The following case involves a patent application.

CASE 8.1 U.S. SUPREME COURT Patent

Bilski v. Kappos, Director, Patent and Trademark Office

130 S.Ct. 3218, 177 L.Ed.2d 792, Web 2010 U.S. Lexis 5521 (2010)
Supreme Court of the United States

"The concept of hedging, described in claim 1 and reduced to a mathematical formula in claim 4, is an unpatentable abstract idea."

—Kennedy, Justice

Facts

Bernard Bilski and Rand Warsaw filed a patent application with the U.S. Patent and Trademark Office (PTO). The application sought patent protection for a claimed invention that explains how buyers and sellers of commodities in the energy market can hedge against the risk of price changes. The key claims are claims 1 and 4. Claim 1 describes a series of steps instructing how to hedge risk. Claim 4 puts the concept articulated in claim 1 into a simple mathematical formula. The remaining claims describe how claims 1 and 4 can be applied to allow energy suppliers and consumers to minimize the risks resulting from fluctuations in market demand for energy. The PTO rejected the patent application, holding that it merely manipulates an abstract idea and solves a purely mathematical problem. The U.S. Court of Appeals affirmed. Petitioners Bilski and Warsaw appealed to the U.S. Supreme Court.

Issue

Is the petitioners' claimed invention patentable?

Language of the U.S. Supreme Court

Section 101 specifies four independent categories of inventions or discoveries that are eligible for protection: processes, machines, manufactures, and compositions of matter. The Court's precedents provide three specific exceptions to Section 101's broad patent-eligibility principles: laws of nature, physical phenomena, and abstract ideas. The concepts covered by these exceptions are part of the storehouse of knowledge of all men free to all men and reserved exclusively to none.

Petitioners seek to patent both the concept of hedging risk and the application of that concept to energy markets. It is clear that petitioners' application is not a patentable process. Claims 1 and 4 in petitioners' application explain the basic concept of hedging, or protecting against risk. Hedging is a fundamental economic practice long prevalent in our system of commerce and taught in any introductory finance class. The concept of hedging, described in claim 1 and reduced to a mathematical formula in claim 4, is an unpatentable abstract idea. Allowing petitioners to patent risk hedging would preempt use of this approach in all fields, and would effectively grant a monopoly over an abstract idea. The patent application here can be rejected under our precedents on the unpatentability of abstract ideas.

Decision of the U.S. Supreme Court

The U.S. Supreme Court held that the concept hedging is an abstract idea that cannot be patent

Case Questions

Critical Legal Thinking
Is it often difficult for the U.S. Patent and Trademark Office to determine the patentability of cla in patent applications?

Ethics
Do you think that it was obvious that hedging is abstract concept that cannot be patented?

Contemporary Business
Does the patent system promote or detract from business innovation?

Patent Period

In 1995, in order to bring the U.S. patent system into harmony with th systems of the majority of other developed nations, Congress made the f important changes in U.S. patent law:

Law Case with Answer

Retail Services Inc. v. Freebies Publishing

Facts Eugene F. Zannon and Gail Zannon filed an application on behalf of Freebies Publishing with the U.S. Patent and Trademark Office (PTO) to register the word "Freebies" as a trademark. The PTO granted applicant Freebies Publishing the registration of the word "Freebies." Thereafter, Freebies Publishing registered the Internet domain name freebies.com. Freebies Publishing operated its business from the website freebies.com.

Two years after Freebies Publishing was granted the trademark to "Freebies," Retail Services Inc. (RSI) registered the Internet domain name freebie.com and began operating a website that promoted free offerings of goods and services for clients. RSI filed an action in federal court, seeking an order that RSI's use of the domain and website name freebie.com did not infringe Freebies Publishing's trademark "Freebies" and that this trademark was generic and should be canceled. Is the word *freebies* a generic word that does not qualify as a trademark and whose trademark status should be canceled?

Answer Yes, the word *freebies* is generic and does not qualify to be registered as a federal trademark. As a slang term, "freebie" means something given or received without charge or an article or service given for free. For a long time, "freebie" has been understood to mean something that is provided free. Freebies Publishing's site is but one of hundreds of websites that incorporate the word "freebie" of "freebies" into their domain names. These websites are so common that the term "freebie site" is often used to refer to other sites that, like Freebies Publishing's, offer information about free products or services. In addition, advertisements in newspapers and elsewhere often use the phrase "freebie" to designate something that will be given to a consumer for free.

Thus, in the public's mind, "freebies" indicates free or almost free products and is not solely identified with the Zannons or their website. The word *freebies* is a generic name, and a generic word cannot function as a trademark. Therefore, the trademark granted to Freebies Publishing for the word "Freebies" must be canceled. RSI is permitted to operate its website www.freebie.com. *Retail Services Inc. v. Freebies Publishing*, 364 F.3d 535, **Web** 2004 U.S. App. Lexis 7130 (United States Court of Appeals for the Fourth Circuit)

Critical Legal Thinking Cases

8.1 Fair Use James W. Newton, Jr., is an accomplished avant-garde jazz composer and flutist. Newton wrote a composition for the song "Choir," a piece for flute and voice that incorporated elements of African American gospel music. Newton owns the copyright to the composition "Choir." The Beastie Boys, a rap and hip-hop group, used six seconds of Newton's "Choir" composition in their song "Pass the Mic" without obtaining a license from Newton to do so. Newton sued the Beastie Boys for copyright infringement. The Beastie Boys defended, arguing that their use of six seconds of Newton's song was *de minimis* and therefore fair use. Does the incorporation of a short segment of a copyrighted musical composition into a new musical recording constitute fair use, or is it copyright infringement? *Newton v. Beastie Boys*, 349 F.3d 591, **Web** 2003 U.S. App. Lexis 22635 (United States Court of Appeals for the Ninth Circuit)

8.2 Patent Pioneer Hi-Bred International, Inc. (Pioneer) holds patents that cover the company's inbred and hybrid corn and corn seed products. A hybrid plant patent protects the plant, its seeds, variants, mutants, and modifications of the hybrid. Pioneer sells its patented hybrid seeds under a limited label license that provides: "License is granted solely to produce grain and/or forage." The license states that it "does not extend to the use of seed from such crop or the progeny thereof for propagation or seed multiplication."

