Legal Environment

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CLASS 13

UCC, Commercial Paper, and Electronic Commerce;
Employment Law
UCC, Commercial Paper, and Electronic Commerce

• Chapter 5

What is the UCC?

• Uniform Commercial Code (UCC):
  – A model law that has been adopted separately by each state to facilitate making the law of sales and commercial transactions generally uniform across the different states so that these transactions would be easier to complete.

UETA

• Uniform Electronic Transactions Act (UETA)
  – A model law that was created in an attempt to make state governing of e-signatures more uniform. Under the UETA most contracts must be signed by the parties against whom enforcement is sought.
E-SIGN Act

- Electronic Signatures in Global and National Commerce Act (E-SIGN Act):
  - A federal law that provides that all contracts, records, or signatures that are in electronic form are legally valid to the extent they would be legally valid if they were in printed form on paper.

9 Articles of UCC

2. Sales of Goods
   2A. Leases of Goods
3. Negotiable Instruments
4. Bank Deposits
   4A. Funds Transfer
5. Letters of Credit
6. Bulk Transfers
7. Bills of Lading, Warehouse Receipts
8. Investment Securities
9. Secured Transactions

Interpretation under the UCC

- **Course of Performance** – contractual habits as what parties meant for written words of the contract
- **Course of dealing** – conduct of parties over time as what parties meant for written words of the contract
- **Usage of trade** – standard practice in trade should guide contractual interpretation
Employment at Will

- Either the employer or the employee may terminate an employment contract at any time and for any reason, unless the contract specifically provides to the contrary.
- An employer may not fire an employee if to do so would violate a federal or state statute.
Exceptions

- Violation of contract
- Violation of statutory law
- Exceptions based on contract theory, tort theory, and public policy

Exceptions Based on Contract Theory

- If the employee is fired outside the terms of an implied contract, he or she may succeed in an action for breach of contract even though no written contract exists.

Contract Modifications

- Express
  - Not to terminate employment except for good cause
  - Employment for a specification duration
- Implied
  - Representations made by employers regarding job security, disciplinary procedures, and other employee privileges
Exceptions Based on Statute

• Certain protections at federal and state levels
  – National Labor Relations Act (NLRA) – right to form labor unions and to bargain collectively
  – Illegal for employers to make employment decisions based on race, sex, and other protected characteristics
  – Protections against employment decision based on age, disability, and certain family obligations

Just Cause

• A provision that limits the employer’s ability to terminate employees except for just cause.
• Substantial workplace misconduct
  – Fighting, drinking, and insubordination
• Off-the-job misconduct?
  – Does the misconduct affect legitimate employer interests?

Implied Modifications

• From employer communications
  – Oral statements
  – Written memos
  – Policies (e.g., employee handbook)
Exceptions Based on Tort Theory

- Abusive discharge procedures – intentional infliction of emotional distress
- Fraud – making false promises to a prospective employee if the person detrimentally relies on the employer’s representations by taking the job.

Exceptions Based on Public Policy

- Wrongful discharge based on a violation of public policy
- Typical elements
  1) Engaged in conduct protected by a clearly defined public policy,
  2) Dismissing the employee would jeopardize or undermine the public policy, and
  3) A casual link existed between the employee’s conduct and the discharge to indicate that the employer terminated the employee because of the employee’s participation in the protected conduct.

Typical Categories

- Categories of employee activities that serve as the basis for wrongful discharge
  - Refusing to engage in illegal conduct
  - Performing a public obligation
  - Exercising a legal right or privilege
  - Whistle blowing
Wrongful Discharge

- Discharge of an employee in violation of an employment contract or a statutory law protecting employees

Mandated Terms and Conditions of Employment

Family and Medical Leave Act of 1993

- A federal statute mandating that certain employers must provide an eligible employee up to a total of 12 weeks of unpaid leave during any 12-month period.
  - 50 or more employees
  - Employer not required to pay employee
  - Employee not guaranteed to have the same position
Overtime

• Under the Fair Labor Standards Act (FLSA):
  – Any employee who works more than 40 hours per week must be paid no less than 1.5 times normal rate of pay for all hours over 40
  – Certain employees including administrative, executive, professional, outside sales people, and computer programmers are exempt

