

# ESTOPPEL

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**Estoppel:** A principle that provides that an individual is barred from denying or alleging a certain fact or state of facts because of that individual's previous conduct, allegation, or denial.

1.

"I bargained the proper coins and slipped away."

I was drunk when I decided to go to law school. It was a February day, unseasonably warm. I sat on the porch, listening to birds, watching planes fly overhead, the sun warm on my wool sweater. A breeze rocked the suet bird feeder against the post. It smelled like fall and it wasn't even spring yet.

I'd been in a rush to finish a paper for an American drama class and had given up. I couldn't concentrate. My usual plan for writing papers write until a good idea appeared, then erase everything and write the idea to death. This time, however, it just wasn't working.

I remember Molly in the bedroom. The apartment was small and the porch looked right through the big plastic bedroom window. Molly was reading in bed (we didn't have any other furniture to sit on). She smiled at me.

2.

I haven't slept for days.

I have begun to dream while I am awake. The dreams are mostly images. Among them:

a. I am on the sidewalk in TriBeCa, under the windowless IBM building, at dusk. I'm with a girl I don't know, but we're friendly. I cover her eyes, she smiles, and throws her arms out wide behind her to fall backward. Faith.

b. Flood walls, roads under water, the citizens of some vast city stranded on rooftops, total quiet except for the sound of water lapping on gutters and eaves.

c. Children sledding, a forest, black and snow. A letter to my mother: dreams, exigency, snowfall.

Strangely, it's easier to work when I'm too tired to think because all of my energy goes into comprehending what I read. I don't have much energy for feeling nervous about a legal brief or law school paper coming

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due. I've stopped telling friends what I'd like to do to my professor for fear that someone will actually kill her and the police, following tips, would come to me.

In movies, when people lose their minds, they generally laugh strangely, or start singing parts of songs slightly under their breath, or run screaming into the woods like animals looking for a place to die.

Now I know how going crazy is done. It's a quiet thing. You do it in your office at 3 p.m. on a Thursday. People work around you. You look up from your work, bite the end of your pen and wonder how much longer you can fool people into thinking you're sane enough to practice law. You wonder if, after your mental condition is more widely known, someone will hire you to do paralegal work or to serve coffee at a bagel shop. Do paralegals earn enough to eat, to repay loans, and cover the monthly rent? To stay sane, or at least appear you keep working. You keep your head down. When you go home for the evening, you grab a beer and eat the take-out you brought home from the Indian place on Fayette Street. You drink. Rinse. Repeat.

### 3.

It's hard to write about law school and this has troubled me for some time. My answer came when, in class, a professor who works with the papers of a dead writer discovered a gap in that writer's work. There was nothing to be found about the writer's stint in law school. No one writes during law school. There's simply nothing to write. That's the problem, that's why no one writes in law school. If they do, they write about:

- a. memories,
- b. class, or
- c. drinking.

### 4.

Driving back to Charleston with Joey, I can't breathe. Good, at least he's driving, but I can tell he's getting a little suspicious. I hang on as we make our way down I-79. Molly is on vacation in Florida, my grandfather is near death in Eleanor, West Virginia. My mother called at 1 p.m. saying I should come home. I can't, I tell her, I have homework, Monday is the first day of law school and I have a lot to read. She calls back, my grandfather is dead. I work out a ride.

My grandfather worked at Monsanto, making asbestos and chemicals. He had silicosis. He died in the guest bedroom of his three bedroom ranch-style home. I know he watched the Christian channels, the ones that ask elderly viewers to send money to help pay for missions to Burma. I imagine his last few moments, his muted rasping, a raised

hand, the hospice crew getting ready to clean up in the hallway. Nine children, six huddled around his bed.

I'm panicking, not because of my grandfather, or sorrow, or fear of death, but because of the drive home. I hate cars. I have panic attacks in cars. On the drive back to Charleston, I think I am dying or going crazy. Joey is smoking a joint in standstill traffic outside Clarksburg; my Contracts casebook is in my lap. I don't understand a word I'm reading, not a word. Breathing into a paper bag doesn't help. Not here, not in Contracts.

5.

The poet, Trakl, wrote:

Mankind placed before fiery craters,  
Rolling drums, dark foreheads of warriors.  
Footsteps in a fog of blood, the ringing of black steel  
Here is Eve's shadow, the hunt, and blood money  
There the twelve stand assembled.  
At night, under the olive-trees, they cry out in their sleep.  
Saint Thomas lowers his hand into the wound.

This is the world of law school: Buildings lean into one another in the dark, tunnels leading out of the city are blocked by mounds of burning cars, and, occasionally, survivors run screaming into the street, grown senseless subsisting on rats, living in basements and cellars.

