



Dear Friend:

It's time for another edition of Legal Bytes. I hope that each of you had a happy holiday season and I wish you the best for the year 2002.



**MAXIM FOR THE DAY**

He who consents to an act is not wronged by it. (California Civil Code § 3515)

**DID YOU KNOW?**

The question of whether there was consent is found in many legal disputes.

- ❖ Most commonly, the issue of consent arises in prosecutions for rape. It has recently been held by an appellate court that even though a woman has consented to have sex she can withdraw her consent, even during the act of intercourse, and the man becomes guilty of rape if he doesn't immediately stop what he is doing. There is a maxim which says "The law never requires impossibilities." (Civil Code § 3531) Should the court have considered this maxim before it ruled?
- ❖ The law requires a doctor to obtain the "informed" consent of a patient before operating on a patient or treating with drugs capable of causing serious injury. The doctor must disclose to the patient the risks of harm or injury from the treatment with a drug. If he doesn't, there is no informed consent.

I recently handled a case where the doctor prescribed medication for a patient without warning the patient that under certain circumstances the drug could cause serious injury or death. The doctor hadn't bothered to look at the information about the drug which is contained in a book found in his and virtually every other physician's office, the Physicians Desk Reference. Because the patient was not warned of the risks, there was no informed consent to the drug therapy. The patient dropped dead after taking the drug for four days.

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- ❖ There are some persons that cannot consent. For example, a mentally impaired person, or in some cases a person under the influence of alcohol, may be incapable of consent.
  
- ❖ A minor (18 and under) can consent to a contract. However, the law says the minor can withdraw his or her consent to a contract unless the contract was for necessities such as food, shelter, etc.
  
- ❖ Consent can be implied from conduct. A passenger in an automobile who continues to ride with a drunk driver under circumstances indicating that he agreed to the risk can be held to have consented to the risk, thereby preventing him from recovering when a collision occurs.

***INCOME TAX TIME***

Income tax time is upon us and this is a good time to remember what the famous jurist Learned Hand said about the income tax act. He said:

The words of such an act as the income tax, for example, merely dance before my eyes in a meaningless procession; cross-reference to cross-reference, exception upon exception – couched in abstract terms that offer no handle to seize hold of – leave, in my mind only a confused sense of some vitally important, but successfully concealed, purport, which it is my duty to extract, but which is within my power, if at all, only after the most inordinate expenditure of time.

Justice Learned Hand made that statement more than 40 years ago. If you think the income tax act has gotten better, think again.

Fortunately for me, I do not have to give advice about the income tax act because I restrict my practice to representing persons who have suffered some kind of injury because of another person's negligence.

Regards,  
**Charlie**  
CHARLIE