

# Queens

## BAR BULLETIN

Queens County Bar Association | qcba.org | 88-14 Sutphin Blvd., 3rd Floor, Jamaica, NY 11435 | 718-291-4500  
March/April 2024 | Volume 91, No. 6



### Editor's Note

## New York: The 400-year Achievement of All Time and a Proposal to Make it Even Better

By Paul E. Kerson

#### I: New York Today

Five Borough New York City, New York State. It started out as New Netherland 399 years ago with 350 people by 1630, 4301 souls by 1650 and 9000 individuals by 1674. See Google, New Netherland. Its capital, New Amsterdam (Lower Manhattan) had 1500 people by 1655, and 2500 by 1664. See Google, New Amsterdam and New Netherland population.

Next year, 2025, will be its 400th Birthday, with 8,804,190 souls in the City and an additional 14,795,810 in the surrounding states and counties totalling 23,600,000 individuals in the New York, Long Island, Connecticut and New Jersey Metropolitan area. See Google, NYC and NYC Metropolitan Area population (more or less, depending on the communities counted).

The Mother Country, The Netherlands, in Europe has a population of 17,530,000 today, far less than its former colony. See Google, Netherlands, Population.

New York: Deep water harbor to the world.

New York: Site of the origin of the United States Government, where George Washington was sworn in as the first President in 1789 and where *The Federalist Papers*, explaining the new government were written by Alexander Hamilton, James Madison and John Jay in 1787 and 1788.

New York: Site of the United Nations Headquarters where diplomats from 193 countries have met continuously for the last 79 years and counting to prevent World War III and Nuclear Annihilation.

New York: Financial Capital of the world of stocks, bonds and banks.

New York: Home to the leading live theater community on and off Broadway.

New York: Home of the City University of New York's (CUNY) 25 campuses and 243,000 students from the world over, and private universities and colleges of every description: Columbia University,

New York University, Fordham University, St. John's University, Yeshiva University, Touro College, Long Island University and Pace University to name just a few of them. See Google, CUNY.

New York: Home of the New York City Health and Hospitals Corporation's (HHC) 11 acute care hospitals, five nursing homes, six diagnostic and treatment centers and 70 primary care sites. HHC turns no one away. It served 1.4 million people in 2021. See Google, NYC HHC.

New York: Home of the New York City Department of Education (DOE) today educating 1.1 million students in 1,800 primary, middle and high schools. See Google, NYC DOE.

CUNY, HHC and DOE welcome everyone by mayoral directive over the decades, both Democratic and Republican. Immigration status is not permitted to be asked.

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# The Docket

Being the official notice of the meetings and programs listed below. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

## CLE Seminar & Event listings

### APRIL 2024

Tuesday, April 9  
Wednesday, April 10  
Friday, April 12  
Tuesday, April 16  
Wednesday, April 17  
Thursday, April 18  
Tuesday, April 30

**CLE:** Equitable Distribution, Part 1 – 5:30 pm  
**CLE:** ABCs of Trusts, Part 4 – 1:00 pm  
**CLE:** Women’s History Month Roundtable Panel – 1:00 pm  
**CLE:** Equitable Distribution, Part 2 – 5:30 pm  
**EVENT:** Anti-Semitism CLE with Brandeis – 1:00 pm  
**CLE:** Search & Seizure Update 2024 – 1:00 pm  
My Legal Software Tech Tuesday – 1:00 pm

### MAY 2024

Wednesday, May 1  
Wednesday, May 8  
Wednesday, May 8  
Thursday, May 9  
Wednesday, May 15  
Wednesday, May 22  
Monday, May 27  
Tuesday, May 28  
Thursday, May 30

**CLE:** The Trial, Part 5 – 5:30 pm (tentative)  
Asian American Heritage Month celebration –  
Queens Supreme Court, Civil Term – 1:00 pm  
**CLE:** Ethics Update, Part 1 – 5:30 pm  
**CLE:** LGBTQ+ Committee CLE – 5:30 pm  
**CLE:** Ethics Update, Part 2 – 5:30 pm  
**EVENT:** Annual Dinner – Terrace on the Park – 5:30 pm  
*Memorial Day – Office Closed*  
My Legal Software Tech Tuesday – 1:00 pm  
Jewish Heritage Month Celebration –  
Queens Supreme Court, Criminal Term – 1:00 pm

### JUNE 2024

Tuesday, June 4  
Wednesday, June 5  
Thursday, June 13  
Wednesday, June 19  
Tuesday, June 25

**EVENT:** Tri-County Elder Law Dinner –  
Bourbon Street – 5:30 pm  
**EVENT:** Family Law Committee Dinner –  
Bourbon Street – 5:30 pm  
**CLE:** Co-Op / Condo Committee CLE – 6:00 pm  
*Juneteenth – Office Closed*  
My Legal Software Tech Tuesday – 1:00 pm

### JULY 2024

Thursday, July 4

*Independence Day – Office Closed*

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## Editor's Note

# New York: The 400-year Achievement of All Time and a Proposal to Make it Even Better

By Paul E. Kerson

### CONTINUED FROM PAGE 1

Former Mayor Mike Bloomberg is reported to have said: "Trying to keep people from emigrating to New York City is like trying to stop the tide."

The Federal Government in Washington, DC tries to restrict immigration in various ways. New York City's 8,804,190 eccentrics do not agree.

In the New York Harbor stands the Statue of Liberty inscribed with Emma Lazarus' poem, "*The New Colossus*".

