A Packet of Purported Legal Humor

Stephen Kruger*

Abstract

The packet consists of seven humorous pieces.

I. "Appellate Insight": a look at goal-oriented adjudication.
II. "One Dozen (Equivalent of a Duodecimal 10) Haikus."
III. "A Tetrad (Equivalent of a Ternion Plus One) of Legal Limericks."
IV. "A Baker's Dozen of Legal Rubaiyat."
V. "The Road Not Taken": a look back at 25 years of practicing law.
VI. "Final Exam: Contracts": a look at a law-school phenomenon.
VII. "With Security and Efficiency For All": a look at telecommunications security.

I. Appellate Insight

Introduction

One of the faults of the case-law method is that only the best of the best appellate decisions are studied. Law-school students get the mistaken impression that appellate judges are founts of wisdom. Too many judges, appellate judges among them, are social engineers and policy-makers. They do not see precedents as mainstays to be respected, but as gates of a slalom course, to be negotiated or evaded.

The following illustration of judicial slaloming is attributed to the Appellate Division of the Belau Supreme Court. There is a Palau, the local name for which is Belau. The Republic of Palau is a micro-country in the north Pacific Ocean, southwest of Guam and east of the southern Philippines.

The Palau Supreme Court has a Trial Division and an Appellate Division. The Trial Division has general original jurisdiction. There are two courts of limited jurisdiction. All appeals are heard by the Appellate Division. There is no court above the Appellate Division.

The imaginary Belau Supreme Court has a Trial Division and an Appellate Division. The Trial Division has general original jurisdiction. There is no

court of limited jurisdiction. All appeals are heard by the Appellate Division. There is no court above the Appellate Division.

Opinion

SUPREME COURT OF BELAU
APPELLATE DIVISION

NGARA-IRRAI TRADITIONAL COUNCIL OF CHIEFS and ROMAN TMETUCHL, as Ngiraked of Airai, Petitioners, v. SUPREME COURT OF BELAU, Respondent.	SPECIAL PROCEEDING NO. 2011-5 OPINION

Ngara-Irrai Traditional Council of Chiefs and Roman Tmetuchl by Stephen Kruger, Esq., Council Counsel, and John Gower, Esq., Heriot & Mortuary

Supreme Court of Belau by Boris Badenov, Esq., Attorney-General, Natasha Fatale, Esq., Deputy Attorney-General, on the brief

Before Arthur Ngiraklsong C.J., Larry W. Miller Ass.J., and Alexandra R. Munson T.Ass.J.

Decided October 18, 2011

NGIRAKLSONG C.J.

A. Introduction

This special proceeding is brought by the Ngara-Irrai Traditional Council of Chiefs and Roman Tmetuchl. From "time out of mind," which is to say, from a "time whereof the memory of man runneth not to the contrary,"[1] the Ngara-Irrai has been one of the traditional political authorities in Belau.

[1] 1 BL. COMM. *67 (in context of ancient nature of common-law maxims and customs).

The bailiwick of the Ngara-Irrai is the traditional region of Irrai; that region and the territory of the contemporary Airai County are coterminous. Irrai and Airai County are situated on the island of Babeldaob, north of the Ngermechiiuch Channel. To the south of the channel are the islands of Oreor, the traditional region which is coterminous with the territory of the contemporary Koror County. The court house is on Koror, one of the islands of Oreor and Koror County.

Roman Tmetuchl is the Ngiraked of Airai. As Ngiraked, Tmetuchl is the paramount chief among the ten traditional chiefs who constitute the Ngara-Irrai.

The Ngara-Irrai and Tmetuchl, appellants in the companion appeal,[2] petition the Court to vacate my nomination and appointment of Assistant Magistrate Alexandra R. Munson, of the United States District Court for the Northern Mariana Islands, as a temporary associate justice of this Court to hear the appeal. I acted because R. Barrie Michelsen Ass.J. is scheduled to check yet again into an off-island rehabilitation clinic, so he will be unable to attend the scheduled oral argument on the appeal.

B. The Merits

Pursuant, nominally, to the applicable sections of the Consolidated Laws of the Republic of Belau,[3] I sent to the Clerk of Courts, on May 28, 2011, a one-page, conclusory Order appointing Assistant Magistrate Munson as a temporary associate justice.

And that was that. The President, the President of the Senate and the Speaker of the House of Delegates were not notified of my determination, they were not bothered with pettifogging details of why a temporary

[2] *Ngara-Irrai Traditional Council of Chiefs and Roman Tmetuchl, as Ngiraked of Airai v. Republic of Belau and Airai County*, Civ. Appeal No. 2010-110 (Civ. Action No. 2009-666). The Trial Division (Kathleen M. Salii Ass.J.) granted summary judgment to both defendants. As per usual, her decision was peppered with dubious legal reasoning.

[3] "The Chief Justice may determine whether one or more associate justices are needed for temporary service on the Supreme Court, and, if so, he shall notify the President and the presiding officers of the Olbiil Era Kelulau of the need, with specific reasons therefor." 4 CLRB § 201 (2010). "A temporary associate justice shall be appointed by the President." 4 CLRB § 205 (2010). "The appointment of a temporary associate justice is valid only for the civil action or criminal case, whether for trial or for appeal, specified by the chief justice." 4 CLRB § 206 (2010).

associate justice was needed, and the President was not distracted from his other duties to exercise his appointment power.

No objection to the appointment was made by the Ngara-Irrai and Tmetuchl in their opening brief on appeal. The rule is that an error not assigned on appeal is waived. *Sungino v. Belau Evang. Church*, 3 Belau 72, 75-76 (1992).

In their petition for this special proceeding, the Ngara-Irrai and Tmetuchl protest that the appointment was made "in secret," and they learned of the facts only recently, so there was, allegedly, no opportunity to brief the issue. Petition, p. 8. This borders on whining. Anyhow, *stare decisis* and consistency in judicial opinions are important, so my gut reaction is that it's probably not a good idea to make an exception to *Sungino*.

The Ngara-Irrai and Tmetuchl refer to the Disqualification Provision (Belau Const. art. X, § 2), the last sentence of which provides, "No justice may hear or decide an appeal of a matter heard by him in the trial division." Petition, p. 17. They contend that, because I made the appointment, I am reviewing my own decision, so, under the Disqualification Provision, I may not sit on this panel.

Section 2 refers to "appeal" and "matter" and "trial division." The challenge to the qualification of Temporary Associate Justice Munson is not an appeal or a matter, but is a special proceeding. My action was taken in Chambers, not in the Trial Division. Section 201 (see footnote 3) uses "determine" and "notify" and "specific reasons." I did not determine; there was a ukase in the form of an Order. Consequently, no notification was required, and, so, no specific reasons were required. Dodging a bullet was never easier.

