VALLEY LAWYER
FEBRUARY 2022 • $5
A Publication of the San Fernando Valley Bar Association

# Jumping Frogs and 'Highly Pleasing' Cheese: More Arcane and Absurd Laws Still On The Books

## Ancient Legal Maxims: Still Alive and Still Useful

**Earn MCLE Credit**

www.sfvba.org

# Our Family Law Practice Group:

*over 30 years of service in Southern California*

Vanessa Soto Nellis*
Shareholder

Lynn Soodik
Shareholder

Nancy Martinez
Associate

Susan T. Goldstein
Of Counsel

*Certified Specialist in Family Law, State Bar of California Board of Legal Specialization

LEWITT | HACKMAN
SHAPIRO | MARSHALL | HARLAN
A LAW CORPORATION

**16633 Ventura Boulevard, 11th Floor**
**Encino, California 91436-1865**

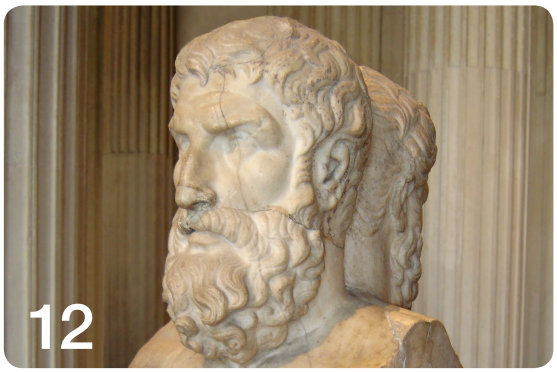
**lewitthackman.com**

**818.990.2120**

# CONTENTS

FEBRUARY 2022

VALLEY LAWYER
A Publication of the San Fernando Valley Bar Association








## FEATURES



## COLUMN



## DEPARTMENTS

# VALLEY LAWYER

**SAN FERNANDO VALLEY BAR ASSOCIATION**

20750 Ventura Boulevard, Suite 104
Woodland Hills, CA 91364
Phone (818) 227-0490
Fax (818) 227-0499
www.sfvba.org

**EDITOR**
Michael D. White

**GRAPHIC DESIGNER**
Marina Senderov





Valley Lawyer is published monthly. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Valley Lawyer are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

# Affiliates

**ROSIE SOTO COHEN**
Executive Director
rosie@sfvba.org

**We at the San Fernando Valley Bar Association want to thank you for your membership and encourage you to support and, when appropriate, make use of resources and services of our affiliated organizations. These are shown here.**

VCLF
Valley Community Legal Foundation

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association. VCLF promotes education in the law, provides scholarships to students pursuing law-related studies, supports the courts, increases access to justice, and assists families in conflict and victims of domestic violence with their legal needs. Please consider making a tax-deductible donation to the Foundation. **www.thevclf.org**

MCLA Mediation Center of Los Angeles
Building Community Through Mediation

Founded by SFVBA in 2013, MCLA provides reduced-fee mediations for civil disputes through the LA Superior Court Mediation Vendor Resource Program. Please consider having your case mediated through MCLA. **www.mcla.org**

Attorney Referral Service
San Fernando Valley Bar Association

The SFVBA Attorney Referral Service, established in 1948, connects those in need of legal assistance with qualified, experienced attorneys. ARS is one of the longest-running State Bar-certified legal assistance programs in California. **www.sfvbaReferral.org**

MULTICULTURAL BAR ALLIANCE OF SOUTHERN CALIFORNIA
Equality · Inclusion · Diversity

The San Fernando Valley Bar Association is a long-time associate member of the Multicultural Bar Alliance (MCBA) of Southern California, an organization comprised primarily of minority bar associations. SFVBA belongs to the MCBA because of the Association's commitment to increasing diversity in the legal profession at large and our own organization. SFVBA was recognized by the State Bar of California with its 2016 Diversity Award for its "outstanding efforts and significant contributions" to ensure full and equal opportunity for all persons considering a career in the legal profession. SFVBA encourages members to support the MCBA by attending events and programs organized by the Association's member Bars. **www.mcba-socal.org**

THE SANTA CLARITA VALLEY BAR ASSOCIATION

In 2004, members of the San Fernando Valley Bar Association and additional volunteers successfully established the Santa Clarita Valley Bar Association. A unique arrangement was formed where members of the SFVBA may join the SCVBA for a discounted annual dues rate. The two bar associations have had joint activities for years, including MCLE programs and joint networking mixers. We invite members who either work or live in the Santa Clarita Valley to get involved. **www.scvbar.org**

# A...B...C...

**MICHAEL D. WHITE**
SFVBA Communications Manager

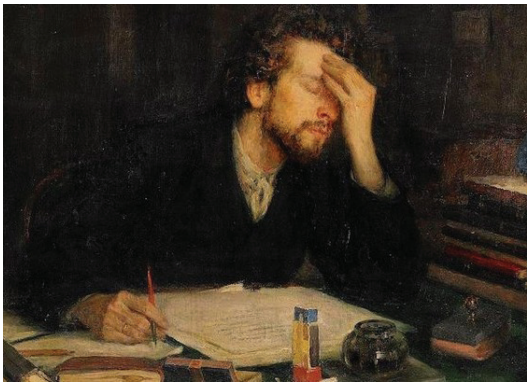
michael@sfvba.org

I WANT TO TAKE THE OPPORTUNITY TO THANK THE Bar members who responded to the recent call for writers to submit articles for publication in *Valley Lawyer*.

Within a week of the appeal, I received more than a dozen replies from members with hard-earned professional expertise in a variety of areas including elder abuse, entertainment and intellectual property law, and ethics lessons for new attorneys.

I was bowled over, so to speak.

Fourteen responses in so short a time is laudable, but the response represents only 0.7 percent of the total number of the Bar Association's professional members.



Writing, I know, is a challenge, and after many years of pushing words around, it hasn't become any easier.

But one of the things that helps me through the dry spells is some advice that was given to me a long, long time ago: There are, I was told, 26 letters in the English alphabet and there are roughly—depending on the source—somewhere between 350,000 and 1 million words in the English language.

Walk into any library or bookstore (yes, they do exist) in the country and you'll see hundreds of thousands of books, all composed of millions of words, all of which are made up of some combination of those same 26 letters. They're just arranged differently. Ideas converted into words made up of letters, transformed into sentences that flow into paragraphs that fill pages.

They encompass a vast array of topics from history and mathematics to political science and botany, from stamp collecting and nuclear physics to romance novels and the culinary arts.

All the same, in a sense; just words from the same deep 'well,' rearranged in a way to express whatever message whoever is pushing the pen or clicking away on the keyboard wants to convey to the reader. It's as simple as that.

So, here's the pitch—what's the message you possess that's worth sharing? You've spent a lot of time in your profession accumulating both insights and expertise and there are others who can benefit from that.

Here's your opportunity. If the spirit so moves, consider sharing your insights and expertise on issues of interest with your colleagues by contributing an article or book review to *Valley Lawyer*.

We're always on the look-out for informative articles on topics that inform and instruct, motivate and compel. Give it a try. You can actually help make smart people smarter.

To quote William Faulkner: "Get it down. Take chances. It may be bad, but it's the only way you can do anything really good."

San Fernando Valley Bar Association
*founded in 1926*

*Sponsor*

# THE SFVBA'S 2ND ANNUAL MOCK TRIAL COMPETITION

## April 8 & 9, 2022

Via Zoom

### $750 AWARD PRESENTERS

ONLY 5 AVAILABLE!

Presenters appear on Zoom at Award Ceremony to Intro Themselves and Give Individual Award: Best Advocate, Best Opening, Closing, Cross or Direct Exam
Top billing on all Promotional Material

### $500 FIRST CHAIR SPONSORS

UNLIMITED!

Recognition at Award Ceremony Prominent Billing on all Promotional Material

### $250 SECOND CHAIR

UNLIMITED!

Name included on all Promotional Material

### VOLUNTEER

Practicing Attorneys and Bench Officers Needed!

## EVENT INFORMATION

Sponsor the SFVBA's Second Annual Mock Trial Competition where teams from California law schools will go head-to-head to be the San Fernando Valley Bar Association's Mock Trial Champions.

Law student scholarships graciously provided by the Valley Community Legal Foundation

## PLEASE CONTACT

Kyle Ellis (858) 373-8122 | elliskylem@gmail.com
Linda Temkin (818) 227-0495 | events@sfvba.org

VCLF

# CALENDAR

FEBRUARY 2022

| SUN | MON | TUE | WED | THU | FRI | SAT |
|---|---|---|---|---|---|---|
| BLACK HISTORY MONTH 1 | | | 2 | 3 | 4 | 5 |
| 6 | 7 VBN VALLEY BAR NETWORK ZOOM MEETING 5:00 PM | ZOOM MEETING 8 Board of Trustees 6:00 PM | 9 | ZOOM MEETING 10 Membership and Marketing Committee 6:00 PM | 11 | 12 |
| 13 | 14   | WEBINAR 15 Taxation Law Section *CA Pass-through Entity Tax (PTET): Risks and Rewards of Making the PTET Election* 12:00 NOON CPA and US Tax Court Practitioner Larry Pon will discuss the California Pass-through Entity Tax election under AB 150, enacted on July 19, 2021, which provides a much need work-around to the $10,000 state and local federal tax deduction limitation. Individuals who are losing the benefit of federal deductions because of the $10,000 cap will benefit greatly from this presentation. (1 MCLE Hour) ZOOM MEETING Mock Trial Competition 6:30 PM | WEBINAR 16 All Section *Maximizing Legal Analytics as a Competitive Advantage in California State Trial Courts* Sponsored by trellis 12:00 NOON Topics will include: Judicial Analytics and Ruling History; Helping Attorneys to Draft Stronger Motions, Faster; Locating Verdict Data and Uncovering Intel on Opposing Counsel; California Docket & Ruling Searches + Alerts. Free to all members! (1 MCLE Hour) | ZOOM MEETING 17 Inclusion and Diversity Committee Meeting 12:15 PM Santa Clarita Valley Bar Networking Mixer 6:00 PM REYES WINERY ON MAIN Join SCV Bar members for drinks and appetizers! RSVP: info@scvbar.org | 18 | 19 |
| 20 | 21   SFVBA OFFICES CLOSED | 22 | 23 | WEBINAR 24 Probate and Estate Planning Section *Certificate of Independent Review: Drafters, Care Custodians, Timing, and Other Conundrums* 12:00 NOON Nancy Reinhardt and Mark A. Lester discuss best practices to protect your client's wishes on nomination of a fiduciary and gifts to care custodians and what not to do! (1 MCLE Hour) | 25 | 26 |
| 27 | 28 | SFVBA COVID-19 UPDATES sfvba.org/covid-19-corona-virus-updates/ | | | | |



