not to be identified.

Leach said that, for now, she's trying to avoid stress that will hurt her health. She is also working on a book about her life.

Discussion Questions

1. What are the legal requirements for a gift of personal property?

A gift of personal property requires three (3) elements: a) donor intent to make a gift (also known as "donative intent"); b) delivery of the property by the donor (or the donor's agent) to the donee (or the donee's agent); and c) acceptance of the property by the donee.

2. In terms of the legal requirements for a gift of personal property, what is best argument for the man who claimed the \$260,000 in lottery winnings? What is Emily Leach's best argument that she is entitled to the prize money?

The gentleman who claimed the lottery winnings can argue that all of the elements required for a gift of personal property (donative intent, delivery of the property by the donor to the donee, and acceptance of the property by the donee) were satisfied, and are corroborated by the convenience store videotape and the cashier's recollection of the event. Leach's best argument is that she lacked donative intent, handing over the lottery ticket to the man as the result of pressure and/or a mistake.

3. In your opinion, who should win the dispute—the man who claimed the lottery winnings, or Ms. Leach?

Ms. Leach's prospects are "dim" in this case, since the convenience store videotape and the cashier's recollection of the event represent strong circumstantial evidence against her. Perhaps her best hope is that of perceived credibility; more particularly, a jury's conclusion that her credibility (in terms of her testimony that she did not intend to make a gift) is greater than the credibility of her adversary and his witness (the cashier).



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Video Suggestions

Video 1: “A ‘Nickel-and-Dime’ Crime Almost 50 Years Ago Gets 68-Year-Old Employee Fired”

http://www.cnn.com/2012/08/30/us/iowa-fired-for-a-dime/index.html?hpt=hp_t3

Note: In addition to the video, please also review the following article (also included at the above-referenced web address):

“A ‘Nickel-and-Dime’ Crime Almost 50 Years Ago Gets 68-Year-Old Employee Fired”

According to the article, sometimes life can turn on a dime. Just ask Richard Eggers, a former Wells Fargo employee.

The 68-year-old Eggers was fired by the company's home mortgage division in West Des Moines, Iowa, in July for a petty crime he committed nearly 50 years ago. He got caught using a cardboard cutout of a dime to run a laundromat washing machine when he was 19.

Officially, the crime is called operating a coin changing machine by false means, court records from 1963 say.

"It was silly and stupid," Eggers said. "I am not terribly proud of it, but, it doesn't warrant a termination a half a century later."

Wells Fargo says it's following federal laws laid down by the Federal Deposit Insurance Act. They're designed to weed out employees guilty of identity theft and mortgage fraud.

"Wells Fargo is ... bound by US Federal law ... to protect our customers and their personal financial information from someone who we know has committed an act of dishonesty or breach of trust -- regardless of when the incidents occurred," Vickee J. Adams, vice president of external communications, said in a statement.



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"It is uncomfortable, but it is a law that we have to follow," she said. "We have the responsibility to avoid hiring or continuing to employ someone who we know has a criminal record."

Wells Fargo says between May 2011 and May 2012, it performed thorough background checks on all its team members, regardless of when they were hired. The screenings were the same as those required for new hires.

"The whole thing was too absurd for words," Eggers said. "They had their instructions and there was nothing I could change, but I wanted to let them know I didn't accept it as a logical and reasonable business practice."

Wells Fargo says Eggers has been put in touch with an FDIC case manager to work on steps to "make him eligible for reemployment."

Leonard Bates, an attorney representing Eggers and three other employees who used to work for the company, said he may file a class action lawsuit against Wells Fargo and the FDIC.

"Common sense tells you that Mr. Eggers and his 49-year-old crime was not the downfall of the mortgage industry in 2008 and 2009," Bates said.

Discussion Questions

1. Make a persuasive case for Wells Fargo in support of the company's decision to terminate Richard Eggers' employment.

Wells Fargo's best argument is that the law is on the company's side—namely, that the Federal Deposit Insurance Act actually requires a financial institution to terminate an employee who has committed an act of dishonesty or a breach of trust. Also, remind students that the "employment-at-will" doctrine allows employers to terminate employees for any reason, or for no reason at all. Iowa, the state in which Wells Fargo employed Mr. Eggers, is an employment-at-will state. That fact alone legally justifies Wells Fargo's decision to terminate Mr. Eggers' employment.

