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Obscenity and giant technological strides in the bedroom

Paul Brennan

There are people in our society who do not have a high appreciation of art, such as the ladies who convinced a US museum to cover up the genitals of an exhibition of Greek statues. In fact, sticking a clay fig leaf on certain statues has been popular for centuries and probably requires a steady hand.

Therefore, when an art exhibition by an internationally renowned artist is raided by police and photographs of pre-pubescent girls in a "sexual context" have been seized, people are either outraged at the photographs or the raid itself.



Obscenity is difficult to prove. The pictures may need to "deprave and

corrupt", which takes some going, especially, nowadays as anybody who has watched shows like "The Simpsons" and "Southpark" will know. The Jury may be told that "depravity and corruption" are given their ordinary dictionary meaning, which is not much help. One judge said of obscenity, "I cannot describe it but I know what it is when I see it".

In the "Lady Chatterley's Lover" trial a judge said it was the sort of book that you would not want your servants to read, which explains why those charged with obscenity can be glad that a jury decides.

The divide for most legislation and many of us is that if it can be called "art", however weird it seems to us, it is probably alright. In this case the photographs were on sale for \$25,000 each so that must be art or at least he has got me fooled.

In obscenity trials the Prosecution produce po-faced Puritans, who are disgusted and the Defence produce "Oscar Wilde" types who say, in art, anything goes. There can be a party atmosphere. But, if there is a guilty verdict, the defendants will probably be sent to prison as in the Oz trial because they have gone too far in the view of a jury.

So what is normal? Well, I thought I had a handle on this until a few weeks ago. When a primary school teacher was suspended from her job for appearing naked in Cleo magazine and speaking candidly about her sex life with her husband. Asked if she ever brought "toys" into the bedroom The Australian reported her reply as "Yes, the usual stuff - dildos, clitoral stimulators, whips and cuffs". Understandably, now, I am not so sure.

[click here to the new "Law" webpage for articles on various areas of law](#)

Debt-where is thy sting?



Paul Brennan

As you struggle to manage your personal credit crunch by cravenly avoiding your own creditors while doggedly and indignantly pursuing your debtors, there are a few rules to the game that you should know about.

There are four rules to being a successful debtor:

1. Admit nothing, especially not that you owe any money or that you are completely satisfied with the goods or services.
2. If there is anything slightly wrong with the product or services tell the supplier in writing.
3. Try not to sign personal guarantees.
4. Do business in a company or entity that is not worth suing.

At some stage during your evasive activity the creditor will "spit the dummy" and instruct a lawyer. Should you surrender immediately? Well, maybe not. There are two types of lawyer's letter. Either:

a) Pay or we shall commence action. This is called a "letter before action". It is very precise and states that the money must be received within say, seven days of the date of the letter. The reason for this precision is not to help you pay more efficiently or make the threat more menacing, it is simply to ensure that once the deadline expires the lawyer can commence action and the costs of the proceedings will be ordered against you. A "letter before action" is like the scene in "Dirty Harry" where Clint Eastwood says, "Make my day". The choice is blindingly simple, pay up or get sued.

b) Pay or we shall "seek our clients instructions" or "advise our client that action should be commenced" or my own personal favourite "take such action as we deem necessary without further notice to you". This is usually a shot across the bows.

Assuming that you do not want to make payment in full, there are five possible responses to a lawyer's letter:

1. Do nothing and hope it goes away.

Letter a) forget it

Letter b) this may work.

2. Offer to pay in installments.

Letter a) maybe.

Letter b) probably acceptable.

3. Say that you will defend any proceedings commenced.; this means that you have taken it out of the "cheap and easy" debt collection class and put it into the expensive "defended action" category. If you have credible reasons this may make the creditor think twice before commencing action, especially if it combined with 4.