The Ngara-Irrai and Tmetuchl suggest that Temporary Associate Justice Munson may not sit on this panel, because she is in breach of the ABA Model Code of Judicial Conduct.[4] According to the Ngara-Irrai and Tmetuchl, "it was typical impropriety, and it stank of partiality, for her to have said, at a recent meeting of the Belau Inn of Court, 'I'm a Koror gal, and always will be'." Petition, pp. 23-25 (citing Model Code Canon 2 and Canon 3E(1)). Based on our long-term professional relationship, I know

[4] "Justices and judges shall adhere to the standards of the Code of Judicial Conduct of the American Bar Association except as otherwise provided by law or rule." 4 CLRB § 303 (2010). No law or rule provides an exception to the Model Code.

that Temporary Associate Justice Munson is beyond reproach, so I won't stoop to the level of the Ngara-Irrai and Tmetuchl.

Another position of the Ngara-Irrai and Tmetuchl is that, contrary to the Due Process Provision (Belau Const. art. IV, § 6),[5] they would be deprived of due process of law were Temporary Associate Justice Munson to sit. They make much of the Panel Provision (Belau Const. art. X, § 2): "All appeals shall be heard by at least three justices." Petition, p. 33. It is undisputed that the practice is to have three justices hear appeals. According to the Ngara-Irrai and Tmetuchl, "Though, over the years, Assistant Magistrate Munson has sat, on prior appointments, for various appeals before the Court, she has never, ever issued any opinion of her own -- majority, minority, you name it." Petition, pp. 46-47. The Ngara-Irrai and Tmetuchl conclude that, with Temporary Associate Justice Munson on this panel, its appeal would be heard "in effect" by only two justices. Petition, p. 61.

The Ngara-Irrai and Tmetuchl fail to refer to any United States decisions supportive of this proposition, though Belau is a former U.S.-administered trust territory, and its tie to the United States through the Compact[6] is of interpretive significance. I therefore treat United States case law as persuasive. *Tell v. Rengiil*, 4 Belau 224, 227-28 (1994) (uncritical citations of U.S. cases to establish sovereign immunity); *Fritz v. ROB*, 4 Belau 264, 271-76 (Trial Div. 1993) (mindless citations of U.S. cases to import political-question doctrine into Belau). Generally, U.S. constitutional concepts may be imported. *Senate v. Nakamura*, Civ. Action No. 1996-510, Order, slip op. at 4 (Trial Div. July 11, 1997), *rev'd on oth. gds.*, 7 Belau 8 (1998).

United States case law is to the contrary of the position taken in the petition. A justice absenting himself or herself or itself from the court room during trial does not necessarily deny due process to a litigant. *U.S. v. Grant*, 52 F.3d 448 (2nd Cir. 1995). Where, as here, the Ngara-Irrai and Tmetuchl do not indicate that Temporary Associate Justice Munson will not be in fact

[5] "The government shall take no action to deprive any person of life, liberty, or property without due process of law . . .."

[6] Compact of Free Association Between the Republic of Palau and the United States of America, 48 U.S.C. § 1931 note. *See* Belau Const., amend. II (changed name of country from Palau, which is of Spanish derivation, to Belau, the Belauan name for the country, after Compact became law; no corresponding change in § 1931).

in the court house, in the court room, on the bench and awake during oral argument, this argument is kinda weak.

The Ngara-Irrai and Tmetuchl observe that, under the Prerequisites Provision (Belau Const. art. X, § 8), no one is "eligible to hold judicial office in the Supreme Court . . . unless he has been admitted to practice law before the highest court of a state or country in which he is admitted to practice for at least five years preceding his appointment." Petition, p. 88. Clearly, serving as a temporary associate justice of this Court is the holding of a judicial office.

Thereon, the Ngara-Irrai and Tmetuchl put forward two issues. First, though Temporary Associate Justice Munson is admitted to practice in the Northern Mariana Islands, and has been for more than five years, the Northern Mariana Islands Supreme Court, which admitted her to practice, is not "the highest court of a state or country." The Northern Mariana Islands is a commonwealth, not a state, of the United States, and is not a country. According to the Ngara-Irrai and Tmetuchl, "The plain meaning of § 8 requires the conclusion that Assistant Magistrate Munson lacks the prescribed experience." Second, § 8 speaks of "he" being admitted to practice before the highest court of the foreign jurisdiction; "he" being admitted for more than five years; and "his" appointment. "The plain meaning of § 8," again according to the Ngara-Irrai and Tmetuchl, "precludes appointment of a justice of the female persuasion." Petition, p. 91.

Neither plain-meaning issue need be given much thought. I read the constitutional phrase, "highest court of a state or country," as "highest court of a state, province, commonwealth, territory, possession, district or country."[7] The plain-meaning rule of constitutional interpretation (*Senate v. Remeliik*, 1 Belau 1, 5 (High Ct. Trial Div. 1981)) notwithstanding, this Court has authority to add to the Constitution words inadvertently omitted by the Framers. *ROB v. Gibbons*, 1 Belau 547A, 547P-547T (1988) (adding "unreasonable" to Search and Seizure Provision (Belau Const. art. IV, § 4)).[8]

[7] The facts prevent me from deciding whether "state" is inclusive of a state of a federal country other than the United States. Belauans attended law schools in Australia, and it's important to increase Belauan participation in the judiciary, so I read "state" inclusively. But don't quote this dictum.

[8] The companion authority to subtract from the Constitution words inadvertently included by the Framers (*Koror County v. Blanco*, 4 Belau 208 (1994) (subtracting "expressly" from Express Delegation Provision (Belau Const. art. XI, § 2)) is not at issue here.

I also employ this authority to read "he" in both places in § 8 as "he or she," and to read "his" therein as "his or her." Alternatively, I interpret § 8 according to the gender-connotation standard of 1 CLRB § 203 (2010).[9] This makes "he" and "his" in § 8 inclusive of "she" and "her." Section 203 does not apply by its terms to the Constitution, but equality of opportunity is a policy I'm not adverse to.

The Ngara-Irrai and Tmetuchl cite many United States decisions which support the proposition that a statute may not be used to interpret a constitutional provision, because "courts are bound to the intent of the framers and may not substitute the intent of legislators." Petition, p. 108. Decisions of United States courts are not dispositive of this proposition, because Belau is a former, not a current, U.S.-administered trust territory, and its tie to the United States through the Compact is not of interpretative significance. I therefore treat United States case law as irrelevant. *Robert v. Ikesakes*, 6 Belau 234, 242 (1997) (slithering around and successfully avoiding inconvenient, on-point United States Supreme Court case central to appellant's thesis); *ROB v. Sakuma*, 2 Belau 23, 37 (1990) (unconstitutionally-disproportionate sentence under U.S. Constitution is not unconstitutionally disproportionate under Belau Constitution). Generally, U.S. constitutional concepts may not be imported. *ROB v. Wolff*, 4 Belau 278, 280-81 (Trial Div. 1993).