*"Give me your tired, your poor,  
Your huddled masses yearning to breathe free  
The wretched refuse of your teeming shore  
Send these the homeless tempest-tost to me  
I lift my lamp beside the golden door."*

Emma Lazarus wrote this poem in 1883 to celebrate New York as "*The Mother of Exiles*". This idea is carried out in CUNY (1961), HHC (1969) and DOE (1842), three massive bureaucracies that literally shine the Statue of Liberty's well-lit torch into every corner of the globe, no matter how backward, hungry or oppressed.

Throughout European history, the ideas of capitalism and socialism have been at odds, causing wars and fights which still go on today. One cannot truly understand American History without understanding European History because various parts of the United States were colonies of The Netherlands, Great Britain, France, Spain and Russia and once part of Mexico. To understand American History, one must know what was going on in these countries when they colonized ours.

New York City today has blended these two seemingly opposite ideas of capitalism and socialism in a way that leads the world. Unbridled capitalism in banking, stocks, bonds, publishing, fashion, insurance and advertising exists immediately adjacent to CUNY, HHC and DOE serving everyone from everywhere whether they have resources or not.

Nowhere is this more apparent than at Baruch College, CUNY's business school located at 55 Lexington Avenue, New York, NY 10010. Students of modest means from all over the world study business administration there, walkable blocks from the global headquarters of banks, stock and

bond traders, advertising firms, fashion designers, internet and print publishers and large and small businesses of every description.

This is the "secret" mix of raw capitalism and state socialism that keeps New York open to all comers to compete: When capital changes hands, the City and State each get a piece of the action through the stock transfer tax, the real estate transfer tax, the annual real estate tax, the Unincorporated Business Tax (UBT), the City and State income tax, the commuter tax and the sales tax.



The plaque marking the former offices of the Dutch West India Company at Herenmarkt 99, Amsterdam, The Netherlands where they voted to build New Amsterdam (NYC) and New Netherland (NYS) exactly 400 years ago.

(Photo by Paul Kerson)

Thus the rich get richer, but everyone else's health and education gets taken care of by CUNY, HHC and DOE, the public recipient institutions of these tax dollars. Thus, the playing field is leveled in a way that is rare among more stratified cities, states and nations.

### II. How Amsterdam informed New Amsterdam

How did it get this way, this massive engine of opportunity for every eccentric, ambitious soul on our planet? To find out, your Editor journeyed to New York's 1625 Founder, the Headquarters of the Dutch West India Company (WIC), still standing 399 years later at Herenmarkt 99, 1013 EC, Amsterdam, The Netherlands. The WIC itself

closed in 1792, but the building remains in use with new tenants and WIC Memorials.

Published here is a photograph of your Editor pointing to the Statue of New Netherlands Governor Peter Stuyvesant in the Courtyard of the West India House in Amsterdam, The Netherlands on February 19, 2024, 400 years after the Board of Directors voted the establishment of New York in that very building on that very land in that exact spot.

New Amsterdam and New Netherland were the brainchild of ONE MAN, Jesse de Forest (1576-1624). Like Moses in the Old Testament, he never got to see the Promised Land, having died in 1624. See Deuteronomy 32:51-52. De Forest was one of the original organizers of the WIC in 1621. He was a Walloon Huguenot, a French Protestant in a Catholic France, persecuted for his religion. He thus left France for more tolerant Leiden in the Netherlands. In Leiden, he met the Pilgrim fathers on their way to England to board the Mayflower. It was deForest's fondest wish to establish a colony in the New World where he and his fellow Walloons could practice Reformed Protestant Christianity without persecution. He convinced the Board of Directors of the WIC (of which he was a member) to found such a colony.

Although he never made it to the New Amsterdam and New Netherland he dreamed up, his daughter Rachel, and his son-in-law, Dr. Jean de la Montagne came to live in New Netherland in 1634, 10 years later, together with his sons, Isaac and Henri and other family members. Dr. de la Montagne became New Netherland's first surgeon. Thus, Jesse de Forest's descendants are among us. A monument to our founder was given to NYC Mayor John F. Hylan in honor of the 300th Anniversary of the WIC vote to establish our City and State in 1924 by the Belgian Province of Hainaut. It still stands today in Battery Park, next to the Battery, the first building authorized for New Amsterdam and New Netherland by the

CONTINUED ON PAGE 10





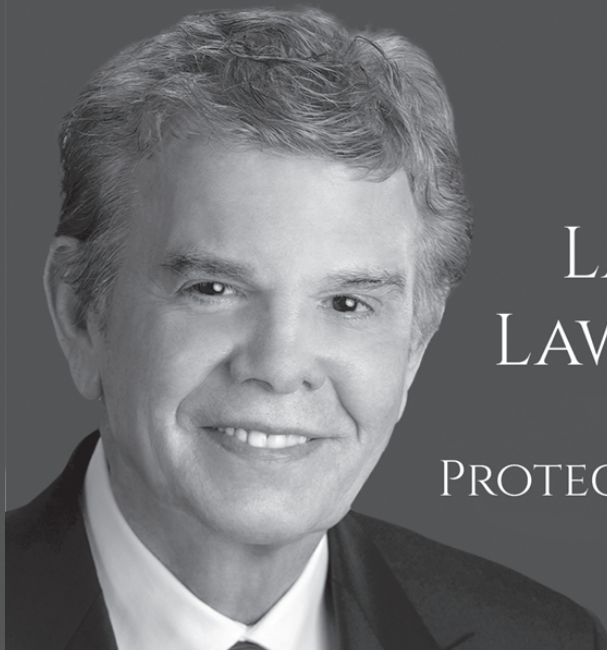
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## President's Message

# Spring Greetings

By Michael D. Abneri

Hello everyone.