MCLE

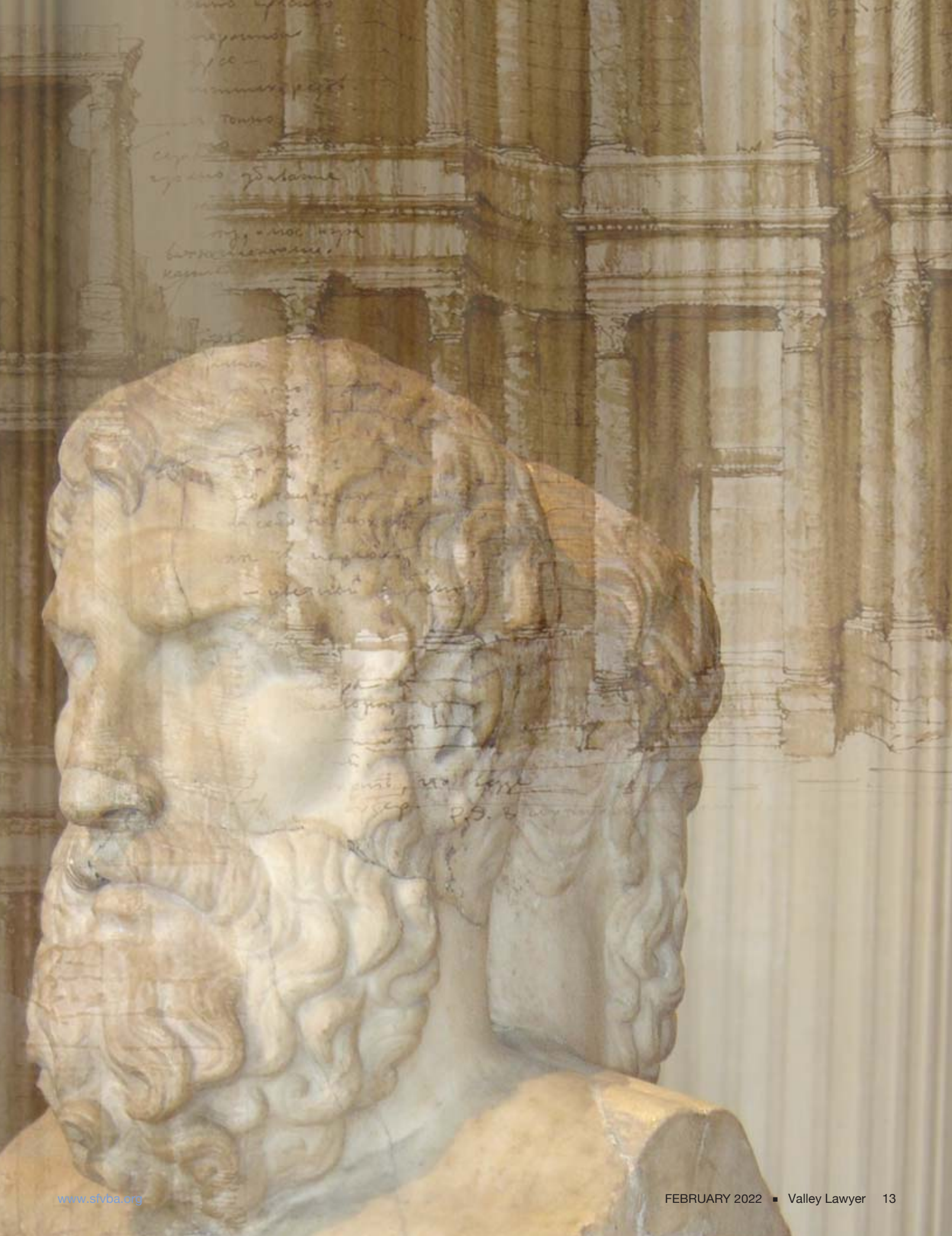
**The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0495 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.**

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 19.

By David Gurnick

# Ancient Legal Maxims: Still Alive and Still Useful

Maxims have their place and usefulness from the earliest common law through the present and can crisply summarize principles as a substantial aid to advocacy. These ancient maxims and countless more remain good law today.



CHANGE IS INEVITABLE. YET SOME THINGS never change.[1] [2]

Historically courts followed maxims that succinctly summarize a principal of law. Many ancient maxims continue to be good law, and this article discusses a few of them, not often cited but not overruled.

These are good law, citable in appropriate contexts today. Some examples…

• *Argumentum ab inconvenienti plurium valet in lege*—An argument from inconvenience avails much in law.

This maxim applies when the wording of a statute, agreement or another instrument can have multiple meanings. The construction applies that leads to the least inconvenience.[3]

The maxim has applied for the principal that a statute should not be construed to work public mischief, unless required by explicit, unequivocal language.[4]

If words of a statute leave room for construction, the *argumentum ab inconvenienti* might be entitled to great weight, but the maxim does not apply where the language of a statute is clear.[5]

One scholar said the *argumentum ab inconvenienti* is essential in a legal system where law impacts social ordering—bringing about good and useful effects in society.

The form of the argument is that "if you allow X the following bad things will happen." Another old maxim holds that "*plurinum valet in lege*," is powerful in law.[6]

The maxim, has been discussed in California decisions and, though not raised recently, appears to be good law in this state.[7]

> "Historically courts followed maxims that succinctly summarize a principal of law. Many ancient maxims continue to be good law, and this article discusses a few of them, not often cited but not overruled."

• *Communis error facit jus*—Common error repeated many times makes law.

Multiple wrongs can make a right. Under this ancient principle, a mistake or error that has occurred many times, can establish governing law.

There are cases in which a mistaken notion of the law has become generally accepted and acted on so that acceptance of the mistake becomes the law.[8]

Viewed another way, customs followed in a community, even if contrary to law, can be the law.

As one example, when a statute is ruled unconstitutional, actions taken earlier under the unconstitutional statute are invalid. Usually, rights cannot be built up under an unconstitutional statute.[9]

But courts sometimes recognize a need to uphold the validity of transactions or events that occurred before a statute was ruled unconstitutional.

The doctrine embodied in this maxim applied to uphold sales of property over ten years by probate courts even though probate courts were later ruled to lack subject matter jurisdiction to conduct the sales because the authorizing statute was unconstitutional.[10]

The California Supreme Court applied the maxim in 1849. Henry Johnson had died without a will in the Pueblo of San Francisco. California was not yet a state, and Johnson's wife petitioned the local Alcalde—a Spanish municipal magistrate, having both judicial and administrative functions—to appoint an administrator and sell all Johnson's property. The Alcalde did so, and the property was sold.

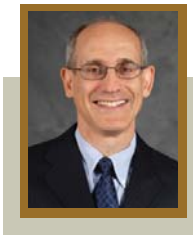
But the Alcalde had no authority to make that appointment.

In a quiet title dispute with a frustrated heir, the California Supreme Court seemed to agree. But it ruled that, given the rough and tumble of custom and practice in the Mexican territory, the appointment of an administrator and sale of property, though improper, would be upheld.

The Court colorfully described life in the territory, stating that to decide the case, "*it will be necessary for the Court to take into consideration the condition of California previous to the organization of the State Government*."[11]

Describing California at that time, the Court noted:

> "*It was sparsely populated; here and there a rancho; no ready or easy means of intercommunication with the Mexican Capital or National Government. The written laws of Mexico, though theoretically in force, were either*



**David Gurnick** is with the Lewitt Hackman firm in Encino, representing franchising companies and other businesses in litigation and transactions. He is the author of *Distribution Law of the United States and Franchising Depositions*, both published by Juris Publishing, and previously chaired both the SFVBA Business Law and Litigation Sections. He can be reached at dgurnick@lewitthackman.com.

# LawPay®

AN AFFINIPAY SOLUTION

+

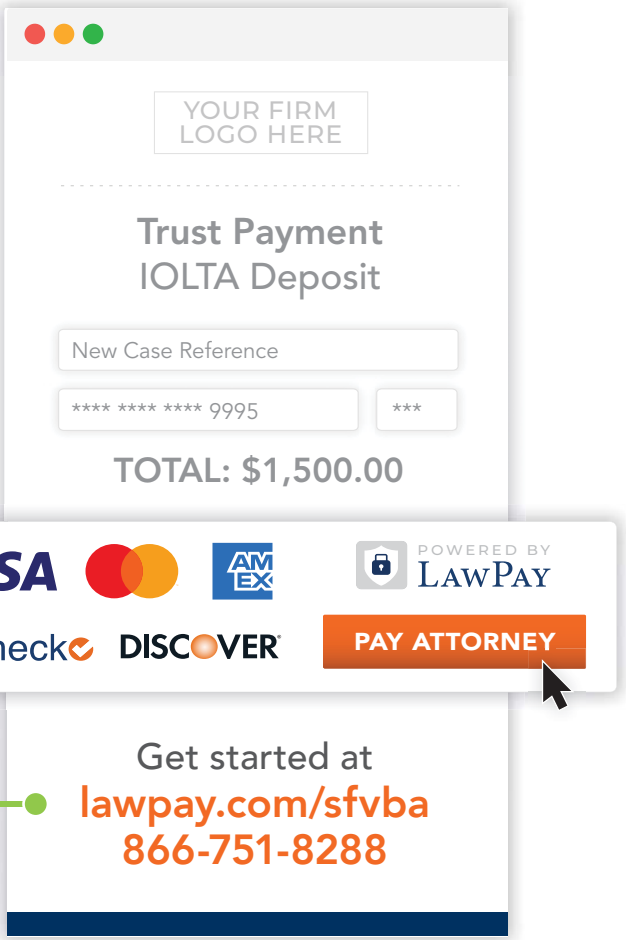
San Fernando Valley Bar Association

Member Benefit Provider

> **I love LawPay!** I'm not sure why I waited so long to get it set up.
>
> *– Law Firm in Ohio*

Trusted by more than 150,000 professionals, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.

- **22% increase in cash flow with online payments**
- **Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA**
- **62% of bills sent online are paid in 24 hours**


Get started at
lawpay.com/sfvba
866-751-8288

Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered agent of Wells Fargo Bank N.A., Concord, CA and Synovus Bank, Columbus, GA.

*unknown, had fallen into disuse, or were annulled and supplanted by provincial customs. The law and its forms and administration were different in different districts. The people who were here were ignorant and destitute of learned lawyers and Judges. Under American rule, the discovery of gold-induced immigration was ten times as large as the original population of California and numerous enough to form a State…The American settlers could obtain no books containing Mexican laws. They found no established laws, no established institutions, and no Judges to administer the law. The necessities of trade and commerce, the urgency of their condition, and self-protection, justice, and humanity, demanded some law to regulate their transactions and intercourse and some Judge to dispense justice. They were compelled to adopt customs for their government…The Judges, being ignorant of the laws, were compelled to apply to the Governor of California for instructions, and he, being equally ignorant, could only say, 'You must, for the time being, be governed by the customs and laws of the country, as far as you can ascertain them, and by your own good sense and sound discretion.'"*[12]

The Court's engaging description continues at greater length and is interesting reading.

It noted *communis error facit jus* was a maxim of Roman Law, adopted in Spanish law. "*The judicial acts of a person that exercises a jurisdiction which does not legally belong to him, but which is generally recognized and submitted to by the people are valid, and binding*."[13]

Applying this principle, the Court affirmed the administrator's sale of the property.

• ***De fide et officio judicis non recipitur quaestio; sed de scientia, sive error sit juris aut facti***—The good faith and office of a judge cannot be questioned, only the judge's knowledge of law or facts.

