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JULY 2021 • \$5

A Publication of the San Fernando Valley Bar Association



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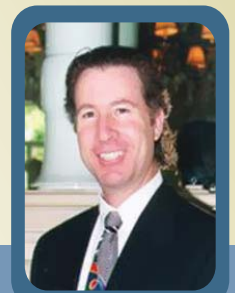
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20750 Ventura Boulevard, Suite 140
Woodland Hills, CA 91364
Phone (818) 227-0490
Fax (818) 227-0499
www.sfvba.org

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Michael D. White

GRAPHIC DESIGNER

Marina Senderov

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And Down the Stretch They Come!

MY PAST COLUMNS HAVE been a bit more focused on Bar business and weighty, so I thought I would mix in some levity, and then share a meaningful note at the end of the column.

As many know from both my President's messages and cover story in *Valley Lawyer*, my family has a significant tradition in thoroughbred horse racing. My love for horse racing and its history runs deep.

As our Bar elections approach, I've begun to reflect on what will be the last few months of my presidency, and as usual, my mind converted the situation into horse racing terms and analogies.

Dave Johnson, one of the most famous national horse racing announcers, often used his rousing signature call of "and down the stretch they come" to excitedly describe the horses thundering around the final turn in the Kentucky Derby and other big races. I view these final days of my tenure with the same exhilaration and excitement.

Looking back, whether you prefer either "and they're off" or "and away they go" to describe the start of a race, we certainly got off to a strong start and were fast out of the gate.

As I explained in earlier messages, we had a highly engaged Board from the outset with a really strong start, and, while many of the Board members were jockeying for position in an effort to work on their favorite projects or causes, virtually everyone pitched in on important projects after assignments sorted themselves out.

And despite the massive COVID-19 and financial challenges we faced this term, which at times had me feeling like it was a head-to-head race down to the wire in a photo finish, the Bar thrived and, once again, was in the Winner's Circle at the end of the race.

With a Board and Bar staff like ours, it should have been easy to see early on, as the legendary Trevor Denman might say, the SFVBA "was moving like a winner."



As we reopen our Bar to the public and begin again to have in-person experiences such as our upcoming Member Appreciation event, all of those who sacrificed to get our Bar through this difficult term are to be commended for their competitive efforts and dedication."

Lawyers are competitive people, and horse racing is a very competitive environment, as I learned from my Dad growing up around the racetrack. The same can be said for Bar Associations like ours and other small businesses that weathered the pandemic.

As we reopen our Bar to the public and begin again to have in-person experiences such as our upcoming Member Appreciation

event, all of those who sacrificed to get our Bar through this difficult term are to be commended for their competitive efforts and dedication.

With the recent Father's Day holiday, I also was able to reflect on the passing of my father during the first ten days of my Presidential term.

Horse racing writers often used the term "heart of a champion" to describe the best horses of the generation, and certainly my father had that type of heart and instilled the fight within me to weather tough times and persevere.

But there are different types of challenges which we all must overcome in life, and, while many have lost those close to them during the past year, losing a father is something different that I can certainly relate to on a personal level.

Our Bar family recently had such a loss when Trustee Alex Hemmelgarn's father recently passed away.

Our most sincere condolences go to Alex and his family, and I know that he has the same type of toughness to make it through this difficult time.

To Alex: Please know that our Bar community mourns your loss.

And lastly, I can hardly express the deep sorrow we have over the loss of Past President Kira Masteller's stepson, Dusty Masteller. Dusty lost his life in a tragic motorcycle accident on June 1, and our hearts and prayers go out to the Masteller family.

This loss is immeasurable, and we send our sincere condolences. The loss of any loved one is always significant, but to lose someone so young, words fail me. 🏇

DAVID G. JONES
SFVBA President



djones@lewiththackman.com

Once More Into the Breach!

WELL, IT'S TIME ONCE AGAIN to pass the baton and this month's edition provides you with a roster of talented and dedicated attorneys who have planted themselves squarely in the batter's box and thrown their collective hat into the ring for election to the SFVBA Board of Trustees.

My sincere apologies for the mixed metaphors.

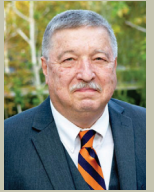
Seriously though, the San Fernando Valley Bar Association does genuinely critically important work, not only on behalf of the Valley's legal community, but for all those who call the San Fernando Valley

home. That work is a legacy that is the motive force propelling its impressive growth.

The Board of Trustees election begins the second week of August and culminates on Election Day, Friday, September 10.

Each active attorney member will have the opportunity to help craft the Board that will assist the incoming slate of officers in shouldering a myriad of duties, including setting policy, working closely with Bar staff to improve and develop programs for the public, and overseeing the Association's finances.

MICHAEL D. WHITE
SFVBA Communications
Manager



michael@sfvba.org

It is important that you exercise your franchise because the SFVBA is important, not only to the attorneys who practice in the Valley, but to the citizenry at large that depends upon it to promote the community's well-being and help provide access to much-needed legal services, particularly those who can least afford it.

Invest some time, peruse the slate of talented and dedicated attorneys seeking a seat on the Board, vote, and place your stamp on the worthy work the Bar will accomplish over the coming year.


If being elected into office is not on your bucket list, we encourage you to bring your experience to bear in any one of the Association's Sections that strike a chord with you.

The Sections cover a broad swath of practice areas, including bankruptcy, criminal, family, entertainment and internet law, new lawyers, litigation, probate and estate planning, and workers' compensation, among several others.

Or, if the spirit so moves, please consider sharing your insights and expertise on issues of interest with your colleagues by contributing an article or book review to *Valley Lawyer*.

The magazine has been honored by the National Association of Bar Executives and Los Angeles Press Club (LAPC).

In fact, this year, *Valley Lawyer* has been nominated as Best In-House Publication by the LAPC, while three individual articles have been put up for awards in their individual categories.

Remember to vote in the Trustee election and, perhaps, consider sharing your know-how with those who would benefit from your hard-earned expertise. 

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One Year On...

AT THE ONE-YEAR MARK OF the anniversary of the death of George Floyd, The San Fernando Valley Bar Association (SFVBA) would like to take a moment to reflect on the anniversary, the verdict, and highlight opportunities to be active in your community's efforts at social justice reform.

The verdict against Derek Chauvin shows our justice system at work. It is our sincere hope that the verdict gives the Floyd family some peace and, further, that it deters those who might exercise their power of the badge to use unnecessary and unreasonable force on others.

While the verdict is a step forward to accountability, the SFVBA knows that it will do nothing to bring Mr. Floyd back to his family, that police-involved shootings of persons of color continue, and that there is so much more work to be done.

The SFVBA hopes that reflection on this anniversary will prompt engagement among our membership, the Valley community, and law enforcement, in general, to have tough conversations and work toward restoring trust in our police force.

If you are interested in efforts in the local community to combat racism, please consider joining the SFVBA's Inclusion & Diversity Committee. You can do so by contacting co-chairs Jessica Rosen (jrosen@lewitthackman.com) and Amanda Moghaddam (moghaddama@lawyersmutual.com). We look forward to the day when all people, irrespective of color or race, are treated fairly and equitably. 

Minutes of the San Fernando Valley Bar Association 2021 Nominating Committee

The Nominating Committee met over two sessions. The first session was held via Zoom on May 17, 2021. Present were, Chair of the Committee Barry P. Goldberg, David G. Jones, Christopher P. Warne, Jessica Rosen, Hratch J. Karakachian, Trevor Witt, Steven Fox, Erin Joyce and Rosie Soto Cohen.

Goldberg called the meeting to order at 5:00 p.m. Rosen volunteered and was elected to serve as Committee Secretary. The Committee approved the election application process, deadlines, fees, and considered incumbent Trustees and potential nominees. Adjourned at 5:31 p.m.

The Committee met for a second session via Zoom on June 9, 2021. Present were Chair of the Committee Barry P. Goldberg, Christopher P. Warne, Hratch J. Karakachian, Trevor Witt, Steven Fox, Erin Joyce and Rosie Soto Cohen. Absent were David G. Jones and Jessica Rosen. Whereas Joyce was elected to serve as Acting Committee Secretary in Rosen's stead.

Goldberg called the meeting to order at 5:05 p.m.

After a discussion, the Committee considered two qualified candidates for treasurer and unanimously nominated the following for officers:

Amanda Marie Moghaddam.....	Candidate for Treasurer
Taylor F. Williams-Moniz.....	Candidate for Treasurer
Heather Glick-Atalla.....	Secretary
Matthew A. Breddan.....	President-Elect
Christopher P. Warne.....	President (automatic)

After a discussion, the motion to approve all incumbent candidates passed unanimously. The Committee considered all applicants and nominated the following as candidates for Trustee:

Kenny C. Brooks (New)	Alex J. Hemmelgarn (Incumbent)
Alan Eisner (Incumbent)	Robert Kahn (New)
Anthony Ellis (New)	Alexander S. Kasendorf (Incumbent)
Kyle M. Ellis (Incumbent)	Minyong Lee (Incumbent)
Gary J. Goodstein (Incumbent)	Joy Kraft Miles (Incumbent)
Stella Havkin (New)	Pravin Singh (New)

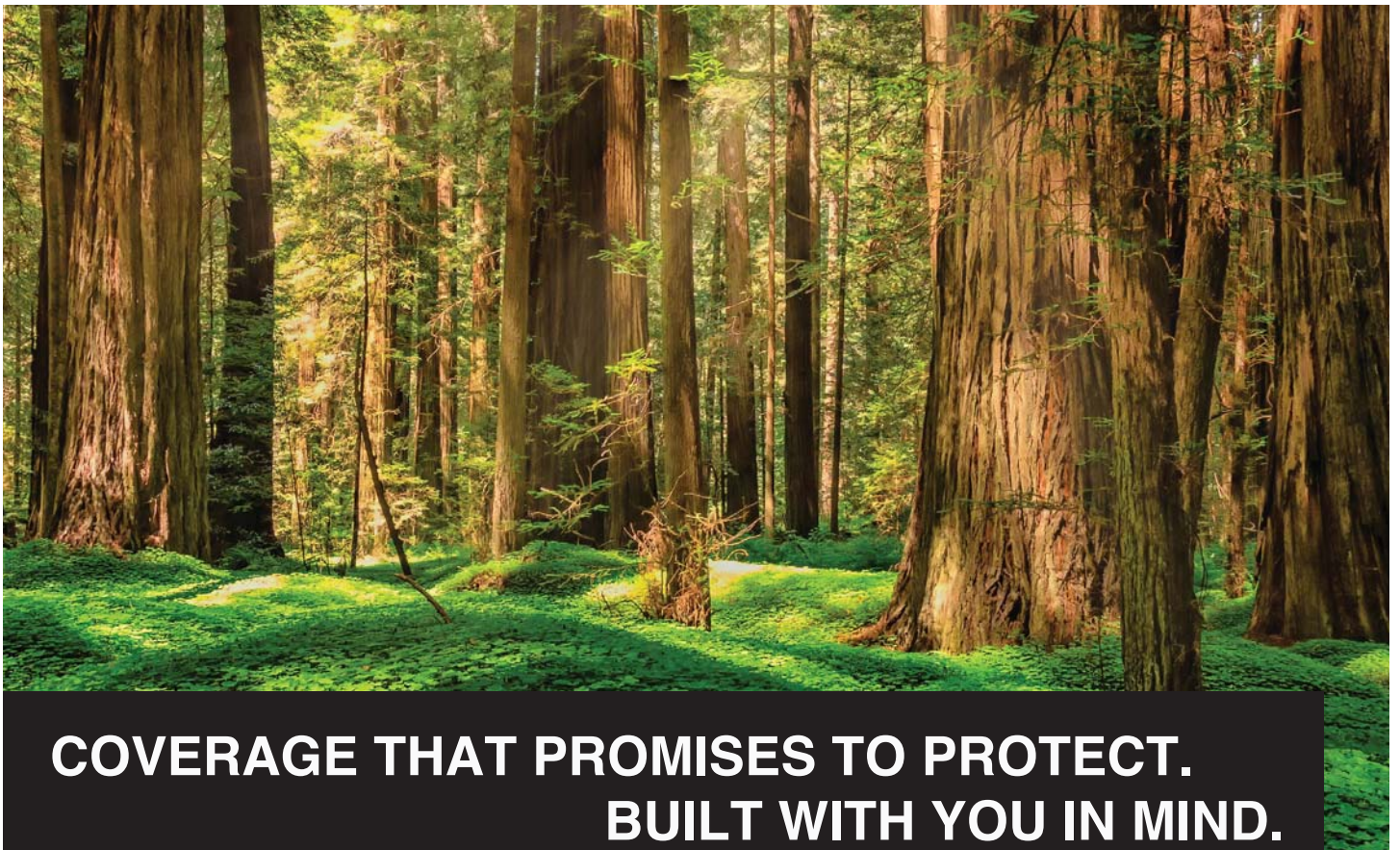
Applicants not nominated will be contacted and encouraged to be more involved and apply again next year.