Spring is here, bringing with it longer days, a chance to get a little more sunshine, and the historically busy season in court for trials. I spent three of four weeks in March on trial. I am always grateful to jurors from the community who serve and donate their time (not voluntarily of course) for these types of cases. It is the backbone of our civil and criminal judicial system. While not all will agree, it is extremely important for parties to a lawsuit to have their opportunity to have a jury of their fellow Queens residents hear their case, whether they are the plaintiff or defendant.

I was on trial against a skilled adversary who had an excellent technology set up. I must admit, while I've given some thought to it, watching my adversary use it skillfully has made me reflect more on what we as trial lawyers can do to improve our evidence presentations using these technologies. It is great that you can get a large TV in the courtrooms to display information front of the jury. You need to notify the court at the beginning of your trial that you need a TV for evidence presentation (and make sure you have your own HDMI cable). It certainly led me to think about the different ways I can improve evidence presentation to a jury using the latest technology. I encourage all trial lawyers to consider and explore the same. I recommend practicing in your office using these various technologies before trying it in front of a jury to ensure a smoother presentation of the evidence. I also hope that the Office of Court Administration, the Governor and the legislature of the State of New York can budget the appropriate money to equip our courtrooms with the most recent technology available in order to help attorneys present cases on behalf of their clients. The Supreme Court, Criminal Term has recently been equipped with Elmo devices and TV monitors in the courtrooms.

According to statistics from the Office of Court Administration for calendar year 2023, across the five boroughs of New York City, Queens County Supreme Court, Civil Term had the most verdicts

by far with 399. The Bronx had 113 verdicts, Kings County had 123 verdicts, New York County had 91 verdicts and Richmond County had 69 verdicts. In terms of case settlements, according to the statistics, Queens County Supreme Court was fourth of the five boroughs with 2,236 settlements compared to Kings County with 4,497 settlements as the highest. In 2023, Queens County had the second most new case filings at 19,451 cases, trailing only Kings County's 25,618 cases. With respect to note of issue filings, Queens County had 4,052 note of issue filings, again second to Kings County, which had 5,391 note of issue filings. I cite these statistics to give you a perspective as to where we stand in Queens County in terms of how cases are moving through the system. I applaud our Queens County judges for their work with respect to these verdicts. These statistics are available on the Office of Court Administration website. While I am sure the pace of cases moving through the system will not please everyone, I am equally sure that the court system strives to improve on this. Staff shortages remain a problem in the courts and hopefully the Office of Court Administration can get staffing levels up to full capacity as soon as possible.

Women's History Month is celebrated annually in March since 1988. It was established by presidential proclamation, as well as by congressional resolutions to honor the contribution of women to American history. While I was unable to attend any of the events, I do wish to congratulate the women of the judiciary in Queens County and the woman lawyers in Queens County. In 33 years of practicing law, I have personally witnessed the addition of many women judges and, of course more women practicing law in all areas. Three of the four Appellate Division, Second Department judges from Queens are women, Justice Valerie Braithwaite Nelson, Justice Janice Taylor and Justice Lourdes Ventura. Justice Cheree Buggs is a member of the Appellate Term for the 2nd, 11th and 13th Judicial Districts. The administrative

judges for the Supreme Court Civil Term and Criminal Term in Queens County are both women, Justice Marguerite Grays and Justice Donna Marie Golia. Judge Joanne Watters is the Supervising Judge of the Criminal Court of Queens County. In Queens County, women have made great progress and achievements, and we honor these achievements and contributions. Additionally, the Queens County Women's Bar Association is also a thriving organization, and we celebrate their success and accomplishments. I am pleased that we sponsored events together and continue to work together.

On March 5, 2024, we had our annual Judiciary, Past Presidents, and Golden Jubilarian Night celebration at St. John's University School of Law. Attendance was among the highest turnouts that we have ever had. We were proud to celebrate our five Golden Jubilarians, each practicing law for over 50 years, and our honorees. William Reyes, the recipient of the Court Appreciation Award, is the retiring Chief Clerk of the Supreme Court, Criminal Term. We also honored Justice Bernie Siegal as the recipient of our annual Academy of Law Award for Excellence for her years of contribution to the QCBA Academy of Law. It was also an opportunity to socialize and honor our judges of Queens County who work hard every day in the various courthouses helping administer justice.

I continue to encourage everyone to join the committee and get involved in QCBA. We continue to offer excellent continuing legal education programs and our committees continue to advocate on behalf of attorneys in the various practice areas. Please mark your calendar for May 22, 2024, at which time Zenith Taylor will be installed as president of the Queens County Bar Association, as the first African American woman to hold his position. I encourage you to sign up online for the dinner on our website. Stay well and I hope to see at the dinner.


## 2024 MEMBERSHIP DIRECTORIES

**Directories will be mailed on or about April 15.**


**If you would like an additional copy, please contact Janice Ruiz**

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**5:30 PM – 7:30 PM**

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## Editor's Note

### New York: The 400-year Achievement of All Time and a Proposal to Make it Even Better

#### CONTINUED FROM PAGE 4

WIC in 1624, 400 years ago this year. See Google, Wikipedia, Jesse de Forest.

How did we get the New York City and State and Metropolitan area of today from that monumental moment in world history?

Historian Russel Shorto explains it all in his book *Amsterdam: A History of the World's Most Liberal City*, (Vintage Books, a Division of Random House LLC, New York 2013).

In the beginning, the Dutch West India Company wanted a mere military trading post. But to compete with the British in New England, they had to establish towns of colonists. See Shorto at page 193.

In 1624-1625, Amsterdam was the richest City in the world. The Dutch East India Company had trading outposts all over the Spice Islands (Indonesia). The Dutch West India Company had trading outposts throughout the Caribbean and South America. See Shorto at pages 35-38 and 114-117.