"*The law*," said Lord Bacon, "*has so much respect for the certainty of judgments and the credit and authority of judges that it will not permit any error to be assigned which impeaches them in their trust and office, and in wilful abuse of the same*."[14]

This maxim has renewed significance in today's era of seeming politicization of courts and questioning of judges' predilections and biases.

In 2021, the Court of Appeal applied this maxim.

An attorney appealed on behalf of a client. He petitioned for rehearing without citing "*a single statute or opinion and made no attempt to explain, distinguish, or otherwise reply to the cases and statutes relied upon by the trial court*."[15]

Counsel's petition stated, "Our society has been going down the tubes for a long time, but when you see it in so black and white as in the opinion in this case, it makes you wonder whether or not we have a fair and/or equitable legal system or whether the system is mirrored by [sic] ignored by the actions of people like Tom Girardi."

Counsel's brief insinuated that the adversary might have won because it had contracts with a third party who wielded "*legal and political clout in Orange County*." His brief suggested that the Court of Appeal, in its prior opinion in the case, did not follow the law and ignored the facts.

On its own motion, the Court issued an order to show cause for the attorney to explain why he should not be held in contempt for impugning the integrity of the Court.

The attorney's response claimed he merely "*mentioned the obvious things that go on in Orange County which has a lot to do with The Irvine Company, plain and simple.*"

The Court read this as a "*second insinuation that political clout accounted*" for the trial court's actions and found that this had impugned the integrity of the Court.

The Court, while not requiring lawyers to avoid vigorous advocacy, cautioned strongly against impugning the Court itself, stated:

> *"If you think the Court is wrong, don't hesitate to say so. Explain the error. Analyze the cases the Court relied upon and delineate its mistake. Do so forcefully. Do so con brio; do so with zeal, with passion. We in the appellate courts will respect your efforts and understand your ardor. Sometimes we will agree with you. That's why you file a petition for rehearing—because they are sometimes granted. But don't expect to get anywhere—except the reported decisions—with jeremiads about "society going down the tubes" and courts whose decisions are based not on a reading of the law but on their general corruption and openness to political influence. The judge of a court is well within his rights in protecting his own reputation from groundless attacks upon his judicial integrity, and it is his bounden duty to protect the integrity of his Court."*[16]

Citing the maxim, Court added, the "*timbre of our time has become unfortunately aggressive and disrespectful. Language addressed to opposing counsel and courts has lurched off the path of discourse and into the ditch of abuse. This isn't who we are*."[17]

The Court found the attorney to be in direct contempt, ordered a monetary fine, and reported the lawyer to the State Bar.[18]

• *Necessitas inducit privilegium quod jura privata*—Necessity gives a privilege to private rights.

Sometimes called the 'necessity defense,' it comes from the common law of England and recognizes that sometimes, breaking the law may be justified to prevent or avoid greater harm.

The California Supreme Court recognized the defense in 1853, stating the common law adopts principles of natural law and justifies an act, otherwise tortious, on the ground of necessity.[19]

San Francisco suffered a great fire in 1849. John Geary, at the time the local Alcalde, destroyed a building owned by Pascal Surocco, and justified his action claiming need to stop the progress of the fire.

Geary claimed he was removing his property from the building at the time and won damages in the trial court.

But on appeal, the Supreme Court reversed, stating:

> "*The only question for our consideration is, whether the person who tears down or destroys the house of another, in good faith, and under apparent necessity, during the time of a conflagration, for the purpose of saving the buildings adjacent, and stopping its progress, can be held personally liable in an action by the owner of the property destroyed.*"

The Court ruled that "*blowing up of the house was necessary, as it would have been consumed had it been left standing. The plaintiffs cannot recover for the value of the goods which they might have saved; they were as much subject to the necessities of the occasion as the house in which they were situate*."[20]

The Montana Supreme Court invoked reached a similar conclusion, citing the maxim *salus populi est suprema lex*, interpreting this to mean "*there exists an implied agreement of every member of society that his own individual welfare shall, in cases of necessity, yield to that of the community, and that his property, liberty, and life shall, under certain circumstances, be placed in jeopardy or even sacrificed for the public good*."[21]

• *Sic utere tuo ut alienum non laedas*—One must so use his own rights as not to infringe upon the rights of another.

This principle first appeared in a California Supreme Court decision in 1857, referred to by counsel as a "*neighborly maxim*."[22]

The Supreme Court recognized the rule but also noted another maxim that no one "*can be deprived of the due enjoyment of his property and held answerable in damages for the reasonable exercise of a right*."[23]

Maxims have their place and usefulness from the earliest common law through the present."

**Conclusion**

Maxims have their place and usefulness from the earliest common law through the present and can crisply summarize principles as a substantial aid to advocacy.

These ancient maxims and countless more remain good law today.

However, they come with a problem "*with conducting jurisprudence by maxim is that there is often an equal and opposite one available in any particular case*."[24]

And they are not conclusive. A law review article written in 1950 by legal scholar Karl Llewellyn pointedly showed that for many maxims of statutory construction, an equal and opposite counterpart can be identified.[25]

Even that problem can be a tool for the lawyer. The equal and opposite may be cited and argued when an adversary cites a maxim.

---

[1] Benjamin Disraeli, Speech on Reform Bill of 1867, Oct. 29, 1867, in *Selected Speeches of the Late Right Honourable the Earl of Beaconsfield*, (T. E. Kebbel, ed.) vol. 2, pt. 4, p. 487 (1882). *See also*, *McGaffee v. McGaffee*, (Iowa 1953) 58 N.W.2d 357, 360 ("Change is inevitable in all human affairs.").

[2] *Johnson v. Sawyer,* 120 F.3d 1307, 1337 (5th Cir. 1997) ("Some things never change; nor should they."); Peri v. State, (Fla. App. 1983) 426 So.2d 1021, 1028.

[3] George Frederick Wharton, *Legal Maxims* (Baker, Voorhis & Co., NY 1878) p.37.

[4] *Sawyer v. North Am. Life Ins. Co.,* (Vt. 1874) 46 Vt. 697, 702.

[5] *Gustin v. Nevada-Pacific Dev. Corp*, 125 F.Supp. 811, 814 (D.Nv. 1954).

[6] *Arthur Allen Leff, The Leff Dictionary of Law: A Fragment,* 94 Yale L.J. 1855, 2056 (1985).

[7] *See e.g., People v. Wismer* (1922) 58 Cal.App. 679, 688 (an argumentum ab inconvenienti can never be allowed except in cases where the law being construed is, due to ambiguity, of doubtful meaning, in which case it is permissible).

[8] *Wade v. Woodward,* (Miss. 1933) 145 So. 737, 738.

[9] *Bergstrom v. Palmetto Health Alliance,* (S.Car. 2004) 596 S.E.2d 42, 47.

[10] *Id.* (discussing *Herndon v. Moore* (S.Car. 1883) 18 S.C. 339, 351).

[11] *Ryder v. Cohn* (1869) 37 Cal. 69, 81.

[12] *Id.*

[13] *Id.*

[14] Quoted in *Rainey v. State* (1886) 20 Tex.App. 473, 484; *see also In Re Mahoney* (2021) 65 Cal.App.5th 376, 381(same).

[15] *In Re Mahoney, supra 65* Cal.App.5th at 378.

[16] *Id.* at 380.

[17] *Id.* at 381.

[18] *Id.* at 381-382.

[19] *Surocco v. Geary* (1853) 3 Cal. 69, 73.

[20] *Id. See also, Marty v. State*, (Id. 1989) 786 P.2d 524, 534 (discussing the defense). The necessity defense is discussed in some depth in Susan B. Apel, *Operation Rescue and The Necessity Defense: Beginning A Feminist Deconstruction*, 48 Wash. & Lee L. Rev. 41 (1991), https://scholarlycommons.law.wlu.edu/wlulr/vol48/iss1/4.

[21] *Stocking v. Johnson Flying Service* (Mon. 1963) 387 P.2d 312, 316–17.

[22] *Tenney v. Miners' Ditch Co.* (1857) 7 Cal. 335, 337.

[23] *Id.* at 340.

[24] *Miller v. Superior Court* (1990) 221 Cal.App.3d 1200, 1210.

[25] Karl Llewellyn, "*Remarks on the Theory of Appellate Decision and the Rules or Canons about How Statutes are to be Construed*," 3 Vand. L. Rev. 395 (1950).

# Ancient Legal Maxims: Still Alive and Still Useful

## Test No. 160

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. Ancient maxims can remain good law in current times.
   ❑ True ❑ False

2. The maxim *Argumentum ab inconvenienti plurium valet in lege* means that an inconvenient truth must still be applied with the force of law.
   ❑ True ❑ False

3. The logic of the *argumentum ab inconvenienti* maxim is that "if you permit a certain event or rule, then other bad things will follow."
   ❑ True ❑ False

4. The maxim *Communis error facit jus* means that no matter how many times a thing is repeated, two wrongs do not make a right.
   ❑ True ❑ False

5. Customs followed in a community, even if against the law, can be the law.
   ❑ True ❑ False

6. Rights can never be built up under an unconstitutional statute.
   ❑ True ❑ False

7. Before California became a state, the population was well-versed in and assiduously followed Spanish law.
   ❑ True ❑ False

8. The maxim *De fide et officio judicis non recipitur quaestio; sed de scientia, sive error sit juris aut facti* means that no matter what, the good faith and office of a judge cannot be questioned.
   ❑ True ❑ False

9. A judge's knowledge of law or facts can be challenged vigorously.
   ❑ True ❑ False

10. The maxim that the judge's good faith cannot be questioned, must give way to the lawyer's First Amendment rights as a citizen.
    ❑ True ❑ False

11. A lawyer who thinks the court has erred must be extremely careful before saying so, and then only mildly, with utmost gentility and soft-spokenness.
    ❑ True ❑ False

12. The maxim *Necessitas inducit privilegium quod jura privata* means that sometimes necessity gives a privilege to break the law.
    ❑ True ❑ False

13. The necessity defense, being in conflict with the common law, must be construed narrowly and applied rarely.
    ❑ True ❑ False

14. The maxim *Sic utere tuo ut alienum non laedas* means that one acting to exercise an existing right has no obligation to affirmatively consider the interests of others.
    ❑ True ❑ False

15. For many maxims there is an equal and opposite maxim.
    ❑ True ❑ False

16. Maxims are less useful when originally in Latin.
    ❑ True ❑ False

17. In the 1849 San Francisco Fire the California Supreme Court allowed a property owner to recover damages for the value of goods that were destroyed, even though he could not recover for the damage to the real property.
    ❑ True ❑ False

18. The maxim that one must use his own rights without infringing the rights of others, has an opposite maxim that no one can be deprived of the due enjoyment of his property and held answerable in damages for the reasonable exercise of a right.
    ❑ True ❑ False

19. One benefit of maxims is that they are so time honored as to be recognized as largely axiomatic and conclusive thus eliminating or shortening a great deal of argument.
    ❑ True ❑ False

20. Due to the problem of opposing maxims there is no use responding to a lawyer's assertion of a maxim.
    ❑ True ❑ False

