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Proceedings

A monthly newsletter from McGraw-Hill

September 2012 Volume 4, Issue 2

Mc Graw Hill Education

Contents

Dear Professor,

I hope your fall semester is off to a great start! Welcome to McGraw-Hill's September 2012 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 4, Issue 2 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the September 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. "Squatters'" rights and the effect of bankruptcy on a forced eviction;

2. An employee's firing based on a Facebook "like";

3. The intermingling of religious beliefs and business practices;

4. Videos related to foreign objects (needles) found in airline meals;

5. An "ethical dilemma" related to a compensation dispute between Scranton, Pennsylvania and city employees; and

6. "Teaching tips" related to Article 1 ("Family Can't Move into Their Home after Squatters File for Bankruptcy"), Video 1 ("Needles Found in Sandwiches on Four Delta Flights") and Video 2 ("Air Canada Needle Probe") of the newsletter.

Here's to an enjoyable and informative 2012-2013 academic year. May it be your best ever!

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Of Special Interest

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

1) "Squatters'" rights and the effect of bankruptcy on a forced eviction;

2) An employee's firing based on a Facebook "like"; and

3) The intermingling of religious beliefs and business practices.

Hot Topics in Business Law

Article 1: "Family Can't Move Into Their Home After Squatters File for Bankruptcy"

http://abcnews.go.com/Business/colorado-family-unable-move-home-squatters-file-bankruptcy/story?id=16896984#.UBlFt2Ge6-M

According to the article, Dayna Donovan and her family have been unable to occupy their home after two strangers squatting in her Littleton, Colorado home for eight months have filed for bankruptcy, preventing an eviction from the sheriff's department.

On July 12, a judge in Arapahoe County ruled that Veronica Fernandez-Beleta and Jose Rafael Leyva-Caraveo, the two people who were living in the home, had to move out in 48 hours.

Troy Donovan, 45, filed for a forced eviction with the Arapahoe County Sheriff's office on July 16.

However, Fernandez-Beleta filed for bankruptcy on July 20, which the Donovans learned about just hours before the scheduled eviction was to take place last week.

"The sheriff's office will not proceed with an eviction if there is a bankruptcy in question," Arapahoe County Undersheriff David Walcher indicated.

"It's frustrating. It's just one thing after another, after another," Donovan said. "We've lost two months' time. It has been an absolute living nightmare and an emotional roller coaster."

The Donovans and their two young daughters have been staying in the basement of a relative's house in Greeley, about 65 miles away. They say they can't afford an attorney and have struggled to come up with $500 in court filing fees and gas for driving to the clerk's office throughout the legal process.

Donovan said she delayed starting working a temporary job near her home in Littleton just because of the complications from the delayed eviction. She and her husband have struggled to find jobs in the small town where they are staying temporarily. They are also dealing with their mortgage company,

because they are about $20,000 behind on their house payments, the last of which was made in June 2011.

Donovan's brother in law set up a website asking for donations to allow them to move into a temporary home.

She has been contacting lawyers with the Colorado Legal Services who have so far said they are unfamiliar with this area of the law.

It all started last August when the Donovans moved to Indiana with their two children. Both were unemployed at the time and two months behind on their mortgage payments. They decided to relocate because Troy had a temporary job with a race team. Donovan said she left their home of more than 13 years locked and ready for the cold Colorado winter.

In March, Donovan said she had a "premonition" something was wrong with the home. She and her husband called a neighbor and learned someone had been living there since the winter.

When the couple called the police to check up on the home, the two occupiers showed paperwork from the Arapahoe County Clerk and Recorder with an affidavit of "adverse possession," their names and the Donovan's address written on it. The two claimed they bought the home from a real estate agent for $5,000.

"I am sad and confused and distressed," Fernandez-Beleta said.

The law of adverse possession varies from state to state. In Colorado, adverse possessors who stake their claim to a piece of land for 18 years without dispute may be able to become owners of it, according to Willis Carpenter, a real estate attorney in Denver who is not involved in the case.

Since the recession, reports of squatters staking their claim to a foreclosed or abandoned home flooded headlines, and instructional guides popped up online about how to file paperwork for adverse possessions.

Carpenter said the police won't usually get involved because it's a civil, not a criminal matter. However, Donovan and her husband were ordered to stay 100 yards away from their home after Fernandez-Beleta and Levya-Caraveo requested temporary restraining orders. The orders were issued on July 3.

Carpenter said the real estate agent who sold the home for $5,000 defrauded the buyers.