The Ngara-Irrai and Tmetuchl maintain that "the lack of Belauan decisions by Assistant Magistrate Munson betokens mediocrity. A justice who writes nothing is hardly of the caliber expected of members of the Belauan judiciary." Petition, p. 142. Though it is indisputably true that Temporary Associate Justice Munson has done nothing more than sign on to opinions authored by other members of the panels on which she sat, this argument, too, is kinda weak. There is no constitutional requirement that a justice of this Court author opinions, and I decline to amend the Constitution to create a requirement of that type. The function of the judiciary is to interpret the Constitution according to its plain meaning. *Senate v. Remeliik*, *supra*. I may neither add words to the Constitution nor subtract them.

[9] "As used in any Act of the Olbiil Era Kelulau, unless it is otherwise provided or the context requires a different construction, application or meaning: * * * (c) words importing the masculine gender shall be applied to females[.]" 1 CLRB § 203 op. para., (c) (2010).

Irregardless, the argument flies in the face of history. When President Nixon nominated Judge G. Harrold Carswell to be an associate justice of the U.S. Supreme Court, Hizzoner's unimpressive caliber did not prevent very important persons from supporting the nomination. One VIP, Senator Roman[10] Hruska, said: "Even if he [Carswell] is mediocre there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance?" L.A. TIMES, June 12, 1996, p. A19 (quoting remark made at time of nomination). My bosom-buddy Alexandra is entitled to a little chance.

The remaining arguments of the Ngara-Irrai and Tmetuchl are simply ridiculous, so no response is necessary.

Getting to the point: The petition is denied.

C. Sanctions

The Attorney-General moves to sanction counsel for the Ngara-Irrai and Tmetuchl, jointly and severally, for their "reliance on namby-pamby, time-wasting, due-process horse pucky." Opposition, p. 6. He also moves to sanction them for their "consistent, and therefore simplistic, invocation of the plain-meaning rule." *Id.*, pp. 7-8.

That denigration of due process is new here, but it fits in with our denigration of due process as a "ritualistic formula" (*Wolff v. Sugiyama*, 5 Belau 105, 115 (1995)). We have already condemned the plain-meaning rule, which "interferes with judicial creativity." *Children of Marina Udui v. Pinoy Fraternal & Sororal Ass'n*, Civ. Action No. 1998-361, Order Granting and Denying Summary Judgment, slip op. at 11 (Trial Div. Feb. 8, 1999). *Accord*, *Chodechosong Group v. Koror County Public Lands Authority*, 6 Belau 198, 203 (1997) (rejecting "exacting interpretation" of specific requirement of County Government Provision (Belau Const. art. XI, § 1)).

Considering that I have once again reached the desired goal of causing the Ngara-Irrai and Tmetuchl to go down in flames, I exercise uncharacteristic restraint, and deny the motions.

D. Conclusion

The petition is DENIED. The motions are DENIED.

[10] All of us are unanimously opposed, together and without exception, to agreeing with a Roman, be he Tmetuchl or Hruska. The exception is contrived to support the conclusion.

MILLER Ass.J.
The artful reasoning of my revered brother the Chief Justice is magnificent, and the manipulated result of my celebrated colleague the Chief Justice is outstanding. Consequently, it was not necessary to resort to our private presumption of bankruptcy of most positions, whether put forward here or in the Trial Division, of a party from north of the Ngermechiiuch Channel. Had the need arisen, I would have found that the Ngara-Irrai and Tmetuchl did not overcome the presumption, and I would have tanked the petition on that narrow ground.

On the other hand, I would have preferred to find *some* merit in the position of the Ngara-Irrai and Tmetuchl. All-or-nothing opinions create unavoidable precedent, but the judicial imperative is to leave ourselves some wiggle room. Precedent which forces us to reach results we don't care for isn't welcome. In the biblical adjudication, King Solomon threatened to divide the baby between the two women, and the mother made herself known. 1 *Kings* 3:16-28. He did not have to decide the case before him in the way he deemed undesirable. When we play our cards right, neither do we.

MUNSON T.Ass.J.
I concur.

II. One Dozen (Equivalent of a Duodecimal 10) Legal Haikus
Haiku is traditional Japanese poetry. A haiku consists of seventeen syllables, in three metrical phrases of five, seven and five *morae* (sound units) respectively, written in a single vertical line. English-language haikus are written in three lines. The first line has five syllables, the second line has seven syllables, and the third line has five syllables.

Contracts
Commerce needs credence.
Ponzi scheme or bankruptcy
snips the strand of trust.

Constitution
Framers' guidance for
the ages, entombed in a
NARA pyramid.

Environment
Tree-huggers endorse
real tyranny to impose
pagan fantasy.

Gummint
A government is,
at heart, a mafia with
a constitution.

International Courts
Kangaroo courts of
ex-nihilo laws. Judges
singing for suppers.

Jurors
People who render
consequential verdicts for
derisive wages.

Law Reviews
Notes about nothings.
Head-of-the-class nerds stirring
dusty citations.

Liberalism
Attorneys who serve
the welfare state are priests of
a failed religion.

Real Property
My house, my castle.
A law-protected refuge
in a lawless world.[1]

SCOTUS Justices
Bunker-busters strike
article I, section 8.
Bombardiers in robes.

Torts
Death and injury
wreaked again and again by
reasonable men.

United Nations
One-worlders' talkshop
and resolutions workshop.
Jew-haters' HQ.

III. A Tetrad (Equivalent of a Ternion Plus One) of Legal Limericks

The form of a limerick is a stanza of five lines. Each of the first, second and fifth lines has eight or nine syllables, and each of the third and fourth lines has five or six syllables. The rhyme scheme is *aabba*.

Humor or mockery is often the point of a limerick.

Lines are written in the anapestic meter (two unstressed syllables followed by one stressed syllable) or in the amphibrachic meter (one stressed syllable

[1] Subject to exceptions for lawful acts by sheriffs or bailiffs, the common-law rule was "That the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose; and although the life of man is a thing precious and favoured in law so that, although a man kills another in his defence, or kills one *per infortunium* [by misfortune] without any intent, yet it is felony, and in such case he shall forfeit his goods and chattels for the great regard which the law has to a man's life, but if thieves come to a man's house to rob him, or murder, and the owner or his servants kill any of the thieves in defence of himself and his house it is not felony, and he shall lose nothing . . .." *Seyman's Case*, 77 Eng. Rep. 194, 195 (K.B. 1603). *Accord*, 4 Bl.Comm. ch. 16 (1769); Castle Doctrine Laws, *e.g.*, Tex. Penal Code §§ 9.31, 9.32 (2010), Tex. Civil Practice and Remedies Code, § 83.001 (2010).

between unstressed syllables). Meter and stress may be modified. There is freedom to bend words.

Appellate Argument
Contract clauses, torts, property, too,
Feed the primates in the legal zoo,
  Judges high, to be heard
  Draw nigh, say not a word
Ere blowing on the dice to luck you.