## Ancient Legal Maxims MCLE Answer Sheet No. 160

**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:**

   **San Fernando Valley Bar Association**
   **20750 Ventura Blvd., Suite 140**
   **Woodland Hills, CA 91364**

**METHOD OF PAYMENT:**

❑ **Check or money order payable to "SFVBA"**
❑ **Please charge my credit card for**

**$**_____.

_____
**Credit Card Number**

_____ _____/____/_____
**CVV code** **Exp. Date**

_____
**Authorized Signature**

5. **Make a copy of this completed form for your records.**
6. **Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0495.**

**Name** _____
**Law Firm/Organization** _____
_____
**Address** _____
**City** _____
**State/Zip** _____
**Email** _____
**Phone** _____
**State Bar No.** _____

**ANSWERS:**

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

| | | |
|---|---|---|
| **1.** | ❑ **True** | ❑ **False** |
| **2.** | ❑ **True** | ❑ **False** |
| **3.** | ❑ **True** | ❑ **False** |
| **4.** | ❑ **True** | ❑ **False** |
| **5.** | ❑ **True** | ❑ **False** |
| **6.** | ❑ **True** | ❑ **False** |
| **7.** | ❑ **True** | ❑ **False** |
| **8.** | ❑ **True** | ❑ **False** |
| **9.** | ❑ **True** | ❑ **False** |
| **10.** | ❑ **True** | ❑ **False** |
| **11.** | ❑ **True** | ❑ **False** |
| **12.** | ❑ **True** | ❑ **False** |
| **13.** | ❑ **True** | ❑ **False** |
| **14.** | ❑ **True** | ❑ **False** |
| **15.** | ❑ **True** | ❑ **False** |
| **16.** | ❑ **True** | ❑ **False** |
| **17.** | ❑ **True** | ❑ **False** |
| **18.** | ❑ **True** | ❑ **False** |
| **19.** | ❑ **True** | ❑ **False** |
| **20.** | ❑ **True** | ❑ **False** |

By Michael D. White

# Jumping Frogs and 'Highly Pleasing' Cheese:

## More Arcane and Absurd Laws Still On The Books

Presenting some examples of strange, out-of-date, and puzzling laws from around the country that are still on the books and guaranteed to amaze, baffle, and amuse.

IF YOU LOOK INTO IT, IT IS A SURE BET THAT EVERY state in the country has squirreled away in their files some dusty, oddball laws that, when exposed to the light of day, are sure to have you raising your eyebrows, scratching your head, or chuckling to yourself, wondering how they came to be.

Context is certainly key in explaining why some laws, strange and absurd on their face, were, perhaps, actually enacted for good reason.

For example, a frog that dies during a frog-jumping contest in California "*cannot be eaten and must be destroyed as soon as possible*."

The code likely made its way into the books to protect competitors at the annual Calaveras County Fair and Frog Jumping Jubilee—a decades-old tradition in the gold-mining town of Angels Camp immortalized by writer Mark Twain in his classic story, *The Jumping Frog of Calaveras County*.'

Or why, in Florida, people who own bars, restaurants, and other places where liquor is sold may be fined up to $1,000 if they participate in or permit any contest of "*dwarf-tossing*." Florida outlawed tossing little people in 1989 after the bar activity caught on in southern parts of the state.

On the other hand, it would take no small degree of analysis to figure out why Oklahomans are threatened with a fine should they violate state law by making an ugly face at someone else's dog; or why it is illegal to honk your horn in front of a sandwich shop after 9:00 p.m. in Little Rock, Arkansas. There are, literally, hundreds more, but space constrains.

Some examples, then, of strange, out-of-date, and puzzling laws from around the country that are still on the books and guaranteed to amaze, baffle, and amuse.

**Never on a Sunday**

Alabama law makes it a "*criminal offense against public health and morals*" to engage in a whole host of activities on Sunday, including playing cards. Shooting, hunting, gaming, and racing are also prohibited and carry a fine of $10 to $100.

In Salem, West Virginia, where it's against the law to eat candy less than an hour and a half before church service. Another, in Winona Lake, Wisconsin, prohibits the eating of ice cream at a counter on Sunday.

South Carolina law provides that "*on the first day of the week, commonly called Sunday*," it is illegal to "*engage in*


*worldly work, labor, business*" or the sale of consumer goods or to employ others to do so. The one exception is made in Charleston County, where those who observe the Sabbath on the "seventh day of the week" (i.e., Saturday) may work on Sundays, as long as they refrain from working on Saturday.

You can't be arrested on a Sunday in Ohio. In fact, in the Buckeye State, you also can't be arrested on the Fourth of July or during a session of the State Congress.

There's a reason Pennsylvania car dealerships are closed on Sunday: It would be illegal for them to sell you a car. It's a vestige of Pennsylvania's blue laws—laws designed to keep Sunday a day of rest. And while many of those laws have been repealed, the one restricting the sale of vehicles remains on the lot. Seventeen other states including Iowa,

In addition to Iowa, according to the National Conference of State Legislatures, 17 other states including Missouri, Minnesota, and Illinois have laws banning or otherwise restricting the sale of motor vehicles on Sunday.

In Georgia, remember that, on Sundays, absolutely no one may carry an ice cream cone in their back pocket.

Children in the City of Rehoboth Beach, Delaware, are prevented from trick or treating should Halloween fall on a Sunday. A city ordinance mandates that, "*Such going door-to-door and house-to- house for treats shall take place on the evening of October 30" instead*." In any event, trick-or-treating is limited to between the hours of 6 p.m. and 8 p.m.

In New York City, it's illegal for a restaurant to serve an alcoholic beverage before 10 a.m. on Sunday. Until only recently, the ban extended until noon.

According to Maine's state code, the sale of cars and other motor vehicles on Sunday is strictly prohibited with

**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.

violators punishable by up to six months in jail and a $1,000 fine, along with having their auto dealer license revoked. The law applies to any person "*who engages in the purchase, sale, exchange or trade of a new or used car*" on the day of rest.

If you live in Hartford, Connecticut, it is illegal for a man to kiss his wife on Sundays.

**Party On…Or Maybe Not**

According to Alaska state law, an intoxicated person may not "*knowingly*" enter or camp out where alcohol is sold, nor can they get drunk in a bar and remain on the premises.

In South Dakota, liquor stores can't sell alcoholic candy containing more than 0.5 percent alcohol by weight.

According to one South Dakota law, liquor stores cannot sell candy containing more than 0.5 percent alcohol by weight, while in North Dakota, it is against the law to serve beer and pretzels at the same time.

Citizens of Oklahoma will never know the joy of a perfectly chilled beer, since any beer that's over 4 percent alcohol must be sold at room temperature.

Protecting the sobriety of their fish is very important to Ohioans, so there is a law stating that it is illegal to give alcohol to fish.

State law in Wyoming holds that "*no person shall move uphill on any passenger tramway or use any ski slope or trail while such person's ability to do so is impaired by the consumption of alcohol or by the use of any illicit controlled substance or other drug*."

It's illegal to sell liquor by the glass in over 25 counties across Kansas, which repealed prohibition a full 15 years after Congress. Individual counties in the state may by resolution or petition prohibit the sale of alcohol in public places where 30 percent or less of their gross revenue comes from the sale of food, according to state law.

In Maine, dancing is prohibited at establishments that sell liquor, unless the establishment has been issued a "*special amusement permit*."

Singing, along with whistling and hooting, on the streets of Danville, Pennsylvania, is considered a prohibited noise punishable by a hefty fine and/or jail time.

Liquor stores in Indiana can't sell refrigerated water or soda. The law specifies that a beer and wine store should be in the exclusive business of selling adult beverages and that any water or soda sold needs to be room temperature.

**Animal Farm**

In Georgia, those engaged in "*llama-related activities*," such as riding, training, or goofing around at a county fair, are responsible for any personal injuries they suffer.

The state's Department of Agriculture protects llama owners from liability in the event of harm or death with few exceptions, though someone may pursue legal action if they were simply watching from an authorized area.

Glendale, California's animal control laws specifically prohibit dog owners from bringing their dogs into elevators in public buildings. Service dogs are exempt.

Driving animals onto a railroad track in Montana "*with intent to injure the train*" can result in a fine of up to $50,000. Breaking this law can also result in a stay at the state prison not exceeding five years and other damages.

A Louisiana ordinance states that any individual involved in a "*bear wrestling match*" which is defined as "*a match or*

*contest between one or more persons and a bear for the purpose of fighting or engaging in a physical altercation*" has violated state law and can be fined up to $500 or imprisoned for not more than six months, or both.

In this, the Age of the iPhone, New York has banned the practice of taking a '*selfie*' with a tiger.

In Roeland Park, Kansas, the law prohibits the ownership of more than two dogs of six months age or older without a special permit.

Florida's elephant riders get no special treatment. If planning on parking their elephants at a paid meter, they must pop in some change, the more the better.

In its "*Noise, Odor, and the Like*" ordinance, the City of Galesburg, Illinois, state that "*no person shall keep or maintain any animal, poultry or fowl in such a manner to cause inconvenience or disturbance to other persons by reason of noise, odor, or other cause*."

In the municipality of French Lick Springs, Illinois, all black cats "*must wear bells around their necks on Friday the 13th*." The rule was introduced on October 13, 1939, "*as a war measure to alleviate mental strain on the populace*," and has technically been in effect ever since.

The State of Indiana bans both the shooting of fish or catching them with your bare hands.

In Kentucky, it is illegal to sell baby bunnies, baby chicks, ducklings, and other birds whose fur has been dyed. Violators can be fined up to $500.

Millcreek Canyon, Utah has made it unlawful to "possess an unleashed dog on even-numbered days."


**Better Tell Grandma**

According to the North Carolina Department of Public Safety, the number of Bingo sessions "*conducted or sponsored by an exempt organization shall be limited to two sessions per week and such sessions must not exceed a period of five hours each per session*."

Bingo is taken very seriously in Maine. State law there mandates that a person may assist another Bingo player by playing their cards while they take a bathroom break. The law, however, does not…repeat, does not… apply to those playing Beano, a popular, high stakes Bingo-like game of chance. No pun intended.

In North Carolina, a Bingo game being conducted or sponsored by a commercial organization may not last more than five hours. However, according to the law, non-profit groups can play for as long as they please.

In Bensalem, Pennsylvania, there is a law that states no person convicted of a felony may operate a Bingo game.

"*No distributor nor any person who has been convicted of a felony…shall have a pecuniary interest in the operation or proceeds of games of chance*."

**Food for Thought**

All members of North Dakota's Dry Pea and Lentil Council must be citizens. The organization was created in 1997 to promote certain agricultural industries, according to the State Historical Society of North Dakota.

In Wisconsin—America's Dairyland—many different kinds of state-certified cheeses, like Muenster, cheddar, Colby, and Monterey Jack, must be "*highly pleasing*" by law.

Anyone in Iowa trying to pass off margarine as real butter is guilty of a misdemeanor under food-labeling laws in Iowa. So-called '*renovated butter*' must also be labeled as such.

Looking southward, jambalaya prepared in "the traditional manner" is not subject to Louisiana's state sanitary code.

Kansans don't mess around with their cherry pie. At one point, it was illegal in the state to top a slice of cherry pie with a scoop of ice cream. According to the Kansas Secretary of State, it's unknown if the law has ever been enforced.

