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# Dough, Re, Me: The Scale of Justice (A Descant for Entering First-Year Law Students)\*

Kelly Kunsch\*\*

*In his own inimitable style, Mr. Kunsch reengineers the well-known "Do Re Mi" from The Sound of Music to help introduce new law students to the legal profession.*

In *The Sound of Music*, the young governess Maria transforms a group of incorrigible children into a widely acclaimed choir. She begins this process by introducing them to solfeggio using a song called "Do Re Mi." Law students are not entirely unlike those incorrigible children. Perhaps they too could benefit from a similar introduction to their art—a *sol-leggio*, so to speak. With apologies to both Rodgers and Hammerstein II, the following is a less harmonic adaptation of their work to the legal profession.

**Do—dough:** Slang for money.<sup>1</sup> The root of all evil.<sup>2</sup> That's how it starts. That's what it's all about. It often begins with a television-induced dream about an Arnie Becker<sup>3</sup> lifestyle. And that requires dough. And so the paper chase begins; only to wind up like the caucus race in Alice's Wonderland<sup>4</sup> where you don't know who is chasing whom. Don't misunderstand, though. Money is the driving force behind lawyers. But it is that—a driving force: the master with the whip, not the carrot. Rather than chasing the allurements of making large sums of money, the modern lawyer is driven by the need to fend off creditors. Hell, if Leland McKenzie<sup>5</sup> had student loans like those of recent graduates, he'd still be paying them off. Rather than spotlighting Arnie Becker, what these

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1. See IV THE OXFORD ENGLISH DICTIONARY 986 (2d ed. 1989).

2. 1 *Timothy* 6:10.

3. A divorce lawyer on television's *LA Law* known for wearing Armani suits, driving foreign sports cars, and sleeping with clients. See David Grogan, *As a Scurvy Attorney with Almost Criminal Appeal, Corbin Bernsen Takes L.A. Law into his Own Hands*, PEOPLE, Oct. 20, 1986, at 65. N.B.: None of the above violates the ABA Model Rules of Professional Conduct. See *Attorney Discipline: Do We Need an Ethical Rule Restricting Sexual Relations with Clients?*, 78 A.B.A. J., Jan. 1992 at 34. (The ABA has not formally discussed the Armani suit or foreign sports car issues).

4. See LEWIS CARROLL, ALICE'S ADVENTURES IN WONDERLAND, ch. 3 (1865).

5. The most senior partner at *LA Law* firm McKenzie Brackman. See *supra* note 3.

television producers really ought to show is the newest associate in a rumpled suit from off the rack at Mervyn's bitching about the size of student loan payments.<sup>6</sup> That's the dough that drives attorneys.

**Re:** *Lat.* In the matter of; in the case of. A term of frequent use in designating judicial proceedings in which there is only one party.<sup>7</sup> And you thought that judicial proceedings existed to resolve disputes *between* parties. No way, man. If there is money to be made, lawyers can make a lawsuit out of anything or nothing.<sup>8</sup> Where else but America can you find a law suit named *In re One Hundred Fifteen Thousand Five Dollars in United States Currency*<sup>9</sup>? How about *United States v. 594,464 Pounds of Salmon, More or Less*?<sup>10</sup> There were 100 million new cases filed in 1990.<sup>11</sup> According to the National Center for State Courts, this is the equivalent of one court case for every other adult in the United States. Not to worry, though. The other half will get theirs shortly.

**Mi—me:** The accusative and dative form of the pronoun of the first person.<sup>12</sup> The one person more important than the client. Here, the composer of this opus. A lawyer. A life in being.<sup>13</sup> A hapless drudge squeezed like a pimple between the thumbs of billable hours and time deadlines. According to a study by the Johns Hopkins University School of Public Health, lawyers are 3-1/2 times more likely to be depressed than non-lawyers.<sup>14</sup> This is somewhat depressing to think about. Yet still, enrollment at accredited law schools has risen to 127,261 students.<sup>15</sup> What's wrong with these people? What's wrong with "me"?

