



Protecting a Great Idea

By Tamara H. Bennett, Esq.

Do great minds really think alike or is it simply that more than one person can conceive the same idea? A philosopher I am not, so let's turn to how the law protects ideas.

The first place to start is by looking at what areas of law do not protect ideas. Copyright law does not protect ideas, but rather the expression of the idea. If you conceive a great new book story line, but do not write the story line out, it is not protected by copyright law.

Trademark law does not protect ideas. You can have an idea for the name of a new clothing line, but until you either

- (a) file an intent to use federal trademark application, or
- (b) use the trademark in conjunction with the clothing line,

you do not gain any trademark rights.

Three areas of the law that can protect ideas are patent law, trade secret law and contract law.

The patent laws specify the general fields of subject matter that can be patented and the conditions under which a patent may be obtained. Patent protection is under federal law, not state law. In the language of the statute, any person who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a

patent," subject to the conditions and requirements of the law.

But, you as the "inventor" have to flesh out your idea into an acceptable technical drawing of your invention as well as outline the purposes for your invention. A patent cannot be obtained upon a mere idea or suggestion. The patent is granted upon the new machine, manufacture, etc., as has been said, and not upon the idea or suggestion of the new machine. A complete description of the actual machine or other subject matter for which a patent is sought is required.

If you keep a process or perhaps a recipe or formula secret, and that secret gives you a competitive edge in your business, it is a trade secret. The key to protecting a trade secret is simple: keep it secret. A famous trade secret is the Coca Cola formula. Trade secrets can also include customer identities and preferences, vendors, product pricing, marketing strategies, company finances, manufacturing processes and other competitively valuable information.

Contracts, if properly drafted and utilized can provide protection for an idea. Non-disclosure/confidentiality/non-use agreements can be effective tools for protecting your disclosure of confidential "ideas" to third parties who may be interested in developing or purchasing your "idea." Please be aware that if a third party signs an

agreement, but still discloses or uses your idea, you have the burden of enforcing the agreement, which can often be difficult.

Before you tell your next-door-neighbor, or the manufacturing plant downtown your latest, greatest idea, make sure you have investigated what it takes to protect your interests. In some situations, one or more of the methods discussed can be used. Also, not all ideas are protectable. Don't be surprised if you do not tell anyone your next invention and suddenly you see it on a home shopping network.

Remember, it is possible for great minds to think alike!

Closed for Holidays

The DCBA office is closed on

December 24, 2005

December 26, 2005

January 2, 2006

What's Inside

<i>From the Civil Side</i>	2
<i>Around the County</i>	3
<i>CLE</i>	4
<i>Sponsors</i>	6
<i>From the Civil Side (cont.)</i>	7
<i>Announcements</i>	8



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DCBA Membership

Your DCBA Membership includes

- Free and discounted CLE programs
- Monthly lunch and happy hours
- Networking opportunities

Your DCBA Membership offers

- Family Law Section
- Real Estate, Trust, and Probate Law Section
- Criminal Law Section
- Denton County Trial Lawyer's Assoc.
- Greater Denton County Young Lawyers Association

Ask Judge Bob

Excerpted from the column written by Justice Bob McCoy of the 2nd Court of Appeals.

Getting to Know the Judge

Second Court of Appeals Justice

Dixon Holman's favorite limerick:

This is the grave of Mike O'Day

Who died maintaining his right of way.

His right was clear, his will was

strong,

But he's just as dead as if he'd been

wrong.

Judge Bob, Can a person under the age of sixteen obtain a marriage license?

Yes, if a court order has been granted pursuant to §2.103 of the Texas Family Code. See §2.009(a)(3) of the Texas Family Code. [Thanks to Judge Graham Quisenberry for this item.]

Judge Bob, Is a "Rule 11 Agreement" something relatively new to Texas Jurisprudence?

No, the rule can be traced in substantially the same form to District Court Rule 28, adopted in 1840 under the laws of the Republic of Texas and recodified as District and County Court rule 47 in 1877.