Constitution
John Marshall rewrote the document,
To be a centralist referent,
  A national polis,
  The Court *über Alles*,
And politics played out to judgment.

Ninogram
There once was a judge named Scalia,
Who preachèd Originalismia,
  Said he to pal Clarence,
  "Our thoughts have no valence,
Because of Ruth, Kagan and Sonia."

Policy-makers
Prez Barack of hopey and changey,
Sees liberal judges as peachy,
  They love queers and quota,
  Not law an iota,
Or weapons or markets or country.

IV. A Baker's Dozen of Legal Rubaiyat
Rubai is the Farsi word for quatrain (a four-line stanza of poetry). The plural of *rubai* is *rubaiyat*.

Omar Khayyam (1048-1123) wrote numerous *rubaiyat*. The word found its way into the English language through *The Rubaiyat of Omar Khayyam*, rendered (not translated) from Farsi into English by Edward FitzGerald (1809-1893), first in 1859, and thereafter in four editions.

To scan, in poetry, is to identify the rhythm. In English poetry, rhythm is variation of stressed and unstressed syllables.

One or more stressed syllables together with one or more unstressed syllables constitute a foot. An iamb is a foot with one unstressed syllable followed by one stressed syllable. A verse with five feet is a pentameter.

Rhyme is repetition or correspondence of sounds, often of final syllables.

There are four lines in each of the stanzas in this piece, so each stanza is a rubai. The rhythm of the rubaiyat is iambic pentameter. That is, each foot has one unstressed syllable followed by one stressed syllable, and there are five feet in each verse.

The rhyme scheme is *aaba*. That is, the first, second and fourth lines rhyme, and the third line does not rhyme with the others.

For each of three rubaiyat in this piece, a reference is noted. This intends a starting point from which my work proceeded. There is no parody. That term means imitation of a style for comic effect or in ridicule. No comic effect, and no ridicule of FitzGerald, was purposed; none may be inferred.

I

Three years in law school, day plus day plus day.
Professors taught, each prof in his own way,
  And in my seat in back, I held my tongue.
"Keep wake!," "Keep wake!," "Keep wake!," oft I did pray.

II

A book of contracts and a book of torts,
Con law and property, books of all sorts
  In law school, which a desert of life makes:
No time for thee, no time for thee, no sports.

III

Oh, come with Kruger old, and leave the Law
To talk. No law is certain, no law saw
  Whole-hearted honor given it. Each needs
A punishment, the legal line to draw.[1]

[1] The reference is Rubai XXVI (First Edition):
Oh, come with old Khayyam, and leave the Wise

IIII

A hair, perhaps, divides the Law and Crime;
Yes, there are thousands who are doing time.
  Could you but find a way to go scot free,
Would you maintain a life which is sublime?[2]

V

On television, lawyers handsome are,
and lawyerettes all score way above par.
  Procedure, law or evidence is not
What truly separates stars from the Bar.

VI

In life are laws and strife. Attorneys see
to it that parties have advocacy.
  Each client gets good lawyering, and, oft,
some empathy's included in the fee.

VII

To me a client his case did entrust,
The fees and costs of suit left him nonplussed.
  Complaint and answer fil'd, discov'ry done,
Both settlement and trial were discussed.

VIII

Before I go to court and try a case,
I'm heedful that 'tis jurors whom I'll face,
  Twelve men and women, tried and true, but lay,
Who'd rather be at work than in that place.

IX

All rise! The judge to his high bench doth go,

To talk; one thing is certain, that Life flies;
  One thing is certain, and the Rest is Lies;
The Flower that once has blown forever dies.

[2] The reference is Rubai L (Fifth Edition):
A Hair perhaps divides the False and True;
Yes; and a single Alif were the clue --
  Could you but find it -- to the Treasure-house,
And peradventure to THE MASTER too[.]

The judge in garment black who walks so slow,
The majesty of law thus to portray,
Though whim's enthroned, and all is just for show.

X

No matter quarts and more of Law Day fizz,
Each court a workshop of distortion is.
E.g., a statute a judge will rewrite,
His self-regard makes him a drafting wiz.

XI

Appellate briefs are written thusly: Fight
To cloak a client with the law and right.
Align the facts or make them go away.
The panel has a goal, keep it in sight.

XII

The "morals of the market place"[3] don't seize
A judge. 'Tis law, each swears, that he must please.
In conf'rence, therefore, secret truth is kept,
That traded votes create majorities.

XIII

Then from the courts of law I did adjourn,
A better way to spend my life to learn,
So verse was written, baseball games were played,
Of course to court I never did return.[4]

V. The Road Not Taken

A. Perceptions

Law is notorious for having, among all the professions, the highest rate of dissatisfaction. Earning money assuages professional dissatisfaction among lawyers up to a point. Compare taking a drug to ease, up to a point, personal

[3] "Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior." *Meinhard v. Salmon*, 249 N.Y. 458, 464 (1928).

[4] The reference is Rubai XXXIV (First Edition):
Then to this earthen Bowl I did adjourn
My Lip the secret Well of Life to learn:
And Lip to Lip it murmur'd -- "while you live,
Drink! -- for once dead you never shall return."

discontent. The effectiveness of money diminishes, as does the effectiveness of a drug. Consequently, greater earnings are needed, in the manner of greater drug dosages. Ultimately, money does not conquer professional dissatisfaction, just as a drug does not conquer personal discontent.

The reason for professional dissatisfaction is not the history of law and is not legal methods, but is the contemporary condition. It used to be that the common law brought about consistent adjudication; the Magna Carta curbed despotism; the Constitution, through its article I, section 8, was a protection against governmental officers and officials who would emulate King George III; the Bill of Rights guaranteed enumerated and unenumerated rights across the generations; and the United States was a government of laws and not of men.

The contemporary condition is the trampling of the common law and its principles; the tossing of the Magna Carta into a landfill; the exercising by the United States government of unlimited authority, well outside the delegated powers; the degrading of constitutional rights to licenses, which are created and obliterated, expanded and contracted, both legislatively and judicially; and the maintaining, by the United States and by states of governments of men and not of laws.

The incomparable work of the Founding Fathers and the companion incomparable work of the Framers were undone by legislators and executives, supported by justices and judges. Invocation of law is useless, when justices and judges are beguiled from the straight and narrow by a "living" Constitution, the content of which is personal, political, economic and social inclinations.

For legislators, executives, justices and judges, the straight and narrow is republican government, federalism, limited government and capitalism. The straight and narrow was abandoned on March 4, 1933. In place of republican government, there are hives of bureaucracies. In place of federalism, there is treatment of states as prefectures of Washington. In place of limited government, there are more and more United States laws, and there are yet more and yet more state laws. In place of capitalism, there are allocations of resources and distributions of wealth by the United States and by states.

The contemporary condition is beyond repair. There will be no reversion to the country intended by the Founding Fathers, and no return to the

Constitution of the Framers. The departure from the straight and narrow is permanent.

