

The Wit of Jurisprudence

By Dale Alberstone, Esq.

As a child, I found “Confucius” sayings to be fascinating and an interesting commentary on life.

Surely you remember some of them too, such as Confucius says: “Man who have feet firmly planted in ground have difficulty getting pants off.”

In my many years of practice as an attorney, my interest in adages, maxims and witty truisms has expanded into the legal arena. So, in this month’s article, I thought AOA members might enjoy some of the humorous, curious or profound expressions I have accumulated over the past three decades. They are in no particular order and contain a random compilation of thoughts. Here they are:

- “Talent whips truth every time.” – Judge Don Morgan
- “A landlord may normally evict a tenant for any reason or for no reason at all, but he may not evict for an improper reason.” S. P. Growers v. Rodriguez (1976) 17 Cal. 3d 719, 730.
- “A landlord intends the natural and probable consequences of his acts and where the acts of the landlord effectively deprive the tenant of the use and enjoyment of the premises, the intent to evict is implied from the character of the acts done.” Pierce v. Nash, 126 Cal.App. 2d 606, 613.
- “The frailty of human memory is a fact of universal acceptance.” Pra v. Bradshaw, 121 Cal.App. 2d, 267, 270.
- “The Fourth Amendment [pertaining to unreasonable searches and seizures] protects people, not places.” Katz v. United States, 389 U. S. 347.
- “Ignorance of a law is not a defense to a charge of its violation.” Hale v. Morgan, 22 Cal. 3d, 388.
- “Expert testimony is not required where a question is resolvable by common knowledge.” Jorgensen v. Beach, 125 Cal.App. 3d, 155, 163, restating in legalize Bob Dylan’s famous lyric: “You don’t need a weatherman to know which way the wind blows.”
- “The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread.” Anatole France from 1984.
- “It will not be disputed that “White” and “Negro” are generic terms, and refer to two of the great types of mankind.” California Supreme Court observation in 1854 in People v. Hall, 4 Cal.App. 399, 402.

- “The Court: I find the Defendant guilty of assault with a deadly weapon ... What are you complaining about? The Defendant: I haven’t said a word. The Court: You don’t have to say a word. Your counsel didn’t put you on. . . . The Defendant: What did I pay him for? The Court: I don’t know. Take him out. Defense counsel: Thank you.” People v. Wheeler, 260 Cal.App. 2d 522, 525.
- “When a client has paid cash up front to his lawyer, the client knows he has a lawyer and the lawyer knows he has a client.” Paraphrasing Abraham Lincoln.
- “Just as a panda is not a true bear, a trustee of a deed of trust is not a true trustee.” Stephens v. Hollis, 196 Cal.App. 3d, 948, 955.
- “Although the Supreme Court is free to overrule its own prior decisions ... there is no exception for Supreme Court cases of ancient vintage.” Mehr v. Superior Court, 139 Cal.App. 3d, 1044, explaining that all lower courts must abide by the rulings of the Supreme Court no matter how old the decisions may be even if the lower courts disagree.
- “He who takes the benefit must bear the burden.” Halperin v. Raville, 176 Cal.App. 3d, 765, 768.
- “. . . the obviously futile attempt to ‘unring the bell’ . . .” Hyatt v. Sierra, 79 Cal.App. 3d 325, 337, explaining that if a jury hears otherwise inadmissible evidence, it cannot ignore it even if so instructed by the Judge.
- “Remedies may be fashioned only to enforce rights, not to meet the needs of one party or to achieve what the court perceives to be equity in a given situation.” Taylor v. Polackwich (1993) 145 Cal.App. 3d 1014, 1021.
- “A ‘time out’ is defined as a one week period in which no discovery can be served, all deadlines are postponed and counsel can generally goof off.” Zenith v. Matsushita, 478 Fed. Supp. 889, 959.
- “According to the attorney, defendant, in discussing how the will was witnessed, ‘admonished me to the effect that I was a young lawyer, I’d better go back and study my law books some more, that anybody knew a will which bore a notarial seal was a valid will, didn’t have to be witnessed by any witnesses.’” Biakanja v. Irving, 49 Cal. 2d, 647, 648. A Will must be witnessed; notarization is irrelevant.
- “Property does not have rights. People have rights.” Lynch v. Household, 405 U. S. 538.

- “I know it when I see it.” Justice Stewart explaining that he can recognize, but not define, hardcore pornography in the context of banning obscenity. Jacobellis v. Ohio, 378 U. S. 184.
- “The law will not stand by and allow such an evident wrong to be committed without finding some remedy.” Carter v. Adler, 138 Cal.App. 2d 63, explaining that a landlord should receive fair rent from a tenant based on a percentage of the tenant’s gross sales for a commercial business.
- “The adversarial system of justice presumes that the attorneys for each side oppose one another, not depose one another.” Carehouse v. Superior Court, decided in October 2006, explaining that lawyers in a case may not, as a general rule, be allowed to take the depositions of each other.
- “No one can take advantage of his own wrong.” C. C. Section 3517.
- “For every wrong, there is a remedy.” C. C. Section 3523.
- “The law neither does nor requires idle acts.” C. C. Section 3532.
- “Time does not confirm a void act.” C. C. Section 3539.
- “When the reason for a rule ceases, so should the rule itself.” C. C. Section 3510.
- “He who consents to an act is not wronged by it.” C. C. Section 3515.
- “No one should suffer by the act of another.” C. C. Section 3520.
- “No man is responsible for that which no man can control.” C. C. Section 3526.
- “When the reason for a rule ceases, so should the rule itself.” C. C. Section 3510.
- “Anyone may waive the advantage of a law intended solely for his benefit.” C. C. Section 3513.
- “He who takes the benefit must bear the burden.” C. C. Section 3521.
- “The law helps the vigilant before those who sleep on their rights.” C. C. Section 3527.
- “The law respects form less than substance.” C. C. Section 3528.

- “That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.” C. C. Section 3529.
- “That which does not appear to exist is to be regarded as if it did not exist.” C. C. Section 3530.
- “The law never requires impossibilities.” C. C. Section 3531.
- “That is certain which can be made certain.” C. C. Section 3538.
- “The law has been obeyed.” C. C. Section 3548.

Finally, let me conclude with one of my own sayings. I dedicate it to first year lawyers who are directed by their firm’s senior partners to research cases to support the defense of an indefensible position: ***“When you search for the nonexistent, you will search forever.”***

I had fun writing this month’s column. I hope you have enjoyed reading it. Perhaps you have found some interesting saying worth remembering or even repeating on some future occasion.

Dale Alberstone is a prominent real estate attorney who has practiced real property and business law in Century City for the past 30 years. He has been appointed to periodically serve as a judge pro tem of the Los Angeles Superior Court and is a former arbitrator for the American Arbitration Association. He also testifies as an expert witness for and against other attorneys who have been accused of legal malpractice.

Mr. Alberstone has been awarded an AV rating from Mardindale-Hubbell. An AV rating, registered through Reed Elsevier, reflects an attorney who has reached the heights of professional excellence and is recognized for the highest levels of skill and integrity.

The foregoing discussion is intended as a general overview of the law and may not apply to the reader’s particular case. Readers are cautioned to consult an advisor of their own selection with respect to any particular situation.

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