The meeting adjourned at 6:15 p.m.

Jessica Rosen
Nominating Committee Secretary

Erin Joyce
Acting Nominating Committee Secretary

Barry P. Goldberg
Nominating Committee Chair



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SFVBA COVID-19 UPDATES sfvba.org/covid-19-corona-virus-updates/				ZOOM MEETING 1 Membership and Marketing Committee 6:00 PM	2	3
 4	5 SFVBA OFFICES CLOSED	6	7	8	9	10
11	12	13	14	ZOOM MEETING 15 Inclusion and Diversity Committee Meeting 12:15 PM	16	17
18	ZOOM MEETING 19 Mock Trial Committee 6:00 PM	20	21	22	23	24
25	26	27	28	29	30	31

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By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 21.

By David J. Habib



International Contracting: The Global Impact of COVID-19

The COVID-19 pandemic has disrupted virtually every major segment of the world's economy and, in particular, international trade thus, impacting the contracts affecting the rights and obligations of the parties engaged in global business.



C OVID-19 HAS DISRUPTED THE GLOBAL economy, and in particular international trade. What impact has this had on the formulation of an international contract?

The short answer is that the pandemic has had a serious effect on virtually all major segments of the world's economy, and, thus, on the contracts affecting the rights and obligations of parties engaged in those segments.

The broadest imaginable range of commercial activity was and continues to be disrupted—consumer retail sales, hospitality, bars and restaurants, commercial and residential leasing, manufacturing and supply chains, international shipping, travel and tourism, international student programs, to name just a few. The list is virtually endless.

Most of us never reflect on how many steps and how many parties are involved in extremely complicated activities such as maintaining efficiency and effectively operating international supply chains, international travel and tourism networks, and international education programs. We simply take these things for granted.

This article, then, will generally describe the primary contracts driving these segments of our economy, thereby hopefully highlighting how COVID has disrupted them, and briefly review the role and efficacy of the “force majeure clause.”

Imports and Exports

The manufacture and delivery of any product involve, at a minimum, contracts concerning production, quality control, and packaging.

There may also be regulatory requirements that must be met, and/or licensing and/or franchising contracts that must be complied with. The actual delivery of the product to the customer can involve additional contracts related to transportation and type of transport—perishable products and those with shelf-life issues require special terms, for example—inventory and delivery commitments, insurance, warranties, etc.

These issues are more complicated when the transaction involves crossing international land borders, let alone oceans.

Moreover, additional contracting issues frequently exist concerning such matters as financing, payment and delivery risks, special packaging requirements, international transport, cargo insurance and limitations of liability, import

and export regulatory compliance, customs clearance and duties, delivery to the ultimate customer, and the terms for resolving disputes.

The contractual allocation of risk and responsibility for all functions related to international delivery is determined by the delivery terms—known as Incoterms®—agreed to between buyer and seller.

They determine what additional contracts the buyer and seller must enter into with third parties, such as banks, cargo carriers, insurance companies, inspectors, customs brokers, and truckers, one or more of which are involved in virtually every international sales transaction.¹

Depending on the Incoterms agreed to, an importer may agree to assume the delivery-related obligations, including contracting, which otherwise would be assumed by the exporter. Some manufacturers import raw materials or parts in order to produce a product it intends to export.

By definition, then, these manufacturers must complete two international transactions, an import and an export, essentially twice involving the same steps and risks.

Per Mare

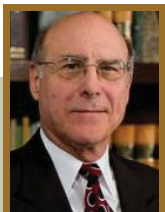
The volume of international trade carried on ocean-going ships is staggering, with currently some 90 percent of all global business involving the movement of goods by sea.

That international transportation component of a typical sales transaction, alone, requires that several complex issues be addressed, all of which are governed in large part by contractual relationships.

An exporter wishing to ship its product by sea must arrange for a Vessel Operating Common Carrier (VOCC), usually the operator of container ships, to transport the cargo to the foreign market, but may not be able to contract directly with the carrier.

Carriers issue a document called a Bill of Lading to shippers, which identifies, among other things, the cargo, the shipper, the consignee, the destination, the ship and routing, and virtually all other material information related to the subject shipment.

A negotiable Bill of Lading is arguably the most important document involved in an ocean shipment, as it serves as a delivery receipt, a contract of carriage, and a title document concerning the cargo containing pre-printed, detailed terms of agreement between carrier and shipper, such as force majeure and dispute resolution terms that tend to favor the ocean carrier.



Attorney **David J. Habib** is based in Thousand Oaks, he practices in several areas including international trade, and investment and risk management including joint ventures and other commercial partnering. He serves as Chairman of the Southern California District Export Council and can be reached at davidh@habiblaw.com.

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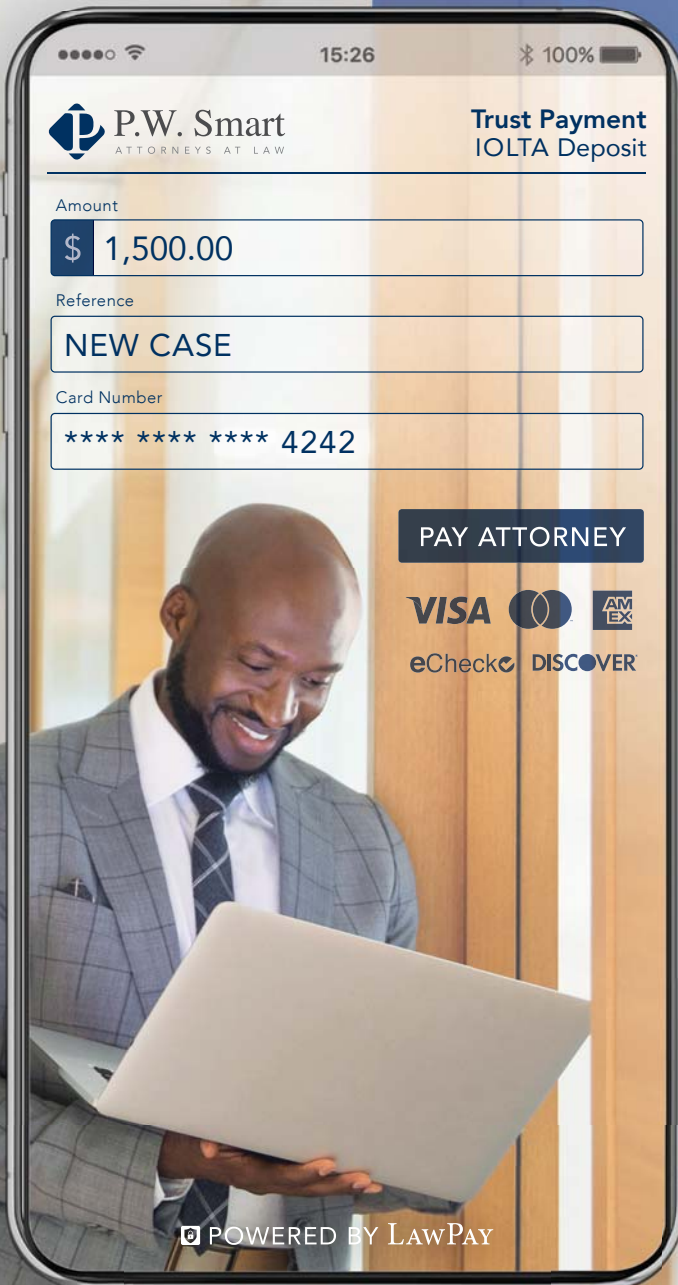
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In the past, ocean shipping rates were regulated and made public via published tariffs.

However, Congress passed the Shipping Act of 1984, which allowed both carriers and shippers to enter into negotiated service contracts filed with the Federal Maritime Commission (FMC).

In 1998, Congress passed the Ocean Shipping Reform Act, which amended the Shipping Act of 1984 by allowing carriers to enter into service contracts with shippers on a confidential basis.

Shipping rates are subject to a variety of factors, and often fluctuate with commitments that tend to be transaction and timing specific.

Carriers' service contracts usually contain terms intended to provide predictability to the shipper-carrier relationship as delay is an enemy in the shipping world. All a carrier has to sell is the space on its ships; the more it is able to sell the space, the more money it can make. To sell its space, a carrier's most fundamental asset—its ships—must be available to move cargo; they cannot be idle.

Delays in loading or offloading cargo cost ocean carriers money, so they look to offset those costs on to someone else, more often than not, the shipper.

Service contracts may contain favorable terms such as reduced shipping rates and the ability to minimize additional

costs assessed for demurrage and/or detention due to delays.²

To maximize value and minimize the administrative burden of dealing with an unwieldy number of shippers, carriers tend to enter into these service contracts with entities whose shipments are regular and large in number and consistent enough to justify the effort.

Most U.S. importers and exporters are not large enough to obtain these service agreements, and, thus, must arrange international transportation via an entity called a freight forwarder.

A freight forwarder is a party licensed to book cargo with a carrier. Some freight forwarders also act as Non-Vessel Operating Common Carriers (NVOCC); that is, they do not own or operate a ship, but aggregate and consolidate the cargo of several shippers in order to negotiate favorable rates with a VOCC.

The NVOCC assumes to the shipper the responsibilities of the carrier to move the cargo to the intended destination—in effect, it acts as a virtual carrier. Under this arrangement, several shippers enter agreements with the NVOCC, who enters into a contract with a VOCC.

It is sometimes said that an NVOCC acts as a carrier to the shipper, and as a shipper to the carrier. The NVOCC may also own or lease containers which it makes available to shippers.

As none of the shippers have a contract with the actual carrier, none are in a position to negotiate any real control over the proposed shipment, but must rely on the NVOCC.

None receive a VOCC Bill of Lading; rather, they receive the NVOCC's own house Bill of Lading, which may or may not contain terms compatible with the VOCC's Bill of Lading.

A freight forwarder that is not a NVOCC acts, for a fee, on behalf of a shipper to confirm an arrangement with a VOCC or NVOCC, but has no liability or control over the actual shipment itself.

Financing the Deal

Financing and payment terms are material issues in every sales transaction.

Unless the parties enjoy a longstanding and trustworthy relationship, international transactions often require a buyer to enter into a financing or credit agreement with its bank to secure funds for eventual payment to the seller.

The payment is contingent upon receiving the appropriate documents which identify the goods, confirm that other conditions are being met, and transfer the title.

For ocean shipments, the documents required almost always include a Commercial Invoice, Packing List, proof of insurance coverage, and negotiable Bills of Lading. Other documents may be required as well, depending on the circumstances and agreement of the parties.



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For example, concerning agricultural products, certifications are often required which the seller must obtain from third parties. The shipping documents are delivered to the buyer or the buyer's agent in exchange for payment with the parties often contracting with intermediaries such as banks to facilitate the exchange.

Virtually all contracts described above are time sensitive, in that they contemplate performance within, and/or are valid for, a limited period of time, subject to penalties. All are likely to contain different force majeure and dispute resolution provisions.

Travel, Tourism, and Educational Programs

Anyone who has traveled abroad for business, such as attending meetings or a trade show, or pleasure, such as going on a cruise or tour, knows how much planning is required.

Contracts and monetary deposits are required to reserve everything—the international travel itself, hotels, trade show space, equipment and supplies, tour operators and tourist attractions, local travel, such as rental cars, for example. Visas may be undoubtedly be required.

International students hand-over deposits to universities, take out student loans, make travel arrangements to and from home, enter into residential lease agreements, and often make other arrangements with the intention of enjoying the cultural attractions of the foreign country they will temporarily reside in.

Students also travel abroad to participate in temporary programs or projects that supplement their domestic curricula. To confirm reservations, contracts and monetary deposits are required for travel, hotel, and in-country expenses.

Again, virtually all contracts described above are transactional and/or time sensitive, and subject to penalties. All more than likely have different dispute resolution provisions.

COVID-19

In December 2019, it was disclosed that a virus was afflicting workers and production facilities in Wuhan Province, China.