On the other side of the plate, so to speak, since 1999, in Vermont, when serving apple pie—the official state pie—"*a good faith effort*" must be made to accompany it with "*a glass of cold milk, a slice of cheddar cheese weighing a minimum of 1/2 ounce, or a large scoop of vanilla ice cream*."

**Whether the Weather**

Federal law dictates that anyone who "*issues or publishes a fake weather report and claims it's from the Weather Bureau is subject to imprisonment for not more than ninety days*."

In several states, it's illegal to perform activities that create changes in the composition or behavior of the atmosphere.

But not so in Colorado, where a permit is required by law. Weather modification there is not only possible, but it's actually a lucrative business as Colorado ski resorts pay private companies to burn silver iodide on the slopes. The material carries into the clouds and stimulates precipitation, which creates a fresh layer of powder for the skiers who swarm the state every winter.

**You Say 'Potato'…**

Visitors beware: it is strictly prohibited to pronounce "*Arkansas*" incorrectly. Per the state Code, the only acceptable pronunciation is "*in three (3) syllables, with the final 's' silent,*

*the 'a' in each syllable with the Italian sound, and the accent on the first and last syllables*."

Not to be outdone, the City of Joliet, Illinois, has drafted a special ordinance that defines the proper pronunciation of its name. "*The only official, correct and proper pronunciation of the name of this city shall be Jo-li-et: the accent on the first syllable, with the 'o' in the first syllable pronounced in its long sound, as in the words 'so,' 'no,' and 'foe,' and any other pronunciations to be discouraged as interfering with the desired uniformity in respect to the proper pronunciation of the name of this city*."

**What the…?**

This past Christmas, a police officer in Sudbury, Massachusetts, ticketed a motorist for violating a town ordinance prohibiting a driver from having a Christmas tree "*too big for his car*" tied to the vehicle's roof.

In Collinsville, Illinois, saggy pants have been banned since 2011. Under the law, pants must be "*secured at the waist to prevent the pants from falling more than 3 inches below the hips … causing exposure to the person or the person's undergarments*." The fine is $100 plus community service for the first offense, and $300 plus community service for subsequent offenses.

The New Orleans City Code states "It shall be unlawful and a breach of the peace for any person wantonly to curse or revile or to use obscene or opprobrious language toward or with reference to any member of the city fire department while in the actual performance of his duty."

In Pennsylvania, state law stipulates that "*a person is guilty of a misdemeanor of the first degree if he deals in humanity, by trading, bartering, buying, selling, or dealing in infant children*."

Rhode Island's '*Mayhem*' laws will slap you with one to 20 years in prison if you intentionally cut or bite off the limb or member of another human being.

In certain sections of Boulder, Colorado's University Hill neighborhood, a law—passed in 2001—prohibits the use of indoor furniture, such as couches, on front lawns or porches. The aim of the ordinance was "*to protect the public health, safety and welfare*" of the area's residents.

Hartford, Connecticut's City Code makes it illegal to collect "r*ags, paper, glass, old metal, junk, cinders or other waste matter in the city*" without a license.

In Mobile, Alabama, "*It shall be unlawful to sell, dispose of, give away or use within the city or its police jurisdiction articles known as stink balls or funk balls or anything of like nature, by whatever name known or called, the purpose of which is to create disagreeable odors to the great discomfort of persons coming in contact therewith*."

In 1974, Louisiana enacted a law making pro wrestling or boxing bouts that are "*sham or fake contests or exhibitions*" illegal within state lines. The law was amended to exempt pro wrestling from the prohibition in 2007.

A statute in Galesburg, Illinois, strictly prohibits the "*fancy riding*" of any bicycle on city streets, particularly "*riding with both hands removed from the handlebars, both feet removed from the pedals, or any other acrobatics*."

In Minneapolis, Minnesota, it is still illegal to wear a hat inside a movie theatre. Specifically, the city code provides that "*no person, during the performance of the program in a theater, auditorium, or place of amusement, shall wear any headgear*" or "*otherwise conduct himself in a manner which interferes unreasonably with the view or enjoyment of another person of the stage or screen or place of activity*."

Back in 1969, the Skamania County, Washington, Commission passed a law classifying the "*slaying of a Bigfoot to be a felony and punishable by 5 years in prison*." The law was later amended, designating Bigfoot as an endangered species. Wanting to make sure that all the bases are covered, the State of Washington has mandated that it is illegal "*to harass or otherwise disturb*" a Bigfoot.

Back to the future…Alaska State law mandates that the school year begins on the first day of July and ends on the 30th day of June.

**There is More…**

- It's illegal to carry away or collect seaweed at night in New Hampshire.
- Unmarried women cannot parachute on Sundays in Florida.
- In Ohio, every operator of an underground coal mine must provide an "*adequate supply*" of toilet paper with each toilet.
- Illinois forbids you from giving your dog a lighted cigar no matter how much he wants one.
- Any contest in which participants try to capture a greased or oiled pig is illegal in Minnesota.
- In New Hampshire, ice dealers who don't weigh the ice on request are subject to a $50 fine. Just to be on the safe side, the state prohibits selling lightning rods without a license.
- Grand Forks, North Dakota, forbids the throwing of a snowball on public or private property and you cannot throw candy from a float during a parade.
- It is illegal in Vermont to prohibit erecting a clothesline. The law forbids regulations that prohibit "*clotheslines, or other energy devices based on renewable resources*."

- Except in the case of an actual emergency, lying down on the sidewalk in Reno, Nevada, is strictly prohibited.

- It's illegal to wear slippers in public after 10:00 p.m. in New York City.

- In Rockville, Maryland, it is illegal to "*profanely curse and swear or use obscene language upon or near any street, sidewalk or highway within the hearing of persons passing by, upon or along such street, sidewalk or highway*."

- If you take longer than four minutes in an Alabama voting booth, you can be asked if you need assistance. If you don't, and there is a high volume of voters waiting, you are given one more minute to vote and then you will be be asked to leave.

- Deadwood, South Dakota, doesn't allow one to "*engage in psychic powers, spirits, seership, palmistry, necromancy, science cards, charms, potions, magnetism, or Oriental mysteries*."

- In Massachusetts, listening to a boom box without earphones in public can get you tossed in the 'gray bar hotel' for as long as 30 days.



- Every legislator, public officer being sworn-in and every lawyer admitted to the bar in Kentucky must take an oath stating that they have not fought a duel with deadly weapons.

- In the Village of Manteno, Illinois, "*No person shall drop, throw or place any used facial tissue or paper handkerchief upon any public way*."

- In West Virginia, it is a "*crime against the government*" to display or possess a red or black flag.

- Little Rock, Arkansas, Municipal *Code has made it* illegal to honk your horn after 9:00 p.m. at any place where sandwiches or cold drinks are served.

- By law, New Yorkers are prohibited from greeting each other by "*putting one's thumb to the nose and wiggling the fingers*"—a sign of derision known in Britain as "*cocking a snook*."

- Utah has made it illegal to "*cause a catastrophe*." State law defines a catastrophe as "*widespread injury or damage caused by weapons of mass destruction, explosion, fire, flood, avalanche, or building collapse*."

- So far as extensive research can tell, Chico is the only city in California, if not the country, where people so inclined are prohibited from owning a smelly animal hide, bowling on the sidewalk, or driving a herd of cattle or walking a leashed alligator down a city street.

For the record, Chico scores once more as my personal, all-time favorite.

According to the city—a self-declared "nuclear free zone"—City Code 9.60.30 mandates that "*no person shall produce, test, maintain, or store within the city a nuclear weapon, component of a nuclear weapon, nuclear weapon delivery system, or component of a nuclear weapon delivery system*."


By Barry L. Pinsky

# Financial Scams:
## Avoiding 'Too-Good-to-Be-True'

THE E-MAIL APPEARED without warning, a shot in the dark.

"*I want to share somethings (sic) with you and i believe it will be of great interest to you. Write back so i can tell you more."* Perhaps not the most compelling invitation in memory, but sufficient to solicit the perfunctory reply, *"I am writing back."*

With this token commitment of attention, a client, Jack Robinson (a pseudonym) , descended into a miasma of financial intrigue and misdirection.

His newfound correspondent, Joanna, promptly spun a tale of an abandoned fortune, anxiously awaiting Jack's petition.

"*A deceased client, Robert Robinson, a crude oil merchant residing in Canada, passed away in 2014 without any surviving relative*," wrote Joanna. "*Before his demise, I was his financial advisor. . . Since his demise, no one has made any claim on the money…it has become obvious that our dear client died with no known or identifiable family member. I want to present you as a beneficiary since you share the same last name*."

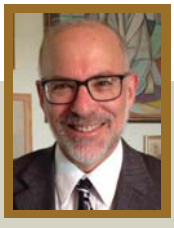
**The Hook is Baited**

Joanna offered to share the details of the estate and to facilitate the distribution of the inheritance, said to total millions of dollars, to Jack in exchange for a portion of the inheritance proceeds.

Jack Robinson is an intelligent, sophisticated, and successful professional in the creative arts. He is currently working on design projects around the world, and he did not just fall off the turnip truck last week. He continued the correspondence, but with a measured skepticism.

"*I have no knowledge of Canadian law*," he responded. "*As long as this is legally possible and will be done in accordance with the laws of Canada, I am happy to assist you*."

With her knowledge of Robert Robinson's financial and personal situation and the apparent lack of direction to the estate distribution, Joanna Fox insinuated herself into sharing in Jack's good fortune, as his confidant and insider intermediary,



**Barry L. Pinsky** is a Financial Advisor and First Vice President with UBS Financial Services in Encino and has been active in the financial services industry in the San Fernando Valley since 1997. He can be reached at barry.pinsky@ubs.com.

though he openly expressed his doubts about the legitimacy of these claims.

Nonetheless, Joanna persisted. She offered to provide documentation establishing the authenticity of the inheritance, in exchange for the execution of a proceeds-sharing contract agreement. Jack took the first step and executed the agreement, presuming that if the inheritance was non-existent, the agreement would be of no consequence.

Over the next few weeks, Jack received copies of Robert Robinson's death certificate and a power of attorney (POA) document establishing his eligibility as a legitimate heir, and access to brokerage statements specifying the substantial assets foretold, as well as a note from an agent of the Bank of Montreal Financial Group attesting to his apparent eligibility to receive the inheritance.

Throughout the process of documentation, Jack continued to perform what he believed to be an exhaustive due diligence process by verifying the identities of the intermediaries on Linked-In, Facebook, Instagram, the web site of the attorney providing the POA, and the site of the brokerage institution.

He became convinced that the institutional officers were genuine; that the assets were indeed authentic; and that he would, in fact, be able to claim what amounted to a substantial estate.

Jack went so far as to wire $30,000 from his bank to the brokerage house in Canada in order to "reactivate" the estate account which had supposedly been dormant for several years, and create a new account in his own name to receive the inheritance proceeds.

Subsequently, he was able to verify on-line that he had indeed established a new account in his own name, and, shortly after the first transfer of his funds, he received on-line access to the "reactivated" Robert Robinson account, complete with an account number, a pass key code, and an account PIN.

Jack was further informed that substantial funds were due against the estate for past income taxes and account maintenance fees which had not been paid in the years since the passing of Robert Robinson, and during which time the account had remained unclaimed.