4. Offer to pay part of the money in "full and final settlement". This is called "negotiating a settlement".

5. The best response and the one most likely to stop your creditors in their tracks is to convince them that you are broke and that suing you is throwing good money after bad. This can be difficult to do as they will think that you are having them on; claims of fatal diseases, lost jobs, deceased relatives (or pets) tend to fall on deaf ears. A good tactic is the "open kimono" approach, by making a list all your assets and debts offering to pay a few dollars a month to each debtor. On the positive side the worse that your financial position is the more successful that this tactic will be.

Now that you know the four rules to be a successful debtor you will understand that as a creditor you must:

1. Get the debtor to admit that the money is owing e.g. the cheque is in the post. Get it or confirm it in writing.

2. Know legally who owes you the money.

3. Get guarantees and do credit checks.

You are now fully equipped to be in small business, during this particular

turn down. Best of luck.

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The do's and don't of "Franchisee Rage"

Paul Brennan

The great thing about being a franchisee is that you can share the misery of being in small business with others.

You hear the franchisor is going bust. But what are you going to do about it?

What not to do:

1. Panic. Teetering on the brink is not the same as going bust.
2. Start an action group and broadcast that the franchisor is going bust. This may be defamation and puts you, personally, in the frame. Also, it may put people off buying the franchise.
3. Get your lawyer to engage in correspondence or sue. You should take your lawyer's advice and be guided by him or her. However, correspondence may be a waste of money and suing, premature.
4. Knee jerk reactions e.g. stopping all payments immediately. This places you in breach of contract, where the object may be to prove that the franchisor is in breach of its contract with you.

What to do:

1. Read the franchise agreement. I know it goes on a bit but it governs your relationship with the franchisor. Identify the obligations of the franchisor, you are unlikely to find many.
2. Decide if you want to get out of the franchise. Handled correctly this may give you the opportunity to "cut your losses". Here is how:



- a. Identify the breaches of the agreement or the act that the franchisor could commit.
 - b. Instruct a lawyer to help you identify breaches of the agreement and the act to enable you to terminate the franchise agreement at the right time.
3. Make your own investigations. Note down what you find out and the source. Calling the franchisor's office and asking if it is going bust is likely to be met with the answer "No". However, that statement and the date may be good evidence later on if you are trying to prove that the franchisor traded when it was insolvent.
 4. Check that the rent has been paid. Often, you are a licensee of the franchisor and it is the lessee of the premises.
 5. Tell everyone else not to panic as it devalues the franchise.

Three things may happen:

- a. The franchisor survives and it's business as usual;
- b. The franchisor goes bust and someone steps in to take over;
- c. You get notice that an administrator/receiver/liquidator has been appointed. A date is usually chosen for a creditors meeting after which you will find out if the franchisor will continue or fold.

A common rumour among franchisees is that the franchisor is teetering on the brink of going bust. As this is not an uncommon business model, the rumour may be sort of true rather than being generated by malicious franchisees but be careful.

[click here to visit the Law & Disorder site](#)

Result of last month's competition



Thank you to those of you who entered last month's competition to tell us the meaning of the penalty "Shove the Fumbler" referred to on the newly expanded Old Bailey site among other penalties such as "burning in the hand" and "transportation". The winner is Bob Brummell ENACT Business Architects bbrummell@enact.com.au who receives Paul's new eBook "The Legal Guide to Dying-Baby Boomer Edition". According to the winner the meaning of "Shove the fumbler" is "receive the correction of the gentle Lash for several crimes respectively no less tedious, than impertinent here to be

recited". Disappointed? Yes, so was I. With keel hauling, hanging, drawing and quartering as well as being strapped to a cannon and being blown to bits to choose from it seems a little dull. Anyway, I do not want to give the primary school teachers any more ideas.

Apek Publications PO Box 27, Mooloolaba, Queensland 4557

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ABN 60 583 357 067. **Phone:** 07 5444 2166 **Fax:** 07 5444 456

info@brennanlaw.com.au www.brennanlaw.com.au

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