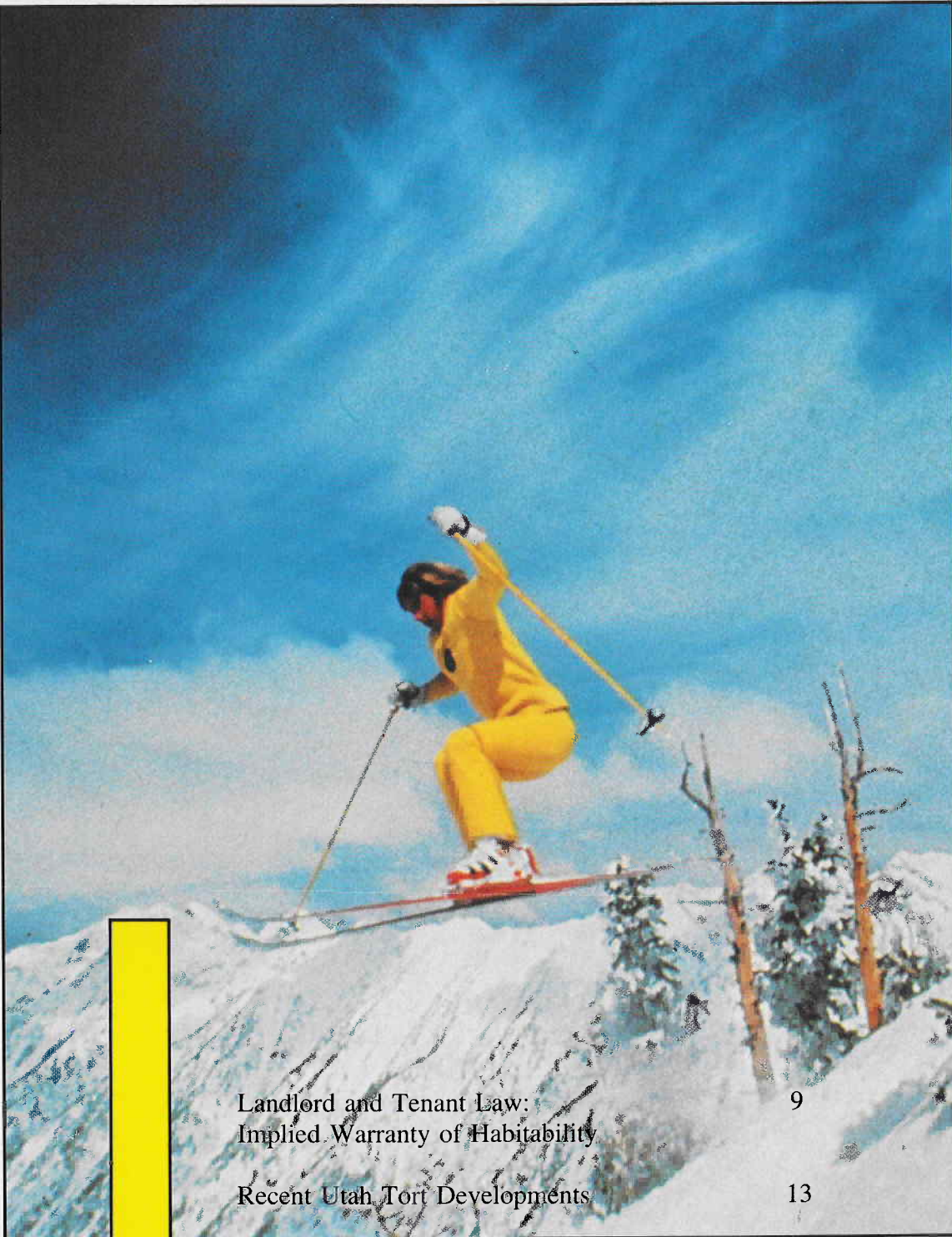


# UTAH BAR JOURNAL

Vol. 3, No. 1

January 1990



Landlord and Tenant Law:  
Implied Warranty of Habitability 9

Recent Utah Tort Developments 13

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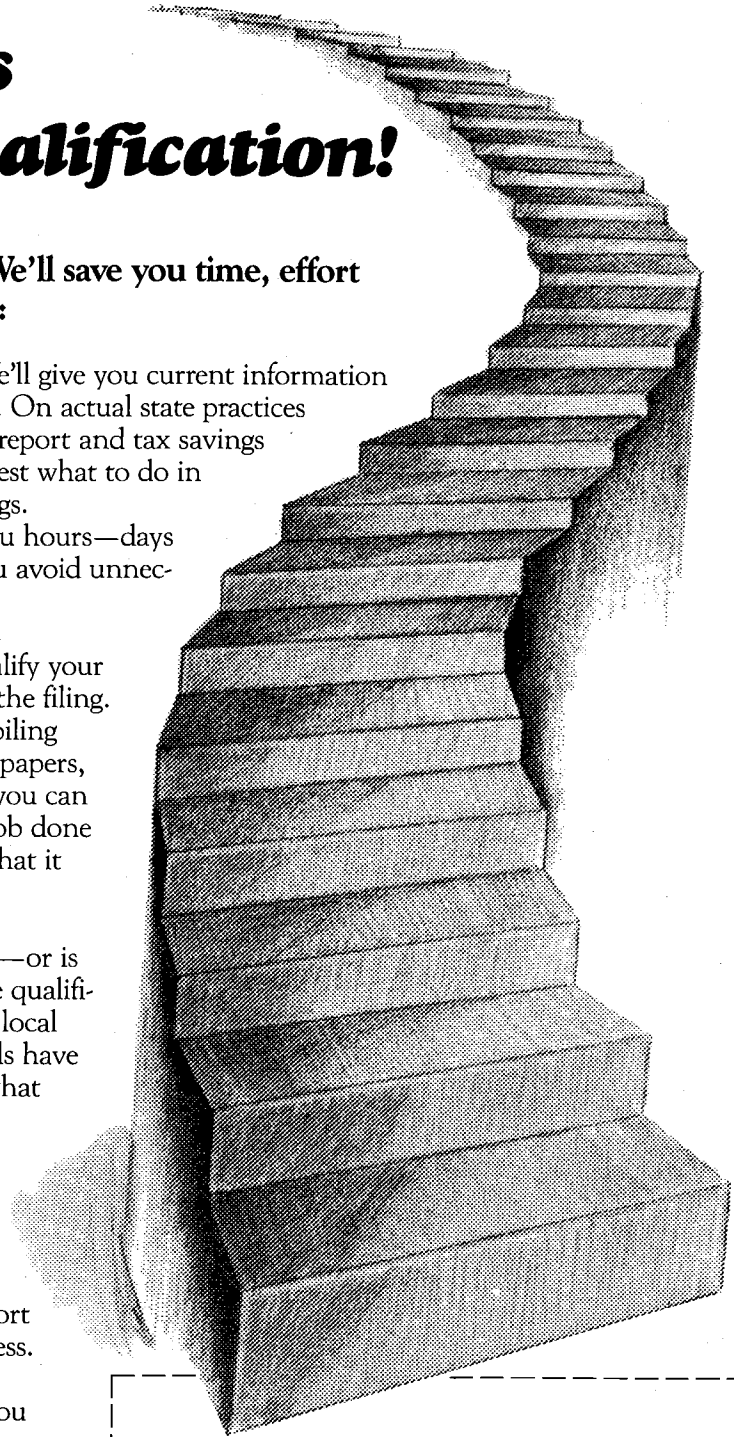


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COVER: Our thanks to the Salt Lake Convention and Visitors Bureau. Skier enjoying Utah's  
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# LETTERS

**Editor's Note:** Because letters responding to Governor Lamm's editorial were invited by the *Bar Journal*, the usual limitations on length are being waived for such letters.

Dear Editor:

As always, I am fascinated by the unfairness and double standards of the Utah State Bar Commission. In contrast, I thought that you would always be above such conduct.

The *Utah Bar Journal* (August/September 1988 Edition, p. 4) made clear that "Letters to the Editor" to be published must not exceed two hundred (200) words. However, when the Bar Commissioners respond to Brian Barnard in a "Letter to the Editor" your rules don't apply. The Commissioners directed Brian Florence to respond to Barnard's letter and Florence defended the Commissioners and rambled on for three hundred plus (300+) words. October 1989 Edition, p. 4.

It is unfair that the Bar Commissioners can review a letter before it is published and direct that one of their own respond to it. The Minutes from the Bar Commission meeting of July 20, 1989, reveal the Commissioner read Barnard's recent letter long before publication and ordered that a response be published simultaneously.

Actions like this reflect poorly on your integrity as Editor and on the integrity of the publication.

Ronald O. Neerings  
Attorney at Law

Letters Editor Reply:

The *Utah Bar Journal* did not intend to be "unfair" or to maintain "double standards" by printing Brian Barnard's Letter to the Editor in the same section as a response from the Bar Commission. Rather, the *Bar Journal* published the two letters simultaneously in order to present two sides of a question of interest. The *Utah Bar Journal* apologizes for any confusion caused by the length and positioning of the Bar Commission's response to Barnard's letter.

Letters Editor

Dear Editor:

The statistics quoted by former Governor Lamm are interesting but misleading. For instance in Japan the major companies do not employ attorneys to draft contracts and other documents because they have in-house people who perform that function. I wonder if Governor Lamm took into account the divided legal system in Britain, solicitors and barristers, when he counted lawyers. Even if he did, would anyone like to compare the productive output of the United States per capita with the United Kingdom. Does Richard Lamm believe that the British are more productive than Americans?

