

FACEBOOK AND THE WORKPLACE: BEWARE!

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A student in high school posted a picture of herself in a swimsuit on her Facebook page. An administrator later used that picture as part of a county-wide presentation concerning the potential pitfalls of using social media websites. After learning of the picture being used as part of the presentation, the student brought a suit against the school district and the administrator. As a part of its response to these allegations, the case went to the United States District Court. This case has been written only as an instructional case study that examines emerging and traditional legal and management concepts. Although this case notes the seriousness of this real world situation, the legal and business concepts are presented and discussed in a manner to promote student learning only. As a result, the case will be presented and discussed in this manner. The names of the parties, certain locations and certain facts have been changed in order to protect various individuals. This case is appropriate for graduate and undergraduate business law, business management, risk management and business communication classes.

THE BACKGROUND

The use of social media by many people has become quite prevalent in our society. Currently, it is estimated that 1.61 billion people are now active in social media and the numbers are expected to climb to 2 billion in 2016 (Bennett, 2013).

In particular, the growing market of social media users appears to be within the eighteen to thirty-five year old range (Social Media Growth Statistics, n.d.). This is especially true in the United States where one in five Americans ranging in age from 18-35 years of age use twitter with an addition of 300,000 twitter users a day ("Social Media Growth Statistics," n.d.).

Another important statistic to note is that 15% of all bloggers spend 10 hours or more per week engaging in social media activities (“Social Media Growth Statistics,” n.d.). Thus, this statistic relates to seventy-eight percent of all consumers relying on recommendations and suggestions from their peers (“Social Media Growth Statistics,” n.d.).

Facebook has become quite popular as a social media site. Facebook was started by Mark Zuckerberg and has become the most sought after communication modality globally. For example, the average time a person spends in one visit to the Facebook site is 20 minutes (“The B2B Guide to Social Media,” 2012). Of the Facebook users, 57% are women and 43% are men. Another important statistic concerning the use of Facebook is that 250 million people globally upload photos daily. Additionally, 37 million people globally have ten or more likes per day (“The B2B Guide to Social Media,” 2012). Globally, Facebook users report and average of 130 friends and 20% of Facebook users comment on another user’s photos daily (“The B2B Guide to Social Media,” 2012). Additionally, 22% of the average user’s friends are from high school and 9% of the Facebook user’s friends are from college.

The range in which Facebook impacts its users is vast. It has been reported that 73% of all consumers can be reached through Facebook (“The B2B Guide to Social Media,” 2013). Thus, it is not surprising that social media is the communication and data wave of the future. For example, 150 million people interact with external Facebook sites per month (“The B2B Guide to Social Media,” 2013).

However, there are some concerns pertaining to the use of Facebook and other similar social media sites. Of the users of Facebook, it is noted that 60% have considered deleting their account because of privacy concerns. More specifically, this may be related to 3.5 billion pieces of content that are shared on Facebook each week.

These concerns may be especially prevalent when pertaining to high school and college aged students. This may be especially true when these students use a social media site such as Facebook and the information is viewed by those in the workplace.

THE CASE

On September 20, 2011, the Johnson County Public School District (the district) held a county-wide activity, the “Community Awareness Seminar,” in Johnson County, South Carolina (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013). This seminar was held at Johnson High School, which is also located in Johnson County, South Carolina (Chelsea Chaney v. Fayette

County Public School District & Curtis R. Cearley, 2013). Johnson High School was established in 1997 as a public secondary school with grades ranging from ninth through the twelfth. It has an enrollment of approximately 1,600 students with a comparable male to female ratio ("Education High School," n.d.).

As part of a planned program at Johnson High School, the seminar addressed a variety of subjects. One of the subjects pertained to the issue of posting items on the internet. In particular, the "permanency of postings to social media websites" as well as safety on the internet was addressed (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, pp.1-2). Kirk Sealy, the director of technology services for the District, established and designed a PowerPoint presentation called *Internet Safety* which discussed concerns over the use of personal information on the internet (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013).

Sealy's presentation, in addition to noting the permanent nature of social media postings, stressed how this information "could be embarrassing if published by third parties" (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, p. 2). A part of the presentation used a "slide of a cartoon depicting a daughter approaching her mother about the mother's Facebook page from years past, which listed the mothers' hobbies as "body art, bad boys, and jello shooters" (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, p.2). The next slide in the presentation contained a photo of Debra Smith in a two piece red bikini swim suit (Rudra, 2013) standing beside a full-sized, cardboard cut out photo of Calvin Broadus, also known as "Snoop Lion" (and recognized as "Snoop Dogg") (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013). The slide contained the name "Once It's There-It's There to Stay" (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, p.2). In addition, Smith's full name was listed below the picture.

