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The Sweat Standard of Money - Part II

- A. NEWS TO USE -**A1. Using Arbitration to Lower Costs**

You have a contract dispute that cannot be resolved. Now what? Well, the next step is often to get assistance. That is, to go to court.

There are some advantages to going to court, and some disadvantages. Courts usually have a relatively inexpensive filing fee. However, using the judicial system sometimes provides a judge or jury who is not familiar with the subject-matter of the dispute, the litigation is usually public, and there are multiple layers of appeals. Although a system of intended fairness, courts have so many protective mechanisms, that taking a dispute to an ultimate non-appealable award can be extremely expensive in time and attorneys' fees.

A note about attorneys' fees. You may not know it, but attorneys' fees are usually only available if a contract provides for attorneys' fees, or if an applicable statute provides for attorneys' fees. For example, let us say you have a claim worth \$25,000. That is a lot of money by many estimations. However, if there is no applicable contract provision or applicable statute, attorneys' fees generally are not recoverable. Many, if not most, attorneys do not accept contract litigation on a contingency basis. Unlike the industry-standard for personal-injury cases, contract litigation is usually handled for the servicing attorney's applicable hourly rate; accordingly, you could easily spend \$25,000 to take a case to trial. The net effect is that you might break even — or even lose money — for the effort. The lesson known by sophisticated business people is to have a contractual provision setting forth attorneys' fees, even if some something as basic as, "**Interest on overdue invoices will accrue at the lesser of 1.5% per month or the highest rate permitted by law. You are responsible to indemnify and hold us harmless for your breach of the terms hereof, including, but not limited to, all costs of collecting overdue invoices, including costs and attorneys' fees.**"

Back to arbitration. There are two kinds of arbitration. One type of arbitration is called "statutory arbitration" or "compulsory arbitration" because there is a statutory requirement compelling you to arbitrate before you get to see a judge in court. Many court systems have statutory arbitration for small cases. If you lose a statutory arbitration, you appeal to the trial court. In this case, statutory arbitration is part of the judicial court system. It is sort of a case before a case.

The other type of arbitration is private arbitration, a private process of resolving disputes outside of the judicial system. Private arbitration is distinct from the judicial system, with the exception that the

law provides that the courts will respect the award for enforcement purposes. That is, even though you did not use the court system to resolve the dispute, the court system will respect the private arbitration award and send the Sheriff out to collect the judgment. The courts are glad for private arbitration, since it helps resolve the dispute without judicial process.

The [American Arbitration Association](#) is a leader in providing arbitration services, although there are many qualified private arbitration companies. Private arbitration is a controlled settlement mechanism outside of court whereby the parties indicate in a contract something like, "if we have a dispute, we will settle it amongst ourselves and we will hire an arbitrator to assist us." Actually, it is stated a bit more formally than that statement, something like: **"In the event of any dispute arising from, related to, or in connection with this agreement, the parties agree to settle the dispute in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The award may be entered in any court having jurisdiction thereof."**

But, let us not get ahead of ourselves. What is an arbitration procedure? Simply put, an arbitration is a streamlined procedure for hearing disputes without a "judge" acting as such. It usually occurs in a small room with an attorney or other "arbitrator," evidence is presented, with witnesses, relaxed rules of evidence and an ultimate award. That is all. It is a private hearing, just less formal than court. Remember, arbitration is merely an agreed and controlled private settlement mechanism.

A private arbitration can be based upon a "demand" or a "submission." An arbitration is based upon a demand when the contract at issue has an arbitration provision. Thus, a party has a contractual right to demand the arbitration. An arbitration is based upon a submission when the parties agree, after the fact, to submit themselves to an arbitration; for example, the contract does not have an arbitration provision, but the parties decide to arbitrate anyway.