Governor Lamm's statements are too general and sweeping. It leads one to believe the whole problem with our economy is the legal system. The number of attorneys and the number of

disputes are not cause and effect. The old joke that one attorney in a town starves but two make money is just that, a joke. The level of litigation is merely symptomatic of the larger problems.

Would Governor Lamm care to go into private business? He is now a member of the law firm. He could just as easily work for private enterprise and do "productive work." Is he suggesting that the government limit the free choice of individuals in pursuing a legal education? He states, "The solutions are numerous and clear," and gives some offhanded cures. Such statements are typical of politicians guilty of demagoguery, but are unworthy of one in Richard Lamm's position.

Michael W. Crippen CLU, ChFC  
Attorney at Law  
Salt Lake City, Utah

Dear Editor:

You invited responses from members of the Utah Bar to the Richard Lamm editorial "Too Many Lawyers, Too Much Litigation." I suspect most of the comments you receive on Lamm's "startling claims" will be spirited rebuttals. However, I believe we should give thoughtful consideration to his principal point that we have too many lawyers and our legal system costs too much, because it's in our own long-range professional interest to do so.

His statistics, if accurate, are the startling feature of his editorial, and appear to support his claims. Certainly our nation, with 5 percent of world population and 70 percent of world lawyers, would prima facie seem imbalanced, unless there are strong reasons to justify such disparity between us and the rest of the world. Some have argued that it's one of the prices we pay for being the freest and most prosperous nation in the world. However, with both Europe and Japan overtaking us economically, this argument will increasingly ring more hollow, and any differences in individual liberties between us and other western democracies has lately existed more in our own rhetoric than in the perceptions of the citizens of each.

Even if our expensive legal system presently gives us some qualitative edge over other nations in the free world, how much longer will it withstand cost-benefit analysis? Such analysis, and the conclusions it will suggest will increasingly be reached in a future of declining prosperity, not by lawyers, but by unhappy citizens seeking a scapegoat, and the legal profession will be a prime target.

Our proliferation of lawyers and system costs has been explained as necessary to protect our rights on the criminal side, and to maximize justice on the civil side, but these rationales come mainly from our own ranks, and more rarely from the society we serve. If I interpret correctly what I read and hear, the lawyer proliferation is increasingly viewed not as a natural and beneficial consequence of a free enterprise system, but as more analogous to the model of a runaway arms race, in which we occupy the role of a military-industrial complex, open to the suspicion of serving our own pecuniary interests above larger social goals, by fomenting strife.

I submit the most effective way to arrest present trends is to reduce the number entering the profession each year. This will be best accomplished, not by quotas, but by removing stimulus—the profit and power motives—and need, which means beginning to dismantle the adversarial system (which we have begun to do, anyway, in many areas of the law). Although the adversarial system has served our needs for two centuries of national life, its cost, like a nuclear explosion, is suddenly mushrooming. There are less costly and equally good alternatives. On this point, I recommend David Luban's book *Lawyers and Justice*, Princeton University Press.

As we enter a new age in world history, we need to be open to the Richard Lamms who prescribe radical surgery. It may be our only salvation.

Robert F. Owens  
Circuit Court Judge  
Fifth Circuit

Dear Editor:

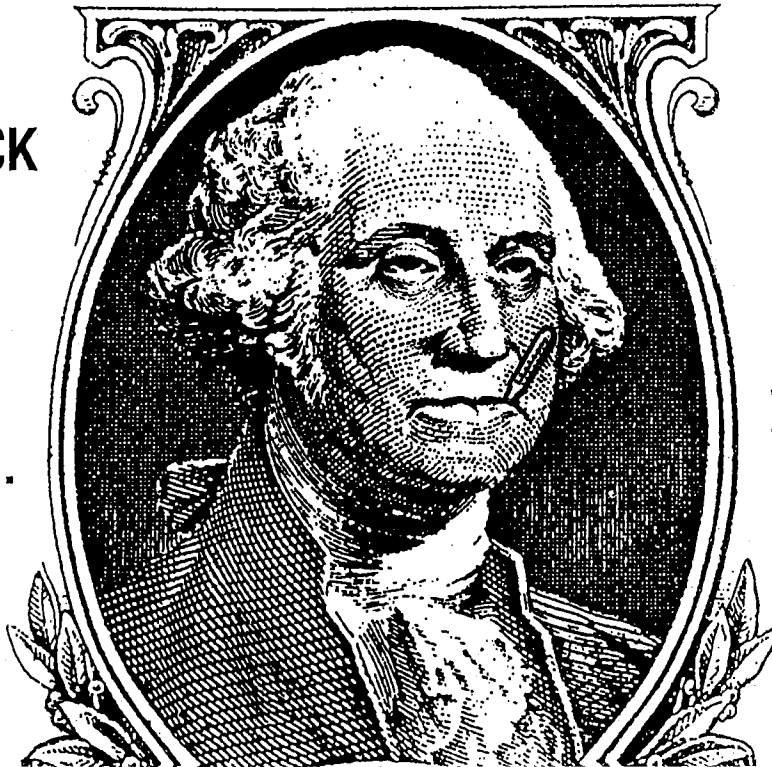
The only thing startling about Mr. Lamm's editorial, as reprinted in the November 1989 *Utah Bar Journal*, is that you found his claims to be "startling." The validity of his claims is patently obvious to anyone whose outlook has not been obscured by his proximity to the profession.