By February or March 2020, the Chinese response to the virus had effectively shut down many of the country's production facilities and workers were laid off, not just in Wuhan, but across the country. As a result, the volume of the Chinese exports of a tremendous variety of manufactured goods plummeted.³

As the U. S. and the rest of the world began experiencing the effects of the virus and as concerns grew regarding its spread and unknown effects and the absence of a readily available vaccine, federal, state, and local governments issued restrictions on public gatherings

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and required the use of protective equipment (PPE), with concerns raised about imports from China.

Some popular writings have described this phenomenon as supply shock.

Restrictions were also imposed on the export of certain medical equipment, PPE, and other items, while social distancing became a household phrase, and many businesses severely cut back operations or outright ceased them altogether.

Millions of U.S. workers almost instantly became unemployed, or cut back to part-time employment, severely impacting their disposable income. Business and consumer purchasing were greatly reduced and international shipping, supply and delivery commitments were disrupted as the production of goods and the movement of goods through Chinese ports became erratic.

As a result, countless international contracts were affected.

By July or August 2020, Chinese production facilities were recovering momentum, and American consumers were receiving stimulus checks from the government. Consumer demand spiked, particularly for consumer and home goods, primarily from e-commerce providers like Amazon and big box stores like Target and Home Depot, whose shelves are stocked with goods, many of which are produced in China. Some popular writings have described this phenomenon as “demand shock”.

Ocean carriers determined they could make much more money sending their ships eastbound—that is, eastbound across the Pacific from China to the U. S.—than westbound. U.S. imports surged to the point that already troublesome port congestion problems became seriously exacerbated.

At one point earlier this year, more than 60 containerships were anchored in San Pedro Bay off the Ports of Los Angeles and Long Beach awaiting a berth to unload. This ongoing congestion has resulted in delays to the carriers, and the imposition of significant demurrage and detention penalties.⁴

Once cargo is unloaded, the carriers’ desire to return the ships and containers to lucrative eastbound service create a shortage of available equipment and space for U. S. exports.

The two shocks described above have created havoc not only on U. S. life styles, but also in respect of contracts governing thousands of international trade transactions. These extraordinary circumstances continue to this day as ships are backed up at deep-water U.S. ports, and return, after offloading, to Asia with empty containers rather than waiting to be loaded with outbound U.S. exports.⁵

Numerous complaints about shipping delays and canceled bookings have been lodged with the FMC by U. S. exporters, particularly agricultural exporters whose products

are seasonable and/or perishable with the agency being urged to ramp up pressure on global ocean container carriers to live up to their obligations under the U.S. Shipping Act.

In April, the U. S. District Export Council of Southern California produced a live webinar addressing the problem. The importance of this issue is reflected in the webinar’s attendance—269 people from 32 states, Washington, D.C., Guam, Puerto Rico, and five foreign countries.

At this point, considering the contracts alluded to above in the context of just a single hypothetical transaction in each category, it is important to see that there are several contracts in play, each with its own terms that are not likely to be completely compatible with the others.

For a U.S. manufacturer looking to export its product to a foreign buyer, there are likely several contracts in play, each with its own terms:

- A purchase contract between the buyer and the seller;
- A financing or credit agreement between the buyer and its bank;
- At least one contract between the shipper and a VOCC/NVOCC/forwarder;
- An insurance agreement, either the buyer or the seller; and,
- A payment facilitation contract between the buyer and/or the seller and the bank(s).

As indicated previously, any number of additional contracts are also often required to address such things as special packaging, inspection or document services, and inland transportation to and from ports.

Virtually all those contracts are time-sensitive, in that they contemplate performance within, and/or are valid for, a limited period of time, subject to penalties, while all are likely to have different dispute resolution provisions.

If the manufacturer must import raw materials or parts to integrate into an export product, it must execute and perform substantially similar inbound and outbound sets of contracts in order to accomplish that objective.

It has been estimated that normal production and supply cannot function in circumstances where there is a delay of more than 15 days. Yet, COVID-19-related disruptions to supply chain processes have caused delays sometimes lasting as long as months.

In some cases, these disruptions resulted in the underlying contracts being terminated. In many, the disruptions caused the parties to attempt to renegotiate their contracts in order to avoid resorting to the vagaries and frustrations of international dispute resolution.

Similarly, pandemic-related disruptions to international business and personal travel, and students' studies, have required most, if not all, parties to cancel or indefinitely postpone commitments, attempt to retrieve monetary deposits, and avoid formal disputes.

As the world wrestled with how to limit the spread of COVID-19, international travel drastically declined as travel restrictions and visa requirements were imposed, trade shows were postponed or canceled, business trips were replaced by virtual meetings, and vacations and tours were canceled.

Students studying abroad found their classes only offered remotely, and by the summer of 2020, many students were constrained to return home—wherever that may have been—with no clear picture of if or when they might be able to resume their studies abroad.

The impact on travel, hospitality, tourism, and entertainment-oriented businesses was, and continues to be, substantial. All of these activities are interconnected by contracts which may not anticipate any disruption at all, let alone a pandemic lasting more than a year.

A force majeure clause that does not indicate thoughtful consideration and allocation of risks the parties actually bargained for can, as a result, be ineffective.

Force Majeure

The force majeure clause of a contract is frequently relied upon to address the possibility of a failure of performance due to circumstances not anticipated by and beyond the control of the parties.

The question of the hour: Will a force majeure clause be effective to excuse a failure to perform allegedly due to the COVID-19 pandemic?

In this context, the answer largely depends on the facts and the language of the clause.

The American Bar Association has indicated there are four necessary components of a force majeure clause—it must define the breach for which a promisor seeks to be excused; it must define the force majeure event itself; it must require (and define) the causal connection between these two; and it must explain what will happen if performance is excused.⁶

The ABA has also provided some examples of how the specific facts of the case and language of the force majeure clause influence the result.

In *Gibson v. Lynn University*, a student sued a university for breach of contract to provide in-person learning, when COVID caused the University to pivot to remote learning. The subject force majeure clause said, “[t]here will be no refund of tuition...in the event the operation of the University is suspended at any time as a result of [a force majeure event].”⁷

The court found the University's force majeure clause did not apply because its alleged breach was not “suspend[ing] its operation” but only *offering* an alternative mode of teaching.

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Inclusion of the word pandemic or epidemic is not necessarily required for a force majeure clause to be effective.

In *JN Contemporary Art LLC v. Phillips Auctioneers LLC*, the court honored a clause allowing an auction house to terminate a contract if an auction was postponed for any reason beyond the gallery's reasonable control, "including, without limitation, as a result of natural disasters...".

The court concluded that natural disasters includes pandemics.⁸

Interpreting a commercial lease which included a provision stating "lack of money" is not covered by force majeure, the court nevertheless found in *In re Hitz Restaurant* that the force majeure clause was applicable on the grounds the lessee's inability to pay was due to government restrictions, which was explicitly included in the clause.⁹

The effectiveness of a force majeure clause as applies to COVID-19 will depend upon the specific facts of the case, the language of the clause and the contract as a whole, and, likely, the jurisdiction in which the case is being heard.

Interestingly, authors at one major international law firm have noted that the long-form template force majeure clause published by the International Chamber of Commerce (ICC) "presumes an epidemic to be a force majeure event but does not cover pandemics such as COVID-19. The difference between an epidemic and a pandemic is that an epidemic is a disease happening in a particular community."

A pandemic, in contrast, the ICC said, "is a disease that spreads over a whole country or the whole world. Due to its global spread, COVID-19 is classified as a pandemic."

Those authors suggest ensuring force majeure clauses going forward address this distinction.¹⁰

Conclusion

The international COVID problem remains fluid and dynamic, yet, while the United States has made significant progress reducing the dangers of the virus, many other countries continue to have difficulty.

Statistics have improved temporarily in China, but a recent outbreak in the major commercial city of Guangzhou in southern China threatens to return some of the country's manufacturing centers to another lockdown.

India is grappling with an unimaginable crisis, having reported over 29 million COVID cases, approximately 380,000 deaths to date, and a catastrophic breakdown of its healthcare system.


Clearly, commercial contracts, and contracts involving travel, tourism, and international education with India are being affected.

Brazil, France, the U.K., Russia, Italy, and Argentina continue to experience significant COVID problems as of the

date of this article, while conditions in Iceland, New Zealand, Australia, Israel, and Singapore appear to have improved.

U.S. citizens contemplating an international transaction of any kind face challenges for the time being in contracting and interacting with the wide range of different and changing circumstances abroad.

In the current environment, it is

critical to invest careful attention to the preparation and/or review of force majeure clauses to provide a reasonably reliable way of managing the risks of non-performance due to the pandemic.¹¹ 



Some 90 percent of the world's international trade moves by sea.

¹ Incoterms® is a set of delivery terms published by the International Chamber of Commerce and widely accepted as applicable to transactions for the international sale of goods. See www.iccwbo.org.

² While there is some inconsistency in usage of the terms, generally speaking, Demurrage relates to cargo while it is in the shipping container, and is a fee charged if the full container is not picked up within a specified number of free days. Detention relates to the equipment (e.g., the container itself), and is a fee charged after the container has been picked up if it is not returned to the carrier's designated location within a specified number of free days.

³ According to the WTO, new export orders in China declined by as much as 50 percent during the first quarter of 2020.

⁴ Demurrage charges can amount to \$100/container/day. Detention charges are often \$50 - \$100/container/day.

⁵ As of this writing, more than forty (40) ships are at anchor off the ports of Los Angeles and Long Beach waiting to unload.

⁶ <https://www.americanbar.org/groups/litigation/committees/commercial-business/boilerplate-contracts/force-majeure-clauses-contracts-covid-19/>.

⁷ *Gibson v. Lynn University*, No. 20-cv-81173 (S.D. Fla. Nov. 29, 2020).

⁸ *JN Contemporary Art LLC v. Phillips Auctioneers LLC*, No. 20-cv-4370 (S.D.N.Y. Dec. 16, 2020).

⁹ *In re Hitz Restaurant*, 616 B.R. 374 (U.S.B.C. N.D. Ill. 2020).

¹⁰ "Coronavirus: The Second Wave and Force Majeure", Dr. Daniel Sharma and Franz D. Kaps, December 2020; <https://www.dlapiper.com/en/germany/insights/publications/2020/12/covid-19-the-second-wave-and-force-majeure/>.

¹¹ The concepts of "commercial impracticability" and "impossibility of performance" have apparently been coolly received by the courts as grounds for non-performance due to COVID, and are beyond the scope of this article.



International Contracting: The Global impact of COVID-19

Test No. 153

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. COVID-19 is the reason port congestion exists at the Ports of Los Angeles and Long Beach.
☐ True ☐ False
2. A common carrier is licensed to carry cargo from one location to another.
☐ True ☐ False
3. NVOCC means Non-Vessel-Ownning Common Carrier.
☐ True ☐ False
4. VOCC means Vessel-Ownning Common Carrier.
☐ True ☐ False
5. Demurrage refers to costs assessed for delays in unloading cargo.
☐ True ☐ False
6. Detention refers to costs assessed for delays in returning shipping equipment to a specified location.
☐ True ☐ False
7. In the international shipping world, free days refers to the number of days allowed to unload cargo or return shipping equipment (e.g., containers) before penalties are assessed.
☐ True ☐ False
8. A negotiable Bill of Lading is the most important document issued in an international sales transaction.
☐ True ☐ False
9. VOCC Bills of Lading and House Bills of Lading must contain identical terms.
☐ True ☐ False
10. All freight forwarders can issue Bills of Lading.
☐ True ☐ False
11. A freight forwarder that is a NVOCC can contract directly with an ocean carrier.
☐ True ☐ False
12. The exporter is always responsible for arranging international shipment to the importer.
☐ True ☐ False
13. Exporters always control their shipments until the goods reach their destination.
☐ True ☐ False
14. Incoterms® is a set of delivery terms published by the U.S. Chamber of Commerce and widely accepted as applicable to transactions for the international sale of goods.
☐ True ☐ False
15. All export transactions involve a House Bill of Lading issued to the shipper.
☐ True ☐ False
16. Force Majeure is always a defense to a claim for non-performance of an international transaction due to an epidemic.
☐ True ☐ False
17. In the *Gibson v. Lynn University* case cited in the article, the court found the University did not breach its contract by suspending operations because it continued to offer classes remotely.
☐ True ☐ False
18. In a typical international sales transaction, the buyer conditions payment upon receipt of proper documents.
☐ True ☐ False
19. International sales transactions always involve several contractual relationships.
☐ True ☐ False
20. A manufacturer that imports parts and integrates them into a product that is then exported, has necessarily entered into two sets of contracts (one applicable to the import and one applicable to the export), the terms and conditions of which are identical.
☐ True ☐ False

International Contracting: The Global Impact of COVID-19

MCLE Answer Sheet No. 153

INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the \$20 testing fee for SFVBA members (or \$30 for non-SFVBA members) to:

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Email _____

Phone _____

State Bar No. _____

ANSWERS:

Mark your answers by checking the appropriate box. Each question only has one answer.