Arbitration can often cost more to file; however, the savings can be absorbed through less complex motion and hearing practice. And, there is usually no appeal. This means the result of the arbitration is final. Another advantage is that a corporation or LLC might be permitted to have an officer present the case, which means that the company possibly might not need an attorney. In the court system, however, usually only licensed and admitted attorneys may appear at the Bar.

Often the greatest advantage of arbitration is that the parties can mutually agree in the contract to the credentials of the arbitrator(s). This means that, for a sophisticated relationship, the parties can identify arbitration credentials, such as, "the arbitrator must have practiced law for at least 10 years representing commercial enterprises in the area of technology licensing." Also, if having a sophisticated relationship ruled upon by one person is a concern, the contractual arbitration provision can identify, for example, three arbitrators, each with specific credentials. For example, a retired judge, an accountant and a practicing attorney within the industry.

Arbitration provides an excellent tool in certain circumstances and should be seriously considered.

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A2. Integration Clauses.

"He said. She said." You have probably heard that phrase to indicate a case that is tough to prove because it is one person's testimony against the other person's. In fact, those cases are difficult to prove.

How do you keep contract enforcement from being a "he said, she said" case? You use an integration clause, sometimes called a "merger" clause. It is called "integration" because the oral

communications are integrated, or merged, into the written agreement.

Some background is in order. Proving a case is a question of evidence. Let us say you have a written contract for a painter to paint a box the color of black. You get the box back, but it was painted the color of yellow. You are not happy, the painter will not return your calls. You sue.

You testify the box was to be black, and you show the written contract. Case closed, right? Simple. Well, not so easy. The painter testifies that the document was a merely a "form" and that you were saying "yellow" while signing the agreement; you both forgot to change the word from "black" to "yellow" in the form. In fact, the sample you were using was yellow as well, so there is some evidence of the painter's claim. But, the written agreement says, "black," right? Believe it or not, this happens all the time. And, this is the most basic example. Believe it or not, attorneys have a tough job.

The problem is that the contract did not have an "integration" clause. This means that the court must hear all evidence. The court cannot tell the painter he is not permitted to contradict the written agreement. If you had an integration clause, the painter would not be able to contradict the written agreement. So, if the agreement is integrated, "black" means "black," not "yellow." Technically, for integrated agreements, you cannot introduce evidence to contradict the written document, but you can still introduce evidence to explain the written document.

Remember, there are three points in time: past, present and future. Accordingly, each period must be addressed in your contract. You might consider an integration clause, such as: "**This document is final, complete and exclusive statement of the entire agreement and understanding between the parties and supersedes any prior or contemporaneous communications, whether oral or written. No modifications of this document may be made without the signed written agreement of both parties.**"

So, for example, if you are using an attorneys' fees clause in your written contracts, such as stated in the above article, without the integration clause, it might be contradicted at trial by the defendant. You see that it is the integration clause that "locks down" the terms and conditions of your agreement. The lesson is to consider having integration clauses in your agreement.

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· B. LEGAL UPDATE ·

B1. California Anti-Paparazzi Law.

California recently passed a law giving greater protection to citizens from interference from the paparazzi, at Cal. Civ. Code §1708.8. This law has become somewhat controversial because it pits privacy rights against free speech rights, or at least that is the suggestion from some media pundits.

Oliver Wendell Holmes once famously stated, in [Schenck v. United States](#), that the right of free speech does not permit yelling fire in a crowded theater. That is, quite simply, that there are limitations to fundamental guaranteed rights. Free speech is good, but the benefit is not untethered to balanced justice. Accordingly, we must be wise, as American citizens, to consider the source when the source exclaims "freedom of speech" to challenge this law, lest Queen Padme's Star Wars statement, "[So this is how liberty dies, with thunderous applause](#)" not be made true. That

is, we sometimes gladly embrace the very thing of our destruction.

True freedom of speech, as intended in the [Bill of Rights](#), was a contract between the American People and the American Government to protect an individual right to speak against the government without jeopardy. Fundamentally, the right of protest. It was not intended to give unlimited freedom of the press to trespass as an ordinary profiteer for the purpose of reporting about Britney Spears' undergarments.