J.E.M. Ag Supply, Inc., doing business as Farm Advantage, Inc. (Farm Advantage), purchased patented hybrid seeds from Pioneer in bags bearing this license agreement. Farm Advantage created seed from the hybrid corn products it grew from Pioneer's patented hybrid seed. Pioneer sued Farm Advantage, alleging that Farm Advantage had infringed its patent. Farm Advantage filed a counterclaim of patent invalidity, arguing that Pioneer hybrid plant seed patents are not patentable subject matter. Farm Advantage appealed to the U.S. Supreme Court. Are sexually reproducing hybrid plants patentable subject matter? *J.E.M. Ag Supply, Inc., d.b.a. Farm Advantage, Inc. v. Pioneer Hi-Bred International, Inc.*, 534 U.S. 124, 122 S.Ct. 593, 151 L.Ed. 2d 508, **Web** 2001 U.S. Lexis 1094 (Supreme Court of the United States)

8.3 Patent Amazon.com has become one of the biggest online retailers. Amazon.com, Inc., enables customers t

prohibited outdoor advertising display signs, including billboards. On-site signs at a business location were exempted from this rule. The city based the restriction on traffic safety and aesthetics. Metromedia, Inc., a company in the business of leasing commercial billboards to advertisers, sued the city of San Diego, alleging that the zoning ordinance was unconstitutional. Is it? *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800, **Web** 1981 U.S. Lexis 50 (Supreme Court of the United States)

5.7 Equal Protection Clause The state of Alabama enacted a statute that imposed a tax on premiums earned by insurance companies. The statute imposed a 1 percent tax on domestic insurance companies (i.e., insurance companies that were incorporated in Alabama and had their principal office in the state). The statute imposed a 4 percent tax on the premiums earned by out-of-state insurance companies that sold insurance in Alabama. Out-of-state insurance companies could reduce the premium tax by 1 percent by investing at least 10 percent of their assets in Alabama. Domestic insurance companies did not have to invest any of their assets in Alabama. Metropolitan Life Insurance Company, an out-of-state insurance company, sued the state of Alabama, alleging that the Alabama statute violated the Equal Protection Clause of the U.S. Constitution. Who wins and why? *Metropolitan Life Insurance Co. v. Ward, Comm sioner of Insurance of Alabama*, 470 U.S. 869, 1 S.Ct. 1676, 84 L.Ed.2d 751, **Web** 1985 U.S. Lexis (Supreme Court of the United States)

5.8 Supremacy Clause The Clean Air Act, a fede statute, establishes national air pollution standards fleet vehicles such as buses, taxicabs, and trucks. T South Coast Air Quality Management District (Sou Coast) is a political entity of the state of Californ South Coast establishes air pollution standards the Los Angeles, California, metropolitan area. Sou Coast enacted fleet rules that prohibited the purcha or lease by public and private fleet operators of vehic that do not meet stringent air pollution standards by South Coast. South Coast's fleet emission standa are more stringent than those set by the federal Cle Air Act. The Engine Manufacturers Association (Asso ation), a trade association that represents manufact ers and sellers of vehicles, sued South Coast, claim that South Coast's fleet rules are preempted by federal Clean Air Act. The U.S. District Court and U.S. Court of Appeals upheld South Coast's fleet rul The Association appealed to the U.S. Supreme Cou Are South Coast's fleet rules preempted by the fede Clean Air Act? *Engine Manufacturers Association South Coast Air Quality Management District*, 5 U.S. 246, 124 S.Ct. 1756, 158 L.Ed.2d 529, **Web** 20 U.S. Lexis 3232 (Supreme Court of the United States

Ethics Cases

5.9 Ethics The Raiders are a professional football team and a National Football League (NFL) franchisee. Each NFL franchise is independently owned. Al Davis was an owner and the managing general partner of the Raiders. The NFL establishes schedules, negotiates television contracts, and otherwise promotes NFL football, including conducting the Super Bowl each year. The Raiders play home and away games against other NFL teams.

For years, the Raiders played their home games in Oakland, California. The owners of the Raiders decided to move the team from Oakland to Los Angeles, California, to take advantage of the greater seating capacity of the Los Angeles Coliseum, the larger television market of Los Angeles, and other economic factors. The team was to be renamed the Los Angeles Raiders. The city of Oakland brought an eminent domain proceeding in court to acquire the Raiders as a city-owned team. *City of Oakland, California v. Oakland Raiders*, 174 Cal.App.3d 414, 220 Cal.Rptr. 153, **Web** 1985 Cal.App. Lexis 2751 (Court of Appeal of California)

1. What is eminent domain?
2. Is it socially responsible for a professional spo team to move from one city to another city? W are the economic and other consequences of suc move?
3. Can the city of Oakland acquire the Raiders throu eminent domain? Why or why not?

