

Introduction they  
operate in. the  
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## **Introduction**

Businesses are influenced by the environment they operate in. The environment is based on factors which interplay to determine the operations and scope of the business. Law is one such factor that determines the extent of the legality of the operations of a business. The business and the bill of rights concept apply with the legislation available to the businesses so as to limit their operations and protect the consumer. Administrative agency deals with handling issues relating to agency relationships. Torts and contracts govern the involvement of the business in tortuous issues and the protection of the fiduciary relationships in business. This paper provides a case brief involving each of the issues mentioned above as they are applied in business law.

## **Business and the Bill of Rights**

Case Brief: *Burden v. The State of Texas* [1698-99] Facts: The petitioner, Burden, sold a video tape that appeared obscene to a detective of the state of Texas. During the hearing in the trial court, the appellant offered cumulative evidence of the fact that the library also has sites that allow the viewing of pornographic images. This cumulative evidence was however considered misleading.

He was found guilty of selling obscene material with the knowledge of the obscene nature. Burden then appealed against the conviction to the criminal court of appeals of Texas. Issues: The issue of concern is whether the conviction of obscenity promotion had sufficient legal evidence to support it.

Ruling: The criminal court of appeals of Texas held that the evidence was

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sufficient in establishing that the appellant knew the content and character of the video tape and thus affirmed the conviction. Analysis: In establishing the sufficiency of the evidence, the court based its ruling on cases such as *Green v. State* and *McDuff v. State*.

According to the Texas penal code section 43. 23 (c) (1), charges on the offence of obscenity promotion are based on the defendant's knowledge of the material as having a character and content that is sexually explicit. The court needed to be able to establish whether the appellant was aware of the material content.

This was based on the case of *Hamling v. United States*. This means that the court did not need to prove that Burden knew that the content material was obscene. It was just enough that the person knew the material of the video tape. However, the appellant had the right to produce evidence in terms of comparable materials so as to counter the evidence given by the state and to prove that there were other governmental institutions that had access to such pornographic material. The court determines the quality of such evidence to establish what evidence was liable to the case and which one was misleading. Hence, the evidence was found to be misleading and confusing to the jury.

Minority Rationale: If there is a lack of sufficient evidence to prove that the defendant knew the material content to be obscene, he is entitled to receive the protection of first amendment rights that allow for free self expression.

Comment: Self expression is very important as is protected in the first amendment act, but should consider the influence on the other people.

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## **Follow up Questions and Answers**

Political speech and business speech differ mainly in content in that political speech is meant to create a good impression of character of the person, while business speech is meant to increase the awareness of the business to the public through creating a better image of the business. The industries that are strictly regulated are not accorded the fourth amendment guarantees due to the protection of the greater good. This is because the protection of the public good is a better objective than protection of the business. This is fair to the extent that such businesses are likely to take advantage of ignorant consumers and vulnerable population and gain higher profits (Meiners, Ringleb & Edwards, 2006).

The case law was judged well because despite the use of cumulative comparative evidence, the video shop openly exposed the society to obscenity. Moreover, Burden was aware of the nature of the materials but still sold them without making the customer aware of the obscenity.

## **Administrative agency**

Case Brief: Pruet v. Harris County Bail Bond Board [05-0283] Facts: Pruet, an agent of a bonding company, violated the rules 24 and 25 set by the Harris County Bail Bond Board. He challenged the authority of the board of setting the rules claiming that they are unconstitutional although he acknowledged the violations. The board suspended his license for seven years. Pruet filed a suit in the trial court which granted his motion and the enforcement of the rules while the court of appeal asserted that the board acted within its mandate of the promulgation of the solicitation rules.

While the constitutionality of rules 25 and 25 was established, the prohibition of bondsmen who had no prior relationship with the individual requiring the bond within 24 hours of arrest was decided to be an unconstitutional restraint. This was petitioned in the supreme court of Texas. Issues: The issues identified in the case were whether the board acted within its authority in making the rules and whether the restrictions on the bail bond customers were constitutional. Ruling: The Supreme Court held that the board acted within its authority to make rules. In addition, the non-business hours rule was considered constitutional while the 24 hours rule and the open warrant were considered a violation of the rights of the plaintiff. Analysis: The court relied on the Occupation Code which was in existence at the time the rules were promulgated. This implied that since the Occupation Code allowed the board to make rules and measures that would regulate the industry, the board had acted within its powers.

The fifth circuit argued that the board acted in violation of the amendment rights of Pruet, while the prohibition of bondsmen on grounds of warrant was not in line with the interests of the board hence cannot survive scrutiny constitutionally. The ban of the 24 hours deal did not prove the deceptive, misleading or illegal nature of the information Pruet wanted to pass to the customers. Regarding the non-business hours, it was noted that even before the solicitation rules were set, it was illegal to make business calls to customers at that time with the restriction of the bondsmen that had a prior relationship with the customer. This was to establish equal competition because the call from such a person at the restricted hours would be received (Keenan & Riches, 2007). Minority Rationale: The change in the

definition of “ bonding business” to mean “ the execution of a bail bond by a bail bond surety” by the Harris board limited its regulatory power while the local rules are a violation of the Texas public information act through preventing access of information of public interest especially on incarcerations and open warranties. Comment: The powers of a regulating body need to be communicated to the agents especially to the extent they are binding on them.