"Anybody that told Fernandez-Beleta and Levya-Caraveo they could have that home for $5,000 by adverse possession, that's obviously fraud," he said.

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The minimum amount of time for an adverse possessor to have legal ownership of a home can be shortened to seven years, if the occupier has a deed to the property and has been paying property taxes.

Most states have at least a five-year requirement for adverse possession, said Carpenter.

"Many states require 20 years or somewhere in between," Carpenter said, adding that most people use the law to claim a strip of land or a field, say, in dispute with a neighbor.

"It sounds like none of this comes close to that," Geoffrey Anderson, a real estate attorney in Denver not involved in the case, said of the people occupying the Donovan's home.

Donovan said she suspects a real estate agent targeted her home because it was briefly on the market last year.

"People who are even on an extended vacation need to be aware of this situation because once someone illegally occupies your home, you can't just have the cops arrest them," because they need to be caught in the act of breaking in and entering, Donovan said.

"It's just been a nightmare," she said. "We just want to get settled and try to get on with our life."

Discussion Questions

1. Why did the Arapahoe County, Colorado sheriff not proceed with a court-ordered, forced eviction in this case?

The filing of a bankruptcy petition serves as an "automatic stay" on other judicial actions involving the debtor's property rights, including a court-ordered, forced eviction. The term "automatic stay" means that all other judicial actions involving the debtor's property rights must cease, since the bankruptcy court takes exclusive jurisdiction over distribution of the debtor's property and resolution of the debtor's property rights. In effect, the bankruptcy petition (filed in federal court) "trumps" state and local judicial actions involving the debtor's property and property rights.

2. Should a bankruptcy filing take precedence over a court-ordered, forced eviction? Why or why not?

Although this is an opinion question, remind students that bankruptcy law is federal law, and bankruptcy cases involve federal (bankruptcy) court. In the legal "pecking order," federal judicial actions are superior to state and local judicial actions. Also, emphasize to students that the only way to administer a bankruptcy estate in an orderly fashion is to grant exclusive jurisdiction over the debtor's estate to one court (in bankruptcy matters, the federal bankruptcy court.)

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3. What is "adverse possession?" Should a person be allowed to obtain ownership of property by adverse possession? If so, under what circumstances?

Real estate may be acquired by possessing it in a way adverse to the interests of the owner for a legally-mandated period of time. Adverse possessors can gain title to real property even though they had no right to use the property at the beginning of their use or possession. To acquire title by adverse possession, the possession must be:

a. actual;
b. visible and notorious;
c. exclusive;
d. hostile; and
e. continuous for a statutorily-prescribed period of time.

Adverse possession law is set forth at the state level, and as mentioned in the article, states vary in terms of the length of time one must adversely possess property in order to acquire title.

Article 2: "Virginia Deputy Fights His Firing over A Facebook 'Like'"

http://www.cnn.com/2012/08/10/tech/social-media/deputy-fired-facebook-like/?hpt=te_t1

According to the article, a Virginia sheriff's deputy has been fired for liking his boss's political opponent -- on Facebook.

Now Daniel Ray Carter Jr. is fighting back in court, arguing that a "like" should be protected by his First Amendment right to free speech. It's a case that could settle a significant question at a time when hundreds of millions of people express themselves on Facebook, sometimes merging their personal, professional and political lives in the process.

According to court documents, the case began when Sheriff B.J. Roberts of Hampton, Virginia, fired Carter and five other employees for supporting his rival in a 2009 election.

Carter's offense? Clicking the omnipresent Facebook thumbs-up to follow the page "Jim Adams For Hampton Sheriff." Roberts, of course, won re-election, leading to the firings.

Free-speech advocates argue that the "like" should have been clearly protected by Carter's right to freedom of expression. But a U.S. District Court judge in Virginia ruled differently saying, in effect, that free-speech protections don't kick in when someone doesn't actually say something.

"Liking a Facebook page is insufficient speech to merit constitutional protection," Judge Raymond A. Jackson wrote in his May ruling, because it doesn't "involve actual statements."

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Carter is appealing that ruling in the U.S. Court of Appeals. The appeal was filed recently, and the sheriff's lawyers are expected to respond by September.

Carter's advocates argue the judge's definition of free speech doesn't match existing law.

"The judge is wrong in the sense that the Facebook button actually says the word 'like,' so there are actually words being used," said Aden Fine, a senior staff attorney with the American Civil Liberties Union, which has filed a brief supporting Carter's appeal. "And there's a thumbs-up symbol, which most people understand means they, literally, like something."

