



The Common Law of the Gym

BY MARK COHEN

Common law is law judges develop in individual cases, as opposed to laws enacted by legislative bodies or regulations the executive branch issues. Justice Holmes explained that common law develops gradually as consensus arises from prior decisions.¹ Customs may become so widely accepted as to become part of the common law.²

In the United States, few laws govern conduct in the gym. Of course, the jurisdiction's criminal laws will apply, so you can't steal equipment or assault another visitor. In addition, some facilities promulgate gym rules, but these are usually limited to those needed to ensure safety. Beyond that, with regard to matters such as etiquette, we must look to the common law.

Fitness training is not a modern invention. Egyptian tombs show pictures of lifting bags filled with sand, and stone swinging and throwing exercises.³ Weightlifting competitions date back to early Greek civilization.⁴ With no

statutes, ordinances, or regulations governing gym etiquette, customs developed and became so widely accepted as to acquire the status of common law. This article summarizes nine common law principles of the gym.

1. Offer no advice unless asked or there is an imminent threat to someone's life or health.

You may be a bodybuilder with decades of knowledge. You may see a young person using too much weight on the curl bar and using his or her body to swing the bar upward rather than using less weight and isolating the bicep muscles. You *know* this young person would benefit from your advice. What should you do? The common law requires that you say nothing because the person has not asked for your opinion and is not endangering anyone. This rule is not new. The Bible cautions us to mind our own business in the gym. It proclaims, "And that ye study to be quiet, and to do your own

business, and to work with your own hands, as we commanded you."⁵

2. Prior in time, prior in right.

The first person in the gym controls the music. End of discussion. The Romans summarized the applicable law in the maxim, *Si dormiatis, vinceris*.⁶ That's the law.⁷

3. Move along or let others work in.

You're using your gym's only squat rack and someone else wants to do squats. Because you're more concerned with impressing others by how much you can squat than you are with being fit, you rest five minutes between sets. Under these circumstances, if you leave the squat rack, even for a second, to get a drink of water, the common law allows others to use the equipment while you're wasting time. "Equity aids the vigilant, not those who slumber on their rights."⁸

4. Clean up your mess.

Your mother doesn't work at the gym. You can bench press 315 pounds and you love doing it as others marvel in amazement at the fact that you have three 45-pound plates on each side of the bar. If you complete your last set and walk away without putting your weights away, the Yiddish weightlifters had a word for people like you—*shmendrik*.⁹ If you're strong enough to lift the weight, you're strong enough to put your weights away. The Bible repeatedly commands us to put away our weights.¹⁰

5. Offer to spot others.

As an experienced lifter, you know when others are pushing their limits in the gym. Always offer to spot others. No less a weightlifter than William Penn made the point when he wrote: "I expect to pass through life but once. If therefore, there be any kindness I can show, or any good thing I can do to any fellow being, let me do it now, and not defer or neglect it, as I shall not pass this way again."¹¹

Offer to spot others. You might make a new friend who will appreciate your kindness and pay it forward. Kindness will spread across the land. It's like trickle-down economics, except it works.

6. Don't scream.

You're about to attempt a personal record in the deadlift. You manage to lift 515 pounds one time and then you let the weights crash to the floor as you let out a scream like a woman giving birth to a 1971 Chrysler. News flash: You already lifted the weight; screaming won't help with your lift. So act like a pro, lower the bar slowly, and quietly bask in the knowledge that you achieved your goal. Even without the scream, everyone in the gym saw you. If your screams result in "continuous annoyance and discomfort to others" in the gym, courts of equity will restrain the nuisance.¹²

7. Wipe it down.

You sweat like a pig. When you do leg curls you leave a quart of sweat on the foam pad. If you finish your last set and move on to knee extensions without wiping down the pad, you're creating a smelly, unpleasant environment that discourages others from using the gym. "Wash you, make you clean; put away the evil of your doings from before mine eyes; cease to do evil." —Isaiah 1:16.