Because Amsterdam was itself a melting pot of seamen and traders from all over the world in 1625, so New Amsterdam became the same as its parent city. In 1643 it was recorded that Lower Manhattan (population then less than 500) had 18 spoken languages and dialects. See Shorto at page 195.

New Amsterdam's Dutch colonists brought with them the idea of free trade by individuals, the idea of financing ships for free trade across the ocean and tolerance of individual differences of religion and culture in the name of free trade. There was an official policy of *Gedogen* – Looking the Other Way. It was rooted in Protestant Holland's earlier conflict with Catholic Spain and the Roman Catholic antipathy to competing views of religion. See Shorto at page 195.

Shorto summed up the Amsterdam and New Amsterdam philosophy this way: "...Things work better, people flourished and made money when they were left alone" See Shorto at page 195.

This tolerance was codified by the townspeople of Flushing, Queens County, NY (Then called Vlissingen, after the Dutch City of that name, as were their neighbors in Dutch named New Netherland towns of Haarlem (Harlem), New Utrecht, Breukelen (Brooklyn), Vleekbosch (Flatbush), Boswijck (Bushwick), Catskill, Tappan Zee, Conyne (Coney) Island and Beverwijk (Fort Orange or Albany). See Shorto at page 191-192.

In 1657, New Amsterdam had a conflict between Protestant Sects. Governor Stuyvesant was instructed to run a Dutch Reformed Church Colony. John Bowne wished to pursue the British Quaker religion. Recall that the British and Dutch had been bitter military rivals on and off for centuries and that the idea of separation of church and state had not yet been invented.

Bowne was banished from New Amsterdam to Vlissingen (Flushing) where the town elders refused



QBB Editor Paul Kerson standing on the land where the Dutch West India Company voted to build New Amsterdam (NYC) and New Netherland (NYS) exactly 400 years ago and pointing to the statue of Governor Peter Stuyvesant who carried out the plan.

(Photo by Marleen Kassel Kerson)

to support Stuyvesant's edict. The Dutch West India Company, back in Amsterdam, sided with Bowne and Flushing. This was called the Flushing Remonstrance and became the model for the First Amendment guarantee of freedom of religion, speech and the press written in New York 134 years later. See Shorto at page 196.

When the British took over New Amsterdam and New Netherland in 1664 renaming it New York, they were stuck with New Amsterdam's immigrants from all over, free trade and tolerance philosophies. So New York grew up very different than Boston. And when the former New Netherland farmers

wanted more land for their growing population, they brought free trade, tolerance and *Gedogen* (Looking the other way) in covered wagons to Ohio, Indiana and ultimately to the Pacific Ocean Coast. See Shorto at page 199.

#### III: The Dutch West India Company's Atlantic Slave Trade and Repression of the Ramapo Munsee "Indians"

It is predicted that the 400th Anniversary of the Founding of New York City and State as New Amsterdam, New Netherland in 1625 will be an

CONTINUED ON PAGE 11



## Editor's Note

# New York: The 400-year Achievement of All Time and a Proposal to Make it Even Better

### CONTINUED FROM PAGE 10

extremely low-key event, despite its tremendous significance to the world.

This is because the Dutch West India Company was deeply involved in the Atlantic Slave Trade and even brought slaves from Angola, Africa to New Amsterdam in 1625-1628. See Prof. Hugh Thomas, *The Slave Trade: The History of the Atlantic Slave Trade 1440-1870*, Simon and Schuster Inc., NY, 1997, Pages 170-171.

When the British took over New Amsterdam and New Netherland in 1664 and renamed both New York, they continued the Atlantic Slave Trade. Historian Hugh Thomas had this to say about the attitude of the British monarchy and Catholic Church towards slavery:

"If they ever considered the plight of African slaves, for which there is no evidence, they would have accepted the Catholic Church's acceptance of the commerce, and supposed that it was better for an African to be in the New World at the behest of a Christian master than in Africa working for an infidel..."

"They were children of their age." See Thomas at page 199.

The Dutch Calvinist Church first opposed slavery and then championed it:

"Before, Dutch Calvinists depicted slave trading as a manifestation of Spanish/Portuguese, and not coincidentally Catholic, cruelty foisted on native peoples.

But after the conquest of the clove-yielding Banda Islands and sugar-producing plantations in Brazil, Calvinist churchmen justified enslavement as a means to Christianize peoples and save them from the much more oppressive slavery of Muslims and Catholics. Even though the claims belied reality, Calvinism gave missionary cover for the companies' labor strategies." See Prof. Charles H. Parker, *Global Calvinism*, Yale University Press, New Haven, CT 2022, Page 16-17.

The Atlantic Slave Trade of 1440-1870 was not only brutal, barbaric and immoral, it was profoundly stupid and criminal. Prof. Thomas, in his *"Reflection"* describes it as "disgraceful" and quotes William Baikie, writing in the 1850s:

"There is no captain who carried slaves who has not been, either directly or indirectly, guilty of murder (for) a certain number of deaths are always allowed for."

Prof. Thomas adds that the slave trade merchants were equally guilty. See Thomas at page 794.

Prof. James Walvin, in his learned study, *A Short History of Slavery*, (Penguin Books, London, England 2007) gives us the numbers. Before the 1820s, two and a half million Europeans emigrated to North and South America. During that same

time, eight and a half million Africans were transported to the Americas in slave ships in brutal, horrific overcrowded conditions that caused death from illness and disease. He estimates that half a million Africans died on board these hell-holes in that time period. The number of deaths after 1820 was even greater. See Walvin at pages 69-73.