- | | | |
|-----|-------------------------------|--------------------------------|
| 1. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |

By Michael D. White

Meet the 2021 SFVBA Trustee Candidates

Next month, SFVBA attorney members will have the opportunity to select from a slate of 12 highly qualified and dedicated candidates running for seats on the Bar's Board of Trustees. On the following pages, we profile each Trustee candidate and allow SFVBA members the opportunity to gain some perspective into the candidates' ties with the San Fernando Valley, their backgrounds, individual goals and their aspirations for the Bar over the coming year.



Michael D. White is editor of *Valley Lawyer* magazine. He is the author of four published books and has worked in business journalism for more than 40 years. Before joining the staff of the SFVBA, he worked as Web Content Editor for the Los Angeles County Metropolitan Transportation Authority. He can be reached at michael@sfvba.org.



KENNY C. BROOKS



Law School: University of Southern California, Gould School of Law

Area(s) of Practice: Professional liability defense

Admitted to the State Bar: 2008

What makes this area unique? What sets it apart?

"The Valley is very unique because, despite its inclusion in Los Angeles, it feels separate—both in geography and culture. Since relocating to the Valley in 2019, I have noticed and appreciated the sense of pride members of the community, and especially the legal community, have in representing the area."

What drew you to practice here? "I was drawn to practice in the Valley by the law firm of Nemecek & Cole. Having already specialized in the practice area for several years, I jumped at the opportunity to work with the firm that is so respected in my specific field. I also recently purchased a home in the Lake Balboa area."

What skills and abilities would you bring to the SFVBA Board?

"I previously served on the steering committee of the Southern California chapter of the Professional Liability Underwriters Society. In that role, I was directly responsible for planning/organizing social and professional events, including reserving venues, budgeting, establishing topics of current importance to the legal community, and securing speakers qualified on those topics."

What influenced you to become an attorney? "I have always enjoyed 'getting to the bottom of things.' I find the pursuit interesting and enjoy the process of doing so. Being a defense litigator allows me to participate in that process every day and help people along the way."

Who are some individuals in the legal profession that you look up to? Why? "Jon Cole, Michael McCarthy, and Frank Nemecek. They have built a respected litigation practice in the Valley that provides top-quality defense services to lawyers in the Valley and across the State. This vital service allows Valley lawyers to practice with the confidence of knowing that their rights will be protected if they are ever placed into the unfortunate situation of facing a legal malpractice claim."

A native of Southern California, Brooks grew up in Orange County and moved to Los Angeles to attend UCLA as an undergraduate and law school at USC.

"Since becoming a member of the bar in 2008, my practice has focused on defense litigation with an emphasis on defending lawyers from professional negligence actions."

Brooks and his family reside in the Lake Balboa neighborhood of the San Fernando Valley and, despite having been raised behind the "Orange Curtain," he is "a lifelong Dodgers fan who enjoys spending my free time at the pool with my wife, our three-year-old son, and our dog, Tim Riggins."

ALAN EISNER



Law School: Loyola Law School

Area(s) of Practice: Criminal defense

Admitted to the State Bar: 1993

What makes this area unique? What sets it apart? What drew you to practice here? "The Valley has been my home for years. It's where my family lives and my kids are."

What skills and abilities would you bring to the SFVBA Board?

I hope to make the SFVBA even a more vibrant, "go to" bar association in our community, attracting more members, younger members, and connecting the association with the non-legal community. I practice in both state and federal court and I am aware of the differences in each venue, and the best practice strategies in each. I would also work towards the Bar establishing quarterly MCLE programs to mentor young lawyers on courtroom procedure and advocacy, and I would engage judges and prosecutors to participate on topics that could include recent changes in legislation; sentencing mitigation and alternatives to prison; how to best protect your client's immigration rights; the effective use of experts in criminal defense; and juvenile defense practice."

What influenced you to become an attorney? "Wanting to advocate for the underdog."

Long active in the San Fernando Valley Bar Association, Alan Eisner has been a participant and speaker at numerous Bar events including Judges' Night and the Bar's annual MCLE Marathon, and currently serves as Chair of the SFVBA's Criminal Law section.

Eisner has practiced exclusively criminal defense in the San Fernando Valley community for over 30 years.

He received his undergraduate degree from the University of California, Berkeley in 1982 and his JD from Loyola Law School in 1985.

Admitted to the California Bar in 1986, he initially worked as a Deputy Public Defender in Los Angeles from 1987 through 1992 when he opened his own practice.

Eisner was admitted to the United States District Court for the Central District of California in 1992, and to the United States Court of Appeals for the Ninth Circuit in 2001.

Certified by the State Bar of California as a Specialist in Criminal Law since 1995, he serves as a member of the Criminal Justice Act panel of the U.S. District Court, Central District of California.

Among the hundreds of felony and misdemeanor cases he has successfully litigated are murder, vehicular manslaughter, violent sex crimes, narcotic possession and sales, white collar crimes including embezzlement, loan fraud, bank fraud, insurance fraud, identity theft, computer intrusion and internet pornography.

Eisner is a member of several professional organizations, including the California Attorneys for Criminal Justice, Association of Federal Defense Attorneys, and the Criminal Courts Bar Association.

ANTHONY ELLIS



Law School: Pepperdine University School of Law

Area(s) of Practice: Catastrophic injury, wrongful death, products liability, and premises liability

Admitted to the State Bar: 2015

What makes this area unique? What sets it apart?

"We have everything here. We are a true melting pot of all kinds of cultural backgrounds, we have every type of cuisine and we are a short drive away from everything you could want, beaches, mountains, lakes, big city, farms, and even snow. Most of all, we have the best down to earth people."

What drew you to practice here? "This is my hometown. I grew up here."

What skills and abilities would you bring to the SFVBA Board?

"I am a tech-savvy experienced trial lawyer. Prior to becoming an attorney, I was a business broker (helping people buy and sell businesses). Part of being a business broker was analyzing business structures and systems to find ways to make them more efficient and productive. My skills and passions combined will help SFVBA expand our community service programs and our positive impact on our community."

What influenced you to become an attorney? "I wanted to do something where I helped people and had the excitement of a battle. As a personal injury attorney I get to do both!"

Who are some individuals in the legal profession that you look up to? Why? "I look up to attorneys like Robert T. Simon and Brad M. Simon because they aren't just focused on money. They are constantly giving back to the community and helping young attorneys. They were an especially important part of my growth as an attorney and the way I do things. They are always coming up with ways to empower young lawyers and provide them with the tools and skills to be better lawyers and better humans."

An experienced trial attorney, Anthony Ellis represents clients all over California in the areas of wrongful death, premises liability, products liability and motor vehicle collisions, and won his first trial just two months after getting licensed to practice law.

He has been named a Super Lawyer SoCal Rising Star by fellow attorneys three years in a row, and the National Trial Lawyers named him Top 40 Under 40 & Top 100 Civil Plaintiff's Attorney. He volunteers time with multiple non-profit community service groups and also mentors young lawyers and law students.

Ellis serves as Co-Chair of the SFVBA's Litigation Section and has written numerous articles on the discovery process and claims against a government entity that have been published in some of the nation's top legal education publications.

KYLE M. ELLIS



Law School: Fordham University School of Law

Area(s) of Practice: Government

Admitted to the State Bar: 2015

What makes this area unique? What sets it apart? "While it may sound a bit cliché, the thing that sets the valley apart are its people. There is a great reservoir of kindness, dedication, and enthusiasm among the people in my neighborhood, and in the valley in general, that make it a wonderful place to live."

What drew you to practice here? "After growing up in San Diego, and living in several other states for college and law school, I moved to the valley and began practicing in Los Angeles County because it is where my wife and I felt we could put down roots and establish ourselves."

What skills and abilities would you bring to the SFVBA Board?

"In addition to being an incumbent trustee with an intimate knowledge of how the Board functions, I have been an effective organizer for several events for the SFVBA, including the 2020 Mock Trial Competition, assisting with the organization of Judges' Night in 2020, and the CD12 Candidates forum in 2019."

What influenced you to become an attorney? "I chose a legal career because I wanted to put the research and writing skills I learned studying history to practical use helping people resolve problems."

Who are some individuals in the legal profession that you look up to? Why? "One of the people I look up to in the profession is Justice Corrigan. Both her insightful and intriguing questions during oral arguments, and the way she writes her legal opinions inspire me to improve as an attorney. A little closer to home, I look up to Yi Sun Kim for her ability to empathize with others and her professionalism, which I strive to emulate."

Ellis was born and raised in San Diego, and earned his BA from the University of California – San Diego and an MA in History from Oregon State University. He received his JD from Fordham University before returning to California, where he presently works as a Supervising Research Attorney for the Los Angeles County Superior Court.

"I am responsible for the Family Law Unit and research attorneys at several district courthouses. Previously, I worked as a Research Attorney for judicial officers in the Antelope Valley and Burbank courthouses."

A member of the SFVBA Board of Trustees since 2018, Ellis was the motive force behind the Bar's first-ever Mock Trial competition, held earlier this year.

In addition, he has served as Chair of the Membership and Marketing Committee since 2019, and as a member of several of the Bar's most active committees.

GARY J. GOODSTEIN



Law School: Loyola Law School

Area(s) of Practice: Business litigation and real estate litigation, insurance coverage and anti-SLAPP

Admitted to the State Bar: 1993

What makes this area unique? What sets it apart? "The Valley is under-appreciated. We may not be beach-adjacent like Santa Monica, have the international notoriety of Beverly Hills or the trendy nightlife of West Hollywood, but the SFV is still the best place in Los Angeles to live a life without pretense."

What drew you to practice here? "I have been a lifelong Valley resident, but for more than 20 years, I commuted daily to my law office in downtown Los Angeles. In 2017, I decided, "Enough is enough!" and moved my office to Woodland Hills."

What skills and abilities would you bring to the SFVBA Board? "I have held leadership roles in bar associations for the past 15 years because I believe it is important to contribute my time and energy to help improve professionalism, civility and job satisfaction within the legal community. I am particularly focused on improving the benefits of SFVBA membership, so my organizational and leadership skills will once again be focused on ensuring that SFVBA offers useful, interesting and educational programming and networking opportunities for its members. I also have substantial experience in organizational fundraising to ensure that the SFVBA remains financially healthy so it can continue its important work for the benefit of its members and the communities we serve."

What influenced you to become an attorney? "Idealism was my original motivation. I sought a career path that would enable me to affect positive change in the lives of individuals and to create a lasting, beneficial impact on the world generally."

Who are some individuals in the legal profession that you look up to? Why? "I admire those who have used their legal education, training and experience to influence positive societal advances, to protect and enhance the rule of law, and to improve the functioning of the legal system. Individuals such as Supreme Court Justice Ruth Bader Ginsburg and Justice Sonia Sotomayor are two excellent examples."

An avid outdoor enthusiast, who enjoys skiing, hiking and biking, Goodstein is admitted to practice in all California state and federal district courts, the Ninth Circuit Court of Appeals and the United States Supreme Court.

He has 28 years of experience as a trial and appellate attorney representing municipalities, corporations, partnerships, and individuals in litigation involving corporate and business disputes, real estate and insurance coverage.

"Once it is safe, I look forward to resuming international travel. I enjoy volunteering as a judge for Mock Trial competitions and in the past coached a middle school mock trial team."

STELLA A. HAVKIN



Law School: University of California, Hastings College of Law

Area(s) of Practice: Business and bankruptcy

Admitted to the State Bar: 1988

What makes this area unique? What sets it apart? "The San Fernando Valley has mainly consumer bankruptcy cases, not business cases."

What drew you to practice here? "I am good with numbers and solving financial issues. I also like the fact that the focus of the practice is resolving issues, not litigating them."

What skills and abilities would you bring to the SFVBA Board? "The ability to get people to resolve disputes and come up with creative solutions to problems."

What influenced you to become an attorney? "Ability to solve problems and convince people to see problems from multiple perspectives as well as ability to write succinctly."