Grant A. Hurst  
Attorney at Law  
Dallas, Texas

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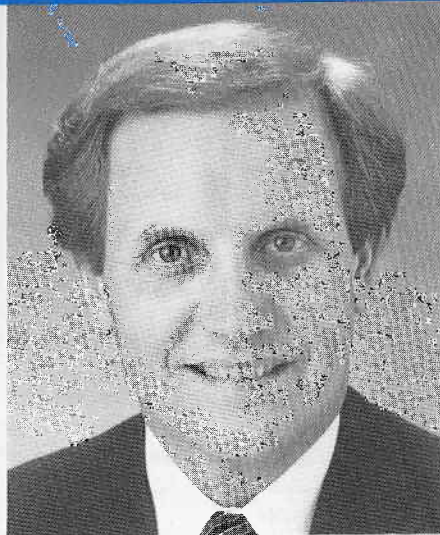
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## Future Trends

*By Hans Q. Chamberlain*

I recently attended a regional ABA Board of Governor's Meeting which focused on the future of the legal profession, law practice management, economics and technology. Two speakers, Bob McKay and Ward Bower, gave excellent presentations and I thought many of the items discussed were well worth passing on to you. While I have observed changes in the legal profession during my 20 years of practice, this conference focused on not only where we have been over the last 20 years, but what these two experts see for the future.

Some of the statistical information was quite revealing. For example:

1. Growth in revenues generated by law firms has increased from \$51 billion in 1985 to \$73 billion in 1988, or a rate of approximately 10 percent to 13 percent per year.

2. There now exists three firms with over 1,000 lawyers, 40 firms with over 300 lawyers and 300 firms with over 100 lawyers.

3. Over the past 10 years, law firms have experienced a profit squeeze in the sense that while growth revenues are up 137 percent, expenses to operate an office are up 164 percent. It only follows that law firms must learn to operate on a more effective basis because operating expenses cannot continue to grow faster than gross receipts.

4. Billable hours per year for partners in

law firms are up 12 percent over the past 10 years, while associates are up 8 percent. Lawyers, therefore, appear to be working more hours just to stay even with the cost of operating an office.

5. An average law firm invests \$150,000 to \$250,000 over the first two years for each new associate it hires, and it takes from three to four and a half years to recover the up front costs. Because lawyers are much more likely to change firms than they were 10 years ago, a law firm may not recover its initial investment if an associate leaves during his or her first two years of practice.

6. In 1980, on a nationwide basis, the ratio of lawyers to the general population was 1 to 418. In 1995, it is projected that there will be 1 lawyer for every 270 persons.

7. Twelve percent of licensed lawyers are now women, and 40 years of age is now the medium age for lawyers nationwide.

What much of this boils down to is the fact that the legal profession must be careful to adjust to the marketplace and recognize that while we are professionals and unique in that sense, the practice of law is similar to other service industries and, therefore, we must be careful to avoid what has happened in the banking and savings and loan industry which failed to adjust to market conditions. Ward Bower coined the phrase "market

maturity," and used as an example the soft drinks industry where for approximately 100 years, Coca-Cola had only one product to sell, but because of "market maturity" in the past few years, we now see Diet Coke, Diet Cherry Coke, Caffeine-free Coke, Caffeine-free Diet Coke, Coca-Cola Classic and New Coke. We are now seeing a great deal of "market maturity" in the legal profession as to what the client wants and expects.

Mr. Bower also indicated that the client is much more sophisticated, particularly the corporate client. There now exists 70,000 "in-house" lawyers, or approximately 1/10th of all licensed lawyers in the nation. Thus there is now a skilled lawyer within the corporate structure who wasn't there in past years who advises the corporation concerning the quality of legal services provided by competing firms, which in turn necessitates the need to provide quality legal services at a competitive price.

The 1990s will see a wide-open marketplace according to Mr. Bower, with much more emphasis on marketing. At the present time, law firms spend approximately 1 percent of gross revenues on marketing, while other service industries are spending 3 percent to 4 percent of gross revenue. Undoubtedly, we will see an increase in law