5.10 Ethics Congress enacted the Flag Protecti Act, which made it a crime to knowingly mutila deface, physically defile, burn, or trample the U flag. The law provided for fines and up to one year prison upon conviction.[21] Certain individuals set to several U.S. flags on the steps of the U.S. Cap in Washington, DC, to protest various aspects of federal government's foreign and domestic policy a separate incident, other individuals set fire to a flag to protest the act's passage. All these indiv als were prosecuted for violating the act. The dis courts held the federal act unconstitutional, in vi tion of the defendants' First Amendment free spe

at full cost. Dianna sued Clancy to recover damages based on his negligence. Has Clancy been negligent? If so, what amount of damages should be awarded to Dianna? *Clancy v. Goad*, 858 N.E.2d 653, **Web** 2006 Ind. App. Lexis 2576 (Court of Appeals of Indiana)

6.2 Duty and Causation Michael Carneal was a 14-year-old freshman student at Heath High School in Paducah, Kentucky. Carneal regularly played the violent interactive video and computer games "Doom," "Quake," "Castle Wolfenstein," "Rampage," "Nightmare Creatures," "Mech Warrior," "Resident Evil," and "Final Fantasy." These games involved the player shooting virtual opponents with computer guns and other weapons. Carneal also watched videotaped movies, including one called *The Basketball Diaries*, in which a high-school-student protagonist dreams of killing his teacher and several of his fellow classmates. Carneal took a .22-caliber pistol and five shotguns into the lobby of Heath High School and shot several of his fellow students, killing three and wounding many others. The three students killed were Jessica James, Kayce Steger, and Nicole Hadley.

The parents of the three dead children sued the producers and distributors of the violent video games and movies that Carneal had watched previous to the shooting. The parents sued to recover damages for wrongful death, alleging that the defendants were negligent in producing and distributing such games and movies to Carneal. Are the video and movie producers liable to the plaintiffs for selling and licensing violent video games and movies to Carneal, who killed the plaintiffs' three children? *James v. Meow Media, Inc.*, 300 F.3d 683, **Web** 2002 U.S. App. Lexis 16185 (United States Court of Appeals for the Sixth Circuit)

6.3 Strict Liability Leo Dolinski purchased a bottle of Squirt, a soft drink, from a vending machine at a Sea and Ski plant, his place of employment. Dolinski opened the bottle and consumed part of its contents. He immediately became ill. Upon examination, it was found that the bottle contained the decomposed body of a mouse, mouse hair, and mouse feces. Dolinski visited a doctor and was given medicine to counteract nausea. Dolinski suffered physical and mental distress from consuming the decomposed mouse and thereafter possessed an aversion to soft drinks. The Shoshone Coca-Cola Bottling Company (Shoshone) had manufactured and distributed the Squirt bottle. Dolinski sued Shoshone, basing his lawsuit on the doctrine of strict liability. Does the doctrine of strict liability apply to this case? If so, is there a defect on which to base a case for strict liability? *Shoshone Coca-Cola Bottling Company v. Dolinski*, 420 P.2d 855, **Web** 1966 Nev. Lexis 260 (Supreme Court of Nevada)

6.4 Design Defect Intex Recreation Corporation designed and sold the Extreme Sno-Tube II. This snow tube is ridden by a user down snow-covered hills and can reach speeds of 30 miles per hour. The snow tube has no steering device, and therefore a rider may end up spinning and going down a hill backward. Dan Falkner bought an Extreme Sno-Tube II and used it for sledding the same day. During Falkner's second run, the tube rotated him backward about one-quarter to one-third of the way down the hill. A group of parents, including Tom Higgins, stood near the bottom of the hill. Higgins saw 7-year-old Kyle Potter walking in the path of Falkner's speeding Sno-Tube. Higgins ran and grabbed Potter to save him from harm, but while he was doing so, the Sno-Tube hit Higgins and threw him into the air. Higgins landed on his forehead, which snapped his head back. The impact severed Higgins's spinal cord and left him quadriplegic. Higgins sued Intex for damages based on strict liability. Is the snow tube defective? *Higgins v. Intex Recreation Corporation*, 199 P.3d 421, **Web** 2004 Wash.App. Lexis 2424 (Court of Appeals of Washington)

6.5 Merchant Protection Statute LaShawna Goodman went to a local Walmart store in Opelika, Alabama, to do some last-minute holiday shopping. She brought along her two young daughters and a telephone she had purchased earlier at Walmart to exchange. She presented the telephone and receipt to a Walmart employee, who took the telephone. Unable to find another telephone she wanted, Goodman retrieved the previously purchased telephone from the employee, bought another item, and left. Outside, Goodman was stopped by Walmart security personnel and was accused of stealing the phone. Goodman offered to show the Walmart employees the original receipt, but the Walmart employees detained her and called the police. Goodman was handcuffed in front of her children. Walmart filed criminal charges against Goodman.

At the criminal trial, Goodman was acquitted of all charges. Goodman then filed a civil lawsuit against Walmart Stores, Inc., to recover damages for falsely accusing her of stealing the telephone and false imprisonment. Walmart asserted the defense that it was within its rights to have detained Goodman as it did and to have prosecuted her based on its investigation. Walmart asserted that the merchant protection statute protected its actions in this case. Was Walmart's conduct ethical? Did Walmart act responsibly by bringing criminal charges against Goodman? Did Walmart present sufficient evidence to prove that it should be protected by the merchant protection statute? *Walmart Stores, Inc. v. Goodman*, 789 So.2d 166, **Web** 2000 Ala. Lexis 548 (Supreme Court of Alabama)

