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SHOULD ATTORNEYS BE REQUIRED IN RESIDENTIAL REAL ESTATE TRANSACTIONS?

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BEST PRACTICES

The law in the movies

BY GERARD V. MANTESE AND BRIAN P. MARKHAM

The legal profession is a high-stakes world with no shortage of drama and intrigue. Attorneys regularly deal with matters of high import for their clients. Personal rights and freedom. Personal livelihood. The public welfare. Big-money corporate battles. Even life and death.

It is no wonder that courtroom dramas make for some of the most compelling cinema. Movies like *12 Angry Men*, *Primal Fear*, *The Firm*, and *The Rainmaker* have riveted audiences for decades.

As Oscar Wilde famously observed, "Life imitates art far more than art imitates life."[1] There is truth to this in the practice of law; the hyperbole of high drama in film can make stark that which we might miss in our more nuanced day-to-day practice. Lawyers can draw inspiration from the movies, as movies explore people's experiences and how the law intersects their lives. Finding inspiration in the arts allows for new perspectives and unique approaches to helping clients. Studying movies can activate a lawyer's creativity and assist in achieving a client's goals even more effectively.

The following movies are examples of how films give insight into the actual impact that the legal system can have in business, in fortunes, and in life.

THE SOCIAL NETWORK

In the following scene from *The Social Network*, characters Mark, Cameron, Tyler, and Divya discuss forming a business relationship to create a social networking website:

CAMERON: We'd love for you to work with us, Mark. I mean, we need a gifted programmer who's creative.

TYLER: And we know you've been taking it in the shins.

DIVYA: The women's groups are ready to declare a fatwa, and this could help rehabilitate your image.

MARK: Wow. You'd do that for me?

DIVYA: We'd like to work with you.

CAMERON: Our first programmer graduated and went to work at Google. Our second programmer just got overwhelmed with schoolwork. We would need you to build the site and write the code and we'll provide —

MARK: ***I'm in.***

CAMERON: — the money. What?

MARK: ***I'm in.***

TYLER: Awesome.[2]

Despite this agreement, Mark delays working on the project to secretly create his own website, Facebook. Mark's website goes on to become wildly successful, and he excludes the others from the business.[3]

This hallway discussion is filled with legal implications. Was it enough to form a partnership? As in many states, Michigan law defines a partnership as "an association of two or more persons, which may consist of husband and wife, to carry on as co-owners a business for profit."[4] Partnerships may be formed by express, written agreements, which clearly define the partners' roles, rights, and duties. They also may be formed by oral agreement. Or, partnerships may be implied from the parties' conduct, even if the parties never used the word "partner" or "partnership" to describe their relationship.[5]

Lesson: When possible, formalize your business relationship in writing. Doing so can avoid major implications down the road,

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such as the billion-dollar legal dispute dramatized in *The Social Network*. But even if your partnership is not memorialized in writing, you should investigate whether the parties nonetheless created a partnership by their conduct.

WOMAN IN GOLD

Woman in Gold[6] is the fascinating movie about Maria Altmann's legal efforts to retrieve Gustav Klimt's famous painting, *Woman in Gold*. Altmann, herself an artist, battled the Austrian government for a decade to reclaim Klimt's iconic painting of her aunt, which the Nazis stole from her relatives in Vienna at the onset of World War II. She first sued the Austrian government in 2000 in federal court in Los Angeles. However, after defeating a motion to dismiss, she and the Austrian government agreed to arbitration in Austria in 2005, at which Altmann prevailed in 2006. *Woman in Gold* now sits in the Neue Gallery in Manhattan.

Lesson: Choose your venue wisely. Which state to file in? State court or federal court? Arbitration or litigation? Altmann's decision to switch to arbitration in Austria was a gutsy move, as she gave up home court advantage. However, arbitration can be quicker and less costly — but not always — and here, it led to a just result.

OPPENHEIMER

Oppenheimer,[7] the dramatic film about the development of the atomic bomb, dramatized a jealous politician's efforts to undermine J. Robert Oppenheimer and his political influence in the runup to the Cold War. In one scene, documents are used against Oppenheimer at a hearing to question his loyalty to the United States However, these documents had not been shared with Oppenheimer or his attorney beforehand, giving him no opportunity to prepare. Oppenheimer's attorney objected, but the panel ruled that the documents were top-secret and could not be shared outside the panel members. After the hearing, Oppenheimer was stripped of his security clearance, damaging his reputation and influence.

