

It's law eZine ...but not as you know it!

LAW & DISORDER

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Mediation, Alternative Dispute Resolution and "EADR"

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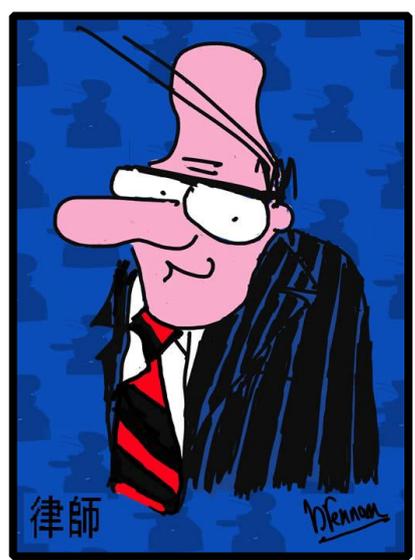
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For further information on the events, book launch or other matters referred to in this ezine please go to www.lawanddisorder.com.au.

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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MEDIATION

Since time immemorial, apart from maybe at duels, lawyers have been assisting clients in what we used to call "having a bit of a dust up" but now optimistically describe as "Dispute Resolution".

1. Alternative Dispute Resolution



George Orwell once said, "The quickest way to end a war is to lose it." Sometimes in litigation matters, such as debt collection or injunctions, you can overwhelm your opponent's trenches at an early stage. However, often litigation it is not over by Christmas.

In the way that War Ministries are now called Defence Ministries, sometime in the last few years Litigation Departments became Dispute Resolution Teams.

The "team's" mission is to find a resolution to your dispute rather than just opening hostilities and seeing how it goes which seemed, amongst clients, to be the preferred method for centuries, or certainly as far back as I can remember.

Apart from mediation and tribunals, which I shall deal with later, there are two other main alternatives to a court case:

1. Arbitration - This process replaces courts and judges and their resulting delays and red tape. Nonetheless, arbitrators produce their own delays and red tape and arbitrations can be presided over by people who are not judges but have always wanted to be. The popularity of arbitration seems to have waned.

2. Expert determination - Contracts often provide for issues to be determined by an expert whose decision shall be final. An independent person is appointed to choose the expert if the parties cannot agree. This can be a lottery as experts cannot be trusted to decide in your favour especially if you do not have a strong case.

What about just bumping them off? Always popular. For some, the risk of life imprisonment is adequately compensated by the promise of legal costs being covered by legal aid.

2. Mediate And Be Damned

The CIA is alleged to have launched 638 assassination attempts against Fidel Castro including one using an exploding cigar.

Unfortunately, assassination is not available to litigants; they are condemned to fight their enemy in the courts.

Fortunately, many people find that issuing a writ feels better than sex (depending of course, on who their current partner is).

Yet, after a year or so in some entrenched cases, all parties can feel like they have been through the mill.



At this stage neither party is prepared to give up but they may be ready for mediation. This is where you meet the other party with their lawyers with the object of settling the dispute.

In the 70s, there was no mediation that I recall. Clients were advised not to speak to their opponent. A writ would be served and skirmishes would occur up to the hearing where a huge number of cases settled at the court door. Few facts were admitted. Communication with what we still call "the other side" would be, for the most part, aggressive. Early settlement would be initiated by the defendant, if at all.

Acting outside these bounds was seen as a sign of weakness. In many cases, it still is.

What happens in a mediation:

- The lawyers agree on a suitable mediator usually (yes, you guessed it) often another practising lawyer.
- The parties attend the mediator's office.
- A lawyer on each side gives a brief case overview (five minutes). This can be like the assegai waving and chanting at the start of Zulu or a "Budget Speech" depending on your lawyer.
- The parties split up into different rooms and once apart, the mediator will tell each party that their case stinks and it will cost them far more than they thought.

- The mediator will then flit between the rooms conveying offers back and forth and nag the parties into offering far more than they ever expected until an agreement is reached.
- The ideal finish to mediation (from the mediator's twisted point of view) is that both parties walk away feeling that they have been shafted.
- In a perfect world your enemy would leave the mediation and be promptly run over by a bus. This seldom happens.

At the end of the day, if you can't let it go, and mediation is not for you, then there is always the exploding cigar.

3. Extreme Alternative Dispute Resolution ("EADR")



For those of you who do not have the money, temperament or time for litigation and have no wish to engage in "limp wristed" mediation, another possibility is to "bump off" your enemy.

I do not advise "bumping off" your husband or wife as the trouble with murdering your spouse is that, for understandable reasons, you are usually the prime suspect.

In my view, murder of your enemy is strictly a DIY activity. Unless you are well in with organized crime, then it is best not to hire a hit man. They just do not seem to take the same care these days and so often turn out to be police agent provocateurs.

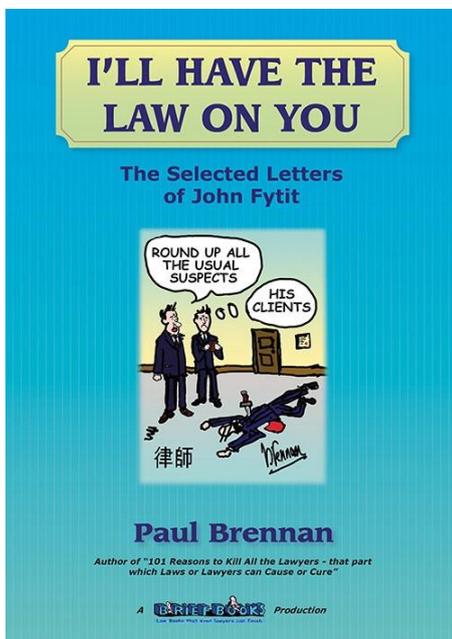
Unless, you are a particularly creative person, do not expect to commit the perfect undetected crime, first time. Although, this does happen in crime dramas with so many others tuning in, the modus operandi of TV programs can be a little oversubscribed.

Do not broadcast your hatred and you will have surprise on your side having spent your life staying within the law without any criminal convictions, except the occasional bit of shoplifting. Your participation in a murder could leave the police baffled with no motive. Even telling your spouse about your hatred can be risky as now they are entitled to give evidence against you, and they do. Frankly, if I can be sexist about this for a moment... especially wives.

In my view, the best homicidal method is not stabbing, poisoning or strangling (however satisfying those methods may seem). It is running your adversary down in a stolen motor vehicle such as a four wheel drive. The big advantage of a four wheel drive is that owners often leave them open with the keys in the ignition in a subconscious bid to get rid of them.

For those of you who are not ready for murder on ethical grounds, one of the great benefits of age is to watch your enemies die before you do. Life prolonging, entertaining and entirely legal.

New Book - I'll Have the Law on You



BOOK LAUNCH TO BE IN MARCH 2016

This is the first major edition of John Fytit's* works and is as close as we will come to the autobiography that he never wrote.

Readers of his legal advice column will have followed Fytit's journey from embittered sole practitioner to liberated and unrestrained legal adviser.

His thirty years' experience in legal misfortunes equipped him to give the public the legal advice they truly desired.

Variouly known as a Legal Agony Aunt and Legal Agony Ombudsman, his ambition to be a Legal Agony Commissioner was cut short.

*Pronounced "Fight it" and not "Fit it".

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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