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6. Note that student loan debts are generally not dischargeable in bankruptcy proceedings. 11 U.S.C. § 523(a)(8) (1988).
  7. BLACK'S LAW DICTIONARY 1263 (6th ed. 1990).
  8. For making suits out of nothing, see HANS CHRISTIAN ANDERSEN, THE EMPEROR'S NEW CLOTHES (1837).
  9. 777 F. Supp. 418 (E.D. Pa. 1991).
  10. 871 F.2d 824 (9th Cir. 1989). The court in this case determined the constitutionality of the Lacey Act. Unfortunately, it did not answer the more interesting questions of whether the defendants were identified with sufficient specificity in the pleading and whether defendants' presence was required in the courtroom during the proceedings.
  11. NATIONAL CENTER FOR STATE COURTS, STATE COURT CASELOAD STATISTICS: ANNUAL REPORT 1990 3 (1992).
  12. IX THE OXFORD ENGLISH DICTIONARY, *supra* note 1, at 509. The "first person" referred to here is the grammatical term for the being identified as *I*, not Adam. For more on Adam, see *Genesis* 2:7, *et seq.* *Accord* Michelangelo, *Fresco: The Creation of Adam*, on SISTINE CEILING bay 6 (1508-12). *But see*, CHARLES DARWIN, ON THE ORIGIN OF SPECIES BY MEANS OF NATURAL SELECTION (1859).
  13. For further elaboration of this concept, see JOHN CHIPMAN GRAY, THE RULE AGAINST PERPETUITIES (4th ed. 1942). This 900-page volume attempts to explain a rule that can be stated in one sentence. Practically speaking, such an exercise (reading the treatise) has no value because failure to understand the rule is not grounds for legal malpractice. This is because the standard for negligence is the "ordinary skill and capacity commonly possess[ed]" by those engaged in the profession. Since most attorneys do not understand the rule, there can be no liability. See *Lucas v. Hamm*, 364 P.2d 685 (Cal. 1961).
  14. William Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079 (1990).
  15. AMERICAN BAR ASSOCIATION, ANNUAL REPORT OF THE CONSULTANT ON LEGAL EDUCATION TO THE AMERICAN BAR ASSOCIATION 1993-94, at 6.

**Fa:** Chinese word for positive or written law as an abstraction;<sup>16</sup> a model or standard imposed by superior authority, to which the people must conform. See also “la” (section VI *infra*). Hey, this “law” thing goes far<sup>17</sup> beyond our borders. In Eastern traditions, however, *fa*, or positive law,<sup>18</sup> is less important than *li* (a less rigid standard of behavior which can be roughly translated as “correctness”<sup>19</sup>). You see, some backward cultures haven’t realized that human beings are essentially evil and antagonistic.<sup>20</sup> This explains why there are relatively few lawyers in these unenlightened countries.<sup>21</sup> Considering America’s abundance of attorneys, its role as world leader, and the country’s current trade imbalance, the exportation of lawyers to these needy countries may be the answer to all worldly problems. Less *li*; more *fa*.

**Sol—soul:** Aretha Franklin’s<sup>22</sup> realm; James Brown’s<sup>23</sup> godchild; Don Cornelius’s<sup>24</sup> train. Also, man’s moral and emotional nature as distinguished from his mind or intellect.<sup>25</sup> That which a lawyer sells as consideration for the expectation of receiving dough (*see* section I).<sup>26</sup> I mean, how else can you represent murderers and rapists, companies that knowingly expose small children to hidden dangers, and mountebanks playing “deep pocket pool”? How can you represent these people and profit from them and with them without tainting your self image (not to mention other’s views of you and your profession)? How indeed?

It’s our system: based on a tug-of-war. How many tug-of-wars wind up as ties?<sup>27</sup> In our legal system, a case often goes to the better lawyer. So what happens to justice? What happens to law’s soul? And what about our own souls?

