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LAW & DISORDER

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LITIGATION SPECIAL

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For further information on the events, book launch or other matters referred to in this ezine please go to www.lawanddisorder.com.au.

The Law & Disorder eZine attempts to provide legal information in an entertaining and amusing manner to help clients avoid predictable legal issues.



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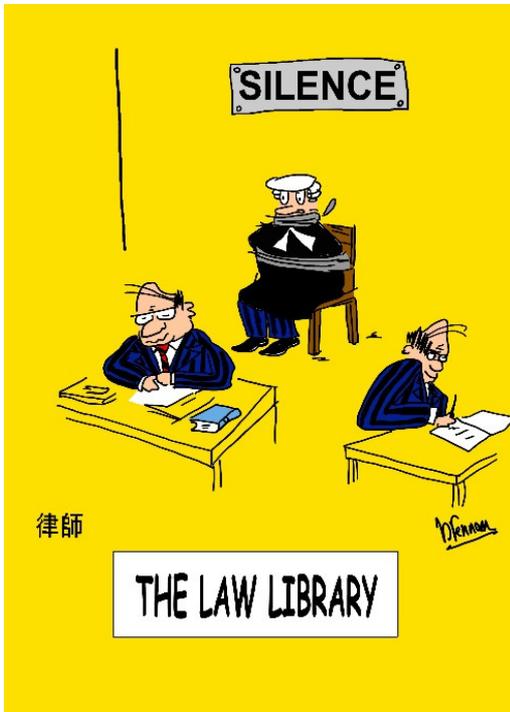
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Fights with Government Departments



To their credit, government departments have the professionalism and training to listen quietly when you throw a tantrum. But what if slamming the phone down and telling your wife is not enough?

Decisions regarding licences, permissions, trademarks, taxes- there is no end to the decisions that government departments can make to wind you up.

Government departments even outshine private industry and other non-governmental organisations (except maybe Opus Dei) in inventing ways to be castigated.

Nevertheless, things have come a long way, and unlike in the past where only "aggrieved parties" could complain, now all sorts of people can get angry and seek an avenue of appeal.

There are four ways to appeal:

1. A letter to the Minister.
2. The Ombudsman - Although he does not have the power to force anyone to do anything, he can investigate complaints in an informal Scandinavian sort of way (they have come a long way since the Vikings).
3. An Appeal Tribunal - Many appeals can be made to tribunals and the process is usually informal and cheap.
4. A judicial review application- The court can quash the original decision and make the department's life a misery:
 - a) It does not hear the evidence/witnesses again. It decides if the department had the power to make the decision and if they exercised that power lawfully or with bias, irrelevant considerations, improper delegation or in bad faith etc.
 - b) Nevertheless, this method does take time and is expensive.

- c) Even if you win, the matter may just be sent back to the Minister to think again. In response to this, the Minister can simply remake the decision using the correct procedures.

Note: There is normally an appeal time limit. Don't miss it, as extensions are unlikely.

I was once a member of an organisation where an aggrieved person travelled for hours just to throw a brick through our window. Simple, effective and does not need to be in writing, but regrettably illegal, even against government departments.

Extract from *Legal Disputes, the Art of War and You* (coming soon).

Fights with Multi-nationals

You are a small business owner who returns to your business to find your wife in tears and your business ravaged and brought to a standstill by your new computer system.

Multi-national computer companies ("multi-nationals") offer cheap servers to SMEs (Small to Medium Enterprises). But if something goes wrong, providing a replacement server does not compensate the SME for data loss, business downtime and a technician's time.

Your lawyer's letters are ignored. The multi-national relies on you not having the money to sue.



But that night, after watching a re-run of *Braveheart* you realise Mel Gibson was right, and yet another peaceable, hardworking small business owner is goaded into becoming a lethal fighting machine.

Admittedly, the English army did not give *Braveheart* the run around using Bangalore call centres. Nonetheless, there are lessons in guerrilla tactics which may help you elevate the issue in the multi-national until you find someone with a budget to pay you off:

1. Get your lawyer to summarise the claim and use him as a background adviser.
2. Complain to the CEO in the HQ as well as the local office.

3. Complain to government departments.
4. Do not criticise the multi-national itself, but blame their employees' decisions.
5. Have your lawyer threaten court action but conduct the case yourself.
6. Use the Small Claims Court procedure which does not allow either side to claim their legal costs.
7. Sue both the parent company and the local subsidiary. Write to the founder telling him your reasons.
8. Enlist press support in your just cause. They love a good story.
9. If your cause is just, then you have nothing to fear from the court finale. But the multi-national does.

Isn't this a bit risky and time consuming? Well, no more than leading a 13th century rebellion.

Extract from *Legal Disputes, the Art of War and You* (coming soon).

Using the Law to Protect Your Privacy



You were aware that someone had a video camera, but were surprised when you appeared on YouTube as "Drunken middle-aged fool dancing". As the popularity of your video clip soars, people start to recognize you on the street.