Judge Bob, In a criminal case, the defendant has a right to a jury trial if he wishes. Is the State also entitled to a jury trial even if the defendant wants to waive that right?

Yes, the State also has a right to a jury trial. See *State ex re. Turner v. McDonald*, 676 S.W.2d 371, 374 (Tex. Crim. App. 1984).

Judge Bob, What is an aleatory contract?

It is a contract in which a promise is conditioned on the happening of a fortuitous event, that is, an event

of chance, such as an insurance agreement. See, for example, *In re Texas Ass'n of School Boards, Inc.*, 169 S.W.3d 653, 658 (Tex. 2005).

Ask Caesar

Caesar, a couple of months ago, you discussed what could be done about someone who injured my assistance dog. If I can't afford to buy a new assistance dog, what can I do about it?



According to the same section of the Penal Code setting out penalties for the person responsible for the attack, §42.091(d) allows the court to order a convicted defendant to make restitution for expenses of veterinarian bills, the cost of replacing the assistance animal and other expenses "reasonably incurred as a result of the offense."

Items of Interest

A loss of cents

Before your client goes to pay court-ordered attorney's fees to opposing counsel in bags of pennies, be sure that the client reads, *In re Marriage of Powell*, 170 S.W.3d 156, 157 (Tex. App.—Eastland 2005, no pet. h.).

What is a retaliatory tax?

"[F]oreign title insurance companies... are required to pay an additional tax if their states of origin impose financial burdens on Texas insurance companies selling title insurance in the foreign states that are higher than the

Judge Bob continued on page 7.

Attorney Appears in Local Theatre Production

DCBA has a star among us! Our very own Charles “Chuck” E. Beachley, III appeared in the Greater Lewisville Community Theatre’s (GLTC) production of Sam and Bella Spewak’s outrageous dark comedy *My Three Angels* during its November run.

Under the direction of Connie Salsman and along with his talented cast mates, Chuck took his audience on an enjoyable trip to French Guiana, a region where on Christmas Day the temperature graciously dropped to 104 degrees.

Chuck played one of three convict roofers—Joseph, Jules, and Alfred—hired on by a family whose roof is in desperate need of repair and whose evil-minded relatives are on their way from France to oust the father from his

business and jilt the daughter for an heiress.

Chuck, aka *Joseph*, and his fellow convicts utilize every criminal art and penal grace at their commands to take the unruly visitors on and set matters right. In the end, they redeem themselves as real life angels to the grateful family.

“Charles is always the consummate professional,” said Producer Connie Salsman. “This is the second time I’ve directed him. I can always count on him to carry his role with aplomb. He was a strong anchor in his role as *Joseph*, the schemer. His portrayal of the *King’s Prosecutor* was hilarious!”

DCBA member, Phillip E. Romero, expressed, “No doubt this was worth

seeing. Chuck Beachley playing the role of a convicted murderer was definitely worth the price of admission!”

Although the last curtain has fallen for the GLTC’s production of this holiday classic that debuted in 1950, Chuck has already started preparing for his role in the group’s next production—*Smoke on the Mountain* by Connie Ray and Alan Bailey.

M. Shane Hurst will direct Chuck as he steps back in time to a 1930s Baptist Church as a member of the singing Sanders family who witnesses through their gospel music. You’ll not want to miss his rousing renditions of Bluegrass Gospel favorites in January. Please call 972-221-SHOW or visit www.glct.org for more information.



Photos courtesy of Connie Salsman.

Photos shown from left to right.

Chuck kicked-off the holiday season and entertained the audience as he (right) and Jules (left), played by Hank Henry, thwarted the plans of the evil nephew (center), played by his son, Charles E. Beachley, IV.

Chuck’s (right) real life day job allowed him to play a “believable” convict pretending to be a lawyer in this scene with Alfred (left), played by Nathan Autrey.