Facebook itself also has weighed in with a brief to the court, saying that a "like" for a political candidate is "the 21st-century equivalent of a front-yard campaign sign."

"A campaign endorsement in particular need not be elaborate or lengthy to constitute political speech," the site's lawyers wrote. "Carter need not have published a detailed analysis of the competing candidates' platforms for his speech to warrant First Amendment protection. His endorsement of his preferred candidate is enough."

With the London Olympics recently concluded, the ACLU's Fine compared it to another wordless moment -- the two American sprinters who defiantly raised gloved fists in a "black power" salute on the medals stand during the 1968 Olympics in Mexico City.

"They didn't say any words," he said, "but they clearly sent a message."

Bruce Barry is a professor of Management and Sociology at Vanderbilt University and author of 2007's "Speechless: The Erosion of Free Expression in the American Workplace." He calls the argument used in the lower court ruling "ridiculous" and "on its face absurd."
Barry believes if the appeals court upholds that judgment, it could make it much easier for employers to clamp down on their workers' speech on social networks such as Facebook and Twitter as well as on personal blogs and other sites.

"If, as a lot of people expect, the appeals court overrules this and says this is obviously protected speech, then it may be that this case doesn't really establish a great amount of new law," he said. "That's the outcome a lot of people might expect.

"But if it goes the other way, then it really does change things, at least in the legal realm. That would have, potentially, a significant effect."

Barry notes that the Virginia case is the latest in a string of legal disputes that have arisen between employers and employees based on the increasingly popular use of social media.

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Last year, gadget-review site PhoneDog sued Noah Kravitz, a former employee, for taking with him a Twitter account he built while at the company to promote his work for other sites.

And, last year, the National Labor Relations board weighed in on behalf of an ambulance driver who had been fired because of a negative Facebook post about the company for which he drove. The board said the company's policy, which prohibited negative comments by its employees on the Internet, was too broad. In February, the two sides settled the case.

"I think that employers are often too concerned about his stuff and about their employees," Barry said. "(Social media) has just become so common, so ubiquitous."

It's not clear how long it will take Carter's case to move through the court system.

After the sheriff's lawyers respond, Carter's attorneys will get one more chance. Then, the court could take several months to hear further arguments and, ultimately, issue a ruling.

Discussion Questions

1. Make your best argument as to why Sheriff Roberts was legally within his rights in firing Carter and five other employees.

Sheriff Roberts' best argument supporting his right to fire Carter and five other employees is based on the "employment-at-will" doctrine. This doctrine, recognized in Virginia and many other "right-to-work" states, allows employers to fire employees for any reason (or no reason at all), provided the employer does not violate federal and/or state anti-discrimination law. In this case, Roberts can argue that he was well within his supervisory rights to make a determination as to which deputies are "fit to serve."

2. Make your best argument as to why Sheriff Roberts was not legally entitled to fire Carter and five of his co-workers.

The employees' best argument is based on the First Amendment to the United States Constitution—more particularly, the free speech provision of the First Amendment. Traditionally, courts have granted the most First Amendment protection to political speech. Carter and his co-workers can argue that in "liking" their superior's opponent, they have exercised a right that is the essence of what it means to be an American—the right to freedom of speech.

3. Does a case like this represent the "death" of the right to privacy in the United States? Why or why not?

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Without question, technology has eroded the right to privacy. Most will agree that by "logging on" to Facebook, users compromise their right to privacy. Whether this represents the "death" of the right to privacy in the United States can be a subject for classroom debate.

Article 3: "Chick-fil-A Not Alone in Touting Religion Alongside Products"

http://www.foxnews.com/us/2012/08/01/chick-fil-not-alone-in-touting-religion-alongside-products/?intcmp=trending

According to the article, Chick-fil-A president Dan Cathy is not the only business tycoon who refuses to hide his faith under a bushel — top executives from some of America's biggest companies are born-again Christians who talk about their beliefs more often than their balance sheets.

Major corporations like Tyson Foods, Interstate Batteries and Hobby Lobby were either founded or are now led by outspoken and deeply religious bosses. While some of the companies distinguish between their corporate identities and their leaders' faith, others embrace it.