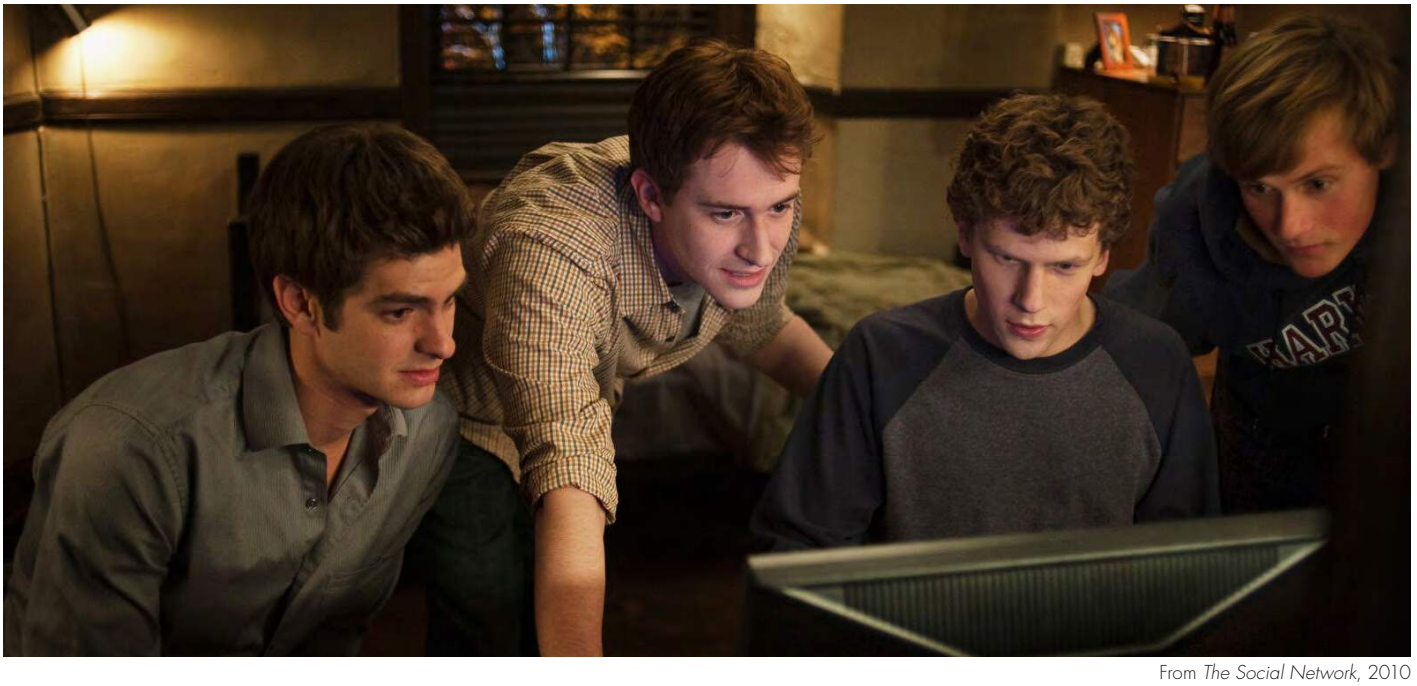
Lesson: To prepare for events like mediation or trial, attorneys must be able to share almost every document with their clients. Attorneys should obtain all documents beforehand and challenge the improper designation of documents as confidential or attorneys' eyes only (AEO).

Parties often broadly and without basis designate materials as Confidential — or worse, as AEO, so they cannot be shared with clients or experts. This requires motion practice to undo and causes increased expense and loss of time.[8] The author has seen numerous instances of counsel improperly designating documents and then, later in the litigation, forgetting how sacrosanct the documents allegedly were and attaching them to briefs without hesitation. This shows that the initial designation of the documents as confidential or AEO was improper.

THE SOCIAL NETWORK (AGAIN)

Another riveting scene in *The Social Network* shows Mark presenting Eduardo with documentation to memorialize his 30% ownership interest, which he had been promised for his role as CFO.[9] Eduardo signs of the agreements without the benefit of counsel and thereafter finds that the documents allowed for infusion of capital and a corresponding dilution of ownership by existing owners. Eduardo finds that Zuckerberg diluted his ownership to less than 1% pursuant to the agreement, which leads to litigation and a settlement.

Lesson: Read all documents carefully and be on guard for dilution clauses. A shareholder agreement or operating agreement may allow



From *The Social Network*, 2010

for capital calls and a corresponding dilution of owners who do not inject more needed capital. However, issuance of capital calls, without a legitimate need to do so — i.e., solely to dilute a fellow owner — can constitute oppression. A party's contractual ability to do something, such as dilute an owner by injecting more capital, does not mean that such a right may be exercised oppressively.[10]

THE FOUNDER

The Founder[11] tells the agonizing story of the creation and development of the McDonald's hamburger empire. It portrays Ray Kroc's manipulative scheme to increase his wealth at the expense of the McDonald brothers. Among other things, Kroc decides to buy the real estate for McDonald's franchises all over the country without sharing the opportunity with the McDonalds. Lacking counsel, the brothers do nothing about it.

The story ends tragically, with Kroc acquiring all intellectual property of the company, such that the McDonald brothers could not even operate their sole remaining hamburger shop — their original McDonald's location — under their own name.

