

NOTARY WORLD



SEPTEMBER 2023



WELCOME TO - NOTARY WORLD

Notary World is C.L.A.N.'s flagship publication for members and is full of articles and news designed to continually inform and educate.

Please do not hesitate to send in your feedback and if you want to contribute to Notary World, contact Ken Lord, Editor.

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EDITORIAL

In this edition of Notary World we feature our esteemed President Stewart Germann's Report, (New Zealand), a delightful article on the vagaries of quotes from the redoubtable Professor Peter Zabłud, (Australia), wise words from the good-natured Leo Mangan, (Ireland), a short note from the venerable Bob Narev (New Zealand), and some excerpts from the excellent journal, *Protocol*, a Newsletter of the Notaries' Society of South Australia Volume 2023 Issue 1 | August 2023 reproduced with kind permission from Editor Dr. Ricky Lee.

I have also taken the liberty of inserting a short article. I appreciate the articles and material sent to me and I'm always keen for more. Before finishing this Editorial, a short item of note...

The Notary's Desk

The importance of the notariat today is unchanged and no better symbolised than by its presence at medieval fairs such as the Champagne Fairs.



Medieval merchants travelled to fairs and markets all over Europe exchanging goods "which they knew little about with people they knew little about" ... in places they knew little about (Kadens quoting Benson 272).

Fairs lasted a long time, sometimes years, or sometimes only a few days. Some "Flemish merchants attending the English fairs in the 13th century may even have remained in England for as long as three years" (Kadens 273).

The notary acted, along with other witnesses, as a "reputation broker ... [and repository] ... of legal culture" (Kadens 275). English regulations governing the fairs required guarantees as to the quality of wool or any other commodity being traded. The notary assisted commerce to operate smoothly.

More than that however, the notary was a source of reputational information, helping traders to know whom to trust, and from whom they may learn local customs and laws. Academic Emily Kadens gives us the following morsel of information:

The notary's business, in particular, was often conducted openly in the marketplace. The notary brought his writing desk wherever he would be accessible to merchants, and they lined up to wait their turn with him ... A notarial document had to be witnessed, and the people in line often served that role. Once he had drawn the contract up, the notary was required to read it out to the witnesses. Thus, merchants might learn a great deal about the business being done by others simply by standing around the notary's desk (Kadens 275, 276).

The modern notary desk is more private but notary skills and learned information are similar.

I thank all our contributors and trust you enjoy reading this edition of Notary World!



Ken Lord, Editor

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Now retired from the practise of law (although still enrolled as a lawyer), Ken remains practicing as a Notary Public. He is one of the authors of the LexisNexis Law of Trusts, having written and reviewed the chapter devoted to charity law, as well as chapters in the LexisNexis publication, The Law and Practice of Charities in New Zealand.

Graduating LLB from the University of Canterbury in 1977, Ken completed a BA in English and Russian literature in 2004, a BA(Hons) First Class in Russian and English literature, and is now pursuing a master's degree on the legal language of Shakespeare.



PRESIDENT'S REPORT FROM STEWART GERMANN

Dear Notary

It is with great pleasure that I write my President's Report for the latest issue of Notary World September 2023. The Council held a meeting by Zoom on 26 July 2023. Everyone was present except Daniel Boisevert of British Columbia who tendered his apology. Subsequent to that meeting Daniel resigned from the Board so I would like to thank Daniel for his contribution while he was a director. As you are aware the previous meeting of the directors was held in person in Dublin on 31 March 2023.

It was an excellent meeting and well supported by the Irish who were very hospitable in every way. The Notariats which belong to C.L.A.N. are Ireland, England and Wales, British Columbia, Canada, and New Zealand. I have been trying to get the various states in Australia to join and recently the New South Wales notariat has recommended that individual members apply to join our Association. This is exciting and we are awaiting a number of applications. Also we have received applications for individual membership from Gibraltar and Guernsey. Peter Zablud of Melbourne, Australia has kindly agreed to present a webinar in November on the important topic of Notarising American documents and the problems associated with that.