## **Follow Up Questions and Answers**

The relationship between Pruett Company and Harris Bond Board represents an agency relationship.

This is because as a government body which was mandated to offer bond services to customers, the board offers the agent companies the opportunity to offer such services but limits their operations. The board, being the administrative body, has powers to set the rules of operation for the agents, issue licenses to agents, supervise their work and suspend their licenses. The agents have the responsibilities of offering bond services to customers and to make reports of its operations to the board. In case of any issue requiring more analysis, the agents are required to file suits to court (Meiners et al., 2006).

## **Torts Relating to Business**

Case Brief: Tiller v. McLure [02- 0136] Facts: McLure Barbara and her husband were contractors of the defendant, Tiller. She then sued Tiller on the claim that he had caused her emotional distress.

This emotional distress she claimed was from the way Tiller had conducted himself in the contracts of construction. The trial court did not find sufficient evidence purporting that Tiller was guilty and held that McLure takes nothing. On appeal, the court of appeal held that there was sufficient evidence to prove that Tiller had caused emotional distress to McLure and established that punitive damages were to be paid to McLure. The case was then subjected to the Supreme Court of Texas. Issues: The main issue is whether there is enough evidence to decide the case in the favor of McLure. Ruling: The Supreme Court held that there is no sufficient evidence to support the finding of the appeal court that Tiller's conduct was extreme thus this does not fall in the category of a matter of law. The court thus decided that McLure should not be compensated.

Analysis: The court is mandated with the obligation of establishing that the defendant acted in a manner that was outrageous, extreme, had intended to do it and it caused emotional distress that was severe to the plaintiff. This then provides the basis of how much damages the plaintiff can be paid by the defendant. An outrageous act is termed as one that is beyond decency and not tolerable in the community. Tiller's conduct was termed extreme when he proposed the termination of the contract if the business was closed in the entire day of the funeral although he requested some workers to attend the funeral. Minority Opinion: The actions of Tiller can be termed extreme and outrageous due to the persistent calls and insensitivity even in the death of McLure. Comment: The issue of the extent to which a disturbance is outrageous and warrants damage if determined by the court provides the likely best opinion.

## Follow Up Questions and Answers

Torts in business include defamation, unfair competition, interference with contractual relations and an advantage, trade law or common law trademark infringement among others. The concept of warranties refers to the assurance given by a party to a contract as to the condition upon which the other party can use to make a decision whose result binds the other party.

Warranties include the warning signs that the producer gives to a consumer and which would influence the use of the product. Liability occurs where there is a duty to act reasonably which was breached and as such the party suffered injury linked to the breach of duty (Emerson, 2003). The use of warning signs in products is adequate because it is assumed that the consumer is responsible for ensuring that they are aware of the conditions of the product they are buying. It however requires further disclosure through advertisement which creates awareness among the consumers.

## Contracts

Case Brief: ERI Consulting Engineers Inc v. Swinnea [07- 1042] Facts:

Snodgrass and Swinnea were partners in a business.

Swinnea colluded with others in forming Air Quality which was to be involved in the buy out but he did not disclose this information to Snodgrass. He lowered production at ERI after the buy out from which ERI lost the contract with Merico. Later, Swinnea formed a different company, Brady Environmental, which competed for business with ERI. Swinnea was fired and Snodgrass filed a law suit against him through ERI. The trial court decided that Snodgrass and Swinnea were liable to be paid damages. The court of

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appeal ruled in favor of Swinnea claiming that the evidence was legally insufficient to warrant damages.

Issue: The issue in this case was whether the forfeiture of contractual consideration would be available as a remedy against Swinnea. Ruling: The Supreme Court of Texas held that evidence existed to show that there was considerably loss of profits hence Snodgrass and ERI should receive compensation for the loss but would receive nothing for their conspiracy against Brady Environmental. On the other hand, Swinnea was liable for his involvement with Air Quality. Analysis: The court established that Swinnea owed a fiduciary duty to ERI and Snodgrass which was violated through the inducement of the buyout and as a result the parties experienced a loss in profits. In the other case, ERI and Snodgrass would not receive anything as damages on the issue of conspiracy against Brady Environmental.

Minority Rationale: If the profit lost was a result of the lack of the contract with Merico, then the profit calculation should be based on reduction of the profits gained from Air quality. Comment: Contracts owe a fiduciary duty to the parties and it is important for any dealings to be disclosed to the other party.

## **Follow Up Questions and Answers**

The element of contract under violation was the breach of trust and fiduciary duty which could have been avoided with the disclosure of the interest Swinnea had in Air Quality. The contract is also affected by the inducement of buy out.

The plaintiffs, ERI and Snodgrass, received damages for the loss in revenues. Normally contracts need to be in a written form although this is not a binding requirement. Enforceable contracts are contracts which have to be in a written form (Miller & Jentz, 2009).

## **Conclusion**

This paper has reviewed cases in the areas of business and the bill of rights, administrative agency, torts related to business and the contract as they relate to business law. The case analysis and briefing has also involved the review of follow up questions and answers.

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