6.6 Negligence Seventeen-year-olds Adam C. Jacobs and David Messer made the acquaintance of 17-year-old

waitress Sarah Mitchell at a pizza restaurant in Indianapolis, Indiana. Jacobs and Messer returned to the restaurant when Mitchell's shift ended at midnight, and the trio went to Messer's home. At approximately 2:30 A.M., Mitchell drove her Honda Accord with Jacobs in the front seat and Messer in the back seat. Jacobs suggested that they "jump the hills" on Edgewood Avenue, which he had done at least twenty times before. The speed limit for Edgewood Avenue, a two-lane road, was 40 miles per hour. Mitchell accelerated to approximately 80 miles per hour to jump the "big hill" on Edgewood Avenue near its crossroad at Emerson Avenue. The car crested the hill at 80 miles per hour, went airborne for a considerable distance, and landed in the middle of the road. Mitchell lost control of the car and over-steered to the right. The car sideswiped an Indiana Bell Telephone Company, Inc., utility pole (pole 65) and spun clockwise several times. The car then slammed broadside into an Indianapolis Power & Light Company utility pole (pole 66) and caught on fire. The two utility poles were located approximately 25 feet from Edgewood Avenue, at the edge of the utility companies' right of way. Messer escaped from the burning wreckage but was unable to rescue the unconscious Mitchell and Jacobs, both of whom died.

Susan J. Carter, the personal representative of the estate of Adam C. Jacobs, sued Indiana Bell and Indianapolis Power, alleging that the companies were negligent in the placement of their utility poles along Edgewood Avenue. Has Indiana Bell or Indianapolis Power breached its duty of care to Jacobs and proximately caused his death? *Carter v. Indianapolis Power & Light Company and Indiana Bell Telephone Company, Inc.*, 837 N.E.2d 509, **Web** 2005 Ind.App. Lexis 2129 (Court of Appeals of Indiana)

6.7 Strict Liability Senco Products, Inc. (Senco), manufactures and markets a variety of pneumatic nail guns, including the SN325 nail gun, which discharges 3.25-inch nails. The SN325 uses special nails designed and sold by Senco. The SN325 will discharge a nail only if two trigger mechanisms are activated; that is, the user must both squeeze the nail gun's finger trigger and press the nail gun's muzzle against a surface, activating the bottom trigger, or safety. The SN325 can fire up to nine nails per second if the trigger is continuously depressed and the gun is bounced along the work surface, constantly reactivating the muzzle safety/trigger.

The evidence disclosed that the SN325 double-fired once in every 15 firings. Senco rushed the SN325's production in order to maintain its position in the market, modifying an existing nail gun model so that the SN325 could shoot longer nails, without engaging in additional testing to determine whether the use of longer nails in that model would increase the prevalence of double-fire.

John Lakin was using a Senco SN325 nail gun to help build a new home. When attempting to nail two-by-fours under the eaves of the garage, Lakin stood on tiptoe and raised a two-by-four over his head. As he held the board in position with his left hand and the nail gun in his right hand, he pressed the nose of the SN325 up against the board, depressed the safety, and pulled the finger trigger to fire the nail into the board. The gun fired the first nail and then double fired, immediately discharging an unintended second nail that struck the first nail. The gun recoiled violently backward toward Lakin and, with Lakin's finger still on the trigger, came into contact with his cheek. That contact activated the safety/trigger, causing the nail gun to fire a third nail. This third nail went through Lakin's cheekbone and into his brain. The nail penetrated the frontal lobe of the right hemisphere of Lakin's brain, blocked a major artery, and caused extensive tissue damage.

Lakin was unconscious for several days and ultimately underwent multiple surgeries. He suffers permanent brain damage and is unable to perceive information from the left hemisphere of the brain. He also suffers partial paralysis of the left side of his body. Lakin has undergone a radical personality change and is prone to violent outbursts. He is unable to obtain employment. Lakin's previously warm and loving relationship with his wife and four children has been permanently altered. He can no longer live with his family and instead resides in a supervised group home for brain-injured persons. Lakin and his wife sued Senco for strict liability based on design defect. Is Senco liable to Lakin for strict liability based on a design defect in the SN325 that allowed it to double-fire? *Lakin v. Senco Products, Inc.*, 144 Ore.App. 52, 925 P.2d 107, **Web** 1996 Ore.App. Lexis 1466 (Court of Appeals of Oregon)

6.8 Design Defect Lorenzo Peterson was swimming in a swimming pool with a friend at an apartment complex. Lorenzo watched his friend swim to the bottom of the pool, slide an unattached drain cover away, and then slide it back. Lorenzo thought his friend had hidden something inside the drain, so he swam to the bottom of the pool. Lorenzo slid the drain cover aside and stuck his arm inside the drain. The 300 to 400 pounds of pull of the drain pump held Lorenzo trapped underwater. At least seven people tried to free Lorenzo to no avail. When the police arrived, they broke down the door to the pool equipment room and turned off the drain pump.

Lorenzo was trapped underwater for twelve minutes, which left him irreversibly brain damaged. Evidence at trial showed that Sta-Rite's drain covers are designed to screw down, but often a drain cover becomes loose. Further evidence showed that there had been more than twenty prior suction-entrapment accidents

Urban Development (HUD) to be used for housing rehabilitation assistance. The city of Peoria designated United Neighborhoods, Inc. (UNI), a corporation, to administer the funds. Arthur Dixon was UNI's executive director, and James Lee Hinton was its housing rehabilitation coordinator. In these capacities, they were responsible for contracting with suppliers and trades people to provide the necessary goods and services to rehabilitate the houses. Evidence showed that Dixon and Hinton used their positions to extract 10 percent payments back on all contracts they awarded. What crimes have Dixon and Hinton committed? *Dixon and Hinton v. United States*, 465 U.S. 482, 104 S.Ct. 1172, 79 L.Ed.2d 458, **Web** 1984 U.S. Lexis 35 (Supreme Court of the United States)