What if I had perceived earlier that lawyering is, in this generation, illegitimate, and, so, causative of dissatisfaction? I would have branched out to other illegitimate activity.

B. Alternate History

CURRICULUM VITAE - STEPHEN KRUGER

Education
Brooklyn Law School, 1981-1984, Juris Doctor, 1984
Koror Jail, 2003-2004
Stonecutters Island Penal Institute, 2007-2009

Certificates
New York Bar, admitted 1984, disbarred 2004
Palau Bar, admitted 1999, disbarred 2004
Koror Jail, certificate of discharge, 2004
Stonecutters Island Penal Institute, certificate of discharge, 2009

Specializations
Double, triple and quadruple bookkeeping; deniable investment vehicles; invisible off-shore bank accounts; international trade in extraordinary merchandise

Experience
July, 2009 - present: Namibia: Firepower Services
Managing partner of cash-and-carry military-surplus emporium.

May, 2007 - June, 2009: 3rd interlude
All-expenses-paid vacation in Stonecutters Island Penal Institute, a serious lockup; model prisoner -- many months; prisoner of the year -- 2008; tutor of fellow prisoners, native speakers of Cantonese, in English conversation, grammar, reading, and some writing -- a unique cross-cultural experience; maximum time off for good behaviour (HK is a former British hangout, so good behaviour, rather than good behavior, was called for).

Served with deportation order; retrieved hidden proceeds of scheme; vamoosed to Namibia.

September, 2004 - April, 2007: Hong Kong: investment counselor
Made HK$17,450,000 gross, HK$16,869,000 net, in dodgy investment scheme; arrested in sting operation; tried in Court of First Instance, convicted and sentenced, with no mucking about; leave to appeal to Court of Appeal denied.

July, 2003 - August, 2004: 2nd interlude
All-expenses-paid vacation in Koror Jail, a lax lockup; lolled around, went fishing with guards, etc.

Served with immigration-hearing order re deportation; served with complaint sounding in restitution by Special Trustee of Iyebukl and Ngetkib Bank; ignored immigration hearing, and ignored summons and complaint, and scrammed with the loot; arrived in Hong Kong.

February, 1999 - June, 2003: Palau: lawyer
Employed as general counsel of Iyebukl and Ngetkib Bank; installed triple-bookkeeping system, and helped myself to US$170,000; caught with hand in cookie jar; sham trial in Palau Supreme Court, Trial Division; typical Palauan slap-on-wrist sentence; wasted time and effort in appeal to Palau Supreme Court, Appellate Division.

July, 1998 - January, 1999: 1st interlude
International travel hither and yon; arrived in Palau in January, 1999.

January, 1988 - June, 1998: New York: lawyer
Practiced law, including contracts, torts, property, commercial law and constitutional law. Legal services included negotiations and settlement conferences; research for, drafting of, and writing of memoranda and briefs for submission to New York courts (Supreme Court, Appellate Division, Court of Appeals) and United States courts (United States District Court for the Southern District of New York, Court of Appeals for the Second Circuit); appearances and trials in the New York Supreme Court, and arguments before the Appellate Division. I had hundreds of tedious, wearying cases over the years for a multitude of clients, all of whom were entitled to representation, though all but a handful of them were undeserving of sympathy.

January, 1985 - December, 1987: New York: lawyer
Law clerk to Associate Judge George Mason, New York Court of Appeals; research for, drafting of, and editing of decisions, memoranda, motions and orders.

Languages
English (native), German (superior), Palauan (exposure), Cantonese (triad conversational)

VI. Final Exam: Contracts
In the State of Confusion, contract law is identical to that in the Empire State, except that a contract for sexual services is not illegal,[1] and prostitution is not against public policy.[2] There are no common-law crimes in Confusion or in New York, and there are no ecclesiastical crimes. Confusion courts cite New York cases, and accept New York appellate decisions as persuasive. Civil procedures of the two jurisdictions are similar, not congruent.

One hot evening at the end of August, 2009, Themis (not a goddess) and Dweeb (an urban rustic) find one another in a tony Confusion saloon, located in sophisticated Meetmart, Argent County. Themis is from Confusion, and Dweeb is from Hunger, an adjacent state. A Confusion governmental agency employs Themis as a goferette, whereby she is productive despite her limited ability. Dweeb likewise lacks talent, so he became a lawyer. He is utilized as a gofer by a partner in a major Hunger law firm.

[1] Prostitution is not a common-law crime. The offense was within the jurisdiction of the ecclesiastical courts. *People v. Cummons*, 23 N.W. 215 (Mich. 1885); *Commonwealth v. Cook*, 53 Mass. 93, 97 (1846). Statute law remedies the jurisdictional limitation, and has done so for a long time. *See Commonwealth v. King*, 372 N.E.2d 196, 201 (Mass. 1971) (citing colonial law which prohibited lewd, wanton and lascivious speech or behavior).

A contract to perform an illegal act is illegal. *Armaluuk v. Mereb*, 7 T.T.R. 459, 464 (Trial Div. 1975) (Trust Territory of the Pacific Islands). An illegal contract is unenforceable. *Gibbs & Sterrett Mfg. Co. v. Bruckner*, 111 U.S. 597, 601 (1884); *Holman v. Johnson*, [1775] 98 Eng. Rep. 1120, 1121 (K.B.); *The Highwayman's Case* (*Everett v. Williams*), (Ex. 1725) 9 LAW Q. REV. 197 (1893).

[2] "I, for one, protest, as my Lord has done, against arguing too strongly upon public policy;--it is a very unruly horse, and when once you get astride it you never know where it will carry you. It may lead you from the sound law. It is never argued at all but when other points fail." *Richardson v. Mellish*, [1824] 130 Eng. Rep. 294, 303 (C.B.).

After desultory conversation about the decor of the saloon (Dweeb: "Nice place, huh?" Themis: "Quite so.") and about how long each has been present (Themis: "Have you been in this licensed establishment for a while?" Dweeb: "Yeh. An' you?" Themis: "No. I arrived relatively recently."), Dweeb asks Themis if he could buy her a drink. Themis perks up, says, "I do not mind if you do"; after imbibing, she feels that there is chemistry between Dweeb and her. Dweeb quaffs a few himself, and figures that she is better-looking than he first thought. The two dance, drink some more, and dance close together.

Later in the evening, Themis says to Dweeb, "The acquaintance in whose motor vehicle I traveled to this licensed establishment appears to have retraced our route, and gone back to her abode. If you provide transportation so that I can effectuate a return to my tenancy for years, I shall share a bed with you, and engage in intercourse with you. I shall treat you lovingly, as would a damsel."[3]

Dweeb replies, "Let's go to a hotel, sweets, and you got yerself wheels."[4] Themis says nothing, but she leaves the saloon with Dweeb, and gets into his wheels.

