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You Be the Judge: Top Staffing Cases of 2022



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You Be the Judge: Top Staffing Cases of 2022

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How This Will Work

- The Attorneys will present their case for either the Plaintiff or the Defendant
- The Judge and/or Jury (i.e., you) will ask questions to clarify the facts
- The Jury will vote for either the Plaintiff's or Defendant's case
- The Judge will pronounce the verdict
- The Attorneys will explain the verdict on the basis of the legal theory applied in the real case
- Questions



Case No. 1

Misappropriation and Noncompete Agreement





ABC Recruiting v. Johnson

- The Players
 - ABC Recruiting: Plaintiff staffing agency
 - Johnson: Defendant who worked for ABC Recruiting as a legal recruiter



ABC Recruiting v. Johnson

- The Key Facts
 - During his employment at ABC, Johnson recruited attorneys for placements at large law firms.
 - Johnson left ABC and joined a competitor.
 - But before Johnson left ABC, he began using his personal email for candidate submissions and allegedly submitted six lateral candidates to clients through the founder of his new employer.
 - ABC alleges that Johnson misappropriated ABC's confidential information about law firm clients and attorney candidates.



ABC Recruiting v. Johnson

- The Case
 - ABC sued Johnson and alleged that he misappropriated trade secrets and breached noncompete and nonsolicitation covenants in his employment agreement.
 - Specifically, ABC alleges that Johnson used confidential information he'd obtained during his final year of employment with ABC to place six candidates at law firms in the year following his departure from ABC.
 - ABC filed the case in federal court in Austin, TX.
 - Johnson testified that the information was based on his own personal relationships with the candidates and that ABC did not take measures to protect the information at issue.



ABC Recruiting v. Johnson

- The Issues
 - Is the client information a trade secret?
 - Is the noncompete agreement enforceable?

- The Law
 - A trade secret is defined as information the owner has taken reasonable measures to keep secret and which derives independent economic value from not being generally known or readily ascertainable through proper means.
 - In most states, noncompetes are enforceable if (1) they are reasonable in time, area, and line of business; set forth in a writing signed by the party against whom enforcement is sought; and are reasonably necessary to protect that interest; and (2) the contractually specified restraint is supported by at least one legitimate business interest justifying the restraint.



You Decide

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ABC Recruiting v. Johnson

ABC
Recruiting

Johnson

ABC Recruiting v. Johnson

- The Decision
 - Pieces of information about clients and potential clients were trade secrets.
 - The noncompete agreement was not overbroad in geographic area, nor overlong because of the tolling requirement, nor unconscionable.
- The Reasons
 - All of ABC's employees who accessed the company's proprietary information were required to sign a confidentiality agreement, which ABC enforces through legal redress when applicable. Thus, Johnson would have known the information was confidential and that ABC attempted to keep the information confidential.
 - The noncompete was reasonably necessary to protect ABC's legitimate business interest in building and maintaining relationships with clients and candidates.