7.6 Administrative Search Lee Stuart Paulson owned a liquor license for My House, a bar in San Francisco. The California Department of Alcoholic Beverage Control is the administrative agency that regulates bars in that state. The California Business and Professions Code, which is administered by the department, prohibits "any kind of illegal activity on licensed premises." An anonymous informer tipped the department that narcotics were being sold on the premises of My House, an establishment that sold liquor, and that the narcotics were kept in a safe behind the bar on the premises. A special department investigator entered the bar during its hours of operation, identified himself, and informed Paulson that he was conducting an inspection. The investigator, who did not have a search warrant, opened the safe without seeking Paulson's consent. Twenty-two bundles of cocaine, totaling 5.5 grams, were found in the safe. Paulson was arrested. At his criminal trial, Paulson challenged the lawfulness of the search. Is the warrantless search of the safe a lawful search? *People v. Paulson*, 216 Cal.App.3d 1480, 265 Cal.Rptr. 579, **Web** 1990 Cal.App. Lexis 10 (Court of Appeal of California)

7.7 Privilege Against Self-Incrimination John Doe was the owner of several sole proprietorship businesses. During the course of an investigation of corruption in awarding county and municipal contracts, a federal grand jury served several subpoenas on John Doe, demanding the production of certain business records. The subpoenas demanded the production of the following records: (1) general ledgers and journals, (2) invoices, (3) bank statements and canceled checks, (4) financial statements, (5) telephone company records, (6) safe deposit box records, and (7) copies of tax returns. John Doe filed a motion in federal court, seeking to quash the subpoenas, alleging that producing these business records would violate his Fifth Amendment privilege of not testifying against himself. Must John Doe disclose the records? *United States v. John Doe*, 465 U.S. 605, 104 S.Ct. 1237, 79 L.Ed.2d 552, **Web** 1984 U.S. Lexis 169 (Supreme Court of the United States)

7.8 Search and Seizure Joseph Burger was the owner of a junkyard in Brooklyn, New York. His business consisted, in part, of dismantling automobiles and selling their parts. The state of New York enacted a statute that requires automobile junkyards to keep certain records. The statute authorizes warrantless searches of vehicle dismantlers and automobile junkyards without prior notice. One day, five plain-clothes officers of the Auto Crimes Division of the New York City Police Department entered Burger's junkyard to conduct a surprise inspection. Burger did not have either a license to conduct the business or records of the automobiles and vehicle parts on his premises, as required by state law. After conducting an inspection of the premises, the officers determined that Burger was in possession of stolen vehicles and parts. He was arrested and charged with criminal possession of stolen property. Burger moved to suppress the evidence. Did Burger act ethically in trying to suppress the evidence? Does the warrantless search of an automobile junkyard pursuant to a state statute that authorizes such a search constitute an unreasonable search and seizure in violation of the Fourth Amendment to the U.S. Constitution? *New York v. Burger*, 482 U.S. 691, 107 S.Ct. 2636, 96 L.Ed.2d 601, **Web** 1987 U.S. Lexis 2725 (Supreme Court of the United States)

Ethics Cases

7.9 Ethics Leo Shaw, an attorney, entered into a partnership agreement with three other persons to build and operate an office building. From the outset, it was agreed that Shaw's role was to manage the operation of the building. Management of the property was Shaw's contribution to the partnership; the other three partners contributed the necessary capital. Ten years later, the other partners discovered that the loan on the building was in default and that foreclosure proceedings were imminent. Upon investigation, they discovered that Shaw had taken approximately $80,000 from the partnership's checking account. After heated discussions, Shaw repaid $13,000. When no further payment was forthcoming, a partner filed a civil suit against Shaw and notified the police. The state filed a criminal complaint against

spent more than $22 million on advertising materials, resulting in more than a billion separate audio and visual impressions using the slogans. Roux Laboratories, Inc., a manufacturer of hair-coloring products and a competitor of Clairol's, filed an opposition to Clairol's registration of the slogans as trademarks. Do the slogans qualify for trademark protection? *Roux Laboratories, Inc. v. Clairol Inc.*, 427 F.2d 823, **Web** 1970 CCPA Lexis 344 (United States Court of Customs and Patent Appeals)

8.7 Generic Name The Miller Brewing Company, a national brewer, produces a reduced-calorie beer called "Miller Lite." Miller began selling beer under this name and spent millions of dollars promoting the Miller Lite brand name on television, in print, and via other forms of advertising. Falstaff Brewing Corporation had brewed and distributed a reduced-calorie beer called "Falstaff Lite." Miller brought suit under the Lanham Act, seeking an injunction to prevent Falstaff from using the term *Lite*. Is the term *Lite* a generic name that does not qualify for trademark protection? *Miller Brewing Co. v. Falstaff Brewing Corp.*, 655 F.2d 5, **Web** 1981 U.S. App. Lexis 11345 (United States Court of Appeals for the First Circuit)

8.8 Copyright Infringement Elvis Presley, a rock-and-roll singer, became a musical icon during a career that spanned more than twenty years, until he died at the age of 42. Many companies and individuals own copyrights to Presley's songs, lyrics, photographs, m ies, and appearances on TV shows. Millions of dolla Elvis Presley-related copyrighted materials are sol licensed annually.