Dweeb and Themis drive to a motel, rather than a hotel, with no more than "Where's the hotel?" from Themis. The motel is situated on a hillock of tacky Madonna County, Confusion. On the way, Themis removes her shoes and pantyhose. When, after midnight, Dweeb and Themis arrive at the motel, Dweeb wants to go directly to a room. Themis walks a few paces with Dweeb, pulls away, and, as she runs to the nearby lake, flings off her blouse and Victoria's Secret brassiere. Dweeb gives chase, catches up to her and embraces her.

Themis resists, and moves away from Dweeb. He stands where he is, his arms akimbo across his chest. After a bit of coy hesitation, Themis goes back to Dweeb, who opens his arms. The two embrace, and ardor is reciprocated. Themis takes off her skirt; Dweeb rips off his shirt, yanks off

[3] Damsel, noun. "A young unmarried lady; originally one of noble or gentle birth, but gradually extended as a respectful appellation to those of lower rank." IV OXFORD ENGLISH DICTIONARY 233-34 (2nd ed. 1989). The definition is provided for moderns who are not familiar with the word, let alone the concept.

[4] Wheels, noun. "A motorcar; var. of wheel, n." A DICTIONARY OF SLANG AND UNCONVENTIONAL ENGLISH 1325 (8th ed. 1984) (Paul Beale ed.). The definition is provided for ancients who are not familiar with the mode of transportation, let alone the slang.

his shoes, peels his socks and rids himself of his encumbering pair of pants and underwear.

As Themis and Dweeb lie entwined on the lakeside grass, Themis's thoughts are remote from the lakeside, Dweeb and the goings-on. Themis is delighted by the celestial street lights aglow along the Milky Way. She sees the Swan (in flight, as it were) in the northwest quadrant of the starlit dome of the heavens, as well as the Great Square. Binary Algol is difficult for Themis to distinguish, but brilliant Altair is not.

Dweeb maneuvers to achieve his goal, and causes his companion to transfer her attention to the terrestrial sphere. Themis realizes that she is not quite ready to consummate passion, so she says, "No! Not in this locale!", and pushes once, feebly, against Dweeb's chest. Dweeb ignores Themis and _____ her and _____ to _____ and _____, without caring about her psychological and physiological needs.

The two lovers gather their respective garments and clothing, and dress. Neither speaks to the other. Dweeb drives Themis to her tenancy for years. She flounces out of Dweeb's wheels, slams the door and goes into her tenancy. Dweeb drives back to his bachelor digs. Each sulks, feels angry and hurt and used.

Themis seeks to assuage her feelings by recourse to law.

> Once Law was sitting on the bench,
> And Mercy knelt a-weeping.
> "Clear out!" he cried, "disordered wench!
> Nor come before me creeping.
> Upon your knees if you appear,
> 'Tis plain you have no standing here."
>
> Then Justice came. His Honor cried:
> "Your status? -- devil seize you!"
> "*Amica curiae*," she replied --
> "Friend of the court, so please you."
> "Begone!" he shouted -- "there's the door --
> I never saw your face before!"[5]

[5] AMBROSE BIERCE, THE ENLARGED DEVIL'S DICTIONARY 176 (Ernest Jerome Hopkins ed. 1967).

One cold afternoon at the beginning of December, 2009, Themis sues Dweeb for breach of contract (count 1) and for breach of the implied duty of good faith and fair dealing (count 2). Punitive damages are demanded in relation to count 2. She files the complaint in the Supreme Court of Judicature, Trial Division, County of Bozo, State of Confusion.

The Confusion Supreme Court of Judicature has both a Trial Division and an Appellate Division. Each justice may serve in either division, except that a justice may not hear an appeal from a judgment which he rendered, or, when an interlocutory appeal is allowed, from an order which he entered. There is no court of limited jurisdiction, and there is no appellate court above the Appellate Division.[6]

The court has both *in-personam* jurisdiction and subject-matter jurisdiction.[7] Themis chooses venue on the basis of her residence in Lamb Town, Bozo County, Confusion. Dweeb answers the complaint. Thereby, he waives the defect of venue, and does so because an accident of geography placed the Bozo County court house in Bozoville, Bozo County, Confusion, within convenient driving distance of his bachelor digs in Predator City, Lair County, Hunger. Dweeb also declines to challenge the validity of the second count, although the implied duty is inconsistent with freedom of contract.[8]

Along with the answer, Dweeb countercomplains with two similar counts, as well as a third count, sounding in duplicitous inducement to contract. Each of the three counts includes a demand for punitive damages. Themis makes a motion for definite pleading as to count 3, and a motion to strike the punitive-damages assertion in count 1. She, too, declines to challenge the validity of a count based on the implied duty of good faith and fair dealing. The Motion Term grants the motions, with leave to file a substitute countercomplaint within fifteen days. Another pleading is filed timely by

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[6] Conf. Const. art. IV, §§ 1-4.

[7] Evaluation of the parties may be more important than selection of the court. If so, the first reference in a text is to personal jurisdiction, and the second reference is to subject-matter jurisdiction. Alternatively, selection of the court is primary. If so, one refers first to subject-matter jurisdiction.

A Scot cleric of an earlier generation said, of an entirely different problem, "This is a matter of very considerable difficulty. We look it straight in the eye, and pass on."

[8] *English v. Fischer*, 660 S.W.2d 521, 522 (Tex. 1983). At the common law, the implied duty is limited to special relationships. *Central S. & L. Ass'n v. Stemmons N.W. Bank, N.A.*, 848 S.W.2d 232, 238-39 (Tex. Ct. App. 1992).

Dweeb, but, due to a law-office failure,[9] only two counts are stated: breach of contract (count 1) and breach of the implied duty of good faith and fair dealing (count 2), and the latter demands punitive damages.

Themis, pleased to be rid of the inducement count, answers the substitute countercomplaint.

Dweeb feels that he was indeed induced by Themis, who, he feels, acted unreasonably, but he prefers his stress-free relationship with a post-Themis bimbo to litigation, because "Litigation is an activity that does not markedly contribute to the happiness of mankind, though it is sometimes unavoidable."[10] Rather than move for rectification of pleading, he lets the inducement count go. The tactic provides him a bonus: constraint of his attorney's fees.

The New York rationale for discovery is that a litigant is a stranger to the facts, so he needs a fishing expedition to uncover them. Under Confusion procedure, discovery is restricted. A litigant may inquire only about fact allegations and legal theories which are material to the pleadings. Dweeb and Themis manage nonetheless to avoid surprise through discovery of information which is, in any event, well known to both of them.

Limited discovery facilitates setting the day of reckoning within a year after issue is joined. One gray morning in mid-October, 2010, at 8:30 o'clock, trial begins. The milieu of the liars' contest is Trial Term 1, the Honorable Stephen Kruger C.J. presiding.

Dweeb also wants to assuage his feelings, so he elects trial by wager of battle.[11] He informs the Court that, though trial by wager of battle was abolished in England,[12] abolition was effected after the reception of English common law in Confusion, whatever the date of the reception was. Thus, trial by wager battle is part of the common law of Confusion.