I expected something radically different. In the movies, the halls of the law school are paneled with oak (not the stuff people put in basement recreation rooms), students wear ties, compete to participate in class discussions, and the teachers are Kingsfieldian.

My law school, under investigation for asbestos controversies, was built in the early seventies in a cheap, American corporate version of Corbusier or Mies van der Rohe. No windows, no oak, and the library is a claustrophobic's nightmare. Students wear t-shirts and ball caps, sleep or play solitaire on laptops in class, and class discussion is the forté of three or four reviled classmates.

On my first day of property, Dean Fisher asked a student to give the reasoning for a case describing the means of "acquiring title to wild animals." She floundered and when pressed, revealed she hadn't read the case. Dean Fisher's face turned red and he suggested she read the case. She agreed. He said, and I'll never forget this, "I mean now, Ms. de Beauvoir." The class sat silent, most of us in absolute terror as if the Dean were going to smite us all. We were, for all intents and purposes, law students in the hands of an angry dean.

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The law school world is *old*. The traditions and habits associated with our legal institutions have been in place for centuries. Langdell's pedagogy, now, in this year 2000, seems to have arisen from the Age of Antiquity. The professors seem old, the casebooks ancient, and the words spoken in class timeless (when they get beyond the banal).

Words, magic words. Law school has more names for words than English grad school. We find ourselves confronted with key words, magic words, terms of art, Cardozo words, Posner words, words in Queen's Bench cases no longer used either in Britain or the United States. On exams, bonus points, and the big A, go to the student who knocks on the door with the right words. Second year students invited to join law review spend the year poring over words, ensuring that the words authors use are supported by still more authoritative words. One can search whole electronic databases of cases, statutes, and articles looking for one or two words.

Words take on special power in law and law school. An exercise: compare the words in the law to words used by magicians or shamans in non-industrial societies. The utterance of a word makes all the difference. In one world we have "procedural due process" in another, "spirit" and "fire." Words are the ways in which power is conveyed or kept or undermined.

This old law school world is shadowy, and you get a sense that real power can be taken on here. There are handshakes in the dark, whistles on the lawn at dusk, and secret signs scrawled on the bulletin boards, on desks, and in restrooms above urinals.

## 6.

Another late night. I turn the overhead light off and lean back into my \$30 Office Max chair. The only light is from a tiny desk lamp and a couple of candles I burn to keep my spirits afloat while I work. I've quit smoking again, but can't promise to keep the ban in effect. Not smoking makes me crazy. I've tried to quit so many times I've grown familiar with the impulsiveness and heat in my chest. Still, at exactly this moment, I would just like to rip my skin off.

All through the first year of law school, I was convinced I had entered another universe. I was sure that my real self had married that girl from high school and moved to the suburbs, somewhere off in Ohio, or worse, Indiana. I could be convinced that the real Jason actually went off to graduate school exactly as planned. I wasn't sure of much during that first year but I was positive I didn't belong in law school.

It isn't the difficulty of the work that gets to you. It's the interminable hours spent doing it. It's a marathon and I'm no long distance runner. The worst part of it is the lack of texture, of spirit, anything real to hold on to. Law school has two speeds: working and drunk. Students work all of the time because, well, that's what law students do. Professors ensure that students are paranoid, shifty, and anxious. Students drink because they feel and fear they've become paranoid, shifty, and anxious.

Late nights, afternoon naps, dark bars. The only color I remember from my first year of law school is the beige of the walls in the law school. The fluorescent lights of the lecture halls. Squinting in a.m. Torts after a night drinking in the dark on my couch.

#### 7.

Herein my plot synopsis of Franz Kafka's *The Castle*: K arrives in the village late one snowy night. The village is a cramped, dark, confusing space filled with two story shops and hovels. The only distinguishing feature of the town is the castle which dominates the village. K has left everything behind him: family, home, and work, for the lure of this better job as a surveyor in a foreign city. When K arrives, he checks into a local tavern and asks to speak to the administrator who hired him. He is told there is no such person and that no one has hired a surveyor. Furthermore, after the authorities are called to the inn, K is told he cannot stay in the tavern that night. K spends the rest of the novel trying to speak to someone with the authority to tell him about his job or where he can stay. Despite all effort, there is no success or even reprieve for K. He dies alone and without knowledge of where or who he is.

#### 8.

I'm not sure I drink with anyone who isn't on SSRIs. Except me, of course, because I'm too paranoid to take them. And Molly, for the same reason, except she amplifies my concerns with vivid and sincere images of flipper babies, early death, and brain tumors.