Interdisciplinary Collaborative Law Training Registration Form

January 5-6, 2006, 8:00 AM - 5:00 PM
Oakmont Country Club

Name: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

- Enclosed is my check for \$350 made out to
The Collaborative Law Institute of Texas.
- Please charge my Visa Master Card
 American Express Discover

Name on card: _____

Account number: _____

Expiration date: _____

- I am a(n) Attorney Mental Health Professional
 Financial Professional

Please mail completed application and payment
to **Mike Gregory, 303 N. Carroll Blvd., Denton,
TX 76201** or fax to **940-387-2173**.

Enrollment limited to 40 persons.

Coming



Soon!

Ad Litem of the Caribbean

2006 DCBA Probate, Guardianship, & Ad Litem Law Seminar

*Debuts February 3, 2006, 8:00 am
Oakmont Country Club, Corinth*

6 hours CLE and 1 hour Ethics

\$75 Lawyers licensed less than 2 years
\$100 Lawyers licensed more than 2 years

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10th Annual Civil Trial Seminar

presented by the

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January 27-28, 2006
Bally's Resort & Casino
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Approved by the SBOT
10.5 hours MCLE
1.5 hours Ethics

Go to www.elpasobar.com/cle.asp to register.
For questions, please call **915-532-7052**.

REPTL Section Meeting

Date:

Wednesday, December 21
12:00 PM

Topic & Speaker:

To be announced

Location:

Luby's in Denton

Family Law Section Meeting

**No December meeting.
Happy Holidays!**

January Meeting Date:

Monday, January 30
5:30 PM for snacks
6:00 PM for program

Topic & Speaker:

To be announced

Location:

Hannah's Off the Square

Collab. Law Section Meeting

Date:

Monday, January 9
12:00 PM

Topic & Speaker:

Look at the New Year
Mike Gregory and Camille
Milner

Location:

El Guapo, Denton

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Searching for Lawyers Ineligible to Practice Law in Texas

The State Bar of Texas has simplified the search process for locating attorneys in specific counties who are ineligible to practice law in Texas. This new search process will allow you to locate the lawyers ineligible to practice law in your county in a matter of seconds. You can find a lawyer ineligible to practice law by


Finding the list of ineligible attorneys

You can find the list of ineligible attorneys by,

1. Logging on to the Internet.
2. Opening your Internet browser (Windows Explorer, Netscape Explorer, etc.)
3. Browsing to www.texasbar.com/ineligible.
4. Clicking the  link.

Searching the list of ineligible attorneys by county

You can search the list of ineligible attorneys by county by,

1. Opening the **List of ineligible attorneys.pdf** file.
2. Clicking on the  button located at the **top** of the acrobat window.
3. Using **all capital letters**, keying in the name of the **county** in which you would like to search for an ineligible attorney. For example, **DENTON COUNTY**.
4. Repeating to search in other counties.

The list of ineligible attorneys will be updated regularly. If you have any questions or need assistance accessing the information, please email ineligible@texasbar.com or call Kathy Holder at 800-204-2222, x1383.

From the Civil Side

Judge Bob continued from page 2.

financial burdens Texas imposes upon foreign insurance companies selling title insurance here. This additional tax is called a retaliatory tax.” *First American Title Ins. Co. v. Strayhorn*, 169 S.W.3d 298, 301 (Tex. App.—Austin 2005, no pet. h.).

Briefing Requirements

“The brief must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief. Rule 38 requires Appellants to provide us with such discussion of the facts and the authorities relied upon as may be requisite to maintain the point at issue.” *Jimenez v. Citifinancial Mortg. Co., Inc.*, 169 S.W.3d 423, 426 (Tex. App.—El Paso 2005, no pet. h.).

Death Penalty Sanction

“Where, as here, a plaintiff files suit and then actively frustrates all legitimate attempts by a defendant to define the cause of action and investigate potential defenses, there is a direct relationship between the plaintiff’s conduct and the trial court’s dismissal of the action.” *Hernandez v. Mid-Loop, Inc.*, 170 S.W.3d 138, 144 (Tex. App.—San Antonio 2005, no pet. h.).