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[9] Law-office failure, noun. A professional lapse, characterized by not meeting a work-related obligation, whether caused by an attorney or by an attorney's employee or by a client. Lapses include misplaced files and overlooked time requirements. *Fox v. Hartmann*, 455 N.Y.S.2d 17, 18 (2nd Dep't 1982). The definition is provided for attorneys although they are familiar with the term, all too often through personal experience.

[10] *Gallie v. Lee*, [1969] 2 Ch. 17, 41 (C.A.), *aff'd sub nom. Saunders v. Anglia Bldg. Society*, [1971] A.C. 1004 (H.L.).

[11] 3 BL. COMM. *337-*341 (1768).

[12] 59 Geo. III c. 46 (1819).

Themis replies that, no matter what the date of reception, there is no reported Confusion case in which the parties adjudicated their differences through trial by wager of battle. A century and a half without even one trial by wager of battle proves that it is not part of the common law of Confusion.[13]

The Court pronounces the *ex-cathedra* conclusion of law that trial by wager of battle was not received as the common law of Confusion. The fallback position of the Court is the further *ex-cathedra* conclusion of law that, if trial by wager of battle were received, it was abolished by the constitutional right to trial by jury.[14]

Dweeb adds that the statute of abolition was repealed in England,[15] and that restored the status of trial by wager of battle in England to the legal status quo ante its statutory abolition. At the time that the statute of abolition was repealed, Confusion relied freely on English legal authority. With trial by wager of battle in England, trial by wager of battle became the common law of Confusion.

A hand is held up by the Court to stop Themis from replying. Repeal of an act of repeal, the Court rules, does not revive the repealed act, unless revival is expressly provided.

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[13] There is no doubt that reception took place. The Master of the Rolls was overheard to mutter that he rues the event. THE TIMES (London), May 7, 1975, at 2.

Professors and lawyerlings, sheltered in the legal acres of *silvas scholai* from the stresses of life, debate the date of reception, because the relevant records are not preserved (or cannot be found) in Confusion court records. Among the dozens of law-review expositions on this burning issue are Paris Hilton, "Reception in Confusion: Catering to the Bozos," 65 ANTIUTOPIA L. REV. 557 (2008), and Antonin J. Scalia, "Toward a Comprehensive Comparative Gnoseological Resolution of Historical-Dating Ambiguities in Common-Law and Civil-Law Jurisdictions," 4 BROOKLYN J. IOTAS 1066 (1997).

[14] *See Childress v. Emory*, 21 U.S. 642, 674 (1823) (conclusory dictum that trial by wager of law, even if brought by colonists to New World, was abolished by constitutional right to jury trial).

Slackers are assisted here. A wager of law is a giving of sureties, in an action on a debt, that, on a day certain, the debtor would make his law. That is, he would take an oath that he is not indebted, and he would bring into court eleven compurgators. These men would swear that, to their knowledge, the debtor is telling the truth. Thereon, the debtor is discharged absolutely. 3 BL. COMM. *341-*342 (1768).

[15] Statute Law Revision 1873, listed in 1 CHRONOLOGICAL TABLE OF THE STATUTES 239 (1992).

The Court goes on to say that there is no provision concerning revival of trial by wager of battle, or any provision of any sort concerning trial by wager of battle, in the TLC (Totality of the Laws of Confusion).

Without a statute, reliance has to be placed on the common law. Thereunder, Themis, a woman, may not be challenged, because the common law does not recognize women as battle-worthy.[16] The common law, the Court adds in a dictum, does not recognize women as reasonable, either.[17]

Dweeb, a male supremacist, maintains hypocritically that men and women should be equal under law. Aren't female lawyers nowadays esquires, as male lawyers are, though the term "esquire" used to mean "knight's gentleman"? The analogy, and the guarantee in the Confusion Constitution of equal protection under law, he thunders, compel the conclusion that, whatever the common law was, the contemporary common law recognizes women as battle-worthy.

(Despite this litigation position, Dweeb still feels that Themis acted unreasonably, so he just cannot bring himself to apply the contemporary-common-law point to the dictum of the Court.)

Themis responds demurely that only males need register at age eighteen for military service. The U.S. Supreme Court upheld that sex-based distinction.[18] The Confusion constitutional guarantee intends legal equality, not insupportable symmetry and not fatuous obliteration of natural differences.

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[16] Slackers are assisted here as well. "The cases which have been cited in this argument, and the others, to which we ourselves have referred, shew very distinctly that the general mode of trial by law in a case of appeal is by battel, at the election of the appellee, unless the case be brought within certain exceptions. As, for instance, where the appellant is an infant, or a woman, or above sixty years of age, or where the appellee is taken with the mainour, or has broken prison. Now, in addition to all these, there is the case where great and violent presumptions of guilt exist against the appellee, which admit of no denial or proof to the contrary." *Ashford v. Thornton*, [1818] 106 Eng. Rep. 149, 167-68 (K.B.) (Lord Ellenborough C.J.).

[17] *Fardell v. Potts* (*The Reasonable Man Case*), reported in A.P. HERBERT, MISLEADING CASES IN THE COMMON LAW (1927). *See McFarlane v. Tayside Health Board,* (1999) 3 W.L.R. 1301, 1318 (H.L.) (reasonable man is commuter on Underground); *Hall v. Brooklands Auto Racing Club,* (1933) 1 K.B. 205, 224 (C.A.) (reasonable man is passenger on Clapham omnibus).

[18] *Rostker v. Goldberg*, 453 U.S. 57 (1981).

The common law reflects life as it is, she says, never life as theoreticians and do-gooders would have life be. Nature made women the fair sex. On this, of necessity, the contemporary common law is as the common law always has been. Women are not battle-worthy.

More's the pity the continuation of inequality, Dweeb retorts, considering that trial by wager of battle is an honorable mode of alternative dispute resolution.[19]

Losing interest in the barrister-babble, the Court denies the election. To meet the requirement of a statement of decision,[20] the Court intones, "*Quod erat demonstrandum*."

A jury trial,[21] which is the giving over of a private dispute for public resolution by nine ignorant strangers, is eschewed by Themis and brushed off by Dweeb. The litigants agree to trial by judge ("And a good Judge too!"[22]).

Only the two former lovers testify; no demonstrative evidence is offered. The Court grants judgment in favor of Themis as plaintiff, and further grants judgment in favor of Themis as counterdefendant. General damages in the amount of $2,500 are awarded, as are punitive damages of $69 for count 2. There is no evidence as to special damages, so none is granted. Dweeb's motions to vacate the awards; to reduce the awards; and for a new trial, are denied.

You are a member of the Appellate Division panel which hears the case. Dweeb is the appellant, and Themis is the respondent. Write a pellucid opinion on the following issues:

1. Dweeb asked Themis if he could buy a drink for her, and Themis replied, "I do not mind if you do." Did this constitute offer and acceptance of a contract?