The original Dutch New Netherlanders also engaged in repression of the Ramapo Munsee "Indians" and other local tribes including various military campaigns. Some were taken into slavery. There was considerable intermarriage with Dutch settlers. This indigenous community of several thousand souls still exists in Ramapo, New Jersey, 22 miles from Manhattan and recently met with Dutch officials. See Leendert van der Valk, *"The Ramapo Munsee are no Longer Hiding – 'We are Still Here'"*, De Groene Amsterdammer, #9, Feb. 28, 2024.

### IV: Our Proposed 400th Anniversary Gift to the World – The New York Reparations Bank

Africa the Continent, and African-Americans in North and South America and the Caribbean continue to feel the pain of the African Slave Trade wrongfully conducted by The Netherlands, Great Britain, France, Germany, Belgium, Spain, Portugal, Brazil and the United States even after its abolition by 1870. See Wayne Modest and Wendeline Flores, *Our Colonial Inheritance*, Wereld Museum, Amsterdam, Netherlands, 2023.

American Indigenous people, among them the Ramapo Munsee of Ramapo, New Jersey (formerly New Netherlands) also continue to feel the same pain. See van der Valk, pages 1-16.

The primary unit of human existence is the Family, followed by the City, State (Province) and Nation. See the stories of the world's most prominent families over time in Simon Sebag Montefiore, *The World – A Family History*, Weidenfeld & Nicolson, London, UK 2022.

As we general law practitioners in New York City can attest, the African-American Family was disrupted by the African Slave Trade and continues to be disrupted even today because of its after effects. African American families are far less likely to own their own homes, have pension plans, savings accounts or stable families than any other ethnic group in our polyglot population. See Nikole Hannah-Jones, *The 1619 Project*, Penguin Random House, LLC, New York 2021, pages 7-36.

African American men in particular, are much more likely to be arrested, convicted and imprisoned than their counterparts in other ethnic groups. See Bryan Stevenson, *Just Mercy*, Spiegel & Grau, a division of Penguin Random House LLC, New York 2015

African cities, provinces and nations are impoverished and behind the rest of the world in development.

Reparations for all of this maltreatment are being discussed. The City of Evanston, Illinois has a program. San Francisco, California is considering one.

In light of all the history detailed above, I propose the following plan: the organization of the New York Reparations Bank. Capital should be contributed by all the former slave trading countries named above.

The Board of Directors and Officers should be prominent Africans and African Americans from North and South America, the Caribbean and American Indigenous communities.

Long term loans should be granted at low interest rates to African cities, provinces and nations and American Indigenous communities for specific development projects and to African-American, Caribbean and South American individual families of African descent and American Indigenous descent for mortgage loans, college tuition, to start a business large or small and for legal fees for first class lawyers to challenge wrongful arrests as Public Defenders are underpaid and overworked. (Note: I know all about this in my bones. For 19 years I was a Public Defender. This means on most days I was locked in a jail cell called "a holding pen" as in a cattle holding pen, listening to a young Black man explain how he came to be in that cell, so I could explain it to a Judge and Assistant District Attorney a few minutes later. I also saw, up close and personal, jailhouse injuries not unlike the slave ships of 350 years earlier – missing eyes, broken bones, stitches).

This Plan should start to level the playing field for African cities, provinces and nations and African-American, Caribbean and South American and individuals and families and tribes of African and/or American Indigenous descent.

The reason for low-interest long term loans instead of grants is this: Each recipient individual, family, city, province or nation must have a stake in curing the after effects of slavery for generations to come.

Built into this plan is the incentive for each recipient to take care of their brothers and sisters, children and grandchildren by keeping the capital of the New York Reparations Bank intact in perpetuity to always be available to be used for its intended purpose. Centuries of abuse will not be ended overnight, or even in one generation. It will take centuries to undo this level of damage to humanity.

This plan would be a way to celebrate what the Dutch West India Company gave us in founding our City and State, and to correct the terrible mistake they made in the process. In America, we call slavery our national original sin. It is high time we stop sinning with the after effects of that original sin.



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# Annual Judiciary, Past Presidents & Golden Jubilarian Night

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## The Practice Page

# THE NYS “LEMON LAW”... NOT APPLICABLE TO LEMONADE

BY HON. MARK C. DILLON

*Serves on the Appellate Division, Second Department*

Let's talk cars, whether owned or leased. And motorcycles. And while we're at it, motor homes.

The New York “Lemon Law” (GBL 198-a) provides special consumer protections if a vehicle is covered by an express manufacturer's warranty at the time of its original delivery. It applies to vehicles registered in New York for a period of two years from the original delivery or for 18,000 miles, whichever occurs first. The law requires that the manufacturer, agent, or dealer perform warranty repairs for the consumer for no charge, so long as the vehicle is within the statutory two-year/18,000 mile window. While that portion of the law merely enforces many repairs that should be made under warranty anyway, the statute has an important kicker: the manufacturer has a duty to replace or repurchase the vehicle if the warranty repair cannot be made after four or more attempts or if the vehicle is out of service thirty or more calendar days as a cumulative result of one or more repair attempts. In the event that a consumer chooses to receive a replacement vehicle rather than its repurchase price, the vehicle provided is to be comparable — meaning the same year, model, and approximate odometer mileage.

A key to the remedies of the Lemon Law is that there be a non-conforming defect with the vehicle which cannot be repaired despite the reasonable attempts required by the statute. That requirement was central in the case of *Matter of BMW of North America, LLC v Dean*, 215 A.D.3d 746 (2023), which warrants some discussion.

