



# The Maxims of Jurisprudence and creativity in the law

## “No one should suffer by the act of another” and other Maxims found at Civil Code sections 3509-3548

BY CONOR GRANAHAN

“It’s in the Maxims of Jurisprudence!” he exclaimed.  
 “The what!?”  
 “Look them up, in the Civil Code.”  
 I rifled through my four-in-one book...  
 “Found them!”

We laughed and awkwardly high-fived, both of us a bit delirious from our late-night trial prep. I was a young second chair getting to bounce ideas back and forth with a gracious, seasoned trial lawyer.

Who knew there were these Maxims with such commanding statements as “he who takes the benefit must take the burden?” When I was introduced to Rick Friedman’s and Patrick Malone’s *Rules of the Road*, the Maxims turned from a novelty into a resource. I realized the principles in the Maxims can instruct my rules and themes I wanted to develop in my cases.

The Maxims of Jurisprudence are found at Civil Code sections 3509-3548. They were initially codified in 1872, with additional sections added in 1965. There aren’t many cases or notes about them, but the first one tells us how to use them: “The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application.” (§ 3509).

Taking that cue, here are a few sample themes from the Maxims:

There is the case where the defendant is not taking your client’s damages seriously. These Maxims can help:

- No one should suffer by the act of another. (§ 3520).
- For every wrong there is a remedy. (§ 3523).

These remind us that we have a client who suffered and there is a remedy for the defendant’s wrong. Put the focus back on the defendant’s wrong and the client’s suffering.

In a vicarious liability case, like respondeat superior or negligent entrustment, you can focus on the defendant not as being directly wrong, but as one who should be held responsible because of its position of power. A few Maxims that apply:

- He who takes the benefit must bear the burden. (§ 3521).
- One who grants a thing is presumed to grant also whatever is essential to its use. (§ 3522).
- He who can and does not forbid that which is done on his behalf, is deemed to have bidden it. (§3519).
- The incident follows the principal, and not the principal the incident. (§ 3540).

These Maxims focus on the defendant who profited from the activities that led to our client’s injuries, who didn’t do what was possible to prevent it, and who is now accountable.

In a disputed liability case, these Maxims can help:

- No one can take advantage of his own wrong. (§ 3517).

- One must so use his own rights as not to infringe upon the rights of another. (§ 3514)
- One must not change his purpose to the injury of another. (§ 3512).
- Where one of two innocent persons must suffer by the act of a third, he by whose negligence it happened, must be the sufferer. (§ 3543).

These Maxims focus on the choice a defendant made that led to the harm. While the defendant may not be wholly blameworthy in a disputed case, we cannot excuse the conduct because our client is the one who was injured. The law requires that we attribute responsibility accordingly.

There are other Maxims to explore. I hope you read them and get some insight for your cases. That’s the fun part of our job for me: being creative. We get to develop theories of liability and themes in order to justly apply the law, which is what the Maxims are here for.

*Conor Granahan is the principal of Granahan Law, with offices in San Francisco and Marin. He handles personal injury, employment, and landlord tenant matters. He is a member of AAJ, CAOC, SFTLA, and Justice HQ, a network of consumer advocate attorneys. He can be reached at conor@granahanlegal.com.*



Granahan