Who are some individuals in the legal profession that you look up to? Why? "The Honorable Bankruptcy Judge Maureen Tighe in the way she deals with the attorneys that appear before her as well the public. You always feel heard."

A Magna Cum Laude graduate of York University in Toronto, Canada, Havkin came to California to attend the Hastings School of Law at the University of California, Berkeley.

While at Hastings, she was a Member of Hastings International and Comparative Law Review served as a judicial extern to the Hon. Justice M. O. Sabraw at the California Court of Appeal, First District, Fourth Division.

Havkin is admitted to practice before all the Courts in California, the Ninth Circuit of Appeals, the Fifth Circuit of Appeals, the Federal District Courts in California and in Austin, Texas.

A state Certified Bankruptcy Specialist and a Certified Consumer Bankruptcy Law Specialist, she has represented debtors, creditors and trustees in more than 1,000 Chapter 7, Chapter 13 and Chapter 11 bankruptcy cases, as well as in involuntary bankruptcy cases, in California, Texas and Florida.

She was editor of the Central District of California Consumer Bankruptcy Attorneys Association Newsletter for five years and is currently on the Board of the same organization, and has been a commissioner, Vice Chair and Chair with the State Bar of California Bankruptcy Legal Specialization Board for five years.

Havkin is Incoming President for Southern California Bankruptcy Inn of the Court and is Chair of the State Bar Legal Specialization Board for Bankruptcy, while balancing her practice with "exercise, spending time with family and reading."

If not the law, what? "Design and interior decorating. I have an artistic side."

ROBERT KAHN



Law School: Loyola Law School

Area(s) of Practice: Personal injury, medical malpractice and legal malpractice

Admitted to the Bar: 1980

Robert Kahn is a trial attorney who practices personal injury, wrongful death, medical malpractice and legal malpractice in Woodland Hills. He has been doing so for 41 years.

Kahn received his undergraduate degree in Economics from UCLA in 1975 and his JD from Loyola Law School in 1979, where he later served as an Adjunct Professor of Law.

Following his graduation from law school, Kahn served as a Senior Associate with several law firms before founding his own firm in 1986.

"I represent people who suffer from physical and financial injuries as the result of the negligence of drivers, doctors, lawyers, property owners, government entities, and others. When that happens, my job is to fight for the victim's right to compensation. With 41 years of experience in high stakes litigation, I have the passion, knowledge and expertise to relentlessly battle for people when they need it most."

Kahn has obtained many multi-million dollar jury verdicts and settlements for his injured clients.

Active in the community, Kahn was honored in 2002 and 2003 by the Valley Community Legal Foundation—the community service arm of the San Fernando Valley Bar Association—with its Certificate of Appreciation.

In addition to the San Fernando Valley Bar Association, he is an active member of the Los Angeles County Bar Association, the Consumer Attorneys of Los Angeles, and the Consumer Attorneys of California.

Kahn was selected to Super Lawyers for 2013-2021 and was named one of Southern California's Top Attorneys in 2015.

ALEX J. HEMMELGARN



Law School: University of Illinois at Chicago Law School

Area(s) of Practice: Tax, trust and estate administration, corporate

Admitted to the Bar: Illinois (2013), California (2015)

What makes this area unique? What sets it apart? "I appreciate that the Valley is a close-knit community but with easy access to the amenities of greater Los Angeles."

What drew you to practice here? "I practiced in Chicago before moving to the Valley. A few Chicago winters will cause anyone to reconsider their life choices and dream about Southern California's weather. I quickly realized the collegial and supportive nature of legal practice in the Valley, appreciate the opportunity to work with the members of the community in my adopted home, and value not having to fight traffic into an office downtown every morning."

What skills and abilities would you bring to the SFVBA Board? "My election would bring my experience with fundraising and with membership marketing, which I plan to utilize in continuing my work to increase membership and participation in SFVBA activities among new attorneys and law students. I also readily dive into the day-to-day yeoman's work to advance programs and projects."

What influenced you to become an attorney? "I was on the path towards becoming a civil engineer but found that I disliked the impersonal and isolating nature of structural design. While interning at an engineering firm, I found the work of the intellectual property attorneys infinitely more interesting."

Who are some individuals in the legal profession that you look up to? Why? "Two important mentors of mine are Zane Averbach and Mark Phillips, longtime Valley residents and mainstays of its legal community. Though their philosophies differ on the practice of law, each is an example of hard work, attention to detail, and substantive legal knowledge necessary to pursue the best result for each client."

Originally from Charleston, West Virginia, Alex Hemmelgarn attended Ohio State to study civil engineering. Encouraged by a mentor to apply to law school, he earned his JD and co-founded and ran a small law firm focusing on estate planning and elder law for Chicago's LGBT community, before earning an LLM in Tax.

Before entering private practice in the Valley, he worked at Bet Tzedek Legal Services as the coordinating staff attorney of the Holocaust Survivor's Justice Network where he assisted in helping a national program assisting Holocaust survivors in applying for reparations expand to assist with estate planning and public benefits appeals.

ALEXANDER S. KASENDORF



Law School: Villanova University, Charles Widger School of Law

Area(s) of Practice: Business, real estate, lobbying

Admitted to the State Bar: 2001

What makes this area unique? "What sets it apart?" Culturally and professionally diverse. The Valley offers tremendous opportunity for growth and commerce."

What drew you to practice here? "I moved to the Valley from the west side in 2007. My wife and I were looking to buy our first home, and the Valley was in our price range."

What skills and abilities would you bring to the SFVBA Board? "Problem solving, patience, tenacity and courtesy."

What influenced you to become an attorney? "I thoroughly enjoy problem solving and logic."

Who are some individuals in the legal profession that you look up to? Why? "My partners at the firm. I joined my firm in 2008 and have had the pleasure to work with tremendous attorneys and people. They include Lee Kanon Alpert, Gary L. Barr, Adam D. H. Grant, David Almaraz and most recently due to our merger, Natela Shenon."

Kasendorf is a partner with Alpert, Barr & Grant in Sherman Oaks, focusing on matters involving dispute resolution, strategic advocacy, and real estate and commercial law and litigation.

A graduate of the University of Massachusetts with a degree in Sports Management. While in law school at Villanova, he was a quarterfinalist in both the Tulane University School of Law Sports Law Moot Court Competition and the Villanova University School of Law's Moot Court Competition.

A registered lobbyist with the City of Los Angeles and advocates in areas such as complex business transactions, commercial property issues and real estate disputes.

Kasendorf feels his involvement in the San Fernando Valley communities "connects his clients with various organizations and individuals which can, at times, assist in efficiently accomplishing their goals."

A major league baseball scout and attorney, he currently serves as a member of the SFVBA Board of Trustees and, in 2017, and was recognized by the *San Fernando Valley Business Journal* as a "Trusted Advisor" and "Attorney of the Year."

Recipient of a Martindale-Hubbell AV Preeminent Peer Review Rating, Kasendorf coaches Little League and other youth sports and serves on the Board of the Van Nuys-headquartered Valley Industry and Commerce Association.

The winner in all three of his post-judgment appeals, Kasendorf sees the SFVBA as playing a critical role in promoting "early education regarding the role of our legal system by furthering the Bar's interaction with local high school criminal justice programs."

MINYONG LEE



Law School: Pepperdine School of Law

Area(s) of Practice: Legal aid, family law

Admitted to the State Bar: 2007

What makes this area unique? "What sets it apart?" San Fernando Valley is a wonderfully hot place that is perfect to settle down in. It provides communities that are outside of the hustle of the city but with easy access to the beach, mountains and the city. One of my favorite things are the still valley nights; nothing beats it."

What drew you to practice here? "I grew up in San Fernando Valley. I tried my best to get away, but my heart is anchored here. I moved back to the Valley seven years ago with my family and I joined Neighborhood Legal Services of L.A. County because I wanted to help communities in the Valley who are in need of legal services."

What skills and abilities would you bring to the SFVBA Board? "If elected, I would represent Neighborhood Legal Services of Los Angeles County. As a non-profit legal aid that seeks to serve San Fernando Valley communities, I would be able to bring a perspective that speaks to those more marginalized that are in need of legal services."

What influenced you to become an attorney? "I always knew I wanted to study the law. I grew up with a long history of dentists in the family, but as a second-generation Korean American, I was in awe of the law and how powerful it is. I wanted to be able to use that to help those most in need and without a voice."

Who are some individuals in the legal profession that you look up to? Why? "I'm sure many will say this, but our late, great Ruth Bader Ginsburg because of her tenacity, professional demeanor, and amazing work in women's rights. Judge Akemi Arakaki is also someone I have deep respect for. She was the first female Asian-American judge that I appeared in front of as a practicing attorney and it was such an inspiration to see someone that I could identify with carrying out her duties on the bench with such grace, dignifying those who appeared in front of her."

Minyong Lee is a Senior Attorney at Neighborhood Legal Services (NLSLA), practicing family law.

She is a graduate of UC Berkeley; she currently serves as an SFVBA Trustee and lives in Porter Ranch, California with her husband and two children.

"The digital divide has been especially heightened recently and it has made access for some an impossibility," she says. "I believe that SFVBA is in an excellent position to address these issues and think creatively to support efforts being made to increase access to justice."

JOY KRAFT MILES



Law School: Southwestern Law School

Area(s) of Practice: Family law

Admitted to the State Bar: 2014

What makes this area unique? What sets it apart? “After living on the Westside of LA for nearly 20 years in my early adulthood, I was attracted to the Valley for family life. It offered excellent public schools and activities for children, and free, ample parking! I also like that we can still find a variety of delicious restaurants offering a diversity of cuisines.”

What drew you to practice here? “My mother, the late Marcia L. Kraft, was one of the first female attorneys to open a multi-associate firm here in the Valley about 30 years ago, and I continue to follow in her footsteps.”

What skills and abilities would you bring to the SFVBA Board? “I bring 11 years of experience as an LAUSD high school teacher and a lifelong commitment to social justice to the Board. I try to evoke trustworthiness and excellence in all that I do.”

What influenced you to become an attorney? “My husband and I were both high school teachers when we met, and we were unable to buy a house on our income, so we both considered going to law school. The deciding factor was offered by him, ‘You get along better with your mother,’ he said to me. He went back to school first to become a school administrator, then I went to law school and eventually went to work for my mother.”

Who are some individuals in the legal profession that you look up to? Why? “The Supreme Court Justice Ruth Bader Ginsberg inspires me, in particular when she said: ‘When I’m sometimes asked when will there be enough [women judges on the US Supreme Court bench] and I say, ‘When there are nine,’ people are shocked. But there’d been nine men, and nobody’s ever raised a question about that.’” I currently supervise an all-female law firm, and similarly, people are surprised to hear that, but for years all-male law firms have never been scrutinized. I am grateful for trailblazers like the Notorious RBG and my mother for showing me the way.”

Joy Kraft Miles is a Certified Family Law Specialist and the president at Kraft Miles, ALC, where she exclusively practices family law, focusing on Divorce and Child Custody matters.

Prior to deciding to pursue the legal profession, Joy worked as a high school history and art history teacher in the Los Angeles Unified School District for 11 years.

Bilingual in English and Spanish, Miles is currently serving as an Elected Trustee of the San Fernando Valley Bar Association, and as Co-President of the Valley Community Legal Foundation, the charitable arm of the SFVBA.

Joy resides in Topanga with her husband and two children.

PRAVIN A. SINGH



Law School: Pepperdine University School of Law

Area(s) of Practice: Workers' compensation and employment

Admitted to the State Bar: 2012

What makes this area unique? What sets it apart? “Diversity and heat wise, New York City is probably the Valley’s only competition. Truth be told, I didn’t really know about the Valley until I went to Pepperdine for law school. My understanding was limited to [the film] *Encino Man* and what my new UCLA friends told me about Taft High School.”

What drew you to practice here? “When I became an attorney, I looked for a job anywhere outside of Los Angeles because I had lived my entire life in this 50-mile radius. But as fate would have it, I ended up living in the Valley practicing mainly workers’ compensation. With time, my migratory urges waned, replaced with the feeling of community and home. Nearly ten years later, I can’t imagine living anywhere else. Especially after joining the SFVBA, where I’ve made some great friends.”

What skills and abilities would you bring to the SFVBA Board? “I am naturally curious, so I am always curious to see what idea you have—and I flesh that idea out. We become better when everyone’s best ideas come out. I am also not married to my own ideas—if there is a cooler idea, I am going with that!”