Norm Miller, chairman of Interstate Batteries, discusses his faith and salvation at length on the company's website, even inviting people to write him for advice on prayer;

Tyson Foods, the Arkansas food processing giant, offers chaplains to counsel its employees on life issues like deaths or family emergencies;

In-N-Out Burger, the popular California-based hamburger chain, prints "John 3:16" on the bottom of its cups;

Hobby Lobby, the Oklahoma City-based arts and crafts store chain, cites its commitment to "honoring the Lord" on its website and closes its 500-plus nationwide locations on Sundays, as does Chick-fil-A.

"We believe that it is by God's grace and provision that Hobby Lobby has endured," its website reads. "He has been faithful in the past, we trust Him for our future."

Cathy sparked a national controversy last month when he told the Baptist Press that he was "guilty as charged" for supporting the "biblical definition of a family," leading to widespread criticism from gay rights groups and the mayors of at least three large U.S. cities — Chicago, San Francisco and Boston — who said the chain was no longer welcome there.

Another well-known company, furniture maker Herman Miller — which was founded by Christian evangelical D.J. De Pree in 1905 — said despite its founders' religious background, the firm is not a "religious company."

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"Although the founding family were deeply devout Christians, at no point in the company's history was their religious faith part of the ethos," spokesman Ron Reeves said. "The company's ethos is based on values rather than religion."

"Norm Miller is also a believer in God's power to change lives, because it was that power that turned his own life around after years of drinking as hard as he worked," the website reads. "That was the beginning of many changes in his personal and professional life. At the same time, there were some things about Norm Miller that stayed the same. His creative energy never flagged, and his willingness to dream up and try new ideas remained his hallmark."

One marketing expert said blurring the line between a company's image and its top boss's religious beliefs can be bad for business.

Jonah Bloom, former editor of Ad Age and chief strategy officer for Kirshenbaum Bond Senecal & Partners in New York, told FoxNews.com that while having a "purpose" such as a social or environmental cause can be a very good thing for a business, evoking religion can backfire.

"It can come across as anti-something rather than pro-something," Bloom said. "It's very important to do it positively and inclusively."

With regards to Cathy's statement on same-sex marriage, Bloom said it appeared to have been a "bad business decision" and not the kind of "purpose" he would have advocated.

But other business leaders, including Hobby Lobby CEO and founder David Green, say being outspoken about their religious beliefs is non-negotiable. In 2011, the Green family — whose fortune was estimated by Forbes magazine at about $2.5 billion — purchased 30,000 rare biblical texts and artifacts that now make up one of the largest private collections of its kind in the world.

"We believe the Bible has a positive influence and I think that all people should see what it has to say," president Steve Green said. "We encourage people to make their choice and follow its principals like we do and strive to do."

Discussion Questions

1. Focus on the comment of Dan Cathy, president of Chick-fil-A, that he is "guilty as charged" for supporting the "biblical definition of a family." From a business standpoint, is it prudent to make such a comment?

This is debatable--Perhaps one should reserve judgment until Chick-fil-A issues its most recent quarterly financial report! For those who patronize Chick-fil-A for the Cathy family's staunch support of Christian principles and beliefs (closing its business on Sundays, for example), Dan

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Cathy's most recent statement regarding the "biblical definition of a family" likely serves as a "rallying cry"--Witness the long lines snaking outside of Chick-fil-As across the country immediately after Cathy's comments and the media firestorm that resulted. For those upset with Cathy's comments, the question remains as to whether: 1) they associate Cathy's comments with Chick-fil-A; and 2) they choose to refrain from purchasing Chick-fil-A products because of his comments.

2. Is it fair to assume that Dan Cathy's proclamation is a statement on behalf of Chick-fil-A?

In defense of Mr. Cathy, he stated that "he" (not Chick-fil-A) is "guilty as charged" for supporting the "biblical definition of a family." However, corporate leaders should arguably exercise restraint in addressing an issue as controversial as the definition of marriage, since "picking sides" might diminish the corporation's customer base.

3. Aside from sales, are there any other potential business-related problems associated with Cathy's statement? Explain your response.

*Assume, **hypothetically**, that a homosexual believes he has been denied an employment opportunity at Chick-fil-A. Although the Civil Rights Act of 1964 does not specifically prohibit discrimination based on sexual orientation (it prohibits discrimination based on race, gender, national origin, culture and religion), many states and municipalities do. Cathy's comments could potentially "set the stage" for a plaintiff's argument that Chick-fil-A's corporate culture serves to discriminate on the basis of sexual orientation. Although there is certainly no guarantee that a plaintiff could prevail on such an argument, would Chick-fil-A want to defend its corporate culture in light of Cathy's statement?*

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Video Suggestions

Video 1: "Needles Found in Sandwiches on Four Delta Flights"

http://abcnews.go.com/Blotter/needles-found-sandwiches-delta-flights/story?id=16790585#.UBlIoGGe6-O

Note: In addition to the video presented at the above-referenced web address, please read the following article:

According to the article, two passengers suffered minor injuries from needles found in the meat of sandwiches served aboard four Delta Air Lines flights from Amsterdam to the United States Sunday, federal officials report. And the FBI is now investigating those incidents.