There are and must be boundaries. There must always remain the "free choice" to be alone and to be private, even for Britney. A singer need not make an election: sun or song; live in the sun or sing as a hermit in the shade.

The California statute generally provides:

A person is liable for physical invasion of privacy when the person knowingly enters onto the land of another person without permission with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal activity and the physical invasion is offensive to a reasonable person.

A person is liable for *constructive* invasion of privacy when the defendant attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, regardless of whether there is a physical trespass

A person who commits any act described ... is liable for up to three times the amount of any general and special damages that are proximately caused by the violation of this section. This person may also be liable for punitive damages. If the plaintiff proves that the invasion of privacy was committed for a commercial purpose, the defendant shall also be subject to disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this section.

Freedom begins with the right to be left alone. Security in property, *and freedom from the anticipation and the fear of an intrusion*, is not an incidental right, it is a fundamental right — if not the seminal principle upon which the United States of America was founded.

It is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens and one of the noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise and entangled the question in precedents. ... We revere this lesson too much ... to forget it."

I believe there are more instances of the abridgement of the freedom of the people by gradual and silent encroachments of those in power, than by violent and sudden usurpations....This danger ought to be wisely guarded against.

American Forefather, James Madison [called "Father" of the United States Constitution]

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- C. TRIVIA WE SHOULD KNOW -

Was the Government of the United States, in any sense, founded on the Christian religion?

Treaty of Peace and Friendship between the United States and the Bey and Subjects of Tripoli of Barbary. Fresh out of the oven in 1797, this [Treaty](#) was sent to the floor of the United States Senate on June 7th, where it was read aloud in its entirety. It was unanimously approved by the Senate and signed by John Adams.

Art. 11. As the Government of the United States of America is not, in any sense, founded on the Christian religion; as it has in itself no character of enmity against the laws, religion, or tranquillity, of [Mussulmen](#); and, as the said States never entered into any war, or act of hostility against any [Mahometan](#) nation, it is declared by the parties, that no pretext arising from religious opinions, shall ever produce an interruption of the harmony existing between the two countries.

John Adams' signature block stated:

Now be it known, That I John Adams, President of the United States of America, having seen and considered the said Treaty do, by and with the advice and consent of the Senate, accept, ratify, and confirm the same, and every clause and article thereof.

[John Adams](#) (the Second President) is believed to have been a [Unitarian, such as other presidents](#) and the likes of [Charles Darwin](#). History teaches that neither John Adams nor [Thomas Jefferson](#) (the Third President) believed in the special divinity of Jesus, although both certainly believed in the United States, universal morality, and the essential rights of Mankind. A basic study of [Freemasonry](#), and its [membership](#) (e.g., George Washington, Benjamin Franklin) is essential to gaining a broad historical perspective on the personalities of our American Forefathers.

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- D. FIRM UPDATE -

- In addition to its Pittsburgh office, the firm has opened a new **South Hills, Upper Saint Clair**, Pennsylvania "meet and greet" facility for the convenience of its clients, located at 2585 Washington Road, Summerfield Commons Building 100, Suite 131, Pittsburgh, PA 15241. This convenient office is intended to serve our many clients in the upper South Hills area of Pittsburgh, including Bethel Park, Bridgeville, Mount Lebanon, Peters Township and South Point areas. As the firm is a leader in law office technology, our facilities are now integrated more virtually. The world is changing, and we are in step. In the next few months, you will see increased innovations to assist with increasing service with lower overhead. This means lower cost to you!
- Our clients and friends have asked us for an update on the [Borings v. Google](#) case. This case is the only known case against Google for trespass and invasion of privacy from the StreetView program. The case was dismissed by the United States District Court for the Western District of Pennsylvania on the privacy count and the trespass count. We were successful against Google on appeal, and the Third Circuit reversed the District Court and reinstated the trespass count, but not the privacy count. The firm is in the

process of appealing to the United States Supreme Court to hear the case to reinstate the privacy count, as well. Privacy is not an incidental thing: see [The Universal Declaration of Human Rights](#). It is not an issue of whether you care about your privacy; it is an issue about whether you care about others' rights to care about their own privacy. Not what we do for ourselves, but what we do unto others, if you will.