What influenced you to become an attorney? “I never liked arguing. But I do enjoy skeptical listening while taking mental notes. As a kid, I was always researching random topics, which I learned compromises a lot of our profession. I also realized I was comfortable with public speaking. Thinking about all of this, I figured attorney would be a good approach.”

Who are some individuals in the legal profession that you look up to? Why? “Anyone who has become successful with hard work, integrity and respect for others.”

Attorney Pravin A. Singh received his JD degree after graduating from UCLA. He currently works at the firm of Michael Burgis & Associates, P.C., in Sherman Oaks.

“A plurality of people don’t know many of their rights, let alone where to find help,” he says. “The SFVBA can take the initiative in going to the people rather than expecting them to call for our help.”

Singh volunteers with SOLID, a nonprofit that works with the Devonshire Division of the Los Angeles Police Department.

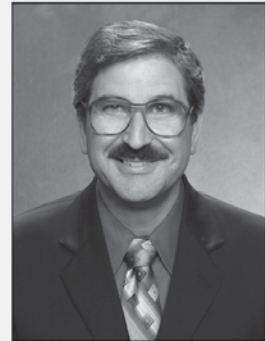
“Police officers put their lives on the line every day for strangers, so that altruism is beautiful,” he says. “Making our communities safer is part of making a better world.”

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IS THIS WHAT IT'S ALL ABOUT?: Southern California's iconic In-N-Out Burger was recently served with a COVID-19 workplace safety and wage violation lawsuit.

The suit—*Becerra v. In-N-Out Burger*—alleges retaliation for reporting workplace COVID-19 safety hazards along with unrelated wage and hour allegations.

The plaintiff, a former butcher for the fast food burger chain, filed a Private Attorney General Act (PAGA) complaint alleging various violations of the California Labor Code and unfair business practices. According to the complaint, In-N-Out failed to enforce COVID-19 safety measures, including social distancing and requiring employees to wear personal protective equipment (PPE). The plaintiff claims the meat department was full of sick employees, many of whom exhibited COVID-19 symptoms, but In-N-Out did not place them on medical leave.

Becerra filed a report with the L.A. Public Health Department regarding the meat department's alleged failure to observe safety protocols, and he informed other butchers of their right to report workplace safety concerns. The plaintiff contends that, as a result of his reporting workplace conditions and encouraging other employees to report, In-N-Out retaliated against him by giving him a "final warning" for attendance violations.

In-N-Out reports that it terminated Becerra's employment because he provided false documentation about an absence and exhausted his sick leave.

The plaintiff alleges that his previous absences were excused, and that he and similarly aggrieved employees were terminated for attempting to use sick leave. He also claims that In-N-Out failed to pay separated employees their final wages and provide accurate wages statements.



BREAK A WINDOW, SAVE A LIFE: A new California law that went into effect January 1 gives people the go-ahead to rescue a child from a hot car without the worry of being found civilly or criminally liable for property damage or trespassing.

Assembly Bill 2717 exempts people from certain charges if they should break a vehicle window in order to save a child from the heat. The law only applies if that person believes a child who is six-years-old or younger is at risk of "suffering, disability, or death" due to being in a hot or cold car without proper ventilation.

Previously, a similar law only applied when a person rescues an animal from a car. The new law clarifies that Good Samaritans will not be charged with property damage or trespassing while in the act of rescuing a child from a hot vehicle.



IN MEMORIAM: On June 2, the California Supreme Court honored the life of Justice Cruz Reynoso, the first Latino state Supreme Court justice in California history, during a special program following oral argument.

Justice Reynoso passed away on May 7 at the age of 90.

Chief Justice Tani G. Cantil-Sakauye said Justice Reynoso was a "revered member of our court, an incredible mentor in the legal profession as well as a distinguished voice in law."



Justice Mariano-Florentino Cuéllar recounted Justice Reynoso's upbringing as one of 10 children, who picked oranges alongside his farmworker parents during hot summers in Orange County.

He would go on to attend a segregated elementary school, serve in an Army counterintelligence unit, and become one of very few lawyers representing Spanish-speaking farmworkers in the Imperial Valley.

On the California Supreme Court, Justice Reynoso authored the landmark *People v. Aguilar*, where the court found non-English speaking people accused of a crime have the right to a translator during their entire court proceeding.

Guest speakers at the memorial event included retired Supreme Court Justice Joseph R. Grodin; Judicial Appointments Secretary Luis Céspedes; UC Davis School of Law Dean Kevin R. Johnson; and Len ReidReynoso, Justice Reynoso's son, who is also an attorney.

ReidReynoso recalled an interview with his father when he was asked his favorite job during his career. He answered: sitting on the California Supreme Court.

"Dad had worked on social justice issues for eight decades, but the job he enjoyed the most was a job that he was able to help and serve the most. Dad continued to teach us the value of helping others."

GARAGE NOT A DWELLING: A burglar arrested after entering a garage in San Francisco won his challenge to a first-degree burglary conviction after a California appeals court said the structure, while on the same property as a home, isn't considered an inhabited building.

State law as written, the Court said, reserves first-degree charges for inhabited dwellings.

Counsel for Leonardo Corona, who was charged with burglary in the San Francisco County Superior Court, had argued that existing burglary law prohibited the state from charging Corona with first-degree burglary because the garage he entered wasn't technically a dwelling.

The California Court of Appeal, First District, recently agreed and has blocked the trial court from levying a first-degree burglary charge against Corona.

By C. Valerie Ibe

Copyright Infringement: Surviving a Motion to Dismiss



MANY POTENTIAL LITIGANTS are quick to file a copyright infringement case against an alleged copyright infringer. Many of those cases do not survive the motion to dismiss stage.

To avoid the pitfalls that many have faced in the past, it is important to have a firm grasp of the Copyright Act in the jurisdiction that one is suing in and, of course, be conversant with the heightened pleading requirements in federal court.

There are several reasons one's copyright infringement case may not survive a motion to dismiss. They include:

Failure to Identify the Relevant Law

The Copyright Act states that, "no civil

action for infringement of the copyright in any United States work shall be instituted until...registration of the copyright claim has been made in accordance with this title."¹

It is dependent on when registration is deemed to have occurred. Currently, the United States Courts of Appeals are split on the interpretation of when the registration occurs in the copyright process.

Some Circuit Courts have held that the actual registration is required, while others, like the Ninth Circuit, are of the opinion that merely applying to register for the copyright gives the plaintiff applicant the right to sue for any alleged infringement that occurs after the application for registration.²

For registration to be valid in the Ninth Circuit, the applicant would need to apply for copyright registration on a form approved by the U.S. Copyright Office (USCO) with the application including, among other things, the name and address of the copyright applicant; the year the work sought to be copyrighted was completed; the nation it was first published for published works; and a number of other requirements as specified in the U.S. Code.³

Registration is complete in the Ninth Circuit once the copyright application has been completed and submitted to the USCO.

Conversely, any actions for alleged copyright infringement that



C. Valerie Ibe is a Certified Public Accountant and an attorney licensed to practice in California, Maryland and New York. She practices family law, employment, tax and general civil litigation. She can be reached at valerie@cvalerieibe-law.com.

occurred before the application for registration will fail as no rights ensued to the plaintiff applicant before the application.

Failure to Plead Time and Place

FRCP Rule 9(f) provides that an allegation of time or place is material when testing the sufficiency of a pleading.⁴

This has never been more relevant as in the case when the timing of an application for registration of a copyright determines whether the plaintiff applicant has legitimate cause to sue.

It is well settled in all the Federal Courts, including the Ninth Circuit, that an allegation of time and place is material when testing the sufficiency of the pleading.

Thus, it is crucial for the plaintiff to plead in its complaint the date, time and place of the alleged infringement in order to determine if there is any right to sue.

If the complaint fails to give anyone, let alone the defendant, any notice as to when the alleged infringement occurred, the defendant will be left to guess when it is that the plaintiff contends he violated copyright infringement laws.

Any complaint that is bereft of any date and time of the alleged infringement has failed to meet the basic pleading requirements, specifically FRCP Rules 9(f). Even if the date and time were alleged, the complaint would still fail pursuant to Rule 12(b)(6) if many of the basic facts that one would expect to see in a complaint are wholly absent in the pleading.⁵

Failure to State an Infringement Claim

To establish a prima facie case of direct infringement, under 17 U.S.C. § 106, a plaintiff must show ownership of the allegedly infringed material and “demonstrate that the alleged infringers violated at least one exclusive right granted to copyright holders.”⁶

Direct infringement requires the plaintiff to show causation—also referred to as volitional conduct—by the defendant. The plaintiff is required to show substantial similarities between the parties’ works, and that the defendant had access to the plaintiff’s work.^{7 8}

Plaintiff would have to allege that the defendant purchased, authorized, sold work or designs substantially similar to its own, and also show in the complaint how the defendant authorized the designs or that defendant had access to its work.

Even though the plaintiff has filed a copyright application—a precondition to filing a copyright infringement lawsuit in the Ninth Circuit—ownership of the alleged infringed material will have to be established.

The plaintiff will have to state whether his copyright application is still in the processing stage with the copyright office with proof of that or provide proof that it has been granted. The work that is the subject of the copyright infringement suit has to be unique.


If it is prevalent and commonplace, it is difficult to see how it could be subject to a copyright claim. The designs/work that are alleged to have been copyrighted have to bear substantial similarity to the work/designs being copied.

Assuming that the plaintiff has shown ownership of the alleged infringed material, it also necessary

to demonstrate that the defendant violated at least one exclusive right granted to it over the work/design. If the complaint is filled with unfounded allegations and innuendo as to how the defendant copied, purchased, sold and marketed designs that it claims are similar to its designs, then it will not survive a motion to dismiss.

In conclusion, the date of the alleged infringement is critically important. If the alleged infringement occurred before the date of plaintiff’s application for copyright registration, the plaintiff would have no standing to sue on this because of a lack of copyright registration.

If the alleged infringement occurred after this date, the plaintiff’s complaint would still fail if it has not demonstrated that the defendant had knowledge of its exclusive right or even caused the alleged infringement or had access to it.

“[A] claim of infringement must state...by what acts and during what time defendant has infringed the copyright.”⁹ 

¹ U.S. Code - Unannotated Title 17. Copyrights § 411.

² *Cosmetic Ideas Inc. v. IAC/InteractiveCorp*, United States Court of Appeal for the Ninth Circuit, No. 08-56079, 2010 DJDAR 7635.

³ U.S. Code - Unannotated Title 17. Copyrights § 409. Application for copyright registration.

⁴ Federal Rules of Civil Procedure, Rule 9(f).

⁵ Federal rules of Civil Procedure, Rule 12(b)(6).

⁶ *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001).

⁷ *Fox Broad. Co., Inc. v. Dish Network L.L.C.*, 747 F.3d 1060, 1067 (9th Cir. 2013).

⁸ *Langman Fabrics v. Graff Californiawear, Inc.*, 160 F.3d 106, 115 (2d Cir. 1998).

⁹ *Calloway v. Marvel Entertainment Group*, 82CV8697, U.S. Dist. LEXIS 15688 at *7 (S.D.N.Y. July 5, 1983).

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By Barry Kurtz

Buying a Franchise: Dream vs. Delusion



FRANCHISING IS A FLEXIBLE, tried and true method of distributing products and services that offers business owners an alternative avenue to expand their already successful operations.

In a typical franchise arrangement, franchisees sell or distribute their franchisor's trademarked products or services, usually in exclusive, protected territories in which the franchisor will not permit other franchisees to operate or offer the same products or services.

Franchisors generally provide their franchisees with operations manuals covering in minute detail an outline of operational and management procedures.

At the same time, they closely monitor their franchisees for compliance to protect the integrity of their brand and systems, while franchisees rely on their franchisors for advice, training, advertising and marketing assistance.

What is a Franchise?

If the elements of a franchise are

present in an agreement, the business relationship governed by the agreement is legally considered a franchise regardless of the name given to it by the parties involved.

If a business relationship is a franchise, the relationship is highly regulated by federal and state laws to protect franchise buyers.

Under California law, a business relationship is a "franchise" if the business "will be substantially associated with the franchisor's trademark; the franchisee will directly or indirectly pay a fee to the franchisor for the right to engage in the business and use the franchisor's trademark; and, the franchisee will operate the business under a marketing plan or system prescribed in substantial part by the franchisor."¹

By way of contrast, true licensing, distributorship and dealership arrangements are not franchises because they lack at least one of the three elements described above.

For example, under a typical licensing arrangement, one company,

the licensor, permits another, the licensee, to sell its products or services in exchange for a percentage of the proceeds from the sale without any other involvement on the part of the licensor.

