

**Leon Lysaght, Esq. Remarks**  
**“Being an Orthodox Christian Attorney:**  
**Integrating Faith & the Practice of Law” Panel Session**  
**Orthodox Christian Attorneys Gathering**  
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In the Litany of Supplication following the Great Entrance, the priest or deacon prays for:

A Christian ending to our life: painless, blameless, and peaceful; and a good defense before the dread judgment seat of Christ, let us ask of the Lord.

The choir and the faithful respond, “Grant it O Lord.”

This petition is repeated again in the Litany before the Lord’s Prayer.

As a lawyer, this petition raises the question: What are the standards by which my defense will be judged?

This is not a trivial question, particularly for one who, like me, is approaching the completion of his Biblical allotment of time. I am referring to Psalm 90 that says, “The days of our lives are 70 years and if by reason of strength they are 80 years.” At 77, I read this as an important notice that I should be attentive.

The two obvious standards to which my attention should be directed are Scripture and the Rules of Professional Responsibility. As an Orthodox Christian my conduct will be judged under the former and as a lawyer, I am governed by the latter. So, do I get two defenses or one?

To state it another way, if I have not violated any rules of law or the Rules of Professional Responsibility in my professional life, and in my private life I have roughly stayed within Scriptural imperatives, am I on pretty solid ground? Notice that my second claim is more modest than the first.

I should disclose, at this point, that I have spent over 30 years teaching in a law school that is sponsored by the Jesuit Order. You may infer from that that I am well versed in the strategies available to avoid, or otherwise obfuscate, moral imperatives.

I am also well acquainted with rules and how they function in authorizing various modes of conduct. I am a commercial lawyer with familiarity with all of the Articles of the Uniform Commercial Code and associated federal regulations and statutes. They work pretty well and strict compliance generally yields a fair and occasionally just result. At least most of the time. And where they don’t, it certainly isn’t my fault. And I think that I can say the same thing about the Rules of Professional Conduct.

Let me tentatively conclude that on the professional side I'm in reasonably good shape.

What about the Orthodox side? This presents a more complex problem. Orthodox Ethics does not include a system for producing rules. There is no equivalent in the Orthodox Church to the Baltimore Catechism in the Latin Church. So where do I turn for guidance? One possibility is to look to what the Church refers to as things for which I must confess. Consider the following lines from the Communion Prayer:

“. . . Have mercy on me and forgive my transgressions both voluntary and involuntary, of word and of deed, committed in knowledge or in ignorance.”

That doesn't leave much out. It also clearly establishes that actions mandated or permitted by secular law may also be a transgression.

The term “justice” is widely used in our country, particularly in political discourse. Unfortunately, the multiple uses to which the term is put in political discourse will not yield the type of insights that will be helpful to an Orthodox Christian lawyer. Some of the patristic literature raises the question as to whether the pursuit of Justice is an appropriate goal in all cases. St. Isaac the Syrian had this to say:

“A man cannot draw nigh the Lord's commandments through the discipline of justice of the Law. In the latter there is 'an eye for an eye' and a 'stripe for a stripe' and so forth. But the Grace of Christ commands, 'Overcome evil with good, 'that is, 'Whosoever shall smite thee on thy tigh cheek, turn to him the other also.'”

“The mind is unable to contain at the same time the opposition of justice and grace, for justice begets zeal and excites anger, whereas grace pours out peace, love and mercifulness upon the mind.”

Maximos the Confessor also identified the tension between justice and mercy. His analysis was similar to St. Isaac's. “Justice,” according to Maximos seeks revenge or punishment while mercy obeys God's commandment to love one another. Fr. George Morelli has an excellent essay on this subject on the website of the Antiochian Orthodox Church.

Let's explore this for a moment. Assume that someone borrows money to buy and boat and a trailer. We will also assume that the cost of the boat and trailer is \$40,000.00 and the loan is \$30,000.00 secured by an Article 9 security interest. The other \$10,000.00 was provided by the borrower. A couple of years later, the borrower/debtor defaults on payment obligations. At this point there is \$20,000.00 owing on the debt and the fair market value of the boat and trailer is about \$20,000.00. The secured creditor hires a lawyer to collect the debt. So far, there isn't anything troubling with this transaction. If you borrow money, you ought to pay it back.

Section 9-601 of the Uniform Commercial Code provides that the secured party can either sue on the debt and assert his Article 9 priority in the execution sale, or foreclose and sell the collateral. This is a routine matter that occurs multiple times every day (though not always with boats and trailers). Out of curiosity, I contacted a number of collection lawyers and asked them how they handled matters like this. I was surprised to hear that they all did the same thing. They filed a lawsuit to enforce the debt rather than repossessing the boat and trailer (i.e. foreclosing the security interest). Why would they do that? The answer is that if the secured party attempts to recover the money due by seizing and selling the boat and motor they run two risks. The first is that the sale proceeds may not be sufficient to pay the debt. They have a right to collect the deficiency, but that will require another legal proceeding. The second risk is that the court may decide that the entire process was not conducted in a commercially reasonable manner and the claim for all, or part of the deficiency may be wiped out. The standard for commercial reasonableness is not precisely defined in the Code, so that adds an element of unpredictability.

On the other hand, a lawsuit on the debt has a high probability of success. The judgment will result in a lien against all of the debtor's assets. The sheriff will conduct the sale and sheriff's sales are not subject to any commercial reasonableness standard. In case there is another creditor who filed its execution lien before the secured creditor, the secured creditor can assert his or her Article 9 priority to the sale of the boat and trailer. If the secured creditor is first in line, the sheriff will conduct an auction for the boat and trailer and if the proceeds are insufficient to pay the debt, the sheriff will continue to auction other non-exempt personal property until the debt is paid. If the proceeds from the sale of the personal property is insufficient, the sheriff will sell the debtor's house.

Now lets step back. If the secured party had conducted a sale of the boat and trailer in a commercially reasonable manner, the proceeds of the sale would probably approach the amount of the debt. Remember the fair market value of the boat and trailer was about the same as the amount of the debt. If there were a short fall, it would probably be only a couple of thousand dollars. What happens at a sheriff's sale. Several studies have been conducted in Michigan. The conclusions were the same. Assets sold at sheriff's sales typically bring about 20% of their fair market value. That means, in our example, that the sheriff would have to seize and sell \$100,000.00 worth of the debtor's assets in order to pay the \$20,000.00 debt. When I asked the collection lawyers if this bothered them at all, they simply responded, "Well that's the way it works." Two of them were Orthodox Christians.

Remember, both procedures are perfectly legal and following either one would not raise any issues under the Rules of Professional Responsibility. Do the lawyers who handled these cases have a good defense before the dread judgment seat of Christ?

Collection lawyers are not the only ones who have to think about this. We have an adversarial system.

