

Answers to Common Personal and Business Legal Questions

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ROBERT IRWIN & DAVID L. GANZ

THE 90 SECOND LAWYER

**Answers to Common
Personal and Business
Legal Questions**

**ROBERT IRWIN
DAVID L. GA**



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Preface

The idea for this book germinated from the experiences of one author, a practicing attorney in New York, New Jersey, and the District of Columbia, and those of the other author, who is a well-known and respected California-based writer in real estate and finance, who has gotten along fine for many years without the aid of a lawyer, thank you!

In the course of nearly 20 years of practicing law, and assisting hundreds of clients each year, the lawyer of the duo found that there are recurring problems that concern numerous clients. The Californian has found over a comparable period of time that there is a great deal that the layperson can do for him- or herself that achieves the desired result without the help of an attorney.

Both authors are owners and investors in real property, so it's ironic that the lawyer is the one who consistently hires another lawyer to be his counsel when it comes time to make a real property purchase, while the nonattorney author buys and sells property with apparent abandon, never utilizing a lawyer's services.

But that's the theme of this book: life is full of choices, and one of them is whether to have someone represent you when you might instead be perfectly capable of representing yourself and achieving a satisfactory result.

Herein you'll find the answers to more than 80 common questions for which you would normally seek an attorney's help. In most cases, satisfactory answers are provided for self-help, and depending on your situation, you can do it yourself. In other cases, we'll show you what you can do, and then point out that perhaps you ought to also consult a lawyer if you're not familiar with legal processes. Along the way we hope to save you a great deal of time, money, and aggravation.

—ROBERT IRWIN AND DAVID L. GANZ

FURTHER QUESTIONS AND ON-LINE ASSISTANCE

The 90 Second Lawyer™ wants to be your source for succinct legal information. We recognize that not every question that you have can be anticipated in this book, and we plan to write additional books that present a series of questions and answers in the same format as this one.

If you have a question in the interim, you can get on-line assistance for questions of a general nature simply by posting the question on the Internet. *The 90 Second Lawyer* will try to answer it for you, and, if it fits our format, we'll utilize it in our next book. You can send your questions to:

LAWYR90SEC@AOL.COM or DavidLGanz@AOL.com

Check out our home page on the Internet:

<http://home.aol.com/Lawyr90Sec>

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Introduction

We are all familiar with televised news reports, so-called sound bites a minute and a half long. It occurred to us that people seeking legal information might be able to glean in that same minute and a half helpful hints and some reliable solutions. This 90 seconds of information is the germination of this book—short, concise answers to legal questions.

Can you actually read anything of consequence in 90 seconds? When John F. Kennedy was president, he took a well-known speed reading course to increase his reading to over 1,200 words a minute. Our goal is much more modest, estimating that the average adult reads about 800 words a minute with a reasonable amount of comprehension. Thus, each of the essays (or answers) is between 750 and 1,200 words—about the size of a typical newspaper column that is trying to present a complicated topic with attention both to the issue and its resolution.

We do not pretend that this book is a substitute for sound professional advice for the specifics of legal problems, which may vary. If you decide that you do want or need a lawyer to give you more in-depth advice, by all means, seek one out. But we think that you'll find this book can save you time and money, because it will show you how to organize your complaints in a cohesive fashion—and that will, if nothing else, give you a break on the bill that you get for professional services, which usually are charged at an hourly rate. You will find answers to questions concerning:

- consumer complaints
- divorce
- tax matters

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contracts
small business concerns
estate planning
working with attorneys
small claims court

and many other topics. *The 90 Second Lawyer Guide to Real Estate* will be published by John Wiley & Sons later this year.

Obviously, it is impossible to distill the essence of law as it is studied into a short book such as this. Indeed, legal encyclopedias typically have more than 100 volumes devoted to our key topics. These tomes are obscure, but sometimes useful to the practitioner. Further, lawyers, before they are admitted to the bar, go to law school for three years and spend hundreds of hours in classroom settings studying the law in all its beauty and confusion. Many lawyers, after they are admitted, are required to take a skills and methods course before they are able to practice.

This book is not intended as a substitute for that type of experience, but it is designed to get to the nub of more than 80 common legal problems that you, a typical consumer, are likely to run across. It offers a quick fix for a number of issues that you are likely to incur in the course of your daily life.

There are more than 400,000 lawyers in the United States, more than in virtually any other country in the world. If you need a lawyer, you won't have any trouble finding one. Chances are, however, that you won't need one for the topics covered. From the facts that we have assumed in each of our examples, we think that in many cases, you will be pleased to find that you do not need a lawyer or other professionals to give you assistance. With the help of this book, you will be on the right track, and be able to resolve your problems by yourself, quickly and profitably.