The licensee operates under its own trade name and usually buys products or services from the licensor at wholesale prices that the licensee resells to the public. Neither party is substantially involved in the day-to-day business affairs of the other.

Pros and Cons of Buying a Franchise

Though McDonald's, Subway, and Burger King immediately come to mind, there are hundreds of other franchisors in a wide variety of food, retail, and service businesses that compete with each other to market and sell their franchises.

The benefits of owning a franchise are many—for example, access to a proven and experienced business mentor; a wider customer base; an established brand name recognition and market presence; group purchasing discounts; marketing, and research and development support; continuing



Barry Kurtz is a Certified Specialist in Franchise and Distribution Law and serves as the Chair of the Franchise & Distribution Law Practice Group at Lewitt Hackman in Encino. He can be reached at bkurtz@lewitthackman.com.

professional education and training; and support from fellow franchisees who share similar goals and challenges.

On the other hand, franchising isn't always a bed of roses as it has drawbacks that can include operating under the delusion of independent ownership.

Generally speaking, franchisors do not want free thinkers who will buck the system; they want followers, and can impose numerous limitations on any deviations from their corporate business model and standard operating procedures.

Buying a brand-name franchise can also be prohibitively expensive and, in many cases, can actually exceed the costs of starting an independent business.

In most cases, franchisees are also required to pay their franchisors non-refundable advance payments, as well as non-refundable continuing royalty payments for the franchisor's support services. Such payments are calculated from a percentage of gross revenue.

In addition, as surprising as it may sound, some franchisors may not provide any of the training, guidance and support services that are crucial for the success of a franchise.

Regulation of Franchises

Federal law requires franchisors to provide prospective franchisees with a franchise disclosure document (FDD) before the franchisor may sell a franchise.²

Currently, thirteen states—California³, Hawaii⁴, Illinois⁵, Indiana⁶, Maryland⁷, Minnesota⁸, New York⁹, North Dakota¹⁰, Rhode Island¹¹, South Dakota¹², Virginia¹³, Washington¹⁴ and Wisconsin¹⁵ also require franchisors to provide similar information in their FDD and to submit their FDD for review and registration by a governmental agency before any franchises are sold.

An FDD is an offering prospectus written in plain English that provides prospective franchisees with answers to 23 specific questions with dozens of

ancillary queries regarding the franchisor and the franchise.

As a rule, franchise candidates must have an FDD for at least 14 full days before they can execute a franchise agreement or pay the franchisor any money.

The FDD must include, among other things, background information and business experience of the franchisor and its executives; the litigation and bankruptcy history for the franchisor, its affiliates, and their executives; descriptions of the fees payable from the franchisee to the franchisor; the amount of the initial investment required to open a franchised business; a summary of the primary responsibilities of the franchisor and franchisee; and an explanation of the franchisor's training requirements and a schedule for classroom and on-the-job training.

The table of contents of the franchisor's operations manuals must also be included in the FDD, as well as any information regarding institutional and local, maintenance of any franchisor-managed marketing funds and disbursements from the marketing fund in the preceding year; an explanation of the territorial rights that may be granted to franchisees; information regarding the ownership and use of the franchisor's trademarks and patents; a description of the franchisees' rights to renew the term of their franchise agreements;

the grounds for the termination of a franchise agreement by the franchisor and franchisee; and detailed information regarding the number of company-owned and franchised units operating, opened, closed, transferred and terminated during the prior three years.

In addition, contact information for the franchisor's current and former franchisees; samples of the contracts franchisees must sign with their franchisor for their franchised businesses; and, in most cases, audited comparative financial statements for the franchisor for the previous three years must also be included in the franchise disclosure document.

Franchisors may also be required to provide historical information on the financial results of company-owned and franchised units in Item 19 of their FDD. A franchisor need not include an Item 19 disclosure in its FDD, but the franchise marketplace encourages franchisors to make financial performance representations in Item 19.


In the context of an FDD, financial performance representations are any indication of "a specific level or range of actual or potential sales, income, gross profits, or net profits."

Franchisors choose what Item 19 disclosures to make. Choices include historical gross revenue of company-owned and franchised units, gross revenue with expense information or gross revenue, expense information and gross and/or net profit.

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Each choice requires franchisors to gather the information from its entire network of operating affiliates and franchisees.

Purchase Guidelines

A client's business must have the potential to succeed. A wise franchise candidate will make a detailed review of the franchisor's Item 19 and use the information provided to develop budgets and projections for at least 2-3 years of operations.

When considering the purchase of a franchise, a potential franchisee should look for a business in which the typical daily activity involved with the franchise aligns with what they enjoy doing and avoid those that will require activities they dislike, and not jump into businesses that are in fields completely new and different to them as their chance of success is greatly enhanced by selling products or services they understand.

Clients should also consider their own strengths, weaknesses, and comfort levels. If a client is amenable with following orders, buying a franchise could be a wise choice. On the other hand, if an individual insists on going their own way at every turn, consideration should be given as to how long it will take before they rebel against the highly supervised and structured nature of a franchisor/franchisee relationship.

There are a number of other guidelines that counsel and their potential franchisee clients should keep in mind:

- Consideration should be given to the profitability of the business model for both the franchisor and its franchisees. Is the business sustainable in the marketplace? Franchises built on fad products or services rarely survive. To be sustainable, the business concept should be unique enough to withstand competition, and also

be one that potential franchisees are willing to pay to learn.

- A client should be pragmatic about the actual investment in the time and money involved in becoming a franchisee and should look for a franchise that matches their resources.
- A client should obtain a current FDD from the franchisor as a franchisor without an FDD is generally not one worthy of consideration.
- Due diligence is absolutely vital. Both counsel and client should learn everything possible about the franchisor and the franchise. A client would do well to talk to every current and former franchisee that they can contact as one of the most important signs of a healthy franchise system is a high level of satisfaction among current franchisees.
- A client should research the franchisor's management structure to ensure that the company is being led by leaders who have substantial experience in the field—such a management team is infinitely preferable to a company whose management team's experience is marginal or diluted by involvement in other industries.
- It should be ascertained if the character of the franchisor's staff and fellow franchisees matches up with the client's own standards.
- Franchise agreements tend to favor franchisors to maintain system uniformity. However, franchise agreements that are too one-sided place franchisees at the mercy of the franchisor's whims and judgments. A client should find a system where the franchise agreement is balanced, either at its inception or through negotiation.

Legal Protection

The purchase of a franchise is a complicated process as there are many other legal factors to consider before doing so.

Once a franchise is purchased, the parties must adhere to the terms of their franchise agreement as well as applicable law.

While reliance on applicable law is not a wise alternative to effective pre-purchase due diligence, California and 17 other states have franchise relationship laws that restrict a franchisor's right to terminate or refuse to renew or consent to a transfer of a franchise without good cause.¹⁶

Several years ago, California expanded the termination, transfer and renewal rights for franchisees under franchise agreements entered into or renewed on, or after, January 1, 2016, and for franchise arrangements with an indefinite duration that permit either party to terminate a franchise agreement without cause.¹⁷

The law increased the required cure period for franchisee defaults from 30 to at least 60, but no more than 75 days, unless the parties mutually agree on a longer cure period, and include a new 60-day notice of default/termination requirement.

In addition, the amendment imposes a substantial non-compliance standard on any actions and/or inaction that may constitute good cause for termination and non-renewals with the goal of eliminating terminations and non-renewals for non-material violations of the franchise agreement.


However, despite the notice and cure requirements, franchisors may, if their agreements allow, still terminate a franchisee with no opportunity to cure in the case of bankruptcy, abandonment, mutual agreement, material misrepresentation, illegal activity, repeated non-compliance with the franchise agreement, and imminent danger to the public.

California law prohibits a sale, transfer, or assignment of a franchise, all—or substantially all—of the assets of a franchise business, or a controlling or non-controlling interest in the franchise business, without the franchisor's written consent, while creating a framework for the notice and information a selling franchisee must provide its franchisor on a proposed sale.

However, franchisors cannot prevent such a transfer to a purchaser who meets its then-existing standards for new and renewing franchisees.

A franchisor must, as soon as practicable after receiving a franchisee's notice, inform the franchisee of any additional information it requires and issue its approval or disapproval, with reasons, within 60 days or any shorter period provided in the franchise agreement. A franchisor that fails to do so will be deemed to have approved the transfer.

In addition, with some exceptions, even when a franchise agreement is properly terminated or legally not renewed, a franchisor must purchase from the franchisee, at their original price less depreciation, all inventory, supplies, equipment, fixtures, and furnishings that the franchisee purchased from either the franchisor or a franchisor-approved supplier.

And, in addition to any other damages, franchisees may be awarded the fair market value of the franchised business, as well as the franchise assets, following a wrongful termination or non-renewal. 

¹ Cal. Corp. Code § 31005(a).

² 16 CFR. § 436.2.

³ Cal. Corp. Code § 31000.

⁴ Haw. Rev. Stat. § 482E-3.

⁵ 815 ILCS 705.

⁶ IC 23-2-2.5.

⁷ Md. Code Ann., Bus. Reg. § 14-214(a).

⁸ Minn. Stat. § 80C.

⁹ N.Y. Gen. Bus. L. § 683.

¹⁰ N.D. Cent. Code § 51-19.

¹¹ R.I. Gen. Laws § 1928.15.

¹² S.D. § 37-5B.

¹³ Va. Code § 13.1-557.

¹⁴ Wash. Rev. Code § 19.100.010.

¹⁵ Wis. Stat. § 553.

¹⁶ CFR § 436.2.

¹⁷ Cal. Bus. & Prof. Code § 20000 – 20043.

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- Numerous Sex Offense Accusations: Dismissed before Court (LA County)
- Several Multi-Kilo Drug Cases: Dismissed due to Violation of Rights (LA County)
- Misdemeanor Vehicular Manslaughter, multiple fatality: Not Guilty Verdict (San Fernando)
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A Ripple in Time: Board the Cryptocurrency Train



BLOCKCHAIN TECHNOLOGY COMPANIES' revenues are expected to surge to \$20 billion by 2030.¹

The expected expansion of blockchain technology and the cryptocurrencies that rely on it—Ripple, Bitcoin, Ethereum, for example—could transform how lawyers accomplish basic tasks with a long-term impact that could rival that of the internet.

Cryptocurrencies, as widely vetted digital stores of value, are considered almost-invulnerable to hacking and offer attractive efficiencies and economic advantages.²

Together, those advantages make digital currency competitive with recognized fiat currencies as a medium of exchange. Fiat currency—the U.S. dollar, for example—lacks intrinsic value, but is considered legal tender by a government.³

Despite the fact that it offers protocols that allow anonymous, direct peer-to-peer transactions via the internet, blockchain technology minimizes the need for relationships of trust among the parties to transactions.⁴

Third parties, such as banks or escrow companies, are not necessarily in the mix when individuals engage via a blockchain system as cryptocurrency can eliminate notaries, brokers, and other layers of administration that are designed to enhance trust. This can save money on recurring law firm expenses.

When parties digitally transfer value among accounts on the blockchain, they place their trust not in any individuals or businesses but in the underlying technology that enables the transfer, ensures sender authenticity, and safeguards currency validity.

This direct, peer-to-peer interaction, without transactional friction resulting from third-party participation, nurtures the revolution around cryptocurrency by creating a high-tech fiscal work-around for individuals seeking to eliminate the middle-man and engage in more direct business dealings.

As blockchain technology—a relatively raw technology—gains more stability and related technology improves, new business methods for smaller law firms will evolve with new approaches that will incorporate cryptocurrency as a way to offer greater value to clients and harden competitive advantage in a crowded market.



Lisa Miller is an administrative law judge in Vermont and a law professor in the U.S. and EU. The American Bar Association recently published her administrative law and litigation practice manual, *Art of Advocacy*. She can be reached at LM@LexLawCorp.com.

Cryptocurrencies Explained

As a decentralized, peer-to-peer payment Cryptocurrency, aka digital currency, is network that eliminates involvement by banks and governments in financial transactions. It is intangible in that—unlike fiat currency—it is intangible as users cannot physically touch or hold it.

Digital currencies exist in a decentralized environment: they are not regulated or recognized by any nation as that republic's money with users essentially functioning as their own bankers. Holders of cryptocurrency bank through digital wallets that contain sets of cryptographic hash addresses. Wallets can be stored on flash drives, in computers, on cell phones, or on paper.⁵

Benefits of Cryptocurrency for Law Firms

Because it functions as a peer-to-peer, decentralized system that distributes data among servers, or nodes, blockchain cryptocurrency is generally considered secure from cyberattack as client data that is transferred to counsel could be considered more secure than the information transferred via a credit card.