2. Make a persuasive case against Wells Fargo in opposition to the company's decision to terminate Mr. Eggers' employment.

The best argument against Wells Fargo is that in firing Mr. Eggers, the company failed to follow the "spirit" of the law rather than the "letter" of the law—namely, that the law is intended to protect financial institutions and their customers from employees who present a "clear and present" danger, rather than from those who committed relatively minor offenses in the past. Mr. Egger's offense was relatively minor, and took place almost a half-century ago!

3. In your opinion, who should win the dispute—Wells Fargo, or Mr. Eggers?



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This is an opinion question, so student responses will likely vary. "Black-letter" law appears to favor Wells Fargo, while basic principles of fairness appear to support Mr. Eggers' reinstatement.

Video 2: "Man Claims Heinz Ketchup Stole His Idea"

http://www.youtube.com/watch?v=4ij-Z_3wKyw

Discussion Questions

1. Define/describe the term "intellectual property." What are the most common forms of intellectual property rights?

Intellectual property refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. The most common forms of intellectual property rights are patents, copyrights and marks. Patents cover inventions, copyrights cover literary and artistic works, and marks cover symbols, names, images and designs used in commerce (with "trademarks" covering tangible, physical goods, and "service marks" covering services.)

2. David Wawrzynski is suing H.J. Heinz Company for breach of implied contract. What is meant by "breach of implied contract?"

While an express contract consists of words, either spoken or written, that would indicate offer, acceptance and the exchange of consideration (the fundamental requirements of contract formation), an "implied contract" is an enforceable agreement that is based on the actions and/or the conduct of the parties. If a court recognizes the existence of an implied contract, it is as enforceable as an express contract would be, meaning that if a contracting party does not perform his or her obligations under an implied contract, that party would be responsible for "breach" of contract and any resulting damages experienced by the non-breaching party.

3. The video refers to a Heinz spokeswoman's statement that Mr. Wawrzynski's claim is "groundless, and has no legal merit." Do you agree or disagree with this assertion? Why or why not?

Of course Heinz would claim that Mr. Wawrzynski's lawsuit is groundless and has no legal merit—The company is the defendant in the lawsuit, and this is a standard defense response! Barring settlement, a jury and judge will have to determine whether an implied contract existed and was breached by Heinz, or whether a "quasi-contract" will have to be recognized in order to do justice in the case. Quasi-contract theory, a rarely-recognized equitable remedy, allows a judge to grant the plaintiff relief based on ultimate notions of fairness where no legal remedy is available to the plaintiff—In this case, if the evidence does not support Mr. Wawrzynski's legal claim of breach of



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implied contract, the judge could use his or her discretion to recognize quasi-contractual relief in Mr. Wawrzynski's favor.



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Of Special Interest

This section addresses the question of whether it is legal and/or ethical for an employer to "lock out" union employees, with a special emphasis on the National Football League's recent decision to lock out referees.

Ethical Dilemma

"Why Are the NFL Refs Locked Out? It's All in the Game"

http://www.cbsnews.com/8301-215_162-57502041/why-are-the-nfl-refs-locked-out-its-all-in-the-game/?tag=cbsnewsSectionContent.13

Note: The following article is an August 28, 2012 opinion-commentary written by Dave Zirin, sports editor for The Nation magazine, and Mike Elk, a labor journalist and union organizer based in Washington, D.C.

Although anathema to NFL fans across the country, we should recognize that sometimes a punter shall lead us. It was Minnesota Viking's punter Chris Kluwe who took to Twitter and said what has been so painfully obvious through three weeks of the National Football League's pre-season: "The NFL really needs to kiss and make up with the refs. These replacements are horrible. Frankly, it's kind of embarrassing."

Kluwe is correct. It is embarrassing. It's embarrassing that replacement referees with highlights on their resumes like working for the Lingerie Football League have been bungling calls throughout the pre-season. This has included screwing up the small detail of which teams were actually on the field. It's embarrassing that in a league where any play could be the last time someone walks without a limp or concussion, these incompetents are in charge of monitoring the health and safety of players. It's embarrassing that members of the NFL Players Association, who are part of the AFL-CIO, will, once on the field, be under the authority of scabs.

