Knowing the Question
How Do I Know The Right Question To Ask My Lawyer About My Case? ©

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Law as a Briar Patch

I have written before about law – and perhaps any profession for that matter -- as a "briar patch" of interrelated and seemingly inconsistent – without slicing points infinitely small – principles. And, often, into this briar patch comes the client with the "quick question," the wrong question or the failure to see the question at all.

The Quick or Simple Question

As discussed more fully in my article Briar Patch, The Nature of Law and Legal Practice,[1] a quick or simple question almost never has a quick or simple answer due to the nature of law. For example, a question about a "mechanics lien" may require the following for a competent attorney response:

1. Reviewing and understanding the facts;
2. Finding the right statute (which took a bit of time because while colloquially called "mechanics liens," strictly speaking under Arizona law "mechanic liens" refer to the liens of subcontractors on construction projects while the liens by repair shops are called "garageman's liens");
3. Reviewing, understanding, and analyzing the statute;
4. Researching, reviewing and analyzing the annotations and case law relating to the statute;
5. Application of the statute and case law to the facts, thoughts and analysis re same;
6. Derivation, formulation and composition of our arguments;
7. Derivation, formulation and composition of *their* arguments;
8. Comparison and consideration of the strengths and weakness of the opposing arguments;
9. Consideration of possible responses and counter-response;
10. Calculation of best case, worst case and likely outcome;
11. Cost-benefit considerations, and -- although not done here in an email because it would be premature without discussion and consultation with the client:
12. Recommendation(s).

[1] Request copy from The firm @azbuslaw.com

A competent answer may require 4000 words. And, that is after appropriate, and usually time-consuming, research and analysis. A written answer, of course, takes even more time in formulation, drafting and revisions. If the first principle of law, like medicine, is: *Primum non nocere*, i.e. "First do no harm." then most of the time a quick answer should be avoided because it may do more harm than good.

The Wrong Question

"Wrong questions get wrong answers." So said "Master Gregory" played by Jeff Bridges, in the recent movie "Seventh Son," (2015). Master Gregory was a self-defined "Spook" whose life's work was to slay evil beings. When his new apprentice "Tom Ward" played by Ben Barnes asked what happened to the previous apprentices (who were killed) and similar questions, Master Gregory answered "Wrong question! Wrong questions get wrong answers."

In law wrong questions get wrong answers. Often wrong questions have the "baggage" of false assumptions, misunderstandings or unrealistic expectations which can lead to bad outcomes. In short the client is "ignorant," i*n the sense of lacking knowledge* (not of being dumb) of what is needed to get the right answer. This ignorance is caused by a fundamental "Catch 22" built into the process of learning.[2] The process or syllogism goes something like this:

A. The client needs right knowledge.
B. Right knowledge requires asking the right question (spotting the legal issue)
C. The right question requires right knowledge.

This is the "Syllogism of Knowledge." While the right knowledge needed for the right question, e.g. knowing something about commercial leases may be different than the right knowledge of the answer, e.g. duty to mitigate damages, it is almost impossible to get to C without A. And, even if one knows *something* about the subject matter, there is the question: "How does one know what one does not know?"[3] This leads to what I call "The Document Looks OK to Me Fallacy."

The Document Looks OK to me Fallacy.

Often the client focuses on the language *in* the form, but does not realize what *is not in it*. This is the "unknown unknown," to borrow Rumsfeldian vernacular. For example, I had a self-made millionaire client who was negotiating the purchase of a new business. He asked me to

[2] Wikipedia defines a "catch 22" as a dilemma or difficult circumstance from which there is no escape because of mutually conflicting or dependent conditions. Simply put one thing needs the other and you have neither.

[3] There are known knowns. These are things we know that we know. There are known unknowns. That is to say, there are things that we know we don't know. *But there are also unknown unknowns. There are things we don't know we don't know.* Donald Rumsfeld (Emphasis added.) Read more at: *https://www.brainyquote.com/quotes/quotes/d/donaldrums148142.html*

look at the contract late in the afternoon on the day before the Closing.[4] I quickly realized the contract contained none of the seller representations and warranties essential to a business buyer.[5] The client had gone through nine drafts and revised the language *in* the document but did not realize what language was *not* in the document. Thus, the client drew the false conclusions of completeness of process and adequate protection.

It takes years of law school and considerable knowledge and experience to know *what the business contract is missing*, e.g. strong indemnification language; precise and favorable definitions of terms; and as in this case representations and warranties about the accuracy and completeness of financial and other information disclosed, clients, client contracts, taxes paid, condition of equipment, the absence of liens and litigation, etc. The list goes on.

Conclusion

When we do not work in the field, whether that is law, medicine, engineering or auto mechanics, there are things we don't know. And, the problem is compounded by our not knowing what we don't know. Not knowing causes the above-discussed quick question, wrong question or false conclusions.

So, how do we break through the Catch 22 of the "Syllogism of Knowledge?" To do that we need "right knowledge" sufficient to begin the process. In law this right knowledge comes from what they teach lawyers in law school: Some knowledge of the law and common types of issues, knowing how to look and where to find answers to legal questions, and to think like a court of appeals judge. In short, a lawyer with a legal education is the interceding person or event which breaks the Catch 22. The lawyer knows enough at the first level to get the right knowledge at the last level. But, without this first level of knowledge the layperson cannot escape the trap of ignorance, no matter how brilliant that person might be in his or her own vocation.

[4] This triggers my "The client does not want a lawyer; he wants a priest" speech. See Speeches at azbuslaw.com/ Publications/Articles.

[5] This is the subject matter of another one of my little "Speeches:" One is not buying the business but *what the contract says about the business*.