Sealy obtained this picture of Smith by viewing different students' Facebook sites. During this time period when Sealy used the picture in the presentation, Smith was actually seventeen years old and attended Johnson High School (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013). Sealy was able to obtain the picture due to the type of setting that Smith used. Smith allowed entry to her Facebook web page using a "semi-private setting." This setting allowed her site, which included the picture, to be viewed by "friends" and friends of friends." Due to

Smith's minor status, this setting was the "most inclusive privacy setting she could

choose” (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, p.2).

Further, copies of the presentation, which also included the picture and information pertaining to Smith, were provided to the individuals at the presentation. As a result, each person attending the seminar had access to the picture (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013).

DISTRICT POLICIES

The District had a policy pertaining to use of students’ material on the District’s website. It was called the “District Technology Services Policy-Staff Use of Internet and E-Mail” (“DTSP”) (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, p.3). The DTSP contained a stipulation that forbade workers in the District from using “electronic communication in a way that could cause offense to others or harass or harm them . . . or [could] in any other way be inappropriate for the school environment” (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, p.3). The DTSP also banned workers in the District from breaking “principles of confidentiality and privacy” arising from or relating to “accessing . . . or disclosing information about students” (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, p.3).

In addition to the other District provisions pertaining to the use of the internet by its employees, the District also had provisions pertaining to social media and its use by District employees. In particular, employees were required “to obtain approval from their supervisors if the employee was “participating” on a social media site for school or District-related business” (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, p.4). Moreover, the appropriate provisions “required a District employee to notify a student’s parents beforehand of his (or her) intended use of and interaction with a student’s social media page” (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, p. 4). However, in this situation, neither Smith “nor her parents were notified of or consented to Sealy’s intended use of and interaction with Smith’s Facebook page prior to Sealy’s presentation” (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, p.4).

Of note, Smith also stated that Sealy “had the final policymaking authority for the district in relation to certain Internet and technology-related issues, including the planning and execution of the presentation” (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, p.4). Smith also stated that Sealy’s attainment and displaying of her Facebook photo was initially allowed by the Deputy Superintendent.

CONCERN OVER THE PICTURE

When Smith learned of the use of her two-piece bikini picture for a county-wide seminar concerning the negative aspects of social media, she was very upset. She stated to a media outlet that “I was embarrassed. I was horrified” (Rudra, 2013, p.2). She stated that “it never crossed my mind that this would ever, ever happen to me” (Rudra, 2013, p.2). Smith felt that she has experienced “extreme humiliation, shame, embarrassment, and mental and emotional distress” (McDonald, 2013, p.4) due to the use of this picture.

The picture was initially “taken when Smith accompanied a friend on her family’s vacation” (Chelsea Chaney v. Fayette County Public School District & Curtis R. Cearley, 2013, pp. 2-3). According to the legal action documents against the district, the use of Smith’s picture in this manner “branded the teenager as a ...promiscuous abuser of alcohol who ... should be more careful about her Internet postings” (Kinkade, 2013, p.1).

Sealy, in an effort to address the matter, sent a letter to Smith’s parents apologizing for the situation. In the letter, he explained his purpose for using the picture of Smith in his presentation. He stated that “in order to stress the public and permanent nature of the media, and in an attempt to make the presentation as relevant as possible, it included a photo of a [Johnson] County student, your daughter” (Rudra, 2013, p.2).

Sealy also apologized to Smith. He stated that “from the students I found with open profiles I simply selected a photo at random. The embarrassment I have caused you at school is an unintended consequence of my hasty actions. For that, I offer my apology directly to you” (Rudra, 2013, p.2).

THE DECISION TO SUE

According to Smith’s legal representative, efforts were made to contact the district concerning the matter. The legal representative also felt this suit could have been resolved. The lawyer stated that “had the school district not completely ignored my written request for a conference prior to filing [the] suit, [the] suit may well have been avoided” (Kinkade, 2013, p.2).

However, as a result of this situation, Smith decided to bring a legal action against the district and Sealy for two million dollars (The Unruly of Law, 2013).