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16. DERK BODDE & CLARENCE MORRIS, *LAW IN IMPERIAL CHINA EXEMPLIFIED BY 190 CH’ING DYNASTY CASES* 11 (1976).
  17. “A long long way to run.” *Do, Re, Mi* from *THE SOUND OF MUSIC* (1959).
  18. Law created because of a negative viewpoint of humanity. Like many other legal terms, the naming causes confusion. See also note 29 *infra*.
  19. Not to be confused with “political correctness.”
  20. Whereas the ideal Eastern state is a balance of yin and yang, Western scales must fall one way or the other: in favor of the plaintiff or the defendant.
  21. See e.g., VICTOR H. LI, *LAW WITHOUT LAWYERS: A COMPARATIVE VIEW OF LAW IN CHINA AND THE UNITED STATES* (1978).
  22. *The Queen of Soul, as stated in STEELY DAN, HEY NINETEEN* (MCA Records 1980).
  23. *The Godfather of Soul*. PETER GAMMOND, *THE OXFORD COMPANION TO POPULAR MUSIC* 84 (1991).
  24. Don Cornelius has hosted the television show *Soul Train* since its beginning in 1971. ALEXMCNEIL, *TOTAL TELEVISION: A COMPREHENSIVE GUIDE TO PROGRAMMING FROM 1948 TO THE PRESENT* 706 (3d ed. 1991).
  25. WEBSTER’S THIRD INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (UNABRIDGED) 2176 (1971) [hereinafter WEBSTER’S THIRD—not to be confused with Beethoven’s Fifth]. “Man” here is used in the sense of the human race. The quote is directly from Webster so call him sexist, not me. For more on me, see *supra* notes 12–15 and accompanying text.
  26. See STEPHEN VINCENT BENET, *THE DEVIL AND DANIEL WEBSTER* (1937). In this work, a lawyer (Daniel Webster) saves a poor soul (Jabez Stone) who sells his soul to the devil to become a rich soul. The great orator has long since died and today’s lawyer is probably more likely to be a Jabez Stone than a Daniel Webster.
  27. See *supra* note 20.

**La—law:** That which must be obeyed<sup>28</sup> and followed by citizens, subject to sanctions or legal consequences.<sup>29</sup> The body of principles, standards, and rules that courts of a particular state apply in the decision of controversies brought before them.<sup>30</sup> Realistically, an intricate maze full of falling objects and trapdoors.<sup>31</sup> To quote a prominent<sup>32</sup> lawyer: “Somewhere in all these dusty law books, a great idea was lost.” No shit, Joel. The idea was justice; but don’t worry, it has been replaced with a million particularized maxims announced by doddering politicians. Maxims to which one must blindly adhere or distinguish in some “petty and obscure”<sup>33</sup> way (thereby creating another particularized maxim [and more dusty law books]).

**Ti—T:** The twentieth letter of the English and other modern alphabets.<sup>34</sup> The first letter in *The Great Escape*, which is what law students and lawyers often need to reduce the stress of their lifestyles: escapism. Escape via T’s: TV, “T and A,”<sup>35</sup> Manhattan Iced Tea, driving small dimpled balls off a tee. The ultimate goal is to forget by way of distraction. Unfortunately, these distractions are not cheap. In fact, like freedom, they’re dearly bought and dearly maintained.<sup>36</sup> Fortunately, however, the bank is willing to loan the means for escape (albeit at vampiric interest rates)

which creates more debt . . .

which creates more stress . . .

which creates more need to escape . . .

which creates more debt . . .

which will bring us back to:

**Dough**<sup>37</sup>: See section I. Also “doe,” as in “John Doe.” A name, when used

28. Not to be confused with “*she* who must be obeyed”: Hilda, wife of the famous barrister Horace Rumpole. See JOHN MORTIMER, *RUMPOLE OF THE BAILEY* (1978), *et seq.* (and sequels).
29. *Koenig v. Flynn*, 179 N.E. 705, 707 (N.Y. 1932). Does it strike anybody else as noteworthy that by its own definitions “law” is the opposite of “equity” (which generally means fairness) and is also the opposite of “fact” (which generally means truth)?
30. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 4 (1969).
31. Kelly Kunsch, *Dough, Re, Me: The Scale of Justice*, 87 LAW LIBR. J. 471 (1995). Note here that your intrepid author breaks new ground in scholarly publishing. Traditionally an author attempts to add credibility to previous opi by citing them in later publications. Here, the waiting period is eliminated by citing the article as authority within itself. See also autoeroticism.
32. Prominent here in the sense of Webster’s first definition: “appearing in high relief; jutting, protuberant” (as opposed to the third definition: “notable, leading, eminent”). See WEBSTER’S THIRD, *supra* note 25, at 1815.
33. “Petty and obscure” ultimately translates into the term “pettifogger.”
34. XVII THE OXFORD ENGLISH DICTIONARY, *supra* note 1, at 503.
35. According to the O.E.D., “T and A” is a U.S. term used for “tonsils and adenoids” (with intelligence like that emanating from their finest citadel of learning, it’s no wonder the Brits lost the war). *Id.* at 54. NOTE: Those are not the body parts referred to here. For those, see *Baywatch*.
36. “Dearly bought, and dearly maintained.” Vice President J. Danforth Quayle, Speech at Ninth Annual Peace Officers Memorial Ceremony (May 15, 1990). Many Americans feel the same way about the former Vice-President himself.
37. Money: The alpha and omega of the legal profession. See *Revelation* 22:13. But see WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE* act 1, sc. 3, ln. 99. The devil can cite Scripture for his purpose.