We are planning to have further webinars in 2024. Membership is very important and each director has been tasked with pursuing membership in various countries. I am optimistic that our Association will grow in the next year. Please don't forget to look at our website and, in particular, the Business Plan published on it.

The aims and objectives from this year until 2026 are recruitment of new members and raising the profile of notaries. We are making progress on both counts. Finally I thank Ken Lord, our esteemed Editor of Notary World, for his diligence in sourcing articles and acting as our Editor.

Stewart Germann



Stewart Germann, B.Com, LLB, FCIS, CFInstD, CFE, Notary Public

Partner

Stewart Germann is a Barrister and Solicitor of the High Court of New Zealand and he attended the University of Auckland. He has the qualifications of B.Com, LLB, FCIS, CFInstD, CFE and Notary Public and he specialises in franchising, licensing, sale and purchase of businesses and commercial law.

Stewart has over 40 years' experience in franchising law and has acted for many franchisors in New Zealand and overseas. He also acts for franchisees advising them about a particular franchise and commenting on the form of franchise documents.

From 1997 to 1999 Stewart was the Chairman of the Franchise Association of New Zealand. He has spoken at franchising conferences in New Zealand, Australia and USA and is very interested in international franchising. He has also written numerous articles on franchising for New Zealand and international publications. He is Adjunct Professor of Law at Auckland University Law School teaching Franchise Law and is the only lawyer in NZ to hold the CFE (Certified Franchise Executive) qualification following an accreditation ceremony in Florida 2020.

Stewart is a member of the International Franchise Association (IFA) based at Washington DC and of the International Bar Association (IBA).

Stewart is a qualified mediator and is a member of AMINZ. He is also on the Panel of Mediators of the Franchise Association of New Zealand.

QUOTES AND MISQUOTES



AUTHORS AND PUBLIC SPEAKERS HAVE LONG SINCE SOUGHT OUT AND RELIED UPON THE WORDS AND IDEAS OF OTHERS TO AUGMENT AND EMBELLISH THEIR VERBAL AND WRITTEN PRESENTATIONS.

For instance, the great Roman orator and lawyer, Marcus Tullius Cicero was widely renowned for his use of literary allusions and quotations in his speeches and writings.¹ In more recent times, until the advent of the internet, tools of trade for most writers and speakers have included books of quotations such as Bartlett's Familiar Quotations (now in its 18th edition). Today, most people turn to Professor Google to seek out appropriate aphorisms, witticisms and quotes. When using someone else's words, however famous they may be, in the overwhelming majority of cases it is important to give proper attribution. As a rule, correctly sourcing and crediting a quote isn't too difficult. But, to coin a phrase, it can be a task full of traps and pitfalls for the unwary. Merely because a saying or a quote is written in a book or found online or has become a familiar part of the lexicon does not mean that it has been accurately quoted or properly attributed and has not been plagiarized. Indeed, it is remarkable to discover how many commonplace quotes and phrases that are taken for granted are misquotes or have been incorrectly attributed or are bogus or just flights of fancy. To "gild the lily" is a phrase wrongly attributed to Shakespeare. In *The Life and Death of King John*, the line from which the "quote" is taken is found in Act 4 Scene 2 of the Play, when the Earl of Salisbury remarks, "To gild refined gold, to paint the lily ... is wasteful and ridiculous".² "Discretion is the better part of valour" is another misquote from the Bard's works. In Act 5 Scene 4 of *King Henry IV Part 1*, Falstaff actually declares, "The better part of valour is discretion". "Pride goes before a fall" is generally thought to be a direct quote from the Bible's Book of Proverbs. In the King James Bible, Chapter 16 verse 18 of "Proverbs" reads "Pride goeth before destruction and an haughty spirit before a fall".