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EXHIBIT 1

Invasion of Privacy:

“The courts have held that certain amendments to the U.S. Constitution imply a right to privacy” and “some state constitutions explicitly provide for privacy rights, as do a number of federal and state statutes.”

The four acts listed below pertain to invasions of privacy:

1. ***Appropriation of Identity*** – “Under common law, using a person’s name, picture, or other likeness for commercial purposes without permission is a tortious invasion of privacy.”
2. ***Intrusion into an individual’s affairs or seclusion*** – This would pertain to “invading someone’s home or searching someone’s personal computer without authorization is an invasion of privacy.”
3. ***False Light*** – “The publication of information that places a person in a light is another category of invasion of privacy. This could be a story attributing to someone’s ideas not held or actions not taken by that person.”
4. ***Legality*** – This “occurs when a person publicly discloses private facts about an individual that an ordinary person would find objectionable or embarrassing.”

Source: Cross, F.B. & Miller, R.L. (2009, 2007) p. 296. *The legal environment of business* (7th ed.). Mason, OH: South-Western, Cengage Learning.

EXHIBIT 2

Defamation of Character:

This tort involves “wrongfully hurting a person’s good reputation. The law imposes a general duty on all persons to refrain from making false, defamatory statements of fact about others” to a third person (publication). “Breaching this duty in writing or other permanent form (such as an electronic recording) involves the tort of libel.” “Breaching this duty orally involves the tort of slander.”

Defenses to Defamation:

1. ***Truth*** – “Truth is normally an absolute defense against a defamation charge.”
2. ***Privileged Speech*** – “In some circumstances, a person will not be liable for defamatory statements because he or she enjoys an immunity.”
Absolute – “Only in judicial proceedings and certain government proceedings is this [type of immunity] granted. (An example of this type of immunity would be a “statement made by attorneys and judges in the courtroom during a trial.”)
Qualified (Conditional) – Certain statements will be given immunity in certain situations. (An example of this type of immunity would be “an employer’s statements in written evaluations of employees.”)
3. ***Public Figures*** – “Public officials who exercise substantial governmental power and any person in the public limelight are considered public figures.” This requires that statements against public figures “must be made with actual

malice.” This type of statement “must be made with either knowledge or its falsity or a reckless disregard.”

Source(s): (a) Cross, F.B. & Miller, R.L. (2009, 2007), p. 294-296. *The legal environment of business* (7th ed.). Mason, OH: South-Western, Cengage Learning.
(b) See also, Garner, B. A. (Eds.) (2010). *Black’s law dictionary*, (9th ed), p. 377. Eagan, MN: West, A Thomson Reuters Business.

Intentional Infliction of Emotional Distress

“An intentional act that amounts to extreme and outrageous conduct resulting in severe emotional distress to another.” “To be actionable, the act must be extreme and outrageous to the point that exceeds the bounds of decency accepted by society.”

Source(s): (a) Cross, F.B. & Miller, R.L. (2009, 2007), p. 294-296. *The legal environment of business* (7th ed.). Mason, OH: South-Western, Cengage Learning.
(b) See also, Garner, B. A. (Eds.) (2010). *Black’s law dictionary*, (9th ed), p. 377. Eagan, MN: West, A Thomson Reuters Business.

Negligence

“The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others’ rights.”

“In order to succeed in a negligence action, the plaintiff must prove each of the following items”:

1. “That the defendant owed a duty of care to the plaintiff,”
2. “That the defendant breached that duty,”
3. “That the plaintiff suffered a legally recognizable injury.”
4. That the defendant’s breach caused the plaintiffs’ injury.”

Source(s): (a) Cross, F.B. & Miller, R.L. (2009, 2007), pp.304-305. *The legal environment of business* (7th ed.). Mason, OH: South-Western, Cengage Learning.
(b) See also, Garner, B. A. (Eds.) (2010). *Black’s law dictionary*, (9th ed), p. 890. Eagan, MN: West, A Thomson Reuters Business.

Immunity

“Any exemption from a duty, liability, or service of process; esp., such an exemption granted to a public official or governmental.”

“A government’s immunity from being sued in its own courts without its consent.”

Source: See also, Garner, B. A. (Eds.) (2010). *Black’s law dictionary*, (9th ed), p. 642 - 643. Eagan, MN: West, A Thomson Reuters Business.