in a search warrant, case report, textbook, or other legal document, that refers to an unknown or nonexistent person.<sup>38</sup> John Doe, Jane Doe, Mary Doe, and Baby Doe are all legal fictions:<sup>39</sup> devices designed to ease judicial reasoning by skirting reality. Other examples of such fictions are: treating a corporation as a person; at common law, assuming that a wife acted under the direction of her husband,<sup>40</sup> and perhaps even the legal metaphor of the scale of justice itself.

### Conclusion

Instructional songs are a proven teaching mechanism. Following their introduction to music in this tradition, the Von Trapp family singers won first prize at Austria's prestigious Saltzberg Festival, hoodwinked the Nazi Schutzstaffel, and then "climbed every mountain" through the Alps to freedom. Closer to home, everyone reading this article probably would not be doing so without the benefit of "The Alphabet Song."<sup>41</sup>

In contrast to this, the traditional law school teaching model is based on the monotonous questioning and "hiding the ball" of the Socratic method.<sup>42</sup> Undoubtedly, such a law school pedagogy can use some enhancements. Instead of boring and confusing law students, professors should reveal the law, and do so in a way students will remember. Instead of briefing *Hawkins v. McGee*,<sup>43</sup> entering first-years should sing ditties like "Dough, Re, Me." In the words of the sonorous postulant: "Let's start at the very beginning. A very good place to start."<sup>44</sup>

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38. BLACK'S LAW DICTIONARY, *supra* note 7, at 836.

39. Jeremy Bentham attacked legal fictions with particular venom. He claimed: "[I]n English law, *fiction* is a *syphilis*, which runs in every vein, and carries into every part of the system the principle of rottenness." JEREMY BENTHAM, *Elements of Packing as Applied to Juries*, in 5 THE WORKS OF JEREMY BENTHAM 92 (J. Bowring ed., 1843) (emphasis in original). Then again, consider the source. As per his own instructions, upon his death, Bentham was dissected in the presence of his friends. He was then stuffed and displayed in a glass-framed case at University College in London.

40. To which, Dickens' Mr. Bumble replied the immortal words: "If the law supposes that . . . the law is a ass—a idiot. If that's the eye of the law, the law is a bachelor; and the worst I wish the law is that his eye may be opened by experience—by experience." CHARLES DICKENS, *OLIVER TWIST*, Ch. 51 (1837–39).

41. Other examples include: *Follow The Drinking Gourd* (instructing slaves on the route to freedom), *Dry Bones* ("Head bone connected to the neck bone"), and the Polaroid Swinger jingle ("Pick it up. It says yes.' Squeeze the shot. Pull it out. Zip it off.').

42. The legal system did extract revenge on the philosopher. During Socrates' life, it bound him to the vitriolic Xanthippe. Later, Socrates was tried and convicted and forced to drink hemlock. *See* PLATO, *APOLOGIA SOKRATOUS* (for an account of the trial of Socrates) and PHAEDON (for an account of the death of Socrates). *See* also BILL AND TED'S EXCELLENT ADVENTURE (Orion Pictures 1989) (for an excellent revisionist treatment of Socrates).

43. 146 A. 641 (N.H. 1929).

44. *Do, Re, Mi*, *supra* note 17.