The law is not confined to any one volume of enactments or rulings. The laws of our federal government take up shelves upon shelves for they are comprised of Acts of Congress, executive orders, judicial opinions, and regulations promulgated by government agencies. Likewise, there are multivolume sets of judicial opinions, statutes, ordinances, regulations, and so on, for each of the states and for counties, cities, and other political subdivisions within the states. And laws change all the time, as a result of further legislation, court rulings, executive orders, and the re-writing of agency regulations. And laws are subject to re-interpretation and to contradictory interpretations.

The 90 Second Lawyer is not a survey of any one set of laws, nor is it meant to be a definitive response to all the legal problems that might arise out of a purchase or sale, or from business or consumer disputes, or regarding disputes with family members or neighbors, to name just a few. *The 90 Second Lawyer* is meant to convey encouragement by suggesting that the non-lawyer need not be helpless in the face of every difficulty, even difficulties involving some law.

The authors want readers to be inspired to think in terms of cautious, prudent, and responsible self-help that does not dismiss resorting to a lawyer but which promotes remedies and resolutions devised by the individuals affected; devised by resorting to common sense, with appeals to reason and fairness. This book is meant to provide courage and inspiration for bringing a grievance to the attention of another in a temperate fashion in the hope that a resolution can be reached without unnecessary cost and rancor. Some situations, however, will not lend themselves to simple non-lawyered resolutions, and in those situations *The 90 Second Lawyer* may prove helpful to the non-lawyer in deciding when to hire a lawyer and in determining which lawyer to hire.

This book is meant to be a resource, not an oracle. It cannot guarantee a particular outcome. For some predicaments, the self-help route may be too risky or just plain inappropriate. This kind of evaluation of risk and assessment of appropriateness can only be made by each individual and the book does not purport to provide the answer for each and every predicament or grievance. The authors hope it will aid your deliberations and save you some time and consternation, even if you conclude that you should hire a lawyer.

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Consumer Concerns

Question 1

I've received a "gift" in the mail that I didn't order, along with a bill. Do I have to pay? Who keeps the gift?

You don't have to pay for it. The gift is free! Three centuries ago, British satirist Samuel Butler cautioned, "Ne'er . . . look a gift-horse in the mouth." In August 1970, the Congress of the United States codified this into federal law, making unordered merchandise that arrives in the mail absolutely free, even if the sender intends for you to pay for it.

This is true whether the merchandise is an inexpensive annual calendar, or a more expensive diamond, or even a rare coin. Codification of this is found in Title 39 of the United States Code (section 3009) and is specific as to what is "free" and what is not.

Significantly, there is a finding that mailing of items and then attempting to charge for them is an unfair and deceptive practice in trade and commerce, something that is rectifiable by the Federal Trade Commission as well as the United States Postal Service, whose postal inspectors can enforce the provision.

Specifically, the law provides that,

Any merchandise mailed in violation of . . . this section, or within the exceptions contained therein, may be treated as a gift by the recipient.

WHAT YOU CAN DO WITH YOUR GIFT

As is the case with any gift, recipients can do with it whatever they want. The law is specific that the recipient of a "free" gift has the right:

- to retain it,
- to use it,

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- to discard it,
- to dispose of it in any manner he or she sees fit, without any obligation whatsoever to the sender.

Further, free samples clearly and conspicuously marked as such don't violate the statute; they can be sent and kept. Recognizing another longstanding practice, items sent by charities are not considered deceptive, but the charity can't make you pay for them if you didn't order them.

If the law sounds a bit strict, consider that the reason it was enacted in the first place was to rectify the abuse that was going on in the marketplace. Merchants were sending rare coins labelled as free, for example, and then following up with a request that the recipient either return the coin or pay for it.

Under the law as it now exists, if the product is labelled "free," that's what it is; it is improper, and illegal, for the merchant to request that it be returned, or even that it be paid for.

GUIDELINES FOR "FREE" ITEMS

There are some specific guidelines that merchants must follow when sending so-called free merchandise. If you, the consumer, understand these, you'll be in a better position to recognize merchants who violate the rules:

► The law requires that all such unordered merchandise shall have attached to it a clear and conspicuous statement informing the recipient that he or she may treat the merchandise as a gift and has the right to retain, use, discard, or dispose of it in any manner he or she sees fit, without any obligation whatsoever to the sender.

► Recognizing that sometimes people may forget, Congress directed further that no mailer of any merchandise sent in violation of this section shall mail to any recipient of such merchandise a bill or any dunning communications for such merchandise. Charities can't, either.

► What does "unordered merchandise" mean? It means merchandise mailed without the prior expressed request or consent of the recipient.