

The Art of Law

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Law is an artform.

Properly practiced, the legal maneuvers of a skillful civil court lawyer can be as grandly artistic as the sweeps and twirls of a *prima donna* ballerina or the majestic complexity of Michelangelo's statuary.

The wise lawyer uses the rules like colors of paint to portray his client's cause as just.

The shrewd lawyer can utterly destroy his opponent's arguments and by turning his words as a potter turns the clay make ruin of the other side by showing them to be the selfish, unprincipled louts they are.

A truly artistic lawyer can derive from the opposing party a handsome sum of money to finance further artistic battles against the dark side of our society.

The law can be brought to life. It can be made to walk and talk, as a puppeteer commands his marionettes. The law can be so wonderfully choreographed by a skillful practitioner that the entire course of human destiny may be altered by its commanding patterns, by the rhythm of its edicts, by the light it can be made to shine on arrogance and stupidity.

It is, indeed, a most majestic artform.

Like many things artistic (e.g., music and poetics) law is a system of knowledge composed of a small number of discrete ideas fit together by simple rules. For all its apparent complexity, the effective practice of lawyering requires mastery of only these few rules and just a few related concepts.

Consider civil litigation as an example. All civil cases begin with a complaint. The complaint is followed by an answer and defenses. After the answer and defenses are filed, both sides do what they can to discover evidence and put it in the court record as *admissible evidence*. Both sides study statutes and appellate court opinions that tend to justify their respective positions. The matter is then submitted to the court for judgment by making motions.

Only five steps.

- Complaint
- Answer and Defenses
- Discovery
- Motions
- Adjudication

Five steps, like the musical rules of pitch, duration, tempo, timbre, and loudness that comprise the essence of every symphony, every operatic aria, every concerto, and every song the Beatles ever did. As it is with music, the degree of art employed to arrange and assemble the parts of a legal battle makes the difference between failure and victory.

Five steps, like the five primary color tones. What's that? You say there are only three? Add the tones of brightness and texture to make your list complete. Five tones of color make every Rembrandt, every Matisse. How the five color tones are applied to the canvas is what determines greatness.

In The Art of War Sun Tzu teaches, "Measure in terms of five things: the way, the weather, the terrain, the leadership, and discipline." In war, as in litigation, victory comes to the one with ability to see things in their simplest expression. Sun Tzu sees five ways to measure when the time is right for battle and when discretion needs to be the better part of valor. Art in war is measured by the warrior's ability to see reality through a limited number of variables.

True artists create the desired result by managing just a few separate factors that together form complete mastery. It is this mastery of essential elements by which one consistently obtains victory.

Five parts to a lawsuit. They are the elements of every action in civil court. Taken together they include everything lawyers do in court. The plaintiff files a complaint. The defendant files an answer and defenses. Both sides then seek to discover evidence in favor of the point of view they want the court to see. Each party searches for case law and statutes that justify his or her position. When the bookwork

and discovery of evidence are at last complete, the parties submit their opposing arguments and move the court to enter orders.

It's no more complicated than that.

Using the five parts artfully is what makes the difference between failure and success, between a favorable judgment and an order directing you to empty your pockets.

Take a painting. A pastoral scene will do. Imagine trees and shrubs and colorful flowers with chirrupy birds and bees and a solitary cabin with its chimney pouring thin gray wisps of smoke upward into an empty sky.

No blue. No clouds. No mountains in the distance. Just bare canvas. Probably wouldn't win any serious contest as a masterpiece. At its very best, true works of art are always complete ... i.e., they contain all necessary component parts.

It is the same with legal battles. Omit one thing and all may be lost, for a court's ultimate decision can turn on a comma too many or a misplaced participle, not to mention a question you forgot to ask at deposition or the Supreme Court case you never took time to read.

Law is art.

There are good artists and there are passable artisans who ply their trade for profit and make do with what is necessary to sell their wares.

Good legal artists study their cases. They know the facts. They know what evidence they must prove. They know the law that controls the outcome of their case. They know they can obtain the desired judgment if they can discover the necessary elements of evidence and hang the parts together by sound legal reasoning based on prior court decisions.

That's how it's done.

The best of the good lawyers play their cases like Heifetz played the violin, like Balanchine danced, like Caruso sang, like Rubens painted.

They understand the elements of their art and use those elements creatively to obtain the desired effect.

If war can be practiced as an artform, if dance is art, if stimulating senses by rhyme and rhythm is art, if arranging colored images on canvas or notes on a musical staff is art, or if chipping away unnecessary parts of a block of marble to reveal the wonderfully detailed features of a human figure is art ... then is it not equally true that the honest practice of effective litigation is also an artform deserving recognition as such among the honored works of man?

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