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[19] Revivalists should read HENRY C. LEA, SUPERSTITION AND FORCE (2nd ed. rev. 1968); M.J. Russell, "Accoutrements of Battle," 99 LAW Q. REV. 432 (1983); and Richard W. Ireland, "First Catch Your Toad: Medieval Attitudes To Ordeal and Battle," 11 CAMBRIAN L. REV. 50 (1980).

[20] Conf. Civ. Prac. Act, §§ 36, 44 (2010).

[21] W.S. GILBERT AND ARTHUR SULLIVAN, TRIAL BY JURY, in ASIMOV'S ANNOTATED GILBERT & SULLIVAN 61 (Isaac Asimov ed. 1988) [hereinafter "A Delightful G&S Operetta"].

[22] A Delightful G&S Operetta, *supra*, n. 21, at 71, 83-84.

2. Dweeb said to Themis, "Let's go to a hotel, sweets, and you got yerself wheels." Did Dweeb accept Themis's offer concerning transportation from the saloon to her tenancy?

3. At the motel, Themis pulled away from Dweeb and ran to the lake. Was this a breach of contract by Themis?

4. At the lake, Themis and Dweeb embraced ardently. (a) Was the embrace performance of a contract by Themis? If yes, which contract? If no, why not? (b) Was the embrace performance of a contract by Dweeb? If yes, which contract? If no, why not?

5. Themis realized that she was not quite ready to consummate passion. Instead of telling Dweeb this, she said to him, "No! Not in this locale!" (a) Did Themis have a contractual obligation to tell Dweeb what she wanted? (b) If Themis had accepted money, not only a ride, from Dweeb, would she have had an obligation, under the law merchant, to make a full disclosure to Dweeb of her needs?

6. Themis pushed once, feebly, against Dweeb's chest. (a) Was this a breach of contract by Themis? (b) Was this an anticipatory breach of contract by Themis?

7. At the critical moment, Dweeb did not meet Themis's psychological and physiological needs. Was this a breach by Dweeb of the implied duty of good faith and fair dealing?

8. Although Dweeb wanted to assuage his feelings, the Trial Division denied his election of trial by wager of battle. Was the ruling correct?

9. Was the amount of general damages excessive?

10. Were punitive damages for count 2 of Themis's complaint properly awarded?

VII. With Security and Efficiency For All

DHS Form No. DHS-TU-700-052 (06/10)
OMB Control No. 1600-2315
Expires November 4, 2013
Estimated Burden: 5 minutes

NOTICE OF ISSUANCE OF SHUTDOWN ORDER
OR TEMPORARY SHUTDOWN ORDER
This notice was sent to you by the
United States Department of Homeland Security
Office of Civil Rights and Civil Liberties
Telecommunications Unit

READ CAREFULLY

Date: June 1, 2011

You are hereby notified that the
___ telephone number _____
_X_ email address safavidstudiesfdn@islamnet.ir
_X_ which you contacted
___ from which you were contacted
is the object of a
_X_ Shutdown Order
___ Temporary Shutdown Order
issued on May 12, 2011 .
The order, which took effect immediately upon issuance,
_X_ is permanent.
___ is in force from _____ through _____.

The order was issued by the Telecommunications Protector pursuant to Section 2339E of Title 18 of the United States Code. Section 2339E, titled Protection of Telecommunications, is one of the three major units of the Civil Liberties Improvements Act of 2008 (Public Law 110-471 (2008)).

Section 2339E(a) authorizes the Telecommunications Protector to issue a Shutdown Order or Temporary Shutdown Order against "a telecommunication identifier registered by a person who is of interest to a security service of the United States, in relation to an act or a suspected act

which supports terrorism or attempted terrorism in the United States or which is likely to affect the United States."

The term "telecommunication identifier" is defined in Section 2339E(f)(7) as "a telephone number or an email address, whether numeric, alphabetical, or alphanumeric."

Section 2339E(c) permits the Telecommunications Protector to issue a Shutdown Order or Temporary Shutdown Order without judicial authorization.

Section 2339E(d) permits a person who is aggrieved by a Shutdown Order or Temporary Shutdown Order to contest the order before the United States Foreign Intelligence Surveillance Court. An aggrieved person may be represented by an attorney of his or her choice, if the attorney has a current security clearance of secret or higher. An aggrieved person may represent himself or herself, if he or she has a security clearance of secret or higher.

For information about obtaining a security clearance, contact the Defense Intelligence Agency, Security Clearance Office, Building 6000, Washington, DC 20340-5100; 202-231-8476; securityclearance@dia.mil.

Section 2339E(b)(1) prohibits a United States person from contacting a telecommunication identifier which is the object of a Shutdown Order or Temporary Shutdown Order.

Section 2339E(b)(2) requires a United States person who is contacted from a telecommunications identifier which is the object of a Shutdown Order or Temporary Shutdown Order to report the contact to the Telecommunications Protector, by email, within 24 hours, and to provide a copy of the written telecommunication or the substance of the oral telecommunication. The email address for this purpose is report@usdhs.gov.

Under 18 U.S.C. sec. 2339E(e), the first violation of a provision of section 2339E is punishable by a fine of $5,000, imprisonment for not more than six months, or both. The second violation is punishable by a fine of $25,000, imprisonment for at least six months and not more than one year, or both. A third or subsequent violation is punishable by a fine of $100,000, imprisonment for at least three years and not more than five years, or both.

Further under sec. 2339E(e), a first violation of sec. 2339E is punishable by imprisonment in a United States prison operated in the United States by the United States Bureau of Prisons. A second or subsequent violation of sec. 2339E is punishable, at the discretion of a United States judge, by imprisonment in a United States prison operated in the United States by the United States Bureau of Prisons, in a "detention facility" on "United States military property in the United States or abroad", or in a "security facility" in a "country with which the United States maintains diplomatic relations and which cooperates with the United States in the fight against terrorism."

The Department of Homeland Security urges all Americans to be vigilant. Questions about this notice may be addressed to the Telecommunications Protector.

BY MAIL:

U.S. Department of Homeland Security
Office of the Telecommunications Protector
Washington, DC 20528-1539

BY E-MAIL:

telecommsprotector@usdhs.gov

Please include your mailing address, so that, if necessary, you can be contacted via the United States Postal Service.

BY PHONE:

Department of Homeland Security switchboard: 202-282-8000
Office of the Telecommunication Protector: 202-282-0666

OTHER OFFICIALS:

To contact other Department of Homeland Security officials, see the Directory of Department Officials on the USDHS web site.

To comment on the USDHS web site, please send an email to webmaster@usdhs.gov.

ESPAÑOL:

Para obtener este anuncio en español, llama por favor al 202-938-2225 o envia un correo electrónico a reconquista@whitehouse.gov. Con respecto al uso general del español en Estados Unidos, incluyendo interacciones con gobiernos, contacta con español@northamericanunion.int o multilingua@newworldorder.org.