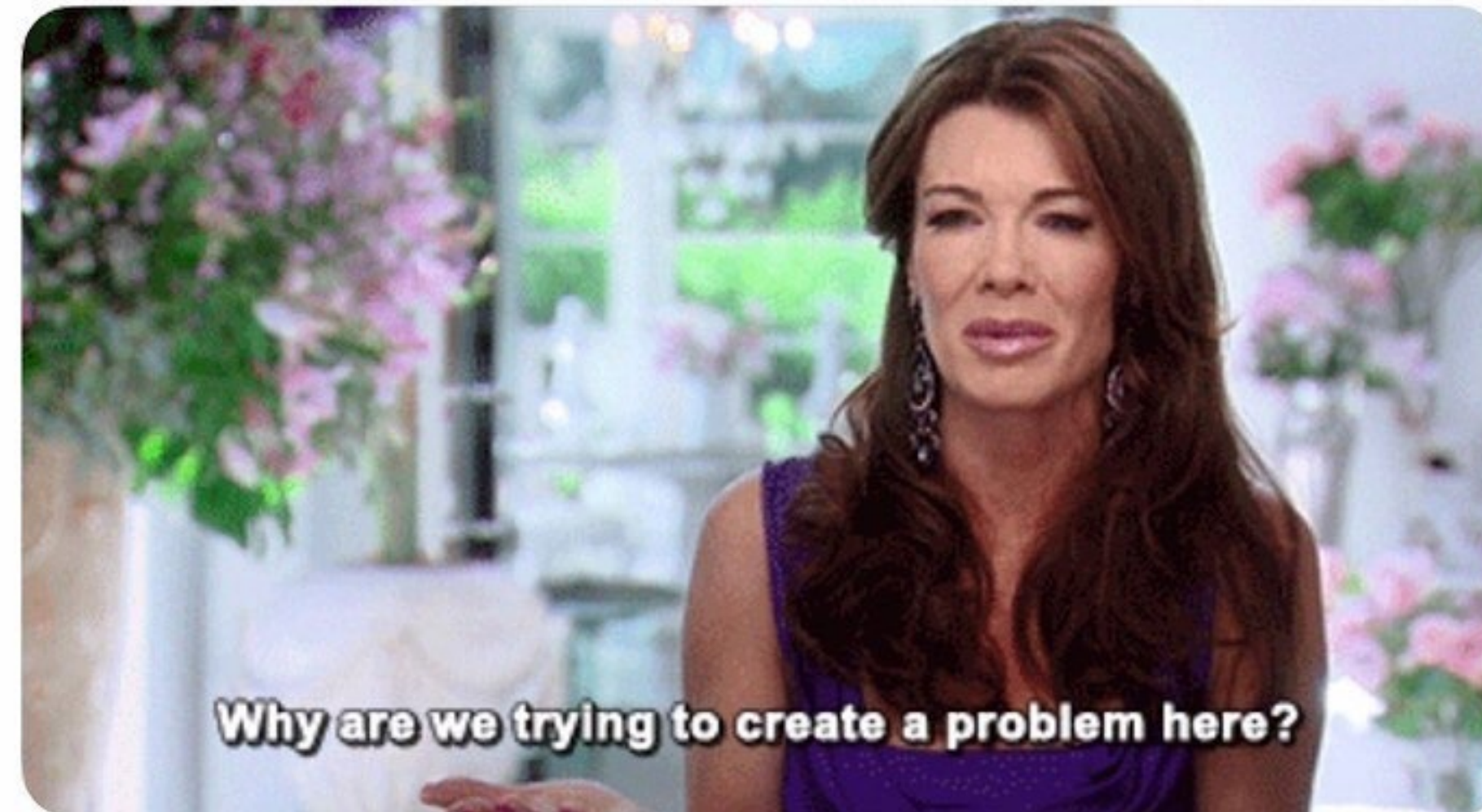




Case No. 2

No-Poach Agreement and Criminal Antitrust Law

When another company starts poaching my best people



Why are we trying to create a problem here?



Department of Justice v. Howard, et al.

- The Players
 - XYZ LLC: Defendant staffing company
 - Ryan Howard: XYZ's regional manager
 - Department of Justice: prosecutor of antitrust violations



Department of Justice v. Howard, et al.

- The Key Facts
 - XYZ provided contract health care staffing services.
 - Through Howard, XYZ agreed with its competitor to not hire each other's workers and to refrain from raising nurses' wages.
 - The agreement in question involved nurses assigned to one school district and lasted for less than nine months.
 - XYZ and its competitor were the two primary providers of contract nursing services to the school district.



Department of Justice v. Howard, et al.

- The Case
 - The DOJ conducted a federal investigation with its antitrust division's San Francisco office, the international corruption unit of the Federal Bureau of Investigation, and the U.S. Attorney's Office for the District of Nevada.
 - The DOJ charged XYZ with a criminal antitrust charge for its role in a conspiracy to eliminate competition and fix the wages of nurses.
 - XYZ argued that agreement in question was very limited, involving nurses assigned to one school district, and lasted for less than nine months.



Department of Justice v. Howard, et al.