The respondent, Avery Dean (Dean), custom ordered a 2019 BMW X3 with standard features and other carefully-selected upgrades, which rendered that BMW an expensive but desirable quality vehicle. One of the vehicle's features was a “Comfort Access System.” A Comfort Access System automatically unlocks the doors and starts the engine when the owner merely walks within a certain proximity of the vehicle. The owner need not use a key or even press any button on a fob. The vehicle transmits a constant signal seeking the owner's fob, and when the fob comes within sensor range, the owner can enter the vehicle and drive away without the inconvenience of unlocking any door or turning the ignition. In Dean's case, the system sometimes worked. But there were other occasions when the owner would walk toward the vehicle intending to drive it, and contrary to the promise of the Comfort Access System, was forced to use his fob to push a button to unlock the car door and to then manually activate the engine.

Dean brought his BMW to the petitioner, BMW of North America, Inc. (Dealer), on five occasions for warranty repairs to address the issue. The Dealer failed to correct the problem. As a result, Dean requested an arbitration required by the Lemon Law seeking a refund of the vehicle's value. Ultimately, the arbitrator's determination became the subject of a CPLR 7511 proceeding and its appellate review. Here, Dean failed to establish that there was any actual defect in

the materials or workmanship covered by the vehicle's express warranty. Rather, the Comfort Access System was specifically designed to enter a sleep mode if not operated for approximately two days, so that its constant search signal would not drain and kill the car's battery which powered it. Once the Comfort Access System entered its sleep mode, it could not operate when the owner's fob came within range without the vehicle first being manually started to re-activate the search feature. Thus, while the owner's enjoyment of the automatic unlock and ignition feature was spotty, there was no “defect” in the design or manufacture of the car which was instead performing as specifically designed and intended. The Appellate Division further found that the shortcomings of the Comfort Access System did not affect vehicular safety, nor did it substantially impair the value of the vehicle.

The bottom line for the Lemon Law is that there must actually be a bitter lemon to trigger the statutory remedies, and not lemonade intentionally sweetened with sugar.

---

*Mark C. Dillon is a Justice of the Appellate Division, 2nd Department, an Adjunct Professor of New York Practice at Fordham Law School, and a contributing author of CPLR Practice Commentaries in McKinney's.*



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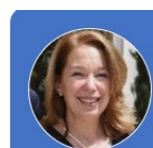
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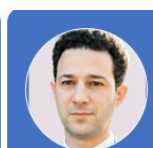


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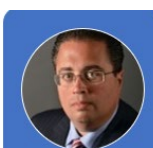
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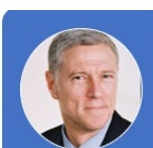
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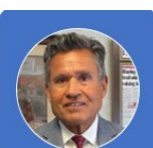
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Securing long-term care insurance stands as the most effective defense against the financial challenges associated with extended care needs. When contemplating this insurance option, critical considerations involve defining an appropriate daily benefit amount and incorporating an inflation rider to match the escalating costs of nursing home care. Notably, long-term care insurance goes beyond by covering the expenses of home health aides, empowering individuals to gracefully age within the familiarity and comfort of their own homes, steering clear of the need for relocation to a facility. In case you're unable to obtain long-term care insurance, there's a backup plan called Medicaid Asset Protection (MAPT). Assets held in MAPT for at least five years are shielded from nursing home expenses, and upcoming laws may extend protection to two and a half years for home care.

Explore the option of using trusts instead of wills to bypass probate, which is a legal process initiated when you pass away with assets solely in your name. Trusts are harder to challenge than wills, especially if you're disinheriting a child. In general, trusts streamline the estate settlement process, saving both time and money.

Opt for Inheritance Protection Trusts when leaving assets to your children instead of direct distributions. These trusts serve as a protective measure during your children's divorces, ensuring that in the unfortunate event of your child's passing, the inheritance is preserved for your grandchildren rather than being vulnerable to claims from your children's spouses.

Elder law estate planning is a comprehensive approach tailored to address the unique legal and financial concerns that individuals face as they age. Moreover, elder law estate planning aims to mitigate potential tax liabilities, ensuring that as much of the estate as possible goes to the intended heirs rather than being depleted by taxes or other financial burdens.

In essence, an elder law estate plan does three main things: (1) safeguards your assets from long-term care expenses, (2) passes assets to your heirs while minimizing taxes and legal fees, and (3) ensures your grandchildren inherit while shielding the legacy from your children's divorces.

Elder law estate planning offers a holistic approach to secure the well-being of seniors, protect their assets, and provide a clear roadmap for the distribution of their estate according to their wishes. By taking a proactive stance, individuals can steer the complexities of aging with confidence and ensure a legacy that aligns with their values and goals.



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# Crossroads of Love, Law, Life and Death

BY FRANK BRUNO, JR.

Do you know anyone who is a people pleaser? I do. I happen to be a people pleaser. I check the pulse of others; seek approval and check it twice before decisions. My intuition and the confirmation of Freud say it stems from my childhood. I also intermingle that with impulsive behavior; probably due to that same childhood. Quick ordering online, quick commitment to a new program, quick money outlay. Sometimes I run out to the store for an impulsive purchase or drive to a place for a certain food (Chick-fil-A anyone?) and other times I cannot order something on the menu without asking the table what they are eating. Complete rugged individualism with no dependency on myself.