It's also bewildering. Consider the multibillion-dollar entity that is the National Football League. Then consider that NFL referees are 119 part-time employees who make \$8,000 a week. As Jeff MacGregor calculated at espn.com, at a cost of \$50 million a year -- less than one percent of total revenue -- NFL Commissioner Roger Goodell could hire 200 full-time officials at \$250,000 a year. Conversely, if Goodell gets everything he wants from the referees union and he doesn't have to spend too much in legal fees, it works out to league-wide savings of just \$62,000 per team.

Locking them out is like using an Uzi on a field mouse. The question once again is why? Why has NFL Commissioner Roger Goodell, taken such a hard



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line? After a year defined by the tragic suicides of former players suffering from post-concussion syndrome and a looming lawsuit brought by 2000 former players contending that the NFL didn't take their safety seriously, why would they engage in such naked contempt for the well-being of players and the integrity of their game? Simply put, because they can.

The NFL clearly believes with no small amount of justification that they can do this because no one will care. As NFL VP Ray Anderson said, perhaps while twirling his mustache, "You've never paid for an NFL ticket to watch someone officiate a game."

The only way to understand why there is a lockout of NFL Referees is to understand who is doing the locking out. It's not Roger Goodell, who for all the fawning media profiles, is little more than an exceptionally well-paid executive "flak-catcher." It's the people he represents. NFL teams are no longer family businesses and owners are no longer kindly patriarchs. They comprise the right-wing edge of America's super-rich. NFL owners don't travel in the same circles as Mitt Romney. They travel in the circles of those who underwrite Mitt Romney's campaign.

For these twenty-first-century Masters of the Universe, the lockout, once a near-unthinkable labor-management tactic, has become the weapon of choice when dealing with what's left of the trade union movement. Since 2010, the number of lockouts annually in the US has doubled. A lockout gives employers the power to strip workers of their salaries, bring in temporary replacements and then simply wait until the day locked out workers eat through their meager savings and then force them back on the conditions of outlandish demands. It's a management tactic that has hammered thousands of families from middle class security to destitution.

The owners have decided NFL referees need to be locked out because like the scorpion who stings, that's simply what they do. Look at the demands being made of the referees: NFL owners want them to stop being part-time labor and instead work full-time for the league. Sounds great, except they want the refs to eliminate their other sources of income while taking a 16 percent cut in salary. They also want to eliminate their pensions and replace them with 401k plans tied to the stock market. Put simply, the owners line is less pay, less benefits, and if you don't like it we're locking the doors.

"They told us if we didn't take what was on the table, they would cut it more and they have. They have disguised regressive bargaining as trying to improve officiating overall and to give people more time off," said NFL Referee's Association lead negotiator Mike Arnold. "They keep saying in the media that they were willing, able, and ready to negotiate, but they kept telling us they weren't interested in discussing our proposal and if the deal was going to settle it was going to settle on their terms."

The referees and the NFL Players Association both seem to be keeping any joint strategy under wraps. "We'll see what the decision is as we get closer to (opening) day. Hopefully, they can figure this out in an amicable way as soon as possible. I'm not sure what the decision is going to be from the Players Association when that day comes," NFLPA president Domonique Foxworth said.



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But both seem to be coordinating arguments about player's safety as the most compelling reason to end the lockout. As NFLPA Executive Director DeMaurice Smith said, "The officials are being asked to be first responders on the field for player safety as well as to officiate the games. How do you expect officials not used to doing games at that level to be able to step in and handle the job? To use a [lockout] as a motivational tactic in negotiations...we find repulsive."

However, like the high-skilled workers at a Honeywell uranium plant in Metropolis, Illinois, learned after a fourteen-month lockout, today's bosses rarely listen to appeals about safety. Furthermore, as they learned, the longer the lockout drags on, the more time employers have to increase the quality of their replacement workers. The quality of the godawful refereeing on display will, with time, improve as well.

John Paul Smith, who was one of those Honeywell workers that suffered through the lockout, which ended in August of 2011, says now that having been through the pain of a lockout himself, there is no way he could watch the NFL this year. John Paul Smith is now calling on other fans to boycott watching as well, knowing that the only way to make the owners back off is if they feel it in their wallets.

"I have been a Dolphins fan since I was in the fifth grade and I can't watch s**t. It's killing me," said Smith. If Goodell and friends don't care about the refs, the health of their players, or the quality of the games, then maybe they'll care about that: people like John Paul Smith turning away from the game until NFL owners remember that owning the game doesn't mean owning the people who officiate it.