- [Gregg Zegarelli](#) recently spoke as faculty for the [Pennsylvania Bar Institute](#) on [Ethical Issues of Emails, Attachments and Metadata](#). In short, your documents are watching you, be careful. Contact Gregg for details on this subject and/or speaking engagements. Also, Gregg's book, [ONE - The Unified Gospel of Jesus \(Divine Version\)](#), is now available in audio book format at [Amazon](#), as well as all formats, including digital .pdf, at [OUGPress.com](#). The "Universal Version" is in pre-production and due to be first released in digital format soon; stay tuned. Gregg, an attorney, consolidated of the testimonies of Matthew, Mark, Luke and John.
- If you are not sure if someone is filing for a trademark registration that might infringe upon your brand, consider our automated proprietary MarkAssure trademark email notices. You are automatically informed of the status of your current legal issues, without needing to pay for attorneys and staff to "pull and review your file." The goal is to improve service and lower cost through implementation of advanced technologies. Our clients have discovered many potentially infringing marks by use of our MarkAssure service.
- [Dennis Moskal](#) has now litigated hundreds of employment claims and has established a distinct area of service in advising companies and human resource departments in employee risk management. In this new economy of downsizing — or even controlled and thoughtful upsizing — consider contacting Dennis about how to manage your company's risk. Dennis has worked with many Fortune 500 companies. Gems of Dennis' real-world experience in this area can be invaluable to your company.

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- E. The Zegarelli Commentary: The Monetary Sweat Standard Part II -

In the last commentary, I addressed the [Sweat Monetary Standard](#). In essence, my point was that the real standard of money reduces to work, to **sweat**: the real standard of money reduces to *production*.

Think about it. Even **gold** is not a *real* standard; indeed, minerals — even the [noble](#) ones — do not produce anything. Gold *represents* something; a coin *represents* something; a paper dollar *represents* something. You cannot eat gold. Gold does you no good on a stranded island. The value of gold is illusory, except to the extent of perception and social ethereal attribution. Yet, my brother working to pull me out of a ditch does help me, for real.

Q. So, where do the tiers of representation for monetary standards ultimately touch-down to something real?

A. At the end of the day, what is real is the maintenance and increase in our standard of living. In the real world, things in life reduce to the standard of living. Life, and how we live it.

The reason is simple: it is work — production — *inherently* improves the standard of living. Money merely makes individualized *production* [fungible](#) as an **equalized** standard of **measurement**. Money is merely the shadow of production.

Hold that thought. And, now, let us talk for a moment about credit. Credit is a very good thing on one level and very bad on another. Let us look at simple examples of credit-related issues:

- A woman has a \$10K unsecured credit line and knows she will die soon. She buys expensive toys and gives them to her children. Before she dies, she transfers all of her property to her children. The woman dies. The estate is bankrupt and owes \$10K. The children have the toys. Children are not liable for the debts of their mother, so they keep the toys. The lender loses \$10K in bad debt. But, the lender does not "lose" the money, the lender socializes the expense by charging higher rates to society to recover the loss. Because the cost of credit increases as a result, our supermarket must charge us more for food to cover the interest. The woman's children get fun toys, we pay higher food prices.

The burden of repayment is not destroyed, only shifted and diffused. Let us look at another example.

John lives in a dump of a house, by American standards of living. John is miserable; his life is [nasty and brutish](#). In some societies, John's house would be a castle, but John watches television shows and has seen teenagers with expensive cars, so he believes that he has now objectively confirmed for himself that he should be and is miserable.