Can you relate? You say yes when you want to say no. Do you feel responsible for other people's emotions? You're always doing things for others and are left feeling exhausted when it is time to fill your cup. You give and then resent? You give, yield, and bend, and then explode? You feel guilty as hell when you prioritize yourself? You feel massive discomfort when someone is angry with you? You think you are responsible for other's feelings or the way they react to a situation? You'll do nearly anything to avoid conflict? That is difficult when eighty percent of the practice involves litigation across several fields. If you bend over backward to meet everyone's needs before you even consider your own, listen up. Let's get raw because I know you are meant for more. I am meant for more. You need to stop abandoning your own needs to make others happy. Take a stand. Get a foundation. Take your left foot and smush it into the ground. Pretend you are a right-handed batter in the batter's box. Left foot towards the pitcher. Take the ball of your foot, place it down, and swivel the ankle. When it feels right plant the heel. Take your right foot and step fully into the box. Slide it forward and back until there is a slight dirt groove. A few millimeters of dirt pushed to and fro, front and back and when the feeling is right just plant it. Face the pitcher. What got you here, won't get you there. People pleasing is a sign of low self-worth. It says "I value meeting your needs, before my own".

Putting yourself first is not selfish. It is required to live a fulfilling life. Boundaries are not bad - they show others how to treat us. So where do you go from here? Start where you are and take a stand. Get into the batter's box. Second, start saying no. Find two to three places where you can say NO in your life this week.

Third, replace, "I'm sorry" with gratitude ("I'm sorry for being late" —> thank you for waiting, thank you for understanding, etc.) A simple important reframe although how about at step

zero, we just commit to not be late. No need to express gratitude or reframing if we simply are not late in the first place. Being late was probably a sign that you took on too much or did not say "no" to something

that you should have said "no" to. So, reframe for a little while until your set boundaries make an impact on your schedule.

Fourth, start setting boundaries. Get clear on who is crossing your boundaries and how you can set them.

Fifth, start practicing internal validation. "It is ok to say no"; "saying no is acceptable to me." It is hard to say no when you have doubts. Validate through positive self-talk, speak to a shrink if necessary, and have a conversation with you, Freud, and your mother. Give yourself the validation you outwardly seek.

Sixth, shift which narrative you listen to. It is always the story that we tell ourselves. Either the recitation of facts woven with the thread of where we came from or where we want to go. I know you THINK everyone will get mad if you say no, but separate the facts from the story you tell yourself.

---

Self-care. Do you imagine massages, saltwater baths, spa days, deep breathing yogis, goat yoga retreats, or deep blue ocean beach vacations? How about rest, proper sleep, vitamins, or meditation? How about we start with the Imagination? Visualization and imagination are good to use in self-care. At least in the way that I am proposing it. Life is busy. The life of a parent is busy. The life of a legal professional is busy. Busy, busy, busy. Busy is a badge of honor and really should be pushed out of the vocabulary. Upon seeing a colleague after some time. "Hey John, good to see you, how have you been?" The typical reply. "I've been good, just real busy." At most, the follow-up is "Good for you." What does that even mean and why is it good for them? The Pollyanna version of me would hope to be able to say in response to "how are you?" Joyful! Exuberant! Energetic! Miraculous! All true and even more true when I put some thought behind it. Busy should not be awarded a medal. Sometimes we all are required to do more with less and to stretch ourselves to outpace the lack of resources but those are stop gap measures with the expectation if we are busy then deploy more resources.

For busy attorneys, self-care does not have to mean an entire day of relaxation. Sure, it could include that, although practically:

Use your imagination and pretend you are in the sun or at a day spa. Overwhelmed by the thought of self-care? Too much to do so the gym goes out the window? The meditation falls off the calendar, the yoga class does not make the grade. "Put on your oxygen mask before assisting others." Deep breath. Slow oxygenating breaths to be at your best to effectively serve your family, friends, and clients. Take active rest. Not doom scrolling or Netflix bingeing. Playing a sport, reading a book, going for a light stroll, building a model airplane, doing a puzzle, or a power nap. The focus on the activity allows your mind to rest.

Block your calendar for certain events or tasks. Set boundaries on your time, especially for the tasks that you want to become important to you. If it does not make the calendar then the task will not be accomplished. Walking while listening to a motivational podcast or an audiobook, especially in the morning can maximize time and lend a kickstart to your efforts.

How else can we prioritize self-care? Go to your calendar - paper or digital - and block out certain times for these productive projects. Get out from behind your desk and stretch or walk once an hour; set a specific time for daily meditation; journal some of your thoughts, angst, and joys. Start with morning pages or a reflection journal. If journaling at the start of the day, consider the best of the last day or what is to come for the day ahead. If journaling at night think about the day's events highlight the top moments and prepare for the next day's assignments.

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Love, exciting and new. Come aboard. We're expecting you. And love, life's sweetest reward. Let it flow, it floats back to you. Love, everlasting love for some and for others not so much "told myself that you were right for me, but felt so lonely in your company, but that was love and it's an ache I still remember."

Heartbreak or heart sorrow, every marriage ends. A breakup, divorce, or even death after a lifetime of marriage, every relationship eventually ends. Have you planned for the end? Whether you have or have not impacts your family, your business, your children, and your assets. "It's knowing that this can't go on forever, likely one of us will have to spend some days alone. Maybe we'll get forty years together, but one day I'll be gone, or one day you'll be gone... Maybe time running out is a gift, I'll work hard 'til the end of my shift. And give you every second I can find and hope it isn't me who's left behind." Jason Isbell opines that the limited time together gives his relationship meaning as compared to eternal love.

We can prepare for the end with strategic planning. From a prenuptial agreement to business succession planning to an estate plan. Meet the end at the beginning so that the best ending is possible at the crossroads of love, law, life, and death. When the relationship ends, have a plan in place for contingencies so that your loved ones can avoid the stress, conflict, and chaos that comes with incomplete planning. Joyful moments, shared future, and intestate law have default measures for what happens to your assets if one spouse dies, but the State plan may not align with your personal preference or even make sense if you have minor children.