Discussion Questions

1. In the context of labor-management relations, what is a "lockout?"

In the context of labor-management relations, a "lockout" represents management's decision to refuse to allow employees to come to work. Strategically, management hopes to use a lockout to force (financially) employees to enter into a collective bargaining agreement they otherwise would not sign. Work typically stops during a lockout, hurting the company financially as a result, but management's hope is that employees will feel even more financial pain due to their loss of compensation during the term of the lockout, and that the company will, as a result, win the "war of attrition."

2. Is it ethical for the National Football League (NFL) to subject NFL referees to a lockout? Why or why not?

This is an opinion question, so student responses will likely vary. However, ask students the following question: If workers have the right to strike, why should an employer not have the right to lock out workers? The point is this—Just like the strike is the most powerful negotiating tool



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available to workers, the lockout is the most power negotiating tool available to companies. Both result in a cessation of work, thereby increasing the earnestness of resolving a labor-management dispute in order to “stop the bleeding” financially.

3. Is it ethical for NFL referees to demand more than \$8,000 per week (their current rate of pay), when the average income for an American family is approximately \$1,000 per week (according to 2011 statistics?)

This is an opinion question, so student responses will likely vary. Classroom discussion regarding this question should be robust due to the popularity of the National Football League (NFL) in the United States, and the fact that it is football season! In your author’s opinion, the dispute involving NFL referees should come as no surprise—With an incredibly profitable league that generates \$9 billion in revenue, how NFL owners, players, referees and others “split the pie” will always be an issue.



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Of Special Interest

This section of the newsletter will assist you in covering Article 1 ("Consumer Advocates: Time to Make Hotel Fees a Federal Issue") and the Ethical Dilemma ("Why Are the NFL Refs Locked Out? It's All in the Game") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 1--"Consumer Advocates: Time to Make Hotel Fees a Federal Issue"):

"Consumer Advocates Declare War on Hidden Hotel Fees"

<http://www.chicagotribune.com/travel/sns-ed-perkins-sends-message-to-stop-hidden-hotel-fees-20120828,0,5958859.story>

Note: The following article was written by consumer advocate Ed Perkins, and was included in the August 28, 2012 edition of chicagotribune.com.

"Stop hotels from hiding part of their true prices from consumers and business travelers." That's the message Kevin Mitchell of the Business Travel Coalition and I sent to the Federal Trade Commission (FTC) on August 27, 2012. Our target, of course, is the mandatory "fees" that hotels add to the room rates they post as supposedly independent fees rather than as integral parts of their true prices. The most common are "resort," "housekeeping," and "Internet access" fees, but business travel columnist Joe Sharkey recently identified mandatory fees for grounds-keeping and a "bell captain" fee.

Our objection to these fees is simple: If they're mandatory, they should be included in the hotel's base room rate. As it works now, these fees are yet another case of "split pricing," or as the FTC calls them, "drip pricing." You know how it works: A hotel that wants to collect, say, \$200 a night for a room, instead posts a phony rate of \$170 a night, then adds one or more mandatory fees to make up the \$30 difference. The problem, of course, is that it's the phony \$170 price the hotel posts online and submits to the online pricing sites; you don't find out about the true \$200 price until later — maybe not until you've made a nonrefundable purchase. Hiding the fees from their initial price displays, even when shown before final purchase and sometimes not even then, is clearly deceptive. A related deception is failure to include a value added tax (VAT) in displayed prices for European hotels.

As we note in our submission to the FTC, mandatory artificial "fees" and hidden VAT make a hotel's posted rate appear to be below its true price often enough to drive consumer choices in the travel marketplace. This widespread



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drip pricing damages almost all important stakeholders in the marketplace for hotel/resort accommodations:

1. Consumers and corporate travel managers find it difficult to determine the true cost of a stay in advance and to make accurate price comparisons among competitive hotel/resort options.
2. Online travel agencies are unable to provide accurate side-by-side price comparisons, and they are, therefore, often unable to present true final prices, even at the time of consumer purchase commitment. Instead, they are reduced to issuing vague "you may be subject to additional fees and charges" disclaimers.
3. State and local taxing authorities are deprived of revenue because they collect taxes on only the carved-out partial price rather than the true full price.
4. Online travel agencies and other travel agencies are deprived of a portion of earned commissions for the same reason.
5. Hotels that display rates in an honest manner suffer in supposedly side-by-side price displays when competitors display artificially low rates. As a result, some honest suppliers feel pressure and reluctantly adopt the drip-pricing model in order to appear competitive.