The sandwiches were served to business class passengers, crew members and government employees flying from Amsterdam to the United States.

At least one batch of 17 sandwiches appeared to be made by a U.S. company based at Amsterdam's Schiphol airport. Those sandwiches were served during Delta's flight to Minneapolis-St. Paul.

Two passengers aboard the flight found needles in their sandwiches, officials confirmed. The sandwiches were turned over by Delta to Customs and Border Patrol.

Two passengers sustained minor injuries after biting into the sandwiches and CBP officials found a third needle after confiscating the sandwiches, according to an official report.

According to Delta, the contaminated sandwiches were turkey sandwiches that were served in the business elite cabin to a small number of passengers. Since the incident, turkey sandwiches have been removed from flights out of Amsterdam and have been replaced by pre-packaged pizza, Delta said.

"Delta is taking this matter extremely seriously and is cooperating with local and federal authorities who are investigating the incident," Delta spokeswoman Kristin Bauer said. "Delta has taken immediate action with our in-flight caterer at Amsterdam to ensure the safety and quality of the food we provide onboard our aircraft."

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Delta told authorities that Gate Gourmet, a U.S. company operating in Amsterdam, made the sandwiches.

Gate Gourmet said it is treating the incident "as a criminal act."

"Gate Gourmet immediately launched a full investigation to determine the root cause of this disturbing incident, and we are treating this as a criminal act," Gate Gourmet spokeswoman Christina Ulosevich said in a statement. "Nothing is more important to Gate Gourmet than the safety and well-being of the traveling public. The company also is cooperating fully with investigations by local and federal authorities and by our customer."

Although federal air marshals were aboard the flight, they were not notified of the incident by the crew, authorities said, until deplaning. At that point the air marshals turned the incident over to the FBI, which was working with CBP and local police to investigate how the needles were put in the meat.

In addition to the Minneapolis flight, a needle was discovered by a teenage passenger aboard a Delta flight from Amsterdam to Atlanta. The teen would not surrender the needle to authorities, who noted he told them that he planned to use it as evidence in a lawsuit.

In a federal report on the incidents, it was noted that the teen was the son of a passenger aboard the flight to Minneapolis who also found a needle in his sandwich.

Additional needles were reported found on two other flights, one by a crew member and another by a federal air marshal.

Discussion Questions

1. What is/are the legal standard(s) for liability when an object is found in food?

In the United States, product liability law related to the sale of food is largely determined on a state-by-state basis. States recognize two (2) different standards in terms of evaluating whether a food product is defective. Under the "reasonable expectations" test, the operative issue is whether a reasonable consumer would expect what he or she found in the food to actually be in the food. Under the "foreign substance/natural substance" test, the operative issue is whether what is found in the food is "foreign" to the food, or a natural part of the food. As an example to illustrate the competing standards of product liability, suppose a one-quarter inch wide and one-quarter inch tall piece of pig bone is found in a pre-packaged barbeque sandwich. A consumer might argue that under the "reasonable expectations" test, no reasonable consumer would expect a piece of pig bone to be found in a pre-packaged barbeque sandwich. Conversely, a seller might argue that under the "foreign substance/natural substance" test, bone is natural to a pig and any meat surrounding the

bone. Further, a seller might argue that despite state-of-the-art food processing standards, it is impossible to completely remove small bone fragments from barbeque.

2. There are two potential defendants (aside from a criminal who might have sabotaged the food) in a product defect lawsuit: Delta and the in-flight caterer. Evaluate their potential legal liability in the subject cases.

In product liability cases related to food products, plaintiffs typically list two (2) defendants in lawsuits: a) the food producer/packager; and b) the ultimate seller. Logically, juries hold food producers/packagers to a higher standard of liability, since they ultimately control what "goes into" the packaged food product. However, ultimate sellers can also be held liable if they a) did not exercise reasonable care in selecting a food producer/packager (for example, continuing to use a producer/packager even though numerous health citations have been issued against the company); and/or b) they knew or should have known that the food product was defective, but sold it to the customer anyway. As a defense attorney, in terms of relative ease of representation, your author would prefer to represent Delta. It would be for a jury to determine, based on the facts presented at trial, whether Delta and/or the in-flight carrier are liable for what might amount to sabotage and/or the act of a terrorist.