Now, if John has the virtue of discipline for three years, John can save money working and remodel his home. But, wait, John has an unsecured credit card for \$30K. Great. John spends the \$30K and remodels. Wow, John now has a wonderful standard of living, as he perceives it. A standard of living that Americans prize, and expect. But, it is a false standard. It is a lie. John's standard of living is an absolute fraud. There was no work, no production, no sweat. Anyone can get credit, no sweat. It is a monetary game, established by very smart people who want us to think they know what they are doing, but they do not. It is quite easy to understand the problem. John never produced anything for the standard of living he now enjoys.

But, please wait! There is more. Remember, when John remodeled, he had to hire the remodeling construction company. They received new orders. With these new orders, they had to hire more staff and buy more inventory. How **stimulating**. Now, everyone is happy, right? John is happy, the remodeling contractor is happy, the TV manufacturer is happy, the electronics parts makers are happy, and the newly hired employees are happy. **Life is good. Everyone is happy!** The economy is **stimulated** with activity. John is a nice guy. He did a good thing borrowing, buying on credit and consuming: he stimulated the economy and made everyone happy! That John.

But what is really, really, really wrong with this picture?

It is not the extent of consumption that is the problem, it is the lack of source production. It is out of balance, it must topple. It is [cold fusion](#), unending free energy. Unbounded happiness. There is no burden for the benefit. No work for the joy. Nature does not play that way. **If you want to eat, then you must sweat out the gathering and the hunting.** That is the way it works. That is what Mother Nature teaches, and that is the price she demands. Mother Nature reminds us to pay her with a smack, if we should forget to do so.

Okay, let us stick with the simple example. Remember, all that economic stimulation came from the **bank's money**, based upon **credit** to John. John gets the bank's money, and it moves all around making everyone happy.

But, the circle of value transfers must get closed. **What if John dies or does not pay back the bank?** What if John never supplies the return of value back to the bank for the benefit he received? Now what? Well, the bank loses the money, of course. It was a **bad loan**. Oh well. But, wait

again! From where did the bank get its money in the first place? The hard-working people gave their earnings to the bank to hold in trust. Now what? I will tell you: everyone who had money in the bank loses it. That is just the way it works in a simple society. So, if this were the old-school "Old West" of America, circa [Jesse James](#), the depositors would lose their money. In those days, a person who was not credible — a person without known personal virtue and character — could not get a loan.

But, today, we are smarter than that, right? It would be unfair for the people to lose their money because of bad John (who was bad only because he could be). So, the Government will insure the banks, and bail out bad loans. That is fair. Now, no one will ever lose their money for bad John (who was bad only because he could be). The politicians numb the pain for us. Perfect. Everyone is happy. Thank you.

But, where does the government get its money to make us so happy?

Two places. The Government, of course, gets its money from our earnings — full circle — by taxes. Or, well, the Government just prints it untethered to real value or real production. So, to the extent that the Government gets the money from us to make us happy, I suppose through some circuitous route that is no longer cognizable, we just paid to remodel John's home. John is certainly happy. On the other hand, for anyone who simply thinks the Government just printing money is a solution, we should just take the premise to its logical conclusion. The Government should just print more of it, forever, stop taxing us, and we can all have unending happiness without work. Utopia. We can do it, no sweat. John did not work.

Money is no longer the shadow of our production. Our money no longer represents the traditional pride of American Sweat. The remedy is now the disease. The Government has made money the very thing itself. Money no longer represents something else, it is the thing itself. And, we are now confused, and so is the Government, and so are its advisors. Worse than confusion, delusion.

The value of a people's currency is no better than the people who back it. American Currency represents the American People. And, what does our money represent when it is printed as vapor?

Benefit and Burden, sister and brother, where must you find them? One with the other.

[Gregg Zegarelli](#)

[These comments are Gregg Zegarelli's and are not necessarily representative of the TEV Law Group, PC. Comments can be emailed to ZegarelliCommentary@zegarelli.com]

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