American folklore is a fount of material for presenters. Here as well, care must be taken when choosing quotes to use. For example, the image of Paul Revere atop his galloping horse warning the community of the approaching redcoats is indelibly

etched into the American psyche. Most books of quotes and internet sites about quotes make it clear that Revere did not shout the warning, "The British are coming!". However, almost invariably, they go on to assert that the warning was invented by Henry Wadsworth Longfellow and appears in his poem, *Paul Revere's Ride*. Neither the alleged warning nor anything similar to it are found in the poem. It seems that George Washington's biographer, Parson Mason Locke Weems concocted the famous "cherry tree" story about America's first President. He simply made up this quote which he attributed to the youthful Washington, "I cannot tell a lie Pa; You know I cannot tell a lie. I did cut it with my hatchet."² Ironically, that bogus quote which is now almost always misquoted as "I cannot tell a lie. It was I who chopped down the cherry tree", is accepted throughout the United States as being genuine. Two communications experts from Calvin University, Michigan, have observed that over the years, the public at large, including scholars has become so accustomed to seeing and hearing unvetted and unsourced quotations attributed to famous or historically important figures, that when a quote is said to be by a well-known person, it is automatically accepted as being so.³

The sayings, one-liners and bon mots of the American humourist (and one-time Nevada Notary), Mark Twain have created a veritable goldmine of quotes. A recent google search for "Quotes by Mark Twain" unearthed "about 22.9 million results" (in just 0.28 seconds). Mark Twain did not say or write everything that has been attributed to him. It is certain that he did not come up with the comment, "There are three kinds of lies: lies, damned lies and statistics" so often credited to him. The late Dr. Peter M Lee of York University uncovered at least a dozen possible originators of that quote.⁴ Nor was Mark Twain the author of the delightful remark (also wrongly attributed to Abraham Lincoln), "Better to remain silent and be thought a fool than to speak out and remove all doubt". "New Yorker" writer and queen of the fabled "Algonquin" Round Table, Dorothy

Parker was reputed to be able to make a pun out of any word. When approached by a cynic who asked her to make a pun out of “horticulture”, she immediately responded, “You can lead a whore to culture but you can’t make her think”. Despite being responsible for a wealth of puns, witticisms and quips, Mrs. Parker is quoted as saying, “I am not witty and I am not funny. But I do have a reputation as a smarty pants ... I hardly say any of those clever things that have been attributed to me. I wouldn’t have time to earn a living if I said all those things.⁵

Bogus quotes, wrongful attribution and errors arising from the ravages of time are not confined to the USA. Similar issues abound in countries across the Atlantic. Whether or not Queen Victoria ever said “We are not amused” is now shrouded in mystery. According to an undated English “Radio Times” report (found online of course), it is possible that the quote may have been misattributed to Queen Victoria and may actually have been something said [four centuries previously] by Queen Elizabeth I. In a 1976 interview, Victoria’s grand-daughter, Princess Alice said that the Queen told her that she had never uttered the immortal line attributed to her. ⁴ Britain’s war-time Prime Minister, Winston Churchill always denied that when he was First Lord of the Admiralty he had said, “The only traditions of the Royal Navy are rum, sodomy and the lash.” He did however confess to his private secretary that he wished he had said it.⁶ The caustic remark about Charles de Gaulle, “The hardest cross I have to bear is the Cross of Lorraine” also attributed to Churchill, actually appears to have been a remark made by a British envoy to France, Sir Edward Spears.⁷ “Quality is never an accident, it is always the result of intelligent effort”, is a brilliant aphorism, often seen in articles about business and commercial matters. It is usually said to be by the 19th century English art critic and polymath, John Ruskin. According to Dr. Christopher Donaldson of the Ruskin Research Centre at Lancaster University, although the idea expressed in the quotation has a “Ruskinian ring” to it, the words are not actually Ruskin’s.⁸