8. Don't stink.

The First Amendment does not protect body odor.¹³ You can buy deodorant for \$3.49 at your local grocer. Do it. In *Baldwin v. McClendon*, the Alaska Supreme Court found that the "foul odors" emanating from a hog-raising operation were a nuisance and could be enjoined.¹⁴ The Court noted that the odors produced "material annoyance and inconvenience" to the plaintiffs in the comfortable enjoyment of their own home. If you have a right to the comfortable enjoyment of your own home, then, a fortiori, you have a right to the comfortable enjoyment of your gym because you should be spending more time at the gym anyhow.


9. It's not good to go without coverage.

Nobody wants to see your private parts. It's gross. While the law does not define "gross," we know it when we see it.¹⁵ Moreover, there is good reason for men to wear some type of supporter. In *Bhagwant v. Kent School Corp.*, the court described the consequences of "testicular

torsion" in vivid detail.¹⁶ Federal regulations also recognizing the importance of keeping certain equipment in an upright and locked position.¹⁷

Conclusion

Practicing kindness in the gym reinforces kindness in the practice of law, which is equally important. For example, the CBA's Principles of Professionalism call on lawyers to demonstrate courtesy and civility.¹⁸ See also *Williams v. General Motors Corp.*¹⁹ In this case, plaintiff's counsel failed to appear for a deposition after learning his father was seriously ill. Defendant's counsel sought sanctions, and plaintiff's counsel filed a cross-motion for sanctions based on what he considered to be the defendant's frivolous motion for sanctions. The court denied the defendant's motion and granted the plaintiff's motion. The court wrote, "If all courtesy, goodwill and decency should finally be bled out of the practice of law it will be a sad and bitter calling that remains; I cannot imagine a more

unpleasant way to earn a living than to be a lawyer in a profession devoid of any semblance of kindness, courtesy or humanity." 



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NOTES

1. Kellogg, "Law, Morals, and Justice Holmes," 69 *Judicature* 214 (1986).
2. *United States v. Arredondo*, 31 U.S. 691 (1832).
3. Moran, The History of Strength Training, <http://thesportdigest.com/archive/article/history-strength-training.html>.
4. *Id.*
5. 1 Thessalonians 4:11, *King James Bible "Authorized Version," Cambridge Edition, cited with approval in Greene v. McElroy*, 360 U.S. 474 at 496, n.25 (1959). See *id.* For a more detailed discussion of judicial opinions quoting the Bible, see "Quoting the Bible: The Use of Religious References in Judicial Decision-Making," 9 *N.Y. City L. Rev.* 31 (2005).
6. If you snooze, you lose.
7. See also *United States v. New Britain*, 347 U.S. 81 (1954) ("Priority for purposes of federal law is governed by the common-law principle that the first in time is the first in right.").
8. *Ivani Contracting Corp. v. City of New York*, 103 F.3d 257 (2d Cir. 1997).
9. *Shmendrik* is a Yiddish word that means "jerk," but not just any jerk, a *much* bigger jerk, the master of all jerks. See <http://grammar.yourdictionary.com/slang/jewish-slang-words.html>.
10. See Ezra 10:4, "Arise, for it is your task, and we are with you; be strong and do it." See also Galatians 6:5, "For each will have to bear his own load."
11. www.goodreads.com/quotes/94935-i-expect-to-pass-through-life-but-once-if-therefore.
12. *Baltimore & P.R. Co. v. Fifth Baptist Church*, 108 U.S. 317 (1883).
13. The author conducted a Westlaw search and could find no reported decision holding that body odor is a form of protected speech.
14. *Baldwin v. McClendon*, 288 So.2d 761 (Ala. 1974).
15. See *Jacobellis v. Ohio*, 378 U.S. 184 (1964), in which Justice Stewart, speaking of hard-core pornography, wrote, "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description, and perhaps I could never succeed in intelligibly doing so. But I know it when I see it . . ."
16. See, e.g., *Bhagwant v. Kent Sch. Corp.*, 453 F.Supp.2d 444 (D.Conn. 2006).
17. See 14 C.F.R. 121.311(e).
18. www.cobar.org/For-Members/Committees/Professionalism-Coordinating-Council/Principles-of-Professionalism.
19. *Williams v. Gen. Motors Corp.*, 158 F.R.D. 510 (M.D.Ga. 1993).