Mineral Production

“A clause in an oil and gas lease that the lease will continue after the primary term for ‘so long thereafter as oil, gas, or other minerals is produced’ has been interpreted to mean paying production or production in paying quantities. A lessor seeking to establish that a lease terminated because of a ‘cessation of production in paying quantities’ must meet a two-prong test:

1. that the lease failed to yield a profit over a reasonable period of time

2. that a reasonable prudent operator would not have continued to operate the well in the manner in which it was being operated for the purpose of making a profit and not merely for speculation.”

Brown v. Reeter, 170 S.W.3d 151, 155 (Tex. App.—Eastland 2005, no pet. h.).

What is the faithless employee defense?

See Texas Business and Commerce Code §3.405.

Ordinance v. Resolution

“[U]nlike a ordinance, a resolution is not a law, but an expression of an opinion.” *City of Carrollton v. Com’n on Env. Quality*, 170 S.W.3d 204, 215 (Tex. App.—Austin 2005, no pet. h.).

Waiver of Immunity

“The supreme court has held that [by] filing a suit for damages, a governmental entity waives immunity from suit for any claim that is incident to, connected with, arises out of, or is germane to the suit or controversy brought by the State. Based on [this] decision, this court has held that a governmental entity’s counterclaim seeking affirmative relief constitutes an intentional relinquishment of any claim to governmental immunity.” *City of Grand Prairie v. Irwin Seating Co.*, 170 S.W.3d 216, 219 (Tex. App.—Dallas 2005, no pet. h.).

What is the BIFDL?

It is the Texas Beer Industry Fair Dealing Law, found in Texas Alcohol and Beverage Code §102.71-.79, which governs “all relations between manufacturers and their distributor, including any renewals or amendments to agreements between them....”

TEX. ALCO. BEV. CODE ANN. §102.72(b) (Vernon 2004).

Coverage

“[I]f risk has never attached because an insurance policy was void *ab initio*, the insured is entitled to a return of all premiums paid.” *In re Texas Ass’n of School Boards, Inc.*, 169 S.W.3d 653, 659 (Tex. 2005).

Statute of Limitations

“The first step in ascertaining when the statute of limitations begins to run in a tort action is to determine whether the act causing the damage constitutes a legal injury. If the act complained of constitutes a legal injury and the cause of action accrues from the time the act is committed, even where little, if any, actual damage occurs immediately on commission of the tort. Conversely, if the act complained of does not, by itself, constitute a legal injury, the cause of action accrues when, and only when, the damages are sustained.” *Burke v. Ins. Auto Auctions Corp.*, 169 S.W.3d 771, 776 (Tex. App.—Dallas 2005, no pet. h.).

Statute of Limitations

“Under Texas law, if a tort is not expressly covered by a statute of limitations, we presume the tort is a trespass for purposes of determining the statute of limitations and apply the two-year limitations period as per Civil Practice and Remedies Code section 16.003(a).” *David L. Smith & Associates v. APT*, 169 S.W.3d 816, 822-23 (Tex. App.—Dallas 2005, no pet. h.).

Quote of the Month

“It is best to keep your mouth shut and be presumed ignorant than to open it and remove all doubt.”

—Mark Twain

DCBA in 2005-06

December Bar Luncheon

Time:

11:45, Friday, December 2
Meal included

Place:

Oakmont Country Club
1200 Clubhouse Drive
Corinth, Texas 76210

Program:

Immigration Law
MCLE and State Bar College
Credit, 0.5 hours

Speakers:

Elena Kareneva

January Bar Luncheon

Time:

11:45, Friday, January 6
Meal included

Place:

Oakmont Country Club
1200 Clubhouse Drive
Corinth, Texas 76210

Program:

To be announced

Speakers:

To be announced

DCBA Holiday Party

Time:

Thursday, December 22, 2005
5:00 pm until ???

Place:

DCBA Office
525 North Locust Street
Denton, TX 76202

Festivities

*Stop by for some
Holiday cheer!*