Passport Video produced a video documentary ti *The Definitive Elvis*, comprising sixteen one-hour sodes. The producers interviewed more than two l dred people regarding virtually all aspects of El life. Passport sold the videos commercially for a pr Approximately 5 to 10 percent of the videos were c posed of copyrighted music and appearances of Pre on television and in movies owned by copyright hol other than Passport. Passport did not obtain permis to use those copyrighted works. Elvis Presley En prises, Inc., and other companies and individuals owned copyrights to the Presley works used by P port sued Passport for copyright infringement. Pass defended, arguing that its use of the copyrighted m rials was fair use. The U.S. District Court held in f of the plaintiff copyright holders and enjoined Pass from further distribution of its documentary vid Passport appealed.

Did Passport act ethically in including the Elvis P ley copyrighted material in its video? Why do you t Passport Video did so? Has there been fair use in case, or has there been copyright infringement? *P Presley Enterprises, Inc. v. Passport Video*, 349 622, **Web** 2003 U.S. App. Lexis 22775 (United St Court of Appeals for the Ninth Circuit)

Ethics Cases

8.9 Ethics Cecilia Gonzalez downloaded 1,370 copyrighted songs on her computer, using the Kazaa file-sharing network over a period of a few weeks, and she kept them on her computer until she was caught. BMG Music, a producer of music CDs, sued Gonzalez for copyright infringement for downloading thirty songs to which BMG owned the copyrights. Gonzalez defended, arguing that her downloading of these copyrighted songs was lawful. Gonzalez's position is that she was just sampling music to determine what she liked enough to buy at retail. Instead of erasing songs that she decided not to buy, she retained them. As she tells the tale, downloading on a try-before-you-buy basis is good advertising for copyright proprietors, expanding the value of their inventory. Gonzalez also proffered the defense that "everyone was doing it" and that there greater offenders then her. *BMG Music v. Gonzalez*, 430 F.3d 888, **Web** 2005 U.S. App. Lexis 26903 (United States Court of Appeals for the Seventh Circuit)

1. What is copyright infringement? Did Gonzalez engage in copyright infringement?
2. Do you think that Gonzalez knew that she stealing someone's copyrighted work when copied the music onto her computer?
3. Have you ever downloaded music by using a to-peer file-sharing program without paying musician or the music company? Have you violated copyright law in any other way?

8.10 Ethics Integrated Cash Management Serv Inc. (ICM) designs and develops computer software grams and systems for banks and corporate fina departments. ICM's computer programs and sys are not copyrighted, but they are secret. After A Sims Newlin and Behrouz Vafa completed gr ate school, they were employed by ICM as comp programmers. They worked at ICM for several y writing computer programs. They left ICM to wor Digital Transactions, Inc. (DTI). Before leaving however, they copied certain ICM files onto comp disks. Within two weeks of starting to work at they created prototype computer programs that ated in substantially the same manner as compa

at full cost. Dianna sued Clancy to recover damages based on his negligence. Has Clancy been negligent? If so, what amount of damages should be awarded to Dianna? *Clancy v. Goad*, 858 N.E.2d 653, **Web** 2006 Ind. App. Lexis 2576 (Court of Appeals of Indiana)

6.2 Duty and Causation Michael Carneal was a 14-year-old freshman student at Heath High School in Paducah, Kentucky. Carneal regularly played the violent interactive video and computer games "Doom," "Quake," "Castle Wolfenstein," "Rampage," "Nightmare Creatures," "Mech Warrior," "Resident Evil," and "Final Fantasy." These games involved the player shooting virtual opponents with computer guns and other weapons. Carneal also watched videotaped movies, including one called *The Basketball Diaries*, in which a high-school-student protagonist dreams of killing his teacher and several of his fellow classmates. Carneal took a .22-caliber pistol and five shotguns into the lobby of Heath High School and shot several of his fellow students, killing three and wounding many others. The three students killed were Jessica James, Kayce Steger, and Nicole Hadley.

The parents of the three dead children sued the producers and distributors of the violent video games and movies that Carneal had watched previous to the shooting. The parents sued to recover damages for wrongful death, alleging that the defendants were negligent in producing and distributing such games and movies to Carneal. Are the video and movie producers liable to the plaintiffs for selling and licensing violent video games and movies to Carneal, who killed the plaintiffs' three children? *James v. Meow Media, Inc.*, 300 F.3d 683, **Web** 2002 U.S. App. Lexis 16185 (United States Court of Appeals for the Sixth Circuit)

6.3 Strict Liability Leo Dolinski purchased a bottle of Squirt, a soft drink, from a vending machine at a Sea and Ski plant, his place of employment. Dolinski opened the bottle and consumed part of its contents. He immediately became ill. Upon examination, it was found that the bottle contained the decomposed body of a mouse, mouse hair, and mouse feces. Dolinski visited a doctor and was given medicine to counteract nausea. Dolinski suffered physical and mental distress from consuming the decomposed mouse and thereafter possessed an aversion to soft drinks. The Shoshone Coca-Cola Bottling Company (Shoshone) had manufactured and distributed the Squirt bottle. Dolinski sued Shoshone, basing his lawsuit on the doctrine of strict liability. Does the doctrine of strict liability apply to this case? If so, is there a defect on which to base a case for strict liability? *Shoshone Coca-Cola Bottling Company v. Dolinski*, 420 P.2d 855, **Web** 1966 Nev. Lexis 260 (Supreme Court of Nevada)