The outstanding account fees and taxes totaled in excess of $175,000, and Jack was given routing instructions to which the requisite funds should be dispatched.

**Too Good to Be True**

Jack explained his need for funds to a financial advisor, and forwarded the transfer instructions, along with his request to wire the "required" funds.

Upon receipt of a copy of his wiring instructions, and after a review of the background narrative, a reputable financial service firm that had been consulted requested copies of the preliminary correspondence relating to the inheritance revelation.

A brief discussion with management confirmed the true fraudulent nature of this enterprise and a review of the full e-mail correspondence requesting the funds and providing account and wiring instructions revealed numerous procedural errors, inconsistencies, and diversions from standard operational norms.

An apparent once-in-a-lifetime, too-good-to-be-true windfall for a supposed heir was exposed for what it really was—a well-crafted, but unfortunately convincing scam.

Needless to say, the final transfer of funds from Jack's account was prevented, the "inheritance" was exposed as completely fraudulent, and reports were dispatched to appropriate the appropriate government authorities in both the U.S. and Canada.

Sadly, as scams go, the progression of this entire sorry affair is not atypical.

However, the level of sophistication in the counterfeit documentation, internet siting, and account verification reflected a high degree of sophistication and the enhanced availability of the technological tools criminals have at their disposal.

To the eye of a normal civilian victim such as Jack Robinson, the fraudulence was far from obvious.

Modern technology affords manifold opportunities to create counterfeit birth or death certificates, professional web sites, legal documents, social media sites and links, brokerage and bank statements which may appear genuine, but which are merely building blocks in an intricate fraudulent scheme.

**Red Flags**

A number of red flags appeared throughout the various stages of this unfortunate drama.

As generally occurs, the initial contact came completely out of the blue, from a totally unknown individual—the intermediary—who introduced the scheme.

The intermediary adamantly and repeatedly insisted upon complete confidentiality and secrecy in order to prevent interference by "corrupt and rapacious government officials."

The non-existent estate had been amassed by a mythical deceased relative who was heretofore unknown to the quarry Jack. As the scam progressed, the intermediaries requested identity information and documentation from him, along with information relating to his personal bank accounts.

Throughout the incident, requests for money escalated—initially, $1,700 was requested to split attorney fees; then, he was told, thousands more needed to be transferred to the bank for expenses such as account activation, documentation, and other fees.

As the scam climaxed, demands for funds accelerated to reach over $175,000 for back-end income taxes, account maintenance costs, and transaction charges.

Also, throughout the process, a number of tell-tale spelling, grammatical, and procedural errors could be noticed in the correspondence.

A few examples of irregularities in the correspondence may be instructive.

First of all, notifications, documentation, and initial instructions in inheritance cases are never, under any circumstances, transmitted via e-mail. Such official notification would arrive via U.S. Postal Service or courier.

Grammatical, spelling, and syntax errors are clear warnings of suspicious origins. From the initial e-mail contact, Joanna demonstrated serious flaws in her written communications.

> "Never make arrangements for contracts, payments, wire or electronic transfers, or credit card charges only with trusted individuals and institutions."

Subsequently, a mailing address was given as "*563 Ferguson driver*," rather than "*563 Ferguson Dr*." or "*563 Ferguson Dr*."

One e-mail referred to "*This account have been dormant*," and a later explanation of procedures included a cumbersome run-on sentence—"*There wouldn't be any more charges after this, a receipt of payment from the bank, an Inland Revenue receipt along with certificate of cleared source of funds will be sent to you, which will be shown to any bank you wish to transfer your funds to avoid any further questioning*."

A bank notice sent by the so-called Chief Operating Officer included the information, "*We have done some verification and the certificate is genuine, we shall invite the attorney tomorrow to sign the final approval documents as soon as we concluded tomorrow we shall make you have access to his account*."

And a bank was identified as "*Sun Trust*," rather than the correct "*SunTrust*."

Throughout the e-mail correspondence, no effort was made to secure the transmitted information from hacking or other cyber intrusion. Confidential account numbers, pass codes and PIN numbers were repeatedly sent in unsecured e-mails, contrary to standard best practices.

In the correspondence e-mail addresses, obscure, suspicious domain names masked the deceit of falsified accounts.

**What to Do?**

First and foremost, to prevent being victimized by such scams, maintain vigilance, be aware of the types of schemes that are being hatched, and, most importantly, be supremely skeptical of any enterprise which promises unusual or quick riches.

Never make arrangements for contracts, payments, wire or electronic transfers, or credit card charges only with trusted individuals and institutions; not with unknown people or entities.

Do not provide confidential information such as social security numbers, bank or brokerage account numbers, PINs, birth dates, or addresses to parties with which there has been no prior positive relationship.

Watch for suspicious warning signs in communications such as spelling or grammatical errors, bizarre syntax, or procedures which appear even slightly problematic.

And please do not send money without verifying and confirming its ultimate destination in writing and verbally.

Remember, no one is immune from being scammed. It is a dangerous world out there, and that if it sounds too good to be true, it probably is.

**ROBO-TRENDS:** *The National Law Review* recently published an article laying out several major trends in emerging robotics technology.

First on the list is the growing investment in robotics companies. "*With plenty of cash in the market, venture capital (VC), private equity (PE), and strategic investors aim to capitalize on and steer development of disruptive robotics technologies.*"

According to the article, Intellectual Property (IP) is critical for robotics innovations "*as patents and trade secrets continue to be essential tools for protecting robotics innovations and maintaining a competitive edge. Strategic companies will increasingly leverage design patents to protect the look and feel of robots and user interfaces in addition to the how it works protections afforded by utility patents.*"

The increasingly important role that Cobots—robots that work alongside humans—are taking in the workplace. "*Many companies dream of full automation, but the reality is there are many tasks robots just can't perform as well as humans at this stage. Cobots will help bridge the automation gap as developers continue efforts to perfect robotic Artificial Intelligence (AI).*"

Progress in robot interoperability will continue to surge "*as companies adopt robotic platforms from multiple developers, these diverse platforms need to be able to communicate and work together. This interoperability, which is similar to standard setting and interoperability pushes in analogous tech industries such as computers and telecommunications, is expected to become more prevalent as robotics adoption becomes more widespread.*"

*Hacking will continue to be a top concern for the* robotics industry with increased efforts put in motion to not only prevent hacking, but mitigate liability, as well. "*Hackers taking control of robots could cause significant damage, disruption, and even bodily harm. Questions of liability also arise in this context, which also are driving an intensive push by industry and government to head off evolving threats.*"

**HEADS UP!:** Federal government labor agencies are expected to pursue an especially aggressive agenda this year.

According to Executive Order 12866, signed by President Bill Clinton in 1993, federal agencies are required to publish an agenda of regulations they plan to propose, promulgate, or review in the coming one-year period.

The Department of Labor's regulatory agenda has outlined a menu of ambitious goals for its multiple agencies in 2022, as does President Biden's 'Build Back Better Framework.'

Employers, sources say, are advised to brace themselves for increased enforcement activity from Labor agencies such as the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and the Office of Federal Contract Compliance Programs.

**PLEASE RELEASE ME:** In late December, less than a full month after signing a $35,000/seven-month contract with the State Bar of California, Sacramento Mayor Darrell Steinberg said he wants to be released from the agreement to help the Bar develop and promote proposals to license legal paraprofessionals.

A spokesperson for the mayor said he realized he doesn't have time for the work, but would be glad to help as a volunteer.

Steinberg has been challenged recently by issues involving Sacramento's chronic homelessness problem; meanwhile, Bar leaders had already said they were reassessing the contract after lawmakers questioned whether it was "an example of the Bar straying from its core purpose."

**INVASION OF PRIVACY?:** The states of Texas, Washington, and Indiana, and the District of Columbia have filed suit against Google —a subsidiary of multi-national tech conglomerate Alphabet Inc.—over the company's allegedly deceptive location-tracking practices that they claim invade users' privacy.


In a statement, Washington D.C. Attorney General Karl Racine's office stated that, "*Google falsely led consumers to believe that changing their account and device settings would allow customers to protect their privacy and control what personal data the company could access.*"

The statement went on to say that the tech giant "continues to systematically surveil customers and profit from customer data."

According to *American Lawyer* magazine, the lawsuit cites a 2018 article by the Associated Press that revealed Google was continuing to track the location of users even when they switched off the Location History setting on their cellphones.

Google claims that switching the setting off would stop location tracking, but there was actually a different setting called Web & App Activity that continued to track the location and personal data of its users.

In a statement, Mountain View, California-based Google, said the suit was based on "inaccurate claims and outdated assertions about our settings. We have always built privacy features into our products and provided robust controls for location data. We will vigorously defend ourselves and set the record straight."

**PRIVACY PROTECTION:** Over half of all Americans would support a federal data privacy law, according to a recent poll conducted by *Politico* and *Morning Consult*. The poll found that 56 percent of registered voters in the U.S. would either "strongly or somewhat support" a proposal to "make it illegal for social media companies to use personal data to recommend content via algorithms."


By John P. Stigi III, Valerie E. Alter, and Gian A. Ryan

# SLAPPed: SEC Filings Protected or No

*This article originally appeared as a blog post on the Corporate & Securities Law Blog: www.corporatesecuritieslawblog.com and is reprinted here with permission.*

ON DECEMBER 27, 2021, THE California Court of Appeal issued two decisions addressing whether claims arising from statements made in filings with the Securities and Exchange Commission fall within California's statute designed to deter "*strategic lawsuits against public participation*," or SLAPPs, arising from protected speech.

In *Sugarman v. Benett* and *Sugarman v. Brown*, the Court held that state law claims arising out of disclosures in federal SEC filings may be subject to California's anti-SLAPP statute, giving defendants a powerful tool to dispose meritless claims early in the process.[1] [2]

*Benett* and *Brown* stem from the same underlying complaint, brought by the former CEO of Banc of California and his trust—collectively, the plaintiff—against Banc, its board, its former auditor and its former chief financial officer, among others, in the wake of the events that led the plaintiff's resignation from his positions at Banc in January 2017.

The plaintiff asserted a number of tort claims against the defendants, which arose out of alleged misleading statements regarding Banc's financial projections, earnings per share guidance and corporate governance made in SEC filings.

In response to the lawsuit, Banc and its directors brought anti-SLAPP motions, as did Banc's former auditor and former chief financial officer. Resolution of an anti-SLAPP motion involves two steps. The defendant must first establish that the challenged claim arises from activity protected by California Code of Civil Procedure.[3]

If the defendant makes the required showing, the burden then shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success on the merits.

The trial court granted in part and denied in part Banc's and its directors' anti-SLAPP motions. Both parties

**John P. Stigi III, Valerie E. Alter, and Gian A. Ryan** are, respectively, a Partner in the Business Trial Practice Group and leader of the Securities Enforcement and Litigation Team; Special Counsel; and an Associate in the Century City office of Sheppard Mullin. John Stigi III can be reached at jstigi@ sheppardmullin.com.

appealed. The trial court granted Banc's former auditor's motion and granted in part and denied in part the former chief financial officer's motion.

The plaintiff and the former chief financial officer both appealed.