- The Issue
 - Whether XYZ engaged in an unlawful antitrust conspiracy

- The Law
 - Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation.



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Department of Justice v. Howard et. al.

Department
of Justice

Howard et.
al.

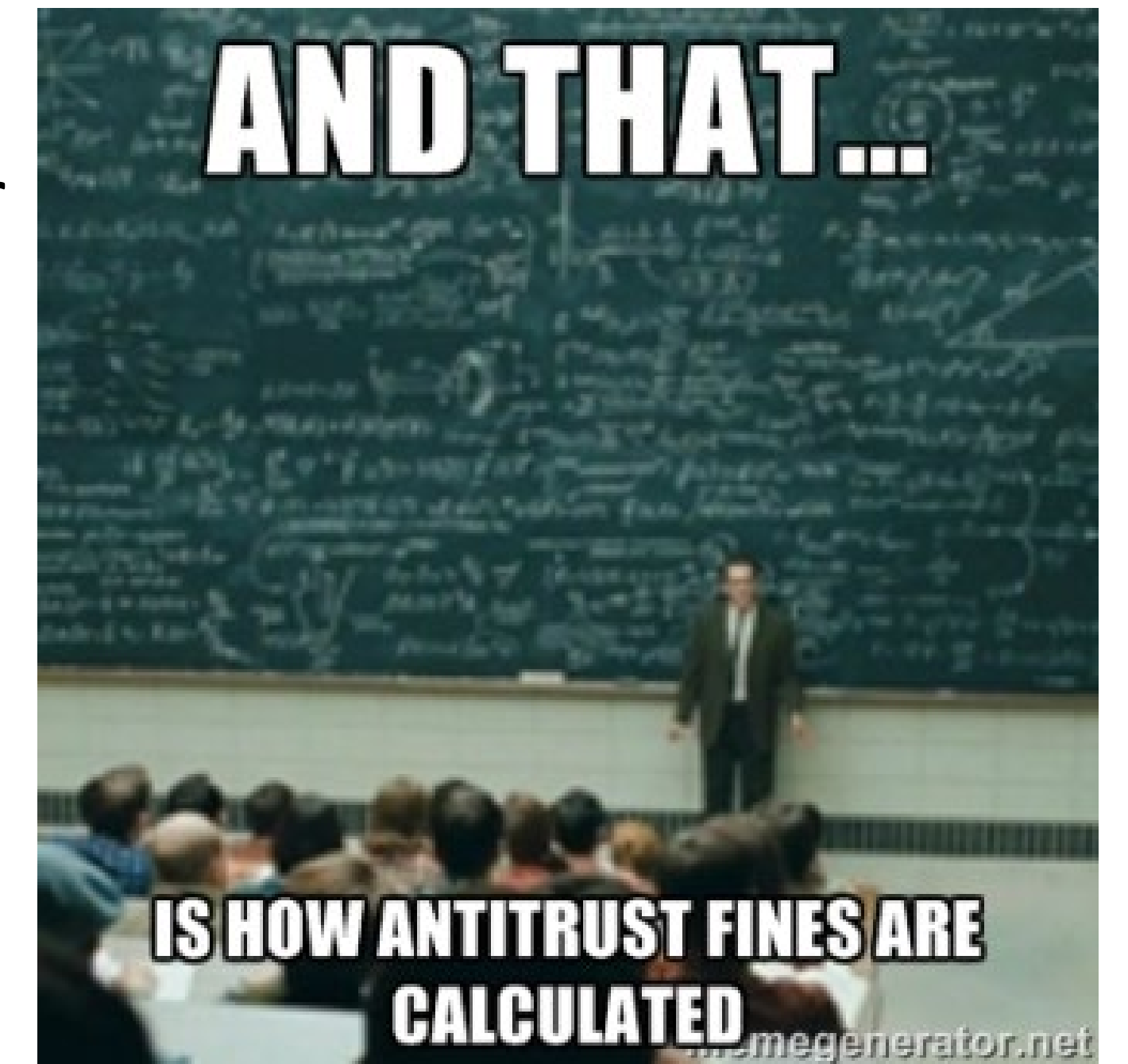
Department of Justice v. Howard, et al.