If an unmarried couple has no plan, it leaves the surviving partner out in the cold or without the ability to make decisions about individually named property or medical choices.

CONTINUED ON PAGE 20



# Crossroads of Love, Law, Life and Death

BY FRANK BRUNO, JR.

CONTINUED FROM PAGE 19

Lack of planning when a relationship ends:

- 1. Property Ownership for a couple.** Without documentation detailing ownership rights, the recorded deed controls and if the relationship ends in a breakup, the deed may not accurately reflect the proper terms or the tacit agreement of the parties. If unmarried and one partner passes away, the other partner might find themselves without a rightful claim to the property, potentially tremendous financial loss.
- 2. Healthcare Decisions.** In a Medical emergency where one partner becomes incapacitated, lack of appropriate documentation could impede the other partner's ability to make critical healthcare decisions on their behalf. Problems from delays in treatment to the need for a guardianship proceeding, the failure to plan causes stress, loss of time and money.
- 3. Guardianship for Children.** For couples with children, failing to establish guardianship arrangements in the event of both parents' incapacity or death can have devastating consequences. Without a designated guardian, children may be placed in the care of individuals who may not align with your wishes or values, leading to potential custody battles and emotional upheaval for the children and your extended family.
- 4. Business Interests.**
- 5.** If you and your partner share business interests or investments, the lack of a solid plan could jeopardize the future of these assets. Without instructions, the surviving partner may face issues managing or transferring ownership of these assets.

The absence of an estate plan leaves individuals subject to legal and financial problems. Consider in advance what happens when your relationship ends, couples can safeguard their assets, ensure their wishes are honored, and provide peace of mind for themselves and their loved ones. Make a plan and keep it updated for your family and your evolving wants, needs, and desires.

*Frank Bruno, Jr. is Past President of the QCBA, a Member of the Board of Managers, a regular contributor to the Bar Bulletin and a practicing attorney for more than 26 years.*

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Donna received her law degree from St. John's University of Law. She is currently on the Board of Directors of the Catholic Lawyers Guild of Queens and was past President of the Queens County Women's Bar Association, the Astoria Kiwanis Club, East River Kiwanis Club, and the Catholic Lawyers Guild of Queens. Co-Chair of the Elder Law Section of Queens County Bar Assn. 2012-2019

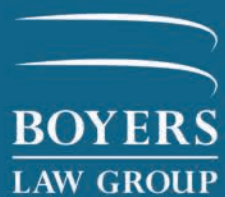


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*\$135 per person for QCBA members admitted to practice 4 years or less (through May 12)*

**Same Day Reservations: \$225 per person (day of dinner or at the door)**

*Kosher meals available if registered by May 19 (\$25 additional)*



# Sponsorships

## DIAMOND

Limit of 1

\$8,500

- back cover full page advertisement
- table of 12 in premium location near dais
- acknowledgement in all marketing and press releases
- 4 email messages to QCBA members between May 2024 and April 2025
- 1 sponsorship credit for 2024-25 CLE program(s)
- 1 marketing table at the dinner
- company logo on signage and table flyers at the dinner
- recognition from the podium

**SOLD!**

## RUBY

Limit of 2

\$6,000

- inside front or back cover advertisement in full color
- 8 tickets at table near dais
- acknowledgement in all marketing and press releases
- 2 email messages to QCBA members between May 2024 and April 2025
- 1 sponsorship credit for 2024-25 CLE program(s)
- 1 marketing table at the dinner
- company logo on signage and table flyers at the dinner
- recognition from the podium

**SOLD!**

## EMERALD

Limit of 4

\$5,000

- includes Gold page full page advertisement
- 6 tickets at a table near the dais
- acknowledgement in all marketing and press releases
- 2 email messages to QCBA members between May 2024 and April 2025
- one marketing table at the dinner
- company logo on signage and flyers at the dinner
- recognition from the podium

## SAPPHIRE

\$4,000

- includes Silver page full page advertisement
- 4 tickets at a table near the dais
- acknowledgement in all marketing and press releases
- 1 email messages to QCBA members between May 2024 and April 2025
- company logo on signage and flyers at the dinner
- recognition from the podium

## GOLD

\$3,000

- includes full page advertisement
- 3 tickets to the dinner
- acknowledgement in all marketing and press releases
- company logo on signage and flyers at the dinner
- recognition from the podium

## SILVER

\$2,500

- includes full page advertisement
- 2 tickets to the dinner
- acknowledgement in all marketing and press releases
- listed on signage and table flyers
- recognition from the podium

## BRONZE

\$1,500

- includes half page advertisement
- 2 tickets to the dinner
- acknowledgement in all marketing and press releases
- listed on signage and table flyers
- recognition from the podium

## SPONSOR

\$1,000

- includes quarter page advertisement
- 1 tickets to the dinner
- acknowledgement in all marketing and press releases
- listed on signage and table flyers
- recognition from the podium

# Journal Ads

• Back Cover	7.375" x 9.875"	\$2,600	• Inside Front or Back Cover	7.375" x 9.875"	\$1,800
• Gold Page	7.375" x 9.875"	\$1,300	• Silver Page	7.375" x 9.875"	\$1,050
• Full Page	7.375" x 9.875"	\$800	• Half Page	7.375" x 4.75"	\$525
• Quarter Page	3.50" x 4.75"	\$375	• Business Card	3.50" x 2.00"	\$225

All journal ad measurements are listed as width x height and represent the printable area for your ad. Inside front or back and outside back cover ads are full color. All interior page ads are black and white only.



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