Lesson: Related party transactions, whereby some of the owners establish outside companies that transact business with the company, can be the source of significant abuse that injures the other owners. These transactions must be investigated for oppressive features. Under the doctrine of usurpation of corporate opportunities, certain opportunities must be offered first to the company and disclosed to the other owners before an owner can pursue them personally.[12]

THE HUDSUCKER PROXY

In the cult classic *The Hudsucker Proxy*,[13] the founder and president of Hudsucker Industries unexpectedly passes away, leaving his controlling shareholding interest for sale to the public pursuant to the company's bylaws. Sensing an opportunity in tragedy, an unscrupulous company director schemes to purchase the controlling interest on the cheap by temporarily depressing the company's stock price. To do so, he promotes a mailroom employee to serve as president. In the ensuing absurdity, we are reminded of how change-of-control events — such as an owner's passing — can result in disputes and upheaval for businesses. This issue is especially salient today as Baby Boomers enter retirement and transfer their businesses to the next generation.[14]

Lesson: Business owners must plan for the future. Succession planning considerations include: distribution of shares upon an owner's death; buy-sell life insurance; procedures for an owner to exit a company and obtain liquidity for her shares; dispute resolution for deadlocked owners; tax planning; and estate planning. To this end, there are contractual provisions to consider when drafting a company's governing agreement, such as: buy-sell provisions; shotgun provisions (i.e., an auction procedure for a forced buy-out); valuation provisions; non-compete issues, and restrictions on share transfers.[15]

From *The Founder*, 2016

CONCLUSION

Legal disputes lend themselves to fascinating storytelling and make for highly entertaining and compelling movies. But beyond entertainment value, movies often include valuable legal lessons for businesspeople and attorneys. They show how the work we do profoundly affects people's lives and may serve as a portal to creative solutions to clients' issues.

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ENDNOTES

1. Wilde, *The Decay of Lying* (1889).
2. *The Social Network* (Sony Pictures 2010).
3. Helft, *Court Upholds Facebook Settlement with Twins*, New York Times (April 11, 2011) <https://www.nytimes.com/2011/04/12/technology/12facebook.html> (all websites visited Sept 22, 2025).
4. MCL 449.6.
5. See *Byker v Mannes*, 465 Mich 637; 641 NW2d 210 (Mich 2002) ("In determining whether a partnership exists, the focus is on whether individuals intended to jointly carry on a business for profit within the meaning of the Michigan Uniform Partnership Act, MCL 449.1 *et seq.*, regardless of whether they subjectively intended to form a partnership.")
6. *Woman in Gold* (BBC Films, 2015).

7. *Oppenheimer* (Universal Pictures, 2023).
8. See *Associated Surgical Ctr of Dearborn, LLC v UHG 2, LLC*, Opinion and Order of the Oakland County Circuit Court, issued Nov 14, 2014 (Case No. 14-141946-CZ) <https://www.courts.michigan.gov/4a55ee/siteassets/business-court-opinions/c06-2014-141946-cz-(nov-14,-2014).pdf> (denying defendant's request to designate financial documents as AEO after two rounds of motion practice); *In re Valsartan N-Nitrosodimethylamine (NDMA), Losartan, & Irbesartan Prods Liability Litigation*, 512 F Supp 3d 546 (DNJ, 2021) (discussing document confidentiality and striking the defendant's "confidential" designation of five email chains that were nothing more than routine business communications).
9. *The Social Network*, *supra* n 1.
10. *Berger v Katz*, unpublished opinion of the Court of Appeals, issued July 28, 2011 (Docket No. 291663) {"Although the bylaws gave defendants the general authority to make business decisions such as setting salaries, issuing capital calls, or approving rental payments, that does not mean that defendants were permitted to act in a manner that was willfully unfair and oppressive to plaintiff, as a minority shareholder. The exception in MCL 450.1489(3) cannot be read as permitting willfully unfair and oppressive conduct under the guise of defendants' general authority to run and manage IPAX.")
11. *The Founder* (The Weinstein Company, 2016).
12. See *Prod Finishing Corp v Shields*, 158 Mich App 479, 485-486; 405 NW2d 171 (1987) ("A corporate officer or director is under a fiduciary obligation not to divert a corporate business opportunity for his own personal gain . . . [i]f he does, the corporation may claim the benefit of the transaction.")
13. *The Hudsucker Proxy* (Warner Bros, 1994).
14. See Ebeling, *Hash Out the Inheritance Now, or Fight Your Family Later*, The Wall Street Journal (April 6, 2024) <https://www.wsj.com/personal-finance/hash-out-theinheritance-now-or-fight-your-family-later-5fd836b9>.
15. See Mantese & Williamson, *Succession Planning and the Approaching Massive Transfer of Wealth*, Michigan Bar Journal (July/August 2024) < https://www.michbar.org/journal/Details/Succession-planning-and-the-approaching-massive-transfer-of-wealth?ArticleID=4916>.

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