*Benett* addresses the anti-SLAPP motion brought by Banc and its board, while *Brown* addresses the former auditor's and former chief financial officer's anti-SLAPP motions.

Although the Courts address both prongs of the anti-SLAPP statute—whether the claims in question fall within the anti-SLAPP statute and the plaintiffs met their burden of proving success—this post focuses on the prong one analysis, as that was the issue of first impression.

The Court in both cases looked to *Hawran v. Hixson*.[4]

In *Hawran*, the trial court held that claims arising from statements made in filings with the SEC fall within California's anti-SLAPP statute.

However, because the plaintiff did not challenge that finding on appeal, the Court of Appeal in *Harwan* did not reach the issue.

Consistent with the trial court's reasoning in *Hawran*, the Court of Appeal in both *Benett* and *Brown* affirmed the trial court's rulings that statements made in Forms 8-K, 10-Q and 10-K—all of which publicly traded companies are required to file with the SEC—fall within the anti-SLAPP statute.

Such statements constituted statements in connection with an issue under consideration or review by an official proceeding and also fell within the anti-SLAPP statute's catchall provision for speech in connection with an issue of public interest.[5] [6]

> "The California Court of Appeal issued two decisions addressing whether claims arising from statements made in filings with the Securities and Exchange Commission fall within California's statute."

In concluding that the Banc's Forms 8-K,10-Q and 10-K were protected under the Code as statements made in connection with an issue under consideration or review, the Court relied heavily upon the trial court's reasoning in *Hawran*.[7]

There, the trial court found the *Hawran* defendant's "Form 8-K put the issues identified in the form under consideration or review by the SEC,"and that the company's related press release, "*from which [the plaintiff's] claims arose, was thus protected as a writing made in connection with an issue under consideration or review by...any other official proceeding authorized by law*."[8]

These mandatory SEC filings "*allow the SEC to determine whether to investigate a particular transaction*."[9]

Thus, the Court of Appeal in *Benett* and *Brown* agreed with the trial court in *Hawran*, extended its reasoning not just to Form 8-K, but also to form 10-Q and 10-K, and held that statements made in such filings fall within the scope of the Code as statements "*made in connection with an issue under consideration or review*" by a governmental body.[10]

With regard to Form 10-K in particular, the Court in *Brown* noted that require the SEC to review disclosures made by issuers of securities on a regular and systematic basis.[11]

This review requirement made clear that claims arising out of statements in a Form 10-K fall within the anti-SLAPP statute.

As to Forms 8-K and 10-Q, Plaintiff attempted to argue in Benett that the

anti-SLAPP statute does not apply because unlike Form 10-K, Forms 8-K and 10-Q are not *specifically* designed to trigger an SEC investigation.

The Court disagreed, noting that "*Form 8-K filings are required by the SEC to report specified material changes and other events the registrant deems important to investors*."

Even though these filings may not be designed to trigger an investigation, they nonetheless "*subject the information reported to SEC review,*" which is sufficient to fall within subdivision (e)(2) of the anti-SLAPP statute.

As for subdivision (e)(4) of the anti-SLAPP statute, the so-called 'catchall' provision applicable to claims arising out of speech in connection with a public issue or an issue of public interest, the Court of Appeal reasoned that statements about Banc's financial position in SEC filings "*were public statements …and were likely to impact individual investors and the market*."

Such statements "*had a high degree of closeness to the public interest in the performance of a publicly traded company*,"and fell within the scope of the anti-SLAPP statute. As the Court observed in *Brown*, "*[t]he financial projections of a large, publicly traded company like Banc are of great interest to a significant community of investors*."

Because *Benett* and *Brown* hold that the anti-SLAPP statute applies to claims arising out of statements made in Forms 8-K, 10-K and 10-Q, they provide another arrow in the proverbial quiver for defendants faced with California state law claims arising out of statements in disclosures to regulators, particularly to the SEC.

That said, it is important to recognize the limits of these cases: they did not hold that "*all statements to a regulator are protected*," leaving some room for creative arguments by future plaintiffs' counsel, particularly under subdivision (e)(4).

Moreover, although *Benett* extended protection not just to the SEC filings themselves, but also to "*private statements*" that were "*related directly to the investor presentations*" because the "*connection between [the] statements and the investor presentations and SEC filings is clear*," there is likely a point at which the "*connection*" will become too attenuated, and the anti-SLAPP statute will not apply.

Later cases will draw these lines.

[1] *Sugarman v. Benett*, No. B307753, 2021 WL 6111725 (Cal. App. Dec. 27, 2021).
[2] *Sugarman v. Brown*, No. B308318, 2021 WL 6111718 (Cal. App. Dec. 27, 2021).
[3] California Code of Civil Procedure § 425.16.
[4] *Hawran v. Hixson*, 209 Cal.App.4th 256 (2012).
[5] California Code of Civil Procedure § 425.16(e)(2).
[6] *Id.* § 425.16(e)(4).
[7] *Id.* § 425.16(e)(2).
[8] *Hawran v. Hixson*, 209 Cal.App.4th at 269.
[9] *Id.* at 263 n.2.
[10] California Code of Civil Procedure § 425.16(e)(2).
[11] 15 U.S.C. § 7266(a) and (c).


By Practice Panther

# The Business of Law: Practical Marketing Tips for Law Firms

LAWYERS GET INTO LAW TO practice, not to focus on administrative tasks or marketing.

However, running a law firm is much more than practicing law—it is running a business.

If law firms want to stay in business, they need to put effort into keeping abreast with legal marketing trends to attract new clients and keep the firm growing and profitable at the same time.

According to recent research, 57 percent of clients look for a lawyer on their own, and many use the internet to conduct their search for the right law firm.

In addition, the research found that 66 percent of solo lawyers do their own marketing, while only 46 percent of law firms even have a budget for marketing.

The global market size of the legal services industry is projected to grow over $900 billion by 2025, so it is primed for innovation and evolution.

As a result, law firms need to stay current on legal trends and invest in marketing to be part of this massive industry growth.

Here, then, are the top 2022 legal marketing trends:

• **Setting SMART Goals:** No strategy is worthwhile without goals and SMART goals—specific, measurable, achievable, relevant, and time-bound—ensure marketing results match their intent.

Setting goals allows marketers to see what's working and what isn't to refine and reconsider the strategy.

For example, a goal to generate new clients doesn't fit the SMART goals framework.

Instead, the goal should be crafted to increase the number of client leads generated per month from 15 to 30 as a result of the newsletter. This should be achieved in six months.

Each goal should be aligned with a purpose or what the law firm is hoping to achieve.

A law practice management software developer, Florida-based **PracticePanther** also produces editorial content for the National Law Review and several other national legal publications. The firm can be reached at help@practicepanther.com.

Examples of general marketing goals include brand awareness; lead generation; client acquisition; and increased customer value.

• **Creating a Brand:** Branding isn't limited to retail corporations.

Law firms need a brand, too as a brand can help a law firm attract the right type of client and grow.

Creating a brand is a long process, but it starts with a thorough analysis of the mission and the firm's vision and core values, and the unique value proposition which separates it from its competitors.

• **Running an SEO Campaign:** Search engine optimization (SEO) is vital to any effective marketing plan in 2022.

Competition is fiercer than ever, so law firms need to stand out and gain a ranking on the first page of the search engine results to drive traffic to its website.

Law firms should use tactics such as content marketing, strong keyword research, optimized images, intuitive website structure, and a fast and secure web hosting platform to improve their SEO.

• **Embrace Content Marketing:** Content marketing is essential for a law firm from both an SEO and a general marketing perspective.

Valuable content turns a law firm into a thought leader in the field or practice area, bringing clients back when they need a solution to their legal problems.

It is important for firms to create in-depth, original content that addresses common questions for the target audience. A good place for firms to start is with a legal blog that addresses topics such as frequently asked questions (FAQs) from potential clients.

• **Explore Video Marketing:** Video marketing is sweeping the marketing world.

It has plenty of value for law firms as potential clients are far more likely to be receptive to video rather than written formats since people are more inclined to skim their sources of information.

Using a video gets the message across and can serve to humanize the law firm's brand.

Videos come in many shapes and forms, including animated explainer videos that break down complex legalese; spokesperson videos with a partner answering law-related FAQs; and client testimonials to showcase how the firm has helped them.

These videos can be used on the firm's website, emails, or social media accounts like YouTube and Facebook.

• **Focus on the Right Social Media Platforms:** Plenty of law firms use social media platforms, but not all are created equal.

It is challenging to maintain accounts on every social media platform, so it is best for law firms to select the platforms that have the most prospective clientele.

When a law firm focuses on selecting the ideal social media platforms, it can develop a clear idea of how clients and other law firms interact and, as a result, increase their engagement with followers and increase their social media presence.

• **Post Reviews from Clients:** Client reviews go a long way in helping law firms attract new clients and earn a higher search engine ranking.

If a law firm doesn't garner a lot of reviews, it is important to prompt clients to leave a review on social media, Google, or the website.

If getting reviews is a challenge, law firms can create incentives for staff to ask for reviews and how they can potentially impact the firm, while clients can be incentives can be offered to clients. Keep in mind that video reviews or testimonials can go a long way in increasing credibility for a firm.

# Retrospective

*If you were a teenager and spent any part of the '60s or early '70s in the Valley, it won't take much effort to recall listening to 93-KHJ 'Boss' radio.*

*The station's popular line-up of 'rock jocks cornered almost 50 percent of the region's teenage listening audience with hip banter and playlists that covered all the bases from The Supremes and Led Zeppelin to the Beach Boys and Jefferson Airplane.*

*The station entered a float in the 1970 Rose Parade which carried disc jockeys (left to right) Scotty Brink, Robert W. Morgan, Sam Riddle, The Real Don Steele, Humble Harve, Charlie Tuna (on the very front of the float), Bill Wade, and Johnny Williams, all stylishly decked out in oh-so-cool polyester pants and faux-leather jackets.*

• **Showcase Case Studies:** Case studies are in-depth analyses that demonstrate a firm's expertise and success on behalf of its clients.

Law firms should have a well-organized page with current, comprehensive case studies that highlight successful case outcomes so clients can find studies similar to their own.

• **Create an Email Marketing Campaign:** Despite social media and other forms of communication, email marketing remains an incredible outbound marketing tool that's still important in 2022.

Nearly 60 percent of marketers say that email delivers the highest ROI, no matter the industry.

Sending out targeted, value-packed emails can help a law firm build credibility, convert new leads, and attract new and repeat customers.

Once an email list is built, law firms can segment the list according to practice area, and the stage of the client's journey, as well as their location, and other useful information to create highly targeted email messaging campaigns.

• **Use Automation to Track Legal Marketing Trends:** The legal sector is traditional, but legal practice management software (LMS) is the way modern firms get ahead.

LMS can assist a law firm in a wide variety of lucrative business operations including streamlining billing, invoicing managing client communications, and tracking time.

With the burden of marketing tasks, having legal practice management software gives law firms the ability to automate many day-to-day tasks, thus freeing time to focus on their marketing efforts.

It also offers automation solutions for marketing efforts, such as custom tagging to track lead sources or assigning marketing tasks through workflows to ensure a lead is never overlooked.