6.4 Design Defect Intex Recreation Corporation designed and sold the Extreme Sno-Tube II. This snow tube is ridden by a user down snow-covered hills and can reach speeds of 30 miles per hour. The snow tube has no steering device, and therefore a rider may end up spinning and going down a hill backward. Dan Falkner bought an Extreme Sno-Tube II and used it for sledding the same day. During Falkner's second run, the tube rotated him backward about one-quarter to one-third of the way down the hill. A group of parents, including Tom Higgins, stood near the bottom of the hill. Higgins saw 7-year-old Kyle Potter walking in the path of Falkner's speeding Sno-Tube. Higgins ran and grabbed Potter to save him from harm, but while he was doing so, the Sno-Tube hit Higgins and threw him into the air. Higgins landed on his forehead, which snapped his head back. The impact severed Higgins's spinal cord and left him quadriplegic. Higgins sued Intex for damages based on strict liability. Is the snow tube defective? *Higgins v. Intex Recreation Corporation*, 199 P.3d 421, **Web** 2004 Wash.App. Lexis 2424 (Court of Appeals of Washington)

6.5 Merchant Protection Statute LaShawna Goodman went to a local Walmart store in Opelika, Alabama, to do some last-minute holiday shopping. She brought along her two young daughters and a telephone she had purchased earlier at Walmart to exchange. She presented the telephone and receipt to a Walmart employee, who took the telephone. Unable to find another telephone she wanted, Goodman retrieved the previously purchased telephone from the employee, bought another item, and left. Outside, Goodman was stopped by Walmart security personnel and was accused of stealing the phone. Goodman offered to show the Walmart employees the original receipt, but the Walmart employees detained her and called the police. Goodman was handcuffed in front of her children. Walmart filed criminal charges against Goodman.

At the criminal trial, Goodman was acquitted of all charges. Goodman then filed a civil lawsuit against Walmart Stores, Inc., to recover damages for falsely accusing her of stealing the telephone and false imprisonment. Walmart asserted the defense that it was within its rights to have detained Goodman as it did and to have prosecuted her based on its investigation. Walmart asserted that the merchant protection statute protected its actions in this case. Was Walmart's conduct ethical? Did Walmart act responsibly by bringing criminal charges against Goodman? Did Walmart present sufficient evidence to prove that it should be protected by the merchant protection statute? *Walmart Stores, Inc. v. Goodman*, 789 So.2d 166, **Web** 2000 Ala. Lexis 548 (Supreme Court of Alabama)

6.6 Negligence Seventeen-year-olds Adam C. Jacobs and David Messer made the acquaintance of 17-year-old

prohibited outdoor advertising display signs, including billboards. On-site signs at a business location were exempted from this rule. The city based the restriction on traffic safety and aesthetics. Metromedia, Inc., a company in the business of leasing commercial billboards to advertisers, sued the city of San Diego, alleging that the zoning ordinance was unconstitutional. Is it? *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800, **Web** 1981 U.S. Lexis 50 (Supreme Court of the United States)

5.7 Equal Protection Clause The state of Alabama enacted a statute that imposed a tax on premiums earned by insurance companies. The statute imposed a 1 percent tax on domestic insurance companies (i.e., insurance companies that were incorporated in Alabama and had their principal office in the state). The statute imposed a 4 percent tax on the premiums earned by out-of-state insurance companies that sold insurance in Alabama. Out-of-state insurance companies could reduce the premium tax by 1 percent by investing at least 10 percent of their assets in Alabama. Domestic insurance companies did not have to invest any of their assets in Alabama. Metropolitan Life Insurance Company, an out-of-state insurance company, sued the state of Alabama, alleging that the Alabama statute violated the Equal Protection Clause of the U.S. Constitution. Who wins and why? *Metropolitan Life Insurance Co. v. Ward, Comm sioner of Insurance of Alabama*, 470 U.S. 869, S.Ct. 1676, 84 L.Ed.2d 751, **Web** 1985 U.S. Lexi (Supreme Court of the United States)

5.8 Supremacy Clause The Clean Air Act, a fed statute, establishes national air pollution standards fleet vehicles such as buses, taxicabs, and trucks. South Coast Air Quality Management District (So Coast) is a political entity of the state of Califor South Coast establishes air pollution standards the Los Angeles, California, metropolitan area. So Coast enacted fleet rules that prohibited the purch or lease by public and private fleet operators of vehi that do not meet stringent air pollution standards by South Coast. South Coast's fleet emission standa are more stringent than those set by the federal Cl Air Act. The Engine Manufacturers Association (Ass ation), a trade association that represents manufac ers and sellers of vehicles, sued South Coast, claim that South Coast's fleet rules are preempted by federal Clean Air Act. The U.S. District Court and U.S. Court of Appeals upheld South Coast's fleet ru The Association appealed to the U.S. Supreme Cou Are South Coast's fleet rules preempted by the fede Clean Air Act? *Engine Manufacturers Association South Coast Air Quality Management District*, 5 U.S. 246, 124 S.Ct. 1756, 158 L.Ed.2d 529, **Web** 20 U.S. Lexis 3232 (Supreme Court of the United States)

Ethics Cases

5.9 Ethics The Raiders are a professional football team and a National Football League (NFL) franchisee. Each NFL franchise is independently owned. Al Davis was an owner and the managing general partner of the Raiders. The NFL establishes schedules, negotiates television contracts, and otherwise promotes NFL football, including conducting the Super Bowl each year. The Raiders play home and away games against other NFL teams.

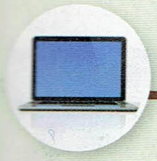
For years, the Raiders played their home games in Oakland, California. The owners of the Raiders decided to move the team from Oakland to Los Angeles, California, to take advantage of the greater seating capacity of the Los Angeles Coliseum, the larger television market of Los Angeles, and other economic factors. The team was to be renamed the Los Angeles Raiders. The city of Oakland brought an eminent domain proceeding in court to acquire the Raiders as a city-owned team. *City of Oakland, California v. Oakland Raiders*, 174 Cal.App.3d 414, 220 Cal.Rptr. 153, **Web** 1985 Cal.App. Lexis 2751 (Court of Appeal of California)

1. What is eminent domain?
2. Is it socially responsible for a professional spor team to move from one city to another city? Wh are the economic and other consequences of such move?
3. Can the city of Oakland acquire the Raiders throu eminent domain? Why or why not?