Child Labor

• 18 or older – no restrictions on jobs or hours
• 16-17 – may perform any job no declared hazardous and have no restrictions on hours
• 14-15 – may work outside of school hours in certain classes of jobs and under certain restrictions

Warn Act

• Worker Adjustment and Retraining Notification Act (Warn Act) requires large businesses to provide 60 days notice before implementing a mass layoff or closing a plant that employs more than 50 FTEs
Sexual Harassment

• Quid Pro Quo
  – occurs when an employment decision is conditioned on sexual activity or the basis for the decision is the satisfaction of a sexual demand

• Hostile Work Environment
  – a work environment pervasive with sexual advances, or unwelcome sex-related humor or comments

Regulation of Workplace Health and Safety

Legislative Efforts

• Compensating employees injured as a result of their job
• Passing laws to prevent injuries from occurring in the first place
Workers’ Compensation

- Workers’ Compensation is intended to provide wage replacement and compensation for employees who suffer work-related injuries or illness.
- Workers Comp laws require that injury-related disputes between employees and employers be managed by an administrative agency or board.

Claims and Insurance

- Employees file claims for specific damages for specific injuries without filing suit
- Employers purchase insurance at a predictable cost in order to cover the cost of workers’ compensation claims.

Typical Benefits Under State Law

- Medical benefits
- Temporary total disability benefits
- Temporary partial disability benefits
- Vocational rehabilitation benefits
- Permanent disability benefits
- Death benefits for surviving family members
OSHA

- Occupational Safety and Health Administration (OSHA) is responsible for setting standards and conducting workplace inspections of safe and healthy workplace conditions.

Employee Privacy

WORKPLACE SEARCHES
O'Connor v. Ortega

• “Searches and seizures by government employers or supervisors of the private property of their employees … are subject to the restraints of the Fourth Amendment.”

O'Connor v. Ortega

• “The workplace includes those areas and items that are related to work and are generally within the employer’s control. At a hospital, for example, the hallways, cafeteria, offices, desks, and file cabinets, among other areas, are all part of the workplace. These areas remain part of the workplace context even if the employee has placed personal items in them, such as a photograph placed in a desk or a letter posted on an employee bulletin board.”

O'Connor v. Ortega

• “The appropriate standard for a workplace search does not necessarily apply to a piece of closed personal luggage, a handbag or a briefcase that happens to be within the employer’s business address.”
O'Connor v. Ortega

- “The employee’s expectation of privacy must be assessed in the context of the employment relation. … [T]he question whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis. …”

Lockers

- “[B]y having placed a lock on the locker at the employee’s own expense and with the appellants’ consent, has demonstrated a legitimate expectation to a right of privacy in both the locker itself and those personal effects within it.”

WORKPLACE DRUG TESTING
Borse v. Piece Goods Shop

- 1992 3rd Circuit
- Issue
  - “[W]hether an at-will employee who is discharged for refusing to consent to urinalysis screening for drug use and to searches of her personal property states a claim for wrongful discharge under Pennsylvania law…”

Borse v. Piece Goods Shop

- Employee refused to sign the consent form
- Company terminated employee’s employment

Borse v. Piece Goods Shop

- PA Intrusion on Seclusion
  - “One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person. Restatement (Second) of Torts §652B.”
Borse v. Piece Goods Shop

- Urinalysis possible violations
  1) Manner in which the program is conducted (e.g., collection of urine)
  2) Disclosing private medical facts

Employee Notice

- "[T]he Court finds that the taking of urine samples is an intrusion in an area in which plaintiffs may have an expectation of privacy. However, in this case, the Court finds that plaintiffs had no expectation of privacy with regard to drug testing since they had been on notice…"
- Baggs v. Eagle-Picher Industries

Requiring Employee Consent

- "Courts have [generally] held that employers requiring employees to consent to drug testing (or to surveillance or monitoring) shield themselves from liability under the intrusion upon seclusion tort because the employees consented to the intrusion."
Electronic Monitoring in the Workplace