As a result, in order for a cyber thief to gain unauthorized access to a law firm's sensitive blockchain-based data, the intruder would need to simultaneously breach a majority of nodes. Such a multi-level structure makes DDoS attacks difficult to carry out.⁶

In addition, cryptocurrency records are public, but pseudonymous and, although accounts are visible online, their owners are not readily identifiable. Online visitors can see how much money is in a wallet, but not who actually owns the wallet.

As more consumers seek payment options involving cryptocurrency, law firms that accept digital currency can potentially attract them as clients.

For example, millennials, who numbered 76 million in 2020, are more receptive to owning cryptocurrency than owning stock.^{7 8 9}

Law firms that seek to expand legal services as millennials age could attract prospective clients by folding cryptocurrency payment options into their internal administrative operations.

Direct Benefits for Law Firms

Users of cryptocurrency actually exert more control over their funds than clients paying via traditional credit cards or writing checks.

Without involving credit card companies, banks, or other third parties, users of cryptocurrency can directly transfer funds from their own wallets to the law firm wallet.

In cases of any dispute regarding refunds, third parties, unlike traditional payment processing companies, are unable to freeze a firm's account.¹⁰

These same third-party payment processing companies generally charge law firms from 2.9 percent to as much as 9 percent of the total charge for their services.¹¹

CRYPTO PAYMENT HOW-TO

1. Select the cryptocurrencies the law firm would like to receive (Ripple, Bitcoin, Ethereum, and many others are currently available).
2. Create a cryptocurrency wallet to use for sending and receiving crypto coins and sign up for an account with a merchant processing service (popular merchant services advertise widely on the Internet).
3. Integrate the merchant cryptocurrency wallet into the law firm website; receiving crypto payments is similar to receiving e-mail (the firm's merchant wallet has a public address through which customers send cryptocurrency).
4. Add payment buttons to the law firm website to let potential clients know they can pay law firm charges via cryptocurrency.

Detailed tutorials are available online, including "Crypto for Beginners: How to Set Up Your First Wallet" by Ryan Dalton; published January 22, 2018.

<https://medium.com/@CharlesRDalton/crypto-for-beginners-how-to-setup-your-first-wallet-88448c82eef3>.

In contrast, when a law firm accepts cryptocurrency, clients pay the transaction fees, which are normally amount to a fraction of a penny.¹²

In fact, cryptocurrency wallets do not currently include chargeback functions.

Law firms maintain their own cryptocurrency wallets—apps that allow cryptocurrency users to store and retrieve their digital assets. Law firms that accept cryptocurrency need not wait days for banks or other payment processors to transfer funds.

When funds appear in a firm's crypto-wallet, counsel can correspondingly withdraw U.S. dollars at many cryptocurrency ATMs.¹³

Firms that accept digital currency streamline the payment experience for a client, who only needs a smartphone in order to pay counsel.

Clients paying legal bills via cryptocurrency use the smartphone app for their cryptocurrency wallet to scan a quick-response, or QR, code established by the law firm, which sets up specific client-matter QR codes that store data that is readable by a smartphone that scans a trigger transfer of the correct value from a client's digital wallet to a law firm's digital wallet.

Currently, several large and small U.S. law firms accept cryptocurrency as payments for legal services. They include Quinn Emanuel Urquhart & Sullivan; Perkins Coie; Steptoe &

Johnson; Frost Brown Todd; McLaughlin & Stern; NuLegal; Rose Law Group; and NS Wasserstein & Associates.

Some Visa debit cards now allow payment via cryptocurrencies at any location that accepts Visa charge cards with the payment processor withdrawing the money directly from the client's cryptocurrency account. Currently, TenX and Monaco cryptocurrencies work with the Visa system.

Cryptocurrency, because it operates on blockchain technology, supports automatic funds transfers, called smart contracts, that help law firms ensure timely payments, although they are not in a recognizable contract format.

Considering that cash-flow delays can seriously undermine a law firm's operations, cryptocurrency transactions could be an attractive alternative to traditional third-party payment processors.

And, as an added bonus, cryptocurrency eliminates international monetary transfer or foreign currency conversion fees.

An interesting note: there are reportedly 271 cryptocurrency ATMs currently operating in the greater Los Angeles area.¹⁴

Data Security


Data protection, a serious concern for law firms, could benefit greatly from cryptocurrency transactions, especially in contrast to the data leak potential of traditional electronic payments.


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Cryptocurrency and blockchain rely on a dual-key system of public and private keys, similar to traditional passwords, that are protected by a layer of cryptography.


The dual-key system is widely thought to guarantee that blockchain participants can be reliably verified without exposing sensitive personal financial information or user identities.

Firms utilizing blockchain technology can limit the risk exposure associated with handling volumes of personal data.

As a competitive value proposition that law firms can offer to prospective clients, firms can verify client transaction data without linking to any public identity. This limits unauthorized access to personal information.¹⁵

Conclusion

As millennials and international clients push for cryptocurrency compensation options, proactive law firms could secure a significant competitive advantage by exploring ways to integrate this option into their business models.

Just as the internet fundamentally changed the way lawyers do business, cryptocurrency has the potential to do the same. Successful law firms might consider evaluating their cryptocurrency options and adapt accordingly. 

¹ 2030 Projection of Blockchain Technology Market, published online at Autonomous Next on February 24, 2017; found online at: <https://next.autonomous.com/insights/2030-projection-of-blockchain-technology-market>.

² Why Nobody Can Hack a Blockchain, by Werner Vermaak, CoinMarketCap, December 9, 2020. <https://coinmarketcap.com/alexandria/article/why-nobody-can-hack-a-blockchain>.

³ Investing Answers; <https://investinganswers.com/financial-dictionary/economics/flat-money-1790>.

⁴ According to blockchain engineer Preethi Kasireddy, describing blockchain as "trustless" is inaccurate. Rather, blockchains minimize the amount of trust required from users by distributing responsibility among numerous participants. Published Feb 3, 2018 on Medium.com, found online at <https://medium.com/@preethikasireddy/eli5-what-do-we-mean-by-blockchains-are-trustless-aa420635d5f6>.

⁵ These are digital currencies; they are not virtual currencies. The difference between the two is that digital currencies are value embodied in digital form. Virtual currency usually exists in online games, allowing players to purchase tokens with fiat money and use those tokens to make purchases within the game.

⁶ Distributed Denial of Service (DDoS) attacks overwhelm a firm's computer network, including its website, by submitting repeated requests from numerous computers, sufficient to shut down the network's functionality (denial of service). Some attacks originate with business competitors.

⁷ According to Pew Research, Millennials were born between 1981 and 1996. <http://www.pewresearch.org/fact-tank/2019/01/17/where-millennials-end-and-generation-z-begins/>.

⁸ Found online at <http://www.pewresearch.org/fact-tank/2018/03/01/millennials-overtake-baby-boomers/>.

⁹ "Millennials are 5 times as likely as older adults to say bitcoin is the best way to save for the future" by Emmie Martin; found online at <https://www.cnn.com/2018/07/30/more-millennials-than-older-adults-say-bitcoin-is-the-best-way-to-save.html>.

¹⁰ PayPal has the legal right to freeze funds on its platform, for example.

¹¹ Found on-line at <https://www.cardfellow.com/blog/average-fees-for-credit-card-processing/>.

¹² Found on-line at <https://www.fool.com/investing/2018/03/30/which-cryptocurrencies-have-the-lowest-transaction.aspx>.

¹³ Additional fees may apply when counsel cash out via ATM.

¹⁴ Complete list with addresses found online at <https://coinatmradar.com/city/93/bitcoin-atm-los-angeles/> (No guarantee that this list is updated, current, accurate, or even useful. Proceed at your own risk).

¹⁵ Online attacks can significantly drain law firm resources. Although not necessarily a cause-and-effect relationship, a majority of small businesses that suffer cyberattacks shut down less than a year after sustaining damage (60 Percent of Companies Fail in 6 Months Because of This (It's Not What You Think)); by Thomas Koulopoulos; Inc. com. Found online at: <https://www.inc.com/thomas-koulopoulos/the-biggest-risk-to-your-business-cant-be-eliminated-heres-how-you-can-survive-it.html>).

Retrospective



OFFICIALS OF the Senior Citizens' Multi-Purpose Center and the San Fernando Valley Bar Association are shown completing arrangements for a new service to elderly Valley residents. Beginning August 11 volunteer attorneys from the San Fernando Valley Bar Association will be available at the Multi-Purpose Center, 6514 Sylmar Ave., Van Nuys, to provide free or low-cost legal advice to senior citizens. Above, seated at left, is Susan Keating, executive director of the Valley Bar Association, and at right, Betty Springer, executive director of the Senior Citizens' Multi-Purpose Center. Standing, at left, is Jay Plotkin, president-elect of the Valley Bar Association and, at right, Jose Galvan, a case worker at the Center who will be in charge of the project. For information, call 781-1101.

From the *Daily News*, August 11, 1977



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Traveling Back in Time

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AS PART OF ITS ONGOING community outreach efforts, the Santa Clarita Valley Bar Association sponsored its 8th Annual District-Wide High School Speech Competition, on Thursday, April 15, 2021.

Senior class students from throughout the William S. Hart Union High School District were invited to compete for cash scholarships that would be awarded to the top three presenting students. Unlike past competitions, this year's event was held virtually due to COVID-19 restrictions. Also, unlike past competitions, the scoring panel was comprised of the Bar Association's Executive Board, rather than judges from the Los Angeles County Superior Court.

The topic for this year's competition—*"If you could travel back in United States history to personally witness an event, or series of events, leading to the enactment of national legislation, what would that event(s) be and why is this legislation meaningful to you?"*

Students were given wide latitude and breadth in presenting their four-minute speech and were scored on their written submission, as well as their oral presentation, according to a scoring rubric.

Not surprisingly, all the students invested tremendous effort in the midst of an extremely challenging, COVID-19-impacted academic year.

Victors in the challenging competition were First Place, Amanda Sheppard, *"Woman's Rights & Suffrage."* Amanda attended West Ranch High School and is enrolled at Lewis & Clark College, Fall 2021); Second Place, Cameron Armendariz of West Ranch High School, who will be starting at Cornell


University, Fall 2021); and Third Place, Eyan Documet, *"Bill of Rights."* Eyan attended High School and will be at the College of the Canyons, Fall 2021). They received cash scholarships in the amount of \$750.00, \$500.00 and \$250.00, respectively.


Funding for the scholarships was graciously provided through the generous sponsorship of SCVBA member firms and solo practitioners.

All three students—Amanda, Cameron and Eyan—were subsequently invited to the Santa Clarita Valley Bar Association's "Scholars & Bench Night", held on Thursday, May 20, where they presented their speeches not only to the general membership and guests, but to the Presiding Judge of the Los Angeles County Superior Court, the Honorable Eric Taylor, who provided an update on the state of our county courts to everyone in attendance.

Recognizing the importance of being a good partner with the local community, the SCVBA is privileged to partner with the William S. Hart High School District in supporting superior academic standards and opportunities for greater student achievement.

Although this year's competition was held under less-than-ideal conditions, the SCVBA is excited to resume the dynamics that make the competition particularly engaging and vibrant—in-person student speeches presented before a panel of Superior Court judges, who are also residents of the SCV community.

Next year's competition will be Spring 2022, and available to interested junior and senior class students throughout the district. 



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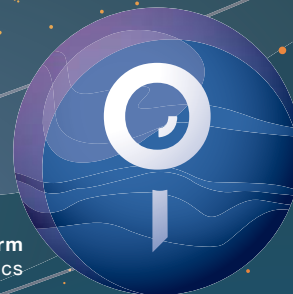
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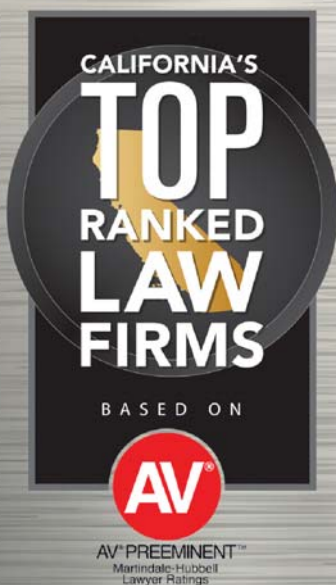
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