



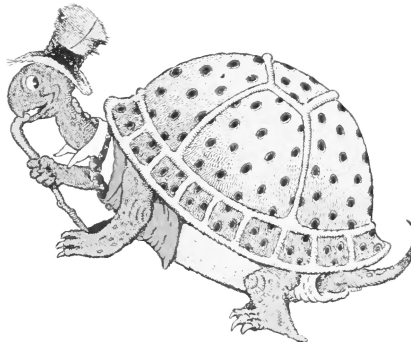
# FABLES IN LAW, CHAPTER 10

LEGAL LESSONS FROM  
FIELD, FOREST, AND GLEN

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We will no longer forecast or anticipate additional installments of Judge Hornby's Aesopian legal fables. We will, however, continue to hope for more, and publish them.

— *The Editors*



## THE DANGEROUS APPEAL OF TURTLE MAGIC

**T**urtle was a skilled writer. She wrote her appellate briefs with elegance, and she was adept at making precedents appear to favor her cause. She was careful to stick to her strongest arguments, and to treat both her ad-

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versary and the tribunal with courtesy and respect. As a new law clerk to a Vulture, Squirrel was captivated by Turtle's written advocacy and its contrast to the often clumsy or undependable briefs written by other advocates in appeals from the Forest Glen. Invariably Squirrel leaned toward Turtle's view of the case as he prepared memoranda for the Vultures. Only as he heard the Vultures challenge Turtle during oral argument about some of her points did Squirrel learn that he must not be swayed by the caliber of the advocacy, and that he must still probe for the just outcome to the case.

*Moral: The court must always strive for the just outcome, which is not necessarily the outcome urged by the finest advocate.*



## THE MYSTERY OF SAUCE FOR COUNSEL BUT NO SAUCE FOR THE CONDOR

Over the course of his career Condor generally had been a good arbiter, but notoriously outspoken in letting advocates know exactly how he felt about their strategies. As he grew older, he seemed to shed whatever inhibitions he once had and sometimes intervened directly in

advocates' representation of clients in the tribunal over which he presided. Finally, one of the advocates complained about Condor's conduct to the arbitral discipline authorities, a group of other arbiters. They were accustomed to many frivolous complaints from disappointed litigants. Knowing Condor, being tolerant of his tendencies and respectful of his age, hoping he would soon retire, and not wanting to be distracted from the regular work they did as arbiters, the other arbiters mildly and privately reproved him. Undeterred, Condor continued his troubling behavior. Later, a creature litigant who had observed Condor's interest in her cause contacted Condor directly to complain about how another arbiter had treated her. Condor met with her and discussed her case, then sent a message to the other arbiter. Aghast at the intrusion on arbitral independence, that arbiter filed a complaint about Condor with the arbitral authorities. Because this complaint was more egregious and because of advocate and public concern, the arbitral discipline authorities passed it up the chain to the Three Vultures. The Three Vultures appointed Snake to conduct a confidential investigation. Snake concluded that the incident had occurred as described and was wholly improper. The Three Vultures issued a public notice of reprimand to Condor, but sealed Snake's report. They were reluctant to take more drastic steps in light of Condor's age and his long service. The advocates and the reporter Magpies reacted with outrage at what they considered trifling punishment as well as the lack of transparency about what the investigation uncovered.

*Moral: Treatment of complaints against judges is a challenging exercise. Those who review such matters see many frivolous and unjustified complaints and therefore bring a jaundiced eye to the process. Judges are generally reluctant to treat one of their own harshly, lack experience in disciplinary procedures, and resist being distracted from their ordinary judicial duties. Coupled with a lack of transparency, these characteristics result in considerable public and lawyerly mistrust of the process's efficacy.*



## THE COMPLEXITIES OF CLARIFICATION IN A CROWDED FOREST GLEN

Some among Owl, the Three Vultures, and the advocates in the Forest Glen thought it desirable to clarify and simplify the rules that applied to the creatures who lived there. They formed an institute of judges, advocates, and law professors to review the rules, as well as the tribunals' pronouncements, all with a view to reform. They appointed academics like Professor Beaver to study a given topic, write it more clearly, and entertain the input of the other constituencies. At first the effort was remarkably successful, rationalizing and simplifying the rules and resolving inconsistencies that had previously developed. But as time passed, the ex-

planations became ever more detailed, the distinctions more esoteric, the law professors more invested in their particular views, and the advocates more committed to language that would protect their clients' interests. As a result, the clarification and simplification projects sank into a sea of their own complexity.

*Moral: Clarification and simplification are possible when rationalization of legal materials is first undertaken; but once invested in the project, participants unfortunately tend to increase the complexity.*



### THE FOX'S PLIGHT . . .

The Forest Glen advocates knew that Condor, an arbiter who sometimes helped with the Forest Glen's caseload, became very frustrated and vocal with advocates who did not perform precisely the way he thought they should. On one occasion Fox, an able and conscientious advocate, pursued an argument that Condor thought she should drop. Condor knew that Fox's client Hedgehog was in the courtroom, but Condor belittled Fox biting in front of her client, telling her the argument was inept nonsense and that Fox was wasting the tribunal's time. Fox found the treatment hard to take, but she bit her lip, so as to avoid prejudice to Hedgehog's case, fearing how Condor might react if Fox challenged him. Later, Condor wrote an opinion in which he publicly excoriated Fox and ridiculed the argument. Once again, Fox felt she could not complain to Condor or to other arbiters about how Condor treated her, because she

was concerned that Condor might hold it against her in future cases. But Fox fretted and seethed over the treatment while Condor, having got his frustrations off his chest, was totally oblivious to the anguish and anger he had caused Fox.

*Moral: A judge should be sensitive to the role constraint that leaves lawyers virtually unable to protest or respond to a judge's criticism, fair or unfair.*

### . . . AND HER CLIENT'S

Fox was a capable defense lawyer in criminal cases. She worked hard and prepared her cases thoroughly. Chipmunk had pleaded guilty to the offense of illegally importing red currants into the Forest Glen, and Owl scheduled Chipmunk's sentencing for a date certain. Fox filed an excellent brief with the tribunal and lined up and prepared Chipmunk's character witnesses for the proceeding. There was nothing more to be done and Fox proceeded to take a scheduled two-week vacation with her family at a great distance from the Forest Glen, promising to return two days before the hearing. Chipmunk, stressed by his upcoming sentencing, tried to reach Fox while Fox was away. Chipmunk became frantic at his inability to talk with Fox about issues that were bothering him, and filed a motion with the tribunal seeking new counsel. Fox returned before the motion could be heard and at the hearing assured Owl and Chipmunk that she was totally prepared. The sentencing proceeded as planned, but Chipmunk's confidence in his advocate had been severely shaken and he always believed that his sentence was harsher than it would have been if Fox had been available to him during her two-week vacation.

*Moral: A litigant whose life, liberty, or property is at stake in a proceeding does not have the dispassionate attitude of the lawyer who has experienced many such events. An effective lawyer must be prepared and available to hold a client's hand when the pressure is on, despite the personal sacrifice it may entail.*