The medieval jurist and teacher, Bartolus of Sassoferrato (1313-1357) is considered to be the progenitor of the modern doctrine of Conflict of Laws. As noted by the translator of Bartolus’ classic treatise on the subject: In the course of five hundred years, the simple principles which Bartolus laid down [in his treatise] became strangely warped and distorted. [Various scholars in Europe] drew singular conclusions from his expressed opinions and ascribed those conclusions to Bartolus himself. ⁹ How better to finish this article than with a quote about misquotes – for which no source or context may readily be found. The English actor and author, Hesketh Pearson is alleged to have said, “Misquotations are the only quotations that are never misquoted”. Did Pearson really say that and, if so, when where and why”



Professor Peter Zabrud, AM, RFD

Professor Zabrud is an Australian Lawyer and Notary. He is an Adjunct Professor at the Sir Zelman Cowen Centre and at the Victoria Law School, Victoria University.

He is held in the highest regard throughout the common law world for his commitment to excellence, the advancement of the notariat and his outstanding contribution to the education of prospective and practising notaries.

He is considered to be a leading world expert on the Hague Apostille Convention and the authentication of documents for cross-border purposes.

Professor Zabrud was the inaugural Chairman of the Board of Governors of The Australian and New Zealand College of Notaries and is a Distinguished Fellow of the College.

He is also a Life Member and a Fellow of the Society of Notaries of Victoria and is a Councillor and past-President of the Society.

As Director of Notarial Studies at the Sir Zelman Cowen Centre, Professor Zabrud designed and is responsible for the presentation of the Professional Course in Notarial Practice – the pre-eminent qualification for notaries in Australia and one of the outstanding courses of education of its kind in the common law world.

1. See, e.g, ML Clarke, ‘Ciceronian Oratory’, Greece & Rome [1945] (14), 72
2. Mount Vernon Ladies Association of the Union, Where the Cherry Tree Grew: An interview with Phillip Levy, [undated]. Found at (Prompted by the Wikipedia entry for “Mason Locke Weems”).
3. Quentin Schultze and Randal Bytwerk, *Plausible Quotations and Reverse Credibility in Online Vernacular Communities*, ETC: A Review of General Semantics, Vol 69 No 2 (April 2012), 216.
4. Peter M Lee, *Lies, Damned Lies and Statistics* (found at <<https://www.york.ac.uk/depts/maths/histstat/lies.htm>>
5. Found at <quoteinvestigator.com/2019/06/12/say-clever>
6. See the International Churchill Society website at <https://winstonchurchill.org/>
7. Ibid.
8. From an exchange of email correspondence with Dr Donaldson on 20 October 2020.
9. Joseph Henry Beale, ed and trans. *Bartolus on the Conflict of Laws*, Harvard University Press (1914) Introduction, 10, (Quoting Armand Lainé from his book, *Introduction au droit international privé*, (1892) at 131).

NOTARIAL ITEM OF INTEREST



The only recent item of interest in my notarial practice was an application for notarisation (duly rejected by me) of an “Official Order “ on behalf of an unknown government, signed and sealed by the applicant, purporting to be issued by him as Chief Justice of the United States and representing himself as a descendant of Abraham Lincoln.

No attendance fee was charged!

Regards

Robert (Bob) Narev
Notary Public since 1969



I have practised law for over 60 years and have been a Notary Public since 1963, having served as President of the Auckland Society of Notaries for 10 years.

I offer Notarial services and, work as a Consultant to Glaister Ennor.

As a consultant, I work with my clients offering a preliminary discussion, understanding your requirements and will happily refer you to a trusted member of our firm who is experienced in the relevant area. I always endeavour to satisfy my clients and their needs

PROTOCOL, A NEWSLETTER OF THE NOTARIES’ SOCIETY OF SOUTH AUSTRALIA VOLUME 2023 ISSUE 1

This is an excellent Newsletter and I recommend reading it. Of note in it are the Apostille Convention Updates, and Recent Cases of Interest. Dr Lee comments on **Antov v. Bokan (No. 2)** (2019) 101 N.S.W.L.R. 142 Supreme Court of New South Wales, Court of Appeal, rightly points out that “no party sought nor produced the notary’s records, even though this would have shortened the proceedings (by years). Presumably this was tactical, with neither side wanting proof that one of the two documents was authentic or otherwise” (*Protocol* 3). The other two cases are well worth studying, thanks Dr Lee.