Hell, this is the nineties, I tell myself on days when I really think I need to go on *something* at least. Here is a list of the things law students take to forget about being in law school: (1) Zoloft, (2) Paxil, (3) Prozac, (4) Zanax, (5) alcohol, (5) weed, (5) ecstasy, (6) coke, (7) cat tranquilizers, (8) St. John's Wort, (9) kava (a personal favorite), (10) valerian root, (11) B-complex vitamins, (12) B-10 shots at Ruby Hospital on bad days, and (13) over-the-counter sleeping aids (e.g. Sleepinol). There are more, I just don't know the names. Each works with varying

degrees of effectiveness and risk of significant injury, e.g. post-ecstasy anxiety (it decreases your brain's ability to produce serotonin).

A law student could go to the Student Health Center and see someone about getting real medication but they generally don't. The problem is this—you go off to get medication and you get diagnosed with, say, generalized anxiety disorder. Where does that leave you? It's doubtful anyone is clamoring to hire a mentally ill lawyer.

**9.**

Driving to visit a friend at a small college in central Ohio, we passed Wheeling. I was reading James Wright:

When I went out to kill myself, I caught  
A pack of hoodlums beating up a man.  
Running to spare his suffering, I forgot  
my name, my number, how my day began . . .  
held the man for nothing in my arms.  
I alone bargained the proper coins, and slipped away.

There was once a child without parents. The child grew up in a large, beautiful home entirely by himself. Food appeared, and the child consumed it. Clothes appeared and the child took those as well. The child, without parents, was free to do whatever he wished. The child ran into the neighboring woods during the day and stayed up late to watch the constellations at night. At an early age, the child named these patterns of stars: Warrior, Cat, Justice, and Mother.

The child knew nothing of the lives of others. He played with no one. He never met adults.

Education wasn't an issue. He knew how to read by instinct. In periods of boredom, in the winter, he combed through the house's large library. He consumed the thought of generations. He read, one day:

If he aims at the highest, he must take risks. He must not stop at consecrated phrases, which in their day were a revelation, but which in time from their very felicity tend to stop the endless necessity of further analysis and advance. He must throw down his naked thought, unswaddled in pompous commonplaces, to take its chance for life. He must try to realize the paradox that it is not necessary to be heavy in order to have weight.

He left his home and went out into the world and found himself in a city in disarray. Crime was common. The poor wandered the streets in hunger. When he finally took command, the citizens rebelled. His raised finger was law, but that did nothing to quell his fear of great expanses, open spaces, the sky. Order was restored. The city grew powerful and old.

**10.**

After Rob's dad died, he began baking bread. Rob was a friend and the baking bread got our attention. His dad died of cancer the day he turned forty-seven. That's young, and it bothered us, so we kept our heads down in our work, as if to avoid dropped bombs, shrapnel, and stray thoughts of mortality.

On the day his dad died, Rob emailed a message that went something like, "you guys are the best friends I have. My dad died this morning." He'd sent it to me, Zac and Ian. My stomach dropped. I'd known Rob's dad had cancer but assumed he would survive it. He didn't. Out of guilt, I emailed Rob and told him I would drive home immediately following Environmental law class.

I sat in classes that day and stared at the walls. In Evidence, the professor lectured on expert testimony. In Environmental law, it was citizen suits. I took exactly four lines of notes for both classes.

When I finally made it home that evening, Rob was at a friend's house, his mother still in Baltimore with his father's body. The friend's house was slated for condemnation, a road routed through the master bedroom. I found Rob sitting at a desk in the study checking his email and drinking scotch. Rob never drank scotch. It was, he told me, the only alcohol in the house. Rob's girlfriend, Jessica, was taking a nap upstairs. I had a cup of black tea and tried to settle down.

I was afraid to talk. Testing Robert's mood, I told him about the Fourth Circuit's visit to the law school that day. He'd been asking me questions about it. He wants to be a Federal judge someday. Robert nodded his head as I told him about the oral arguments. I told him how the court lashed into a lawyer who'd stopped representing his client because of a money dispute. Rob laughed. The doorbell rang. It was a delivery man with a ham. Rob joked, "with a death in the family, the living eat well."

Rob's going to law school in a year or so. I want to tell him not to do it. I want to write him a long letter and tell him how law school can turn a decent world upside down. I need to convince him to go to grad school or just watch television for a career.

But it would be no use. Nobody thinks that law school will do what it ends up doing. I look at Rob and Jessica, I think about them crying together softly in that friend's house that night, and I think, "law school will change all this and more." Rob assures me that he and his girlfriend will be fine. I hope he's right, but I doubt it.