3. Assuming that the evidence demonstrates that the needles in the in-flight meals were the result of criminal actions. Would that immunize Delta and its in-flight caterer from liability in these cases? Why or why not?

Criminal acts would not automatically immunize Delta and its in-flight caterer from liability in these cases. Even if the adulteration of in-flight meals amounted to criminal actions, the companies involved could have potential liability if the evidence demonstrates they either knew or should have known the meals were defective. Jurors, however, might be sympathetic to Delta and its in-flight caterer if the evidence demonstrates criminality, since a jury might differentiate the intentional actions of a third party from mere negligence on the part of the companies.

Video 2: "Air Canada Needle Probe"

http://www.cbc.ca/player/News/ID/2262696526/?sort=MostRecent

Discussion Questions

1. Compare the potential liability of Air Canada to Delta. More specifically, is Air Canada charged with a higher degree of responsibility, compared to Delta, regarding needles in in-flight meals?

Since the Air Canada incident happened after the Delta cases of meal adulteration, Air Canada would be held to a higher standard of care. Under the circumstances, it would be easier for a jury to

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conclude that Air Canada should have known its meals might be adulterated by a criminal/terrorist, and that Air Canada should have inspected its meals more carefully to avoid harm to its passengers.

2. Which court system would have jurisdiction over a potential Air Canada product defect lawsuit arising from the facts of this case?

Clearly, the Canadian court system would have jurisdiction over this case. The defective meal was discovered on a flight from Victoria, British Columbia, Canada to Toronto, Ontario, Canada, and involved a Canadian airline company (Air Canada). Since the dispute arose in Canada (more specifically, in Canadian air space) and since the defendant is a Canadian corporation, the Canadian court system has proper jurisdiction.

3. Since the meal involved was "pre-packaged" by a caterer, does the fact that Air Canada did not prepare the meal immunize the company from product liability? Why or why not?

Please see the response to Video 1, Discussion Question 2 presented earlier in this newsletter. As mentioned previously, in product liability cases related to food products, plaintiffs typically list two (2) defendants in lawsuits: a) the food producer/packager; and b) the ultimate seller. Logically, juries hold food producers/packagers to a higher standard of liability, since they ultimately control what "goes into" the packaged food product. However, ultimate sellers can also be held liable if they a) did not exercise reasonable care in selecting a food producer/packager (for example, continuing to use a producer/packager even though numerous health citations have been issued against the company); and/or b) they knew or should have known that the food product was defective, but sold it to the customer anyway. It would be for a jury to determine, based on the facts presented at trial, whether Delta and/or the in-flight carrier are liable for what might amount to sabotage and/or the act of a terrorist. The fact that Air Canada did not prepare the meal does not immunize the company from product liability.

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This section addresses the question of whether the mayor of Scranton, Pennsylvania had the legal and ethical right to cut city employee pay.

Ethical Dilemma

"Scranton Pays up Owed Income Plus Interest to City Employees"

http://www.foxnews.com/politics/2012/07/31/scranton-pays-up-owed-income-plus-interest-to-city-employees/?test=latestnews

Note: Please see the video, accompanying the article, at the above-referenced web address.

According to the article, city employees in Scranton who earlier this month saw their pay slashed to minimum wage over a dispute between city leaders will soon get the money owed them, plus interest.

With the pay reinstated, John Judge, president of the local firefighters union, said he was "cautiously optimistic" the city's latest financial crisis is over.

Earlier this month Scranton attracted international attention when Mayor Chris Doherty, a Democrat, said the city was unable to meet its million-dollar payroll, and he ordered all 400 city workers to be paid the federal minimum wage of $7.25 an hour. Doherty, whose salary is $50,000 a year, slashed his own pay along with police, firefighters and public works employees.

Unions representing city workers went to court and won an injunction preventing Doherty from violating collective bargaining agreements. The mayor ignored the court order, explaining the city did not have money to pay workers their full salaries.

Firefighters like Judge called the mayor's decision "insulting."

"These guys are trained professionals. These guys train every day," he said. "They put their lives on the line."

Two weeks ago, citing improved tax flow, the mayor restored full pay but still faced a contempt hearing for ignoring a judge's order. The city, meanwhile, owed workers about $700,000 in back wages.