[Click here to read Protocol](#)

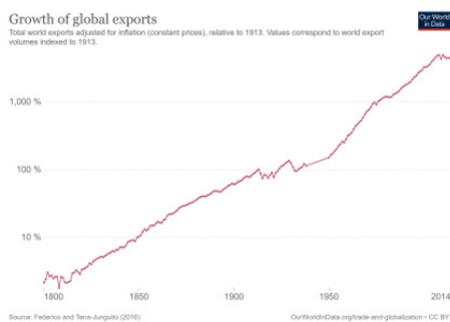
THE NOTARY AND COMMERCE: LAW MERCHANT

Commerce is defined as “the activity that embraces all forms of the purchase and sale of goods and services” (Collins 324).

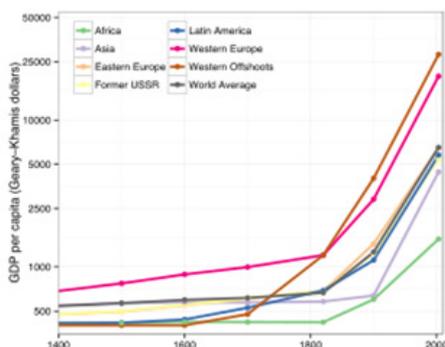
Such activity has grown remarkably over the last two hundred years, and the integration of national economies into a global economic system has been one of the most important developments of the last century.

This process of integration, often called Globalization, has materialized in a remarkable growth in trade between countries.

The chart below shows the value of world exports over the period 1800-2014.



Represented in GDP per capita in the following graph



There is strong connection between the work of notaries and commerce. I have not yet been able to source data for the growth of the common law notariat to see if it corresponds with the growth of commerce. Resorting to asking ChatGPT I was referred to seek out government data with an apology from the AI! What then is the historical connection between notaries and commerce?

International law firm CharlesRussell Speechlys' Partner Robert Bond, in an article in Lexology August 17, 2015,

entitled “The role of the Notary today in a global world” wrote:

The functions of a Notary Public are derived from the law merchant, which has been defined by Jowitt’s Dictionary of English Law as “that part of the law of England which governs mercantile transactions. It is founded upon the general custom of merchants of all nations, which, though different from the general rules of the common law, has been gradually engrafted into it, and made to form part of it” (Bond 1).

This intrigued me for two reasons.

Firstly Mr Bond’s suggestion that the *functions of the Notary Public derive from it* may need further clarification. The office of the Notary Public has a long history with its origin in the civil institutions of ancient Rome, further back than any suggestion of Law Merchant. As Brooke suggests:

In the last century of the Republic, probably in the time of Cicero, a new system of shorthand was invented and ... certain arbitrary marks and signs, called *notae*, were substituted for words in common use. A writer who adopted the new method was called *notarius* ... (Brooke 2).

At first, notaries in England were appointed by the Papal Legate, and were clergy. Then, in

1279 Pope Nicholas III granted John Pecham, the Archbishop of Canterbury, the faculty of appointing three notaries within a year. In the course of time, members of the clergy ceased to take part in secular business and laymen, especially in towns and trading centers, began to assume the official character and functions of a modern common law notary (Brooke 14).

Mr Bond may refer to England’s notaries public, and their familiarity with the Law Merchant as they plied their trade at fairs. Which brings me to the second reason my interest was piqued by Mr Bond’s assertion – his reference to the Law Merchant. Is it a separate system of law as some historians suggest? Law Merchant principles have been traced back to the Magna Carta.