We note several precedents for government action against drip pricing: The U.S. Department of Transportation prohibits airlines from carving out part of the true fare into phony "fuel surcharges" and such; the Florida attorney general forced cruise lines to abandon carving phony "port charges" out of their featured rates, and the Federal Trade Commission took action against a tour operator that was carving out a phony "tax and service" charge.

We want to re-emphasize that we aren't asking any government agency to dictate which services hotels should or should not offer or the prices they should charge for any individual service. Instead, our principle is simple: If consumers have to pay it, hotels should include it in their posted prices.

The FTC does not investigate individual claims. But if you've been hit with unexpected fees or been misled in an online price comparison, you can add your voice by submitting a complaint online at ftccomplaintassistant.gov and specifically mention "drip pricing." Or if you disagree, feel free to tell that to the FTC, too.



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Teaching Tip 2 (Related to Ethical Dilemma--“Why Are the NFL Refs Locked Out? It’s All in the Game”):

“Lockout Law and Legal Definition”

<http://definitions.uslegal.com/l/lockout/>

Note: In discussing the Ethical Dilemma, use the following definition/description of an employee lockout:

A lockout is a tactic typically used by employers to hinder union organization or to gain leverage in labor disputes. Although it may entail locking employees out of the workplace, it can also be achieved through work stoppage, layoffs, *or the hiring of nonunion replacement workers* (emphasis added). Lockouts have generally been regarded as legal by the courts, although in some cases they have been held unlawful if they violate the terms of a joint agreement.



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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 5, 8, 45 and 48	Chapters 12, 42 and 43	Chapters 2 and 42	Chapters 42 and 45
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapters 5, 8, 45 and 48	Chapters 12, 42 and 43	Chapters 2 and 42	Chapters 42 and 45
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 4, 6, 7, and 25	Chapters 7 and 24	Chapters 1 and 24	Chapters 24 and 25
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3, 6, 23 and 48	Chapters 8 and 51	Chapters 4 and 51	Chapters 48 and 51
Barnes et al., Law for Business	Chapters 4, 6, 33 and 46	Chapters 8 and 25	Chapters 3 and 25	Chapters 25 and 46
Brown et al., Business Law with UCC Applications	Chapters 2, 6, 15 and 29	Chapters 23, 24 and 33	Chapters 1 and 24	Chapters 15 and 24
Reed et al., The Legal and Regulatory Environment of Business	Chapters 6, 7, 10 and 18	Chapters 11, 20 and 21	Chapters 2 and 22	Chapters 18 and 22
McAdams et al., Law, Business & Society	Chapters 5, 7 and 15	Chapters 12, 13 and 16	Chapters 2 and 14	Chapters 14 and 15
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2, 9, 21 and 23	Chapters 11, 12 and 24	Chapters 5 and 11	Chapters 11 and 21
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapters 1, 4, 6 and 7	Chapters 11, 12 and 15	Chapters 1 and 12	Chapters 4 and 12



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This Newsletter Supports the Following Business Law Texts:

- Barnes et al., Law for Business, 11th Edition 2012© (0073377716)
- Bennett-Alexander et al., The Legal Environment of Business in A Diverse Society, 1st Edition 2012© (0073524921)
- Brown et al., Business Law with UCC Applications Student Edition, 13th Edition 2013© (0073524956)
- Kubasek et al., Dynamic Business Law, 2nd Edition 2012© (0073377678)
- Kubasek et al., Dynamic Business Law: The Essentials, 2nd Edition 2013© (0073524972)
- Kubasek et al., Dynamic Business Law: Summarized Cases, 1st Edition 2013© (0078023777)
- Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 15th Edition 2013© (0073377643)
- McAdams et al., Law, Business & Society, 10th Edition 2012© (0073525006)
- Reed et al., The Legal and Regulatory Environment of Business, 16th Edition 2013© (0073524999)
- Melvin, The Legal Environment of Business: A Managerial Approach 2011© (0073377694)