Recently, the mayor and city council, all of whom are Democrats, reached agreement on a financial recovery plan that among other things calls for a minimum 33 percent increase in real estate taxes. Pending state approval, the

plan paves the way for Scranton to almost immediately receive more than $2 million through in a state loan and a grant.

The mayor then struck a deal with the unions to pay the back wages and 6 percent interest. In exchange, the unions dropped their contempt petition against the mayor.

Doherty described the last month as a "tough situation." "Employees deserve to be paid," he said. "They have done a good job for the city, that is never a question, and we have an obligation to pay them."

But Scranton's financial problems are not over. Long-term debt is over $250 million, including $15 million owed to police and firefighters resulting from wage hikes that were not honored.

Teri Ooms of the Pennsylvania-based Institute for Public Policy and Economic Development said Scranton faces "several more years of crisis mode and then several years of rebuilding mode before we can say we have weathered the storm."

Discussion Questions

1. The article references an "injunction" obtained by unions representing Scranton city workers. What is an injunction?

An injunction is a court order prohibiting certain activity. As a general rule, the violation of an injunction constitutes contempt of court. As mentioned in the article, unions representing Scranton city workers went to court and won an injunction preventing Mayor Doherty from violating collective bargaining agreements.

2. The article references a "collective bargaining" agreement between Scranton and city workers. What is a collective bargaining agreement?

A collective bargaining agreement represents a contract between an employer and its union employees. Under the principles of contract law, a collective bargaining agreement is generally enforceable, and its violation typically constitutes breach of contract. In essence, Mayor Doherty contends that financial duress should excuse the city from its contract obligations. Traditionally, courts have not been receptive to such an argument, especially if the contracting parties had comparable bargaining power when they entered into an agreement.

3. Why would Mayor Doherty face a charge of "contempt of court" when, according to Doherty, financial circumstances dictated a dramatic decrease in city worker pay? Is Doherty not within his rights, as "chief executive officer" of his city, to make a "business" decision regarding city employee compensation? Why or why not?

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In short, Mayor Doherty faces a contempt of court charge because he directly violated a court injunction. The court injunction specifically instructed him to not violate the collective bargaining agreement between the city and its union employees.

As a side note, Scranton does have the option of filing for federal bankruptcy protection. Such a filing might serve to lessen its contractual obligations to its workers.

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Of Special Interest

This section of the newsletter will assist you in covering Article 1 ("Family Can't Move into Their Home after Squatters File for Bankruptcy"), Video 1 ("Needles Found in Sandwiches on Four Delta Flights") and Video 2 ("Air Canada Needle Probe") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 1--"Family Can't Move into Their Home after Squatters File for Bankruptcy"):

"How Bankruptcy Stops Your Creditors: The Automatic Stay"

http://www.nolo.com/legal-encyclopedia/how-bankruptcy-stops-creditors-automatic-29723.html

When you file for bankruptcy, something called the automatic stay immediately stops any lawsuit filed against you and most actions against your property by a creditor, collection agency, or government entity. Especially if you are at risk of being evicted, being foreclosed on, being found in contempt for failure to pay child support, or losing such basic resources as utility services, welfare, unemployment benefits, or your job (because of a raft of wage garnishments), the automatic stay may provide a powerful reason to file for bankruptcy.

What the Automatic Stay Can Prevent

Here is how the automatic stay affects some common emergencies:

Utility disconnections. If you're behind on a utility bill and the company is threatening to disconnect your water, electric, gas, or telephone service, the automatic stay will prevent the disconnection for at least 20 days. Although the amount of a utility bill itself rarely justifies a bankruptcy filing, preventing electrical service cutoff in January in New England might be justification enough.

Foreclosure. If your home mortgage is being foreclosed on, the automatic stay temporarily stops the proceedings, but the creditor will often be able to proceed with the foreclosure sooner or later. If you are facing foreclosure, Chapter 13 bankruptcy is usually a better remedy than Chapter 7 bankruptcy, if you want to keep your house.

Eviction. If you are being evicted from your home, the automatic stay may provide some help -- but the new bankruptcy law makes it easier for landlords to proceed with evictions. If your landlord already has a judgment of possession against you when you file, the automatic stay won't affect these

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eviction proceedings; the landlord can continue just as if you hadn't filed for bankruptcy. And if the landlord alleges that you've been endangering the property or using controlled substances there, the automatic stay won't do you much good, either. In other cases, the automatic stay might buy you a few days or weeks, but the landlord will probably ask the court to lift the stay and allow the eviction -- and the court will probably agree to do so.