**11.**

Several faiths and philosophies discuss desire and fear. Stoics believe that the cause of all pain and suffering in the world is desire.

Epictetus wrote that a man should never love his family or country so much that he would be unable to bear the loss of one of them. Never concern yourself, he wrote, with those things that are beyond your control. Some Buddhists believe that desire is at the root of fear, or *dukkha* (death). But they take a different approach than the Stoics. For them, avoiding fear and death is about not trying to avoid either of them. Fear and death happen. They are a part of us. Enlightenment is the simple recognition of this reality.

## 12.

“I caught a pack of hoodlums beating up a man.”

The snow was picking up outside. I was drinking a beer, studying for my Torts final, and watching “Who Wants to Be a Millionaire” on TV. In the middle of *Palsgraf*, someone knocked at the door. Molly answered. It was Sartre.

He stormed in, his head protected from the cold by a wool cap, and jumped onto my red, velour armchair. In his thick, Princeton accent, he declared, “Man, I am seriously fucked up. I have no idea what a tort is. What is a tort? Don’t French people eat those for fucking dessert!”

My eyes went wide and I reached for my beer. Apparently, Sartre hadn’t done any reading for the class. He showed me his notes and I was surprised to find that they consisted mostly of sketches of the injuries sustained by parties in the cases. Each sketch contained a stick figure of the plaintiff suffering the injury in dispute—an arrow in the eye, a dog shot by a hunter, a scale falling on a train passenger. Sartre always included text above the sketch that read, “Shit! My fucking (insert injured body part).”

Here was Sartre, on a full scholarship, and his notes for an entire semester consisted of a series of obscene stick-figure sketches. It was an amateurish, four month long performance art exhibit.

Now he wanted my help. More explicitly, he wanted me to teach him Torts. The strange thing was I didn’t mind. I’d grown tired of reading my notes and the outline. Before he walked in, I was nodding toward my third beer and I’d been answering questions for the people Regis Philbin was trying to give a million dollars.

Growing up, I’d always been the intuitively smart kid. School was never work. In high school, I studied at home only once. It was for a calculus exam. I never really needed to study. The same was mostly true in college. I was an English and philosophy major and I read everything I possibly could. It was fun, engaging, and it made me feel cool (whatever that means).



Law school was a different matter. Typical story: smart-ass gets his comeuppance as a 1L. Students who'd trekked their way out of some holler in the West Virginia hills were correcting me in class. And to think that these people didn't even know who Heidegger was! A pop-psychological analysis would suggest I had been brought low by the people I'd so long been trying to escape.

So here was my chance. Someone actually had the confidence (or desperation) to rely on me to get him through a class. I got another beer from the fridge, turned off the tv (the latest contestant was struggling at \$125K), and flipped to page one of my notes. I was truly happy for the first time in months.

The night ran long and others joined us. Before we quit at five a.m., I'd led a "torts in a nutshell" seminar. I lectured, practiced the Socratic method, drew charts. I felt like Plato at the Symposium.

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We hadn't gotten far into the second semester when Sartre dropped out. By then, he'd been missing class for days at a stretch. You do that when you're crushing and snorting Zanex. Friends said he spent days without wearing clothes. He wrote in magic-marker on the panelled walls of his trailer. He was done.

Today, Sartre makes less and less sense to me. He was brilliant. He really *didn't* need to read. He could get through classes with sketches and his memory of what we covered in class. He was the person everyone talks about when they talk about a legal genius. I've spent a year and a half defending him. The wags decry his forthrightness, his fearless tendency to take professors head on in class (e.g., one day in Property, he told Dean Fisher that property law was "bastard law." The Dean seemed to agree), and his reluctance to take case law at face value. He was someone who refused to toe the line. I toe the line all too well and Sartre reminded me of that. But he dropped out. He cracked. Folded.

The day he dropped out, we spent the afternoon biking in White Park. It was a beautiful day, the first warm day of the season and I was finally wearing shorts again. He was nuts. He shot through two foot gaps between trees without hesitation.

Afterward, we went to Kegler's. By then it had grown dark and cool again. Molly and another friend joined us at the bar. In the middle of the third drink, he told me he was finished. I didn't know how to respond. I still don't.

Sartre got an A+ in Torts. I may have led a torts seminar for my friends but there was no A+ for me.

**13.**

I remember Molly in the bedroom. I was on the porch, drinking in the afternoon. I had given up on a paper. I smoked cigarette after cigarette. I was going to law school because I was afraid.

I am still trying to write a paper.

I am still drunk in the afternoon.

I am still afraid.