■ The Decision

- XYZ LLC was ordered by the U.S. District Court for the District of Nevada to pay a criminal fine of \$62,000 and restitution of \$72,000 to nurses impacted by the agreement with its competitor to not hire the other's workers.
- This was the Justice Department's first-ever win in criminal enforcement of labor antitrust violations.

■ The Reasons

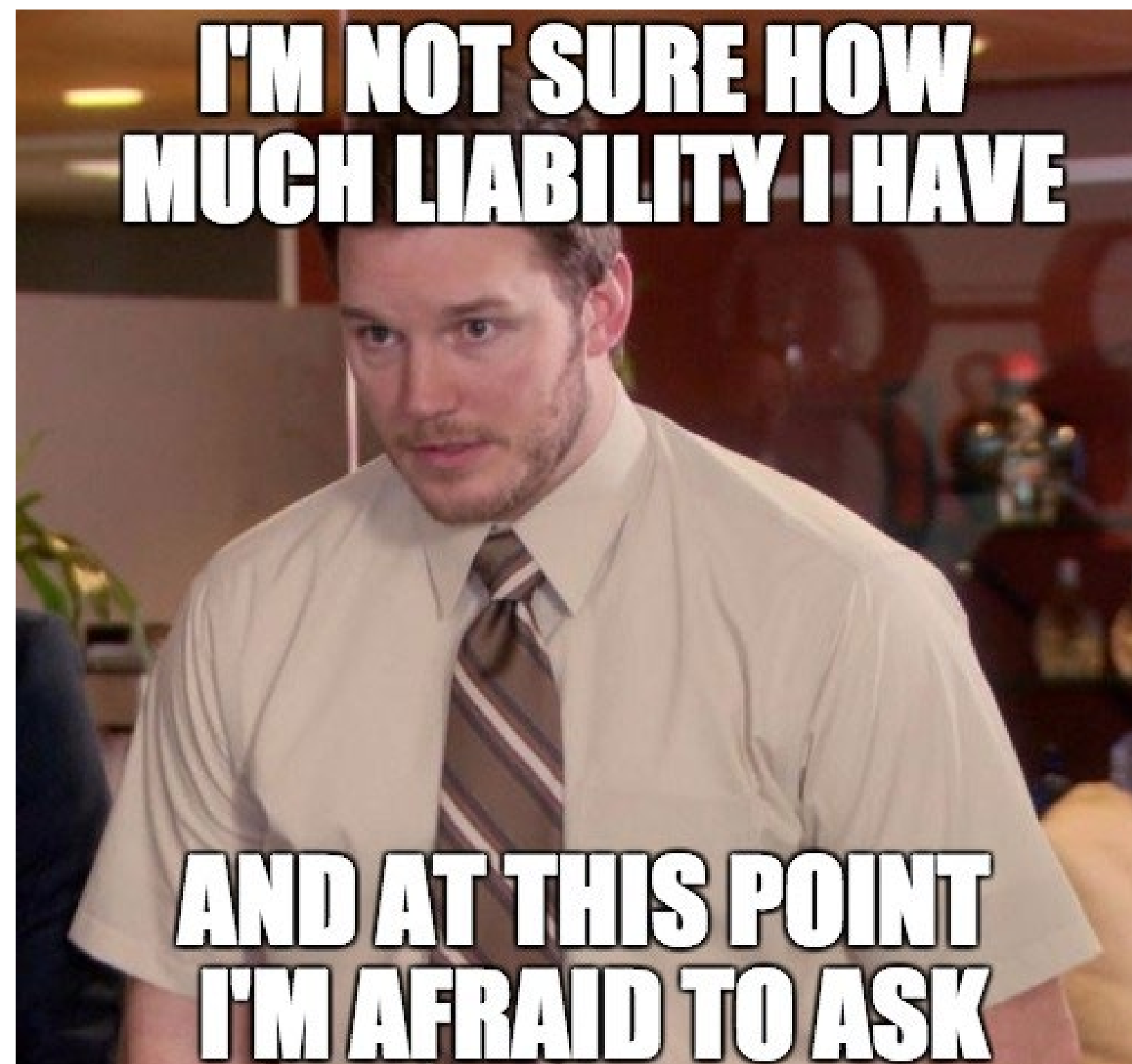
- During the relevant period, the business activities of XYZ and its co-conspirator were within the flow of interstate trade and commerce.
- XYZ was found to have violated the federal antitrust law by engaging in the no-poach agreement.