Chapters 41 and 42 of the Magna Carta writes Robert Bond,

specifically safeguard the rights of merchants to “enter or leave England unharmed and without fear” and confirms that merchants “may stay or travel within it [England], by land or water, for the purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs”. Today, the law merchant is alive and well whether in relation to engagement by land or water or equally on the digital highway. The role of the Notary has always been to authenticate and validate signatures, seals and identities and in doing so, to be a trusted professional

in the Global World where proof of identity and authenticity of transactions is critical (Bond).

Chapter 41 of this Great Charter does indeed state that all merchants were to enjoy safe and secure access to English markets, freedom from “evil tolls,” and even a measure of protection from exploitation in time of war. Chapter 42 also guaranteed a measure of freedom to travel to all subjects, both into and out of England, with appropriate exceptions to deal with criminals and with the special problems that always exist in wartime. Montesquieu himself was to praise these chapters as enacting the “spirit of commerce” that led to peace among nations. The two chapters are:

Chapters 41 (and 42)

Omnes mercatores habeant saluum et securum exire de Anglia, et venire in Angliam, et morari et ire per Angliam, tam per terram quam per aquam, ad emendum et vendendum, sine omnibus malis toltis, per antiquas et rectas consuetudines, preterquam in tempore gwerre, et si sint de terra contra nos gwerrina; et si tales inueniantur in terra nostra in principio gwerre, attachientur sine dampno corporum et rerum, donec sciatur a nobis vel capitali iusticiario nostro quomodo mercatores terre nostre tractentur, qui tunc inuenientur in terra contra nos gwerrina; et si nostri salvi sint ibi, alii salvi sint in terra nostra.

All merchants shall have safe and secure exit from England, and entry to England, with the right to tarry there and to move about as well by land as by water, for buying and selling by the ancient and right customs, quit from all evil tolls, except (in time of war) such merchants as are of the land at war with us. And if such are found in our land at the beginning of the war, they shall be detained, without injury to their bodies or goods, until information be received by us, or by our chief justiciar, of how the merchants of our land found in the land at war with us are treated; and if our men are safe there, the others shall be safe in our land.

Mr Bond is in good company. Even Shakespeare, some say, used the Law Merchant.

Shakespeare and the Law Merchant

The court trial scene in *The Merchant of Venice* is, some say, by implication administering

the Law Merchant ... accords with several details of the play. It explains for example how swift and summary judgement can be offered somewhat informally in the presence of the leader of the city and a number of fellow merchants, for these were typical procedures of Law Merchant tribunals. The international nature of the Law Merchant also accords with the use in the Venetian play of a young lawyer from Rome, recommended from Padua, to judge a case brought by an ‘alien’ (IV. i. 345) Jew. Indeed it was stipulated that a certain proportion of foreigners sat in judgement on some English Law Merchant tribunals (Sokol 63).

However, the concept of the Law Merchant, and therefore the assertion of Mr Bond (and many others) is now seriously in doubt, at least as to its existence as a separate system of law. Lawyers and economists have similarly latched onto their own favourite construct: the law merchant. According to this story,

medieval merchants created, without the intervention of the state, a uniform and universal set of commercial customs to facilitate intercity trade. This law merchant tale has become the touchstone for advocates of private ordering, endlessly rehearsed in articles and books on everything from international commercial law to aviation law, to cyberspace. Historians have for decades now been sounding the warning that the law merchant emperor has no clothes, but to little avail ... True, scholars writing about private ordering do sometimes cite these historical studies ... [and] ... continue with their discussion of the law merchant as if no challenge to the accepted construct could be seriously entertained ...[but] ... this emperor has no clothes. The law merchant as portrayed in the literature on private ordering did not exist. It is time to end the tyranny of this construct. Just as with feudalism, the concept of the law merchant has a history of creation and reinvention (Kadens 252).

Notaries today, I respectfully suggest, derive their functions from spheres much older than any system of rules such as Law Merchant, even if it exists.

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NOTARY WORLD



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