5.10 Ethics Congress enacted the Flag Protecti Act, which made it a crime to knowingly mutila deface, physically defile, burn, or trample the U flag. The law provided for fines and up to one year prison upon conviction.[21] Certain individuals set f to several U.S. flags on the steps of the U.S. Capi in Washington, DC, to protest various aspects of t federal government's foreign and domestic policy. a separate incident, other individuals set fire to a U flag to protest the act's passage. All these indivi als were prosecuted for violating the act. The distr courts held the federal act unconstitutional, in vio tion of the defendants' First Amendment free spee

rights, and dismissed the charges. The U.S. government appealed to the U.S. Supreme Court, which consolidated the two cases. Who wins? *United States v. Eichman*, 496 U.S. 310, 110 S.Ct. 2404, 110 L.Ed.2d 287, **Web** 1990 U.S. Lexis 3087 (Supreme Court of the United States)

1. What is symbolic speech? Can it be protected speech under the First Amendment?
2. What are the arguments in favor of enforcing the Flag Protection Act? What are the arguments in favor of dismissing the act?
3. Who wins and why?



Internet Exercises

1. To view a map of the original thirteen colonies, go to **http://en.wikipedia.org/wiki/13_colonies**.

2. Visit the website of the U.S. Senate, **www.senate.gov**. Click on "Senators." Go to "Choose a State" and select your state. Who are the U.S. Senators that represent you state?

3. Go to **https://forms.house.gov/wyr/welcome.shtml**. Select your state or territory. Type in your zip code. Click "Contact My Representative." What is the name of your representative?

4. Go to **http://ap.grolier.com/staticbp?page=/static/hist_links.html&templatename=/static/ap.html**. Scroll down to the current president's name. Click on "Biography at the White House" and read the first news item under "Latest Headlines." What is the topic of this news item?

5. Visit the website of the Supreme Court of the United States, at **www.supremecourtus.gov**. Click on "About the Supreme Court." Click on "Biographies of Current Justices." Read the biography of the current chief justice of the Supreme Court. What is name of the chief justice? What president nominated the chief justice?

6. Go to **www.youtube.com/watch?v=Gve7avdld78&feature=related** and view the video about the "Trail of Tears." When did this occur?

Endnotes

1. To be elected to Congress, an individual must be a U.S. citizen, either naturally born or granted citizenship. To serve in the Senate, a person must be 30 years of age or older. To serve in the House of Representatives, a person must be 25 years of age or older.
2. To be president, a person must be 35 years of age or older and a natural citizen of the United States. According to the Twenty-Second Amendment to the Constitution, a person can serve only two full terms as president.
3. Federal court judges and justices are appointed by the president, with the consent of the Senate.
4. The principle that the U.S. Supreme Court is the final arbiter of the U.S. Constitution evolved from *Marbury v. Madison*, 1 Cranch 137, 5 U.S. 137, 2 L.Ed. 60, **Web** 1803 U.S. Lexis 352 (Supreme Court of the United States, 1803). In that case, the Supreme Court held that a judiciary statute enacted by Congress was unconstitutional.
5. Article VI, Section 2.
6. Article I, Section 8, Clause 3.
7. 25 U.S.C. Sections 2701–2721.
8. 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed.122, **Web** 1942 U.S. Lexis 1046 (Supreme Court of the United States).
9. 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346, **Web** 1976 U.S. Lexis 55 (Supreme Court of the United States).
10. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031, **Web** 1942 U.S. Lexis 851 (Supreme Court of the United States).
11. *Brandenburg v. Ohio*, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430, **Web** 1969 U.S. Lexis 1367 (Supreme Court of the United States).
12. *Beauharnais v. Illinois*, 343 U.S. 250, 72 S.Ct. 725, 96 L.Ed. 919, **Web** 1952 U.S. Lexis 2799 (Supreme Court of the United States).
13. *New York v. Ferber*, 458 U.S. 747, 102 S.Ct. 334, 73 L.Ed.2d 1113, **Web** 1982 U.S. Lexis 12 (Supreme Court of the United States).
14. *Roth v. United States*, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498, **Web** 1957 U.S. Lexis 587 (Supreme Court of the United States).
15. Justice Stewart in *Jacobellis v. Ohio*, 378 U.S. 184, 84 S.Ct. 1676, 12 L.Ed.2d 793, **Web** 1964 U.S. Lexis 822 (Supreme Court of the United States).
16. 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419, **Web** 1973 U.S. Lexis 149 (Supreme Court of the United States).
17. *Wallace v. Jaffree*, 472 U.S. 38, 105 S.Ct. 2479, 86 L.Ed.2d 29, **Web** 1985 U.S. Lexis 91 (Supreme Court of the United States).
18. 508 U.S. 520, 113 S.Ct. 2217, 124 L.Ed.2d 472, **Web** 1993 U.S. Lexis 4022 (Supreme Court of the United States).
19. *Rostker v. Goldberg*, 453 U.S. 57, 101 S.Ct. 2646, 69 L.Ed.2d 478, **Web** 1981 U.S. Lexis 126 (Supreme Court of the United States).
20. 18 U.S.C. Sections 2721–2775.
21. 18 U.S.C. Section 700.