Case No. 3

Staffing Agency Client Liability





Green v. Edwards Medical Center

- The Players
 - Lynn Green: Plaintiff nurse assigned to work at a medical center by a temporary staffing agency.
 - Adaptable Nursing LLC: staffing agency that employed Green.
 - Edwards Medical Center: Defendant/client hospital where Green was assigned to work.



Green v. Edwards Medical Center

- The Key Facts
 - Adaptable Nursing assigned nurse Green to work at Edwards Medical Center
 - Green sued the staffing agency for wage and hour violations. The parties settled. Edwards was not a party to this first lawsuit.
 - Now, Green sues Edwards for the same wage and hour violations from the first lawsuit.



Green v. Edwards Medical Center

■ The Case

- The trial court determined that the hospital was not in privity with the staffing agency and found that the releases previously granted to the staffing agency did not extend to the hospital.
- The Court of Appeal affirmed, agreeing with the trial court that the hospital was not in privity with the staffing agency. Thus, preclusion was not appropriate.
- The California Supreme Court granted review.



Green v. Edwards Medical Center

- The Issue
 - Can the nurse recover against the medical center for the same claims which she already settled with the staffing agency?

- The Law
 - Privity is required to bar recovery on the same claims.
 - Privity requires the sharing of an identity or community of interest, with adequate representation of that interest in the first suit, and circumstances such that the nonparty “should reasonably have expected to be bound” by the first suit.



You Decide

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Green v. Edwards Med. Ctr.

Green

Edwards
Med. Ctr.

Green v. Edwards Medical Center

- The Decision
 - The Court of Appeal held Green was not precluded from suing Edwards.
- The Reasons
 - Edwards was neither a released party in the first case nor in privity with Adaptable Nursing.
 - Edwards would not have been bound by an adverse judgment in the first case against Adaptable Nursing.





Case No. 4

Religious Sect Discrimination





Lewis v. Gibson Technology

- The Players
 - Kevin Lewis: Plaintiff associate producer
 - Gibson Technology: Defendant employer of Lewis
 - Expert Process Network (“EPN”): Defendant staffing agency that employed Lewis



Lewis v. Gibson Technology

- The Key Facts
 - EPN assigned Lewis to work at Gibson Technology.
 - Lewis's job involved the production of videos in the Gibson Technology Developer Studio.
 - Lewis's supervisors were members of the Fellowship of Friends, a religious sect based in California.
 - Many experts, family members, and ex-members describe the Fellowship of Friends as a cult.
 - Lewis alleges he faced discrimination for not being a member of the sect.



Lewis v. Gibson Technology

- The Case
 - Lewis sued Gibson Technology for religious discrimination in California Superior Court.
 - Lewis alleged that the majority of employees in his department were members of the sect, and that Gibson Technology financially supported the sect.
 - Lewis alleged that sect members were treated more favorably than him on the basis of their membership in the sect.
 - Lewis claims he was terminated on the basis of his opposition to the sect.
 - Gibson Technology claims that his assignment was terminated for performance issues.



Lewis v. Gibson Technology

- The Issue
 - Did Gibson Technology engage in unlawful discrimination on the basis of religion?

- The Law
 - An employer cannot discriminate on the basis of religion or lack of religion. Discrimination includes termination, refusal to hire, and other adverse employment actions.



You Decide

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Lewis v. Gibson Technology

Lewis

Gibson
Technology

Lewis v. Gibson Technology

- The Decision
 - The parties settled the lawsuit!
- The Reasons
 - Terms of the settlement were not disclosed.
 - What do you think the reasons were?





Final Questions?