2022 SFVBA MCLE MARATHON TO GO

# MCLE MARATHON–TO GO

*Fulfill Your MCLE Requirements the Easy Way!*

## 25-Hour MCLE Bundle

**Specialty Credits Included**

**$205 Member Rate; $305 Non-Member Rate**

Shipping and Tax Included!

(12.5 Hours Eligible for Participatory Credit/12.5 Hours Self-Study)

## 6-Hour MCLE Bundle

**Specialty Credits Only**

**$80 Member Rate; $120 Non-Member Rate**

Shipping and Tax Included!

(Eligible for Participatory and/or Self-Study)

Enjoy some of the best seminars the SFVBA has offered in the comfort of your home and office! The SFVBA with audio partner Versatape offers the above packages to help you meet your mandatory CA State Bar Reguirements. Compliance Group A-G is due February 1! Audio files on flash drive will be shipped via Versatape or audio downloads available. Join SFVBA and register today for member discount!

**Contact events@sfvba.org, call (818) 227-0495 or register online at www.sfvba.org.**

Versatape

San Fernando Valley Bar Association

*founded in 1926*

# Referring the Best Attorneys Since 1948

The Attorney Referral Service of the SFVBA is a valuable service, one that operates for the direct purpose of referring potential clients to qualified attorneys. It also pays dividends to the attorneys involved. Many of the cases referred by the ARS earn significant fees for panel attorneys.

## Programs

- Senior Citizen Legal Services
- Modest Means Program
- Speaker Bureau
- Family Law Limited Scope Representation

Hablamos Español

Attorney Referral Service

San Fernando Valley Bar Association

MEETS ABA STANDARDS FOR LAWYER REFERRAL
AMERICAN BAR ASSOCIATION
THE RIGHT CALL FOR THE RIGHT LAWYER

Certified Lawyer Referral Service
No. 0006

**(818) 340-4529**

www.SFVBAreferral.com

# A Failure to Provide

**LENA SILVER**
Associate Director of
Litigation and Policy, NLSLA

lenasilver@nlsla.org

HUNGER CAN'T WAIT. That is why the state of California requires counties to expedite the processing of certain food assistance applications for people with extremely low incomes and those whose housing costs exceed their resources or income for the month—and process them within three days, while federal law mandates that expedited food assistance benefits be provided in no more than seven days.

In Los Angeles County, though, thousands of vulnerable families are left without access to food assistance every month because the County fails to process their applications on time.

In September 2021, the County failed to meet the state's three-day timeline for nearly one-third of all eligible applicants, leaving almost 5,000 individuals and families who qualify for expedited benefits without access to the state's CalFresh program.

Over the past year, the County failed to provide timely benefits to more than 54,000 households, forcing some applicants to wait more than a month to receive emergency food assistance.

Neighborhood Legal Services of Los Angeles County has joined with the Western Center on Law and Poverty, the Public Interest Law Project, and pro bono firm Sidley Austin to file a lawsuit against Los Angeles County, demanding that it comply with its obligation to grant expedited CalFresh benefits to its neediest applicants.

NLSLA and its partners are representing two organizations in the lawsuit—Hunger Action Los Angeles and the Los Angeles Community Action Network—as well as one applicant affected by these delays. The harm that results when people, especially children, go hungry are significant, far-reaching, and undisputed. Even short periods of hunger can have profound

> "When someone is hungry, every hour—every minute—matters and in Los Angeles County, parents shouldn't have to wonder whether they can provide for their children's most basic needs."

and long-lasting effects on an individual's physical and mental well-being and can also negatively impact an adult's ability to work and children's attendance and focus at school. People who are eligible for expedited service CalFresh are already in desperate financial situations with many homeless or fleeing domestic violence. Our individual applicant, Paul, was 17 years old when he applied for CalFresh benefits after a stroke left his father unable to work as a day laborer and his family without enough resources for food.

Paul should have received benefits within the three-day mandate, but, instead, 17 days passed before someone from the County called once and left a message.

When Paul attempted to return the call, he was greeted by a "high call-volume" message and then disconnected. A few days later, he received a letter stating that his application had been denied.

While the NLSLA was able to get Paul and his family approved for benefits, our advocates realized that many other people were facing similar weeks-long delays that left them without access to food.

Our lawsuit, filed in Los Angeles Superior Court in November, includes data showing that the County has been in violation of both state and federal law for months.

When someone is hungry, every hour—every minute—matters and in Los Angeles County, parents shouldn't have to wonder whether they can provide for their children's most basic needs.

To learn more about NLSLA's work on behalf of people living in poverty, or to get involved, please visit nlsla.org.

# How Much is Too Much?

*Dear Phil,*

*What are some guidelines for negotiating compensation when I bring multi-million dollar litigation into my firm? I am thinking of 30% of whatever the firm gets in compensation (not costs) plus my regular hourly wage. Is this reasonable? I don't want to start out at such an extreme point that I cannot it back to reasonable and conclude the deal. But I want to get everything I can reasonably get."*

*Sincerely,*
*Faircomp*


*Illustration by Gabriella Senderov*

DEAR FAIRCOMP:

This is a complicated question and there are a lot of variables to consider before simply making a blanket demand.

For instance, how long have you been at the firm? Is this is single case or a new client that is going to bring repeat business? Have you brought in business before? How many years have you been practicing law?

If you are seasoned attorney who is set to bring in continuous business in excess of 2 million dollars for the firm, and have been with the firm for 3-5 years, you can make a request for 30 percent of the attorney's fees collected.

Don't be surprised when you end up getting between 15-25 percent.

At 30 percent the profit margin to the firm and its partners will really start to slim down, so the incentive may not be there for the firm to support the business.

You, as the attorney bringing in the business, need to find the sweet spot where you are getting fairly compensated but you are also making it worth the firm's efforts to support the business with staffing needs etc..

You may be better off taking a smaller percentage with a guarantee from the firm that you will be supported. Then, as the business blossoms, you can renegotiate.

Another option is to have a tiered approach, if you are confident that the cases or business will be consistently large. You could negotiate for 15 percent of the first million, 25 percent between 1-2 million and 30 percent of anything above 2 million.

Bottom line, have your end game in mind with respect to where you see yourself with this business because if the firm says "no" to an unreasonable demand, you need to decide how willing and able are you to walk out the door with that business and get a better deal. Chances are, that is not as easy as you think it is.

Best,

*Phil*

**Dear Phil** is an advice column appearing regularly in *Valley Lawyer* Magazine. Members are invited to submit questions seeking advice on ethics, career advancement, workplace relations, law firm management and more. Submit questions to editor@sfvba.org.

# EXCLUSIVE **FREE** MCLE OFFERS FOR SFVBA MEMBERS

San Fernando Valley Bar Association
*founded in 1926*

## OPPORTUNITY TO RECEIVE

# FREE

## MCLE ANNUALLY WITH SFVBA MEMBERSHIP

1. **8+ FREE** sponsored live **MCLE seminars** per year
2. **1 FREE** self-study hour **MCLE audio MP3 seminars**—including specialty credit of your choice—with early renewal
3. **1 FREE** self-study hour **MCLE audio CD**—including specialty credit of your choice—at Member Appreciation Dinner
4. **FREE Fastcase webinars**
5. Purchase **MCLE Marathon** in a box! **12.5 MCLE hours** for low purchase price! CD or audio download! Includes specialty credits!
6. And admission to low-cost seminars, webinars, and ***Valley Lawyer* MCLE articles**

## THE SFVBA MAKES EARNING YOUR MANDATORY MCLE CREDITS SIMPLE AND EASY!

Find more member benefits at **www.sfvba.org**

# CLASSIFIEDS

## ATTORNEY-TO-ATTORNEY REFERRALS

**STATE BAR CERTIFIED WORKERS COMP SPECIALIST**

Over 30 years experience-quality practice. 20 percent referral fee paid to attorneys per State Bar rules. Goodchild & Duffy, PLC. (818) 380-1600.

## SPACE AVAILABLE

**ENCINO**

Encino Office in Class A Bldg. Appx. 14'x16' office w/floor to ceiling windows & 180° view of Valley in shared 1,100 ft 10th Fl Suite w/room for asst. Call Richard (818) 788-8900.

**SHERMAN OAKS SUBLEASE**

Large executive office (22'x18') with views of hills (btw. Woodman and Hazeltine). $950/month. Secretary space available. Contact David (818) 907-9688.

**SHERMAN OAKS**

Single Office Space w/Secretarial Bay in Comerica Bldg. Professional suite with CPAs and Tax attorneys in the Sherman Oaks Galleria, 10th fl., 12 mo. lease. Amazing views. Relaxed atmosphere. First month & deposit due upon entry. Call (818) 995-1040.

**WOODLAND HILLS SUBLET**

Window Offices (apprx. 10'x14'), Class A Bldg, Ventura & DeSoto, unfurnished, secretarial bay avail, use of two conf rooms, copier/scanner. Call or text (805) 953-6747.

## SUPPORT SERVICES

**PROFESSIONAL MONITORED VISITATIONS AND PARENTING COACHING**

Family Visitation Services • 20 years experience offering a family friendly approach to high conflict custody situations • Member of SVN • Hourly or extended visitations, will travel • visitsbyllene@yahoo.com • (818) 968-8586/(800) 526-5179.

## HIRING

Ekerling & Doherty is hiring a licensed family law attorney with two years of experience. Send resume and cover letter for consideration to ekerlinganddoherty@gmail.com



SFVBA Inclusion & Diversity and Membership & Marketing Committees

# DINNER AT MY PLACE

*A member benefit to help members get to know each other in an intimate setting and spur referrals.*

San Fernando Valley Bar Association
founded in 1926

**PRESIDENT'S CIRCLE**

WE RECOGNIZE THE FOLLOWING PRESIDENT'S CIRCLE MEMBERS FOR THEIR DEDICATION TO THE SFVBA AND THE COMMUNITY.

Alpert Barr & Grant APLC
Brot • Gross • Fishbein • LLP
Brutzkus Gubner Rozansky Seror Weber LLP
G&B Law, LLP
Kantor & Kantor LLP
Kraft Miles ALC
Law Offces of Gerald L. Marcus
Lewitt Hackman Shapiro Marshall & Harlan ALC
Neighborhood Legal Services of Los Angeles County
Nemecek & Cole
Oldman Cooley Sallus Birnberg & Coleman
Stone | Dean
The Reape-Rickett Law Firm

- **SFVBA membership for every firm attorney and paralegal**
- **Prominent listing in *Valley Lawyer* and firm logo on President's Circle page of SFVBA website**
- **Recognition and 5% discount on tables at Bar-wide events, including Judges' Night**
- **Invitations to President's Circle exclusive events with bench officers, community leaders and large firms**

Contact SFVBA Executive Director Rosie Soto Cohen at (818) 227-0497 or rosie@sfvba.org to sign up your firm today!

# LEWITT | HACKMAN

SHAPIRO | MARSHALL | HARLAN

A LAW CORPORATION

CALIFORNIA'S TOP RANKED LAW FIRMS

BASED ON AV

AV® PREEMINENT™ Martindale-Hubbell Lawyer Ratings


16633 Ventura Boulevard, Eleventh Floor
Encino, California 91436

lewitthackman.com
818.990.2120