- When determining whether an employer should be held liable for violating an employee's privacy rights, the courts generally weigh the employer's interests against the employee’s reasonable expectation of privacy.
- **Employees are informed** – cannot reasonably expect those communications to be private
- Employees have no expectation of privacy if the employer provides the email system

Work Email

- “[W]e do not find a reasonable expectation of privacy in e-mail communications voluntarily made by an employee to his supervisor over the company e-mail system notwithstanding any assurances that such communications would not be intercepted by management. Once plaintiff communicated the alleged unprofessional comments to a second person (his supervisor) over an e-mail system which was apparently utilized by the entire company, any reasonable expectation of privacy was lost.”
- **Smith v. Pillsbury Co.** (E.D.PA 1996)
Work-Related Email Liability

- Defamation
- Copyright infringement
- Sexual harassment

Service Provider Exception

- "In many workplaces — such as government workplaces, universities, and large corporations — the employers are also the service providers. Therefore, they would be exempt from intercepting e-mail under the Wiretap Act. Additionally, employers can have employees sign consent forms to the monitoring, and consent is an exception to federal wiretap law."

Social Media Password Demands

- Reasonable expectation of privacy in privately posted messages in social media
- Several states have passed laws to prohibit schools and/or employers from demanding social media passwords
U.S. v. Ziegler

- 9th Cir. 2007
- Issue
  - Does an employer's coordination with the FBI regarding a child pornography investigation including copying a work hard drive violate an employee's privacy rights?

U.S. v. Ziegler

- Employer tipped FBI that D had accessed child porn websites from work
- Employer monitored workplace computers and employees were aware of the monitoring
- Employer made a copy of the employee's hard drive (at direction of the FBI?)

U.S. v. Ziegler

- Defendant's groups for appeal:
  - “[T]he January 30, 2001, entry into [D’s] private office to search his workplace computer violated the Fourth Amendment and, as such, the evidence contained on the computer’s hard drive must be suppressed.”
U.S. v. Ziegler

• “[A] criminal defendant may invoke the protections of the Fourth Amendment only if he can show that he had a legitimate expectation of privacy in the place searched or the item seized.”

U.S. v. Ziegler

• Did D have a legitimate expectation of privacy?
  – “Ziegler’s expectation of privacy in his office was reasonable on the facts of this case. His office was not shared by co-workers, and kept locked.
  – “Because Ziegler had a reasonable expectation of privacy in his office, any search of that space and the items located therein must comply with the Fourth Amendment.”

U.S. v. Ziegler

• “[W]as the search of Ziegler’s office and the copying of his hard drive were ‘unreasonable’ within the meaning of the Fourth Amendment? As in Mancusi, the government does not deny that the search and seizure were without a warrant, and it is settled for purposes of the Amendment that ‘except in certain carefully defined classes of cases, a search of private property without proper consent is ‘unreasonable’ unless it has been authorized by a valid search warrant.”
U.S. v. Ziegler

• Consent is an exception to the government’s warrant requirement
• Consent may be given by the party to be searched, or a “third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected”

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U.S. v. Ziegler

• What about computer consent?
• “[An employer” could give valid consent to a search of the contents of the hard drive of [an employee’s] workplace computer because the computer is the type of workplace property that remains within the control of the employer “even if the employee has placed personal items in [it].”

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U.S. v. Ziegler

• “The remaining question is, given [the employer’s] ability to consent to a search, did it consent to a search of the office and the computer. We conclude that it did. … And because valid third party consent to search the office and computer located therein was given by his employer, the district court’s order denying suppression of the evidence of child pornography existing on [Defendant’s] computer is affirmed.”

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Duty to Monitor Employees

- Are there policies in place to monitor the employee’s use of email and the Internet?
  - "We hold that an employer who is on notice that one of its employees is using a workplace computer to access pornography, possibly child pornography, has a duty to investigate the employee’s activities and to take prompt and effective action to stop the unauthorized activity, lest it result in harm to innocent third parties. No privacy interest of the employee stands in the way of this duty on the part of the employer...."
- Doe v. XYC Corp.