Collection of overpayments of public benefits. If you receive public benefits and were overpaid, normally the agency is entitled to collect the overpayment out of your future checks. The automatic stay prevents this collection. However, if you become ineligible for benefits, the automatic stay doesn't prevent the agency from denying or terminating benefits for that reason.

Multiple wage garnishments. Filing for bankruptcy stops garnishments dead in their tracks. (And not only will you take home a full salary, but you also may be able to discharge the debt in bankruptcy.) Although no more than 25% of your wages may be taken to satisfy court judgments (up to 50% for child support and alimony), many people file for bankruptcy if more than one wage garnishment is threatened.

What the Automatic Stay Cannot Prevent

In a few instances, the automatic stay won't help you.

Certain tax proceedings. The IRS can still audit you, issue a tax deficiency notice, demand a tax return (which often leads to an audit), issue a tax assessment, or demand payment of such an assessment. However, the automatic stay does stop the IRS from issuing a tax lien or seizing your property or income.

Support actions. A lawsuit against you seeking to establish paternity or to establish, modify, or collect child support or alimony isn't stopped by your filing for bankruptcy.

Criminal proceedings. A criminal proceeding that can be broken down into criminal and debt components will be divided, and the criminal component won't be stopped by the automatic stay. For example, if you were convicted of writing a bad check, sentenced to community service, and ordered to pay a fine, your obligation to do community service won't be stopped by your filing for bankruptcy.

Loans from a pension. Despite the automatic stay, money can be withheld from your income to repay a loan from certain types of pensions (including most job-related pensions and IRAs).

Multiple filings. If you had a bankruptcy case pending during the previous year, then the stay will automatically terminate after 30 days unless you, the trustee, the U.S. Trustee, or a creditor asks for the stay to continue and proves that the current case was filed in good faith. If a creditor had a motion to lift the stay pending during the previous case, the court will presume that you acted in bad

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faith, and you'll have to overcome this presumption to get the protection of the stay in your current case.

How Creditors Can Get Around the Automatic Stay

Usually, a creditor can get around the automatic stay by asking the bankruptcy court to remove ("lift") the stay, if it is not serving its intended purpose. For example, say you file for bankruptcy the day before your house is to be sold in foreclosure. You have no equity in the house, you can't pay your mortgage arrears, and you have no way of keeping the property. The foreclosing creditor is apt to go to court soon after you file for bankruptcy and ask for permission to proceed with the foreclosure -- and that permission is likely to be granted.

Teaching Tip 2 (Related to Video 1--"Needles Found in Sandwiches on Four Delta Flights" and Video 2--"Air Canada Needle Probe"):

For an excellent state-by-state summary of case law and statutes regarding tort claims relating to food liability, refer students to the following web address:

http://cousineaulaw.com/forum-series/2010/01/case-law-and-statutes-on-a-state-by-state-basis-for-claims-relating-to-food-liability.php

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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, 32, 42, 43 and 49	Chapters 9 and 10	Chapter 42	Chapters 9, 10 and 32
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapters 5, 8, 32, 42, 43 and 49	Chapters 9 and 10	Chapter 42	Chapters 9, 10 and 32
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 4, 6, 7, 18 and 24	Chapters 6 and 25	Chapter 24	Chapters 6, 18 and 25
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3, 6, 24, 30 and 51	Chapters 7 and 20	Chapter 51	Chapters 7, 20 and 30
Barnes et al., Law for Business	Chapters 4, 6, 25, 34 and 44	Chapters 7 and 20	Chapter 25	Chapters 7, 20 and 44
Brown et al., Business Law with UCC Applications	Chapters 2, 6, 21, 23 and 30	Chapters 6 and 15	Chapter 24	Chapters 6, 15 and 21
Reed et al., The Legal and Regulatory Environment of Business	Chapters 6, 7, 10 18, 20 and 21	Chapter 10	Chapter 22	Chapters 10 and 18
McAdams et al., Law, Business & Society	Chapters 5, 7, 12, 13 and 15	Chapter 7	Chapter 14	Chapters 7 and 15
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2, 9, 11, 12, 20 and 23	Chapter 9	Chapter 11	Chapters 9 and 20
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapters 1, 6, 7, 9 and 11	Chapter 6	Chapter 12	Chapters 6 and 9

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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)

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