Your lawyer tells you that you can't stop it, even if you did not give your permission. Before you vow never to go to another wedding, some things are private, even for celebrities and, therefore, protected:

- When Naomi Campbell was snapped stepping out of the Narcotics Anonymous meeting, the papers were wrong in printing the pictures, as it related to medical treatment.

- When secret pictures were taken of Ewan McGregor's children, publication was not permitted.
- Catherine Zeta-Jones sold the right to take pictures of her wedding to OK! Magazine for \$US1.5M. A paparazzo sneaked in, took pictures and sold them to HELLO! Magazine. Her deal was protected by commercial confidence.

Therefore, feigning a heart attack, involving your children and pre-selling your drunken exhibition are all ways to stop your appearance on YouTube.

It may be worth a try to claim that a song you were singing at the time or your performance itself is a copyright work and, therefore, protected.

A person caught on CCTV trying to commit suicide, unsuccessfully as it turned out, was compensated when the pictures appeared in the press, whereas an abattoir trying to stop pictures of their possum stunning procedure was not protected, even though the pictures were taken by a trespasser.

To digress, what about affairs with neighbours, I hear you ask? Affairs and sexual indiscretions do not seem to be protected from the press, or other interested parties, pictures or no pictures; although a Brazilian model who unexpectedly discovered a video of her making love to her boyfriend on the internet was successful in having it removed. Therefore, an innocent couple's lovemaking was something private, on the same basis that rare footage of sex within marriage would also be protected.

So, what is protected? Well, it is a balance of your right to a private life against the video cameraman's or journalists often stronger right to freedom of expression. For instance, naked pictures of a young woman on a beach may not be protected. The same pictures in her bathroom or of a Duchess on her brother-in-law's private estate; definitely yes. Naked pictures of a judge (unless it is on a beach); hopefully yes.

Be warned; your 15 minutes of fame awaits you. But it is possible to use privacy law to protect your business and other secrets.

See video clip at <https://www.youtube.com/watch?v=zKP3CfCbB3U>

New Book - Legal Disputes, the Art of War and You

Coming soon

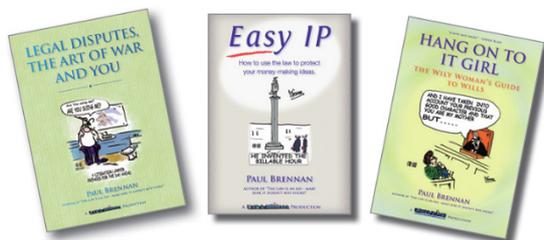
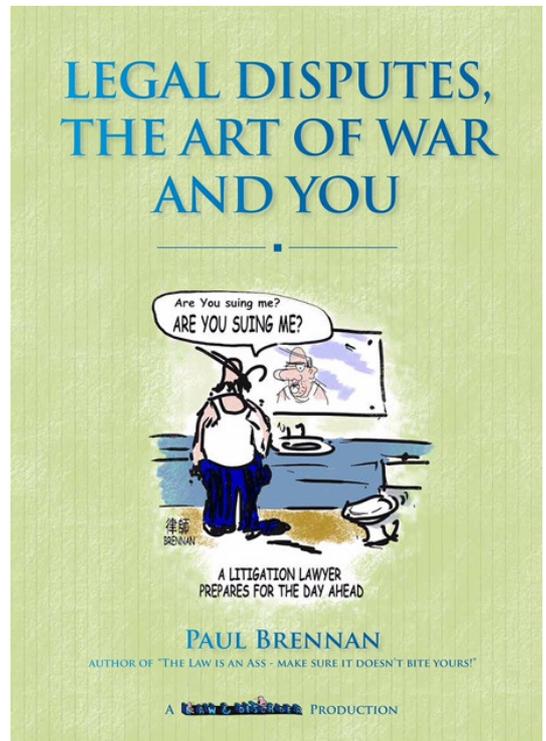
This book is to help you deal with your legal conflicts. It not only covers court actions, but fights with government departments, multi-nationals, club committees, your spouse, neighbours and all sorts of other people and organisations that wind you up.

Most importantly, it deals with how to avoid disputes in the first place which is often the most effective but least popular option.

The types of legal issues that people have are universal. Laws may try to be different, but when it gets down to it they are dealing with the same problems. Having said that, a legal case can turn on a single word and the law in each jurisdiction can have quirks and twists.

Nonetheless the big picture strategies to avoid, win, or at least not dig too deep a legal hole, are very similar.

For more books go to <http://www.amazon.com/Paul-Brennan/e/B001KMQFEC>



Disclaimer:

The content of the Law & Disorder eZine is to give you legal basics and in some instances included unashamedly to try and make you laugh. In law it is sometimes difficult to work out what is serious and what is just for fun. Therefore, if you plan to do anything legal, rely on your own lawyer's advice or instruct me to look at the particular facts of your case. Not only will I deny responsibility for the legal content but also for some of the jokes.

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